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VICTIMS, VICTIMIZATION, AND CRIMINAL JUSTICE

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INTRODUCTION

Our knowledge about victims is in a state of continuing development. Conventional conceptions of victimization have been challenged by new studies of previously invisible victims: of corporate and white-collar crime, of trafficking, genocide, armed conflict, torture, terrorism, and crimes of the state (Ruggiero 1992; Morgan and Evans 1999; Goodey 2005). Studies of secondary victimization and the collateral effects of crime and punishment draw attention to the families of primary victims (Young 2000), of prisoners (Travis and Waul 2004), and of those sentenced to capital punishment or executed in jurisdictions that retain the death penalty (Vandiver 2003; Sharp 2005). These studies both expand and render problematic the concept of victim so that the term victim has become a contested one, challenged by those who prefer 'survivor' (Rock 1998b; Lamb 1999) or favour reference to 'harms' (Hillyard *et al.* 2005). Our expanding knowledge is guided by both academic research and the political impact of legislation, policy-making, and lobbying by interest groups. The promotion of victims' interests on the national and international stage has driven radical policy development in respect of victims' service and procedural rights. Perhaps the most dramatic shift has been the emergence of restorative justice, commonly advanced in the name of victims. Restorative justice is, however, only the most prominent of many procedural changes made in recent years that purport to enhance justice for victims.

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THE NATURE AND DISTRIBUTION OF VICTIMIZATION

SOURCES OF DATA

Survey data

The development of victim surveys was a key factor in generating criminological interest in victims. In America in the 1960s mass victimization surveys sought to quantify the unreported 'dark figure' of crime. Pilot studies (Reiss 1967) led, in 1972, to annual National Crime Surveys (NCSs) (now National Crime Victimization Surveys, NCVSs) carried out by the Bureau of Justice Statistics. The British Crime Survey (BCS) (Hough and Mayhew 1983) was modelled on the NCS and collected data on crime; factors predisposing people to victimization; impact of crime; fear of crime; victims' experiences of the police; and self-reported offending. From 2001 the BCS moved to an annual cycle, increased its sample size, and now interviews 50,000 people aged 16 or over. The BCS provides data at the level of individual police force areas and is published jointly with police recorded crime statistics to allow for direct comparison.[1] National crime surveys are also carried out in Scotland (McVie *et al.* 2004) and in Northern Ireland (French and Campbell 2005).

International data sources

Similar large-scale surveys are conducted in over 70 different countries. An important source of comparable data is the International Crime Victimization Survey programme (ICVS) carried out, originally in Europe, since 1989. From 1991, United Nations involvement increased the geographical coverage to 33 countries, rising to 48 in 2004 (Alvazzi del Frate and Van Kesteren 2004). In 2004–5, the fifth round of the ICVS in the 15 old member states of the European Union was carried out as the European Crime Survey. These surveys seek a better picture of victimization than police records supply and identify the social, economic, and demographic characteristics of victims (although for discussion of methodological limitations see Maguire, Chapter 10, this volume).

The many publications of the World Health Organization (WHO),[2] such as the 2002 *World Report on Violence and Health* (Krug *et al.* 2002), also provide valuable information, as do other WHO reports on domestic violence, and sexual violence and the prevention of violence, published since 2002. Non-governmental organizations (NGOs) also gather important information on criminal victimization. What follows is not an exhaustive list but rather an indication of the many types of data available.

Amnesty International (AI) campaigns for internationally recognized human rights and reports annually on human rights abuses and other forms of violence worldwide,

[1] Crime against retailers is the subject of periodic Commercial Victimisation Surveys (Shury *et al.* 2005).

[2] The WHO was established in 1948, as a specialized agency of the UN, to serve as the directing and coordinating authority for international health matters and public health.

including rape and sexual violence against women and children, violence against minorities, torture, 'disappearances', 'death squads', trafficking, terrorism; as well as on the justice system, including the death penalty, arbitrary detention, unlawful killings, unfair trials, and deaths in custody.

Other organizations, such as The Medical Foundation for the Care of Victims of Torture and the Aegis Trust, also document evidence of torture, genocide, and other offences. Human Rights Watch, the largest independent, non-governmental human rights organization is another source of valuable data, conducting fact-finding investigations into human rights abuses worldwide. In addition to these international bodies, countries with recent histories of severe human rights abuses have established regional organizations which gather data on victimization by interviewing witnesses and victims about killings, disappearances, torture, and other abuses within armed conflicts (for example, the Humanitarian Law Center based in Belgrade). Since 1998 the United Kingdom Foreign and Commonwealth Office has published an annual report on human rights, drawing on evidence from AI and other organizations. It is an important source of information on victims of torture, terrorism, and the death penalty, as well as on specific abuses against women and children.

Academic research

Von Hentig, *The Criminal and his Victim* (1948), is widely regarded as the seminal text in developing victim studies. Highly critical of the traditional offender-oriented nature of criminology, von Hentig proposed a dynamic, interactionist approach to victim precipitation and 'victim-proneness'. Others took up these notions. Mendelsohn (1956) developed victim typologies to denote degrees of culpability; Wolfgang (1958) applied the concept of victim precipitation to homicide data; and, most controversially, Amir (1971) studied victim–offender interaction as a precipitating factor, re-ascribing blame to the victim in rape cases. Whilst Amir's study attracted criticism on methodological and ideological grounds (Morris 1987: 173–4; Walklate 1989: 4–5), others have defended the idea of victim-precipitation, arguing that in a rigorously pursued, value-free social science there is no reason why it should entail victim blaming (Fattah 1991).

In an attempt to overcome the limitations of studies based on recorded data, Sparks, Genn, and Dodd's study (1977) of London sought to ascertain the extent and nature of unreported crime, victims' perceptions of crime, and attitudes towards the criminal justice system. It set the agenda for many subsequent surveys and smaller-scale, qualitative studies. By narrowing their geographical focus, local victim surveys document the uneven distribution of risk, by race, sex, age, class, and locale (see Maguire, Chapter 10, this volume). For example, rural victim surveys challenged the presumption that crime is primarily an urban problem (Koffman 1996: 89–114). Local surveys set crime in its broader social context by including questions about racial and sexual harassment, drug abuse, and other forms of anti-social behaviour (Crawford *et al.* 1990: 4), as well as victim perceptions of police priorities, service delivery, and accountability. Their success in revealing differential patterns of victimization has prompted changes also to the BCS (Percy and Mayhew 1997).

Securing sufficient numbers of victim groups, such as the elderly, the young, the disabled, or those subject to domestic or sexual violence, requires dedicated surveys directed at, among others residential homes, schools, refuges, or total institutions. For example, recent research in prisons has focused on victimization of male (Edgar and O'Donnell 1998) and female prisoners (Loucks 2005). There are, of course, limitations to these data: evidence of sexual victimization by both prison staff and prisoners draws almost entirely on US data and tends to ignore violence against the most vulnerable, such as sex offenders and homosexuals (O'Donnell 2004).

Studies of personal crimes against women seek to overcome their under-representation by mass victimization surveys (Hoyle and Sanders 2000; Loseke *et al.* 2005). Recent work examines domestic violence victims within ethnic minority and marginal communities (Parmar *et al.* 2005). This challenges the primacy of gender as an explanatory model of domestic violence, by exploring how structural inequalities such as racism, class privilege, and heterosexism, intersect with gender oppression (Sokoloff 2005). Academic research has also taken up the largely hidden phenomena of violence in same-sex relationships (Ristock 2002); violence against children in the home (Cavanagh *et al.* 2005), and domestic violence against men (Grady 2002) although the methodological difficulties associated with this research remain a matter of concern (Saunders 2002; Dobash and Dobash 2004).

Several local or specialized surveys suggest levels of sexual crime against women that are far higher than those revealed by national victim surveys and police records (Walby and Allen 2004). The chief difficulty with these studies is that differences in approach, wording, and categorization of responses have generated widely differing estimates of victimization. The sensitivity of survey questions and the approach and demeanour of the interviewer may also dramatically alter response rates. These limitations led many academics, particularly those committed to empirical study of the experiences of vulnerable groups, to abandon the survey for in-depth qualitative work.

The tendency of surveys to concentrate on the 'ideal victim', the weak, respectable, and innocent person harmed by the big, bad stranger (Christie 1986), prompted researchers to explore victimization amongst the less obviously 'worthy' or those in a relationship with their offenders. Examples include research on male rape (Allen 2002), date rape (Fisher *et al.* 2005), and rape within marriage (Painter and Farrington 1998). Miers (2000) shows that only 'innocent' victims are considered worthy of compensation, Hamill (2002) looks at the less than ideal status of victims of paramilitary punishments, whilst Borer (2003) challenges the discrete and binary approach to the concepts of victims and offenders through an analysis of the South African Truth and Reconciliation Commission. These studies make explicit the more general truth that there is considerable overlap between populations of victims and offenders.

