

Vera Bergelson: Victims' Rights and Victims' Wrongs
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The premise of this book is that it is “common to think of crime as something that ‘bad guys’ do to ‘good guys’”, to “think of the victim in the passive voice, as ... someone who was an object rather than a subject of an offense”, even to think of “the world as split into two categories, the guilty and the innocent” (p. 1). However, this attitude is characteristic, not of the “complex conception of responsibility shared by social sciences, moral philosophy and the community” (pp. 55–56), but specifically of the “1-D doctrine of responsibility” embedded in Anglo-American criminal law: “[c]ourts are unanimous in stating that, unless it is the sole proximate cause of the resulting harm, the victim’s conduct is irrelevant” to criminal liability (p. 15). Vera Bergelson takes issue with this premise, pointing out its inadequacy in comparison to the more complex conception of responsibility she locates in ordinary moral consciousness. She argues that victims can be partly responsible for the harm they suffer in such a way as to alter the moral significance of the criminal act. There are some nice examples to back this up: a man agrees to be eaten by another man; a speeding motorist kills a person who throws himself in front of her car (but whom she could have avoided had she not been speeding); a woman kills her husband after a history of abuse (p. 2). Bergelson argues that the moral difference that the victim’s contribution can make should be reflected in the nature of the crime for which the defendant is convicted. Hence defendants should have available to them a defence of comparative liability, a new defence Bergelson characterises as a partial justification.

Bergelson recognises that criminal law provisions for consent (which she takes to include assumption of risk), self-defence and provocation already recognise the possibility that what a victim does in the lead-up to an offence might affect the nature of that offence: hence the rule she is attacking “has exceptions so broad that it can hardly be called a rule” (p. 35). Furthermore, the victim’s contribution is allowed as a mitigating factor at sentencing (pp. 45–46); and a principle of comparative liability is now widely acknowledged in tort law, a development prompted by the inadequacies of the principle of contributory negligence that “completely barred recovery to a plaintiff who was at fault, no matter how

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