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# *Victim Participation in Japan: When Therapeutic Jurisprudence Meets Prosecutor Justice*•

Erik HERBER*
Leiden University

**Abstract**
This article examines how a therapeutic perspective on victim participation has been conceptualized and implemented in criminal trials in Japan after procedural reforms in 2000 and 2008. Findings are discussed with reference to therapeutic jurisprudence studies on victim participation and relevant literature on Japanese criminal justice. Analysis of policy documents, survey data, interviews, and minutes of Ministry of Justice "expert meetings" reveals how the therapeutic needs of victims and the therapeutic effects of victim participation in court proceedings have been understood and conceptualized based on generalized common-sense assumptions of legal practitioners. In court, participants' reference to victims' wellbeing and recovery puts pressure on judges to impose harsher punishment than usual, while reinforcing the position of prosecutors. The adopted therapeutic perspective, combined with traditionally expected displays of remorse, furthermore has the effect of limiting the defence's ability to argue facts and circumstances favourable to the defendant.

**Keywords:** Japan, victim participation, therapeutic jurisprudence, criminal justice, legal reform

## 1. INTRODUCTION

For years, victims of crime did not play a role in Japanese criminal justice other than that of a witness providing evidence. That changed, however, when the Japanese Code of Criminal Procedure (CCP)[1] was revised in 2000 and again in 2008 to provide victims with various opportunities to participate in criminal proceedings. For example, victims may now make a statement about their feelings and the finding of facts, and they may question the defendant in preparation of their statement. All this is part of a general legal effort to protect and promote victims' rights and interests and is based on an explicit acknowledgement that the criminal justice system "also exists for the sake of victims" and the idea that victims' involvement in criminal proceedings can and should be conducive to their (mental) recovery.[2]

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* University lecturer. Correspondence to Erik Herber, Leiden Institute for Area Studies (LIAS), School of Asian Studies (SAS), Faculty of Law, Van Vollenhoven Institute for Metajuridica, Law and Governance, Leiden University, P.O.Box 9515 2300 RA Leiden, The Netherlands. E-mail address: e.d.herber@hum.leidenuniv.nl.

1. law.e-gov.go.jp (1948). All CCP references in this article refer to this Code.
2. cao.go.jp (2003), in particular pp. 10, 26; cao.go.jp (2004), in particular Art. 2.3.

This expansion of the victim's role is in line with other wide-scale legal reforms intended to, among others, increase input from the public in criminal decision-making. Perhaps the most notable reform in this regard has been the introduction in 2009 of a lay-juror (*saiban'in*) system under which lay jurors and judges together determine defendants' guilt as well as the appropriate sentence.[3] Much has been written about this lay-juror system and the way in which it has been functioning since its implementation.[4] But, despite representing nothing short of a paradigm shift within Japanese criminal justice, victim participation has received very little attention by comparison.

Literature on the subject includes studies introducing and analyzing the new system's set-up,[5] examinations of the background against which changes came about,[6] and discussions of the legal theoretical issues and debates linked to the expansion of the victim's role in Japanese criminal justice.[7] Some studies also provide an overview of the numbers of victims who have participated in proceedings and the extent to which victims have made use of the various options that the revised CCP provides for.[8] Various studies have in addition addressed the impact of victim participation on the finding of guilt or innocence and sentencing. Most of these, however, are based on hypothetical cases and scenarios.[9]

When it comes to research based on actual cases, Saeki has reported on the experiences of victims who delivered Victim's Statement of Opinion (VSO) in court, and Shiraiwa and Karasawa[10] have studied how participation impacts a victim's confidence in the criminal justice system. These two studies discuss victims' experiences in making use of the new opportunities for participation that the new system set-up provides.[11] A victim support organization known as Victim Support Forum (VSF) has in addition published a volume in which lawyers representing victims in victim participation trials have outlined their experiences, views, and concerns as lawyers.[12] These studies thus address aspects of criminal justice administered "also for the sake of victims."

Missing, however, are studies focusing on the aim of providing for trials conducive to victims' mental recovery. How has this taken shape in practice and how has it affected traditional courtroom practices? This article constitutes a first step in filling this void. It accordingly aims to examine and contextualize (1) what the newly introduced therapeutic perspective entails, both in theory and in practice, as well as (2) how the implementation of this perspective has affected Japanese courtroom procedures.

3. Only a limited range of serious offences is tried in this way. For a list of the applicable offences, as well as a general introduction of the system, see courts.go.jp (2009). For an overview of the various reforms, see e.g. Foote (2011) and references listed there. See also Kantei.go.jp/ (2003).

4. See e.g. Aoki (2013); Kuzuno (2013); Hirayama (2012); Corey & Hans (2010); Weber (2009), etc.

5. See e.g. Ota (2007).

6. Matsui (2011).

7. Abe (2010).

8. Saeki (2010); Matsui, *supra* note 6; Goto (2014).

9. Saeki, *ibid.*; Shiraiwa & Karasawa (2013).

10. Saeki, *ibid.*; Shiraiwa & Karasawa (2014).

11. Saeki's report on the experiences of victims delivering a VSO is based on a survey conducted by the Study Group of the Policies for Crime Victims (被害者のための施策を研究する会) in 2004. As such, it predates the victim participation system introduced in 2008. Saeki, *ibid.*

12. VSF (2013). See also Suwa (2010) for one lawyer's personal account and observations in handling one victim participation case.

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Examining these issues will increase our much needed understanding of Japanese victim participation in practice, as well as understandings of how victim participation affects and interacts with existing characteristics of Japanese criminal justice, famously characterized as "prosecutor justice," in reference to prosecutors' dominant role within criminal proceedings.[13] An examination of the therapeutic perspective introduced within a system of victim participation also has implications, however, for more general discussions about criminal justice in terms of its possible therapeutic or anti-therapeutic effects. In other words, such an examination will have important *therapeutic jurisprudence* implications.

Therapeutic jurisprudence is the "study of the role of the law as a therapeutic agent. It focuses on the law's impact on emotional life and on psychological wellbeing."[14] Accordingly, therapeutic jurisprudence represents a perspective, a way of looking at the law in terms of its therapeutic and anti-therapeutic consequences.[15] A newly found concern for victims' wellbeing and a focus on mental recovery suggest that the Japanese criminal justice system has adopted a therapeutic jurisprudence approach. As will become clear, the Japanese experience with this approach has implications when studying and conceptualizing the law's therapeutic and anti-therapeutic impact in more general terms.

This article will accordingly contribute first of all to the literature on victim participation and criminal justice in Japan. In addition, however, by focusing on the practical functioning of a therapeutically oriented system of victim participation, this article will also contribute to understandings of the therapeutic jurisprudence potential of criminal justice in terms that are not exclusive to Japan.

The article relies on an unpublished survey conducted in 2012 by the Japan Federation of Bar Associations (JFBA),[16] kindly made available to the author, as well as information gathered through meetings and correspondence with JFBA lawyers and public prosecutors. In addition to statistical data available at the Ministry of Justice (MOJ) and Supreme Court of Japan websites, qualitative data are drawn from case studies compiled by the VSF[17] as well as the written minutes from 12 meetings organized by the MOJ in 2013 and 2014 ("MOJ meetings"), in which representatives of victims' organizations, legal scholars, judges, lawyers, and prosecutors as well as MOJ officials exchanged views on victims' participation in criminal trials.[18] These data will allow us to form a picture of victim participation in Japanese criminal justice as seen and experienced by the experts involved. Victims' perspectives are represented through analyses of statements and testimonies made available via websites and journals of victim organizations, and more indirectly through lawyers and public prosecutors speaking and writing on behalf of victims.

## 2. LEGAL REVISIONS: PRELUDE AND CONTENTS

This section will provide a brief overview of the history of the reforms of 2000 and 2008. Doing so will provide the necessary context within which the aims of CCP revision should be

13. Johnson (2012). See also generally Johnson (2001).
14. Wexler (2000), p. 1.
15. *Ibid*., p. 1. See also generally Wexler & Winick (1996); Wexler (1999); Wexler & Winick (2003).
16. JFBA (2012b).
17. VSF, *supra* note 12.
18. moj.go.jp (2013–14).

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understood and will help us to understand how the concept of therapeutic victim participation was conceived—something which, as will become clear, also has consequences for the ways in which such victim participation is in practice pursued.

The legal reforms that have redefined the role of the victim in Japan can be understood within the context of a more general international trend towards the recognition of victims' rights and interests.[19] However, two domestic occurrences have been particularly influential in terms of raising public and political consciousness regarding victims' needs and rights: the sarin gas attacks carried out in 1995 by members of the *Aum Shinrikyō* doomsday cult, and the serial killing of two elementary school children by a 14-year-old boy in Kobe in 1997. The sarin gas attacks raised awareness of the issue of victims' rights and needs and led to the adoption of a law created specifically to compensate victims.[20] New National Police Agency Guidelines were subsequently adopted as well in an effort to offer better protection of victims' rights.[21] But it was the Kobe murder case that drew even more acute attention to the issue of victim support and the limited involvement of victims and their families in criminal and juvenile proceedings.[22] A period of increased media attention for crime victims and their families ensued, and victim activism increased.[23] Particularly significant in this regard was the establishment in 2000 of the National Association of Crime Victims and Surviving Families (NAVS/ 全國犯罪被害者の会 / 明日の会).[24,25]

As crime victims were receiving more attention and media reports on crime helped create the incorrect perception that crime was on the rise,[26] criminal justice policies became to an increasing extent based on politicians' perceptions of popular sentiments and demands. Here, "public calls" for harsher punishment for offenders went hand in hand with a "public demand" for a greater recognition of victims' rights, interests, and needs. It is also against the background of this penal populist climate that the impact of victim activism and the legal recognition of victims' rights and interest can be understood.