'Radical' and 'critical' victimologists have analysed the wider political, economic, and social context of victimization (Mawby and Walklate 1994). A newly emerging area of 'radical-critical' academic research, as yet on the margins of criminological enquiry, concerns victims of crimes of the state, armed conflict, and crimes against humanity. A high proportion of the data about these victims derives from research in the adjacent

disciplines of political science, international relations, anthropology, and history. Despite intense media coverage of atrocities such as the massacre of around 8,000 Bosniak (Bosnian Muslim) men and boys in Srebrenica in 1995 by the Bosnian Serb forces and the genocide of over half a million Tutsi in Rwanda around the same time, criminology is only now beginning to recognize the scale and effects of state crime and other political violence.

Less than a decade ago Cohen (2001) and Jamieson (1998) demonstrated the reluctance of criminologists to carry out research on crimes against humanity, despite the fact that conflicts involve colossal violence and victimization, and Hagan *et al.* (2005), in their critique of Sudanese state denial about the conflict in Darfur, consider how slow modern American criminology is to advance the study of genocide. A special issue of the *British Journal of Criminology* acknowledges that 'the space devoted to state crime in the literature of our discipline remains pitifully small' (Green and Ward 2005: 432). With some notable exceptions—Cohen, Ward, Green, Jamieson, Roche, McEvoy, and Bauman—criminologists have, as yet, paid little attention to state-sponsored aggression. Despite the scale and importance of the subject matter, criminologists are perhaps uneasy about entering into this new area, unsure whether their methodological expertise is up to the task. Following the approach of Bauman, Woolford examines some of the prevailing arguments for establishing a criminology of genocide and, showing the limitations of mainstream criminological frameworks for this endeavour, argues that criminologists must develop a critical and reflexive approach to this understudied area of criminal behaviour (Woolford 2006; Bauman 1989).

THE NATURE AND SCOPE OF VICTIMIZATION

National data

In respect of ordinary crimes, successive reports of the BCS have found that while the chance of being a victim of a minor offence is high, the risk of suffering a more serious offence is small. The 2004/05 BCS estimated that there were 2,412,000 violent incidents against adults in England and Wales, although 46 per cent of these did not result in any lasting injury to the victim. Violent crime rates have fallen by 43 per cent since reaching a peak in 1995, an estimated 1.8 million fewer incidents. Victimization falls unequally on particular individuals and groups. Risk of victimization generally is closely related to geographical area, and risk of personal victimization correlated with age, sex, and patterns of routine activity, such as going out in the evenings and consuming alcohol. People who had visited a pub or wine bar more than three times a week in the past month had a higher risk of victimization for all violent offences and were particularly likely to experience stranger violence: 3.2 per cent compared with 0.6 per cent of those who had not (Nicholas *et al.* 2005: 59). Much crime is endogenous—victims, witnesses and offenders are recruited from substantially the same groupings and are more likely to be (quite literally) in contact with one another. Age is a key determinant: young men between the ages of 16 and 24 are most at risk, with 14.6 per cent experiencing criminal violence in the past year (Nicholas *et al.* 2005: 71). Domestic violence is the only

category for which the risks for women (0.7 per cent) are higher than for men (0.2 per cent). Risks of violence by strangers and acquaintances are substantially greater for men than for women; 2.3 per cent of men were victims of stranger violence in 2004/05 interviews, compared with 0.6 per cent of women (Nicholas *et al.* 2005).

Women are most likely to be raped by men they know: 54 per cent of rapes are committed by intimates, and 29 per cent by other known individuals, with 50 per cent of cases involving repeat offences by the same person (Walby and Allen 2004). Although 17 per cent more sexual offences were recorded by the police in 2004/05, this can be largely accounted for by the change in recording of indecent exposure. Within the 2004/05 total of 60,946 sexual offences, the police recorded 24,120 indecent assaults on women and 3,515 on men. There were 14,002 recorded rapes, 92 per cent of which were of women (Nicholas *et al.* 2005: 80).

The risk of being a victim of either burglary or vehicle-related theft has halved since 1995 and is much reduced for other property crimes. Household acquisitive crime has fallen by more than half (53 per cent) between 1995 and 2004/05 and domestic burglaries by 20 per cent between 2003/04 and 2004/05 (Nicholas *et al.* 2005: 49). Risks are much higher in inner-city areas, particularly those with high levels of physical disorder, and higher in rented accommodation than owner-occupied homes. Households with lower levels of disposable income, with single-adult, young, or unemployed heads of households, are also at greater risk.

For many types of crime, in particular personal crimes such as street robberies, both Afro-Caribbeans and Asians are more at risk than whites, possibly because they are over-represented in social and age groups particularly prone to crime. Ethnic minorities are disproportionately likely to be council tenants or to live in younger households in socially disadvantaged areas. The risk of being the victim of a racially motivated offence is highest among those of mixed ethnicity. Assaults, threats, and vandalism are those offences most often thought to be committed for racial reasons (Salisbury and Upson 2004: 1–3).

International data

Turning to the international data, the 2000 ICVS revealed that from 1990 to 1995 crime stabilized or fell in many respondent countries and from 1995 to 1999 the dominant pattern was of falling crime (Van Kesteren *et al.* 2000).[3] There was a consistent fall in property crime; changes in violent crime were more variable. In 2000 contact crime accounted for about a quarter of all crimes, with assaults and threats making up about two-thirds of these (or 15 per cent of all crime). Robbery formed a very small proportion of contact crime in all countries. Car vandalism made up nearly a quarter and theft of, and from, cars together comprised a third of all crimes. Assaults and threats comprised 15 per cent of crimes. Only just over 1 per cent of women (1.3 per cent) reported offensive sexual behaviour and only 0.6 per cent reported sexual assaults

[3] At the time of going to press data from the fifth IVCS (2005) were not yet available. See: http://www.unicri.it/wwd/analysis/icvs/index.php.

(including rape, attempted rape, and indecent assault), though for reasons discussed above these are undoubtedly under-representations.

The US National Crime Victimisation Survey (2004) shows that US residents, aged 12 or older, experienced an estimated 24 million violent and property victimizations. For crimes of violence aggregate rates for the period 2003–4 declined by 9 per cent from 2001–2 and, taken together, these years' estimates indicate that crime rates remain stabilized at the lowest levels experienced since 1973 (Catalano 2005). Nonetheless, it remains the case that in the USA, 700,000 women report being raped or sexually assaulted each year (Krug *et al.* 2002: 151). Evidence from other continents, particularly from Africa, suggests that high rates of sexual violence are not unique to America. For example, the South African police statistics for the years 2003/4 recorded 52,759 reported rapes (Amnesty International 2005).

Beyond surveys, supranational institutions and NGOs provide international data about various forms of violence. The World Heath Organization *World Report on Violence and Health* (Krug *et al.* 2002) estimated that in 2000 at least 1.6 million people worldwide died as a result of self-inflicted, interpersonal, or collective violence. Most deaths occurred in low- to middle-income countries, with less than 10 per cent in high-income countries. Children are at high risk of both physical and sexual abuse and homicide. There is a strong relationship between domestic violence and child abuse. Domestic violence is common and in some countries it is endemic: in Turkey it is estimated that between a third and a half of women are victims of physical violence in the home (Amnesty International 2005: 5), often accompanied by psychological and/or sexual abuse. Partner violence accounts for a significant proportion of female murder victims (between 40 and 70 per cent in Australia, Canada, Israel, South Africa, and America: Krug *et al.* 2002: 93). An important form of domestic violence is assaults, acid attacks, and murder as a consequence of dowry disputes. UN data show that dowry murder occurs predominantly in South Asia. In many societies, rape victims and women suspected of engaging in premarital sex or adultery are murdered by their male relatives in 'honour killings' (in Pakistan more than 1,000 women every year) (Coomaraswamy 2000; Warrick 2005).

An emerging area of criminological concern is victimization within armed conflicts and state-sponsored aggression. Some 70 per cent of casualties in recent conflicts were non-combatants, most women and children. Women are frequent victims of abduction, rape, sexual abuse, forced pregnancy, and slavery (Rehn and Johnson Sirleaf 2002). For example, in Rwanda, approximately half a million women were raped during the 1994 genocide; in Bosnia, 20,000–50,000 women were raped during five months of conflict in 1992. At any one time, according to data collated by the UK Foreign and Commonwealth office, there are over 300,000 children fighting in armed conflicts around the world. Over two million have been killed in conflict situations over the last decade and many more have been made orphans, maimed, abducted, and abused. Furthermore, trafficking thrives in conflict zones, with girls in particular being at a high risk of sexual violence. In South Asia, it is estimated by UNICEF that at least 500,000 children are involved in the sex industry, many of whom are victims of trafficking

(UK Foreign and Commonwealth Office 2005: 232–4). Trafficking of women from Eastern Europe, South America, Asia, and Africa remains widespread (Krug *et al.* 2002: 153–5).

