SO WHO ARE THE VICTIMS NOW?

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Abstract

The purpose of this article is to explore the interconnections between different strands of victimological thought, their relationship with the contemporary victims' policy scene and the relevance of this work for community justice. In so doing the argument will be developed that in order to understand contemporary policy concerns it is necessary to situate those concerns within the wider changing relationship between the citizen and the state and the extent to which that changing relationship has resulted in the politicisation of the crime victim. Particular attention will be paid to the re-orientation of the probation service, the introduction of the victim personal statement scheme, and the contemporary use of restorative justice, as policy examples currently concerned with the victim of crime. The conclusion will draw out some of the implications of policy orientations of this kind for the field of community justice.

> The final strand in the new punitiveness is the rise and rise of the crime victim. Since the mid-1970s there has been a growing emphasis on the neglect and the invisibility of the victim of crime in the administration of justice. The trumpeting of crime victim wrongs has been useful to anyone wishing to make an electoral appeal on law and order issues. Although at a common sense level one might have thought that it is because crimes do have victims that anyone cared about crime in the first place, the 1970s rediscovery of the victim certainly fed into 1990s punitiveness with a vengeance! The results? A greatly increased fear of crime, daily demands for stiffer sentences, and a steep increase in levels of criminological nonsense (Carlen, 1996: 53).

Introduction

In the aftermath of the events of September 11th in New York it seems a little odd to be writing a piece about the current state of play in respect of victim policy, since in a very real way those events raise all kinds of questions about what we understand by victim, criminal victimisation and victim policy. The hidden and not so hidden politics that lie behind the victims we 'see' and those we do not 'see' have been commented on elsewhere by Elias (1993) and Cohen (2001). As a consequence of the thought processes generated by those events and those that have followed, this article will address three themes in order to develop an appreciation of the nature of contemporary victim policy. First it will

Sandra Walkate

offer a brief, critical consideration of the nature of the sub-discipline of victimology and its links, if any, with victim policy. Second, it will consider the changing nature and influences in the victim policy-making process from 1945 to the present. Finally it will consider how both of these processes have contributed to contemporary victim policy concerns by exampling three contemporary policy issues: the re-orientation of the work of the probation service, the introduction of the victim personal statement scheme, and the move towards increasing the use of restorative justice. We shall then return to the questions of what we understand by victim, criminal victimisation and victim policy. But first a brief word about victimology.

Victimology, "victims" and "victimisation"

It has often been observed that the 'victim' has been the forgotten party of the criminal justice process. The extent to which this is the case in the contemporary criminal justice scene is perhaps less so, however how and when 'victims' are taken account of, and what kind of 'victims' are interesting questions to explore. The reader will have noted already that I have chosen to put inverted commas around the terms "victims" and "victimisation". This is to indicate what I consider to be their problematic status as ways of either describing or understanding what we have contemporarily come to take for granted in relation to people's experience of crime. The justification for viewing these terms in this way shall become clear as this article progresses but in order to do this we need an understanding of the key characteristics of victimology.

In many ways the emergence and development of the (sub)discipline of victimology parallels that of criminology. Early victimological work was concerned to identify different types of victims much in the same way that early criminological work endeavoured to identify different types of criminals. Original concerns such as these reflect the extent to which victimology was as embedded in the processes of differentiation, determinism and pathology as was criminology (Roshier, 1989). Concerns such as these, and their subsequent development, have led commentators to identify different theoretical strands of criminological thought broadly categorised as positivist, radical and critical victimology (Mawby and Walklate, 1994). It will be of value to say a little about each of these.

Miers (1989) initially assigned the label 'positivist' victimology to a range of victimological work. He identified the key characteristics of this kind of work in the following way:

> The identification of factors which contribute to a non-random pattern of victimisation, a focus on interpersonal crimes of violence, and a concern to identify victims who may have contributed to their own victimisation (Miers, 1989: 3).

