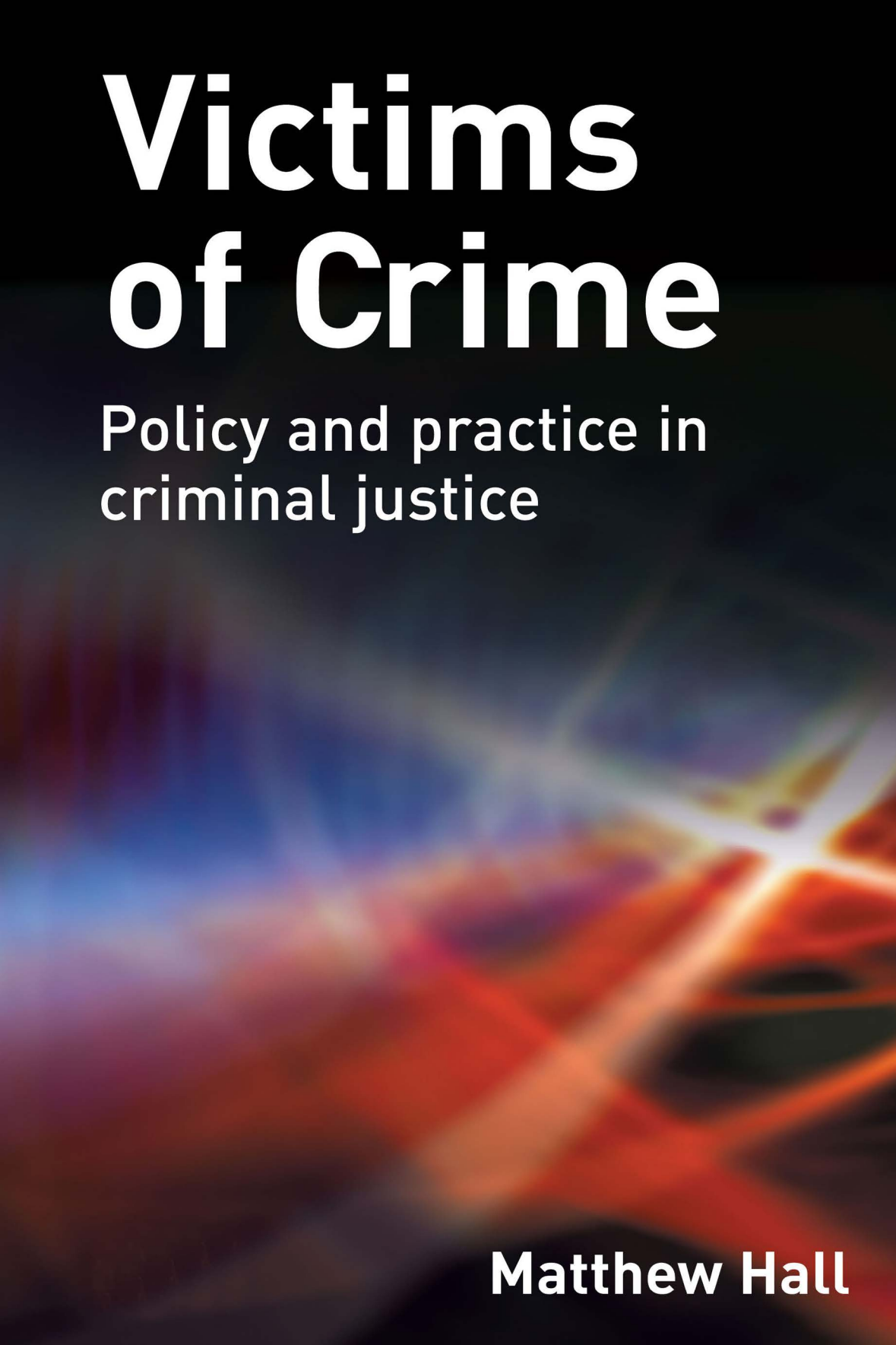
# Victims of Crime

## Policy and practice in criminal justice



Matthew Hall

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**Matthew Hall**

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Dedicated to the memory of Linda Mary Hall
(1952–1989)
Mum