IMPACT OF VICTIMIZATION

Victim surveys tell little about the impact of victimization. This is better captured by qualitative research focusing on particular types of crime or of victim, for example burglary victims (Mawby 2001); domestic violence (Hoyle and Sanders 2000); sexual assault and stalking victims (Kelly 1988); victims of violence (Shapland *et al.* 1985; Stanko and Hobdell 1993); rape victims (Scheppele and Bart 1983; Allen 2002); child victims (Hartless *et al.* 1995); ethnic minority victims (Salisbury and Upson 2004); and the elderly (Brogden and Nijhar 2000; Donaldson 2003). Together these studies highlight the acute stress and adverse physical, practical, or financial effects suffered by victims of more serious crimes. During the 1990s the grief and trauma suffered by relatives of murder victims and families of death row and executed prisoners was documented in the psychological literature (for example, the *Journal of Traumatic Stress*). Recent work has focused on the impact of large-scale political violence. As well as witnessing brutal attacks on and murder of family members, survivors often experience forced expulsion, rape, torture, and loss of their home and livelihood (Weine 1999). While reactions to victimization are highly crime-specific, most studies suggest that psychological distress is the dominant reaction. At its most severe, this has been formally recognized by psychologists as 'post-traumatic stress disorder'—a clinical condition the symptoms of which include anxiety, depression, loss of control, guilt, sleep disturbance, and obsessive dwelling on the crime (Falsetti and Resnick 1995). Industrial and environmental crimes may also have a massive effect, aptly captured by their common designation as disasters—witness Piper Alpha, Zeebrugge, Bhopal, and Three Mile Island (Ericson 1994).

Personal crimes such as physical and sexual assault and child abuse commonly entail long-term effects. For example, victims of sexual assault may suffer emotional disturbance, sleeping or eating disorders, feelings of insecurity or low self-esteem, or troubled relationships for months or years after the event. Even after counselling, psychological symptoms such as depression and somatic disorders persist (Kelly 1988). Child abuse victims may suffer impaired self-esteem, poor physical health, short- and long-term psychological damage, learning problems, withdrawal, and regressive behaviour. Some children suffer psychiatric illnesses that include post-traumatic stress disorder, major depression, and sleep disorders (Wolfe 1999). Child sexual abuse may induce profound feelings of fear, revulsion, shame, and guilt (Finkelhor and Araji 1986; Trowell *et al.* 1999).

Studies of abuse by intimate partners reveal immediate and lasting mental and physical health effects. In addition to physical injury, victims of domestic violence suffer depression, eating and sleeping disorders, self-harming behaviours, low self-esteem, and chronic physical disorders, and some even attempt suicide (Follette *et al.* 1996; Krug *et al.* 2002). Children who routinely witness abuse frequently exhibit similar

behavioural and psychological disturbances to those who are abused (Krug *et al.* 2002: 103). The impact on victims and their children of this violence and the controlling behaviours that are part of most violent relationships (Hoyle and Sanders 2000) produces high attrition rates in the criminal process (Hoyle 2000; Ellison 2003). The failure of criminal justice to provide an effective response for some victims has led academics to consider alternative responses, including specialized domestic violence court processes (Eley 2005) and restorative justice (Strang and Braithwaite 2002).

In the context of armed conflict and state-sponsored aggression, victimization can affect morbidity and mortality, with high murder rates often in quite short periods of time. Approximately 191 million people lost their lives to collective violence in the twentieth century, more than half of whom were civilians. In just 100 days in 1994 approximately 800,000 people were killed in Rwanda. Not only are many survivors of conflicts seriously injured or permanently incapacitated as a result of attack, but there is an increase in deaths due to the concurrent rise in infectious and non-communicable diseases brought about by the collapse of public services, including health care and immunization programmes, during periods of conflict. Disruption to trade and business leads to shortages of food and other vital supplies (famine related to conflicts is estimated to have killed 40 million people in the twentieth century). Such conflicts also lead to further crimes. The increase in psychological and behavioural problems it causes (depression, suicide, and post-traumatic stress disorder) leads to more interpersonal violence amongst survivors. There is often a dramatic rise in HIV transmission, with military forces, and, sometimes, peacekeeping forces, demanding sexual services from local people and using rape as a weapon of war. Survivors of conflicts can suffer from depression and anxiety, psychosomatic ailments, suicidal behaviour, intra-familial conflict, and anti-social behaviour (Krug *et al.* 2002: ch. 8). These symptoms are often very severe amongst refugees who have experienced considerable upheaval and displacement (during 2004 over 25 million people were internally displaced by civil wars; see www.unhcr.ch).

Whilst the emotional impact of serious violent crimes is readily apparent, research suggests that property crimes can also take their toll on victims. Not only do they cause financial and practical harms, they also can create feelings of shock, insecurity, or violation (Maguire 1982). The BCS 2002/03 found that 83 per cent of burglary victims were emotionally affected, with 37 per cent reporting they had been strongly affected (Nicholas and Wood 2003). Elderly victims were particularly badly affected, with many experiencing deterioration in health following the crime (Donaldson 2003). The impact of white-collar, corporate, or business crime upon its victims, including corporations, can also be significant (Levi 2001; Slapper and Tombs 1999). High-profile fraud cases, such as Barings Bank, BCCI, Lloyds, the Maxwell pension fund, MCI Worldcom, and Enron drew attention to the financial and emotional impact upon their victims (Levi and Pithouse 1992). In turn, the impact of crime against corporations (businesses, local authorities, government agencies, and charitable or religious foundations) is by no means only financial (Young 2002: 136–42). The remote consequences of corporate crime may extend to employees, tenants, and consumers (Young 2000: 230).

In respect of both personal and property crime, the impact may extend beyond the incident itself. Considerable expenses may be incurred in replacing uninsured property, in medical care, counselling, or funeral costs. Some victims are driven to move house as a consequence of a traumatic burglary, or to escape continuing attacks, harassment, or stalking. Some lose earnings, or even their jobs, after missing time from work for court attendance or due to crime-related illness or depression (Shapland *et al.* 1985: 104–5).

The impact of victimization varies according to sociodemographic variables such as isolation, resources, vulnerability, and previous experience (Skogan 1986: 140–3). General feelings of vulnerability among women (in part because, at least in America, women may associate crime with the risk of rape, Ferraro 1995), ethnic minorities, and the poor also increase the impact of crime, although expectations of masculinity can inhibit men from expressing their reactions (Goodey 1997; Allen 2002). Multiple or series victimization compounds the impact suffered with each repeated occurrence. Research suggests that a very small percentage of victims experience a disproportionate amount of crime (Farrell and Pease 2001). A minority of victims are so repeatedly victimized that it becomes virtually impossible to distinguish the impact of discrete crimes from the generally impoverished quality of their lives (Hope *et al.* 2001: Commission for Racial Equality 1988: 7). Racial harassment is an important example here. Bowling suggests that violent racism is best seen as a 'process' that the mere counting of individual incidents cannot capture (Bowling 1998: ch. 5).

The wider impact of crime on secondary or indirect victims is increasingly recognized. The most telling example is immediate grief and long-term trauma experienced by the families of murder victims (Rock 1998a; Hoffmann 2003; Victim Support 2006). Spungen (1997) describes families' feelings of isolation and stigmatization within their communities, and of being overlooked by the criminal justice system. For those who witness homicide or other non-fatal assaults, the shock or guilt for failing to intervene may be profound (Victim Support 1991). Serious crimes place considerable stress on family relations, and may even lead to their break-up. The consequent dislocation also impinges on those other members of the household who are its 'indirect victims'—most commonly children (Morgan and Zedner 1992; Burman and Allen-Meares 1994). At its worst, the impact is such that they should properly be recognized as victims in their own right.

VICTIMS' MOVEMENTS AND VICTIMS' JUSTICE

In the United States, a strongly rights-based victim movement emerged in the 1960s and 1970s. Largely conservative in outlook, often seeking more punitive responses to offenders, it was in some states associated with demands for the retention or reintroduction of the death penalty (Hodgkinson 2004). Dissatisfied with the existing responses to victims, the movement demanded a reorientation of the criminal justice

system in favour of victims. Latterly it has become more variegated, with groups like 'Parents of Murdered Children' eschewing political involvement, while other groups like 'Families and Friends of Murder Victims' engage in high-profile political lobbying.

In Britain, the central organ of the victim movement, Victim Support, has a very different history. Beginning life as a local initiative in Bristol in 1974, Victim Support grew dramatically in the following decades (Rock 1990). Its 370 local schemes now cover the entire country, with over 1,000 paid staff and 18,000 volunteers helping over one and a half million victims and over 235,000 witnesses in the criminal courts a year (Rock 2004a: 121). Traditionally, Victim Support has maintained a relatively low-key political profile. More recently it has adopted a proactive role promoting service rights for victims, though not rights of allocution, arguing that victims should 'be free of the burden of decisions relating to the offender' (www.victimsupport.org.uk). Lobbying by Victim Support contributed to the introduction of the Domestic Violence, Crime and Victims Act 2004, the provisions of which give statutory protections to victims' interests (see below).