These developments in any case led to the adoption, in 2003, of the Basic Act on Crime Victims, followed by a Basic Plan in 2004 that provided a road map for giving concrete shape to the aims and principles defined in the Basic Act. The most important aims of the Basic Act are to (1) support victims so that they can again live a peaceful life and (2) allow victims to be

19. See Ogawa (1974); Otani (2008); Abe, *supra* note 7; Matsui, *supra* note 6.

20. See law.e-gov.go.jp (2007): Law Concerning the Payment of Benefits in Support of Victims etc. of Crimes of *Aum Shinrikyō*, Heisei 20, 18 June, Law No. 80. See in this regard also Takano (2009).

21. npa.go.jp (1996). These guidelines thus aimed at police practices more mindful of victims' position and interests as well the bringing-about of services to support victims of crimes, such as providing information on victim support groups and counselling services.

22. Miyazawa (2014), p. 78; see also generally Miyazawa (2008).

23. Hamai & Ellis (2006); Hamai & Ellis (2008).

24. The NAVS succeeded in generating much attention for victims' rights and was very influential not only as a result of media exposure, but also because of the fact that its head, Isao Okamura, was the former president of one of the three Tokyo bar associations and the former vice president of the JFBA. Both his professional stature and connections allowed Okamura to exercise considerable political influence and achieve results, allowing the NAVS to become *the* organization to speak on victims' behalf. See Miyazawa, *supra* note 22.

25. NAVS representatives were also closely involved in the deliberation processes in preparation for the CCP reforms that ultimately led to a range of victim-focused laws and revisions. See navs.jp (2002) for an overview of their activities in this regard, showing NAVS involvement in various MOJ deliberative legislative committees (法制審議会). See Matsui, *supra* note 6, Abe, *supra* note 7, and Matsuo (2010) for a more comprehensive overview of the various laws enacted from (especially) 2000 onwards. Given the focus as well as the scope of this article, only those laws most relevant to crime victims' participation in criminal proceedings are addressed here.

26. Hamai (2004); Kawai (2004).

"appropriately involved" in procedures concerning matters of criminal justice related to the harm suffered. Curing or at least lessening this harm has furthermore become a basic aim underlying various measures.[27]

By qualifying and envisioning a role for victims in criminal justice in this way, the Basic Plan adds a new goal to existing criminal justice aims. In addition to the goal of upholding social order, the Basic Plan boldly states that "criminal justice also exists for the sake of victims." This refers to the justice of victims' increased involvement in criminal proceedings as well as the mental recovery that is assumed to result from such participation.[28] The expanded role of the victim is thus conceptualized as a matter of justice, as well as a practical means of improving mental wellbeing among victims.

Significantly, mental health experts do not appear to have been involved in the deliberative meetings concerning victims' new role in court. Instead, it was government officials, legal professionals, and representatives of victims' organizations who were responsible for conceptualizing the goals of victim participation in court proceedings as well as the CCP revisions through which these goals would have to be pursued.[29]

The Act and Plan in any case led to the introduction in 2008 of the victim participation system.[30] These reforms came on top of those introduced in 2000 that allowed for victims or their legal representatives to make a VSO about victims' sentiments and their opinion regarding the case.[31] For a limited number of serious offences,[32] the victim participation system primarily allows victims to take the following actions[33]:

1. attend the trial (meaning that they can sit with the public prosecutor), as well as carry out inspections and questioning of witnesses in preparation for the trial (CCP 316–34);

2. question witnesses in court when there is a dispute concerning the credibility of witness statements about mitigating circumstances; questions concerning the facts of the crime may not be asked (CCP 316–36);

27. Basic Act, *supra* note 2.

28. Basic Plan, *supra* note 2. This statement explicitly deviates from a 1990 Supreme Court ruling in which the Third Petty Bench held that criminal investigation and prosecution and, by extension, criminal justice in general are aimed at bringing about the public interest goal of maintaining public and state order, and are not aimed at restoring the harm suffered by victims of crime. The court held in addition that any benefits that victims might experience as a consequence of criminal investigation, prosecution and so on are nothing more than factual benefits that these public interest-driven activities might indirectly produce. These are, according to the court, not legally protected benefits. See courts.go.jp (1990).

29. moj.go.jp (2006–07). On this site, the deliberative meeting minutes as well as documents produced and consulted within these meetings on victims' new role in court can be found. It should in addition be noted that mental health experts were also not involved in the MOJ meetings, *supra* note 18.

30. In accordance with CCP Art. 316–33. Note that, besides the introduction of the victim participation system, many measures have been taken to help to support victims when reporting a crime to the police, during police and prosecutors' investigations, as well as during trial. See in this regard generally Abe, *supra* note 7, and Matsui, *supra* note 6.

31. Pursuant to CCP Art. 292–2. It should be noted, however, that, considering the situation at the hearing as well as other circumstances, the court may find that making a VSO is not appropriate, and order the victim or the victim's representative to submit a written VSO or prohibit the making of such a statement altogether. If a written statement is submitted, the presiding judge may then read the statement out loud or explain its content—if doing so is deemed to be appropriate (CCP 292–2 (7)).

32. These are: (1) intentional crimes that resulted in the death of a person; (2) bodily injury or death through negligent conduct in breach of one's duty of diligence or in the driving of an automobile; (3) indecent assault and rape; (4) arrest and confinement; and (5) kidnapping and human trafficking. See Saeki, *supra* note 8, p. 152.

33. For a complete overview, see Saeki, *ibid.* Listed here are those acts most directly relevant to victims' in-court participation.

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3. ask questions in preparation for a statement[34] (CCP 316–37); and

4. make a statement about the facts of the case as well as the application of the law, within the limits of the charges as specified by the public prosecutor (CCP 316–38).[35–37]

To review, this section has shown how high-profile crimes and victim activism, combined with political response to both of these have led to legal reforms allowing for an expanded role for victims within criminal justice. The aim of these reforms has been to on the one hand bring about criminal justice practices that exist "also for the sake of victims" and on the other to have criminal justice contribute to the recovery of victims from harms suffered.

## 3. PURSUING VICTIMS' RECOVERY IN JAPANESE COURTS

How has the newly introduced therapeutic outlook been conceived in practice? In addressing this question, the focus will be on criminal trial court proceedings. After all, in accordance with the revised CCP provisions, it is especially within court proceedings that victims have the opportunity to speak out, express their opinions and sentiments, and ask the defendant questions if they wish to do so.[38]

Drawing on case studies, surveys, and the minutes of meetings organized by the MOJ for discussion among judges, prosecutors, and victims' lawyers, it is clear that victims, representatives of victim interest groups, and legal professionals frequently refer to the importance of the opportunities that trials provide to victims in terms of stating what one wants to say and asking what one wants to ask. In-court statements and questioning carried out by victims were said to provide a sense of satisfaction and feelings of accomplishment

34. This concerns both the already-mentioned VSO in accordance with CCP 292–2, as well as a statement on the finding of facts and the application of the law in accordance with CCP 316–38.

35. Differently from the VSO, this statement cannot be considered in sentencing, and it also does not have any evidentiary value: CCP 316–38(4).

36. Victims' engagement in these acts 1–4 is subject to various conditions, such as judges' approval dependent on the characteristics of the case at hand.

37. To give an idea of the extent to which victims have been making use of the options that have become available to them: in 2013, the number of victims who made a statement of opinion in court (VSO) was 1,173; the number of victim participants was 1,298; moj.go.jp (2014). In the past five years, the numbers for both types of participation appear to have stabilized around these numbers. Murder and in particular vehicular negligence resulting in death are offences with the highest numbers of statements and victim participants. In 2012, for example, 72 VSO's were made and 115 victims participated in 367 murder trials. In 213 trials of vehicular negligence resulting in death, 191 VSOs were made and 291 victims participated. For other offences, the numbers of VSOs and victim participants were typically much lower. For example: in 3,902 assault trials, 43 VSOs were made and 71 victims participated; in 1,469 sexual assault trials, 46 victims delivered a VSO and 59 participated as victim participants. See moj.go.jp (2012c), moj.go.jp (2011), and moj.go.jp (2009).

38. It should nevertheless be remembered, however, that victim participation and victims' contribution and involvement in criminal justice go much further than their performance or presence in court. In accordance with the revised CCP articles, victims may now be involved in prosecutors' activities in preparation of the trial while, preceding the trial, victims may already have had numerous meetings with their own representative, etc. Cf. VSF, *supra* note 12, pp. 119ff. and 222ff. While victims' involvement thus starts long before the beginning of the trial, it is also important to note that victims are excluded from participating in the so-called pre-trial conference procedure that is part of lay jury proceedings. In this procedure, the public prosecutor and defence lawyer gather in front of a judge to establish which issues they will dispute at the trial and which pieces of evidence they will select to do so. The aim of this procedure is to reduce the burden on lay jurors who will not have the time to work their way through numerous or voluminous dossiers, and to allow a more speedy trial by focusing on issues and evidence that are truly central to the case at hand. See courts.go.jp (2008). As a result, however, evidence that has not been agreed upon will typically not be accessible to victims or their lawyers. Victims are thus excluded from procedures that very much shape the course of the trial they will be participating in, much to the chagrin of victims' organizations; see e.g. NAVS (2012), p. 5. It should be noted, however, that victims at times do get access to material not admitted into evidence, and ask questions and express opinions based on this not admitted "evidence." MOJ Meeting 3, p. 5; JFBA, *supra* note 16, p. 2.

