PREFACE

This book contains an edited selection of papers given at the 8th International Symposium on Victimology held at the Convention Centre in Adelaide, South Australia from 21 to 26 August 1994. The Symposium was organised by the Australasian Society of Victimology (ASV) on behalf of the World Society of Victimology (WSV). The WSV is an international nongovernmental organisation with consultative status category II with the United Nations Economic and Social Council and with the Council of Europe. Its membership includes 'scientists, students, organisations, victim helpers, volunteers, lay persons and others' concerned with issues of scientific research and practical humanitarian help for victims of crime, victims of abuse of power and victims of other tragedies.

One of its key activities is convening the International Symposium every three years. These have been hosted in the past in Jerusalem (1973), Boston (1976), Munster (1979), Tokyo (1982), Zagreb (1985), Jerusalem (1988) and Rio de Janeiro (1991). The Adelaide Symposium attracted 461 delegates from 39 countries, and 171 papers were delivered. We would like to thank the following:

The Executive Committee of the WSV in the three years prior to the Symposium:

President:	Hon. C. J. Sumner (Australia)
Vice-Presidents:	Prof. Ester Kosovski (Brazil)
	Prof. Koichi Miyazawa (Japan)
	Prof. Irvin Waller (Canada)
	Dr Marlene Young (USA)
Secretary-General:	Prof. Gerd Ferdinand Kirchoff (Germany)
Treasurer:	Prof. Hans Joachim Schneider (Germany)
Members:	Prof. Duncan Chappell (Australia)
	Madame Marie-Pierre de Liege (France)
	Prof. LeRoy Lamborn (USA)
	Dr Joanna Shapland (UK)
	Chief Adedokun Adeyeme (Nigeria)
	Prof. K Chockalingham (India)
	Prof. Zvomimir Paul Separovic (Croatia)

The ASV Organising Committee was:

President:	Hon. C.J. Sumner
Chairperson:	David Hunt AO
Symposium Director:	Mike Duigan
Symposium Organiser:	Anita Scandia
Academic Director:	Dr Peter Grabosky
Committee Members:	Gary Byron, Prof. Duncan Chappell, Julie Gardner,

Kate Hannaford, Mark Israel, Kym Kelly, Linda Matthews, Sgt. Michael O'Connell APM, Andrew Paterson, Rick Sarre, Harold Weir, Ray Whitrod AC, Judge Andrew Wilson.

Particular thanks are due to the Symposium Director, Mike Duigan, and the Symposium Organiser, Anita Scandia, for what was generally recognised as a highly successful event.

Sponsors of the Symposium included the Australian Government and the Australian Institute of Criminology (AIC). The AIC agreed to include the Symposium as part of its regular conference program, provided administrative assistance and agreed to publish this book of edited proceedings. The South Australian Government through the departments of the Attorney-General and the Police assisted with financial and staff support. In December 1993, the Government in South Australia changed and the incoming Liberal administration through its Attorney General, the Hon. K.T. Griffin MLC, continued the support provided by the outgoing Labor Government. Other sponsors were the Australian International Development Assistance Bureau (AIDAB) which enabled delegates to attend from African and Asian countries, one of the key aims of the organisers. Other sponsors included Qantas Airlines, Law Foundation of SA, Australia-India Council, Australia-Korea Foundation, the Miyazawa Foundation of Japan, the Adelaide City Council and its Mayor the Rt. Hon. Henry Ninio, the Australian Crime Prevention Council, Victims of Crime Service (VOCS), the Australian Victims of Crime Association and the University of South Australia School of Law. Volunteers from VOCS and the Australian Crime Prevention Council as well as other volunteers, made a significant contribution to the success of the Symposium.

The Governor of South Australia, Dame Roma Mitchell DBE AC, who is a former Justice of the Supreme Court of South Australia and Chair of the Australian Human Rights Commission, formally opened the Symposium. Delegates were entertained by the Australian Aboriginal group Ngarindjeri—Narungga Dreaming, who gave a traditional Aboriginal welcome to delegates, and by the South Australian Police Band. A service of Remembrance and Response was conducted at St Peters Cathedral prior to the Opening.

We were also honoured by the presence of the Hon. David Libai, Minister of Justice of Israel, who attended the Symposium as a delegate and delivered a paper on the 'Rules of Procedure and Evidence for the Protection of Victims of Sexual Offences—The Israeli Experience'.

In 1993 we mourned the loss of John Freeman who had been a Member of the Executive Committee of the WSV for many years prior to his death. During the Symposium his contribution to victimology and the activities of the WSV were recognised in a Memorial Lecture given by Prof. Gerd Ferdinand Kirchoff, the Secretary General of the Society.

The South Australian Justice Administration Foundation held its Annual Oration in conjunction with the Symposium. This was given by Ms Helen Reeves OBE, Director, National Association of Victim Support Schemes, England, on the

topic ‘The Victim Revolution: The growth of policies and services for victims of crime and their impact on criminal justice’.

Rapporteurs who summed up the proceedings were Dame Ann Ballin (New Zealand), Helen Reeves (United Kingdom), Prof. Richard Harding (Australia) and Dr John Dussich (USA).

At the conclusion of the Symposium the WSV presented the following Awards:

Hans von Hentig Award:	Ms Irene Melup (United Nations)
Certificates of Appreciation:	Dame Ann Ballin (New Zealand)
	Mr Ray Whitrod (Australia)
	Justice Krishna Iyer (India)
	Prof. Elias Neuman (Argentina)

About the Editors

Chris Sumner is a barrister and solicitor and currently a Member of the National Native Title Tribunal. He was formerly a Member of Parliament, Attorney-General and Minister for Crime Prevention in South Australia. He is President of the Australasian Society of Victimology and was President of the World Society of Victimology at the time of the Eighth Symposium.

Mark Israel lectures in criminology in the School of Cultural Studies at Flinders University of South Australia. He has an MA in Law and an MPhil in Criminology, both from the University of Cambridge. He is currently completing his doctorate in Sociology at Oxford University on South African political exile in the United Kingdom. His other research includes work in the United Kingdom and Australia on racial discrimination in recruitment, on antisemitism, the victimisation of backpackers, and the portrayal of crime in the media.

Michael O'Connell is a Policy Research Sergeant with the South Australia Police as well as a lecturer in criminal justice studies, including victimology, at the Adelaide Institute of Training and Further Education. He was the first appointed police coordinator for victim impact statements. He received the Australia Police Medal for his work regarding police and victims of crime.

Rick Sarre is Associate Professor and Head of the University of South Australia's School of Law. He spent part of 1992 acting for the Jesuit Refugee Service and Australian Lawyers for Refugees in refugee camps in Port Hedland (Australia) and Hong Kong. He teaches, amongst other things, a course in criminal justice and has published a text book in this area in 1994.

The Editorial Task

The editors faced an extremely difficult task in selecting papers for publication. One hundred and seventy-one papers of a generally acknowledged high standard were given but had to be reduced to thirty-four for this publication. In some cases, papers were abridged in the interests of space. The editors decided to develop several themes and fit the papers into a general commentary on these themes which in some cases includes references to papers given at the Symposium but not published in this volume. However, all authors and titles of their papers are listed at the end of this volume. Names of authors of papers which have been selected for inclusion in this volume and which are mentioned in the commentaries are shown in bold type.

Each of the co-editors is primarily responsible for a section: Mark Israel for Section One: Power, Politics and Victimisation; Rick Sarre for Section Two: Victim Surveys and Methodology; Chris Sumner for Section Three: Victims Offenders and the Criminal Justice System; and Michael O'Connell and Rick Sarre for Section Four: Serving Victims.

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INTRODUCTION: PRESIDENT'S OPENING ADDRESS

The following is an edited and revised version of the address given at the Opening Ceremony by the then President of the World Society of Victimology (WSV) and President of the Symposium Organising Committee, the Hon. C. J. Sumner.

This year's Symposium coincides with the United Nations declared Year of the Family and a significant section of the Symposium program will be devoted to this theme. 1994 is the Centenary of the introduction of Women's Suffrage to South Australia. The South Australian Parliament was one of the first in the world to grant women the right to vote and the first in the world to allow women to stand and be elected to Parliament.

In Australia there is heightened debate about the rights of Indigenous Australians and in particular, debate about the decision of the High Court of Australia in the Mabo case which in 1992 recognised that the right of Australian Aboriginal people and Torres Strait Islanders to title to land survived European settlement.

These are all issues of contemporary relevance to victimology as we examine victimisation in families and violence against women and the continuing debate about equal opportunity for women including gender bias in the legal system. Issues surrounding Native Title and the rights of Aboriginal Australians to decent housing, health and welfare facilities and their significant over-representation in the criminal justice system, in arrest rates, court appearances and imprisonment are all relevant to our work.

I would like to make some comments about the approach taken by the Organising Committee in putting this program together. It seemed to the Organising Committee little point in having a Symposium which did not attempt to deal with the major theoretical and practical issues in victimology and to openly confront the contending points of view.

Victimology has its critics. In August 1991, *Time* magazine under the heading 'What's happening to the American character' asserted 'that it is the age of the all purpose victim'; that 'we're not to blame, we're victims' which is the 'increasingly assertive rallying cry of groups who see the American dream not as striving fulfilled but as unachieved entitlement'. It referred to a double-barrelled social phenomenon now threatening the real exercise of American civil liberties. The first barrel is victimology, the other the rights industry. 'Under the corrosive influence of victimology, the principle of individual responsibility for one's own actions, once a vaunted American virtue, seems like a relic'—the authors argued.

More recently, the Australian author and critic, Robert Hughes, who lives in New York took up the theme in his book *The Culture of Complaint*: 'since our new found sensitivity decrees only the victim shall be the hero the white

American male starts bawling for victim status too' (1993, p. 7); 'the all pervasive claim to victimhood tops off America's long cherished culture of therapeutics' (1993, p. 9); 'the range of victims available 10 years ago, blacks, chicanos, indians, women, homosexuals, has now expanded to include every permutation of the halt, the blind, the lame and the short or to put it correctly, the differently abled, the other visioned and the vertically challenged. Never before in human history were there so many acronyms pursuing identity' (1993, p. 17).

In a recent article in the *Australian* newspaper, Australian academic and commentator Beatrice Faust referred to 'the prevailing fashion for victims' and to the media creating a stereotyped Aboriginal victim 'and thereby reinforcing learned helplessness'. The argument is that there was greater value in promoting achievers rather than victims 'which is not only to provide role models for young Aborigines but also to give the white communities a new understanding of what Aborigines can achieve'.

The scene has also been set by two recent articles in Australia. Professor Richard Harding (1994, p. 27) has criticised what he sees as 'the over-reaction of the victimisation industry which has occurred in this country as in North America', which in turn provided a critical response from Sandra Egger (1994, p. 44) who argued that victim-oriented research had 'led to some important breakthroughs in our understanding of the causes of crime' and had enhanced 'the formulation of effective and just criminal justice and crime prevention policies'.

It is a little difficult to take seriously the accusation that victimology is to blame for the perceived ills of modern society. Indeed, what the authors of the *Time* magazine article are talking about is not victimology. In a global context it is impossible to deny that there is a role for the continuing attention to the effect of victimisation both in research and practical assistance. Consider the refugees in Somalia or Rwanda, or the victims of the war in the former Yugoslavia or the victims of human rights abuses in the former South Africa or Soviet Union or many other countries, and the relevance of our work becomes immediately obvious. But not all the criticisms can be so easily dismissed. For instance, the question of whether the balance of rights in the criminal justice system has been upset by society's recent response to victims of crime has to be confronted.

The Organising Committee did not wish to avoid these and other debates—indeed quite the reverse—so the Symposium is structured to encourage them. Professor Robert Elias will give a keynote address—'Paradigms and Paradoxes of Victimology'—in which he raises many of the issues and criticisms of contemporary victimology. Victimologists must be able to compete in the world of ideas and subject both their ideas and actions to critical scrutiny. Proposals that emerge from the research into victims must have a firm base and we must be able to defend our position. In this Symposium we have not sought to be 'politically correct'. We have not sought to exclude any point of view.

There are a number of reasons to support victimology both as a theoretical, academic and research-orientated discipline and a movement concerned with alleviating the suffering of people who become victims as a result of criminal acts or abuse of political or economic power. One attractive aspect is that it is multi-disciplinary, it is not narrow in scope, it deals with more than victims of

crime. If it were confined just to victims of crime then the argument that it should be subsumed into criminology might have some force. But the United Nations through its 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, has clearly recognised victimisation which goes beyond victims of conventional crime and the Symposium program has been constructed to provoke debate across a number of disciplines. Those that come from the criminal justice system will gain insights directly relevant to their work, but the exposure to a broader range of ideas including the medical consequences of victimisation, victims' experiences, service delivery and human rights will inform us all.

Rather than being a cause for criticism it seems to me that the WSV gains strength from the fact that its membership comprises theoreticians, scientists, administrators and activists. In that sense it is a unique organisation. There are important theoretical debates about the place of victimology in the social sciences—its relationship to criminology—whether it should be involved in crime victim issues only or broader issues of human rights abuses and the relationship between theory, research and practical programs. However, it is important to realise that the WSV covers all people with an interest—theoretical or practical—in victimology. The Charter of Incorporation refers to the purpose of the Society as 'to advance victimological research and practices . . .' and its members 'may include scientists, students, organisations, victim helpers, volunteers, lay persons and others'. There is no reason why victimology as a social science cannot co-exist with victimology as an activist movement. There is no reason why research activities cannot lead to concrete results to improve the situation of victims irrespective of the form of victimisation. However, we do expect our researchers to be rigorous so that victimology remains a legitimate and credible area of study. We also expect research where appropriate to be practically orientated so that the results can inform policy makers and governments about relevant programs which do in fact improve the position of the victim in the criminal justice system and elsewhere. The WSV supports theoretical discussions, practical research and social action in the interests of victims of crime and victims of abuses of human rights or corporate power.

A movement that wanted to turn everyone into a victim in order to nourish itself would hardly have credibility. It is for that reason that disparaging references to the victims industry hardly take the debate anywhere. It is the same sort of rhetoric that is used to disparage the advancement of other important ideas in our community such as multi-culturalism, or human rights.

We have tried to construct a Symposium which provides a democratic forum for rational debate. Robert Hughes said in *The Culture of Complaint* that in the 1980s one of the features of the electoral scene in the USA 'was a public recoil from formal politics, from the active reasoned exercise of citizenship'. But the survival of democracy in the long run depends on that reasoned exercise of citizenship. In the end whether ideas about victimology and any programs which flow from it are accepted depends on the functioning of the democratic process. We have an obligation to do our best to inform that democratic process.

Some criminologists refer in disparaging terms to the moral panics which they allege surround the community's approach to crime. In the end it's not the

criminologist that has to face the distraught parents of a murdered child—or has to face a public meeting of 300 people complaining about the incidence of vandalism in their town and demanding a curfew for all young people in order to curb it, or who have to sit in the meeting rooms of political parties and hear elected representatives consistently and forcefully urging that more and more be done about law and order and increasing crime rates. It is the policy makers, politicians and service providers that confront these issues at the coalface. While law and order can be manipulated for political purposes, this can only occur because of genuine community concern about levels of crime and the state's response to it.

It would have been self-indulgent to have had a program concentrate solely on victims of crime without recognising human rights abuses around the world and the tragic situations in Bosnia and Rwanda for instance. We are not here to create victims but to develop practical programs through valid research to alleviate their suffering.

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Section One:
Power, Politics and Victimisation

The papers in this section are concerned with victimology's ability to work with and for the victims of abuses of power. As Jacob Sahetapy noted, 'like water which never streams up', such abuses affect generally the less powerful in our society and are intricately linked with local, national and international structures of domination.

In the first paper in this collection, a strong condemnation of the current state of victimology is provided by **Robert Elias**. Despite the growth of the intellectual discipline, he maintains that levels of victimisation around the world, at least as far as are measured by crime surveys, have increased. Indeed, Elias argues that victimology itself has been coopted by a particular political agenda, that of law and order, which does not work in the best interests of most victims and survivors. This form of cooption is not the only threat. Other victimologists like Ezzat Fattah and Richard Harding have suggested that the discipline has been hijacked by a 'victimisation industry' which turns conferences into 'pedestals for political rhetoric'. Elias asks if there can be any use for a victimology that shows such little imagination in escaping the clutches of a reactionary 'right realist' political paradigm which he characterises as dominant in the politics of victimisation.

Elias claims, nevertheless, that the politicisation of victimology is both inevitable and healthy. Rather than defending a politically neutral victimology, he urges us to struggle for a particular form of political agenda and offers seven possible positions which might allow us to challenge right realism. These derive from a series of liberal, feminist, radical, socialist, left realist, and peacemaking standpoints.

As part of the new agenda, Elias calls for a radical shift in attention away from victims of crime to victims in general, from the construction of symbolic policies to the implementation of tangible ones and from a manipulation of punishment to the construction of positive reinforcements. He asks us to foster a healthier social environment which in turn might generate fewer incidents of victimisation.

Not surprisingly, Elias' work has not been without its critics. At the symposium, some academics and service providers, while accepting that there was a gap in our knowledge of abuse of power and the problems of structural, institutional and collective victimisation, took issue with Elias' claim that victimology has been coopted by law and order ideologies. Hans Joachim Schneider, for instance, suggested that victimology is able to play a useful role in alerting potential victims to dangers.

One wonders, however, whether the role of lighthouse or guide-dog is enough for victimology. Many of the papers in this collection do seem to advocate a much more politically active victimology, one that makes explicit the way that victimisation is bound up in the exercise and abuse of power: papers from Australia, the United Kingdom, the United States, Yugoslavia, India, China, and Japan consider the impact of patriarchy on the abuse of women; three papers outline the violence associated with heterosexism in Australia; while American and Japanese papers investigate the nature of corporate victimisation.

Patriarchy and the Abuse of Women

In his case study on the contradictions of patriarchal justice, Elias notes how a rhetoric of protection has, in part, been able to coopt some feminist agendas into law and order crusades which end up empowering the state by strengthening sexist institutions. For instance, campaigns to promote women's safety have sometimes ended up suggesting that women should not attempt to use public spaces after dark. In many countries there is an illusion of change, but the state continues to deal with patriarchal violence by blaming or ignoring women and paying almost no attention to the real causes of violence. Women, in short, are still not being taken seriously by men and masculinist-dominated institutions. Papers from every continent reiterated this point, using examples such as sexual assault, family violence and sexual harassment.

Many European and North American feminist researchers have drawn attention to the under-reporting of violence against women in their countries. Low levels of reported violence have been used by many state institutions to justify ignoring the widespread nature of the phenomenon. The level of under-reporting may be even higher in other parts of the world. Alessandra Raffo spoke of the high level of victimisation of women in Brazil which, she argued, has resulted in a sense of powerlessness among women. She found that Brazil still regards claims of sexual harassment as a woman's 'strategy to vengeance and a way to get money'. The paper presented by **John Dussich**, written with **Yoshiko Fujiwara** and **Asami Sagisaka**, two rape counsellors in Tokyo, investigates the enormous under-reporting of rape in Japan, as well as the lack of official interest in its true extent. In Japan, they argue there is a dominant perception that rape is a personal rather than a social problem. Partly as a result of this, there is minimal support for survivors of rape and they suffer 'tertiary victimisation' in the form of rape trauma syndrome. Patricia Easteal's paper, based on her book, *Voices of the Survivors* (Easteal 1994), also noted a tendency in Australia to blame the victim and a failure to offer them assistance.

Under-reporting appears to be particularly common for violence, in all its forms, within families. **Elizabeth Stanko**'s paper, 'Looking Back, Looking Forward', reviews what researchers in victimology have discovered about exploitation, and psychological and physical abuse within the heterosexual family, particularly of women, children and the elderly. She points out that studies have shown repeatedly that the most likely threats of sexual assault to children and adult women come from those with authority over, access to and intimacy with them. Violence between men and women, adults and children, she argues, arises largely from familiarity. It is an integral part of many heterosexual relationships, buttressed by 'institutions and structures which privileges men's control over women and children.' **Suzanne Hatty** and **Nanette Davis** interviewed over 100 homeless young women in Sydney. Their paper reports that before they left home, 65 per cent of that group had been physically abused and 80 per cent emotionally abused by other family members.

Sushma Sood argues that any analysis of the aetiology of domestic violence has to pay attention to the economic, social, political and legal status of women in particular societies. Three papers in this collection follow this process: Sood's own paper explores the stereotypes and myths that have led to wife battering,

bride burning, and violence against widows in India; **Xin Ren** traces the resurgence of trafficking in women in China and links it to traditional patriarchal values, the tension between those values and the official one-child per family policy. Ren explores the dramatic political and economic changes in the country which have brought about a rapid expansion in the market economy and, more specifically, in the sex industry. Finally, **Vesna Nikolić-Ristanović** examines the increase in domestic violence in Serbia as armed soldiers return from war to a country embroiled in economic crises and ethnic tensions.

Domestic or family violence was also addressed in several other presentations given at the conference: Jane Lester, the South Australian coordinator of the National Family Violence Intervention Program, spoke of the need to come to terms with Australia's past—the dispossession, 'oppression, demoralisation, confusion and despair' of Aboriginal people which had contributed to 'more family violence deaths in one Aboriginal community alone than there were Aboriginal Deaths in Custody cases presented to the Royal Commission'; Nyrell Brooks of the Aboriginal and Islander Health Service in Townsville, Queensland, argued that domestic violence in the Aboriginal community reflected the inadequate housing, health and conditions experienced by Aboriginal Australians: 'When people feel frustrated, angry, lost and powerless to make change, this negative energy turns not only inward but outward and is inflicted on all those around you'; and Anshu Padayachee spoke of the ineffectiveness of South African legislation in protecting and supporting female victims of abuse, and described the various strategies that abused women had followed in order to survive.

Helmut Kury noted that people's anxiety about their safety, known in academic, political and popular discourses as 'fear of crime', has now come to be a major concern for governments. In response, many commentators have pointed to the mismatch between official statistics—which are accepted uncritically as an indication of actual levels—and individual perceptions of the risk of victimisation. In a second paper, **Stanko** argues that heightened fear among women is the result of threats to their sexual integrity, a consequence of living under patriarchy. As a result, she maintained, any attempt to reduce women's fears must go to the source of the problem:

> *The social context of women's fear of crime is such that unless women's autonomy is promoted¾ which, I advocate, must address women's freedom from sexual danger, then it is unlikely that our fear will be reduced. Good lighting, good transport, adequate childcare, decent education, safe houses and safe relationships¾ one without the others is inadequate to address women's needs, and, by extension, our fear of crime.*

Jo Goodey's highly original paper examined the gender-specific nature of the socialisation and sexualisation of fear among adolescents in England. She suggested that it is during puberty that girls learn at least in part from their parents to fear sexual assault and rape. This fear, she argued, is part of a system of social control that denies women full access to the public sphere.

Heterosexism

Gay and lesbian activists have had significant success in mobilising their communities to combat heterosexism in Australia. In New South Wales, for instance, the Gay and Lesbian Rights Lobby has launched the Lesbian and Gay Anti Violence Project, to reduce anti-lesbian and homophobic violence by identifying the nature, causes and extent of the violence, and to lobby the government and the general community to support remedies to minimise such incidents.

Steve Tomsen, however, notes in his paper how some activists have felt uncomfortable working within the politics of victims' rights. He appreciates the advantage of involvement in a large group advocating responsiveness to the needs of victims, but notes the difficulties of operating in a sometimes conservative political environment that 'marginalises the interests of non-traditional crime victims . . . in tandem with a political drift to tougher "law and order" policies'.

The papers by **Mason** and **van Reyk**, like Tomsen, discuss the growing political strength of the Australian gay and lesbian communities in drawing attention to physical and symbolic violence directed against them. In short extracts from their papers, Tomsen discusses murders of gay men, Paul van Reyk outlines the incidents of assaults on both lesbians and gays in New South Wales, and Gail Mason investigates the characteristics, perceived meanings and roles of verbal hostility directed towards lesbian women in Victoria. All three authors link various forms of violence against gay and lesbian people to the ideology of heterosexism which 'denies, denigrates or stigmatises any non-heterosexual behaviour or lifestyle' (Mason). Mason, for example, argues that by circumscribing public expression of lesbianism, verbal abuse constitutes part of a wider process of reinforcing conformity to prevailing values and norms in a sexist and heterosexist culture. Interestingly, neither Mason nor Tomsen use the term victim in their papers, preferring 'recipient of abuse' or the less passive 'survivor'.

Importantly, Mason recognises that abuse directed against gay and lesbian people has to be interpreted in terms of their various identities, and notes that any attempt to disentangle the causes, meanings and experiences of violence has to be sensitive to the positioning of the subject in hierarchies of gender, sexuality, ethnicity, and race.

Corporate Victimisation

The area of corporate victimisation raises interesting questions about whether capitalism itself is criminogenic: is it the profit-seeking nature of commercial enterprises that leads to violations of employees' right to occupational health and safety, and the 'corporate looting' of communities? Why are corporations so well protected, yet arguably so poorly regulated by legal codes? Victimology has tended to examine white-collar crimes and rogue corporations rather than the kinds of routine illicit corporate activity that may give us a deeper insight into the relationship between capital and victimisation. Krishna Iyer's address outlined

how ‘corporate predations’ in countries of the developing world leave ‘a trail of victims against which even the state proves impotent.’ He described how in his native India, the explosion at the Union Carbide plant in Bhopal claimed hundreds of thousands of victims, ‘dead, living and unborn’. While the papers by **David Shichor**, **Jeff Doocy** and **Gil Geis** on a telescam operation in California, and by **Tatsuya Ota** on pyramid sales schemes in Japan do focus on rogue enterprises, they also offer a platform for a much wider critique.

In the case study analysed by **Shichor** et al. 9000 American investors were fleeced of US$217 million over 10 years. The paper records the sense of betrayal and violation of trust experienced by 150 generally wealthy, well educated, victims of the fraud. It also notes that the victims’ anger remained unfocused and that there was no generalisation of anger against a political and economic system that failed to regulate such schemes effectively and allowed their life-savings to be spirited away.

There were over 30 000 Japanese victims of pyramid schemes in 1992 alone. In the scheme investigated by Ota, most of those defrauded were in their twenties and less well off than the Californians examined by **Shichor** et al. They too, however, suffered a loss of confidence, though in this case it was exacerbated by the fact that they were recruited by friends into the scheme.

Concluding Comments

In his rapporteur’s report, John Dussich complained about the atheoretical nature of many of the papers presented at the conference, suggesting that the majority ‘seemed content with merely descriptive rather than explanatory research’. Very few papers were directly concerned with theoretical issues, though one notable exception was Sam Garkawe’s piece on attempts within victimology to respond to the law and order agenda. On the other hand, as this selection demonstrates, many papers were concerned both with locating abuse within various hierarchies of domination, and using this critique to empower survivors of such abuse. The influence of patriarchy, sexuality and capital were important themes in the conference, but other papers outlined the victimisation of the elderly, of young people and of the intellectually disabled: Margaret-Ann Diedrichs drew attention to the lack of interest South Africans had shown to the victimisation of the elderly by apartheid; Carlene Wilson, Rob Potter and Ted Nettlebeck considered the vulnerability of people with intellectual disability in Australia, while Stuart Burke and Suzanne Hatty analysed the victimisation of young travellers, the so-called ‘feral’ youth, who live in the forests of the Rainbow Region of northern New South Wales.

Elias concludes his paper by arguing that if victimology is to support attempts to tackle the patterns of domination that the papers in this section have outlined, then victimologists have to become politically responsible. It is to be hoped that this international selection of papers can contribute to the development of a politically active and intellectually mature field of study.

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Paradigms and Paradoxes of Victimology

ROBERT ELIAS

> *The significant problems we face cannot be solved at the same level of thinking we were at when we created them* (Albert Einstein).

Several years ago, in a paper he presented at the Fifth International Symposium on Victimology, Donald Cressey (1992) claimed that:

> *Victimology is . . . a non-academic programme under which a hodgepodge of ideas, interests, ideologies and research methods have been rather arbitrarily grouped . . . [and] is characterized by a clash between two equally desirable orientations to human suffering—the humanistic and the scientific.*
> *. . . [However], [T]he humanists' work tends to be deprecated because it is considered propagandistic rather than scientific, and the scientists' work tends to be deprecated because it is not sufficiently oriented to social action. Each set of victimologists would probably be better off if it divorced the other and formed alliances outside the shadow of the victimology umbrella.*

This is pretty strong criticism. Cressey posed two possible solutions: Victimology should limit itself only to scientific victimologists, and push the humanistic victimologists into human rights activism or social work. Or victimology should fade away altogether, with the scientific victimologists merging with the criminologists (Cressey 1992).

Was Cressey right? Do internal contradictions undermine victimology's effectiveness? Is it making a contribution or has it lost its direction? Has victimology outlived its usefulness?

The Prevailing Ideology

While much valuable work in victimology has been done over the last 40 years, most of it remains confined within narrow boundaries, both conceptually and

politically. We must decide whether we are satisfied with the kind of victimology most of us are practising. Cressey is quite justified in worrying about victimology but we should be alarmed for somewhat different reasons than those he suggests. To see why, let's examine the prevailing ideology of crime and victim policy.

Crime policy

Understanding 'where we are' in victimology relies on more than chronicling the latest research and policies. Even more important is the political context of that work: the ideological assumptions that permeate our field. In a few words, mainstream victimology is dominated by a law and order ideology—sometimes known as 'right realism'.

Law and order ideology promotes conservative strategies for fighting crime and victimisation. It relies largely on a negative view of human nature that assumes that people (and especially some people more than others) are inclined toward evil. Crime occurs when people either choose not to restrain their evil tendencies, or when law and order institutions act too weakly to deter them, or both. Thus, crime results from individual choices, not social conditions. Preventing crime depends on whether enough force has been generated to deter it: force in the form of tough criminal laws, strong police forces, frequent arrests and convictions, wars on crime and drugs, a proliferation of prisons, and severe penalties—including capital punishment.

This ideology has dominated nations like the United States for the last century. In the 1980s, it was intensified under the Reagan and Bush administrations. By the decade's end, rather than being only third in the world (behind South Africa and the USSR) in its incarceration rate and length of punishments, it was now first (Rothman 1994). The United States has perfected what Nils Christie (1993) has called the 'crime control industry'—a market just 'waiting for its entrepreneurs'; an industry with unlimited growth potential, motivated by war fever toward increasingly repressive policies.

Thus, even the recent escalation of force has not been enough. Crime and victimisation continue unabated so, in the 1990s, the Clinton administration has decided to 'get tough' (once again) on crime, devising a new crime bill that merely reproduces the failed policies of the past (Currie 1994; Parenti 1994). Its key provision is a 'three strikes' clause that will send offenders to prison for life for committing three crimes (Dresslar 1994; Wright 1994). Corporate offenders are excluded from these laws, despite their high recidivism rate and the far greater victimisation they cause (Greider 1994).

Besides policy, also consider the strong United States public support for punishment to deter offenders or to teach them lessons. For example, the United States public recently applauded the caning of an American who was convicted of painting graffiti in the streets of Singapore. Never mind that despite this kind of brutal punishment, this repressive society still has a big crime problem (Neier 1994). And never mind that according to a recent National Public Radio report (22 July 1994), getting in to prison (rather than staying out—that is, getting punished) has increasingly become a 'badge of courage' among street-tough young men in many United States cities. So much for deterrence.

> Nothing in the new crime bill will challenge business as usual. Whether promoted by Democrats or Republicans, the only answer to crime has been more wars, more force. Neither one works (Gordon 1990).

Victim policy

Despite the flurry of research and law and order policy initiatives in the last 20 years, victims have gained far less than promised. Many victim policies have not been implemented, resources have been scarce, drug wars have victimised hundreds of communities (Elias 1991a), feminist programs have been defunded, progressive victim initiatives have been shunned, and in many ways victimisation has gotten worse (Elias 1993).

While some applaud the victim movement's apparent institutionalisation in many nations (Maguire & Shapland 1990; Smith 1992), others believe that victims and the movement have been largely coopted, and politically manipulated for official purposes (Elias 1990; Phipps 1988).

Alternatives

But alternatives to law and order policies are certainly possible (Elias 1993). For example, instead of assuming the worst of human nature, we could recognise that people more often commit evil (that is, crime) less by individual choice, and more in response to their environment. We could significantly improve that environment, providing positive reinforcement rather than negative threats and punishments (MacLean & Pepinsky 1993). The victim movement could demand tangible rather than symbolic policies from officials, and a concern not only for crime victims but for all victims (Elias 1991b, 1993). To reduce victimisation, we could promote a social policy of enhancing social justice, rather than moral crusades and rights rollbacks (Derber 1994). And so forth.

But victimologists have resisted these and other alternatives. They believe the victim movement is succeeding, that criminal justice is helping victims, and that alternative policies are utopian and cannot relieve the real suffering victims are experiencing right now. They would maintain our current course, continuing victim policy and research that largely reflect a conservative, law and order ideology.

But we can do much better. What is utopian is not endorsing alternatives but rather believing that we can continue to survive the violence that is generated by our current, repressive crime and social policies. The only realistic route is to find alternative policies, to create a new, more ambitious vision for ourselves, and to launch a very different victimology than the one we now have. To do so, we also would have to find alternative ideologies that could provide the intellectual models for generating new crime and victim policies and research.

Politics And Science

Too much ideology?

Science versus humanism. Some believe that this would be making political choices that would compromise us as scientists. To return to Donald Cressey's

(1992) concerns, rather than choosing between conventional and alternative politics, he would have us shun politics entirely. He argues that humanistic victimology has inappropriately politicised the field, undermining scientific victimology. Victimology has become too dominated by victim advocates whose zeal for promoting victim policy has biased our ability to conduct objective scientific research.

Ezzat Fattah (1992) echoes Cressey's concerns, arguing that victimology has strayed too much from theory and science, and become too ideological, activist and policy oriented. Victim advocates are sometimes so concerned with painting a grim picture that they distort crime, its impact, its frequency, and its victims.

Fattah illustrates the dangers of the missionary zeal often practised by victim advocates: child-abuse crusades have produced false accusations, presumptions of guilt, premature child removals, and unnecessary fear and suspicion among parents, childcare workers and children. Victim advocacy also risks stigmatising crime victims as helpless, and securing unwarranted special treatment for them, whereas in a just society, all victims would be entitled to assistance (Fattah 1992).

Victimology conferences, Fattah argues, are no longer scholarly meetings to exchange scientific research but rather pedestals for political rhetoric. Victimology is becoming more the practice of social work than of science. Victimology has helped push criminal justice further toward inappropriate right-wing crime policies that use victim programs as vehicles for social control (Fattah 1992).

Like Fattah and Cressey, Richard Harding (1994) argues that a politicised victimology has distorted criminal justice, with harmful consequences for both. He warns us about the victimisation industry, comprised of 'special-interest pleaders' who hijack the victimisation debate on behalf of their favoured victim group.

The victim rights movement, Harding argues, has promoted rights selectively¾ for certain victims, and also the unwarranted assumption that victim rights are more important than competing rights or values in society. It perpetuates a false, zero-sum contest between victim and offender interests that promotes ineffective, conservative crime policies.

Inevitability of politics. Cressey, Fattah and Harding offer persuasive critiques of victimology, which should be taken very seriously. Nevertheless, we might well draw some different conclusions from the concerns they have raised.

First, special-interest pleading has dominated victimology and the victim movement, as Harding has suggested, and even shown up in specific victim policies for groups such as women, children, and the elderly. But while this pleading may have 'hijacked the debate', its policies have barely been implemented: it has had little impact on reducing the victimisation or improving the treatment of these groups by criminal justice. It is not the tangible success of these policies that has been damaging but rather their symbolic cooptation as fuel for law and order crusades.

Second, Cressey claims that scientific victimologists should limit themselves to criminal victimisation. Yet doing so would narrow victimological research to

officially endorsed boundaries and definitions, thus undoing what little progress victimology has made in broadening the kinds of victimisation it takes seriously. In limiting ourselves to criminal victimisation, Cressey does not compensate by asking victimologists to broaden our crime definitions beyond official boundaries to take more seriously, for example, corporate and state wrongdoing, repression, and crimes against humanity. Thus, rather than being apolitical, Cressey's recommendations would seem to have us even more explicitly endorse the prevailing politics.

Third, these critics suggest that victimology and victim advocacy have promoted ineffective law and order crime policies. They at least imply that more progressive, even radical crime policies would be better for victims. If so, then if we had more progressive policies, would they still be concerned that victimology and victim advocacy were too political? Would victimology still be too humanistic and unscientific?

If the point of their criticism is that victimology should be politically neutral, then it should not matter to critics whether it is the politics of the left or the politics of the right that is tainting our science. But what if we tried to be neutral on politics? Cressey assumes, for example, that victim advocates mobilise victim policies. Thus, if advocates—or the humanistic victimologists—were forced out of victimology, as he suggests, scientific victimology could presumably remain neutral. That way, victimology would be lending no support to crime policies of either the right or the left.

But, to the contrary, it is not victim advocates but rather public officials who mobilise victim policies. Officials sponsor only those victim policies that promote their objectives and ideologies: this has been central to the political manipulation of crime victims over the past few decades (Elias 1993). Thus, if we rid ourselves of victim advocates, as Cressey suggests, so that victimology can remain neutral, our research will nevertheless still be coopted, and still be used selectively to rationalise prevailing crime policies: that is, law and order crusades. Quite apart from victim advocacy, officials already manipulate our research for political purposes.

In other words, politics is inevitable. Trying to be neutral in our research does not negate the political uses to which it will be put. To the contrary, only by not being neutral will we avoid having our research being used inappropriately. This fits uncomfortably with our conventional notions of objective science, where politics is viewed as a threat to our findings and our credibility. Yet notions of a value-free science have long since been laid to rest.

For example, doing science forces us to make choices, whether or not we acknowledge them. As the victimologist Emilio Viano (1983) has suggested:

> *The problems researched, the way in which the research is conducted, and the strategies devised to reach a solution either tend to support and reinforce society's status quo or undermine it. In this sense, social research is inescapably political.*

Choosing our politics. Not only is our research susceptible to political uses, and not only do we at least implicitly make political choices when we conduct research, but we should be making those choices. Why do science if it

has no humanism, if it makes no contribution to human development? How can we be neutral about how to best use our science in society? Those decisions are all a matter of politics and ideology.

As the sociologist Howard Becker warned us many years ago, 'the question is not whether we should take sides, since we inevitably will, but rather whose side are we on?' (Becker 1967). Victimologists typically take the victim's side yet often countenance policies in the name of victims that actually contradict victim interests.

This is because we typically take the victim's side against the offender when instead we should be taking the victim's side against a much more serious barrier to the victim's well-being: officials and the state. This does not mean we are faced with some sort of intentional, state conspiracy against victims; rather it only suggests that official priorities necessarily lie elsewhere, buried under the rhetoric. As the sociologist Barrington Moore (1978) once suggested:

> *In any society, the dominant groups are the ones with the most to hide about how a society works. Very often, therefore, truthful analyses are bound to have a critical ring, to seem like postures rather than objective statements. . . For all students of human society, sympathy with the victims of historical processes and skepticism about the victor's claims provide essential safeguards against being taken in by the dominant mythology. A scholar who tries to be objective needs these feelings as part of his working equipment.*

The criminologist Michael Hallett (1994) has recently argued that:

> *Conceding that no combination of human genius or discipline has ever come close to solving the 'crime problem', criminology has instead endorsed approaches that serve the interests of established power, not the interests of those who are continuously victimised by crime. The problems of crime and violence are obviously too big for criminology.*

Are crime and violence too big for victimology, too? Put another way, if our science is not intentionally put to positive use, if we are not consciously seeking its productive application, then do we not risk actually obscuring social problems? As the anthropologist Marvin Harris (1989) has argued:

> *A proportionate relationship such as has existed for some time now between the volume of social research and the depth of social confusion can mean only one thing: the aggregate social function of all that research is to prevent people from understanding the causes of those things that determine their social existence.*

Has victimology allowed this to happen to victims?

Victimological research has helped us tremendously to understand victimisation but in our preoccupation with an increasingly detailed, descriptive micro research, we may have obscured the bigger picture. Have we been too influenced in our research by official definitions and perspectives? Are we allowing our research to be distorted into politically exploited misconceptions about victimisation?

The writer John Jay Chapman has suggested that: 'The world of politics is always twenty years behind the world of thought.' Does this happen because we

spend too much time in our ivory towers, failing to get the 'word out' into society? Is it because our research is not in a form that can be used by the political system? Or is it because we victimologists allow ourselves to be coopted, letting our mediocre thoughts be used, rather than our farsighted ones?

Science and humanism. If victimology has been going in the wrong direction as a science, then should it be abandoned, as Harris and Cressey seem to imply? Or should we instead think about doing it differently? We cannot separate our science from our humanism or from the ideologies we believe will make the most humanistic use of our science. Instead, as the economist Albert Hirschman has suggested:

> *It is . . . possible to visualize a kind of social science very different from the one most of us have been practising: a moral social science where moral considerations are not repressed or kept apart, but are systematically commingled with analytic argument, without guilt feelings over any integration* . . . (quoted in Hoffman 1980)

For example, Lee Ann Hoff (1990) has drawn upon the sociologist C. Wright Mills in her research on women victims. Mills once wrote that:

> *It is the task of the social scientist . . . of any educator . . . to continually translate personal troubles into public issues, and public issues into the terms of their human meaning for a variety of individuals.*

As Jane Mugford observes, social scientists often ignore Mills in their effort to achieve an allegedly more 'objective' quantification of their theories about human behaviour. But feminist research has shown us that objectification is usually an illusion. If what we want is to know about 'human meaning', then research must be more qualitative and context-specific. Hoff has done precisely this, by converting the personal traumas of battered women into a public issue (Mugford 1993) that carries a particular politics about how the society should respond. Hoff is not neutral about women victims or about the policies that will best serve them; does that mean her research is not objective?

In other words, it is not a matter of whether we are more scientists or more humanists; hopefully we will be some combination of both. Victimologists and victim advocates should be working together. And it is not a matter of whether science is influenced by politics (either our own or that of others), or whether we will inevitably make political choices in our work. Rather, it is a matter of making the right choices. The problem is not one of victimology having too much ideology or politics but rather the wrong ideology and politics: philosophies that have failed miserably in reducing victimisation and helping victims. Overcoming this problem relies not on rejecting ideology but rather on devoting ourselves more fully to finding a politics that works. If we do not choose our politics, a politics will be chosen for us; indeed, it already has.

Alternative Ideologies

Victimology can and should do better than the prevailing law and order or 'right realist' ideology of crime control. But what alternative ideologies are available to guide it? We can identify at least seven possibilities. Briefly, they include:

First, 'critical/liberal ideology' takes a somewhat critical stance toward right realism. It endorses less harsh, more social approaches to crime policy. It views victim assistance as a matter of entitlement, and questions the 'labelling' process that conventional criminal justice uses to inappropriately focus more attention on some victimisations than on others (Miers 1989, 1990).

But this ideology might not provide much of an alternative to right realism. It seems to treat the labelling process more as an inadvertent by-product of criminal justice rather than the predictable result of conservative ideologies, and thus remains well within the boundaries of conventional law (Mawby & Walklate 1994).

Some of our victim advocacy reflects this perspective yet despite its liberal face it usually gets coopted into right wing strategies. Liberal feminist initiatives, for example, that rely on government benevolence and reforms, have been routinely diluted or blocked in practice (Elias 1993).

Second, 'fundamentalist feminist ideology' is promoted by a small group of feminists who have largely narrowed the causes of patriarchy and women's criminal victimisation to pornography and prostitution. It suggests that men are inherently violent against women, and are provoked in particular by the proliferation of pornography. Some proponents even suggest that all heterosexual sex in any patriarchal society is tantamount to the sexual assault of women. To better protect women, this ideology endorses get-tough penalties against men, and the outlawing of pornography and prostitution (Dworkin 1981; MacKinnon 1987).

Obviously we should all be outraged by sexism in our societies, and men should be held responsible for the violence they commit against women. But this ideology promotes historically unsuccessful, right realist initiatives against sexist victimisation whose implementation relies almost entirely on sexist men. This gives even more power to patriarchal institutions that thrive on right-wing, anti-feminist policies (Segal & McIntosh 1993).

Third, 'radical feminist ideology' also attributes victimisation to patriarchal institutions (Radford & Stanko 1994). But unlike fundamentalist feminism, radical feminism believes that male violence comes more from their sexist socialisation than from their inherent characteristics. Unlike liberal feminism, it rejects piecemeal reforms as an effective check against sexism and male violence. Radical feminism opposes crime wars and draconian punishments, instead favouring appropriate penalties or alternatives to imprisonment (Harris 1991; Snider 1990; Caulfield & Wonders 1994). It blames violence against women on structural forces far broader than the sex industry.

Radical feminism provides a much more formidable challenge to right realism (Hanmer & Stanko 1985). It diagnoses social conditions as the source of most victimisation, advocates feminist alternatives to the adversarial model of justice, and promotes a serious but more balanced, feminist response to crimes

against women, and against men (Stanko 1985, 1988; DeKeseredy & MacLean 1991; Messerschmidt 1986).

Fourth, 'critical/radical/socialist ideology' diagnoses the sources of victimisation in economic and political systems—especially state capitalism. It views conventional crime policy more as the social control of forces that threaten capitalists than as merely the control of crime. It views prisoners largely as the surplus labor of an unequal, unjust and dysfunctional society. It rejects crime wars and harsh punishments as racist and classist. And it views victim policies as the political manipulation of victims to bolster state power and law and order crusades.

In response, this ideology argues that corporate criminals commit the most victimisation, and should be held accountable. It claims that crime can be reduced only by transforming social conditions, which can occur only by eliminating repressive capitalism in favour of democratic socialism. And it implores victims to stop being pawns in conventional criminal justice, and instead to radically challenge official policies (Elias 1986; McShane & Williams 1992; Menzies 1992; Phipps 1986; Stenson & Cowell 1991).

Fifth, 'left realist ideology' also believes that ultimately only democratic socialism will fundamentally curb victimisation. But this ideology is 'realist' in pushing radicals to pay more attention to crime in the short run. It tries to take back the crime issue from the right realists by dealing with victimisation less as an abstraction and more as a concrete reality for citizens.

Rather than abandoning the political process, left realism tries to use it. It promotes social programs to prevent crime but it also pitches itself toward victims, supporting punishments in the short run to help allay public fears. It advocates decentralised, community strategies for curbing crime, emphasising public involvement, motivated by more progressive diagnoses of crime's causes and its solutions (Lowman & MacLean 1992).

But in practice, this ideology may be far more realist than leftist, harbouring a naive faith in the gains that can be made through the conventional political process (Phipps 1988; Walklate 1989). Its retrenchment seems to push it away from social policies toward exclusively crime policies; in the end, it may be endorsing a far more conservative politics than is necessary, diluting the progressive challenge right realism ought to be facing.

Sixth, 'peacemaking ideology' blames social institutions for most victimisation (Elias 1994a, 1994b). But rather than merely patriarchy or capitalism, it emphasises cultures of violence: from the violence of war and militarism to the structural violence of poverty, punishment and injustice (Pepinsky 1991; Turpin & Kurtz 1995). Thus, peacemaking ideology rejects draconian policies in favour of less violent, if not nonviolent, alternatives ranging from decriminalisation to decarceration. Rather than fighting wars on crime and drugs, it supports peace movements against victimisation. Instead of imprisonment, it endorses alternatives such as mediation and reconciliation (Caulfield 1991; Quinney & Wildeman 1991). To prevent crime, it advocates a radical strategy of human rights enforcement (Elias 1991b), promoting not only political and civil rights but also economic, social and cultural rights.

Peacemaking ideology would intensify the United Nations initiatives that not only set international standards for victim treatment but that link victimisation to 'abuses of power' by the state (Fattah 1989; Johnston 1989; Lamborn 1987), such as the victimisation that results from government repression or criminality (Barak 1991, 1994a; Bierma 1994; Churchill & Vander Wall 1992; Cleaver 1993; Griffiths et al. 1989; Stone 1993), and from state-generated social and economic environments that victimise people directly (such as the structural violence of poverty and its symptoms) and indirectly (by providing the breeding grounds for criminal victimisation committed by others). In other words, governments that generate other victimisation are not likely to be very concerned with criminal victimisation.

Seventh, 'critical/radical/feminist ideology' tries to overcome the shortcomings of some of these alternatives. From critical/radical/socialist ideology it takes its concerns about race, class and capitalism. From radical feminist ideology it takes its greater sensitivity to patriarchy and women's victimisation. From left realist ideology it takes its concerns about the immediate impact of crime and the need for short-term responses. From peacemaking ideology it draws its concerns about violence and social injustice. Its formula for ending victimisation goes well beyond crime policies: to establishing a radical economic and feminist democracy that would eliminate the structural sources of violence (Elias 1993).

This ideology lays out a more active and politically sophisticated role for victims that could help develop a victim movement that challenges rather than acquiesces to state policies. It recognises both the limits (Smart 1989) but also the possibilities of the law for curbing crime and helping victims. It recognises how individualised, victim rights can be coopted, recommending instead rights claims that focus on collective, structural inequities for certain groups—such as classes, genders and races. By focusing on substantive and not merely procedural rights, this ideology could be the basis for a justice-based, rather than merely a rights-based, victimology (Mawby & Walklate 1994).

Making Choices

Thus, obviously alternative ideologies exist; there are no doubt others. The question is whether we will embrace them, and translate them into alternative crime and victim policies. To illustrate the possibilities, let's consider the following five case studies. Each one poses choices for victimology between mainstream and alternative ideologies.

Case Study 1: The contradictions of patriarchal justice

Victimology should be making choices about women's victimisation. Women have been the focus of considerable victim policy and research in the last dozen years (Vaughan-Evans & Wood 1989). Some older concerns have been addressed, and some newer issues have been considered.

For example, on the issue of sexual assault (Resick 1990), we know more now about the factors that influence whether women will report and otherwise pursue the crime (Lizotte 1985; Winkel & Vrij 1993). We have new research on

the trauma of rape (Denno 1993; Herd 1985), on medical needs and services (Bruyere 1994; Franks 1991; MacKenzie 1993; Manley 1990), and on the transmission of AIDS through sexual assault (Eid 1990; Guccione 1988; Laszlo & Smith 1991). We remain concerned with the continuing victimisation of women caused by media and judicial maltreatment. There's growing interest in holding negligent third parties at least partially liable for sexual assaults (Moran 1989). And the shocking and extensive rapes in the Bosnian civil war have also captured our attention.

Similarly, extensive work has been done on domestic violence (Campbell 1990; Dutton 1989; Friedman & Schulman 1990; Markesinis 1985; Quinn 1985). We know more about the consequences of this violence for individuals and families (Hotaling et al. 1988a), and about coping (Hotaling et al. 1988a, 1988b; Mahoney 1992) and defensive (Finkelhor et al. 1988) strategies. We have learned about domestic violence in new cultural and geographical (Avni 1992; Feinman 1992; Jain 1992) settings, and about international strategies being used to combat it (Walker & Corriere 1991). The increasing tendency for women to fight back against domestic violence was highlighted in particular by the Lorena Bobbitt case in the United States, where she cut off her husband's penis.

Victimologists have also been exploring new territory in women's victimisation. We have seen an upsurge in research on sexual harassment, for example, especially in light of the Anita Hill case in the United States (Almony 1992; Barickman et al. 1992; Harper 1991). New attention has also been paid to stalking and hate crimes, date rape (Pirog-Good & Stets 1989), and the victimisation caused by pornography (including the Pornography Victims Compensation Act) (Teepen 1992; Whicher 1993). And besides new research, women have been the apparent beneficiaries of new victim policies, including laws that purportedly crack down on crime against women.

Nevertheless, there are good reasons for concern. On the one hand, the new revelations of women's victimisation far outpace the measures we pursue against it. On the other hand, anti-battering initiatives sometimes include sweeping assumptions that all men are violent and that leaving the home is a women's only real solution against domestic abuse (Harding 1994). Victim-impact statements (Morgan 1992), anti-stalking laws (Attinello 1993; Bernstein 1993; Seager & Jordan 1990), and rape and battering reform legislation have been widely celebrated (Horney & Spohn 1991; Lambert 1981; Tocchio 1987), but have had minimal impact in practice. Instead, they have produced a rhetoric of protection, and the illusion of change (Coutts 1988; Ghent 1982; Hanmer & Stanko 1985; Hinch 1991; Maher 1989; Parloff 1992).

For all our increased concern, women's victimisation remains undercounted: crimes against women are still underrepresented in crime statistics (Stanko 1988) and corporate harms—which disproportionately victimise women—are barely treated as crimes in the first place (DeKeseredy & Goff 1992; Peterson & Runyon 1994; Vickers 1990; Wickramasinghe 1993). Arguably, victim policy has little to do with the real causes of violence against women; nor does it prevent it. Unfortunately, most of these shortcomings are also reflected in mainstream victimological research.

For example, the Anita Hill case has not produced the revolution in sexual harassment cases that many predicted. Similarly, the Nicole Simpson murder case has been hailed as a tragic but nevertheless valuable turning point against domestic violence. But the way it has been covered is unlikely to produce a lasting effect. Quite apart from whether O.J. Simpson's race and celebrity status have either helped or hindered his case, Nicole Simpson has remained largely invisible. In both sexual harassment and domestic violence cases, women are still routinely blamed for their victimisation, or substantially ignored (Douglas 1994).

Even worse, we can see an increasing criminalisation of women: drug-dependent pregnant women treated as drug dealers to their offspring (sometimes even before they are born), criminal penalties for abortions, and murder convictions against women who kill their violent, battering husbands or partners (Chadwick & Little 1987; Thomas & Stein 1990; Walker 1989). Women are taken more seriously for their actual or purported crimes (and no less so than men) (Daly 1994) than for their far more extensive victimisation.

Why does the victimisation of women persist; why are policies more symbolic than real in their impact? Arguably, it is because taking women's victimisation seriously would significantly challenge the status quo, including much of our research. Usually, we wrongly assume, given certain adjustments, that the criminal justice system can promote women's concerns (Snider 1990). Likewise, we have unrealistic expectations for the law's role in reducing women's victimisation (Smart 1989). In both instances, we have ignored the contradictions of our typically patriarchal legal and criminal-justice systems (Messerschmidt 1986; Radford & Stanko 1994).

Cracking down with get tough policies against women's victimisation typically does more to empower the state than to protect women. It also strengthens sexist institutions, which will do little to reduce the sexism that typically motivates violence against women. Women's victimisation is still not taken as seriously as men's. Feminism is blamed for luring women outside the home, where they are increasingly victimised in the streets (Faludi 1990). Sexist men are still primarily the ones making and enforcing our laws. Women's initiatives—even a few backed by some 'fundamentalist' feminists (that is, anti-pornography campaigns or initiatives that define as rape all heterosexual sexual intercourse if it occurs in a patriarchal society)—typically subscribe to ineffective, and often counterproductive, law and order crusades.

In our policy and our research, a truly feminist agenda (that avoids the extremes of right-wing, fundamentalist feminism on the one hand and watered-down, liberal feminism on the other hand) is marginalised (Walklate 1992): we largely ignore the root causes of women's victimisation, and the structural changes necessary to significantly reduce it (Stanko 1985; Wilson 1985).

The research for developing what could become a more non-sexist victimology is being done (Stanko 1988), but almost entirely by people who probably do not think of themselves as victimologists (Carignella-McDonald & Humphries 1991; Caulfield & Wonders 1994; Chapman 1990; DeKeseredy et al. 1992; Gregory 1986; Thomas & Beasley 1993). Unless we have some unexpected reason to trust patriarchal, criminal-justice institutions, we need an

alternative model for taking women's victimisation seriously. This kind of research should become part of the mainstream of victimology. It is simple, if not controversial: if our work is not really feminist, then it will not really help women. Those are the kinds of sides we should be choosing.

Case Study 2: Do victims want revenge?

Victimology must make choices about the role of punishment in criminal justice. Generally it assumes that if criminals are not made to suffer harsh punishments, then somehow victims have been deprived by criminal justice, perhaps even denied their rights. But do victims really want revenge? Should they want it?

Victims advocates often argue that only tough penalties for offenders will show victims that they are being taken seriously by the criminal justice system. This corresponds to the general notion that victims can only have their rights protected if suspects are denied their rights. This creates a zero-sum game based on the dubious proposition that victims can gain only if offenders lose. But there is little evidence to support this notion, and indeed, offenders already lose quite routinely: the vast majority of prosecutions in the US, for example, end in convictions. And as the nation with the world's highest incarceration rate and length of punishments, most of those convictions result in tough sentences.

According to mainstream victimology, victims 'need' revenge for psychological reasons. Victimisation generates pent up rage that can be satisfied only through the stiff penalisation of criminals. Harsh punishments such as 'three strikes' laws will also put criminals away for longer periods, perhaps forever, thus eliminating any further victimisation those offenders might cause. And the prospect of these penalties will deter potential offenders from victimising in the first place.

But these assumptions are wrong. Our criminogenic societies always generate new criminals to replace the offenders we put away, no matter how many new prisons we build to hold them (Carignella-McDonald & Humphries 1991). Victimisation does not decline; instead it continues to rise.

But what about victim rage? Some victims do seem to want revenge. But is revenge really the 'natural' reaction of someone who has been victimised, as victimology and victim advocates often assume? We spent years hearing that aggression and violence were also 'natural' to humans. But in the late 1980s, dozens of the world's leading scientists issued the Seville Statement on Violence that found just the opposite: the urge to aggression is not natural but rather socially constructed (Adams 1994). The same is likely true of revenge.

How could we expect victims not to believe they want revenge when law and order ideology and the mainstream victims movement have repeatedly told them that severely punishing offenders is what they need: for their rage and for their own self-protection? In our 'culture of violent solutions' (Elias 1995a), we have given victims no other model but revenge.

Yet as Richard Harding has argued, victim groups like VOCAL worry that not enough victims are joining them, ignoring the possibility that most victims may 'prefer to cope, to deal with their experience and move on, and that joining a punitive, ideologically motivated single-issue organisation does not strike them as a particularly productive way of trying to do so' (Harding 1994). As

interviews with the United States victim group Save Our Sons and Daughters (SOSAD) indicate: 'Parents demand justice but their secret craving is more for a validation of their grief, an acknowledgment that what they have lost is precious (Editors 1994)'.

Candy Lightner, the founder of Mothers Against Drunk Driving (MADD), has now abandoned the group, arguing that in its missionary zeal for punishment, MADD has lost its direction and does victims a disservice (Griffin 1994). As she argues: 'MADD helps you deal with anger, but I think it really prolongs denial'.

Despite the enormous pressures encouraging victims to 'want' revenge, it is remarkable that many victims, nevertheless, do not seek revenge in practice, and are far less punitive than we might imagine (Baker 1992; Elias 1983, 1993; Henderson 1985; Hough & Mayhew 1983; Karmen 1986; Maguire 1982; Shapland et al. 1985; van Dijk et al. 1991).

Consider, for example, the tragic and highly publicised rape, kidnapping and murder of Polly Klaas in northern California. While some of Klaas's supporters have endorsed harsh penalties, her grandfather has instead called for social programs to eliminate the conditions that generate criminals like Polly's assailant —a man, by the way, who was criminally victimised repeatedly during his own life (Dougan 1994). One victim recently opposed, publicly, the new 'three strikes' legislation in California (Finney 1994), and another victim refused to testify in her own case, because 'three strikes' legislation would have been applied against her victimiser; now she is leading a ballot measure against the legislation (O'Connor 1994).

Families Against Mandatory Minimums, based in Austin, Texas, now has 25 000 members and 40 chapters nationwide. They oppose harsh punishments, and instead favour measures more tailored to the offence, preferably using alternatives to traditional punishments. Murder Victims Families for Reconciliation, based in Liberty Mills, Indiana, opposes the death penalty and other methods of revenge (Murder Victims Families for Reconciliation 1993). Some judges have refused to apply three strikes laws in cases that have come before them (Sonenshine 1994). Why do these kinds of groups rarely appear in the victimological literature?

Victimology and victim advocacy have a choice. Will we continue encouraging victims to support harsh punishments, or will we encourage them instead to consider penal alternatives such as restitution, reconciliation and social change? Victims clearly do not need revenge; with our help, fewer and fewer of them will even want it.

Case Study 3: Police as victims of law and order

A second case study examines the impact of law and order crime policies on law enforcement officials. Police officers have expanded their powers by virtue of victim initiatives that curb suspects' rights and give officers a freer hand in enforcement. To protect against a growing criminal victimisation, police have even been encouraged to use greater force and violence. Nevertheless, their gains do not outweigh their losses.

The greatest benefits of law and order policies accrue to political forces in society far higher in the hierarchy than police officers. Political and economic leaders gain new powers of social control, and new capital for profitable criminal justice 'industries' (Christie 1993), while staying well outside the line of fire of the violence and tensions their policies unleash. Police officers, in contrast, are on the front lines of battles planned elsewhere, such as in Congressional backrooms and corporate boardrooms. The police are the foot soldiers of our repeated wars on crime and drugs, and are a large part of the casualties each time these wars fail.

The police often treat victims poorly, partly because officers view themselves as also being victimised. They believe they are unappreciated, and that their own victimisation is unrecognised. They're right. Most police officers, of course, do not view themselves as victims of law and order. To the contrary, most of them strongly endorse law and order policies, hoping they will give police more power and resources, even in societies like the United States, which are already committing overwhelming resources to law enforcement. But the problem is not a lack of resources or power; the problem is that we are implementing the wrong policies.

Although the dangers of being a police officer can sometimes be exaggerated, the costs are nevertheless significant. Police officers are subject to fear and extensive stress on the job. They are more susceptible to being afflicted by drug and alcohol abuse, suicide, accidents and disease. They have shorter life spans than the general public. They suffer social and personal isolation in their private lives, and have a high divorce rate.

Police officers are more likely to experience violence, resulting in physical and psychological wounding, or death. The pressures and temptations of their work lure them into corruption, brutality, crime, and rights violations—as revealed again by the recent Mollen Report in New York City (Mollen Commission 1994). Police are subjected to public scorn when citizens unfairly but routinely hold them responsible for increasing crime rates (Seager 1992). And their immersion amidst the dregs of society give most police officers a lowly and cynical view of human nature, often leading to racist attitudes they might not have otherwise developed (Kroes 1985).

It may seem strange treating police officers as victims since law enforcers in the United States, for example, have recently received so much attention for the victimisation they themselves produce (Salholz 1992; Witkin 1990). The videotaped, police beating of Rodney King in Los Angeles, for example, starkly illustrated police violence. Rather than an exception, coming from a few, rogue officers, police brutality is the natural and systematic result of failed, law and order policies: harsh tactics are endorsed amidst the rage—often mixed with racism—felt by many police officers from the frustrations, trauma, and violence of their work. Police officers' own victimisation, of course, does not justify police violence in response: brutality should be seriously resisted. But rather than being discouraged, it is instead encouraged by current policies predicated on war, where brutality is treated as a necessary evil.

Some police officers have begun to reconsider conventional law enforcement. They have concluded, for example, that wars on crime and drugs

are doomed to failure, and put police officers unnecessarily in the line of fire (Levine 1990). But powerful forces such as career, hierarchy, cynicism, and ideology make it difficult for many police officers to question law and order crime policies and their own work. To do so, police officers need more support.

Victimology could help provide that support. We have a choice: we can continue supporting both police victimising and police victimisation or we can help police officers find a new way of understanding law enforcement, the causes of their own job frustrations, and viable alternatives. Doing the latter would help not only the police, but also crime victims, avoid the continued victimisation of law and order crusades.

Case Study 4: Corporations as victimisers

Victimology must make choices about who it recognises as victims and as victimisers. Do we confine ourselves only to officially sanctioned categories of crime and victimisation, or should we recognise a broader array of significant harms? So far, we have largely limited ourselves to official definitions. With the adoption of the UN Declaration on Victims of Crime and Abuses of Power, however, at least a small part of victimology has broadened its definition of victimisation beyond what many nation-states, including the United States, would readily accept.

That is, 'abuses of power' implicate states as criminals, or at least as victimisers. Unfortunately, abuses of power seem very marginalised within victimology; most victimologists either do not accept or fully appreciate their implications for the study of victimisation. This prevents us from second guessing nation-states the way we should be—as genuine victim advocates: after all, why should we trust with the protection of crime victims nation-states that practice widespread victimisation elsewhere, that commit their own serious crimes, and that help promote the conditions that generate crime committed by others?

Nevertheless, despite this neglect, the Declaration does provide an opening for broadening how we define victimisation. Even if we did so, we would still largely be excluding from victimology another significant source of victimisation: that produced by corporations. As non-governmental organisations, they may not be included within the conventional definitions of 'abuses of power', even though corporations have enormous power, sometimes even exceeding nation-states themselves. Moreover, corporations produce extensive harms, and far more victimisation—measured in terms of injuries, deaths, and financial losses—than common crimes (Elias 1986; Reiman 1986; Frank & Lynch 1992).

That victimisation ranges from dozens of different kinds of corporate grand theft to improper medical care to workplace diseases and 'accidents' to environmental pollution to the promotion of unnecessary economic destitution (DeKeseredy & Goff 1992; Mokhiber 1992). Corporations are far bigger drug pushers than even the drug cartels yet instead of provoking a 'war on drugs' against them, nation-states are more likely to protect their crimes—often times even promoting them by subsidies or other favourable legislation—or at least not seriously restricting their activities (Cotts 1992; Henry 1989).

While we are appalled at the property crime that often occurs during riots or other domestic disturbances, we almost completely ignore the massive corporate looting that happens every single day (Rothstein 1992). And besides victimising individuals, corporations often harm entire communities. A good example of this is the increasing environmental devastation produced by corporate policies, and lax regulations (Schwartz 1993).

Most corporate harms have been ignored by victimology. Since most of this victimisation has not been officially designated as crime, it falls outside conventional victimological boundaries. Thus, implicitly or deliberately, we have made a choice about the kind of victimisation we take seriously.

There are defenses, of course, for our narrow choice. It has been argued, for example, that expanding our concept of victimisation would make victimology too unwieldy: where would we draw the line once we go beyond the formal definitions of crime? Focusing on crime victims is a manageable project. Others argue that we cannot focus on corporations because we would not know who to hold responsible for any victimisation they might cause. Do we blame workers, mid-line bosses, top executives, or the entire corporation?

But these kinds of objections all have answers: most we have now, others could be devised from precisely the kind of new research that victimology could be doing. There's no reason why we cannot devise new boundaries; the sign of a mature field is the ability to make paradigm shifts. More important, we delude ourselves if we think that corporate behaviour is irrelevant even to the narrow crime definitions that we already accept. In many ways, corporate wrongdoing is far more premeditated than most of the street crime that we commonly accept as crime, and as victimisation.

In addition, corporations—like states—are substantially responsible for creating the environments in which common crime flourishes. They help generate the economic conditions—for the poor, and even for the rich, for example, that generate most crime. In other words, on both a micro and a macro level, corporations contribute substantially to worsening the crime problem, and to increasing victimisation. Thus, we in victimology have no choice but to focus on corporate harms, even if we confine ourselves to fairly narrow definitions of crime.

Corporate harms are not unlike state abuses of power for another reason. Nation-states largely immunise corporations from the criminal label; this is no accident. Corporations lobby hard to earn this exemption for their harmful behaviour; even where they are not completely successful in convincing state officials, corporations are often exempted anyway by the rampant nonenforcement against the few areas where corporate behaviour is officially defined as criminal.

But nation-states protect corporations not merely by inaction but also by action: that is, by pursuing initiatives that affirmatively block corporate accountability for the victimisation they produce (McQueen 1992). Commercial law in nations like the United States and Canada, often directly support corporate harms—endorsing, for example, 'buyer beware' policies that victimise consumers, or labour policies that exploit workers, or housing policies that gouge tenants.

Likewise, the United States Bankruptcy Reform Act of 1978 allows corporations to file for temporary bankruptcy as a way of avoiding responsibility for fraud and other consumer rip-offs (Duffy 1986). On the other hand, when corporations are themselves victimised by crime, nation-states pamper them far more than common, individual victims, ensuring corporations 'justice', both inside and outside the courts, at far higher rates than usual (Hagan 1983).

Again, there has been considerable research done on corporate victimisation. A small amount of it has been done within victimology (Walklate 1989), but most of it has come from people who do not identify themselves as victimologists (Cullen et al. 1990; Frank & Lynch 1992; International Meeting of Experts 1994). So again, we have a choice. We can continue to ignore corporate harms or we can begin to take them seriously. If we choose the latter, then victim research and policy must devote itself to holding corporations responsible for the victimisation they generate, including initiatives that impose formal criminal liability for this behaviour. We should help demonstrate the devastating impact of these harms. We should expose the double standards and favouritism in state laws and policies toward corporate victimisation. And we should clarify the connection between unrestrained corporate power and the criminal victimisation it helps generate even at the hands of people not directly involved in the corporate sector.

Case Study 5: Newsmaking victimology

A final case study focuses on the mass media and victimisation. Arguably, the media illuminate the realities of crime and punishment very poorly in nations like the United States. News coverage distorts victimisation's causes and impact, individualising crime and ignoring its social sources. It emphasises some criminals while downplaying others—often displaying racial and class biases. It promotes get-tough crime policies and undermines alternative strategies, encouraging public retaliation and vigilante crusades. It endorses each new war on crime and drugs, ignoring all the others that have been fought and lost before (Elias 1994c; Jackson & Naureckas 1994). Its bias toward official and corporate perspectives on criminal justice are so strong that some regard crime news as essentially propaganda (Leiper 1994).

The media often present victimisation out of focus: child neglect, for example, is a far more prevalent victimisation than child abuse. Shoddily manufactured automobiles produce more highway victims than drunk drivers. Most missing children are runaways not child abductions (Kappeler et al. 1993). News stories deplore the mugging of the elderly as a vicious crime yet ignore old people who are victimised by landlords who maintain inhumane living conditions or by corporations who cheat them out of their pensions (Burtch 1986). Crimes committed at the workplace have become big news (Solomon & King 1993), yet the far more frequent victimisation caused by the workplace receives no media attention at all (Reiman 1986).

These distortions are further reproduced in media dramas and entertainment shows. And their steady and escalating diet of violence exaggerates reality and heightens the fear of crime (Gerbner 1993). So-called 'reality' television programs about the police (such as 'Cops') are anything but realistic (Seagal

1993); instead, they seem more designed to legitimise police brutality (Andersen 1994).

Media treatment of victims is generally simplistic, promoting stereotypes such as the 'helpless, innocent victim'. The coverage is often condescending and insensitive (Viano 1992). Television programs run by former crime victims or their survivors, such as 'America's Most Wanted' blindly plug into ineffective get-tough crusades, giving viewers the false impression that their tips significantly affect the crime problem. Talk shows such as 'Geraldo' often feature victims and survivors, using their anguish to whip up new public support for harsh measures, with virtually no consideration of alternatives.

Again, victimology has a choice. It can continue being either passive, or supportive, toward a mass media that promotes counterproductive crime policies, or it can instead more aggressively challenge media misconceptions. Comparable to the 'newsmaking criminology' proposed by the criminologist Gregg Barak (1994b), we could pursue a 'newsmaking victimology' that actively uses the media to promote victim interests.

We could provide new stories, new perspectives and especially new themes and categories of analysis for the media coverage of victimisation. We could challenge distortions and stereotypes such as those that filled the Reagan administration's shameful Presidential Task Force Report on Crime Victims. We could encourage the media to endorse alternative victim policies that mobilise social and economic strategies rather than merely law and order strategies against victimisation. We could act as media commentators and consultants, respondents and debaters. We could write articles and letters. In other words, we could assume our public and not merely our private role as scientists.

Which Victimology?

These examples illustrate the different directions victimology could move in the coming years. Charting a new direction would not be easy. Since some groups benefit from law and order policies, change would be strongly resisted. We would have to think of ourselves as radicals, if not politically then at least in the sense of 'going to the root' of the problem of victimisation.

If we make no conscious choice of ideologies or if we specifically decide to maintain our current course and remain wedded largely to a right-wing realist ideology, then continued victimisation and limited help for victims will likely persist. Such a choice should necessarily also force us to consider whether victimology—if it has that little energy and that little to offer, has outlived its usefulness as a field.

If, however, we decide we must change, then we must choose which one or more alternative ideologies will guide us. We must also commit ourselves to a new level of responsibility. As Czech playwright and president Vaclav Havel (1990) has argued:

> *If the hope of the world lies in human consciousness, then it is obvious that intellectuals cannot go on forever avoiding their large share of responsibility for the world, and hiding their distaste for politics under an alleged need to be objective. The intellectual should constantly disturb, should bear witness to the*

> *misery of the world, should be provocative by being independent, should rebel against all hidden manipulations, and should be the chief doubters of power and its incantations.*

If we make a choice for change, then victimology will have a great deal of usefulness, indeed.

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Decisions not to Report Sexual Assault in Japan

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Before World War II the roles of women were restricted to the traditional roles of home makers and mothers; however, that changed after 1945. The new constitution of 1947 gave them equal rights (Article 14) and opened a new way of life. However, in spite of their new roles, when compared to Western women, most Japanese women are still more reserved and conservative in their attitudes, behaviours and contacts with men.

Japan is a mostly male dominated society where remnants of the feudal attitudes of *bushido* (the way of the samurai) are still in use. The deference women give to their male counterparts includes a significant degree of making allowances for men's misbehaviours. Sexual assaults are among these misbehaviours. Sexual assault is not always taken seriously by the establishment. In most of the official publications on crime, sexual assault behaviours receive scant mention. Even in most popular books that document sexual attitudes in Japan, sexual assault is usually relegated to only token mention, if at all. In the major English tome on sex behaviour in Japan, Nicholas Bornoff's *Pink Samurai* does not mention rape in its index, and almost entirely avoids reference to any form of sexual assault. However, there is a brief mention made of gang rape as a frequent comic book theme openly viewed by male train commuters; and, a mention made that rape victims 'prefer to keep silent' (1991, pp. 108-9). In a more recent book, *The Japanese Woman*, Sumiko Iwao (1993) also excludes the word rape in her index although other topics such as incest, prostitution, spouse abuse, domestic violence, pornography, sex crimes, are listed. Rape is often portrayed in the media as the unfortunate fate of those who stray from the role of the traditional model women. The notion that rape is an extension of sexual gratification is still a dominant theme. The notion that rape is an act of aggression rarely appears in the scant literature on sexual assault (feminists and victimologists included). Oda (1990) writes that many Japanese males rape women for pleasure seeking sexual gratification. According to Asai Kiwamu

(personal interview, 3 August 1994), young Japanese men will sometimes refer to their chasing young women as looking for an opportunity to 'reipu' (a Japanese version of the English word rape). In 1985, one of the directors general of the cultural affairs bureau of the Ministry of Education, Miura Shumon, wrote in more than one magazine, that 'rape, although not gentlemanly conduct, was not so bad if practiced on modern young women whose moral standards has slipped anyhow' (Wolferen 1993, p. 228).

