

# THE HEART OF THE CRIMINAL JUSTICE SYSTEM: A CRITICAL ANALYSIS OF THE POSITION OF THE VICTIM

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## Abstract

*The aim of this dissertation, which is based on secondary research involving analysing a range of books, journal articles, Government publications, newspaper articles and videos, is to critically examine the position of the victim in the criminal justice system. The paper looks at the role of political interests in establishing victim-focus policies and the direction towards their placement at the heart of the justice system. This includes the managerialistic values, modernization of the Government and covering-up of punitive measures taken against the offender that all point to the political rhetoric around the centeredness of the victim. Furthermore, the view of traditional justice is accounted for in order to get a grasp of the many underlying factors that can be attributed to the so called rebirth and the consequent concentration on the victim.*

*The paper firstly discusses characteristics of victims, the impact of crime on victims and also their needs for a better understanding of who they are and what can be done to help them. Particular attention is drawn to stereotypes associated with victims and constructions of the ideal victim. Secondly, the adversarial nature of English justice and implications for victims are discussed, as well as some tensions between the interests of the offender and the victim, and the opposed nature of the two. Procedural and service rights especially play an important role in defining whether victims are given appropriate attention. Many new initiatives favour the victim and pledge for its better treatment, but it will be shown that there are conflicts as to what can be done in reality and what is proposed. However, it cannot be disputed that support for victims has progressed significantly within the last decade. In the dissertation, it will be argued that the position of the victim, influenced by these many factors, cannot be at the heart of the system, but has advanced in terms of their treatment.*

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## Introduction

‘For too long victims of crime have not been given a proper support and protection they deserve. This must change. I am determined to ensure that their needs are placed at the very heart of the criminal justice system’ (Jack Straw, 1999 cited in Sanders, 2002: 197).

‘At the heart of my Government's legislative programme is a commitment to reform and rebalance the criminal justice system to deliver justice for all and to safeguard the interests of victims, witnesses and communities’ (Queen’s Speech, 2002<sup>2</sup>).

‘We will put victims and witnesses at the heart of the criminal justice system and ensure they see justice done more often and more quickly. We will support and inform them, and empower both victims and witnesses to give their best evidence in the most secure environment possible’ (Home Office, 2002: 19).

‘My Government will put victims at the heart of the criminal justice system’ (Queen’s Speech, 2006<sup>3</sup>).

‘By 2011 we will improve victim satisfaction with the Police and victim and witness satisfaction with the Criminal Justice System’ (Home Office, 2008: 11).

The quotes illustrate the recent and rapidly increasing attention that has been paid to victims of crime in England and Wales and the atmosphere for the care of victims. A great number of governmental papers, reports and initiatives now focus on victims, their treatment, needs, assistance, support and satisfaction with the criminal justice system. Particularly the White Paper Justice for All (Home Office, 2002) has brought new priorities by setting out a programme of radical reform and a pledge to rebalance the criminal justice system in favour of the victim (Home Office, 2002). Victims have become a significant element appearing in policies relating to crime, its reduction and prevention, and are also used as a factor to determine the success of the criminal justice system, or to justify some developments towards the offender. Criminologists, policy-makers, researchers, organizations and lobbying groups have shown an interest and engagement in victim-related issues, which can be seen in the growing amount of literature and studies investigating this area (Goodey, 2000). In the past, the victim was often described as ‘the forgotten man’ of the criminal justice system (Shapland et al, 1985: 1), ‘the non-person in the eyes of the professional participants’ (Shapland, 1983 cited in Rock, 2004: 331) or the ‘Cinderella of the criminal law’ (Shafer, 1960 cited in Walklate & Mawby, 1994: 58). The tendencies towards poor treatment, overlooking or complete ignorance of victims are evident in the phrases. The low status has recently transformed dramatically, and victims have been accepted as key players and actors on the criminal justice stage (Mawby, 2007; Zedner & Hoyle, 2007; Walklate, 2007). The Government intensively promotes the idea of reorientation of the justice system, makes efforts to enhance the position and improve services for victims, as purportedly the offender has been in the centre for too long.

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<sup>2</sup> Available online at: <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo021113/text/21113-01.htm>.

<sup>3</sup> Available online at: [http://news.bbc.co.uk/1/hi/uk\\_politics/6150274.stm](http://news.bbc.co.uk/1/hi/uk_politics/6150274.stm).

Recent developments include for example the Code of Practice for Victims of Crime, victim personal statements, the Witness Charter, Victims' Champion or the Witness Care Units in court. Without any question, victims are treated with more respect, dignity and recognition. Victims' needs and rights are regarded as essential to the criminal justice system, and it is fundamental to address and fulfill those.

However, some arguments point out certain contradictions between what is proposed and what can be realistically done. Victims may still be marginalized and not given appropriate consideration, even though the Government is suggesting oppositely. The White Paper has been criticized for offering little tangible effects and benefits in victim's rights and remedies, and for its rhetorical, rather than substantial nature (Goodey, 2005; Jackson, 2003; Sanders & Young, 2007). Equally, the criminal justice system can appear too complex, unfamiliar and bureaucratic to victims which could result in difficulties to realize the plans to put victims at its heart<sup>4</sup>. Needless to say, the language of the victim-orientated agenda is likely to appeal to the public, and possibly influence voters in the political competition. As some put it, there is always 'room for doubt about politicians' motives in drawing attention to victims' (Williams, 1999: 13). Furthermore, practical reality of provisions to victims has to be distinguished from the theoretical side. Various policies can be introduced, but there may be problems with their implementation<sup>5</sup>. Laws may be passed, but not enforced<sup>6</sup>. Hall (2009b) explains that some reforms may be genuinely targeted at assistance to victims, some are grounded in different concerns and accidentally help victims, and the rest is only rhetorical with other aims. The government may want to claim credit for supporting victim, and thus increase public confidence and ensure victims turn up to give evidence (Dunn, 2007). It is apparent that politics has its part in the victim-focused programme.

What may seem a simple program to advance the victim's position at first glance, is in fact a part of a continuous change within the wider political and social settings with many underlying factors. The growing awareness and current concentration on victims, as well as the publication of Justice for All were the initial reasons that determined the topic for this dissertation. The methodology of the dissertation is based on secondary research. By conducting a review of selected literature, journal articles and governmental publications concerning victims, the focus of the paper was refined to a few issues arising from the literature and believed to be important in the debate about victims. The paper aims to critically analyze the position of the victim and draw conclusions in regard to its alleged placement at the heart of the criminal justice system. The key objectives of the analysis are:

- to explain who victims are and to discuss the rebirth of the victim
- to explore the relationship between the victim and traditional criminal justice
- to investigate political motives behind the victim agenda and practical developments in the criminal justice system

The main challenges encountered were related to the amount of the material and selection of all relevant sources, and organization and structure of final writing.

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<sup>4</sup> See for example Putting Victims at the Heart of Justice (Guardian, 2009).

<sup>5</sup> See for example Hoyle et al (1998) for an evaluation of some difficulties in One Stop Shop and Victim Statement initiatives, or Flood-Page & Mackie (1998) for research on the use of compensation orders.

<sup>6</sup> 'More than 50 sections of the 2003 Criminal Justice Act haven't been put into effect.' (Nick Clegg cited in Guardian, 2006).

Chapter one is concerned with the main characteristics of victims and the beginning of the victim movement, chapter two discusses traditional criminal justice and victims' rights, and chapter three looks at the role of the Government and the criminal justice system as a service provider.

### **Characteristics of victims and the victim movement**

This chapter will give some information about who victims are, victimization, impact of crime, and victims' needs which will set a background for later discussion. The beginning of the victim movement will also be briefly outlined in order to provide a fuller picture about the debate around victims and the forces behind victim-centred justice.

To begin with, the study of crime concentrated specifically on the offender until quite recently. A new perspective was brought with victimology<sup>7</sup>, an expanding sub-discipline of criminology that is concerned with the problems relating to victims of crime. By a victim of crime it is meant 'a person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of a commission of a crime' (Smartt, 2006: 16). The term is often associated with negative meanings of weakness, passivity, and some victims could be even perceived as underdogs (Dunn, 2007; Williams, 1999, Dignan, 2005). The alternative term survivor<sup>8</sup> is sometimes preferred, as it implies the seriousness of the experience with crime and promotes images of strength. Also groups may become victims; this would typically involve hate crime. Social construction may determine who are regarded as a victim to a degree, as the status carries certain expectations that the victim will have of others and they will have of the victim (Marsh et al, 2004; Goodey, 2000). In victimology, there are still many unanswered questions and difficulties to find patterns that would easily classify victims, because virtually anyone can become a victim (Dignan, 2005; Wright, 2003). Nevertheless, some stereotypical views about victims are embedded in our society. For example, Christie (1986) describes the notion of the ideal victim<sup>9</sup>, that is, a person who is easily given the status of being a victim. Ideal victims<sup>10</sup> are perceived as innocent, vulnerable and deserving of help, sympathy and attention. The media have been highlighted for playing a part in maintaining these views by constructing particular representations of victims according to the newsworthiness of each story and their selectiveness (Geer, 2007). Also campaigners use ideal victims to emphasise the importance of victims' interests and thus excluding other groups of victims (Dignan, 2005). Walklate's (2005: 18) distinction between the 'victimological other', that is white heterosexual men viewed as criminals, and 'criminological other', that is middle class females viewed as victims, further sheds light on the stereotypes.

Victims often have other characters, past conducts or actions that are considered undesirable (Goodey, 2005: 124). This makes it difficult to accept such people as

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<sup>7</sup> The roots can be traced back to Hans von Hentig and his book *The Criminal and his Victim* (1948), Benjamin Mendelsohn and *The Origin of the Doctrine of Victimology* (1974). The term victimology was first used by Frederick Wertham in his book *The Show of Violence* (1949). There is a distinction between positivist, radical, critical and feminist victimology.

<sup>8</sup> Particularly victims of rape and homicide tend to be called survivors (Rape Crisis, 2008; Rock, 1998).

<sup>9</sup> Such victims can be identified according to six main attributes, for example weakness of the victim in relation to the offender who is a big and bad stranger, or victims' blamelessness (Christie, 1986).

<sup>10</sup> For instance elderly people, young children or weak women are ideal victims. Women particularly have represented a powerful image of victims, especially in the context of sexual offences (Walklate, 2007).

victims. The acquirement of the label has been described as the 'hierarchy of victimization' (Carrabine et al, 2004: 116). At one end of the scale are low-status victims or so called unworthy victims, for example the homeless, prostitutes, drug addicts, those with criminal convictions, and the ideal elderly woman is placed at the other end. In reality, it is young men who are most at risk, and twice as likely to be victims of violent crime compared to women (Walker et al, 2009). These perceptions might have an influence on victims of crime and the way they are perceived and used in policy-making process. The so called ideal victims need appropriate support due to their vulnerability, but not to the exclusion of a large proportion of other victims.

The extent of and victimization patterns depend on a variety of factors, for instance the type of crime, nature of the area, income, age or gender of the victim<sup>11</sup>. The knowledge about victimization derives from victimization surveys<sup>12</sup>, qualitative studies and clinical studies looking at the psychological effects of being a victim (Maguire, 1991), as well as official statistics. Research into victimization gained a different dimension with the introduction of the British Crime Survey in 1982 that looks at factors such as concerns about crime, risk of crime, groups at risk, media influence, or vulnerability. Despite limitations<sup>13</sup>, the survey represents a useful source of information and reveals a lack of completeness of official statistics, the so called dark figure of crime. Alternatively, the complexities of victimization and incompleteness of statistics can be revealed by other ways, such as the independent investigation of crime in Oxford that offers additional and quite detailed information<sup>14</sup>. It is obvious that the real extent of victimization goes far beyond the recorded and published numbers, not to mention some victims, such as victims of white collar crime, who are hardly recognized.