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and liberation. This sort of participation was viewed as essential to the victim's ability to move forward, regardless of how the defendant might respond. Speaking out was in fact represented over and over as something that constitutes an indispensable first step for victims to leave what has happened behind them.[39]

Similarly, a prefectural Bar Association survey refers to victims who "felt they could recover" (立ち直れそうだ) after they conveyed their suffering to the defendant.[40] Conversely, being denied the opportunity to speak out was presented as something that could deny the victim's ability to "move forward towards recovery" and "hinder victims' mental recovery" to the extent of causing lifelong trauma.[41]

Participating in trial proceedings is often also portrayed, however, as something that could result in "secondary victimization." For example: one judge feared for the "secondary victimization" that might result from allowing a young girl to participate as a victim in trial proceedings,[42] and a victim's lawyer argued that the irrelevant questions that his client was asked by curious lay jurors "unfortunately led to secondary victimization."[43] The general conditions under which participation takes place were also discussed as a source of potential secondary victimization.[44]

Victims' in-court experiences are thus discussed—by victims, victims' support organizations, lawyers, prosecutors, and judges—in terms of the benefits of such experiences for victims' recovery and victims' mental health, and the demerits of added trauma, damage, and secondary victimization that may occur as a result of limiting victims' participation or the experience of participating itself.

It is unclear, however, what exactly is meant by "mental recovery" or "secondary victimization" in the sources cited. The terms are used without any definition or specification, much less reference to psychological, psychiatric, or any other disciplinary discourse. Discussions and statements instead appear to be based on implicit commonsensical knowledge and assumptions about the therapeutic benefits of speaking out on the one hand and the potentially traumatic effects of being exposed to irrelevant questions, uncooperative judges, etc. on the other.

Qualifying the above-mentioned conceptions and views as commonsensical—as opposed to specialist or disciplinary—is in no way meant to imply that Japanese victims' participation in criminal trials is or is not in fact therapeutic. The distinction here rather serves to bring into focus the relative lack of definition or circumscription of what was being discussed or aimed for. It appears as if everyone assumed a common understanding and deemed explicit definitions unnecessary.

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39. MOJ Meetings 3, pp. 5, 28; 6, p. 2; 10, p. 2; moj.go.jp (2012a); moj.go.jp (2012b); aiben.jp (2009); VSF, *supra* note 12. It should be noted that, in the sources listed here, especially victims' lawyers, representatives of victim interest groups, and victims themselves have expressed their conviction concerning the therapeutic benefits of speaking out, etc.

40. aiben.jp, *ibid.*

41. MOJ Meeting 6, p. 2; VSF, *supra* note 12, pp. 171, 173. The fact that, as indicated, victims cannot participate in the pre-trial conference procedure and are at that stage being denied the opportunity to speak out has similarly been referred to as something that brings with it "the risk of hindering victims' mental recovery" (VSF, *supra* note 12, p. 173). Participating in this procedure is also argued to be important as doing so will allow victims to understand and accept why, for example, certain pieces of evidence were excluded and others were not, and it is, according to one lawyer specialized in representing victims, "precisely that understanding which is the right medicine for recovery" (MOJ Meeting 8, p. 31). Another reason why victims are said to want to participate in the pre-trial conference is that obtaining information is important for their recovery: "…when thinking about recovering from a crime, it is the knowing of the truth that is the biggest support for bereaved family members" (MOJ Meeting 8, p. 31).

42. MOJ Meeting 5, p. 5.

43. VSF, *supra* note 12, p. 163.

44. moj.go.jp (2012b), pp. 1–2.

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This commonsensical quality might not be surprising when we consider that the 2004 Basic Plan and the CCP revisions came about on the basis of deliberations in which representatives of victims' organizations, notably the NAVS, were closely involved but psychologists, psychiatrists, or other mental health specialists were not. The therapeutic aspect of victim participation has from the deliberation stage of reforms been conceived in non-specialist terms—something which explains its non-specialist operationalization in practice.

What then are the implications of these findings for more general therapeutic jurisprudence debates on these issues? And what, conversely, are the implications of such debates for these findings? The next section addresses these questions by placing our findings within the context of general debates on therapeutic victim participation that are also very much focused on the therapeutic effects of victim participation, or lack thereof.

Again, the aim here is to study and think about the conceptualization and implementation of a therapeutic perspective on victim participation, as opposed to measuring the therapeutic effects of doing so. As will become clear, however, general debates on the therapeutic effects of victim participation also involve more or less explicit debates on the conceptualization of therapeutic victim participation and are as such relevant to our discussion.

### *3.1 Therapeutic Jurisprudence Studies on Victim Participation*

The therapeutic effects of victim participation have been widely debated. Many studies, however, have been mainly focused on a single aspect of participation, namely the delivering of a Victim Impact Statement (VIS).[45] Some suggest that delivering a VIS may lead to secondary victimization, while others argue that it is effective in helping victims to recover from the crime. This has led scholars to make opposing claims that "Victim Impact Statements can work, do work"[46] on the one hand and that "Victim Impact Statements don't work, can't work" on the other.[47] It has been pointed out, however, that previous studies have typically looked at victims' *satisfaction* as a way to measure the therapeutic effectiveness of VISs.[48] According to Lens et al., "this is troublesome, because neither satisfaction nor dissatisfaction can be directly translated into therapeutic and anti-therapeutic effects."[49] She also notes a tendency to equate victims' dissatisfaction with secondary victimization, even though dissatisfaction does not necessarily lead to negative effects on victims' wellbeing.[50]

45. Lens et al. (2015); Pemberton & Reynaers (2011); Roberts (2009). While the study by Lens, Pemberton et al. is focused mainly on the experiences of Dutch victims, Pemberton and Reynaers approach the subject of VISs from a more general, international perspective; Roberts's study is focused on VISs in the US.

46. Chalmers et al. (2007), referring to VISs in Scotland.

47. Sanders et al. (2001), referring to VISs in the US.

48. See Lens et al., *supra* note 45, p. 19 and references listed therein. Referring to among others Alexander & Lord (1994) and Davis & Smith (1994), whose studies address the situation in the US, Lens et al. further note that observations concerning victims' satisfaction differ depending on whether the observant is an advocate, or rather a critic of a VIS regime (*ibid*., p. 19).

49. *Ibid*., p. 19. See also Zech & Rimé (2005), who address this issue from a general psychotherapeutic perspective.

50. Lens et al., *supra* note 45, p. 19. Note that the study by Lens et al. is informed by a wide range of studies on the different ways in which individuals are affected by criminal acts as well as insights on the different trajectories of mental health outcomes following traumatic events. Based on a longitudinal study involving 143 victims who delivered a VIS in the Netherlands, Lens et al. conclude that "doing so has no direct 'therapeutic' effects," while also noting that feelings of anxiety decrease for victims who experience stronger feelings of procedural justice (*ibid*., p. 31). Importantly, however, they also observe that the decision to deliver a VIS results in a highly selective group of participants. Like the observation on the different ways in which different individuals are affected by criminal acts, this observation alerts us to

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Discussing victim participation in more general terms, some link the therapeutic potential of criminal justice to matters such as respect for and recognition of victims, victims' satisfaction, empowerment, moving on, and closure.[51] However, similarly to the above-mentioned discussions concerning VISs, others have pointed out that such understandings of the word "therapeutic" do not necessarily correspond to those in the psychological literature and have questioned whether court proceedings actually have any therapeutic potential at all.[52]

While the debate thus continues, the foregoing in any case illustrates how different researchers have employed very different conceptions of the therapeutic or anti-therapeutic dimensions of victim participation, and have accordingly come to very different findings concerning its effects.

As we have seen, however, such a lack of conceptual clarity is not limited to academic discussions on this subject. It is not clear to what extent the unspecified commonsensical conceptions employed within the context of Japanese trials correspond with specialist psychiatric knowledge. What is also unclear, however, is the extent to which those who aim to implement a therapeutic perspective in criminal trials actually share the same conceptions of what is therapeutic about this perspective.

While general therapeutic jurisprudence discussions thus alert us to the lack of conceptual clarity among those studying the therapeutic and anti-therapeutic effects of victim participation, the findings from a Japanese context alert us to how legal professionals may in turn conceive of therapeutic victim participation in their own way and act accordingly. The worlds of both those studying therapeutic victim participation and those aiming to implement it would thus benefit from further discussion on how to define therapeutic victim participation.

Finally, it is important to note that different studies of victim participation in non-Japanese contexts point out the diversity in victims' wants and needs.[53] Such findings are relevant because they raise questions about the feasibility and limitations of a one-size-fits-all conception of therapeutic victim participation. They thus alert us to the possibility that, for example, delivering a VIS or confronting a defendant by means of questions may work for some victims but not for others.

An awareness of the diversity in victims' wants and needs thus also forces us to re-examine claims about Japanese victims' wants and needs. Within the various fora and sources examined,[54] those speaking on behalf of victims tend to discuss victims' wants and needs in very generalized terms. Victims are represented as a group of people who all share the same wish, that being mainly the severe punishment of the defendant for the sake of victims' recovery.[55] The literature on the diversity of victims' wants and needs here alerts us

*(F'note continued)*
the importance of recognizing the diversity of experiences and needs of different victims. This matter will be further addressed below.

51. See Wemmers (2008), who focuses in her study specifically on victims in Canada; cf. also Diesen (2013), who approaches this subject in general terms. Cf. Bandes (2009) for a critical approach of the concept of closure.

52. See Van Stokkom (2011), who discusses this subject in terms not explicitly tied to a specific context, as do Pemberton & Reynaers, *supra* note 45, Roderick & Krumholz (2006) and Arrigo (2004).

53. See e.g. Lens et al. (2013); David & Choi (2009); Partnership for Safety and Justice (2011); Maruna & King (2004). See also Lens et al., *supra* note 45.

54. That is: the different MOJ meetings, the case studies presented by the VSF as well as the various statements issued by the National Association of Crime Victims and Surviving Families (NAVS/明日の会).

55. As indicated earlier, NAVS representatives have played an important part in raising awareness of victims' position within criminal justice as well as the lobby that led to the formal expansion of victims' role within criminal justice.

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to the possibility that, within the Japanese debates, only one voice in particular is being forcefully represented—to the exclusion of others.

