

# VICTIMOLOGY — AN OUTLINE AND SOME ISSUES

by Christopher Corns, BA(Hons.), LL.B, LL.M

## INTRODUCTION

Victimology can generally be described as the scientific study of victims. However, this simple definition disguises a number of significant and ongoing debates between victimologists concerning the proper scope and content of victimology.

At a number of recent International Congresses and Conferences on victimology, considerable time was devoted to a range of basic, threshold questions. For example, which 'victims' should be studied? Should the study be limited only to victims of conventional crime or should political victims be included or even victims of environmental damage?

Similarly, what is it about victims that should be studied? Should, for example, the focus be on the effects of crime, ascertaining the extent of crime, the adequacy of support services, the extent to which the criminal justice system protects the interests of victims, or perhaps simply trying to understand the victimisation process — how people become victims?

These sorts of definitional questions are not simply of academic interest but in practice, shape the future direction of victimology, the agenda for victimological research, the formulation of policy and ultimately, likely reforms within the criminal justice system and broader treatments of victims within society.

In short, the question '*What is Victimology?*' has no simple answer. It is largely a matter of ideology. To further complicate this aspect, there is also debate as to whether victimology is a distinct discipline or part of Criminology.

Clearly, there is an infinite number of topics relating to crime victims all of which deserve analysis. The focus of this paper is the position of crime victims within the criminal justice system. Part One will provide a brief account of the development of interest in crime victims, the impact of this interest, and an outline of some basic '*injustices*' presently experienced by many victims.

Part Two will explore the question of reform and specifically obstacles to the implementation of appropriate reforms. Throughout the paper, the focus is on the Victorian situation although a number of broader issues are applicable to most jurisdictions in Australia.

## PART ONE

### *The adversarial structure*

A useful starting point is the proposition that victims of crime have traditionally been excluded from the criminal justice system.

The primary source of this exclusion lies in the fundamental nature of the Anglo adversarial legal model. Under this model, criminal justice is a matter between the Crown (or the State) and the accused. The political philosophy behind this model is the notion that a crime is an act against the State rather than an act against the individual victim.

For this reason, the State has assumed responsibility for conducting proceedings on behalf of the community. The role of the victim is essentially that of a crown witness; in many cases the victim is a bystander to the proceedings.

Until the middle of this century the position and rights of crime victims were essentially unchanged from their position in the 17th and 18th centuries. There was virtually no interest or concern about the plight of crime victims and any victims for that matter. Victims were not politically significant nor a significant social '*issue*'.

Thus, to explain why victims have been ignored or excluded, it is necessary to consider the broader socio-legal context. What this means is that any significant reforms for victims must, by definition, undermine the traditional adversarial model. The more rights and prominence given to the victims, the less '*adversarial*' the overall system becomes. There is of course nothing radical or unique about challenging the old adversarial model. Current financial and administrative pressures in the higher courts, for example, have led to increased demand for pre-trial hearings involving judicial resolution of evidentiary issues, and a range of incentives for the accused to forego a '*battle*' in the court and plead guilty. All these developments are quite foreign to the '*pure*' adversarial model.<sup>1</sup>

The point is however, that one obstacle to reforms for crime victims may turn out to be entrenched attitudes and ideologies of relevant individuals not prepared to change the '*true and tried*' adversarial tradition. The challenge facing policy makers is how to provide necessary rights



CHRISTOPHER CORNS

Christopher Corns is lecturer in Criminal Justice in the Legal Studies Department of the Latrobe University in Victoria. He has conducted research in a number of areas of criminology including victimology, the private security industry and the legal implications of In-vitro fertilisation. On June 11, 1987 he presented a paper on victimology to the Australian Crime Prevention Council (Victorian Branch). The paper was very well received by the members who attended that meeting. It raises matters of great interest to all concerned about the criminal justice system. It will interest all delegates to the conference. We reproduce it here by kind permission of the author.

for victims within the structure of an adversarial system.

### **Major Developments**

Although criminology as a distinct discipline has been developing for at least 100 years, the focus of criminologists until recently was the **offender**. In Australia, up until the 1970s, only a handful of articles or research projects had been carried out on victims.