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# List of abbreviations

| | |
|---|---|
| BCS | British Crime Survey |
| CICS | Criminal Injuries Compensation Scheme |
| CJS | Criminal Justice System |
| CPO | Case Progression Officer |
| CPS | Crown Prosecution Service |
| DCA | Department for Constitutional Affairs |
| ECHR | European Convention on Human Rights |
| ETMP | Effective Trial Management Programme |
| LCJB | Local Criminal Justice Board |
| OCJR | Office for Criminal Justice Reform |
| PSA | Public Service Agreement |
| SAMM | Support After Murder and Manslaughter |
| VIS | Victim Impact Statements |
| VIW | Vulnerable and Intimidated Witnesses |
| VPS | Victim Personal Statement |
| WAVES | Witnesses and Victims Experience Survey |
| WCU | Witness Care Unit |
| WSS | Witness Satisfaction Survey |
| YOT | Youth Offending Team |

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## Chapter 1

# Victims, victimology and policy-making

> My government will put victims at the heart of the criminal justice system. (Queen's Speech of 15 November 2006)

By the time Tony Blair's New Labour government was setting out its policy on victims of crime in such stark tones at the end of 2006, victims had already undergone a radical metamorphosis from the 'forgotten man of the criminal justice system' (Shapland *et al*. 1985) to the subjects of extensive official attention and legislative change. Indeed, by this point, the pledge to put victims 'at the heart' of the system, and to achieve 'victim-centred' criminal justice, was itself well established in official policy rhetoric. The pledge had already appeared in multiple policy documents, including the seminal 2002 White Paper *Justice for all* (Home Office 2002). In the years that followed, victims of crime have remained a topical and pervasive issue for politicians, policy-makers, the media and academics in the twenty-first century.

### Researching victims

Initial planning for the research set out in this volume began in 2003, shortly after the summer publication of the government's 'New Deal' strategy to deliver improved services to victims and witnesses (Home Office 2003a). By this point, victimology was already a well-established (if somewhat diverse) (sub)discipline with its own journal – the *International Review of Victimology* – and associated debates

and conjecture. Nevertheless, as the initial research and the review of literature and policy developments continued, clear gaps were uncovered in our present state of knowledge. In short form, the reviews exposed a marked absence of up-to-date, first-hand empirical data on the position of victims during the most symbolically powerful component of the criminal justice process, the criminal trial itself (Tyler 1990). Furthermore, the pace of change in this area indicated the need for a re-evaluation of the policy situation: especially one which took account of wider, international and societal factors beyond the United Kingdom. Few studies had combined the political and policy-making side of the victims issue with questions about that policy's practical implementation thus far in the context of local criminal justice areas and individual courts. Indeed, few commentators had questioned directly what a genuinely victim-centred criminal justice system (CJS) might look like in practice at all.

Following the above observations, the goal of this book is to examine New Labour's pledge to put victims of crime at the heart of the criminal justice system in England and Wales. The central questions to be addressed are:

1 What would it mean to have a victim-centred criminal justice system?
2 What factors have driven this 'policy'?
3 What has putting victims 'at the heart' of the system meant so far in practice?

Drawing on ethnographic techniques – including courtroom observation, qualitative interviews and surveys – the research discussed in this book was particularly concerned with the place of victims in criminal *trial*s. It will demonstrate that while much has been done to assist victims throughout the criminal justice system in a practical sense, cultural barriers and the practices of lawyers, advocates, benches and court staff have not caught up with these good intentions. It is further argued that this 'policy' is in fact driven by a multitude of goals and political pressures, not all of which are conducive to victims' needs. Broadly speaking, this has resulted in central government relinquishing responsibility for victims in favour of local implementers, without the necessary financial backing. The study concludes by proposing a model of victim-centred criminal justice, which emphasises a victim's ability to construct a 'narrative' during the trial process and thereby derive therapeutic outcomes.

## Victims in academia and politics

It is conventional in most writings in this area to begin with a discussion on how victims became the focus of such widespread academic and political attention. Rock (2007) rightly points out the complexity of this exercise given the divergence of opinion among scholars on the exact foundations/founders of victimology. Kearon and Godfrey (2007) similarly warn against the academic tendency to 'force social phenomena into false chronologies' (p. 30). As such, it is perhaps more accurate to say that this chapter provides *one* overview of the development of the academic (sub)discipline of victimology. It will then move on to introduce and critique existing research on the proliferation of victims within policy-making circles, this being an even more contested issue and a key focus of this research.