The main thrust of Victim Support's endeavour remains in the provision of emotional support, practical services, and information to individual victims at a local level (Maguire and Kynch 2000: 13). The BCS suggests victims find contact with Victim Support very helpful or fairly helpful in 64 per cent of cases, especially where contact was made soon after the offence and by telephone, not letter. Of all BCS-recorded incidents, only 3 per cent resulted in some contact with Victim Support, and in 91 per cent of cases this contact was initiated by Victim Support (Ringham and Salisbury 2004: 11). Despite efforts to harmonize provision, there remains considerable diversity of local policy and practice, particularly as between inner-city and rural areas. The availability of volunteers also determines service provision; particularly since inner-city areas with the highest crime rates tend to furnish the fewest recruits. Although there has been a massive increase in government funding to Victim Support from £5,000 in 1979–80 to over £30 million in 2005 (although funding is now static) demand for services still outstrips resources. For example, the Victim Supportline launched in 1998 took over 15,500 calls during 2005, but more than double that number went unanswered for lack of volunteers (just over half of all calls were related to violent crime, while one-fifth came from people affected by domestic violence: www.victimsupport.org). Formally, Victim Support is committed to providing services to all victims and witnesses of crime (there has been, since 2003, a Witness Service in every criminal court in England and Wales): in practice it is obliged to balance this ideal with the targeting of limited resources to those most in need. Victim Support's focus has moved from concentrating on 'conventional' victims of burglary, robbery, and theft, to victims of sexual and violent crime and the families of murder victims (increasingly in cooperation with SAMM, see below) (Victim Support 2006).

Other established organizations include the National Society for the Prevention of Cruelty to Children (NSPCC) which, since 1884, has carried out campaigns, research, education, and community-based protection of abused children. The more recently founded (1986) Childline (which merged with the NSPCC in 2006) provides a free 24-hour helpline for children in distress or danger.

Refuges are an important source of support for victims of domestic violence. They grew out of the women's movement of the late 1960s and 1970s. The first refuge for battered women was established in 1972. Most local and regionally based services are coordinated through the Women's Aid Federation (founded in 1974). In 2001/02 refuges were provided for over 40,000 people, and nationally, over 140,000 women and their children were given outreach support. Another source is Refuge, an independent charity set up in 1979. It provides a home to 1,200 women and children, as well as helplines, outreach services, and advice centres, offering support, advice, and referrals to about 80,000 abused women and their children a year. In 2003/4 the National Domestic Violence Helpline answered approximately 74,000 calls. Funding of refuges is piecemeal and precarious with the result that provision is variable, heavily reliant on voluntary support, and often in poor-quality accommodation (Dobash and Dobash 1998).

Rape Crisis centres developed out of the same wave of re-emergent feminism in the 1970s, on a similar model to that of refuges. First opened in London and Birmingham, rape crisis centres spread nationwide offering emotional support and legal and medical advice to women who have been sexually assaulted or raped. With few funded posts, reliant mainly on the work of volunteers, rape crisis centres offered a 24-hour telephone helpline and provided face-to-face counselling. Committed also to educating and informing the public about rape, Rape Crisis has preferred the term survivor to victim. The Rape Crisis Federation was founded in 1996 as an umbrella organization for local rape crisis groups, a referral service to provide advice, information, and training to local groups, and campaigning on local issues of sexual violence. In 2003, however, the Home Office withdrew funding, forcing it to close, leaving many areas without support for rape victims (www.rapecrisis.org.uk). Support for victims of sexual offending is now channelled through the Victims' Fund introduced by the Domestic Violence, Crime and Victims Act 2004. Administered by the Home Office, the Victims' Fund provides £4 million, recovered from the proceeds of crime surcharge on all criminal convictions, and on fixed penalty notices, which could boost the total value of the Fund to up to £30 million. Priorities include developing and extending the network of Sexual Assault Referral Centres (SARCs) and grants of up to £50,000 to voluntary and community organizations (Home Office 2004).

New lobby groups promoting particular victims' interests continue to proliferate. The Zito Trust, which campaigns for victims of mentally disordered offenders; the tiny pressure group Justice for Victims, campaigning on behalf of the families of homicide victims; and Support After Murder and Manslaughter (SAMM), which primarily provides support after homicide, were launched in the mid-1990s. While some groups work with government for the advancement of victims' interests, others, notably Justice for Victims, are more confrontational and exigent in their promotion of victims' interests, and less mindful of the need to balance these against the rights of offenders. The victim movement is ideologically diverse. Relations between the groups range from close cooperation to outright hostility (Rock 1998a: 206–77). Despite, or perhaps because of, this heterogeneity, the combined impact of their endeavours has been considerable.

Although the victims movement in general has been careful to avoid political involvement in penal policy (indeed, Victim Support has eschewed the very title 'victims' movement'), certain victims organizations have been vociferous in their demand for greater severity in sentencing (Rock 1998a: 218). Vocal, determined, or resourceful victims can and have had a profound impact on politics and policy-making. Lobbying by some victim interest groups has contributed to a trend towards increasingly punitive policies. The victim has been invoked as a potent rhetorical device or symbolic tool to lever up punitiveness in what Ashworth calls 'victims in the service of severity' and Garland describes as 'the projected, politicized, image of "the victim" . . . as an all-purpose justification for measures of penal repression' (Ashworth 2000: 186; Garland 2001: 143; MacCormick and Garland 1998). Similarly, the naming of criminal laws and penal measures after individual victims (for example, 'Megan's Law' in America, and the (largely unsuccessful) campaign for 'Sarah's Law' in Britain) uses the plight of the victim to legitimate more extensive controls and new punitive measures (Wood 2005).

A more general political commitment to ' "rebalance" justice in favour of victims' and to promote 'victim's justice' is a central plank of government policy (Home Office 2002). One outcome is the Victims Advisory Panel (placed on a statutory footing by the Domestic Violence, Crime and Victims Act 2004). Chaired by the Minister of State with responsibility for victims' issues, the Panel brings together Ministers and officials, as well as representatives of victims' organizations, and 10 lay members, who have themselves been victims of crime, to discuss the impact of crime and to consider new government policies. It reports on the provision and implementation of victim and witness services and support (Victims Advisory Panel 2003/2004).

VICTIMS IN THE CRIMINAL JUSTICE PROCESS

The victim is fast becoming accepted as a key player in the criminal justice process. Acknowledgement of the victim's status as a party to the dispute (Christie 1977) and as an actor without whose cooperation in reporting crime, furnishing evidence, and acting as a witness in court, most crime would remain unknown and unpunished, has been a powerful driver of reform. Another is recognition that the process inflicts further or secondary psychological harms. Research has shown that insensitive questioning by police, poor information, delay, or unexplained decisions by the Crown Prosecution Service (CPS) to drop a case may compromise victims' willingness to cooperate and entail further suffering. This may lead them to withdraw from the criminal process and limit its ability to pursue cases effectively (Cretney and Davis 1997).

That victims' interests are not presently met is evidenced by, for example, by an international survey which suggests that about half of victims feel that the police 'did not do enough' about their crime (Van Kesteren *et al.* 2000: 7). Examination of Council of

Europe guidelines on the treatment of victims during criminal proceedings revealed that the majority of the 22 jurisdictions did not yet meet the criteria laid down (Brienen and Hoegen 2000). Such evidence has provided further support to efforts to grant victims' rights in the criminal process.

PUTTING RIGHTS INTO PRACTICE

To the extent it is possible to speak of rights for victims, they can be categorized under two headings. 'Service rights' refer to services to victims which do not affect procedure, such as information provided about case progress. 'Procedural rights', such as victims' rights of allocution, give victims a voice in the criminal process and may be detrimental to the defendant (Ashworth 2000; Cape 2004). Although we adopt this distinction as analytically useful, it breaks down in respect of those service rights that have procedural implications; for example, the screening of vulnerable victims in court may have an adverse impact on the defendant's right to a fair trial.

Service rights

In Britain, the Home Office has made progressive attempts to improve the ways in which victims are kept informed by police and prosecutors. Two *Victim's Charters* published in the 1990s (Home Office 1990 and 1996) set out standards of service to ensure that victims received better information about case progress, that their views were obtained and considered, and that they received proper facilities and assistance in court. The One Stop Shop (OSS) was introduced under the *Victim's Charter* 1996, partly in response to evidence that victims were dissatisfied with the quality of information about case progress. Under the OSS pilot the police were made responsible for providing victims with information throughout the case. In practice the scheme failed to live up to expectations. Information often came too late or the police were not able to explain decisions made by others (Hoyle *et al.* 1999: 41–2). Also, many serious crimes (including domestic violence) were excluded from the scheme, as were decisions relating to remands and bail conditions, leaving victims dissatisfied with information provision (Ringham and Salisbury 2004).