The literature on victim participation in non-Japanese contexts thus makes us aware of the importance of being sensitive to the diversity of victims' wants and needs. It is arguably similarly important, however, to be sensitive to diversity in terms of sociocultural contexts, besides the legal ones, when discussing whether delivering a VIS is, for example, emotionally effective or counter-productive.[56]

What victims in Japan need and want is in any case a topic for further research, as is the related question of how assumptions about such wants and needs impact courtroom proceedings. The next section will further address this issue.

## 4. CONSEQUENCES OF A THERAPEUTIC FOCUS: VICTIM PARTICIPATION AND JAPANESE CRIMINAL JUSTICE CHARACTERISTICS

This section will address some of the ways in which a focus on victims' therapeutic wants and needs has affected and been affected by characteristics of Japanese courtroom procedures. This will be done by examining the roles of the traditional players who give concrete shape to these courtroom procedures, namely judges, prosecutors, defence lawyers, and defendants. Special attention, however, will be given to the role of the defendant. As will become clear, the roles of defendant and victim reciprocally affect each other. In order to appreciate how, however, it is necessary to first highlight some characteristics of Japanese courtroom procedures and the traditional roles of the different courtroom players within these procedures.

Japanese criminal justice has been famously characterized as "prosecutor justice,"[57] in reference to the prosecutor's dominant role in criminal proceedings. What is particularly significant about the prosecutor's role is that a prosecutor will refrain from prosecuting a case unless he or she is thoroughly convinced of being able to prove a defendant's guilt. Prosecutors' very careful prosecution policies and practices constitute one of the most important factors leading to a conviction rate of over 99% in Japan.[58]

As a consequence, for all practical purposes, trials are typically about confirming a defendant's guilt and deciding on the sentence that this defendant deserves. The defence lawyer's role is therefore also typically not to argue a defendant's innocence, but rather to

*(F'note continued)*
As such, the NAVS voice is an influential one. The NAVS regularly issues statements on victims' behalf, containing phrases such as the following: "Victims want victimizers to receive strict punishment, and this is also *necessary for victims' recovery.* If an unjustly light punishment is meted out, … victims' retributive feelings will be severely hurt, and they will be disadvantaged"; Navs.jp, *supra* note 25 (emphasis added).

56. See e.g. Lens et al., *supra* note 45, and Pemberton & Reynaers, *supra* note 45. In these insightful and thorough studies, discussions of especially the secondary literature seem to become divorced from the specific local contexts within which the studies discussed were carried out. Thus, it is no longer clear where it is that "Victim Impact Statements can work, do work (for those who bother to make them)" or rather "don't work, can't work," etc. (Lens et al., *supra* note 45, p. 19). It is also important to note in this regard how, in Japan, victims' participation in court proceedings cannot be seen as divorced from *customary* reparation-making practices between victimizers and victims. See *infra* note 64.

57. Johnson, *supra* note 13.

58. One should here also take into account the fact that cases in which defendants confess guilt, usually around 90%, will still go to trial.

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argue for a lesser sentence—or at least a sentence more lenient than the one demanded by the prosecution. An important part of the lawyer's role therefore becomes that of showing extenuating circumstances and defendants' potential for rehabilitation. In this sense, trial proceedings may assume the character of prolonged sentencing hearings.

A defendant's albeit elicited expression of remorse in this context functions as an indication of rehabilitative potential. Courts furthermore appear to expect confessing defendants to show an appropriately remorseful attitude. One should not underestimate the importance attached to apologies and prospects of rehabilitation, since sentences are, after all, to an important extent determined by the seriousness of the offence, and judges have on average subtracted 20–30% of the punishment demanded by the prosecution.[59] Nevertheless, establishing facts concerning a defendant's personality, the absence or presence of remorse, and general prospects of rehabilitation has formed a fixed part of fact-finding procedures.

### *4.1 Victims and Other Courtroom Participants*

As shown, the aspects of participation that are conceived of as therapeutic are related most of all to victims' own contribution to court proceedings: making statements, asking questions, etc. Conversely, the potentially traumatizing and damaging aspects of participation are portrayed as resulting from the action or inaction of the other participants: judges placing limits on victims' participation, jurors asking "irrelevant questions," etc. This, then, leads to an evaluation of other courtroom participants' actions in terms of their potentially traumatizing or damaging character. Special attention in this regard is being paid to the defendant.

#### *4.1.1 Defendants*

The JFBA has criticized and called for revision of the new system of victim participation system in light of the possibility of verbal attacks by defendants in court and the potential for secondary victimization as a result.[60] While this argument could be viewed with suspicion in view of the JFBA's earlier opposition to the system,[61] the JFBA was not alone in its concern for secondary victimization resulting from defendants' verbal attack. Different sources have pointed to defendants' statements and demeanour as potential causes for further victimization and suffering. For example, victims were said to have been "further tormented" by defendants' denial or partial denial of the facts, or to have undergone "further mental anguish" because of defendants' lack of co-operation.[62]

Verdicts of victim participation cases also show that defendants' in-court behaviour is scrutinized as a potential source of the participating victim's suffering. The following quote from a verdict in a case of professional negligence resulting in injury or death (業務上過失致死傷) is instructive in this regard:

> The defendant not only … has not shown any consideration for the bereaved family members of the victims,[63] and his words and deeds in court have caused the victims irritation and have further

59. See Harada (2004), p. 3; Osaka (2011), p. 71ff.

60. JFBA (2012a).

61. JFBA (2007).

62. VSF, *supra* note 12, pp. 131, 233; Hōmuinkaichōsashitsu (2007), p. 5.

63. Hereafter: victims. These are the bereaved family members of the persons who died and were injured as a result of the traffic accident caused by the defendant.

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> hurt their feelings. His attitude, and these words and deeds can be thought of as inconsiderate. They suggest not only a serious lacking of any self-awareness on the defendant's part concerning his … responsibility, but it is accordingly also hard to detect an attitude of serious remorse.[64] The defendant's criminal tendencies are deeply rooted.[65]

This quote thus shows a concern for the impact of the defendant's in-court behaviour on the participating victims. In this context, the absence of appropriately considerate behaviour towards these victims is presented as something that adds to the defendant's blameworthiness.[66] This quote in addition shows how a defendant's demeanour towards the victim constitutes another criterion on the basis of which the quality of his remorse is measured and the criminality of his character assessed. The evaluation of defendants' behaviour towards the victim thus provides an opportunity to show concern for this victim's wellbeing, while also helping to assess the defendant's potential for rehabilitation. The following quote from a verdict in another victim participation case is also illustrative in this regard:

> The defendant has … not taken any effective measure to compensate the victims. On the contrary, the defendant has in this court done and said things that have to be seen as irritating for the victims, and in his final statement too, the defendant has not expressed any sentiment of mourning …. It accordingly has to be said that his attitude of reflection on his own responsibility was extremely insufficient, and when one takes these factors into account … one has to say that the defendant's criminal responsibility is grave.[67]

This verdict also shows a concern for victims' feelings in connection with the defendant's in-court behaviour, and how the defendant's behaviour in relation to the victims adds to his criminal responsibility. This behaviour is represented as symptomizing the defendant's failure to reflect on his own responsibility—evidence, in turn, of a lack of rehabilitative potential.[68]

Here, it is important to realize that, irrespective of victims' in-court participation, public prosecutors and judges have generally taken victim-suspect and victim-defendant relationships into consideration. They have mostly done so, however, in relation to suspects' or defendants' eligibility for lenient dispositions. In making decisions concerning prosecution and sentencing, prosecutors and judges have thus generally taken into account whether the suspect or defendant has made efforts to compensate the victim or achieve a settlement, etc.[69] Significantly, the verdicts quoted from here suggest that a defendant's failure to show the expected demeanour towards the victim not only makes the defendant ineligible for a lenient

64. The defendant had however written letters of apology to the victims, had visited the houses of those victims who would let him in, and had given these victims goods and money (見舞金–money given as a token of consolation or sympathy), as is customary (*Brittanica Encyclopaedia* (Japanese edition), 2010).

65. courts.go.jp (2006): Saitama District Court judgment, pp. 15–16.

66. To what extent such reference to defendants' failure to act considerately towards the victim also translates into higher sentences remains unclear. This matter will be further addressed below.

67. courts.go.jp (2002): Kobe District Court judgment, p. 7.

68. The evidence provided here is of course anecdotal. However, many more examples of verdicts exhibiting the same line of reasoning can be found on the Supreme Court of Japan website, at courts.go.jp (2015). The findings presented here are furthermore in line with earlier findings showing that failure to act in accordance with behaviour expected from confessing defendants can in fact add to defendants' criminal responsibility (cf. Herber (2003)). Furthermore, while a remorseful attitude may, as indicated earlier, contribute to a lower sentence, it may thus also hinder the defendant, as any statement in his or her own defence may be construed as evidence of a less-than-truly-remorseful attitude and lack of rehabilitative potential (personal communication with public prosecutors, 2012–15 ($n = 10$); Kawaai (2011), p. 195 and references provided there.

69. *Ibid*., pp. 188–9.

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treatment, but in fact adds to this defendant's criminal responsibility. Concern for victims' wellbeing in any case constitutes an amplified opportunity to focus on the person of the offender and his or her lack of rehabilitative potential. Here, the concern for victims' wellbeing is accordingly put in service of the traditional way of judging offenders.[70]

Victims' participation provides more, however, than an opportunity to judge the defendant's character. Victims' participation and presence in court are also explicitly conceived in terms of their potential to bring about or deepen defendants' remorse. A MOJ/Prosecutors' Office pamphlet with information for participating victims states in this regard that "Providing the defendant with the opportunity to directly hear about victims' and family members' … feelings is something that is also useful to deepen the defendant's remorse."[71] Similarly, in victims' lawyers' perceptions, hearing directly from the victims does indeed deepen defendants' remorse.[72] The Aichi Bar Association survey also notes that much can be expected from advising the participating victims to ask questions that "will prompt the defendant's remorse, and that will have an educational effect."[73]

Here, victims' participation is explicitly represented as something that could invoke or strengthen defendants' remorse and accordingly help defendants take the first step on the road to reform and rehabilitation.[74] By thus conceiving of the participating victims' contribution, victims are assigned a role within the courtroom as a place for remorse. Doing so implies that victim participation is here again looked at as a means to bring about a traditional trial goal.