Accepting one's condition in life is a value highly regarded in most Asian cultures; it is also true in Japan. Some suggest this tendency not to complain and to endure with resignation in silence comes from the meditative Buddhist teachings (Yamagami 1994). In *The Teaching of Buddha*, a book found in many Japanese hotel rooms alongside the Christian Bible, the section called 'The Way of Practice' states people 'should learn to be patient when receiving abuse and scorn' (1966, p. 230)[1]. Whatever the origins, the sense of shame (*haji*), the risk of being shunned (*mura hachibu*) by the neighbours and protecting one's family, friends and superiors serve as strong inhibitors to reporting the entire range of sexual assaults. This includes forcible rape (*gokan*), gang rape (*rinkan*), acquaintance rape (*chijin ni yoru gokan*), sexual molestation (*kyosei waisetsu*), indecent assault (*kyosei waisetsu koui*), sexual touching by a stranger (*chikan*), marital rape (*fuufu kan gokan*), and sexual harassment (*sekuhara*). It is important to note that not all women accept these conditions. Japanese feminists have written and spoken about and against sexual assault for at least twenty years. Writers and lawyers like Keiko Ochiai (1981) Jun Hozumi (1994) and Yukiko Tsunoda (1991) have done much to encourage victims of sexual assault to break the silence. A 16-year-old Japanese girl wrote a poignant article about her rape experience and ended it by appealing to others who have been raped to express themselves, '. . . please keep this in your mind, a lot of women are in pain and cannot speak to anybody. More than men imagine' (Asahi Shinbun 1985, anonymous victim).

The sounds of silent suffering are elusive and difficult to measure. Burgess and Holstrom (1974) identified the 'silent rape reaction' where a victim not only does not report the rape to the police but also does not tell anyone else. In Japan, the dark figure of victimisation (*kakusareta higaisha*) has never been measured by a government agency; thus, the true extent of rape (and other victimisations) is open to conjecture. In a country with such a long history of victimological study, it is ironic that an official national victimisation survey is yet to be conducted. The bulk of victimisation studies that do exist have come from case studies (Nakata & Oda 1966) and officially reported crimes (White Paper 1993). Many, if not most, of these have been more criminological than victimological (Morosawa 1991, p. 225). In those countries where the dark figure has been measured, it is confirmed that rape is one of the most under-reported of the serious crimes (Hyde 1991, p. 336). The only English language summary of sexual crimes in Japan was done by Koichi Miyazawa (1976) covering 20 years of Japanese research. While this analysis was a notable contribution in its time,

1 Buddhism makes up 44.6 per cent of all religious people in Japan and the other major group is the more primitive animistic Shintoism at 49.7 per cent (Asahi Shinbun 1993).

especially the introduction of the Japanese sexual victimisation literature to an international audience, its conservative views, especially concerning the issue of culpability, are no longer valid today in the face of more than 15 years of extensive international research findings to the contrary (*see* Hilberman 1976; Johnson & Jackson 1988; Weir & Wrightsman 1990).

In 1992, the official number of reported rapes in Japan (using the narrow definition of forced sexual intercourse) was 1504 (White Paper on Crime 1993, p. 50). Using this figure, the reported rape rate for that year would be 2.4 per 100 000 females. For the same year in the United States the number of reported rapes was 109 062 and the rate per 100 000 females was 84 (FBI 1993). Based solely on reported rape figures, Vaughn and Tomita (1990, p. 151) reported that the Japanese rate per 100 000 people (men and women) has been declining. This conclusion distorts the reality of rape, as it ignores the dark unrecorded figure of rape and includes men in the rate calculation as though they were at equal risk to women.

It is likely that the decisions not to report rape in Japan are similar to conditions also identified in other countries but in different degrees. In pre-study interviews with Japanese rape counsellors, college students (male and female), housewives, and social scientists it was learned that the cultural pressures to defer to family, friends, acquaintances, neighbours, supervisors, and persons of greater status, males and older persons, are stronger than in most Western cultures and may significantly influence rape reporting and non reporting. It is interesting that the book written about rape and its myths by members of the Tokyo Rape Crisis Centre (1990) avoids mention of reporting phenomena entirely. The pressure for women to act with deference and altruism (Koss 1990) weakens the likelihood of victims reporting. In other cultures the majority of rapes are perpetrated by acquaintances: thus, it is reasonable to assume that a large number of unreported acquaintance rapes also exist in Japan. The majority are date rapes, rapes by colleagues, supervisors, family and friends. Also included should be marital rapes and child sexual abuses; however, in Japan these types of victimisations have not received much recognition as yet (Morosawa 1991).

Another unique category of sexual assault is acquaintance rape of Chinese students by their Japanese sponsors. The total number of mainland Chinese students in Japan in 1991 was 19 625. Approximately 9000 were females who came to Japan as students. Their visa conditions require sponsorship and most are sponsored by Japanese men. Some of these men take advantage of this condition of dependency by raping those they sponsor. In 1994, in a personal interview with Li Ya Xie, psychiatrist researcher, it was revealed that fearing retaliation by withdrawal of sponsorship, most of these students opt to preserve their relationship, protect their student status and do not report their victimisation.

Researchers in other countries have been concerned with measuring the extent of victimisation not officially known. They have learned that those victimisations that are very sensitive (usually of a sexual or family nature) are the ones most unlikely to be reported. One of the common myths that may affect the incidence of rape reporting is that rape is only committed by strangers. This

notion implies that acquaintances cannot be true rapists. In Japan, this idea is reinforced by the way police handle rape. They tend to accept only rape reports that resemble 'classic rapes', sexual intercourse with physical force, committed by a stranger in a secluded public place at night. In the United States the police frequently rule these type cases as 'unfounded'. This type of police policy has become community knowledge and consequently women become reluctant to report rape unless it resembles the 'classic rape' (Williams 1984, p. 460). In an important study of attitudes about what constitutes rape, Hubert Feild (1978) found that the attitudes of rapists and police were almost identical; and, that the attitudes of the general public were more similar to those of the rapists than of rape counsellors.

In the United States, it is common for both police and lawyers to dissuade rape victims from filing charges when the rape did not involve visible signs of physical violence (bruises, torn clothing). As a result, rape has the lowest conviction rate of all violent crimes. A similar trend occurs in Japan for prosecution: for the years 1990, 1991 and 1992 the rates of prosecution were lower than for the crimes of robbery, bodily injury (aggravated assault), and violent acts (White Paper 1993, p. 67). In an earlier study, Shigemori (1970) reported that in the cities he sampled (Tokyo, Utsunomiya, Kumamoto, and Yamagata) a significant percentage (18.1 to 32.5 per cent) of victims decided to withdraw their charges due to their misfeasance/negligence. This explanation used a bias frequently found in the legal profession that some women share responsibility for their victimisation. Thus, their withdrawal of the charge was due to being told or convinced they were not totally innocent (1970, p.145). In a United States study of women college students, Koss et al. (1988) found that about 21 per cent of stranger rapes were reported and only 2 per cent of acquaintance rapes were reported.

Our three major concerns with unreported sexual assault are that since the offenders are not caught and many are recidivistic (Cohen et al. 1971), there is a high likelihood that these offenders will victimise again. Second, non reporting causes a distortion in the statistics (informal indicators point to a dark figure of at least four times the reported figure) that in turn results in a false perception of both its size and character. Studies of reported sexual assault victims are biased in favour of stranger offences and ignore the more common acquaintance offences. The consequences of a false perception are that no official programs exist to deal with this social crisis. There are only two formal rape/sexual assault programs for the entire country and these are volunteer run, non-profit organisations, which operate only telephone hot-lines for up to only six hours per week, one in Tokyo and one in Osaka. Finally, by not officially recognising and validating a victim's trauma, tertiary victimisation develops (Morosawa 1993). Burgess and Holmstrom refer to this, the emotional aftermath pattern of rape, as the rape trauma syndrome (1974). This can mean nightmares, depression, anorexia, bulimia, insomnia, neurosis, psychosis, sexual dysfunction, post traumatic stress disorder, fear and anxiety even after one year (Resnick et al. 1981), and even suicides. Most of these problems, especially for the unreported rapes are untreated. Research has shown that women who do not report rape or tell anyone have more problems with coping (Crooks & Baur 1993).

It is expected that a larger study will confirm that the size of the sexual assault problem in Japan is much larger than most officials realise. The key to accurately measuring the dark figure is to conduct an official nationwide victimisation survey for all victimisations. Once the true size of the problem is officially accepted, at a minimum, changes would be needed in the sexual assault laws, in the training of police personnel, and in the establishment of victim counselling programs for all major population centres.

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Looking Back, Looking Forward: Two Decades and Shifting Perspectives on Familial Violence

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The feminist movements around the world over the past twenty years gave voice to outrage and concern over widespread 'hidden' familial violence. Feminist work on violence against women has forced recognition of the difference between what we now define as violence and how little of it was and is recognised as crime. Broadly speaking, violence involves inflicting emotional, psychological, sexual, physical and/or material damage. I include emotional and psychological harm because threat and intimidation, have consequences for how safe women, children, and men feel. Panic about criminal violence is often fuelled by fear, focused on the diffuse threat people feel from its potential. Curiously, this threat is typically associated with strangers, not those known (Pain 1993). Whether physical or psychological, the harm felt by the recipient of violence varies, as does the long-term impact on his/her everyday life. A recent experience of violence, or its threat, may have significant effects, altering an individual's routines and personal lifestyle or it may have little noticeable influence on daily life. Living within 'climates of unsafety', such as in a violent household, where typically women and children feel specially vulnerable to verbal, sexual and/or physical aggression also takes its toll.

We have learned that much of family violence involves women as the victims of their current and former partners, and also includes parents attacked by their children; children abused by their siblings and parents; women and men attacked by their same sex partners; and occasionally involves men attacked by their female partners.

Feminist research displayed how even the most serious incidents of sexual and physical assault failed to be considered appropriate for inclusion within categories of crime (Dobash & Dobash 1979; Family Violence Professional Educational Taskforce 1991). Silence about violence was unspeakable, for some, and when women and children attempted to speak out, they were often told that such behaviour was 'private' and could not be mediated by state agencies. The legacies of the unspeakable horrors of family life became the stuff of quiet resistance and survival, until the second wave of feminism, in the 1960s. This time the debates ripped open the known but denied suffering of all too many.

When women began to talk about their lives, not only with their current partners but during their childhoods, a catalogue of violence was retold. Sexual assault research on children and adult women suggests the common danger to sexual integrity is from those who have authority, access, and intimacy to their victims. Moreover, as Liz Kelly's recent research (1988) in England tells us, children's peers, especially their neighbouring and school-attending cohorts, harass, threaten and assault them more than adults and family members. Thus, when we think about violence within families, we must also think about families-in-context. Somehow, when we think about promoting safe environments within which children can grow and thrive, we fail to remember that the contexts of families' lives are also crucial.

Women's typical assailants are their intimate and former partners; male friends, acquaintances, co-workers, neighbours and clients are the most likely to threaten and to be violent to women. Violence, for women, arises largely from familiarity.

While all crime surveys should be considered to be underreporting incidence and prevalence of violence within families, the recent Canadian study is worth highlighting here (Statistics Canada 1994): half of all Canadian women have experienced at least one incident of violence since the age of 16; almost one-half of women who reported violence reported violence by men known to them and one-quarter reported violence by a stranger; one-quarter of all women have experienced violence at the hands of current or past marital partner (including common-law unions); one in six currently married women reported violence by their spouses; one half of women with previous marriages reported violence by previous spouse. Canadian women reported to researchers incidents which rarely came to the attention of the police: only six per cent of sexual assault and 28 per cent of physical assault incidents were reported to police (Statistics Canada 1994).

Violence and its threat is an acute reality for many women: fear of sexual violence has resulted in restrictions on lifestyle and mobility. Despite all the evidence that women encounter more danger at home, women take more precautions outside the home than do men (Stanko 1990; Gordon & Riger 1988). Clearly domestic violence and sexual assault are interwoven within women's

heterosexual relationships with men. Women are also targets for sexual harassment and pestering on the street (Gardener 1980; 1988; 1990), and may also be subjected to attack because they are or are perceived to be lesbian (*see* Mason in this volume); because they are women of colour or of minority groups; or because they are not able-bodied (Stanko 1990). So being female—in spite of our many differences—has profound implications for our lives.

So too men's lives have been interwoven by violence at the hands of other boys and men, often their neighbourhood and school mates. By all accounts, young men are the most at risk to personal violence. Violence contributes to the formations of men's relationships to various forms of masculinities, which may themselves be embedded within diverse experiences and structures of communities, class, ethnicities and so forth. Simply put, men position themselves among themselves, and all too often, women become the targets for their own exercise of power and status (Connell 1987).

In terms of domestic assault, feminist analysis has emphasised the impact of serial, intentional, and directed violence by men on women (Dobash & Dobash 1979; Hoff 1990). The meaning of violence for each party lies within the individual, collective and cultural understandings of being male or female. The men who use violence against women in domestic situations, as most notably Dobash and Dobash (1992) and Daly and Wilson (1988) observe, do so as

- a result of men's possessiveness and jealousy;
- an expectation concerning women's domestic work;
- a punishment for women for perceived wrongdoing; and as
- a prop to men's authority.

One of the perspectives forwarded to criticise the overwhelming evidence of women's experiences of domestic violence is to say 'but men are battered too'. Yet most men do not sustain the same level of serious injuries at the hands of intimates (unless they are killed, often in self-defence, by women they batter)—men's friends and acquaintances, even male strangers are more dangerous to them. While there may be men who report experiencing violence at the hands of their wives/partners, the meaning and intent of this violence does not have the overall collective impact on men's lives as such violence does for women.

Desmond Ellis, a Canadian researcher (1994), for instance, in a study of separating couples found that both women and men reported various forms of violence in about one-third of the separations, but that during the separation process, husbands are most likely to use violence to control their wives. Intentional hurting of wives by husbands increased during the last six months prior to separation, reports Ellis, but is not a unique phenomenon to estrangement. In other words, while some women may slap their husbands or throw the dinner dishes, there is little evidence that it 'means' the same thing to both partners (*see* Dobash & Dobash 1992).

Research suggests that women's ties to 'coupledom' are reflected in patterns of domestic abuse, in women's escape plans, and in the widespread, continued denial of the existence of such violence within presumably happy marriages. The significant contribution of feminist scholarship is that we finally see the ordinariness of violence within the home and within the ritual of courting.

Whilst 'families' may provide comfort, companionship, community, and identity to many, for others, those features entrap within domestic terror. Blinded by the rhetoric and promises of safety against the so-called danger of the outside world, these families become the very agency of abuse. But we must be very careful not to simply label these 'families' as not like us: it is far too easy to say that some families are 'dysfunctional' and therefore the problem is within that family. The evidence is too overwhelming about how gender, power and control are exercised within families which themselves are nestled within institutions and structures which privilege men's control over women and children.

We can no longer deny that these private experiences of violence have had a significant impact upon women's lives and have had devastating consequences for women who flee violence. While in many respects, vulnerability to violence at home is 'distinctively female', we must not forget the children who are subjected to assault—both physical and sexual—within the home, and those who witness their mothers being terrorised. One interesting finding of the previously cited Canadian study, for instance, is that women whose fathers-in-law used violence against their mothers-in-law, were five times more likely to have violence used against them. This is not to privilege the simplistic 'answer' to domestic violence—that it merely displays a cycle of abuse. We must continue to ask why, in so many cases, not all male siblings reproduce violence. The question must be asked: why don't some men use violence, especially those men whose brothers use violence? What kinds of support for non-violence do men find to minimise their use of violence? How have they resolved almost inevitable conflict which arises from heterosexual coupledom?

So far, the worldwide movement to halt violence in women's lives has no equivalent in the demand for a halt to the violence in men's lives. The retort—'some men experience violence at the hands of their partners'—is not sufficient to diminish the lessons learnt about women's experiences of domestic violence. Any discussion of the 'meaning' of violence must include the wider context of gender—that is being male or being female—and the resources, individual and cultural, that we have to draw on to live 'free' of violence.

Responses to violence in families: confronting institutional support for violence

In thinking about professional practice, we must take a woman's experiences of the violence she experiences, and use her observations of the man's dangerousness, and her own strategies for escape as the guide for any assistance to her. If we are trying to avoid a woman encountering lethal violence, we must be prepared to listen carefully to women when they describe the violence men use.

Any violence prevention work must address the issue of women's subordination as fundamental to understanding why and how women view sexual and physical integrity at risk. But it must also offer a range of flexible options to assist, not just a set of rigid guidelines where many (most) women and children fall between the nets. Lives are just too complicated to be neat. If we restrict ourselves to a legal framework, for instance, within which to solely define domestic violence as criminal violence, then we opt for a perspective on violence which individualises it, muting the wider contribution of gendered power and institutional support for it.

Approaches to assisting those confronting violence within their families must vary and be sensitive to maximising support from the widest possible spheres. These support structures should be knowledgable about the patterns of domestic abuse within families, and available in:

- social and welfare provision;
- housing, including safe refuge and transitional housing;
- supportive outreach by pro-feminist and non-judgmental community based groups;
- education;
- criminal justice intervention;
- medical services;
- women's economic independence, including provision for child care.

None of these, in isolation, is sufficient.

The buzz words are 'multi-agency work'. I define 'multi-agency' not by the fact that care and knowledge about domestic violence is now reflected in the practice of professionals. Let me remind you that the support of family and friends still is the single most important reason women cite for breaking free of violence. But the obstacles they encounter from those from whom they seek assistance—whose job it is to serve—are often mentioned by women as hindrances to their escaping violence.

I urge you to think like non-violent, supportive friends and family—and use your position as a professional to assist. So please, keep those lines of communication open, take criticism graciously, learn to overcome barriers which may continue to exist among the variety of people in this audience, and do not feel afraid to demand accountable service for those experiencing violence. I continue to learn each day about how 'violence' works—and I continue to work to minimise its impact. If you live in a place where familial violence has not reached the agenda, then put it on it. Most of all, resist your government's complacency. After nearly twenty years of working in the area of violence against women, I continue to be amazed at how often we seem to have to reinvent the wheel. Take this opportunity to discuss with others what they have found useful and helpful. Think about the many different situations and contexts

within which lives are led, and find ways of innovating change to meet diverse needs.

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EDITORS' NOTE:
This paper has been abridged owing to space restrictions. The full paper can be obtained by contacting Dr E. Stanko, Department of Law, Brunel University, Uxbridge, Middlesex U88 3PH, United Kingdom.

No Exit: Violence, Gender and the Streets

SUZANNE E. HATTY,
NANETTE J DAVIS &
STUART BURKE

Living on the street is like living on the edge . . .
There's no place for you.
(Homeless young person, Sydney, 1994)

Homelessness is a politicised issue in Australia today. Recently, a background paper released by the Labor Party of New South Wales declared: 'homelessness, particularly among the young, continues to be an unresolved tragedy and a source of embarrassment for politicians and society as a whole' (Labor Party NSW 1993, p. 8). At present, a Commonwealth Parliamentary Committee is inquiring into the problem of youth homelessness in Australia. This follows on the heels of the national inquiry conducted in 1989 by the Human Rights and Equal Opportunity Commission.

Current controversy surrounding the issue of youth homelessness focuses upon the large numbers of state wards living on the streets of our capital cities, especially Sydney. A recent survey by the Youth Accommodation Association (1994) claimed that there has been a 64 per cent increase in the number of state wards seeking crisis accommodation from 1992 to 1994. Only slightly more than half of these young people could be accommodated. Another issue generating controversy is the apparent ease with which young people can obtain the Federal Government's Homeless Youth Allowance. This allowance is available to young people aged 13 years or more who claim that they have been subjected to abuse or violence in their families of origin, or who claim that they can no longer endure the domestic disharmony of the home environment. This allowance has been available since 1986, but is now coming under increasing scrutiny. With the shift in emphasis in the child welfare system away from concern over 'moral danger' and toward the promotion of law and order solutions to the current 'youth crisis', there is a perceptible hardening of attitudes towards homeless

youth. A prominent media commentator recently announced: 'Kids on the streets are very often there because they choose to be there, and *because the Government funds them to be there, with our money*.' (John Laws, *Sunday Telegraph*, 24 July 1994; our emphasis). Another recent newspaper article stated, with reference to the approximately 10 500 young people receiving the Young Homeless Allowance in Australia (Kate Legge, The *Weekend Australian*, 13 August 1994):

> *They are a small but visible group, alienated from their families and the broader community; flotsam swept up in social, political and legal currents that affect all parents and adolescents to some degree.*

Hence, youth homelessness in Australia today is embroiled in debates about children's rights, parental and state responsibility, and rational choice models of crime and deviance. All of this is occurring in the context of claims of a trebling in the number of homeless young people on the streets of Sydney during the last year (Streetsmart Youth Centre, Wesley Mission, Sydney, cited in the *Sunday Telegraph*, 15 May 1994).

Very little of this public discourse on youth homelessness is informed by a comprehensive knowledge of the backgrounds and experiences of the young people who live on the city's streets. This paper will attempt to fill this vacuum in public and professional knowledge. In particular, we will analyse the link between gender and homelessness. This often-neglected relationship is of deep significance to an examination of victimisation of young people in society. It also reveals a great deal about how we perceive the nexus between gender and public (and private) space. For homeless women challenge the stereotypes surrounding domesticity. By their very existence, homeless women also challenge the social construction of the family as a site of nurturing and caring in which women figure prominently. As Golden (1992) notes:

> *[Fe]male homelessness means something different to society than does male homelessness: whereas a homeless man can be assigned comfortably to a variety of categories (hobo, tramp, bum, vagrant), and be relatively easily dismissed, a homeless woman creates discomfort because she cannot be categorised . . .* (p. 5).
>
> *The homeless woman is far more anomalous than the homeless man, for since there is no category to which she can be said to belong, she is indefinable; she has no recognised status* (p. 217*).*

The Definition and Scope of Youth Homelessness

What does it mean to be homeless? The recent National Inquiry into Homeless Children convened by the Human Rights and Equal Opportunity Commission defined homelessness as 'a lifestyle which includes insecurity and transiency of shelter'. Further, the Commission declared that homelessness 'is not confined to a lack of shelter . . . [but] signifies a state of detachment from family and a

vulnerability to dangers including exploitation and abuse broadly defined, from which the family normally protects a child'.

Worldwide, there are approximately 100 million children who live on city streets without care or shelter (World Health Organization 1993). The United States has about 1.5 million homeless and runaway children, 16 per cent of whom have run away more than five times (Janus 1987; White 1989; Regoli & Hewitt 1991). Los Angeles county alone has over 10 000 young people living on its streets. Canadian cities have 150 000 homeless youth, many of whom are at high risk of contracting HIV (Radford, King & Warren 1990). Indeed, chronically homeless youth may number as many as 500 000 in the United States (Baggett & Donough 1988). A significant proportion of these youth are juvenile prostitutes who are among the growing population of covert homeless not included in statistical reports (Sereny 1985). These young people live a precarious existence, exposed to the risk of violence or harm inflicted by boyfriends, dealers or others who wield power (King 1991).

In Australia, the Human Rights and Equal Opportunity Commission (1989) estimated that between 50 000 and 70 000 youth were homeless, or in danger of becoming homeless. The Youth Refuge Association estimated in 1991 that in New South Wales there were between 20 000 to 25 000 young people, aged 12-18 years seeking accommodation because of homelessness (Coffey & Wadelton 1991). This number does not include those living in squats, sleeping outdoors, living in temporary accommodation and the like. Covert homelessness is similarly patterned in both Australia and the United States, where the practice of short-term live-in relationships with boyfriends or older men may account for the gross under-representation of young women in official counts (King 1991).

Victimisation and Homelessness

Why are so many children living on the streets of the world's cities? In order to answer this question, we need to address issues of power, violence and social control. A theory of structured violence which underscores the institutional nature of many of the 'hidden and private injuries' directed at women and children in society (Graycar & Morgan 1989; Hatty 1992a, 1992b, 1993) is relevant to our understanding of youth homelessness. This theoretical framework is helpful in making sense of the type and nature of harms inflicted upon women and children in society. It argues that a pervasive imbalance of power between men and women in contemporary society legitimates the application of violent forms of control, and perpetuates both inequality and suffering among the powerless (Hatty, Davis & Burke, in press).

The theory of structured violence suggests that women and children may be regarded as paradigmatic victims of male violence (*see* Davis & Hatty 1990), in that their social position renders them vulnerable to assault. Further, this violence against women and children is often employed as a means of social control. This concurs with the position adopted by Campbell and Muncer (1987) which suggests that violent male behaviour is a goal-directed or instrumental activity. According to these authors, violence is both a gendered and a socially-

transmitted behaviour: male violence is directed at influencing the reactions and behaviours of others; women's violence is, in general, expressive.

In contrast to expressive theories of violence, in which violence is seen as a manifestation of stress, arousal or affect, instrumental theories focus on the behavioural rewards of the violence. These rewards generally take the form of enhanced status, coercive control, obedience, and the gaining of approval or material resources. Violence, for males, is outcome-oriented; its objectives are to improve self-esteem and to establish control over others. Our social understandings of violence are shaped by gender, and engagement in violence carries different meanings for men and for women (Campbell 1993; Campbell & Muncer 1994).

We argue in this paper that the sheer frequency and volume of violence directed at children in the family, and their perceived need to escape in order to survive, is a critical factor in producing youth homelessness. However, as we will show, the attempt to escape the culture of violence—its very embeddedness in the lives of young people—is thwarted by the hazards of street life. For homeless youth, whether living without security or shelter, the search for a safe haven is often futile.

Homeless Young Women: A Shelter Study

To illustrate the larger processes that propel youth out of the home and onto the street, we present a case study of 105 young women interviewed in Sydney, Australia in 1992. Fifty per cent of these young women were living in a shelter at the time of the interview; the average number of shelters utilised by this group was eleven. Excluding nine young women who had stayed in 50 or more shelters, there was an average of 5.6 different shelters used by the remaining 71 girls. The age range for the shelter sample was 13 to 21 years. A typical respondent was between 14 to 18 years. Additional interviews were undertaken with chronically homeless women over the age of 21 years, and young women living in juvenile detention centres in Sydney. Fourteen young women were living in such centres at the time of the interview. Most of the respondents in the total sample were Anglo-Celtic in origin, and the majority were from metropolitan centres (Sydney or Melbourne). Twenty-two young women were born overseas and had migrated with their parents as children to Australia. Only nine of the young women were Aboriginal.

The average age for first living on the streets was between 12 and 15 years, but some young women were homeless at much younger ages, for instance, one was six and the other nine when first on the streets. About 62 per cent of the young women had been on the street for six months or more. Over 40 per cent reported they have been on the streets for over one year, usually moving from one location to another.

Violent Beginnings

Violence is endemic to the lives of runaway and homeless youth. Frequently, the violence has been a staple feature of the family experiences of these youth

(Davis, Hatty & Burke 1995). The homeless young women interviewed in the inner-Sydney study reported extraordinarily high levels of violence in their families of origin. Approximately 65 per cent of the young women stated that they had been physically abused within the family, about 43 per cent by their father. Half of the girls interviewed said that they had been sexually abused, the majority by fathers or stepfathers. Over 80 per cent of the young women claimed that they had been emotionally abused by family members. The comments of the young women illustrate the severity of the violence and the impact it had upon them:

> *I'd get bashed or locked in my room if I did something wrong. I was always afraid to talk to my parents in case I got flogged.*

Another young woman said:

> *I'd hide under the bed 'cause I was afraid Dad would bash me. He's dead now. When he died, it was as if the whole world lifted. He can't hurt me any more.*

Other young women were aware of the negative consequences of sexual abuse. Some of the young woman in inner-Sydney commented on the role that this abuse had played in shaping their lives.

> *I had no privacy. I didn't belong to me. My uncle would come on to me all the time. I had to get out.*

The research undertaken, to date, clearly indicates that child physical or sexual abuse engenders particular effects. It injures the child's sense of self, and gravely interferes with the adaptive processes of individuation and differentiation from others. Interference with these processes is implicated in the development of such psychological difficulties as boundary inadequacy in the abused individual. Boundary inadequacy has been defined as 'a pattern of ambiguous, overly rigid, or invasive boundaries related to physical or psychological space' (Coglan 1987, p. 75). The creation of boundary inadequacy within the individual involves behaviours which confirm and perpetuate existing power imbalances in society.

Boundary inadequacy, particularly boundary invasion, has a catastrophic impact upon the fragile, developing self. As female children are more vulnerable to abuse, and possess less social power, they are less likely to successfully defend themselves against the effect of the trauma. As Evans and Schaefer maintain (1987, p. 147):

> *When boundaries are violated by emotional, physical or sexual intrusions it is as if someone rips open the victim, reaches in and 'steals their soul'. In later relationships, they often experience a feeling of being 'swallowed up' and losing their sense of self for they have learned that closeness/touch 'takes away' rather than 'gives' to them. The struggle to protect themselves from intimacy feels like a life/death struggle for survival.*

Individuals subjected to child abuse may respond to this experience in a variety of ways, for example, children and adolescents may engage in behaviours

which have the effect of removing them from the abusive situation, either psychologically or physically. International research studies show that girls, victimised in the home, will often respond to this abuse by running away. Chesney-Lind and Shelden (1993) reviewed several studies which found that between two-thirds and three-quarters of runaway girls in shelters or juvenile detention facilities had been sexually abused. In addition, the percentage of girls who had been physically abused was high. The authors concluded that there was a strong positive correlation between the girls' victimisation and their runaway behaviours. Hence, it should not surprise us that homeless girls and young women frequently report physical and sexual abuse in their families of origin. Nor should it surprise us that these young women believe that fleeing from the abusive situation is the only viable option available to them. Consequently, due to the lack of resources to assist young women running from violent homes, these young people often find themselves living on the street.

Hitting the Streets

A major hurdle in coping with street life is gaining an understanding of what constitutes appropriate behaviour. Being tough, being independent, minding your own business, never reporting crime or violence to the police, keeping your personal belongings with you at all times, being loyal to mates, and above all being ever-vigilant are standard approaches to the challenges of the streets. The adoption of this disposition is essential to the survival of those youth who find themselves on the streets. One young woman told us:

> *You should always be on the alert to things happening around you. Be cool when the police come around. Just keep your mouth shut. Like if you know something's illegal you don't go to the police or nothing.*

Often behavioural norms become obvious to the newcomer only when they are violated. Sanctions usually follow an infraction such as turning someone in to the police, stealing dope, crossing a 'streetie' in any way. Punishment of a novice may be unexpected, swift, and, occasionally, lethal. Two Sydney girls stated:

> *Don't lag, don't tell anyone nothing. Don't spread around who's selling drugs, who's doing business. Don't tell police kids' nick-names. Just keep your mouth shut and your eyes open.*

> *The less you know the safer you are. Watch your own back, and never tell anyone anything.*

For homeless girls living 'on the street' the breaking of these codes of conduct means an end to the 'adventure' of street life, and an increased awareness of the imminence of violence. This homeless girl spoke out about what happens to those who transgress:

> *They get punched out. They're not around for long, they just leave the streets or move to somewhere else. They can't handle it. Sometimes they're hurt real bad.*

Recourse to violence and other criminal behaviour may become essential elements of street survival (Crago 1991). Thus, routine violence may be viewed as part of the experience of youth who are living on the street, and may involve peers, acquaintances, police and strangers (Alder & Sandor 1990; Alder 1991; Davis 1993). Young people may escape violent homes only to encounter further violence on the streets (Human Rights and Equal Opportunity Commission 1989). Ian O'Connor (1989) reported to the Australian Human Rights and Equal Opportunity Committee that his research findings 'were replete with descriptions of being attacked in all manner of situations and of the ever present danger of violence.'

The World Health Organization (WHO) argues that the street lifestyle not only exposes street children and adolescents to multiple forms of victimisation, but that street behaviours involving drug abuse, prostitution and property crime may jeopardise the youth's return to mainstream society. The intensive interviews with 51 homeless youth under the age of 18 conducted by Christine Alder (1991) in Melbourne revealed that almost two-thirds had been physically assaulted and half had been sexually assaulted in the previous 12 months. Distinct gender differences in victimisation were uncovered: violence between the males generally involved fights, whilst the girls' experience of violence often involved sexual assault (*see also* Hagen 1987). Perpetrators of this violence were overwhelmingly male, including the police attackers reported by 47 per cent of the females and 58 per cent of the males (Alder & Sandor 1990; Alder 1991). One of the most disturbing findings of Alder's research was the extent to which these young people suffered their violent victimisation in silence without seeking assistance or reporting the episodes to authorities.

Life on the streets is a hazardous experience for young homeless people. Perhaps the *most* significant danger is the constant exposure to and involvement in violence. Only 23 per cent of our sample had not witnessed violence; over half had witnessed 10 or more violent acts. These were shootings, knifings, fights, beatings, rapes, muggings, death by overdose, and even a homicide. This street violence can come from numerous sources. Other homeless youth may prey on newcomers, clients may harass and assault young sex workers on the street, and drug dealers and others who operate within public space may intimidate and harass young people. The following comments from the young women in inner-Sydney indicate the extent of the problem:

> *I was crashing in a house and these guys broke in. The girl that said I could stay was dealing. The guys were raiding the joint for drugs.*
>
> *The most dangerous situation for me? Going to sleep at night, and not knowing if I'll wake up the next morning.*
>
> *It's dangerous on the streets. I don't care about anyone on the street—you worry about food, showers, clothes, everything.*

Our interviews with homeless girls in Sydney showed that the most pervasive threat posed by living on the street is violence. As noted above, the young women described witnessing hundreds of violent episodes 'from street gang fights to fights between prostitutes to police beating kids to get them to

break off fights'. Brawls were commonplace and could erupt when one homeless youth took something from another, or when a young person was known to be associated with a perpetrator.

> *A girl came up to me and punched me in the face. Then a friend did the same thing. Another time my boyfriend ripped someone off, and we both got bashed up.*

Echoing the pattern of repeated violence, one young woman said:

> *Yes, I was forced to have sex. Heaps of times. Before the streets it was violent sex and bondage with my father.*

Although many of these young women were more likely to be victims than to be offenders, contact with police, court, and detention were fairly common occurrences. Seventy-eight per cent of the young women we interviewed had been involved with the police, for a variety of reasons, for example, arrests for status offences or criminal acts, and for welfare/protection reasons. A significant number of girls (34 per cent) experienced police violence (bashings), a few on repeated occasions, especially if they were Aboriginal or members of other minority groups, or if they failed to behave in conventionally feminine ways (eg be polite, deferential, softly spoken, and so on). Forty-two per cent had been held in custody or detention. Most of the girls reported that they had avoided contact with the police because the police response could be unpredictable. The young women were as likely to be arrested as helped, especially since many of them had been involved in episodes of street crime and violence.

Police harassment and brutality were frequently cited as major reasons why 'you can never trust the police'. A 16-year-old who reported having 30-40 police contacts talked about her experience of police violence, including the 'phone book' technique, which reveals no external signs of injury, but can be extremely painful.

> *The police bashed me heaps of times. Once they flushed my head down the toilet. They've kicked me in the stomach and threatened me with the phone book until I gave them what they wanted.*

Another young woman said:

> *Police bashed me four or five times. They bash the shit out of you. Keep you in cells. They put telephone books on you and then bash you so it doesn't leave bruises.*

Young people may be at risk of police intervention simply because they spend significant periods of time in public places. Young people who occupy the streets, parks and commercial areas such as shopping malls, may be targets for police intervention. These public places may be construed within law enforcement discourse as sites of danger requiring strict surveillance to prevent crime and violence. The police mandate of maintaining public order, and the popular stereotype of young people in groups as potential or active criminals, converge to produce police practices which often violate the civil rights of these young people. Police may engage in random 'name checking', or officers may

question and detain young people without legal justification. Watkins et al. (1992, p. 31) describe such an incident:

> *[Police] take them out to the car park, split them up, ask them to stay there, and walk around and interview each one without arresting them, without giving them a reason.*

Such techniques of harassment and intimidation can lead to confrontational challenges to the authority of the police. Once a young person demonstrates an apparently disrespectful attitude, the police are more likely to move beyond a simple caution. In a recent survey of the relationship between young people and the police in Australia, it was found that police decision-making was affected by these extra-legal factors. Almost all police officers interviewed (89 per cent) claimed that a young person's 'attitude' was an important determinant of the decision to arrest (Alder, O'Connor, Warner & White 1992). Consequently, structural factors such as homelessness, poverty, or membership of a youth subculture or a youth gang, may predispose a young person to police intervention, and to stigmatising modes of informal or formal social control.

Living on the Edge

Taking up illegal or deviant activities appears to be an integral part of a 'street lifestyle'. Deviance and crime may be directly related to survival mechanisms learned on the street. Alternatively, the young person may have a prior history of conflict with the law. Indeed, there are two possible interpretations of the relationship between crime, violence and street life: deviance and illegal behaviour may be an outcome of running away and subsequent homelessness; or on the contrary, homelessness may be an outcome of previous deviant and illegal involvement. We can examine our data for an understanding of these two alternatives.

First, most of the young women we interviewed had experienced some deviant involvement prior to leaving home and living on the streets. For instance, before their movement into street life, over half had engaged in shoplifting, 15 per cent had sold drugs, 35 per cent had stolen property worth $50 or more, and 19 per cent had committed forgery. This pattern of crime and deviance was especially pronounced among the older homeless girls, and those girls sampled while in the detention centre.

Second, after moving to the streets, this pattern of illegal behaviour was exacerbated for many of the young women. Sixty-eight per cent admitted to shoplifting, 37 per cent to regularly selling drugs, 56 per cent to being involved in theft, almost 27 per cent to having committed forgery, 70 per cent to fighting, and most notably, almost 40 per cent claimed to have used weapons. Whilst only a small proportion of the young women we interviewed stated that they were currently involved in sex work, about one out of three girls indicated that they had been involved in prostitution for money while on the streets, and nearly the same number had exchanged sex for drugs. This pattern contrasts with less street-wise girls who exchanged sex for food or shelter. Regardless of the specific motivation for selling sex, homeless young women involved in

prostitution obviously constitute a high-risk group for health problems, especially HIV and the effects of drug abuse. As street prostitution is one of the most dangerous occupations (Hatty 1989), this activity places these young women at serious risk of physical and psychological injury, and even death.

Clearly, it is possible that there are two distinct modes of street adaptation. On the one hand, some young women may become involved in crime and deviance, but never or rarely in prostitution. These young women may seek protection from an older male, and become part of a crime-dependent street culture. On the other hand, there are some young women who have rarely been involved in serious crime, but instead use their bodies as 'capital' to negotiate street life. Although only 2 per cent of the sample identified themselves as 'sex workers', girls who worked on a regular basis were apt to, first, not draw on the Homeless Youth Allowance; second, live primarily on their prostitution earnings; and, third, have chronic problems with illicit drugs.

Indeed, national statistics on drug abuse in Australia show that homeless youth are particularly susceptible to drug and alcohol abuse, especially such illicit drugs as marijuana, barbiturates, cocaine, hallucinogens, heroin, inhalants, and ecstasy. Additionally, widespread use of tranquillisers (78 per cent for 'street kids' versus 9 per cent for other youth) has been reported, as well as a very high incidence of self-injected drugs. The National Campaign Against Drug Abuse (NCADA 1992) survey on 'street kids' emphasised that:

- Acceptance of drug use was much greater among 'street kids'; for example the average number of drugs accepted by 'street kids' was 6.9 compared with 2.7 for the 'teenage' group and 2.1 for the total random sample;

- A majority of the young people interviewed had also tried many other drugs; for instance 'street kids' had tried an average of 9.8 different drugs compared with 2.9 for 'teenage' and 3.4 for the total random samples;.

- Sixty-two per cent of the 'street kids' had self-injected drugs; and

- The preferred drug among the 'street kids' was heroin (54 per cent) followed by alcohol (17 per cent) and amphetamines (11 per cent).

This interconnection between 'street kids', illicit drugs and street crime has been borne out by research conducted by Inciardi, Horowitz and Pottieger (1993) in Miami, Florida. The authors found that the greater the involvement in dealing in crack cocaine, the greater the involvement in violent crime. In terms of absolute numbers, the 254 youths (of a total of 611 sampled) were responsible for a total of 223 439 criminal offences during the 12 months prior to the interview, including drug sales (61.1 per cent), property offences (23.3 per cent), and major felonies (robberies, assaults, burglaries, and motor vehicle thefts) (4.2 per cent) (Inciardi, Horowitz & Pottieger 1993). The Miami crack trade and its intimate link with serious crime may be an exceptional case; our research shows the young female street population in Sydney to be less affected by deep

involvement in a criminal lifestyle. Instead, most engage in episodic crimes, especially drug sales, prostitution and property crimes that sustain their life, as well as their lifestyle (*see also* Hirst 1989; Robertson 1991; Davis 1992; Neil & Fopp 1992).

This is not to negate the structural and situational features of homelessness that contribute to high criminality among youth. McCarthy and Hagan's (1991) self-report study of 390 homeless youth in Toronto, Canada, found that although a sizeable proportion of those surveyed participated in a number of illegal activities (most of them minor delinquencies) before leaving home, a significantly higher proportion of adolescents were involved in more serious criminal activities since leaving home. Levels of crime showed fairly serious increases for older street youth (16 years and up) and for those whose homelessness lasted more than a year. McCarthy and Hagan believe that street life is inherently 'criminogenic' in that it provides both opportunities for criminal offending as well as the necessity to commit criminal acts in order to survive. McCarthy and Hagan (1991, p. 408) conclude that 'there is compelling evidence of an interactive relationship between illegal activity and the length of the current homeless episode'. Hence, in general, the longer the time on the street, the greater the involvement in crime.

The escalation in crime after a certain period of time on the street supports the assertion that crime may be adopted as a 'conditional survival strategy' for coping with the economic and social strains which characterise homelessness (Cohen & Machalek 1988; *see also* Stelf 1987; and Wright 1989). We need to bear in mind, however, that an overemphasis on criminality and drug abuse among these youth tends to draw attention away from the violent, exploitative and neglectful family and social conditions that precede and surround the criminal behaviour.

Gender and Risk

The street can be a harsh and unrelenting place. Street youth often suffer from serious health problems due to a poor diet, lack of regular hygiene and unsafe sexual and drug using practices. As we have seen, homeless young people may be exposed to harassment and violence from a number of sources. Young women on the street are particularly vulnerable in the face of these risks. Young homeless women in inner-Sydney referred to the gender-related risks attached to street life. Some of the responses included:

> *It's much worse being a girl on the street. People on the streets have a problem with girls. Guys are more dominant and can take care of themselves. Everyone thinks you're a bloody nothing or a slut.*

> *It's much worse being a girl on the street. Guys think we can be used. A friend of mine was raped last night.*

> *It's much worse for girls. Everyone thinks we're easy to beat up or rape. People think we're shit.*

The case of Jasmin Lodge, a homeless young runaway of 17 years, who was killed in February 1993 whilst working as a prostitute on the streets of inner-Sydney, testifies to the risks of the street. Jasmin was a former state ward (until she reached 16 years) who had been placed in more than twelve refuges and foster homes stretching from the Central Coast to Sydney. Jasmin had also been placed in two detention centres for short periods after convictions for petty crimes.

Psychological reports prepared for the New South Wales Department of Community Services in 1989 indicated that Jasmin was suffering severe psychological trauma as a result of family problems. The reports stated that she was very anxious, impulsive and unable to protect herself.

At the time of her death, Jasmin had been working the street corners of Darlinghurst in inner-Sydney for about two and a half years. She had invented a new identity for herself, adopting the street-name of Cindi. Typically, she worked from 9.30 in the evening until morning, earning the $200 a day she needed to support her heroin habit. Jasmin was also supplying money for her boyfriend to purchase heroin. This boyfriend was often violent toward Jasmin, leaving her injured and distressed.

Jasmin's working practices became more high-risk over time. She began to steal client's wallets, and always carried a weapon. Her killer was convicted of manslaughter in March 1994, after alleging that Jasmin had threatened him with a knife, and admitting that he had strangled her.

It is clear that Jasmin Lodge had been subjected to a variety of controlling practices—ranging from violence to neglect—all of her life. Her life, and death, exemplify the extreme point on the scale of gender-related risks attending homelessness. Running from a family torn by conflict and disruption, Jasmin encountered the culture of public and private violence. Battered by her drug-dependent boyfriend, and exposed daily to the serious hazards of street prostitution, Jasmin disappeared from the life of her family and from the records of the state.

In reinventing herself as Cindi, the sex worker, Jasmin created a fresh identity. However, this identity was too fragile to endure the grave risks of the male-dominated streets. For Jasmin Lodge, her presence on the street was precarious; subjected to a routine of structured violence, Jasmin was literally 'out of place'. But lacking the protection of family, and of the state, what space could Jasmine occupy with safety?

Conclusion

Why are so many children living on the streets of the world's cities? Why are so many children suffering assault, injury and even death on the streets of the world's cities? What is the relationship between these two questions?

For answers to these questions, we need to refer to the hierarchical organisation of society in which power and authority are unevenly distributed. The effect of this disparity in resources is that the more powerful are granted a licence to engage in conduct which will secure and confirm their positional advantage. Those who are disadvantaged, by virtue of their lack of material or

social assets, are vulnerable to the intrusion of sanctioning behaviours. Women and children are particularly at risk of exposure to behaviours intended to influence and sometimes constrain their belief systems, their self-perceptions, and their ability to exercise freedom of choice.

This gendered system restricts young women whilst it gives to most young men their freedom. Whilst young males strive to move beyond the domestic space and to traverse the great, wide world, this experience is generally denied to young women. As Thurmer-Rohr (1991, pp. xvi-xxvi) notes, this journey leads women into:

> *mirrorless space, not to experiences of self-discovery, scarcely to places of memory. For in this freedom—we do not find ourselves . . . 'outside' for women is neither the symbolic road . . . nor the landscape of adventure . . . that on the whole still seem[s] to offer a 'home' and 'family' for men.*

For young women, there are few places of belonging or of safety. Permitted only conditional access to public space, and subjected to strategies of violence and control, young womens' dreams of a territory to call their own (a 'home') continue to be elusive.

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Domestic Violence: Towards a New Theoretical Approach

SUSHMA SOOD

The discussion in this paper is confined to four major types of domestic violence: wife-battering, wife burning, exploitation and humiliation of widows, and child abuse. Data on each of these four types were collected through an empirical study in selected cities from one state in western India. The total number of cases studied on wife-battering was 133, on bride-burning was 93, on widows was 190 and on child abuse was 167.

Wife-battering

When a husband who is supposed to love and protect his wife beats her, slaps her, or kicks her, it becomes a shattering experience for the wife. This beating may be for her refusal to obey her husband's advice or command, for her extravagance, for using vile and disgusting language, for neglecting husband's parents or siblings, or for satisfying her husband's complexes. Beatings may be occasional or frequent. In many cases, they start soon after the marriage. Since the problem of wife-battering is concealed from the public eye, it is difficult to estimate its extent in society. Marriage in every society is based on the feeling of companionship. In Indian society, however, the woman enters into marriage with old values and convictions. She is expected to shift her loyalties from parents and siblings to husband and in-laws. After marriage she has no independent social or economic status of her own. Her social status is directly determined by and is dependent on her husband's status in the family. In low and middle-income groups, illiterate and less educated and economically dependent wives are made to feel empty and meaningless. Whenever a family runs into problems, such problems are generally attributed to her. For all marital problems also, it is the

wife who is criticised for maladjustment. Marital violence is mostly directed by the husband against the wife. The wife prefers to tolerate victimisation and remains docile. The girl's childhood training and experiences in adolescence condition her to such oppression and suffering.

My empirical study found that:

- it is not only economically dependent housewives who are battered by their husbands;
- family structure, presence or absence of children and the size of the family have little correlation with wife-battering;
- the husband's occupation and family income make no difference in wife-battering;
- there is no significant relationship between the fact of beating and the educational level of the victim, but illiterate and less educated women and women belonging to low income families are battered more frequently than highly educated or middle-class women;
- the behaviour of wife-batterers is mostly learned. There is a correlation between growing up in a violent home and violent behaviour as an adult. Early socialisation to violence teaches and reinforces violence as a method of conflict-resolution or as a coping mechanism (*see also* Bandura 1973);
- husbands who batter their wives are mostly neither attached to their families nor committed to their family roles;
- use of alcohol in wife-battering is only a 'cooperative' factor rather than the 'basic' or 'chief' factor;
- the high-risk category of women physically battered by their husbands are women who are conservative, submissive, unintelligent, irrational and who lack confidence in self and have a weak ego;
- the high-risk category of batterers are those men who have conservative attitudes towards women, who have uncontrolled jealousy, who had faced battering in childhood, who are depressed and insecure, and who suffer from status frustrations;
- battered wives do not seek any police protection or any help from neighbours. This is the reason that the severity of violent acts in wife-battering cannot be assessed in a society like India. The reasons are that however violent the beating may be, the wives generally suffer in silence and avoid hospitalisation.

Bride-burning

Dowry is banned by a 1961 act, yet dowry deaths are on the increase. Indian weddings are occasions for conspicuous spending and this is related to the maintenance of what is believed to be the status of the family. Marriage is the time when the groom's family makes up all the losses and plans to live the good life on the demands they make from the bride's kith and kin. Even after paying dowry, girls' parents are not sure whether their daughters will lead a happy married life. About 43 700 cases of crimes against women were registered in 1990 in whole of India. Dowry deaths constituted 5.4 per cent of these total crimes against women. An exhibitionist culture has induced dowry-based marriages in which better positioned bridegrooms are highly rated and demanded in the matrimonial market. Demands are made after the marriage for cash, vehicles, gold and electronic goods. It is not only parents-in-law who torture young brides to bring more money from their parents, husbands also start abusing their wives. Young brides are humiliated, tortured and even burnt alive for failing to bring the expected dowry. They are physically beaten, denied food, verbally abused, and made to work like slaves. They are not allowed to visit their parents and sometimes even locked up in a room.

Parents of brides by and large do not make any efforts to save their daughters from being tortured by their in-laws because they feel that their daughter's real home is her in-laws' home, that daughters are 'guests' in their parental homes and that parents should never interfere in their daughter's affairs after marriage. Our empirical study also revealed that in a large number of cases, even after the marriage of their daughter, parents continue to meet with the demands of her in-laws. The parents who could not help their daughters were poor, had more daughters to marry, and were ignorant of the ill-treatment of their daughters.

The major findings of my empirical study of bride-burning are:

- the majority of brides who were burnt were between 21 and 25-years-old;
- in a large number of cases (88.2 per cent), brides were killed within three years of their marriage;
- ill-treatment and humiliation of brides by their in-laws started soon after marriage;
- in most of the cases (61.3 per cent), the brides' parents knew about the ill-treatment of their daughters by their in-laws but did not encourage their daughters to leave their husbands;
- in a majority of cases (57.2 per cent), the victims of burning died before reaching the hospital;
- in about one-fourth of cases, the victim was able to give a dying statement (26.9 per cent);

- in a large number of cases (62.4 per cent), the victim's husband was involved in burning her;
- the victim's parents were generally not satisfied with the police investigation and felt that the police had colluded with the offenders' families;
- three main methods were adopted in killing the victims: burning, strangulation, and beating and then setting on fire.

Violence against Widows

Widowhood is both a personal condition and a social status. The life of a widow is made miserable by the norms of patriarchy. She faces emotional trauma, familial exploitation and social stigma. She has to find new support systems, new sources of attachment, and new social networks, which are often difficult. She has to adjust to in-laws, find some job for supporting her young children and face the 'male gaze', seductive overtones and even molestation. However, the problem of widows has been ignored by the researchers, reformers and social scientists.

In traditional Indian society, involvement in social roles, social relationships, and support systems is not determined by choice or through life events but by family, caste, and social norms. A widow's life is dependent upon her in-laws, her parents, siblings, and relatives. The traditional culture discourages her from any assertive social engagement outside of the private domestic sphere of the home. The widow is poorly evaluated by her in-laws and others in a mother's role, daughter-in-law's role and leisure role. This lowers her self-esteem. She is harassed, humiliated, exploited and tortured. Even if she makes sacrifices to please others, she is taunted and terrorised. Violence against widows may be both visible and invisible; emotional as well as physical and sexual; denial of normalcy of life available to married women as well as conformism to norms of widowhood. It includes: physical battering, emotional neglect and torture, verbal abuse, sexual abuse, depriving her from legitimate share in property, and abuse of her children.

The low social status of widows in Indian society is evident from the fact that they are considered inauspicious on many occasions. To see a widow in the morning or to face her while going on a journey or some mission is regarded as a bad omen, bringing calamity, misfortune and frustration. Consequently, she has to keep herself away or at a distance on such occasions. While widowers can carry on with life as if nothing has changed, can sport new clothes and acquire another wife, a widow's life has to be ascetic. She is expected to remain chaste and virtuous in word, thought, and deed.

The nature of violence against the widow depends upon the person who is the victimiser, for instance, the mother-in-law, sister-in-law, father-in-law, brother-in-law, husband's maternal uncles and children. Mothers-in-law are involved in physical violence, passing sarcastic remarks, accusing for immorality, assigning heavy household chores, and beating or ill-treating

children; sisters-in-law are involved in passing sarcastic remarks, accusing for illicit relations, giving heavy household chores and ill-treating the children. The males in the family exploit the widow by denying her share in her husband's property, taking away her husband's economic assets and also by molesting the widow. Of the three most important motives of victimisation—power, property and sex—property is a crucial factor in victimisation in the middle-class widows, sex in the lower-class widows, and power in both the middle-class and the lower-class widows.

Widows also face violence from children. After the death of a husband, a woman becomes dependent on her son economically, emotionally and socially, a son who considers her immature and inexperienced. The son may want to become the power in the family and may transfer the mother's property to his name and take over decision-making. Three types of mothers are most likely to be victimised by their children. Those who:

- lack social resources to retaliate effectively against abusive children;
- have no other place to go and are totally dependent on their sons;
- give full authority to their sons during their adolescence.

The New Theoretical Model

Women have been victimised in traditional Indian society. Dependent on men, they have been humiliated, tortured and exploited, routinely defined and assessed on the basis of sex. They have never been equal with men. Wives are treated as domestic drudges and as an instrument of male pleasure. A large number of educated women have started working outside the home, but they remain dependent on men. Until recently they have failed to organise collectively. Today, however, a search for identity has started. Women have felt the need to discover themselves. But the stereotypes and myths prevalent in our male-dominated society limit this search.

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Violence against Women under China's Economic Modernisation:
Resurgence of Women Trafficking in China

XIN REN

Trafficking in women was one of the 'oldest evil trades' to flourish in pre-communist China. At that time, parents and husbands were permitted by the law to sell their children or wives in the open marketplace. The early practice of women and children trafficking represented women and children's inferior social status before the law and generally reflected the society's values and attitudes toward victims of this evil trade in the traditional Chinese society. When political power changed hands in China in 1949, the new government quickly abolished such inhuman practices against women and children. They launched a public campaign that vigorously and swiftly eradicated the trade in slaves, prostitution and opium in the late 1950s. The government's triumph over these evil forces not only provided badly needed social stability for the revival of the national economy but also boosted public confidence in the newly established political entity, and eventually helped the communist party to consolidate power throughout China.

As China has undergone drastic political and economic changes in the past fifteen years, human trafficking has resurfaced. It has been reported in more than twenty of China's thirty provinces and autonomous regions since the early 1980s. Women and children have been the primary targets of abduction, illegal imprisonment, physical and sexual assault, and sale. Although no official statistics have been released on how many women and children were abducted and sold in the black market, the media and unofficial sources put their estimates at at least 10 000. The slave trade in women is particularly prevalent, and has not only affected hundreds and thousands of families in rural areas but also the population in cities. This paper is a preliminary report on the issues of violent crimes against women in this evil trade practice under China's economic and social modernisation program. To understand the enormous social impact of this crime on Chinese families and people, I begin with an assessment of the

prevalence of the abduction and sale of women and a description of trafficking network operating in China. Secondly, I shall discuss various violent acts against the slaves and their families. The third issue of this paper traces the historical roots of the trade and considers the social breeding ground that has allowed such crime to flourish under the economic reform. The final section is devoted to the official crackdown on trafficking.

Prevalence and Trafficking Network

The trade in women is particularly rife in villages in mountainous and remote rural areas of provinces such as Sichuan, Shandong, Hebei and Henan. For instance, between 1986 and 1988, there were 48 100 women sold in six counties of Xiuzhou region in Jiangshu Province. In one village, two-thirds of newly wedded brides were purchased through the black market peddlers. In a county of 100 000 population, peasants spent a total of US$85 000 for purchasing nearly 700 women as wives from 1982 to 1988. 7424 cases of human trafficking were reported to police in Guizhou Province between January and September of 1988. Consequently, the police arrested 2535 offenders for alleged human trafficking and abduction. Law enforcement agencies in Shangdong Province rounded up 2761 offenders and 267 gangs for operating trafficking rings and liberated 2035 abducted women and 158 children.

The slave trade affected the lives of thousands and generated lucrative profits for the abductors and dealers at various points of the process. For each deal that goes through, traffickers can make between US$300 and US$500. A trafficking ring with 40 members in the city of Xiuzhou abducted and sold more than 100 women and generated more than US$100 000 profit within a two-year period in the later 1980s. Trafficking often involves a chain of abductors, with each one passing women on to the next link in their intricate network throughout the country. Most traffickers are young men between 22 and 37-years-old, peasants, unemployed, taxi, bus and truck drivers and railway workers. Traffickers usually organise their network along the railways. Once women are abducted, they are often stripped and lined up for sale in the rural free markets. The trade is often made under the eyes of the law and local cadres. The abducted victims in Xiuzhou, mainly aged between 14 and late thirties, were sold for between US$400 and US$800 depending on looks, age, virginity, physical condition, and previous marital status.

A preliminary investigation conducted by local and provincial law enforcement agencies found that, besides abduction, a significant proportion of victims of the slave trade was lured away by dealers through deception such as a job offer, an admission to college, or a promising marriage in big cities. Since many young women are eager to leave their isolated, impoverished small towns or villages for better opportunities and life elsewhere, they often fall into the trap of traffickers who pretend to help them with promises of college, jobs in big cities, and ideal marriages. Some of the women were sold voluntarily, hoping to escape poverty or an abusive husband for a better life elsewhere. Most of them do not understand the perils they are facing in this brutal and illicit trade. Tragically, some of the victims were sold to men who are mentally retarded,

physically disabled, elderly or were to be shared by several brothers within a family.

Criminal Violence against Women

In the slave trade, the commission of violence is a daily event. Many women were victims of kidnapping, rape, sexual slavery, psychological humiliation, physical torture or even mutilation and murder. According to victims' own accounts and those of witnesses, victims were held in inhuman conditions, with long-term solitary confinement, physical restraining, starvation and humiliation being used. Their eyes were blindfolded, hands tied, mouths taped, and they were kept in the dark for several days without clothing, adequate food or water. Forced virginity examination was also a common practice. When victims tried to escape from men who bought them, they were often recaptured, brutally beaten, imprisoned, mutilated or even murdered. In 1989, a women's magazine reported an incident in which a woman's eyes were gouged out by her husband, who bought her in a black market, so that she won't be able to escape again. What is even more devastating is that many escaping victims were recaptured and returned to the men who bought them by local law enforcement officers or public security staff in the village. Instead of viewing the slave trade as illicit and violent, many officials considered the men who bought women to be the legitimate owners. For instance, when a bride was known to be a victim of human trafficking and forced marriage, local officials would still issue a marriage licence. Many women committed suicide as the only way out of this tragedy.

Theoretical Analysis on the Causes of Slavery Trade in China

The selling women as wives or prostitutes has its historical roots in traditional values about men and women, but there are a number of reasons for the contemporary rise in the slave trade.

The practice in the early twentieth century of selling daughters to support a family or purchasing a woman to carry on a family line is still vivid in the memory of many people, particularly in underdeveloped rural areas. This old custom of carrying on the paternal line has come under siege as a result of China's one-child-family policy. In many cases, a husband sold his wife to a dealer simply because she gave a birth to a baby girl and his family has shunned the wife for being unable to bear a son. As a result of the clash between traditional values and the official one-child-family policy, female infanticide has also become prevalent in rural China. Again, government officials rarely take any action against offenders.

The rising cost of the traditional rural wedding, which frequently exceeds US$2500 nowadays, makes marriage very expensive and often unaffordable, while purchasing a wife generally costs only US$500 to US$800. For the rural population, marriage is not a personal matter that involves emotional commitment and romantic affection but a family responsibility of prolonging their paternal line. Therefore, in many families, the marriage of their son is a

family affair and every member will have to work hard and save every penny for the dowry. If it is necessary, a family may sell its daughters to raise money to purchase a wife or to exchange with another family for a daughter-in-law. Arranged baby marriage also exists in many rural areas. Women are still regarded as the reproductive property of men, which can be purchased and sold at a market price.

The growth of prostitution as a by-product of the rapid expansion of tourism has provided another market for traffickers. Pimps control the prostitution industry while the traffickers supply sex slaves for high profits. Along with economic development, more and more young women left their poor villages to go to the big cities for opportunities of jobs, education and a better life. The sex industry has provided them with an alternative living in cities. According to the Public Health officials, the widespread prostitution problem has brought a rocketing rate of venereal diseases.

In addition, woman trafficking is believed to have increased as economic controls in the rural areas are eased and more people, both men and women, search for ways to be prosperous or escape poverty for a better life elsewhere while China moves towards a market-oriented economy. People now have more freedom to decide where they want to live or work. They can be self-employed and are subjected to less governmental scrutiny and official control. The partial emergence of a market economy has reinvigorated the slave trade, as travel and residence change become easier and peasants accumulate enough cash to purchase a bride. Although woman trafficking is strictly illegal under sections 140 and 141 of the penal law, the rapid decline in social and legal control has had a devastating impact on protecting women/children from these crimes. In addition, many participants of the slave trade, including some of the victims, view such activities primarily as a means of making business and achieving economic prosperity. Lastly, the high illiteracy rate among the female rural population has severely hampered victims' chances of seeking effective help from official agencies and private organisations.[1]

Official Crackdown

The Government has recently launched a campaign against abduction and slavery trade by declaring it as one of 'six evils'.[2] On 4 September 1991, the National People's Congress passed two bills to prohibit solicitation of prostitution and to increase penalties for the crimes of women and children abduction and trafficking. The new laws criminalise such conducts as engaging in prostitution with sexually transmitted diseases, purchasing abducted women or children, and kidnapping for ransom. They create a group of serious felony crimes such as

1 China still has more than 220 million people who are illiterate or literate at a socially dysfunctional level. Of this population, more than a half of them are women in rural areas. Chinese officials reported that in 1989, among seven million children who dropped out of school, 80 per cent were girls in rural areas.

2 These were prostitution and women trafficking, pornographic publications and sales, manufacturing and trafficking in narcotics, illegal gambling and swindling through superstition.

operating a human trafficking ring and kidnapping women and children for the purpose of sale. The new laws have also increased the penalties for prostitution, for forcing women into prostitution, and for human trafficking.[3] The bills require mandatory educational programs and medical tests of sexually transmitted diseases for those arrested for prostitution and solicitation. The new laws delegate the responsibility of inspection, suspension and full closure of hotels, taverns, bars and night clubs (where the owners may be involved in prostitution and the trafficking of women) to the local business licensing agencies. The new laws also affirm the legal responsibility of local, district, county and provincial governments to cooperate with law enforcement agencies' investigative efforts and help those victims of abduction and slavery to reunite with their families.

The official crackdown on human slavery trade began in the early 1990s. On 28 September 1990, a 27-year-old man was found guilty of selling his mother, wife, his three-year-old daughter and 18 other women and children. He was executed on 3 November 1990. In January 1991, six men were executed and seven others were imprisoned for abducting and selling women in the province of Henan. The execution was a result of crackdown on a gang of human slave trade. This group of men had abducted 70 women and sold 61 for a total of more than 138 000 yuan (US$26 500). A similar case was also reported in Shanxi Province. In June 1991, the provincial court sentenced ten men to death for kidnapping and selling 91 women; the youngest one was only 13-years-old. These offenders had also raped at least 22 women before selling them to peasants who needed wives. The ten men, as a part of gang, had earned 210 000 yuan (US$40 000) over several years. Recently, the traders have expanded their market and territory beyond the borders of China. For instance, Burma's authority has contacted Chinese official about young Chinese women rescued by the police from massage parlours. The reports suggest that these women were sold by Chinese smugglers to Burma. Chinese police have also repatriated at least 2716 Vietnamese women who were believed to be abducted, smuggled and sold to Chinese peasants. According to government reports, between 1990-91, 65 236 people were arrested for involvement in the sale of women and children. From 1993-94, another 50 000 traffickers were arrested in a further 33 100 cases. The authorities reported that 27 000 people, including 2700 children, were rescued. However, even the government admits that this was just the tip of the iceberg concerning the problem of women trafficking.

As China's economic development continues, the trade in women will continue to make its way back into rural and poverty-striking areas. The battle against women trafficking is far from over.

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3 The new laws increase the penalty from the original 5 to 10 years of imprisonment to minimal 10 years to life or death penalty.

Domestic Violence against Women in the Conditions of War and Economic Crisis

VESNA NIKOLIĆ-RISTANOVIĆ

The main aim of this paper is to analyse the characteristics of domestic violence against women in Yugoslavia where the war in Bosnia and Croatia and economic crises have an influence. I report on the qualitative analyses of thirty-three cases of domestic violence against women.

War and Economic Crises¾ the Specific Influence on Domestic Violence Against Women

As the base for analyses of specific influence of war and economic crises on domestic violence against women, I used 25 cases reported to the SOS telephone, four cases from Shelter for battered women and four cases reported to me in interviews which I did with women refugees from Bosnia and Croatia.

The general characteristic of all these cases is that the beginning or aggravation of violence is related to: the return of soldiers, nationalism, aggravation of social position and financial situation resulting from refugee status or from economic dependence of either husband or wife as a consequence of economic crises and refugee status. Twenty molesters were husbands and eleven were sons. In addition, one boyfriend molested his girlfriend and one refugee molested his landlady. The majority of women were Serbs, one was Moslem and two were Croats. Six women lived with husbands of different

nationalities—one with a Moslem, one with a Croat, one with an Albanian and the rest with Serbs.

All sons who molested mothers and eight husbands who molested their wives came back from warfare and brought weapons with them. Some of these men also molested their sisters as well as other relatives who lived with them and destroyed household furniture. All of them regularly used weapons (pistols, bombs) for threatening their victims. Some of them became more violent under influence of their war experience. Some started to consume alcohol and beat their mothers and wives for the first time when they returned home from warfare. Some women described their husbands as 'persons who had became crazy after their war experience'. Even when they were not beaten, wives of such husbands called the SOS telephone and asked what they could do with them.

At the very beginning of the war some women reported so-called 'post-television news violence'. This means that their husbands became very aggressive after watching television news on Channel 1, which was the main channel for broadcasting war propaganda. Some of these women were beaten for the first time in their lives by their husbands: sometimes violence was abrupt, unexpected, or more drastic, and women learned to stay away from their partners at that time.

Belonging to different ethnic groups or differences in political opinions of spouses are also the source of conflict and violence in marriages. In some cases violence became more drastic because of the wife's belonging to an ethnic group different to her husband's but in some cases nationalism provoked the violent behaviour of her husband. Nationalism did not dominate only in politics and the media. Its reflection is obvious in all, even personal, relationships. As Smith pointed out 'everything that happens in global society is reflected in the family' (Smith 1989). The abstract hatred against other nationalities was smoothly transformed into hatred against very close persons such as wives, children, relatives. They are seen as concrete symbols of enemies. But wives are also seen as parts of their husbands' property which became bad and worthless because of their nationalities as well as the source of husbands' shame and problems in contacts with other people.

One Croatian woman reported that in the last two years she had 'been suffering awful violence from her husband because of her nationality'. He molested her earlier, too, but with the beginning of war and nationalism he became completely insupportable. He turned the child against her too. One other woman, also a Croat, is divorced but because of the bad financial situation had to continue to live in the same apartment with her Serbian husband. Her husband's entire family blamed her for the war and the political situation. Her former husband became violent with the beginning of nationalism and beat her several times so that she had serious injuries and had to stay in hospital. A very similar situation was reported by a Serbian woman who lived with a Croat. She suffered death threats from her husband and his family, and she was beaten. One Muslim woman whose husband was Serb has been beaten regularly since the beginning of war. Earlier she was happy with her husband but when the war started the friends began to accuse her husband saying: 'Why did you choose to marry one Moslem among so many Serbian women'. They found her guilty for everything

that was done against Serbs by Moslems. And he started to beat her every night after having drink with his friends. She had serious injuries and tried to escape but he refused to allow her to bring their child with her saying: 'It is a Serbian child and must stay here'.

Domestic violence against women may also be related to frustrations produced by refugee status. Sometimes the conflicts in refugee families result from a changed social status or a lack of financial security. When a husband does not work and his family has serious financial problems, he is frustrated since he is not able to support his family as it is traditionally expected from him. When a woman who was earlier economically independent from her husband is not able to find a job, she may be regarded as worthless and abused, usually psychologically, because of that. In some cases husbands spent some time at warfare as soldiers and have the weapons with them. In these cases, the violence is most dangerous and victim is most helpless. One woman refugee from Bosnia lived with her husband and child in a rented apartment. Both parents were unemployed. When the husband came back from warfare he started to consume alcohol, to rape, beat and threaten her with a knife. She would like to leave him but did not have anywhere to go.

A special problem existed in families which accepted refugees. Women who have both refugees and violent husbands in their homes report that their husbands became more violent. The imbalance in the family created by newcomers is used by men as a reason for violence against women. In such situations men are violent regardless of the nationality of their wives. Also, there were some cases of male refugees who took advantage of the hospitality of women (who accepted them for some time) and molested them.

Sometimes aggravation of the financial situation of the family and incapability of husbands to support their family as well as to satisfy their own elementary needs were sufficient reason alone for the husband's violent behaviour. One woman reported that her husband was violent for years but in recent times the violence became more drastic and dangerous. Her husband became nervous and more violent when their financial situation got worse. Earlier, he consumed alcohol regularly but now he has not the money even for cigarettes. He broke off the contacts with friends and relatives and spent all his time watching television.

Sometimes, the tension arising from different nationalities of spouses is added to an aggravated economic situation. This is especially serious in the cases when the nationality of the husband is seen as the cause of the loss of job or aggravation of the financial situation. One Serb woman said that her Moslem husband start to consume alcohol, to beat her and their child and to threaten to kill her after being fired from his job.

The majority of women called police and asked for help, but police either did not intervene or their intervention was not effective. Police did not take away the weapons from molesters. Sometimes they supported molesters who participated as volunteer soldiers in the war in Bosnia and Croatia and justified their violent behaviour as the consequence of their war traumas. Also, police officers often made mocking comments in response to the reports of battered women. They

made comments such as ‘what do you expect me to do, I was not the witness at your wedding’, ‘he is obviously in love with you’ and so on.

Conclusion

War and economic crises promote the criminalisation of society and are the source of frustrations and stresses of individual men which make domestic violence against women more widespread and dangerous than usual. Although sexist organisation of society, that is, imbalance of power in relations between women and men, is still the main cause of domestic violence, war and economic crises lead it to the dramatic point. Cultural norms, such as the male-dominated ideology regarding relationships between the sexes, influence acceptance of domestic violence in such a way that there is inappropriate reaction, or even absence of reaction by police and other institutions within the patriarchal social system. In the conditions of war this is intensified by the high rate of violent behaviour in general and widespread tolerance toward violence as a way of conflict resolution.

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The Commercial-isation of Women's Fear of Crime[1]

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Over the past few years, women have come to occupy a central position in police discourse about public safety. In England and Wales, for example, concern about women's safety has spurred the Home Office, the police, and local authorities to issue safety advice to women. The recognition of the impact of fear of crime (Grade 1989) and the spotlight upon crime prevention combine to place women as prime consumers of targeted advice about personal safety (and indeed, as customers of gadgets and devices, such as rape alarms, personal telephones and so forth). Yet according to the Home Office's own data, young men are most at risk to personal violence in public. Despite this, women are considered the most important constituency for guidance about danger.

Reassuring the public, and particularly women, about crime and safety has been prompted by the concern of state officials to appear in control of (or at least serious about) rising crime. Targeting women in the 'fight against crime' comes from three powerfully influential sources. Firstly, the law and order debate, fed by escalating crime statistics (Loveday 1992), prompted a search for mitigation of this newly discovered bane of urban existence, 'fear of crime'. Secondly, waning confidence in police led to attempts to restore their legitimacy through service delivery and empathy to victims. Women officers are particularly useful here in exemplifying a new face of police: as the deliverers of sympathy to 'innocent, defenceless victims' and as the new face of front-line policing, demonstrating the progressive change within a largely male-dominated, macho force (Heidensohn 1992; Reiner 1992; Smith & Gray 1985; Soothill 1993). Finally, the rise of the discourse of the 'responsible citizen' in

1 An extended version of this paper has been published as 'Women, Crime and Fear' in *Public Reactions to Crime and Violence*, ed. W. Skogan, Sage Publications, Beverly Hills.

Thatcher and post-Thatcher Britain was gaining strength, culminating in the publication of the Citizens' Charter in March 1991 (Cooper 1993). Within law and order politics, citizens must take responsibility for protecting our own property and persons and women continue to be the targets of government rhetoric about responsibility and citizenship.

This paper explores how women's safety is narrowly focused by security companies, and other commercial enterprises, as a saleable commodity. I shall treat security products as a recognition of male violence to women, a recognition within which women are treated as subordinate and vulnerable to the arbitrary whims of dangerous male strangers, while at the same time assumed to be capable of avoiding such dangerous men. Such developments coincide with police safety advice, which additionally serve as popular narratives about the danger women face and about the skills women need to possess to challenge such dangers. I treat women's fear of crime as a signifier of gender and gendered structure, which privileges particular beliefs about women's risk to violence but ultimately denies our anxiety about its potential. Within this discourse, we are treated as 'cultural dopes' (Garfinkel 1967), and in need of guidance about the 'true' context and environment within which we live.

Women and Fear of Crime

While there is no overall consensus among researchers about a definition of fear of crime, there are basic components of fear of crime upon which many researchers would agree. Generally, fear of crime is taken to represent individuals' diffuse sense of danger about being physically harmed by criminal violence. It is associated with concern about being outside the home, probably in an urban area, alone and potentially vulnerable to personal harm.

