

Just Interests: Victims, Citizens and the Potential for Justice. By Robyn Holder. Northampton, MA: Edward Elgar, 2018.

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This critical examination of the status of victims in the criminal justice system takes up the ways they are marginalized in legal theory and practice. Grounded in a qualitative study, the book shows that victims have complex interests in pursuing justice and that their expectations for the justice system are often unmet. A practical and compelling idea of the victim as citizen emerges, over the course of the book, to identify their hopes and capabilities for being constructively involved.

The book is enriched by the author's 15-year service as an independent statutory advocate for victims' rights in Canberra. Her regular interactions with victims "revealed their bewilderment with a system they thought they would know;" working alongside legal professionals made it evident that their well-intentioned ideas about justice pushed victims to the sidelines: "people as victims were excluded, ignored or diverted ... As a 'victim' they were seen as a problem for law to manage and contain" (2). This seemed like a lost opportunity to express and cultivate citizenship: to consider "what had happened and what should happen next" regarding the particular case "but also to debate and deliberate the issues that confronted both victim and offender, and the social, political, economic, and cultural aspirations they held for themselves and for others" (2). Where were the "procedural and institutional spaces for citizens to *produce justice*" (2)?

Conceptions of victims in legal theory legitimate this marginalization, while practitioner attitudes help reproduce it. Though harm to victims—as reported by victims themselves—is often necessary to put criminal cases in motion, victims are not seen by legal professionals as having much of value to contribute to the production of justice. Indeed, mainstream legal theory conceives of victims as threatening the impartiality of the proceedings with a relentless focus on winning their case. In addition, the prosecutors Holder interviews for this book admit that victims are "ignored as a class of people" and "nowhere to be seen" (93). This is unfortunate, Holder points out, because her research shows victims to have "just interests" that are broader than self-interest and reflect concern for the process, the offender, and the community. Otherwise well-meaning court professionals, she argues, have such low

expectations of victims that they strip them of their due as citizens with a stake in the proceedings.

To better understand victims' conceptions of justice, their expectations for outcomes, and their experience in the justice system, Holder interviewed a group of 33 victims of violent assault in the Australian Capital Territory. Of the 6 men and 27 women, all the men were victims of acquaintance or stranger assault and all the women victims of a partner or ex-partner. The participants were interviewed after an assailant was charged but before going to court, then again after the court hearing, and then finally 6–8 months after the court decision. The interview questions shifted to fit the stage. First, people were asked "what justice goals they wanted in terms of verdict, sentence, and application of principle"; then, after the case was decided they were asked to evaluate the results; finally, participants were asked open-ended questions about "whether justice had been done" (130).

While this group shared similar attitudes with Australian public opinion, and could be called fairly representative, it did stand out in one respect. Most victims do not mobilize the legal system, yet 64% of the study participants reported the incident to the police. Why did they report? One factor was the seriousness of the offense: "lay participants frequently remarked that it was the perceived seriousness of the incident either to themselves and/or to others that served as a motivator" (120). Also important was the support of family, community, or institutions. While these victims were "realistic" about the limits of the criminal justice process, they "expected a fair system and felt social legitimation of their action" (127).

Asked about the principle of justice they would like the court to apply to their case, victims most commonly mentioned rehabilitation, specific deterrence, and victim protection. Victims reasoned that offenders should have accountability—to learn a lesson, have some consequence attached to their action, and to have the wrong or harm acknowledged by the court. The results, Holder argues, show victims have preferences for justice outcomes that go far beyond strictly personal benefit: "Their reasoning encompassed the offender and the wider community.... [T]he lay participants did not see their recourse to law or their engagement with the criminal justice system as divorced from the communal and the civic" (144).

Victims in the study had mixed views of their court experience. By the third interview, "only a third...expressed overall satisfaction with the handling of the case by the justice system" (218). Victims felt marginalized: "Each person came to the realization that, to varying degrees, they were not central to a process that had evolved from their individual experience. Participants came to feel detached from the system" (153). They wanted to be heard

and have more influence, especially in the court setting, but also expressed deference to the expertise, experience, and specific roles of legal professionals.

What might it mean for a justice system to treat victims more like citizens—as “citizen-victims”? At the very least, it means encouraging institutions to recognize victims who come forward as active citizens with “interests in the way public systems work and how they work for all” rather than assume they are self-interested individuals pushing a particular agenda (12). Victim-citizens are fellow stakeholders in the justice system with expectations for fair treatment and a process that hears their voice and grants them some influence. More ambitiously, legal institutions that treat victims like citizens will strive for “routine inclusion” of people “who are directly affected in particular cases” and develop actual “*spaces* to achieve justice for and on behalf of the political community” and which “demand more of citizens” (219). As Holder implies, this may be to “recast the process as a deliberative system” in which “Justice professionals should ask individuals what justice means to them (and to those around them), what values they think might inhabit a just process and just outcome, and what outcomes they might wish to see for the trilogy of victim, offender and community” (220).

Just Interests is an insightful book that opens up incredibly useful paths for further examination. A major barrier to making the victim’s civic identity a more central part of the criminal justice process is what can be called “social trustee professionalism” among prosecutors: justice is their goal but they believe they do not need to communicate much with victims or even engage much with the public to deliver it. “They project a discourse of benign competence, inevitability, and naturalness” Holder notes, adding that their professional “claim to represent community diverts scrutiny of them; just as custodianship of public interest suggests democratic authenticity. Essential to what is in essence an authoritarian discourse is seemingly opposing depictions of a public that is vulnerable and in need of protection, and a public that is vengeful. The benign prosecutor stands central to the management of both/either” (211). How can a more genuinely democratic form of legal professionalism emerge when practitioners are accustomed to this “authoritarian discourse”? What new mode of law school training is needed? What institutional innovations can be put in place to reinforce this more democratic professionalism and affirm the citizen identity of victims? These are just a few of the issues raised by Holder’s significant contribution to law and society research.

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