

Tilburg University

Procedural and interactional justice

Laxminarayan, M.S.; Henrichs, J.; Pemberton, A.

Published in:
European Journal of Criminology

Publication date:
2012

Document Version
Publisher's PDF, also known as Version of record

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

Citation for published version (APA):
Laxminarayan, M. S., Henrichs, J., & Pemberton, A. (2012). Procedural and interactional justice: A comparative study of victims in the Netherlands and New South Wales. *European Journal of Criminology*, 9(3), 260-275.

General rights

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

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

Take down policy

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

European Journal of Criminology

<http://euc.sagepub.com/>

Procedural and interactional justice: A comparative study of victims in the Netherlands and New South Wales

Malini Laxminarayan, Jens Henrichs and Antony Pemberton
European Journal of Criminology 2012 9: 260
DOI: 10.1177/1477370812439641

The online version of this article can be found at:
<http://euc.sagepub.com/content/9/3/260>

Published by:



<http://www.sagepublications.com>

On behalf of:



European Society of Criminology

Additional services and information for *European Journal of Criminology* can be found at:

Email Alerts: <http://euc.sagepub.com/cgi/alerts>

Subscriptions: <http://euc.sagepub.com/subscriptions>

Reprints: <http://www.sagepub.com/journalsReprints.nav>

Permissions: <http://www.sagepub.com/journalsPermissions.nav>

Citations: <http://euc.sagepub.com/content/9/3/260.refs.html>

>> [Version of Record](#) - May 24, 2012

[What is This?](#)

Procedural and interactional justice: A comparative study of victims in the Netherlands and New South Wales

European Journal of Criminology
9(3) 260–275

© The Author(s) 2012

Reprints and permission: sagepub.co.uk/journalsPermissions.nav

DOI: 10.1177/1477370812439641

euc.sagepub.com



**Malini Laxminarayan, Jens Henrichs and
Antony Pemberton**

Tilburg University, The Netherlands

Abstract

Justice evaluations have become a widely studied area in the past 25 years. Such research indicates that victims have numerous legal preferences, which are in tune with the theories of procedural and interactional justice. This study examines these theories with regard to victims and the justice system from a comparative perspective including the Netherlands and New South Wales. After outlining the victim's position in criminal justice, hierarchical regression analysis investigates several differences in perceptions of justice. Findings indicate that victims in the Netherlands perceived greater levels of process control and decision control, in addition to less improper treatment by the defence counsel. Accuracy and treatment by the police, prosecutor and judge were not significantly different between legal systems. Implications are discussed.

Keywords

comparative criminal justice, interactional justice, procedural justice, victim rights

Introduction

With the rapid growth of victimology since the 1970s, evaluations of justice have become a widely studied area. Consistently, research indicates that victims have numerous legal preferences, including information, compensation, voice and acknowledgement. Social psychological research in the last 30 years has illustrated the importance of the quality of

Corresponding author:

Malini Laxminarayan, International Victimology Institute Tilburg (INTERVICT), Tilburg University,
Warandelaan 2, Tilburg 5037 AB, The Netherlands
Email: m.s.laxminarayan@uvt.nl

the procedure in justice judgments (Bies and Moag, 1986; Leventhal, 1980; Thibaut and Walker, 1975). More specifically, procedural justice, interpersonal justice and informational justice are recurring theories explaining satisfaction. For victims of crime, factors related to these concepts are often indicative of satisfaction (Shapland et al., 1985; Wemmers et al., 1995). Many of these justice preferences are reflected in international (and national) victim rights mechanisms (Groenhuijsen and Letschert, 2008), such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Even when new legislation is adopted to meet the standards of the UN Declaration, countries still struggle with the actual implementation of victim instruments (Groenhuijsen and Pemberton, 2009). The characteristics of the justice system may influence the experience of the victim. Concerning the impact of criminal justice on victims, we identify one way in which differences among legal systems can influence victim perceptions: the structure of the justice system. One common distinction between systems is that of inquisitorial and adversarial procedures (Van Koppen and Penrod, 2003). We acknowledge that countries are not solely inquisitorial or adversarial. Rather, if they mostly possess the characteristics of one or the other, they may be referred to as such. This distinction between systems translates into differences in, for example, dealing with evidence, the roles of justice officials and the participatory role of victims.

This study investigates the differences between two legal systems, the Netherlands and New South Wales (NSW), Australia (with a focus on implications for the victim) and how these disparities may lead to differences in perceptions of justice. Both New South Wales and the Netherlands made significant strides in improving the legal position of the victim, yet they represent two very different types of criminal justice systems. In the first part of the article, the theoretical framework on victim justice preferences in terms of procedural and interactional justice will briefly be introduced. National victim legislation and the structural differences of each system will be discussed. The second part of the article comprises the empirical analysis. Comparative data on 68 victims of serious crime in New South Wales and 101 victims of serious crime in the Netherlands will be presented.

The quality of the procedure

For victims of crime, the importance of the quality of the procedure was noted in a growing number of studies that began recognizing the legal needs of victims. Most notably, Shapland et al. (1985) empirically examined the legal preferences of victims that led to victim satisfaction. The main finding of this research was that the needs of victims of serious crimes, for example participation, information and proper treatment, were not being met by the justice system. In the ensuing years, research not only analysed the legal preferences of victims but more specifically investigated indicators of satisfaction and victim well-being in terms of procedural and interactional justice (Elliot et al., 2011; Orth, 2002; Wemmers, 2010; Wemmers et al., 1995).