### *Victimology and conceptions of crime victims*

The advent of modern victimology came in two waves. The origins of the discipline trace back to Von Hentig's (1948) arguments against clear-cut distinctions between victims and offenders. Von Hentig suggested that individuals could be prone to victimisation, and even precipitated it through lifestyle choices. The term 'victimology'[1] is usually attributed to Frederick Wertham (1949) or sometimes to Benjamin Mendelsohn (Kirchhoff 1994). The early victimologists continued these 'precipitation' debates up to the late 1950s and early 1960s (Mendelsohn 1956; Wolfgang 1958; Amir 1971; Fattah 1992). At this point, Schneider (1991) argues that victimology was set off in two directions, as a discipline concerned with human rights, and also as a subdiscipline of criminology concerned specifically with victims of crime.

The second victimological wave originated from the United States in the late 1960s. Pointing and Maguire (1988) discuss how the 'victims movement' in the USA was driven by a host of 'strange bedfellows' concerned with different aspects of victimisation ranging from feminists[2] and mental health practitioners to survivors of Nazi concentration camps (see Young 1997).[3] Victimology was therefore very much an international development, and while US (and, later, British) victim surveys revealed new details about crime victims (Mawby and Walklate 1994), Heidensohn (1991) also notes the role played by the European women's movement. The United Nations also drew attention to victims (Joutsen 1989) and various international meetings were hosted on the topic by the Council of

Europe and HEUNI throughout the 1970s and 1980s (Mawby and Walklate 1994).

Certainly in its earlier years, victimology was far from a unified discipline. Maguire and Shapland (1997) note how victim groups in the United States adopted aggressive, political strategies emphasising victim rights, while the European schemes emphasised service provision. The 1970s saw disputes arise between those victimologists who focused on the provision of services to victims, and those interested in broader research-driven victimology (Van Dijk 1997). Conflict also arose between 'penal victimology' – focused on criminal victimisation and scientific methods – and 'general victimology' encompassing wider victimisations, including natural disasters and war (Cressey 1986; Spalek 2006). Broadly speaking, research-driven penal victimology characterised much of this early work.

As the view gradually developed that victims of crime were being neglected by the criminal justice system – and perhaps for political reasons (Elias 1986) – the study of crime victims took centre stage (Maguire 1991).[4] In a seminal contribution, Nils Christie (1977) argued that conflicts had been monopolised by the state:

> [T]he party that is represented by the state, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena, reduced to the triggerer-off of the whole thing. (p. 5)

Such views have led many recent commentators to propose alternative justice models, often based on restorative justice principles (Dignan and Cavadino 1996; Dignan 2002a, 2002b; Braithwaite and Parker 1999; Young 2000). For Dignan (2005) this is because policies and practice relating to victims of crime within the criminal justice system have led only to their 'partial enfranchisement' at best within that process.

### *Conceiving 'victimhood'*

Generally speaking, the concept of 'victimhood' as understood by academics has gradually expanded along with the subdiscipline of victimology itself and its recent focus on those affected by crime. That said, recent years have seen a dramatic increase in the pace of this expansion, to the point that the victim is now described by Kearon and Godfrey as a 'fragmented actor' (2007: 31). Clearly there has been a marked change in the two decades since Christie (1986) famously argued that only certain stereotypically ideal victims achieve

victim status in the public's eye or in the criminal justice system. Characteristics then attributed by Christie to the ideal victim include: being weak; carrying out a 'respectable project'; being free of blame; and being a stranger to a 'big and bad' offender. To be labelled as a *bona fide* victim Christie argued that one must first conform to this ideal and then 'make your case known' to the justice system. The presumption that 'real victims' necessarily become involved with the justice system has led to the victim's role often being shrouded in that of the witness giving evidence in court, which will be discussed in Chapter 3. This is problematic, given that the majority of crime probably goes unreported and most victims therefore never come into contact with the criminal justice system (Maguire 2002). As such, Jackson (2004) has argued that much of the victim policy at present is actually focused on a relatively small group of (mainly vulnerable and intimidated) *witnesses* rather than victims *per se*.

Elias (1983, 1986) and Rock (1990) draw on similar arguments to suggest that society's narrow conception of victimisation is brought about by selective definitions of crime construed for political purposes. While this may oversimplify the complex interaction of social processes which leads to an activity being labelled as deviant,[5] the point remains very significant in the context of any attempt to understand the driving forces behind victim policies. Such arguments led to the development of so-called 'radical victimology' which expanded notions of victimhood to include 'real, complex, contradictory and often politically inconvenient victims of crime' (Kearon and Godfrey 2007: 31). For example, it is now known that there is considerable overlap between victims and offenders (Hough 1986; Dignan 2005). We have also recognised 'indirect' victims, including the friends and family of 'primary' victims and the bereaved survivors of homicide (Rock 1998). Of particular relevance has been the growing appreciation for the problem of 'secondary victimisation', the notion that poor treatment within the criminal justice system may constitute a revictimisation (Pointing and Maguire 1988: 11). Such ideas have contributed to the recent emphasis on recasting victims as the *consumers* of the criminal justice process (Zauberman 2002; Tapley 2002).

