

# Victimization and Criminal Justice System: Some Fundamental Challenges

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## Abstract

The Criminal Justice System (CJS) is accepted as a solution to problematic situations in society that can be criminalized. Yet, we have enough reasons to doubt its usefulness and effectiveness. Moreover, our belief in its function is not supported by any facts. This paper can only resonate if it touches upon areas of your knowledge, be it experience, be it taught knowledge by education, or experience shared by peers or parents, in all areas of knowing, if we strive to get the achievement for victims.

This paper aims to examine where we fundamentally went wrong in our basic notions of CJS; from crime to punishment, and rehabilitation of offenders and from victimization to justice, and victim support for victims. Professionals are trained to think and behave in particular ways; some of that training has led to faulty learning. The article examines some of these fundamental challenges that professionals in CJS and victim support face; the belief that victims are revengeful, the professional language they use, and the limitations of scientific knowledge. They need to pause and reflect on what they have learned. The best way to do the work as professionals are, they should always be passionate, professional, precise, doubting their possible prejudgments, and if possible, have the integrity to admit their own mistakes and not accept the cover-up of mistakes of their colleagues at the expense of clients or unrealistic research results.

**Keywords:** Criminal Justice System, Victimization, Victim Support, Revengeful Victims, Retributive Justice, Criminal Justice Institutions.

## 1. Introduction

*The 'victim'* is the one who experiences the damage. It can be an

individual or a legal entity. '*Victimization*' is the term used in Victimology for damage

experienced by a victim. Victimization is both the process and the result of a victimizing process (Kirchhoff, 2005).

'Victimology' is the social science of victims; it centers on victims. In victimology, we make clear distinctions between individual victimization, institutional victimization, and collective victimization. We differentiate direct from indirect victimization, and primary victimization (by the offender) from secondary victimization (insensitive and damaging reactions of the social environment). Some colleagues speak about tertiary victimization where victims internalize their victimization, let it affect their self-image, and they believe themselves to be awful victims, weak, powerless, poor, and only worthy of compassion. Theorists tell us that victimological theories perpetuate this stereotypical image of the weak, passive, powerless victim.

It is very strange that the proverbial weak old lady robbed in the street, a stereotype of a "suitable" victim, is known worldwide. The courageous individual who fights against his or her victimization does not fit into this stereotype. The "idealization" of the weak lady serves a social purpose. The message of this "ideal victim" is: you have to give in to the societal forces which bring you into submission – only then do you get the social recognition of being a real, dignified victim (Christie, 1977).

Victimization can be short and quick and involves physical contact with the victim, like in the case of raid victimization.

Or it can be a protracted process with or without physical contact. The damaging result is essential in both cases. Like a coin with two sides, victimization can be understood as the flip side of crime. However, it is merely an expression of complacency. At best, it obfuscates the issue. Victimization is an entirely different currency. There is no victimization if there is no suffering - a crime may be committed, but there is no victimization (Kirchhoff, 2005).

One of the most important facets of Victimology is how victims are treated. Genuine victimology (Sessar, 1994) includes efforts aimed at helping victims, dealing with the aversive consequences of the victimization, treating post-traumatic disturbances and disorders, providing crisis intervention, and providing victim assistance. Knowing the effects of victimization is vital to helping the victim.

## **1. The Damaging Effects of Victimization**

Crime victimization has three types of damages: emotional, physical, and financial damages (Kirchhoff, 2005).

### ***1.1 Emotional Damage***

There is no doubt that emotional damage is difficult to quantify and heal. The severity of the emotional damage is subjective to the individual experiencing it. Kirchhoff (2005) defines victimization as the invasion of the victim's self. They lead to crises, situations of escalating insecurity. As a consequence of victimization, victims feel, to varying degrees, that their normal crisis management skills are impaired. Kirchhoff (2005 & 2006) states that victims may

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become confused, disoriented, helpless, and insecure when faced with victimization. Their reactions vary from bewilderment to outright anger - anger directed at the offender, the individuals (family, friends, colleagues), and/or institutions of the criminal justice system from which they seek help, understanding, and orientation. Additionally, victims are concerned about getting lost in a more profound emotional turmoil. They are in an unknown situation that they cannot be accustomed to.