In other words this version of victimology has been concerned to identify patterns of victimisation, the regularities and precipitative characteristics of victimising events, and thereby to produce victim typologies. This view of the data gathering process privileges

traditional conceptions of science and scientific objectivity and, as a consequence, has been very influential in setting the victimological research agenda along a particular path. That path has, for the most part, been characterised (though not exclusively) by the development and use of the criminal victimisation survey. Criminal victimisation surveys have been clearly influential in placing the question of criminal victimisation on political and policy agendas since its first use in England and Wales in 1982. These surveys comprise a sample of the general population who are asked about their experiences of crime and the criminal justice process. The last one was conducted in 2001 and they have now moved to being conducted every year. One of the main purposes of these surveys is to measure the nature and extent of crime as compared with officially recorded crime statistics. Much value has been attached to the findings of these surveys and in more research years more advanced statistical techniques have enabled researchers to explore the concentration of criminal victimisation referred to in the research findings as 'repeat victimisation' (see for example, National Board for Crime Prevention, 1994). Moreover later surveys have also attempted to measure more contentious features of criminal victimisation like, for example, domestic violence (see Home Office Research Findings No. 86, 1999) However, despite the value to be attached to the empirical findings that this positivist victimology has generated, these findings are nevertheless limited. They are limited in that, for the most part, such work focuses our attention primarily on victims of what has been called 'conventional crime' (Walklate, 1989). There is little sense from within this strand of victimological work that the state (including the law) actively contributes to the victims we see or do not see nor does it capture a sense of the ways in which individuals may actively resist, campaign against or survive the label 'victim'. "Victim" in this work is taken to be a self-evident concept.

The focus of radical victimology is, arguably, somewhat different. Whilst the presence of a radical victimology can be traced back to the discipline's early days this radical strand takes on its most substantial form in the 1960s. Essentially a radical victimology, somewhat paralleling (again) a radical criminology, concerns itself with: 'victims of police force, the victims of war, the victims of the correctional system, the victims of state violence, the victims of oppression of any sort' (Quinney, 1972: 315). In other words, for Quinney all of these victims could be rendered visible by calling into question the role of the capitalist state in defining the social construction of both the offender and the victim. Elias (1986) has associated this broader definition of victimology with the whole question of human rights. Indeed, Elias goes so far as to argue that the standards of human rights can not only provide victimology with its definitional framework but also with 'more objective measures of victimisation' (Elias, 1985: 17). Such an agenda would also include victims of terrorist activity. However, during the 1980s there emerged a version of radical victimology which took the victims agenda in a somewhat different direction.

The emergence of radical left realism within criminology/ victimology during the 1980s had an impact in the United Kingdom and elsewhere in its determination to take the victim of crime seriously. Young (1986: 23-4) called for an 'accurate victimology' which started with the 'problems as people experience them' and embraces an understanding of

Sandra Walkate

the geographically and socially focused distribution of criminal victimisation. As a consequence this led researchers to commit themselves to the conduct of local criminal victimisation surveys. Such surveys were completed in Merseyside, Edinburgh and Islington. It is also interesting to note that the requirement to conduct local crime audits made under the 1998 Crime and Disorder Act led some local authorities to conduct such local surveys. Radical left realism has been very successful at offering a much more detailed picture and analysis of who the victims of crime are. It has been particularly more successful at uncovering incidents of, for example, racial and sexual harassment than national victimisation surveys, and has also included some efforts to explore an understanding of those who are disproportionately victims of 'commercial crime' (Pearce, 1990). However, one of the problems associated with this version of a radical victimology emanates from its use of the term realism. Suffice it to say at this juncture that this radical left realism's understanding and application of this concept is partial and has the cumulative effect, according to Smart (1990), of a latent slippage into positivism. However before moving on with this it is important to say something about the contribution of the feminist movement to our understanding of "victimisation".

The marginalisation of feminism by victimology has been commented on on more than one occasion. Rock (1986), for example, implies that this has occurred to a certain extent in the choices made by feminists themselves who have regarded the concept of 'victim precipitation', so central to much conventional victimological work, as being 'victim blaming' not only in its everyday used but also in the way it has been translated in the courts as 'contributory negligence' (Jeffries and Radford, 1984). Some aspects of this uneasy relationship between victimology and feminism are epitomised in their respective use of the terms 'victim' and 'survivor'. The genealogy of the term victim itself connotes the sacrificiant who was frequently female and the word itself, when gendered as in French is denoted as female. Feminists, recognising the power of such a linguistic heritage, regard the term as emphasising passivity and powerlessness in contrast to what they argue is the active resistance to oppression that most women most of the time engage in in their everyday life in order to survive. Hence the feminist preference for the term survivor. But of course, whilst these terms are often presented as oppositional, experientially speaking they frequently are not. It is as possible to think in terms of an active or passive victim as it is to identify an active or passive survivor. Indeed an argument can be mounted which presents these concepts as capturing different elements of the same process (Walklate, 1993) and moreover are embedded in women's own experiences of their day to day lives (Kirkwood, 1993).