### *Victims as state policy*

As with the development of victimology itself, several attempts have been made to identify driving forces behind the renewed policy interest in victims of crime. In an early examination, Van Dijk

(1983) categorises reforms intended to 'do something' for victims into four victimogogic ideologies. The label 'victimogogic' was intended to distinguish such measures from victimology's wider goals of counting and gathering information on crime victims.[6] For Van Dijk (1983), victimogogic measures can be based firstly on a care ideology, emphasising welfare principles. Policies can also fall under a resocialisation or rehabilitation banner, with offender-based goals. The third victimogogic ideology is the retributive or criminal justice model, stressing just deserts. Finally, the radical or anti-criminal justice ideology involves resolving problems without resorting to the formal criminal justice system. Van Dijk also notes two broad dimensions to victimogogic measures, which remain valid in the recent policy context. The first is the extent to which victims' problems are incorporated as factors to consider within the criminal justice process. The second dimension is the extent to which victims' interests are goals in their own right, or whether they are intended to feed back into decision-making regarding offenders.

Examining why victims have become a significant policy issue clearly affords insight into the limits of such policies. Nevertheless, Van Dijk's construction is restricted to an examination of political ideologies. As such, he does not discuss the wider network of factors – including international influences or social issues like race and secularisation – that may lead to different policies being put into operation.[7]

Robert Elias has argued that victimogogic policies in the USA were actually a tool to facilitate state control:

> [V]ictims may function to bolster state legitimacy, to gain political mileage, and to enhance social control. (Elias 1986: 231)

The argument is that politicians use victims as political ammunition in elections, and later to insist on increasingly punitive measures. Hence, Fattah (1992) characterises victimogogic measures as 'political and judicial placebos' (p. xii).

Both Elias and Fattah therefore look more closely at the driving force(s) behind such ideologies, which takes our understanding forward. Nevertheless, the concentration on punitiveness may distract attention from a still wider range of influences, that might help us understand *why* political mileage can be gained through the appearance of supporting crime victims in the first place.[8]

In a series of publications, Paul Rock charts the development of victim policy initiatives in Britain and Canada (Rock 1986, 1990, 1993,

1998, 2004). A recurring theme throughout these studies is the lack of any unified or consistent policy. Rather, says Rock, the appearance of a unified victims strategy only develops *retrospectively*:

> [P]olicies for victims sometimes seemed to have little directly to do with the expressed needs of victims themselves and more to do with other politics. And they attain meaning only within the larger framework which those politics set. (Rock 1990: 38)

In a recent instalment, Rock (2004) examines the pressures leading to the Domestic Violence, Crime and Victims Bill.[9] A number of influencing factors are discussed, including: consumer-orientated thinking; human rights issues; international developments; vulnerable and intimidated witnesses; the development of reparation processes[10] and the Macpherson Report. In Rock's view, while making victims a party to criminal proceedings was ruled out by 2003, such influences assured that 'notions of victims' rights never disappeared' (Rock 2004: 570). To escape this impasse, Rock argues that politicians and policy-makers compromised by introducing statutory service standards for victims[11] and witnesses backed by the Parliamentary Commissioner:

> [T]hey [victims] were never to be recognized fully as formal participants in criminal proceedings, their eventual standing was to be resolved by a clever *finesse* of the problem of rights that was to be floated as the possible kernel of new legislation. (Rock 2004: xvii, emphasis in original)

Despite its extremely detailed analysis, the key drawback of Rock's methodology is his tight focus on specific institutions (such as the Home Office). As such, there is no consideration of how victim policies link to wider social trends. Also, while Rock has studied the policy background and the implementation of such measures (Rock 1993), these analyses are not combined. It is therefore difficult to draw links in Rock's work between the creation and development of policies and their actual implementation.

### *Adding the macro element*

Victim policies can also be understood as products of broader social processes. Boutellier (2000) argues that, in our post-modern society of secularised morality, the moral legitimacy of the criminal law is no longer self-evident. For Boutellier, the only public morality to survive this secularisation is the awareness people retain for each

other's suffering. This leaves us with a *negative* frame of reference for morality, where no consensus remains on what constitutes 'the good life' but there is agreement enough to acknowledge the suffering of others. This makes victims of suffering a focal point for establishing the moral legitimacy of criminal law. Hence, the criminal law becomes the 'basal negative point of reference for a pluralistic morality' (p. 65). The pain suffered by crime victims becomes a metaphor for wrongful conduct, replacing metaphors of community or collective consciousness. Boutellier calls this the 'victimalization of morality'.