### 4.1.2 Judges

Representatives of victims' organizations have noted that judges have a responsibility to take care that jurors do not hurt victims by asking irrelevant questions (see *supra*).[75] While data in this regard are very limited, there have been reports of judges who in fact pay attention to this issue by, for example, limiting the number of questions a juror could ask to just one question.[76]

While the concern for victims' mental wellbeing would thus appear to affect judges' actions, such concern also provides rhetorical possibilities that can be used to persuade other courtroom participants, but obviously notably the judge, of the desirability of letting victims perform the acts they wish to perform.[77] The phrasing of a statement submitted to the court by a victim's lawyer is telling in this regard. This statement was submitted after the presiding

70. Interestingly, in the 2004 Basic Plan (*supra* note 2), the therapeutic benefits of participation actually coincide with victims' role in service of criminal proceedings: "… when it comes to the process leading to a solution (of the criminal case): by contributing to this (process) victims feel that they could fulfil their *responsibility* …, and this has aspects that are conducive to victims' … mental recovery" (emphasis added).

71. moj.go.jp (2015), p. 31.

72. aiben.jp, *supra* note 39.

73. *Ibid*.

74. The idea of the courtroom as a place for remorse is not new, however. Long before the participating victim entered the picture, trials have been represented as opportunities for defendants to acknowledge what they have done and to publicly commit to a non-deviant lifestyle; see e.g. Wagatsuma & Rosett (1986); Peters (1992).

75. See also MOJ Meeting 7, pp. 20–21; VSF, *supra* note 12, p. 161.

76. VSF, *ibid*., p. 161.

77. It should be kept in mind here that, as indicated, the extent to which victims can make use of the new possibilities for participation provided by the CCP revisions is in the end decided by judges, who either do or do not give victims permission. See *supra* note 31.

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judge had announced that he would read a bereaved family member's statement in court, rather than allowing this family member to read it herself:

> If she is not allowed to make her statement, I fear that for the rest of her life she will not be able to organize her feelings …. Her not conveying the facts might result in a verdict in which only the murder victim's honour will be stained. If that happens she will believe that she was not able to do anything for her mother and her heart will probably suffer a deep wound that she will bear for the rest of her life.[78,79]

When it comes to judges' (and jurors') sentencing decisions, the impact of a therapeutic perspective is difficult to assess, given the large number of factors that affect such outcomes and the difficulty of comparing like cases.[80] Nevertheless, when a therapeutic perspective is explicitly acknowledged within the process of justice and victims' therapeutic needs are equated with desires for harsh punishment,[81] victim participation will result in pressure on those participating, notably judges and lay jurors, to give victims "what they need" and impose the desired harsh punishment.[82] This issue will be further addressed in the next section.

### *4.1.3 Defence Lawyers and Prosecutors*

As indicated, victims' speaking out, asking questions, and expressing feelings of victimization have often been represented as something that helps victims recover (回復・立ち直り).[83] In this sense, there is a general common-sense recognition of the therapeutic dimension of victim participation, even if such participation is also perceived to have its risks.[84] As will become clear, the practical implementation of this therapeutic dimension does not so much affect prosecutors' *role*, but rather strengthens their *position*. Here it is important to keep in mind first of all that, when victims participate in court proceedings, their seat is next to that of the public prosecutor. Participating victims in this sense literally join the side of the prosecution.

Concretely speaking, victims' speaking out is something that may serve to strengthen prosecutors' sentencing demands. This may on the one hand result from the fact that judges and jurors will hear directly from victims about the impact of the crime on victims' lives. However, victims will in their statements often also demand a sentence. Such a demand may

78. VSF, *supra* note 12, p. 171.

79. After receiving this statement, the presiding judge did in fact give the victim permission to make the statement herself.

80. Different studies on the impact of VISs on sentencing in non-Japanese settings have produced different results. While some studies suggest that these have little impact on sentencing decisions (Wemmers, *supra* note 51; Gordon & Brodsky (2007); Erez & Rogers (1999)), others suggest that they do have some effect (Nadler & Rose (2002); Erez & Tontodonato (1990)). A Japanese study involving *mock* victim participation and lay-juror trials with 171 graduate students acting as lay jurors did not reveal a connection between victims' statements and the sentence decided upon by the mock jurors. It showed rather that those who opposed victim participation "see the victim's statements as having a smaller impact on him or herself, and considered the defendant as deserving a more lenient punishment" (Shiraiwa & Karasawa, *supra* note 9, p. 12). In another mock trial study involving 137 university graduate students, Naka found that both the holding of a portrait of the deceased victim and victims' making of a statement "affected both the decision on guilt or innocence as well as decisions regarding punishment" (Naka (2009), p. 146, referred to in JFBA, *supra* note 16).

81. See *supra* note 55.

82. This is not unique for the situation in Japan. Cf. Van Stokkom, *supra* note 52; Pemberton & Reynaers, *supra* note 52.

83. See *supra* notes 38, 39.

84. See *supra* note 62.

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take the form of a request for "the most severe punishment possible," but there are also victims who request a specific prison sentence, or the death penalty.[85] Significant in this regard is that both victims' and defence lawyers have expressed their impression that harsher-than-usual punishment has been both demanded and meted out.[86] There have in addition been cases in which, on appeal, the punishment meted out within the first-instance victim participation trial was judged to be too severe.[87]

In addressing the consequences for the defence of participating victims joining the side of the prosecution, the JFBA survey portrays a situation in which lawyers and defendants are outnumbered by a prosecution that is joined by participating victims, who together argue both the defendant's guilt and participants' feelings of victimization over and over again.[88] These repeated actions are reported to have a powerful impact on the courtroom atmosphere. Defence lawyers have in fact qualified this atmosphere as "warlike" (殺伐) and "extraordinarily tense."[89]

Lawyers have frequently pointed out this change in atmosphere and the consequences thereof.[90] One of these consequences is that some lawyers have become hesitant to refer to any victim's fault, while some indicate that they refrain from asking the victim potentially significant questions, as "it is pointless to argue with a victim" and doing so might lead to a higher sentence for their client.[91] One could in this regard argue, as victims' lawyers have in

85. aiben.jp, *supra* note 39. See also JFBA, *supra* note 16.

86. JFBA, *ibid.*; VSF, *supra* note 12, p. 218.

87. JFBA, *supra* note 60, p. 3. More research will be necessary, however, to examine the "harsher-than-usual" claim, in view also of conflicting findings in different studies. This issue will be further addressed below.

88. The 2012 JFBA survey provides a concrete example of how this could work out, reporting on a case in which five bereaved family members' pre-trial statements were read out loud. These five family members also made a VSO. Four family members in addition delivered a final statement, in which they requested the death penalty, making a total of 14 statements. And so "the words 'ultimate punishment' and 'death penalty' were uttered in court countless times" (JFBA, *supra* note 16).

89. JFBA Statement of Opinion (JFBA, *supra* note 60). MOJ Meeting 3, p. 4. This tension may also be connected, however, to victims' approaching their participation as a once-in-a-lifetime opportunity to confront the defendant—the alleged victimizer. In this regard, a statement by a NAVS representative, who as a lawyer has represented many victims, is worth quoting at length: "Victims … have many, many things to ask and say to the victimizer. They can only confront the victimizer in court, and if they miss that opportunity, there won't be another for the rest of their lives. Even if the victimizer doesn't answer, they want to … get to the truth. They want to confront the victimizer with the bad feelings and frustrations they still have in their hearts …. That is why victims come to court with a do or die attitude. When the trial is over and they come home, they can report (to their deceased family member) in front of the Buddhist altar: 'The victimizer didn't answer at all, but I said all I had to say.' The feelings of accomplishment, satisfaction and liberation that come from this (feeling of) 'I did all I could do': victims cannot make the step towards recovery without that" (MOJ Meeting 6, pp. 1–2); cf. also VSF, *supra* note 12, p. 171. In the case of deceased victims, these "once-in-a-lifetime" confrontations thus also appear to be shaped in part by religious or customary beliefs concerning the deceased. In this regard, it should also be noted that family members often take a framed portrait of the deceased with them to court, "to allow the victim to be present at the proceedings" (personal communication with JFBA lawyer (2012)). According to a victims' organization representative, bereaved family members all want to bring such a portrait with them: "They will want to show the victim who their killer is: 'this is the criminal who killed you, you know. You'd like to give him a piece of your mind, wouldn't you?'" Here, the showing of a portrait of the victim would thus seem to be a way to ritually confront victim and the alleged victimizer. Incidentally, while holding onto such a portrait is allowed when sitting in one of the spectator's seats, this is not allowed when entering the area, "the bar," where the prosecutor, lawyer, and defendant sit (MOJ Meeting 7, p. 24). This practice of holding onto portraits of the deceased arguably also contributes to increasingly tense courtroom atmosphere.

90. MOJ Meeting 4, p. 5; JFBA, *supra* note 16, p. 2.

91. *Ibid.*, p. 5; personal communication with JFBA lawyers ($n = 24$), 2011. Another reported consequence of this tense atmosphere is defendants' "withering" (萎縮): "Especially in cases where the defendant admits guilt and victims question the defendant, this defendant will become extremely nervous, and it will be difficult for him/her to say anything in his/her own favor." See Nakajima (2012), p. 5. See also JFBA, *supra* note 60, pp. 2–4.

fact done, that victims' presence as well as their speaking out, in addition to bereaved family members' holding on to a portrait of the victim,[92] have made it harder for the defence to tell lies to make defendants look less guilty and to blame the victim.[93]

Victims' increased presence, expressions of victimization, and so on in any case have the effect of strengthening prosecutors' position. Conversely, keeping in mind also the expectations regarding appropriate behaviour towards participating victims referred to earlier, the defence appears to have less room to manoeuvre than ever.