Victims can be affected by crime in various ways; some experience practically no effect, whilst others are impacted very seriously. More qualitative research would provide a detailed account of the impact of crime (Hoyle & Zedner, 2007). But such research might be problematic, as there are substantial differences in responses to crime by individual victims determined by their characteristics, circumstances and type of the crime. A range of studies looks at specific issues and draw conclusions within their subject of investigation, for example Beaton et al (2000) explores the impact of burglary, Hoyle & Sanders (2000) domestic violence, Shapland et al (1985) violent crime, Donaldson (2003) elderly victims, and Morgan & Zedner (1992) child victims. Again, the ideal victim seems to be preferred. Studies covering a broader variety of crimes and their victims may help to separate the stereotypical views and promote a better understanding of victims' experiences and needs. In general, the impact of crime is a product of the effects from the victim's own standpoint (Dignan, 2005: 24). Janoff-Bulham & Frieze (1983 cited in Dunn, 2007: 258) suggested that victims experience shattering of three basic assumptions – firstly, about their personal invulnerability, secondly, that the world is meaningful and ordered and finally, about the positive view of the self. This implies difficulties with full psychological recovery and maintenance of healthy perceptions victims may have had prior to the crime

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<sup>11</sup> For instance, victimization has a close link with social disadvantage (Williams, 1999; Dixon et al, 2006), and rural areas are at lower risk than urban areas (Walker et al, 2009).

<sup>12</sup> These can be international - for example the International Crime Victimization Survey, national - for example the British Crime Survey and local - for example The Islington Crime Survey (Jones et al, 1986).

<sup>13</sup> For example see Criminology: the Basics (Walklate, 2005).

<sup>14</sup> Available online at: <http://www.bbc.co.uk/truthaboutcrime/index.shtml>.

experience. Victimization usually imposes physical, financial, psychological and emotional effects on the victim (Walklate, 2007; See Appendix A). Among common responses are changes in behaviour, attitudes and one's self-perception (Dignan, 2005). The changes are accompanied by suffering a collection of emotions, from distress, fear, anxiety, anger and shock, to severe depression or post-traumatic stress disorder<sup>15</sup>. Evidence suggest that violent crimes have the greatest impact (Shapland et al, 1985) and tend to be underestimated (Farrell & Pease, 2007), rape victims tend to suffer long-term (Dixon et al, 2006), older victims could be damaged for long periods and sustain quick health deterioration (Donaldson, 2003; Williams, 1999), child victims may be harmed psychologically and have learning problems (Hoyle & Zedner, 2007), and emotional impact can be more important than physical or financial impact for burglary victims (Nicholas & Wood, 2003; Victim Support, 2005). Moreover, the impact of victimization can influence other people<sup>16</sup> in the vicinity of the victim (Dignan, 2005), not to mention possible repeat victimization that could be encountered<sup>17</sup>.

On the other hand, victims can be believed to have precipitated their victimization experience<sup>18</sup>. Studies concerning this problem include Patterns in Forcible Rape (Amir, 1971) concluding that some rapes were victim precipitated, Patterns in Robbery (Normandeau, 1968) suggesting that some victims of robbery created temptation-opportunity situations, or Patterns in Criminal Homicide (Wolfgang, 1958) analysing murders and possible victim precipitation. Naturally, this way of thinking is likely to act upon the perceptions and subsequent treatment of victims by the criminal justice system<sup>19</sup> and the public views. Such opinions need to be reasonably reduced to improve the situation for victims. Additionally, more emphasis should be put on support and meeting victims' needs. The variety and individuality of reactions displayed by different victims can be a barrier to the provision of their recovery, as they may not fully benefit from services targeted at certain needs or receive necessary support.

Victims' needs are taken into account in order for them to cope with the seriousness that impact of crime causes. Their needs incline to be very individual and depended on a number of factors<sup>20</sup>, but typically are of a social, emotional, practical<sup>21</sup> or financial character. For instance, indirect victims of homicide and victims of violent crime may have very strong reactions requiring assistance over a long period of time, or may never fully recover<sup>22</sup>. It is vital that victims are provided with appropriate support which rests on a sensitive approach consisting of recognition of the individual needs, provisions of information and help on one side, and avoidance of victim

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<sup>15</sup> See Psychological distress following criminal victimization in the general population: cross-sectional, longitudinal, and prospective analyses (Norris & Kaniasty, 1994).

<sup>16</sup> These are called secondary or indirect victims (Dignan, 2005; Williams, 1999). Serious crimes, such as homicide or murder, has more secondary victims.

<sup>17</sup> "Repeat victimisation occurs when the same person or place suffers from more than one criminal incident over a specified period of time" (Home Office, 1994: 2). Recent statistics show that domestic violence and vandalism indicate the highest figures for repeat victimization (Walker et al, 2009)

<sup>18</sup> This is based on victim precipitation and a continuum from completely innocent victim to most guilty victim (Walklate, 2005).

<sup>19</sup> Victims may experience secondary victimization, that is, re-victimization by the criminal justice system.

<sup>20</sup> This may include gender, age, type of crime, circumstances, personal characteristics of the victim, the impact of the offence, and so on. Goodey (2005) identifies physical and social power as important determinants of recovery from victimization.

<sup>21</sup> See for example Investigating the Practical Support Needs of Burglary Victims (Victim Support, 2005).

<sup>22</sup> See for example In the Aftermath: the Support Needs of People Bereaved by Homicide (Paterson et al, 2006); Murderers, Victims and 'Survivors' (Rock, 1998).

blaming, secondary victimization and minimizing the stereotypical boundaries between deserving and undeserving victims on the other side. Goodey (2005: 121) lists basic victims' needs<sup>23</sup>:

- reassurance and counseling
- medical assistance
- financial and practical assistance to secure property
- information about case progress
- guidance about what to expect in court
- the chance to express how the crime has affected them
- assistance with filling out a form for state compensation
- information about the release date of their offender

Up until recently, the criminal justice agencies failed to fulfill these needs and largely neglected victims. For example, guidance and sufficient information was not provided and could cause great frustration (Shapland et al, 1985). It is welcomed that the increasing emphasis on victims has improved their assistance and general treatment. Nevertheless, disregard towards victims is still found to take place, as well as the poor accommodation towards their needs (Victim Support, 2002; Audit Commission, 2003; Casey, 2008). Victims who come into contact with the criminal justice agencies must be at least treated with respect and recognition, and kept informed about their case. Furthermore, individual needs should be assessed and support assured accordingly. A key issue is that need is a problematic conception because of its subjective and individualistic nature (Maguire, 1991; Dunn, 2007). It may prove difficult to establish victims' needs, since the effects of crime can be underestimated, or may be beyond the scope of support organizations (Spalek, 2006 cited in Dunn, 2007). Most importantly, victims themselves should be approached and asked about their preferences of support<sup>24</sup>. It is vital, that attention is paid to the actual needs, not what is believed to be helpful for victims. The present shifting priorities offer an opportunity to acknowledge victims' importance within the criminal system. However, Spalek (2006 cited in Dunn, 2007: 277) implies that help is limited since victims' needs are framed and used according to the bureaucratic and political goals. Moreover, victims may not be informed about available help (Moore & Blakeborough, 2008). Another problem is the low detection and conviction rates<sup>25</sup> (Ministry of Justice, 2008; Walker et al, 2009; See Appendix F) which may leave the majority of victims with feelings of injustice. Some propose increased resources designated for the police in order to improve satisfaction rather than focus solely on victims themselves (Liberty, 2003; Jackson, 2003). Such needs fall under the heading of justice needs that relate to the victims' expectations from the criminal justice system (Sebba, 1996 cited in Sebba, 2001). Notwithstanding, the concept of justice is very subjective, and more importantly, it is specifically formed within traditional justice that is guided by certain rules and values, and thus it can be quite problematic to deliver these needs. For instance, it may seem that victims seek retribution, but research shows that, in some cases, victims prefer restitution or compensation (Doak & O'Mahony, 2006; Shapland et al, 2007). It is clear that progress is finally being

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<sup>23</sup> Also Victim Support Manifesto outlines the basic support for victims (Victim Support, 2001).

<sup>24</sup> Seventy-five per cent of victims did not want any form of advice or support (Ringham & Salisbury, 2004); victims of domestic violence do not seek criminal sanctions, but future protection (Hoyle & Sanders, 2000).

<sup>25</sup> For illustration, the Fawcett Society (2008; See Appendix B) reported on low conviction rates of rape.

made in this area, but further improvements are desired. It is also essential to understand the context in which crime victims have advanced their position.

As has been expressed, victims were often forgotten and poorly treated. In the post-war-period, they were invisible to the policy makers, criminal justice agencies, practitioners, media and public (Dignan, 2005; Newburn, 2003). In the second half of the twentieth century, the rediscovery of the victim emerged through something called the victim movement<sup>26</sup>. There are a number of factors that founded a basis for the victim movement. Firstly, a network of victim support schemes was formed and quickly expanded in the 1970's (Shapland et al, 1985). The central part was Victim Support, a charitable voluntary organization established in 1974 to offer support to victims of burglary. Victim Support<sup>27</sup> has been in operation since and nowadays represents a key organization within the private sector helping all victims, cooperating with other charities and justice agencies and having some influence over the Government<sup>28</sup>. Secondly, victimology became significant because of an increase in crime rates, discovery of hidden crime by surveys, media reports on injuries inflicted by crime and subsequent fear of crime, public intolerance and the response by academics (Goodey, 2005; Dignan, 2005; Rock, 2004a). Thirdly, vulnerable victims came under the spotlight, particularly in cases of domestic violence, sexual offences and child abuse<sup>29</sup> (Newburn, 2003). Feminists campaigned on behalf of such victims and played a vital role in improving the support given to victims and creating rape crisis centres<sup>30</sup>. Fourthly, victims of crime became highly politicized. The Government sought to be perceived as responsive to victims which was achieved through victim compensation, emotional and practical support, victims' assistance, reparation and mediation (Goodey, 2005; Dignan, 2005). Many independent groups also campaigned for better services to victims and victims' rights, mainly because of concerns for their welfare (Maguire, 1991; Walklate, 2007). It is apparent that numerous complexities were involved in the movement which eventually resulted in a gradual change towards victim-focused policies. The success of the movement can be attributed to wider social responses to crime underlined by a humanitarian factor, as well as the willingness of the Government to take action. Furthermore, international influence and standards set in other countries, particularly the United States as the birthplace of the movement, helped to shape the orientation in the direction of the victim.

On the contrary, the ideology behind the victim movement seems to be debatable. The intentions of the movement were largely based on other people's ideas about victims and the actual victims' experiences and expressions were ignored (Shapland et al, 1985). It is quite possible that these were not in correspondence with reality. Van Dijk

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<sup>26</sup> The beginning of the movement was the United States in a form of better provision of information and assistance for victims (Davies et al, 2005).

<sup>27</sup> Victim Support works through trained volunteers who offer a listening ear, information on police and court procedures, compensation and insurance, liaison and contact with other sources of help, and accompaniment to the police station or court (Victim Support, 2003). A telephone helpline is provided as well. In Cambridgeshire, enhanced help is available through the Victim Support Plus under which all victims who are referred to Victim Support are contacted and their needs are assessed (Available online at: <http://lcjb.ejonline.gov.uk/Cambridgeshire/home.html>).

<sup>28</sup> Although Victim Support maintains a non-political stance (Goodey, 2005), it receives funding from the Government which could be binding in a way. In 2009/2010 Victim Support was granted £ 30 million and £6.2 million was allocated to Victim Support Plus (Available online at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/cm090506/text/90506w0014.htm>).

<sup>29</sup> This includes mainly women and children who were insufficiently supported by the police and approached in an intimidating manner by courts.

<sup>30</sup> The Rape Crisis Centre first opened in 1973.