Typically, the classic fear of crime question which appears on victimisation surveys is: How safe do you feel walking alone in your neighbourhood [in this area] alone after dark [or at night]? (Hough & Mayhew 1983; 1985). In responding, interviewees are assumed to be thinking of their personal safety vis-a-vis criminal violence (*see* Garofalo 1979; 1981 for discussion of methodology and measurement). Most large scale victimisation surveys use this question. Individuals may be asked to assess their probability of encountering, say, a burglary, robbery or rape within the next twelve months. This line of questioning then is used to analyse respondents' evaluation of their risk to victimisation. Finally, information is collected about 'actual' (that is, reported to the researchers) victimisation.

While there have been a number of criticisms about how the concept of fear of crime is constructed (for example, *see* Crawford et al. 1990; Gibbs, Coyle & Hanrahan 1987; Shapland & Vagg 1988; Williams, McShane & Akers 1991), the concept itself and what it is presumed to represent, citizen anxiety about crime and disorder, is now treated as a social problem in its own right. This is precisely because those segments of the population who are found to be most fearful, women and the elderly, do not report (at least on large scale crime surveys) significant levels of this sort of criminal victimisation. The high levels of fear disclosed by so-called vulnerable groups have provided the impetus for government concern. I have argued elsewhere (Hanmer & Stanko 1985) that programs designed to reduce fear may well be a reflection of the state's worry that their image as public protectors is being undermined. After all, if the

public had confidence in the police's ability to protect them, then anxiety about encountering criminal violence should be low.

Beyond any doubt, the gender differential is the most consistent finding in the literature on fear of crime (for example, *see* Baumer 1978; Clemente & Kleiman 1977; Bowker 1981; Crawford et al. 1990; Gordon & Riger 1989; Hindelang et al. 1978; Lewis & Maxfield 1980; Maxfield 1984, 1988; Skogan & Maxfield 1981; Stanko 1987; 1990; La Grange & Ferraro 1989; Warr 1984; 1985). Women report fear at levels that are three times that of men, yet their recorded risk of personal violence, especially assault, is, by all official sources, lower than men's. Indeed, there is a mismatch between women's and men's reported risk of violent criminal victimisation and their fear of falling victim to such violence. Those who admit feeling safest, young men, reveal the greatest proportion of personally violent victimisations.

In comparison to the volume of literature exploring 'fear of crime', the gender differential, especially the high levels of anxiety expressed by women, did not produce a great deal of researchers' interest (for exceptions, *see* Hanmer & Stanko 1985; Ortega & Myles 1987; Stanko 1987). Concern about the elderly took precedence (the fact that the elderly are mostly women seemed to be overlooked). Gender, if addressed at all, is commonsensically linked with how individuals report fear: men mask fear because the image and language of masculinity does not include acknowledging it (Clemente & Kleiman 1977); women easily disclose fear in recognition of greater social and physical vulnerability (Skogan & Maxfield 1981; Maxfield 1984). The gender differential did lead to the quest for alternative explanations for why individuals fear being victimised by crime they do not seem to encounter. The victimisation perspective, that victims fear crime more than non-victims, does not account for the worry and concern from those people surveys indicate are not victims, women. Since reported victimisation did not seem to predict fear, criminologists looked elsewhere to explain anxiety about public space. Researchers have explored how fear is fostered by urban decay and blight (Conklin 1975; Wilson & Kelling 1982), by community powerlessness (Lewis & Salem 1986), by lack of adequate police-public contact (Pate et al. 1986), or by exposure to crime news (Heath 1984; Liska & Baccaglini 1990).

There have been some attempts to explain why women might especially harbour anxiety about their personal safety. Skogan and Maxfield (1981) suggest that women's fear of crime is fostered by greater physical and social vulnerability. Maxfield, analysing the 1982 British Crime Survey, finds some evidence to suggest it is women's fear of sexual assault that 'reduces feelings of safety among young women' (1984, p. 14). Warr (1984) argues that 'it may well be that [for women] . . . fear of crime is fear of rape.' Gordon and Riger (1988), extending their earlier work (Riger et al. 1978), go farther by naming women's fear of rape as 'the female fear.' If women's fear of crime is related to women's fear of rape, how are we to explain such widespread fear in the context of the low number of recorded rapes? Is it, as Maxfield (1984) speculates, that women are more concerned about the consequences of rape, but that this concern is merely a perception?

What is generally agreed by conventional criminologists is that women feel at greater risk of rape, but that this concern is not founded in actual experience. Crime against women, most criminologists now agree, is seriously underreported and underrecorded. The findings of oft-cited government-conducted crime surveys have

no way of estimating a 'dark figure' of women's victimisation (Stanko 1988). Despite the shortcomings of crime surveys for capturing 'family' crime, the crime survey frames the contemporary debate about violence and the fear of violence in a way that fails to take into account what women themselves say about the dangers they face throughout their lives, and in particular the danger associated with violence within the home. One attempt to use the crime survey method to explore how violence by intimates effects women's fear of crime is that by Smith (1988). He found that women who experienced severe forms of violence at the hands of intimates were significantly more fearful than women who had experienced minor violence and those who were not victimised.

As part of the feminist strategy of naming sexual violence as a form of oppression, feminist researchers set out to document women's experiences of sexual and physical violence. More importantly, these researchers include a wide range of women's experiences of men's violence that are rarely classified as criminal offences: obscene phone calls, being followed on the street, being touched up on public transport, and sexual harassment on the street. Feminist researchers exposing men's violence to women explain women's fear of crime as a realistic appraisal of endemic abuse (Kelly 1988; Hanmer & Saunders 1984; McNeill 1987; Radford 1987; Russell 1982, 1984, 1985; Stanko 1985; 1990). These studies have also uncovered significant incidence of serious sexual violence among adult women. Russell's (1982) detailed study of 930 California women, for instance, reports that 44 per cent of the interviewed women had experienced rape or attempted rape in their lifetimes, with one in seven women reporting a rape by a husband. Painter (1991) in a survey of English married women found that one in seven experienced coercive sexual intercourse.

What feminist studies indicate is that the reality of sexual violence is a core component of 'being' female and is experienced through a wide range of everyday, mundane situations. What women define as sexually violating and threatening, moreover, is not confined to what is statutorily defined as rape (*see also* Warshaw 1987). As Bart and O'Brien (1986) show, even some women who were 'legally' raped define their experience as attempted rape. Limiting the explanation of women's fear to the fear of rape, as some criminologists have, directs our attention to the worst scenario of sexual violence, the violent invasion of rape. By categorising rape as the only understandable, abhorrent sexual intrusion that could reasonably frighten women, ordinary events, such as receiving sexual comments on the street or from co-workers, experienced as threatening, often private encounters, are overlooked by most crime surveys (*see* Crawford et al. 1990 as an exception) because they are not 'serious' enough events (that is, not crime) and therefore do not contribute to women's fear of crime (Kelly & Radford 1990).

Consistently documented by crime surveys, women's fear of crime has become part of the agenda when thinking about fear of crime. As I have argued here and elsewhere, women's fear of crime is a reflection of our sexual integrity at risk. As Rachel Pain (1993) has suggested, women's fear of crime is a consequence of being at the 'sharp end' of patriarchy.

This point of view is contentious, even in the so-called feminist debate. Women's fear of crime, some claim, is merely the result of feminists' propaganda about male violence. Katie Roiphe, for instance, accuses some feminists of fabricating the

incidence of rape and sexual assault, and scaring young women along the way. Naomi Wolf, though criticising the simplistic arguments of Roiphe, none the less criticises some feminists for emphasising an 'identity of powerlessness' of women. But the research about women's coping strategies suggests that rather than act as powerless, women are quite creative about precautionary strategies and violence avoidance. The fact that women encounter the criminal justice system mostly as victims suggests that we try to use it as some form of redress for harm, and in the case of domestic violence, immediate crisis intervention. Women may also fear that when we do ask the criminal justice system for assistance, it will not be useful, able or forthcoming in a way which both protects women's safety and autonomy. The fact that we are not always successful in our avoidance strategies is a commentary on men's violence, not our failures.

Will we consign women's fear to the category of feminist (or women's) hysteria—a position which had some airing in the not too distant past? Or will we characterise women's fear of crime as much wider than that which can be reduced to 'women' and 'crime'?

It might be helpful here to speculate what an article exploring men's fear of crime could contribute to this collection. Despite all official data indicating that men, particularly young men, report the larger proportion of personal crime against them, by and large, men report feeling safer than women in public. To what could we contribute such misplaced confidence? Naivete? Stupidity? Perhaps we should issue similar risk-management advice to men, suggesting that they avoid dark alleys, make sure they have gas in their car when embarking on journeys, stay away from pubs and bars, or carry personal alarms? Why are personal alarms being sold or distributed to women?

If we are to take women's fear of crime seriously, and if we agree that it is more a reflection of our social location within intersections of gender-class-race-ability structures, then we must reconsider what we mean by crime prevention and fear reduction. The fact is that many of us still place what endangers us the most—familial and familiar violence—on an agenda often separate from that of crime reduction. Others may suggest that better lighting, repairing 'broken windows' or cleaning graffiti is sufficient for creating an environment which is woman-friendly, and thus less fear-producing.

The social context of women's fear of crime is such that unless women's autonomy is promoted—which, I advocate, must address women's freedom from sexual danger, then it is unlikely that our fear will be reduced. Good lighting, good transport, adequate child care, decent education, safe houses and safe relationships—one without the others is inadequate to address women's needs, and, by extension, our fear of crime.

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Gay Homicides: Activism, Victims and Law and Order

STEVE TOMSEN

Since the late 1980s, there have been claims of a marked increase in violence directed against lesbians and gay men in various nations including Australia (Herek & Berrill 1992; Mason 1993). Because these attacks have only very recently become a focus of police attention or researchers' interest, there can only be speculation about their real level of increase. It seems likely that the increased concern with this violence is a result of the efforts of activists themselves. Community research, protest rallies and other publicity, have provided the catalyst for making homophobic violence into a public issue.

This change has often reflected the growing political strength and organisation of this minority group. Especially in New South Wales, the lesbian and gay community now has an increased and often open representation in party politics and sections of the state bureaucracy. Official concerns about assaults and harassment formed the political backdrop for the 1993 enactment of legislation against sexual vilification in that state.

The heightened media and political interest about this form of crime has also begun to be reproduced in other parts of Australia. From the vantage point of social researchers, we are currently witnessing the formation of another victim group demanding further responsiveness from the police and criminal justice system.

The negative impact of the long-term official silence on this violence has been very evident with regard to gay murders in Australia. Outside of occasional media sensationalism, the more general pattern of official disinterest has meant that these killings have only been of minor interest to homicide researchers in Australia.

However, political activism has also recently served to create a greater consciousness of these offences. Police officers in several states have begun to investigate fatal incidents through liaison, monitoring and cooperation with local

gay and lesbian groups. From 1988 to 1994 the NSW Police Gay and Lesbian Liaison unit has recorded the details of twenty-four cases, equal to approximately one-quarter of all stranger murders occurring in that State in the same period.

The number of cases where murder has been accompanied by robbery suggests that criminal opportunism is a frequent motive for these killings. A perception that homosexuals are 'easy marks' could be linked to the common reluctance of gay men and lesbians to seek police assistance as crime victims (Mason 1993).

But the underlying importance of heterosexism cannot be ignored in this form of violent crime. The often extreme and frenzied form of attacks in these killings (with some victims attacked at length, tormented and wounded repeatedly) also reflects their quality as 'hate crimes'—motivated by a deep loathing that is based on a simple judgment or knowledge of the victim's sexuality.

With determined police investigations a small number of these fatal attacks have gone to trial. The subsequent hearings have attracted wider media and political interest, and served as rallying points for activists. In some cases, hefty sentences imposed and judicial warnings against anyone contemplating such violence, has appeared to give a reassurance that the legal system is now more focused on punishing these crimes.

But the political interest of activists viewing these cases has dovetailed with wider concerns regarding the appropriate position of gays and lesbians in recent criminal justice politics. The international growth and spread of organised victim groups has also reached Australia in the last decade. These call for greater responsiveness to the needs of victims in the operation of the law.

But at the same time, they often articulate a conservative world-view that marginalised the interests of non-traditional crime victims (like gays, Aboriginal people and working class youth) who often experience police harassment and are still frequently stigmatised by the law.

Their mobilisation has also run in tandem with a political drift to tougher 'law and order' policies since the 1980s—involving such measures as more intensive policing of street behaviour, harsher criminal sentencing and increasingly punitive systems of prison management.

The creative borrowing of the victim mantle by gays and lesbians signals that this victim-centred politics is not inherently conservative. Projecting this new image can serve to rupture the traditional view of these marginal groups as 'deviants' deserving harsh repression by the police and courts.

But it would be ironic if this new turn towards legal activism and demands for police protection led to a quick alignment with conservative forces. Among conservative victim groups, a tendency to disregard the rights of criminal defendants and to focus on punishment and retribution, often derives from an almost exclusive concern and anger with the brutality of assailants.

For these reasons, gays and lesbians must also acknowledge the limits of the usefulness of any such 'politics of victimhood' if it is not tempered by broader educational campaigns promoting attitudinal changes to actually reduce levels of violence.

The abhorrent quality of the actions of the small number of young men who have been tried for gay murders is apparent enough. But it is also worth noting that these youths have acted out in their violence the gay-hating values that have been so thoroughly instilled in them by a heterosexist society.

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'Are You a Boy or a Girl?': (Hetero)sexism and Verbal Hostility

GAIL MASON

This paper considers the phenomenon of verbal hostility directed toward lesbian women on the basis of their sexuality. First, I will consider the characteristics of such hostility and the meanings placed upon it by lesbian subjects. Second, I will locate this form of hostility within the mechanisms of disciplinary power exercised in the regulation of sexuality.

During 1993 and 1994 I conducted a series of interviews with seventy-three women in the State of Victoria who identify as gay or lesbian. Most interviews were held with participants on their own; however, some have been with two or three women together. In three instances I arranged large group discussions where approximately eight women participated.

Some background on the research participants: they range in age from 14 to 57 at the time of interview. They live in various parts of Victoria, including Melbourne, outer lying suburbs of Melbourne, provincial towns and some small rural areas. It is fair to say that participants are widely distributed across socioeconomic boundaries, perhaps with the exception of the very rich. Most have an Anglo-Saxon or Anglo-Celtic background, but approximately 20 per cent of participants are migrants to Australia and a number identify with a range of ethnic and cultural backgrounds including Greek, Dutch, Chinese, Anglo-Indian and Israeli.

Over time the focus of my interviews has changed and gradually refined, but generally interviews have centred on experiences and perceptions of (hetero)sexism—particularly hostility, abuse, harassment and violence which participants believe is due to their sexual preference. I am using the word (hetero)sexism here to denote an ideological system which denies, denigrates or

stigmatises any non-heterosexual behaviour or lifestyle (Herek 1990).[1] The word homophobia is more familiar and is often used to denote the same phenomena.

As I have been listening, transcribing and analysing these interview recordings over the last twelve months I have watched the size of the file labelled 'Verbal Hostility' gradually expand in size. It is now only second in size to the file of interview excerpts labelled 'Invisibility'. Whilst I had expected to collect extensive interview material on questions of invisibility (anyone who has knowledge of this field would not be surprised by the size of the invisibility file) I had not expected to find such pervasive experiences of verbal hostility. I had not anticipated how often I would hear stories of lesbian/gay women being verbally abused or harassed on the streets, at work and in their homes. Nor did I expect to be told by so many women about their fear of anti-lesbian verbal hostility, the threat it represents and the strategies they employ on many levels to avoid it.

Of course, there was no reason for me to be surprised by the extent of verbal abuse experienced by lesbian women. The final report of the GLAD (Gay Men and Lesbians Against Discrimination) survey into discrimination and violence against lesbians and gay men, published this year, has attempted to measure the actual levels of discrimination and violence. This study, which surveyed over 1000 gay men and lesbians in Victoria, found that 70 per cent of lesbians and 64 per cent of gay men report experiences of verbal abuse in a public place because of their presumed homosexuality; 36 per cent of lesbians and 39 per cent of gay men report threats of violence in public because of their presumed homosexuality; and 11 per cent of lesbians and 20 per cent of gay men report actual physical violence in public because of their presumed homosexuality (Gay Men and Lesbians Against Discrimination 1994).

There has also been substantial research undertaken in the United States which suggests levels of public verbal abuse close to 80 per cent—depending on factors such as the construction of the survey and the region it which it was distributed (Herek & Berrill 1990). One of the limitations of the GLAD research (and of most overseas research) is that the survey only includes questions about violence and abuse in public places, yet hostility within the family has been shown in overseas studies to be a problem. However, it is just such 'public' experiences that I wish to focus on in this paper.[2] When I first began this research I assumed that verbal abuse was relevant but really only a minor player with little significance in an overall picture of more overt forms of discrimination and physical violence. However, I no longer subscribe to this view. After listening to the experiences and understandings of research participants I have come to see verbal abuse as an insidious, pervasive and very powerful strategy of regulation.

My use of the phrase 'verbal hostility' or 'verbal abuse' refers to comments made, words called out, things said which are interpreted by the intended

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1 I have chosen to bracket the 'hetero' element of this word in order to highlight the intrinsic sexism which is at play in acts of hostility directed towards lesbian women.

2 I do not use the word 'public' unproblematically and have written elsewhere on the incoherence of the public/private dichotomy, particularly in relation to lesbian experience. *See* Gail Mason (1995).

recipient as offensive, derogatory, insulting, intimidating or threatening in some way. Of course the intention of the person speaking does not necessarily match the recipient's interpretation of it and certainly not all comments are read by recipients as abusive. Some may simply be annoying or others may be laughed at for being stupid, pointless or pathetic. However, some comments which may seem quite mild in comparison can have a strong negative impact upon individual women.

Some Examples of Public-Related Verbal Abuse

Verbal abuse and hostility can take place in any environment and often the most mundane of activities can be affected by it:

> *Sharon: We'd go down the local shops and the bad boys would be hanging out there . . . there were young boys hanging around a certain supermarket, you know outside. You'd have to walk through these—walk the gauntlet. So there'd be comments . . . They called us 'Lesos!'. Yeah it was threatening because it was a group.*

Dimitra operates a second-hand furniture store in Melbourne and her experiences reveal how verbal abuse can take place in a work environment and yet still be quite public. On the door of her shop she has a sign which says 'No homophobes. No misogynists.' She states that she put the sign up because of 'bad experiences'. When asked about these experiences she recalls:

> *Dimitra: Well, yobbos. . . They used to come and buy because it was so cheap . . . But it was rude and when they'd drive past they used to call out 'Leso!' They'd call out 'Leso!' or 'Look at that c-u-n-t with a couch on its head!' I'll never forget that one.*

Of course, abuse may be written rather than oral:

> *Dimitra: I've had 'Leso' smeared on my door . . . Smeared with a pie or something like that. Mouthfuls spat on the door and things thrown on the door so I'm forever cleaning it.*

Experiences of hostility from neighbours is not unusual, and may present the recipient with a conflicting mix of abuse which is so idiotic it is laughable, but which can be threatening at the same time:

> *Monica: I mean like we had neighbours across the road and there were five boys or something ranging from fifteen down, and you'd walk out to the car and you'd get them screaming 'Leso! Leso! Come root me grandmother!'. . . and you know you're always of the opinion are they're gonna do something, that's the thing once they come out with things like that.*

The football, a popular Victorian pastime, came across in interviews as a common site of verbal abuse for those lesbian women who find themselves crossing the boundaries of visibility, even if unintentionally. For example, Sue found the following situation disquieting and uncomfortable:

Sue: We went to the footy. Just sitting at the footy. I don't know who was playing, Essendon and Collingwood, it didn't really matter. Sitting together, rug on both of our knees, that was as close as we were. And this guy a row in front of us was obviously intoxicated and he was a young guy and turned around, like there was obviously nothing going on with the football, and [he goes] 'Dirty, dirty lesos'. And it was really, like I was just here to watch the football, I don't need this, we weren't even being lesos. It became, it went on and on and that was just real uncomfortable . . . I'm sure had we been in the street alone it may have been different . . . He may well have been, taken it further, or followed us, you just don't know. That's what is so fearful, you don't know how far it will go.

The following example gives some idea of the ways in which verbal abuse and physical violence may be closely intertwined and represent an acute disturbance to a woman's physical and emotional safety. Catherine, who worked for a major international environmental organisation, narrates her experiences following the disclosure of her sexuality to workmates some weeks earlier. Referring to a work party held at her house she says that:

Catherine: By 3.00 in the morning I was the only woman in the house . . . Greg brought three friends with him, one of them came up to me, he asked me out and I turned him down and he was really quite okay about it. I didn't think twice about it . . . about half an hour later he came back and was saying to me, 'Oh my mate tells me you're gay and I wanna do something about it'. And all you need is a good fuck kind of thing. And he was drunk but not staggering kind of drunk, but he was pretty drunk . . . and he attempted to rape me, it was pretty clear cut attempted rape. By which point I managed to get him off and get out of there . . . [When Catherine went back to work] by the end of the next day it was public knowledge what had happened at that party . . . and then within a week of that party I started to get harassing phone calls at home. 'I know where you live, I'm gonna get you.' This person knew I was a lesbian, knew I worked with xxxx, knew what hours I worked . . . the phone calls were of a sexual nature and as time went on they became more explicit . . . they were really threatening . . . and the calls centred around my sexuality. And by this stage I was getting one of these calls every night.

The level of imagination generally used in verbal taunts and insults is certainly not high. I have drawn out two themes which are apparent from the words that are used. The first and most popular term used is, not surprisingly, 'Leso'. Teenage boys and girls seem to have developed a virtual profusion of different ways to say the word 'leso'. But all have the apparent underlying assumption that the mere identification of and speaking of the word represents an insult in itself.

Some of the most common adjectives used in this cultural marking of lesbians are 'dirty' and 'butch'. It is difficult not to associate the word dirty with misogynist constructions of women's bodies as unclean. Thus the etching of the lesbian as dirty is not just a cue for the supposed unnatural character of same-sex desire and sex but also for the construction of women's bodies as unhygienic. The frequency with which the phrase 'dirty' is coupled with the phrase 'leso' seems to signify a distaste for women's bodies and an abhorrence of sexual activity which does not revolve around masculinist notions of phallic pleasure.

The use of 'butch' as an insult represents an attempt to highlight the supposedly masculine nature of the lesbian. An assumption which is already contained within the (hetero)sexist construction of the concept of lesbian, but which is further reinforced through the 'butch' adjective.

Talking of her ex-husband one participant recalled:

> *Sharon: It's just in the last month that he's really harassed me about my sexuality. Screaming at me in the street, calling me a butch lesbian . . . He's used my sexuality to retaliate. Which is a typical kind of response, I mean the homophobic response.*

A second interesting theme to emerge very strongly from an examination of the type of abuse taking place is what I have called the sex/gender perplexity. A common example would be the 'Are you a girl or a boy?' type question; usually made when the person speaking is quite certain that he/she is speaking to a woman, but not of the type which they find acceptable. Consider the following examples:

> *Lesley: In a supermarket on New Year's Eve . . . it was about 5.00 and we'd gone up, [with] the children . . . to do some shopping, and were walking around the supermarket and there was a woman with her partner and her children . . . and she walked past me and said [loudly] to her boyfriend, 'Is that a girl or a boy?' And so I just ignored that, and so I passed them again in the supermarket and then . . . [about me] they made a comment about, you know, said 'What is it?'.*

> *Kim: It was about four in the morning, a bad time, Carlton Gardens, and we were walking back and a car load of probably about five boys, probably about 19, with P plates roared out of the Carlton Gardens and started, 'Hey are you a boy or a girl? Are you a boy or a girl?' And then when they realised that we were both women and that we were together it was all, 'Can you kiss for us, go on let's see you kiss, go on, go on!'*

> *Maria: We were walking from the Southbank to Collins Street, the Paris end of Collins Street and there was a [stream] of remarks . . . guys just going after us. And I stopped, probably about six times . . . We had our arms around each other . . . Often they'd [try to] figure out who was the boy and who was the girl, 'Oh my god, they're both girls!'*

Of course, there is also the occasional AIDS-phobic comments which might be thrown in with other abuse, such as 'I hope you all die of AIDS'. This sort of comment rarely seems directed to lesbians on its own and is usually accompanied by various other comments—as are most of these forms of verbal abuse.

The Multiple Subject

One of the important things to note about verbal abuse is not just the character of the words that are used, but the fact that, like other forms of violence or hostility, it cannot be neatly classified into discrete categories. Neat discrete categories may be perfect for simple analysis, but unfortunately they frequently fail to match the reality of many women's lives.

For example, there were some rare instances where research participants believed that it was their sexual preference, and sexual preference alone, which caused them to be the target of the abuse. But many lesbian women seem less able to isolate hostile reactions to them as stemming merely from their sexuality. Thus, participants commented that at times they were unable to tell if they are being hassled because they were women or because they were lesbian:

> *Sarah: There's one that yelled out to me 'Are you a woman or are you a man?' So that could have been directed at my sexuality, I'm not actually sure . . . Like I think he knew I was a woman because I don't think he would shout that to a man.*

Yet it is futile in many situations for lesbians to attempt to isolate the anti-woman sentiment from the anti-homosexual sentiment. The 'double' positioning of the lesbian as homosexual and as woman means that she occupies a distinctive place within a (hetero)sexist culture. The lesbian signifier does not denote homosexuality alone, it combines femaleness and homosexuality within the one sign. It is not that lesbians can never separate out the fragments of their multiple subjectivities but rather that reactions to homosexuality are shaped by the individual bodies upon which the labels of sexuality have been placed; and such bodies are invariably sexed bodies. Thus much anti-lesbian hostility represents a network of inter-related prejudices which cannot necessarily be separated into discrete categories of sex, gender or sexuality.

But, of course, such an interpretation is limited in itself because individuals are not merely sexed, we are also culturally positioned according to categories of ethnicity and race. If you are white or an Anglo-Celtic lesbian woman you have the privilege to locate the apparent source of hostility towards you in your sexuality and/or your sex; that is, stemming from discourses of (hetero)sexism and misogyny. Yet some of the lesbian women I have interviewed who are not from this hegemonic white/Anglo background, had something else to say. These women have suggested that the way in which they are perceived by the dominant Anglo heterosexual community is not simply as a woman who is a homosexual. If I can simplify what these research participants have said to me, it is that when they experience verbal abuse it is likely to be not just a simple reaction to their perceived homosexuality, nor to their presence as a homosexual woman, but rather as a Chinese or a Greek homosexual woman for example.

> *Sucheng: It's very hard in some ways 'cause it's quite clear for white women . . . but when you're a person of colour you sometimes wonder whether you're getting hassled because you're a person of colour or because of your sexuality. And sometimes they're both. So it's quite hard to pull them apart sometimes.*

> *When I get harassed on the streets I can't say that it's because I'm a lesbian, I do know that it's because I'm Chinese as well as a lesbian as well as a woman.*
> (Excerpt from an interview with members of *Internesbian*, a multicultural lesbian group based in Melbourne. *See* Neville 1993, p. 14).

In many situations the multiple character of identity and subjectivity means that we experience and interpret abuse in relation to a complex interplay between the various fragments of our self. (Hetero)sexism and its hostility is always

racially and ethnically located, either through the privileges brought by a white/Anglo-Celtic positionality or through the absence of such for lesbians situated according to racially and ethnically marginalised categories. Aspects of the self can certainly be separated and experienced in different ways at different times, but they cannot necessarily be separated into neat categories which bear no relationship to each other.

Knowledge of the Imaginable: The Impact of Verbal Abuse

When looking at the lives of the women who have participated in this research it is fair to say that the impact of verbal abuse is widespread, both upon actual and potential recipients. Circumstances such as time of day, who you are with, sex of the person making the comment, and the tone in which it is said can make all the difference as to how threatening it is or how seriously it is taken.

As I have indicated some comments are merely laughed off. Others, however, are interpreted as direct threats, as signifiers of potential physical violence, as downright offensive and invasive, or as humiliating situations to be avoided at all costs. For some lesbian women verbal abuse operates as a reminder of the threat of violence. For example, a number of participants stated that there are certain areas in Melbourne where they would hold hands with a lover, but others where they would never hold hands or show intimacy with another woman. Situations and locations are critically assessed and judged for the risk they present. This is a strategy which most participants said they do both constantly and consciously. One woman commented:

> *Sarah: If you don't, you just leave yourself open to it . . . [it's] mostly men, mostly men who I look out for. That's who I feel the most threatened by. But I feel personally threatened by men as a woman and I feel being a lesbian is a double threat and I feel doubly threatened.*

Another woman felt that the threat of verbal and physical abuse is ever-present:

> *Amanda: I'm always thinking about it when we're out. I look out all the time, before we kiss or something . . . If I want to be affectionate in public it's really difficult . . . A simple thing like going to the movies and seeing like a romantic move or a sexual movie and you feel affectionate towards each other or whatever. You're just limited to do anything. Because I 'spose for me the fear behind that is that of bashings or verbal abuse. And in the shopping centre and that too . . . Like sometimes you want to hold hands, really simple things. But you can't do that. And I don't know if it's just my frustrations. I was thinking the other day, what if I just do it anyway? There's still that fear that people will verbally abuse and it won't be okay.*

Another woman who has been very public about her sexuality in newspapers, at work and with her family, commented that:

> *Jackie: I've always been more concerned for my personal safety than anything else with coming out issues. You know, never worried about the repercussions within work or within the union or anything like that, or even worried about my family.*

Hostility, Visibility and Regulation

Verbal hostility, and indeed physical violence, do not operate as an attempt to forbid or prevent lesbian sexuality but rather to circumscribe its public expression. Verbal hostility is one strategy in a network of power relations, operating from innumerable points, which do not prohibit peripheral sexualities, but which attempt to delineate the acceptable boundaries within which such sexuality can be expressed.

Thus verbal hostility can be contextualised within the broader mechanisms operating in the regulation of lesbian sexuality. For example, it is informative to look briefly at the legal constitution of the lesbian subject. Within modern legal history sex between women, unlike sex between men, has never been specifically criminalised in either Australia or England. A now infamous attempt was made in 1921 in England to outlaw homosexual behaviour among women, but the relevant amendment was rejected by the House of Lords. It is their reasoning which is so interesting. For example, in arguing against the amendment to outlaw homo-sex between women, Lord Desart declared:

> *You are going to tell the whole world that there is such an offence, to bring it to the notice of women who have never heard of it, never thought of it, never dreamed of it. I think that is a very great mischief* (Lord Desart, House of Lords, 1921, cited in Jeffrey Weeks (1990, pp. 106-7).

Clearly, their Lordship's strategy for minimising the perceived danger of lesbian sexuality was not through a process of legal prohibition but through a more formidable and effective manoeuvre, namely, the refusal to allow public recognition of the very existence of lesbian sexuality; to keep the knowledge of such sexuality confined to the emerging scientific and psychiatric disciplines of the day.

Like their historical counterparts the Australian judiciary and legislature have shown a similar proclivity for insisting upon a profound privatisation of lesbian sexuality. For example, Jenni Millbank has shown how lesbian women face discrimination when applying through the courts for legal custody of their children. Whilst a lesbian relationship is not of itself a disentitling factor Millbank has highlighted how judicial distinctions are drawn between lesbian parents who are 'private' and those who 'flaunt' their sexual identity. She concludes that it is in the interests of lesbians to be 'discreet' and to conform to sex role expectation, as 'overt' lesbian behaviour runs the very high risk of jeopardising a custody application (Millbank 1992). This judicial preference for maintenance of a public charade through the insistence on lesbian invisibility is neatly exemplified in the following comments in a successful custody hearing in the Family Court:

> *Neither the wife nor Miss Y. are obvious homosexuals. Both dress in a pleasant and appropriate fashion and neither gave me the impression that they flaunted their homosexual relationship or went out of their way to communicate to the world at large that they were homosexuals living in a homosexual relationship* (Baker, J. *In the Marriage of L and L* (1983) FLC 91-353 at 73 365).

In contrast to male homosexuality, the primary pattern of lesbian subjugation has been not through the juridico-political structures of western culture, but rather through the exercise of what Foucault calls, local disciplinary powers, powers of normalisation (Foucault 1977). Such normative mechanisms have constructed the lesbian as a distinct aberrant category of person, but one that remains hidden from public view. In this way she is marginalised and shrouded in stigma and myth.

Thus it is the trope of the lesbian as an undesirable body marked by mannish tendencies and failed femininity which has characterised her minimal presence in dominant discourse. Until very recently this has been her only public persona, a vilified image which remains obscured yet suspected to be lurking in the murky perimeters of peripheral and dangerous sexualities. The contradiction embodied in the category of lesbian is that whilst she may be obliquely present within discourse as an 'abiding falsehood' she is concurrently excluded from dominant discourse as a visible or knowable subject. Judith Butler refers to those who are neither named nor prohibited within the economy of the law as 'abject': unviable (un)subjects. She asserts that, 'Here oppression works through the production of a domain of unthinkability and unnameability. Lesbianism is not explicitly prohibited in part because it has not even made its way into the thinkable, the imaginable, that grid of cultural intelligibility that regulates the real and the nameable' (Butler 1991).

To conclude, it is apparent that lesbians are culturally marked, yet rendered simultaneously invisible within a (hetero)sexist culture. Verbal hostility epitomises the manner in which lesbians are marked within the public sphere yet disciplined into believing and acting as if they should not be there, into regulating their own behaviour so that they remain unseeable. This final comment from a research participant exemplifies this understanding:

> *Lyn: Because whatever is behind that comment you know there is some kind of maliciousness behind it . . . It doesn't make me feel bad it makes me feel discriminated against. It makes me aware of where I stand with other people in society. That I'm going to be, I'm going to be maybe pointed out, and tried to be the subject of someone's smart comment or humiliation and that's what they want to do. I find it threatening in that way. I mean I don't feel ashamed but I feel threatened . . . I mean you can be just . . . doing a common thing, walking down the street or you're in the market place and then all of a sudden this, this, ugly thing can crop up from nowhere and remind you of what you are, what you are . . . It says something about your sense of freedom in a so called free place, in a free society*.

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Homophobia, Hate and Violence against Lesbians and Gays in NSW:
An Overview of Some Studies

PAUL VAN REYK

Violence against lesbians and gays is a world-wide phenomenon. Its source is based in heterosexism, an ideological system that denies, denigrates or stigmatises any non-heterosexual form of behaviour, identity, relationship or community. Heterosexism exists at the level of the individual's attitudes and beliefs and at the level of social structures and practices.

There have been three successive reports on violence against gays and lesbians in NSW over the period 1990-94. The Streetwatch report, produced in 1990, by the Gay and Lesbian Rights Lobby; the Off Our Backs report in 1992, specifically looking at violence against lesbians; and the Counter and Counter Report produced in 1994, both of the latter produced by the Lesbian and Gay Anti Violence Project (AVP).

Overall, the studies indicate that between eight and 30 per cent of lesbians and gays report being survivors of physical violence at some time in their life, where that violence is seen to be based on their sexuality. The variation reflects the different populations, locales and methods of sampling of the studies.

The majority of those reporting violence are gay men aged 25-39 years of age. In part, the preponderance of gay men in the sample may be an artefact of the observed

phenomenon that violence against lesbians is often on the basis that they are women, and so may not be turning up as frequently in the data collected on specifically lesbian and gay assaults.

It is interesting to note that the AVP has begun to have a higher rate of recording of violence against lesbians since having an identified position for a lesbian violence prevention officer and conducting a specific campaign targeting violence against lesbians (*Lesbians Do Have Rights*. 1994 Campaign funded by the Commonwealth of Australia Office for the Status of Women). Where bisexuals have been included in the studies, they attribute the motive for attacks on them to their perceived gayness. Similarly, there are a handful of incidents reported in the studies where heterosexual men and women attribute attacks on them to a perception that they are lesbian or gay.

The majority of those attacked were alone when attacked. In about half the attacks, witnesses were present but in only half of those did the witnesses give any assistance. Over 80 per cent of the assailants were unknown to the survivor. Assailants of lesbians were more likely to be known to them. The majority of attacks against gay men occurred on the street near identified gay venues and were single instances of violence. Less than 20 per cent occurred at beats, public areas where men go to have sex. Lesbians were more likely to be assaulted in the neighbourhood or home, and the attack was likely to be one of a number over a period of time. Street violence was more likely to happen late at night or in the early hours of the morning on Thursday, Friday and Saturday nights. Most assaults did not involve weapons, and few involved robbery. Bruising and contusions were the most common kinds of injury. Survivors reported the majority of assaults were clearly hate-related, and this was corroborated by the verbal taunts that often accompany the attacks.

The majority of assailants were male (80–90 per cent). The majority were reported to be between 15 and 25 years (50–80 per cent); 20–39 per cent were aged between 15 and 18. Lesbians were more likely to be attacked by older males. The majority of incidents involved between three and five assailants. The larger the number of assailants, the younger they were likely to be. There was little evidence that assailants were from organised gangs. Most often they were described by survivors to be a group of friends. The majority of assailants were identified by survivors as heterosexual. The assailant being drunk or drugged was not considered by survivors to be a major factor in the attack.

Most reports in Australia of violence to lesbian and gay anti violence projects or the police are of circumstantial street based violence where the assailants are unknown and most usually are not able to be arrested and charged. So there is little Australian material available on the motivation of assailants as reported by the assailants. What Australian information we do have comes from testimony from trials, from interviews assailants have given to the press from time to time, from reportage by participants in education sessions, and from other largely anecdotal sources. There is some material from the United States from the same kinds of sources, and also from small studies like that conducted by Weissman (1978).

The first thing that must be said about motivation is that at one level it appears to be part of the general motivation behind violent attacks on a range of targets by adolescent and young adult males. The profile of an assailant of lesbians and gays is very similar to the profile of assailants of women, people from non-English speaking backgrounds, and Aboriginal and Torres Strait Islanders.

Violence against lesbians and gays is in part a result of the social construction of masculinity and about the behaviours sanctioned or encouraged in that construction. That this is so is borne out by studies into youth violence or by reports from young assailants. Violence and aggressive behaviour is part and parcel of the way many young men describe masculinity and what it means to be a man. Often, this pre-disposition to violent behaviour is found to be, or reported by the assailants to be synergistically linked with boredom, restlessness, mild intoxication and peer or group pressure.

Some commentators and researchers have sought to link violence to socioeconomic co-factors such as substance abuse, poverty, unemployment and homelessness. Others dispute this connection. For example, Bessant and Watts (1993) say:

> *a reading of Australian history demonstrates very clearly that the phenomenon of teenage gangs and violence is not new, nor that it is driven by urban poverty or high levels of unemployment. From at least the 1870's in Australia we have seen recurrent expressions of adolescent gangs and high level of violence manifested.*

While it is probably too early to make a definitive claim on this from the data so far collected on lesbian and gay violence in the studies researched for this paper, there does not appear to be any correlation between socioeconomic factors and the likelihood of violence.

Some studies and anecdotal information link violence to the assailants own unacknowledged homosexuality (Goddard 1991a & 1991b). However, there is no evidence that this a significant part of the motivation of the majority of assailants. So, if, as appears likely, violence and aggression perpetrated by young men is part of how masculinity is constructed, why is this violence directed against lesbians and gays?

Physical violence against lesbians and gays is often accompanied by verbal harassment. The epithets used are invariably abusive and involve some reference to the person's sexuality. It is clear to the survivors that they are the subject of an attack based in homophobia. Homophobia has been defined as the unreasonable fear and loathing of homosexuality and homosexual people, be they lesbian or gay. Homophobia is manifested by individuals and by social groupings.

The ideological underpinning for homophobia is heterosexism. Heterosexism has been described by Herek et al. (1992) as an ideological system that denies, denigrates or stigmatises any non-heterosexual form of behaviour, identity, relationship or community.

Herek categorises two kinds of heterosexism. Psychological heterosexism is a manifestation of an individual's attitudes and actions. Cultural heterosexism is that manifested in social customs and institutions such as religion and the legal system.

It is the interplay of both these forms of heterosexism which provide the context and often the excuse for violence against lesbians and gays.

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EDITORS' NOTE:
This paper has been abridged owing to space restrictions.

Anger, Disappointment and Disgust:
Reactions of Victims of a Telephone Investment Scam

DAVID SHICHOR,
JEFF DOOCY &
GILBERT GEIS

> *I didn't know there was a scheme or scam until it went into bankruptcy or whatever. I almost had a nervous breakdown. I have practically no income. I'm almost 71 years old and I borrowed from equity on my house. I owe almost US$75 000. The first mortgage was just paid off after 30 years.*
>
> *It has totally caused a major loss of self esteem and realisation of victimisation. I considered suicide. I am losing my house.*
>
> (Victim reports of their reactions after learning that they had been duped by a telephone investment scheme.)

A great deal of research has focused on the physical and fiscal consequences of victimisation by street crimes, particularly by the crime of forcible rape (Burgess & Holstrom 1974). Such research typically portrays anger, long-term emotional trauma, self-blame, and anxiety about future safety (Greenberg & Ruback 1992; Karmen 1990). Much less attention has been paid to the consequences of victimisation by fraud and false pretences: this is an issue, as Levi & Pithouse (1992, p. 229) note, 'upon which no hard evidence has been collected . . . in the world.' It is sometimes maintained that the effects of fraud and of various kinds of white-collar offences are more devastating to their victims than street crimes. Street crimes, according to Durkheim's (1938, pp. 68-71) theme, unite 'decent

folk' against wrongdoing and help to define permissible behaviour boundaries (Erikson 1966). White-collar offences, on the other hand, call into question basic values that victims have come to rely upon, most notably that those with whom they deal will be honest and trustworthy (Sutherland 1949, p. 13; Braithwaite & Pettit 1990, p. 188: Edelhertz 1970, p. 124).

We sought to examine these ideas by means of a survey of victims of a telecommunications fraud that primarily involved land leases for oil and gas prospecting and for conveyance of oil and gas, allegedly already pumped, through pipelines. There were about 12 000 investments in the program by approximately 9000 persons nationwide, none of whom recovered much money, and some of whom suffered severe financial losses. Investigators from the state of California contacted 8527 of the victims, who together were bilked out of US$125 851 462. It is estimated that the total loss inflicted by the fraud reached US$217 million.

Operating The Scheme

Deceptive claims that an investor could earn a profit of between 30 and 40 per cent a year by putting money into an oil and gas partnership lay at the heart of the earliest phase of the fraudulent solicitations. The major perpetrators were known as the 'two Daves'—David H. Bryant and David C. Knight. In the end they were charged in California with wilful misrepresentations, failure to disclose a previous cease and restrain order, and failure to tell potential investors of the 55 per cent commission and loading costs. They also did not inform investors that they were co-mingling funds, had an abysmal track regard in previous ventures, and that the actual control of the 187 or more business entities and limited and general partnerships for which they solicited funds all were under their own control.

Names of prospective investors in the schemes were secured from marketing firms which identify persons believed to have disposable income. Persons were cold-called, that is, telephone contact was made with individuals who had no previous relationship with the brokers. Those solicited were told to 'hurry' and make up their minds because others wanted to participate and there was room for only a limited number of investors. By the end of the scheme, more than 300 persons were pushing the offerings; salespersons retained 35 per cent of the amount they raised. Many of the sellers were recruited by Bryant, himself a recovering alcoholic, at Alcoholics Anonymous meetings.[1]

Possible investors typically were told on the telephone that there existed 'fantastic investment opportunities' in whatever enterprise the two Daves were pushing at the moment. Usually no attempt was made to solicit money on the initial call; the salesperson primarily sought to determine whether the person being called was financially capable of participating in the scheme. Elegant promotional materials then would be dispatched to those who seemed to be likely

1 Is it merely a coincidence that the Home-Stake swindle in the 1950s and 1960s, an oil and gas investment scheme, also was operated by a man who found his foremost associate when both were in an alcoholic recovery program? (*see* McClintick 1977, p. 36).

targets. Before hanging up on the initial call, the broker told potential customers to write down any questions about the contents of the brochure and reports that they would receive: then these could be discussed during a subsequent call. About a week later, the salesperson called again. While each pitch varied somewhat, the sales staff worked from a script, which advised a friendly mix of warm greetings, contrived small talk, followed by a rundown about some 'great acreage' sitting on top of 'huge oil reserves'. Returns to the investor within a few years were promised, with figures such as 15 to one or 37 to one often cited. The investor's money, once secured by the promoters, often never reached the field project, where one existed. Delays in payoffs were explained by means of fabricated or embellished stories of unforeseen drilling expenses, poor weather, or equipment failures. When projects operated, other problems surfaced: leases were not properly negotiated, and the project often was acquired for substantially less than the investors had been led to believe. Full interest in the same asset often were sold to different investment groups. Toward the end of the scheme, the promoters began to push general partnerships which allowed them to further assess investors for 'new' expenses that 'unexpectedly had arisen.' Any token return that investors received almost invariably was less than five per cent of their investment. After a while, the promoters came to arrange loans through reputable banks for investors who were told that they could pay off their promissory notes from investment profits. The personal lives of the scheme operators was financed out of whatever company had money available at the time.

Ultimately, on 7 May 1991, the nearly-decade long scheme came to an end when a California court receiver, without warning, seized all of the two Dave's assets to end, as a creditor's attorney noted, 'six years of their systematic and relentless stripping of assets from investors, partnerships and projects' (Weisz et al. 1993, p. 97).

The Victims

From the base of 8527 identified investors, we sent questionnaires in January 1994 to randomly-selected victims. We received 152 completed questionnaires out of a possible 281. The respondents overwhelmingly were men: 124 males and 21 females, with four respondents indicating that their was a joint venture (though the husband in each case returned the questionnaire). The largest group of victims was between 53 and 62-years-old when they were solicited and were generally well educated. Most (33 per cent) lived in the suburbs of metropolitan areas, with 18 per cent residing in large cities (200 000 population and above), 23 per cent in medium-sized cities (50 000 to 200 000), 20 per cent in towns (2000 to 5000 population), and 7 per cent in rural areas. Reported yearly income (salaries plus other income) at the time they responded to the investment solicitation covered a wide range. Six of the respondents had an income of below US$25 000 while 14 took in more than US$100 000 a year.

For the 133 persons who supplied this information, 65 per cent invested less than US$30 000, 17 per cent between US$30 000 and US$74 999, with the

remaining 18 per cent putting up more than US$75 000. The largest four investments were for US$160 000, US$200 000, US$280 000, and US$326 000.

The overwhelming reason why persons invested was the agent's persuasiveness (over 66 per cent) with the prospectus being noted as influential by fewer than 20 per cent of the respondents:

> *The promise of excellent returns and tax breaks. The representatives were very persuasive and well-trained. For every objection they had a ready answer.*
>
> *He seemed to believe in what he was doing. Prospectus seemed to be professional. I thought he was honest.*
>
> *The note in the prospectus said they were risky investments, but I was told that they have to put that in all prospectuses and I believed him that they really weren't risky.*

Only one person felt compelled to offer as another reason for investing a pithy five-letter response: 'Greed'.

Reflecting on the experience, most of the respondents singled out the risk factor and the promised rate of return as the representations made to them that they now believe were false. There were also occasional inventive ploys to consummate sales. A respondent remembers, for instance: 'One phone salesman called me and told me he quit his job at blah-blah securities because he knew he was selling phoney and fictitious properties.'

Personal Reactions among Victims

A limited number of descriptors usually sufficed for the respondents to portray their reactions when, as the question asked, 'you learned that you would likely lose your investment in the scheme?' By far the two major reactions were 'anger' (with variants such as 'shocked', 'mad as hell', 'enraged', 'horrified', 'felt betrayed', and 'felt terrible') and disappointment and feeling 'sick' (with variants such as 'hurt', 'very upset', 'devastated', 'depressed', 'frustrated', and 'almost had a nervous breakdown'. 'Lying bastards!' one respondent scrawled. Only a few went beyond single-word descriptors to portray serious personal problems as a result of their experience. Among these was: 'It has totally caused a major loss of self-esteem and realisation of victimisation. Honest, I consider suicide; I am losing my house!!!' And only one victim expanded on the sense of betrayal. 'Pat [the saleswoman] had called so often and sounded so sincere', this respondent wrote, 'that she seemed like a friend. I couldn't afford to lose that much money'.

A small minority turned the blame inward rather than toward the perpetrators. One respondent wrote: 'I did not realise I was so stupid.' Two others, along much the same line, wrote: 'Very upset—lifetime savings gone. No way to recoup losses. Annoyed with myself for being so stupid and being taken in by this scam', and 'Disappointed about being gullible.' There were also details of more severe emotional traumas: 'Plagued with remorse and sleepless nights. Not only loss of investment, but I am billed quarterly for IRA [Individual Retirement Account] investment.' One respondent observed that his wife had continuously sought to dissuade him from putting his money into the scheme. His

final reaction was: 'I had lost my credibility in front of my wife. I could not admit she was right. I agreed now that I'll not make any investment without her approval.'

Some of the respondents felt compelled to pay credit to the talents of fabrication displayed by the salespeople: 'I had been scammed by a very persuasive individual', one wrote, while another replied: 'I realised that I had been conned out of my money by good con artists.' Only a very few—less than a handful—took a nonchalant stance: 'Breaks of the game', wrote one such. 'Not all investments are successful after all.' 'Easy come, easy go', wrote another, while a third scrawled: 'There's a sucker born every minute.' And, inevitably, there was the upbeat pollyanna: 'I was very upset', he wrote, 'but as with all mistakes I try to make them a learning experience'.

Discussion

It is often suggested that crimes in which the victims' trust is traduced inflict greater injury than those in which harm is more physical and more impersonal. The present study provides a portrait of the victimisation of almost 9000 persons of US$217 million in what might be regarded as a very large but nonetheless commonplace telephone investment scam. The victims were in the main middle-aged and older middle-class investors looking for better-than-average profits and the prospects of the tax break granted for oil and gas programs. They were shamelessly cheated by scheme operators and solicitors who put together persuasive dramaturgy. Most of the victims apparently lost money that they could more or less afford, though some were placed in serious financial jeopardy by the scam.

How did they react? Our survey indicates strong personal distress among the victims, but there is no pressing of their laments to a larger stage, that is, to expressions of malaise with the society in general, the economic system, or cynicism about human nature. The respondents appear to have isolated the scam as an event in which they succumbed to slick pressuring and, on their part, inadequate resistance. The results often darkened their existence and they continue to hope against hope for some possible restitution that would put them back into the financial situation they enjoyed before they invested in the oil and gas swindle.

Years after the scheme, most victims continue to express strong feelings of anger and distress. These feelings, however, rarely fix on any particular person. Only a few focus their emotions on the salesperson, in part because, as some noted, they remain uncertain whether those who worked the telephone lines themselves were culpable or whether they were carrying out their assignment in good faith. The two Daves—the true villains in the scheme—remain too remote and invisible for the victims to draw the victims' fire. In this regard, there was no need for the fraud promoters to 'cool off the mark' (Maurer 1940; Goffman 1952), that is, to becalm the victims so that they would not turn on the perpetrators. These fraud victims see no reasonable personal retaliatory action that they might take; their hope lies with the authorities who, as is so often the

case, are faulted for not providing much, if any, information to the victims on how the case is proceeding.

A telling point that can be gleaned from the responses is that, in this kind of fraud, the respondents can take at least some small comfort in the fact that they now have learned a tactic that will satisfactorily protect themselves from future similar victimisations. Hang up the phone when an alleged broker calls is what they overwhelmingly advise others—and, of course, themselves. A lesson that will satisfactorily suffice in the future has been learned. In this sense, at least certain forms of fraud and white-collar crime can be seen from a victimology viewpoint as self-contained episodes, perhaps awful in themselves, but limitable.

The data from the study reinforce the theme regarding the high fiscal price exacted by frauds and white-collar crime. The 9000 victims on the average invested about US$30 000 in the scheme. Very few burglaries and many fewer robberies come close to taking so high a fiscal toll on their victims.

Victims almost uniformly provided strong emotional expressions of outrage regarding what had happened to them: how much, if at all, stronger these expressions are by victims of other forms of criminal activity can be demonstrated only by a comparative study, well-controlled in terms of items such as demographics and harms. Such a study ought to have a high place on the research agenda of victimologists.

While the telephone scam had elements of betrayal and violation of trust it also possessed for the victims some remoteness: the perpetrators did not violate their personal space but rather carried out their ruse at a distance, in a faceless manner. The continuous litany of warnings by the victims responding to our questionnaire to others that they be on guard against telephone solicitors carries with it the message that none should be allowed to intrude into our privacy, even by telephone, unless they have proper credentials or, put another way, it conveys the rather sad lesson that human beings in today's world need to be wary of any stranger allegedly bearing gifts.

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The Victims of Pyramid Sales Schemes and Remedies in Japan

TATSUYA OTA

Recently, pyramid sales schemes have been proliferating once again in Japan. A pyramid sales scheme varies in structure and size, but can be generally characterised as a plan or scheme in which each participant expects to make a vast amount of profits from commissions and bonuses by recruiting additional distributors to sell goods, services or membership. It has the following common features (Takeuchi 1977): first, each participant is considered an independent merchant; second, a scheme operates on more than one level, in which a higher-ranking participant can obtain greater potential profits; third, each participant expects to earn a majority of their profits from recruitment bonuses rather than commissions on resale of goods.

The pyramid sales scheme grows in geometrical progression and may damage thousands of people before its eventual collapse. According to police statistics, 160 000 people were victimised in eight cases cleared by the police (National Police Agency 1994). The total amount of damage was approximately 30 billion yen (US$300 million). Moreover, the victims of pyramid sales schemes suffer not only financial damage but also mental damage. Some victims lose their friends or families, others lose their jobs or their confidence in society. Many victims also suffer from secondary or tertiary victimisation. Thus, the negative impacts of the pyramid scheme on Japanese society are too serious to be ignored further.

The Problem (Unlawfulness) of the Pyramid Sales Scheme

A pyramid sales scheme is deceptive and unlawful per se. The main reason is that a pyramid sales scheme inevitably breaks down and the chance of success for every participant is virtually impossible. Participants who join the scheme by paying a membership fee and usually purchasing goods are expected to recruit new participants to earn commission and bonuses paid by them. However, it is almost impossible for every participant to continue to recruit additional members because the proliferation of the participants will eventually result in saturation of the market with participants (Takeuchi 1977). Assuming that each participant in the scheme established by one promoter recruits one new participant every month, 32 months later the number of the participants will reach about 4.3 billion, almost the total population of the world. This means that sooner or later the pyramid sales scheme will fall apart. This collapse is an inevitable result and most participants cannot even recover their membership fee, let alone achieve the promised profits. Moreover, recruitment activities in pyramid sales schemes injure or destroy human relations between recruiting participants and recruited participants because participants usually enrol their friends or acquaintances, resulting in feelings of resentment when the scheme collapses.

Victims and Victimisation Process of Pyramid Sales Schemes

Data was collected from a non-random sample of 160 victims of a typical pyramid scheme case which occurred in the early 1990s. This is the case of a company which was engaged in the sale of water purifying devices through a pyramid sales scheme (*Asahi-shinbun*, evening edn, 30 June 1992, p. 15). The scheme was founded in 1990 and lasted about two years until some high-ranking participants were arrested by the police. For the two years about 10 000 persons were recruited to the scheme. There were four ranks of participants, namely, top-ranking distributors (0.3 per cent), high-ranking distributors (4 per cent), middle-ranking distributors (17 per cent) and low-ranking distributors (79 per cent). The financial damage amounted to about 3.3 billion yen (US$33 million). The estimated damage to each victim is about 300 000 yen (US$3000). The area distribution of victims ranged throughout the country although the main concentration was around Kyoto and Osaka. Participants joined the scheme by paying 15 000 yen (US$150) in membership fees and purchasing one set of water-purifying devices costing 240 000 yen (US$2400). They were then ranked as low-ranking distributors and could be ‘promoted’ to middle-ranking distributors by recruiting at least three new participants. Additional recruitment was one of the requirements to be promoted to higher-ranking distributors. The higher the ranking of the participant, the higher the commissions and recruitment bonuses. This promotional system attracted many participants and caused huge damage to the victims. The recruiting approach of pyramid sales schemes is fraudulent; the products sold are generally bad or low quality. The water-purifying device for home use in this case was low-quality. The estimated market price was about 20 000 yen (US$200), one-twelfth of the sales price in this scheme.

Among the 160 victims of the pyramid sales scheme, 56.3 per cent were male and 39.4 per cent were female (4.4 per cent—unknown). The most common age group for victims was 20 to 30-years-old, a category into which 74.4 per cent of the victims fell. Most participants of pyramid schemes participated as a side business and according to the findings, 36.3 per cent of victims were invited or recruited by alumni of their school and 32.5 per cent were recruited by their colleagues in the workplace. However, the recruitment by family members of relatives was relatively rare (2.5 per cent).

The victims' motive for participation in the scheme was parallel to the representations used in recruitment, for instance, they 'expected much earnings' (44.4 per cent), were 'interested in goods or services' (41.9 per cent) or 'wanted to make dreams come true' (23.1 per cent). It is noteworthy here that 26.3 per cent of victims joined the scheme for their friendship (25.9 per cent). They reluctantly participated in the scheme because their friend asked them to join.

The mean amount of damage suffered by the victims was 296 000 yen (US$3000), and 2.6 per cent of victims lost 500 000 yen (US$5000) or more. These damages were composed of membership fee and price of goods purchased. To meet these expenses, half of the victims used their own money (48.1 per cent) but the other half (50 per cent) borrowed money from a credit company or loan shark. They have to clear their debts and the high interest even after secession from the scheme or collapse of the scheme.

Victims of pyramid schemes suffer not only financial losses but also various mental or social losses. Besides financial damage (55 per cent), 41.3 per cent of victims expressed regret in causing trouble for their friends. 17.5 per cent of victims acknowledged that their involvement with pyramid scheme discredited them and 20 per cent answered that they were disgusted with themselves. 14.4 per cent of victims were worried that they could not trust another person. Moreover, it is also important to point out that 4.4 per cent of victims lost their principal jobs and 3.1 per cent of victims fell ill because of the pyramid schemes.

Conclusion

Pyramid sales schemes may spread in other developing countries in the same way that they entered Japan from the United States. The countries experiencing fast economic development are vulnerable to new types of dishonest or fraudulent businesses including pyramid sales schemes. It is important to prevent this fraudulent business by sharing the information and experiences from countries which have experienced pyramid sales schemes.

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Section Two:
Victim Surveys and Methodology

How can social science research best determine the needs of victims, the rates of victimisation and the precipitating factors in the perpetuation of victimisation? Misinterpretation of survey data occurs too often. Many pitfalls await the unwary. Clearly, methodology is an important concern for researchers in this area. Equally, the findings of those research projects that have been undertaken should be of interest to policy-makers. This section examines some of the themes which attend the process of undertaking research on victimisation. It reports the outcomes of selected national and international victim surveys.

In the first excerpt, from **Jan van Dijk**'s keynote address, the author gives an overview of the historical development and some of the findings of the two International Crime Surveys carried out. In seeking an understanding of victimisation, the surveys explored the needs of victims as well as their attitudes towards sentencing and their satisfaction with police work. Van Dijk concludes that the image of a vengeful victim is fallacious. He reports that victims are not unhappy with non-custodial alternatives in some situations. Acting out of informed self-interest, he concludes, victims may be seen as natural allies for governments who wish to sponsor improved 'situational' and community-based crime prevention strategies.

From the Ministry of Justice in The Hague, **Jo-Anne Wemmers** reports on a survey designed to measure the impact of the introduction of the 1986 Dutch Victim Guidelines upon the treatment of victims by police and criminal justice agencies in that country. She concludes that the consideration displayed by the authorities towards the victim goes much further towards satisfying victims than securing the outcomes desired by the victim. Victims appear far more likely to express dissatisfaction with the police failing to keep them informed than with the police failing to solve the case. She found that victims have realistic expectations and are more concerned about process than result. In the final analysis, the police were perceived as more effective in implementing the guidelines than prosecutors.

The last papers in this section are concerned less with the findings of their survey research and more with the process by which data are collected. **Per Stangeland**'s contribution on the effect of methodology on survey rates provides an insight into one of the hazards of social science methodology. His victim survey in southern Spain involved interviewing two independent samples by, respectively, face to face and telephone methods, about their victimisation experience. In the telephone interviews, he obtained a better response rate, while the face to face interviews showed higher crime rates. He concludes that there is good reason to be suspicious of research that attempts to compare findings that derive from different data collection techniques. The study also throws some light on the issue of non-response. Those who did not respond to the face to face interview were approached again, and asked to do the interview by phone instead. These initial non-responders reported less victimisation events than the main sample.

The paper by **Julie Gardner** on violence against women contrasted use of official statistics and victim surveys. Rather than favouring one over the other, Gardner proposes that the two sources of information can complement, rather than frustrate, each other, resulting in a picture more complete than one gleaned

by surveys alone. She uses results of a survey of violence against women in Australia to illustrate her point.

These papers illustrate the difficulties associated with conducting surveys and interpreting accurately their results. They also show that the data collection techniques are not without their difficulties. Researchers who ignore these methodological challenges do so at their peril.

Crime and Victim Surveys

JAN J.M. VAN DIJK

Many mass media commentators and politicians assert that the public demands a tougher policy on crime in response to rising rates of violent crime. In this discourse, crime victims feature as the prime supporters of a tough policy on crime. Victimisations are supposed to generate feelings of fear and a call for harsh, deterrent punishment of offenders. Conservative politicians present themselves as the ones who understand this call better than others and will act accordingly when (re)elected. For instance, in the 1988 presidential election campaign in the USA ex-President Bush consistently portrayed his contender as 'soft on crime'.

For the criminal justice establishment, this line of reasoning provides welcome support. If tougher law enforcement is seen as a top priority by an increasingly victimised and fearful public, political claims for expanded police and prison budgets seem justified. The professional interest of law enforcement and prison agencies is well served by the image of the crime victims as a natural pressure group for law and order. The demands of those who have personally suffered from deficient criminal policies cannot be easily disparaged.

Whether crime victims or the public at large benefit from more expensive, punitive criminal policies remains to be seen. It is far from certain that such policies actually discourage offenders and reduce crime. In the meantime the interests of crime victims might be harmed by their portrayal as emotional proponents of tough crime policies. For academic lawyers, prosecutors and judges this image confirms their traditional reservations about crime victims. Criminal lawyers in both the common law and the European codification tradition have always felt that crime victims are too emotional and vindictive to be given a place in criminal proceedings. They are seen as a threat to the

principles of equality and consistency (van Dijk 1986; Sumner 1987). A greater involvement of crime victims in criminal proceedings will be more strongly opposed to the extent that victims are believed to seek gratification of personal emotional needs. In the early days of the victim movement, some lawyers favoured state compensation and counselling as an alibi for denying crime victims access to criminal procedure.

Criminologists have for years tried to redress the image of the victim as a person who seeks reassurance for his fears by demanding severe sentences. In the 1970s survey researchers concluded that fear of crime sometimes moved in the opposite direction to changes in recorded crime. Personal or household victimisations were found to be weakly related to fear of crime (Van Dijk 1978, 1979; Rifai 1982). Sparks, Genn and Dodd (1977) even speculated that victimisations reduce fear. Those most at risk such as adolescents did not exhibit most fears and those least at risk from ordinary street crime—elderly ladies—were most fearful (Hough & Mayhew 1983). Those who were fearful did not themselves try to reduce their perceived risks. On the basis of these findings and discrepancies, fear of crime was frequently described as 'irrational'. Fear of crime was said to be fuelled by exaggerated media reporting on violent crime and exploited by political parties and the security industry. It was sometimes also found to be associated with racist attitudes.

In the reports on the first generation of crime surveys excessive fear itself was often identified as a negative force which undermines the social fabric of the community. Those who take special measures to protect their households against crime were said to exhibit a 'fortress mentality'. Rather than acting as a rational response to crime, fear was construed as a social problem in its own right and in fact a cause of crime (Conklin 1975; Skogan & Maxfield 1981; Wilson & Kelling 1982).

Little empirical support was also found for the 'fear of crime causes punitivity' hypothesis. Personal victimisations were found to be unrelated to a preference for severe sentencing (Taylor et al. 1979; Fattah 1979; Tyler & Weber 1982; Brillon 1983). Increased crime rates did not go together with a demand for more severe punishment in The Netherlands (Van Dijk & Steinmetz 1988). Opinions on sentencing were related to level of education and age but not to victimisation (Wanner & Caputo 1987). Punitivity was partly seen as a consequence of media-induced, exaggerated fear. In addition it was supposed to be determined by political-social ideology (Killias 1989).

In the criminologists' book, neither fear nor punitivity were seen as natural responses to rising rates of violent crime. The politicians' equation of victimisation by crime with feelings of fear and punitive attitudes was rejected. Interestingly, criminologists did not only take issue with the image of the victim as a spontaneous campaigner for law and order but even sought to turn the argument around. They not only denied that victims are fearful and punitive but also construed these very attitudes as socially harmful. The politicians' exploitation of fear as an argument for heavy sentencing was seen as part of the problem rather than of the solution (Fattah 1982). In the USA fear reduction was put forward as an important policy goal, independent of crime reduction (Skogan 1981). In Europe the Council of Europe set up a committee of experts in the mid

seventies to study methods to overcome the public's resistance towards non-custodial sanctions.

Victim advocates or practical victimologists, too, have wittingly or unwittingly taken sides in this ongoing debate. At the Budapest conference of the International Society of Criminology in 1993, Fattah accused the victim's movement of being a law and order lobby in disguise. According to him the movement has taken sides with conservative mass media and politicians. Although North American and German victim advocates may occasionally have campaigned for stiffer sentences, the overall position of the victim's movement is, much more ambiguous. In most European countries they have in fact clearly distanced themselves from the 'war on crime'. In circles of victim support agencies strong feelings of fear and revenge are not valued positively. In clinical studies fear of crime is interpreted as one of the negative repercussions of a victimisation. Incapacitating fears can be overcome if proper help is given. Certain manifestations of fear of crime are defining elements of a Post Traumatic Stress Syndrome (Cook et al. 1987). In evaluation studies of victim support, the help given was found to be unsuccessful partly because clients did not experience less fear than control groups (Steinmetz 1990; Skogan & Wycoff 1987). If punitivity is indeed driven by fear and anxiety, victim assistance agencies try to reduce rather than to encourage it.

In The Netherlands very few victim support officials and volunteers welcome or support punitive attitudes among their clients. Most of them feel ill at ease with clients who demand harsh punishment of the offender. One occasionally even gets the impression that some victims are socialised by their visitors/counsellors into not being vindictive. In media presentations in The Netherlands crime victims frequently express socially desirable opinions about the senselessness of long prison sentences and the importance of forgiving.

Crime victims are differently construed by conservative media and politicians on the one hand and criminologists and victimologists on the other. The former present crime victims as people who, for good reasons, demand more protection against violent crime from the government through harsher sentencing. The latter portray the victim as a person who, given proper care and treatment, will come out of his/her experience as a better person. That is, a person who, ideally, reaches out to the world and is ready to participate in victim-offender reconciliation.

The debate about the true nature of the crime victim is part of a wider political debate on the direction of criminal policies. Both parties project their own biases and policy agendas upon the abstract victim and accuse the other party of exploiting him/her. The alternative options are an unmediated expansion of police forces and prison departments or a more experimental policy, promoting non-custodial sanctions, mediation and crime prevention. The victim is presented as a key witness by both parties.

As mentioned, there are also stakes in this debate for crime victims as a special interest group. Contrary to popular beliefs, repeat victimisation might be prevented more effectively with a preventive than with a punitive approach. In some cases victims might have a legitimate interest in presenting their damages before the court in person. Their reputation for vindictiveness may close

procedural doors for them. As said, criminal justice agencies may deny victims a proper place in criminal procedure precisely because they are presented as vindictive and over-emotional.

It would be an illusion to think that this ongoing debate will be settled by scientific research and analysis alone. Victimologists must at any rate try to influence the debate by confronting both sides with available empirical findings and theoretical insights. In this paper we will make such an attempt by presenting and interpreting data on the experiences and attitudes of crime victims across the world, collected in the framework of the International Crime Surveys.

The dataset of the Surveys, stored and processed by the Criminological Institute of the University of Leyden, offers unique possibilities to analyse characteristics and opinions of victims in an international context. Such analysis will reveal which features of victims are cross-cultural and which reflect national or regional idiosyncrasies. In the last paragraphs we will discuss the implications of our findings and conclusions for victim policies and for the socially construed image of crime victims.

The International Crime Surveys

In crime or victimisation surveys representative samples of the population are asked about selected offences they have experienced over a given time and whether or not they reported them to the police. As such they provide an estimate of the level of crime, independent of reporting behaviour of victims and recording practices of the police. Typically, such surveys have also asked opinions about fear of crime, policing and sentencing.

In 1987, the proposal for an international crime survey was formally made at a Council of Europe conference (Van Dijk et al. 1987). A working group was set up to take forward a standardised, international survey. Up until now the survey was carried out in 1988 and/or 1992 in 41 countries involving, in total, more than 80 000 respondents. Samples sizes varied between 1000 in developing countries and 2000 in most other countries. The study was characterised by an authoritative reviewer as ‘a quantum leap in international statistics on crime and justice issues’ (Lynch 1993).

Internationally comparable surveys will a fortiori be flawed in some respects. The International Crime Surveys (ICS) are no exception to this rule. They do provide, however, comparable information on crime and related issues which cannot be collected otherwise and which has never been available before. The so-called ICS league tables of national victimisation rates have so far attracted most attention in the media. The attitudinal data presented here are potentially just as interesting and arguably less affected by the error structures of the survey.

To be made presentable, the data were aggregated into rates for six global regions: the New World (USA, Canada, Australia, New Zealand), Western Europe (13 countries), ex-communist Europe (8 countries), Asia (Japan, India, Indonesia, Philippines), South America (Argentina, Brazil, Costa Rica) and Africa (Tanzania, Uganda, Egypt, South Africa and Tunisia). Each country was given an equal statistical weight. Data from countries where the survey was

carried out twice were averaged. To ensure greater comparability, all rates were calculated for respondents living in cities with more than 100 000 inhabitants.

Urban Victimisation Rates across the World

By way of introduction to the subject, we will first present urban victimisation rates for four different types of crime and the overall rates of the six global regions.

The overall five-year victimisation rate is highest in Africa where three of every four citizens were victimised. In Uganda, for instance, 96 per cent of the citizens were victimised at least once. In Asia, less than half the population was victimised. Rates for contact crimes (such as violent crimes and robbery) are highest in Africa and South America. In Rio de Janeiro, Buenos Aires, Kampala, Tunis, Dar es Salaam and Cairo one in every three citizens had fallen victim to such crimes. The distribution of car related crimes (car theft, theft from cars and car vandalism) is strikingly different: the highest rates are in the New World countries and Western Europe.

To gain insight into the social background of crime, all respondents were asked whether they were satisfied with their financial situation. Respondents in the industrialised countries and Asia were substantially more satisfied than those in Africa, South America and Eastern Europe. On the face of it, high rates of victimisation by contact crimes and personal thefts go together with high proportions of people who feel economically deprived. This relationship was confirmed by multivariate analyses of national victimisation rates. By contrast, car-related crimes tend to be higher in nations with developed economies where more people own cars. These findings lend support to the theoretical notion that crime rates are partly determined by the economic problems of (potential) offenders and partly by the provision of criminal opportunities by (potential) victims.

From these findings the conclusion can also be drawn that victimisations by crime can no longer be seen as rare events in most urban parts of the world. This is even true for victimisation by crimes of violence. A majority of all families in urban areas are struck at least once by crime in the course of five years. The experience to be criminally victimised has become a statistically normal feature of the life of families in an urban setting. In all countries victimisation rates are highest among young adolescents. Most adolescents living in the largest cities of the world must be regarded as streetwise survivors of crime and its repercussions.

If the large majority of the population has been a victim in recent years, the impact of victimisations cannot be adequately assessed by comparing victims with non-victims. Nearly all citizens, whether formally defined as victims or non-victims, are affected in one way or the other by criminal victimisations. In addition to cross-sectional analyses, the impact of crime upon the victim's attitudes must therefore be measured by comparing the attitudes of the public in low crime regions with those of the public in high crime regions. The ICS dataset offers unique opportunities to carry out precisely such comparisons. Using the ICS dataset, relationships between victimisations and attitudes can be analysed at

both the level of individual persons—comparing victims with non-victims—and the aggregate level of nations or regions (comparing the attitudes of the public in high crime and low crime areas).

Fear of Crime and Crime Prevention

In the ICS, respondents were asked both how they rated their chance of being burgled over the next year, and—to tap fear of street crime—how safe or unsafe they felt when walking alone in their local area after dark. Roughly 40 per cent of all city dwellers in the world feel vulnerable to burglary and street crime.

Fear of burglary is highest in Africa and Eastern Europe and lowest in Asia. Clearly these rates are higher in regions where vulnerability to burglary is also objectively higher. The correlation between regional burglary rates and regional concern about burglary is strong (r=0.31; n=156). In a regression analysis, level of urbanisation and burglary rates were both independently of each other, strongly related to fear of burglary. Risk perceptions of burglary closely reflect actual risks and experiences at the aggregate level.

Fear of street crime is by far the lowest in Asia. Less than 20 per cent of the citizens in Asian cities feel unsafe after dark in their domestic areas. Feelings of unsafety are the highest in Eastern Europe. The surprisingly high levels of fear in some of the ex-communist countries indicates that collective feelings of personal vulnerability are partly determined by other factors than exposure to crime as measured in the survey. In Eastern Europe political instability—for example, the civil war in Georgia and various political coups in Russia—may, for instance, have increased feelings of personal vulnerability.

At the level of national regions, fear of street crime is nevertheless strongly related to regional victimisation rates for street crimes, such as robbery (r=0.40; n=101). Fear of crime, too, closely reflects actual exposure to violent crime.

As previous analyses of the ICS data have indicated, personal victimisations are also significantly related to concern about burglary and street crime at the individual level. By and large the ICS findings indicate that criminal victimisations substantially increase the awareness of crime risks among both victims and the public at large. The notion of ‘irrational’ fears which have no basis in actual experiences of crime, is clearly not supported by our international findings.

Both populations and individuals who indicate concern about their risks to be victimised are more likely to take precautions. This finding again refutes the notion of free floating, inconsequential fears. Those who feel to be at risk make a serious effort to protect themselves. The conclusion seems warranted that high levels of crime increase the crime awareness of the public at large as well as the readiness to make investments in various forms of self-protection. Fear of crime, in this sense, can be interpreted as a fairly rational or utilitarian response to the actual burden of crime. Although some groups of the population are more sensitive to threatening (media) information than others, the average rates of fear of national or regional populations closely reflect actual crime rates.