## 5. CONCLUSION

This article has examined the ways in which a therapeutic perspective on victim participation was conceptualized and implemented in Japanese criminal trials. The ways in which therapeutic victim participation was conceived and implemented were furthermore contextualized by also zooming in on (1) the process that led to the incorporation of a therapeutic perspective into criminal justice, as well as (2) characteristics of the Japanese courtroom procedures within which this perspective was implemented. The article accordingly contributes to the sparse literature on both the theory and the practice of victim participation in Japan, as well as therapeutic jurisprudence discussions on therapeutic victim participation. This section will briefly present the article's findings and conclusions, as well as suggestions for future research based on both these findings and conclusions.

A growing international awareness and recognition of victims' rights, in combination with high-profile domestic incidents and crimes, victim activism, and politicians' response to these have led to legal reforms allowing an expanded role for victims within Japanese criminal justice. The aim of these reforms has been to on the one hand to bring about criminal justice practices that exist "also for the sake of victims" and on the other to allow for criminal justice to play a part in victims' (mental) recovery.

Through these reforms, a therapeutic perspective was incorporated in Japanese criminal justice. This therapeutic perspective was, however, never clearly circumscribed or defined—something which can be explained by a lack of involvement of psychiatrists, psychologists, or other mental health specialists in the reform process. In practice, this perspective in any case involves "common-sense" assumptions held and expressed by especially victims' lawyers, representatives of victim interest groups, and victims themselves about the therapeutic effects of speaking out and asking the questions one wants to ask.

A review of the therapeutic jurisprudence literature shows that there is no consensus regarding the therapeutic effects of victim participation, speaking out, etc. This is related to the fact that different researchers have very different ideas about what the words "therapeutic effects" stand for. This is problematic, as the meaning and implications of findings on the therapeutic effects of victim participation may remain unclear as long as those concerned do not speak the same language, or have not acknowledged whether they do so.

Besides the difficulty of conceptualizing therapeutic victim participation, a review of the therapeutic jurisprudence literature also alerts us to the diversity in victims' wants and needs. Accordingly, what may be therapeutic—however one defines the term—for one victim may

92. See *supra* note 81.

93. MOJ Meeting 7, p. 26.

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not be therapeutic for another. An awareness of the diversity in victims' wants and needs thus brings into focus the unlikelihood that victims' wants and needs can ever be discussed in general terms. "Japanese victims' needs," while discussed in general terms in the various sources consulted, may accordingly also refer to the needs of some victims, to the exclusion of others, whose voice may have remained unheard.

The implementation of a therapeutic perspective has impacted the different courtroom participants in different ways. As part of the traditional division of courtroom labour, defendants will typically confess guilt and express remorse while the defence will show extenuating circumstances as well as potential for rehabilitation. For the defendant, the adoption of a therapeutic perspective has resulted in his or her court statements and demeanour being evaluated in terms of their potentially traumatizing or damaging character. In practice, this means that denying guilt, arguing or suggesting that the victim also shares some of the blame, may be interpreted in terms of a lack of appropriately considerate behaviour towards the victim. Here, a defendant's demeanour becomes one more criterion on the basis of which his or her character and prospects of rehabilitation are evaluated. The adopted therapeutic perspective accordingly allows for expanded opportunities to judge defendants in terms of traditional criminal justice criteria and goals.

A concern for victims' wellbeing puts pressure on judges to shield victims from irrelevant or potentially traumatizing questions. "Victims' wellbeing" also functions as a rhetorical tool used to pressure judges to let victims perform the acts they wish to perform, and to impose punishment that is harsher than usual. While there is anecdotal evidence suggesting that judges have responded or given in to such pressure, the extent to which they in fact do so remains unclear.

The implementation of a therapeutic perspective has not so much affected prosecutors' role in court, but has rather strengthened their position. This strengthening results from the fact that victims literally join the side of the prosecution in court, providing support in numbers and argumentation. Alongside prosecutors, participating victims argue both defendants' guilt and express feelings of victimization, at times over and over and over again. Victims' speaking out and expressing their wishes concerning punishment lend support to the demands made by the prosecution in this regard.

Conversely, victims' presence, (repeated) expressions of victimization, and the resulting "extremely tense" atmosphere have weakened the position of the defence. Out of fear of negative consequences for their clients, some lawyers have become hesitant to refer to any victim's fault, refraining in addition from asking potentially significant questions. As indicated, under the traditional division of courtroom labour, the role of the defence has often been limited to arguing extenuating circumstances and defendants' potential for rehabilitation. Within victim participation trials, defence lawyers would appear to have less room to manoeuvre than ever.

Based on this article's findings, a number of topics of future research and discussion can be identified. One concerns what victims want and how this relates to what is known about victims' therapeutic needs. Here it is important for researchers to acknowledge and further address the persisting issue of conceptualizing the therapeutic within therapeutic jurisprudence in general, and the context of victim participation in particular. More research, in full acknowledgement also of victims' heterogeneity, may contribute to a more informed way of addressing victims' diverse needs and wishes. For this to happen, however, efforts should also be made to disseminate the results of such research also among legal professionals.

In a similar vein, in the case of Japan, it is important for legal professionals to be informed about victims' wants and needs not only by victims' organizations such as the NAVS, but also by researchers and (mental health) professionals active in the field of victim counselling. As indicated, mental health professionals were not involved in the development of the laws aimed at therapeutic victim participation. Nor were they involved in evaluative meetings such as those organized by the MOJ. A greater exchange of views and knowledge between these professionals and legal professionals could be fruitful, as such an exchange of knowledge might lead to victim participation practices that are more evidence-based.

It would in addition be fruitful to study and explore ways to resolve the tension between a therapeutic concern for victims' wellbeing and defendants' freedom to mount a defence. This tension could be partly resolved, for instance, by separating the stages of fact-finding and sentencing, where victims would partake in proceedings only from the moment that defendants' guilt is established—as has in fact been suggested by the JFBA. Doing so may diminish the repressive effect on in-court fact-finding processes that victim participation in its current form appears to have. It would also reduce the risk that judges would become complicit in such repression, as a result of their concern for victims' wellbeing.

At this point, however, there are no signs that victim participation is going to be limited to the sentencing stage, and it seems safe to assume that the system will continue to function in its current form. Given that this is the case, it is especially up to judges to ensure that, within the context of court proceedings, the rights of both victims and defendants are upheld and balanced. After all, as we have seen, many aspects of victim participation are subject to judges' approval and discretion. Here, respect for victims' wishes needs to be balanced against the defence's right to present its case. While judges may decide to reward a defendant's co-operative and remorseful behaviour, they should not penalize a defendant for invoking the right to respectfully speak up on his or her own behalf.

Even a respectfully mounted defence may, however, cause victims further aggravation. Judges may also cause aggravation by limiting victims' opportunities for participation—for the sake of balancing defendants' and victims' rights. The very possibility of this occurring as a result of actions that are arguably part and parcel of criminal justice proceedings lends credence to the claim that such proceedings do not make for a very therapeutic environment. It is accordingly of great importance that victims who express the wish to participate in court proceedings are also given easy access to victim support services, including mental health support services. In this sense, the existing services provided by the MOJ and the various Prosecutors' Offices remain of undiminished importance—providing information on the victim participation system while also guiding people to other relevant support services.

Finally, it may be worthwhile to explore alternatives for the alliance between the prosecution and participating victims. While victims may obtain their own lawyers, they are still together with their lawyer placed on the side of the prosecution—both literally and figuratively. Providing victims with their own space in court, assisted only by a neutral party rather than one that has a clear stake in getting the defendant convicted and sentenced in a certain way, may allow the possibility of a more independent role for victims—one less predefined by existing criteria for judgment, goals, and scripts. Findings from this article concerning the situation in Japan as well as studies in non-Japanese contexts in any case point to the importance of acknowledging that finding the right modus of victim participation is still very much a work in progress.

## REFERENCES


Abe, Chizuko (2010) "Higaishasankaseido ni Kansuru Ikkōsatsu: Higaishasanka no konkyo/Higaishasanka no Mokuteki/Higaisha no Hōteki Chii" ["A Study of the Victim Participation System: The Basis of Victim Participation/The Goal of Victim Participation/Victims' Legal Position"]. 62 *Dōshisha Hōgaku* [*Dōshisha Law Review*] 963–1084.

aiben.jp (2009) "Higaishasankaseido no Jisshijōkyō" ["Situation Concerning the Actual Implementation of the Victim Participation System"], online <http://www.aiben.jp/page/library/kaihou/2110_01.html – Aichi Bar Association website> (last accessed 20 September 2015).

Alexander, Ellen K., & Janice Harris Lord (1994) *Impact Statements: A Victim's Right to Speak … a Nation's Responsibility to Listen*, Arlington, VA: National Victim Center.

Aoki, Takayuki (2013) *Keijishihōkaikaku to Saiban'in Seido* [*Criminal Justice Reforms and the Lay Participation System*], Tokyo: Nihon Hyōronsha.

Arrigo, Bruce A. (2004) "The Ethics of Therapeutic Jurisprudence: A Critical and Theoretical Enquiry of Law, Psychology and Crime." 11 *Psychiatry, Psychology and Law* 23–43.

Bandes, Susan A. (2009) "Victims, 'Closure,' and the Sociology of Emotion." 72 *Law and Contemporary Problems* 1–26.

cao.go.jp (2003) "Hanzaihigaisha Kihonhō" ["Basic Act on Crime Victims"], Cabinet Office website, online <http://www8.cao.go.jp/hanzai/kihon/hou.html> (last accessed 20 September 2015).

cao.go.jp (2004) "Hanzaihigaisha Nado Kihonkeikaku" ["Crime Victims Basic Plan"], Cabinet Office website, online <http://www8.cao.go.jp/hanzai/kuwashiku/keikaku/keikaku.html> (last accessed 20 September 2015).