Victimization causes us to alter the narrative of our lives. The stories we tell about life are often not true (they seem especially false after being victimized). The fictions we tell ourselves about life include that we are strong and not vulnerable. Despite the uncertainty in this world, these stories help us feel safe. When victimization occurs, it destroys this shield of protection. Life would be much more challenging without these fictions.

We learn from the Just World Theory (Lerner, 1980) that most people need to believe that 'nothing bad will happen to good people.' Our parents taught us all kinds of concepts about life that they rarely practiced themselves. Teachers tell us that we will be judged equally based on our school results, but we soon find out that some people are treated more equally than others.

Another way to make sense of the effect of the victimization process is to understand the concept of 'shattered assumptions' (a phrase taken from Janoff-Bulman, 1992). We assume that the world is compassionate and that we are strong

enough to withstand its challenges. Victimization shatters our assumptions about life and our ability to master it, at least for a while. However, these assumptions can be reestablished. Crisis intervention may be necessary to restore the victim's emotional stability and restore their sense of agency in the healing process (Janoff-Bulman, 1992 & 2010).

### ***1.2 Physical Damage***

A victim may experience a range of physical responses at the time of the incident or after realizing that a crime has occurred. Criminal activity can cause minor injuries (bruises, scrapes) to severe and significant injuries (stab wounds, gunshot wounds). Victims of crime may experience sleeplessness, appetite disruption, lethargy, migraines, muscular tension, vomiting, and reduced libido, among other symptoms. Stanko and Hobdell (1997) indicate that specific long-term adverse effects may occur, such as stomach pain and temper tantrums. The somatic effects of victimization have been proven. Stanko and Hobdell's (1997) study found that 18% of victims had difficulty breathing, 18% had headaches, 14% had stomach discomfort, 11% had lumps in their throats, and 10% had chest pain. Further, victims may be permanently disfigured or disabled due to the crime. Some victims may never be able to return to work due to the crimes they have suffered.

### ***1.3 Financial Damage***

In the aftermath of victimization, victims often suffer various direct and indirect financial losses. Literature has extensively discussed the financial costs of

crime (Kirchhoff, 2005, Dolan et al., 2005 and Spalek, 2006). Dolan et al. (2005) measured the direct and indirect financial damages of crime. The direct cost is the loss of financial resources that can be replaced, such as vehicle damage or damaged materials. Indirect costs include lost productivity, for example, or the need to work harder to compensate for direct damages. The indirect financial losses of victimization most often exceed the direct financial losses (Dolan et al., 2005).

In the complex process of victim care, determining the damages, a victim has suffered is essential. To assist effectively and avoid further emotional damage in the form of secondary victimization, individuals and institutions providing post victimization support must be mindful of the emotional, physical, and financial damages a victim has suffered.

## 2. Victimization and Justice

Do victims expect punishment for the offender as a consequence of their victimization? This question combines the two concepts of justice and victimization.

Do you know the justice scandal around Roman Polanski? At the end of 2015, the highest court in Poland finished the justice handling of his case; finally, after 43 years. In 1973 Roman Polanski, a world famous movie director took the photos of a thirteen-year-old girl, Samatha Geimer. The young girl, maybe an aspiring model herself, told her mother about what happened during the sessions with Polanski. Polanski had asked Samantha's mother (a television actress and model herself) if he could take photos of the girl as part of his work for the