Attitudes towards Sentencing

Respondents were asked which types of sentences they considered the most appropriate for a recidivist burglar—a man aged 21 who is found guilty for the second time, having stolen a colour television. In total 43 per cent of all respondents favoured imprisonment. More than half of the public in Africa, Eastern Europe, South America and Asia favoured imprisonment. In Asia, Japan was an exception (only 23 per cent favouring imprisonment and 58 per cent another sentence other than those listed). In the West European countries less than a quarter favoured imprisonment and in the New World countries roughly a third. In contrast to the stereotypical image in Western countries of the public demanding imprisonment of repeat offenders, community service orders are the most chosen sanction in this part of the world. In many countries, (including for example Germany, France, The Netherlands, Sweden, New Zealand and Australia) at least half of the public favoured community service orders.

Previous analyses of data at the individual level have shown that those most fearful of crime and victims in general are not more in favour of a prison sentence than non-victims (Rich & Sampson 1990; Kuhn 1993). There is no indication from the ICS data that recently victimised citizens typically reject non-custodial sentences. On the contrary, in Western countries community service is the favourite sentencing option, even of burglary victims, with 4 out of 10 favouring it. The idea that crime victims typically demand the imprisonment of offenders is apparently a myth.

Victims' Satisfaction with the Police

Victims of crime were asked whether they or anybody else had reported the incident to the police. In general reporting percentages are highest for serious property offences such as car or motor cycle theft and burglary. The ICS showed that reporting is much higher in New World nations and Western Europe than elsewhere. The main reasons for non reporting given were that the incident was not serious enough or that the police could do nothing. In the developing countries and Eastern Europe a relatively high percentage said they had solved the incident themselves. Although few victims explicitly said so, lack of insurance seems an important factor. At the individual level, those without insurance are less likely to report burglaries to the police. In most African and South American countries only between 10 and 20 per cent of the respondents are insured against household burglary. In most industrialised countries the insurance rate is at least 70 per cent. Among the industrialised countries, those with low insurance rates, as Spain and Italy, show the lowest reporting rates. At the aggregate level there is obviously a strong association between the extent of insurance cover and reporting of burglaries to the police. Financial considerations seem to play an important role in the decision making of victims vis-a-vis the police.

All respondents who had reported a crime to the police over the last five years were asked whether they were satisfied with the way the police had dealt with their last report. Having reported an offence, satisfaction with the police

was lowest in Eastern Europe, South America and Africa. In the New World countries in particular satisfaction was remarkably high. There is a weak association between reporting rates and levels of satisfaction. In countries where victim satisfaction is high, more victims report burglaries and other crimes to the police.

Victims who were not satisfied were asked to give their main reasons (more reasons per respondent could be given). The reasons given for dissatisfaction show interesting differences. In South America and Africa, where satisfaction was low, the single most important reason is that the police did not recover the property. In Eastern Europe, many reporting victims also complained that the police did not find the offender or were slow to arrive. The reasons for dissatisfaction of African, South American and East European victims indicate that for them reporting is often motivated by the wish to reclaim stolen property. In more affluent nations, this instrumental consideration seems less pertinent. The findings on insurance coverage, presented above, corroborate this interpretation. In the developing countries great economic interests are at stake for the victims of property crimes in the criminal investigations of the police. This is illustrated by the comment of the survey coordinator in Uganda that in many cases the interviewed victims had not yet replaced the stolen property (Samula 1993).

The dissatisfaction with the police of crime victims in developing countries must be understood in relation to their immediate economic interest in the outcome of the investigation. Since most burglary cases are not solved, the victims' dissatisfaction—and subsequent lower willingness to report such crimes—in developing nations stands to reason. Victims whose financial interests rest with insurance rather than with the police are logically less concerned about the outcome of the investigation. Victims in these circumstances want to be treated efficiently and with respect and be given a document supporting their insurance claim. Against this background the relatively high levels of satisfaction in the West become somewhat less impressive. The fact that a quarter and perhaps up to a third of victims in most Western countries are dissatisfied should be a reason for concern rather than complacency.

Need of Victim Support

In the surveys, victims were specifically asked whether they had received support from a specialised agency. In most countries few victims had received such help. Of those who reported their last victimisation to the police 2.1 per cent had received help. Of all victims of contact crimes and burglary 3.8 per cent had been given such help (3.3 in Western Europe, 5.1 in New World and 5.7 in Eastern Europe). The highest pick up rates were in the USA (10), England/Scotland (10), New Zealand (10), Costa Rica (4), Canada (4) and in The Netherlands (3). In all other countries lower percentages of such victims had been clients of victim support schemes.

The pick up rate of victim support schemes is rather low. Since victim support is still altogether lacking in most countries and a newly emerging service in most others, these findings were perhaps to be expected. An analysis of the

ICS 1991 dataset of industrialised nations showed that victim support was more often received by the elderly and by persons who were divorced or widowed.

Victims who had not received help from a specialised agency were asked whether they would have appreciated help in getting information, or practical or emotional support. The survey shows that on average 40 per cent of the victims would have welcomed more help than they actually got. In general there were less victims with unmet needs in countries with extended welfare provisions and/or more specialised victim support such as The Netherlands (12 per cent), Sweden (15 per cent), Canada (23 per cent), New Zealand (23 per cent), Australia (24 per cent) and England/Wales (24 per cent). Levels of demand were clearly highest in Africa and South America. Here more than half of the victims would have welcomed help. In Eastern Europe demand was also relatively high, although many victims declined to answer the question.

Implications for Theory and Research

On the basis of these findings victimisation by crime can no longer be regarded as a rare event in the rapidly growing urban areas of the world. In today's global village, the victim status is almost universal and has therefore lost its salience as a predictor of attitudes towards crime and crime control. The distinction between victims and non-victims must not be seen as a dichotomy but rather as a continuum. The impact of crime must be assessed at both individual and collective levels.

The responses of the public to crime are partly shaped by pre-conceived beliefs about crime and punishment, which are sustained and played upon by sensational media reporting. These responses must yet primarily be interpreted as the outcomes of rational assessments of the risk to be victimised and of the costs and benefits of possible countermeasures. In this perspective of the rational-interactionist model, fear of crime must not be regarded as a symptom of mental trauma but as the outcome of rational decision making. In general the perception of victimisation risks must not be a priori equated with emotions at all. In some cases a heightened risk awareness generates feelings of fear or anxiety but this need not be so. Neither is fear a necessary condition for self-protection as was previously assumed by the proponents of the fear-drive model.

In the perspective of the rational interactionist model, the public's collective decisions on preventive measures constitute an adaptive social mechanism which in the long term contributes to a better control of crime. Crime awareness among the public should be studied as a socially constructive, negative feedback mechanism. In future studies, more attention should be given to the economic interests and considerations of the public with regard to self-protection. In the evaluation of victim assistance increased risk awareness and a lasting commitment to reduce crime risks individually or with others must, in principle, be seen as positive outcomes of the coping process. More research must be done on the extent to which individual and collective self-protection measures actually reduce victimisation risks of individuals and (local) populations.

Attitudes of victims towards the police and sentencing also seem largely governed by rational considerations. The need to back up an insurance claim

with official papers is an important factor in decision-making on reporting to the police. In Western countries victims do not normally blame the police for being unable to arrest the offender and neither do they demand imprisonment. Satisfaction with the police does not predominantly depend upon the effectiveness of the investigation. Many crime victims, however, would like to receive more information and practical or emotional support than they actually get. Severe sentences are supported only if perceived to be instrumental in reducing crime and losses from crime. Several studies suggest that victims' satisfaction with the police and the courts is determined more by the procedural quality of the treatment than by its outcome.

Policy Implications

At an abstract theoretical level our findings refute the notion of crime victims as a special category of citizens who typically possess extreme feelings of fear and other mental health problems and demand the imposition of harsh, retributive punishment upon offenders. The image of the over-emotional and revengeful victim with a lust for punishment proves to be a fallacy. Victim advocates must therefore raise their voices against the persistent misrepresentation of crime victims for political ends. In the past victims have wrongly been paraded as proponents of tougher crime policies. Crime victims were supposed to resist experimentation with non-custodial or preventive policies. In reality the public at large in all Western nations, whether personally victimised by crime or not, leaves sufficient scope for such experimentation and would, in fact, welcome it. With regard to sentencing reform the public in several countries seems more pragmatic and open-minded than many criminal justice professionals and politicians.

If a majority of inhabitants of cities is victimised by crime at least once every five years or so, it is unlikely that victims typically suffer from mental health-related problems. If all or most crime victims would exhibit emotional disorders, the urban populations of the world would be in a permanent mental health crisis. Our findings suggest that most victims cope rather well with their victimisation experience and respond rationally to it, for instance by regaining their self-confidence through improved self-protection. The crime victim's public image must not only be defended against political exploitation. The emerging tendency to routinely attach clinical labels to crime victims on behalf of vested professional interests must also be exposed.

In our opinion, the needs of crime victims must not primarily be interpreted in medical or legal terms at all. They must first of all be understood in a perspective of informed self-interest. Victims of crime are sharply aware of their interest in better self-protection. They are therefore the government's natural allies in campaigns for improved situational or community-based crime prevention. The public's spontaneous tendency to be very concerned about its safety must not be seen as problematic. It should rather be seen as 'healthy anxiety' and a contribution to a better control of crime. It seems questionable whether governments are justified to try to reduce fear of crime independently of crime. As Bennett (1990) concludes, such policies might upset natural

equilibriums and reduce the motivation of residents to participate in community crime prevention programs and/or to take adequate precautions to secure their property. As experiments in The Netherlands showed, attempts by governments to reduce fear through information campaigns stand little chance of success anyway (Kuttschreuter 1994). Rather than to reduce fear against heavy odds, governments should aim to steer and encourage the public's spontaneous defensive responses in the framework of a coherent crime policy. The use of situational and community-based crime prevention should, for instance, be promoted through subsidies, taxation and the adoption of minimum standards.

Reservations of lawyers about the participation of victims in criminal procedure were probably also based on misguided notions. Criminal lawyers have been unduly concerned about the emotional state of crime victims. In The Netherlands victims of serious crimes are entitled to speak in person with the prosecutor in charge of 'their case'. Victims were found to be much less demanding than was previously feared. In North America victims exercising their right to speak up in court about their feelings and opinions do not typically demand harsh punishment. Most victims do not apparently use their new rights as a retributive tool. They want to be recognised as concerned parties and to be notified of judicial decisions. They also have an obvious interest in securing compensation from the offender for losses or for pain and suffering (Groenhuijsen 1993; Van Hecke & Wemmers 1992). Meeting these modest demands does not require any fundamental changes in procedural or substantive law. What is needed is nothing more or less than a serious commitment from all parties involved to treat victims the way government agencies are supposed to treat citizens across the board in democracies: fairly and efficiently.

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The Dutch Victim Guidelines and their Impact upon Victim Satisfaction

JO-ANNE M. WEMMERS

The Victim Guidelines

In The Netherlands, the treatment of victims by police and criminal justice authorities is regulated by guidelines. Victims are viewed as a special target group for the services or activities of the police and criminal justice authorities. Van Dijk refers to this approach as the 'services model' which he contrasts with the 'procedural rights model' (Van Dijk 1986). The procedural rights model sees victims as subjects who must be given an extended set of legal rights to pursue their own interests. This approach is common, for example, in the United States where many states have adopted victims' bills of rights (NOVA 1988).

The first set of victim guidelines for police and public prosecutors in The Netherlands was issued in 1986 (Richtlijnen voor Openbaar Ministerie en politie). These original guidelines were directed at victims of serious violent crimes. A year later, in 1987, the guidelines were extended to include all victims of felonies (Richtlijnen aan politie en Openbaar Ministerie ten aanzien van uitbreiding slachtofferbeleid). The guidelines introduce a number of special duties for police and prosecutors.

The duties of the police can be broken down into two steps. The first step is the initial contact between the victim and the police when the victim reports a crime. The police are often the first and only representatives of the criminal justice system with whom the victim has contact. Police are required to treat victims with consideration and have respect for their dignity. During this first

contact they must inform the victim of the possibilities of victim assistance and, where appropriate, refer the victim to the local victim assistance scheme. Police should give the victim a general description of the procedure following their report and ask the victims if they wish to be kept informed of the developments in their case and if they desire financial restitution.

The second step involves following through with the victim's wishes regarding notification and restitution. The police are expected to comply with the wishes of the victim. If a suspect is apprehended and the victim wishes restitution, the police should arrange, where appropriate, the payment of restitution by the offender. Victims who wish to be kept informed should be notified of the fact that a suspect has been apprehended. Or when the police fail to solve the case, they should be informed when the criminal investigation is closed.

All relevant information gathered by police in steps one and two should be included in their report. The purpose of this information is twofold. Firstly, it provides police with an overview of the wishes of the victim so that when a suspect is later apprehended they can follow through with the victim's wishes. Secondly, when the case is sent to the office of the public prosecutor, he or she can continue to address the wishes of the victim.

The guidelines for the prosecutors concentrate on notifying the victim of all important decisions concerning the case and restitution. A decision by the prosecutor to dismiss the case may be taken only if the offender has made a reasonable effort to compensate the victim. Finally, the guidelines oblige the prosecutors to invite victims of serious crimes of violence (and the relatives of deceased victims) for a personal interview in order to explain the criminal procedure and any special aspects of the case.

The present study was designed to examine systematically the effects of changes in the treatment of victims of crime and their reactions to the police and the public prosecution since 1993. Although the existing guidelines have been in effect since 1987, their implementation is modest. Few victims are treated in complete accordance with the guidelines, many in part and most not at all. The reactions of victims who had not been treated in accordance with the guidelines could be compared with those who had, thus permitting a systematic study of the effects of the treatment of victims on their satisfaction with police and the public prosecution. In sum, the 1993 changes (introduced as guidelines nationwide in 1995) mandated the police and prosecution to seek pre-trial restitution as a matter of urgency. Victims have to be informed of their rights to seek restitution, police reports must include an assessment of the offender's ability and willingness to pay, the prosecution must attempt restitution and, if these attempts fail, inform victims of their right to appeal.

Method

The data presented in this study are part of a larger investigation of the effects of the new legislation and guidelines for victims of crime. In order to study the effects of these new measures an untreated control group design with separate pre-test and post-test samples was used. The experimental group consists of

victims from the two jurisdictions where the new measures were introduced in April 1993 namely, 's-Hertogenbosch and Dordrecht. The control group consists of victims from two jurisdictions of comparable sizes where the new measures will not be introduced until 1995 namely, The Hague and Assen.

The respondents were selected from cases entering the four offices of the public prosecutor included in the study. All reports which fit the selection criteria were included in the sample. The first selection criterion is that the case must include one or more victims. The offence must be one of the following felonies: property crime or (minor) assault. Minors (17 years of age or younger) as well as department stores and other large organisations were excluded from the sample. Individual victims and the owners of small, privately owned shops were included in the sample. Only offences occurring on or after April 1 1993 fall under the new legislation. For this reason the samples were selected in the period from August to October 1992 (pre-test) and from September to November 1993 (post-test). The samples consist of 638 respondents in the pre-test and 709 in the post-test.

1347 subjects were approached (by mail) for an interview. The interviews were conducted face to face using computer driven questionnaires. Of the 638 respondents in the pre-test, 315 participated in the interviews. For the post-test, 325 of the 709 respondents were interviewed. This is a response of 49 per cent for the pre-test and 46 per cent for the post-test. The first interviews were held soon after the cases of the respondents had entered the office of the public prosecutor. The interviews were held from September to December 1992 (pre-test) and from October 1993 to January 1994 (post-test).

Some five months later the respondents who had participated in the first interview were approached for a second interview. In all, 193 victims were interviewed twice in the pre-test and 242 respondents were interviewed a second time in the post-test. These second interviews took place from March to May 1993 (pre-test) and from April to June 1994 (post-test).

Among the victims who participated in the first interview, 65 per cent were male and 35 per cent were female. The median age was 39 years. The level of education among the respondents is average: 10 per cent have had only elementary school and the rest have had some form of secondary education, one-quarter has attended college or university. Due to the selection procedure the different types of victimisations represented in the sample is limited: three-quarters of the cases involve property crimes, the remaining cases involve (minor) cases of assault. There are not significant differences between the respondents who participated in the first interview and those in the second interview.

Results of the Study

In order to understand the effects of the treatment of victims on their evaluations of their interactions with the police and the public prosecution, analysis was performed using all of the interview data. For this purpose, the respondents were split up into subgroups based on their treatment by police and the prosecution. Two treatment variables are considered namely, notification and restitution. The

following table shows the distribution of the respondents across the various groups.

Table 1
Distribution of respondents across treatment groups

Task	*Police*		*Prosecution*	
	(n = 640)		(n = 435)	
Notification				
Want notification	511		363	
Receive notification		169		108
Do not receive notification		342		255
Do not want notification	129		72	
Restitution				
Want restitution	321		231	
Attempted restitution		34		38
Restitution not attempted		139		193
Uncertain		148		
Do not want restitution	78		50	
No damages	241		154	

Overall, the respondents appear satisfied with the treatment by and the outcome achieved by police. The respondents are less satisfied regarding their experience with the prosecution.

79 per cent of respondents are either satisfied or very satisfied with the treatment by police, and 57 per cent are satisfied or very satisfied with the outcome achieved by police. The respondents are less satisfied regarding their experience with the prosecution. The proportion of respondents being satisfied or very satisfied with treatment by prosecutors is 34 per cent and satisfaction with outcome 40 per cent.

One scale was developed for victim satisfaction with the performance of the police and one for the prosecution (Table 2). The reliability of this scale was assessed using cronbach's alpha. This scale is based on the respondents' average scores across the four items. The minimum possible score is one (very dissatisfied) and the maximum possible score is five (very satisfied).

Table 2

Standardised alpha coefficients and means of the general satisfaction scales for police and the public prosecution in the first and the second interview

	First Interview	*Second Interview*
Police		
alpha	0.80	0.82
mean	3.37	3.36
Prosecution		
alpha	0.80	0.82
mean	3.03	3.16

The general satisfaction scores presented in Table 3 reflect the respondents' satisfaction directly following their experience. Hence the mean for police is derived from the first interview and that for the prosecution is derived from the second interview. An examination of the means across the various treatment groups shows that victims who do not wish restitution or notification generally show similar levels of satisfaction as those whose wishes are responded to by the police and the prosecution. However, a majority of the respondents want to be kept informed by the police and the public prosecution and among those with damage, most desire restitution.

Table 3

Evaluations (mean scores) for the various treatments

	Police			*Prosecution*		
	outcome/treatment/general			outcome/treatment/general		
Notification						
Want notification						
* receive	3.79	3.98	3.45	3.14	2.98	3.18
* do not receive	3.11	3.67	3.31	2.98	2.45	2.58
Do not want notification	3.77	3.95	3.41	3.14	2.93	3.07
Restitution						
Want Restitution						
* attempted	3.06	3.62	3.34	2.74	3.21	3.14
* not attempted	2.99	3.60	3.25	2.46	2.60	2.98
* uncertain	3.32	3.75	3.31			
Do not want restitution	3.36	3.74	3.31	2.58	2.94	3.14
No damages	3.81	4.02	3.51	2.89	2.94	3.08

(Lower scores indicate low levels of satisfaction)

When legal authorities fail to recognise needs, victims tend to be less satisfied with the way they were treated and the performance of authorities in general.

The negative impact of disappointment

In order to examine the potentially negative impact of disappointment on evaluations the respondents were further differentiated based on the treatment received by police and the public prosecution. Previous research suggests that high expectations have a negative impact on satisfaction (Erez & Tontodonato 1992). In the present study two causes for disappointment can be identified. The first concerns notification, the second restitution.

Regarding notification, the guidelines specify that victims should be asked if they wish to be notified of any developments in their case. A number of victims claimed that they had been asked if they wished notification but were subsequently not kept informed by the police or the prosecution. These victims should be less satisfied than victims who were notified, and perhaps, because they had been led to believe that they would be notified, they might be more dissatisfied than respondents who wanted information but who had not been led to believe that they would be notified.

These distinctions generated the following groups. Among the 342 respondents who wanted but did not receive notification from the police, 92 had been asked by police if they wished to be notified. For the prosecution, 67 of the 254 respondents wanting but not receiving notification had been asked this.

If raised expectations lead to dissatisfaction, then the respondents in the first group should be more dissatisfied with authorities than those in the second group, whose expectations were never raised. Using t-tests the average scores for the two groups were compared for each of the evaluation variables. The results show that the evaluations of the two groups do not differ significantly. Respondents who had been promised notification but did not receive it are not more dissatisfied than those whose hopes were never raised.

The second condition involves those respondents who claim that the police or the public prosecutor attempted but failed to secure restitution. These respondents would obviously be disappointed by the negative result. Here too the question is whether the disappointment results in greater dissatisfaction with police and the prosecution than when restitution is desired but not attempted.

This test involves comparing the evaluations of victims who claimed that the attempted restitution had failed, with those who wanted restitution but said that police or the prosecution had not attempted to obtain restitution for them. In all, 30 respondents claim that attempts by police to secure restitution was unsuccessful while 139 respondents who want restitution claim that the police never tried to arrange restitution. Regarding the prosecution, 32 respondents claim that the attempt was unsuccessful and 193 respondents believe that the prosecution did not try to obtain restitution for them.

These comparisons show that, on most measures, failed attempts at restitution do not lead to more negative evaluations that when restitution is not attempted at all. Disappointed respondents are no less satisfied than respondents whose hopes were never raised in the first place. Generally the observed

differences are statistically not significant. One exception is the respondents' satisfaction with the treatment by the public prosecution. Respondents who claim that the prosecution attempted to arrange restitution but failed are significantly more satisfied with the way they were treated than whose who want restitution and say restitution was not attempted ($t = 3.00$, $df = 223$, $p = .003$).

Discussion

Interest in the needs of victims results in greater satisfaction with legal authorities. Victims appreciate the time and effort authorities give to them and are more satisfied with both the experience and the performance of police and public prosecutors in general. These findings support efforts to improve the position of the victim in the criminal justice system by recognising their needs for information and restitution. However the implementation of the guidelines is weak and many victims are not offered the opportunity to request notification and/or restitution. Before considering further changes in the formal position of victims, the implementation of the existing guidelines should be improved.

In most cases, authorities were unsuccessful in securing restitution for the victim. However, it is interesting that the respondents who claim that such attempts failed do not show significantly lower levels of satisfaction than those whose desire for restitution was not responded to by police. In fact, higher levels of satisfaction with the treatment received by authorities are observed among the victims whose hopes for restitution were disappointed. No support is found for the assumption that disappointment intensifies victim dissatisfaction. Apparently, victims have realistic expectations and appreciate the interest and concern reflected by such efforts. Victims are more concerned about the process than the outcome of the case.

By keeping victims informed of the developments in 'their' case, legal authorities can have a significant impact on victim satisfaction. Notified victims are not only more satisfied with the treatment received by authorities, they are also more satisfied with the outcomes they achieve. Although the present study consisted solely of cases in which police were successful in finding a suspect, evidence suggests that the outcome by police is not a primary concern of victims in their interactions with legal authorities. Victims are more likely to criticise police for their lack of interest and their failure to inform the victim than their failure to solve the case.

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EDITORS' NOTE:
This paper has been abridged owing to space restrictions. Full details of the survey and its methodology can be obtained by contacting Dr Wemmers at the Ministry of Justice, The Netherlands (fax no: 31-70-370-7948).

The Effect of Interview Method and Response Rate on Victim Survey Crime Rates

PER STANGELAND

In a regional crime survey in Southern Spain, 3139 respondents participated in a victimisation survey, a representative sample of the 1.2 million inhabitants of the province. The object was to integrate various sources of information about crime in one region, supplemented by other research where necessary, in order to obtain a coherent picture of crime patterns and trends (Stangeland 1995).

Two methodological questions are addressed in this paper. Firstly, which method is preferable, telephone or face to face interviews? Secondly, what would the non-respondents tell us?

Telephone versus Face to Face Interviews

Population survey agencies appeared to shift away from personal interviews and instead use the telephone in the 1980s. Telephone surveys are faster, cheaper, and give rise to fewer rejections. There are, however, several remaining doubts about the wisdom of this move. Do telephone responses have the same validity? Do people have a better personal contact, and do they reflect more over the questions posed in a face to face situation?

A review of 28 published studies that compare telephone interviews with face to face interviews indicates that the difference between these two methods is small (de Leeuw & van der Zouwen 1988). Both methods show some bias: the

respondent may be more prone to give socially desirable answers in a face to face interview, while telephone interviews may be less successful in obtaining sensitive information. Interviewer skill and training is probably a more decisive factor than the interview medium itself. Körmendi (1988) carried out a methodologically solid comparison between income information given in face to face and telephone interviews. Both samples were drawn from the Danish Central register, and information given in the interview could be checked against declared income. The conclusion of that study was that telephone interviews gave higher levels of non-response on questions on income. However, those who responded gave quite comparable results. Both kinds of interview gave a Spearman's R correlation of .85 with officially recorded net income. Self-employed persons gave information that correlated badly with official data which might indicate that the interview data was more truthful than their tax declaration.

However, none of these methodological studies relates directly to interviews on crime experiences. The ICS surveys use telephone wherever the coverage is high enough, and personal interviews in regions with low phone coverage. This implies that one cannot compare personal interviews with telephone interviews within the ICS data base, since the samples obtained are different. Kury (1993) presents a comparison between interviews by telephone to 5000 households in the former German Federal Republic with personal interviews carried out in the former German Democratic Republic to produce tables with crime rates from the two parts of Germany before and after the Wall came down. The validity of such a comparison depends on whether or not the two methods give comparable results with regard to crime rates.

Pavlovic (1994) organised an ICS survey in Ljubljana, the capital of Slovenia, in 1992. Doubts as to the telephone coverage and adequacy of phone interviews made them decide for a dual (split) sample—700 were interviewed by phone, and 300 by personal interview. The telephone interviewees were chosen from the phone directory, the personal interviewees by area sampling methods. Active refusal rate was, respectively, 3 per cent and 6 per cent.

Refusal rates are quite low, as in many other former Socialist countries, while survey research is still a novel experience. Refusal rates are, however, lower in the telephone sample. Given the moderate size of the two samples, it is difficult to find significant differences in crime rates, or in other response patterns between the two samples.

Who are the Non-Respondents?

The number of rejections and other sample losses vary strongly between different surveys. The undisputed leader in producing a consistent and high response rate is the US Census Bureau. One must, however, take into account that the US surveys sample addresses, not households. If a family has moved from the given address, the Census Bureau makes no attempt to find them. The new arrivals are interviewed instead.

The ICS response rate varies between the 33 per cent obtained in 1989 in Spain, to a high of 95 per cent or more in Poland in 1992 (Van Dijk 1992). Can

one compare the crime rate found in different countries if, in addition to sampling problems mentioned above, the response rate fluctuates that strongly? An overview of the impact of non-response in telephone surveys in general leaves the question open. The answer depends on the extent to which victimisation correlates with the factors that produce sample loss. The part of the population that is most difficult to find in a survey may also be the part of the population that suffers more crime. The same goes for the 10 per cent to 20 per cent of the population that does not have a telephone—they are not included in the sample at all.

Jock Young states that victim surveys have their own dark figures:

> *The non-response rates in all these surveys are considerable, and in most cases there is a fifth to one quarter of respondents whose victimisation is unknown. It goes without saying that such a large unknown population could easily skew every finding that we victimologists present. At the most obvious level it probably includes a disproportionate number of transients, of lower working class people hostile to officials with clipboards attempting to ask them about their lives, and of those who are most frightened to answer the door because of fear of crime* (1988, p. 169).

Van Dijk (1990) discusses this problem in his review of the 1989 surveys, and concludes that they have no clear evidence on the effects of non-response. Two counter-balancing effects are operating. Firstly, as Young maintains, the surveys lose that part of the population which is most difficult to locate, and which may have a lifestyle that makes them more vulnerable to crime. Secondly, people who have been victimised may be more motivated to participate, because they have something to tell. These two effects, which we might call respectively the 'lifestyle' and 'eager to tell' hypotheses, may rule each other out to some extent. That could explain the overall lack of correlation between victimisation rates and response rates in the ICS surveys.

A possible support for the 'eager to tell' hypothesis is found if we compare the two ICS surveys that were carried out in the US. The response rate in these two surveys increased from 37 per cent in 1989 to 50 per cent in 1992. The effect was that rates of personal violence decreased. Robbery went down by 21 per cent, assault by 14 per cent and sexual incidents by 49 per cent. Since it is unlikely that a 'real' decrease in personal violence took place during these three years, the change in victimisation rates is probably due to sampling fluctuations. If respondents who have suffered a violent attack are more motivated to participate in a survey about crime, we would find precisely such an effect by improving the response rate. On the other hand, an improvement in the Finnish sampling technique and response rate between 1989 and 1992 gave increasing counts of violent crime.

Three other research projects throw light on the non-respondents from another angle.

A German study on self-reported crime undertook to interview a representative sample of youngsters. Of a total sample of 1398 persons, they tracked down and interviewed 920 (Willmow & Egon 1983, p. 283). However, they were also able to check police, state attorney and Central Criminal Register

data for all the youngsters, whether they participated in the study or not. They found that police record rates varied between the participating and non-participating group. The group of respondents who refused to participate had the highest crime rate of all. They were closely followed by the youngsters who were difficult to locate. At last, to reassure those who might suspect that surveys tell nothing but lies, Willmow found that those who confess having committed crimes actually are registered with the police more often that those say that they have not.

Victimisation surveys may be different. Respondents who have suffered a crime might be more willing to tell about their experience than delinquents who have been caught in the act of committing a crime. Sparks (1977) interviewed a selected group of persons who had reported a crime to the police, along with a representative sample drawn from the population register in the same area. They experienced severe problems in locating both samples, but more so with the victims than with the population in general.

Whereas 45.6 per cent of the general sample had moved or could not be contacted, the same was the case for 56.8 per cent of the persons who had reported a crime to the police. However, the refusal rate was more or less the same for the two sub-samples: 9.4 per cent for the population sample, and 8.1 per cent for the 'victimised' sample. If we calculate refusals on the basis of persons actually contacted, we find a refusal rate of 18.8 per cent for victims, and 17.3 per cent for non-victims.

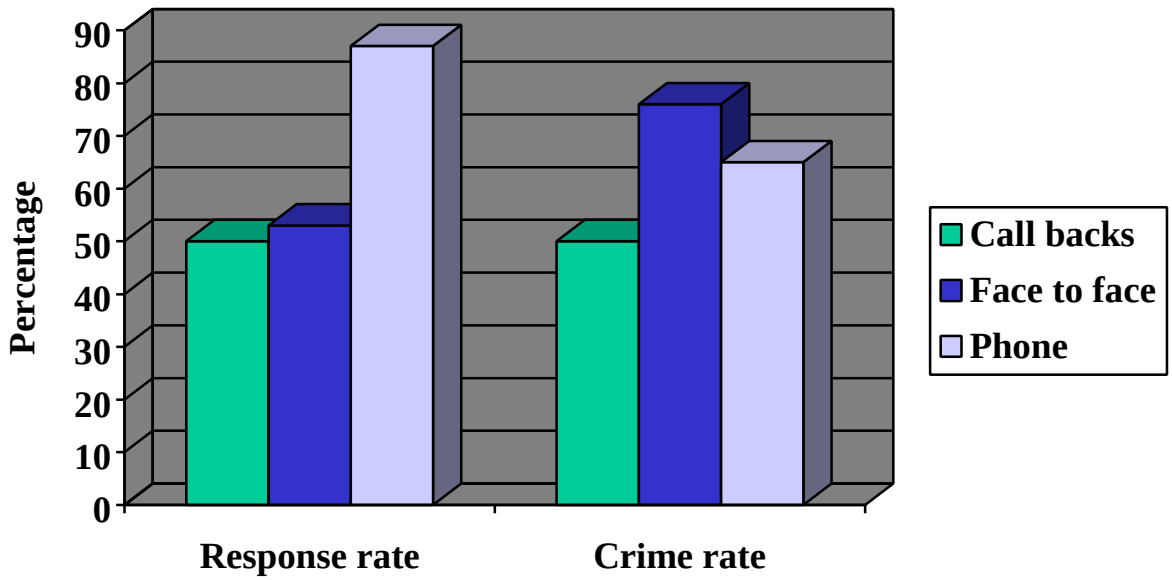
We conclude from this that the refusal rate is not significantly higher among people who have reported a crime to the police. However, they move more frequently, or are difficult to locate in their homes. We have good reasons to suspect that non-respondents are, in fact, different with regard to lifestyle. They may be more delinquent, more accident-prone and more often victimised.

Our Findings

Do personal interviews on crime experience give other responses than telephone interviews? Our split sample design gave an answer to that question. A total of 901 respondents were interviewed by telephone, and 479 by a personal interview.

All results in figure 1 refer to the city of Malaga only. Data from the 1574 interviews outside the capital area are held outside this comparison. The personal interviews and telephone interviews are independent random samples from the same population, drawn in the same way, preceded with the same introductory letter and interviewed with the same questionnaire, with the minor adaptations necessary for the different media employed: face to face versus telephone interview. The telephone interviews were carried out in two sweeps: the first one in 1993, with the purpose of finding out if telephone interviews were preferable to personal interviews. The second sweep was carried out in 1994. Response rates are calculated on the basis of net samples, where only the relevant contacts count.

Figure 1
Response rates and crime rates in comparable samples, Malaga 1993-94



Comparing the personal interviews with the telephone interviews, we find a strong inverse relationship between crime rates and response rates. The personal interviews are more difficult to carry out, and the refusal rate is higher. However, those who concede an interview have more to tell: a total of 76 per cent have experienced one of more crimes during the last five years, compared to 65 per cent of those interviewed by telephone.

We also find that the 'call backs' who refused to participate or were difficult to locate by personal interviews, actually report fewer crimes. We sent a second letter to 370 respondents left over from the personal interviews in 1993, and obtained an interview by phone with 185 of them. These 185 interviews brought the overall response rate for that year up to 73.9 per cent, and can indicate what we gain by making an extra effort with respondents who refused to participate or were difficult to locate.

Discussion

Non-response issues have been under debate since victim surveys started. We identify two hypotheses on how non-respondents skew the sample. The 'lifestyle' hypothesis maintains that the non-respondents have a lifestyle which exposes them to high crime risks. They are more transient, and perhaps of lower social class than the sample interviewed. The other hypothesis, which we called the 'eager to tell' hypothesis, is that victims of crime might be more motivated to participate in a survey of this kind, and that non-respondents report less crime than the respondents.

Our findings lend more credibility to the 'eager to tell' hypothesis. The extra effort spent in locating and interviewing half of all the initial non-respondents actually brought down the crime rates in the final sample. The difference was, however, not very great, and we suspect that these two effects counterbalance each other, so that the net result of increasing the response rate is only marginal. This means that surveys where response rates may vary between 50 per cent and 80 per cent might be comparable, without any corrections for the skewing effects of low response rates.

The half of the population who respond to a personal interview are more motivated to participate. They take more time to think the questions over, and might also feel more of an obligation to tell the interviewer something, since he or she took the time and effort to visit them. Consequently, they report more crime incidents than the sample interviewed by telephone. In the telephone sample, where we reached almost 90 per cent of the respondents, we meet persons who are in a hurry, who are not very motivated to participate, and answer more briefly. They fail to recall minor incidents, and give a lower crime count. The group who had initially refused to participate or were difficult to locate, are the ones with the lowest crime rates of all.

Improving the response rate did not, however, give higher crime counts. We might be able to locate more respondents of the lifestyle which would imply higher crime risks. This is, however, more than counterbalanced by their lower motivation to participate in the survey, and a reduced effort to recall what has happened to them previously.

Telephone interviews yield slightly lower crime counts than personal interviews. Which of the two methods is the more valid one? The personal interviews may have 'telescoped forward' more events, and perhaps also included some thefts that actually happened to their aunt or their cousin. The telephone interviews may have ignored incidents that actually should have been included. We cannot, on basis of these data, draw any firm conclusions on validity, except that comparisons of victimisation rates between surveys which employ different methods must be performed with great caution. Comparisons between surveys which employ the same interview methods, but obtain different response rates may, however, be quite valid.

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Use of Official Statistics and Crime Survey Data in determining Violence against Women

JULIE GARDNER

There is an oft held debate on which source of data is best for measuring victimisation: official statistics or crime survey data. The benefits of one are set against the limitations of the other, but rarely are the two sources of data used to complement or enhance each other. This paper has as its main purpose the examination of violence against women, but in doing so both police and survey data have been used. The benefits and limitations of each source of data are illustrated in the paper with reference to the obtained results.

The benefits of police data are sometimes forgotten by victimologists. This source of information represents the official response to crime. Police data include crimes against businesses as well as crimes against individuals. Children who have been victims as well as adults are included. In short, it is the total population of recorded offences. Offences are ordered in time so that the number of crimes reported in different months or days is easily established.

The biggest limitation of police data is the perennial question—what about those crimes which are not reported? In addition, because police data rely on administrative process and legislative factors, one is not able to make accurate comparisons between times or areas. A past limitation of police data has been that very little information about the victim of the offence was collected.

However, in South Australia details such as the victim's age, sex and relationship with the offender are now recorded on a computerised justice system, and are thus able to be retrieved easily.

The major benefit of survey data is that they include offences which are not reported to police. The survey can be also repeated at different times and places to enable comparisons to be made over time or between geographic areas. A further benefit of survey data, and one that is rarely mentioned, is the ability of survey data to provide more details about the victim and the circumstances of the crime. It allows one to move beyond counting things into examining the consequences of events.

The limitations of surveys arise from the fact that they are a sample and as such will be subject to sampling errors. Any results are subject to confidence limits. They generally exclude children and businesses, and usually limit the type of offences under review. Problems also exist with the recall and memory of interviewees.

It is best, therefore, to use each method for its strengths. Use police data for rare events, volume of data, and to reflect official response. Use survey data for its flexibility and descriptive qualities.

Previous Research

Information on physical violence against women has been to date difficult to obtain despite extensive public interest in the topic. There has been, however, some limited research on the topic both in Australia and internationally. The Australian Bureau of Statistics conducted national victim surveys in 1983 and 1993. The findings of both surveys revealed that females were victims of assault and robbery less frequently than males (Australian Bureau of Statistics 1986 1994). The Australian National Homicide Monitoring program also found females were victims of homicide less often than males (Strang 1991). A National Injury Surveillance and Prevention project found that although males were the most frequent victims of physical violence identified in emergency hospital departments, females were more likely than males to have such injuries sustained in their own or another person's home (National Committee on Violence 1990).

A Canadian national survey on male violence against women found that half of all Canadian women had experienced at least one incident of violence since the age of 16 (Statistics Canada 1993). The United States Department of Justice released figures which showed that the rate of assaults on males has been declining over the past 15 years, but that the rate of violence towards women has either stayed the same or increased (US Department of Justice 1992).

The following results are taken from the Office of Crime Statistics study which examines violence against women (Gardner 1994). The study takes advantage of recent improvements in the collection of crime statistics in South Australia which allow details such as the victim's age, sex and relationship with offender to be easily retrieved. In recognising that even the inclusion of this detailed information would only present some of the picture, the study also utilised findings from a recently conducted crime survey. The results provide,

therefore, for the first time in Australia, comprehensive information about the extent and characteristics of violence against women.

Violence Reported to Police

All violent incidents reported or becoming known to South Australian police between January and December 1992 were examined. During this time there were 16 262 violent incidents to males and females. Although the majority of victims were male, a sizeable proportion (46.1 per cent) were female. The age profile for male and female victims was very similar across all age categories, with both sexes most at risk of victimisation between the ages of 20 and 29 years. It is worthwhile noting that 9.2 per cent of females and 9.6 per cent of males were aged under 10 years. This highlights one benefit of police data as it is unlikely that this age group of victims of violence would have been captured in any survey.

A range of violent offences was reported to police ranging from homicides, rapes, assaults, robberies, blackmail, and threatening behaviours. This illustrates the benefit of police data, in that a variety of crimes, including relatively rare events, are captured. It is also possible with police data to determine a seriousness ranking for the violence by using the legal classification; for example, an assault can be recorded as a common assault, or assault occasioning actual bodily harm, or grievous bodily harm.

The most frequent type of violent offence occurring against women was common assault in nearly 6 out of 10 violent cases (57.7 per cent). Over one in five female victims reported some sexual violence (21.2 per cent), this was the next most frequent offence type for females. Males, too, were often victims of common assault (66.1 per cent), but very few males (2.9 per cent) were victims of sexual offences.

The location of the violent incident was examined for the police data. A private dwelling was the most frequent location of the incident for female victims (58.2 per cent), compared to less than a third of male victims (30.6 per cent). The most frequent location for males to be victimised was in an open, public area such as a street or a recreational area (40.9 per cent). The rate of males being a victim in a private dwelling was estimated to be 3.8 per 1000, which compared to 6.1 per 1000 for females. The risk for females being a victim of violence in a private dwelling therefore was 1.6 times greater than the risk for males.

Although the relationship between the victim and offender was an available data item, it was recorded by the police in only half of the incidents involving female victims (52.2 per cent), and fewer still for male victims (38.9 per cent). This highlights one of the limitations of police data: the reliance on administrative and bureaucratic process which may or may not distort the data. In this case it is difficult to establish if bias has occurred in recording or not recording information about the offender/victim relationship, although it would be reasonable to assume that the information is more likely to be missing if the victim did not know the offender. The large number of cases, however, which have missing data does mean that some caution should be used when interpreting

the results. The survey data presented later in this paper provide additional information on the relationship between victim and offender.

From the available information, female victims reported knowing the offender in three-quarters of incidents (76 per cent), but male victims were just as likely to not know the offender as to know them (52.1 per cent known, 47.9 per cent stranger or unknown). For females, the offender was often someone close to them. Partners, or ex partners, relatives or friends comprised 61.6 per cent of the violent offenders against females. These groups comprised one in five (20 per cent) of the offenders against males.

An illustration of how much more information is now able to be retrieved from the police data than previously is the ability to detect individual victims who report more than one incident during a year. During 1992 the vast majority of female and male victims had cause to only report the one violent episode (91 per cent female and 92 per cent male). Examination of the last reported incident, however, revealed some differences between female and male victims. For those females who were multiple victims during the year, the offender in the last incident was known to them in nine out of ten cases, and this offender was also likely to be a partner or ex-partner (39.7 per cent compared to 30.2 per cent of all female victims). There was little difference between males who had been victims more than once during the year and male victims as a whole. There were, however, more offenders in the 'other' category for male multiple victims (15.6 per cent compared to 9.4 per cent). This 'other' category includes assaults on police and prison officers. These findings suggest that work-related victimisation might be a factor in repeated violence to males, while domestic assaults are a feature of repeated violence to women.

Another advantage of police data is the ability to examine the official response to recorded crime. The number of offenders apprehended for offences reported in 1992 was able to be determined. Over four out of ten violent offences against women resulted in the apprehension of the offender (43.8 per cent). The apprehension rate for male victims of violence was very similar to the rate for female victims (46.3 per cent).

Survey Results

Not all violent incidents will be reported or come to police attention, and it is for this reason that crime surveys are useful in providing information on the extent of victimisation. The survey data used for the South Australian violence against women project involved over 3000 people aged over 15 years, interviewed in person during two months of 1992. The respondents were asked about two violent offences: robbery and assault. The definitions of these offences are broader and more subject to individual interpretation than the legal definitions used in police data.

The results of this survey showed that the vast majority of adult South Australians had not been robbed (98.9 per cent) nor assaulted (95 per cent) in the past year. Nearly twice as many males however, were assaulted as females (6 per cent compared to 3 per cent), and a similar situation existed for robberies (1.3 per cent compared to 0.8 per cent).

Although the two sources of data: survey and police, are quite different in the scope of victims covered, it is interesting that the two sources find similar results with regard to the location of incident and relationship of victim to offender.

As with police data, the survey data found that a residence was the location of an assault for the majority of female victims (59.5 per cent), whereas male victims were more likely to be assaulted in public areas (37.4 per cent). In addition, the survey data found that men were unlikely to be assaulted by someone who they knew (37.9 per cent), while women knew their attacker in seven out of ten cases (71 per cent).

Qualitative Information

The same survey as the one described above was undertaken during two months of 1993, but in the 1993 survey respondents who reported being victims were given a supplementary interview by telephone at a later date. This supplementary survey highlights the strengths of survey data in that it can be used to provide valuable descriptive information about the victimisation event. The circumstances surrounding the event, the degree of seriousness of the victimisation, and the consequences to the victim can all be elicited. The following example illustrates how this information can help us understand victimisation.

Both the police data and the survey data revealed that women were victims of assault in private dwellings more than males, while males were often assaulted in public areas. The qualitative data available from the supplementary survey provides us with more of a 'feel' for what this finding actually means for those involved. The following information is drawn from among the victims who responded to the supplementary interview. These victims were the 13 females and 6 males who were assaulted inside their own home, and the 12 males and 6 females who were assaulted in the street.

The qualitative data revealed that the violence is often greater at home than in a public area, and within the home the degree of violence was greater for women than for men. This was reflected in the degree of physical injury which involved hitting, punching, bruising and breaking bones. None of the male victims of violence in the home suffered physical harm, while 5 of the 13 women had some injury. Street assaults physically harmed a third of women and men (4 of 12 men, and 2 of 6 women). Most of the assaults in the street, however, could be best described as 'incivilities', threats and swearing which involved no physical contact—half of all street assaults fitted into this category. Perhaps as a consequence of the higher degree of harm, most home assaults were reported to police (11 of the 19); but very few of the street assaults were so reported (4 of the 18). It was also interesting to note, however, that nearly all the men assaulted in their home (5 of the 6) called the police but only about half the women assaulted at home took this action (6 of the 13).

From reading the descriptions provided about the event it is doubtful whether some of the 'assaults' recorded in the survey would meet any legal definitions of assault. This raises a question about the promoted benefit of crime

surveys, that of estimating the amount of unreported crime. A proportion of behaviours presented in crime surveys as 'unreported' crimes could actually be misleading. It is not so much that the crimes have not been reported but that surveys can tap into a totally different and much wider range of behaviours than would ever, or should ever, occupy police attention. Behaviours that were captured included drivers swearing when cut off in the traffic, cyclists having bicycle handle bars bumped, and commuters having toes trodden on in a bus queue. There were, however, some very serious events captured in the survey such as a rape, an attempted rape, victims being hospitalised, and being threatened with guns and knives.

Apart from physical harm, the supplementary survey looked at the emotional harm felt by victims. In this area, too, the consequences of assaults in the home were also greater than those in the street, for both male and female victims. The vast majority of victims of home assaults (15 out of 19) reported some emotional harm resulting from the assault (4 out of 6 men, 11 out of 13 women). Common emotional responses included fear, sleeping problems, anger, and shock. These problems were also reported as a continuing problem for six of the victims. Victims of street assaults also reported some emotional harm (6 out of 18), but females were more likely in these instances to report this harm than males (4 out of 6 females compared to 2 out of 12 males).

When examining victimisation it is often convenient to consider them as isolated incidents. The qualitative information shows that this is a fallacy, especially with regards to incidents in the home. Every one of the street assaults was by a stranger, and all were a 'one off' event. The home assaults, however, were all by people known to the victim, and in 13 of the 19 cases the assault was part of a series of similar events which had occurred in the past.

Domestic Violence

Given that most of the interest in violence against women is concerned with domestic violence, the study undertaken by the Office of Crime Statistics examined this issue in more depth.

The definition of 'domestic violence' includes incidents between a women and her spouse, ex spouse, defacto partner or ex defacto. Although some definitions of domestic violence include relationships such as other family members or friends, the findings below are limited to abuse that occurs between partners or ex partners. It is also recognised that domestic abuse can involve a myriad of non physical abuses such as psychological, social and economic abuse. The focus of this paper, however, is on threats and incidents of physical violence.

Using the above definition, over one in six violent crimes reported to police by females in 1992 could be classified as domestic violence. This represented 1241 individual women. The annual rate of domestic violence for the South Australian female population was calculated to be 3.4 per 1000 (0.3 per cent) of the married, separated and divorced women.

The survey data enable another estimate to be made of the level of domestic violence, one that includes incidents not reported to police. The value of survey data is also that more information is available about the victim, for example,

their marital status. Very few (1.7 per cent) of married women or women in de facto relationships had been threatened with force or attacked by anybody in the past year—and only 10.3 per cent of these assaults were committed by a partner or ex partner. The situation for women who had separated or divorced was, however, significantly different. These women were much more likely to have been assaulted (8.3 per cent), and the people who assaulted them were much more likely to have been a partner or ex partner (51.5 per cent). From these figures it was estimated that 2 per 1000 women in a married or defacto relationship had been a victim of domestic violence in 1992, compared to 42 per 1000 women who were separated or divorced.

Conclusion

Physical violence as reported to police or told to interviewers involved in the crime survey occurred to relatively few South Australians in 1992, female or male.

Police data informed us about victims which the survey data could not report on, for example younger victims, and victims of a wider range of crimes. The police data also provided information about the apprehension of offenders. Both survey and police data showed that it is the location of the offence and the nature of the relationship between victim and offender that characterises violence towards women. Women, compared to men, are more often victims in their homes, and more frequently the offender is someone with whom they have a close relationship.

A benefit of survey data was that more qualitative details could be obtained on the consequences of victimisation. The seriousness of violence, circumstances surrounding the attack, and the variety of behaviours that are captured in a survey were better understood through the qualitative information than by the statistical results alone.

Data obtained from police records and survey data have been used successfully to provide a picture of violence against women. It leaves a picture that is more complete than would have been achieved by using only the one source of data.

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Section Three:
Victims, Offenders and the Criminal Justice System

A constant theme since the emergence of the victims' movement has been the extent to which victims should be involved in the criminal process beyond being a witness for the prosecution. A welfare approach to this issue has seen broad agreement in the need for victims to be treated with compassion and respect for their dignity, to be informed and to receive appropriate services and compensation for the injury or loss sustained. More controversial is what legal rights should be accorded to a victim to intervene or be separately represented in the criminal trial. This issue occupied much of the time of the United Nations Congress on the Prevention of Crime and Treatment of Offenders in Milan in 1985 which prepared the draft Declaration on the Rights of Victims of Crime and Abuse of Power. In the end the Congress agreed on a heavily qualified provision, [Para 6(b)]—'Allowing the views and concerns of the victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant criminal justice system'. Even then, the British delegation made an explicit reservation, arguing that it went too far in claiming rights for victims and that the rights of victims should not extend in any way to sentencing, case disposal or the course of trial. This view is still reflected in the reluctance of the United Kingdom to support Victim Impact Statements as an aid to sentencing. The debate is always complicated by the approach of different legal systems and universal agreement on the exact role of the victim in the criminal trial is not possible.

Nevertheless, the 8th Symposium once again saw considerable attention given to this issue. This was in the context of renewed criticism of the role of the victims' movement in the law and order debate. Elias in his keynote address refers to some victim advocates arguing for tougher penalties and claiming that victims can gain only if offenders lose: the so-called zero-sum game.

Marc Groenhuijsen describes the proceedings of the European Forum for Victims Services at Falkirk in Scotland in 1994 where an attempt was made to define victims' rights in the context of those of the offender. This issue will be further developed by the Forum. He makes it clear that the European Forum agreed that the emancipation of the victim is not intended to be at the expense of the rights of the offender in the penal process. He specifically refutes the notion of a zero-sum game and argues that in some cases the rights of offenders and victims may coincide. He opposes changes to the criminal trial to make the victim a third party and a direct adversary of the defendant. This view is supported by some other victims' organisations (for example, the Victims of Crime Service in South Australia) while support was also found for more anti-offender views. Tricia Rhodes of the Victims of Crime Assistance League (VOCAL) in Victoria made no apology for asserting that victims saw an appropriately severe sentence as serving the interests of justice. She was impatient with those victims surveys which tended to shown that victims were not so concerned about heavier sentences. Melvyn Barnett of VOCAL argued for more direct victim involvement in the trial through an Office of Victims Advocate and a Victims Ombudsman. This direct representation was supported by Ruth Wilkie of New Zealand who argued that New Zealand reforms should

now be taken a step further to encompass direct victim representation in Court. Clearly those representing the victims' movements differ on this issue.

Despite the arguments against a zero-sum approach, there have been a number of recent initiatives which have impacted on offenders' rights. The question is whether these have been justified. For instance, until recently in most Australian States, an accused person was able to make an unsworn statement without being cross-examined. This was rightly seen by most victims and particularly women in rape cases as unfair, when their own actions were subject to often aggressive questioning about intimate and sensitive personal sexual matters. Women victims often left court with a strong sense of injustice. In most Australian States this right to give an unsworn statement has been abolished and the accused now only has two options, to remain silent or give sworn evidence and be cross-examined.

Offenders' rights have also been modified in other ways as **Kate Warner** outlines. Joining the debate from a feminist perspective, Warner describes several victim-oriented developments which have impacted on women. Changes to the law and procedure in the area of rape, domestic violence and homicide have modified rules in such a way as to minimise the chance of guilty parties being acquitted. Offenders' rights have probably been adversely affected by these changes, but desirably so, as the old rules provided too many opportunities for injustice to occur to assaulted women.

The approach to victims in different legal systems was always evident in discussions. Melvyn Barnett in quoting the Australian Director of Public Prosecutions, Michael Rozenes QC, refers to the fact that British and Australian courts in a criminal trial do not see their goal as a search for truth but rather as a 'proceeding structured by rules that are designed as well as possible to guarantee that accused persons are not deprived of their liberty without the most stringent examination'.

Barnett argues that if these rules lead to the guilty being acquitted then justice is not achieved and asks the question of whether 'the inquisitorial system favoured by many countries with its emphasis on the search for the truth may not lead to a more just legal system'. It is highly unlikely that such a revolutionary change in the basic legal structure of common law countries will occur. Nevertheless, it would be possible for judges in these countries to modify practices and procedures, to be more interventionist in the conduct of trials, thus improving the perception of justice by emphasising the importance of the quest for the truth and minimising the perception of the trial as an adversarial game.

Matthew Goode summarises the legislative history of the criminal law dealing with stalking, particularly in the United States of America, and the recent introduction of offences to combat it in a number of Australian States. This behaviour is becoming an increasing social problem involving victims in a wider range of circumstances than previously. His paper provides a useful case study of the difficulties in creating criminal offences which are effective in reducing victimisation while at the same time ensuring that basic principles of criminal responsibility based on intent remain in tact.

Victim Impact Statements (VIS)

The desirability or otherwise of victim impact statements still provokes controversy and much academic and research attention (Erez 1994). They are central to the debate about the balance of rights in the criminal justice system and the zero-sum game. The 8th Symposium reflected this. **Edna Erez**, **Leigh Roeger** and **Michael O'Connell** present the results of South Australian research projects which have been consolidated into one paper for this volume. Aggregate sentences were not increased by the introduction of VIS. The research confirmed findings from other studies, namely that for effective law reform the support of all organisations involved is necessary. Legislation and government backing is not always sufficient to ensure effective implementation of reform. This conclusion is not surprising given the widely differing views about the role of the victim in the criminal justice system and particularly in the sentencing process. Despite the importance of empirical research, support or otherwise for VIS depends heavily on 'one's philosophical stance or moral conviction' (Erez, Roeger & O'Connell 1995) or 'on a moral/humanistic conviction about the victim's right to participate' (Erez (*International Review of Victimology)* 1994, p. 29).

Martin Hinton uses the example of a VIS presented in a murder case in South Australia to criticise the process and concludes that subjective statements from the deceased victim's family and information about the victim's character, were not matters that should be considered in sentencing. In this he reflects the controversy in the USA, and argues against the most recent US Supreme Court decision in *Payne v. Tennessee* (115 LEd/ 2d 720), where the majority held that evidence regarding the emotional impact of the crime on victims and their family as well as evidence relating to the personal characteristics of the victim was admissible at sentencing (*see further* Sebba 1994, p. 141).

Other papers were critical of VIS. Therese McCarthy argues that VIS did not effectively fulfil their claimed objectives of providing women with their 'day in court', of educating the judiciary, and as a sentencing tool. Using the examples of sexual assault, she suggests that VIS are a means of dividing victims, by implying that some rapes are worse than others and some women more deserving of recognition. VIS are a poor tool in the education of judges, a process which should be undertaken comprehensively across the whole system. In assessing their worth, great weight must be given to their damaging potential to revictimise victims. 'If you decide that the legal system is a service, you will reject VIS as a placebo'—she argues. Carmel Benjamin argues that VIS, plea bargaining, information systems, comfortable and private waiting areas may all be useful and civilised additions to the process but do not change it. The VIS gives the appearance of involving victims in the trial process but does not do so in reality. The victim is not included in a real and meaningful way. She too is critical of the British and Australian view of the prosecution process as expressed by Australian DPP Michael Rozenes QC referred to above, and calls for a fundamental rethink of the British system of justice and whether it serves the needs of contemporary society.

Kathy Laster and Roger Douglas, using research from Victoria partly published elsewhere (Erez 1994, p. 95), note that information about victimisation

tends to ‘get lost’ and that this is particularly so with the criminal justice system’s recent commitment to efficiency. They argue that simple measures, such as changing the form on which details of victimisation are recorded, may be more effective than elaborate procedures such as VIS in providing comprehensive information about victimisation to the courts.

Despite these criticisms, it is worth noting that victim support agencies and the police support VIS, a majority of the judiciary found them useful in at least some cases and the families of murder victims who had used VIS in the case referred to by Hinton strongly supported the process. ‘They do not make any difference to sentences, so please don’t take them away from us’ was one victim’s plea.

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Conflicts of Victims' Interests and Offenders' Rights in the Criminal Justice System ¾ a European Perspective

MARC GROENHUIJSEN

Up until some years ago, the criminal justice system used to be depicted as a battle between a suspected criminal on the one hand and the government—representing respectable society—on the other. It is now accepted that criminal law and criminal procedure could never really lead to *justice* being administered unless and until the system pays respect to the interests of victims of crime. This means that the victim should not just be viewed as an instrument enabling the prosecutor to procure convictions. Rather than dealing with the victim as a tool, which can be used in the process of reporting the crime and later on as a witness, he or she should be considered as the injured party, as a human being with rights of their own that should be structurally taken into account at all stages of the criminal investigation and eventual trial. The general direction of victims' reforms means that the victim has a right to be treated fairly, respectfully, and will have to be paid compensation or restitution for the damages incurred by the criminal offence.

It is much less clear, however, in what ways the efforts to emancipate the victim in the criminal process relate to the legal status of the offender, or, during the course of the proceedings, to the position of the person who is accused of having committed a crime. I contend that two sorts of 'easy answers' to this question have surfaced.

The first one is that too much attention has been paid to the legal rights of defendants. To restore an equitable balance, it is asserted we need to divert our basic concern away from the offender and shift it in the direction of the victim.

The other clear solution has often been offered by representatives of some European victim support organisations. Their fundamental argument holds that they are in favour of victims rights but not at all against offenders rights. They fight the idea that victim emancipation is a zero-sum game. They emphasise the areas where victims and offenders interests coincide. For instance, where reparation by the offender to the victim is taken as an argument for a more lenient sentence by the criminal court. In the same vein, the constitution of the Dutch Association for Victim Assistance states as the objective of the Association to promote the interests of victims while at the same time contributing to the further humanisation of the criminal justice system, that is a lessening of its retributive elements.

This paper purports to take this issue one step further. The question is too complicated to allow a straightforward either/or answer. We need differentiation. Yes, there are areas of common interest. We have to define them very carefully —and subsequently take the utmost advantage of them. But we also have to face the fact there are elements of antagonism which can neither be denied nor resolved easily.

The Falkirk Conference

The Paper by the English Language Group

The Annual Conference of the European Forum for Victims Services held in Falkirk, Scotland, in May 1994, debated the conflict between victims and offenders rights in the criminal justice system. A discussion paper was prepared by representatives of England, Scotland, Northern Ireland and Ireland. Acknowledging important contributions made by all participants in finalising the paper, special credit should be awarded to Helen Reeves (director of Victim Support England) for producing the first drafts and inserting the hard core of ideas.

The purpose of the exercise is defined as to explore the long-term goals in the development of victims' rights, and whether or not the rights of victims should be limited in relation to the rights enjoyed by all other citizens, or the rights traditionally given to offenders or alleged offenders. After a sketchy section on the historical background, the paper goes on to analyse the problem in three different categories. The first one is: where victims' and offenders' rights are the same. The second one is labelled: where offenders' rights exceed the rights of victims. And finally: where victims' and offenders' rights conflict.

The first compartment is relatively small, and comparatively easy to deal with. The right to better facilities for witnesses at court and the right to simplified court procedures are presented as examples in the UK. Better legal representation is mentioned as an option for other jurisdictions. The straightforward conclusion reads that 'where injustice exists for both parties, Victim Supporters could join with offenders' representatives to press for improvements'.

More trouble is to be expected in the second area, about 'inequalities of rights between the parties', also introduced as 'dramatic imbalances between the rights of offenders and those of victims'. Examples are:

- discrepancies in legal advice and legal aid;
- the requirement to give evidence in court for victims versus the right to silence of offenders;
- the right to cross-examination by the defendant which does not have an equivalent on the part of the victim;
- mitigation: the accused may say whatever he wishes in an attempt to get a lenient sentence, whereas the victim does not have a right to dispute or to answer; and
- the right to appeal against the sentence, awarded to the convicted person but not to the victim.

These disparities cannot be denied. The question, of course, is: are they justified? Two quotations from the paper make clear that its authors approach the matter in a very prudent way: 'Where an imbalance of rights has been found, victims organisations will need to demonstrate that victims have a right to expect equal treatment'. And: 'However much rights may be needed or deserved, there are many rights which cannot be regarded as "absolute". The resources may not be available to provide for everything which should be due and other priorities may have to be considered. Where two parties are involved in any form of dispute, the rights of one may be in conflict with the rights of the other, so that complete satisfaction by both parties cannot be achieved'.

This observation leads automatically to the third compartment, where victims' and offenders' rights conflict. Here again an enumerative list of examples:

- DNA tests, dental imprints and other intimate samples to be used as forensic evidence;
- AIDS tests in sexual complaints;
- special provisions for vulnerable witnesses (children, victims of sexual assault, organised crime);
- should the means of the victim be taken into account in determining the amount of a compensation order?;
- should prisoners' letters be censored on behalf of victims' interests?

- do victims have a right to be informed about prisoners' release plans and have the right to require that the offender must live or work elsewhere to avoid a meeting? The paper concludes with a restatement of the basic questions instead of a definitive answer: 'In all of these situations, whose rights should prevail? Should it be those of the victim, on the grounds that they were not responsible for the crime occurring, or the alleged offender, who is in danger of imprisonment, or the convicted offender who will need all the support and encouragement possible if he is to avoid committing further crimes?'

The Workshop in Falkirk

The 1994 conference of the European Forum devoted a full day of deliberations to this subject. Two sessions were scheduled. The first one was intended to draw up a list of fundamental rights of victims within the framework of the criminal justice system. To that end, small working groups were created, along language lines, in order to promote widespread participation and highlight differences between the various legal systems. The ensuing debate was, as might have been expected, probably rather illuminating than conclusive. The rights mentioned by individual contributors varied widely in character and level of abstraction. For instance, it would be hard to place the right to 'decent and respectful treatment' on the same plain as a technical provision like the right to a free copy of the judge's verdict. The right to 'a swift and simple trial' is of a different nature than the right to free legal assistance. This kind of differentiation complicated the debate. It also turned out that some rights which are quite natural or self-evident for some members of the Forum, are unacceptable to others in the same measure of firmness. I mention as examples the right to initiate a criminal prosecution and the right to appeal against the sentence. After the working groups reported back to the plenary, more lively debate resulted in the following tentative list of rights:

1. Protection
- against intimidation)
- against physical threat) Examples
- respect from media)

2. Information
- about all aspects of criminal justice process

3. Legal help
- knowledge about their legal situation
- access to legal support with regard to their case
- in countries where victims already have a formal role, this should be strengthened

4. Compensation

However, the Forum was fully aware of the contingencies within this catalogue. Designating this product as only the first step in a prolonged effort, it

instructed its Executive Committee to elaborate a more balanced and fine-tuned set of basic minimum rights for victims in the penal process.

The Conference also tackled the question of prioritising conflicting victims' and offenders' rights by having the working groups make up their minds in three real life cases. Each group was asked to:

- come to a decision on whose interests should prevail in each case,
- list the two main reasons why they reached this conclusion, and
- state what other action they might take to remedy the potential harm to the party they did not select. Here are the cases and the responses they provoked from the working groups:

Case 1: Release before trial

(a) Victim: Eva Schmidt sexually assaulted in her own home by a man she met in the social club where she works. Eva, who lives alone, has informed the police that she has been so badly affected by the assault that she feels unable to leave her home or return to work. She is terrified that her attacker will return.

(b) Accused: Gerhard Müller accused of sexually assaulting Eva Schmidt in her own home. He has denied the charge. Gerhard is very worried about being absent from work as he has only recently got his current job following a long period of unemployment, and he is worried about losing it.

Question: Should Gerhard Müller be released from custody before his trial?

Results: On the basis of the information supplied, four groups answered yes, the suspect should be released awaiting trial. Some of the groups suspended judgment, because they felt they needed more information before a responsible decision could be taken (for example, details about the amount of evidence, about prior convictions, and so on, which can be very important in some of the European jurisdictions but would hardly matter for this question in others).

The main reason listed for this opinion was the 'presumptio innocentiae', the principle that a person should be treated as innocent until his guilt has been legally proven. As a possible remedy for the victim, it was suggested by some to get a civil court injunction preventing the suspect to show himself in the vicinity of the victim's home and for the social club where the victim is employed. Only one member of one group felt that the accused should remain in pre-trial custody.

Case 2: Compensation

(a) Victim: John Robertson a single parent living on state benefits, came home one day to find his home had been broken into. His TV and video

were stolen along with Christmas presents bought on credit for his one-year-old son. He has no insurance for the contents of his house.

(b) Offender: Alison Smith has been convicted of burglary. She ransacked John Robertson's house and stole his TV and video and some Christmas presents. Alison is a single parent who lives on state benefits.

Question: Regardless of any sentence she may be given, should Alison Smith be ordered to pay compensation to John Robertson?

Results: Four groups answered yes, two groups said no. Obviously, what is at stake here is the problem of how to match the interests of two parties who realistically cannot be expected to sustain a substantial financial loss. Main reason for an affirmative answer, then, is justice. The victim is not better off than the offender, so if one of them has to suffer beyond means, the burden has to fall to the latter. Besides, the duty to pay reparation is the logical consequence of crime, it was noted. So, a moral reason, theft is wrong and the offender is responsible. The primary reason for the opposite opinion was of a pragmatic nature: compensation orders which do not take the means of the offender into account, are doomed to be counterproductive. They will more often than not leave the victim with empty hands in the end. In existing victimological literature it has often been explained that raising expectations which can later on not be fulfilled, easily leads to secondary victimisation. So a compensation order which cannot be effected is very harmful. One should bear this in mind when, for instance, looking at the low rate of only 25 per cent of court orders benefiting victims in the French 'partie civile procedure' in the end leading to actual payment by the offender (de Liege 1988). Alternatively, they will add to new victimisation because the offender resorts to repeated crime in order to pay off his debt.

Case 3: Prisoner's Release Plans

(a) Victim: Annette Laval, 24 years was assaulted by her ex-boyfriend Marcel Dubois over a period of three years. She has since re-built her life and has a new relationship and a young child. She has now been informed that Marcel will shortly be released from prison. She has informed the authorities that she believes her safety will be at risk if Marcel comes back to town. She has already been intimidated by members of his family. Annette has said she will have to move if Marcel is released to his home town.

(b) Offender: Marcel Dubois, 25 years, has served 4 years of a 6-year prison sentence for violent assault on Annette Laval, his estranged girlfriend, and will shortly be released on supervision. He is hoping to settle in his home town where his mother will accommodate him and where his former employer has guaranteed a job.

Question: Should Marcel Dubois be allowed to settle in his home town?

Results: Yes: five groups; no: one group. Most important reason for the majority is that after completing the sentence set by the court, the case is closed. No further punishment can then be inflicted. Besides this principled argument, some pragmatic reasons were offered, like: an exclusion order would not reduce the risk, since the offender can still return and reoffend, or if exiled, there could even be an increased risk of intimidation by his family. Redress for the victim should be sought by preventing additional harm done to her in the future. This could entail a court order foreclosing seeking personal contact with his former girlfriend, for example.

Discussion

The Inventory of Victims' Rights

As has been shown in the preceding section, the Falkirk conference did not exactly produce a carefully considered definitive catalogue of basic victims' rights in the criminal justice system. Still, the efforts made to that effect have been worthwhile and will contribute to cast a new light on the question of balancing victims' and offenders' (or suspects') interests. When reflecting on the outcome of the debate, four items should be highlighted.

- Victims' and offenders' rights are from a substantive point of view heavily contingent on some of the features of the criminal justice systems involved. Victims issues are part of—and therefore dependent on—a larger design. In my opinion, the following characteristics of any system could never be discarded in determining the scope of rights and obligations. First, the nature of the proceedings. Members of the European Forum comprise nearly the entire range from strictly adversarial systems to fairly inquisitorial ones. The stature of the prosecutor and the role of the judge during proceedings before the bench—either a safekeeper of a fair trial in the former, or the official bearing the chief responsibility for getting to the truth in the latter type of systems—is of pivotal importance vis-a-vis the other major participants in a given case. Just one obvious example: witness preparation and protection. This notion will, to a large extent, be contingent on whether the system employs harsh cross-examination or a practice in which the questioning of informants during trial is primarily left to the judge, so that—as a rule—a more detached and less intimidating conduct may be expected. The same holds true for systems employing a different procedure for trying confessing perpetrators and denying defendants on the one hand and systems which do not make that distinction on the other. And finally, one should always take into account whether a given system is based on the expediency principle rather than the principle of legality.[1] These are

[1] The principle of legality obliges a prosecutor to bring every clear criminal case to court. On the other hand, the expediency principle allows the prosecutor a wide margin of discretion in

some of the key-elements constituting the frame of reference of victims' and offenders' rights in comparative law. They carry quite a few assumptions, implications and prerequisitions bordering on the very concept of what can be considered as fundamental rights and obligations.

- In drawing up a list of basic victims' rights, some of the vital issues can easily get confused. During the debate in Falkirk, Helen Reeves emphasised that one should carefully distinguish the question of what rights a victim should have from the question which person or official must be charged with effecting any such right during the course of criminal proceedings. In other terms: some of the basic victims' rights could and should be reformulated into a 'services model', leaving it to the police and the prosecutor to see to it that the victim gets his due. I think that is right on the mark. Applying this kind of analytical distinction could bridge the gap between positions which could otherwise never be reconciled. Taking this argument one step further, I claim it would be wrong to use a 'victims charter' or a 'victims bill of rights' as a first (or as a final) step in the direction of transforming the criminal trial into a three-party process. Awarding the victim the status of a party on the same level as the prosecutor—that is as an *opponent* of the accused—would be a burden instead of a bonus. Instead of being an improvement, it would make the victim vulnerable to attacks from defence counsel. Applying these general observations to some contentious questions of reforming criminal law, I would argue against the right for victims to initiate a criminal prosecution and against the right to appeal a sentence considered to be too lenient. Of course, the victims' view in these matters should always be taken into account—should carry a lot of weight—but this input should be effected by indirect means, that is through the prosecutor's office, and when appropriate subject to judicial supervision.

- Further pursuing the line of specifics, it seems fit to comment on the tricky subject of victim impact statements. Over the past years, a vast bulk of scholarly literature on this topic has amounted. Instead of some form of consensus it shows bitter clashes of opinion, quite often laced with emotional evocations and ideological denouncements of victimologists favouring a dissenting point of view. Against this background, the Falkirk conference was remarkably productive on this issue. First, it was agreed that the information as to the impact of the crime for the victim should not only be supplied at the trial stage of the criminal proceedings. The police and the prosecutor should record data about

deciding to drop the case, to enter a settlement with the offender, or to formally indict the offender. Prosecution will only commence when it is explicitly considered to be serving the public interest. It may be conceded that on an operational level the two systems have converged considerably. However, the difference in perspective still has implications for the way the protection of victims' interests has to be structured.

both the emotional and the financial consequences of the crime for the victim. This type of information must be a firm component of the file in every case. Subsequently, the officials should take this into account whenever taking decisions in processing the case. If the case comes to court, the magistrate can only measure the seriousness of the facts if and when he is informed about the material and emotional loss of the victim. Then it was agreed that a distinction is to be made as to the objective of a statement concerning the effects of the crime. It is one thing to have a statement to support a claim for reparation. But it is quite another matter to deal with a statement formulating a desired charge of the offender, or designating a requested sentence. Members of the European Forum for Victim Services are much more in favour of the former than of the latter.[2]

And finally, it was suggested to altogether drop the label of 'victim impact statement' from policy debate. The term is in itself not clear, and contaminated by ideological battles. So why not abandon the label and restart focusing on the substantive questions underlying it?

- The final question must be: what's the use of just another inventory of basic rights for victims of crime? We already have the UN Declaration of basic principles of justice for victims of crime and abuse of power (A/res/40/34). We are also familiar with the Council of Europe Recommendation on the position of the victim in the framework of criminal law and procedure (no. R(85)11). What additional value could a similar document, produced by the European Forum for Victim Services, have? I would say that a plain and simple statement of fundamental rights, issued by an international body comprised of national organisations with a huge experience in the hardships of crime victims, would be of great importance. It would not be an end in itself. Rather, it would offer a challenge to legislators in all countries directly involved by membership. It would present a new goal for policy makers. There would be a new yardstick for success in improving the position of victims in the framework of the criminal justice system.

Conflicts of Rights, continued

The session of the Falkirk conference in which the three cases were argued, was revealing in more than one sense. Here we had an assembly of experts at work with a professional duty and personal commitment to protect the interests of crime victims. And yet, the outcome of their deliberations showed unequivocably

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2 Of course, it is important for the victim to get a chance to express his feelings as to the optimum punishment. But we should be careful in choosing the right forum. Dutch experience has shown that it is very useful in serious cases to have a personal meeting between prosecutor and victim, prior to the trial. The victim is then free to state his opinions without restraint; the prosecutor will show empathy and will explain his own position and the way he is going to handle the upcoming trial.

that they are not prepared to pursue this aim at any cost. They fully accept that other considerations have to be taken into account which might even have to prevail. The votes taken on the three cases prove that there is an overriding feeling that the emancipation of the victim in the criminal justice system does not entail that offenders' rights are taken lightly. So the inevitable question presents itself again: where to strike the balance? What should be the *criterion* to apply when deciding whose interests should prevail?