The Charters have been replaced by a Code of Practice introduced under the Domestic Violence, Crime and Victims Act 2004 (section 32). In force since April 2006, the Code sets out minimum standards of service that victims and witnesses can expect from criminal justice agencies. For example, most victims (the Code does not extend to corporate victims) have the right to information about the decisions relating to case progress. These include bail and remand decisions (whose omission under the OSS scheme had been a source of dissatisfaction to victims: Hoyle *et al.* 1998) which must be reported within specified timescales, shortened in the case of vulnerable or intimidated witnesses.[4]

[4] Vulnerable victims are defined as persons under the age of 17 and those with mental or physical disabilities. The definition of intimidated victims is very broad ranging, deriving from sociodemographic and offence-related factors that provide evidence of likely intimidation or potential further victimization.

For the small percentage of victims who are called as witnesses, there are further service rights: to render the trial less intimidating, prosecutors are supposed to introduce themselves and later explain the outcome. Yet witnesses remain at the mercy of questioning by defence counsel *and* prosecution alike. Attempts have been made to ameliorate the position of victims both through the provision of support and by statutory reform.

The Witness Service, run by Victim Support, covers all courts in England and Wales and provides advice, information, and support to help witnesses through the stress of a court appearance. It ensures better facilities, such as separate waiting areas, offers pre-trial visits to court, and helps witnesses make sense of the court process. Whilst improving the experiences of witnesses, especially immediately prior to the trial, arguably the Service is as much about improving witness attendance rates, thereby increasing the rate of timely guilty pleas and increasing successful prosecutions (indeed, much innovation done in the name of victims and witnesses has the ulterior purpose of increasing the efficiency of the system by encouraging victims to report crime and witnesses to testify more effectively and thereby increasing convictions). The Witness Service can do little to lessen the ordeal of cross-examination in the witness box and witness service volunteers may not be able adequately to explain court decisions (Riding 1999).

To resolve these problems, the Victims' Code of Practice introduced 165 Witness Care Units across England and Wales (Home Office 2005c). The units bring CPS and police together to provide 'better information, reassurance and support' to victims and witnesses and encourage their cooperation at trial. Witness Care Officers act as a single point of contact, providing information about case progress, and coordinating other support agencies. Pilot studies carried out in 2003 found that the Units improved witness attendance at court by nearly 20 per cent, reduced the number of trials adjourned due to witness difficulties by 27 per cent, and led to a 17 per cent drop in cracked trials. In addition, a 10-point Prosecutors' Pledge introduced in 2005 now provides for information, emotional and practical support, and court visits prior to trial (www.cps.gov.uk).

Recognition of the secondary victimization experienced by vulnerable witnesses such as rape victims, who can be subjected to intensive and degrading questioning, has led to many procedural innovations and changes in the rules of evidence (Temkin 2002; Hamlyn *et al.* 2004; Burton *et al.* 2006). Where children are witnesses, judges have long removed wigs and robes or come down from the bench; barristers have de-robed; quietly spoken victims or witnesses are provided with microphones; and provision has been made for the use of screens, of live video links, and pre-recorded videotaped interviews, all intended to reduce the stress to victims (Morgan and Zedner 1992: 128–44; Keenan *et al.* 1999; Choo 2006: 307–34). The government paper, *Speaking up for Justice* (Home Office 1998) made 78 recommendations to improve the treatment of vulnerable and intimidated witnesses in the criminal justice system. Some of these required administrative action, such as training, guidance, early police/CPS strategy meetings, and separate waiting areas. Others required legislation. The Youth Justice and Criminal

Evidence Act 1999, Pt II provides for vulnerable or intimidated witnesses to be screened in court, or to give evidence by live link or in camera; for the removal of gowns and wigs; for the clearing of the public gallery; for the use of communication aids; for the admissibility of video-recorded evidence-in-chief and cross-examination; and for the examination of witnesses through an intermediary (Ashworth 2000: 190–1; Birch 2000). It provides also for the protection of certain witnesses from cross-examination by the accused in person, and restricts the cross-examination of rape complainants about their sexual history. The Criminal Justice Act 2003 went further, allowing any witness to give evidence via a live video link.

National surveys of witnesses show that 78 per cent were fairly or very satisfied with their experience of the criminal justice system (Angle *et al.* 2003). Eighty-one per cent of witnesses had contact with the Witness Service and 95 per cent of these found it supportive. Fifty-seven per cent of witnesses had the opportunity to see the courtroom prior to trial and 83 per cent were kept in separate waiting rooms. Despite efforts to prevent intimidation, 26 per cent of witnesses still felt intimidated by individuals, and 21 per cent felt intimidated by the process or environment.

However, studies of vulnerable witnesses are not so encouraging. Whilst some research has shown that those who took advantage of 'special measures' introduced in the 1999 Act were less likely to feel anxious or distressed than those not using them, and that a third would not have been willing and able to give evidence without them (Hamlyn *et al.* 2004), a recent evaluation of provisions for vulnerable and intimidated witnesses suggests that the administrative and legislative measures in place are not fully implemented and leave significant unmet needs (Burton *et al.* 2006). These later findings are consistent with Hamlyn *et al.* in terms of increased satisfaction rates amongst witnesses, and show a greater use of special measures in court. Although Burton *et al.* suggest deficiencies in the implementation of measures, Cooper and Roberts (2005) found video-recorded evidence-in-chief, TV link and screens were commonly requested and made available. Early identification of vulnerable and intimidated witnesses by the police and CPS is vital if these measures are to be used appropriately. Burton *et al.* (2006) found that these organizations continue to experience difficulties identifying those in need. Although these various measures have improved the experience of giving evidence for some victims, they do not appear to have improved the conviction rate for rape victims, which has declined over the past few decades, with current figures showing that fewer than 6 per cent of rape cases reported to the police result in a conviction (Home Office 2006).

Procedural rights

Whilst few argue against service rights, procedural rights are contentious because they can threaten defendants' due process rights and undermine fairness (Hudson 2004). Arguments against allowing victims a greater say include: the intrusion of private views into public decision-making; limitations on prosecutorial discretion; the danger that the victim's subjective view undermines the court's objectivity; disparity in sentencing of similar cases depending on the resilience or punitiveness of the victim

(Ashworth 1993); and, lastly, that to increase their involvement may further burden victims while raising their expectations unrealistically (Justice 1998; Reeves and Mulley 2000: 138). Nevertheless, partly as a result of lobbying by some wings of the victims movement (Victim Support resolved from the first that it would not comment on sentences and sentencing), there has been a significant expansion of victims' rights to influence decisions in respect of cautioning and charging decisions, plea negotiations, sentencing, parole, and release. For example, witnesses are routinely consulted in respect of trial dates and bail decisions. Since 1990, the Probation Service has been under an obligation to contact the victims of life-sentenced prisoners, and since 1995 victims of other categories of prisoner, to ascertain if they have concerns about the conditions attached to the offender's release, which the Parole Board is required to take into account in determining licence conditions (Crawford and Enterkin 2001). The Code of Practice imposes more extensive obligations on the Probation Service to inform victims as to parole and release and take account of their wishes in respect of release conditions.

In Britain Victim Statements were introduced under the Victim's Charter 1996, inviting victims to state the physical, financial, psychological, social, or emotional effects the offence had on them or their family (Hoyle *et al.* 1999). The term 'victim statement' rather than 'victim impact statement' was deliberately chosen to distance the initiative from American statements of opinion (Morgan and Sanders 1999: 1). It is claimed that victim statements give victims a voice, enable their views to be heard and taken into account, and increase victim satisfaction, and thereby their cooperation (Sanders *et al.* 2001).

Advocates of victim input have argued that it promotes more informed, accurate, and democratic sentencing decisions; recognizes the victim's status as the person harmed by the offence; helps victims to recover; increases their satisfaction and cooperation with the criminal justice system; and can promote rehabilitation by confronting the offender with the impact of his or her crime (Tobolowsky 1999). Criminal justice practitioners generally welcomed victim statements, but were divided as to whether they should influence sentencing decisions, not least because information so provided was potentially irrelevant, exaggerated, or unverifiable (Hoyle *et al.* 1999: 3). It is unclear whether the fact that victim statements, appear seldom to influence sentencing decisions is a product of resistance by criminal justice professionals to victims' influence (Erez 1999; Erez and Rogers 1999), or because they are 'misconceived in principle and unsatisfactory in practice' (Sanders *et al.* 2001). Most opponents have argued that victim statements impair the objectivity of the process; shift the focus away from legitimate sentencing factors and towards inappropriate considerations of victim retaliation and vengeance; risk disparate and disproportionate sentencing; erode the prosecutor's function and control over the prosecution; or further traumatize victims by creating unmet expectations or by obliging them to participate in the sentencing process against their wishes (Ashworth 1993; Tobolowsky 1999).