It must be noted that feminist work is not in and of itself centrally concerned with criminal victimisation yet many of the areas and issues with which feminists have concerned themselves and campaigned against are very much about criminal victimisation. Rape, domestic violence, child abuse, are all areas in which feminist informed work has achieved much in documenting both the extent and the impact of such events on women's' lives. What renders the findings associated with this data different than those of more conventional victimological work is twofold; on the one hand

it renders the safe haven of the home a significant arena in which to understand criminal victimisation and on the other hand it poses an underlying mechanism which produces the surface manifestation of this kind of patterning of criminal victimisation; patriarchy. And although there is a danger inherent in feminist work which can leave the impression that women are 'victims' and men are not (Walklate, 2000, Goodey, 1997; Newburn and Stanko, 1994), it does lead us to consider what we mean by the term 'victim'. Such work returns us to the question of what can meaningfully be understood by the term realism.

Efforts have been made to construct an alternative agenda for victimology incorporating an understanding of both feminism and realism by Mawby and Walklate (1994) with the proposal of a critical victimology. The term critical has been used in a number of different ways to articulate an agenda for victimology (see for example, Miers, 1990, and Fattah, 1991). However the version of critical victimology proposed by Mawby and Walklate (1994) demands that we move beyond the mere appearance of things towards understanding what generates that appearance. In order to do this it is important to ask the question: what constitutes the real?

In order to understand the nature and impact of social reality, arguably it is necessary to search underneath the 'mere appearances' associated with positivism, and to posit mechanisms by which those appearances are produced. Leaning on Giddens' (1984) theory of structuration, endeavours to research the real need to take account of a number of different processes which contribute to the construction of everyday reality: people's conscious activity, their 'unconscious' activity, the unobserved and unobservable mechanisms which underpin daily life, and the intended and unintended consequences of people's action. In other words this kind of theoretical starting point privileges process over incidence and argues for duality rather than dualism. As such it is reminiscent of some feminist concerns (Harding, 1991) and provides one way of beginning to understand the dynamism between the structural location of women (victimisation) and women's negotiation of that structural location (survival). In the context of victimology this kind of starting point postulates the importance of understanding the processes which go on behind our backs, which contribute to the victims (and the crimes) which we 'see' as well as those we do not 'see', in order to fully understand the 'lived realities' (Genn, 1988) of criminal victimisation. The relevance of thinking about such mechanisms is highlighted in what follows.

The extent to which any of these versions of understanding 'victims', and 'victimisation' have had an impact in the policy arena is open to considerable debate. Sebba (2001: 44) concludes:

> Research on victims of crime in western societies has disclosed some real
> needs on their part, not only in practical terms, but also in terms of the need
> of greater attention from the criminal justice agencies and for enhanced
> participation in the legal process. The rights of victims have been recognised
> on the level of declared policies and legislation, but as in other areas of

criminal policy (and indeed social policy in general) these policies are not necessarily - or even usually - based upon the findings or research, even when available.

However, it is fair to say that given the advent of the use of the criminal victimisation survey in England and Wales and the ever growing presence of organisations claiming to speak for the victim of crime (more of which below), the crime victim is now on the policy agenda in a way which was probably inconceivable fifty years ago. As has already been stated much of this concern, given its prime data base, focuses on the victim of crime as conventionally understood, though the presence of some feminist informed voices have also been heard. Little in policy terms draws our attention, for example to the victim of corporate crime. Despite this overall increase in attention given to the crime victim, such attention has not necessarily been rooted in empirical findings or recommendations. In this respect Sebba's conclusion is correct. He sees the key problem as being not that nothing works but that 'nothing is fully implemented' (ibid. 45). Yet it is nevertheless clear, as the Carlen quote at the beginning of this paper exemplifies, invoking the crime victim is an increasingly important dynamic in buttressing, if not informing, criminal justice policy. The question is why and what form does this take?

Politics, policy and process: 1945 to date, welfare and beyond

The policies associated with the formation of the Welfare State are largely attributed to the guiding influence of Beveridge. Those policies, put together under his guidance, were intended to provide protection from the five great social diseases; "disease, squalor, ignorance, idleness, and want". In order to extend this protection to (potentially) all members of society, he introduced the principle of insurance. This principle established "individual contractual entitlements that arise from a contractual relation" (Garland, 1985: 246). In other words, individuals could claim rights from the state provided that they had contributed to the state. In this way the nineteenth century distinction between the deserving and the undeserving became enshrined in the welfare state. This is an important underlying mechanism that contributes to our understanding of the current nature of crime victim policy. An understanding that is developed below.