(1983 cited in Shapland et al, 1985) proclaimed the ideology victimagic, meaning that emphasis is put on the sense of action-orientation, rather than knowledge-orientation. Similarly, Maguire (1991) points out that the movement was initiated by individuals, groups and organizations motivated by various aims, rather than victims themselves, and therefore the movement is not lead by victims in the right sense. Presumably, the victim served as an instrument to push others' views through, and became accepted as a part of a broader change in attitudes towards victims. The focus on the victim reflected the mood of social welfare and human rights. In spite of some flaws in the philosophy, the movement enabled the victim to be recognized and support to be advanced. The development could be traced back to the 1960's as the decade of promise (Mawby & Walklate, 1994), through to the more radical changes and developments of the 1990's, and the demand for a reorientation of the criminal justice system in favour of the victim (Hoyle & Zedner, 2007). This paragraph touches on the wider changes and interests that caused the increased focus on the victim and enabled it to be shaped to the present situation where services and treatment of the victim are priorities for the criminal system.

### **Victims of crime and traditional criminal justice**

In order to examine whether the position of the victim is at the heart of the criminal justice system, this chapter will discuss the nature of English criminal justice and its connection to the victim. This will be done by considering the relationship between the victim and the defendant, victims' rights, victim participation in criminal proceedings and laws concerning victims. It should be noted that victims often function as witnesses in the criminal process and that a great deal of attention is paid to them as such. For comparison, a brief historical perspective of the victim's role will be briefly mentioned.

Firstly, criminal justice can be seen as a form of governance that imposes social order, resolves disputes and manages risks (Zedner, 2004). Additionally, the concept of criminal justice might be constructed according to social, moral and historical values, and depend on interpretations of the criminal law<sup>31</sup>. The criminal justice system<sup>32</sup> has been described as an official response to criminal activity in a series of decisions and actions taken by a network of agencies<sup>33</sup> within limits that are supposed to protect people from wrongful treatment and conviction (Davies et al, 2005; Sanders & Young, 2007). The system has goals based on a tradition advocating to act justly and to protect the innocent,<sup>34</sup> although Ashworth (2005: 67) warns that to define the aims in one sentence is a 'descent into vacuity', and thus emphasising the complexity. The system comprises of individual agencies with specific interests and practises, and different stages beginning with crime prevention, police investigation, criminal process, sentencing, and ending with punishment. Nonetheless, general aims have been listed as (Young & Sanders, 2007: 43):

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<sup>31</sup> See Legal Construction of Crime (Lacey, 2007).

<sup>32</sup> Zedner (2004) questions the term 'system', as there is a lack of unity, coherence and independent developments amongst the criminal justice agencies.

<sup>33</sup> The criminal justice agencies include the police, the Crown Prosecution Service, courts, the National Probation Service, the Prison Service and other bodies.

<sup>34</sup> 'It is a maxim of English law that ten guilty men should escape rather than one innocent man should suffer' (Holroyd, 1823 cited in Sanders & Young, 2007: 8).

- convicting the guilty
- protecting the innocent from wrongful conviction
- protecting victims
- maintaining human rights
- maintaining order
- securing public confidence in, and cooperation with, policing and prosecution
- pursuing these goals effectively without disproportionate costs and consequent harm to other public services

These may adapt in accordance with changing practices and principles, and social or political shifts. For example, human rights began to progress considerably since only the mid 1970's (Lea, 2002). A transformation of criminal justice and crime control since the 1970's, including the new expanding focus on the victim (Garland, 2001), has also contributed towards the creation of new aims in regard to victims. The aims have been formed by modifications caused by social movements, international influence, and a diversion from welfare<sup>35</sup> to retributive justice. In 1998, standards on victim assistance and treatment were published in a major report discussing the role of the victim in criminal justice (JUSTICE, 1998). The slow efforts to improve the position of the victim indicate carefulness, since the fundamental component of criminal justice continues to be the trial. It is important to consider the extent to which the victim is favoured at the expense of the trial structure and proper functioning.

Victims are essential to the criminal system to bring crime to attention<sup>36</sup>, although only a small minority has any formal dealing with it (Ministry of Justice, 2008; Walker et al, 2009). They are asked to cooperate, identify an offender and give evidence as witnesses (Carrabine et al, 2004). Despite their value, the relationship between victims, offenders and criminal process tends to be problematic. One of the reasons could be the conceptualization of crime as a wrong against society (Uglow et al, 2002). Therefore, demands of individual victims do not carry any significance. In addition, the adversarial<sup>37</sup> nature of English justice, in which a trial is perceived as a contest between the State and the defendant, and a strong emphasis is put on the principle of orality and life cross examinations, is also in conflict with victims' needs (Ellison, 2001). Rock (1991 cited in Zedner: 162) states that 'trials involve adversaries and adversity, defeats and victories, winners and losers' which suggests lesser urgency to finding the truth, for the ultimate goal is to win a case. Such approach may be insensitive and insufficiently considerate towards victims.<sup>38</sup> It has been documented that particularly gender, age and vulnerability are frequent themes emerging in the poor dealing with victims during criminal processes.<sup>39</sup> Indeed, the adversarial nature of the system carries some aspects, such as aggressive cross examination or humiliating treatment, which easily result in victims being neglected, re-victimized and dissatisfied, and also judged with a sign of stereotypical and biased

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<sup>35</sup> This is connected to the rehabilitative ideal at the time which emphasised rehabilitation and treatment of offenders (Davies et al, 2005; See p. 32)

<sup>36</sup> JUSTICE (1998) reported that ninety per cent of all recorded crime was brought by victims.

<sup>37</sup> The adversarial system requires convincing the magistrate or a jury with reference to evidence (proof of guilt) that the accused is guilty beyond reasonable doubt (Davies et al, 2005; Sanders & Young, 2007).

<sup>38</sup> Traditionally, victims were regarded as "a professional tool at the disposal of lawyers, judges and court officials" (Pollard, 2000: 1).

<sup>39</sup> See for example Chambers & Millar (1987) for questioning tactics used on women in sexual assault offences; Report of the Advisory Group on Video Evidence (Pigot et al, 1989) for a research on child witnesses.

views<sup>40</sup> (Shapland et al, 1985). They are commonly expected to behave in certain ways to be fully admitted the status of being a victim (Faulkner, 2006; Lea, 2002; Dixon et al, 2006). Prejudice could be seen, for example, in sexual assault and rape cases (Temkin & Krahe, 2008). Ellison & Munro (2009) also found biased views among many jurors who fail to understand rape victims.<sup>41</sup> This could be associated with the traditional culture and opinions of criminal justice professionals. For example, lawyers still keep to their established trial norms, even though there are some changes in how they talk about victims (Hall, 2009b). Pointing toward a radical change of attitudes over a longer period of time could potentially bring a better appreciation of the victim. In contrast to the adversarial approach, the inquisitorial system<sup>42</sup> relies on a range of oral and written evidence, and arguably may accommodate better for victims (Brienen & Hoegen, 2000). For instance, victims are accounted for by *partie civile*<sup>43</sup> that is used in inquisitorial systems (Wolhuter & Olley & Denham, 2009; Goodey, 2005).

Another contention between the victim and traditional criminal justice rests upon its primary preoccupation with the offender and the offender's right to a fair trial. Necessary protection is guaranteed to defendants through due process rights that are intended to avoid convictions of innocent people. If victims' interests are unreasonably prioritized, the defendant's protection is put at stake resulting in their rights being eroded (Fenwick, 1997). Views assuming that the victims' interests are in conflict with the offenders' interests, and contrariwise, are notable. The language of balancing analogies suggests that 'one must be weighed until the other until a fair level is struck' (Liberty, 2003: 12). This approach has been criticised for conveying dangers, being misleading, and creating false expectations (Jackson, 2003; Esmée Fairbairn Foundation, 2005; Williams, 2005). Furthermore, the unacceptability to convict an innocent person is stressed, but may be in collision with the governmental proposals. By the disproportional focus on victims, the probability of miscarriages of justice to occur could increase. It is risked that innocent people who should be protected by the system become victims of it. In fact, there is no guarantee that taking away the defendant's rights will deliver better justice to the victim (Liberty, 2003). In this delicate issue, it is important to address victims' interests, but in a way that would still respect the offender. Some developments, for example the provision of information or TV links in court, should not be seen as a threat to the offender (Goodey, 2005), purely because they only serve as a supportive mechanism. Even though the offender is not given any such privileges, they uphold the care for victims and could be of benefit to criminal proceedings<sup>44</sup>. Other developments, for example mitigating factors, can work against victims' desired punishment of their offender (Faulkner, 2006). Plea bargaining can upset and frustrate in the sense of perceived justice<sup>45</sup>. On the other hand, it is to the advantage of victims who do not want to go through the distressing process of giving evidence (Ashworth & Redmayne, 2005

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<sup>40</sup> Particularly patriarchal stereotypical views could be present, as men form a substantial proportion of criminal justice staff (See Ministry of Justice, 2009b; Fawcett Society, 2009a).

<sup>41</sup> Jurors expect rape victims to fight back against their attacker, sustain serious physical injuries, report the offence immediately, and appear tearful and distressed in court (Ellison & Munro, 2009).

<sup>42</sup> Inquisitorial system pursues all evidence to determine guilt or innocence, based on the principle of truth finding.

<sup>43</sup> A right that allows victims to bring a civil claim for compensation from the offender during a criminal trial (Goodey, 2005: 144).

<sup>44</sup> The number of trials that are abandoned, ineffective or crack due to witness problems is relatively high (Criminal Justice System, 2004).

<sup>45</sup> Guilty pleas are known as a sentence discount.

cited in Sanders & Young, 2007). Guilty pleas may also lead to an increased pressure for innocent people to plead guilty (Fenwick, 1997) which ends in the real offender walking free and causing further distress to victims.

The debate around the relationship between the victim and offender closely relates to the place of the victim in a trial and victims' rights<sup>46</sup>. Since prosecution and defence are the only two parties figuring in criminal proceedings, victims are denied any formal status (Dignan, 2005; Sanders & Young, 2007). They have no right to participate in their proceeding, because that could interfere with the defendant's due process rights. Moreover, victim participation is seen as inconsistent with the traditional ways of sentencing and can infringe the principles of just deserts, proportionality and objectivity (Doak et al, 2009). Clearly, the adversarial nature of justice is not equipped to accommodate a third party<sup>47</sup>. The introduction of a third party would mean reinterpreting centuries of practise, as far as traditional justice is concerned (Goodey, 2005). As has been mentioned, sentencing decisions are made in the public interest, not private, which assures rationality and consistency (Edwards, 2002). For the purpose of making victims central to criminal justice, victim-centred models of justice may be more suitable<sup>48</sup>. Hall (2009b; See Appendix C) proposed a model of victim-centred justice which is based on practical, cultural and narrative centrality, and addresses key aspects of practical reality, changing attitudes and some form of victim participation (Hall, 2009b). In spite of the simplicity of the model, it can be confidently said that a reform of current criminal justice would be required to truly put victims at heart.

It is notable that victims and offenders are portrayed as two separate groups which are opposed and polar (Dignan, 2005; Doak, 2008; Zedner, 2004). This is often referred to as a zero-sum game, in different words a trade-off between the rights of victims and defendants (Hall, 2009b; Williams, 2005). However, some argue for similar treatment for both victims and offenders, since the two groups overlap<sup>49</sup> and in order to eschew the artificial separation from the ideal type of victim (Williams, 1999; Walklate, 2007). Of course, this needs to be cautiously combined with the fact that victims are not in the same position as offenders (Edwards, 2004). The relationship seems very contradictory in some ways, but ultimately, offenders' rights do not have to be compromised to favour the victim, as it is presented in the White Paper.

From a historical perspective, the victim was not just a passive participant excluded from criminal processes, but had an active position in resolving disputes. Anglo-Saxon period has been labeled as the golden time of the victim (Shafer, 1968 cited in Shapland et al, 1985). Individual victims were responsible for prosecuting offenders and had a right to compensation until the middle of the nineteenth century. A procedure without lawyers in which private individuals joined their conflict under a judge was called an altercation trial<sup>50</sup> (Rock, 2004a). It was also a time of private

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<sup>46</sup> Procedural rights (for example participation through speaking up in court and having an influence over decision-making) and service rights (such as considerate treatment, support and provision of information) (Ashworth, 1993).