Procedural justice refers to the perceived fairness of the procedures that are used to obtain a given outcome (Lind and Tyler, 1988). People regard an outcome as more fair if the procedure leading to it is perceived as fair (Leventhal, 1980). Research has often pointed to the impact that procedural justice may have on one's perceptions of legitimacy

and confidence in the legal system (Tyler, 1990, 2010). Fair and respectful behaviour by legal authorities is a requirement for effective justice (Hough et al., 2011).

Since the 1970s, there have been several conceptualizations of procedural justice. First, Thibaut and Walker (1975) were mainly interested in the concept of control and fairness in dispute resolution methods. Process control was distinguished from decision control, where the former was concerned with the development and selection of information whereas the latter referred to the extent that a participant may 'unilaterally determine the outcome of the dispute' (Thibaut and Walker, 1978: 546). Not long after, Leventhal (1980) presented a more structural conceptualization. Similar to the concepts of process and decision control, Leventhal (1980) evaluated the fairness of a procedure in terms of representation and the opportunity to present one's case to the authorities and to have one's opinions considered. In addition to representation, Leventhal (1980) asserted that procedures and decisions must be based on accurate information; they should be consistent; authorities should suppress biases; there should be an opportunity to correct for mistakes; and authorities must act ethically.

In more recent years, the relational group-value model was introduced (Tyler, 1989). The group-value model argues that the conceptualization devised by Thibaut and Walker is not extensive enough. Rather, other aspects of procedural justice are important. This model contends that people care about their relationship with third parties (such as legal authorities) and this includes non-control issues. A main premise of the group-value model is that belongingness to groups is psychologically rewarding. Therefore, people value such identification. There are three factors that may communicate such attitudes of acceptance by the third party: (1) standing within one's social group (that is, proper treatment), (2) trust in the third party and (3) neutrality of the decision-maker.

The concepts included in the group-value model are largely related to the construct of interactional justice. Interactional justice is composed of informational justice and interpersonal justice (Bies and Moag, 1986). Informational justice refers to the extent to which individuals are provided with explanations about the procedure, informed of the progress and facts of their case and given details of available sources of assistance. By providing explanations, individuals can be more confident that decisions were based on fair proceedings (Greenberg, 1993). Interpersonal justice refers to the extent to which people are treated with respect by the justice officials they come into contact with (Bies and Moag, 1986).

Interactional justice has been argued to be separate from procedural justice within the organizational context. This distinction was the result of conceptual differences, where procedural justice was considered to be an appraisal of the formal aspects of the procedure whereas interactional justice was understood as an assessment of interpersonal treatment (Bies and Moag, 1986). The debate, however, has continued, with some suggesting that the two concepts comprise a single measure (Tyler and Bies, 1990) and others more recently arguing for their separation, often pointing to their correlates as predicting different criteria (Bies, 2001).

Wemmers et al. (1995) specifically studied the construction of the theoretical concept of procedural justice for crime victims. They concluded that there is a two-factor model consisting of respect and neutrality, constructing a hybrid from the previous models and conceptualizations. Respect refers to interest and friendliness from legal authorities,

opportunities to make wishes known and consideration of views. Neutrality refers to honesty, bias suppression and decision accuracy.

Although each of the conceptualizations and models varies, there is much overlap between them. For instance, the standing indicator of the group-value model and aspects of interpersonal justice both deal with the respectful treatment of the individual. Furthermore, Wemmers et al. (1995) provided evidence that both control over the procedure and the standing dimension may better be defined in terms of respect. Regardless of the overlap and theoretical ambiguity, we maintain that there are several victim perceptions related to these conceptualizations that may vary between legal systems.

Comparing New South Wales and the Netherlands

Legislation affecting victims

New South Wales, Australia. First, in 1996, the Victims Rights Act¹ established a statutory Charter of Victim Rights. The Charter of Victim Rights ascertains standards for the appropriate treatment of crime victims by all NSW government agencies. The rights guaranteed by the Charter are related to proper treatment, information, privacy, protection and forms of victim representation. Second, the Evidence Act (1995) specifies several regulations for the examination of witnesses. The court is required to prohibit certain (disallowable) questions, which, for example, may be confusing, intimidating, prejudiced or insulting (Section 41(1b)). Moreover, challenging the accuracy of witness statements is not considered improper (Section 41(3)). Third, the procedure of submitting victim impact statements is outlined in the Crimes (Sentencing Procedure) Act 1999. In NSW, primary victims or family victims (in cases of the primary victim's death) may communicate the personal harm they have suffered as a result of the offence after conviction but before sentencing. Fourth, the Criminal Procedure Act 1986 provides victims of sexual offences with protections for privacy. *In camera* proceedings, for example, are applicable and authorised in almost all sexual offence cases (Sections 291, 291A and 291B). Evidence regarding the sexual reputation of the victim is inadmissible (Section 292(2)). Guidelines also exist that outline the duties of the prosecutor.² These duties refer prosecutors to the Victims Charter and the Victims Rights Act but also lay out more specific duties of the prosecutor in relation to victims, such as consulting the victim at various stages.

The Netherlands. First, the Code of Criminal Procedure (CCP) was amended in 2011 as a result of the Law for the Strengthening of the Position of the Victim. The content of the CCP states that the public prosecutor must treat the victim properly. At the request of the victim, the police and prosecutor should keep him or her informed regarding developments in the case. Police should offer written notification of any termination of investigation or when the report (*process-verbaal*) has been submitted to the prosecutor. Second, as a result of the Victim Impact Statement Directive (*Wet spreekrecht*), victims have been able to make use of these statements in court proceedings since 2005,³ either orally during court proceedings or in written form. Third, in addition to the CCP, there are several guidelines giving attention to the position of the victim. Some provisions

contained in the Victim Assistance Guideline (*Aanwijzing Slachtofferzorg*) were incorporated into the CCP. However, the Guideline is broader than what is laid down in the CCP, because the prosecutor should consider the wishes and needs of the victims at various stages, including dismissals, transactions or demands by the prosecution. The Guideline for the Investigation and Prosecution in Cases of Sexual Abuse⁴ deals specifically with this vulnerable group. Victims come into contact with trained officers and are entitled to special informative discussions.