It is my personal conviction that the basic line of demarcation can be found in article 6 of the European Convention for Human Rights, Rome 1950, guaranteeing everyone charged with a criminal offence the right to a fair trial. Neither legal scholars nor lobbyists for victims' rights could ever pride themselves for advocating changes that would move the system below the qualitative level called for in this Convention. It just would not do to answer an historical injustice to the injured party with intentional and institutional unfairness to the accused. One ought not to try to correct a wrong with a wrong.

Of course, this reference to the Convention of Rome does not provide a panacea. It leaves many tough questions unresolved. Although it carries the advantage of offering a firm sense of direction, it still leaves much room for interpretation and evaluation. I will briefly consider three items which are bound to come up in further discussions about prioritising victims' and offenders' rights.

The first one concerns the literal application of provisions of article 6—or equivalents thereof in domestic law—in each and every instance. Sometimes, exerting procedural rights during the course of the trial can be extremely distressing for a victim, while no legitimate interest of the accused is really served by such a course of action. When there is no sensible purpose to be discerned, the only point in invoking the right could be either trying to sabotage the proceedings or to harass the victim. It conforms to general principles of law —for example the maxim 'point d'intérêt, point d'action'—in circumstances like this to deny the defendant the exercise of his statutory right. The fairness of the trial is clearly not compromised.

The question is more complicated when it cannot be denied there is some reasonable interest at stake for the accused, but one which is matched by an overriding obstacle on the part of the victim. The issue here is whether or not the judge should have the power to make a discretionary decision giving priority to one of the relevant interests with the possible effect of thereby curbing the legal rights of the defendant. I would argue that he should have, provided this power is limited to cases where an extreme disparity is evident between the interests at stake. In cases like that, courts should have the discretionary power to rule that the statutory right is superseded by the interests of the aggrieved party. I mention as an example a recently tried case by the Dutch Supreme Court, about the right of the defendant to have each accusing witness challenged in open court. This right, clearly within the ambit of article 6 and fully sustained by the Dutch Code of Criminal Procedure, was nevertheless slighted—or rather infringed—given the circumstances of the case—*see* Hoge Raad, 1 October 1991, Nederlandse Jurisprudentie 1992, no. 197. The case concerned a psychiatrist who had sexually abused a number of pupils who had been entrusted to him in an institution.

These acts left the victims with great psychological damage. After reporting the crime, the victims were questioned by the police and by an examining magistrate. Their statements were later used as evidence in the court. The Supreme Court upheld the decision to refuse the defendant the opportunity to have the victims testify in open court again, because of the emotional strain this would cause to them. The most prominent factors that were taken into consideration by the Supreme Court in balancing the interests at stake were:

- witnesses were questioned by an examining magistrate in the presence of a defence attorney who had the opportunity to ask questions; and

- the statements by the witnesses were supported by independent other pieces of evidence used by the court (*see also* the case Hoge Raad, 22 June 1993, Nederlandse Jurisprudentie 1994, no. 498).

Subsequently, the Moons Commission (a commission advising the government on modernisation of criminal procedure) urged the Minister of Justice to alter the Code of Criminal Procedure accordingly, so that the interests of witnesses (victims) shall play a part in deciding who is to appear for questioning in open court (9th Report, Recht in vorm, Den Haag, juni 1993).

Obviously the legal system should be very careful and restrained in denying defendants the opportunity to exercise their procedural rights. There are indeed many pitfalls involved in leaving it to the judiciary to determine when the accused is effected severely enough in any legitimate interest when opting for unusual or unsympathetic tactics in litigation. On the other hand, however, it is beyond doubt that honouring the *substantive* interests at stake is the only way to avoid gross injustices in the criminal process. So we should try to develop some additional standards governing this kind of discretionary decision which prioritises rights. I would suggest that some of the unwritten general principles of law, such as the principles of proportionality and subsidiarity, could be applied *per analogiam* in this area.

The second item is about the ways the victims' and offenders' interests are the same. Earlier in this paper I quoted the results yielded by the English language group of the European Forum, identifying several areas where these interests apparently coincide. Examples mentioned are the right to better facilities for witnesses at court and the right to simplify court procedures. These examples give rise to some comments, both on a practical and on a more theoretical level. From a practical point of view, we ought not too easily accept the proposition that procedural interests are identical. For instance, let us for a moment further examine the example of the need for a simplified court procedure. Upon closer inspection, it can be argued convincingly that doing away with all kinds of technicalities is not at all in the interest of the accused. Complicated procedural standards tend to provide loopholes for defendants and can be invoked for claims of a mistrial. They can get guilty people off the hook, no matter the quite different and honourable intentions with which they have initially been designed. Simplification would also lead to speedier trials. Would that be a shared interest of victim and offender alike? At least in one sense it would not. It is well known that the more time elapses between the crime and the

judgment by the court, the milder the sentence is likely to be: hence the notorious attempts at delaying proceedings by many—respectable—defence lawyers. So, in practical terms we should be very sensitive to spot conflicts of interests where some common ground at first sight appears to exist. On a theoretical level, though, I would like to point to a striking similarity in the positions of the victim and the accused in the criminal justice system. Whenever acting within the framework of this system, both victim and offender are always entitled to a state of intellectual autonomy. This means they have a nearly unqualified right to fight for their own interests as they see fit. It further means that they are not bound by the basic premises of the criminal justice system. They cannot be required to subscribe to its underlying values. In this key aspect, the victim and the accused share a position which is fundamentally different from the one taken by all the public officials involved, most notably the prosecutor and the judge (*see* Melai 1992). In operational terms, this state of affairs opens up roads to reform. By following a daring, unconventional strategy in a given trial, a victim may prompt some bending of hitherto constraining rules. The intrinsically dynamic character of procedural law can thus be exploited by victim and offender alike.

But what to do when the wishes of the victim ultimately fall outside the ambit of the criminal law? I can be brief about this question. To my mind, it is perfectly clear that the criminal justice system does not provide the appropriate forum to honour *all* legitimate claims by victims of crime. In the end, it makes sense that a complementary role must be played by the civil courts. The criminal justice system—in all its stages—may be expected to take victims interests fully into account. There are, however, many matters emanating from a crime having occurred, which do not come under the competence of the government in prosecuting the offender. Examples of this we saw in the cases debated at the Falkirk conference, particularly in the pre-trial detention case and in the case of resettlement in a home town after a prison term has expired. Seeking, and finding, redress in civil litigation in cases like this should be considered as an additional protection offered by law, rather than as a demonstration of the fallibility of the criminal justice system.

Concluding Remarks

In this paper, an attempt is made to put the interrelationship between victims' and offenders' rights into perspective; a European perspective, that is. I have endeavoured to explore the middle ground between two very outspoken positions, one holding that victims' and offenders' interests are by definition always at odds, the other claiming that it never is a zero-sum game. The method used to that effect was a narrative of the deliberations within the European Forum for Victim Services about, first, a catalogue of fundamental victims' rights, and second, some cases in which tough decisions were needed in prioritising victims' and offenders' rights. Instead of summarising the contents of the preceding sections, I will now present four conclusions which seem to be inescapable in the light of the foregoing expositions.

The first one is of a conceptual nature. It reads that a *common interest* of victims and offenders should not be equated with an *identical interest.* Likewise,

a *shared interest* is not necessarily the *same interest*. A simple example might illustrate this distinction. Reparation is clearly and obviously one of the major interests of crime victims. On the other hand, in quite a few criminal justice systems it is advantageous for an offender to pay restitution to the victim: police and prosecutors will then be more inclined to drop the case and even when it still is brought to trial, the sentence is likely to be more lenient. So we can say that this type of covering of damages is a common, a shared interest by both parties, while admitting at the same time that the interests involved are absolutely not identical.

The second main conclusion is gained from the debate about the three case studies presented to the Falkirk conference. In my mind, the outcome of these deliberations establish beyond any doubt that the member organisations of the European Forum for Victim Assistance are all for victims but in no way against offenders. Hence, they will not take part in movements striving for a more repressive criminal justice system; they will, for instance, not endorse campaigns for stiffer penalties. Just two brief remarks to underscore the content and wider meaning of this conclusion. Number one: Individual member organisations do not all share the exact reasons why this position should be adopted. Whereas one member might consider further humanisation of the criminal justice system to be an end in itself, another will have a more instrumentalist view, expecting that a less retributive system will lead to lower rates of recidivism and thus less victimisation in the future. What matters most here, though, is the bare fact that all in the end agree that emancipation of the victim is by no means intended as an effort at the expense of the rights of the offender in the penal process. So, the second remark is simply that the victim support movement in Europe could at present not in any way be associated with victimagogic rhetorics which have elsewhere been seriously criticised, and often with justification (*see* Elias 1993; Fattah 1992).

As the next conclusion I reiterate a point made before, that the criminal trial should not be reformed into a three-party affair. The victim will have to be recognised as a partaker in the proceedings, whose interests must be guarded carefully, but he should not be put in the position of an adversary of the defendant. That would make him vulnerable and could easily lead to more secondary victimisation.

And finally, there is the question of a ‘victims charter’ or a list of basic victims’ rights in the criminal justice system. I have argued that it would be worthwhile to have such a document drafted and issued by the European Forum, provided that the inventory of fundamental rights does not overlook certain structural differences in the legal systems involved.

The past decade has in many countries been an era of reform on behalf of victims of crime. This paper aims to show that providing new kinds of justice to victims is not—indeed: may not be—tantamount to a crusade against offenders. On the other hand, it would be foolish to deny that offenders’ rights can and will in some aspects be impaired by this process of re-evaluating the basic structure of the criminal justice system. A lot of work remains to be done to explore decent solutions somewhere in between these two antipodal positions.

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The Implications of Victim-oriented Developments in the Criminal Justice System for Female Victims

KATE WARNER

This paper focuses on a number of victim oriented developments which impact on women in particular. The feminist movement has been identified as influencing the shift in focus from the offender to the victim along with such factors as a disillusionment with rehabilitation, victim surveys, the increased tendency of both the left and the right to take crime seriously and the push to reconnect the community with the response to crime.

The feminist influence has been considerable.

- At a theoretical level the public/private dichotomy has been explored to determine how it has been constructed and supported by the legal system to the detriment of women. This is of particular relevance in the area of criminal justice where it challenges the classic liberal position which upholds freedom of choice and action in matters of private morality and contests the assertion that it is not the role of the criminal law to

intervene in the private sphere. The implications for this in areas of domestic violence, marital rape, prostitution and pornography have been highlighted and the need to abandon the concept of private as a zone of non interference stressed.

- At a practical level, the exposure by feminists of the position of victims of rape, domestic violence and child sexual assault has been addressed by changes in the substantive and procedural law of rape; by pressure for recognition of battered wives syndrome; by increased police powers and new forms of injunctive relief such as domestic restraint or apprehended violence orders; and by changes to evidentiary and procedural laws which have sought to improve the position of child witnesses. In these three areas feminist critiques have informed and shaped the debate on law reform (Egger 1994). They have challenged the idealised view of general doctrinal principles and the focus on the offender and the offender's rights.

- Reviews of the regulation of prostitution have been informed by feminist perspectives.

- Some feminists support developments such as mediation of disputes outside the formal justice system on the ground it provides a way for women's voices to be heard, whereas the formal system reinforces the power of the state and dominant groups. The development of the system for resolution of discrimination disputes provides the victim with a means of resolving allegations which can involve criminal conduct in an informal, confidential and sensitive setting with a restorative rather than a punitive focus.

- Feminists' attention to victims has also influenced other theoretical shifts relevant to a more victim oriented criminal justice system, as discussions of left realism acknowledge (Hogg 1988).

Rape and Sexual Offence Law Reform

Feminist agitation for legislative change has been highly successful. The substantive law of rape has been modified to extend the definition of sexual intercourse to include penile penetration of the mouth, and in some jurisdictions penetration of the vagina or anus by parts of the body other than the penis and by inanimate objects. The immunity of husbands from prosecution for rape has been abolished in most jurisdictions together with the irrebuttable presumption that a male under the age of 14 is incapable of penetration. Statutory definitions of consent have sought to extend the boundaries of rape and clarify the line between rape and lawful sexual intercourse. Recent reforms in Victoria have adopted the Wisconsin approach and placed more emphasis on the need for consent to be communicated in an overt way. In some jurisdictions an alternative approach has been adopted. Rather than requiring the prosecution to prove absence of consent, in Michigan and Illinios the prosecution is required to prove that sexual

penetration occurred in coercive circumstances. In many jurisdictions the laws of evidence have been altered by removing the requirement of corroboration or corroboration warnings in every case. Judges are required to explain to the jury that delay in complaining does not necessarily reflect on the credit of the complainant. Courts are to forbid questions and exclude evidence pertaining to the general reputation of the complainant as to chastity and evidence of the sexual history of the complainant with persons other than the accused is admissible only with the permission of the court if it is relevant to the issues in the case. The campaign in Victoria by feminists and womens groups which led to the enactment of the *Crimes (Rape) Act 1991* was a particularly sophisticated and effective campaign which achieved a number of significant changes not previously favoured by the Law Reform Commission of Victoria (Egger 1994).

These reforms were implemented in the hope that police would be more receptive, the prosecution more sympathetic, judges more sensitive, that myths would be exposed and the definition of what is 'real rape' would change. The result would be increased reporting, less trauma for complainants in the court process, a higher conviction rate, and less rapes. In Michigan and Illinois, replacing the concept of without consent with that of 'coercive circumstances' would reduce the emphasis on consent in rape trials.

Effect of Reforms

How successful have these reforms been in changing reporting and charging practices, trial outcomes and underlying social behaviour?

The empirical evidence, such as it is, suggests limited success. There is no evidence that the prevalence of rape is decreasing. While it is not possible to make reliable estimates of the incidence of rape per se, crime victims surveys appear to show no change in incidence for sexual offences from 1982-83 to 1990-91 (Walker 1994). While the number of rapes reported to the police and the reporting rate per 100 000 population have increased dramatically (Walker 1994), many victims still do not report (Walker & Dagger 1993, p. 19; Australian Bureau of Statistics 1992). The common experience of complainants remains traumatic (Law Reform Commission of Victoria 1991, pp. 120-5). Some judges allow irrelevant facts to influence their sentencing discretion (*Reg v. Hakopian*, Jones, J., Supreme Court Victoria, 8/8/1991).

In Michigan, research has found that even though the statute makes no reference to consent, in practice this has remained a key issue in many rape trials. A large proportion of judges, prosecutors and defence attorneys consider that under the new law it is still essential for the prosecution to establish the victim's lack of consent (Law Reform Commission of Victoria 1991, p. 16). Moreover, the reform package did not have a major effect on reporting or arrest rates, and had only limited impact on prosecution practices and trial outcomes.

In Victoria, a study of rape trials for the Law Reform Commission resulted in a number of important findings. There is evidence that sexual history questions are asked without a prior application to the magistrate or trial judge. In addition, complainants were found to be subjected to questioning of an offensive or prejudicial nature about matters of marginal relevance. On the issue of consent it seems that it is difficult to get a conviction in the absence of the infliction of

physical injury although the common law has long since abandoned the view that overt violence and physical resistance are necessary (Law Reform Commission of Victoria 1991, pp. 95, 101-2).

Currently in Tasmania, we are in the process of evaluating the effectiveness of the 1987 reforms. Has the new definition of consent resulted in the successful prosecution of cases that are outside the common law definition absence of consent? Early indications are not promising. For example in *Crisp v. The Queen* (Unreported, Serial No. A 74/1990) the Court of Criminal Appeal considered the provision which states that a consent is freely given when it is not procured by reason of the person being overborne by the nature or position of another person. The 11-year-old complainant had submitted to sexual intercourse when the accused, who was her foster parent, said he would get aches and pains if she did not submit. His appeal against conviction was allowed. The Court of Criminal Appeal observed that 'at no stage did the complainant say that she did not give her consent to this act of intercourse at any time while it was occurring'.

Trying to get the public, men, judges, and juries to think differently about what constitutes rape is very difficult. To get them to consider the issues without being prejudiced by irrelevant factors about the complainant is difficult. To get them to see that heterosexual intercourse can be coercive when there is no violence or struggle is very difficult. To get them to see that it can be coercive when the complainant appears to communicate agreement is even more difficult. The reason being that in a patriarchal culture distinctions between rape and consensual sex are constantly blurred. Because of the substantive inequality between the sexes, agreement to heterosexual intercourse is often the result of social, economic and cultural pressures. And when coercion is eroticised as it is in our culture, it is difficult to know when consent is free. The male version of consent dominates and it is difficult for the women's version to be accepted. This is important in relation to at least two issues in rape law; the issue of consent and the issue of the mental element. A recent Tasmanian case, *Parker v. The Queen* (Unreported Serial No. A 57/1994) illustrates the difficulty in having a woman's version of what is rape accepted. The accused was separated from his defacto wife after a stormy relationship in which violence and reconciliation were the pattern. He went to the house one evening and heard the complainant in bed with another man. He returned early next morning and when he could not get in, he broke a glass panel in the door and unlocked it. The complainant was trying to ring the police when the accused entered with a gun. He took the telephone and hung it up. With a strong grip on her throat, he propelled her backwards causing her to strike her head causing a superficial laceration to her scalp which bled. She fell to the floor and when she looked up the prisoner was pointing the shotgun at her. The gun was loaded. The complainant believed she was going to be shot and curled up into a ball waiting for it to happen. He then directed her to go the bedroom. He put down the gun and told her to put on some lingerie which he handed to her and demanded that she perform fellatio on him. This was interrupted by one of the children. The complainant said the accused then acted as if everything was all right, but she was still very frightened. The accused was due in court that morning and she tried to keep him calm. She suggested that they have a shower together before he got ready for court. After the shower they

returned to the bedroom. He asked for a cuddle and she gave him one. He asked whether she wanted sex and she said she did. They had it. She said she was still frightened that he would get angry again. The gun was still on the floor. They were interrupted by a friend of the accused who came into the bedroom. Shortly afterwards a friend of the complainants rang and guessed there was something wrong. When the friend arrived the accused left and the complainant told her what had happened.

The accused was convicted of aggravated assault and rape (on the basis of oral intercourse) but was acquitted in respect of the count of vaginal rape. His defence to aggravated assault was a denial that he threatened her with the gun. He denied that oral intercourse occurred and in relation to the vaginal rape he claimed consent or at least mistake as to consent. On this charge the trial judge directed the jury that the belief had to be reasonable as well as honest. In the course of his directions he said:

> *. . . the circumstances might be such that the jury thinks that's just totally unreasonable to think that she's consenting, taking into account all the things he had done to her. It was unreasonable for him to believe that and even if he believed it we're going to disregard it because it wasn't a reasonable belief.*

Notwithstanding this direction the jury acquitted: either because they were not satisfied there was no consent, or because they thought the Crown has not proved there was no reasonable belief in consent. The accused did not concede the possibility that she might not have been consenting. His view of consent and the jury's view of consent or what is a reasonable belief in consent, did not coincide with the complainant's view. This case illustrates the difficulty of the jury drawing the line between sexual intercourse and rape. From the woman's point of view her agreement was coerced. In seeking to calm him she made herself available. It was like sex with a ticking time bomb.

If it is, as Mackinnon maintains, hard to know when, if ever, consent of a woman to sex is free, what is to be done (Mackinnon 1983)? Does it mean that it is impossible to draw a line between voluntary and coerced sexual intercourse? Is it worth trying to specify what is meant by free consent in a culture where mutually desired heterosexual sex is problematic? If there is no distinction between acceptable sexual behaviour and the unacceptable then there is no legal boundary to impose. I suggest that it is worth trying to specify what is a free consent. While the boundaries are blurred they still exist. The dominant cultural view accepts some sexual intercourse is rape. It is possible to extend this view to include a wider range of sexual behaviour as real rape. Naffine (1994) points out that while the law is a crude weapon for solving social problems, it can be used to change meaning even though we may not be optimistic about the speed of change. The dominant cultural view of rape has not totally eclipsed the views of women: they do not invariably find coercion erotically pleasurable, many feel exploited and violated. By women speaking up and rejecting the dominant version, giving voice to their feelings of exploitation and violation, the dominant meaning of rape is challenged and extended, coming closer to the extended legal definition of rape which covers an increasingly wider range of violations of sexual autonomy. While extended legal definitions will be resisted and

subverted, this will generate further challenge and this continued struggle of meaning will result in change to both statutory definition and its interpretation.

Does it matter that change is difficult to achieve, that the impact of the reforms seems so small? One of the arguments in Victoria against changing the mens rea for rape from proof of lack of an honest belief in consent to proof of lack of an honest and reasonable belief in consent was that a study of rape prosecution files showed that few accused successfully argued they lacked the mental element (Brereton 1994). The common law mens rea for rape was not the green light for rapists that had been claimed. So what? Allowing a person charged with rape to be acquitted on the ground he had an unreasonable belief in consent sends the wrong signals to the community and symbolises the criminal law's general propensity to prioritise male perceptions over women's experiences. The Tasmanian requirement of a reasonable as well as an honest belief in consent in *Parker* did not lead to a conviction on the count of vaginal rape. But at least the judge could direct the jury in the way he did. The standard of reasonableness should enhance the symbolic and educational function of the law in this area. As Egger (1994) has recently pointed out, the requirement of a reasonable belief in consent does not represent the total abrogation of principle as is sometimes claimed. Modern statutory law contains many offences where liability is attached to negligent acts.

Domestic Violence Law Reform

In the area of domestic violence as well as rape, attempts to achieve legislative change have also been successful. In all States legislation has been passed to provide a more adequate statutory response (Seddon 1993). The main features of such legislation include:

- the provision of protection orders (variously called restraint or restraining orders, apprehended violence orders, or intervention orders) obtained on the civil standard of proof protecting the victim against further attacks or harassment;

- making a breach of a protection order a criminal offence and automatic grounds for arrest;

- clarification and extension of police powers of entry to a dwelling house where violence is suspected to have occurred;

- provision for the compellability of spouses as witnesses in domestic violence offences or for all criminal offences

- encouraging the laying of charges and making of applications by the police rather than requiring the victim to do so.

Public attitudes which deny or condone domestic violence have led to underreporting and under policing of a problem which is so widespread 'almost to the point of being a normal, expected behaviour pattern in many homes'

(Chappell 1990, p. 212). The laws which did exist to provide protection for domestic violence were not being used, or at least not to maximum advantage. Nor were they adequate to provide full protection for victims of such violence. Conduct such as harassment by constant telephoning or following in a car was not within the scope of the criminal law. Police powers to enter private premises when domestic violence was suspected were vague and uncertain. The new laws were designed to improve the legal response to domestic violence by making assault within the privacy of the family home as serious as assault committed on the street or between strangers. They were designed to redress the reluctance of police to intervene in 'domestics', their reluctance to lay charges, and the perceived lenient response of the courts to assaults of a domestic nature. A greater degree of protection was to be provided by the availability of protection orders specifically tailored to deal with a variety of violence and harassment. The violent party can be required to leave the home and not approach the victim. The orders can be obtained more quickly and cheaply than family court injunctions and the enforcement regime is more effective than that provided for breach of family court injunctions and recognisances to keep the peace. Because breach of a protection order is a criminal offence, the criminal law is extended by making a breach of any condition of the order a criminal act. At the same time the extension of police powers has empowered the police to enter private premises and to arrest in a wider variety of circumstances in cases of domestic violence; for example, in Tasmania the police have the power of arrest to facilitate the making of a restraint order (*Justices Act 1959* (Tas.) s 106L).

Effect of Reforms

How effective have these reforms been? Seddon (1993), having reviewed the operation of protection order procedures in a number of jurisdictions, concluded that the system works reasonably well in some jurisdictions while not in others despite similar legislative machinery. Quite clearly, the laws depend for their effectiveness on the police and magistrates. In Victoria, for example, a report on the operation of the domestic violence legislation found serious problems with the implementation of the law (Wearing 1992). Problems related to lack of privacy in court when relating distressing experiences, reluctance of police to apply for protection orders on behalf of victims and reluctance of magistrates to make orders removing the violent party from the home. But in South Australia, the police play an important role in applications for orders. Seddon (1993) reports that they initiate proceedings on behalf of applicants in 97 per cent of cases. In New South Wales Hatty (1988) found in a survey of police responses to domestic violence in 1985 and 1986, that police were not implementing their powers in relation to domestic violence conscientiously or effectively and they utilised their discretion to minimise the arrest of violent men. Seddon affirms that the police initially had little involvement in making applications on behalf of victims, but by 1992 approximately 53 per cent of orders were applied for by the police (Seddon 1993, p. 89). Police practices in Queensland responded quite quickly to policies encouraging police officers to use their powers to apply for protection orders, with 58 per cent of applications being initiated by the police in 1990 (Mugford & Mugford 1992, p. 336). Partial police inaction has been

evident in relation to breaches of protection orders. Stubbs and Powell found that in New South Wales no action at all had been taken in the majority of breaches reported to police, solicitors and chamber magistrates (Stubbs & Powell 1989).

Do courts treat offenders more leniently in cases where the assault is domestic in nature? Are breaches of protection orders which are technically assaults treated less seriously than similar assaults which are prosecuted as criminal assault? It is certainly the perception that this is the case and that protection orders and breaches thereof are a soft response to criminal violence in the home. There are promising indications that some judges at least treat domestic violence at least as seriously as other violence. In *Parker v. The Queen* (Unreported, Serial No. A57/1994 at 11). Underwood J, in dismissing an appeal against sentence for aggravated assault and rape, stated that sentencing for crimes of domestic violence should proceed according to the principles stated by the Alberta Court of Criminal Appeal in *R v. Brown* ((1992) 73 CCC (3d) 242 at 249):

> *When a man assaults his wife or other female partner, his violence toward her can be accurately characterised as a breach of the position of trust in which he occupies. It is an aggravating factor. Men who assault their wives are abusing the power and control which they so often have over the women with whom they live. The vulnerability of many such women is increased by the financial and emotional situation in whch they find themselves, which makes it difficult for them to escape.*

Insisting upon 'equity of process' between domestic assault and other assault has been criticised on the ground that this will only improve the position for domestic assault cases if and only if the system for other assaults is demonstrably effective. As it is not, Mugford and Mugford (1992, pp. 342-8) have argued for a system which incorporates Braithwaite's concept of reintegrative shaming like the system in Bellevue, Washington, (Braithwaite 1989).

What is my response to this suggestion? I am impressed by Braithwaite's theory, but I do not want to see it operationalised in the area of domestic violence at this stage. At least not until stranger assaults are also diverted and dealt with in ceremonies of reintegrative shaming. While the failings of the criminal justice system are conceded, one of the reasons for the prevalence of domestic violence is that it is both denied and condoned by our society. Braithwaite himself concedes that his theory works best where there is a strong consensus that the criminal behaviour in question is unacceptable. Opinion surveys indicate that we have yet to reach this position. Until there has been a very significant attitudinal shift it would seem not in the interests of victims to introduce changes which could be seen as a soft option for domestic violence offenders. Until this happens, rather than diverting such offenders from the strict sanctions of the criminal law, a forceful and comprehensive approach, including a commitment to arrest, prosecution and more severe sentencing practices is to be preferred, together with supportive services for domestic violence victims. The Duluth, Minnesota Domestic Abuse Intervention Project model has attracted considerable interest. Rather than concentrating simply on pro-arrest policies or relying upon legal machinery such as protection orders and increased police

powers, the central assumption is one of close cooperation between the agencies involved, the police, the court, the prosecutor's office, the probation department and the victims' crisis service.

Battered Wife Syndrome

Is the battered wife syndrome a much needed solution for infiltrating the traditional male oriented pleas of self-defence and provocation? Or have women too much to lose in placing reliance on syndrome evidence which does not challenge fundamental problems of the legal system's failure to comprehend women's experience?

Provocation and self-defence are excellent examples of the way in which the legal system's supposedly objective standards of reasonableness and ordinariness embrace male standards which largely exclude the experience of women. The immediacy requirement, an implied requirement of self-defence and explicit in the requirement of suddenness in provocation is absent in the usual response of women who are constantly abused. The requirement that force used in self-defence be reasonable in the circumstances and the objective requirement for provocation of a provocative act which is sufficient to deprive an ordinary person of the power of self-control are predicated on male standards. The use of battered wives' syndrome evidence to explain why it is that the force was believed to be reasonable in the circumstances, or why there was a loss of self-control provides an opportunity to insert women's experience into these defences and to modify the male standard. But there are concerns about the use of such evidence.

- Concerns that it does not confront the male standard on which reasonableness is based. Will it really encourage the courts to recognise the gendered nature of the allegedly objective standards they invoke?

- Concerns that instead a standard may emerge of reasonable conduct of a battered woman that is prescriptive and not descriptive, penalising those women who resort to lethal self-help and who do not fit within the psychological profile.

- Concerns that such evidence reinforces notions of irrationality and disorder and stereotypes of women as emotional and passive.

- Concerns that medicalising the response of women who retaliate to abuse may result in the syndrome being seen as a cause and not an effect.

- Concerns that a focus on the psychological characteristics of the woman on trial obscures the importance of political, social and structural factors pertinent to an understanding of male violence.

- Concerns that a focus on the syndrome as a reason for not leaving deflects attention from other reasons such as lack of police response, shelters, lack of social support, affordable housing, child care,

> employment and the poverty which awaits so many women who leave violent men.

Despite these concerns I do not think we should oppose the use of the syndrome. I agree with Elizabeth Sheehy et al.(1992, p. 388) that:

> *In the context of widespread denial of the reality and immediacy of this violence, I see the use of the battered woman syndrome as offering mercy for women who have defended their own or their children's physical integrity or very lives, and as providing an opportunity for public and legal education about the factors of women's lives.*

With or without feminist opposition to the use of BWS, defence lawyers are likely to rely upon it to secure an acquittal or a better result. The Canadian Supreme Court has explicitly approved of BWS evidence and it has been accepted in Australian courts on at least three occasions. Rather than opposing the use of BWS, the better approach is to try to influence the way in which it is used, to demedicalise it, to take advantage of the opportunity some cases provide to educate the public about domestic violence and to adopt long-term strategies to challenge the stereotypes surrounding battered women and to focus on the need for broader solutions to the problem of domestic violence.

While in the short term it may be necessary to rely upon expert evidence to assist in meeting the subjective test of loss of self-control in provocation and to enable battered women's actions to be seen as reasonable self-defence, the reactions of women to domestic violence should not be seen as a syndrome or a medical or psychological problem of the woman, but as a reaction to a social problem.

The attempt must be made to expose the gendered nature of the objective standards used and to change the meaning of what is reasonable self-defence and what is sufficient to deprive an ordinary person of the power of self-control. This does not require abandoning the attempt to achieve justice in individual cases for the greater good of challenging inequities and stereotypes. By seeking to change the way in which the battered wife syndrome is used, inroads can be made on legal standards of reasonableness by incorporating women's experiences. In *Lavallee* ((1990) 55 CCC (3d) 97 at 114) Madam Justice Wilson said: 'The definition of what is reasonable must be adapted to circumstances which are, by and large foreign to the world inhabited by the hypothetical 'reasonable man'. As Sheehy (1992) has pointed out, judicial rulings like *Lavallee* can have an educative effect changing the male meaning of what is reasonable. They can also have a positive impact on other areas of law. Sheehy mentions criminal responsibility imposed on mothers for failure to protect them from abusive fathers, narrow interpretations of defences such as duress and necessity, preconditions for criminal injuries compensation such as immediately reporting to the police and full cooperation, and discounting factors such as contributing to the offence. To this list could be added male standards of reasonableness of belief in consent. Acceptance of battered woman syndrome type evidence in the court should also influence prosecutorial discretion, leading to decisions not to prosecute in some cases or to prosecute for less serious offences.

Short-term strategies include developing and shaping the use of battered woman syndrome evidence so it is demedicalised, does not undermine a woman's claim to have acted reasonably and the emphasis is not on the psychological condition of the woman, but is on the social problem of domestic violence and the reality of the choices available to women who are subjected to it. It has been suggested that the category of person who is eligible to give expert evidence of the experience of battered women should be widened to include shelter workers, counsellors and women who have lived in violent relationships (Sheehy 1992, p. 393), members of community policing squads, criminologists and sociologists (Freckleton 1994, p. 48). Experts should only be allowed to give evidence of commonly encountered reactions in women subject to cycles of violence and to explain and describe those reactions. They should not give evidence that it is a syndrome, or that the accused woman fits it, nor that such a woman is likely to have misconceived the threat posed to her because she suffers from a syndrome (Freckleton 1994, p. 49). In such a way standards of reasonableness may be changed to include the experiences of women as well as men. The use of such evidence has been opposed on the ground it would leave unaltered the current structure of the law and its male standards of reasonableness and perhaps would entrench inequities rather than ameliorate them (Tarrant 1990, p. 604, Stubbs 1991, p. 270). But there is no reason why modern statements of self-defence necessarily imply a requirement that a physical attack be ensuing or imminent (*Criminal Code* (Tas) s 46, *Zecevic* (1987) 162 CLR 645; Yeo 1992). There is room for the meaning of self-defence and reasonable force to be shaped to include women's experience of violence. In my view this approach is better than constructing a new and separate defence for domestic violence self-defence (Tarrant 1990, p. 604; South Australian Domestic Violence Council 1987).

Clearly, efforts to address the problem of domestic violence should not be confined to law reform and attempts to broaden concepts of reasonableness and challenges to legal notions of objectivity and rationality.

Alternative Dispute Resolution

Three of the outcomes of the new wave of enthusiasm for methods of alternative dispute resolution are the emergence of community justice centres or neighbourhood mediation centres, the use of special administrative agencies to solve discrimination disputes and trials of victim offender mediation schemes and family group conferences within the criminal justice system.

Advocates of ADR are attracted by the informalism of disputes in non-industrial societies and by the failure of our adversarial legal system to control crime and resolve disputes. ADR is seen as providing a greater level of participation and access to justice while overcoming deficiencies of the formal legal process.

Community justice or neighbourhood mediation centres are now well established in the most populous parts of Australia. They provide an alternative to the court system for the resolution of disputes, a significant proportion of which involve criminal acts. Discrimination legislation emerged in Australia

because the traditional legal system had failed to provide justice for women, Aboriginal people, other racial minorities, gays and people with disabilities and minority beliefs. Discrimination includes harassment and harassment complaints can involve allegations of criminal conduct. The main method of determining complaints of discrimination is by conciliation.

Clearly it was hoped that women victims would benefit by improved access to justice through community justice centres and anti-discrimination legislation. Have they benefited? Are these developments in the interests of women victims?

Some of the criticisms of ADR are of particular relevance to women as victims of crime. Astor and Chinkin (1992) have pointed out that the rhetoric of ADR may conceal a reality that is flawed. It claims to be an inexpensive, speedy and efficient form of consensual, accessible and participatory justice may not be able to be substantiated. The potential of ADR to increase the state control of many types of disputes and to neutralise protest has been recognised. By offering individualised compromise rather than real solutions to genuine injustices, social control is maintained and critics appeased. Similarly, as a privatised model of justice, both its educative and its empowering roles have been questioned. Jocelyn Scutt (1986) was an early and strong critic of informal justice for its tendency to neutralise protest by providing private solutions. She has argued that it deflects women's disputes, demands and claims for redress into a privatised system of mediation, conciliation and counselling. She sees privatisation of justice as detrimental to the interests of women and other disadvantaged groups because it shuts off from public view the very nature of the inequality from which the individual and the group suffer. Informal justice individualises abuses and renders the person apolitical.

Scutt's criticisms apply also to conciliation of discrimination disputes. The confidentiality of conciliation outcomes has the disadvantage of denying its educative effect. Moreover dealing with it in a private and confidential manner can be viewed as trivialising it. 'Violations are treated not as public transgressions in the way crimes are treated, but as private peccadilloes' (Thornton 1990, p. 144). A further disadvantage of relevance to women is the issue of power imbalance. Almost invariably the respondent will be more powerful than the complainant by virtue of employment status and access to financial and other resources. There is a power imbalance which is difficult for the conciliation officer to redress and the experience of the conciliation process may be empowering in some cases, but in others it may well be negative. Margaret Thornton's research suggests that settlements in conciliated cases may be less favourable than in litigated cases (Thornton 1989).

Victim offender mediation has received widespread support in Australia because of its potential to address the needs of victims as well as offenders and to promote the restoration of victim losses. There are a number of models of victim offender mediation. In Australia, as elsewhere, there has been considerable debate about the most appropriate time for it to occur. Mediation can take place prior to the trial; as a court order prior to sentencing; as a condition of sentence; or after the imposition of the sentence if requested by an offender or victim. A New Zealand version of victim offender mediation, the family group conference, has been enthusiastically received in this country. It

operates primarily as a diversion from court proceedings, but also before sentence.

In Victoria, the Law Reform Committee has supported both pre-court and post conviction models for both adults and young offenders. In Western Australia, a Working Party of the Department of Community Corrections expressed a preference for a pre-court model in the long term, but recommended the post conviction model as most appropriate in the short term because of its relative simplicity (Western Australian Department of Corrective Services 1992).

Currently, pilot victim offender conciliation programs are operating as pre-sentence programs. After considerable debate, pilot presentence victim offender mediation programs were introduced in both Queensland and Western Australia (Murray 1991; Western Australian Department of Corrective Services 1992). In Queensland the program applies to both adults and juveniles, in Western Australia it applies to adults only. Victoria also has a pilot program which began in October 1993 (Law Reform Committee 1993, p. 137).

A version of victim offender mediation, family group conferencing, has considerable support. It differs from other victim offender mediation programs in that it is a communitarian process, not simply a matter of mediation between two individuals. While both are concerned with reparation for the victim rather than retribution, FGCs place more emphasis on the offender's behaviour. By involving the offender's family and significant people in his or her life, the conference is envisaged as a ceremony of reintegrative shaming. It has now been operating with some success in Wagga in New South Wales and there are plans to introduce it elsewhere in that State. South Australia has legislated to introduce it on a state-wide basis and it is being trialed in Western Australia.

There are a number of criticisms of victim offender mediation schemes which are particularly pertinent to women. In common with other forms of ADR, imbalance of power between the parties has been identified as a problem. Victims may be afraid of the offender and be prepared to accept too little by way of compensation. Another criticism of victim offender and conferencing programs is their failure to tackle social injustice. Concentrating on the conferencing or mediation process as a way of dealing with crime may deflect community attention away from wider institutional problems such as patriarchy, family violence and unemployment (Polk 1994, pp. 130-3; White 1994, pp. 183-7).

Conclusion

Much then has been achieved by law reform in an attempt to improve the position of women as victims in the criminal justice system.

But the practical gains have been rather moderate. I do not think that this means that too much effort has been expended on law reform. It merely means that our efforts cannot be confined to that sphere and that they must be accompanied by a realisation that the law is very blunt instrument with which to achieve social change. Laws and policies depend upon the police, the courts, the legal profession and the public for their effectiveness. To reduce the occurrence

of crimes against women such as rape and domestic violence we must seek to change meanings and challenge attitudes and beliefs sanctioned by our society. It is not enough to extend the meaning of absence of consent, to provide that a belief in consent must be reasonable if the commonly understood meaning of what is real rape remains the same. It is not enough to increase police powers to intervene in cases of domestic violence if police perception of domestic violence is that it is really a private matter. We must challenge the dominant male perception of what is 'real rape', what is 'criminal assault' and what is 'reasonable force ' in self-defence. We must seek to modify male standards and allow the woman's voice to be heard. In so doing we should make use of the legal mechanisms available. There is force in the view that we should neither create special laws to deal with violence in the home nor new methods of resolving disputes informally because in so doing we undermine the fact we are dealing with criminal assault, trivialise and in the case of informal dispute resolution, privatise and neutralise conflict. However, in the area of domestic violence, not only were existing laws not fully utilised, they were inadequate to provide appropriate protection. Moreover, as an addition to the use of the criminal law, protection orders have the advantage of being able to be obtained cheaply, quickly and on the balance of probabilities. As for ADR, it does provide a way for women's voices to be heard and for a more informal and confidential hearing. Some concessions can be made without undermining the aim of emphasising the criminality of conduct or sacrificing attempts to insert a female voice into the so called objectivity of the criminal law.

In seeking to change meanings progess will be slow. Public attitudes, police attitudes and judicial attitudes are slow to change. But there is evidence that they are changing. Some of the judicial comments I have referred to in this paper indicate this. As well as criticising judges' comments and rulings when they are sexist and exclude the voice of women, I think we should praise them when they acknowlege the woman's perspective. In both ways we can seek to change meanings.

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Stalking: Crime of the '90s?[1]

MATTHEW GOODE

There has been a new and growing recognition of the importance of the distinct anti-social behaviour known generally as 'stalking'. The essence of this behaviour is intentionally harassing, threatening, and/or intimidating a person by following them about, sending them articles, telephoning them, waiting outside a house and the like. In general terms, an awakening of concern about this kind of behaviour in Australia has been caused by its prevalence in domestic violence cases. The creation of a criminal offence dealing with this behaviour is usually presented, and argued for, as an adjunct to the arsenal of legal weapons arrayed against domestic violence.

As is usual, it appears that scandal provokes and promotes change, especially legal change (Taylor, Walton & Young 1975; Sallman 1981; Ingber 1981). The most immediate catalyst was the murder in New South Wales of Ms Andrea Patrick by an ex-lover, who harassed her violently in violation of a protection order before killing her and committing suicide. To make matters worse, he had been in custody and had been admitted to bail two days previously.

It appears from the growing and extensive American literature on the subject that scandal following notorious individual cases also drove the legislation of stalking offences in that country. It is rare to read an American article on the subject which does not commence with a horrified account of some horrendous case. An account of the murder of actress Rebecca Schaeffer appears to be the de rigeur first paragraph (Sohn 1994; Faulkner & Hsiao 1994). While the stories of personal intimidation, fear and exposure to bizarre intimidation fuel righteous indignation, they do nothing to indicate the extent of the real problem, how the

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law should deal with it, and the extent to which it is possible or desirable to extend the criminal sanction.

The idea for this kind of legislation in modern times originates in the United States (Strikis 1993; Guy 1993; Lingg 1993; Fahnestock 1993; McAnaney 1993; Comment 1993a; Comment 1993b; Sohn 1994; Faulkner & Hsiao 1994; Boychuk 1994). Beginning with California in 1990, at last count 49 American jurisdictions had brought some version of a stalking offence into law. The offences vary from State to State, not only in content, but also in form and penalty. Moreover, it is clear that, while some concerns have been prompted by domestic violence, the original California initiative was probably due to the 'stalking' of celebrities by crazed fans. Perhaps the most notorious of these (and there are quite a number) was John Hinckley, who was obsessed by the actress Jodie Foster, and shot Ronald Reagan in order to get her attention. Some 35 per cent of the work of the relevant unit in Los Angeles Police Department is reported to be celebrity related (Note 1993).

Other Legal Controls

Interestingly enough, South Australia—and, probably, most other Australian jurisdictions at one time or another—had an offence in the criminal law for many years which criminalised stalking kinds of behaviour. Until 1992, the Criminal Law Consolidation Act contained an offence which criminalised, among other things, persistently following another and 'watching and besetting' places where another works or lives with a view to compelling that other to do or not do something.

This offence derives originally from the English Conspiracy and Protection of Property Act 1875 (38&39 Vict, c. 86, s. 7). That legislation was adopted in South Australia in 1878 (*Conspiracy and Protection of Property Act*, No 109 of 1878, s. 7) in order 'to put the law on the same footing as in the old country'. It was directly aimed at what were thought to be the practices of striking or locked out unionists to intimidate strike breaking labour. It comes from a time in which the criminal law was the principal method used by the State to regulate labour relations, although, ironically, in general the legislation was reforming in nature and designed to replace the extremely harsh regime of the Combination Acts (*Combination Act 1797*, 37 Geo 3, c. 123). The offence had not been used in living memory in South Australia, and was repealed without replacement in 1992 (*Statutes Amendment and Repeal (Public Offences) Act*, No 35 of 1992). It is clear that the section would require substantial redrafting to target the kind of stalking behaviour with which the law and public policy is currently concerned.

There was a recent attempt to convert that old anti-union offence to modern problems in England. In *Fidler* [1992] 1 WLR 91, the accused, who were opposed to abortion, stood outside an abortion clinic intending to dissuade women attending the clinic from having an abortion. They were charged with 'watching and besetting'. The question was whether they had acted 'with a view to compel' women from abortions. They were acquitted. The court held that, while the accused intended to stop abortions being carried out by verbal abuse,

reproach and shocking reminders of the physical implications of abortion, their purpose was one of dissuasion and not of compulsion.

In South Australia, there is recent authority to the effect that stalking behaviour can be prosecuted as 'offensive behaviour' contrary to s. 7 of the *Summary Offences Act*. In *Stone v. Ford* (1992) 65 A Crim R 459, the accused was convicted of offensive behaviour on the basis of evidence that he followed a woman about a shopping precinct in a marked manner and lurked outside shops when she went inside. It is notable that, the court held that there must be proof of an intention to behave in an offensive manner, but had no difficulty in inferring the intention (at 464-5):

> *The defendant offered no explanation for his conduct. He knew what he was doing. In the absence of explanation I think the facts here spoke for themselves. They bespoke an intention to be offensive, to threaten. . . . In my opinion, the irresistible inference is that the appellant intended to be offensive, to threaten.*

There is also some law on the use of civil remedies against a stalker. A recent example is *Khorasandijan v. Bush* [1993] 3 All ER 669. The plaintiff, an eighteen-year-old girl, was harassed by a twenty-three-year-old man. The man assaulted her, threatened violence, followed her around shouting abuse, and pestered her by telephone calls. He was arrested for threatening and abusive behaviour and was given a conditional discharge. Later, he was arrested for threatening to kill and served a short term of imprisonment. This did not deter him, so the plaintiff sought an injunction restraining the defendant from threats, violence, and, significantly, from harassing, pestering or communicating with the defendant in any way. The basis was the tort of nuisance. The plaintiff was forced into the civil court proceedings because, it appears, in England restraining orders are limited to those who are or had been in a domestic relationship, and this was not such a case.

The court held that the conduct of the defendant constituted a private nuisance and gave the plaintiff her injunction. A recent commentator has argued that the decision is 'startling' because it gives a plaintiff without an interest in land the right to sue in nuisance and because it granted an order which restrains actions which have nothing to do with the enjoyment of land (Cooke 1994).

It has long been thought that, for a number of reasons, a statutory scheme of summary injunctions is preferable to compelling the victims of harassment, intimidation or violence to resort to the civil jurisdiction. Statutory summary schemes for obtaining injunctions against alleged harassers are now common to all Australian jurisdictions. There are differences in details ranging from the name, to the grounds on which a person is entitled to apply.

In South Australia, these are known as 'restraining orders', and have been in legislative existence since 1982 (*Justices Act Amendment Act*, No 46 of 1982). Restraining orders grew out of very old provisions dealing with bonds or sureties to keep the peace (*Justices Procedure Amendment Act*, 1883-1884). A detailed review of the provisions is beyond the scope of this paper, but it should be reported that the South Australian scheme underwent a complete rewriting in 1994 in order to make separate provision for cases of domestic violence and so that the content of both domestic violence and other restraining orders would

harmonise with the stalking legislation *(Summary Procedure (Restraining Orders) Amendment Act*, No 20 of 1994; Domestic Violence Act, No 22 of 1994). Although separate provision has been made in this jurisdiction for restraining orders in cases of domestic violence, the summary statutory injunction remains accessible to individuals who seek relief from the courts in a non-domestic violence case.

Framing Stalking Legislation

The legal situation appeared to be that some stalking behaviour (but not all) could be prosecuted as 'offensive behaviour'. That was clearly not a sufficient coverage of the general area. The offence carries a maximum penalty of six months imprisonment, and, while that may be satisfactory for minor instances of the behaviour, it was clearly inadequate to deal with the seriousness of a course of behaviour which amounted to major intimidation and harassment. Existing criminal offences covered assaults and threats with appropriately high applicable maxima.

There can be little doubt that there is a niche of a course of anti-social, threatening behaviour which is not properly or adequately covered by the current criminal law. In general terms, that gap occurs where one person causes another a degree of fear or trepidation by behaviour which is on the surface innocent but which, taken in context, assumes an importance beyond its immediate significance. Where a person does not explicitly threaten another, but silently follows them around, or sits outside their dwelling, it may be difficult to find the appropriate criminal sanction. This kind of behaviour can be controlled by restraining orders, but the restraining order may be inadequate to the specific task.

The restraining order regime could not fill that gap for a number of reasons. First, the innocuous behaviour might not be sufficient to attract the making of an order. Second, while in some cases the identity of the stalker is known, in other cases it is not—and if the behaviour is innocuous, no criminal offence would be involved and therefore there would be no grounds for a police investigation. Third, while little research has been done on the effectiveness of restraining orders, the anecdotal consensus appears to be that a restraining order will have little effect on the kind of serious obsessive behaviour exhibited by stalkers (ACT CLRC 1993).

American statutes differ, but in general they criminalise intentionally and repeatedly following or harassing another person and making a credible threat with intent to place that person in reasonable fear of death or great bodily injury. Some of them also contain an 'aggravated stalking' offence in which the basic offence attracts a higher penalty if, for example, the use of a weapon is involved, or there is violation of a restraining order, or a previous conviction.

Some of the available American legislation was drafted in the most extraordinary nineteenth—or even eighteenth—century manner. For example, the Massachusetts statute contains a s. 43(b) which in turn contains a paragraph consisting of one sentence 12 lines long. Illinois statute contains 10 pages of fine detail. But there was a clear pattern. Since California enacted the first statute it

seemed likely to have served as a model. The elements of the Californian offence were:

- A person wilfully, maliciously, and repeatedly followed or harassed another person; and
- The harasser made a credible threat; and
- The harasser had an intention to place that other person in reasonable fear of death or great bodily injury (California Penal Code s. 646.9).

Those three elements are punishable by a maximum of one year's imprisonment or a fine of US$1000 or both. There was an aggravated offence where the harasser was in violation of an injunction or a temporary restraining order, or if there was a second or subsequent conviction within seven years.

Some of the terms were amplified by further definition as follows:

'Harasses' means 'a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys, or harasses the person and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.'

'Course of conduct' means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of 'course of conduct'.

'Credible threat' means 'a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause great bodily injury to . . . [the person or his or her immediate family]'.

There were some legal cultural oddities here, notably the gaol specification, the (by Australian standards) low maximum penalties specified and the plethora of cumulative words meaning fault, but leaving those aside, some points of interest remained. According to a recent commentator, American stalking legislation after California can be sorted into three rough groups: those which, like California, require acts, a threat and an intent; those which require either acts or threat, plus intent; and those which require just acts and intent (Boychuk 1994).

In contemplating legislation on stalking for South Australia, five propositions seemed reasonably clear and obvious:

- the conduct elements of any offence of stalking would need to be as widely described as possible because the ways in which a stalker can intimidate or harass are as boundless as the obsessive human imagination;

- stalking is in essence a pattern of conduct, and not just a single incident, or, put another way, a single incident of intimidation or harassment would be misdescribed as 'stalking';

- given the existence of a summary offence and a scheme of restraining orders, the main point of the legislation would be to aim a serious offence at serious stalkers and that, therefore, this would need to be an indictable offence punishable by a maximum greater than the general summary level of two years, with the summary offence being a possible lesser alternative verdict;

- it would generally make sense to say that a stalker who was stalking in breach of an injunction or restraining order or who was armed with an offensive weapon should be treated more harshly than one who was not;

- many stalkers would, in all probability, commit other offences, perhaps serious offences, in the course of conduct. The stalking offence should be used to fill a gap in the law and not simply to load up the indictment with another offence, perhaps to be used as a bargaining chip in plea negotiations.

The major points of interest in a survey of the American legislation and the growing literature are: the threat requirement; an overbreadth problem; and the intent requirement.

Credible threats

Arcane American constitutional arguments aside, there did not appear to be a sound substantive policy reason for the requirement that the harasser make a threat, credible or not. In all Australian jurisdictions, a person who makes a threat to kill or cause grievous bodily harm is guilty of a serious offence. What about the stalker whose threat lies in mere omnipresence? Menacing behaviour need not include any credible threat, but be menacing for all that. The 'threat'—and the fear—may be all the worse for being unstated and left to the imagination.

Overbreadth

The Californian legislature seemed to have recognised the difficulties in limiting such a broadly defined offence to the target group. The statute required that the conduct have no 'legitimate purpose' and, in addition, took the precaution of specifying that the section would not apply to 'conduct which occurs during labour picketing'. These generalised exceptions seemed unlikely to cater for all the possible variations. For example, if not labour pickets, why not also other pickets such as those attempting to prevent the demolition of an historic building? Is that 'legitimate'?

A number of American statutes, including California, exempted 'constitutionally protected activity', but that was of no aid to an Australian legislator. Tennessee exempted 'lawful business activity' for some reason—perhaps door-to-door sales representatives were at risk.

What about investigative journalists? What about a group of heritage protesters trying to stop the demolition of a building which the owner has every right to demolish? Or peace protesters at an American base? Anti-logging protesters? Summons servers? Workers' compensation fraud investigators? Or anti-abortion protesters at a clinic? Or any number of persistent visitors and callers who, at worst, are a pest, perhaps even a criminal pest, but should not be called stalkers and made subject to heavy criminal penalties.

How did others deal with this problem? The first Australian legislation on stalking was enacted in Queensland (*Criminal Law Amendment Act 1993*). The new sections added to the Criminal Code listed a great variety of harassing behaviour, with a basic penalty of three years, a summary option with a maximum of 18 months, and a serious version, maximum 5 years, where the stalking was aggravated by threats of violence, possession of a weapon, or in breach of any court order. The extreme difficulty faced with keeping the scope of stalking offences within bounds is shown by the inclusion of the following sub-section:

> *It is a defence to a charge under this section to prove that the course of conduct was engaged in for the purposes of a genuine -*
>
> > *(a) industrial dispute; or*
> >
> > *(b) political or other public dispute or issue carried on in the public interest.* [Criminal Code, s. 359A(4)]

It is hardly desirable that the scope of operation of a serious criminal offence should be limited only by such a vague exception. The futility of trying to confine the broad sweep of the general offence by this sort of general 'public policy' exception has recently been demonstrated by the prosecution of a group of Aboriginal youths under this offence for loitering in a shopping centre.

The New South Wales version *(Crimes (Domestic Violence) Amendment Act*, No 101 of 1993), which is an intimidation offence punishable by a maximum of two years imprisonment, solved the problem of scope by limiting its offence to those in a 'domestic relationship'. That is defined as follows:

> *. . . a person has a domestic relationship with another person if the person:*
>
> *(a) is or has been the spouse or de-facto partner of the other person; or*
>
> *(b) is living with or has lived ordinarily in the same household as the other person (otherwise than merely as a tenant or boarder); or*
>
> *(c) is or has been a relative . . . of the other person; or*
>
> *(d) has or has had an intimate personal relationship with the other person.* [*NSW Crimes Act 1900,* s. 545BA(6)]

But that is hardly satisfactory either, as *Khorasandijan v. Bush* demonstrates. While this paper is not concerned with the contentious question whether

'domestic violence' should be treated differently or more severely than ordinary violence, it is plain that serious stalking may arise from a workplace relationship, being a celebrity—or just at random. Why should a criminal prosecution for intimidation turn on whether, for example, the accused was a tenant or not, or whether the accused and the victim had had a previous sexual relationship or not?

In sum, the Americans had devised a number of strategies to avoid unconstitutional overbreadth. The requirement of a threat was one, specific exemptions another. In Australia, Queensland had tried to frame a general exemption, but it did not seem satisfactory. There seemed no good reason, as in New South Wales, to confine the offence to 'domestic relationships'. But many American commentators took the view that the primary way in which unconstitutional overbreadth would be avoided was by the requirement of intent. The New South Wales offence also required an intention to cause the victim to fear personal injury. An intent requirement may solve the problem.

Intent

Most American versions seemed to require that the harasser perform various types of conduct with intent that the victim be intimidated or terrorised. There was a deal of debate about the need for and specification of this requirement in the American literature, but it fitted well with Australian common law tradition that, in the most general of terms, a serious offence ought to require proof of criminal intent (*He Kaw Teh* (1985) 157 CLR 523). It also had the advantage of limiting the scope of the crime to the malificient. What matter that the harasser is engaged in a labour dispute, a fraud investigation, investigative journalism and the like? If he or she harasses the victim with an intent to cause serious harm or intimidation, that should surely be criminal.

The best way to limit the scope of the offence to the targeted group appeared to be a requirement of proof of an intention to cause serious fear, harm or apprehension. But that, too, had its problems. They are best put in the following passage:

> *This requirement may mean that anti-stalking statutes will not reach people who, because they are delusional or otherwise, are not capable of forming the intent. The delusional offender may be acting out of 'love' for the victim, or out of a belief that [he or] she is, or is meant to be, bonded to the victim* (McAnaney 1993).

That will be true assuming that a court can be convinced that the accused was wholly convinced of the delusion and that there was in the (usually) quite bizarre behaviour, no intention to cause harm. But even if that is so, such an accused is highly likely to be sufficiently mentally ill to warrant the application of civil or criminal powers over the mentally ill who cause harm to others. It may also be remarked that even if the law did apply to such a person, the notion that they would be deterred by it is, at best, fanciful.

The South Australian Legislation

South Australia's stalking legislation was enacted by the *Criminal Law Consolidation (Stalking) Amendment Act*, No 7 of 1994 which came into effect on 1 June 1994. It was passed with the warm support of all parties. The legislation enacts an offence of stalking punishable by a maximum period of imprisonment for three years and specifies circumstances of aggravation which take the applicable maximum to five years. That means that both offences are minor indictable offences which may be tried summarily unless the accused elects trial by jury.

Conduct requirements

The Act requires that, on at least two separate occasions, the person follows the other person, or loiters outside the place of residence of the other person or some other place frequented by the other person, or enters or interferes with property in the possession of the other person or gives offensive material to the other person or leaves offensive material where it will be found by, given to or brought to the attention of the other person or keeps the other person under surveillance, or acts in any other way that could reasonably be expected to arouse the other person's apprehension or fear.

Fault requirements

The Act requires that the person intend to cause serious physical or mental harm to the other person or a third person or intends to cause serious apprehension or fear.

Circumstances of aggravation

The offence will be regarded as aggravated and hence attract the higher applicable maximum penalty if, either the offender was in breach of any injunction or other court order or was, on any occasion to which the charge relates, in possession of an offensive weapon.

Other provisions

The Act makes it clear that the summary offence of offensive behaviour may be used as an alternative verdict if the court is satisfied that such an offence has been committed. It also contains two subsections designed to ensure that a stalking offence is not just used to load up an indictment where the offender has also committed other crimes in the course of the stalking conduct.

The legislation was welcomed by most. The exceptions were some police, prosecutors and feminists who wanted the intent requirement dropped, primarily because they argued that it would be impossible to prove. When challenged, however, none of these groups could solve the overbreadth problem in any other principled way. Most could not accept that there is no defensible case at all for making loitering (for example), with no harmful intent, a serious offence punishable by imprisonment for at least three years.

Implementation

Too often, lawyers, politicians, policy makers and pressure groups think or feel that passing a law solves the problem. Generally it does not. In the case of stalking, it certainly does not. The serious obsessive stalker is unlikely to know or believe that his or her conduct is against the law and is likely, even if he or she does know, to disregard that law. If an anti-stalking law is to achieve more than symbolic importance and be useful against the serious stalker, implementation is a key.

It was therefore of considerable interest to South Australia to learn of the existence of a Threat Management Unit within the Los Angeles Police Department. The Unit was created in 1989, and has the task of assessing the threat posed by individual stalkers, taking what steps might be possible to stop the stalking before it escalates into more serious violence. Intervention by the Unit is designed to ensure at the very least that the stalker is aware of police awareness of and concern about the behaviour. This is an instance of exactly the kind of preventive policing which is needed to implement laws on stalking and to try to get to the problem before it escalates to a more serious level.

The Unit also aims to help the victim decide what action he or she can take about the threat. They advise about security, help with getting a restraining order and encourage the victim of stalking to 'manage the threat'.

There does not appear to be much published research on obsessive harassers. The standard psychiatric typology accepts erotomania as a delusional disorder, but, of course, by no means are all stalkers erotomanics. In a study conducted with the help of the LAPD Threat Management Unit (Zona 1993), researchers examined the case files of the Unit and suggested a basic typology of four kinds of stalkers. They are:

- *Simple obsessional*: stalker, usually male, knows victim as an ex-spouse, ex-lover or former boss and begins a campaign of harassment;

- *Love obsessional*: stalker is a stranger to the victim but is obsessed and mounts a campaign of harassment to make the victim aware of the stalker's existence;

- *Erotomania*: stalker, usually female, falsely believes that the victim, usually someone famous or rich, is in love with them;

- *False victimisation syndrome*; the conscious or unconscious desire to be placed in the role of a victim.

The strength of beginning a typology along these lines is, of course, that police and victim manage the threat posed by a stalker differently according to the type identified.

A researcher into stalking has also warned about stereotyping based on outdated prejudices and committing too quickly to tentative typology classifications:

> *Simply put, assassins and other public figure attackers and stalkers are not a type unto themselves with necessarily common features. Efforts to categorise them as loners, frustrated about their lack of impact on the world, striving for greatness by destroying greatness, may be wrong as often as right. There certainly are commonalities, but there are just as many differences, and defining the 'typical' assassin is no more practical than defining the 'typical' murderer. They are as complex and as various as people in general. They can be motivated by jealousy, fear, anger, revenge, frustration, just as any other person* (DeBecker 1994).

Clearly there is much work to be done. But there must be a cooperative effort between police and researchers into human behaviour, so that the style of preventive policing begun by LAPD in relation to stalkers can be refined, made more accurate—and deliver the goods. Serious stalkers are very likely to be mentally ill—that term includes personality disorders—and preventive policing is all the more urgent in such cases where the normal deterrent effect of the criminal law is unlikely to work. The enactment of legislation can be used as one part of a strategy to attempt to deal with a form of behaviour which is simply unacceptable in a decent society.

POSTSCRIPT

Since the paper was written, events have moved swiftly. In New South Wales, the restriction of the offence to domestic violence was removed: *Crimes (Threats and Stalking) Amendment Act 1994*. Victoria has enacted the *Crimes (Amendment) Act*, No 95 of 1994. In common with the previous Australian legislation, it lists the kinds of behaviour which may constitute stalking, and then requires both an intention of causing physical or mental harm or arousing apprehension or fear, and that the course of conduct actually did have that result. The succeeding sub-section then states that the requirement of intention will be satisfied if the 'offender knows, or in all the particular circumstances that offender ought to have understood' that the course of conduct 'would be likely to cause such harm'. This is recklessness. The next sub-section states:

> 'This section does not apply to conduct engaged in by a person performing official duties for the purpose of -
>
> (a) the enforcement of the criminal law; or
> (b) the administration of any Act; or
> (c) the enforcement of a law imposing a pecuniary penalty; or
> (d) the execution of a warrant; or
> (e) the protection of the public revenue . . . '.

While this section provides extensive protection for official actions, the extension of the offence to people who know, or ought to know, (but did not), that what they were doing was likely to cause harm gives cause for apprehension that the ambit of the offence stretches well beyond the stalking mischief which prompted this kind of offence.

Western Australia enacted a stalking statute in 1994 (*Criminal Law Amendment Act 1994*). The definition of the crimes is very similar to that in other jurisdictions. Significantly, like the South Australian offence, it is limited to those who commit the behaviour with intent.

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Victim Impact Statements in South Australia

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South Australia was the first Australian State to legislatively introduce Victim Impact Statements (VIS). The new law which took effect in January 1989 requires that VIS material be put before the court by prosecutors so as to inform the judge of any physical or mental harm, any loss or damage to property suffered by a victim as a result of a crime. This article presents the results of evaluation studies of VIS in South Australia and their implications for the role of victims in the criminal justice process and the effects of VIS on the system. The first study (Erez, Roeger & Morgan 1994) examined the impact of VIS on victim satisfaction and sentencing in the context of the implementation of VIS through interviews of the legal profession, a survey of crime victims and an analysis of sentencing outcomes in the higher courts. In the second study (O'Connell 1995) the attitude of police (largely operational) towards VIS and the role of the police in the preparation of VIS was examined before and after their introduction.

Background to VIS in South Australia

In August 1979, the South Australian Government established a Committee of Inquiry on Victims of Crime to review the needs of crime victims and to recommend the most effective response to those needs. The Committee, which reported in 1981 (South Australia Report of the Committee of Inquiry on Victims of Crime), recommended among other things, that 'prior to sentence, the court should be advised as a matter of routine of the effects of the crime upon the victim.' The Committee observed, that on an accused pleading guilty, the sentencing court would not ordinarily receive information regarding the victim's 'physical, economic, or mental well-being' yet the information was relevant to the determination of sentence.

Such was the impetus for change that by 1985 the majority of the Committee's recommendations, which numbered nearly 70, had been implemented. Recommendation 50 concerning the provision of victim information, however, was not formally dealt with until late in 1985 when the Government promulgated a Declaration of Rights for Victims of Crime. The Declaration, in the form of administrative guidelines, consisted of seventeen principles which were designed to alleviate the trauma suffered by victims. The Declaration was accompanied by an instruction to all government agencies that their practices and procedures were to comply with the principles. According to the then Attorney-General (Sumner, personal communication 1995) the use of the Declaration enabled the government to introduce the changes with minimal opposition and it allowed any deficiencies in the law to be identified from the standpoint of the principles.

Principle 14 of the Declaration concerned the participation of victims in the sentencing process. It stated that a victim shall:

> *be entitled to have the full effects of the crime upon him/her made known to the sentencing court either by the prosecutor or by information contained in (a victim impact statement) including any financial, social, psychological or physical harm done to or suffered by the victim; any other information that may aid the court in sentencing, including the restitution and compensation needs of the victim, should also be put before the court by the prosecutor.*

The provision of victim information during the sentencing process was justified by the Attorney-General on a number of grounds. Allowing victims to participate in sentencing may reduce feelings of retribution and any alienation and dissatisfaction victims feel in their contact with the criminal justice system and that the provision of the information would assist the court in making any compensation or restitution orders. Furthermore, Sumner drew attention to the positive contribution VIS can make to the rehabilitation of offenders. For example, he has suggested that requiring an offender to pay compensation can be likened to a symbolic recognition by the offender of the wrong done to a victim and such recognition on the part of an offender can promote rehabilitation. (Sumner 1987).

Principle 14 of the Declaration was accompanied by a legislative amendment to the effect that whenever the court had before it a structured report on the offender (a pre-sentence report) the report would also contain information, collected by Probation or Parole Officers, about the effect of the crime on the victim. At the time of its introduction, it was proposed that the amendment would be proclaimed after additional staff resources needed had been identified and obtained. Correctional services responded to the Declaration by creating a committee to review that department's current procedures and practices and to develop proposals for implementing the relevant principles and legislative requirements. A report was produced in July 1986 which contained a detailed costed proposal for the implementation of VIS by Probation and Parole Officers. The proposal, however, did not find favour with the Attorney-General who indicated that it 'had a number of resource, philosophical and practical problems' (Sumner & Sutton 1990) and consequently the legislative amendment for pre-

sentence reports to contain victim information was never proclaimed. Instead, it was decided that the police would become responsible for implementing the VIS and an interdepartmental committee comprising representatives of the Attorney-General's Department and the Police Department was formed.

The Attorney-General's/Police interdepartmental committee reported early 1988 and determined, among other things, that the purpose of victim impact statements was 'to provide information to the court for use in the sentencing process, that is to have regard to the effect of the crime upon the victim.' The committee also designed a VIS proforma which after modification was adopted. It was recommended that the proforma be compiled by the investigating police officer as a part of their normal duties. The Attorney-General supported the Committee's recommendation with respect to the use of the proforma and its compilation by the police. He argued that 'collecting and summarising information on the crime's effect' was a task already performed by the police, hence the requirement to prepare victim impact statements was, in simple terms, a formalisation of a traditional 'ad hoc' role (Sumner & Sutton 1990).

During the course of the Attorney-General's/Police interdepartmental committee's deliberations, the government intimated its intention to review the State's sentencing provisions and consolidate these in a single Act. The Criminal Law (Sentencing) bill was introduced and passed late in 1988 and proclaimed in January 1989. The Act provided (*see* Appendix A) that to assist a criminal court to determine an appropriate sentence a prosecutor must furnish a sentencing court with particulars about the effects of the crime on the victim. The victim, however, maintained the right to request a prosecutor not to present this information to the court. To ensure that the information would be considered, Section 10 of the Act stipulated that the effects of a crime on a victim should be, where relevant, taken into account by a sentencing court. The new Act also enabled a court to order compensation and order the return of misappropriated property.

The South Australian Model

In South Australia, the police are responsible for preparing VIS. When police receive the initial complaint that an offence has occurred, the officer receiving such complaint is required, should the victim exercise the right, to take a comprehensive statement including information regarding the harm done and losses incurred. In reality, however, this initial statement is directed towards establishing the nature of the crime and satisfying evidentiary requirements. For summary matters, police prepare the VIS within seven days of the report or arrest of an accused, and within seven days of advice that a matter has been committed for trial/sentence for indictable matters. Until recently the police have prepared VIS using the proforma which originated from the work of the Attorney-General's /Police interdepartmental committee.

Supervisors of investigating officers are required to ensure victim impact statements are correctly submitted. With regards to summary matters the final check in the process is the police prosecutor, whereas for indictable matters either the Victim Impact Coordinator or Witness Scheduling Unit (both within

Police Prosecution Services) monitor the submission of VIS and the Director of Public Prosecutions provides solicitors to ensure statements are suitable for court.

At the time of the introduction of VIS, police agreed to become responsible for VIS without additional resources, although it was agreed that this decision would be reviewed after twelve months. A review was undertaken by the police in early 1990 and found that significant additional resources were required for VIS if police were to continue to prepare them as originally proposed. The Attorney-General in response to this agreed to a less resource intensive approach towards VIS and allocated ten additional positions to the police. Following this decision, and in light of criticisms, since 1992 police have extended to some victims the option of completing a questionnaire themselves or writing a statement in their own words regarding the effects of the crime.

Implementation of VIS: The Perspectives of the Legal Profession

A series of interviews with members of the legal profession were conducted in order to examine the implementation of VIS and assess the effects of VIS on the criminal justice process. Forty-two interviews were conducted with members of the main professional groups in the criminal justice system (prosecutors, defence lawyers, magistrates and judges). These interviews revealed a very uneven and problematic implementation of VIS. In the Magistrates Court where the majority (95 per cent) of cases are dealt with, VIS are rarely tendered. In the Supreme and District Courts where more serious offences are heard, prosecutors and judges stated that the information provided in VIS was highly variable in quality and often was not adequately followed up or updated.

Despite the poor implementation of VIS, many judges and prosecutors believed that information about victim harm has improved since the introduction of VIS. Two thirds of judges and most of the prosecutors stated that they would recommend the introduction of VIS in other Australian jurisdictions. All groups believed that the introduction of VIS has not led to court delays, additional expenses or mini trials on VIS content. Many of those interviewed actually suggested that VIS saved court time. Judges and prosecutors felt that only rarely did VIS contain exaggerations or inappropriate remarks. Defence lawyers stated that they were often suspicious of material relating to the emotional harm suffered by victims; however, they rarely challenged VIS because of the damaging effect a cross-examination of the victim might have on sentencing.

One-third of the judges interviewed stated that VIS were important for sentencing; a third thought that the VIS itself was not very important; and the remaining judges were of the view that VIS were only important in some cases, in particular, offences against the person and cases in which the defendant pleaded guilty. Most of the professionals believed that VIS have not increased the severity of sentencing. In fact, some judges were of the opinion that in the few cases where VIS affect penalties, VIS are just as likely to lead to more lenient sentences as to harsher sentences. Most judges did not believe that VIS have led to sentencing disparity.

Differences of opinion surfaced among the legal professionals concerning responsibility for the minimal implementation of VIS. Judges, Crown prosecutors and some police prosecutors viewed the police, who are charged with VIS preparation, as the culprits. The police, it was suggested, treated VIS as only a formality, were slack, or simply did not appreciate VIS importance. Some judges also viewed prosecutors as negligent in their duty to provide VIS. A few prosecutors thought that judges do not consider VIS in their decisions, so additional demands should not be placed on already overburdened police. Defence lawyers knew that vague or terse VIS are in the defence interest, so they did not concern themselves with this issue. The police perceived themselves as the true 'victims' of the movement to improve the crime victims lot, and as the government's 'dumping ground' in its attempt to win political gains with minimal investment. The police agreed that they are neither trained to prepare VIS, nor do they have the time and resources to do it.

The ideal person or agency to prepare the VIS was also disputed. Generally, the legal professionals objected to victims completing their own VIS, and emphasised the importance of an independent agency charged with VIS preparation. Some thought a professional (such as medical or psychological), whose expertise would normally not be questioned, should be assigned the task. A reliance on experts for the majority of crimes, or even the more serious ones, however, is potentially problematic. As several judges noted, it would result in unjustifiably slower and more expensive justice. Further, judges believe that they are already educated about the effects of crimes on victims. Several judges therefore suggested that only in very unusual cases, those with victims exhibiting uncommon or unique reactions, is there a need for an expert to testify. Several judges suggested, however, that victims should at least sign the VIS. This idea was also expressed in a recent court decision. In the words of Justice Olsen in *R v. Nicholls* (1990):

> *. . . a serious weakness in the present system is that (victim impact statements) are not signed or even acknowledged as accurate by the victims concerned and, at best, reflect the attitude and impression of the police officer preparing them. It would be far preferable for the future for the actual victim or victims to be required to subscribe to such documents as being an accurate reflection of their factual situation* (p. 206).

Despite a common observation that the current implementation of VIS is highly problematic, the sentiment of the legal professionals was that VIS provide the symbolic recognition and voice that victims deserve, and that through the VIS the system further approaches a balanced justice. The legal professionals interviewed in general felt that victims should have input into sentencing, but disagreed about its kind, form, scope and who should prepare it. They objected to victims expressing preference concerning the sentence and were generally reluctant to allow victims to complete VIS on their own.

VIS and Victims: The Perspective of the Police

The aim of this section of the paper is to the present the results of two studies of police attitudes toward VIS and the role of the police in the preparation of VIS. These studies were undertaken before and after the introduction of VIS. In the first study a content analysis was conducted on a set of essays on the Declaration of Rights for Victims of Crime written by police in 1988 as part of study towards promotion to the rank of sergeant in 1988. The second study conducted in January 1990, involved a questionnaire survey of operational police with respect to their views on VIS. Between them the studies allowed an opportunity to appraise any change in police attitude to VIS and the police role in their preparation.