<sup>47</sup> See Victims' Rights, Human Rights and Criminal Justice: Reconciling the Role of Third Parties (Doak, 2008: Chapter Three).

<sup>48</sup> For example, communitarian or restorative justice. Only a victim-centred model of justice would prioritize the interests of victims (Cavadino & Dignan, 1996).

<sup>49</sup> Victims can become offenders and contrariwise. It is believed that involvement in criminal activity enhances the likelihood of becoming a victim (Fattah, 2000).

<sup>50</sup> 'First, it is in the hands of the injured party and his opponent' (Plucknett, 1956 cited in Rock, 2004a: 333)

vengeance where victims could do nothing but threaten their offender (Shapland et al, 1985; Rock, 2004a). Prosecuting could cost a lot of time, money and inconvenience that was achievable predominantly for the rich (Shapland et al., 1985; Mawby & Walklate, 1994). Following a later reform of the criminal justice system, the establishment of the police force and prosecution authorities, and a shift in the nature of penalty<sup>51</sup>, the victim's role became significantly less important (Rock, 2004a; Lea, 2002; Dignan, 2005). The prosecuting role was taken over by the state on the basis of the public interest (Fenwick, 1997). This impacted the expectations and place of the victim greatly. Some believe that disputes have been stolen by the professionals of the system, and that victims have lost participation in their own cases and have been pushed to the margins of criminal proceedings (Christie, 1977). Suggestions that victims should be brought back into the justice system and have a voice there have been expressed. Inversely, the idea has been criticized for certain idealizing of the old concept of restorative justice (Goodey, 2005). This gives an account of the original place of the victim, and it would seem only natural to slowly reintroduce it, even if some idealization is used to draw more attention to the victim.

Rather than reforming the system, other means to provide some kind of victim input into criminal proceedings, and which are naturally seen as controversial, have been developed. Victims can contribute by expressing their emotions, providing information, providing consultation or having control in sentencing<sup>52</sup> (Edwards, 2004; See Appendix D). There have been disagreements about what sort of power should victims hold and concerns raised over their more influential role. Similarly, warnings that a greater voice may be a burden to victims, more than their relief, have been expressed (Ashworth, 1993). Nevertheless, victim personal statements<sup>53</sup> have been made available, in addition to traditional witness statements, for victims to comment on how crime has affected them (Hall, 2009b). Certainly, this brings a number of benefits including justice being enhanced, victims' sense of empowerment and acknowledgement, therapeutic benefits<sup>54</sup> and respectful treatment (Erez, 2000). Furthermore, the statements may provide supplementary information, assist to arrive at a fitting sentence, encourage victims to cooperate, and increase their confidence and satisfaction with the system (Walklate, 2007). The adversarial character of justice may not be implicitly affected, as victims have no influence over decision-making (Erez, 2000). One of the disadvantages of the statements resides in their disputable truthfulness and fairness to the offender.

A prominent criticism of the impact statements draws attention to their conflict with adversarial justice<sup>55</sup>. The evaluation of the scheme in England brought mixed results (Hoyle et al, 1998). It has been said that the statements raise victims' hopes and expectations<sup>56</sup>, do not increase victims' satisfaction, do not contain any unexpected information, nor are taken seriously in court (Sanders, 2001, Edwards, 2002).

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<sup>51</sup> The Industrial Revolution in the eighteenth century and its effects on society seem to have played a part. New institutions and techniques of social control were designed to meet the requirements of the new industrial social order (Dignan, 2005).

<sup>52</sup> So far, victims express their emotions in court which is seen as beneficial. In some cases they may provide information, but rarely bring something that is already known (Sanders, 2001).

<sup>53</sup> They are formerly known as victim impact statements. They have been adopted from the version available in the United States.

<sup>54</sup> Therapeutic jurisprudence emphasises the emotional and psychological consequences of the legal process and attempts to apply aspects of psychological literature to legal procedures. Unfortunately, adversarial justice tends to be limited in the delivery of the healing effects of therapeutic jurisprudence (Doak et al, 2009).

<sup>55</sup> See Ashworth (1993); Ashworth (2000).

<sup>56</sup> Victims can feel frustrated and disappointed, if their hopes are raised and not met (Sanders, 2001).

Moreover, there seems to be confusion over their purpose (Sanders, 2001). For victims who incline to be unfamiliar with the workings of criminal justice, it is necessary to give them the choice to opt for the statement with a clear explanation of its purpose and use. Impact statements pose as a form of furnishing procedural rights<sup>57</sup>, but their value seems to be only symbolic. After all, do victims want to be deeply involved in their cases, or is it only our perception<sup>58</sup>? The rationale of victim participation rests in a presumable improvement of sentencing outcomes, promotion of system efficiency and service quality, and benefits to the victim (Edwards, 2001). However, evidence suggests this is not the case, with the possible exception of healing some victims<sup>59</sup>. It seems that the statements will continue to be used and could be found helpful by some victims, but this should be done with more clarity to the victim. However, a widespread recognition amongst judges will require more time<sup>60</sup>.

Regardless the blatant contradictions of victims' involvement in adversarial justice, victims deserve legitimate needs and rights on their own, and a voice that should be heard. Previous Victim Charters (Home Office, 1990; Home Office, 1996) were supposed to deal with these issues, but this attempt was deemed as unsuccessful, because no serious changes were brought except from a misleading language (Fenwick, 1995; Fenwick, 1997). Equal efforts have been made on an international level. First of all, The European Convention on Human Rights (Council of Europe, 1966) offers some limited protections for victims<sup>61</sup>, as well as the Human Rights Act 1998 enacted in England and Wales<sup>62</sup>. Recently published Framework Decision on the Standing of Victims in Criminal Proceedings (Council of Europe, 2001) legally binds England. Although the English law is reluctant towards the rights of victims, and any measures tend to be based on interests, expectations and entitlements, there has been some willingness to recognize victim's rights<sup>63</sup> (Wolhuter & Olley & Denham, 2009). The Code of Practice for Victims (Home Office, 2005) implements the Framework and presents better prospects of enforceable victims' rights. Nevertheless, the Code is modelled around legitimate expectations<sup>64</sup>, and thus more concern is given to practical support, rather than rights (Hall, 2009b). Moreover, the Code applies only to victims who have made an allegation to the police (Home Office, 2005: 3.1), and in the case of breaching the Code, victims can only complain (Home Office, 2005: 1.4; 16.1). Again, these are fundamental drawbacks suggesting the misleading nature of the proposals that are supposedly aimed at enhancing the position of the victim.

There is an element of intimidation in criminal processes which is also emphasised by the failure of the justice system to support, advice, or provide information to victims (Dignan, 2005). That is why victims' rights bear a notable significance. Victim's

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<sup>57</sup> Ashworth (1993, 2000) warns that the fundamental principles of the adversarial system of justice are undermined by victims having influence over sentencing through the statements.

<sup>58</sup> Shapland et al (1985) and Wemmers & Cyr (2004) found that victims did not seek decision-making powers.

<sup>59</sup> See Erez (2000).

<sup>60</sup> See Appendix E for an example of a victim statement.

<sup>61</sup> These include the right to life, the right not to be subjected to inhuman or degrading treatment, the right to physical integrity (Council of Europe, 1966).

<sup>62</sup> Human rights are primarily directed towards the treatment of offenders, but it has been recently debated that human rights can be restrictive in dealing with offenders of serious cases (Sun, 2008).

<sup>63</sup> See also Joint Committee on Human Rights, section five (2006).

<sup>64</sup> The expectations were listed by JUSTICE (1998) and are concerned with the acknowledgement of the role and responsibilities of the victim, support and assistance, information and explanations about their case and so on. Legitimate expectations should lead to publicly known standards and clear mechanisms for delivery of services to meet them (Shapland, 2000: 28 – 29).

rights are closely connected to victims' needs (See p. 14) and include (Wolhuter & Olley & Denham, 2009: 119 – 120):

- the right to receive support and assistance
- the right to receive information concerning the pre-trial and trial process, the outcome and the subsequent release of the offender
- the right to receive protection in appropriate circumstances, including instances where the victims is afraid to testify or fears intimidation by the offender
- the right to participate in the pre-trial and trial proceedings
- the right to compensation
- the right to freedom from discrimination in the exercise of the above rights

In term of service rights, a lot has been dramatically improved with the introduction of special measures to reduce secondary victimization in the last twenty years. Recommendations regarding vulnerable and intimidated witnesses stated in the report *Speaking Up For Justice*<sup>65</sup> (Home Office, 1998) were largely implemented in the Youth Justice and Criminal Evidence Act 1999<sup>66</sup>. The measures include the use of screens, video-recorded evidence-in-chief, evidence given via a live link, clearing up the public gallery, removal of wigs and gowns, video-recorded cross examination, intermediaries and communication aids. For sexual offences, sections forty-one to forty-three impose restriction on evidence about the victim's sexual history. Although this has been generally accepted, alarming practices still exist<sup>67</sup>. Restrictions relating to cross examination were adopted in sections thirty-four to thirty-nine. The Act has brought positive changes in the treatment of vulnerable witnesses, but could have benefited from a more comprehensive consultation (Birch, 2000). Crucially, some argue that alternative methods of evidence testing are needed in order to meet the adversarial principles of criminal process (Ellison, 2001). The Criminal Justice Act 2003 also refers to victims<sup>68</sup> and extends the special measures to all witnesses. However, Jackson (2003) points out that the act weakens the privileges of the defendant and does not bring any real advantages to victims (Liberty, 2003). The Domestic Violence, Crime and Victims Act 2004 does not improve the victim's position much in the sense of rights either (Rock, 2004). Moreover, the Act 'raises hopes that victim support mechanisms will be greatly improved, but does not clarify exactly what the nature of this support will be, nor how the new system will work' (Collinson, 2004: 7). The Act provides further improvements to a secure environment for witnesses though, through the introduction of the Code of Practise for Victims that prescribes criminal justice agencies to deliver support and services to victims. The Code builds on the recommendations relating to the need for more integrity<sup>69</sup> made by JUSTICE (1998). A recent piece of legislation, the Coroners and Justice Act 2009, 'further strengthens justice for victims and witnesses' (Ministry of Justice, 2009a).

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<sup>65</sup> 'Witnesses feel intimidated by cross-examination...particularly when...questioning is perceived to be aggressive' (Home Office, 1998a: 8.50).

<sup>66</sup> Part Two. Available online at: [http://www.opsi.gov.uk/acts/acts1999/ukpga\\_19990023\\_en\\_1](http://www.opsi.gov.uk/acts/acts1999/ukpga_19990023_en_1).

<sup>67</sup> See Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials (Kelly & Temkin & Griffiths, 2006).

<sup>68</sup> Part Eight. Evidence via live link (sec. fifty-one to fifty-six), witness statement by video recording (sec. 137 – 138), admission of previous statements as reference (Sec. 114). Available online at: [http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030044\\_en\\_1](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030044_en_1).

<sup>69</sup> Integrity is the compliance of every criminal justice agency with standards which are publicly stated and judged to be fair (JUSTICE, 1998: 23).

Judgements about the effectiveness can be made after the Act has been in action for some time.