As can be concluded from the summaries above, the victim rights movement has clearly made progress in the legal systems of NSW and the Netherlands. Both legal systems give substantial attention to procedural justice (primarily through the use of victim impact statements) and interactional justice (through guidelines regarding the treatment of victims). Protections for the victim with regard to testifying in court, however, are more emphasized in NSW. These mechanisms, particularly in relation to vulnerable victims, are not present as such in the Netherlands (though more general guidance on questioning is offered to the judge in the CCP). Overall, however, the stipulations for victims are comparable between the two legal systems.

Structure of the legal system

Though the aspects discussed above seem more comparable than not and illustrate that both systems have made strides in the position of victims, the structural characteristics of the two legal systems may be more likely to lead to different experiences for victims. One common distinction among systems is whether they are adversarial (NSW), inquisitorial (the Netherlands) or fall somewhere between. The nature of these two types of systems may have implications for how victims experience the procedure. In fact, early procedural justice research by Thibaut and Walker (1975) asserted that the adversarial procedure is superior to the inquisitorial procedure in terms of procedural justice, because it leads to fairer decisions. Similar investigations have concluded that adversarial systems are more accurate (through greater presentation of the evidence), provide victims with a greater opportunity to voice their case (Anderson and Otto, 2003; Lind et al., 1980) and are generally more preferred by both defendants and plaintiffs (Lind et al., 1980). We will focus on three main differences concerning the legal structure: the use of judges versus 'party representatives'; cross-examination; and rules of evidence.

New South Wales, Australia. In NSW, the role of the police is to investigate alleged crimes. The Office of the Director of Public Prosecutions (ODPP) prosecutes serious offences, adhering to the principle of expediency. The ODPP advises police on the cases that are eligible for prosecution, and then prosecutes those cases. The ODPP must act in accordance with the Prosecution Guidelines and other relevant instruments that shape the prosecutorial process. Because of the victim's role as a witness, prosecutors often have conferences with victims to obtain relevant information from them and to offer information to them. The role of the trial judge is much more passive in the adversarial system. For example, he or she generally does not direct questions to the parties and instead acts as a neutral decision maker who ensures that trial proceedings follow the dictates of law and justice.

The defence and the prosecution submit evidence for the party they are representing (the State in the victim's case). It has been contended that adversarial procedures will lead to a more comprehensive presentation of the evidence when such evidence is presented through the arguments of the two sides (Van Koppen and Penrod, 2003). Furthermore, representatives in an adversarial procedure have been found to be more diligent compared with representatives in an inquisitorial procedure in searching for additional evidence when sufficient evidence is lacking (Lind, 1975). The exclusionary rules that are used, however, may suggest that a lack of importance is placed on accurate fact-finding (Van Koppen and Penrod, 2003). Even when evidence exists to support fact-finding, the rights of the defendant prevail if that evidence was improperly attained (that is, inadmissibility of evidence or prohibition of hearsay). In these cases, important evidence may be omitted from proceedings.

Perhaps the most notable feature of adversarial procedures, and the most likely to affect victims, is the practice of cross-examination. As the Prosecution Guidelines dictate, 'a criminal trial is an accusatorial, adversarial procedure and the prosecutor will seek by all proper means provided by that process to secure the conviction of the perpetrator of the crime charged'. One primary purpose of cross-examination for the defence is to discredit witness credibility. Inappropriate means may be used that may lead to victim-blaming attitudes or embarrassing questioning. Victim witnesses may be shamed as they are questioned about painful and personal issues (Ellison, 2001). Furthermore, defence attorneys are instructed to ask questions without giving witnesses the opportunity to explain.

The Netherlands. Police and prosecutors follow the guidelines set out for them. The prosecutor has large powers, having a monopoly over prosecutions (Tak, 2008). The prosecutor may settle through a transaction, request a preliminary judicial investigation, prosecute or dismiss the case. Judges for the most part control the investigation and the evidence. The judge may question witnesses and is assisted by the parties' advocates in his or her judicial responsibility. In addition to carrying out the bulk of witness examinations, the judge makes the final decision. The examination of witnesses consists of an informal inquiry between the presiding judge and the witness, with little interruption from the prosecutor and defence attorney. After the court has questioned the witnesses, the prosecutor and the defence have the opportunity to do the same.

Whereas the adversarial procedure places control of the trial in the hands of the prosecutor and the defence, the judge maintains control in the Dutch inquisitorial system. In this approach, the judge will, in theory, often listen to both sides of the evidence, rather than one person controlling the discussion between parties. Control of the process is meant to be in the hands of the inquisitor rather than the parties themselves or their 'representatives'. Participation may also take the form of the *partie civile* (*benadeelde partij*), where the victim becomes party to the proceedings. Consequently, he or she may be able to claim compensation through the criminal courts.

The admissibility of evidence deals with the search for material truth; all evidence is put forward by the prosecutor when searching for the truth, whether or not this is incriminating and/or exonerating. The prosecutor takes a neutral role whose goal is to collect evidence in an objective manner, rather than representing one side in a battle of two parties. As a result, important evidence is not withheld from the judge.