French edition of Vogue, which Polanski was to guest-edit. Her mother allowed both photo shooting meetings. She knew about topless shoots during the first session; however, she was appalled when her daughter told her about sexual intercourse during the second meeting and informed the police. Three years later, in March 1977, Roman Polanski was arrested and charged in Los Angeles with grave sexual offenses against Samantha Geimer. Polanski later accepted a plea bargain offer of the prosecutor with a guilty plea to the lesser charge (engaging in unlawful sexual intercourse). The judge sent him to a prison for psychiatric evaluation for 43 days and then wanted him to be imprisoned for 69 more days to have Polanski submit to deportation. Instead, the defendant fled the US. In the coming years, several US prosecutors hunted him with international arrest warrants. In 2007 – 34 years after the crime - the Swiss justice authorities arrested him, put him under house arrest for 40 days, and finally rejected an extradition request of the US prosecutors. In the meantime, the judge and prosecutor involved in the case were no longer alive. The victim, in the meantime, married and a mother of two children settled a civil claim of 600,000 dollars. She has written a book about the crime. According to her, the event was blown "out of all proportion". In 2008, Mrs. Geimer stated in an interview that she wishes Polanski would be forgiven, *"I think he is sorry, I think he knows it was wrong. I do not believe he is a danger to society. It was 30 years ago now. It is an unpleasant memory, (but) I can live with it."* At the end of 2015, the highest court in Poland rejected

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a US extradition request. Polanski, now 85 years old, lives in Poland (Roman Polanski sexual abuse case - Wikipedia, 2021).

The only people interested in punishing Polanski were justice professionals in the interest of their political career. It was a wonderful story for the mass media. Still today, the details of Samantha's statement as a witness can be read on the internet, 48 years after the crime. This case lets us ask: What do we want to achieve with punishment? Is persecution for this crime justified after 42 years? Should not the victim determine whether there should be public proceedings or not? Is not the social and emotional peace of the victim more important than the demand of the justice system for punishment? Do such proceedings serve beyond the preservation of law? Though this paper does not attempt to answer these questions but carries forward the underlying logical reasoning behind these questions.

The objectives of the CJS professionals and its related institutions that claim to care for the victims, how they are misdirected, and the factors contributing to this complex issue are explained in the subsequent sections. Being critical of professional interventions requires a thoughtful approach. The first step towards understanding fully is to state the objectives of the professionals involved in the Criminal Justice System and other related institutions.

### 3. Objectives of Criminal Justice System

The CJS personnel and the victim support personnel within the CJS institutional framework constitute the "professionals" within the framework of this

paper. There is always a context within which the CJS and victim assistance operate, which is victimization. The goal of a criminal justice system is to address behaviors that are considered unacceptable by society, either because they harm citizens or the state or because they violate a moral code in society. Any person displaying criminalisable behavior will be dealt with an aim to:

- administer retribution (inflict pain/punishment)
- deter/prevent
- incapacitate
- rehabilitate
- restore

The purpose of victim support personnel working within the institutional framework of CJS is to assist victims of crime during criminal proceedings, ensure that their rights are protected and upheld.

By addressing so-called criminal behaviour and ensuring that the victims of this behavior have access to the support they need, we can make society a safer place. This is our starting point regarding victims of crime. It is the way in which we are presented with how the system works. Trying to understand the complex reality is best accomplished by quoting Louk Hulsman (1982) here: "*Investigating systems, using my own experience, each time I found my disbelief truer, than I expected it to be.*"

But professionals are also human beings, and humans make mistakes. Considering that the CJS and victim support institutions are human institutions, mistakes will be inevitable. One of the challenges in

the way that professionals, including academics see the CJS and the role of the victim within it is that if we believe that justice (how all involved would perceive justice) is part of the CJS, and assistance and the insurance of the victim's rights are part of victim assistance, it is to be expected that mistakes will occur. We need to examine where we fundamentally went wrong in our basic concepts of CJS, from crime to punishment, and offenders' rehabilitation, victimization to justice, and support for victims. There are several reasons for the challenges that CJS and victim support professionals face. Three important reasons are; the belief that victims are revengeful, the professional language they use, and the limitations of scientific knowledge.