The British government introduced a 'Victim Personal Statement Scheme' in 2001 (Home Office 2001) despite considerable weaknesses documented by researchers (Hoyle *et al.* 1999). Just four years later, the Victims' Code of Practice no longer requires

the police to solicit victim personal statements,[5] except in respect of relatives of victims of murder and manslaughter who, it is proposed, should be able to make a personal statement in court (in person or via a public advocate) before sentence on how they have been affected by the crime (Home Office 2005a). Victim personal statements were introduced in Australia in the early 1990s (Cook *et al.* 1999) and have more recently been introduced in some European countries, for example the Netherlands and Poland (Wemmers 2005).

In the USA, the federal government and the majority of the states have constitutional or legislative provisions (or both) that require notification, to the victim, of important events and actions in the criminal process and allow, to varying degrees, crime victims to be present and to attend hearings at critical stages of the criminal process. Victims' right to be heard at sentencing has been widely adopted. The federal system and most states admit victim impact evidence though the prescribed content varies considerably. Some states explicitly authorize input only in regard to the direct physical, psychological, and financial impact of the crime whilst others admit opinions as to sentence (Blume 2003; Logan 2005). This latter right of allocution is clearly controversial (Bandes 1996; Arrigo and Williams 2003).

An area of particular controversy is the role of victim impact evidence in capital sentencing hearings. A recent decision of the US Supreme Court overruled previous judgments to pave the way for the admission of victim impact statements in death penalty cases (*Payne* v. *Tennessee*).[6] It remains unclear whether victims' opinions as to sentence are admissible, partly because the courts seem unable to distinguish between opinion testimony and victim impact evidence (Hoffmann 2003).

In Britain the emphasis has been on introducing procedural rights that do not involve victims in sentencing decisions. The Domestic Violence, Crime and Victims Act 2004 increased the protection, support, and rights of victims and witnesses, and created the role of Commissioner for Victims and Witnesses. The role of the Commissioner is to 'promote the interests of victims and witnesses' and 'take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses' and to 'keep under review the operation of the Code of Practice' (section 49).

The extent to which these various reforms create rights for victims remains open to debate. The interests secured by the Victims' Charters of the 1990s were arguably better thought of as 'legitimate expectations' and 'standards' (Justice 1998). Similarly, the Human Rights Act 1998 lacks any clear statement of victims' rights (Ashworth 2000: 188; de Than 2003), although it has established that Articles of the European Convention on Human Rights (ECHR) relating to the protection of life, liberty, and security of a person may be invoked in relation to victims. In the prevailing rights culture, the balancing of victims' rights against the right of the defendant to a fair trial under Article 6 is a source of continuing academic debate and court jurisprudence (Ashworth 2000). Even though the Code of Practice sets out the 'obligations of service

[5] Personal communication from Lisa Vernon, Home Office, October 2005.

[6] 501 U.S. 808, 827 (1991).

providers' and institutes the office of Commissioner, failure to comply does not, of itself, result in liability to legal proceedings (Home Office 2005c). Although victims have the right to appeal to the Parliamentary Ombudsman should they feel that service providers have failed to abide by its provisions, the continuing limits of enforceability makes it questionable whether the Code generates substantive rights for victims.

Compensation

In Britain, victims retain their theoretical but rarely exercised right to damages against the offender in a civil action, but have no right in criminal proceedings to compensation. They have either to rely upon the court to make a compensation order or to make claims against the state Criminal Injuries Compensation Scheme. This said, state compensation in Britain receives more applicants and pays out more money than similar schemes in other European member states (Home Office 2005b).

Unlike in jurisdictions such as France or Germany where victims have the right to pursue civil claims for compensation within the criminal process, in Britain compensation is payable by the offender as an ancillary order to the main penalty in cases where 'injury, loss, or damage' had resulted (under the Criminal Justice Act 1972). The Criminal Justice Act 1982 made it possible to order compensation as the sole penalty and required that the payment of compensation take priority over the fine. These developments reflected the growing importance attached to reparation over retribution. The Criminal Justice Act 1988 further required courts to consider making a compensation order in every case of death, injury, loss, or damage and give reasons for not doing so. It also extended the range of injuries eligible for compensation.

Compensation orders may now be made in respect of personal injury; losses through theft of, or damage to, property; losses through fraud; loss of earnings while off work; medical expenses; travelling expenses; and pain and suffering. The court must take account of the offender's circumstances and ability to pay. In most cases, compensation orders are paid in full within 12 months, not least because the courts have wide powers to enforce payment, including imprisonment. In 2004 12,300 offenders were ordered to pay compensation. Over the period 1999 to 2004, the total number of offenders ordered to pay compensation at magistrates' courts decreased by 12 per cent from 43,800 to 38,400 for indictable offences and increased by 45 per cent from 54,800 to 79,300 for summary offences. At Crown Courts the total number of offenders ordered to pay compensation for indictable offences has remained stable for the past three years (Nicholas *et al.* 2005). The Criminal Justice Act 2003 makes it possible to order compensation pre-trial under conditional cautions.

Compensation is also made through the state-funded Criminal Injuries Compensation Scheme (CICS) set up in 1964 to make discretionary payments to victims, or the dependants of those who have died, of unlawful violence. Payments are made to reflect 'society's sense of responsibility for and sympathy with the blameless victims of crimes of violence' but explicitly not in recognition of any liability (CICA 2006). The scheme thus combines material compensation with a symbolic gesture of sympathy (Miers 1997: 12; Duff 1998: 107).

In an attempt to curb the spiralling cost of payments and improve administrative efficiency, a tariff scheme was introduced under the Criminal Injuries Compensation Act 1995 (Miers 2001b). The minimum award is set at £1,000 (effectively denying compensation to victims of minor assaults and robberies). The tariff groups injuries of comparable severity into 25 bands, each receiving a standard fixed payment (from £1,000 to £250,000). For those who are incapacitated as a result of their injury for 28 weeks or more, a separate payment for loss of earnings (or potential earnings) and for the cost of any necessary special care is available up to a maximum of £500,000. This leaves those unable to work for periods of less than 28 weeks without compensation (though they may receive relevant state benefits). Compensation is payable for loss of dependency in cases of fatal injury, together with a fixed award of £11,000 to the dependant (or £5,500 each if there is more than one). Critics argue that this is a derisory figure that demeans the value of the life that has been lost. But it is in fact marginally higher than the equally conventional sum payable in a civil action against the offender, against which the same criticism could be levelled.

The underlying issue concerns the scheme's purpose. It has been criticized for unduly limiting maximum awards, excluding consideration of the complexities of individual cases, failing to take full account of loss of earnings, and removing parity between state compensation payments and civil awards. When the tariff scheme was introduced in 1996, the Home Office was clear that it 'no longer tries to compensate victims in the same way as civil law damages, but simply provides a lump sum in recognition of the injury suffered' (Home Office 1999: 46). This clarity is, however, compromised by the continuing use of the word 'compensation' and of the provision of 'additional compensation'. These features inevitably create an expectation for victims that the scheme *will* deliver an award close to the outcome of a successful civil action, and equally inevitably invite criticism that victims of more serious and disabling injuries are under-compensated. Radical proposals to restructure the scheme (Home Office 2005b) create an opportunity to give its payments a name that does not use the word 'compensation' but which would both be more accurate as to their purpose and divorce them from unhelpful comparisons with civil actions (Miers 2006b).

Compensation is available only to victims of violence, though why they should be singled out for help denied other victims has long been a matter of debate (Ashworth 1986; Duff 1987; Miers 1997). The Domestic Violence, Crime and Victims Act 2004 (section 57) provides for the Criminal Injuries Compensation Authority to recover from offenders the money it has paid to their victims. The undoubted advantage of the CICS remains that victims are not dependent on the remote possibility that the offender will be identified, prosecuted, convicted, ordered to pay compensation, and have the means to pay.

A controversial aspect of the scheme is the regard given to the victim's character and history. The police play a significant role as gate-keepers: in deterring 'undeserving' victims from applying; failing to inform those they consider inappropriate claimants about the CICS; or giving information to the Authority which calls into question the

legitimacy of claims (Newburn and Merry 1990; Miers 2000). Where an applicant behaved provocatively or has convictions for serious offences, however unconnected with the offence in question, compensation will generally be withheld. Those who fulfil the stereotypical picture of a deserving recipient or ideal victim may thus receive awards more readily than those who do not (Christie 1986; Miers 2000).