Cross-examination is unknown in the Netherlands. In practice, the majority of witness testimony is conducted in the pre-trial stage and the written file is reviewed during proceedings. Even though the Netherlands follows the principle of immediacy,⁵ the Supreme Court ruled hearsay evidence admissible, with the reasoning that a witness personally witnessed what another person stated.⁶ The ability to use written evidence can prevent victims from testifying. In cases where witnesses are heard, testimony is usually brief. As stated in the CCP, certain questions may be excluded by the court. In cases where the victims appear as witnesses, they may be questioned by the prosecutor, the judge and the defence. The prosecutor then has the role of protecting the victim as much as possible from intrusive questioning (Victim Assistance Guideline). Information is obtained through informal inquiry, allowing the witness to offer explanations and narrative responses (Ellison, 1999).

As a result of this overview, we chose to focus on five indicators of procedural and interactional justice: decision control, process control, accuracy, treatment and information. The indicators may perform differently based on differences between the two systems. It should be noted, however, that victims still undergo comparable experiences in some respects. For example, many may be asked to revisit their trauma through giving statements; many encounter insensitive justice officials (for example, through investigative measures); and victims may not be aware of their rights to participation. We focus on the differences, however, to illustrate that legal systems do not follow the same methods and therefore perceptions of justice may differ. The following section examines the main research question: do victim experiences differ in terms of process control, decision control, accuracy, police treatment, prosecutorial treatment, respect from the judge and improper treatment by the defence? We investigate whether the two systems differ in terms of demographics, type of crimes committed, use of victim support and outcome favourability, in addition to seven main outcome measures (process control, decision control, accuracy, treatment by the police, treatment by the prosecutor, respect by the judge, and behaviour of the defence counsel).

Empirical method

Respondents and questionnaire

The data derive from a larger questionnaire measuring the quality of the procedure and the quality of the outcome of justice proceedings.⁷ In both NSW and the Netherlands, participants are victims of serious crimes. In NSW, victims were approached via victim support agencies, either in person or through a link they found on the website. Out of 20 agencies contacted by the researchers, 7 did not respond or were unable to assist. Of the remaining agencies, 6 dealt with sexual assault and domestic violence. The other agencies targeted all types of victim. Those victims who were approached in person were told about the website or answers were recorded on a pen and paper version by victim assistants at the agency. Because victims who were in search of support but who might not actually have made use of the services came across the call for participants, victims not receiving victim support may also have participated in the study. In total, 116 victims of serious crime filled out the survey.

In the Netherlands, victims were approached with the assistance of the Compensation Fund for Victims of Violent Crime. Targeting victims of serious crimes, the Fund assists individuals who have experienced threat with bodily injury, assault, stalking, sexual violence, kidnapping, (armed) robbery or a combination of these. To qualify for compensation from this Fund, the damage must not have been compensated elsewhere (for example, the offender did not pay compensation or was not found or prosecuted). The crime must have occurred in the Netherlands and, in most cases, within the previous three years. Questionnaires were mailed to participants' homes and they were able to either return completed surveys via mail or use an online link. Of the 700 questionnaires that were mailed out, 151 victims completed the survey, indicating a response rate of 21.6 percent.

Though the NSW sample does include victims who did not receive victim support, the majority were likely to make use of such assistance (55 percent). In the Netherlands too, however, victims are often directed to the Compensation Fund by Victim Support, and therefore the likelihood of these victims making use of support mechanisms is also high (67 percent). There were no significant differences in terms of victim support between these two groups.

For victims in both legal systems, the requirements for inclusion in the current examination were (1) being a victim of sexual assault, domestic violence or other serious crime, and (2) having a case not be dismissed by the police, the prosecutor or the victim. The types of crime included the following: sexual assault, domestic violence, stalking, robbery and assault. In total, 169 victims were included in the current analysis: 68 in NSW and 101 in the Netherlands.

Outcome measures

We noted above that the structural differences in legal systems may have repercussions for perceptions of various outcome measures. The seven dependent variables are as follow: process control, decision control, accuracy, interactional justice with the police, interactional justice with the prosecutor, respect by the judge and behaviour of the defence counsel. The Measuring Access to Justice (MA2J) instrument, largely borrowing from the organizational justice literature, is composed of measures examining the quality of procedures and the quality of outcomes in all conflict resolution procedures (Gramatikov et al., 2010). The instrument was then adapted for crime victims in the criminal justice context. To adapt the broader questionnaire to victims, previous research in the criminal justice setting was examined. Conceptualizations of measures were used that were appropriate for victims specifically.

Six of the seven dependent variables were measured on a five-point scale, ranging from 'a very small extent/not at all' to 'a very large extent'. Process control was measured by asking: 'To what extent were you able to express your feelings to legal personnel during the process?' Decision control was measured by asking: 'To what extent were your views considered during the process?' Similar measures have been operationalized in this way in prior research (Colquitt, 2001; Tyler, 1990; Wemmers et al., 1995). Accuracy was measured with the item: 'To what extent was the police investigation conducted well enough?' This operationalization was borrowed from a previous study (Orth, 2002), which also examined procedural justice for victims in terms of

accuracy. Interactional justice was examined for both the police and the prosecutor. In both cases, a composite variable was calculated. For both legal authorities, respondents were asked: 'To what extent did the [police] treat you with respect?' and 'To what extent did the [police] keep you informed throughout your case?' Respect by the judge was also measured with the item: 'To what extent did the judge treat you with respect?' Similar measures for interactional justice have been used in previous studies (Colquitt, 2001; Orth, 2002). Finally, behaviour of the defence counsel was dichotomous. Respondents were asked: 'Did the defence counsel ask improper questions?' This measure was adapted from the propriety indicator devised by Bies and Moag (1986).