Chalmers, James, Peter Duff, & Fiona Leverick (2007) "Victim Impact Statements: Can Work, Do Work (for Those Who Bother to Make Them)." *Criminal Law Review* 360–79.

Corey, Zachary, & Valerie P. Hans (2010) "Japan's New Lay Judge System: Deliberative Democracy in Action." 12 *Asian-Pacific Law & Policy Journal* 72–94.

courts.go.jp (1990) "Supreme Court Third Petty Bench Ruling," Supreme Court of Japan website, online <http://www.courts.go.jp/app/files/hanrei_jp/645/062645_hanrei.pdf> (last accessed 20 September 2015).

courts.go.jp (2002) "Kobe District Court Judgment Heisei 13 (wa) 636, Heisei 15–10–24," Supreme Court of Japan website, online <http://www.courts.go.jp/app/files/hanrei_jp/917/006917_hanrei.pdf> (last accessed 20 September 2015).

courts.go.jp (2006) "Saitama District Court Judgment Heisei 18 (wa) 1701, Heisei 19–3–16," Supreme Court of Japan website, online <http://www.courts.go.jp/app/files/hanrei_jp/290/035290_hanrei.pdf> (last accessed 20 September 2015).

courts.go.jp (2008) "Kōhanmae Seiritetsuduki ni tsuite" ["On Pre-Trial Conference Procedures"], Supreme Court of Japan website, online <http://www.courts.go.jp/vcms_lf/20903007.pdf> (last accessed 20 September 2015).

courts.go.jp (2009) "Saiban'in Seido no Shōkai" ["Introduction of the Lay Assessor System"], Supreme Court of Japan website, online <http://www.saibanin.courts.go.jp/introduction/index.html> (last accessed 20 September 2015).

courts.go.jp (2015) "Supreme Court of Japan Verdicts Search Engine," Supreme Court of Japan website, online <http://www.courts.go.jp/app/hanrei_jp/search1> (last accessed 20 September 2015).

David, Roman, & Susanne Y.P. Choi (2009) "Getting Even or Getting Equal? Retributive Desires and Transitional Justice." *Political Psychology* 161–92.

Davis, Robert C., & Barbara E. Smith (1994) "Victim Impact Statements and Victim Satisfaction: An Unfulfilled Promise?" 22 *Journal of Criminal Justice* 1–12.

Diesen, Christian (2013) "Therapeutic Jurisprudence and the Victim of Crime," in K.T. Oei & M.S. Groenhuijsen, eds., *Progression in Forensic Psychiatry: About Boundaries*, Deventer: Kluwer, 579–98.

Erez, Edna, & Linda Rogers (1999) "Victim Impact Statements and Sentencing Outcomes and Processes: The Perspectives of Legal Professionals." 39 *British Journal of Criminology* 216–39.

Erez, Edna, & Pamela Tontodonato (1990) "Effect of Victim Participation in Sentencing on Sentence Outcome." 28 *Criminology* 451–74.

Foote, Daniel H. (2011) *Law in Japan: A Turning Point*, Seattle: University of Washington Press.

Gordon, Trina M., & Stanley L. Brodsky (2007) "The Influence of Victim Impact Statements on Sentencing in Capital Cases." 7 *Journal of Forensic Psychology Practice* 45–52.

Goto, Akira (2014) "Citizen Participation in Criminal Trials in Japan." 42 *International Journal of Law, Crime and Justice* 117–29.

Hamai, Koichi (2004) "Nihon no Chianakka Shinwa ha ika ni tsukuraretaka" ["How the Myth of the Collapsing Safe Society Has Been Created in Japan"]. 29 *Hanzaishakaigakukenkyū* [*Japanese Journal of Sociological Criminology*] 10–26.

Hamai, Koichi, & Tom Ellis (2006) "Crime and Criminal Justice in Modern Japan: From Re-Integrative Shaming to Popular Punitivism." 34 *International Journal of the Sociology of Law* 157–78.

Hamai, Koichi, & Tom Ellis (2008) "Japanese Criminal Justice Was Reintegrative Shaming a Chimera?" 10 *Punishment & Society* 25–46.

Harada, Kunio (2004) *Ryokeihandan no Jissai [The Practice of Sentencing in Japan—Zohoban]*, Tokyo: Tachibana Shobo.

Herber, Erik (2003) "The (Japanese) Administration of Justice and the Will to Truth." 31 *International Journal of the Sociology of Law* 107–14.

Hirayama, Mari (2012) "Lay Judge Decisions in Sex Crime Cases: The Most Controversial Area of Saiban-in Trials." 3 *Yonsei Law Journal* 128–45.

Hōmuinkaichōsashitsu (2007) "Hanzaihigaisha nado no Keijisanka" ["Participation in Criminal Trials by Victims and so on"], Lower House of Japan website, online <http://www.sangiin.go.jp/japanese/annai/chousa/rippou_chousa/backnumber/2007pdf/20070420017.pdf> (last accessed 20 September 2015).

Japan Federation of Legal Bar Associations (JFBA) (2007) "Hanzai Higaisha nado ga Keijisaiban ni chokusetsu Kanyo suru Koto no dekiru Higaisha Sanka Seido ni Hantai suru Ikensho" ["Statement of Opinion against a Victim Participation System that Makes It Possible for Victims of Crime and so on to Be Directly Involved in Criminal Trials"], JFBA website, online <http://www.nichibenren.or.jp/library/ja/opinion/report/data/070501.pdf> (last accessed 20 September 2015).

Japan Federation of Legal Bar Associations (2012a) "Genkō no Higaishasankaseido no Minaoshi ni Kansuru Ikensho" ["Statement of Opinion Concerning the Revision of the Current System of Victim Participation"], Ministry of Justice website, online <http://www.moj.go.jp/content/000109468.pdf> (last accessed 20 September 2015).

Japan Federation of Legal Bar Associations (2012b) "Untitled Unpublished Survey on Victim Participation, Material Handed out at Ministry of Justice *Heisei 19nen Kaisei Keijisoshōhōnado ni Kansuru Ikenkōkankai* [*Meetings to Exchange Views on the 2006 Revised Code of Criminal Procedure, etc.*], Meeting Minutes," MOJ website, online <http://www.moj.go.jp/keiji1/keiji12_00068.html> (last accessed 20 September 2015).

Johnson, David T. (2001) *The Japanese Way of Justice: Prosecuting Crime in Japan*, New York: Oxford University Press.

Johnson, David T. (2012) "Japan's Prosecution System." 41 *Crime and Justice* 35–74.

Kantei.go.jp (2003) Headquarter for the Promotion of the Reform of the System of Justice Administration website, part of Prime Minister of Japan and His Cabinet website, online <http://www.kantei.go.jp/jp/singi/sihou/index.html> (last accessed 20 September 2015).

Kawaai, Masayuki (2011) "Hikokunin no Hanseitaido nado to Ryokei" ["Defendants' Remorseful Attitude etc. and Sentencing]," in K. Osaka, ed., *Ryōkei Jitsumu Taikei (Vol. 3)* [*A Treatise on Sentencing Law and Practice in Japanese Criminal Cases*], Tokyo: Hanrei Taimuzusha, 172–215.

Kawai, Mikio (2004) *Anzen Shinwa Hōkai no Paradokkusu* [*The Paradox of the Collapse of the Safety Myth*], Tokyo: Iwanami Shoten.

Kuzuno, Hiroyuki (2013) "Saibanin Seido to Keijishihō Kaikaku" ["Criminal Justice Reforms and the System of Lay Participation"]. 79 *Hōshakaigaku* [*The Japanese Association of Sociology of Law Journal*] 37–62.

law.e-gov.go.jp (1948) "Keijisoshōhō" ["Code of Criminal Procedure"], Government of Japan Legal Database website, online <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last accessed 20 September 2015).

law.e-gov.go.jp (2007) "Aum Shinrikyō Hanzaihigaisha wo Kyūsai suru tame no Kyūfukin no shikyū ni kansuru Hōritsu" ["Law Concerning the Payment of Benefits in Support of Victims etc. of Crimes of Aum Shinrikyō"], Government of Japan Legal Database website, online <http://law.e-gov.go.jp/htmldata/H20/H20HO080.html> (last accessed 20 September 2015).

Lens, Kim M., Anthony Pemberton, , & Stefan Bogaerts (2013) "Heterogeneity in Victim Participation: A New Perspective on Delivering a Victim Impact Statement." 10 *European Journal of Criminology* 479–95.

Lens, Kim M., Anthony Pemberton, Karen Brans, Johan Braeken, Stefan Bogaerts, & Esmah Lahlah (2015) "Delivering a Victim Impact Statement: Emotionally Effective or Counter-Productive?" 12 *European Journal of Criminology* 17–34.

Maruna, Shadd, & Anna King (2004) "Public Opinion and Community Penalties," in A. Bottoms, S. Rex, et al, eds., *Alternatives to Prison: Options for an Insecure Society*, Portland: Willan Publishing, 83–112.

Matsuo, Koya (2010) "Hanzaihigaisha to Hō" ["Crime Victims and the Law"]. 64 *Nihongakushi'inkiyō* 71–87.

Matsui, Shigeru (2011) "Justice for the Accused or Justice for Victims: The Protection of Victims' Rights in Japan." 13 *Asian-Pacific Law & Policy Journal* 54–95.

Miyazawa, Setsuo (2008) "The Politics of Increasing Punitiveness and the Rising Populism in Japanese Criminal Justice Policy." 10 *Punishment & Society* 47–77.