Recourse to the CICS by victims increased dramatically for most of its life, but numbers have declined in recent years. Whereas there were nearly 80,000 claims in 2001/02, the Criminal Injuries Compensation Authority (CICA) currently handles about 66,000 cases and pays out to victims approximately £170 million a year (Home Office 2005b). Concern about previous limitations of the scheme (Home Office 1999) led to the introduction of revisions in 2001, including an increase in the level of awards and some amendments to victims' eligibility. As claims continued to rise, so did expenditure on compensation payments. The government's response is the consultation document published in 2005 outlining plans to simplify the scheme. Whilst aiming to increase the amount of support provided to those most seriously injured by crime, it proposes to remove financial compensation to victims with less serious injuries and offer, in its place, practical support. This could include help with improving home security, immediate financial assistance with dental care and other costs, and access to counselling and other services for victims. The document also places an emphasis on more financial compensation from offenders and greater enforcement of compensation orders (Home Office 2005b).

Practical support for victims of crime will be managed by Victim Care Units to be established around the country. The government plans to work with Victim Support and other voluntary organizations to develop a range of help for victims including: paying for security upgrades in burglary cases; providing short-term financial help where the victim faces immediate hardship as a result of the crime; providing personal attack alarms to victims of violent crime; working with the local community and local authorities to improve security, e.g. CCTV and street lighting; liaising with housing, benefits, education, and social services to ensure that the victim's needs are fully understood and met; and help with claiming insurance or compensation, or dealing with other administration needed as a result of the crime (Home Office 2005b).

THE RISE OF RESTORATIVE JUSTICE

The proliferation of research about victims has raised larger questions about the purpose of criminal justice and the place of the victim within it. Victim surveys have consistently revealed that victims are no more punitive than the general public, and many are willing to engage in direct mediation, or to receive compensation from their offender (Mattinson and Mirrlees-Black 2000: 41). A recent poll shows that most victims want a criminal justice system that deters criminals and do not believe that

custodial sentences do this. A majority favour community service and restorative meetings between victims and offenders over more punitive measures (http://www.icmresearch.co.uk/ reviews/2006; Travis 2006). There is clearly an appetite for restorative justice.

Restorative justice is an umbrella term for a variety of theories and practices which share the aim of repairing a wide range of harms, including material and psychological damage and damage to relationships and the general social order, caused by criminal behaviour (Hoyle and Young 2002b). Most restorative justice advocates agree that its core values include: respect; accountability; consensual participation and decision-making; and the inclusion and empowerment of all relevant parties (Young and Hoyle 2003a). The United Nations defines restorative justice as a process 'in which the victim, the offender and/or any other individuals or community members affected by a crime participate actively together in the resolution of matters arising from the crime' (Centre for International Crime Prevention (United Nations) 1999). In contrast to mediation, therefore, bi- or tri-partite resolution is replaced with a meeting of all those involved, however tangentially, facilitated by a youth justice coordinator, social worker, police officer, and occasionally a volunteer. The group discusses the offence, the circumstances underlying it, its effects on the victim and others, and how damaged relationships can be restored and the victim compensated.

BRIEF HISTORY OF RESTORATIVE JUSTICE

Restorative justice was primarily developed not from academic theory but by practitioners frustrated with conventional criminal justice practice (Johnstone 2003a). Practical attempts were made to draw on local indigenous practices with the aim of involving victims, reforming offenders, and repairing damaged communities (Marshall 1999). Nonetheless, some of those responsible for establishing and in particular promoting restorative practices have drawn on the work of academics who sought reorientation of the criminal justice system toward the victim. For example, the oft-cited article, 'Conflicts as Property', has been particularly influential (Christie 1977). Christie argued that crime not only is a wrong against society but often represents also a private wrong done by the offender to a specific victim and that to benefit from conflicts we must stop handing them over to professionals to resolve. This shift, it is claimed, would reduce reliance on punitive disposals and institute in their place positive attempts to rectify the harm caused by crime (Zehr 1990). Such writings have been used to justify practical attempts to put the victim at centre stage, a stakeholder, along with the offender and the wider community. They hark back to a mythical 'golden age' when victims were in control of the decision to prosecute and the presentation of their case (although the heyday of the victim was not quite as unsullied as some of its admirers imagine: Rock 2004b).

An important precursor to restorative justice was experiments with victim-offender mediation and reconciliation carried out in North America and Britain in the 1970s. The first victim-offender reconciliation programme was founded in Kitchener,

Ontario, in 1974 (Peachey 1989). Later, various community programmes brought victims and offenders together, usually after a court had passed sentence, to facilitate individual reparation and reconciliation. By the mid-1990s there were over 300 such programmes in North America and a number of similar schemes in England and Wales (Dignan and Marsh 2001). The 1980s saw the first attempts to include the wider community in such programmes. For example, sentencing circles, group mediation involving the affected parties and the wider community, were inspired by indigenous Canadian peacemaking processes (Lilles 1996). From these local, indigenous practices emerged family group conferences, meetings that involve the family of the offender, the victim, and a trained facilitator.

New Zealand was the first country to put family group restorative conferences into a statutory framework. The New Zealand Children, Young Persons and their Families Act introduced the new youth justice system in 1989, the same year that Braithwaite's seminal book, *Crime, Shame and Reintegration* was published. Conferencing in New Zealand, together with Braithwaite's theory of reintegrative shaming, led to the transfer of the New Zealand model to Wagga Wagga, New South Wales, albeit with conferences facilitated by the police (Daly 2001). In 1991 the renowned 'effective cautioning' scheme began in Wagga Wagga to caution juvenile offenders according to restorative principles (Moore and O'Connell 1994). This was later introduced to the UK, via the Thames Valley Police restorative cautioning scheme, and has since been influential in informing some restorative practices in the youth justice system, in particular the final warning scheme, introduced under the Crime and Disorder Act 1998 (Hoyle 2006) (although there are tensions between attempts to introduce restorative measures and the increasing use of prison for juveniles, see Morgan and Newburn, Chapter 30, this volume).

Unlike legislators in New Zealand and in most Australian states and territories, the UK Labour government strongly endorsed police-led restorative cautioning, as practised in Thames Valley (Young and Goold 1999). It introduced various new youth justice measures which involved the police and other key agencies in restorative justice (Crawford and Newburn 2003). The Crime and Disorder Act 1998 replaced police cautions for young offenders with reprimands and warnings, which are supposed to be delivered according to restorative principles under the auspices of youth offending teams (section 39), and it introduced reparation orders (section 67), which require young offenders to make reparation to the victim or community at large. In making the order, the court is reminded to take into account the victim's views, and reparation should not be ordered without their explicit consent (Fionda 2005). Following the advice of the report of the Home Office sentencing review (Halliday 2001: 21), and the Auld review of the criminal courts (Auld 2001), the government introduced the conditional caution under the Criminal Justice Act 2003 (Part 3, sections 22–7). This disposal for adult offenders includes reparative or restorative conditions stipulated by the police and approved by the Crown Prosecution Service. Indeed, this Act (section 142), reflecting the restorative principles endorsed in the White Paper, *Justice for All* (Home Office 2002), makes clear that one of the statutory purposes of sentencing in general is the making of reparation by offenders to persons affected by their offences.

Whilst academic and political attention has focused on restorative processes with young offenders (Hoyle *et al.* 2002; Fionda 2005), there has been less consideration of its potential in respect of adults and in difficult cases, such as sexual, racial, or domestic violence, or homicide. This has started to change with restorative experiments being carried out in prisons (Van Ness 2006), between victims and people convicted of serious offences (Shapland *et al.* 2006); with victims of sexual and racial crimes (Hudson 1998; Daly 2006); with victims of domestic violence (Strang and Braithwaite 2002); with families of homicide victims (Umbreit *et al.* 2003), including those cases where the offender is awaiting execution (Umbreit and Vos 2000); with disputes and bullying in schools (Morrison 2006); with complaints against the police (Young *et al.* 2005); and with victims of state-sponsored violence, human rights abuses, and even genocide (Drumbl 2002; Roche 2002; Froestad and Shearing 2006; Llewellyn 2006). These diverse initiatives share a commitment to bring victims, and others harmed by criminal or offensive behaviour, into contact with offenders and other interested members of the community, and to provide opportunities for material and symbolic reparation. This being so, they have the potential, at least, to restore victims and to reintegrate offenders (Hoyle and Young 2003).

RESTORATIVE JUSTICE: A VICTIM-CENTRIC APPROACH?

Restorative justice, more than any other initiative since the establishment of the modern criminal justice system, has the power to reinstate the victim centre stage with the offender, and the majority of victims claim that this is where they want to be (Travis 2006). Research suggests that many victims want a less formal process where their views count, more information about both the progress and the outcome of their case, to participate in its resolution, and to receive material reparation and emotional restoration, including an apology (Strang 2002).