The inception and formation of the Welfare State and its associated principles were put in place at a time when government was clearly discernible as Government. Put fairly simply, the idea of Government alludes to a set of principles in which it was believed that the "leader knows best", that there was accountability through the electoral process, a belief in a strong cabinet, and a clear adherence to parliamentary democracy. (These characteristics are sometimes referred to as the Westminster model of politics.) However as Rhodes (1997:4) states:

> Since 1945 the institutions of British government have experienced at least
> two revolutions. The post war Labour government built the welfare state
> and its institutions, but these survived barely three decades before a

reforming Conservative government sought to redefine most and abolish many. .... Allegedly the Westminster model no longer works.

The revolutions of which Rhodes (1997) speaks have been felt in all aspects of the policy making process including criminal justice policy. One key to understanding the radical policy changes which Rhodes (1997) discusses can be seen in the shift from government to governance. To explain: the notion of government is characterised by the Westminster model; the notion of governance, however, is less clear. Rhodes (1997) argues that governance is broader than government: "governance refers to self-organising intraorganisational networks" (ibid.: 53) in which the boundaries between the public sector, the private sector, and the voluntary sector are constantly shifting and opaque.

It can be argued that the movement from government to governance has been accompanied by shifting understandings of accountability and citizenship. Under a system of governance organisations are no longer characterised by mechanisms of accountability to the state, and citizens are much more likely to be viewed as consumers or customers of services. This is part of a process that Garland (1996) has characterised as 'the responsibilisation strategy' in the criminal justice arena leading to the emergence of 'corporate grey areas' (Crawford, 1997). In other words a process which has extended the responsibility for crime and crime prevention to a disparate range of public, private and voluntary organisations for whom the lines of accountability are far from clear yet who wield an increasingly important influence on the distribution of monies and resources especially at a local level. In some respects it is within the space between these 'corporate grey areas' (ibid.) in which the concerns for the victim of crime has grown. Hence the title of this paper: so who are the victims now?

It was against the backcloth of the formation of the Welfare State and the changes in the policy process that have occurred since, that it is possible to map the growing concern for the victim of crime. It was Margery Fry's commitment to the notion of compensation for the victim of crime that informed the formation of the Criminal Injuries Compensation Board (CICB) in 1964. Rock (1990: 66) offers this analysis of her focus on compensation:

> In her last formulation of the problem, compensation would represent a collective insurance provided by society. All taxpayers would be regarded as subscribers. All taxpayers were at risk of becoming victims. Since the state forbade citizens arming themselves, it should assume responsibility for its failure to provide protection.

Such a formulation clearly builds on the principle of insurance embedded in the Beveridge proposals of 1945 implying the notion of a contract between the victim of crime and the state. It must be remembered that the CICB was established to address the perceived needs of the victims of violent crime who could demonstrate that they were the innocent party to the events which happened to them. This narrow remit, and the symbolic construction of the innocent victim contained within it, perpetuating the

Sandra Walkate

distinction between the deserving and the undeserving, are part of what Miers (1978) has referred to as the politicisation of the victim. Indeed it is important to note that the CICB was put in place, in the absence of exploring what crime victims might want and in the absence of any organisation offering a voice to victims' concerns. As Mawby and Gill (1987) pointed out, victims of crime could already be treated under the NHS if injured or claim benefit if unable to work; so in comparison with victims of violent crime in other countries their perceived needs were already well-catered for. Yet the victim of (violent) crime became an important symbolic rhetorical and political device in extending the protection offered by the state to all its citizens.

With the establishment of the CICB it is possible to argue that the final brick of the Welfare State, cementing the power and the regulatory potential of the state, had been put in place (see Mawby and Walklate, 1994, Ch. 4). Moreover the late 1960s saw the emergence of two significant developments which were to make their presence felt in the criminal justice arena with respect to the victim of crime. The first of these was the formation of the Bristol-Victims Offenders Group. A short-lived organisation which paved the way for the founding of the National Association of Victim Support Schemes from the Bristol Victim Support Scheme in December 1973. The second was the feminist movement. The first Women's Refuge was opened in Chiswick in 1972 and the first Rape Crisis Centre in London in 1976. These developments, whilst tangential at the time to mainstream criminal justice policy concerns, nevertheless marked the beginnings of a discourse around issues concerning criminal victimisation that have borne considerable fruit, though it has to be said overall the voice of Victim Support has probably been better heard and acted upon than that of the feminist movement per se.