Covariates

Potential covariates were primarily determined a priori and selected on the basis of earlier research examining what is important to victims of crime in criminal proceedings (Erez and Bienkowska, 1993; Shapland et al., 1985; Wemmers, 1996). Gender was measured using a dichotomous variable (0 = male, 1 = female). Age was measured in years. Education was recoded for both systems to three levels (0 = low education, 1 = medium education, 2 = high education). In NSW, education was low if respondents did not finish high school, medium if respondents graduated from high school and high if respondents were currently in or had graduated from the university level or if they had received or were receiving a TAFE certificate. A similar coding scheme was devised for the Netherlands (0 = primary school or less, 1 = similar to high school⁸ and 2 = higher education⁹). For occupational status, victims in the Netherlands were asked if they were currently employed (0 = no, 1 = yes). Victims in NSW indicated if they had no employment or were a home-maker, a student, retired, worked full time or worked part time. Respondents were considered to be employed if they chose full-time or part-time employment. The type of crime fell into one of three categories: domestic violence (no sexual assault), sexual assault (domestic or not domestic) and other serious crimes. Because the legal outcome could have an impact on perceptions of the procedure, a variable for outcome favourability was included by asking victims: 'To what extent was the outcome favourable to you' (1 = not at all/very small extent, 5 = very large extent). Finally, owing to the differences in sample selection, a dichotomous variable for victim support use was included. Victims were asked: 'Did you have contact with victim support?'

Analytic plan

To investigate whether the two systems differed in terms of demographics and sample characteristics, we conducted independent *t*-tests for continuous variables and χ^2 tests for categorical variables. Differences between NSW and the Netherlands were then analysed regarding the interactional and procedural justice outcome variables, again using independent *t*-tests for continuous variables and χ^2 tests (or Fisher's exact test in the case of cells with $n < 5$) for categorical variables. Finally, to investigate whether type of legal system was independently related to indicators of procedural and interactional justice, we conducted hierarchical regression analyses that were adjusted for covariates. Using explorative analyses, potential covariates were selected based on the conventionally used change-in-estimate criterion of 10 percent (Mickey and Greenland, 1989). For each

analysis, after entering the country variable, each possible covariate was entered one at a time to investigate whether or not it resulted in a meaningful change in the effect estimates (> 10 percent).

Results

To examine whether the systems differed in terms of demographics and sample characteristics, independent *t*-tests for continuous variables and χ^2 tests for categorical variables were used. Victims in the Netherlands were significantly more often female. A significantly greater level of victims in NSW obtained a high educational level (79.5 percent) when compared with the Netherlands (57.2 percent). The type of crime also varied significantly by system. Most crimes in the Netherlands consisted of other serious crimes (77.1 percent), whereas most crimes in NSW consisted of sexual assault (48.3 percent). Victims in NSW were significantly more likely to have contact with the defence counsel (23.3 percent vs. 11.3 percent). There were no significant differences between the systems concerning age, employment, victim support contact and outcome favourability. The results of these analyses are presented in Table 1.

The means and percentages of the dependent variables of the entire sample are presented in Table 2. To investigate whether systems differed in terms of the dependent variables, we conducted independent *t*-tests for continuous variables and Fisher's exact test for the only categorical outcome variable (that is, improper questions) owing to cells with $n < 5$. There were significant differences between systems for both process control, $\eta^2 = .07$ and decision control, $\eta^2 = .04$, both being around a moderate effect size (Cohen, 1988). For both variables, victims in the Netherlands reported higher means than victims in NSW. Victims in the Netherlands also perceived higher levels of interactional justice by the prosecutor, indicating a large effect size, $\eta^2 = .11$. Victims in NSW (95.0 percent) were more likely to experience improper questions by the defence counsel (Fisher's exact test, $p < .001$, Cramer's $V = .61$) than victims in the Netherlands (50.0 percent). There were no differences between systems for accuracy ($p = .23$), interactional justice by the police ($p = .25$) and respect by the judge ($p = .44$).

Next, using hierarchical linear regression analyses, we investigated whether the system predicts the three outcome variables that were found to be significant in the independent *t*-tests (process control, decision control and prosecutorial treatment). One dependent variable, improper questions asked by the defence, could not be analysed using hierarchical logistic regression owing to a small cell count (< 5) in two cells.

The extent of the unique explained variance added by the system to the prediction of process control was investigated by entering the variable at a second step into a hierarchical regression analysis where all significant covariates (change-in-effect > 10 percent) (education and outcome favourability) had already been entered at Step 1 ($R^2 = .03$). After entry of the legal system variable at Step 2, the total variance explained by the model as a whole was 13.7 percent, $F(4, 139) = 6.68$, $p < .001$. Even when entered last, system ($\beta = -.35$, $p < .001$) added a moderate amount of unique explained variance, $\Delta R^2 = .11$, $p < .01$.

To gauge the extent of unique variance added by the system to the prediction of decision control, the legal system was entered at a second step after first entering the significant covariates (gender, age, type of crime and outcome favourability) at Step 1

Table 1. Sample characteristics and demographics

Variable	NL	NSW	Total	Significance testing	Effect size
<i>Gender</i>				$\chi^2 (1, n = 190) = 5.23,$	
Male	50.0%	29.0%	45.3%	$p < .01$	phi = .18
Female	50.0%	71.0%	54.7%		
<i>Employment</i>				$\chi^2 (1, n = 164) = 0.41,$	
Yes	60.4%	33.3%	59.5%	$p = .52$	
No	39.6%	66.7%	41.4%		
<i>Age (M/SD)</i>	41.80 (15.48)	41.84 (12.52)	41.81 (14.87)	$t(177) = -0.02, p = .99$	
<i>Education</i>				$\chi^2 (1, n = 184) = 12.63,$	$\phi_C = .26$
Low	6.2%	12.8%	7.6%	$p < .01$	
Medium	36.6%	7.7%	30.4%		
High	57.2%	79.5%	62.0%		
<i>Type of crime</i>				$\chi^2 (1, n = 186) = 50.97,$	$\phi_C = .53$
Sexual assault	11.8%	48.3%	21.5%	$p < .001$	
Domestic violence	11.1%	36.7%	12.4%		
Other serious crimes	77.1%	15.0%	65.6%		
<i>Contact defence</i>				$\chi^2 (1, n = 185) = 3.00,$	phi = .15
Yes	11.3%	23.3%	14.1%	$p < .05$	
No	88.7%	76.7%	85.9%		
<i>Victim support contact</i>				$\chi^2 (1, n = 167) = 1.89,$	
Yes	67.0%	55.2%	62.3%	$p = .12$	
No	33.0%	44.8%	37.7%		
<i>Outcome favourability (M/SD)</i>	2.20 (1.15)	2.58 (1.44)	2.33 (1.26)	$t(148) = -1.75, p = .08$	