In recent years victims have indeed become more prominent in criminal justice policy with a particular emphasis on those whose suffering seems to be greatest; including survivors of homicide, the victims of domestic violence and childhood victims of sexual abuse. This might, however, suggest that the policy of putting victims at the heart of the system will be limited to those victims whose suffering is readily acknowledged by society, meaning Christie's ideal victims.

Garland (2001) also explains the emergence of victim policies with reference to broader social change. As with Boutellier, Garland's argument is that victims in late-modern society (in America and the UK) have become a core benchmark for determining the success of criminal justice. For Garland, this development is grounded in the collapse of support for penal-welfarism in the 1970s, constituted by a loss of faith in the rehabilitative ideal. This heralded a 'fundamental disenchantment' with the criminal justice system and a loss of faith in its ability to control crime. Consequently, we have seen a shift in focus away from the causes of crime on to its consequences, including victimisation. Victims then become central to criminal justice policy for two reasons. Firstly, governments faced with such problems will redefine what it means to have a successful criminal justice system, by portraying crime as something the state has little control over. The government therefore focuses on the management of criminal justice and the provision of service standards which leads to victims – as the new customers of the system – being afforded increased participation in the process.

Secondly, under these conditions, victims become agents of punitive segregation. In the face of growing concern that little can be done about crime, Garland argues that governments deny their failure by turning to ever more punitive policies, such as mandatory minimum sentences and 'three strikes' legislation. Victims are used to justify such measures by governments appealing to their 'need' to be protected and have their voices heard.

Garland's view clearly corroborates the suggestion that victim policies are grounded in wider political concerns, specifically the need to give the criminal justice system a politically popular goal that is also *achievable*. Indeed, Garland's tone is one of criticism for governments who 'exploit' victims to these ends. Boutellier seems less disapproving in that the victimalisation of morality seems to transcend politics.

Attention should also be drawn to the connections between victim policy and the development of governance. This will be discussed in greater detail in Chapter 3 but, suffice to say, aspects of this policy seem to reflect the features of decentralised service provision and wider consultation strategies associated with governance. Several authors have drawn links between various aspects of criminal justice policy and the emergence of governance (Crawford 1997; Loader and Sparks 2002). Governance is also a key aspect of Garland's (2001) position given above.

Having now set the scene, the remainder of this chapter explains what this research project set out to achieve and briefly discusses the methodologies employed.

## Raising questions

Using the government's pledge to put victims at the heart of the criminal justice system as a starting point, three primary research questions were formulated for this research, which will be discussed here along with the associated issues and hypotheses.

### *What would it mean to have a victim-centred criminal justice system?*

This first research question raises a whole host of different issues, including what it would mean practically, legally, politically and philosophically to have a genuinely victim-centred system and what such a system might look like. Most commentators agree that the present system of criminal justice is not victim-centred. This book goes further, however, to argue that it is possible to convert this system into one worthy of the label without resorting to fundamental reforms. The concept of 'fundamental' versus 'non-fundamental' reform will be discussed in greater detail in Chapter 2. Essentially it is argued that the former implies altering the basic tenets or aims of the adversarial system, and that politically this is not a feasible option for policy-makers. Notwithstanding this, little attempt has been made

to assess how victim-centredness can be achieved without altering the system we have now, especially as moves towards restorative justice processes must be categorised as fundamental reform. Affording victims decision-making power (in some cases) may also constitute fundamental reform but – as will be argued in Chapter 3 – consultative participation in the process and the notion of victims having rights and party status within proceedings would not, as these would not vitally alter the existing process or the existing roles of those within it.