Essays by Police in 1988

A total of 49 police completed essays on the topic of the impact of the Declaration of Rights for Victims of Crime on policing. To assist in writing their essay each officer was expected to interview at least five other police in addition to expressing their own opinion. The majority of writers addressed the issue of VIS in their discussion of the Declaration but four did not. Half (51 per cent) viewed one of the purposes of VIS as useful for obtaining compensation/ restitution orders. Others (11 per cent) indicated VIS were fundamental to fair sentencing and 7 per cent suggested VIS were useful to the pre-trial process pointing out the value of VIS to the determination of appropriate charges and the alleviation of unnecessary charges. An important proportion (13 per cent) felt VIS added balance to the sentencing process. One essayist foresaw that VIS had advantages, although none were specified, for both victims and offenders insofar as justice could be better delivered. Another essayist mentioned that VIS 'remedied shortfalls' in the sentencing process, and another pointed out that VIS provided a victim with the opportunity to seek redress in a civilised manner. Only three writers (7 per cent) specifically stated that VIS had benefits for the victim, rather the clearly dominant focus was in the area of sentencing, in particular, compensation.

In contrast to those viewing VIS as serving the delivery of justice, one essayist argued that VIS do not 'fit the adversarial process', and added that much of the information in a VIS may be irrelevant to sentencing. Whereas one essayist noted the benefits for victims in linking civil and criminal justice systems, another essayist observed some danger in 'confusing' civil remedies with criminal sanctions.

The most significant reason against police preparing VIS was increased workload (87 per cent). Two writers suggested that the preparation of VIS would require numerous contacts between the police and victims. Most argued that police lacked the resources and time to perform the task. Some saw the workload problem could be reduced by establishing networks of experts to whom the police could refer victims, while others mentioned the need for better training and education of the police. Three writers argued that the expectation that the police would prepare VIS was impractical, with one of the three using the example of itinerant tourists to substantiate the difficulties. Other reasons against

VIS included that VIS may delay the court process and that the right to a VIS was wasted on some victims.

Concerning the responsibility for the preparation of VIS, opinions were fairly evenly divided. While some acknowledged that the police had a role, most argued for the establishment of a specialist police unit. Those opposed to the police preparing VIS pointed to the lack of expertise among police in dealing with the emotional and psychological needs of traumatised people. Only one student mentioned that there may be an unanticipated by-product for police; that is, improved relations with victims.

In summary, police writers favoured the introduction of VIS in the sentencing process. Generally, however, the police did not consider they had the time, resources or expertise to deliver the extent of service victims rightly deserved. To provide only a public relations exercise was seen as detrimental to both victims and the police. In fact, while VIS had the potential to ensure better delivery of justice, VIS also had the potential to hamper justice if the right for victims was little more than tokenism.

Questionnaire of Operational Police in 1990

A total of 34 questionnaires were completed by operational police twelve months after the introduction of VIS in 1990. Respondents were first asked to state when VIS were required to be done in terms of the existing policy. Three respondents did not answer this question but of those that did around a third (30 per cent) correctly separated those cases to be heard and determined summarily from those committed for trial and/or sentence. All other respondents incorrectly stated the policy. For example, a few respondents (13 per cent) answered that VIS should not be prepared until sentencing.

Respondents were also asked to stipulate when they thought VIS ought to be completed. Almost one-fifth (19 per cent) of those answering this question stated just prior to sentence. Two respondents suggested on receipt of the initial report of crime, whereas two other respondents suggested VIS should be completed post-investigation, pre-adjudication. Notably, only one respondent indicated that the existing policy should remain. Other answers included: only when the defendant pleads not guilty; only when a person suffers, or a person endures ‘real’ injury; and, when called for by the prosecuting authority.

Just under half (45 per cent) stated that VIS provide the court with an opportunity to hear the effects of crime on victims. Almost a fifth (19 per cent) claimed VIS assist with the determination of compensation. Only three respondents suggested VIS help victims by allowing them to be heard, and similarly, three respondents mentioned that VIS enhanced recognition of the victim.

Consistent with the anticipated workload problem raised by police writers, all survey respondents answering the question indicated that the requirement to prepare VIS had had an impact on their workload. On a scale of 0-10 with 0 being no impact and 10 being significant impact, almost half (47 per cent) rated the impact at 6 or above. No respondent rated the impact at zero, that is, no impact at all.

When asked to estimate the longest time spent preparing a VIS, respondents presented a time range between 15 minutes and 7 months. The variance in times most likely shows the question lacked clarity. On disregarding the 7-month response a more realist range became obvious. The mode was 2 hours (n=7) and the mean 1 hour 24 minutes.

Like the police writers, police respondents were divided on who should prepare VIS. Although ten respondents suggested an independent body, ten other respondents stated that the police should maintain the task. To this later figure can be added four respondents who indicated a specialist police group should be created to prepare and update VIS. Only one respondent answered in favour of the victims preparing their own VIS.

Effect of VIS on Victim Satisfaction

The relationship between victims' involvement and the impact of providing information for a VIS on satisfaction with justice was examined through a mail survey of victims of crime. The sample consisted of all victims whose offender was processed and sentenced by the District and Supreme Courts between January 1990 through July 1992. These courts deal with the more serious offences and they were chosen because court records and interviews with legal professionals revealed that VIS were rarely tendered in the Magistrates' Court which deals with the less serious offences. A total of 427 victims responded to the survey giving a response rate of 67 per cent.

Based on an examination of court records, victims provided VIS information in the overwhelming majority of the cases. However, a major finding emerging from the victim survey is that about half of the victims stated they did not provide information for a VIS when in reality they did provide VIS material. The victims who stated they provided VIS information were mostly victims of offences against the person. Most of the victims who provided input for VIS did so 'to ensure that justice was done'. Only a small minority (5 per cent) provided the input with the purpose of influencing the sentence. Yet, almost three-quarters of victims who stated they provided VIS material expected the VIS to have an impact on the sentence. Less than half of them felt that their input had an effect on the sentence. For about a third of the victims who stated they provided VIS material, expectations concerning the effect of VIS on sentencing went unfulfilled.

On a scale from 1 (very dissatisfied) to 5 (very satisfied) the mean overall satisfaction with the criminal justice system was found to be 2.8 (SD=1.3). While 30 per cent of victims were satisfied and 7 per cent were very satisfied with the manner in which the criminal justice system handled their case a significant proportion were dissatisfied (20 per cent) or very dissatisfied (22 per cent). Analysis of the factors related to victim satisfaction with justice did not identify the provision of VIS material as one of these factors. For victims who knew the sentence of their offender (about half of the sample), satisfaction with the sentence was the major determinant of their satisfaction with justice. For victims who did not know the sentence, satisfaction with justice was predicted by the type of victimisation (personal crime) and their level of distress. Whereas

providing VIS material did not affect victim satisfaction with justice, unfulfilled expectations concerning VIS effect on sentencing were associated with increased victim dissatisfaction with the sentence. Providing victims with a realistic range of penalties and with explanations about the considerations judges use when they impose sentences may reduce victim dissatisfaction.

Almost half of the victims who stated that they provided VIS material felt relieved or satisfied after providing the information, and for the other half, providing VIS material did not make any difference. Only a small number of victims (6 per cent) were upset or disturbed by this experience. The overwhelming majority of victims who provided information stated they wanted or agreed to the VIS being used in sentencing. Practically all these respondents felt that if they were a victim again they would want a VIS presented in court.

Over two-thirds of the victims who knew the sentence of their offender thought the sentence was too lenient. Victims wanted a greater use of, and longer, prison sentences. They also wanted more license revocations, community service orders, restitution and compensation orders than the courts imposed. Over three-quarters of the victims believed that the system does not give adequate attention and help to victims. They wanted more information and efficient processing of the case. Yet, almost all victims stated they would report victimisation and cooperate with law enforcement efforts if they were victimised again.

Impact of VIS Sentencing Patterns

The aim of this part of the research was to assess whether the VIS requirement, which took effect in January 1989, resulted in any changes to sentencing. One of the arguments against the introduction of VIS has been that they will result in harsher sentences. One of the arguments in their favour is that they will lead to increased restitution and compensation orders.

Assessing the impact of the VIS requirement on sentencing present some methodological difficulties. Comparing sentences issued before the introduction of VIS with sentences following VIS might be misleading because of other changes influencing sentences occurring during the time period. For example, other sentencing policy developments may be taking place around the same time that VIS are introduced or the average seriousness of offences may change. An alternative approach of selecting only cases following the introduction of VIS and comparing the sentences of cases with and without a VIS is also problematic because of the possibility that cases including a VIS are systematically different on factors related to the sentence from cases not possessing a VIS. For example, more serious cases may be more likely to attract a VIS than less serious cases.

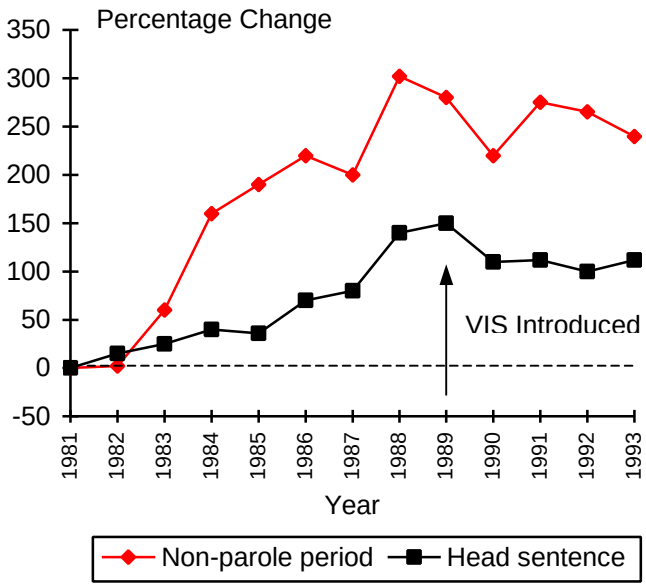
In order to overcome possible systematic bias in the comparisons, the approach adopted in the present study is to examine overall sentencing trends in South Australia before and after the introduction of VIS. The length of sentences of imprisonment and also the proportion of cases receiving a sentence of imprisonment are examined. In addition, a multivariate analysis of one offence type (assault cases) is performed in order to identify whether VIS made a

significant contribution to sentences after controlling for other factors thought to be important in sentencing for these offences.

One possible impact of VIS on sentencing is that VIS influenced the distribution of dispositions, for example imprisonment might be issued more frequently. The percentage of cases receiving a sentence of imprisonment in the higher courts during the period 1987 to 1993 was: 1987 (39 per cent); 1988 (36 per cent); 1989 (38 per cent); 1990 (34 per cent); 1991 (36 per cent); 1992 (37 per cent); and 1993 (41 per cent). Based on this data the introduction of VIS in early 1989 does not appear to have significantly influenced the percentage of cases receiving a sentence of imprisonment.

The second issue addressed was the length of prison sentences. Figure 1 shows the average percentage change in head sentence and non-parole period imposed for all convicted cases in the higher courts for the period 1981 to 1993. A significant upward trend and considerable volatility is exhibited in both data series. During this period, however, there were a number of changes to the manner in which remissions and parole operated and the timing of these changes correspond very closely to the movements in sentencing patterns shown in Figure 1.

Figure 1: Average head sentences and non-parole periods 1981-1993 (taking 1981 as a base year)



As shown in Figure 1, the introduction of VIS in early 1989 does not appear to have had any significant adverse impact on the average length of sentences of imprisonment issued in the higher courts. Sentences in fact fell during 1990 (the year after the introduction of VIS) but the reason for this is most likely to be related to a High Court ruling indicating that remissions should not be taken into account during sentencing. This was later corrected legislatively but sentences of imprisonment have not yet returned to their previous levels.

Another area where VIS may have influenced sentencing patterns is in the number of restitution and compensation orders. Theoretically, information contained in VIS can assist sentencing courts to order restitution or compensation. The VIS indicates whether compensation is sought by the victim, provides details of injury or property loss suffered by the victim, shows whether restitution has been offered by the offender and finally it provides, when it is known, details of the offender's ability to pay compensation. Unfortunately, data relating to the number of compensation or restitution orders made in the Magistrates' Court (where the majority of matters are heard) are not available. In the Supreme and District Courts the number of restitution or compensation orders was increasing prior to the formal introduction of VIS in 1989. It continued to increase in 1990 (to around 129 orders or 8 per cent of cases) but since that date numbers have fallen significantly each year. In 1993, only 33 (2 per cent of cases) restitution or compensation orders were made. The reason(s) for decline in orders was not able to be established. It appears that the introduction of VIS has either had little effect on the number of orders made or that the effect has been significant but not sufficient to counteract the downward trend.

A multivariate statistical study of Assault Occasioning Actual Bodily Harm (AOABH) cases was undertaken to examine in closer detail possible effects on sentencing patterns resulting from the introduction of VIS. The multivariate analysis of the factors related to sentences for Assault Occasioning Actual Bodily Harm identified as predictors of prison sentences: a previous record of imprisonment, the presence of aggravating factors, an absence of mitigating circumstances and the defendant's age. However, the presence of a VIS in the court file, the judges remarks about the VIS or whether the case was finalised before or after the introduction of VIS were not found to be related to sentencing disposition.

Discussion and Conclusion

The evaluation studies summarised in this paper provide valuable insights to the way VIS have been implemented in South Australia. Overall, the research findings provide evidence to dispel several arguments raised against VIS, but at the same time has revealed problems in its present implementation. The difficulties experienced with the implementation of VIS in South Australia are consistent with the view that for successful legal change, the support of all organisational parts involved in the reform is necessary. Support is generally forthcoming where participants are convinced about the need for change and where accompanying resources to effect the reform reinforce the perception of

its significance. In the present case, neither condition was present. Further, the reform, as spelled out in the law, did not change drastically the way in which the system recognises victims' harm. Although the law mandated the presentation of VIS, it did not confer any recognised legal status on it (such as a deposition), nor did it specify any sanctions for non-compliance.

Criminal justice practitioners had (and still have) reservations about victims' integration in the criminal justice process, and doubts concerning the VIS utility as a vehicle for presenting victim harm to the court. The results from the studies of largely operational police, however, showed consistent police support for VIS. The two studies revealed that over time the police came to appreciate a wider range of benefits that could be achieved from VIS. Initially, the primary focus concerned sentencing but in the later study after the introduction of VIS, police were able to identify a more diverse range of benefits for victims including therapeutic aspects and empowerment through participation in the criminal justice process. A recurring theme from the studies was that it was believed that VIS would assist victims to gain compensation/restitution. Mitigating this support, however, was a perceived lack of resources for VIS and this was interpreted as a statement about VIS importance.

In the final analysis whether one interprets the results of the South Australian evaluation study as supporting VIS depends heavily on one's philosophical stance and moral conviction concerning the need for victim integration in the criminal justice process. The South Australian implementation of VIS has not led to any radical change in sentencing process or outcomes and indeed the consideration of victim harm was not seen to violate established principles of sentencing (Sumner 1987). As a consequence, the reform presents a dilemma to both opponents and supporters of VIS. Opponents, while taking relief from the absence of any aggregate effects on sentencing, may claim that any benefits of VIS can be achieved by other means which would guarantee the integrity of established sentencing principles. Supporters on the other hand may doubt that the South Australian system goes far enough in entrenching the victim's place in the sentencing process, even though the VIS seems to have symbolised greater recognition of this place.

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Section Four
Serving Victims

Victims' Services

The nature and type of services available to victims in any particular country is indicative of political, cultural and social conditions.

Philanthropy, a significant trend in the development of services, is predicated on a desire to relieve social distress. Contrary to their somewhat tentative beginnings, philanthropic victim organisations, often victim driven, have been established across the globe. However, several commentators have suggested that some victim organisations have been hijacked by 'law and order' lobbies. **Robert Elias**, for instance, observed that a punitive element was inherent in some victim advocacy. On the other hand, **Richard Harding** acknowledged that attitudinal change in some victim support groups across Australia correlated with greater focus on victim assistance.

Marlene Young contributes a checklist of attitudes if victims' services are to be coordinated in accordance with human rights principles. She reduces her themes to four principles: *compassion* that spreads beyond traditional victim services, *community* that seeks to overcome isolation and fear, *character* that increases the accountability of the victim organisation itself, and *courage* to translate knowledge into action.

Excerpts from the papers by **John Oliphant** and **Andrew Paterson**, both of Victims of Crime Service (VOCS), demonstrate the current 'applied victimological' approach to victims' services in South Australia. Oliphant describes a successful program concerning mothers of victims of sexual abuse while Paterson details traps for the unwary in coordinating a victims of crime agency.

In some countries, victims' services have prospered through government funding and the allocation of other resources, whereas in other places state concern for victims of crime has been overshadowed by efforts to treat and rehabilitate offenders. Notwithstanding the ideals of the welfare state, prevailing economic and social conditions in several western democracies have been conducive to an evolving emphasis on economic rationalism. Although rationalists tend to favour philanthropy as a means of 'cost effective' self-help and reduced government expenditure, the politicisation of victims and their plight has ensured many victims' services are provided at government expense, or with government subsidy. Governments have also intervened through legislative and administrative reforms. In fact, political interest in victims of crime was initially manifest in the design and implementation of criminal injuries compensation schemes. Despite the apparent political favour with these schemes, it is still not clear whether payment of a lump sum to victims of crime is an effective way of extending state beneficence.

Criminal Injuries Compensation

Reflecting on judicial decisions, particularly in Australia, **Ian Freckelton** claims that there is a growing appreciation of the serious repercussions of sexual assaults on children. He asserts that the key to successful criminal injuries claims

is proof of adverse psychiatric effects on child victims of sexual assault. The growing cognisance, he concludes, may have significant ramifications for criminal injuries compensation tribunals such as those that function in several Australian States.

Unlike most countries, New Zealand has a comprehensive accident compensation scheme which covers victims of crime as well as victims of accidents. In an abridged paper **John Miller** outlines the New Zealand scheme and pronounces some of its advantages and disadvantages. He also mentions several reforms, including two new victim programs.

Professional Service Providers

The final trend in the development of victims' services has been the growth of a professional social welfare industry. Consistent with this, **Alexander McFarlane** acknowledges the part played by political as well as social forces in the increasing interest in the effects of victimisation.

McFarlane, in his keynote address, notes with concern the ambivalence in modern societies to the rights of the weak, the injured and the disenfranchised. Allied to this, he says, is the phenomenon that those in power tend to blame victims for their conditions. Moreover, victim service providers frequently fail to recognise their own pre-conceived prejudices when dealing with victims.

Consequently, the involvement of health professionals in victims' services has not necessarily led to improvements in these services. **Gwenn Roberts**, for instance, refers to various studies which show that detection rates for victims of domestic violence by doctors in hospital emergency departments are very low. She points out that these low rates have been attributed to inappropriate attitudes of health professionals towards victims of crime. She reports the findings of a study concerning an education program designed to lessen negative attitudes and increase knowledge about domestic violence among doctors and nurses at the Emergency Department of the Royal Brisbane Hospital. She concludes that attitudes towards domestic violence were a function of profession rather than gender.

Following on from Roberts, **Greg Dear** presents an overview of co-dependency theory. He discusses the premise that the co-dependency model tends to shed blame on the victim for the difficulty in coping with the emotional pain she or he experiences. Dear comments on the implications of this model for professional service providers.

Prevention and Restoration

Interest in crime prevention is not a recent phenomenon. Since the 1970s, however, there has been a resurgence in anticipating and appraising crime risk and the initiation of action to remove, or at least reduce, that risk.

In an abridged paper, **David Hunt** subscribes to a multi-agency approach to preventing crime. He warns that a lack of cooperation between government and non-government agencies can obstruct crime prevention efforts. Consequently, agencies should focus their efforts on the identification and development of

common purposes and functions. He concludes with a list of key ingredients for crime prevention based on his experience in South Australia.

The paper by **Ken Rigby** provides a theoretical overview of a worrying trend towards victimisation of children at the hands of school yard 'bullies'. Rigby contends that school yard violence is often assumed to be part of 'growing up'. Consequently, he adds, the seriousness of the problem is often understated. Rigby outlines several strategies to deal with incidents of bullying.

Excerpts from the paper by **Rika Snyman** provide a picture of one of the groups most commonly affected by murder. She describes a range of responses which ought to be employed at the macro and micro levels. Returning to an earlier theme in this section, Snyman concludes with several observations about victims' services, especially for indirect victims of murder.

Restorative justice is a concept inherent in the notion that the criminal justice system ought to be seen as keen to reconcile or restore victims and offenders as it is to exhibit official state disapproval of an offender's wrongdoings. Offenders are forced to confront their wrongdoing while being empowered to develop their own negotiated settlement with the people they have wronged. As a result victim-offender conflict is placed at centre stage rather than at the periphery of the criminal justice system. The final paper in this section is an overview of research on a pilot victim-offender reconciliation program conducted in Hannover, Germany. **Ute Hartmann** reports that an intransigent prosecutorial attitude can impede efforts to resolve conflict and stabilise the victim-offender circumstance. Indeed, she asserts, criminal justice practitioners (in this study the prosecutors) as well as the participants must want the process to work if 'restorative' justice is to occur.

Group Work with Victims of Crime: Mutual Aid in Practice

JOHN OLIPHANT

The most significant achievements of human endeavour are the product of human cooperation. The Victims of Crime Service (VOCS) in South Australia uses this fundamental principle in designing programs to assist people who have been victims of crime. Group work is an important element in the package of services that is offered by VOCS. One of the major group work programs is a group for women whose children have been sexually abused. This paper describes this group and attempts to make some of the connections between the practice and the theories that underpin it.

Women whose Children have been sexually abused

Early in 1991, VOCS started to experience a rapid increase in the number of referrals of families in which a child had been sexually abused. In the first six months of 1990, 18 new cases of child sexual abuse were referred to VOCS. By 1991, such cases were being referred to VOCS at the rate of about 15 every month. This massive increase was caused by a combination of a number of factors including the high underlying rate of child sexual abuse in the community, the growing awareness that this is a crime and that it is acceptable for people to come forward and ask for help, and the raising of the profile of the agency in South Australia.

From our work in this area, it became clear that there were some excellent services available to assist children who had been sexually abused, but the services for the non-offending parents of such children seemed to be less adequate. Yet our experience of working with these families taught us that in many of these situations the mother was the key figure in the family, and her recovery was critical to the long-term well-being of the whole family. The child's progress was made extraordinarily difficult if the mother was not making a similar recovery from the trauma.

We also observed that, in many families, if the children who had been sexually abused received good support at home and appropriate professional counselling when needed, the children often made significant and relatively rapid progress towards recovery. However, the non-offending parents often appeared to be less resilient. For them, the issues (such as their feelings of guilt and anger) seemed to linger and continue to affect their lives for long periods of time.

From previous group work experience at VOCS, a group based on the mutual aid model seemed the most appropriate for these clients. We decided that we would have six or eight sessions, on a weekly basis, for two hours at a time. The meetings needed to be in the morning, in order to allow time for people to travel home to collect children from school. At this stage, the group was an experiment and so we made no plans beyond six or eight weeks, at which point we would review the situation.

We reviewed our caseloads and selected six people whom we were seeing for individual counselling. The basis of our selection was simple: we chose people who we thought would respond positively to a group situation and who reacted favourably to the idea of meeting others who had experienced a similar trauma in their family.

At this stage, we were planning a group for non-offending parents of children who had been sexually abused. It so happened that the six people we invited to the group were all women. This was not surprising as we were seeing very few fathers for individual or family counselling at the time. Those whom we were seeing had no interest in attending a parent's group. However, once the group had started, we realised that this chance gender selection had been critical. For many of the families, the offender had been the father or father-figure. It would have been extremely difficult for the mothers from those families to cope with the presence of fathers in a group such as this, in which such intense emotions would be laid bare. There would have been the risk that any fathers present in the group could have become the target for the rage that the women felt towards the offenders.

Another complication of which we were unaware before the group started, was that those mothers who were themselves victims of child sexual abuse might have found it difficult and restrictive to participate in a mixed gender group. With the benefit of hindsight, it would be inappropriate to run a mixed gender group for parents of children who have been sexually abused.

As the weeks passed, the importance of this group for the women seemed to grow. At the sixth session, we were due to review whether or not the group should continue. By this stage, it was clear—both from our observations and from individual feedback—that the group was playing a vital role in these people's lives. It was making a significant contribution to their ability to cope and to recover from the crimes that had been perpetrated on their families. There was no question but that the group should continue.

In any group work venture, two of the most important factors are selection and clarity of purpose. We have a few fundamental criteria that we use in selecting people for the group. The potential participants must be mothers of children who have been sexually abused. We allow the women to define whether the crime has occurred. There does not have to be police involvement (although,

in practice, the police have been involved in most of the cases). There is no limit on time or age. Thus some of the mothers have children who are now adults themselves, but who were sexually abused in the past. In these situations, the mothers may only be dealing with the issues now (they may have only recently discovered that the abuse occurred). For these women, the issues they face are similar to those confronting much younger families. The fact that these older women are at a very different stage in their lives does not detract from the group, indeed, their presence helps to universalise and normalise the feelings and reactions that all the women experience.

All potential participants have to be interviewed and assessed by a VOCS social worker before joining the group. This is both to ensure that the above criteria are met and to assess whether this is the right time for this particular person to join a group. We have learnt that some clients benefit from having some one-to-one counselling before joining a group of this kind. We are happy to receive referrals to the group from other agencies and it is entirely acceptable for people to attend the group, but receive their one-to-one counselling elsewhere, providing that, in all cases a VOCS social worker conducts an assessment interview.

Shulman (1979) identified a number of different mutual aid processes that occur within a group. These included the sharing of data, the dialectical process, discussing a taboo area, the 'all-in-the-same-boat' phenomenon, mutual support, mutual demand, individual problem solving, rehearsal and the 'strength-in-numbers' phenomenon. All these processes have been evident in this group.

The discussion of taboo areas is a good example of a mutual aid process. To an extent, the whole subject of child sexual abuse is still regarded as taboo in the community. It is generally not a topic that can easily be discussed with friends and relatives. Not only have the women been able to talk about the subject quite openly in the group, but they also have been able to disclose actual details about the abuse to an extent that would probably not be socially acceptable in any other context.

The level of mutual support amongst the participants in this group has been extraordinarily high. The women have been able to share feelings and display emotions in a way that would not be possible in their usual family and social networks. The strong empathy that the women show for each other and the knowledge that the others in the group really do understand what they are talking about constitute a powerful healing force.

Many of the women who attended the group also received one-to-one counselling from one of the social workers at VOCS, either prior to or during the time that they attended the group, or both, although it should be noted that the frequency of the individual sessions usually decreased markedly once the women joined the group. The experience of the social workers has been that, in most cases, the one-to-one work has been enhanced by the woman's attendance at the group. Far from being competing processes, the two seem to operate ideally in tandem. Our experience appears to fit with the observations of Shulman who wrote that,

> *Group discussion, rather that robbing the individual work of its vitality, will often enrich the content of the individual counselling session . . . In like manner, the*

> *work in the individual sessions can strengthen a client to raise a personal concern in the group . . . Thus, the group and individual work can be parallel and interdependent, with the client free to choose where and when to use these resources for work* (Shulman 1979, p. 127).

Finding mothers in the group who are themselves adult survivors of child sexual abuse was unexpected. About half of the women in the group were themselves sexually abused when they were children. This has enormous implications for their therapeutic needs: it means that as well as coping with all the issues connected to their children's sexual abuse, they also have to confront their own childhood issues, in many cases for the first time. It also usually means that the two sets of issues become entangled. Our experience has shown that these women are more likely to need individual counselling and are more likely to attend the group for much longer periods of time.

Conclusion

The dynamics of mutual aid have the energy to transcend the boundaries of formal structures. These processes result in not only the healing of the individuals, but their empowerment. Thus, the whole purpose of assisting victims of crime is fulfilled.

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Preventing Re-Victimisation: The South Australian Experience

ANDREW PATERSON

This paper describes some of the basic requirements of systems that set out to meet victims' needs in ways that prevent re-victimisation. These issues can be reduced to ten key points.

Victim support programs offered by a variety of professional groups should as far as possible be 'victim driven'. It is important that all organisations which purport to offer victim services should have built-in guarantees that victims can express their opinions about services that are delivered and about the way in which the services are offered. It is also important to avoid victim support being hijacked by human service professionals, politicians or, for example, the 'law and order' lobby. Much has been written elsewhere about this possibility but agencies must be eternally vigilant to avoid the dangers of such a direction. In a recent article Richard Harding has been trenchant in his criticism of victim support agencies in Australia that have gone the way of 'offender bashing' (Harding 1994, p. 41). There is no doubt at all that such criticisms are well founded, even if in Richard Harding's case not accurately aimed. Victim service agencies which concentrate their efforts on tougher penalties and the reduction of offenders' rights will, in the long term, achieve little by way of creative structural change as they will be largely labelled, filed and ignored by the prime movers in the criminal justice system. Progressive police services cannot afford to be associated with such an emphasis nor can court or correctional service organisations. Victim support agencies that subscribe to the 'law and order' lobby therefore inevitably end up merely providing ammunition for the tabloid media to fire, usually with no long or even short-term effect. Such a direction may even be counterproductive in that it gives the general public a false

impression of who victims are and what they hope to achieve by way of justice. The unmitigated desire for revenge and punishment is uncommon enough amongst crime victims, and provides at best only short-term relief in terms of their loss.

Other pitfalls in this particular area include those of a political nature. One of the difficulties a movement which is beginning to gain momentum faces is that of being politically acceptable and therefore popular in terms of the ballot box. The proliferation of victim support services which have grown in Australia seem to be characterised by conservative and timid advances that are, by and large, not well funded. Most represent a political 'toe in the water' to gauge the interest of the electorate before real commitments are made and real progress achieved. Politicians must be encouraged to become involved with victim support. Victim agencies are unable to progress in a political vacuum or in a state of political naivety.

Effective prevention and support programs for victims must also involve non-government and government agencies who have 'open' agendas and who are determined to provide services accessible to victims at all levels in the community. The importance, for example, of police referral cannot be overestimated, and from a world perspective victim support agencies have undertaken a variety of responses to that particular problem. Our colleagues in the United Kingdom, for example, have achieved an excellent referral process where local police stations fax details of recently victimised citizens to the nearest victim support agency which in turn makes a decision as to how to offer service to that particular victim. In Europe, the United States, Canada and other jurisdictions there is a constant emphasis on contact with police services in order that operational police might regularly and accurately refer victims to appropriate services and support. In South Australia we have taken the opportunity to incorporate victim education into all levels of police training and the Victims of Crime Service has earned very high levels of access to such training programs. The fact that the South Australia Police Department has its own Victims of Crime branch which has a clear policy and education mandate, makes such access even easier.

Services for crime victims must be high profile media wise, well publicised and easily accessed by victims and their families. The obvious problem is that such programs are only relevant after a person has become a victim. People's unwillingness to consider the possibility of becoming a victim must be countered by a combination of comprehensive publicity programs combined with the establishment of reliable operational referral from police to victim support agencies.

Most victim support programs operate in the complex environment of the criminal justice system and must therefore continually face the challenge of working within the inevitable realities. In that sense police, court officials, correctional services officers and victim support people themselves must be flexible and adaptable in all situations. The danger of stereotyping victims and situations is always present as is the need to be capable of problem-solving that is based on lateral thinking.

Those seeking to support victims of crime and to free them from secondary victimisation should also realise the need for patience and realism as far as structural change is concerned. There are no 'quick fixes' in this situation and if change is to occur within well established bureaucracies such as court systems, they will be incremental and based on long periods of negotiation, study and compromise. Courts are amongst the most conservative institutions in our society. Independence from the political mainstream is an obvious necessity. Judicial re-education, particularly with regard to such issues as gender awareness, is a worthwhile goal that must be worked towards with patience, sensitivity and above all intellectual respectability. Such systems will not change in response to anger, abuse or constant carping criticism; they will only begin to evolve into victim aware systems as a result of sensible long-term negotiation, patience, tact and careful planning.

Victim support programs incorporating police, courts, correctional programs and victim support agencies must always be open to change and innovation within themselves. A great deal of energy must be conserved and directed towards continually pushing back the edges of the debate within such areas. It is equally important to encourage the participation of academic victimologists who are aware of local issues and who can become a focus for community discussion. Unfortunately, Australian victim support practitioners have far too little contact with academic criminologists and others. It is hard to think of an Australian academic victimologist who has made a significant contribution to the debate, although several criminologists from time to time express the product of their thoughts in this area. This is in marked contrast to that which occurs overseas. In the United Kingdom and particularly in The Netherlands, I am aware of the close working relationship between academics and victim support personnel to the point where academics write as a result of their experience as administrators within national victims support movements. This ensures a greater degree of rigour with regard to the evaluation and assessment of victim support programs. There is no doubt that we have reached in most countries a level of accountability where such assessment of outcomes is not only desirable but also imperative.

Victim support agencies should have a far more obvious role in crime prevention programs. Clearly, when operating in a support role, professionals and volunteers inevitably accrue large quantities of information about the effects of crime on victims and their families and therefore are able to make a significant contribution to prevention programs.

Programs involving crime prevention amongst elderly people have been developed within the Victims of Crime Service as a result of research done in Australia and elsewhere regarding high levels of anxiety amongst elderly people which sit oddly alongside low levels of criminal victimisation amongst this age group. In order to address such a need, VOCS in 1989 developed a pilot program which addressed a variety of factors affecting anxiety levels amongst our elderly population. The program is based on information dissemination and discussion not only concerning the effects of crime but also its actual incidence amongst the elderly. Importantly, it explores media reporting and the ways in which the

elderly might equip themselves in such a way as to become less anxious of crime and simultaneously less likely to be victimised.

There is a need to develop professional interfaces with and between a wide variety of actors within the criminal justice system. Victim support agencies need to be in constant conversation and exchange with judges, lawyers, police, correctional service authorities, academics and court administrators. As far as possible such contact should avoid confrontation, as such a tactic rarely results in significant, constructive organisational change. It usually closes doors, which may take some time to re-open. We must therefore be in the business of changing opinion in the hope that such change will bring about differences in practice, policy and structure. Academics have a significant role to play in such areas, particularly academic lawyers, criminologists and those whose major focus is victimology. We need to continually remind ourselves of the need to enhance our reputation as 'professionals', meaning that we approach issues of reform, change and enlightenment from more than a merely emotional point of view.

Victim support agencies must also operate within the political spectrum in order to bring about the changes we desire within the criminal justice system. In South Australia political change involving the United Nations Declaration of the 17 Rights of Victims of Crime, Criminal Injuries Compensation programs, victim impact statements and the protection of so-called 'vulnerable' witnesses have been an important part of the change we have achieved as we seek to prevent re-victimisation. Such legislative activity provides a framework for victim support and is also a good retrospective measure of any progress that has been made. Legislation, like almost any human achievement, matures, changes and becomes more effective and comprehensive with the passage of time. It is therefore essential that victim support agencies should be unashamed of the fact that they should become and remain politically aware and active in order to influence the criminal justice system at its very roots.

Once a person becomes a victim of crime they are public property. In Australia, as in any democratic country that enjoys the benefits of a 'free press', the media are largely unregulated apart from quasi self-regulation. They are always willing to exploit victims on the basis of the public's 'right to know'. In seeking to prevent such re-victimisation, victim support practitioners should not simply rely on the justness of our cause to bring about the change of behaviour amongst the media. We must respect the media's ability to ignore our sometimes high moral ground in the interest of getting their story. We therefore need to forge the relationships with media that will, in the long term, convince them that the changes in attitude and behaviour will not necessarily affect the profitability of their undertakings. At all times when dealing with the media we need to make our expectations of them crystal clear, setting our own standards by refusing to cooperate with media processes that we know will cause further harm to victims. In South Australia we have recently introduced a media awards program to which our State Governor has kindly lent her name. The Mitchell Awards for Excellence in Crime Reporting will recognise journalistic efforts that in turn recognise the needs and sensitivities of victims of crime in this State. We hope that in this way we will communicate our expectations clearly and recognise those who meet them.

Victims of crime must be considered important to the criminal justice system. Police services in particular must be able to follow their natural inclinations with regard to offering victims information and support that a decade ago may not have been acceptable as 'real' police work. In South Australia this readiness has been ably demonstrated by the creation of a Victims of Crime Branch within the Police Department and the appointment two years ago of specialist police victim contact officers initially in city locations and increasingly in rural areas as well. Police victim contact officers have the role of following up crime reports to ensure that victims of crime are receiving the services, support and respect that the Declaration of Victims Rights intends. They are also in a unique position to make referrals to victim support agencies and to ensure that such referrals meet the needs of the victims with whom they have contact. The effect of such police activity on the overall culture of the police service cannot be overestimated. The initial confusion that surrounded these appointments two years ago has been replaced by an acceptance of and cooperation with Victim Contact Officers by their operational colleagues. It is still clearly the case that a well supported, well informed victim makes the best possible witness for the prosecution and therefore it is in the interests of police departments to provide such services and support.

Conclusion

Ezzat Fattah expresses the concern that by providing sophisticated victim support, including counselling and advocacy, organisations might unwittingly delay the process of natural healing amongst victims (Fattah 1986). Most of us have too few resources to over-service crime victims, but Professor Fattah's warning is timely and well made. We are certainly living in a time when, as never before, agencies supporting crime victims are required to evidence levels of maturity and sophistication that entitle them to full participation within the criminal justice system. The only guarantee that such a level of sophistication and maturity can be reached and maintained involves being open to constant feedback from victims about the services and support offered to them. It also involves building bridges to other professionals, police, courts, corrections and academics who will assist us by their input in the continued process of preventing re-victimisation and restoring self-determination and freedom to those who have become victims of crime.

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Towards a New Millennium in Victim Assistance

MARLENE A YOUNG

What have we learned from the Experience of the last Twenty Years?

The path we seem to be on now is a path leading towards increased violence and victimisation in our global society. We have learned that understanding the trauma of victimisation is a constant, evolving process. We have learned how fast things are changing in our world. We have learned how fast our world is 'shrinking'.

Can we use lessons from the past to establish the foundations for our future? Yes, for these lessons teach us things both old and new. The 'old' is that which is based on concepts tempered with the wisdom generated by victims and survivors over the years, a wisdom that is ever-developing as those of us who observe, work with and study victimisation deal with new disasters, crimes and violence (and experience them ourselves). That wisdom can be reduced to four basis elements: compassion, community, character and courage.

The 'new' is how we define those elements in light of our future needs. So let us look at each element.

Compassion

In the future, compassion must be explained in terms of victim assistance but not simply traditional services such as crisis intervention, court support or advocacy provided to crime victims. Compassion in the future must encompass a world of victim assistance that addresses all types of trauma victims? crime victims, accident victims, disaster victims and others.

It should help remind us that 'victims' may also include 'offenders'? who are justly blamed for the harm they have done to others, but not for the victimisation done to them. Some victim-oriented groups are beginning to provide basic individual and group crisis intervention to gang members and prison inmates in recognition that good victim assistance is a part of violence prevention. It was our

colleagues working with victims of domestic violence who invented treatment programs for batterers and who seek now to reclaim those who can unlearn the teachings of violence? and to keep a close eye on those who do not respond to the treatment.

Compassion should make us call for immediate assistance within twenty-four hours of any serious victimisation. It should also help us revisit the kinds of assistance that is provided. For instance, we often speak of crisis intervention as involving three basic concerns: providing victims with safety and security, providing them with an opportunity to ventilate and receive validation for their stories and helping them predict and prepare them for their future. But how does a victim service worker provide a sense of safety and security to a child who lives in an unsafe world? What does safety mean in the context of randomly speeding bullets in the Chicago Housing Authority or the open streets of Sarajevo? Should victim service providers simply say there is nothing we can do or can we provide some measure of respite or rest to such victims by helping them develop specific coping skills or encouraging them in routine tasks or providing them with symbols of a 'normal world'?

Compassion should help us understand that communities need crisis intervention as much as individuals do. When a community is ripped apart by crime, violence or disaster, the community needs an opportunity to begin to rebuild through group debriefing or defusing sessions. The community needs a chance to develop its story, a story that will be a compilation of its community members.

Compassion means providing support to each other. Victim advocates or victim counsellors become a part of the victimised as they listen to victims and visit victimised communities and lands. They, like rescue workers, law enforcement officers and emergency room workers, absorb some of the suffering and pain of those they help. Constant exposure to devastation, destruction and death changes one's assumption about the world. Care of the caregiver is an essential element in the compassion of the future.

Compassion means recognising that for most victims there is a spiritual dimension to enduring, surviving and transcending a crisis. In the most horrendous victimisations the process of re-establishing a meaning in life is an essential part of regaining hope and a sense of future. For those who cannot, their lives may be forever bifurcated in a dissociative type of existence. Jeffrey Jay talks about the 'catastrophic internal fissures of the soul' which are further 'aggravated by the relentless external pressure on the victim to maintain the breach between private, ravaged self and private, acquiescent persona'. Compassion means we must find a way to restore hope.

Community

The second foundation for our future is that of community. We must learn to forge bonds of community that re-emphasise our human bonds to reduce our isolation and our fears. To forge new communities we need to overcome our emphasis on difference and focus our attention on similarities. Cultural contexts may cause different peoples to cope differently with crises, but pain knows no such boundaries and the commonality of the reactions of trauma and crisis are

irrefutable. In the midst of trauma and pain we look to others to help us find our way.

Forging community bonds means using new technologies to increase communication and expedite personal contact. As technology becomes more sophisticated, it may give us an opportunity to increase services around the globe. Information, referral and even counselling sessions may be designed for implementation by computer technologies. Language barriers may be broken by instant translations. An international victim assistance program implemented through the United Nations may be prepared to respond to crises throughout the world at a moment's notice. Communities may be bonded not as a result of geography, location, ethnicities and the like but by similarities in interests, values and patterns of understandings.

The emphasis on rebuilding a sense of community is a natural corollary to the need for future victim assistance efforts to emphasise the need for character.

Character

Individuals and communities need to be held accountable for their character. This accountability is a fundamental part of the new orientation by the National Organization for Victim Assistance (NOVA) and the victim assistance movement in the United States to a concept called Restorative Community Justice which addresses crime victimisation. It calls for accountability on the part of offenders, victims and their advocates and community in the dispensation of justice.

The offender is held accountable for crimes that are committed in four ways. The first is fair retribution. Offenders should be punished for breaking the law and for hurting both their victims and their society. The punishment should be swift, sure and consistent from one offender to another. Potential offenders should be on notice concerning the possible punishments.

The second method of accountability is victim restitution. Offenders should be held accountable for full restitution to victims for the harm done. That restitution should include compensation for monetary damages incurred in addition to assessments for pain and suffering. If an offender cannot pay at the time of sentencing, the restitution order should be made a part of the record and remain as a judgment against him or her until fulfilled or the offender dies.

The third method of accountability is community restitution. This is an assessment against the offender for the damage done to the community. It may be an actual reimbursement for financial or property loss or in the form of service to community in order to help rebuild community bonds.

The fourth method of accountability is offender remorse. There is a growing sentiment that offenders ought to say they are sorry for the victimisation that they have caused and that the justice system should provide the inducements to make this happen. This might be done through programs we call victim offender reconciliation programs, or the impact of victimisation classes for offenders, or victim impact panels. Victims should not have to accept their wrongdoers' apologies? but they should be made. There are many who believe that the difference between a redeemable offender and one who should be removed from the community may well be whether the offender can experience and demonstrate genuine remorse.

If these elements of offender accountability are met, then the offender has a final obligation to the community and the community has an obligation to the offender. That obligation is to work out a plan for restoring the offender to the community. Offender restoration means providing an opportunity for the offender to return to the community and to participate in community functions like other community members. If the offender has not met the obligations of accountability, then the offender should be removed from the community through prison or exile.

Concepts of 'Restorative Community Justice' for offenders are not just a vision for the future but it is also a reflection of ancient tribal justice. Just recently in Everett, Washington, the Supreme Court judge approved a sentence addressing both the victim and the offender through restorative jurisprudence based on Tlingit tribal law. The criminals were two teenage Alaskan Indians who had committed a robbery of a pizza deliverer. They stole less than forty dollars but the victim was severely beaten with a baseball bat and his hearing remains permanently impaired. The punishment was banishment for one year on an uninhabited island with only hand tools and enough food for two weeks. The victim received a pledge from the Tlingit that a new house would be built for him and his medical bills would be paid. Community leaders would monitor the youths from time to time, but would provide them no assistance. The tribe suggested that the banishment would require these young men to improve themselves and to think about their crime.

Restorative Community Justice does not only address the offender. It also asks for victims to be accountable for their own restoration. Victim accountability means working with victim assistance programs, if needed, to begin the healing process in the aftermath of victimisation. It also means working with other community members to play an active role in victim assistance and violence prevention efforts in the future. It is not suggested that victims pursue these paths of restoration without help. Indeed, twenty-four hour crisis intervention, supportive counselling, criminal justice advocacy, compensation, restitution and post-case-disposition referrals are all a part of the victim service support programs. But many victims are recognising that victim assistance is the beginning of victim involvement. Finally, character in the Restorative Community Justice model demands that the community take responsibility for itself to ensure that the needs of justice are met.

As members of the community, victim assistance providers must take responsibility and become accountable for the quality of their service. Ethical codes of conduct need to be standardised and adopted for victim service providers. NOVA recently adopted such a code for victim assistance providers in the United States. Victim assistance professionals are being asked to sign the code and an accompanying agreement to participate in disciplinary proceedings should the code be violated. In return, they will be issued an ethical certification that should be displayed in their offices. The system relies upon self-enforcement and the monitoring done by victims receiving service.

Service standards for individual victim service professionals and for victim assistance programs need to be established and monitored. Internal disciplinary procedures must be implemented so that when codes are ignored or standards violated, programs and people can be accountable.

Community responsibility means that the justice process will be implemented by community members in conjunction with community-based criminal justice

officials. 'Community policing' has had a resurgence of attention and more and more law enforcement agencies are adopting some form of it. Chicago's strategy, to take one example, has several key elements maintaining 'beat integrity', designed to encourage people and victims to get to know their local or 'beat' officers. It includes community-based problem-solving aimed at involving community representatives, community leaders and victims involved in prioritising problems of crime and disorder, identifying strategies to address those problems, assigning responsibility, and providing a means for measuring success, training for officers and supervisors which include inter-personal communication, problem-solving, alliance-building and for sergeants and lieutenants, advanced leadership skills. And Chicago is exploring the idea of placing a victim advocate in every police precinct to further the relationship between community and law enforcement.

But community police are not the only part of the criminal justice system that needs to be returned to the community. Community prosecutors could be established in every neighbourhood in cities and in small communities as well. Portland, Oregon, now boasts three such prosecutors. The original job description for these neighbourhood-oriented prosecutors included dispute mediation among feuding neighbours, case diversions in juvenile crimes, first-time offences, and petty property crime and facilitating the community problem-solving developed between local police and community members.

Drug courts are becoming more common in some cities as well. These are usually focused on dedicated drug treatment or speedy trial and differentiated case management. The first court to employ drug treatment as an integral part of the processing of drug colonies was the Dade County (Miami), Florida, Drug Court. It began in June 1989 and soon became a model for other efforts to divert defendants charged with drug offences into treatment. By the middle of 1993 there were at least 15 drug courts operating around the nation. There will soon be scores, perhaps hundreds, more.

Drug courts designed solely to reduce disposition time are found in Chicago, Milwaukee, New York and Philadelphia. Their concentration is designed to increase drug case expertise in one courtroom, to reduce time to disposition, to reduce drug felony caseload, to relieve pressures on non-drug caseloads and to increase overall trial capacity. Both types of community-based drug courts can help to maximise the efficiency of local courts and, as a by-product, to increase a fair dispensation of justice as well as access of victims and community members to the courtroom.

There are experiments with teen courts throughout the United States as a creative alternative to the juvenile criminal justice system. They are based on the philosophy that a youthful offender does not continue delinquent behaviour as often if a peer jury decides appropriate consequences for the delinquent act. By using community restitution, it is expected that offenders will better understand the importance of accountability to society.

Some judges, now considering the place of community courts in a restorative form of justice, are considering not only asking individual victims for impact statements at sentencing, but asking community leaders to represent the community position on sentencing and restitution. 'Community corrections officers' are currently based in city or country jurisdictions communities to

monitor the activities of restored offenders. Some of those jurisdictions are considering the idea of establishing citizen boards at the neighbourhood level to help monitor that process. Such boards would include victims and survivors. The boards would not only be monitors but provide continuing education to offenders on victim issues.

Victim advocates under this model would be a part of the realm of community police, prosecutors, judges and corrections. The justice system would be designed and implemented based on the particular character of the community, but it would also be accountable to a legal system that reflected the legal norms of the State or nation or even the world. State-of-the-art technologies could link all jurisdictions so that information was immediately and easily accessible for case disposition. Case disposition could be handled expeditiously. Indeed, some computer-assisted 'paperless courts' in the United States are showing that an offender caught red-handed, with no plausible defence to offer, can be adjudicated and sentenced within an hour or two of the arrest.

'Community responsibility' also means responsibility for prevention. For over a decade, NOVA has been urging communities to integrate victim assistance and violence prevention. But colleagues who promote violence-prevention programs rarely acknowledge the central part that victim assistance can play in a rational prevention scheme, while colleagues who provide victim assistance often avoid issues of prevention for fear of shifting the focus away from crime's casualties.

Yet if we are to avoid the certain dangers of victimisation in our future, we must address assistance and prevention as one. It is true that poverty, illiteracy, homelessness and hunger are parents to violence and suffering. But it is also true that abuse, neglect and victimisation also bequeath that legacy. A child who has witnessed the deaths of ten of his or her playmates in one year learns little regard for life, theirs or yours. Victimisation isolates victims and destroys communities. Victim assistance helps to restore both? a restoration that helps in preventing further victimisation.

Prevention is not only an issue with regard to victimisation caused by violence but also victimisation caused by natural disasters, disease, man-made accidents and the like. In the United States, every jurisdiction has emergency planning agencies, but most focus just on the physical relief and recovery issues that arise after a natural disaster. Few spend dollars, resources, or time on the prevention and mitigation issues, or issues of trauma assistance. Communities should have a responsibility to address prevention of all types of victimisation.

Character will demand much from us all in the future? victims, offenders and communities? as we face the trauma of victimisation.

Courage

The final word of wisdom from our past is courage. We will need courage as victim assistance providers and as members of the World Society of Victimology. We need a courage that goes beyond research, beyond helping individuals and beyond our efforts of the past. It should be a courage that gives us the energy to translate our knowledge and ideas and the values they impart into action.

In the United States, some of that courage has been demonstrated by the thousands of victim advocates who have stood up to the traditionalists and the naysayers opposing significant rights for victims and who have rallied the public

behind not only the idea of rights but the passage of constitutional amendments that make those rights a reality. Some of that courage has been found in volunteer trauma teams that are now responding to disasters, tragedies, and catastrophes throughout the world. NOVA's own Crisis Response Team will be returning to the former Yugoslavia again this October. Some of that courage has been represented by the efforts of the nations which have supported the establishment of the International Crime Prevention Centre in Montreal.

Our future demands that we have the moral courage to not only take on responsibility for ourselves but to take responsibility for others. We must have the determination and the vision to identify trauma and try to eradicate it, to look unblinkingly at the wrongs around us and try to right them, and to understand pain and try to mitigate it.

Yet we have failed more often than not in exercising that courage. According to PIOOM (*Programma Interdisciplinair Onderzock naar Oorzaken van Mensenrechtendingen*, or the Interdisciplinary Research Program on Root Causes of Human Rights Violations), there are twenty-two war zones throughout the world today, and 86 lower-intensity conflicts. There are 20 million refugees in the world; and this was estimated before some 2 million from Rwanda fled their country; and some 25 million internally-displaced persons. We fail today because there is an increasing reluctance of more wealthy nations to accept these refugees. We fail today because there is an increasing tolerance for conflict and war; if it happens elsewhere. We fail today because there is increasing acceptance of murder, if it happens to someone else.

In no place is this failure so striking as in the former Yugoslavia. Over 200 000 people have been killed, mostly civilians. About 2 000 000 are displaced persons or refugees. Whole communities have been obliterated; usually starting with the razing of sanctuaries that represent the ethnic and spiritual identity of a people. And despite the establishment of a War Crimes Tribunal by the UN Security Council, we have failed the peoples of Bosnia and Croatia as miserably as we failed the peoples of Europe before World War II. Professor Winston P. Nagan characterised the danger of our failure in the following statement:

> *I submit that this conflict does not necessarily test the viability of an international rule of law as 'traditionally' understood. Rather, this war of genocide where key players completely reject the values, procedures and objectives of international and humanitarian law, represents an even greater concern: the possibility of an alternative normative framework for world order as we approach the 21st century. If George Bush's vision or glimpse of a 'New World Order' was viewed as an incipient, if distant, prospect of 'light', then the continuing tragedy in former Yugoslavia; but also in Rwanda, Liberia, Afghanistan and other places; can also be seen as an incipient, but not too distant vision of a new Dark Age; a 'darkness' envisaged by Alexander Pope in* The Dunciad *in the 18th century; the Age of Enlightenment:*
>
> *Lo' thy dread empire. Chaos' is restor'd*
> *Light dies before thy uncreating word:*
> *Thy hand, great Anarch! lets the curtain fall*
> *And universal darkness buries all.*

And so, we fail today because we fail to denounce aggressors and impose the standards of compassion, community and character? of humanity? even, if need be, by force.

But when we think of the teachers of our lessons? the victims and survivors, who in spite of our failures, have remained helpful and hopeful for us all? we can be rejuvenated and think not of Pope's ugly world, but that of another poetic seer, Alfred Lord Tennyson, and the words he wrote in *Ulysses*:

The lights begin to twinkle from the rocks:
The long day wanes: the slow moon climbs: the
deep
Moans round with many voices. Come, my friends,
'Tis not too late to seek a newer world.
Push off, and sitting well in order smite
The sounding furrow; for my purpose holds
To sail beyond the sunset, and the baths
Of all the western stars, until I die.
It may be that the gulfs will wash us down:
It may be we shall touch the Happy Isles,
And I see the great Achilles, whom we knew.
Tho' much is taken, much abides: and tho'
We are not now that strength which in old days
Moved earth and heaven, that which we are, we are:
One equal temper of heroic hearts,
Made weak by time and fate, but strong in will
To strive, to seek, to find, and not to yield.

Criminal Injuries Compensation for Domestic Sexual Assault: Obstructing the Oppressed

IAN FRECKELTON[1]

The law in Australia relating to criminal injuries compensation is increasingly complex and inaccessible. Legislation throughout Australia's eight jurisdictions is remarkably disuniform and awards vary widely without apparent justification. Few cases are reported and appellate decisions in administrative appeals tribunals tend to be difficult of access. However, sums available for award to applicants in most jurisdictions are now substantial and recent decisions have opened up opportunities for multiple awards. What commenced as a relatively informal means of awarding modest sums of solatium to victims of criminal acts has transmogrified into an important means of procuring the next best thing to damages for victims.

The sums awarded can be substantial. In the Victorian AAT decisions of *J v. Crimes Compensation* (1993) 6 VAR 174 per J Rosen[2]; *WN v. Crimes*

1 The author acknowledges the valuable research afforded him by Sonia Bettega of McKean and Park, Solicitors, Melbourne.

2 Compare *Linda Wilson v. Crimes Compensation Tribunal*, unreported, Victorian AAT, 4 August 1994 per Ball DP.

Compensation Tribunal (unreported, Victorian AAT, 3 August 1994) and the ACT decision of Master Hogan in *Re Application for Criminal Injuries Compensation* ((1989) 103 FLR 297), the victims of sexual assault were awarded A$54 000, A$23 500 and A$50 000 respectively but amounts awarded and the principles for the awards are difficult to predict[3]. For a family in which long-term assaults have taken place, awards for direct and indirect injury may exceed in total A$100 000.

However, these cases are comparatively rare examples of genuinely benevolent interpretation of criminal injuries compensation legislation. Profound difficulties still confront applicants who are victims of domestic sexual assault, in particular children. Not least among these are the growing problems of statutory construction and case law interpretation which are rendering the area into one of the few 'expansion potentials' for lawyers. This paper will concentrate upon the difficulties confronting child victims of incest when they apply for compensation under the criminal injuries compensation legislation around Australia. Some of the problems are attributable to technical difficulties in the terms of legislation, others are reflective of a disinclination by government to permit major awards to victims but many find their genesis in a primitive understanding by the legal profession of the nature of the trauma caused to child victims by serial sexual assaults inflicted by trusted family members or associates.

Criminal Injuries Compensation Schemes

The payment of compensation for injury to victims and their dependants by the State is a relatively new phenomenon. Its purpose has been described as:

> *not to award damages of a kind comparable or analogous to damages which an injured party, as a plaintiff, might seek and recover from a tortious wrongdoer, but to give to the victim of a criminal act or omission some solatium by way of compensation out of the public purse for the injury sustained, whether or not the culprit is brought to book, and whether or not the culprit might otherwise be liable to the victim (Fagan v. Crimes Compensation Tribunal* [1981] VR 887 at 892; *see also* Duff 1987).

Thus, the jurisdiction is distinguishable from the civil damages area[4] in terms of criteria for entitlement and the key issue in most jurisdictions for the decision-maker is to determine whether there has been an injury, as variously defined, and whether the criminal act in question is the cause of the injury, even if not the sole cause (*see Savage v. Crimes Compensation Tribunal* [1990] VR 96 at 100). Awards are by way of a lump sum, in contrast to the all-encompassing accident

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3 Compare *Hards, Budds & Elliott v. Crimes Compensation Tribunal*, unreported, Victorian AAT, 4 August 1994 per Galvin DP, where only one award was made to each applicant in respect of multiple assaults and the amounts for the multiple sexual assaults were A$12 000, A$9000 and A$12 000 respectively.

4 *See*, for instance, the important decisions in the cross-vested jurisdiction of the Family Court in *Marsh v. Marsh* (1994) FLC 92-443 at 80 622 and *W v. H*, unreported, 18 March 1994, Family Court of Australia per Brown J.

compensation scheme existing in New Zealand. It is standard for crimes compensation legislation to be regarded as 'remedial' and so to be interpreted 'liberally' to the benefit of the claimant (*see*, for example, *Fagan v. Crimes Compensation Tribunal* [1981] VR 887 at 892). However, the extent to which such interpretation is extended varies significantly.

Diversity among Australian Schemes

Criminal injuries compensation regimes throughout Australia are diverse in both form and substance. A few examples paint the picture. In New South Wales and Victoria a Victims Compensation Tribunal and a Crimes Compensation Tribunal respectively have been set up to administer crimes compensation schemes, while in the ACT and in Tasmania the Master of the Supreme Court holds the jurisdiction. In Western Australia it is an assessor appointed for that purpose, while under the South Australian and Northern Territory schemes the function reposes with the District Court and Local Courts respectively. In Queensland the offender may be ordered by a court to pay up to A$20 000 but an application may also be made under the Criminal Code to the Governor in Council for an ex gratia payment (*Criminal Code Act 1989* (Qld), s.663 B).

There are quite different periods within which applications may be made. In South Australia (*Criminal Injuries Compensation Act 1978* (SA), s. 7(1)) and Western Australia (*Criminal Injuries Compensation Act 1985* (WA) s. 17) it is within 3 years of the commission of the offence unless dispensation is given. In Victoria (*Criminal Injuries Compensation Act 1983* (Vic.) s. 20(3)), the Northern Territory (*Crimes* (*Victims Assistance) Act 1992* s. 5) and the ACT (*Criminal Injuries Compensation Act 1983* (ACT). s. 10 (1A)) it is within one year of the injury or death unless the time is extended, while in New South Wales (*Victims Compensation Act 1987* (NSW) s. 17 (2)) it must be within 2 years of the act of violence unless the Tribunal allows a longer period. Under the Tasmanian *Criminal Injuries Compensation Act 1976* and the Queensland Criminal Code Act 1989 there does not seem to be any time limitation.

In Victoria (*Criminal Injuries Compensation Act 1983* (Vic.) s. 21) conviction is not a prerequisite, while in other jurisdictions such as South Australia (*Criminal Injuries Compensation Act 1978* (SA), s. 8 (1A)) the commission of a criminal offence must be proved beyond reasonable doubt[5]. Generally, the onus is upon the applicant to prove their entitlement on the balance of probabilities, although specific provision is made for ex gratia payments in South Australia (*Criminal Injuries Compensation Act 1978* (SA) s. 11) and Queensland (*Criminal Code Act 1989* (Qld) ss. 663C-D).

In Victoria, the Tribunal shall not make an award 'where the incident has not been reported to police within a reasonable time, except where special circumstances resulted in the criminal act not being reported' (*Criminal Injuries Compensation Act 1983* (Vic.) s. 20 (2)(b). In the Northern Territory there is an

5 The legislation provides a qualification: where the award is 'by consent'. In addition, the Attorney-General has wide discretionary powers set out in the legislation to make ex gratia payments: *see* s. 11.

almost identical provision save that the preclusion is that there must have been circumstances 'which prevented the reporting of the commission of the offence' (*Crimes (Victims Assistance) Act 1992* (NT) s. 121 (c)). The victim will also be precluded if they failed to assist police in the investigation or prosecution of the offence (*Crimes (Victims Assistance) Act 1992*)[6]. In Queensland, the offence must have been 'reported to a police officer without delay' (*Criminal Code Act 1989* (Qld), s. 663D(1)(c)(i). Otherwise, delay in reporting is not prohibitive. In New South Wales it is simply necessary that the act of violence has been 'reported to a member of the police force within a reasonable time' (*Victims Compensation Act 1987* (NSW), s. 20 (1)(b)). In South Australia the court must not make an order for compensation in favour of a claimant if it appears to the court 'without good reason' that the claimant:

> *(a) failed to report the offence to the police with in a reasonable time after its commission;*
>
> *(b) refused or failed to provide information to the police that was within the claimant's knowledge as to the offender's identity or whereabouts;*
>
> *(c) refused or failed to give evidence in the prosecution of the offender; or*
>
> *(d) otherwise refused or failed to co-operate properly in the investigation or prosecution of the offence and in consequence investigation or prosecution of the offence was not commenced or was terminated or hindered to a significant extent* (*Criminal Injuries Compensation Act 1978* (SA) s. 7(9A)).

Similarly in Western Australia, where the Assessor forms the 'opinion' that the applicant or a close relative did not do any act or thing which he or she ought reasonably to have done to assist in the identification, apprehension or prosecution of any person alleged to have committed the offence or alleged offence, the Assessor is precluded from making an award (*Criminal Injuries Compensation Act 1985* (WA) s. 24).

In Victoria (*Criminal Injuries Compensation Act 1983* (Vic.) s. 18), the ACT (*Criminal Injuries Compensation Act 1983* (ACT) s. 6) and Tasmania (*Criminal Injuries Compensation Act* (Tas.) s. 4(3)) compensation is given for 'pain and suffering', while in New South Wales (*Victims Compensation Act 1987* (NSW) s. 10) compensation for injury is defined to include compensation for pain and suffering and loss of enjoyment of life, while in a claim by a close relative of a deceased person it includes both categories as well as 'grief. 'Grief' is also a separate head of award in South Australia (*Criminal Injuries Compensation Act 1978* (SA). In the Northern Territory (*Crimes (Victims Assistance) Act 1992* (NT) s. 9) pain and suffering, the mental distress of the victim and loss of the amenities of life by the victim are all compensable, but 'mental distress' is explicitly provided not to include 'grief'. In Western Australia (*Criminal Injuries Compensation Act 1985*) (WA), s. 3) and Queensland (*Criminal Code Act 1989*

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6 Compare Wilson PM in *Bridget Ann Watts v. Crimes Compensation Tribunal*, unreported, Victorian AAT, 22 September 1992 at pp. 11-12.

(Qld) s. 663A) it is 'injury' which is compensable. This is defined broadly to mean 'bodily harm, mental and nervous shock' and to include 'pregnancy'.

Many more uncertainties and anomalies can be identified (*see* Freckelton 1996a forthcoming; Freckelton 1996b forthcoming). This is unsatisfactory because it is fundamentally unfair upon a victim of a crime of violence that she or he receive different entitlements depending upon which side of the River Murray a crime is committed on or upon whether an offence takes place in the west of Queensland or the east of the Northern Territory. The entitlements of victims to state compensation for injuries perpetrated upon them ought to be separate from the trial of offenders, should be recognised as an important aspect of state care of the vulnerable and the wronged and should be uniform Australia-wide.

In light of the extraordinary variation in crimes compensation schemes, a reference should be given to the Australian Law Reform Commission to assess the various models which exist around Australia, and in other countries, and to draft a model code of criminal injuries compensation for submission to the Standing Committee of Attorneys-General.

Curbs on Criminal Injuries Compensation Awards

A range of impediments has reduced the number and extent of awards made to victims of criminal acts:

(1) On occasion applications are denied in respect of criminal incidents that have not been promptly reported to police (*see*, for example, *Criminal Injuries Compensation Act 1983* (Vic.), s. 20(2)(b) unless justification for delay can be adduced by the claimant.

(2) Applications not made within the set period from the time of injury or death in most jurisdictions risk being denied, although the nature of the crime may be the reason for the delay in reporting and applying.

(3) Until 1993-94 in Victoria the practice in most jurisdictions has been for multiple sexual assaults perpetrated on the one victim by the one assailant over an extended period to ground only one application for compensation. This fails to recognise the cumulative damage wrought by long-term sexual violence upon children and domestic violence upon women.

(4) Limited understanding by the legal profession of the nature of trauma and the behaviour of victims regularly results in inadequate advocacy on behalf of victims and confused decision-making by those responsible for dispensing criminal injuries compensation awards.

Delay in Reports to Police

Multiple reasons exist why sexual assaults generally are not reported to police. The recent CASA report (Centre Against Sexual Assault 1993) found in its study that 20 per cent of the victims that it surveyed failed to report to police, although this figure is much lower than that reported in other studies (*see* National Committee on Violence 1990; CASA House 1990; Summers 1975; Freckelton & Bolton 1988; Victorian Community Council Against Violence 1994). The reasons advanced, however, are interesting:

Offender known to and/or feared by victim	66.7%
Fear of police/legal process	70.8%
Did not want friends/family to know	58.3%
Due to victim's disability	12.5%

In the context of children, many other factors also come into play, most pertinent of which is their disempowerment at the hands of their victim and their lack of access either to perspective on the crime committed against them or to resources.

In the area of incest, or family violence generally, it is simply not realistic or equitable for legislatures to impose arbitrary time limits within which reports must be made to the authorities. Those provisions that exist should be amended to recognise the nature of domestic assault and the dynamics created by assaultive family members.

Delay in Applications

Limitation periods in a variety of contexts have been described as 'the primary stumbling block for adult survivors of incest'. It is typical of the denial experienced by a large cross-section of victims that they do not report a criminal act against them for some considerable time. Delay is motivated by a maelstrom of different emotions engendered by the trauma experienced at the hands of the assailant.

That is in the case of the adult victim, but for the child victim, the psychiatrically, physically or intellectually impaired victim or the ethnically disadvantaged victim, sheer inability to report may be the explanation of the delay. The abuse of trust through the vehicle of sexual assault by an authority figure manipulates the victim's dependency and innocence to prevent recognition and revelation (*see Evans v. Eckelman*, 265 Cal Rptr 605 at 609 (Cal App 1 Dist 1990). However, to establish this, expert evidence needs to be carefully marshalled to explain the circumstances of the applicant, the problems confronting victims of sexual abuse in reporting the abuse and to link these considerations to the effluxion of time before reporting or applying for compensation.

As Lamm argued in 1991:

> *Although the victim may know that she has psychological problems, the [post-incest] syndrome impedes recognition of the nature and extent of the injuries she has suffered, either because she has completely repressed her memory of the abuse, or because the memories, though not lost, are too painful to confront directly. Thus, until she can realize that her abuser's behaviour caused her psychological harm, the syndrome prevents her from bringing suit. Often it is only through a triggering mechanism, such as psychotherapy, that the victim is, able to overcome the psychological blocks and recognize the nexus between her abuser's incestuous conduct and her psychological pain* (Lamm 1991).

Many states in the United States have enacted legislation modifying or extending the limitation period for the prosecution of sexual abuse cases 'in recognition of the fact that sexual abuse often goes unreported and even undiscovered for years' (*R v. L (WK)* (1991) 64 CCC (3d) 321 at 328-9). In 1992 British Columbia also amended its Limitation Act to enable survivors of sexual assault to pursue legal action at any time (*see* Limitation Amendment Act 1982 (BC), cl. 44).

Victorian authority suggests that in general terms the onus does not lie upon the late appellant to show 'an acceptable explanation for their delay' (*see Dix v. Crimes Compensation Tribunal* [1993] 1 VR 297, not following *Hunter Valley Developments Pty Ltd v. Minister for Home Affairs and Environment* (1984) 58 ALR 305) when seeking to prosecute an appeal out of time. However, the presence of time limitations upon the bringing of applications in most jurisdictions leaves the institution of an application years subsequent to the criminal act a precarious exercise. This, of course, is the norm rather than the exception in cases of sexual assault perpetrated on children by family members or friends, the assailant so often succeeding in persuading the child that dire consequences will follow upon revelation of details of the assaults.

The leading Australian decision in the area had the potential to be *Sharon Arnold v. Crimes Compensation Tribunal* (unreported, 10 December 1992). Ms Arnold claimed that on a number of occasions between 1974 and 1978 and again that in 1981 she was sexually assaulted by a neighbour who was a family friend. She said that she suppressed the memory of these assaults until she revealed them during counselling in the course of 1987. She reported them to police in December 1988 and swore in evidence that she was not aware of her right to claim compensation until some time late in 1989. In February 1990 she signed a claim form which was lodged by her solicitor in June 1990 and rejected by the Crimes Compensation Tribunal in May 1991.

The Administrative Appeals Tribunal allowed her appeal in part finding that special circumstances had resulted in the failure to report the criminal act but ruled against her in relation to whether an extension of time should be allowed in relation to her delay in applying more than one year after the injury. Unfortunately, although the matter was appealed to the High Court, special leave being granted against the refusal of the Full Court of the Supreme Court to overturn the decision of the Administrative Appeals Tribunal, little emerges from the decisions by way of helpful guidance for future cases.

The most compelling and extensive decision in the area is that of the Canadian Supreme Court in *M(K) v. M(H)* (1992) 96 DLR 289. In that case the

appellant testified that she had been abused from the age of 8 and penetrated by her father from the age of 10 until she left home at age 17. Her cooperation and silence were elicited by standard threats: her disclosure would cause her mother to commit suicide, the family would break up, nobody would believe her and finally he would kill her. The appellant tried to tell her mother what was happening to her when she was 10 or 11 and made unsuccessful disclosures to a school counsellor and a psychologist. At 17 she left home to live with another family and shortly afterwards married. After she bore her husband three children, she separated from him because she could no longer tolerate sexual relations with him (at 295). She sought and received counselling in which she was not able effectively to engage. She subsequently met another male, whom she ultimately married, and was prevailed upon to try counselling once more with a marital and family therapist.

This person testified at trial when she sued her father for damages that the appellant:

> *would have been unaware of the connection between the incest and her psychological and emotional injuries until she understood that she was not responsible for her childhood abuse, and had assigned the blame to her father* (at 295).

A psychiatrist also called by the appellant testified that:

> *the earlier disclosures indicated some awareness of the incest and its consequences, but it was not until the appellant began therapy that she could make a connection between the two. Although there may at times have been an intellectual awareness of the correlation between cause and effect, the appellant did not have an emotional awareness of the connection* (at 296).

The Canadian Supreme Court found that incest was both a tortious assault and a breach of fiduciary duty. Although the tort claim was held to be subject to limitations legislation, it was held not to accrue 'until the plaintiff is reasonably capable of discovering the wrongful nature of the defendant's acts and the nexus between those acts and her injuries' (at 296)[7].

As the English Court of Appeal had held in 1991, the Canadian Supreme Court in *M(K) v. M(H)* stressed that 'the larger social context that has prevented the problem of incest from coming to the fore' should not be ignored:

> *Until recently, powerful taboos surrounding sexual abuse have conspired with the perpetrators of incest to silence victims and maintain a veil of secrecy around the activity.*

The Court applied the United States criterion of focusing upon when 'the plaintiff discovers the causal relationship between his harm and the defendant's

[7] A further difficulty, too, of course, is the unawareness on the part of many victims of their entitlement to apply for criminal injuries compensation.

misconduct[8], and found that the action crystallised for limitation period purposes 'when the incest victim discovers the connection between the harm she has suffered and his childhood history' (*Raymond v. Eli Lilly & Co* 371 A 2d 170 (NHY 1977), the realisation of link between damage and fault. Speaking for the Court, La Forest J held that he was:

> *satisfied that the weight of scientific evidence establishes that in most cases the victim of incest only comes to an awareness of the connection between fault and damage when she realizes who is truly responsible for her childhood abuse. Presumptively, that awareness will materialize when she receives some form of therapeutic assistance, either professionally or in the general community* (at 305).

If this reasoning were extended to the criminal injuries compensation context, the preclusions existing in relation to reporting to police and instituting proceedings would have to be removed. Such an amendment to the law would recognise the fundamental problem experienced by so many victims of familial sexual assault who fail to identify the nexus between their subsequent functional difficulties and the sexual assaults perpetrated upon them[9]. An important obstacle would be removed to the bringing of legitimate applications for criminal injuries compensation.

Multiple Applications

The law in the criminal area in the sentencing context is consistently called upon to grapple with the impact of multiple assaults upon a victim and also with the moral culpability of the assailant responsible for serial assaults. It is common for assailants to be sentenced to a period of imprisonment for one form of sexual assault against a victim and then for other assaults, sexual and otherwise, to result in concurrent sentences or only partly cumulative sentences. This may be in the context of oral, vaginal and anal rape, assaults by multiple offenders or in the context of serial sexual assaults over a night of terror or years of incest. Frequently, victims express the complaint that such an approach devalues the real nature of the conduct of the assailant and the nature of the trauma and pain experienced by the victim.

The issue also arises in the criminal injuries compensation context where the approach of governments, having instituted compensation schemes, is to curb the extent of payouts to victims. This finds expression in Victoria for instance in probing and aggressive cross-examination of persons claiming to have been raped conducted by counsel appearing to assist the Administrative Appeals Tribunal on appeal from the Crimes Compensation Tribunal. It has also resulted in such counsel assisting, instructed by the Government Solicitor's Office, to

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8 *See Stubbings v. Webb* [1991] 3 All ER 949 where the English Court of Appeal was held also in a civil action for childhood sexual assault that the critical date was the plaintiff's realisation that her mental injury was attributable to the acts of her adoptive father and brother.