Table 2. Independent samples t-tests and chi-squares of dependent variables

Variable	NL Mean (SD) ^a	NSW Mean (SD) ^a	Total sample mean (SD) ^a	Significance testing	Effect size
Process control	3.11 (1.33)	2.27 (1.22)	2.93 (1.35)	$t(171) = 3.48, p < .01$	$\eta^2 = .07$
Decision control	2.92 (1.29)	2.29 (1.10)	2.78 (1.27)	$t(163) = 2.64, p < .01$	$\eta^2 = .04$
Accuracy	3.59 (1.34)	3.31 (1.62)	3.48 (1.46)	$t(153) = 1.20, p = .23$	
Police treatment	3.88 (1.11)	3.65 (1.31)	3.83 (1.16)	$t(186) = 1.15, p = .25$	
Prosecutorial treatment	3.98 (0.98)	3.17 (1.14)	3.71 (1.16)	$t(69) = 2.88, p < .01$	$\eta^2 = .11$
Respect from judge	4.02 (0.95)	3.83 (1.23)	3.95 (1.05)	$t(82) = 0.79, p = .44$	
Defence – improper questions (%)				Fisher's exact test, $p < .001$	$\phi_C = .61$
Yes	50.0%	95.0%	76.3%		
No	50.0%	5.0%	23.7%		

^aUnless otherwise indicated.

($R^2 = .18$). After Step 2, the total variance explained by the model was 20.8 percent, $F(6, 127) = 6.84, p < .001$. When entered last, the legal system ($\beta = -.21, p < .05$) added a small amount of unique explained variance, $\Delta R^2 = .03, p < .05$.

In the hierarchical regression model predicting prosecutorial treatment, one covariate (type of crime) was entered at Step 1 ($R^2 = .12$). Type of crime was significant (for domestic violence, $\beta = -.37$ and for sexual assault, $\beta = -.30$). Entering the system at Step 2 indicated that it did not add any unique variance to the model, $\Delta R^2 = .02, p = .28$, suggesting that the system is not independently related to prosecutorial treatment.

Discussion

The findings show that there are in fact differences between the Netherlands and NSW concerning victims' justice perceptions. Univariate analyses found that victims in the Netherlands reported higher levels of process control, decision control, treatment from the prosecutor and treatment from the defence. Victims in NSW were more likely to experience improper questioning by the defence counsel. No differences were reported for perceptions of accuracy, treatment by the police and respect from the judge. Hierarchical regression analyses revealed that process control and decision control were in fact perceived to be greater for victims in the Netherlands, after accounting for several covariates. For treatment by the prosecutor, however, the relationship disappeared. Differences with regard to the defence counsel were not measured in multivariate analysis owing to the small sample size.

Much research has suggested that control, accuracy, respectful treatment and informative procedures are all important to victims when accessing justice (Shapland et al., 1985; Wemmers et al., 1995). The extent to which different systems may influence the perceptions of these indicators has also been researched. Yet, to our knowledge, there is little empirical work comparing populations in a non-experimental setting. This research set out to fill this gap by looking at two contrasting systems, NSW and the Netherlands. Using empirical data allowed for measurements of the actual situation, enabling us to describe what happens in practice rather than what is assumed in theory.

One finding was that the level of process control among participants did significantly differ between systems. The perceptions of Dutch victims regarding their process control in the procedure may in fact be a result of the use of victim impact statements and participation through the *partie civile*. Both systems have stipulations allowing victims to present victim impact statements, yet this may be occurring more often in the Netherlands. Furthermore, cross-examination may hinder perceptions of voice. The inquisitorial procedure is often equated with the opportunity for victims to tell their stories in a narrative fashion, which is more likely to result in perceptions of expression.

Decision control – the extent to which the views of the victims were considered – was also significantly influenced by the system after controlling for covariates. Both NSW and the Netherlands have stipulations for considering the views of victims. Though decision control was significantly higher in the Netherlands, mean scores in both the Netherlands (2.92) and NSW (2.29) were relatively low. Such a finding may suggest that victims remain a relatively passive participant in proceedings in both

systems, though the Dutch legal system does represent a more positive situation for victims with regard to the extent to which their views were considered.

Another question was whether the type of system would have an impact on perceptions of interactional justice by the police and the prosecutors. In the univariate analysis, prosecutorial treatment appeared to be affected by the system, although police treatment did not. This may, for example, be a result of the type of crime explaining the observed relationship, because this variable differed significantly between systems. Rather than the type of system, victims of sexual assault may receive poorer treatment compared with other victims. Furthermore, the similar prosecutorial guidelines found in both systems may be a reason for the finding.