#### **4. Fundamental Challenges of Criminal Justice System**

The justice system is meant to achieve social control by stabilizing the system against an excess of crime and disorder. Many victims fail to report their crimes to the police. Clearly, they do not expect anything from the system. Research on Hidden Delinquency and Hidden Victimization confirms it. A very small number of these crimes are reported to the police. Police are unaware of most crimes. Sexual offenses are an example of this. The victims are very successful in silencing these acts. The event is kept hidden. Domestic violence also illustrates this pattern of hiding. Similarly, if so many crimes remain hidden, the same is true for victimizations - there are countless victimizations which never reach the public's attention, since most of these remain unreported. Societies rarely

deal with crime in an "officially prescribed" formal procedural manner.

Many victims will incorporate their victimization into their life history as unpleasant, embarrassing, evil, painful events. In most cases, victims are able to deal with the crime without any support. They are resilient and do not need any assistance or reinforcement from outside. Coping with victimization is part of everyone's daily lives. Providing assistance to a resilient victim would be a waste of resources. We need to develop psychological tests to determine who needs help and who does not. Decisions regarding which victims need criminal justice responses may be made outside of the criminal justice system.

##### ***5.1 The Belief that Victims are Revengeful***

Are victims revengeful? It is a pertinent question to ask as the CJS and its institutions seem to act with a firm belief that victims want revenge. Furthermore, they assume responsibility for providing justice for the victims by punishing the offender. It is an empirical question, and the answer cannot be derived from speculation but inquiry. As a result of crime and victimization, all societies have developed different criminal justice systems to punish offenders. Our societies uncritically accept the proposition that the most important function of the criminal justice system is to punish (Kirchhoff, 2017). According to Louk Hulsmann, it is not true. Responses by the criminal justice system to the commission of a crime are an exception rather than the rule (Hulsmann, 1997).

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Do victims seek revenge? Answers to this question can't be meaningfully provided when asked in such a general form. Some victims do, and others do not. It is a universal truth. Victims are people who are suffering or have suffered in the past. It is impossible to lump them together in one homogeneous mass - they are distinctly different. Individually, they suffer - or have suffered - to differing degrees (Kirchhoff, 2017).

It is a convincing argument. However, it does not make it impossible to state principles that apply to all or most victims. The weather is different every day depending on the amount of sunshine, the temperature, the direction of the wind, and the strength of the wind. Still, we can distinguish spring from summer from fall and winter depending on their presence or absence. There can be thirty students in a class, each with a very different personality, but we can still refer to them as teenagers and describe them accordingly. In his daily dealings with patients, a physician deals with individuals who are all different. Yet, it is possible to generalize, to describe these individuals as patients who suffer from diseases beyond their suffering. This is possible through a process of abstraction. As a result of abstraction, individual differences disappear, and a new level of abstraction is attained. At this new level, we look at commonalities shared by all individuals.

Victimologists also strive to find these commonalities: all victims, in general, suffer some degree of psychological, physical, and financial damage. Some victims actively seek revenge to cope with their loss and the violation of their

emotional stability. This is both understandable and reasonable (Kirchhoff, 2017). The truth is, revenge cannot bring back the murdered daughter; or restore the losses. This is a human condition. Since we cannot repair the victimized state, all we can do is, we can change our attitude. Through this, we can learn more about ourselves. If victims strive for peace of mind, revenge is unlikely to help. This realization is often painful but liberating. However, that is just speculation.

It can be proven empirically. The majority of crimes the police record are property crimes (theft, robbery, blackmailing, car theft, bicycle theft, fraud, property damages, etc.). From a Marxist perspective, it is evident that the reports of property crimes are the primal providers for the criminal justice system. Violence against children and women is a recently discovered crime. It may be naive to think that such victimization is new, but they are part of the traditional inventory of social control in most societies. The new element is the social and political will to define them as problems.

Sexual violence is rarely reported to the police. McDowell et al. (2017) conducted a study that showed high incidences of sexual victimization in high schools in the USA. We live in a time when criminal law does not work as expected. Such a study should be conducted in every country; it is not limited to the US alone. In reality, criminal justice responses are the exception, not the rule (Hulsmann, 1997). As a society, we have accepted that crime is a stimulus for the police, lawyer, court, and prison. Justice of this kind is just a social

construction. It is made without asking the victims. We are accustomed to a system where offenders are rarely asked. Criminal justice is not a system that provides victims with a 'normal' response, so it is no surprise that many victims expect less from it (Kirchhoff, 2017).