As has already been suggested Victim Support had rather humble origins in Bristol in the early 1970s but from 1975 to 1995 it became the fastest growing voluntary organisation that that sector has probably ever seen. For example, it grew from one scheme in 1973 to over 300 in England and Wales alone in 1990; there being separate organisations for Scotland and Northern Ireland. Moreover Victim support secured Home Office funding in the 1980s when government ideology and financial uncertainty were leading other areas of public service to a curtailment of service delivery and a reduced level of state involvement. This event is not solely explicable in terms of the neutrality of this particular organisation; though, as Rock (1990) has accurately observed, the fact that the victim of Victim Support was an androgynous victim did, as we shall see, have considerable influence. The underlying philosophy of the organisation was also important (Corbett and Maguire, 1987).

This construction of the citizen as a consumer during the 1980s marked a significant re-orientation of the understanding of citizenship from that of the 1950s. It carried with it a view of the citizen who not only has rights but also had responsibilities. Responsibilities which could be played out in and by organisations like Victim Support. (Part of the responsibilisation strategy identified by Garland, 1996, and referred to earlier). Indeed, important endorsement was given to this organisation, in the context of responding to

victims of crime, not only in its receipt of government funding in 1986 but also in the conditions which were attached to that funding; the provision of services to women who had been raped. In this sense it is possible to argue that via Victim Support the state co-opted those issues which had been raised by the feminist movement and also silenced a potentially highly critical political voice. However, it also makes sense to situate decisions such as these within the broader extension of the consumerist notion of citizenship referred to earlier and reflected in a wide range of service delivery processes; perhaps epitomised in the criminal justice system in the publication of the first Victim's Charter in 1990 (for a fuller discussion of this see Mawby and Walklate, 1994).

To summarize: by 1990 Victim Support had gained considerable stature and influence in the formulation of government policy and in representing the voice of the victim of crime; a voice which was largely absent during the 1950s. Indeed the work of this national organisation was heralded as the expert agency in promoting the interests of the crime victim and led the way in sponsoring 'demonstration projects' concerned with the extension of victim oriented services: families of murder victims; the victim/witness in court; children as victims of crime; racial harassment. The range of this agenda certainly highlights the extent to which, by the end of the 1980s, Victim Support had come to be seen as the support agency in England and Wales wielding considerable influence on government policy. Moreover the nature and extent of the influence of this organisation also stands as testimony to the changing character of the influences on the policy process; the process of governance as opposed to government. As Rock (1998) reports the Home Office frequently referred to the national officers of Victim Support for consultation and advice in relation to policy initiatives that might impact upon victims of crime.

So the increasing acceptance of crime as a normal fact of life; the increasing focus of criminal justice policy (including that addressing crime victims) to manage this normality and make people feel better about it; has arguably driven to the surface those aspects of the welfare state that never went away. That is, the distinction between the deserving and the undeserving (the innocent or not so innocent victim of crime). This distinction was enshrined in the principle of insurance and arguably has facilitated the re-working of citizen as a consumer that has occurred since. In the less tolerant climate of the new millennium (Young, 1999) it is possible to example the way in which both polices and services have co-opted the crime victim. The enormous influence of Victim Support as a key player in this policy arena is also apparent. It is also evident that the contemporary criminal justice process is now more complex. There are more agencies, more actors and more sources of funding. Through gaps between Government and governance, between the deserving and undeserving, between social citizenship and consumer citizenship, the politically neutral image of the victim of crime as epitomised by Victim Support, has gained some ground. That the crime victim has almost surreptitiously been involved in and gained recognition through these processes is illustrated in the following examples of contemporary 'victim' policy. For the purposes of this analysis we shall consider three aspect of this process: the re-orientation of the probation service; the introduction of the victim personal impact statement; and the increasing use of notions of restorative justice.

Sandra Walkate

The re-orientation of the probation service

Garland (2001: 177) states that:

> For much of the twentieth century probation was a core institution of
> criminal justice. Extensively used, in the vanguard of penal progress, it was
> often regarded as the exemplary instance of the penal-welfare approach to
> crime control.

It is a moot point as to the extent that either the public or the courts were ever convinced
by probation as a mean of offender control, however contemporarily the probation service
no longer has as its central mission the goal of assisting, advising and befriending
(deserving) offenders. Having been both the subject and the object of the same
managerialist and performance led initiatives as other aspects of the criminal justice
system one of the key roles now for the probation service is to support victims. This focus
was first introduced in the 1990 Victim's Charter that obliged the probation service in
England and Wales to contact the victims and/or families of life sentence prisoners prior
to any consideration of their release. This task was widened in the 1996 Charter to
include victims of serious violent or sexual offences. Moreover in the proposed revision of
this charter it is suggested that this be extended once again to the victims of non-violent
offenders (such as burglars) sentenced to twelve months or more (A review of the Victims
Charter, February 2001: 8).