What could be learned is that there is a difference between law and practise. Practise should be closely monitored after a law has been implemented<sup>70</sup>. It is also important to state how a particular policy will operate and define its specific aims and goals. A genuine consideration of victims' needs and rights should be the force for legislation, rather than the current primary target of obtaining better evidence from witnesses (Newburn, 2003). This needs to be done in a manner that does not jeopardize the rights of the accused and principles of a fair trial. Moreover, evidence-based research should serve as a sound basis for any initiatives, but one has to be careful in assessing the reality, because there is a great degree of progress on paper (Goodey, 2005). There also appears to be a disproportionate focus on vulnerable and intimidated victims<sup>71</sup>, which leaves some victims, such as victims of white collar crime<sup>72</sup> or victims in non police-prosecution<sup>73</sup>, completely overlooked. Still, the standards are a result of an effort to recognize victims' needs, and hopefully with more time, the attempts will expand to all victims and create a greater insistence on enforceable rights. Without doubts, a turn for the better has been seen in service rights, which are perhaps appreciated more by victims than procedural rights<sup>74</sup>. However, tensions are identifiable due to the adversarial character of English justice that pays more attention to evidence presented at a trial, and that is why attempts to totally eliminate aggressive defence incline to be only theoretical (Jackson, 2003). As Sanders & Young (2007: 41) put it, 'our natural sympathy for victims should not blind us to the aim of adversarial system of finding whether the witness is telling the truth'.

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<sup>70</sup> Brienen & Hoegenen (2000) found limitations in putting law into practise in many European countries.

<sup>71</sup> Shapland et al (1985) suggested that the system may not be prepared to deal with non-idealized victims.

<sup>72</sup> Boutellier (2000: 55 - 58) discusses the concept of victimless crime and also suggests that not all people labelled as victims feel that way, or may not know that they are victims.

<sup>73</sup> See Criminal Justice (Sanders & Young, 2007: 360 - 372).

<sup>74</sup> Shapland's et al (1985: 176) study concluded that victims wished to be recognized, respected, appreciated and wanted to have an acknowledged role.



## **The role of politics and implications for criminal justice agencies in shaping the position of the victim**

This chapter will consider the involvement of political interests in defining the position of the victim. Changes within political surroundings, reasons for the need to focus on victims, and the way criminal justice agencies support them will be looked at. The chapter represents a different perspective which, as will be explained, indicates certain clashes with traditional justice. This discussion will give a more complete picture of influences that need to be taken into account when attempting to evaluate the place of the victim.

The importance of the victim has been developing since the 1970's, especially under the Conservative Party, and has to be understood in a context of broader changes. There is a link with the period of late modernity<sup>75</sup> distinguished by social changes, new freedoms for people, new levels of consumption and individual choice, but on the contrary by high levels of crime, disorder and insecurity (Garland, 2001; Boultellier, 2000). New policies put forward in response shaped a so called 'crime complex'<sup>76</sup> evoking public views that condemn criminals, and thus enabling the victim to become a convenient issue for the government, along with crime reduction, prevention and penal punitiveness<sup>77</sup> (Garland & Sparks, 2000: 16; Boultellier, 2000). In addition, there were notable shifts in the increasing engagement of the state, bureaucratization and professionalization, and also the decline of the welfare ideal and the rise of the law and order approach<sup>78</sup> (Garland, 2001). A switch from government to governance, where all citizens are encouraged to be involved in public issues underlined by New Public Management<sup>79</sup>, played a part too (Goodey, 2005; Senior et al, 2007; Faulkner, 2006). Attention was drawn from the social to the individual, which is notable in the process of responsabilization<sup>80</sup>. New managerialism<sup>81</sup> was used to cut expenditure through setting targets, defining objectives, creating league tables, business plans, performance indicators and so on. The managerial values have been taken on by the New Labour who aimed to further reform and modernize<sup>82</sup> the public sector by including effective planning, collaborative interagency working and a reform of policy-making process<sup>83</sup> (Senior et al, 2007). Communities and law-abiding citizens, crime prevention and reduction, and a consequent focus on the victim could be detected among political priorities. Because of the managerial nature, there is a close relationship between the public and private sectors, and criminal justice is portrayed

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<sup>75</sup> Social, economical and cultural changes and developments experienced mainly by the Western world in the last few decades (See Garland & Sparks, 2000).

<sup>76</sup> In this complex, high crime rates are normal, fear of crime is used as a sensitive political reference, concerns about victims and public safety are prioritized in governmental policies, the private sector becomes more important, and consciousness about crime is a part of everyday life (Garland & Sparks, 2000).

<sup>77</sup> See Who Does Justice System Favour? (BBC, 2006).

<sup>78</sup> The Conservative government adopted tougher policies after the unsuccessful Labour Party's welfare model (1945 – 1979) (Goodey, 2005; Senior et al, 2007).

<sup>79</sup> New Public Management, which began in the 1980's, is a new way of managing the public sector in a series of reforms reshaping the relationships between the public and private sectors, professionals and managers, and central and local government (Newman, 2000: 45). The initiative underpinned by modernization contrasts with the previous bureaucratic administration in the public service (Clarke et al, 2000).

<sup>80</sup> Responsibilization is giving more responsibility for preventing and controlling crime to communities and making individuals more responsible for their own welfare (Garland, 2001).

<sup>81</sup> New managerialism draws from the methods of management in the private sector and directs the state to become more business-like, with the emphasis on efficiency, economy, effectiveness and value for money (Clarke et al, 2000). The problems of new managerialism are a subject of extensive literature.

<sup>82</sup> See for example Modernising Government (Home Office, 1999); Criminal Justice: The Way Ahead (Home Office, 2001).

<sup>83</sup> Professional Policy Making for the Twenty First Century (Cabinet Office, 1999).

more as a public service. Managerialism underpins many changes that take place within the system and puts pressures on the agencies in terms of their accountability, effectiveness, accomplishment of visions, fulfilment of plans and many others. The system is driven by Public Service Agreements<sup>84</sup> which set out key outcomes the Government wants to achieve in the next spending period (HM Treasury, 2010). Emphasis is put on satisfaction with the criminal justice system, particularly victim and witness satisfaction<sup>85</sup>, agency partnerships in the local context and on local delivery (Home Office, 2008; Hall, 2009a). It could be speculated about the extent to which this is affecting the employees of the criminal justice system.<sup>86</sup>

In general, the Government presents a vision of citizenship with rights and a voice that should be heard, but also responsibilities (Faulkner, 2006). For example, the victim's voice could be relatively influential through victim organizations (Walklate, 2007). This constructs the victim as a consumer using services of criminal justice agencies. However, it has been argued that this is a false analogy, since victims have little choice about using criminal justice services (Doak, 2008; Williams, 2005). Furthermore, the representation of victims as consumers may be misleading in terms of their rights and citizenship (Rock, 2004), since they are individualized and expected to take their responsibilities and cannot claim these in the case of their noncompliance<sup>87</sup>. Also communities are consulted and engaged in meeting local needs and crime prevention (Home Office, 2008). A move towards the victim, and generally citizens, as active participants in the criminal justice system is apparent.

Admittedly, the victim has become highly politicized in this environment. First and foremost, victims may be strategically used by the Government as a tool to appeal to the public, since victimhood is associated with a variety of emotional impacts, and this way secure public votes in the political competition<sup>88</sup>. Secondly, the focus on the victim is a form of re-emphasizing individual responsibility, and thus reminding that the state cannot be entirely blamed for failures (Lea, 2002). Thirdly, the Government portrays that it has little control over crime, and therefore the inability to do something about crime gave rise to the prioritization of the victim (Doak, 2008; Zedner, 2004). Lastly, many comments have been made on the exploitation of the victim as a cover-up for punitive policies and justification for harsher measures against the offender<sup>89</sup>, and also pointed out the low rate of victim initiatives actually reaching and benefiting victims (Garland, 2001; Ashworth, 2000). Logically, the punitiveness is a result of the commitments made to victims and a response to the seemingly strong public demands for retributive justice ensuring more votes. The principle of just deserts, typical for the retributive model of justice, and some high-profile cases<sup>90</sup> have contributed towards tougher policies on offenders in a sense

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<sup>84</sup> See Comprehensive Spending Review (Home Office, 1998b).

<sup>85</sup> See for example Early findings from WAVES (Moore & Blakeborough, 2008); No Witness No Justice (Home Office, 2004b); Increasing Victims' and Witnesses' Satisfaction with the Criminal Justice System (Home Office, 2004a).

<sup>86</sup> 'Figures mean everything these days' (Court clerk cited Hall, 2009a: 271). It has been found that many serious cases are dealt with by only a caution because it is cheaper, quicker and driven by targets (BBC Panorama, 2009).

<sup>87</sup> This is for example the case of the Code of Practise for Victims which excludes all victims who do not report crime!

<sup>88</sup> See for example Blair promises victim's justice (BBC, 2002).

<sup>89</sup> 'The projected, politicized image of the victim... as an all-purpose justification for measures of penal repression' (Garland, 2001: 143). Other matters were justified by the language of the care for victims, for example the Domestic Violence, Crime and Victims Act 2004 was influenced by consumer-orientated thinking, human rights issues, international developments, vulnerable and intimidated witnesses and the development of reparation processes (Rock, 2004).

<sup>90</sup> For example the murder of Stephen Lawrence (see MacPherson, 1999).

(Goodey, 2005). On one hand, victims are being taken seriously now but on the other, they might be only a pretext to introduce crime control steps to the wider public<sup>91</sup>. As Elias (1986 cited in Hall, 2009a) puts it, to place victims at the heart of criminal justice contains purposes of gaining political mileage and enhancing social control.

Harsher measures go in line with the 'tough on crime' and 'support people in difficulty' Labour agenda (Labour Party, 1996) and reflect the desire to stay in power<sup>92</sup>. The focus on victims may serve as a distraction from implicit provisions about punishment, particularly the enormous expenditures on prisons (Williams, 1999). Both victims and law-abiding citizens seem to be referred to in numerous governmental publications, but often at the expense of the due process and human rights<sup>93</sup> (Sanders & Young, 2007), at least on paper. The real problem, however, is concealed in the fact that there may be no tangible advantages for victims. This could be partly attributed to the conceptualization of victims in a selectively stereotypical way which is very suitable for politicians in formulating their policies (Rock, 2004b; Dignan, 2005; Williams, 1999). Those perceived as ideal victims may receive more assistance than less deserving victims, or can be more convenient to work with. The widespread idealization of victims needs to be dealt with by accepting the reality of who victims are. All these factors point to the concern that victims, allegedly at the heart of the criminal justice system, are a subject of political rhetoric. Needless to say, the language of caring for the victim and the community tends to be flawed and deceitful (Jackson, 2003). Politicians can be misleading, and often promise what cannot be delivered or are not clear about how to achieve a specific goal<sup>94</sup>. The priorities of the Government on the public confidence in the criminal justice system, reduction of fear of crime, and efficiency, effectiveness and satisfaction with the system (Criminal Justice System, 2010; Casey, 2008) may not be in absolute correspondence with the aims of criminal justice (See p. 20). Moreover, deceptive claims are made about achieving these equally (Sanders & Young, 2007).

Policies proposed to improve the position of the victim appear to be rather hurried and again indicate the strict and incorrect division between the victim and the offender<sup>95</sup>. Politicians frequently choose quick-fix solutions in the name of the victim that do not necessarily bring any valuable enhancements (Walklate, 2004 cited in Williams, 2005; Doak, 2008). For that reason, any initiatives need to be done in an organized and orderly fashion. The vast amount of victim policies has been designed within the last fifteen years (See also Chapter Two). These include the Victim's Advisory Panel that has been established to enable victims to have their say (Criminal Justice System, 2010). The Panel demonstrates the attempts of the Government to engage victims in the policy-making process, but has been criticized for its membership<sup>96</sup> (Hall, 2009b) and proposals that have been largely unaccepted by the Government (Casey, 2008). Also a Victims' Champion, Sara Payne<sup>97</sup>, representing the voice of victims was

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<sup>91</sup> This may be the case of the controversial DNA database.

<sup>92</sup> Bottoms (1995) called this populist punitiveness.

<sup>93</sup> This is notable in the paper *Rebalancing the Criminal Justice System in Favour of the Law-Abiding Majority* (Home Office, 2006).

<sup>94</sup> See for example Speech to National Victim Association (Burrowes, 2009).

<sup>95</sup> This reflects the perception that what is seen as victim-centred must be anti-offender (Goodey, 2005).

<sup>96</sup> 'The victim members of the Panel are mainly indirect victims of homicide, and therefore do not represent the majority of crime victims' (Hall, 2009b: 53).