With these points in mind, I will argue that a victim-centred trial would have three main features. The first of these is that such trials would be practically set up and organised to respond effectively to the needs of victims in terms of facilities, procedures, personnel and so on. Secondly, I will argue in Chapter 4 – and expand in Chapter 7 – that a truly victim-centred trial process would be one that understands and accommodates as far as possible victims' narrative constructions of incidents and experiences. Such a system would therefore seek to reduce the many instances in the present system where victims are prevented from constructing a full narrative account of an incident during a criminal trial, and thus miss out on the possible therapeutic benefits of doing so. It will be argued in Chapters 4 and 7 that trials are in fact already characterised by narrative and storytelling. Indeed, in England and Wales the present adversarial model has already accommodated – in the case of vulnerable or intimidated witnesses giving evidence though pre-recorded examination in chief – a much less restrictive form of evidence-giving without apparent prejudice to the interests of defendants. Finally, and linking the other two features described above, a victim-centred trial process would be one in which the underlying occupational cultures of those working within it (court staff, solicitors, barristers, judges, magistrates and so on) are genuinely receptive, understanding and proactive to victims' needs. It is further argued that these three components can be applied beyond trials to the wider criminal justice system in order to arrive at a genuinely victim-centred system.

The key to achieving these three components of victim-centredness is to afford victims rights which are justiciable from within the criminal justice system through the proactive interjection of lawyers and judicial actors. Given that we have now reached the stage where victims are said to have rights – through a Victim's Code of Practice (Home Office 2005f) – this is not so much a fundamental reform as a change in the justiciability of these existing rights.

*What factors have driven this 'policy'?*

The wealth of official action in this area means it is now manifestly unfeasible to argue simply that the needs of victims and witnesses are being ignored by policy-makers, as had previously been the case. Questions remain, however, as to the exact nature of this pro-victims and pro-witnesses policy that seems to have developed over recent years. As such, this project set out to identify the driving force (or forces) behind official actions on victims and witnesses.

The word 'policy' has been placed in inverted commas here because it is not to be assumed that the totality of measures and developments relating to victims (and witnesses) actually constitute a unified and consistent policy at all.[12] In fact the strategy is constituted by a whole range of different influences, what Rock has called 'other politics' (Rock 1990). This is important because policy documents only discuss a limited range of officially recognised influences. Commentators such as Elias, however, suggest that government policies (certainly those relating to victims of crime) may have a much deeper, and often less overt, political purpose (Elias 1986). Chapter 3 will demonstrate that the victims policy has indeed been driven over time by a web of political factors.

Such debates leave us with three conceivable interpretations of the victims 'policy'. Firstly, there is the straightforward possibility that all these reforms are in fact part of a consistent and unified strategy to assist victims and witnesses. The second possibility is that actions which, incidentally, assist victims and witnesses may be grounded in a quite different set of political concerns. The third possibility is that, now that victims and witnesses seem to have achieved at least rhetorical acceptance in the political system, new policies are being re-packaged as the continuation of work for these groups, but are in fact intended to achieve other aims such as, for example, increasing efficiency. Of these three possibilities, it is submitted that a combination of the second and third seems the most likely, and this contention was tested during the course of this research.

*What has putting victims 'at the heart' of the system meant so far in practice?*

In real life the criminal justice system faces a whole host of practical and organisational difficulties every day. As one solicitor remarked during the course of this project:

> The wheels of justice do not run smooth. They're square. And falling off. (a solicitor appearing at Courts A and B)

Add to this the influence of occupational cultures within the criminal justice system – traditionally geared around the exclusion of victims (Shapland *et al.* 1985; Jackson *et al.* 1991) – and one is faced with the real possibility that the policy and the practice of this victim-centred system are very separate things (Rock 1993).

From the outset, it was expected that this project would reveal marked development in the provision for victims and witnesses in criminal trials compared with most previous ethnographic work focused around courts (Shapland *et al.* 1985; Jackson *et al.* 1991; Rock 1993; Tapley 2002). It was hypothesised that the practical infrastructure to assist victims would be significantly developed (separate waiting rooms, facilities for video-linked evidence and so on). It was also predicted that the culture of criminal justice professionals would now be somewhat softened to the plight of victims and witnesses, although more traditional views would still be present and possibly widespread. The fieldwork also paid particular attention to the mechanisms by which victims and other witnesses were dissuaded or openly prevented from making accounts by evidential rules, working practices, courtroom environment and so on, as it was felt that the facilitation of victims' full narrative accounts within the trial process would be the least developed aspect of a victim-centred system.

Overall, what I expected to find from this part of the research was that genuinely victim-centred trials are not yet forthcoming. Nevertheless, as noted above, it was hoped to observe within existing procedures the clear potential to make them more victim-centred without resorting to truly fundamental reform.