The early foray into this kind of work produced a mixed response from within the service.
Whilst some commentators concerned themselves with the suitability of victim work in
probation in the context of restorative justice and/or the value of public protection for
probation as a service (see for example, Nellis, 1995) others clearly saw the central value
of such a change in direction. As James (1995: 346) states:

> It must be proper for the probation service to demonstrate concern for
> victims of crime by acknowledging the very real impact of victimisation
> upon individuals and in their direct work with offenders ensuring that
> offenders are cognisant of the impact of their crime upon victims.

However the initial demands for partnership working and training which followed from
this change in direction should not be underestimated resulting in different practices
being adopted in different areas (See Nettleton, Walklate and Williams, 1997). Later
evaluative work of probation involvement with victims (Crawford and Enterkin, 2001)
examined from the victims' point of view points to the same issues of variation in local
practice but raises some other and perhaps more disturbing concerns. They highlight the
imbalance between what victims are permitted to know about their offender as compared
with the information they are expected to input into the system. In addition they
comment on the failure of the system as it presently stands to guarantee the
confidentiality of the victim. They conclude by saying that:

> The findings from the research reported here suggest that the ambiguities
> and uncertainties surrounding the integration of victims in the post-
> sentencing process may generate expectations, demands, interests and
> unintended consequences which are difficult to control, rather like the
> contents of Pandora's box (ibid. 724).

It would seem then, that this re-orientation of the probation service as it is presently
construed may be posing more problems than it is addressing. This example, however,
certainly illustrates two issues alluded to earlier in this paper. The first is the practice of
making policy decisions that are not necessarily rooted in research. Yes it is the case, as
many would argue, that victims of crime would like more information about 'their' case,
and some would like to be more actively consulted in the criminal justice process. It is a
moot point, however, whether or not victims of crime envisaged their inclusion within
the criminal justice process to be quite of this form. The second illustrates the extent to
which what matters in the current climate of the policy making process is whose voice is
being listened to (Walklate, 2001). Increasingly complex though this is, it is certainly the
case that Victim Support as an organisation was a key player in the formulation of the first
Victims Charter. Many other organisations have been required to address the
consequences that flow from this document. It is a moot point as to the extent to which
despite this re-positioning of probation it has resulted in a true embrace of the victim of
crime.

The victim personal statement scheme

The introduction of the victim personal statement scheme constitutes another dimension
along which policy makers are attempting to (re)integrate the victim into the criminal
justice process by giving them a voice intended to be heard. Involving the victim in the
court proceedings whether via an impact statement or a personal statement is a well
established practice in the United States, Canada and Australia, though the nature and
form of that involvement does vary in these different jurisdictions. The UK scheme shies
away from the impact model of the United States, however, favouring a version of victim
involvement that is not intended to encroach upon sentencing. With this concern in
mind pilot victim impact statement schemes were established in three police force areas in
the U.K. in 1997 to encourage victims of all kinds of crimes to describe how the crime
had affected them. As the then Home Secretary Jack Straw is reported as saying, these
schemes would:

> give victims a voice in a way that they have not had before. It will be a real
> opportunity to make their views known more formally to the police, crown
> prosecution service and the courts and to know they will be taken into
> account in the case. I want victims to feel they are at the heart of the
> criminal justice system (The Guardian, May 27th, p. 6).

In some respects statements like these raise the spectre of victim-led justice Saudi-Arabian
style which does not quite gel with traditional conceptions of justice associated with the

Sandra Walkate

criminal justice system of England and Wales. As Mawby and Gill (1987: 229-30) pointed out some time ago:

> to re-orientate the system towards a mandatory focus on victims' perspectives and the impact of crime is misconceived, both because it invites injustice (where the impact of crime is unrelated to criminal intent) and because it ignores the fact that many crimes are the concern of the state as well as the victim.

Despite these inherent difficulties, for some commentators and certainly for some politicians victim impact statements appear to be a 'good' thing insofar as they constitute another step on the road to victims' rights at a maximum, and at least improved victim participation in the criminal justice system at a minimum.