Nevertheless, we have the "exceptional" victims who report to the system. According to them, the criminal justice system is at least partly meant for their interest and they feel well received. The system has every reason to be friendly to victims. In theory, it is clear: Victims cannot do their revenge. The state takes over the right to punish.

Historically, most western criminal justice systems evolved out of the belief that a harsh, repressive response to crimes seen as acts against feudal sovereignty would endanger everyone subjected to this criminal law (Foucault, 2012; Rousseau & May, 2002 and Kirchhoff, 2017). The powerful wanted to protect themselves against abuse of power by the more powerful nobility. In the 1950s, in England, there were about 200 acts that were punishable by death (Emsley, 2007 and Kirchhoff, 2017). It is evident that the interests of victims were not at the center of the reaction to crime then. Today, why are victims reporting that they are victimized to the police? This is an important question. Notably, it is not to punish the offender. Victims' demands for revenge as justification are nothing but propaganda.

Victims want the victimization to stop so that they can once again feel safe. Compared to the past, most victims do not desire punishment when they use the

criminal justice system. In cases of domestic violence, stalking, or persistent distress and suffering, this is incredibly evident. Victims simply want the victimization to end (Kirchhoff, 1999). For this reason, 95% of the victims go to the police. In a minimal number of cases, victims wish to be compensated for their losses.

Most victims, to everyone's surprise, do not seek revenge. If anything, they are very realistic. They want the state to restore order and ensure their safety. Their action is aimed at the future; they seek restitution for their damages. Of course, some victims seek revenge. The number of such victims is small, and according to Pemberton et al. (2007), these should not justify a system that entails harsh punishment. It will only fill prison cells. Fines and prison terms do nothing to help victims. Victims are not very eager to exercise revenge, they want more information and they want an acknowledgment of their damage (Schmittat et al., 2021).

To summarize, do victims seek revenge? When so many victims do not even feel the need to contact the police to report their crimes, is it not safe to imply that their inclination to fight back against 'their offenders' is not very strong? It is often assumed that the more serious the crime, the greater the need for revenge. Severe crimes, however, are uncommon. We should challenge the fundamental notion that punishing offenders is in the victim's best interest or for the sake of giving victims justice. Several professionals are trained in particular ways of thinking and acting, which have resulted in faulty learnings. Rethinking what they learned is necessary.



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Other challenges arise from the language professionals in CJS and victim support use and their limitations of scientific knowledge.

### 5.2 Professional Language

Language is a potent tool. Institutional or professional language excludes those outside the institution, organization, or profession. Often the language used in institutions and professions hides uncomfortable aspects of the work that they perform. It might not have been designed specifically for that purpose, but it usually ends up that way. Like, when a suspect enters the police interrogation room and is told, 'you may sit there.' The suspect has no choice. He will be forced to sit down if he does not sit down where indicated. A police professional is not comfortable interacting with another person that is defined by a language that does not hide the power relationship or lacks civility. To understand what in victimology is almost always referred to as 'crime,' some concepts need to be defined.

#### 'Crime' or 'Problematic Situations'

The word 'crime' is covering up; whatever behavior is meant to be addressed. There are a lot of us who use the word 'crime' without knowing what kind of behavior we are talking about, the reasons for that behavior, or the state of a person accused of committing the crime. The purpose is to inform us that there has been a severe infringement according to criminal laws that call for serious punishment concerning that behavior, in a specific location and at a specific time. We should remember that the term 'criminal' also applies to Jesus, Gandhi, and Nelson

Mandela, since these individuals were all considered criminals at a certain point, according to their respective territorial laws.