9 Other members of the Court cavilled at the use of the device of a discretion: Sopinka J at 338; McLachlin J at 339.

seek wherever possible to establish that a claimant's mental disorders are not attributable to criminal acts, expert evidence to that effect notwithstanding. The unfortunate reality in this era of government cutbacks is that more and more legitimate applications for compensation are being made, resulting in a significant burden for the taxpayer, and more significantly major expenditure being occasioned for governments dedicated to reducing their expenditure. The danger is that, government rhetoric notwithstanding, changes to legislation will take place not with a view to protecting victims, or even ensuring that the unworthy do not make fraudulent windfalls, but simply in order to save money. The most likely category of victims to suffer will be those who have been sexually assaulted when young.

A major problem in this regard is the uncertainty of the law in light of conflicting decisions. In a series of determinations, including *J v. Crimes Compensation Tribunal* ((1993) 6 VAR 174), *WN v. Crimes Compensation Tribunal* (unreported, Victorian AAT, 3 August 1994) and the ACT decision of *Re Application for Criminal Injuries Compensation* (1989 103 FLR 297) multiple applications were permitted in relation to quite separate acts of sexual violence against child victims. However, the other approach has gained the ascendancy in Victoria pending Supreme Court pronouncement. Bell DP in *Linda Wilson v. Crimes Compensation Tribunal* (Unreported, *Victorian AAT, 3 August 1994),* Galvin DP in *Hards, Budds and Elliott v. Crimes Compensation Tribunal* (Unreported, Victorian AAT, 4 August 1994) and MacNamara DP in *Bichel v. Crimes Compensation Tribunal* (Unreported, Victorian AAT, 20 March 1995) have rejected the making of multiple awards when more than one criminal act results generically in the same injury. This has confirmed the previously common practice in most jurisdictions for awards for criminal injuries compensation to be made in a global form, aggregating multiple assaults into one award.

The controversies are made the more poignant by a 1993 New South Wales Court of Appeal decision in which the Court had occasion to interpret the key limiting provision in New South Wales of s. 3(3) of the *Victims Compensation Act 1987* (*Director-General of Attorney-General's Department v. District Court of New South Wales* (1993) 69 A Crim R 324). Under s. 3(1) of that Act compensation is payable to a 'victim of an act of violence' which is defined as 'an act or series of related acts (as referred to in subsection (3)), whether committed by one or more persons: (a) that has apparently occurred in the course of the commission of an offence; and (b) that has resulted in injury or death to one or more persons'. Section 3(3) provides that an act is related to another act if

> *(a) both of the acts were committed against the same person; and*
>
> *(b) in the opinion of the Tribunal, both of the acts were committed at the same time or were, for any other reason, related to each other.*

This becomes problematical in the context of a series of, for example, sexual assaults perpetrated by a family member. The Court found that the acts had not been committed at the same time, they having been separated at intervals of one or more days. The question, therefore, became whether the several acts of assault

'were, for any other reason, related to each other' within s. 3(3). Mahoney JA expressed the view that the phrase 'at the same time' is to be given a broad operation and affirmed the District Court Judge's ruling that ordinarily it would be 'impossible to say' that acts 'committed days, weeks and months apart' are committed at the same time.

The way, therefore, is unclear as to whether victims of multiple acts of sexual assault can make separate applications for compensation when they have suffered the one injury or exacerbated a pre-existing psychic injury. Arguably, though, acts of molestation separated by significant periods of time have a cumulative and serious developmental impact upon a child. Multiple acts of sexual interference are generally much more serious than one; just the same as Walker would not suggest that one act of wife battery could induce battered woman syndrome (*see* Walker 1984). If compensation is for injury, then compensation should be available for multiple injuries which have an aggregate impact. It is relevant, too, to recognise that persons may suffer multiple or serial post-traumatic stress disorders as a result of separate incidents of trauma. To suggest that separate incidents of violent and intrusive criminality can simply be aggregated and dealt with as one is to diminish both the trauma occasioned by separate episodes of molestation and the nature of the cumulative damage of such interference upon a child's psycho-social development.

However, the danger is that this hard-fought recognition of the impact of crime upon victims of sexual assault will be overtaken by governments' desires to limit the effect upon their budgets of payment of compensation for multiple acts of indecent assault and rape to victims of domestic sexual assault.

Understanding of Trauma

The perception that the task of quantifying the impact of crime upon victims is a complex and specialised role is coming but slowly to the legal system. Even now Masters of the Supreme Court, Magistrates, members of Administrative Appeals Tribunals and Judges of District, County and Supreme Courts all serve terms as such assessors of damage. The irony is that in other areas of the law practitioners are well cognisant of their limitations. Personal injuries specialists are rarely to be seen prosecuting or defending armed robbers in the criminal courts and criminal specialists rarely are found representing plaintiffs in complex personal injuries actions. Even judicial officers are becoming more and more specialised in recognition of the trend toward greater specialisation in our legal system.

Victims, however, are not given the benefit of such specialisation. Decision-makers who have never encountered DSM-IV or standard works on trauma and victim impact are put in the position of having to deal with this sensitive area. No textbook exists in Australia or New Zealand on criminal injuries compensation. Works on administrative law and criminal law tend to give minimal treatment to the area. The result is that the tariff, for example, for the award for those suffering moderate or severe post-traumatic stress disorder is almost impossible to discern. Amounts awarded vary dramatically from one decision-maker to another and from one jurisdiction to another. Appeals are comparatively rarely instituted—in part because of the costs involved, the inadequacy of legal advice

proffered, and the formality of the second and third tiers of decision-making when appeals are run.

Cases before the first level of appeal bodies are rarely reported and it is mostly those who are briefed on behalf of government to oppose appeals by victims claiming they have received too little or nothing at all at first instance who have ready access to unreported decisions in the area.

The time has arrived for it to be recognised throughout the legal system that the area of criminal injuries compensation is a complex and specialised area of practice. This has ramifications for both the bodies and decision-makers whose task it is to assess the existence and quantum of injuries flowing from criminal acts, and for those who represent victims. Greater understanding of the whole area is needed and better communication between mental health practitioners and lawyers if victims are to receive awards which reflect the real level of impact of criminal activity upon their lives.

The Threshold Question

However, there is an important threshold question that must be addressed at the start of a reappraisal of the operation of crimes compensation schemes throughout Australia. That is, whether payment of a lump sum to victims of criminal acts is the best way of extending state beneficence and/or whether it is a better way than improving the quality of rehabilitation, trauma recovery and victim support services. Ideally these would not be mutually exclusive, but in practice they seem largely to operate as alternatives. This is not a controversy into which I shall enter for the purposes of this paper save to offer these reflections.

It is apparent that governments in a variety of jurisdictions throughout Australia are embarking upon ways of reducing the number and quantum of awards to victims of crime while maintaining the posture at pro-victim policies. The categories of victims most under threat in the mooted changes are sexual assault victims who have been repeatedly assaulted, particularly when young, victims of assaults on the sports fields and law enforcement officers and armed guards.

At the same time, moves have already commenced in some jurisdictions toward formulating increasingly stringent criteria for eligibility, in terms of the injury suffered, the nexus between injury and continuing disability, the contribution of the victim to the injury, and the cooperation of the victim with police and prosecuting authorities, these latter being rationalised as evidence of the victim's bona fides. The reasons for these changes are in essence financial because of the number and nature of claims that have been made in recent years as community awareness of entitlement to crimes compensation schemes has grown. In short, the schemes are said to be becoming too expensive for governments under current economic conditions.

The issue that these restrictions pose is whether the system of providing lump sums of consolation to victims of crime, rather than, for example, the New Zealand system of providing regular payments to those injured through any cause, remains worthwhile. Does the Australian model operate to enhance

recovery or in too many cases does it operate counter-therapeutically? Are decisions by those responsible for awarding compensation unacceptably erratic? Are the deficiencies of the systems so thoroughgoing that the award of a 'token' by way of consolation to victims of certain crimes in certain circumstances is so unsatisfactory that the money could be spent better? The answer must lie in the end-product: the way in which victims can best be assisted toward recovery from a major trauma to which they have been exposed through no (or little fault) of their own. The trends in accountability financing are increasingly in the direction of reducing lump sum payments and concentrating upon improving relevant resource availability and quality. It may well be that this will be the direction taken for dealing with victims of criminal injuries in the future.

Conclusion

Criminal injuries compensation currently plays an important symbolic and practical role in compensating members of the community for injuries of which they are innocent victims. It is time that the various models of compensation that are available in Australia be subjected to rigorous conceptual scrutiny and to cost/benefit analysis. If the compensation system is to continue in something resembling its present form but to function equitably, it needs a major overhaul and a reappraisal. The disuniformity of compensation schemes is thoroughgoing and inequitable and the criteria for and amount of awards vary without apparent justification. The Australian Law Reform Commission should be asked to produce model legislation for provision of compensation through specialist Assessors or Tribunals. Such legislation should be constructed on the basis of an informed understanding of the reasons why victims of domestic sexual assault fail to report to police, often for many years, and fail to lodge applications within a short period of the commission after the crime against them.

Provision should exist for multiple awards of compensation, up to a sensible figure, say A$100 000 to victims of multiple long-term sexual assaults, to reflect the profound psycho-social developmental damage often wrought by such criminal acts. Finally, careful selection processes should be devised, with appropriate education if necessary, to ensure that those given the important role of assessing injury as a result of crime are able to discharge their task informedly, compassionately and equitably.

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Compensating Crime Victims within New Zealand's No Fault Accident Compensation Scheme: The Advantages and Disadvantages

JOHN MILLER

The compensation of crime victims in New Zealand differs from other countries in that crime victims are treated in the same way as other accident victims. All are compensated as part of the no fault 24-hour cover accident compensation scheme.

The scheme provides compensation for those who suffer personal injury and it does not matter whether the injury was caused by a careless motorist or doctor, by the victim's own fault in skiing too fast or by a criminal in a deliberate assault. All that has to be shown is that the victim suffered a personal injury that has cover under the Act. Personal injury is defined as physical injury and includes any mental injury which is an outcome of the physical injuries.

Benefits available to injured persons include: weekly compensation; an independence allowance; cover for medical costs; and, rehabilitation assistance. Whilst the benefits available in fatal claims include: surviving spouse weekly compensation; and, compensation for each child under 18 (or 21 if studying). Other payments include a survivor's grant and a funeral grant.

The scheme is funded from premiums paid by motorists, employers and earners. The Government also makes a contribution for injuries which cannot be attributed to the above categories (for example non earners).

As the scheme has replaced workers compensation and the common law action for damages, employers, motorists and others no longer have to take out insurance against being sued in court for damages for personal injury. Thus in effect the scheme is mainly funded by transferring the insurance premiums that were previously being paid to various insurance companies into one central organisation: the Accident Compensation Corporation (ACC).

The ACC is the only organisation involved in distributing compensation. There is no need for lawyers; nor are there the other expensive trappings of a compensation system based on showing fault or negligence in the courts.

How did New Zealand obtain such a scheme? The Accident Compensation system came into force in 1974. Prior to that New Zealand had a capricious fragmented system similar to that still operating in Australia, the United Kingdom and elsewhere. There were various responses to an accident victim depending on how and where a person was injured. The four main systems were: the workers compensation system; the common law system of suing the defendant for damages through the courts; the criminal injuries compensation scheme; and, the Social Security flat rate benefit system as a safety net for those who did not succeed in obtaining compensation elsewhere.

Dissatisfaction with the workers compensation system led in 1966 to the appointment of a Royal Commission under a High Court Judge, Sir Owen Woodhouse. He reported back in 1967 with a startling report which went far beyond simply recommending changes to the workers compensation legislation. Instead, his report proposed a revolutionary no fault accident compensation scheme which would give 24-hour cover against accidents for everyone in New Zealand. It was to replace completely the common law system for accident victims and the other schemes.

The *Woodhouse Report* based its proposals on five guiding principles for a modern compensation system. Briefly, they were: community responsibility; comprehensive entitlement; complete rehabilitation; real compensation; and, administrative efficiency.

The *Woodhouse Report* also indicated that the comprehensive compensation scheme could be funded by abolishing the common law right to sue for damages for personal injury and by, in effect, diverting to one organisation all the insurance premiums currently being paid by motorists and employers to insure themselves against being sued. That one organisation later to be named the Accident Compensation Corporation would then be able to pay compensation to everyone injured in New Zealand from the existing funds going into the existing system.

This bold proposal was completely unexpected and the Government skilfully avoided making any decision on it by calling for a further report from their own officials. Over the years numerous other reports into compensation schemes have been conducted. Despite amendments and various recommendations, the principle of ‘no fault’ advanced in the *Woodhouse Report* has remained.

Experience has shown that the New Zealand Compensation scheme has both advantages and disadvantages for crime victims. The advantages which are most often spoken about include speedy settlement of claims and the ‘no fault’

provision. The disadvantages for crime victims, although like those shared with all other accident victims, are worthy of mention.

Most benefits are now paid under rigid regulation which do not provide any ambit of discretion. Lump sum payments have been abolished and replaced with independence allowances of up to $40 per week for a 100 per cent disability. (A Committee of Inquiry is also understood to have recommended that the independence allowances be able to be capitalised into lump sums.) There are limits on claims for mental injury which essentially exclude such claims unless the mental injury is an outcome of physical injuries to that person. Consequently, it has been necessary for the Act to be amended to provide specific remedies for victims of sexual crimes. Victims of other crimes, however, who suffer mental trauma but not physical injuries (for example the bank teller in an armed hold-up) are ordinarily not compensated.

The problem with exclusion of mental trauma also applies to secondary victims such as the families of murder victims. These people generally do not suffer physical injuries but only mental trauma from witnessing or hearing about the event. They too are uncompensated by the present legislation.

As the main compensation available under the scheme is earnings related compensation at 80 per cent of previous earnings, non earners are limited to an independence allowance, medical and rehabilitation costs.

Should crime victims be treated differently to other accident victims? This question is fundamental to any jurisdiction considering establishing a victims of crime compensation scheme. Various answers have been offered but experience in New Zealand shows that there is nothing which justifies a separate scheme for crime victims over the many other victims of accidental injury that inevitably arise from participating in a modern industrial society. Having said that, however, it is clear that there is a view in New Zealand that victims of crime have lost out through the cut backs in the 1992 Act. Indeed, returning to the comments above about damages for mental trauma, the exclusion from the 1992 Act of any mental trauma claims means that it is now necessary to sue for such damage. Again, the prospects against the usual run of criminals make it an unusual claim. However, claims against third parties are likely such as where a bank teller may sue his employer for lack of security precautions leading to the mental trauma suffered in a bank raid.

Before concluding this paper, it is opportune to describe two other victim initiatives currently topical in New Zealand. Firstly, a Criminal Justice Assistance Reimbursement Scheme has been introduced by the Government to provide some compensation for those who have been victimised and suffer loss of property or earnings because of:

(a) testimony or help as a witness for the prosecution or the defence in a criminal case that is punishable by imprisonment,

(b) assistance in the administration of justice, for example, reporting a crime or giving information to the police without being called as a witness before the Court.

(c) being in a close relationship with a witness or a person who assisted in the administration of justice, and as a result of assisting and caring for that person the relation was also victimised, and suffered loss of property or earnings.

Secondly, a scheme was announced in the 1994 budget to provide counselling for secondary victims such as the families of murder victims.

Given these new features and the New Zealand accident compensation scheme, it is submitted that in comparison with other persons injured in accidents, the victims of crime are in a more favourable position. It is true there are no large lump sums payable as in other countries, but if the victim is an earner who receives earnings related compensation at 80 per cent of previous earnings, that sum plus medical and rehabilitation costs can amount to a significant award if the incapacity continues for many years.

Attitudes to Victims: Issues for Medicine, the Law and Society

ALEXANDER MCFARLANE

Society's Ambivalence Towards Victims

A central concern of any legal system should be to protect the rights of victims and to deliver them justice. Yet society is always ambivalent about the rights of, and its obligations to, the weak, the injured and the disenfranchised. This is particularly the case when victims claim to be psychologically damaged by their experience and ask for compensation or support. Historically, these prejudices probably have been most openly expressed in society's management of and attitudes to war veterans and individuals seeking compensation for 'nervous shock'. For example, the ambivalence of the military in the First World War about how to deal with soldiers suffering from shell-shock is indicated by the fact that some claiming to suffer this condition faced the firing squad, accused and convicted of cowardice. The issues are conveyed in this quotation from *Death's Men* by Dennis Winter (1978), a book about World War I based on men's diary accounts. In this incident, the soldier to be executed by his comrades had previously fought with courage.

> *A man was shot for cowardice. The volley failed to kill. The officer-in-charge lost his nerve, turned to the assistant provost marshal and said 'do your own bloody work, I cannot'. We understood that the sequel was that he was arrested.*
>
> *Officially, this butchery has to be applauded, but I have changed my ideas. There are no two ways. A man either can or cannot stand up to his environment. With some, the limits for breaking is reached sooner. The human frame can only stand so much. Surely, when a man becomes inflicted, it is more a case for the medicals than the APM. How easy for the generals living in luxury, well back in their chateau, to enforce the death penalty and with the stroke of a pen sign some poor wretch's death warrant. Maybe of some poor, half-witted farm yokel, who once came forward of his own free will without being fetched. It makes one sick* (Evans, in Winter 1978, p. 140).

This quote raises the constant tension about how medicine should conceive of the victims of trauma. Many medical writers of the time saw these men as suffering from 'moral inferiority', they were 'moral invalids'. In this light these men did not deserve the status of patients but rather warranted dishonourable discharge or court martial (Winter 1978). This attitude contrasts to the evocative description by Sassoon of the suffering which these men endured. Sassoon had distinguished himself for bravery in combat and his war poetry (Herman 1992).

> *Shell shock. How many a brief bombardment had its long-delayed after-effect in the minds of these survivors, many of whom had looked at their companions and laughed while the inferno did its best to destroy them. Not then was their evil hour; but now; now, in the sweating suffocation of nightmare, in paralysis of limbs, in the stammering of dislocated speech. Worst of all, in the disintegration of those qualities through which they had been so gallant and selfless and uncomplaining—this, in the finer types of men, was the unspeakable tragedy of shell-shock . . . In the name of civilisation these soldiers had been martyred, and it remained for civilisation to prove that their martyrdom wasn't a dirty swindle.* (Sassoon, in Fussel (1983), p. 141).

The attitudes to the suffering of the victims of war were little different in the second world war. These are provocatively described by Germaine Greer (1994) in *Daddy, We Hardly Knew You* which is based on her reflections about her father's war experience and his traumatic neurosis.

> *When [the medical officers] examined men exhibiting severe disturbance they almost invariably found that the root cause in pre-war experience, mostly 'domestic'. This strengthened them in the belief that the sick men were not first-grade fighting material . . . The military proposition, that it is not war which makes men sick, but that sick men cannot fight wars, is clearly wrong, but most of the military medical corps believe it.*
>
> *The experiences that make real men also reveal that many are not real men at all. Real men are a minority even among heroes. Even the flying aces occasionally flew cautiously; the more sorties they had done the more cautiously they flew. They began to realise that they had more in common with the men who fell past them to crash in flames than with the brass who had ordered them to stalk and kill them.*
>
> *Military mythology has to pretend that real men are in the majority; cowards can never be allowed to feel that they might be the normal ones and the heroes the insane. . . .*
>
> *The principal cause of anxiety neurosis, according to the military, is fear not stress. . . .*
>
> *The most dangerous part of any flight, especially on Malta, was landing . . . When the excitement ebbed, soul deep exhaustion took its place, and then they remembered the screams of their victims, the friends that they had lost, the stupid mistakes made and with all the reflection that they had had no time to do came guilt that they were still alive when so many were dead. . . .*

> *The MO's scratched their heads. These were brave men, no mistake so why were they grey-faced and sweating, screaming in their dreams like the worst shikers and the yellow-bellies?*
>
> *The authorities compounded their distress by accusing them of fear. They were actually too tired and dispirited to feel fear* (Greer 1994).

Thus these accounts demonstrate that there has been a striking schism between the way that some authorities, generals, doctors and pension managers conceive of and understand the experience of trauma and the genuine suffering of the victims. This demonstrates that there is an ever present tendency for those in positions of power to distance themselves from the suffering of the people and to stigmatise and blame the victim. Today these attitudes would not be presented so openly but disguised with many subtle rationalisations and administrative procedures.

The Conundrums for Professionals

Medicine and the law are two professions where this division between the victim and the power elite requires constant monitoring. These prejudices and attitudes would appear to still be pervasive in the way that some 'medical experts', courts and lawyers deal with individual seeking damages. Against this background, the nature and determinants of the feelings which the victims of trauma evoke in people will be examined. In psychiatry the feelings and reactions which therapists have about patients are called countertransference. There is a recognition that these feelings and attitudes must be confronted and dealt with by therapists as they otherwise have the potential to be detrimental to the treatment process (Wilson & Lindy 1994). It would appear to be equally important for individuals in any profession or position which brings them face to face with victims to examine overtly these reactions and their origins as they can have a major impact on their behaviour.

As has already been exemplified, it is easy to see how the plight of victims can be distanced, minimised and stigmatised by those in power because their recognition can create some uncomfortable realisations. For example, how could a general who truly acknowledged the horror of war and the after-effects commit his troops to battle? The dilemma for a medical officer who treats a soldier with a combat stress reaction and then certifies him fit for battle is complex (Camp 1993). How could a military officer presiding over a court marshal commit a soldier to the firing squad for failing to charge a machine gun post in the Battle of the Somme which had 60 000 casualties on the first day, more soldiers than USA servicemen killed in the entire Vietnam war (Winter 1978)?

The essential issue is that one cannot hide behind a claim of objectivity and rationality in relation to this question about the nature of one's reactions to victims. It is critical that one confronts the reactions and prejudices that victims and their suffering evoke in each of us as individuals, if we are to be objective, as much as is possible, in dealing with the victims of trauma. This is the case whether you are a police officer, a judge, social worker, lawyer or a politician. Herman has powerfully argued that the response to victims is not a matter in

which any individual can be a passive bystander in her acclaimed book *Trauma and Recovery*. She has particularly examined this issue from the setting of dealing with the victims of sexual abuse and rape.

> *To study psychological trauma is to come face to face, both with human vulnerability in the natural world and with the capacity for evil in human nature. To study psychological trauma means bearing witness to horrible events. When the traumatic events are of human design those who bear witness are caught in the conflict between the victim and the perpetrator. It is morally impossible to remain neutral in this conflict. The bystander is forced to take sides. It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear and speak no evil. The victim, on the contrary, asks the bystander to share the burden or pain. The victim demands action, engagement and remembering. After every atrocity one can expect to hear the same predictable apologies, it never happened, the victim lies, the victim exaggerates, the victim brought it on herself and in any case there is time to forget the past and move on.*

The more powerful the perpetrator, the greater is his prerogative to name and define reality and the more completely his arguments prevail. In the absence of strong political movements for human rights, the active process of bearing witness inevitably gives way to the active process of forgetting. Repression, dissociation and denial are phenomena of a social as well as individual consciousness (Herman 1992, p. 78).

Society's Perceptions of Victims and their Roles

It is therefore a challenge to examine this proposition and what might influence these attitudes and the propensity for any individual to align along these polarities. Central to this question is the role that victims play in society and the dilemmas which they pose to vested interests. Firstly, some individuals who have been traumatised will become powerful agents of social change. Individuals such as Sassoon became prominent pacifists. One can speculate that Germaine Greer's understanding of her father allowed her to better capture the plight of women and the consequences of sexual domination in its uglier manifestations of rape, incest and domestic violence. Anthony Eden and Harold MacMillan, in contrast to Margaret Thatcher, were two conservative British prime ministers who were veterans of the trenches of France and presided over the establishment of the welfare state in the United Kingdom. Thus a personal knowledge of trauma may be personally detrimental but also be a powerful source of motivation for social change. Anna O, one of the original cases which Freud treated for hysteria as a consequence of her sexual abuse, became a pioneer reformer for the rights of women and the protection of children. She was described in the following terms 'A volcano lived in this woman . . . Her fight against the abuse of women and children was almost a physically felt pain for her' (Kaplan 1984, p. 107).

However, there is a social suspicion and fear that victims consume social resources and take away from the strong and the survivors. The weak are a liability to society and this was perhaps most grotesquely characterised by the first group to be exterminated by the Nazis (Meyer-Lindenberg 1991). They were

not the Jews or gypsies, but psychiatric patients. It is little wonder that in the second world war, traumatic neuroses and combat stress reactions were not recognised by the German army and many so affected were put into companies required to carry out battlefield suicide missions (Burma 1994).

Victims also challenge the values of power and demand compromise and concern. Social Darwinism, in its new disguise of economic rationalism, argues that competition and survival of the fittest should be the organising social dynamic. This is an ethos which gives little value to the energy and effort which a society puts into protecting and caring for the disadvantaged and suffering. Victims are a challenge and threat to the rights of the winner. They are attacked with the rationale that victims undermine individual responsibility. People should be responsible for what happens to them. The needs of victims are also readily conceived of as being overwhelming. Victims characterise vulnerability and are the antithesis of this competitive world.

Victims challenge the meaning structures that provide the social definitions of reality and particularly when they focus awareness on the tenuous nature of peoples' control of their lives, they are the prophets of doom and therefore readily shunned. Against this background it is easy to see that victims characterise a series of issues that cause considerable discomfort to the premise of social control and organisation and are easily stigmatised to diminish the threat which they pose.

In this context, this paper addresses a series of questions.

What are the attitudes and reactions to victims?

What are the dimensions which influence people's responses to victims?

What are the forces that have served to identify and advocate the needs of victims?

What are the issues which influence the way that victims are dealt with by the law, medicine and society?

Monitoring the Attitudes to Victims in the Legal System

The administration of justice is one of the dimensions of society that most allows us to monitor the attitudes to and the experience of victims. Given the pervasiveness of social attitudes about victims and the conscious and unconscious ways they influence people's behaviour, it is reasonable to hypothesise that this ambivalence may be reflected in the administration of the law, in the decisions of judges and in the behaviour of lawyers. The paradigm of the law is that of argument and precedent. This is not a perspective that encourages the psychological and sociological analysis and scrutiny of the experience of victims who seek recourse in the courts or the practitioners who administer the system. Given the inevitability of individual bias and prejudice, there is a need to examine how these attitudes influence the administration of justice in the civil courts as well as the criminal courts. One way of investigating this question is to examine how victims experience the legal process and whether it delivers the justice it proposes or whether it becomes a vehicle for institutionalising social prejudice about victims and protecting the rights of those with political power and wealth.

This question can be addressed by examining the experience of the 1983 Ash Wednesday Bushfire in South Australia which has been researched and observed closely over the past 11 years (Marshall 1994; McFarlane 1993). These fires were a devastating event on any scale. The ferocity of the fire storm is perhaps best demonstrated by the objective documentation of flames 800 feet high. Despite the fact that liability for this disaster was determined soon after the event, claims remain outstanding in 1994, particularly those seeking damages for personal injury.

This disaster provides a setting in which it is possible to examine the ability of the legal system to understand and deal with the reasonable needs of victims. After all, one of the justifications of the rights to sue for damages in our society is that it is preserving and serving the rights and needs of the justly aggrieved and suffering. A set of principles that is critical to the monitoring and advancement of medical care will be applied to this legal process—a method which may contribute reasonably to an audit of the implementation of the law.

In contrast to the law, the process of change in medicine is driven substantially from scientific research and the resultant knowledge. Apart from the pursuit of basic scientific questions, similar methodology is used in conducting clinical trials. Medicine has also, importantly, been made to address the needs of various patient groups due to the emergence of advocacy organisations, who for example, raise many pertinent issues about the care and nurture of children in paediatric hospitals. It is illuminating to remember that thirty years ago parents' visits to children in hospital were severely restricted. Adenoidectomies were done on children without anaesthetic prior to the second world war, an issue graphically depicted in Roald Dahl's autobiography (1990). While the women's movement and victims of crime organisations have lobbied for important changes in the administration of aspects of the criminal law such as rape cases, the civil litigation system has largely been protected from the rise of consumerism. The adversarial system creates a clear schism between the defendant and plaintiffs, both of whom are consumers with shared interests.

Today, medical practice demands a series of quality assurance measures, particularly in hospital settings. These programs ensure that the outcomes of interventions are monitored and complications identified and rectified. Hospitals are also inspected and accredited by independent bodies who scrutinise the adequacy and standards of care. Increasingly health care will be funded according to output based measures which means payment will depend on the achievement of the stated goals within efficiency guidelines. Previous examples provide a basis for similar quality assurance based procedures to be applied to the law. It is interesting to speculate how the legal system would change if it were subjected to such external scrutiny which demands that goals and outcome criteria be set.

Disaster Victims' Perceptions of Litigation

In a study of the victims of the 1983 bushfires (Marshall 1994), the experience of these plaintiffs of the legal process was systematically examined, applying some of these principles of audit. In particular, it aimed to examine the extent to which

the legal process met the expectations of these clients. This was an unusual setting because the plaintiffs had all experienced an event where there was no dispute about liability and where all had legitimate claims.

This study examined the experience of 32 of 92 patients who had consulted the author after the disaster and psychometric data had been collected from the disaster. The low return is a potential source of bias. However, my personal knowledge of these individuals did not suggest that their attitudes were significantly different from the nonresponders. The continuing level of distress of this population is indicated by the fact that 75 per cent still had a clinically significant post traumatic stress disorder (PTSD) 10 years after the disaster. Of the 32, 81 per cent had a personal injury claim and this was settled in only 38 per cent. This would suggest that the legal process had failed to provide a rapid settlement of these people's personal injury claims which were a result of the traumatic consequences of the disaster. This was in contrast to the property claims which had been settled for all but one of the plaintiffs by 1993. The group who had outstanding personal injury claims represented a group of plaintiffs who had a legitimate expectation that the civil damages system would deliver what it was intended to do. As a group they had sustained more property damage, had higher rates of bereavement and had higher levels of post traumatic symptomatology than those not pursuing claims. The system was not dealing with a group of litigants who had frivolous claims or who were malingering. Statutory requirements in the aftermath of the disaster meant that their losses were documented objectively soon after the event. Comparison of symptomatology in subjects with unsettled and settled claims in 1993 demonstrated that the continued symptomatology in the litigants was not simply a consequence of the ongoing litigation as the levels of symptoms were unrelated to whether the claim was outstanding.

In the light of these comparisons, how did these victims experience the legal process? It is important to stress these data are about perceptions and therefore liable to a range of biases. First, the helpfulness of the various professionals who had contact with the plaintiffs was examined. The medical experts acting for the plaintiff were reported to be helpful by 87.5 per cent of the victims, in contrast to the medical experts acting for the defence who were seen to demonstrate a low level of helpfulness by 89.5 per cent of the victims. The perceptions of the lawyers were more variable with 48.1 per cent of victims finding their lawyers showed a low level of helpfulness and only 29.6 per cent reporting them to be very helpful. Sixty-three per cent of the victims found the defence's lawyers to be unhelpful and 18 per cent helpful. The empathy of the plaintiff's medical expert was found to be high by 73.9 per cent of the victims and 79 per cent felt that low levels of empathy were demonstrated by the defence. The lawyers acting for the plaintiff were reported to have low levels of empathy by 42.3 per cent of the victims whereas 73 per cent found the defence lawyers had low levels of empathy.

Inadequate knowledge about the legal process at the commencement of litigation was an issue for 89.6 per cent of the victims. Eleven years into the process only 35.7 per cent of the victims saw that they had adequate knowledge

of the claims process with one consequence being that 94 per cent saw themselves as having minimal control over the claims process.

The processing of the claim, which demanded the repeated retelling of their traumatic memories, was felt to be highly negative by 82 per cent of the victims with 57 per cent believing that they had been traumatised by the pursuit of their claim. One contributing factor was that 93 per cent believed that there had been severe delays in the settling of their claims. The understandable reaction of 86 per cent of the claimants was anger. The adequacy of the compensation for the personal injury was anticipated to be or was inadequate in the opinion of 80.9 per cent of the victims. Property damages were thought to be more reasonable with 46 per cent seeing them as inadequate. Sixty-four per cent believed that the possible compensation settlement was insufficient to warrant the pursuit of a claim. In contrast, 64 per cent believed that a property claim was worth pursuing. When asked, 'Overall, what is your reaction to the legal system and how it is put into practice', the response of 89 per cent of the victims was negative and none were positive. Twenty-two per cent felt they had been victimised by the process or subject to prejudice.

These findings suggest that the victims of this disaster perceived the legal process to be unempathic, unlikely to adequately address their needs for compensation and the source of significant distress. It heightened the sense of victimisation from the disaster. The majority in hindsight would not have commenced proceedings which suggests that there is a need for those responsible for administering the law to seriously consider whether the legal process is more attuned to the needs of practitioners rather than the clients, a state of affairs that would not be tolerated elsewhere in society. The attitudes of the legal profession were generally perceived to be unempathic which suggests the need to examine the reality of these perceptions and how the stigmatisation of victims may be a central dynamic of the legal process. The lack of any systematic audit of the system by the courts or the government also raises questions as to why the law has not been subject to the same demands for quality assurance as other sectors of society. A system of health care which was characterised by similar negative perceptions of patient would be the subject of public inquiry and reform.

Such data do not mean that the issues of malingering and fraud do not need to be addressed. Rather, the prejudicial nature of the examination of these issues should be superseded by a careful objective examination of the issues. The fact that a lawyer can introduce a notion such as compensation neurosis, an outmoded concept with no objective validity, should be treated in the same way that the introduction of such a notion would in any serious objective examination of this question. The issue is the validity and reliability of the patient's history and the accuracy of the examination of the attendant expert. Equally, the impact of overly generous compensation schemes on disability and recovery should be the topic of serious social discourse.

These disaster victims are not alone in their reactions to the legal process. Napier, a lawyer who specialises in disaster litigation, has made the following observations about victims' experiences of the legal process:

> *I have tried to understand the feelings of disaster victims and to be sensitive to what they expect from the legal system, which in my view is poorly designed to*

> *cope with disaster aftermath. The victims frequently feel that in the legal process their interests come well down in the list of considerations. We have learned that as soon as the victims suffer what they see as inadequacies in the legal system, they visit their resulting dissatisfaction on who else, their lawyers. However unfair that might be, who can blame them? The result is that the medical trauma of the disaster is worsened by further trauma to the victims as they battle with a confusing system that is often slow and ineffective in providing answers that they and the public reasonably seek* (Napier 1991, p. 158).

How is it that the law has managed to insulate itself from the experiences of the citizens it claims to serve? One possible suggestion is to improve the training of lawyers about the feelings and attitudes which victims evoke. Such reactions may play a critical and unrecognised role in influencing judgments. The issue of countertransference is a critical concept in understanding the relationship between therapist and patient (Wilson & Lindy 1994). The optimal treatment of the patient demands an understanding of countertransference.

Reactions to Victims: Countertransference

The behaviour of victims is a critical determinant of the responses which they evoke. A central issue is that victims tend to unconsciously relate in ways that convey unresolved and unassimilated aspects of the traumatic event. For example, victims often dichotomise the world and relationships into issues of good and evil. There is a tendency to re-enact the trauma, for example, conveying a vulnerability which may provoke further victimisation. This repetition tendency is graphically depicted by victims of child sexual abuse who may sexualise a relationship in a childlike manner. There is a fragility of the victim's sense of trust. These are feelings that can evoke issues of power and control in those dealing with victims. Also, there is a constant struggle between the need for external reassurance and the fear of re-victimisation; again, these are that can provoke complex reactions in those to whom they are directed. Thus, dealing with people who have been traumatised can be emotionally demanding and difficult. It is just as easy to fall into the role of the persecutor as that of rescuer.

Before focusing specifically on the issues that may influence the expression and origins of the feelings of legal practitioners towards victims, I will first discuss the perspectives from which the predicament of victims may be viewed. It should not be assumed that an empathic response to victims is the social norm or the automatic response to those who are suffering or traumatised.

First, there is the moral/legal perspective. One has the opportunity to choose between judging an individual's behaviour as being right or wrong or being understandable along some other dimension. For example, a person who steals food to feed a child has committed a crime that would evoke legal condemnation. The quality of an individual's behaviour during a traumatic event may also evoke moral condemnation. Somebody who survived through cowardice and at the expense of others, despite being extremely traumatised himself, is potentially subject to condemnation. Similarly, there are certain moral attitudes towards people's responses to an injury. Excessive complaint and lack of attempts to

function independently evoke condemnation and hostility. This represents one dimension upon which the behaviour of victims may be judged.

The second is a scientific or medical perspective. This involves the systematic observation of the behaviours and reactions of victims. This objective paradigm can be a powerful one in modifying society's attitude to victims as will be discussed. On the other hand, prevailing social attitudes can substantially bias observations or lead to a denial of the suffering of victims. The accounts already given of the attitude to war veterans is an example of how military doctors' explanations of combat stress reactions was very much determined by the military ethos rather than the objective facts.

The third perspective is a humanistic or philosophical one. This involves an acknowledgment of the importance of an understanding of pain and suffering and society's responsibility for dealing with these. Victims have a right to be protected from both external and internal sources of suffering. This involves a social acceptance of the idea that they are not to blame for their misfortune.

Professionals, whether they be lawyers, doctors or police officers, may instinctively use one or more of these perspectives in dealing with victims. Thus, there is a wide range of attitudes and reactions to victims. There is no one normal or natural response to victims. People's own experiences will critically determine the way that they respond to other victims. For example, somebody who has never known suffering may be more predisposed to taking a moralistic or legal view of victims, whereas somebody who has himself at one point in his life known suffering, may be more likely to take a humanistic and benevolent perspective.

Similarly, the nature of the trauma is also critical. For example, a woman may be more sensitive and receptive to the experience of a victim of rape than a man who feels uncomfortable about his sexuality. The age and number of victims will also influence responses to victims, with children perhaps evoking a greater sense of personal tragedy. Identification with the moral dilemmas characterised by an event are also critical. The strengths and resilience, as well as the symptoms of the victim, will also influence the response of the observer. Institutional and organisational factors may also be important. For example, insurance companies will characteristically have a defensive and critical view of victims. Thus, the setting in which individuals work can modify their attitudes.

It is important also to realise that countertransference reactions can fall along a dimension ranging from avoidance to over identification (Wilson & Lindy 1994). Avoidance is characterised by a variety of strategies which essentially distance or minimise the suffering of the victim. This may be done by suggesting that the victim is exaggerating the experience or the effect that it has had on them. On the other hand, an individual may over identify with a victim and wish to deal with or resolve his/her own issues and difficulties by taking on those of the person who he/she represents. For example, a victim of child abuse who works in a sexual assault referral service may be unable to objectively assess the victims of such crimes.

Reactions to Victims in Civil Litigation

The ethos of the criminal justice system seems also to affect the setting of criminal litigation. The criminal justice system ensures the rights of the accused and by its adversarial nature allows the discrediting of witnesses through cross-examination. Cross-examination can use the subtle exploitation of prejudice to challenge arguments and perceptions. Thus, the courtroom can lead to the expression of attitudes which would seem to be discriminatory and prejudicial in other settings. This has recently caused considerable comment about, for example, what is acceptable force in a marital sexual relationship in a number of rape case judgments in Australia.

As well, plaintiffs often feel that they are on trial rather than the defendant. The balance of power is often tilted when the defendant is an insurance company with considerable resources to defend the case, in contrast to the limited resources of the plaintiff. For example, after the bushfires, where a public authority was deemed to be liable, the resources of the defence were substantially greater than those of the plaintiffs. Because of the cost of the litigation, the plaintiffs were faced with the possibility of losing their houses and property on a second occasion.

It also seems that the procedures of civil litigation do not take account of the nature of post traumatic reactions. For example, victims will often go to considerable lengths to avoid discussion of their traumatic memories and experiences. Litigation requires the repeated provision of statements and focusing on the traumatic event, which exacerbates their distress, and some react by simply withdrawing from the process.

Also, the area of traumatic stress has burgeoned at an enormous rate in the last fifteen years. There would be few expert witnesses in private practice who are familiar with the current knowledge base in this area or could provide a sophisticated critique of some of the current conceptual and methodological issues. Similarly, lawyers' lack of scientific training equips them poorly to test the validity of opinions based on the recent literature.

It is easy to see how a defence lawyer may develop a very different set of perceptions about victims than will a plaintiff's lawyer. Equally, medical experts appearing for the defence and plaintiff may often have quite different views about the same information. It is important that the courts should systematically scrutinise these attitudes because they may substantially interfere with the objectivity of the argument and the data presented. The determining factor in a case may well be the way the case is argued and not the scientific validity and reliability of the assertions being made. For example, a victim who is being examined by a hostile medical expert is likely to be provoked into a variety of behaviours as a consequence of his/her sense of re-victimisation in this setting. This will significantly influence the quality of some of the information that will be provided. For this reason, it is critical that the courts openly examine how the expert's behaviour may modify or influence the reaction of the victim.

The Importance of Scientific Observation

The systematic study of the psychological effects of trauma highlights the reluctance of society to accept the prevalence of trauma and the detrimental nature of its effects. The power of individual's prejudices are highlighted in this context. This is reflected in Kardiner and Spiegel's (1947) historic monograph about the effects of combat in the second world war.

> *The subject of neurotic disturbances consequent upon war has, in the past 25 years, been submitted to a good deal of capriciousness in public interest and psychiatric whims. The public does not sustain its interest, which was very great after World War I, and neither does psychiatry. Hence these conditions are not subject to continuous study . . . but only to periodic efforts which cannot be characterised as very diligent. In part, this is due to the declining status of the veteran after a war . . . Though not true in psychiatry generally, it is a deplorable fact that each investigator who undertakes to study these conditions considers it his sacred obligation to start from scratch and work at the problem as if no one had ever done anything with it before* (Kardiner & Spiegel 1947).

Against this background the acceptance of post traumatic stress disorder in 1980 as a formal psychiatric diagnosis represents an important landmark in the social acknowledgment of the consequences of trauma (APA 1980). There are few psychiatric disorders which have evoked such controversy as PTSD and this continues. The issue of the effects of trauma is again the focus of a major suspicion because of the false memory debate. In the course of therapy some patients access apparent memories of child abuse and in the USA the patients not infrequently sue the abusing parent or adult on the basis of these memories. There has been an increasing public backlash about these cases with the parents claiming that they have been wrongly accused and that these memories have been produced by the inappropriate technique of the therapist working with highly suggestible patients. Organisations such as the False Memory Syndrome Foundation have been formed to support and argue the case for parents who claim to be wrongly accused.

This debate has tended to further polarise opinions between the believers and the sceptics about traumatic phenomena, with the clinical and scientific questions being increasingly lost in the heat of the argument. This highlights the danger of clinicians becoming advocates for patients in legal settings and the need to maintain a healthy degree of doubt when working with such patients. The possibility must be considered that the patient has a history of trauma which accounts for the tendency to dissociate but that the content of the memory does not lie in an event which actually occurred. The author has treated five patients with PTSD who have independently validated histories of extreme traumas who in the course of their illness have developed flashbacks of events which have no basis in reality and this was recognised by the patient. Thus the circumstances which led to the development of these memories is of particular interest from a theoretical view. Unless a degree of caution is exercised in accepting the content of patients' memories, this debate could be the seed which again dooms PTSD and the dissociative disorders to be a passing fashionable interest, and condemns

them to the periphery of acceptable psychiatric practice (Atchison & McFarlane 1994).

This controversy demonstrates the capacity of trauma related issues to polarise opinion and why each individual who becomes involved with victims needs to be aware of his/her personal reactions as they have such an ability to bias one's judgment. PTSD is an important concept in the objective examination of the suffering of victims for a number of reasons. First, the central aetiological issue is the role of the trauma and the psychopathological process which it initiates (Spiegel 1988). The critical element of the trauma is the helplessness and the threat which people have to endure. Historically, this aspect of patients' experience has so often been denied. In this regard, in contrast to other psychiatric diagnoses, PTSD focuses on the event rather than the individual, although the role of other individual factors is important in understanding the onset of the disorder.

Whilst in the 1970s there were many controversies about the stigmatising effects of psychiatric diagnosis, for some victims such as soldiers, there is an important distinction between being ill rather than being a coward. The definition of a psychiatric disorder is also important in qualifying for compensation in contrast to simply experiencing a state of distress. Finally, the definition has lead to the academic investigation of the field of traumatic stress. Thus many notions and popular prejudices are now being systematically examined and this will hopefully impact on the sophistication of the examination of these questions in the courts.

The origins of the notions about the role of trauma as a significant cause of psychological disorder provide many valuable insights into the fragility of the social perceptions of victims. The first major interest in the question occurred in Paris at the Salpetriere where Charcot held his famous demonstration clinics about hysteria. It was his hypothesis that the critical trauma for many of his patients was sexual abuse. The paralyses and sensory defects seen in hysteria were attributed to the notion that the conscious memory of the trauma was repressed or dissociated but that the symptom was representative of the traumatic reminder. Freud (1893), who was one of the observers at Charcot's clinic, said of his work

> *No credence was given to a hysteric about anything. The first thing that Charcot's work did was to restore its dignity to the topic. Little by little, people gave up the scornful smile with which the patient could at that time feel certain of being met. She was no longer necessarily a malingerer, for Charcot had thrown the whole weight of his authority on the side of the genuineness and objectivity of hysterical phenomena* (Freud 1893, p. 19).

The social nature of this exercise and the process of witnessing the plight of the victim was also recognised by William James, who also attended Charcot's lectures. He commented that:

> *Amongst all the many victims of medical ignorance clad in authority the poor hysteric has hitherto fared the worst; and her gradual rehabilitation and rescue will count among the philanthropic conquests of our generation* (James 1894, p. 195).

Despite evidence to the contrary, probably one of the greatest paradoxes is that Freud went on to renounce his views on the role of child sexual abuse, and therefore trauma in the aetiology of the neuroses. The reasons for this are complex, but include ostracism by his colleagues and denial of the abuse by his patients' families. He wrote in 1897, in a letter to Wilhelm Fleiss, about 'the surprise that in all cases the father, not excluding my own, had to be accused of being perverse . . . whereas surely such widespread perversion against children was not very probable' (Masson 1985, p. 108). Instead, Freud went on to formulate the hypothesis of infantile sexuality and the Oedipal complex. Neurosis came to be seen as a result of regression of the ego to a previously fixated libidinal stage (Brown 1961). Interestingly, although the psychiatric community embraced Freud's hypotheses, he himself wrote of continuing doubts. As late as 1933, he continued to emphasise that 'the traumatic neuroses are not in their essence the same thing as the spontaneous neuroses . . . nor have we yet succeeded in bringing them into harmony with our views' (Freud 1973). These writings, stressing the difference between the traumatic neuroses and other neuroses, have been essentially ignored.

Paradoxically, with the current acceptance of the prevalence of sexual abuse (Herman 1992), Freud's earlier ideas about neurosis now have much greater credibility than his libidinal theory. There is little doubt that Freud's denial of the prevalence of sexual abuse is probably one of the most detrimental influences on the recognition of trauma this century. As a consequence, generations of patients were not believed.

Perhaps one of the best safeguards against such denial and the corresponding danger of exaggeration and malingering is to use, wherever possible, systematic research with reliable and valid measures to examine these issues. Such an approach has proved to be most illuminating in examining the effects of the Iraqi occupation on the Kuwaiti population and the legitimacy of the compensation that is to be paid as a consequence of the specific United Nations Security Council resolutions. The available data collected from a series of epidemiological studies demonstrates the prevalence of systematic torture of the civilian population and that as many as 30 per cent of the population had a PTSD two and a half years after the occupation. The author was asked to audit this process by the World Health Organization last year and as a consequence would argue that similar research after most major disasters, which are liable to become the subject of litigation, is a valuable method of systematising judgments about damages. This requires the courts to work in much closer collaboration with the experts who study these events. Such an approach after the *Herald of Free Enterprise* sinking in 1986 led to an expeditious and rapid settlement of the claims of that disaster (Napier 1991), in contrast to the 1983 bushfires.

The Paradoxes created by Knowledge

This paper has focused on some of the factors that can influence attitudes to victims and the importance of society considering their predicament empathically. This would not seem to be too controversial. In victimology there is a tendency to think of the victim and the perpetrator. Thus the legal, scientific

and humanistic understanding of victims are not in conflict. However, a recent study of female prisoners, conducted with Raeside (1994), demonstrated that 81 per cent of this population currently suffered from a post traumatic stress disorder. The traumatic events experienced included rape or sexual assault by 71 per cent, childhood sexual abuse by 55 per cent and physical assault by 32 per cent.

In general, these women had been symptomatic since adolescence, with symptoms often preceding their history of criminal behaviour. Many of their crimes related to the need to support their drug abuse which in many represented an attempt to self-medicate their traumatic symptoms. It is intriguing that while there are many studies of psychiatric disorders in female prisoners, no others have examined this issue of trauma or PTSD. Thus, these data indicate that female prisoners, who have rightfully been condemned by the due legal process, can equally be understood from a medical and humanistic perspective which might suggest that incarceration does not adequately deal with their behaviour. The division between perpetrator and victim is clearly blurred in this population which indicates the complexity of the reactions such women are likely to provoke. Equally, the legal and medical perspectives about trauma may predict very different interventions.

It is interesting how many of these issues about trauma are understood in literature but not addressed in medicine or the law. For example, the dilemma of how to consider the suffering of murderers is considered at length by Shakespeare in Macbeth. Macbeth, even in the scene where Duncan is murdered, is plagued by his traumatic ruminations.

> *What hands are here? Hah: they pluck out mine eyes*
> *Will all great Neptune's Ocean wash this blood*
> *Clean from my hand? No* (Macbeth, Act II, Scene I, p. 929).

Lady Macbeth dies from her traumatic madness not long after she wanders the stage in a somnambulant trance lamenting:

> *Out, damned spot: out I say . . . Yet who would have thought the old man to have had so much blood* (Macbeth, Act V, Scene I, p. 940).

The Need for Reform

The growth of knowledge about the effects of trauma raises many questions about the way victims are dealt with in our legal system. There is ample evidence that many of the attitudes that remain are prejudicial and discriminatory. While the needs of victims have been addressed to a degree in the criminal courts, little consideration has been given to these questions in the civil courts. The origins of prejudicial reactions to victims are complex and have the ability to influence professionals' behaviour in a variety of subtle and indirect ways. These attitudes within the legal system need to be directly examined and articulated.

The data presented about the 1983 Ash Wednesday disaster victims' pursuit of personal injury claims suggests that this was a traumatic process and they did

not feel that justice was delivered. If this is the case, one would assume that no lawyer would want the continuation of a system which does not adequately serve the rights of those who reasonably seek to use it. Failure to institute reform would suggest that the legal process is self-sustaining and unresponsive to the needs of those it is supposed to serve. Politicians likewise have an obligation to actively ensure the administration of justice.

To conclude, the needs and predicaments of victims are easy to stigmatise and ignore even within systems, such as civil jurisdictions, which are designed to address their needs. However, the importance of listening with a sense of empathy should not be minimised. Sassoon described such a sentiment when he spoke of the physician who treated his PTSD:

> *He made me feel safe at once, and seemed to know all about me . . . I would give a lot for a few gramophone records of my talks with Rivers. All that matters is my remembrance of the great and good man who gave me his friendship and guidance* (Sassoon, in Fussel (1983), pp. 134, 136).

It would appear that the civil litigation process does not leave the majority of litigants with such positive feelings that their rights have been addressed and their suffering acknowledged.

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Response of Health Professionals to Domestic Violence in Emergency Departments

GWENNETH ROBERTS

The health care system is often the first place outside of friends and family to which victims of domestic violence turn, placing health professionals in a central role for their assistance (Pahl 1979; Dobash et al. 1985). Some researchers consider that the Emergency Department is the most likely place for domestic violence victims to enter the system (Rounsaville & Weissman 1977; Goldberg & Carey 1982). The reasons are that emergency services offer 24-hour service and relative anonymity compared to other health services. If these victims are not identified and offered appropriate management which addresses the issue of violence, they remain at risk for further episodes of domestic violence and for the accompanying physical and psychological consequences.

A prevalence study conducted at the Emergency Department of Royal Brisbane Hospital in 1991 showed that 30 per cent of women and 13 per cent of men who came to the Department had a history of experiencing domestic violence in their lifetime, including child abuse (Roberts et al. 1993). A second prevalence study conducted by the same investigators at Royal Brisbane Hospital in 1992 (Roberts 1994) supported the findings of the first study. This study showed that every fiftieth woman presenting to the Emergency Department was there as a direct result of domestic violence. Studies have been conducted in Emergency Departments in the USA which show similar results (Stark et al. 1981; Goldberg & Tomlanovich 1981).

Overseas and Australian studies have demonstrated that detection rates for victims of domestic violence by doctors in Emergency Departments were very low, ranging from 4 to 16 per cent (Stark et al. 1981; Goldberg & Tomlanovich 1984; Roberts 1994). Even when victims were identified, doctors' and nurses' attitudes about the aetiology of battering and their perception of the limited role they should play further mitigated against effective intervention (Bowker & Maurer 1987; Easteal 1992). These low rates of detection have been attributed to inappropriate attitudes of health professionals towards victims and lack of education and training regarding domestic violence problems (Pahl 1979; Davis & Carlson 1981; Binney et al. 1981; Borkowski et al. 1983; Burris & Jaffe 1984; Rose & Saunders 1986; Kurz 1987). Factors which were considered to impede the detection and management of victims of domestic violence have been identified. They included the biases which health professionals exhibited because of their beliefs about the causes of domestic violence (Elliott 1993); stereotypical notions of doctors and nurses about domestic violence victims and perpetrators (Shipley & Sylvester 1982); the right to privacy of families and individuals (Kurz & Stark 1988; Sugg & Inui 1992; Jecker 1993); the need of some professionals to create psychological distance from the problem (Morkovin 1982); the moral evaluation of clients made by staff (Roth 1972), and finally, the disillusionment of health professionals when victims return repeatedly to a violent situation (Binney et al. 1981; Davis & Carlson 1981; Borkowski et al. 1983; Sugg & Inui 1992). Klingbeil and Boyd (1984) considered that in the case of battered women the mythology influencing the treatment philosophy has led to poor case management and poor treatment results.

There have been few surveys of attitudes of doctors about domestic violence and most of the data on professionals' attitudes have come from victim surveys. One of the difficulties experienced in surveys of doctors is obtaining good response rates. One study in Australia surveyed three groups of people—general practitioners, Casualty unit doctors and a sample of battered women (Easteal 1990). Since the sample of Casualty unit doctors was small (35 per cent response rate) caution about inferences must be exercised. However, there appeared to be little difference between attitudes of general practitioners and Casualty unit doctors. The larger sample of general practitioners (n=96) indicated that they believed that doctors should play a role in prevention and treatment, but this was not borne out in their behaviour. The most conservative group was a consequence of years of service and not of gender or training.

In one of the few studies to compare attitudes of doctors and nurses towards domestic violence in the USA the investigators concluded that nurses had more sympathetic attitudes toward battered women than physicians and that women, regardless of profession, were more sympathetic than men (Rose & Saunders 1986).

As part of a larger study at the Royal Brisbane Hospital Emergency Department in 1991, an educational intervention program about domestic violence was carried out with doctors and nurses. Surveys of the knowledge, attitudes and practices of the participants were conducted before and after the education program. In this paper the results of these surveys illustrate the impact of the education program on doctors and nurses in Emergency Departments.

Method

The educational intervention program about domestic violence for doctors and nurses who staffed the Emergency Department was conducted between two prevalence studies which were conducted 12 months apart, in 1991 (n=1214) and 1992 (n=1223), at the Department. The goals of the education program were to enhance the recognition of victims of domestic violence who came to the Emergency Department and to increase referral and specialist processes for victims. Knowledge, attitude and practice surveys of the staff were conducted before and after the education program to assess changes, and measure the impact of the program.

The knowledge, attitude and practice surveys received strong support from the Medical Director and Clinical Nurse Consultant in the Emergency Department. The self-administered questionnaires and covering letters were internally mailed to 72 doctors and 91 nurses in the Emergency Department. Respondents were assured of strict confidentiality for information provided on the questionnaire.

In the baseline survey there was a response rate from doctors of 43 per cent—1 senior staff specialist (25 per cent), 6 registrars (60 per cent) and 24 resident medical officers (41 per cent). Nursing staff consisted of 74 registered nurses and 17 enrolled nurses. Their total response rate was 72 per cent, with 74 per cent response from registered nurses and 76 per cent response from enrolled nurses. In the post-test survey the total response rate from doctors increased to 63 per cent—senior staff specialists (75 per cent), registrars (70 per cent) and resident medical officers (59 per cent). The response rate from registered nurses was 76 per cent and from enrolled nurses 88 per cent, with a total response of 77 per cent. The mean age of doctors was 26.1 years (baseline) and 26.7 years (post-test). The mean age of nurses was 30.3 years (baseline) and 30.8 years (post-test).

The baseline and post-test questionnaires in the surveys of doctors and nurses were identical. They contained thirty-three statements relating to facts about domestic violence, victims, perpetrators and legal aspects of domestic violence. The statements required a response of ‘true’, ‘false’ or ‘don’t know’. There were 10 opinion statements based on a 5-point Likert scale—‘strongly agree’, ‘agree’, ‘disagree’, ‘strongly disagree’ and ‘undecided’. Embedded within these statements were myths which have been perpetuated about domestic violence and have been described in the literature (Klingbeil & Boyd 1984). The statements are reported as either ‘true’, ‘false’, ‘agree’ or ‘disagree’, indicating the correct or desirable answer. Only those statements which had statistically significant changes are reported in the tables. Significance levels are reported at the p-values of 0.05 or less.

A matched-pair analysis of those respondents who answered both pre- and post-test questionnaires was conducted to measure the impact of the education program on doctors (n=20) and nurses (n=48). The groups were sub-divided into men (n=18), women (n=50), male doctors (n=10), male nurses (n=8), female doctors (n=10) and female nurses (n=40). McNemar’s test was used for dichotomous variables and t-tests for paired samples for continuous variables.

Results

The results showed that doctors and nurses had a reasonable knowledge about the topic of domestic violence before the education program. In the baseline survey doctors had 63.4 per cent correct answers, and nurses had 61.6 per cent correct answers. Both groups had significant changes in their knowledge after education: doctors had 72.4 per cent correct answers ($p=0.015$) and nurses had 71.5 per cent correct answers ($p=0.0001$). Nurses had fewer correct answers than doctors at baseline in some areas, but there were more areas in which there were significant changes for nurses than for doctors. Although female doctors had more correct answers at baseline (mean=21.5) than female nurses (mean=20.6), female nurses had a significant increase in their total correct answers after education ($p=0.0001$), and had more correct answers (mean=23.7), compared to female doctors (mean=22.8). Male doctors and nurses both had significant increases in their correct answers.

When attitude changes were measured for the combined sample of doctors and nurses, the mean number of positive attitudinal statements was 7.9 at baseline survey, and 8.6 at follow-up (out of 10 positive attitudinal statements). This showed that even at baseline, nurses and doctors had generally positive attitudes towards the topic of domestic violence. When the attitude changes were measured for each group separately, there were significant changes in positive attitudes for female nurses ($p=0.005$) and for male doctors and nurses combined ($p=0.02$), but not for any other groups. In fact, for female doctors positive attitudes diminished (pre-test mean=8.3; post-test mean=7.7).

Myths about domestic violence are that it is a rare occurrence, it only occurs in lower socioeconomic groups, men and women are equally battered, batterers are violent in all their relationships, and women can easily leave a violent relationship. If doctors and nurses subscribed to these myths, domestic violence may be largely undetected, particularly in middle and upper socioeconomic class families. Health care providers may recommend that a woman leaves a relationship, with little understanding of how the battered woman may be restrained physically or psychologically by a perpetrator.

Nurses had fewer correct answers than doctors at baseline about the prevalence of domestic violence, but there was a significant increase in the nurses' correct answers after education. Before education both groups had limited knowledge that 95 per cent of victims were female, although nurses' correct answers increased significantly after education. Both doctors and nurses disagreed that domestic violence was confined to lower socioeconomic groups, and their correct answers increased significantly after education. Both doctors and nurses had significant increases in their correct answers that many maladaptive psychological behaviours of victims were a result of the violence, and not the cause.

Doctors and nurses in the research acknowledged that doctors were consulted more than other professionals, and nurses' correct answers increased significantly after education. Most respondents agreed that domestic violence behaviour was amenable to change. More nurses than doctors agreed that health

professionals could do something to stop domestic violence, and nurses' correct answers increased significantly after education.

When the privacy issue was addressed, the majority of doctors and nurses believed that most victims did not want to discuss domestic violence with a health professional. For both doctors and nurses their correct answers increased significantly after education. After education, nurses displayed a significantly greater understanding of general statements by victims about emotional abuse being worse than physical abuse, although doctors' correct answers about emotional abuse decreased.

Discussion

This study confirmed the difficulties in obtaining high response rates in surveys of doctors. The doctors' response rates in these surveys increased from 43 per cent, pre- education, to 63 per cent after education, with more senior doctors and resident medical officers responding to the second survey. This may have been a result of the education program which showed the high prevalence rates of victims of domestic violence who came to the Emergency Department. Nurses had consistently higher response rates to the surveys (pre-test, 72 per cent; post-test, 77 per cent) than doctors. This indicated a greater interest in the topic of domestic violence by nurses. This may reflect the higher mean age of nurses, with their greater experience in years of service and encounters with domestic violence victims. A large proportion of the doctors were resident medical officers and the itinerant nature of their 6-week term in the Department may have contributed to their poor response rates. One of the limitations of this study is that the small numbers of respondents to pre- and post-test questionnaires, particularly doctors, may not have sufficient statistical power to measure changes.

Generally, doctors and nurses had very good knowledge, before and after education, about the extent of domestic violence in the Australian community, and the knowledge that at least some forms of domestic violence were highly accepted. Both nurses and doctors acknowledged the high usage of the health system by victims of domestic violence. This may have been related to the high rates of victims shown in the prevalence study which was conducted in the Emergency Department before the education program. Almost 100 per cent of nurses and doctors believed that medical facilities should have a protocol for handling cases of domestic violence. It was alarming that 40 per cent of doctors did not know that they were required to report criminal assault, and this did not change after education.

Nurses had greater knowledge than doctors that perpetrators may come from higher socioeconomic groups. Male nurses appeared to have more insight than male doctors about the status of perpetrators, after education. This difference between doctors and nurses may affect the way in which perpetrators and victims of domestic violence are identified in the health care system. Nurses may be more aware of those from higher socioeconomic groups who are victims or perpetrators.

Both doctors and nurses had strong beliefs that domestic violence was a behavioural pattern which could be changed. However, nurses' beliefs that they could do something to stop domestic violence changed significantly after education. This finding indicated that nurses may be prepared to be more pro-active than doctors in the management of domestic violence victims.

In domestic violence research two risk factors have been identified—being female and having a history of child abuse (Roberts et al. 1993). Numerous causal theories of domestic violence exist, but no one theory seems to provide a unitary explanation. It has been suggested that, at a clinical level, the causal theory of domestic violence which doctors endorse will determine how they respond to victims and perpetrators (Elliott 1993). One of the causal beliefs which was tested in these surveys is the basis of feminist theory, that is that one of the causes of domestic violence is a power imbalance between men and women (Saunders 1988). Nurses had significantly greater beliefs than doctors in this causal theory before and after education. Both nurses and doctors, before and after education, had poor knowledge of the process of retaliation or self-defence by female perpetrators of domestic violence.

Research has shown that alcohol has a high correlation with domestic violence but is not considered as a causal factor (McGregor 1990). One-third of the doctors and nurses in these surveys believed that perpetrators were usually affected by alcohol at the time of the abuse. These beliefs were consistent with societal beliefs that alcohol causes domestic violence (Office of Status of Women 1988).

Generally, doctors and nurses did not subscribe to a number of the myths which have been perpetuated about domestic violence (Klingbeil & Boyd 1984). They included victim-blaming, such as a woman being provocative and a woman's poor performance as a wife and mother, and perpetrators being violent in both public and private relationships. Another myth is that victims leave a violent situation early. Most doctors and nurses did not subscribe to this myth.

Another belief which may influence the response of doctors and nurses in emergency department is that domestic violence is not a legitimate emergency unless there are physical findings when a victim presents. The result of this belief is that the psycho-social aspects of the violence are ignored and the 'social emergency' is not recognised. In these surveys most doctors and nurses recognised that the greatest proportion of presentations by victims of domestic violence to emergency department was not trauma, but medical and psychiatric. A large proportion of respondents also agreed that doctors and nurses should be prepared to treat more than victims' physical injuries. However, after education, nurses had significantly greater understanding that victims often state that emotional abuse is worse than physical abuse.

This study showed that the education program impacted more on nurses than doctors, and that attitudes towards domestic violence were a function of profession rather than gender. Nurses appeared to have more interest in this topic and one reason may be that nurses have more personal experience of domestic violence. This is a theory that needs to be tested in further research.

The results of the study point to the necessity for introducing training programs for health professionals on domestic violence problems. It would

appear from the low response rates to the questionnaires by doctors that they still need to be convinced that domestic violence is a significant public health problem. Nurses made better responses to the surveys and made more positive attitude changes. This may have implications, not only for the training of nurses, but for the role which nurses may have to play in the identification, assessment and management of domestic violence victims at emergency departments.

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Blaming the Victim: Domestic Violence and the Codependency Model

GREG DEAR

The Codependency Model: An Overview

The early literature on women with alcoholic husbands outlined a predominantly negative view of these women. Such women were seen as neurotic, poor copers who were obsessed with controlling their husbands' drinking. They were seen to have partnered alcoholic men in order to satisfy their own pathological needs (Kalashian 1959; Whalen 1953). It was further asserted that some women would sabotage the drinker's attempts to abstain in order to continue meeting these needs (Futterman 1953). Edwards, Harvey & Whitehead (1973) termed such notions the disturbed personality theory. They criticised the lack of empirical support for such notions and cite a number of research findings which support the alternative view: that it is the stress created by the drinking which affects the partner's psychological functioning. Subsequent reviews cite further research supporting the stress model and refuting the disturbed personality model (Finney, Moos, Cronkite & Gamble 1983; Gomberg 1989; Watts, Bush & Wilson 1994; O'Farrell, Harrison & Cutter 1981).

When the term chemical dependent emerged as the new label for both alcoholics and drug addicts, the term codependent was coined to describe their partners (Beattie 1989; Bradshaw 1988; Cermak 1986; Mendenhall 1989; Rothberg 1986; Schaef 1986). Rothberg (1986) articulates the notion that problem drinkers and their partners develop complementary relationships in which each reinforces the pathological needs of the other. Such notions were developed from a crude and simplistic adaptation of systems theory incorporating

aspects of the disturbed personality model which Edwards et al. (1973) had discredited more than ten years earlier.

Adults raised in families affected by parental problem drinking were also labelled codependents. It was argued that living in such a family results in the person learning the dysfunctional coping responses seen in the partners of alcoholics and developing a similar personality profile (Cermak 1986).

The central theme of the vast literature on codependency is that all members of any family in which one member has a drinking problem are psychologically disturbed and in need of treatment. There is no doubt expressed by any of the proponents of the codependency model that there exists a distinct syndrome of maladjustive coping behaviours and that this can be observed within every family in which a drinking problem exists. Some writers are explicit in describing codependency as a personality disorder (for example, Cermak 1986) and others go so far as to describe it as a disease (for example, Schaef 1986; Young 1987).

The term has been further generalised to also refer to the partners of anyone with any form of major behaviour problem (excessive gamblers, violent and abusive men, workaholics, psychiatrically disturbed individuals, etc.) and to anyone who had grown up in a family affected by any major disturbance (Bradshaw 1988; Schaef 1986; Subby & Friel 1984).

Treatment programs for codependents have been developed and hundreds of self-help books on codependency have been published. Typically these books comprise discussions of the characteristics of the codependent person, disclosures of personal experience, case histories of codependents, explanations of why long-term therapy is seen to be required, and advice on self-change strategies. Such books sell extremely well and an entire industry has developed around them. Leading writers tour the world conducting workshops and seminars, therapists advertise that they provide treatment for codependency, and numerous support groups and family counselling services have developed programs based on the codependency model.

Such developments have all taken place in the absence of any research support for the model and the lack of an accepted formal definition for the proposed syndrome. A number of other criticisms of the model have also been raised:

- that the model is incorrect in asserting that there is a distinct coping pattern found among the partners of problem drinkers (Gierymski & Williams 1986; Gomberg 1989; Haaken 1990; Hands & Dear 1994).

- that the model is at odds with the research on family coping in that it promotes the notion that most family members adopt ineffective and pathological coping responses (Gomberg 1989; Haaken 1990; Hands & Dear 1994; Raven 1994; Watts et al. 1994).

- that the model is demeaning to women in that it describes socially sanctioned feminine role behaviours as evidence of personal inadequacy and dysfunction (Appel 1991; Haaken 1990; Hagan 1989; Hands & Dear 1994; Krestan & Bepko 1990).

Despite such stringent criticism, and the complete lack of any research support, the model continues to be widely used in the alcohol and other drug field. It is also becoming more common in other areas of the health and welfare arena, and continues to be a prominent concept in the personal growth industry.

Application to Domestic Violence

One area where the codependency model has recently gained some degree of acceptance is in the development of counselling services for women who have been physically abused by a partner or other family member. Domestic violence is specifically listed by a number of the leading writers on codependency as a relevant clinical area for applying the concept (for example, Bradshaw 1988; Cermak 1986). Cermak (1986, p.33) states that 'One of the most reliable symptoms of codependence is the inability to leave a chronically abusive relationship behind'.

This use of the codependency model in the area of domestic violence is of considerable concern. The notion that all women who have difficulty leaving violent and abusive men have some form of personality disturbance is dangerous because it blames the victim for not being able to prevent, avoid or cope with the violence (McIntyre 1984; Queensland Domestic Violence Task Force 1988; Roxburgh 1991). Moreover, blaming the victim further undermines her ability to take action against the violence (Dobash & Dobash 1987; Roxburgh 1991). As Roxburgh (1991, p.143) explains, blaming the victim:

> *reinforces the abused woman's low self-esteem . . . ; can contradict her interpretation of the violent situation and distort her version of what is happening . . . ; can weaken her resolve to act because she feels responsible for and therefore deserving of the violence; makes her feel undeserving of other assistance; diminishes the capacity of the service provider to offer assistance which will be of real benefit to the woman; and is untrue.*

Orr (1991, p. 120) concludes her review of the various theories put forward to explain family violence by stating that an 'understanding of the differences in the gendered identity of men and women is crucial to elucidating why family violence occurs, and to replacing the common myths about the causes of family violence with a stronger knowledge of who benefits from its continual perpetration'. The Queensland Domestic Violence Task Force (1988) also emphasised the importance of such an approach to understanding family violence. The codependency literature, however, comprehensively fails to examine sociocultural processes and gender related power issues and hence leads to an incomplete understanding of the dynamics of family violence.

Norwood (1985), for example, writes of the women 'who love too much'. She avoids examining the cultural processes which obstruct domestic violence victims from obtaining a position of safety and empowerment. Rather she analyses intrapersonal processes in order to explain their lack of power. Hagan (1989) has strongly criticised this approach. She argues that the concept involves 'a classic reversal: women are at fault again, this time for loving—what we've been reared to do—too much' (p. 9). She is highly critical of the lack of social

analysis which only serves to maintain the processes that enable domestic violence to thrive.

As Roxburgh (1991, p. 130) explains, family violence 'isolates the victim from assistance, a consequence the perpetrator frequently seeks to maintain'. Self-help books which promote concepts of personal inadequacy and disorder could be expected to instil a sense of personal responsibility for preventing the violence and hence further isolate the victim from those services which may provide a more realistic solution.

Victims of domestic violence need to have their feelings of fear and trauma legitimised (Queensland Domestic Violence Task Force 1988). They need clear messages which counter the myth that they are in any way responsible for being abused. They need to be able to explore their fears and anxieties and discuss the difficulty they experience in removing or protecting themselves without feeling that this indicates there is anything wrong with them. It is questionable whether a model which employs notions of personal inadequacy can be made consistent with such aims.

The codependency model does not provide any meaningful contribution to the understanding of domestic violence. Given this, and the extensive problems inherent in the model, there is no justification for using it in family violence programs. To do so is in fact unnecessary, given that there are more established models of stress and coping which can be used as the basis for developing positive counselling programs for families (for example, Lazarus & Folkman 1984, Orford 1987, Roth & Newman 1991). Such counselling programs need to be coordinated with other supportive and refuge services, and they need to be philosophically consistent with these other services (Dobash & Dobash 1987; Roxburgh 1991).

Counselling programs for survivors of family violence need to help participants understand that they are coping as best they can under difficult circumstances and that with appropriate support, and an opportunity to learn more effective coping strategies, they can minimise the trauma they experience and improve the quality of their future life. It is also important for these programs to provide participants with an opportunity to examine how gender-based power issues have impacted and continue to impact on their lives. The aim is to empower participants to develop more self-protective and self-fulfilling social roles. While this aim is also the declared aim of the codependency movement, the manner in which this objective is addressed within the codependency model is likely to be counter-productive.

Apart from the conceptual arguments against applying the codependency model within the domestic violence field, the lack of research support for the model dictates against such a move.

A Lesson for Victimologists

The immense popularity that the codependency model has gained over the past decade carries an important lesson for victimologists, as it does for all applied behavioural scientists.

Victimologists need to be vigilant in relation to the various conceptual models which emerge in the popular literature. In concentrating on our own theoretical models it is easy to lack an awareness of the degree of influence which popular models can exert despite their lack of rigour and empiricism. We need to remember that a crucial aspect of the academic's role is to monitor and investigate those models that emerge from the lay movement. Such endeavours are needed not only to safeguard the public from suspect theories but also to pursue those ideas which may prove to be useful or which highlight the limitations of our own perspectives.

It is important not only to investigate emerging conceptual frameworks from an empirical perspective but also to reliably determine whether a given model will appropriately serve the victim or will generate responses which could be regarded as a disservice. It is crucial to ensure that we do not revictimise our clients. The codependency model (with its inherent victim blaming attributes) is therefore not appropriate for use within domestic violence services as it is virtually guaranteed to revictimise clients.

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Preventing Criminal Victimisation: The case for an Intersectoral Response to Victimisation¾ a South Australian Perspective

DAVID HUNT

Strong arguments have been raised to suggest that the police (in fact the whole criminal justice system) have tended to neglect crime victims. While this may have once been true, in the last decade or so, crime victims have gradually gained prominence through the efforts of victims themselves, victim support groups, concerned politicians and criminal justice practitioners.

At the outset, it is important to acknowledge that the concept of victimisation is complex, multidimensional, and even problematic. There is an infinite array of situations or circumstances that can lead to victimisation: the AIDS epidemic; the Balkan war; the Exxon-Valdez disaster; the Los Angeles earthquake; serial killings.