<sup>97</sup> Sara Payne has been actively involved in campaigning for victims, particularly sex offenders, since the murder of her daughter Sarah by a paedophile Roy Whiting.

finally appointed in 2009. Her report *Redefining Justice* (Payne, 2009) brought a valuable insight into failings of the justice system and made a number of recommendations, for example about meeting victims' individual needs, counselling for victims<sup>98</sup>, special measures for witnesses, focus on the total impact of a crime on a victim, or making sentencing clearer for victims (Payne, 2009). However, the challenge of putting victims at the heart has not been addressed fully, chiefly due to the conflicts with the values and aims of traditional justice. A new Victim Commissioner, Louise Casey, will build on the work of Mrs Payne and work to further improve victims' service (Ministry of Justice, 2010). Alternatively, it has been suggested that victims' voices are frequently ignored when creating policies, which are consequently more service-driven rather than victim-driven<sup>99</sup> (Goodey, 2005). Victims should be encouraged to give their opinions which would bring a more qualitative element into victim-focused policies.

In addition, compensation is provided to victims of violent crime. Compensation by offenders through compensation orders has been in decline, as offenders lack the means to pay (Flood-Page & Mackie, 1998) or avoid paying (Daily Mail, 2009a). State compensation is available through the Criminal Injuries Compensation Scheme that was established during the victim movement<sup>100</sup> and corresponds with the humanitarian atmosphere and welfare approach at the time. Rock (1990 cited in Dignan, 2005) argued that the scheme had political reasons and blocked any further victim initiatives. On the contrary, it deals with the duty for the failure to prevent crime (Goodey, 2005) and the ineffectiveness of offender compensation or instances where the offender is not found (Dignan, 2005; Goodey, 2005). Under the Criminal Injuries Compensation Act 1995, compensations are provided from a minimum of a £1000 and can go up to £250,000 (Criminal Injuries Compensation Authority, 2008). Although the scheme provides a kind of material redress to a small minority of victims, it has been criticised. Many victims are not informed about it, there are delays<sup>101</sup>, refusals, generally low awards, affections to benefit support, and it is too bureaucratic and complicated for victims (Criminal Injuries Compensation Authority, 2008; Davies, 2003). The criteria for eligibility are rather discriminative<sup>102</sup>, as they favour the ideal victim and determine between deserving and undeserving victims. Most importantly, victims of non-violent crime are excluded, and the majority of victims of violent crime are not compensated because of the high minimum reward (Dignan, 2005). However, the scheme is quite generous and can ensure needed help in serious cases.

Restorative justice<sup>103</sup> seems a tempting idea for the proposed victim-centred justice, as it concentrates greatly on the victim. Aspects of restorative justice, for example

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<sup>98</sup> It has been pointed out that victims receive more material support than emotional which could more important in the majority of cases (Mawby, 2007).

<sup>99</sup> Service-driven policies are primarily targeted at obtaining information and testimonies from victims, whereas victim-driven policies directly benefit the victim (Goodey, 2005). Clearly, Justice for All identified that many reported crimes go undetected (Home Office, 2002). 250,000 more offences were brought to justice in 2006 than in 2001 and further rebalancing in favour of the victim was announced (Home Office, 2006).

<sup>100</sup> Margery Fry (1874 – 1958), a penal reformer and campaigner, had a profound impact on the establishment of compensations for victims.

<sup>101</sup> The average time to resolve a case is seventeen months (Criminal Injuries Compensation Authority, 2008).

<sup>102</sup> See paragraph thirteen to seventeen, or Crime compensation slashed if victim has been caught speeding (Daily Mail, 2009b).

<sup>103</sup> Restorative justice emphasizes repairing the harm that has been caused by an offence and focus on the personal accountability of the offender towards those who are harmed by the offence (Dignan, 2005).

referral<sup>104</sup> or reparation orders, have been implemented under the Labour Party and are widely used in youth justice to prevent young people from reoffending and to understand the consequences of their offending. Despite the benefits of restorative justice to the victim, is the English justice system truly prepared for such a radical change? Maybe the ideal solution could be a system drawing from ‘aspects of a refined traditional justice with elements of service-based and/or restorative justice principles’ (Goodey, 2005: 4). Even though this may sound good and very doable, one has to be careful about possible disagreements between the different principles and their aims and values.

Lastly, some criminal justice agencies will be considered. As has been said, the justice system now works as a public service that is defined by a target culture, interagency work and by meeting local needs<sup>105</sup>. The agencies share a concern for victims, have a responsibility for consulting and informing them, and have to meet their legitimate expectations (Reeves & Mulley, 2000; Williams, 1999; See p. 28). However, work with victims has not been identified as the core task (Shapland, 2000). Absolute clarity about the aims of measures for victims, accurate communication of the intentions and training about victim awareness are required (Shapland, 2000). One of the most serious problems is the limited resources and funding for victims (Dunn, 2007; Casey, 2008). For example, local bodies have to find resources from existing funding for new initiatives causing tensions in terms of performance, bureaucracy, local responsibility and accountability (Hall, 2009a). These tensions need to be resolved to make the victim more central within the criminal justice system. Apart from the public sector, vital assistance is provided by the voluntary sector and organizations, such as Victim Support<sup>106</sup> which raises awareness about victim issues and, importantly, works in partnership with criminal justice agencies. Also the first National Victims’ Service will be launched and victims will finally get their agency within the criminal justice system (BBC, 2010; Straw, 2010). How effective and useful this service will be is a matter of time, staffing and funding. Without question, the support to victims has been improved considerably within the last twenty years. In the past, victims were often subjected to insensitive treatment, a lack of care and information, and emotional and material support. This is illustrated in these victims’ expressions (Shapland et al, 1985: 28; 52; 68):

‘I was crying but no sympathy – just pen and paper – just if it were happening everyday to them – just one of the crowd but you think you are the only one.’

‘No-one’s bothered to come and tell me what’s happening. Waiting is torment...[T]he longer you wait, the more frightened I get...Right now I’m in the dark, then I’ll be thrown into court – I don’t know what’ll happen.’

‘I was nervous, frightened because I hadn’t been to a trial before. They didn’t try and help me in any way.’

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<sup>104</sup> See The Introduction of Referral Orders into the Youth Justice System: Final Report (Newburn et al, 2002).

<sup>105</sup> This is ensured through Local Criminal Justice Boards designed to manage the system more effectively through local co-ordinators.

<sup>106</sup> Other, but relatively smaller and not as influential, organizations include Support After Murder and Manslaughter, Rape Crisis Centre, Childline, the Zito Trust, MENCAP, Women Against Rape, RoadPeace, and many others.

The police present an important initial contact with the justice system for victims, and yet have nothing tangible to offer victims (Davies, 2003). Nevertheless, the police rely on victims to report crime, and victims rely on the police to receive information and referral to other available support. In the past, and to a degree even now, stereotypes, prejudice or victim-blaming have existed within the police and individual officers which could further result in different responses by the police according to the seriousness, type of crime or characteristics of a reporting victim (Davies, 2003). Domestic violence or rape cases are among examples of such practise<sup>107</sup>. Due to frequent secondary victimization and the failure to provide information (Shapland et al, 1985), victims may have a bad image of the police<sup>108</sup>. The problems have been reduced by the Victims' Code of Practice (Home Office, 2005: 6 - 11), the Witness Charter (Criminal Justice System, 2008), and the strategy No Witness No Justice (Home Office, 2004b) setting minimum standards for the support of victims, and other pieces of legislation<sup>109</sup> which are binding for the police. Also Quality of Service Commitment sets out customer service standards (Home Office, 2008), and the Policing Pledge<sup>110</sup> directs the police to be more customer-focused in a set of promises that should be provided to the public and victims (BBC, 2008). As a part of the pledge, it has been proposed that the police should visit every victim of crime in England and Wales (BBC, 2009). It seems that the proposals lack a sound basis in regard to available resources and also the wishes of victims<sup>111</sup>. Presumably, such initiatives can put extra pressures on the police who may not have time and resources for their intended job of catching criminals. The police should not serve as a complete support, but rather cooperate with other agencies or have specially trained staff in order to satisfy victims. The promises serve as a means to gain more satisfaction and confidence in the system, but appear rather empty and only feed the rhetoric around victim-justice<sup>112</sup>.

Secondly, the Crown Prosecution Service works as a point of receiving information about decisions to prosecute or not to prosecute an offender. The traditional aim of prosecuting in the public interest contradicts with victims' interests, but following the rebalancing agenda, the Prosecution Service now has to accommodate to the demands for the focus on victims<sup>113</sup>. Like the police, the Prosecution Service is guided by the Code and Witness Charter, as well as the Prosecutors' Pledge, Care and Treatment of Victims and Witnesses, Special Measures for Vulnerable and Intimidated Witnesses and pre-trial witness interviews. They have a responsibility to inform victims about their cases through the Direct Communication with Victims scheme (HM Crown Prosecution Service Inspectorate, 2009). For bereaved families, extra care is available through the Victim Focus Scheme<sup>114</sup> which has been put into practise after a positive

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<sup>107</sup> There is a lack of concern for victims and unwillingness to take offences seriously (Mawby, 2007).

<sup>108</sup> See Support for victims of crime: findings from the 2002/2003 British Crime Survey (Ringham & Salisbury, 2004).

<sup>109</sup> Youth Justice and Criminal Evidence Act 1999; Human Rights Act 1998; Race Relations Act 2000; Freedom of Information Act 2000, Data Protection Act 1998.

<sup>110</sup> Available online at:

[http://www.direct.gov.uk/prod\\_consum\\_dg/groups/dg\\_digitalassets/@dg/@en/documents/digitalasset/dg\\_172297.pdf](http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_172297.pdf).

<sup>111</sup> Her Majesty's Inspectorate of Constabulary informs that a majority of police forces failed to deliver the set standards (HMPSCI & HMICA & HMIC, 2009). In addition, a proportion of victims does not want to have contact with the criminal justice system or seeks help elsewhere.

<sup>112</sup> Crime victims face 'postcode lottery' in policing, says report (Telegraph, 2008).

<sup>113</sup> One of the roles of the CPS is to support victims and witnesses and to take the views of victims or their families into account (CPS Policy Directorate, 2010).

<sup>114</sup> Under the scheme, Family Liaison Officers offer to meet bereaved families in homicide cases after a charge in order to explain processes and procedures, including the making of a victim personal statement called family impact statement (Available online at: [http://www.cps.gov.uk/legal/v\\_to\\_z/victim\\_focus\\_scheme/](http://www.cps.gov.uk/legal/v_to_z/victim_focus_scheme/)).

evaluation of the pilots (Sweeting et al, 2008). Regardless of some criticisms<sup>115</sup>, the scheme gives an opportunity to further enhance the victims' position and voice. The new provisions are certainly a step towards a better service to victims as consumers, but it has been argued that there is much contention in the relationship between prosecutors and victims, and importantly between the public interest and the rhetoric of placing victims at heart of the system<sup>116</sup> (Hall, 2010; Doak, 2009; House of Commons Justice Committee, 2010). There is a misunderstanding of the prosecutor's role in relation to victims, and what is realistic for the prosecutor to be and do for victims. However, the Prosecution Service has developed some good procedures and will need to make an effort to deliver them (House of Commons Justice Committee, 2010). As well as that, a change in the professional culture would make a difference (Hall, 2010; HMCPSI & HMICA & HMIC, 2009).