Finally, this overview examined the extent to which perceptions of improper treatment by the defence counsel may be predicted by the legal system. The 1995 Evidence Act in NSW disallows certain confusing or harassing questions. Yet challenging statements by witnesses is not considered improper, suggesting there may be leeway for the defence to interrogate the witness aggressively. Owing to low cell counts, no hierarchical regression analysis was conducted. The Fisher's exact test, however, indicated vast differences between samples, where almost the entire NSW sample (21 out of 22) was subjected to such treatment. Half (8 out of 16) of the Dutch sample who came into contact with the defence, however, also reported poor treatment, suggesting that, although inquisitorial, it would be incorrect to conclude that victims do not undergo what they perceive to be improper questioning by the defence counsel.

We referred above to prior research that examined preferences between adversarial and inquisitorial participants (Lind et al., 1980; Thibaut and Walker, 1975). The present research, however, did not lead to compatible findings. Rather, there was no significant difference for perceptions of accuracy. Furthermore, the inquisitorial Dutch system appeared superior in terms of both process control and decision control, which also is in contrast to earlier assertions (Thibaut and Walker, 1975). This disparity may at least partially be attributed to the unique experience of the crime victim in criminal proceedings.

Although the aim of the overviews discussed above was to illustrate the position of the victim in criminal proceedings, there also were several drawbacks. A main limitation was the small sample size. This particularly applies to the analysis addressing the effect of the system on prosecutorial treatment and the analysis examining the differences in defence counsel behaviour between the systems. Such small sample sizes entail the loss of statistical power and will have repercussions for the generalizability of the findings. Moreover, although the two countries represent two different types of system, another adversarial system might perform very differently from that in NSW, where victim mechanisms may be more or less advanced. In many ways, it is the victim mechanisms that should be examined, in addition to the system as a whole. Furthermore, we argue that perceptions of procedural justice and interactional justice are affected by the nature of a particular legal system. One limitation is that the findings on these perceptions are investigated using a macro-level variable, the legal system, yet individual-level data are utilized in the study. To strengthen this assumption in further research, we could also account for possible covariates that were not included in the study (for example, individual-level factors such as attitudes or expectations) that may also be influencing the perceptions of the two groups. We could assume, however, that there will not be vast

differences between victims in different countries, suggesting that the current findings are unlikely to differ greatly even if these individual-level variables were accounted for. For example, reactions to the victimization experience have been found to be universally similar, where reactions such as fear, anxiety, depression, sadness and decreased self-esteem are all common reactions for victims of crime (McCann et al., 1988). When victims encounter justice institutions to deal with the effects of victimization, the similarities they suffer may outweigh the differences that are not controlled for, such as individual attitudes. Furthermore, previous experimental research supports the notion that macro-level variables, in this case the legal system, are also indeed influential (Lind et al., 1980).

Experimental research better investigates the impact of the legal system on the outcome variables and should be utilized in further research with crime victims. Such a design would also allow one to draw causal inferences, which is not possible with the current findings owing to the cross-sectional design of the present study. Furthermore, it would be beneficial to utilize multiple-item measures for the various dependent variables to increase reliability. Finally, as noted, the two samples were obtained through different mediums (through various victim support agencies and through the Dutch Compensation Fund) and may differ in respects other than those accounted for. The current study has shown that the two victim samples differed in terms of a number of demographic and victim characteristics (gender, education, type of crime, and contact with the defence). We cannot completely conclude that the detected differences between the two samples used influenced our results. To control for these differences, however, our main analyses were adjusted for confounders (defined as covariates that changed the effect estimates of legal system by more than 10 percent). These limitations, however, are offset by numerous strengths of the study. Namely, we employed a comparative method, investigating a diversity of victim indicators. The comparative method allows for insight into better performances by a given system. Rather than describing the experiences of one sample, we investigated two comparable yet contrasting groups.

Conclusion

We have noted that the results should be interpreted cautiously because the two samples do differ in several respects. Still, the benefit of such research should not be understated, even if it provides only an initial understanding of the position of victims. Before making assertions regarding the superiority of certain legal practices, empirical evidence can provide for sound support for such claims. Previous research on victim preferences has affirmed the need for control, information and respect. The current examination went one step further by examining the different perceptions of these factors in two diverse legal systems. Understandably, changing a system is difficult; however, understanding what is most beneficial to victims and what may prove to be more detrimental in practice represents important strides in the advancement of the victim's legal position. It is becoming more difficult to refer to countries as inquisitorial or adversarial, suggesting that the focus should perhaps be given to the practices, rights and mechanisms established for victims. Such advancements are already being examined in research that pinpoints the influence of a specific mechanism (such as victim impact statements) on victim perceptions

of justice. This appears to be where most insights can be found, and comparative studies may provide a first step to such research.

Acknowledgements

We would like to express our appreciation to Professor Marc Groenhuijsen, Lorena Sosa, LL.M, and Dr Suzan van der Aa for their useful comments and insights. Furthermore, the authors greatly appreciate the assistance of Dr. Rita Shackel and her research assistant, Noleen Grogan in addition to the various victim support agencies in New South Wales. In the Netherlands, we are thankful for the help of Annelize van Dijk and the Dutch Compensation Fund for Victims of Serious Crime (*Schadefonds Geweldsmisdrijven*) for their cooperation.

Notes

1. Victims Rights Act 1996 No 114.
2. Prosecution Guidelines of the Office of the Director of Public Prosecutions for NSW.
3. Victim Impact Statement Directive, 23 December 2004, now incorporated in the CCP, Article 51e.
4. 2010A026.
5. All evidence must be presented in its most original form to the neutral, in order to 'preserve the integrity of a judgment by ensuring that arguments and proof are put to the judge in the most direct manner possible'.
6. HR 20 December 1926, NJ 1927, 87.
7. The questionnaire is an adapted version of the Measuring Access to Justice Methodology (see Gramatikov et al., 2010).
8. Includes equivalents of high school (LBO, VBO, MAVO, MULO, HAVO).
9. Includes vocational college (MBO) and university-level schooling (HBO, WO).