We should also be aware that seven countries are still enforcing their legitimate death penalty against homosexuality in today's world. What is considered 'criminal' in which context is very arbitrary. Furthermore, a vast amount of damaging behavior is not criminalized. We all know that certain groups in our societies lack equal opportunity to survive and lead a humane life. Criminal justice systems often target these groups through legislation and enforcement that worsen their already vulnerable position. Sociologist Donald Black (1976) and criminologist Wayne Morrison (2013) describe these phenomena as social constructions.

Louk Hulsman (1986) proposed a new term, *problematic situation*, to describe the unwanted, undesired, or damaging behavior in society rather than using the word 'crime' without knowing what type of behavior is being addressed. For example, in the case of victimology, it could be about victimless crimes like public order offenses, drug use offenses, most traffic offenses, etc. Maybe, that is the more relevant term. It is important to note that the word 'offender' is often used in victimology and criminology to describe someone still a suspect and not yet convicted. It is easy to forget that many people have been unjustly criminally charged and convicted, thereby ignoring these victims of the criminal justice system. Using offender as a presumption of guilt could very well victimize someone who has been unfairly accused and convicted of a

crime, causing harm and damage that will never be reparable. It is a perilous precedent.

### ***5.3 The Limitations of the Scientific Knowledge***

Louk Hulsman argues that scientific knowledge only addresses a very small part of the knowing (Hulsman, 1988). The information that is meant to be shared in this paper can only resonate if it touches upon areas of your knowledge, whether it is from experience, or taught knowledge by education, or experience shared by peers or parents, in all areas of knowledge, if we strive to achieve the best outcome for victims. It is risky to rely on data because of biased research and the tendency to only quote the results that suit our purpose. Not all researchers are that conscientious, and not all funders of research are happy with it because the outcome might not meet their needs. Perhaps this explains why so many scientifically proven 'facts' have been proven false at some point.

Medical procedures based on medical science, at that moment in time, dealt with children's pain by operating without pain relief, but under physical restraint (Oxford textbook on pediatric pain, "History of pain in children," Unruh and McGarth, 2014). As in the case of Leprosy or Hansen's disease, which was at one time considered hereditary in Japan, leading to families being forced to leave society without assistance or help (Kirchhoff, 2013). At the very least, victimology is a multidisciplinary science, which allows those who work in it to gain a more realistic picture of the complexity of a situation.

A quick and easy solution does not exist when it comes to repairing the social fabric of societies. The process of healing is painful for everyone involved. The past must be addressed to move forward. There are many known cases of states abusing their power and killing individual citizens protesting for rights or justice or committing genocide. We all make mistakes, especially when it comes to vulnerable people in institutional settings. Because people do not have a fondness for weakness. We do not provide for our mistakes in complex systems like the Criminal Justice System and, within that, the marginalized position of victim assistance.

### **5. Conclusion**

Victims who cannot cope with their victimization need help and support. We do not need harsher punishment for offenders; we need more assistance for victims. Modern Justice - at least in theory - is not exclusively "repressive" justice with the sole aim of punishing offenders. There is a growing group of practitioners and academicians advocating for "Restorative Justice", "Therapeutic Justice", and "Healing Justice" models for handling victimization. Traditional punishment-oriented systems are changing more and more. CJS now attempts to incorporate Restorative Justice (principally horizontal) elements into their generally vertical "repressive" structure.

So, as professionals, how do we handle these challenges? We dance between the need for a secure job, following the 'party line', and our conscience. If we consider ourselves compassionate, we

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should care not to victimize the people we work for by covering up mistakes for colleagues' sake. A robust and powerful tool in all the layers of those systems should be implemented to provide for visibility and reparation of professional mistakes in a transparent manner, to be able to learn from those mistakes and improve. We should walk the extra mile to get results for victims instead of trying to prevent becoming liable if we deviate from models and regulations. The best way to do our work as professionals is to be passionate and professional, precise, doubt our possible prejudgments, and if at all possible, have the integrity to admit our own mistakes and not accept the covering up of our colleagues' mistakes at the expense of victims or unrealistic research results.

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