A small proportion of victims and witnesses come into contact with the Court Service. As has been documented, secondary victimization was quite common (Shapland et al, 1985). There were no separate areas or information points for victims (Davies, 2003). Later, Witness Service was established in cooperation with Victim Support, which is still available and provides support for witnesses. Courts are now guided by the Code of Practice, Witness Charter and findings from surveys, such as the Witness and Victim Experience Survey (Moore & Blakeborough, 2008) and commonly offer practical information for witnesses, for example on court layout and court procedures, and receive leaflets about what they can expect and the procedures taking place in court (Mawby, 2007). Special measures have been adopted for intimidated and vulnerable witnesses (See Chapter Two). Under the No Witness No Justice initiative, Witness Care Units were developed that run jointly by the police and Crown Prosecution Service. They establish Witness Care Officers who keep victims informed about their case, assess their needs and ensure appropriate help for them. The Units secure a better service to victims, but again there is some way to go to meet the minimum requirements (HMCPSI & HMICA & HMIC, 2009). Moreover, there may be conflicts between the agencies made responsible for running the Units together<sup>117</sup>. Research conducted by Hall (2009b) discusses some points<sup>118</sup> related to furnishing victims' needs and rights at three different courts. He concludes that recent reforms have achieved a significant operational impact, but have deficiencies in the practical reality and notes the existence of resistant occupational cultures among practitioners<sup>119</sup>. All in all, the progress in the care for victims and witnesses, especially vulnerable witnesses, is apparent in comparison to the practice of the past. The courts will have to manage new standards in terms of efficiency and victim service, however, more time needs to be allowed to change actions and attitudes of lawyers and judges.

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<sup>115</sup> See Victims and the sentencing process: developing participatory rights? (Doak et al, 2009).

<sup>116</sup> 'Telling a victim that their views are central to the criminal justice system, or that the prosecutor is their champion, is a damaging misrepresentation of reality. Expectations have been raised that will inevitably be disappointed. Furthermore, the criminal justice system is set up to represent the public rather than individuals, and there are good reasons for this' (House of Commons Justice Committee, 2009: 36).

<sup>117</sup> '...we are still two separate bodies joined for certain functions' (Police Chief Inspector cited in Hall, 2009a: 271).

<sup>118</sup> These are, for example, sources of information available at court, court facilities, waiting times for witnesses or the percentage of cases where a trial was adjourned (Hall, 2009b).

<sup>119</sup> However, it has been observed that lawyers are now changing their attitudes and are now willing to talk about victims and show sympathy to them (Hall, 2009b).

## Conclusion

The ultimate question of this dissertation, the exploration of the heart of the criminal justice system in relation to victims of crime, seems perhaps too simplified, having discussed the many complexities of the problem. The increasing attention paid to victims has been developing for a relatively long time and its birth was influenced by a variety of factors, not entirely victim-connected. International influence has played a part, and it could be speculated that this trend will continue, especially with the direction from the European Union and the United States. Evidence shows that the White Paper and other publications are misleading as to what can be genuinely achieved for victims, their language and rhetoric about putting victims at the heart of the system. The dissertation approached the issue from the traditional justice point of view and the political point of view, and it has been notable that there exist certain clashes between those two. Within traditional justice that works according to adversarial norms, it can be concluded that only radical reform could change the situation for victims. The claim that the offender has been at the centre for too long implies that the victim is now going to be the central focus, which is incorrect. Trials operate around the offender and the pursuit of a proof of guilt which omits the victim. Judges and lawyers have been practising with respect to the values of the adversarial model and seem to be just coming to terms with the new provisions. It follows that there exist disparities between the anticipated focus on the victim and their accustomed methods. Victim impact statements introduced to afford a form of victim participation remain a controversy. With reference to English justice, the statements appear to be confused, unappreciated by court staff and intended to demonstrate the success of the Government in realizing the plans about victims. More urgency, clearer purposes, and actual and improved use need to be given to the statements, as well as familiarizing victims with their working.

Also stereotypical views, prejudice and idealizing of victims is one of the many concealed subjects that should be addressed both within justice agencies and the Government. A blatant example of this is the compensation scheme that can leave many victims without needed help and remedy. Furthermore, victims' rights, and especially legally enforceable rights, are a weak point in the pledge for victim-centred justice. So far, the offender seems to have more rights than the victim. Some initiatives such as the Code of Practise for Victims may give an impression, a deceptive impression, of enhancing victims' rights though. Presumably, more will be done with the growing international influence emphasising human rights. For these reasons, victims have been, and to a point still are, marginalized as far as traditional justice is concerned.

Despite that the traditional English court is not designed to accommodate victims, the commitment made to victims and a number of special measures have improved their treatment significantly in the last few years. The small minority of victims and witnesses that turn up to court are cared for by providing them with information, treatment with recognition, respect and consideration, explanation as to their expectations and court procedures, or special areas and trained staff. This practice needs to be consistent throughout all courts. Importantly, some imparity has been found to prevail between law, its implementation, and actual practicality and practise. Rigorousness and precise evaluations are desired in order to alter or suspend uncertain

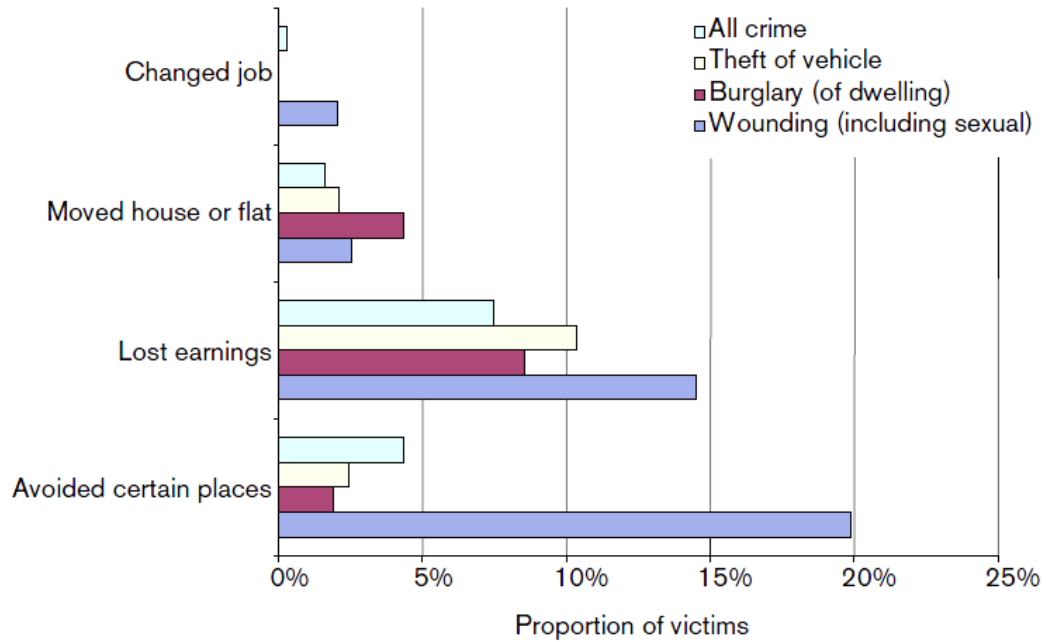


policies and laws. However, it could be in the Government's interest to keep some initiatives even though they are non-functional. In so far as agencies of the criminal justice system attend to victims' needs, significant progress has been made too. These agencies can be supportive, but their own priorities which they were intended for should not be forgotten. In particular the police could face increased pressures and strains on their resources, staff and abilities. Working in partnership could be exploited well to ensure better service to victims, but should avoid possible turf wars and deal with conflicts in each agency's aims. More cooperation with voluntary organizations specializing exclusively in victim issues and bringing their expertise would be only beneficial for victims. Perhaps, rather than putting victims at the heart of the criminal justice system, more importance and concern should be given to such organizations. Hopefully, the new National Victims' Service might be a solution to many problems, but this will depend on how carefully and thoroughly it is introduced. After all, it could be only a tactical step for the Government to appear as fulfilling their victim-focused goals. More systematic approach in adopting new policies, where small changes are made first with gradual introduction of more significant ones, should be taken to ensure validity.

As the first chapter explained, there is a great variability and individuality in how crime affects victims, their reactions and needs to overcome the negative experience. Proposals that victims' needs must be assessed individually according to the total impact of a crime are in place, but surely there are universal needs that can be satisfied. Vulnerable victims and witnesses have benefited the most from the victim-focused programme, and are still receiving a great deal of attention which they truly deserve, but all victims should be recognized and treated the same way. Many victims of crime are largely neglected by the system. Persistent idealizing poses dangers on the plausibility of victim-focused policies and proves the manipulative way in which victims are used by the Government. Evidently, political interests are deeply involved in forming the direction of the criminal justice system and victims are often used as a reference determining its success. These interests underpinned by managerial pressures incline to be in conflict with the interests of traditional justice. It can be only hypothesized about the impacts of a possible change in the political landscape on the victim. In conclusion, to claim that victims are at the heart of the justice system is a step too far, and in the future the Government should avoid rhetorical suggestions and place balanced and fair attention to both victims and offenders.

## Appendix A

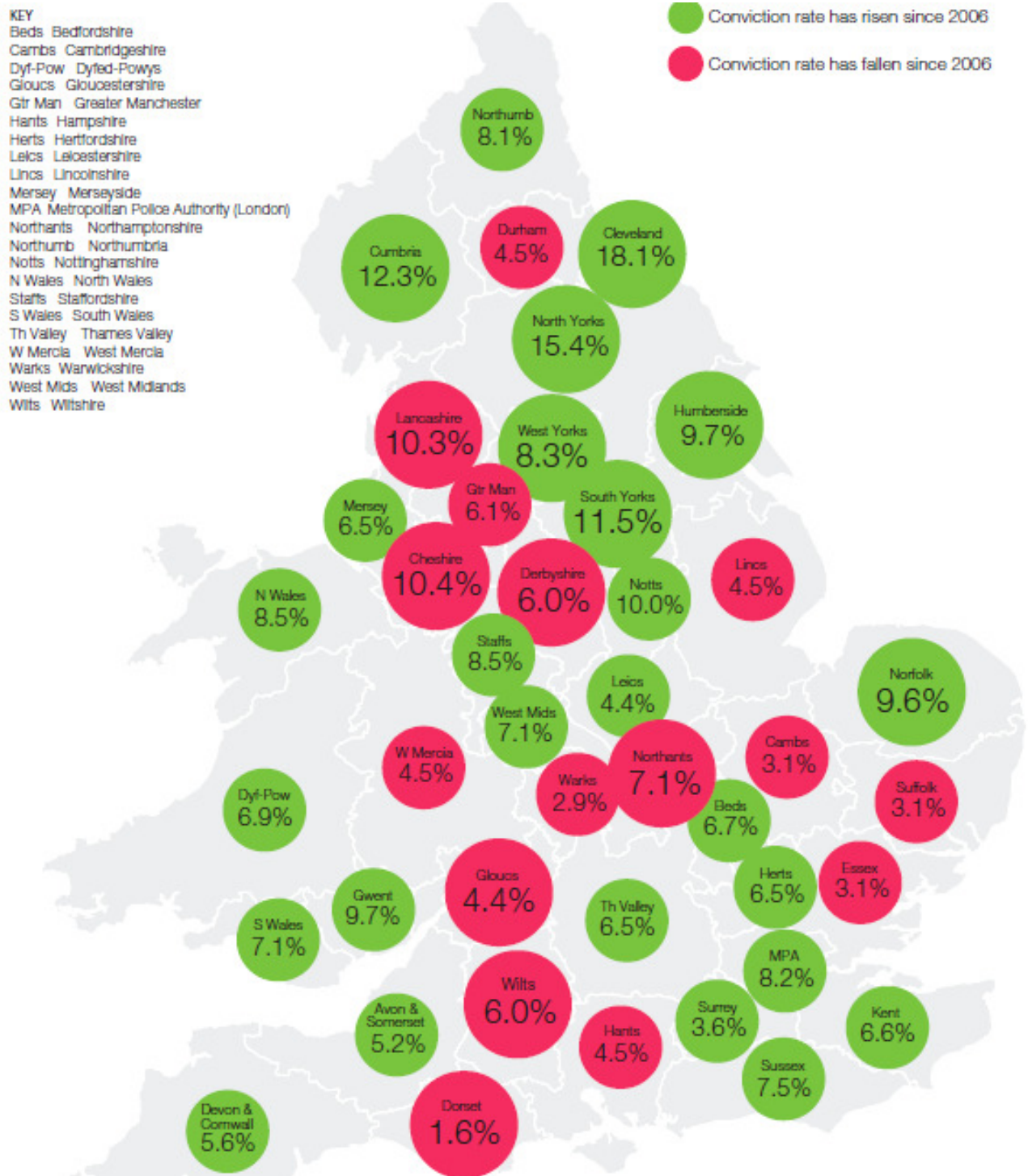
Figure 1: Reported direct impact of experiencing crime, by crime type



Source: British Crime Survey 2002/03, ippr analysis cited in Dixon et al, 2006.