As the science of victimology has evolved and concern for victims grown, a range of strategies intended to reduce the incidence of victimisation and support, perhaps empower, victims has been devised. It is a shame, however, that such concern and concomitant strategies have not so readily extrapolated into ‘substantial’ community activity.

Often our understanding of 'what is really going on' is distorted. Certainly, this is a truism with regard to criminal victimisation and its prevention.

Of all forms of victimisation, criminal victimisation has probably attracted the most interest. Indeed to speak about preventing criminal victimisation has become quite fashionable. Moreover, in the United Kingdom, France, The Netherlands, the United States, Japan, New Zealand, and Australia (to name but a few) the prevention of criminal victimisation is a paramount concern.

Although identifying priorities and targeting efforts are essential components of any criminal victimisation prevention strategy, a major obstacle to prevention of criminal victimisation is the lack of cooperation between and within government and non-government agencies. To focus on the variety of interests that these agencies represent exacerbates the obstacle, whereas the identification and development of common purposes and functions lessens the obstacle.

Additionally, the challenge to reduce criminal victimisation, is not for government and non-government agencies alone, but must involve the community at large. For these reasons, this paper argues that the responsibility for preventing criminal victimisation has to be shared. 'Strategic alliances' will also enhance the prospect of not only devising creative measures to reduce criminal victimisation, but actually achieve a real reduction in crime, erasing fear of crime and minimising re-victimisation.

Importantly, this paper acknowledges the need to develop and implement creative ways to help solve criminal victimisation and related issues (including the alleviation or elimination of secondary victimisation). This view is predicated on the belief that criminal justice agencies and other service providers need to develop a relationship with the community, particularly victims, to allow these people a greater voice in setting priorities and involving them in efforts to address the root causes of criminal victimisation. It concludes that an inter-sectoral 'community oriented' approach both dispels many of the myths that plague the 'crime prevention and control' debate, and improves the 'quality of service' delivered to victims.

Defining Criminal Victimisation Prevention

Crime prevention is not a recent innovation, and since the 1970s there has been a growing interest in anticipating, recognising and appraising crime risk and the initiation of action to remove or reduce that risk. This resurgence has been, and continues to be, manifest in public policy, public consciousness, and in many western democracies is evident by private security industry growth.

What is crime prevention? Crime prevention has traditionally meant providing advice on security and protective behaviours. The term crime prevention, however, embraces an array of concepts and connotations. It has come to mean all things to some people. Indeed, the lack of a precise definition may be an impediment in planning to prevent crime.

Weir (1984), for example, found himself compelled to provide a definition of crime prevention, which insofar as much crime creates victims, serves the purpose of this paper aptly. He stated:

> *Crime prevention is the term applied to principles, policies and programs which aim to reduce law-breaking, through both formal and informal social controls which are acceptable in a democracy and respect basic human rights.*

Weir's definition places the prevention of criminal victimisation within the objective framework of the law. It presumes the inevitability of crime, thus lacks the idealistic belief that society can be completely rid of criminal victimisation. It presumes that principles must translate into policies, and policies into action. And, it acknowledges that both formal and informal social control contribute to the level of criminal victimisation.

Instead of crime prevention, several authors use the expression 'crime reduction' (Elias 1986; Hope & Shaw 1988). Elias (1986), for instance, has categorised 'crime reduction' strategies on the basis of purpose. Some strategies, he pointed out, are intended to increase victim participation, while others target victimisation avoidance, and others require greater law enforcement.

Importantly, Elias's contribution to the definition of crime prevention appreciates that victims have a post-victimisation role beyond simply reporting crime and appearing as State witnesses. That the failure to provide a useful framework which facilitates the 'recovery' of victims, and the failure to involve victims in the design, implementation and ongoing monitoring of such a framework are yet other sources of victimisation.

As mentioned above, criminal victimisation constitutes but one category of all victimisation, yet according to Fattah (1990), criminal victimisation 'embraces a huge variety of multifarious and heterogeneous behaviours'. Consistent with this, Elias (1986) has explained that particular types of crime 'capture' our imagination, yet these 'comprise only part of the victimisation we suffer'.

For many people, the so-called 'crime problem' is dominated by images of 'archetypal criminals' and similar stereotypes. Almost every day, these inaccurate impressions of crime are reinforced by the media.

Selective crime reporting in the media ensures that there are marked differences between the probability of criminal victimisation and the reality of the same. As a consequence, the media does not place the risks of criminal victimisation into perspective. Of particular concern is the resultant fear of crime which may be as debilitating as actual victimisation.

Strategies to prevent criminal victimisation must be driven by more than 'media headlines'. Instead, preventive strategies and activities should be founded on a clear conception of the causes of victimisation, and a realistic and informed assessment of the extent and nature of it.

Similarly, several writers have proclaimed the need for rigorous evaluation of prevention programs. Until recently, measurements of crime prevention programs were, for the most part, tentative even haphazard. In the United States, Lurigo and Rosenbaum (1986) have pointed to varying interest in presenting the 'hard facts' about the success or otherwise of crime prevention programs. Likewise, in Britain it was observed in a Home Office (1988) report that there had been 'an absence of detailed evaluation' and little monitoring to determine the effectiveness of crime prevention programs. And, in South Australia, Sarre

1990; 1991) has described the tendency to appraise crime prevention initiatives rather than engage in scientifically valid methodology.

Undeniably, past attempts to prevent victimisation, especially criminal justice reforms, have been largely unsystematic and uncoordinated (Clifford 1976). Victimisation prevention and criminal justice should not be treated as isolated problems to be tackled by simplistic, fragmentary methods but rather as complex and wide ranging activities requiring integrated strategies and comprehensive solutions.

Additionally, to proceed without knowledge of what victims need, or what victims perceive as their rights, would be insensitive and destined to failure. During the mid-1970s key South Australians realised that to make any progress at all, victims (or at the very least victims' advocates) had to be fully involved if significant progress was to be made in the delivery of justice.

It would be wrong to assume that moves to improve the position of victims and provide adequate services in South Australia have not been without controversy. But the transition toward a victim oriented criminal justice system has been aided by the willingness of successive governments and criminal justice agencies to consider and implement ideas and approaches proposed by victims themselves and their advocates. There has also been a preparedness to learn from other jurisdictions and adapt policies and programs to suit local victim needs.

Those seeking to prevent criminal victimisation need to be cognisant of the array of positive and negative connotations that are closely associated with criminal victimisation. These connotations may taint prevention strategies.

According to Hogan (1991), society appears to be engaged in a 'periodic search for someone to blame' for crime. Consistent with this, Walklate (1989) has identified 'victim blaming', 'offender blaming' and 'community blaming' crime prevention initiatives.

According to Walklate, 'victim blaming strategies' for the most part presume victims precipitate their victimisation, hence the emphasis is on expanding the role of victims in reducing the opportunities for victimisation to occur. 'Offender blaming', Walklate concluded, 'operates within a conventional criminology', and as such may facilitate retributive aspirations, whereas 'community blaming' focused on a conventional or 'fairly narrow' definition of crime.

The 'blaming' thesis of course needs to be placed in a proper context. Walklate's 'community blaming', for instance, is best understood in context of societal changes (Toffler 1970; 1980; 1990). Significantly, the growth in 'community oriented' activity is reflective of a growing reliance on self-help. The attribution of some criminal victimisation prevention activity is, on the one hand, a consequence of economic and philosophical ideologies, but on the other, an honest attempt to attend to rising demands and expectations of victims and victim advocates. Finally, it is axiomatic that preventing victimisation in a democracy must involve public participation.

'Community oriented' prevention strategies in South Australia have been developed at a State and local level in consultation with key stakeholders. The promulgation of these strategies signalled a commitment to community problem solving; of being more concerned with the causes of crime and with crime prevention than with after-the-event activities.

At a local level, community policing is integral to the success of programs. Police and local citizens work together in identifying local needs and problems, and developing locally based activities to help solve contemporary problems related to fear of crime and criminal victimisation itself. On a state level, the success of crime prevention programs has been largely dependent on the cooperation and coordination, and the capacity of organisations to incorporate and carry out preventive strategies.

There are a considerable number of government and non-government agencies, academic organisations, and community groups that provide directly and indirectly a wide range of services to victims of crime. These key stakeholders include Victims of Crime Service, Australasian Society of Victimology, Attorney General's Department, Director of Public Prosecutions, Rape and Sexual Assault Services, Child Protection Services, and Neighbourhood Watch (and other like schemes). Generally, in South Australia there has been both formal and informal cooperation between these and other victim oriented agencies.

During the late 1980s a Victim Liaison Committee was established to ensure, among other things, a coordinated approach to the prevention of victimisation and to advise government on victim issues. Aboriginal people, people of a non-English speaking background, and victims of sexual assault, in addition to the traditional criminal justice agencies, are represented on the Committee. The Committee's membership fosters diversity and avoids uniformity. Moreover, the Committee provides a forum within which victim issues can be placed in a cultural and social setting.

The resolve to introduce and maintain a structured and consistent approach to addressing the needs of victims of crime in the immediate and long-term, whilst at the same time developing and implementing strategies to minimise the risks of victimisation may not be unique to South Australia. However, in some jurisdictions conflicting demands and objectives of those agencies involved with the criminal justice system have detracted from the opportunity to articulate a 'victim oriented' inter-agency network. Consequently, efforts to elevate the importance of victims' needs and preventing criminal victimisation have been thwarted.

South Australia's experience contrasts with observations gleaned from the *Economic and Social Research Council's Crime and Criminal Justice* research initiative of the mid-1980s in Britain (Sampson et al. 1988). According to Bottoms (1990), the research identified two dominant theoretical perspectives of interagency cooperation: the benevolent approach and the conspiratorial approach. Furthermore, differing perceptions; struggles for resources, power and prestige; and, ignorance were noted impediments to interagency programs.

Of particular concern was the propensity for client group needs, such as victims of crime, to be submerged below a facade of organisational anxiety. One solution proposed by Bottoms is to consult with targeted client groups as closely as possible.

Causes of Criminal Victimisation and Traditional Responses

In spite of the gains made for victims during the 1980s, a climate of intense public interest in law and order prevails. The 'problem' of criminal victimisation and its prevention too often falls almost totally upon the criminal justice system. Traditionally, the criminal justice system has functioned as an adjunct to informal social control. And, there are difficulties presuming that the criminal justice system can replicate the socialising forces implicit in informal social control.

Criminal victimisation appears to be an inevitable feature of social life. Indeed, both developed and developing societies suffer a 'crime problem'. Likewise, neither simple or complex societies; nor capitalist or socialist nations have been free of crime.

Reflecting on urban, western societies, Clifford's (1976) observation that the dimensions of crime are not only reflections of a disturbed society but indicative of the lifestyles and social contours particular to that society, appears well founded. He added that traditional responses to crime have validity in dealing with some crime, but such responses failed to address the basic causes of many forms of crime.

Similarly, in their discussion of 'the relentless upsurge of crime', Radzinowicz and King (1979) aptly stated: 'No national characteristics, no political regime, no system of law, police, justice, punishment, treatment or even terror, has rendered a country exempt from crime.'

A common list of criminogenic features from around the globe includes:

- under achievement in education
- boredom
- economic adversity
- inequity
- lack of employment opportunities
- increasing individualism
- weakening influence of traditional social institutions
- breakdown of the family
- lack of religious tolerance
- racism
- drug experimentation and exploitation associated with drugs

Confronting these criminogenic features requires more than a 'law and order' reformation. Criminal justice agencies and others must develop and implement more practical methods of problem solving within the community (Eck & Spelman 1987). These methods should be integrated with the justice system. There must be a concerted effort to provide quality service to all who come in contact with the justice system—victims and offenders—if criminal victimisation is to be truly reduced.

Contrasting these assertions, the law and order, or victim/offender, debate has been fuelled by concomitant demands for mandatory sentences, the removal

of the right to silence, reduced burden of proof, and so on. Several writers (Fattah 1992; Eijkman 1992; Harding 1994), however, have been critical of false allegations that have over-shadowed both the interests of offenders and the interests of victims.

In his review of Fattah's book, *Towards a Critical Victimology*, Harding 1994), for example, contends that there has been an 'overreach of the victimisation industry' in Australia and in North America. With 'missionary zeal' (to quote Fattah), Harding points out that some elements in the victims' movement, the media and some politicians have perpetuated images of 'unfair human suffering'. Inappropriately, such characterisations of victimisation are utilised instead of empirical research data when setting agendas such as law reform. As a consequence neither victims nor offenders benefit.

Punitive Prevention of Criminal Victimisation

Law and order reforms are essentially aimed at only a small proportion of criminals. Some research suggests that the deterrent effect of the threat of imprisonment is unstable. Some commentators go so far as to suggest incarceration does little more than temporarily protect society.

There is no denying, however, that prison prevents some crime. Imprisoned people do not commit more crimes in the community for the term of their imprisonment. Prisons (in conjunction with other corrective measures) may rehabilitate some offenders, although it is widely acknowledged that prisons are ineffective at rehabilitation.

In terms of re-victimisation, recidivist research has shown that knowledge of past offending does not provide accurate predictions about future offending. A Victorian study found that while the majority of violent offenders were reconvicted of some offence after release less than 30 per cent were reconvicted of a violent offence. Likewise, a South Australian study showed only 19 per cent of violent offenders were reconvicted for a violent offence (Police Commissioners' Policy Advisory Group 1992).

The principal objective in sentencing is to ensure an accused person is treated justly and fairly. In determining a sentence the four major criteria considered are: deterrence, rehabilitation, incapacitation, and retribution. Since the late 1980s in South Australia, the extent of harm on the victim has assumed greater prominence in sentencing decisions, and compensation and restitution for the victim have also be added to the sentencing options.

South Australia Police facilitate the provision of 'particulars' concerning the effects of crime to a sentencing court by either preparing, or coordinating the preparation of, victim impact statements. Once again the Police have been instrumental in establishing a network of victim services which help with the preparation of victim impact statements. Agencies which assist with victim impact statements include the Victims of Crime Service, Sexual Assault Services and Child Protection Services.

Pre-conviction, even pre-trial, diversion has been mooted as a viable alternative to post-conviction remedies, such as imprisonment. Diversionary programs are more likely to empower victims, enhance victims' feelings of

security, and enable victims to obtain reparation in more flexible and creative ways. Research in Australia and New Zealand involving mainly youth offender initiatives such as group conferencing shows diversion, unlike post-conviction remedies, facilitates victim/offender reconciliation.

In South Australia family group conferencing (as an alternative to court) has become an important aspect of juvenile justice. Preliminary data suggests family group conferencing is an viable assembly to attend to both the offender's and victim's interests. Certainly, these conferences have the potential to serve a broader range of victim interests than the court process is presently equipped to handle.

A Victim Oriented Police Service

It is widely acknowledged that a lack of consideration for crime victims may influence the willingness of victims to report crimes. Considering, in the overwhelming number of cases it is the reports of victims which begins the criminal justice process, and that process continues to be dependent on the victims, it is now difficult to believe that victims' interests were neglected.

Additionally, often as a result of indifferent attitudes, victims frequently experience a second victimisation. As well as their feeling inferior, shame, even guilt, victims may be confronted by distrust and denial.

The plight of crime victims is now recognised as an important aspect of police service. That service extends beyond crisis intervention, and includes follow up visits and referrals to victim support agencies.

In 1987 the South Australia Police committed themselves to providing a consistent approach to addressing the needs of victims of crime; whilst at the same time developing policies and strategies to reduce actual victimisation and the risks of victimisation. It was also acknowledged that the Police had to consider the process of victimisation as a basis for developing crime prevention strategies.

In moving towards preventing criminal victimisation, it became obvious that some people have a greater probability of becoming a victim of crime. It was assumed that by targeting these groups for crime prevention programs and dissemination of information, the likelihood of victimisation and fear of crime at an individual level could be reduced.

South Australia Police formed a Victims of Crime Branch in 1987 whose charter remains to develop strategies and policies to meet the needs of victims. In addition, the Branch coordinates Police services with respect to training, research and evaluation, and liaison with other victim service providers. Branch staff have over the years prepared a comprehensive set of guidelines directed toward better service delivery for victims.

Since then the Police have appointed victim contact officers and a victim impact statement coordinator. Several Domestic Violence Units have been established in the metropolitan area of Adelaide.

A computer based Brief Enquiry Management System has been developed which provides police state wide with ready access to information about the progress of criminal proceedings. The System allows police to search for

particulars on victims as opposed to traditional police systems which are geared toward offender data. As a consequence, South Australia Police are better placed to meet victims' informational needs.

Finally, police at varying levels undertake victimological studies. The Recruit Training Programme includes a series of lectures and workshops dedicated to victims of crime. Prospective police supervisors must complete an Associate Diploma in Justice Studies which includes victimology as a compulsory core unit.

Various victim service providers and victims themselves participate regularly in the training and education of South Australia's police. The preparedness of these people to assist police is yet again a demonstration of the level of cooperation enjoyed in South Australia.

South Australia Police and the Victims of Crime Service

As mentioned above, South Australia Police, in an attempt to address the physical and psychological needs of victims, has formed several 'strategic alliances' with victim service providers in both the government and non-government sectors. One such 'alliance' is that between the Police and the Victims of Crime Service. Indeed, since the Victims of Crimes Service was established in 1979 there has been a strong affiliation. Both the Police and the Victims of Crime Service (VOCS) have a clear picture of what each other does and what each others' priorities are.

An important aspect of the 'alliance' has been, and remains, the preparedness to resolve problems before they become entrenched. By cooperating, communicating and focusing on the same issues, but from different perspectives (yet conscious of the need to preserve these differences and realise the value of each others approach), creative ways to help redress criminal victimisation and minimise the 'second injury' have evolved.

Predicated on a similar philosophy, 'alliances' have also been formed with sexual assault services, child protection services and domestic violence services. Respect between agencies has ensured an environment where issues can be tackled constructively thereby providing timely and relevant victim service delivery.

Conclusion

Since the 1980s the edict that the police cannot alone control crime has dominated the criminal justice reform agenda. Proponents of this view argue that active cooperation of government and non-government agencies, and the public is more likely to prevent crime. South Australia Police have not been opposed to collaborating with others to prevent crime, hence reducing criminal victimisation. Actually, the police have played an integral role in a range of, perhaps ambitious, programs to eliminate victimogenic features of the criminal justice system, reduce actual crime and alleviate unnecessary fear of crime.

In attempting to prevent victimisation those in positions of power must act as an enabling force or catalyst to bring about change. Service providers such as the

police must become problem solvers. And, agencies must engage in a concerted intersectoral effort to better deliver justice. The emphasis should be on social integration and social relationships (Bottoms 1990).

Finally, this paper has raised a range of issues which show that an intersectoral approach to preventing criminal victimisation is well founded. In my view South Australia's experience suggests that the key ingredients are:

- determination of the actual problem(s) by engaging in critical analysis;
- establishing the reasons for the initiatives in close consultation with the target group;
- ensuring a comprehensive knowledge of theoretical and humanistic perspectives;
- identification of key stakeholders and potential client groups;
- development of 'open lines' of communication and alliances founded on cooperation;
- preparedness to direct activities towards collective goals rather than individual goals;
- election of methods conducive to client needs rather than organisational needs;
- establishment of a useful client oriented network;
- provision for constant monitoring and evaluation; and
- recognition that there are both direct and indirect costs, and these costs are not simply monetary.

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Preventing Peer Victimisation in Schools

KEN RIGBY

The field of victimology has been concerned primarily with adults as victims of crime. Where children are involved, it is typically as victims of adult perpetrators. But clearly children are sometimes the victims of other children. When this occurs, it is often described as 'bullying'—and there is usually no 'crime' as such recognised.

For countless years peer victimisation or 'bullying', as we shall call it, was regarded as part and parcel of 'going to school', largely unavoidable for some—with little or no harm done. However, in the last few years there has been a remarkable change in the way bullying at school is regarded. Beginning in Scandinavia in the 1970s with the pioneering work of Professor Olweus from the University of Bergen in Norway, interest spread to the United Kingdom in the late eighties; over the last five years there has been growing concern about school bullying in Australia.

Peer victimisation in schools is, in my view, an important area for victimologists to study. This is firstly because the harm that it does has been greatly underestimated. Secondly, because it sets a pattern for subsequent interactions involving victimisation in the wider adult society. And finally because we now know that there are measures that can be taken to significantly reduce it.

In this paper I shall concentrate on the phenomenon of bullying, which in many schools is a major means of victimisation. 'Bullying' is of course an emotive term, and its use has a strong impact on students and teachers. Once its essence has been grasped, most, if not all people, want to consider how it can be stopped.

The definition of bullying which I prefer is an adaptation of that proposed by the British criminologist, Farrington, in 1993. It may be defined as follows: 'repeated oppression, psychological or physical of a less powerful person by a more powerful individual or group of persons.'

This definition draws attention to the fact that being bullied, whether physically or psychologically, exists in the mind of the victim, not only when he or she is being abused, but also in anticipation of abusive treatment, and during the aftermath of that treatment. It also identifies a central feature of bullying, that is, an imbalance of power between bully or bullies and victim.

Bullying takes various forms, sometimes physical, as in hitting and kicking which occurs mainly among boys. More often, however, bullying takes a non-physical form. These include verbal abuse especially repeated name-calling; cruel and continued teasing; removing and hiding belongings; and leaving people out of things on purpose; this last practice more frequently involving girls.

The incidence of bullying is best estimated through the use of self-administered anonymous questionnaires. This is because children are frequently reluctant to admit that it is happening to them. In preparing children to answer the questionnaire, it is necessary to define bullying carefully in language they understand and to give clear examples. It must be differentiated from fighting or quarrelling between people of roughly equal strength or power. In surveys conducted by Rigby and Slee (1991, 1993) in Australia, serious bullying has been defined operationally as bullying that is reported as occurring at least once a week. Using this criterion, approximately 15 per cent, or one in seven children, are being bullied by their peers in Australian schools.

The age and gender distribution of victimisation has been estimated using a large sample of schoolchildren of ten years of age and over and attending coeducational schools in South Australia (Rigby 1994a). Boys are more likely than girls to report being bullied, particularly when an anonymous questionnaire is used. Victimisation tends to decrease in successive years of attendance at primary schools, only to increase significantly when children enter high school and find themselves with bigger and stronger children. These results correspond closely to those obtained by the national KidsLine phone-in service in 1993. The figures from that source indicated that numbers of children reporting peer victimisation also peak at the age of thirteen.

There have been many recent studies of the effects of peer victimisation on the well-being of children. In summary, they show that victimised children are more likely than others to have low self-esteem, suffer high levels of depression and have poor general health. They are also likely to be socially isolated and more frequently absent from school. Of particular importance, recent research conducted in South Australia has shown that victimised children are two or three times more likely than others to report having suicidal thoughts (Rigby 1994b). There is also a growing body of evidence that seriously bullied children have been driven to take their own lives. We also know that the effects of bullying can persist into adult years, resulting in lowered self-esteem and, in some, recurring bouts of depression (Farrington 1993; Olweus 1993).

How Peer Victimisation in Schools can be Prevented

The first step must clearly be to increase awareness of the problem of bullying, especially among school teachers. Such awareness is definitely growing, but there are still some principals and teachers who wish to deny that it can be

happening in their schools. The fact that recently a Western Australian school was accused by parents of not taking appropriate action when their children were bullied at school and were paid a $6000 settlement, has done much to encourage the acknowledgment of the problem.

There are now a good many sources of information and practical advice about bullying in schools in the form of books, articles and videos, such as the video, 'Bullying in Schools' by Rigby and Slee (1992), which is being used widely in Australian schools. There is also a more recent book, *Bullying in Schools¾ and what to do about it* (Rigby, in press). The Australian Council for Educational Research in Melbourne can be contacted to obtain such information about both books and videos available on the subject.

Reading books and viewing videos about bullying can be helpful, but schools are much more likely to be convinced of the importance of the issue if they explore what is happening in their own schools. The best approach is to use a well designed anonymous questionnaire, for example, the Peer Relations Questionnaire (PRQ) of Rigby and Slee (1995). In this way it is possible to get reliable information about the incidence of bullying, where and when it occurs, what forms it takes, and most importantly the readiness of students to receive help or to discuss the issue of bullying in their school with other students.

Such data gathering culminating in a detailed analysis and report to the staff of a school is likely to lead to a general recognition of the problem and the development of appropriate policies. This can best be done through planned discussions involving all teachers in the school and also some students and parents.

A policy statement will include some general statements about the school's position on peer victimisation, such as:

'Bullying is unacceptable in our school.'

'Students have a right to a safe environment.'

But clearly such sentiments, valuable as they are, must be followed up with procedures and actions for dealing with actual cases of victimisation when they occur. To this I will return shortly.

If prevention is the aim, this means creating a school ethos which is inimical to bullying behaviour. This implies, first of all, teachers modelling behaviour in their dealings with children that is non-authoritarian (this does not mean teachers should not be authoritative!) and also promoting cooperation in learning. Further, if teachers can engage the real interest of their students, bullying is likely to diminish. The desire to victimise others thrives on chronic boredom.

Most importantly, bullying can be largely prevented by teachers talking about bullying with their classes and helping them to formulate *their* response to it. At the 1990 Victimology Conference in Adelaide, I presented research findings on what students thought about the victims of peer bullying. Even in the most 'macho' schools, the majority of students were supportive of victims and disliked bullies. But they were inclined to be passive in their reaction to it, and to act as bystanders when it occurred.

Dr. Slee and I have subsequently found that children are most supportive of victims at two stages in their school career: in the early years of primary school and in the later years of secondary school. It is easiest to work with students in

these age groups; but it is possible with all classes, because the injustice of bullying is acknowledged by most children at all levels.

When teachers are able to get groups of schoolchildren to discuss bullying constructively, they are likely to come up with rules which they would wish all children to follow. According to Olweus (1993) these rules are often formulated:

1. We shall not bully other children
2. We shall try to help children who are bullied
3. We shall make a point of including children who are easily left out.

Dealing with Incidents of Bullying

Dealing with incidents of bullying is rarely easy or obvious. Teachers are often very uncertain whether to act at all. They may be personally fearful of supporting the victims in case they themselves are victimised. They often feel that they simply do not have the appropriate skills. The children may not trust the teachers to handle their problem effectively. According to the survey results only about one in five of children who are seriously bullied tell a teacher. They are much more likely to tell their friends. Of those who do inform teachers, in about 40 per cent of cases there is no change in the situation. In 10 per cent of cases students have reported that the situation got worse. This means that teachers cannot rely exclusively upon victims of school bullying telling them about it. They need to make their own observations and listen to what bystanders are prepared to tell them.

What can Teachers do when it happens?

Not surprisingly this is controversial. There are commonly two different sets of assumptions about the nature of the bully. According to one viewpoint, the bully is typically a tough guy without remorse or conscience, basically anti-social, perhaps even a deviant psychopath. He (or she) operates alone or with someone very much like him (or her). The prototype is that suggested by the James Bulger case reported last year in the United Kingdom. The alternative viewpoint is that the bully is typically a thoughtless conformist operating in a group and is not fully aware of the harm or hurt that is being caused.

The first view (bully as psychopath) tends to result in an approach characterised by interrogation, blame and punishment. The second view is not concerned overly with the precise facts of the case. It encourages avoidance of explicit blame. It is concerned primarily with conveying to the bully a sense of the harm that is being caused. It seeks to provide an opportunity and encouragement for the group member to behave responsibly and as a mature individual. Treating the bully as a criminal or a potential criminal is the traditional way of approaching the problem. It is in fact very difficult to stop the practice of bullying in this way, because it requires continual surveillance; and we know that bullying can continue in hidden and subtle ways.

The view of bullies as thoughtless conformists who do not appreciate the harm they are doing has led to the development of several methods of

intervention of which those proposed by Maines and Robinson (1994) in the United Kingdom and Anatol Pikas (1989) in Sweden are the best known.

The former which is known as the No Blame Approach proposes that once identified by a victim, the group of bullies should be confronted by the teacher with the evidence of the harm that they have caused. This may take the form of a poem, drawing or piece of writing provided by the victim describing his or her feelings. The group of children may also include bystanders. The teacher invites the group to consider the victim's feelings and to indicate how they intend to improve the relationship. This method is regarded as being more appropriate for primary schoolchildren.

Anatol Pikas has developed a method of intervention which he called the Method of Common Concern, later changed to the Method of Shared Concern. In this approach, which is more suitable for secondary school students, members of the bully group are seen individually, and the victim is not initially involved. Again interrogation and blame are avoided, and the teacher seeks (and usually gets) an agreement with each group member to behave more positively in future. The aim is to develop a shared concern regarding the victim.

It should be noted that in both the No Blame Approach and the Method of Common Concern the issue of bullying is treated as a matter for the school to develop in children more responsible attitudes and behaviours in relation to each other. Parents are not necessarily asked to become involved, but the behaviour of the children is carefully monitored.

Support Groups for Victims

A further, supplementary approach has been suggested for children who are frequently victimised and want to develop better coping skills. For these children groups may be run (usually at lunch time) to help the children to become more assertive and to avoid some forms of victimisation.

A reported consequence of such work is enhanced self-esteem which can help children to avoid being targeted by bullies. Some critics have argued that this approach involves 'blaming the victim'. However, skilfully planned and executed, such group work has been shown to enable some children to protect themselves more adequately (*see* Arora 1991; Rigby & Sharp 1993).

Under what Circumstances or Conditions may specific Measures be usefully employed?

The first and most important condition is that the procedure or measure to be employed must be generally acceptable to a school staff. In some schools it will seem like a choice between (a) a tough uncompromising approach in which sanctions follow every bullying incident, and, if need be, serious talks with parents, and (b) a softer approach in which an attempt is made to avoid blame and to get individuals or groups to appreciate the damage they are causing and to act positively. This latter approach may require patience and skill that is hard to find in some schools, as well as training in a well developed method of intervention. We do know, however, that the newer non-traditional methods have

been used effectively. For example, Professor Peter Smith at the University of Sheffield, has reported that the Method of Common Concern has been used successfully in two-thirds of the cases in which it has been tried in schools in the Sheffield area (Smith 1994).

It seems to me that it is not impossible to use different approaches in different situations. For example, it may be wise to begin with a No Blame Approach or a Method of Common or Shared Concern in the expectation that in many cases one would be successful. Sanctions, however, and talks with parents may be necessary for some children as a last resort.

Conclusion

We are now at the stage in the study of peer victimisation in schools of evaluating different approaches, and some work has already been done in this area (*see* Rigby 1994c). But let me stress that bullying will only be significantly reduced when school staff are convinced of the seriousness of the problem and that there are good grounds (as there are) for believing that interventions can be effective. Solutions imposed upon schools by Education Departments or experts are not likely to work. Schools must develop their own responses—after being informed of the options.

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A Profile of the Murder Victim in South Africa as an Aid to Prevention

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Few things in life evoke such terror as murder. Research conducted by Brown on the counselling of victims of violence indicates that each murder produces about ten persons in need of counselling (Brown 1991, p. 184).

Reported crime in South Africa is increasing at an alarming rate with the murder rate alone increasing by 135 per cent over the past ten years (South African Institute for Race Relations 1993). The murder rate in South Africa is estimated at 98 per 100 000 of the population in 1992 which compares poorly with the American figure of 10 per 100 000. In less than three-and-a-half years in South Africa 52 800 people have died violently with just under 9000 of them the victims of 'political unrest' (*Annual Report* of the Commissioner of Police 1993).

Very little research has been conducted in South Africa on the topic of murder. The extensive research that has been conducted on the death penalty by Naude and Ladikos in 1992 has as its population only murderers on death row, whereas the research by Ndabandaba (1987) is on violence in general and does not cover the topic of murder exclusively. It is therefore not always plausible to make direct inferences between the research carried out in South Africa due to the different accent that the various researchers placed on murder. At a conference in Soweto on 11 June 1992 with the theme 'violence and possible solutions for peace in Soweto' the need was expressed by the Regional Commissioner of Police in Soweto for research on the topic of murder (Snyman 1992). The research project that forms the basis of this paper is an attempt to throw light on the subject.

Definition of Murder

To define murder is not as easy as it may superficially seem. Murder is the general term for the killing of one human being by another. There are some instances where the killing of a human being is regarded as justifiable, for example through the implementation of the death penalty; excusable when no intent is present when a person kills some one by accident; and other instances where the killing of a human being is inexcusable, for example when an individual plans a murder and executes his plan (Nettler 1982, pp. 2-4).

Political violence is of special concern in South Africa when defining murder. Manganyi and Du Toit differentiate between political violence and other forms of violence, (and therefore implicitly murder due to its violent nature) 'by claims to a special moral or public legitimation for the injury and harm done to others, as well as by the representative character of the agents and targets of these acts of violence' (Manganyi & Du Toit 1990, p. 6). The police records reflect the difference between political violence and criminal violence. In the present political climate in South Africa 'political' murder is regarded as more serious by the media and the public in general than 'criminal' murder. This notion aggravates the plight of the indirect victims of 'criminal' murder.

For the purposes of this study murder will be defined as an unlawful and intentional act that caused the death of a fellow human being (De Wet & Swanepoel 1960, p. 23).

A Profile on the Murder Victim in Soweto

The main aim of the research conducted on murder in Soweto is to establish whether a profile can be drawn on the victim and perpetrator of murder, and the crime situation to identify pointers towards a prevention strategy. The investigation was designed around the requirements of a probability survey to obtain descriptive data.

Soweto is one of the largest cities in South Africa, comprising 98 square kilometres, with an estimated population of four and a half million people (Van den Heever 1994). The population is virtually homogeneous due to the fact that Soweto was established under the apartheid legislation as a township for black people. The majority of the inhabitants fall into the low income level. Due to the fact that South Africa is still a fragmented society in terms of residential areas as the Group Areas Act was abolished only in 1991, six of the eight police districts in Soweto were included in the research project, namely Jabulani, Moroko, Orlando, Meadowlands, Dobsonville and Diepkloof as mainly people from the so-called black population group reside there. In the other two police districts mainly Coloured and Indian residents live.

During 1991 a total of 1294, and in 1992, 1450 murders were reported to the police in Soweto (*Annual Report* of the Commission of Police 1993). In 1991 only in 51.78 per cent of these reported murders were the perpetrators arrested and in 1992 only in 48.15 per cent of the cases were the murderers apprehended.

Simple random sampling was used and every tenth file included in the sample was included. Two hundred and eighty one (281) files were studied

comprising of 277 files drawn in the sample and four of the files used in the pilot study. The sample of murder dockets for 1991 and 1992 which are closed were studied and a research schedule on each was completed. The frequency of each of the variables was drawn to enable the researcher to compile profiles on the victim, the offender, the crime situation, the time spatial distribution and the manner in which the arrested accused is disposed of.

In order to compile a profile on a crime, data on the incidence of crime in a specific area can be obtained from three sources, namely official statistics; studies based on information obtained from victims of crime; and studies based on information obtained from the perpetrator of the crime. Information for this study was gathered from official sources only, namely police dockets. Although the researcher realised that the validity of official sources are questionable due to factors like under reporting, it was nevertheless decided to use this source as murder has one of the highest report rates (Conklin 1989, p. 26) and none of the other two sources of research data would provide the bulk of information in the limited time available.

Apart from the advantages of official sources to this study, there were mainly two major drawbacks that hampered the data collection. A number of murder dockets were incomplete and the researcher had to read in some instances through all the statements to find essential facts. Furthermore, an official distinction is made between so-called ‘political murders’ and ‘criminal murders’ with the dockets included in this research project covering only the last category of murders.

Profile of the Murder Victim

A victim is anyone who experiences injury, loss or hardship due to a cause out of his or her control. A murder victim is the individual whose life was taken in an unlawful and intentional manner (Karmen 1992, p. 4). Although this study deals only with the direct victim of murder, it is important to remember that approximately ten people are directly and severely traumatised by a single murder. Brown states that ‘death is not the greatest loss in life. The greatest loss is what dies inside us while we live’ (Brown 1992, p. 184).

The majority of the victims, 86 per cent, were male. Sixty-nine per cent of the victims were between the ages of 21 and 40 with 70 per cent of them being of single marital status. Over a quarter of the victims, namely 27 per cent were unemployed with the rest occupying various professions.

Most studies on homicide describe the murder victim as young males with a peak in age distribution between 25 and 34 (Allen 1980, p. 35). The majority of the victims in the study by Naude and Ladikos were black males but, contrary to the Soweto study, most of them were married and employed. Very little attention is paid in the literature to the employment status of the victim of murder. Hawkins cites in his study on homicide amongst black Americans the high rate of unemployment amongst the blacks in America as the leading cause of their higher than average involvement in crime both as victims and perpetrators (Hawkins 1986, p. 40). In South Africa during 1993 it is estimated that approximately half of the adult population is unemployed. In this study on

murder in Soweto the profession of the victim can have a precipitating role to play. The victims who are employed in the mining and manufacturing professions usually live in hostels where, due to poor living conditions and the political conflict between different hostels they are more exposed to potential conflict situations. The victims whose professions require them to commute between their homes and places of work by train expose themselves to a greater extent than people who need not commute or who can afford private transport.

Profile of the Perpetrator

Only in 2 per cent of the cases included in the Soweto study was the murder committed by a female. Six of the perpetrators were under the age of 18 with the biggest concentration, 74 per cent in the age group 21 to 40. Most of them were unmarried with a third unemployed. Forty per cent of the perpetrators had a criminal record; 20 per cent having a first offence, 19 per cent between two and five previous convictions and 1 per cent more than five convictions. Just under half of these previous convictions were for crimes against the person.

The literature on murder indicates that homicide is primarily committed by unmarried young men (Wolfgang & Weiner 1982, p. 22). This fact is supported by the findings of Naude and Ladikos as their profile of the convicted murderer on death row is also a black unmarried male between the ages of 22 and 31, but, in contrast with the Soweto data, 65 per cent of the group on whom the profile is based, was employed at the time the murder was committed (Naude & Ladikos 1992, pp. 34-41). Little reference could be found in the literature on the criminal record of the murderer, but it is generally presumed that, because an emotional outburst is a strong emotion associated with murder that a pattern of murderous behaviour is more the exception than the rule.

Profile on the Crime Situation

The profile of the crime situation will be discussed in terms of the relationship between the victim and offender prior to the murder; the motive for the murder; the role of alcohol; the weapon and methods used to commit the murder.

The relationship between the victim and offender

Murder is in essence the result of an intense conflict between at least two people that is resolved by violence and results in one of the parties being killed. The relationship structures of the victim is often the first point of start for the investigating officer when looking for the perpetrator. The specific relationship between the victim and offender can be categorised as: the victim and offender are both members of the same family; the victim and offender are acquainted; and the victim and offender are complete strangers to each other.

In 44 per cent of the cases of murder in Soweto the victim and murderer knew each other very well by being related or good friends.

Research on murder shows that the frequency of strangers is relatively low in homicide (Hawkins 1986, p. 60, Harries 1990, p. 117) but the possibility exists that a disproportionate number of instances where relationship was not known,

entails strangers. Curtis' findings that one-third of homicides occur between intimates compare unfavourably with the Soweto data (1974, p. 50). The relationship between the victim and the convicted murderer in the research by Naude and Ladikos indicates that in less than half of the cases, namely 46 per cent were strangers to each other with the relationship between the rest of them varying from lover to employer/employee (1992, p. 60). The study by Ndabandaba into violent crimes in black townships contradicts Curtis' findings and is more in line with the Soweto research results, in that in about half of the murders studied, there was a prior history of hostility and even overt aggression between the victim and murderer. In two-thirds of the cases the victim initiated the interchange with the offender stating his intent to harm the victim and then killing the victim (Ndabandaba 1987, p. 73).

It can therefore be deduced that although spouses and good friends are a main source of pleasure in one's life, they are equally a main source of frustration and hurt. Few others can anger one so much and there is more social transaction time between acquaintances for tension to develop.

The role of alcohol

Alcohol and crime, and then specifically interpersonal violence, has always been inextricably entwined, but the nature of the relationship between alcohol and crime is not a simplistic one. To assume that the relationship is causal is to oversimplify the issue as other factors associated with the murder will be negated. Alcohol is but one, albeit an important, link in the overall chain of causative factors (Walfish & Blount 1989, pp. 370-86).

Alcohol played a major role in the commission of murders in Soweto. In 48 per cent of the cases it was determined that alcohol was consumed by either both or one of the parties and in 39 per cent of the cases the role of alcohol is unknown. In only 12 per cent of the cases it was determined that alcohol played no role.

Mushanga found in the research he conducted on homicide in Uganda a high correlation between alcohol usage in either the victim or the perpetrator or both, and homicide (1974, pp. 124-30). Reports from medical examinations on murder victims in the USA revealed that in eight American cities the percentage of corpses testing positive for alcohol ranged between 38 per cent and 62 per cent. Alcohol is more consistently implicated than drug use in interpersonal violence with fatal outcomes (Karmen 1992, p. 79). This suggests that the more alcohol there is in the blood streams of individuals, the more these individuals are likely to engage in violence which can easily lead to murder.

Weapons and methods to commit murder

Mushanga found in his Uganda survey that people will use whatever weapon is available to inflict death and also people will use what is culturally defined as an offensive or defensive weapon and method when a situation arises which requires the use of violence beyond mere physical force (1972, p. 55).

Eighty-one per cent of the murders investigated in Soweto were committed with a weapon. A knife or other sharp object were used in 53 per cent and a gun in 26 per cent of the cases. The Okapi knife, a folding pocket knife with a very

long thin blade which can be bought at minimal cost at almost any local *spaza* shop featured in virtually every case in the Soweto research where a knife was used. The methods used to murder a person when a weapon was not used varied between strangling, stoning and burning. A method of killing which emerged in recent years is throwing a person off a moving train. This is one of the most feared methods of murder in Soweto.

In the United States firearms are used in about 60 per cent of murders, with knives and other edged weapons accounting for approximately 20 per cent of the cases. In the remaining 20 per cent of the cases methods like drowning, burning and poisoning were used (Macdonald 1986, pp. 38-56). A firearm, knife, panga and limpet mine were used as weapons in 67.3 per cent of the cases investigated by Naude and Ladikos with other methods like stoning and burning used in the remainder of the cases (1992, p. 67). About 47 per cent of the murder cases investigated by Mushanga in Uganda were committed by domestic articles like the spear, sharpened stick and panga that are common in most local homes and used for domestic and agricultural purposes. In the majority of the cases various instruments like bottles, stones and iron bars were used or the victim was killed through poisoning, strangling or brute force (1972, pp. 54-72).

The research by Curtis that points out the fact that the proportion of firearm killings was higher in non-clearances than when other weapons or methods were used, can explain the fact that in Soweto on average only 50 per cent of the perpetrators of murder were arrested in 1991-92 (1974, p. 101). The greater impersonality and efficiency that firearms provide for the criminal enhances his chances not to be apprehended.

Summary of the Profiles

From the research conducted on murder in Soweto it appears that the majority of the victims were young unmarried males who were employed in a variety of professions. The perpetrators were also young unmarried males with two-thirds being employed in various professions. Forty per cent of them had a criminal record of which approximately half were for crimes against the person. In almost half of the murder cases the victim and perpetrator knew each other well by being friends or acquainted to each other. In the majority of the cases the violent act had its origin in interpersonal conflict between the victim and his murderer. Alcohol played a major precipitating role in the murders investigation. The majority of the murders were committed with a weapon of sorts with knives and guns featuring prominently. Most murders were committed over weekends and at night either in public places or inside the home of either the victim or the perpetrator. Less than half of the perpetrators were arrested and of these only 63 per cent were found guilty and sentenced.

As the profile on murder in Soweto indicates, a young, unmarried and employed male is at risk to be attacked and murdered by another young, unmarried male who he is friends with or related to. If interpersonal conflict develops between them, usually over a weekend and at night when they socialise in either of their homes or a public place and consume alcohol, he is at risk of being mortally wounded with either a knife or a gun.

Prevention of Murder in Soweto

According to the profiles sketched the following prevention strategies are suggested:

On a micro level education is needed at many levels.

- The public must be made aware of their own character flaws like a short temper or emotional outbursts and gaps in knowledge that make them susceptible to the perpetrator. An aggressive attitude towards people and an inadequate handling of stress and frustration will lead to confrontation with other people. Better methods are needed to help the perpetrator handle his or her aggression. Both the potential victim and perpetrator must be educated on available community resources and how to use them. Violence must be viewed as an unacceptable way of resolving interpersonal conflicts and healthy conflict resolution strategies must be taught to children from an early age. Schools, clinics and church organisations can play an important educative role in this respect.

- The abuse of alcohol does not only lower inhibitions which can involve a person more easily in a confrontation than when the person was sober, but also lets the person associate with people and places where conflict can very easily arise. Public places and alcohol use together are major contributors to potentially dangerous and lethal situations. The availability of alcohol can never be restricted, but the public must be educated on responsible alcohol consumption. Liquor manufacturers and retailers should realise their social accountability by promoting responsible use of alcohol.

- Health care providers need to recognise murder as one of South Africa's major public health problems. The risk to become a victim of murder is as great as to become the victim of cancer or a heart attack. Comprehensive education over a wide field is needed to enable a variety of people like social workers, teachers, police officers and nurses to develop preventive techniques. Referrals for appropriate intervention, help and follow-up should be made.

- Parents need to understand the need to supervise their children better to identify flaws and gaps in their personalities and lifestyles before the child becomes involved in potential conflict situations.

- Schools need to revise their curricula to provide more relevant education for those students developing crime patterns. Better counselling is also needed. Crime prevention programmes should be introduced to schools at all levels for example children in nursery schools should be taught not to accept gifts from strangers and the older child must be made aware of the risk they take when hitch-hiking and the harm that can be inflicted when carrying or using a weapon like a knife or gun carelessly.

On a macro level the following needs to be done:

- The legitimacy of the criminal justice system must be established. This can be achieved by formulating laws and criminal court procedures that the public at large underwrites; establishing trust between the police and the public to enable them to function as partners against crime; and the imposition of sentences that are aligned with the needs of the public.

- The creation of employment opportunities, acceptable housing; sufficient recreational facilities and proper protection on public transport will decrease most of the trigger factors of homicide.

- The extension of already existing victim support schemes to handle the needs of all victims of crime and especially the indirect victims of murder.

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Victim-Offender Reconciliation with Adult Offenders in Germany

UTE I. HARTMANN

The Idea of 'Restitution'

Conflict-mediation and victim-offender-reconciliation as alternative reactions to deviant behaviour are very much part of the international criminology discussion. Numerous programs have been developed, often associated with the notion of 'restitution', which are intended to relieve the sanctioning systems of the state (Schreckling 1991; Bannenberg 1993). On examination, however, these programs differ considerably due to the different national justice systems (Hammerschick et al. 1994; Trenczek 1993).

Opinions differ as to whether victim-offender-reconciliation ought to be an integral part of the instruments of the criminal law or whether it should be established as a medium for 'private' justice. Since the early 1980s, the integration of conflict-mediation and restitution with the existing criminal justice system has been ardently discussed in Germany (Schoch 1987; Rossner & Wulf 1987; Roxin 1990; Albrecht 1993; Hirsch 1990). In the course of this discussion, victim-offender-reconciliation programs have evolved which target victimised natural persons. These programs provide the offender and the victim an opportunity to meet and talk about the offence, its causes as well as its consequences. Financial compensation is also able to be considered as part of a settlement (Pfeiffer 1992; Netzig & Petzold-Berger 1993).

Despite various opinions, criminologists and politicians in Germany agreed to accept victim-offender-reconciliation as a means of resolving crime and consequently determining sentence. The 'WAAGE Hannover' described in this paper is an example of a pilot victim-offender-reconciliation program for adult perpetrators which has been integrated into the criminal justice system. Although

there are few victim-offender-reconciliation programs like the 'WAAGE Hannover' program, there are more than 200 like programs within the juvenile justice system (Bannenberg 1993). These juvenile programs have been working successfully for many years.

Victim-Offender Reconciliation and Prosecutors

In German criminal law, the legal classification of the severity of the offence is quite different from the British or American justice system. Offences are categorised by distinguishing between crimes of minor or medium severity and severe crimes. Only offences of the first category can be resolved extra-judicially by the prosecutor. For such offences, once victim-offender-reconciliation has been carried out successfully the prosecutor takes no further action on his or her own discretion or the matter can be dismissed by a court. In the case of felonies, however, the prosecutor has to take legal proceedings but the outcome of victim-offender reconciliation can be introduced as mitigation against imprisonment or a fine.

The Pilot Project 'Waage Hannover'

In 1990, the 'WAAGE Hannover' was founded as a non-profit-organisation for conflict-mediation and restitution with the aim of reconciliation between victims and offenders within the criminal law for adults. The prosecutors of the local municipal court refer those cases to the project they consider to be suitable for a victim-offender-reconciliation. Due to the fact that the prosecutors decided on the suitability (and consequently on the number) of cases, they are able to influence the success or failure of such a project directly. Therefore, it was not only sensible, but also inevitable to include the prosecutor's office in the preparatory process of the project. Together with the prosecutors, the 'WAAGE' mediators developed and compiled a catalogue of criteria for the referral of cases suitable for victim-offender-reconciliation.

The most important criteria are: the quality of the victim; the case must be sufficiently solved and indictable; and participation must be voluntary. The catalogue also included a description of offences which are suited for victim-offender-reconciliation.

Quality of Victims

It was agreed that only natural person victims would be referred to the program. Other kinds of crime victims such as associations or companies were excluded from victim-offender-reconciliation. Principally this decision was based on the premise that communication and interaction between those persons who were personally affected by the crime is best suited for reconciliation, especially restitution (Schoch 1993).

Sufficiently Solved and Indictable Cases

Cases which are deemed 'sufficiently solved and indictable' must comply with three conditions:

- Firstly, before referral of cases to the project, the facts of the case must have been sufficiently investigated including acknowledgment of responsibilities for the offence and the attribution of the victim/offender role. Assessment of this criterion is made independent of the WAAGE mediators who seek to remain neutral.

- Secondly, petty offences are excluded from a mediation. Victim-offender-reconciliation is not meant to widen the net of social control or to legitimate interference of the state.

- Thirdly, only offenders who admitted or confessed to at least essential elements of the offence or who gave no statement at all, are considered. For constitutional reasons, the offender's protestation of innocence must be respected.

Voluntary Participation

The voluntary participation of both the victim and the offender is desirable, perhaps inevitable. It was agreed, however, that the threat of a more severe penalty would not be used to sway a refusal to participate by an offender.

Catalogue of Offences

In order to facilitate the selection of offences which are suited to reconciliation, the 'WAAGE' mediators promulgated an explicit list of individual delicts. In the main these offences are of minor and medium severity. But, there is scope for some 'capital felonies'.

Assault, breach of domicile, coercion/threat, and delicts of libel and slander are among those offences considered suited for victim-offender-reconciliation. In German criminal law there is a delict which does not exist in Australian law: verbal injury. Therefore, if two persons are quarrelling, calling each other names, are cursing and swearing under German criminal law a case could be stated.

Program Development

As of 1 July 1992 all prosecutors were required to refer cases suitable for conflict mediation to the 'WAAGE Hannover'. Within the first six months, 37 prosecutors referred only 43 cases, that is about 7 cases per month. In 1993 the number of cases increased to 191 cases, that is an average of 16 cases per month. In between January and June 1994, 94 cases were referred, that is an average of 15 to 16 cases per month. Despite the apparent increase in the number of cases being referred during the first months, it still seems to be insufficient.

Objectives and Research Questions

A research project was appointed to evaluate the prosecutors' conduct concerning the referral of cases; and to investigate the prosecutors' frequent criticism of victim-offender-reconciliation and their recurring reasons for the low referral rate of cases. For example, some prosecutors claimed that: 'adult offenders hardly ever confess'; 'victim offender reconciliation is too time-consuming'; and 'there are hardly suitable case constellations'.

The first task of the researchers was to establish how many of the cases before the prosecutor's office in Hannover were probably suited for victim-offender-reconciliation. For this purpose a register of the case capacity in a comparable period before the program was prepared. Then a register of the cases which have actually been referred to the program was compiled. Cases in the second register were tested for suitability against the criteria-catalogue mentioned above. Both surveys (registers) yielded the necessary data to compare the aspired referral rate of a representative year with the number of cases actually referred for victim-offender-reconciliation. An analysis of the case records was undertaken using a survey instrument devised based on the structure of the prosecutors' investigation records.

The first survey, which had been carried out to investigate the capacity of suitable cases of a representative year, was a random sample of 750 records of 1990. The random sample was drawn from a population of 27 920 cases held in the prosecutors' department in 1990. The second survey of the actual number of referred cases was carried out over 17 months from summer 1992 to November 1993. Whereas 230 records were located, only 201 were included because several records were not available.

Results

Capacity of eligible cases in 1990

From the 750 records collected and analysed in the first survey, 6 records were subtracted because they were mistakenly registered as criminal offences. Other records were subtracted because there was no natural person victim. As a result 335 cases with at least one personal victim were left. These cases were then separated in cases with offenders who confessed or made no statement at all, and those who did not confess. At the same time, records were divided into either petty offences or non-petty offences. This division was based on the prosecutors' final directions. In other words, if the prosecutor decided to dismiss without charges or referred to private prosecution, these cases were labelled petty offences. In some cases, however, the offender's denial contrasted the petty offence classification, hence some data had to be further tested.

A total of 187 suspects denied charges. Of these cases, 94 suspects merely denied and 93 denied petty offences.

After testing, 119 cases of the 1990 survey group were deemed suited for victim-offender-reconciliation. Projected to the population of 27 920 cases in 1990, it was determined that there are 4430 cases per year which the prosecutors could refer to the victim-offender-reconciliation program.

Prosecutors' coverage of case capacity during the project phase 1992-93

Next an assessment of the cases that the prosecutors actually referred was conducted. As mentioned, within the first 17 months, 201 out of 230 finalised records could be evaluated and analysed according to the program criteria.

Consistent with the criteria the 201 records related only to natural persons as victims but surprisingly, more than 50 per cent of the perpetrators denied the offence. Therefore, 103 records should not have been referred to the project and had to be excluded from the research project. Consequently, only 98 records remained.

When testing the remaining 98 'WAAGE' case records against the 'petty offence' criterion it became obvious that it would be dangerous to always proceed according to the prosecutors' closing directions. For instance, the reason a prosecutor had dismissed a case or offered mitigation was not always clearly stated. Nonetheless, 22 cases were identified as petty offences and excluded.

Only 76 cases within the 17-month sample period met the criteria for suitability, that is 54 per year. That number was far short of the several thousand cases identified as suited in the first survey (4430 in 1990). In other words, only 1.2 per cent were actually referred to victim-offender-reconciliation.

Quality of 'WAAGE' cases

Despite the fact that only 38 per cent of all referred cases met the agreed criteria, the 'WAAGE' mediators, perhaps for reasons of 'survival', tried to achieve a reconciliation also in cases which were formally not suitable. In 94 cases, of which only 76 cases were suited according to the criteria, a successful victim-offender-reconciliation was carried out and the success rate increased. Therefore, for the survey period, the 'WAAGE Hannover' case records showed 94 cases where victim-offender-reconciliation had been successful and 107 cases where mediation could not take place.

In most of the 107 cases without successful mediation, the offenders refused to participate. Reasons for non-participation included: the offenders refused to meet the victim, the offender's lawyer advised against participation, or the offender did not approve of the victim's damage claim.

On closer examination, most of the 94 so-called successful cases showed characteristics of petty offences, such as low financial damage. Rarely was physical injury involved. Whereas resultant injury in a few cases required outpatient treatment, only one case involved hospitalisation. In most cases involving physical injury, medical treatment was not necessary at all.

Survey results also showed that victim-offender-reconciliation was more likely to be successful when victim and offender were unknown to each other. Perhaps, victims and offenders who were unknown to each other are less likely to share circumstances of ongoing conflict. Moreover, in the case of conflict among people living together or in close proximity, the affected person's appeal to the criminal justice system was often the last attempt to settle the dispute (or resolve the crime).

The petty cases which the prosecutors referred to the program were more often successfully settled by a mediator than other cases, no matter whether the perpetrator confessed or denied the offence. Indeed, a comparison between

successful and failed mediations, confirmed the assumption that the offender's confession or denial was not a prerequisite for reconciling petty offences. It is unlikely that the same could be said in the case of more severe offences where the effect or consequences is likely to be considerable.

In summary, it is evident that prosecutors referred 'quantity' (although not nearly as many cases as were suited) instead of 'quality' to the program. In so doing, prosecutors widened the offence net in minor matters, and drew the offence-net in in medium and severe offences. It was a pity that the agreed criteria were not consistently applied.

Review

The research project results show that the practical realisation of the mediation concept was not as successful as expected. Despite the prosecutors' promised support, they were obviously not prepared to apply the criteria as predetermined. Perhaps this is indicative of the nature and scope of their education which seems to concentrate too much on punishing the offender and ensuring the performance of proceedings. Under such circumstance, it is unlikely that a communicative measure like victim-offender-reconciliation could be integrated into Germany's criminal justice system.

For future researchers there is also the dilemma that only the prosecutors are authorised to refer cases, hence there is an inherent bias in the case population which would carry over into any sampling. At present, other 'non-reconciled' cases have not been subject to any rigorous evaluation.

Fortunately, a few non-petty cases which were referred to 'WAAGE Hannover' fitted the prerequisite criteria and were successfully settled. Therefore there is cause for some hope. Reconciliation, however, will not become an integral component of a criminal justice system unless criminal justice practitioners themselves accept it as a worthwhile contribution for both the legal and social resolution of criminal victimisation.

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Rapporteurs' Reports

Publication verbatim of the Rapporteurs' Reports has not been possible, but certain comments are summarised.

Dame Ann Ballin noted the enormous contrasts in the international position of victims and services available to them by referring to the lack of refuge services available to black women in South Africa compared with her own country of New Zealand. She was concerned at Brooks' account of violence between Aboriginal men and women, violence, it was argued, which was not present when their culture was untouched by European settlement. In the context of the destruction of Indigenous cultures, she was concerned about the erosion of basic values by the nature of the industrial and electronic revolution, which has isolated people, made them suspicious, angry and unable to control their anger. To reduce victimisation, we need to do a great deal more than think in terms of victimology, she argued. We have to think about spiritual values and the structure of our society in order to deal with the erosion of cultural identity.

John Dussich was worried that many papers lacked a theoretical framework with unstated objectives, research questions and hypotheses. There was a lack of concern for causality he argued, with the bulk of papers content with merely descriptive rather than explanatory research. An excess of anecdotal and case study information seemed to be aimed at generating sympathy for victims rather than concern for accurately representing a true picture of victims. On the other side of the ledger, he noted that many papers were current, dynamic and comprehensive, written by young researchers and practitioners who have embraced the field of victimology and victims services fully and who will ensure creative programs and new insights in the future. He concluded by cautioning against the shadow of nationalism, disciplinism and personal aggrandisement creeping into the work. A mature victimology needs to lower the banners of chauvinism, nationalism, academic parochialism and personal egoism and raise high the banner of objective scholarship. That is what will keep our scholarship respectable, provide quality information for policy innovation and reflect our commitment to improve victims rights, and to a more humane global community.

Helen Reeves observed that the concerns of victimology differ from country to country, noting Ota's paper on corporate crime and the prevalence of pyramid selling in Japan, a practice of which she was unaware in the UK and which is illegal in many other countries. The debate about fear of crime was also evident, including whether the acknowledged extensive fear of crime in large cities is rational or irrational in relation to the risk. Some research suggested that the fear was rational or justified for specific people in specific areas. The commercial exploitation of fear of crime was also raised. Does the crime prevention industry fuel the fear of particular groups, particularly women, in order to sell products which may not be needed? Whether fear of crime is actually a problem or a valuable commodity which helps crime prevention was also debated.

Criminal injuries compensation discussions raised fundamental questions of whether compensation for criminal injuries can be justified more than for accident or disease. The New Zealand system of universal coverage for injury

irrespective of the source was referred to. Whether criminal injuries should be paid only when other remedies have failed was discussed in the context of suggestions from Germany, for instance, that people are applying for criminal injuries compensation because it avoids having to take somebody to court. [It is worth noting that most criminal injuries compensation schemes require the injured party to exhaust all other remedies (including civil) before applying for compensation from the State. (Ed.)] The debate about whether it was a symbolic gesture by the State or full common law damages continued. **Freckelton** referred to the secondary victimisation from hearings and cross-examination in claims for compensation. Field on the other hand asserted that psychiatric referral had very important therapeutic consequences by providing assistance to people who might not have had the confidence to go to a psychiatrist.

Reeves concluded by reviewing the discussion on victim impact statements and the victim's role in the criminal justice system. While there is general support for the idea of empowering victims, increasing the accountability of the court and encouraging offender remorse, the question of whether this is actually achieved by VIS remains a lively one. Reeves traversed the arguments which are dealt with more specifically earlier in this volume and concluded that there is a valuable purpose being served, while acknowledging the need for debate on possible improvements and alternatives. Reeves described as a myth the view advanced by **Elias** that victims' service organisations always advocate tougher penalties as a means of achieving justice for victims. In Europe 'they will not take part in movements striving for a more oppressive criminal justice system' she said. While individual victims may feel very strongly about punishment and have a right to express their views, an organisation set up to represent them does not have that right but must look to research to find out where the truth lies. She was grateful to **van Dijk** for the international research which indicated that victims, at least in western countries, are not overly interested in long prison sentences for offenders but seem to be interested in restorative measures as a means to crime prevention. She concluded by noting that the attitude to punishment in developing countries seemed to be harsher, reminding delegates of the need to be aware of the social, cultural, and legal conditions in different countries and not attempting to apply everything we know from our own country wholesale.

Professor Richard Harding extracted six identifiable but intersecting themes from the Symposium. The first was humanistic versus scientific victimology. He found the scientific content very much in evidence, noting the growth in the measurement of victimisation through national surveys and more particularly the International Crime Surveys, which were reported on during the Symposium. He noted that real attempts were made to link abuse of power with traditional criminal victimisation, which was his second theme. He referred to three examples: the paper from Croatia which demonstrated what a potent criminogenic factor the social disruption of war is, particularly in relation to juvenile delinquency (**Nikolić-Ristanović**); the adverse affect on identity resulting from the incarceration of black young offenders in South Africa (Peacock); the never ending cycle of crime and victimisation through second and

third generations of Aboriginal Australians resulting from lack of self-esteem and the overwhelming identity crisis caused by the enforced removal of children from parents and dispossession of traditional lands (Lester). Papers confirmed that humanitarian victimology can be approached in a way that is not merely ideological but, to a degree, scientific.

> *In any case the change in circumstances whereby services for traditional victims have at least in the developed world now gained proper credence and yet where victimisation as a result of abuse of power, social upheaval and global contravention of basic human rights had exponentially increased means that we must focus in the future on humanitarian victimology.*

His third theme was that of relativism versus universalism. The arrogance of defining victimisation experiences only in terms of western and Judeo-Christian morality was pointed out (Fattah). A striking example of this theme emerged at a Session on domestic violence in Aboriginal communities where it was argued that the responses of the criminal justice system should not necessarily be punitive towards male perpetrators (Lester).

> *If Aboriginal women were doubly disadvantaged by being both female and Aboriginal then Aboriginal men would be triply disadvantaged by their Aboriginality and their structural dispossession. In other words the sort of gender analysis of domestic violence which is so much in fashion with regard to non Aboriginal people is culturally inappropriate for Aborigines at the present time.*

His fourth theme was punitiveness and the lack of it, characterising most but not all the mainstream victims' agencies. His fifth theme related to the legacy of Sigmund Freud whose theories lasted well into the 1970s in so far as our reactions to female assault are concerned, but which were debunked in two papers (**Gardner**, **Warner**). The sixth theme was crime prevention, where the link between crime prevention and victimisation prevention was stronger than it has been at previous conferences. 'There was a growing recognition that a mature victimology cannot be divorced from "offenderology" or more generally from criminology. That is a step forward I believe from some of the earlier assumptions and approaches in this area.' This has been a conference where the WSV has moved its agendas forward and certainly come of age, Harding concluded.

Additional papers presented at the 8th International Symposium on Victimology

Ambikapathy, Patmalar (Australia)
'A new philosophy that justifies victim participation in the criminal justice process. Based on the concept of justice and utilitarianism and not retribution and revenge'

Aungles, Dr Ann (Australia)
'Findings of a study of victimisation and vulnerability in a group of train commuters'

Benjamin, Carmel (Australia)
'Are victim impact statements in collision with justice?'

Bilsky, Dr Wolfgang (Germany)
'Myths and facts about the fear-victimisation relationship'

Bojholm, Dr Soren (Denmark)
'Victims of governmental torture'

Bowie, Vaughan (Australia)
'Victimisation of human service workers'

Brijesh, Professor Chandra (India)
'Victimisation: Old age, an Indian scenario'

Brooks, Nyrell (Australia)
'Domestic violence and perpetrators' belief systems in Aboriginal Communities'

Brooks, Nyrell (Australia)
'Children's coping with loss and grief'

Brown, Judge Michael J.A. (New Zealand)
'Empowering the victim in the New Zealand youth justice process: A strategy for healing'

Buck, Wendy (United Kingdom)
'Analysis of obscene, threatening and other troublesome telephone calls to women in England and Wales 1982-1992'

Chen, Professor Li-Hsing (Taiwan)
'School violence in the junior high school, Taiwa—from the aspect of victimology'

Chetty, Vanitha (South Africa)
'The lost generation: State and public victimization of street children in South Africa'

Chockalingam, Professor K. (India)
'Compensation to victims of abuse of power—recent developments in India'

Coninck, Leo de (The Netherlands)
'The significance of specialist primary care for war victims'

Deichsel, Professor Wolfgang (Germany)
'The potential of the science of victimology for defence lawyers' strategies in criminal defense, as "Victim Lawyers" and in supporting the reconcilitation process between offender and victim outside of the court room'

Department of Justice, New Zealand
'Victim's Court Assistants Scheme in 1993-94'

Department of Justice, New Zealand
'Victim's needs survey'

Diedricks, Margaret-Ann (South Africa)
'Despair among the Black South African Elderly: A theoretical account of their exploitation'

Easteal, Dr Patricia (Australia)
'The victimisation of women by the courts: Women who kill violent male partners in Australia'

Fattah, Professor Ezzat (Canada)
'The cultural relativity of victimisation and victimisation effects'

Ferdinandus, Harriet (The Netherlands)
'Victims of war workshop'

Field, Evelyn (Australia)
'Therapeutic aspects of compensation for victims of crime'
Fisher, Tom (Australia)

‘Victim-offender mediation - An overview of research and issues’

Garkawe, Sam (Australia)
‘Left idealism vs left realism: Answering the challenge of the law and order paradigm’

Goodey, Jane (United Kingdom)
‘The socialisation of gendered fear among 11-16 year olds’

Gomez, Professor (Brazil)
‘The offense and the potential damage to the victim’

Gosita, Dr Arif (Indonesia)
‘Developing services towards victims of violence: An Indonesian case study’

Gutsche, Dr Gunter & Thiel, Dr Knuth (Germany)
‘Social transition in East Germany and the impact of social (structural) and criminal victimisation on fear of crime and sanctioning attitudes—New victim surveys 1991-1993’

Hambly, Professor David (Australia)
‘Criminal injuries compensation: Some policy issues’

Hannaford Kate (Australia)
‘Seven year old Sean Phillips was murdered on 3 March 1988 and his father’s anguish continues. This is an account of his grieving process’

Hjersak, Goran (Croatia)
‘Victims of War in the Former Yugoslavia’

Heydt, Stephen (Australia)
‘Family survivors of homicide victims: Allobiosis. A theory’

Hill, Jan (Australia)
‘Grief begets violence begets grief, Who picks up the tab?’

Hinrichs, Dr Reiner (Germany)
‘Therapeutic aspects of psychoanalytic victimology’

Imbert, Sir Peter (United Kingdom)
‘International perspectives on victimology and victimisation’

Indermaur, David (Australia)
‘A comparison of trends in violent and property offences in Australia and Western Australia’

Iyer, Mr Justice Krishna (India)
‘International perspectives on victimology and victimisation’

Iyer, Mr Justice Krishna (India)
‘A burgeoning global jurisprudence of victimology and some compassionate dimensions of Indian justice to victims of crime’

Jastrobske, Professor Ellen (Canada)
‘False memory or false retraction: Memory retrieval in incest survivors’

Jenkins, Mr Alan (Australia)
‘Keeping a responsibility focus when addressing victimisation with adolescents who sexually abuse’

Jewell, Robyn and Read, Rob (Australia)
‘Partners in crime’

Joutsen, Matti (Finland)
‘President’s plenary on international perspectives on victimology and victimization’

Karunaratne, Dr N. and Sharma, Dr Satish (USA)
‘Victims, victimisation and criminal law: In search of greater international human rights and justice’

Kawasaki, Takuji (Japan)
'Prisoners' family and the victimisation affected by their incarceration'

Keenahan, Dr Debra & Barlow, Dr Allan (Australia)
'Post traumatic stress syndrome and stalking behaviour: A niche marketing phenomenon of the '90s'

Kidd, Darryl (Australia)
'A role for victims in community corrections'

Kilchling, Dr Michael (Germany)
'National Victimisation Survey'

Kirchoff, Professor Gerd (Germany)
'European burglary study: The German sample'

Kitayama, Masayashi (Japan)
'Research on the experience of aggression and being victimised in the girl's juvenile training school'

Konishi, Dr Takako (Japan)
'Japan's first crime victim assistance program'

Kosovski, Professor Ester (Brazil)
'Urban violence, mass media and victimisation'

Krainz, Dr Klaus (Austria)
'Compensation'

Kurent, Dr Maja (Croatia)
'Human rights and refugees in Croatia'

Kury, Professor Helmut (Germany)
'The effects of the type of data collection procedure on survey results—illustrated by a victimisation study'
Kury, Professor Helmut & Wurger, Michael (Germany)
'Victimisation experience and fear of crime: A contribution to the victimisation perspective'

Kvashis, Professor Vitali (Russia)
'Crime in Russia today and new forms of victimisation'

LaFree, Professor Gary (USA)
'The decision to call the police: A comparative study of the United States and Venezeula'

Lane, Barbara & Coello, Mariano (Australia)
'Trauma and Refugee Children'

Laster, Kathy & Douglas, Roger (Australia)
'Alternatives to Victim Impact Statements'

Libai, Hon. David, Minister of Justice (Israel)
'Rules of procedure and evidence for the protection of victims of sexual offences—The Israeli experience'

Loschnig-Gspandl, Marianne (Austria)
'Restitution in Austria: Chances of a victim-offender compensation today and tomorrow'

McCarthy, Therese (Australia)
Victim impact statements—A problematic remedy

McCleave, Dr Noel (Australia)
'The forensic medical examiner and the victim'

McGrath, Gerard (Australia)
'Victim impact: A symbolic interactionist critique of victim impact assessment'

Macrae, Louise (Australia)
'Victim-offender mediation'

Mahamati & Penley, Kenton (Australia)
'Homophobia: How it impacts and how to change it'
Makkar, Professor Singh & Gurdip, Dr Lyallpuri (India)
'Victimisation: State responsibility in India'

Morgan, Frank (Australia)
'The benefits of descriptive information in crime surveys'

Morosawa, Professor Hidemichi (Japan)
'Trends of victimological studies in Japan'

Nishimura, Professor Haruo (Japan)
'Recovery process from difficulties encountered by victims and the family members of murdered persons'

Nowland, Ms Leonie and Policansky, Sany (Australia)
'Traumatic stress: Implications for rehabilitation practitioners'

O'Connell, Michael (Australia)
'Victim impact statement: The South Australia Police experience'

Omaji, Dr Paul (Australia)
'Violence and victimisation in a Western Australian school'

Padayachee, Dr Anshu (South Africa)
'The silence of the law: Survival strategies and problems for abused women in South Africa'

Peacock, Robert (South Africa)
'The effects of victimisation on the formation of a spoiled identity with special reference to the incarceration experience of the black adolescent in South Africa'

Peters, Dr Roger (Australia)
'Police victims'

Raffo, Dr Alessandra (Brazil)
'Women in a victim's position'

Sahetapy, Professor Jacob (Indonesia)
'A critical appraisal about abuse of power: A victimological analysis'

Sarre, Rick (Australia)
'Refugees: International problems and international solutions?'

Schneider, Professor Hans Joachim (Germany)
'Emphases and deficits in the present-day victimological thinking'

Schwartz, Professor Martin (USA)
'Violence against female intimates in secondary schools'

Sessar, Professor Klaus (Germany)
'Social changes and/as victimisation: The case of former GDR'

Smith, Jennifer et al. (Australia)
'Children of battered women: The forgotten victims'

Strobl, Rainer (Germany)
'The victimisation of Turkish migrants and the consequences for German society'

Sutton, Dr Adam & Frances, Ruth (Australia)
'Group programs for perpetrators of family violence'

Tamura, Masayuki (Japan)
'Changes in patterns of criminal homicide and its victims in Japan'

Tatsuno, Bunri (Japan)
'Prevention of crime in the community from victim's perspective'

Taylor, Sergeant Jeff and Smith, Chief Inspector Dave (New Zealand)
'New Zealand Police family violence campaign'

Taylor, Sergeant Jeff and Smith, Chief Inspector Dave (New Zealand)
'Victim Impact Statements: History and use in New Zealand'

Tecilazic-Basic, Ms Mira (Croatia)
'Family in war circumstances and Juvenile delinquency in Croatia'

Tomita, Professor Nobuho, and Dussich, Professor John (Japan)
'Experiences of burglary victims in Tokyo—A pilot study'

Toohey, Dr John (Australia)
'Violence and the stress response at work'

Turpin, Assistant Professor Jennifer (USA)
'Violence and public policy: from the personal to the global'

von Tunzelmann, Adrienne (New Zealand)
Department of Justice, New Zealand
'Comprehensive Review of Domestic Protection Act'

Walters, Christine and Barrett, Michelle (Australia)
'Crime information and prevention for the elderly—From theory to practice'

Wang, Dawei (China)
'The study of juvenile victims in China'

Waller, Irvin (Canada)
'Effective policies to prevent crime: The right of victims to national investment in what works internationally'

Wauchope, Margaret (Australia)
'Protective mediation: A new approach to victim-offender relationship'

Webster, Brian (New Zealand)
'Government strategies to coordinate victims' policies and services within a crime prevention framework in New Zealand'

Weis, Professor Kurt (Germany)
'Images of man in victimology'

Wilkie, Ruth (New Zealand)
'Can we fit the victim into the court? (And do we want it)?'

Wilson, Dr Carlene (Australia)
'Victimisation of disadvantaged groups: Further data on victim proneness'

Woltring, Mr Herman (Italy)
'Crime victim surveys'

Yamagami, Dr Akira (Japan)
'Actual situation of victims of homicide and the methods of victim assistance in Japan'