Despite concerns expressed by both critics and advocates about the role of victims in restorative justice, a consistent picture of high aggregate victim satisfaction with police-led processes emerges from the research: for example, over 90 per cent of victims in the scheme in Wagga Wagga, New South Wales, were satisfied, and 96 per cent in a similar scheme in the USA (McCold and Wachtel 2002). At their best, restorative encounters appear to alleviate victims' feelings of anger or fear towards their offender, or crime more generally, and bring about genuine remorse on the part of the offender, encouraging a greater sense of victim empathy. Victims can, and often do, receive explanations, apologies, and occasionally compensation. In the Thames Valley Police restorative cautioning initiative the therapeutic benefits to victims of attending restorative sessions were clear. The overwhelming majority of victims who participated felt satisfied with the process, and fear of, or anger with, the offender had generally disappeared. Ninety-two per cent said that the meeting had been a good idea, with only one victim feeling marginally worse for having attended (Hoyle *et al.* 2002).

Levels of victim participation in restorative justice schemes are typically low. Research on youth offender panels, part of referral orders, established under the Youth

Justice and Criminal Evidence Act 1999, found that victims attended panel meetings in fewer than 7 per cent of cases, partly due to failures of communication (Newburn *et al.* 2002). A restorative cautioning scheme in Mountpottinger, Northern Ireland, also brought offenders together with victims in only 7 per cent of cases (O'Mahony *et al.* 2002). The Thames Valley Police restorative cautioning scheme was a little more successful, managing to get 14 per cent of victims to conferences (Hoyle *et al.* 2002). However one recent initiative achieved victim participation in 91 per cent of conferences (Shapland *et al.* 2006). Likewise, in New Zealand victims attended about half of all family group conferences (Morris and Maxwell 2000: 211), and in Canberra they attended in about 80 per cent of cases (Strang 2002: 121).

Since victims express an interest in meeting with offenders and generally benefit from those encounters, it is possible that the low victim participation rates in many schemes result from failures of communication. Data from the Thames Valley suggest that whilst some victims choose not to participate through fears of retaliation or because of practical constraints upon their time, others were not provided with sufficient information about the planned session to make an informed choice about whether to attend (Hoyle 2002). Hence, they were effectively excluded from the process.

Where victims want to communicate with the offender, but not to take part in a restorative session, alternative means of communication should be found. In the Thames Valley such processes were not carried out at all or were carried out inadequately. Often the facilitator failed accurately to reflect the victim's experiences and wishes in presenting a victim statement, and misleading information was passed on to the conference participants. Frequent failures to provide feedback information about the restorative sessions to those victims resulted in their feeling irate and excluded (Hoyle 2002).

To judge the success of restorative justice schemes by reference only to victim participation rates might encourage undesirable pressure upon victims to take part. But on current evidence it is far from clear that restorative justice is centrally, or even principally, about victims. One review of restorative justice programmes in 12 European countries found that only one country (Denmark) claimed to be victim oriented; a further five are offender oriented; in two countries the orientation varies with the particular programme; and in the remaining four the orientation is mixed (Miers 2001a: 79).

The question then arises: how much is restorative justice promoted in the interests of victims and how much in the interest of offenders or crime reduction? Certainly research on the latter is inconclusive. Data from New Zealand and Australia suggest that restorative justice may have some crime-reductive effect, at least in some types of case. Maxwell and Morris (2001), in New Zealand, found evidence consistent with a reduction in reoffending even when other important factors such as adverse early experiences and subsequent life events were taken into account. When compared to court, restorative conferences in Canberra were found to result in a substantial reduction in reoffending rates by violent offenders, a small increase in offending by drink drivers, and no difference in repeat offending by juvenile property offenders or shoplifters

(Sherman *et al.* 2000). However, research on the Thames Valley restorative cautioning scheme found insufficient evidence to prove it was more effective than traditional cautioning in reducing re-sanctioning rates. Furthermore, there were no significant differences in the frequency or seriousness of subsequent offending between offenders who met their victims and those who went through a restorative caution without the victim present (Wilcox *et al.* 2004).

Research suggests other benefits such as improvements in offenders' relationships with their families; reductions in truanting and exclusions from schools; and reductions in offending and/or changes in offending behaviour which, whilst not amounting to desistance, clearly indicate a move away from recidivism and towards cessation of particularly unacceptable behaviour (Hoyle and Young 2002b). But these are primarily benefits for offenders and the wider community. Ashworth has therefore warned of the dangers of 'victim prostitution' in restorative justice (Ashworth 2000: 186), whereby victims are used as a means to diversion and crime reduction, not as ends in themselves (Young and Goold 1999).

The most difficult questions, not yet answered to the satisfaction of either critics or advocates, concern the place of restorative justice in the criminal justice system and, in particular, its relationship to the state, including who should facilitate meetings and whether outcomes should be guided by principles of proportionality (Young and Hoyle 2003b; Hoyle 2006). Restorative principles have historically been incorporated somewhat awkwardly into the existing punitive framework (Zedner 1994; Brown 2001). Opinions differ as to the extent to which restorative justice should be bound by principles of due process. On the issue of proportionality, for example, there are those who regard it as paramount (Ashworth 2002) and those who do not (Braithwaite 2002), with others arguing for reparative processes and outcomes within upper and lower limits of proportionality (Cavadino and Dignan 1997; Ashworth 2002; Braithwaite 2002). Questions of proportionality and access to legal advice are not only relevant to offenders, they also concern victims, the wider community, and the public interest in cases where victims feel coerced into agreeing to disproportionately low reparation, where deliberative accountability has failed (Roche 2003).

The problems entailed in reorienting the criminal justice system towards the victim by means of restorative justice have not passed unobserved (Ashworth 1986; von Hirsch *et al.* 2003). Objections include: that it has no penal character; that to secure reinstatement to the victim is no more than the enforcement of a civil liability; and that by focusing on harm, it fails to take sufficient account of the offender's culpability. Looking at the sentencing practice of the Courts of Appeal in cases which have involved restorative processes, Edwards (2006) demonstrates potential incompatibilities between restorative values, in particular between allowing victims rights of allocution regarding sentence, and sentencing principles of proportionality, consistency, and objectivity. In practice the low participation of victims in many restorative initiatives leaves open the question of how far restorative justice practice, as opposed to theory, is victim centred.

CONCLUSION

Victims of conventional crimes now attract an unprecedented level of interest, both as a subject of criminological enquiry and as a focus of criminal justice policy. It remains the case that some victims of violence, such as those caught up in civil war, genocide, or other conflicts are only at the fringes of criminological concern, especially in the West. Far from being simply a compartmentalized topic, victim research has had an impact upon every aspect of criminological thinking and has profoundly altered our picture of crime by uncovering a vast array of hidden offences, many against the most vulnerable members of society. Academic scholarship has shifted, over the last few years, with less attention given to the impact of crime on victims, psychological or otherwise, and more focus on contentious questions about the role of victims in the criminal process. Political pressure, too, has raised the victim's profile, ensuring recognition of victim needs and stressing the importance of victim services. It has greatly expanded the role of compensation, provision of services, and information, and has allowed victims' interests to inform key decisions in the criminal justice process. At a time when the impulse to punish dominates, the current commitment to restorative justice, especially for young offenders, is an important countertrend. How far restorative justice serves the interests of victims, however, remains a matter of live debate.

SELECTED FURTHER READING

Goodey, *Victims and Victimology: Research, Policy and Practice* (Pearson Education, 2005) and Dignan, *Understanding Victims and Restorative Justice* (Open University Press, 2005) are both good overviews of the subject. On the problems entailed in researching victims see Walklate, 'Researching Victims', in King and Wincup (eds), *Doing Research on Crime and Justice* (Oxford University Press, 2000). For contemporary academic, policy, and political debates on the nature, extent, and impact of criminal victimization and policy responses to it see Walklate, *Handbook on Victims and Victimology* (Willan, 2007, forthcoming). On the development of the victims' movement, see Rock, *Constructing Victims' Rights: The Home Office, New Labour, and Victims* (Oxford University Press, 2004). Good collections of essays include Crawford and Goodey, *Integrating a Victim Perspective within Criminal Justice* (Ashgate Dartmouth, 2000) and Hoyle and Young, *New Visions of Crime Victims* (Hart Publishing, 2002). The role of the victim in the criminal justice system is an area of lively debate (Cape, *Reconcilable Rights? Analysing the Tension between Victims and Defendants*, Legal Action Group, 2004). Classic texts, including Christie's 'Conflicts as Property', can be found in Johnstone, *A Restorative Justice Reader: Texts, Sources, Context* (Willan, 2003). On restorative justice see Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989) and Braithwaite, 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice* (1999), and Strang, *Repair or Revenge: Victims and Restorative Justice* (Clarendon Press, 2002). For an overview of its international development see Miers, 'The International Development of Restorative Justice: A Comparative Review', in Johnstone and

van Ness (eds), *Restorative Justice Handbook* (Willan, 2006). Of the many edited collections on restorative justice, its potential, and its limits, see von Hirsch *et al.*, *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003) and Johnstone and Van Ness, *Handbook of Restorative Justice* (Willan, 2006).

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