## Appendix B

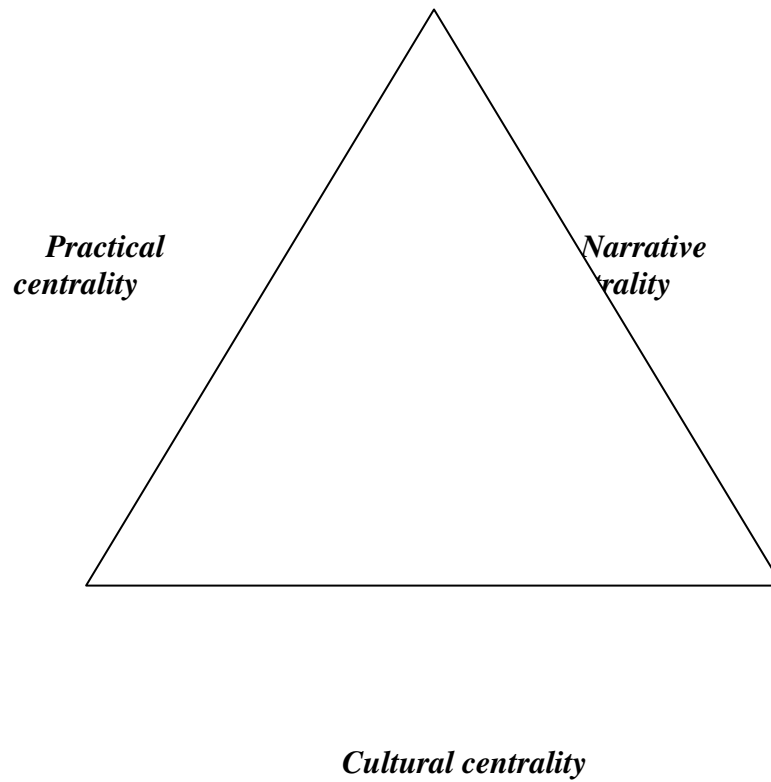
### Regional rape conviction rates 2007



Source: Fawcett Society (2008).

## Appendix C

Figure 2: Proposed model of victim-centredness



Source: Hall, 2009b: 192.

## Appendix D

Figure 3: Four different participatory roles for victims

	<b>Participation type</b>	<b>Obligation on criminal justice decision-maker</b>	<b>Obligation on victim</b>
<b>Dispositive</b>	<i>Control</i>	To seek and apply victim preference	Non-optional supply of preference; victim is the decision-maker
<b>Non-dispositive</b>	<i>Consultation</i>	To seek and consider victim preference	Optional supply of preference
	<i>Information-provision</i>	To seek and consider victim information	Non-optional supply of information
	<i>Expression</i>	To allow victim expression	Optional supply of information and/or expression of emotions

Source: Edwards, 2004: 975.

## **Appendix E**

### **Helen's Newlove's statement in full**

Youths guilty of killing man 'kicked like a football'

Helen Newlove

[guardian.co.uk](http://guardian.co.uk), Thursday 17 January 2008 11.00 GMT

"We were an ordinary working-class family. Garry was a caring, loving, funny and most of all a family man. We did everything together for 26 years. He adored his daughters Zoe, Danielle and Amy - always attended their school sports days and parents' evenings and we were always keen to encourage them to achieve their best.

"Garry loved cars and music. Every Sunday he would wash his car religiously and mine as well.

"We did everything together: shopping, hairdressers, you name it, we did it as a family unit. Garry loved doing jobs around the house with his daughter Amy. When they did the gardening, Amy and himself, he would call her his own 'Charlie Dimmock'. They were like a double act.

"The light has gone out of our lives. It's like a piece of our jigsaw has been lost forever. The tiniest of things that we use to do as a family feels like it takes us forever to achieve them.

"We all sit at home, the girls and I, and wait for Garry to walk through the door as if he's been to his head office in Coventry for meetings, which sadly we know now will never happen.

"Amy suffers terrible flashbacks of that night as Zoe and Danielle also do but as they are slightly older they tend to go in quiet moods sitting alone. As regards to myself, I am completely broken-hearted.

"I am still off work. I have to take medication to help me through the day. Sleepless nights just seeing him in intensive care. I can honestly say that if it wasn't for my three girls and my family, I do not want to live without Garry. It's too hard. My soulmate has gone and I just want to see and hear Garry. To have to turn off his life support machine because of this needless and senseless act, I find hard to comprehend.

"To think that Garry recovered from stomach cancer 15 years ago and to be taken in such terrible circumstances, it makes you think what is the point of everything?

"Amy keeps asking why, when I took all the girls to visit him in hospital, why her dad could not open his eyes. All Amy wanted was for her dad to open his eyes and so he could see that she was there. How do you tell your 13-year-old that he will never open his eyes?

"All Amy sees in her mind is the picture of her dad being beaten to death and lying on the ground lifeless.

"My family and friends have been wonderful. Their support network has been truly comforting to my girls and myself, without which we could not have coped.

"They have been by my side since that Friday night, especially my sister Marie and my mum and father. My mum has been seriously ill since this and my dad is partially blind and not in good health.

"I would also like to thank Berg Legal, the company I work for, who have been tremendously supportive both financially and emotionally. As have Garry's company George Fischer. They have been brilliant.

"As regards to the verdict, as far as I am concerned life should mean life. After all, the tariff for murder is mandatory, but why, as the justice system does not uphold this sentence? There should be no lesser tariff, otherwise what is the point of it being mandatory?

"Parents should take responsibility for their children. Garry and I have brought up three girls together to respect other people and to be home, not walking the streets causing damage and intimidating other people by drinking and abusive language.

"What these people need to understand is that it could be their partners or parents that it happens to. Until this society stops thinking about number one, we should all try and pull together to stop these youth gangs going on rampages.

"Attacking people verbally and physically under the influence of drink and drugs does not give them the rights to do these acts and does not in any way justify their actions. You do the crime, you must face the consequence and do the time.

"They should not be allowed to congregate on street corners under the bridges putting fear into people who simply want to just pass them by without any foul-mouth backchat to them.

"Parents have to face up to their responsibilities. Having children is unconditional and there is not a time limit to it. If the children do not face up to the action, then we have to make the parent face the action.

"By saying that they do not bother to turn up at court is simply passing the buck. Lock them up as well. Make parents responsible. Give them a deterrent. A deterrent needs to be put into action. We have to make our streets safer to walk out on and not be afraid of retaliation.

"Until this Government puts into place an effective deterrent, the youth of today know too well that they can get away with their actions. Why not put them in the Army for a certain length of time? If they have plenty of aggression, do it through boot camp.

"For far, far too long now we have just given them a slap on the wrist and they now know the law better than most decent hard-working people do.

"To have prevented Garry's death would have been for the police to have acted before this incident. Plenty of police presence warning the youngsters away from our residential streets.

"Instead they are asked to empty their alcohol and given a stop warning. As soon as they turn their backs, they then go back and drink and smoke more from their hidden stash. Alcohol is a big issue and needs to be addressed as soon as possible.

"For all too long, youngsters have been drinking and smoking into the early hours and then deciding to do acts of criminal damage and beat people up as a joke because of their influence by the drink and drugs.

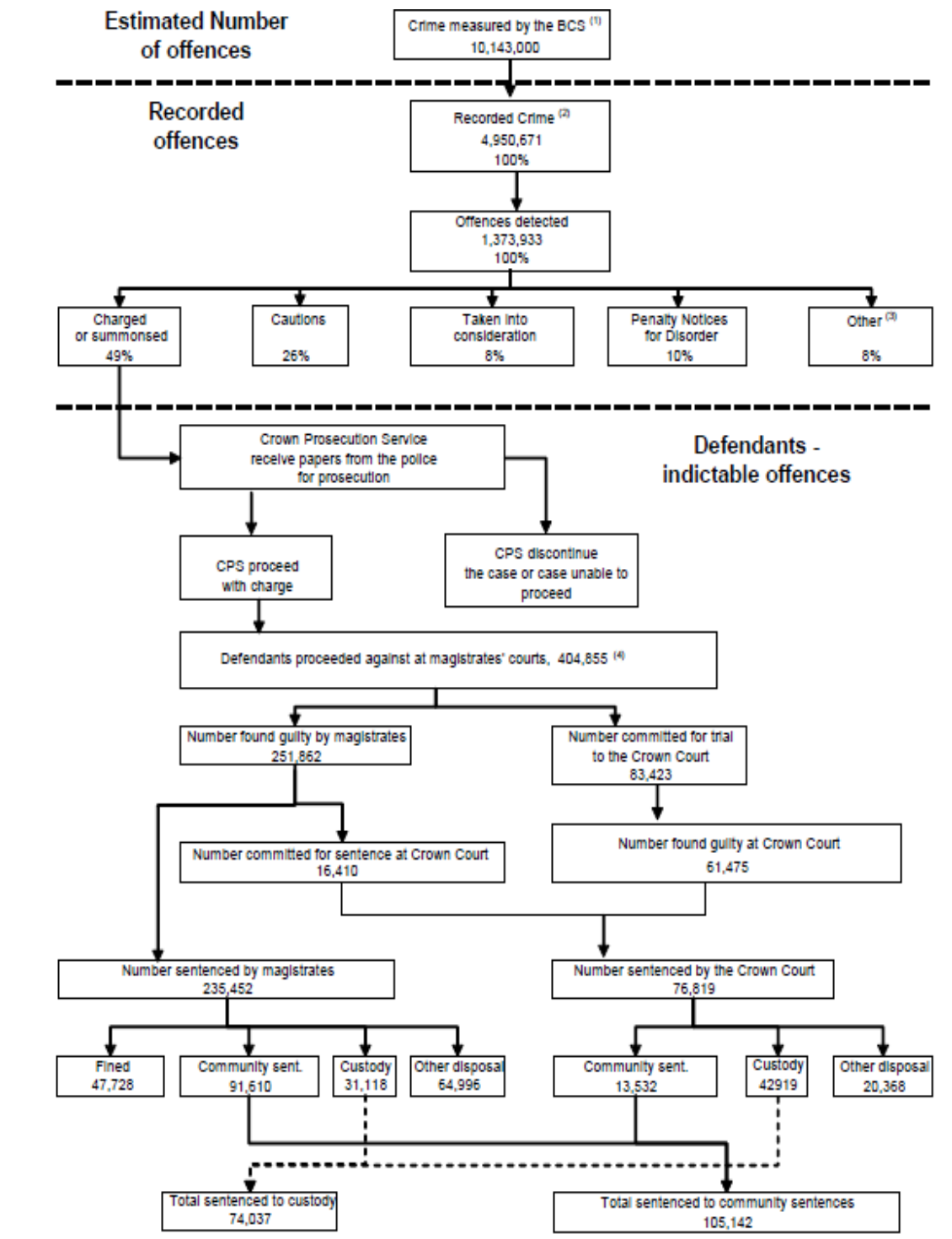
"We all need to keep a closer eye, especially shopkeepers. And it's not just boys that are becoming more aggressive and violent, girls are becoming more violent than the boys. We need to make a stand. Thank you."

Source: Guardian, 2008. Available at:  
<http://www.guardian.co.uk/uk/2008/jan/17/ukcrime>



**Appendix F**

Figure 4: Flows through the criminal justice system, 2007



Source: Criminal Justice System (2008: 10).

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