The victim personal statement scheme started on October 1st 2001. Home Office circular 35/2001 states:

> The scheme is intended to give victims of crime a more formal opportunity to say how they have been affected by the crime. The statement will become part of the case papers, and should help all the criminal justice agencies subsequently dealing with the case to take more informed decisions. The scheme is victim led. The procedure is entirely optional for victims and victims should not feel pressured into making a victim personal statement unless they want to.

The circular goes on to point out that the statement is not a sentencing tool but should be linked to other court papers. It is an addition to other documentation not a substitute for it. This is an interesting variation to the victim impact statement used in the United States, Canada and Australia. The 'victim personal statement' follows the spirit, if not the actual practice, of victim impact statements. The purpose of a victim personal statement is twofold; to offer the optional opportunity to the victim of crime to relate to all the agencies how a crime has affected them, and to provide the criminal justice agencies with more information about the impact of a crime. As has already been stated this is an entirely optional scheme and is not intended to be used by the criminal justice agencies to effect sentencing outcome. The police are gifted the responsibility for taking such statements.

These statements will provide an opportunity for the victim to raise any concerns that they may have about aspects of the crime and the offender not dealt with elsewhere by the criminal justice process (like bail proceedings, for example) and will provide all agencies within the criminal justice process with more information. Obviously this will only be the case in those cases where the victim chooses to make such statements and in which the police pursue such statements. It remains to be seen how effective this scheme proves to be. However, given what is already known about victim impact statements which can

have an effect on sentencing it is likely that three issues will remain unresolved. These are, first, the question of justice: how do you balance the interests of the offender with the interests of the victim? The second is the question of implementation: how do you guarantee that all victims are asked if they want to make a statement not just those deemed 'deserving'? The third is the question of participation: how do you ensure that victims who want to participate do so without there necessarily being any agreeable outcome for them? It would seem we have another policy encouraging good practice with only sound bite politics to enforce it.

Restorative justice

It is now over twenty years since the first appearance of the essay by Christie in *The British Journal of Criminology* entitled "Conflicts as Property" (Christie, 1977). In that essay Christie was keen to make the case that the law, and the emergence of the professions associated with the practice of law, in taking disputes out of people's own hands, had not only denied them the right to manage their own disputes but had also, as a consequence, denied the development of more constructive and imaginative responses to such disputes. Whilst arguably this was primarily a polemical essay, its influence has nevertheless been significant in lending weight to what Pepinksy and Quinney (1991) entitled 'Criminology as Peacemaking'. This version of criminology is concerned to look for ways in which it might be possible to marry knowledge about crime and offending with a more constructive approach to the use of penalties for such behaviour. One of the themes in this work places emphasis on 'reintegration'; of finding ways in which the offender is made aware of the consequences and impact of their offending behaviour yet simultaneously is reintegrated into (rather than ostracised from) the community.

More recently Braithwaite (1989) has been influential in promulgating these ideas. His hypothesis is that in societies where there is a strong commitment to place collective interests over individual interests there are stronger incentives for people to conform and lower crime rates. His prime example of such a society is Japan. The practical implication of Braithwaite's hypothesis is concerned to establish mechanisms whereby offenders could be subjected to such collective processes, shamed by them, and subsequently re-integrated into the community with a stronger commitment to those community norms and values (that is, unlikely to re-offend).

To date many examples of such practices have emanated from Australia and New Zealand in the form of 'community conferences' or 'family conferences'. The relative success or failure of such practices is difficult to determine. What is less difficult to discern is the impact that such ideas have had on contemporary criminal justice policy thinking. In the U.K. faced by such criticism as the following:

> The current system for dealing with youth crime is inefficient and
> expensive, while little is done to deal effectively with juvenile nuisance.
> The present arrangements are failing young people - who are not being

guided away from offending to constructive activities. They are also failing
victims..... (Audit Commission, 1996:96).

It is little wonder that much has been made of the reparation scheme being run by the
Thames Valley Police, following the Australian and New Zealand model. Chief
Superintendent Perry is quoted as saying about the scheme: 'While young offenders feel
ashamed of what they have done, this allows them to make good and to go back into their
community' (Crime Prevention News, 1998:12).

This theme of making good has been incorporated into the Crime and Disorder Act
(1998). Such an emphasis rests on the hope that young people especially can be educated
through the process of reparation on both the nature and the impact of their offending
behaviour. It is hoped that as a consequence this will prevent re-offending and
simultaneously repair some of the damage done to the victim of crime. In this way it is
believed that both the victim and the offender can be re-integrated into the community;
their conflict of interest resolved. How does this concern manifest itself in contemporary
policy?