Miyazawa, Setsuo (2014) "Citizen Participation in Criminal Trials in Japan: The *Saiban-in* System and Victim Participation in Japan in International Perspectives." 42 *International Journal of Law, Crime and Justice* 71–82.

moj.go.jp (2006–07) "Hōseishingikai Keijihō (Hanzaihigaishakankei) Bukai" ["Deliberative Council Criminal Law (Crime Victims Affairs) Section"], Ministry of Justice website, online <http://www.moj.go.jp/shingi1/shingi_keiji_higaisha_index.html> (last accessed 20 September 2015).

moj.go.jp (2009) "Higaishasankashinshutsu no atta Jiken no Higaisha nado no Jinin" ["Victims in Cases in which an Application for Victim Participation Was Made"], Ministry of Justice website, online <http://www.moj.go.jp/content/000106702.pdf> (last accessed 20 September 2015).

moj.go.jp (2011) "Hanzaihigaishakanrenshoseido no Jisshijōkyō" ["The Situation Concerning the Implementation of the Various Systems Related to Crime Victims"], Ministry of Justice website, online <http://www.moj.go.jp/content/000100784.pdf> (last accessed 20 September 2015).

moj.go.jp (2012a) "Hanzaihigaisha no Katagata ni Taisuru Anke-to Chōsa" ["Survey-Based Research of Victims of Crime"], Ministry of Justice website, online <http://www.moj.go.jp/content/000110030.pdf> (last accessed 20 September 2015).

moj.go.jp (2012b) "Hanzaihigaishadantai kara no Hiaringu (Daiikkai) no Kaisai ni Tsuite" ["Concerning the Holding of a Hearing (No. 1) Involving Crime Victims' Groups"], Ministry of Justice website, online <http://www.moj.go.jp/keiji1/keiji12_00065.html> (last accessed 20 September 2015).

moj.go.jp (2012c) "Higaishasankashinshutsu no atta Jiken no Higaisha nado no Jinin" ["Victims in Cases in which an Application for Victim Participation Was Made"], Ministry of Justice website, online <http://www.moj.go.jp/content/000115194.pdf> (last accessed 20 September 2015).

moj.go.jp (2013–14) "Heisei 19nen Kaisei Keijisoshōhō nado ni Kansuru Ikenkōkan ni Tsuite" ["Concerning the Meetings to Exchange Views on the 2006 Revised Code of Criminal Procedure, etc."], Ministry of Justice website, online <moj.go.jp/keiji1/keiji12_00068.html> (last accessed 20 September 2015).

moj.go.jp (2014) "White Papers on Crime," Ministry of Justice website, online <http://hakusyo1.moj.go.jp/jp/61/nfm/mokuji.html> (last accessed 20 September 2015).

moj.go.jp (2015) "Hanzaihigaisha no Katagata he" ["To Victims of Crime"], Ministry of Justice website, online <http://www.moj.go.jp/content/000121888.pdf> (last accessed 20 September 2015).

Nadler, Janice, & Mary R. Rose (2002) "Victim Impact Testimony and the Psychology of Punishment." 88 *Cornell Law Review* 419–56.

Nakajima, Hiroshi (2012) "Keijisoshō ni okeru Higaishasankaseido no Jisshōteki Kenkyū: Kaiseihō no '3nengo no Minaoshi' ni Mukete" ["Evidence-Based Research on the System of Victim Participation within Criminal Proceedings: Towards the 'Revision after Three Years'"], Kagoshima University website, online <http://ir.kagoshima-u.ac.jp/bitstream/10232/14705/1/21530067seika.pdf> (last accessed 20 September 2015).

National Association of Crime Victims and Surviving Families (NAVS) (2012) "Higaishasankaseido no 3nengo Minaoshi ni Kansuru Ikensho" ["Statement of Opinion Concerning the Revision of the Victim Participation System After Three Years"], Ministry of Justice website, online <http://www.moj.go.jp/content/000102446.pdf> (last accessed 20 September 2015).

navs.jp (2002) "Ikensho" ["Statement of Opinion"], National Association of Crime Victims and Surviving Families website, online <http://www.navs.jp/report/1/opinion2/opinion2-3.html> (last accessed 20 September 2015).

npa.go.jp (1996) "Higaisha Taisaku Yōkō" ["Outline of Measures for Crime Victims"], National Police Agency website, online <npa.go.jp/higaisya/data/yoko.htm> (last accessed 20 September 2015).

Ogawa, Taro (1974) "Hanzai ni yoru Higaisha no Kyūsaiseido—Eibei Hōkei wo Chūshin ni" ["Systems to Provide Aid for Victims of Crime—Focusing on the UK and US Legal Systems"]. 575 *Jurisuto* [*Jurist*] 42–9.

Osaka, Keijijitsumukenkyūkai, ed. (2011) *Ryōkei Jitsumu Taikei (Vol. 1.)* [*A Treatise on Sentencing Law and Practice in Japanese Criminal Cases*], Tokyo: Hanrei Taimuzusha.

Ota, Tatsuya (2007) "A New Horizon of Victim Support in Japan," in W.-C. Chan, ed., *Support for Victims of Crime in Asia*, Oxon: Routledge, 240–61.

Otani, Michitaka (2008) "Shakaitekina Kyūsai Taisho to shite no 'Hanzai Higaisha'" ["'Crime Victims' as the Objects of Social Aid"]. 4 *Core Ethics* 25–36.

Partnership for Safety and Justice (2011) "Victim Advocates Call on Public Safety Commission to Consider Diversity of Victims' Needs," online <http://www.safetyandjustice.org/spotlight/victim-advocates-call-public-safety-commission-consider-diversity-victims%E2%80%99-needs> (last accessed 20 September 2015).

Pemberton, Anthony, & Sandra Reynaers (2011) "The Controversial Nature of Victim Participation: Therapeutic Benefits in Victim Impact Statements," Social Science Research Network website, online <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1745923> (last accessed 20 September 2015).

Peters, Antonie (1992) "Some Comparative Observations on the Criminal Justice Process in Holland and Japan." 4 *Journal of the Japan-Netherlands Institute* 247–94.

Roberts, Julian V. (2009) "Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole." 38 *Crime and Justice* 347–412.

Roderick, Dennis, & Susan T. Krumholz (2006) "Much Ado about Nothing: A Critical Examination of Therapeutic Jurisprudence." 1 *Southern New England Roundtable Symposium Law Journal* 201–23.

Saeki, Masahiko (2010) "Victim Participation in Criminal Trials in Japan." 38 *International Journal of Law, Crime and Justice* 149–65.

Sanders, Andrew, Carolyn Hoyle, Rod Morgan, & Ed Cape (2001) "Victim Impact Statements: Don't Work, Can't Work." *Criminal Law Review* 447–58.

Shiraiwa, Yuko, & Kaori Karasawa (2013) "Higaishasankanin no Hatsugen oyobi Higaishasankaseido he no Taido ga Ryōkei ni ataeru Eikyō" ["The Influence of Attitudes towards the Victim Participation System and Participating Victims' Statements on Sentencing"]. 53 *Jikenshakai Shinrigakukenkyū* [*Japanese Journal of Social Psychology*] 12–21.

Shiraiwa, Yuko, & Kaori Karasawa (2014) "Hanzaihigaisha no Saibankanyo ga Shihō he no Shinrai ni ataeru Kōka" ["The Effect of Participation of Victims in Trials on Their Confidence in the Criminal Justice System"]. 85 *Shinrigaku Kenkyū* [*Japanese Journal of Social Psychology*] 20–8.

Suwa, Masaaki (2010) "Keijisaiban ni okeru Higaishasankaseido no Mondaiten" ["Problems of the System of Victim Participation within Criminal Trials"]. 15 *Shinshūdaigaku Hogaku Ronshū* [*Shinshū University Collection of Jurisprudence Papers*] 55–90.

Takano, Mao (2009) "Aum Shinrikyō Hanzaihigaisha nado wo Kyūsai suru tame no Kyūfukin no Shikyū ni kansuru Hōritsu: Terorizumu to tatakau Wagakuni no Shisei wo akiraka ni" ["Laws Concerning the Payment of Support Funds in Aid of Victims and so on of Aum Shinrikyō: Clarifying Japan's Stance in Fighting Terrorism"]. 64 *Keisatsu Kōron* [*Police Review*] 42–5.

Van Stokkom, Bas (2011) "Victims' Needs, Well-Being and 'Closure': Is Revenge Therapeutic?," in E. Erez and M. Kilchling, et al, eds., *Therapeutic Jurisprudence and Victim Participation in Justice: International Perspectives*, Durham: Carolina Academic Press, 207–28.

VS, Fooramu, ed. (2013) *Keesusutadi Higaishasankaseido* [*Case Studies of the Victim Participation System*], Tokyo: Hōreishuppan.

Wagatsuma, Hiroshi, & Arthur Rosett (1986) "The Implications of Apology: Law and Culture in Japan and the United States." 20 *Law and Society Review* 461–98.

Weber, Ingram (2009) "The New Japanese Jury System: Empowering the Public, Preservation Continental Justice." 4 *East Asia Law Review* 125–76.

Wemmers, Jo-Anne M. (2008) "Victim Participation and Therapeutic Jurisprudence." 3 *Victims and Offenders* 165–91.

Wexler, David (2000) "Therapeutic Jurisprudence: An Overview." 17 *Thomas M. Cooley Law Review* 125–34.

Wexler, David B. (1999) "The Development of Therapeutic Jurisprudence: From Theory to Practice," La Rama Judicial de Puerto Rico website, online <http://tribunal.gov.pr/Miscel/Conferencia/PDF/Conf_I_II.pdf#page=17> (last accessed 20 September 2015).

Wexler, David B., & Bruce J. Winick, eds. (1996) *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*, Durham: Carolina Academic Press.

Wexler, David B., & Bruce J. Winick, eds. (2003) *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*, Durham: Carolina Academic Press.

Zech, Emmanuelle, & Bernard Rimé (2005) "Is Talking about an Emotional Experience Helpful? Effects on Emotional Recovery and Perceived Benefits." 12 *Clinical Psychology and Psychotherapy* 270–87.