## Methodology

In order to address the above questions, data was collected throughout 2005 and the first half of 2006 at three criminal courts in the north of England. Two of these courts – Courts 'A' and 'B' – were magistrates' courts. Magistrates' courts deal with the vast majority of criminal cases in the English legal system, offences punishable with a fine up to £5,000 and/or imprisonment up to six months. The most distinctive feature of these courts is that they are presided over by lay members of the local community as judges of both fact and law. Court 'C' was a Crown Court centre dealing with more serious criminal cases. Courts A and C are situated in a large northern city, whereas Court B serves a fairly large town nearby. Access was arranged through the individual court managers and the Area Manager of Her Majesty's

Courts Service, with the support of the presiding judge at the Crown Court.

The data from all three courts falls into three categories: courtroom observations of criminal trials; qualitative interviews with practitioners and court staff; and a court user survey distributed to victims and witnesses via the Witness Service[13] at Court B. Further interviews were conducted with criminal justice administrators in the local area under review and with central policy-makers at the Home Office, Office for Criminal Justice Reform (OCJR) and Department for Constitutional Affairs (DCA).[14] These latter interviews were designed to shed light on the formation of the victim policy and the challenges of its local implementation.

Trials were selected for observation based on the apparent likelihood that they would involve civilian (non-police) witnesses and victims. This was established by examining the charge(s) and gathering information before the trial from court ushers, clerks, and lawyers. 'Trials' here means criminal proceedings originally scheduled to determine the guilt or innocence of defendants facing criminal charges, but also includes shorter proceedings where the trial must be adjourned (postponed) or the need to establish guilt or innocence is removed (which will be termed 'otherwise resolved trials' in this research).

Observations were carried out from the public gallery and recorded on paper, which is the only legal method available. Observations were semi-structured and the anonymity of all participants was strictly preserved. The notes were then subject to a grounded analysis (Glaser and Strauss 1967) to draw out themes. Interviews with criminal justice practitioners and administrators were also conducted in a semi-structured fashion whereby respondents were encouraged to dwell on areas they considered important. This helped expose the occupational priorities of the groups under review. Interviews were tape-recorded – informed consent having been gained – and transcribed. They were then the subjects of further grounded analysis, with the assistance of the NVivo software package.

Through these methods, a dataset of 23 interviews and 247 observation sessions was compiled, along with an analysis of relevant legislation and guidance documents. Overall, while it cannot be claimed that either the interviews or the observational data are statistically representative of the whole criminal justice system in England and Wales, no particularly distinguishing characteristics were identified in relation to the courts or the interviewees. As such, it is hoped that these results will be of use to scholars and practitioners in

England and beyond as an indication of how moves to put victims at the heart of the criminal justice system are being received and applied in practice. In addition, a major benefit of observational methodology is that it captures the human element that so characterises the 'fog of half-knowledge, guesses, and intimations' at the start of trials (Rock 1993: 276), where difficulties may be partly explained by the attitudes of lawyers and other actors in the process.

At this stage, it is important to emphasise two general points regarding the intended scope of this research. Firstly, notwithstanding the government's pledge to centralise the victim within the criminal justice system as a whole, this project was especially concerned with the operation of criminal trials. Even more specifically, the project sought to examine the role of victims within the substantive trial procedure prior to the sentencing stage. Secondly, this research was concerned with criminal justice rather than restorative justice. Many commentators have suggested restorative justice models as a solution to the problems faced by victims in criminal justice (see Dignan 2005). As a consequence, relatively little work has been done on the notion of achieving victim-centredness in the existing criminal justice system. Given that the vast majority of victims must still deal with the traditional criminal justice model even in the light of restorative options, we ignore this model at our peril, or certainly the peril of victims. Nevertheless, in taking this stance I by no means dismiss the significance of the restorative movement, as this will clearly continue to gather pace and become increasingly important to crime victims in the future. Many advocates of restorative justice retain in their theorising a place for more traditional forms of case disposal (see Dignan 2002a; Braithwaite 2002). As such, the following discussions adopt the view of Bottoms (2003) who argues in terms of a separation between the criminal justice and restorative justice systems.

## Book structure

The rest of this book is divided into six more chapters. Following this section, Chapter 2 will provide an overview of research and commentary on some of the key issues pertinent to this research. In so doing, the chapter will also begin to tackle the question of what it might mean to put victims at the heart of criminal justice. Chapter 3 will review in detail the development of policies relating to victims and analyse these policies pursuant to the second research question, drawing on interview data from policy-makers and

document analyses. Chapter 4 will discuss the concept of narrative, setting out an argument for its incorporation within criminal trials. Chapters 5 and 6 will present the empirical results from courtroom observation sessions. Chapter 7 will discuss all the results in light of the three research questions and present an overall model of victim-centred criminal justice based on all the evidence gleaned from this research.