The first major political landmark for crime victims in Australia was the introduction of limited compensation schemes in the late 1960s and early 1970s.

Until 1975, no one knew the extent of victimisation in Australia — partly because no one wanted to know and partly because there simply was no data. The 1975 Australian Bureau of Statistics Crime Victimization Survey was the second major landmark.<sup>2</sup> The data from this research spawned a number of academic articles which slowly attracted interest.

The late 1970s and early 1980s saw a number of very significant developments — many of which were inter-related. In 1979 VOCS (Victims of Crime Services) was established by Mr Ray Whitrod in South Australia, and the following year VOCAL (Victims of Crime Assistance League) was established in Victoria. These two organisations were subsequently to become a significant influence on community and governmental thinking towards crime victims.

In 1981 the South Australian Committee of Enquiry on Victims of Crime produced a report containing 67 recommendations. These recommendations were subsequently to gain legislative and political recognition in 1984.

In 1985 the 7th UN Congress generated international interest in victims **although** this work of the United Nations has not had the impact in Australia which it deserves.

In 1986, a Victorian Joint-Party Parliamentary Committee was established to consider a diverse range of issues relating to crime victims,<sup>3</sup> and in February 1987, a NSW Task Force on Services for Victims of Crime released their Report and recommendations.

### **Why this sudden interest?**

There is no single factor responsible for this remarkable interest and research into victims. However a number of inter-related influences can be identified.

1. There is no question that the Women's Movement, from the early 1970s, initiated a number of significant reforms to procedural and evidentiary reforms relating to the conduct of criminal trials (e.g. the imposition of time limits for prosecutions and limiting cross-examination of rape victims). By focusing upon one aspect of the criminal justice system, the Women's Movement opened a whole range of broader issues. The work of Jocelyn Scutt can be singled out as a leading example.

At the same time, the activities of groups such as VOCAL and VOCS increased community awareness of the plight of all crime victims and exerted not inconsiderable pressure on governments to review the position of victims. The work of Ray Whitrod can be singled out

as perhaps the major contribution in this area.

2. The late 1970s and early 1980s can be seen as the beginning of an era when the entire criminal justice system was opened up for inspection at all levels. At the international level the work of the United Nations, particularly in 1985, had the effect of increasing the political 'currency' of the victims' movement in many Western countries.

The criminal justice system was found wanting in several basic areas particularly sentencing where some sectors of the community appear to have lost faith in sentencing practices and basic notions of 'justice' and 'fairness'.

This had the effect of not only forcing governments to revise sentencing practice but highlighted the relative position of the victim. The system appeared to be weighted in favour of the accused and against the victim.

In other words the victim movement can be seen as part of a much broader retributivist, conservative movement.

3. Finally, the police have been active in highlighting the position of the victim and apparent injustices in the system. Rightly or wrongly, the police have been able to effectively utilise the issue of victims' rights as part of a broader campaign for increased resources and powers in their effort to control crime.

### **The effects of these changes**

The victims' movement has increased police awareness of the plight of the victim and led to an improved relationship between police and victim. It has also led to increased pressure on police to feed back information to victims.

It should be recognised that from the police perspective, these changes have the potential to exacerbate administrative pressures and conflict with the competing community's expectation that the police be efficient "crime fighters". This raises the uneasy tension between the police 'welfare' role and the police "crime control" role. It is difficult to assess the likely occupational impact of these changes as to date, there is little empirical data.

It is possible that, in the long term, the changing attitudes towards crime victims will lead to an increased retributivist philosophy towards offenders. To date in Victoria, this has not been reflected in sentencing practices or indeed in recent sentencing reforms. To the contrary, the Victorian legislative approach to sentencing reform has been determined more by economic and administrative considerations than any guiding principles or clear philosophy. Although no massive community backlash against perceived leniency towards offenders has been evidenced to date, it is suggested that such a response is likely in the future and that

the future direction of the victims' movement will contribute to that response.