Miers et.al. (2001: 8) define restorative justice in the following way:

> In broad and simple terms, 'restorative justice' signifies those measures that
> are designed to give victims of crime a opportunity to tell the offender about
> the impact of the offending on them and their families, and to encourage
> offenders to accept responsibility for, and to repair the harm they caused. Its
> general aims are to reduce re-offending to restore the relationship between
> the victim and the offender that was disturbed by the offence, and to
> improve victims' experiences with the criminal justice system.

The 1998 Crime and Disorder Act makes possible at a number of different junctures the
introduction of restorative justice. For example, young offenders who receive warnings are
referred to a Youth Offending Team, who may as a part of monitoring that offender
require some sessions on victim awareness. Furthermore those who come before the court
may find themselves in receipt of a referral order which may again include the prevention
of re-offending through a youth offender contract. This may include direct and/or indirect
reparation to the victim and/or the wider community. If a young offender is convicted of
an offence they may find themselves in receipt of a 'community order'. Under the action
plan which flows from this order the offender may be required to make reparation to the
wider community or to the victim of the offence or anyone else affected by it should they
so wish it.

Reaction to the introduction of these options within the criminal justice process have
been somewhat mixed and many evaluations of such schemes have either little data to
work with to date or have yet to report. The report by Miers et.al. (2001) is clearly
indicative of the problems facing researchers in trying to evaluate the effectiveness of

these initiatives. They found that, for example, interpretations of what constituted reparation was somewhat elastic across the different schemes they were concerned with. So evidence on effectiveness is at this stage thin on the ground. There are nevertheless some issues of principle that are worth raising about the legislative moves in this direction.

Such a policy commitment reflects a view that such strategies are not only workable but will have the desired effect; that is, reduce offending behaviour. It also reflects a presumption that such strategies constitute the preferred model of reparation, and make sense, for both the individuals involved in the process and the communities of which they are a part. None of these presumptions are necessarily borne out by the evidence neither do they necessarily follow from the policies themselves. Part of the reason for this lies in the tension between what might be expected from policy, what actually has been and can be delivered from such policy, and understanding what might already exist informally as ways of making amends between members of a community. In this latter respect see especially Walklate and Evans (1999) and Walklate (forthcoming). In some respects, then, the questions raised by Christie (1977) still remain unanswered and may well remain so.

Conclusion: so who are the victims now?

In the contemporary climate of a society in which crime is seen as part of everyday life that we are all encouraged to be responsible for and in which for some commentators at least has resulted in the 'culture of fear' (Furedi, 1998), in a very real sense we are all victims now. This is one of the main messages of crime (read victim) prevention policy. The symbolic representation of the victim in the political arena continues apace as a way of justifying both the new punitiveness of which Carlen speaks and as a way of devising ever more imaginative ways of re-integrating the victim into the criminal justice process. The jury is still out as to how effective these imaginations might prove to be. Yes, it must be the case that some victims of crime will feel better, and will be better taken care of as a result of initiatives like the ones under discussion here. How this might come about and for whom is likely to be the result of happenstance as the result of the kinds of policies being implemented. This end product, I would argue, is largely because of the ever-present legacy of distinctions between the deserving and the undeserving, alongside the shallowness of sound bite politics in the criminal justice arena. All of which serves to ensure that policies have width but no quality. As Crawford (2000: 303) states:

> ..given the anxieties and emotions that crime evokes and its capacity to bifurcate through deep-seated fears of "otherness", crime may be an inappropriate vehicle around which to construct open and tolerant communities.

Insert victims for crime in this quote and therein lies the crux of the victim policy problem; what do we mean by 'victims' and 'criminal victimisation'? Herein also lies a key question for those involved in community justice. If the greater involvement of the victim of crime within the criminal justice process is considered to be one of the mechanisms for

Sandra Walkate

encouraging greater awareness of the impact of crime and discouraging further offending behaviour, we must ask whose vision of community justice is this most likely to work for and under what circumstances? Is it likely to work in communities in which intimidation and the fear of being labelled a 'grass' is the norm or is it more likely to work in communities not so structured with alternative forms of social control? Is it likely to work in communities striven with ethnic, religious or racial divides? If so, what would meaningful victim involvement look like and what resources would be needed to put such involvement in place? If we do want open and tolerant communities as the quote from Crawford above implies, then we need to address the reality of crime and criminal victimisation in communities as people actually live and experience those communities, not the way we wish they were.

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