References

- Anderson RA and Otto AL (2003) Perceptions of fairness in the justice system: A cross-cultural comparison. *Social Behavior and Personality: An International Journal* 31(6): 557–563.
- Bies RJ (2001) Interactional (in)justice: The sacred and the profane. In: Greenberg J and Cropanzano R (eds) *Advances in Organizational Justice*. Stanford, CA: Stanford University Press, 89–118.
- Bies RJ and Moag JS (1986) Interactional justice: Communication criteria of fairness. In: Sheppard B (ed.) *Research on Negotiation in Organizations*. Greenwich, CT: JAI Press, 43–55.
- Cohen J (1988) *Statistical Power Analysis for the Behavioral Sciences*, 2nd edn. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Colquitt JA (2001) On the dimensionality of organizational justice: A construct validation of a measure. *Journal of Applied Psychology* 86: 386–400.
- Elliott I, Thomas SDM and Ogloff JRP (2011) Procedural justice in contacts with the police: Testing a relational model of authority in a mixed methods study. *Psychology, Public Policy and Law* 17(4): 592–610.
- Ellison L (1999) The protection of vulnerable witnesses in court: An Anglo-Dutch comparison. *International Journal of Evidence and Proof* 3: 29–43.
- Ellison L (2001) *The Adversarial Process and the Vulnerable Witness*. New York: Oxford University Press.
- Erez E and Bienkowska E (1993) Victim participation in proceedings and satisfaction with justice: The case of Poland. *Journal of Criminal Justice* 21: 47–60.

- Gramatikov M, Barendrecht M, Laxminarayan M, Verdonschot J, Klaming L and Van Zeeland C (2010) *A Handbook for Measuring the Costs and Quality of Access to Justice*. Apeldoorn: Maklu.
- Greenberg J (1993) The social side of fairness: Interpersonal and informational classes of organizational justice. In: Cropanzano R (ed.) *Justice in the Workplace: Approaching Fairness in Human Resource Management*. Hillsdale, NJ: Lawrence Erlbaum, 79–103.
- Groenhuijsen MS and Letschert RM (2008) *Compilation of International Victim Rights Instruments*. Nijmegen: Wolf Legal Publishers.
- Groenhuijsen MS and Pemberton A (2009) The EU Framework Decision for Victims of Crime: Does hard law make a difference? *European Journal of Crime, Criminal Law and Criminal Justice* 17(1): 43–59.
- Hough M, Ruuskanen E and Jokinen A (2011) Trust in justice and the procedural justice perspective: Editors' introduction. *European Journal of Criminology* 8(4): 249–253.
- Leventhal GS (1980) What should be done with equity theory? In: Gergen KJ, Greenberg MS and Willis RH (eds) *Social Exchange: Advances in Theory and Research*. Plenum Press: New York, 27–55.
- Lind EA (1975) The exercise of information influence in legal advocacy. *Journal of Applied Social Psychology* 5: 127–143.
- Lind EA and Tyler TR (1988) *The Social Psychology of Procedural Justice*. New York: Plenum.
- Lind EA, Kurtz S, Musante L, Walker L and Thibaut JW (1980) Procedure and outcome effects on reactions to adjudicated resolution of conflicts of interest. *Journal of Personality and Social Psychology* 39(4): 643–653.
- McCann LI, Sakheim DK and Abrahamson DJ (1988) Trauma and victimization: A model of psychological adaptation. *The Counseling Psychologist* 16(4): 531–594.
- Mickey RM and Greenland S (1989) The impact of confounder selection criteria on effect estimation. *American Journal of Epidemiology* 129(1): 125–137.
- Orth U (2002) Secondary victimization of crime victims by criminal proceedings. *Social Justice Research* 15(4): 313–325.
- Shapland J, Willmore J and Duff P (1985) *Victims in the Criminal Justice System*. Brookfield, VT: Avery Publishing Company.
- Tak PJP (2008) *The Dutch Criminal Justice System*. Nijmegen: Wolf Legal Publishers.
- Thibaut JW and Walker L (1975) *Procedural Justice: A Psychological Analysis*. Hillsdale, NJ: Erlbaum.
- Thibaut JW and Walker L (1978) A theory of procedure. *California Law Review* 66: 541–566.
- Tyler TR (1989) The psychology of procedural justice: A test of the group value model. *Journal of Personality and Social Psychology* 57: 830–838.
- Tyler TR (1990) *Why People Obey the Law*. New Haven, CT: Yale University Press.
- Tyler TR (2010) *Why People Cooperate: The Role of Social Motivations*. Princeton, NJ: Princeton University Press.
- Tyler TR and Bies RJ (1990) Beyond formal procedures: The interpersonal context of procedural justice. In: Carroll JS (ed.) *Applied Social Psychology and Organizational Settings*. Hillsdale, NJ: Lawrence Erlbaum, 77–98.
- Van Koppen PJ and Penrod S (2003) Adversarial or inquisitorial: Comparing systems. In: Koppen PJ and Penrod SD (eds) *Adversarial vs. Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems*. New York: Plenum.
- Wemmers JM (1996) *Victims in the Criminal Justice System*. Amsterdam: Kugler.
- Wemmers JM (2010) The meaning of fairness for victims. In: Shoham SG, Knepper P and Kett M (eds) *International Handbook of Victimology*. Boca Raton, FL: Taylor & Francis Group, 27–42.
- Wemmers JM, Van der Leeden R and Steensma H (1995) What is procedural justice: Criteria used by Dutch victims to assess the fairness of criminal justice procedures. *Social Justice Research* 8(4): 329–350.