At the social level, there appears to have been a decrease in the social stigma traditionally attaching to criminal victimisation. Victims are now more prepared to publicly express their anger, their frustration, and sense of injustice. This could lead to increased reporting rates for some offences as evidenced by the apparent success of programmes such as Neighbourhood Watch.

There has been a significant increase in community awareness of victimisation. Not only awareness of the plight of individual victims, but awareness of the **community** as the victim. The economic and social costs of crime, particularly white-collar crime and other forms of "unconventional" crime is slowly dawning on the community.

To some extent governments have responded but so far the impact has been minimal.

### **Present 'injustices' for victims**

There is a diverse range of concerns expressed by many victims. However, the research to date suggests the following areas as basic issues:

**Compensation:** In some cases the maximum amount payable is inadequate, not all losses are covered, excessive delays in the processing of claims, and there exists a lack of community awareness of compensation entitlements.

**Information:** Many victims are simply not told the progress or outcome of their cases. They are 'left in the dark' often for months which can only add to their trauma. For some victims, the outcome of bail proceedings or release dates from prison, is important.

**Participation:** Many victims would like to be consulted in relation to any plea-bargaining or change of charges, and would like the court to be made aware of the full impact of the crime upon their physical and psychological well-being. At the trial, many victims feel like mere 'bystanders' or simply another 'piece' of prosecution evidence rather than the person upon whom the crime was committed.

**Inconsideration:** Many victims feel decidedly uncomfortable having to sit in the same area as the offender in court, others complain of rudeness from police and other personnel within the system. At the initial time of the crime, and afterwards, many victims simply wish for someone to talk to, to be consoled yet often, there simply is no support available.

**Property loss:** As a result of anomalies in the relevant legislation, victims of property offences are often denied any form of recompense and are not able to recover damages through civil proceedings. In some cases, these victims are

forced to re-purchase their property from third parties such as pawnbrokers.

These are simply a few examples of the sort of concerns felt by many victims which policy makers need to address. Apart from the State of South Australia, no government in Australia has significantly addressed these problems head on.

## **PART TWO**

### **The Question of Reform**

It is one thing to identify perceived weaknesses in the criminal justice system and to suggest reforms. It is however another thing to implement the desired reforms. In Australia, the research and debate regarding victims has tended to focus on the former aspect to the exclusion of the latter. Therefore, it may be appropriate to briefly explore what sort of factors can determine the extent to which reforms will be implemented.

If legislative reforms are required then the priority given to 'victim issues' is largely determined by the political **currency** of those issues. This in turn is dependent upon two factors: (a) the ideological commitment of the particular government to reform in general and specifically, reform of the criminal justice system and (b) the likely political damage a government would sustain if victim-issues were ignored.

In relation to the first factor, there is no question that the present Victorian government is committed to reform, not just of the criminal justice system, but indeed the entire legal system. Such initiatives are to be applauded, although some would of course question whether the initiatives are in the right direction. Legal reform initiatives are not limited to Victoria. Most Australian jurisdictions appear to be in an unprecedented era of reviewing traditional practices and processes of criminal justice.

Thus, in this general 'reformist' climate, one can expect victim issues to at least be addressed by government. Ten years ago this could not be said.

In respect to the second factor, the likely political 'damage', the future is not so optimistic. At present, it is most unlikely that any State government would base its pre-election platform on crime-victim issues and certainly no government would lose an election on the issue.

There is little evidence that the general community is particularly concerned, or indeed interested, in the position of crime victims. Most of the initiatives have come from specific interest groups such as the police and victim support groups.

However, apart from the general community, one source of potentially powerful political pressure which can be exerted upon government is through the medium of law reform bodies. In Victoria, for example, if the current Joint Parliamentary Enquiry into Crime Victims was to recommend sweeping and immediate reforms, the government is unlikely to

ignore such recommendations. Similarly, if the Victorian Law Reform Commission received a relevant reference, their subsequent recommendations would clearly influence government policy. However, the Law Reform Commission has not received such a reference and thus the findings of the Joint Parliamentary Committee will become critical in determining the future position of victims in Victoria.