## Notes

1 The term has been described as 'a rather ugly neologism' (Newburn 1988: p. 1).
2 The role of second-wave feminism is emphasised by Kearon and Godfrey (2007).
3 Doak (2003, 2007) suggests that early victimology was quite punitive. Arguably, however, this is more a characteristic of modern victimology in the present climate of punitive populism (Brownlee 1998; Garland 2001).
4 Although the field of zemiology has continued to address victimisation through social harms beyond crime and criminology (Hillyard 2006).
5 What is sometimes called 'critical victimology' (Mawby and Walklate 1994).
6 The term fell out of fashion, although has appeared in recent literature (Davies 2007).
7 See Chapter 4.
8 Especially when confidence in the criminal justice system is lacking (Garland 2001).
9 Now the Domestic Violence Crime and Victims Act 2004. See Chapter 4.
10 Which, rightly or wrongly, Rock associates with restorative justice.
11 Now found under the Victim's Code of Practice (Home Office 2005f).
12 As has recently been suggested (Home Office 2003a).
13 The Witness Service is a voluntary organisation run by victim assistance charity Victim Support, intended to provide information and services to witnesses attending court to give evidence.
14 All data being gathered prior to the creation of the Ministry of Justice in March 2007.

## Chapter 2

# Victims in criminal justice: rights, services and vulnerability

Having established as far as it is possible the scope of victimology and victims of crime, the following chapter will review contemporary questions raised by victimologists concerning the place of such victims within an adversarial criminal justice system. Three important areas of debate are highlighted: victim rights; the provision of facilities, services and support to victims; and victims giving evidence in criminal trials, including vulnerable or intimidated victims. This is not an exhaustive list of matters dealt with by victimologists as a whole, but encompasses the key issues relating to the questions raised in the last chapter, and the main debates surrounding victims within criminal trials specifically.

### Victim 'rights'

Underlying many of the debates in this and subsequent chapters is the notion of victims having 'rights' within the criminal justice process. It is a notion which has proved controversial. Whereas most accept the 'normal rights' of defendants (Ashworth 2000), many have refused to accept rights for victims on similar common-sense grounds (Ashworth 2000; Edwards 2004). This is not to say there is not a general consensus in the literature that victims should receive information, courteous treatment and protection from the justice system (Zedner 2002). The main debates, however, centre on the structures and procedures that must be in place to guarantee such facilities, and whether this should be done by affording victims rights. In fact, the modern debate on

victim rights revolves less around the specific content of those rights and more on the mechanisms for their delivery and accountability (JUSTICE 1998).

Furthermore, this tacit acceptance of a standardised list of what Ashworth calls 'service rights'[1] distracts from the growing – but far more contentious – calls for 'some form of procedural right of participation within the system' (Doak 2003: 2). Edwards (2004) has labelled 'participation' 'a comfortably pleasing platitude' (p. 973) which is rhetorically powerful but conceptually abstract. In his discussion, Edwards describes four possible forms of victim participation in criminal justice. The most significant casts victims in the role of *decision-makers*, such that their preferences are sought and applied by the criminal justice system. Less drastic would be *consultative* participation, where the system seeks out victims' preferences and takes them into account when making decisions. Edwards sees the traditional role of victims in terms of *information provision*, where victims are obliged to provide information required by the system. Finally, under *expressive* participation, victims express whatever information they wish, but with no instrumental impact, here Edwards highlights the danger of victims wrongly believing their participation will actually affect decision-making.

### *Assessing rights*

A common distinction drawn in these debates is that between 'service rights' and 'procedural rights'. For Ashworth (1993, 1998, 2000), victim participation should not be allowed to stray beyond service rights into areas of public interest. Ashworth is particularly concerned by victims being afforded the right to influence sentencing (and other decision-making within the process), citing the difficulties of testing victims' claims and taking account of unforeseen effects on victims (Ashworth 2000). The more limited service rights Ashworth has in mind include respectful and sympathetic treatment, support, information, court facilities and compensation from the offender or state, but exclude consultative participation (Ashworth 1998: 34).

These arguments have been influential; however, Ashworth's thought seems to be grounded in the defence perspective, incorporating the assumption that there is a zero sum game between victim and defendant rights. The difficulty with Ashworth's argument is that he does not elaborate on why victims should not have input into sentencing or other decisions. Even if affording victims some rights could prejudice the defence, Ashworth offers no mechanisms to resolve