Until such time, it is suggested that the government is unlikely to suffer any, or any significant, damage by placing these issues on the back-burner.

However, legislation is not the only way to implement reform and in some areas, is not even appropriate. Significant reforms can be effected by simple changes in departmental policy by, for example, the issuing of guidelines, training programmes, or simply increasing the awareness of relevant personnel of the victim-issues discussed above. This mode of reform has already been successful in South Australia and provides a valuable model for other jurisdictions.

However, such a strategy ought not be seen as a panacea. A subtle, though significant obstacle to effective implementation is the ideologies and attitudes of the affected individuals and agencies as a whole. It ought to be recognised that at all levels of the criminal justice system, deeply entrenched ideas, beliefs, and philosophies guide the day-to-day practices and processes. Often, these ideologies cannot be changed simply by enacting a statute or issuing revised guidelines.

For some personnel, increasing victims' rights represents additional paperwork, the loss of valuable time, and an unnecessary challenge to the status quo. This 'attitudinal' problem is not limited to victim-issues. The recent Victorian Shorter Trials Committee referred to this phenomena as a major obstacle to achieving the sorts of reforms recommended by that body.<sup>4</sup>

### **A radical model**

In terms of reform strategies, two basic options are available. First, assorted amendments could be made to a range of various legislative provisions and practices. This is essentially a piecemeal, gradual process. Alternatively, a wholesale, total overhaul could be attempted to resolve all, or most of the issues, in one operation.

It is suggested that the latter approach, though requiring greater political will, is the most appropriate.

One step to achieving this goal is the establishment of a central, independent authority, to cater for the full range of victims' interests, needs and rights. This authority could be called the Victims Aid Commission (VAC), modelled along the same lines as the Victorian Legal Aid Commission.

The functions of a Victims Aid Commission would include such things as

advising any person about compensation entitlements, providing information about the progress of a case, providing immediate and long-term counselling services, assist in the preparation of Victim Impact Statements, and attend court with any victim who so requests.

The VAC could also perform broader functions such as increasing community awareness of victim issues, participating in police training and act as a liaison body for all existing victim support groups.

In addition, the VAC would be able to collect and analyse empirical data relating to criminal victimisation which would be a valuable resource for research and policy makers.

The VAC could be staffed by professionals from a range of disciplines (law, psychology, social welfare) who could be employed full-time or part-time.

The operation of the VAC would be the responsibility of either the Attorney-General or the Minister for Community Welfare Services. Funding could be derived from revenue from fines, sale of confiscated assets derived from criminal activities, and joint State-Federal government grants.

Clearly, a Victims Aid Commission would require considerable financial outlay particularly in developing appropriate computerisation facilities. Others would no doubt criticise the feasibility of such a scheme on other grounds.

However, it is suggested that the benefits of a VAC would, in the long term, outweigh the costs. Specifically, such a body would increase the public's confidence in the criminal justice system, would lead to increased reporting rates for certain crimes, would decrease workloads on other sectors of the system, and most importantly, would redress the current injustices experienced by crime victims.

Such a commission need not be initially established on a grand scale. A single office, centrally located with its own distinctive logo, would act as beacon for the thousands of victims presently lost in the morass of fragmented unco-ordinated assistance presently offered.

Finally, if the government has seen fit to establish an extensive, expensive network of various services and legal aid for offenders, it is difficult to argue that an equivalent response should not be forthcoming for the victims.

## **END NOTES**

1. For a description of the Anglo Criminal Justice System prior to the nineteenth century, see Langbein J. 'The Criminal Trial before the Lawyers' (1978) *Chicago Law Review* vol. 45:2, 263-316.
2. See Australian Bureau of Statistics 1975 General Social Survey Crime Victims Ref. No. 4105.0. and 1984 Survey Catalogue No. 4505.0.
3. Legal and Constitutional Committee, Enquiry into Support Services for Victims of Crime, June 1985 (yet to report).
4. Report on Criminal Trials, Shorter Trials Committee (ed. P. Sallmann), Victorian Bar Council 1985. pp. 8-9.