

RE-BALANCING THE CRIMINAL JUSTICE SYSTEM

Achieving justice for all

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Historical Background

- ❑ Before professionalisation of the CJS, victims were the main protagonists
- ❑ Development of a complex CJS increasingly marginalised the role of the victim.
- ❑ Concern with improving the rights of the defendant left the victim with no rights at all
- ❑ Victims suffered secondary victimisation by the CJ process itself
- ❑ Organisational needs prioritised over the needs of victims and witnesses

Shift in focus of the CJS

- ❑ 1960/70 – “Victim’s movement”
- ❑ 1970 – feminist movement; penological pessimism, demise of rehabilitative ideal
- ❑ 1980 – victim surveys, increase in criminological research
- ❑ 1990 – politicisation of victims’ issues
- ❑ 2001 – emphasis on improving public confidence, acknowledgement that CJS relies on victims and witnesses – “putting victims at the heart of the criminal justice system”

Reinstating the victims of crime

- ❑ Since the 1990s, the shift in focus towards victims has sparked a debate concerning their “needs” and “rights”, and controversy is now emerging with regards to what the role of victims should be.
- ❑ This has given rise to concern that the rights of victims should not impinge on those of the defendant.
- ❑ But “rights” are not a finite entity

Ashworth (1993) identified two distinct categories to emerge from the debate:

- *Service* - these acknowledge the victim by providing various services which offer support in order to assist their recovery, but do not afford them a means of making an impact on the process itself.
- *Procedural* - these afford victims opportunities of influencing certain decisions at various stages during the criminal process, through consultation and participation in them.

CJS objective – improving public confidence in the CJS

- 1995 – 2004: steady decline in public confidence despite falls in overall crime (Dodd et al, 2004)
- IPPR (2001) *Reluctant Witness*
- Audit Commission (2003) - Over two thirds of the public are not at all or not very confident that the CJS meets the needs of victims.

Public Confidence & the CJS

- The BCS shows that having been a victim of crime reported to the police & having some contact with the system at some time appears to decrease confidence.
- Despite reforms & initiatives, confidence continues to fall. In 2002/03 only 30% felt the system meets the needs of victims compared with 34% in 2001/02 (Audit Commission, 2003).

Acknowledging the crucial role of victims and witnesses

- 'Supporting victims and witnesses is a worthwhile end in itself. It is also fundamental if justice is to be achieved. The public cannot be protected, offenders convicted or the innocent acquitted, unless victims & witnesses are prepared to report crimes & give evidence confidently & effectively in court.'

A New Deal for Victims and Witnesses (Home Office, 2003: 3).

Giving victims a voice

- 2001 – introduction of Victim Personal Statements in the UK
- Not to be confused with Victim *Impact* Statements
- Purpose – to give victims the opportunity to say how the crime has affected them
- Two stage process
- Aim – to help inform CJ professionals at different stages of the process

Victim Advocate Scheme

- http://news.bbc.co.uk/2/hi/uk_news/7700593.stm
- Government wanted to do more in the most serious cases to ensure families were listened to in court.
- Prior to the scheme a victim's family would have no role to play in the trial process, unless as a witness.
- Nobody there to represent them or consider their interests.
- Would have to sit passively and listen to other people discuss their relative, referring to them mainly as "the victim"

Family Impact Statements

- VAS piloted in 2006 and evaluated in 2008
- [BBC News Player - More victim families may get say](#)
- Provides bereaved families in murder and manslaughter cases an opportunity to make a statement to the court.
- Can be given orally by a family member, the prosecution counsel, an advocate or a lay person.
- Can provide statement in writing to be read by the judge in private.
- To be given after conviction and before sentencing

What professionals said about the Family Impact Statement

- Fulfilled purpose of giving families a voice in court, extremely valuable because of potentially cathartic role
- Some strongly opposed to the oral delivery of the statement in court
- Unconvinced of the purpose of the scheme and *believed that it introduced an unwanted level of emotion into proceedings.*
- Inherent ambiguity with regard to its impact on sentencing

Impact of the FIS

Concerns regarding impact on practitioners, not welcomed as may be less able to detach themselves from the emotion conveyed in court

- Defence counsel concerned about defendant's well-being on hearing the FIS read out in court, especially after being convicted of murder/manslaughter.
- Judges "a heightening of the temperature in court"
'The emotional & often colloquial delivery was not felt to sit comfortably with other, more dispassionate, court room rituals, rendering the FIS inappropriate for court in their view'

Do FIS impinge on the rights of offenders?

- Judicial discretion determines whether FIS is delivered orally, so is not a victim's right
- Families felt that their statements, although not affecting the sentence, gave them the last say. However, despite this perception, the last words heard in court before sentencing are from the defence during mitigation, thus enabling the defence to come up with a raft of excuses for their client's behaviour, in the hope that the judge will feel sorry for them.
- Also further opportunities for this in the pre-sentence report

Difficulties identified by the pilot

- Ambiguity regarding the impact of the statement on sentencing
- The importance of managing the victims' families expectations
- Amount of time given to families to prepare the FIS and for it to be updated
- Choice on how the VIS can be delivered
- CPS have now rolled out the FIS as part of their Victim Focus Scheme.

Latest developments in the US

- Supreme Court has turned down appeals from two LA murderers who said it was unfair that videotapes of the victims' lives were played before jurors in death penalty cases. Defense lawyers argued that the cinematic evidence was designed to play on the jury's emotions.
- Is it so wrong though to confront those who have been convicted with the true reality of their actions?
- Impact evidence gives recognition of the victim's life, of having been a real person – not just the "victim".
- Why do some believe it is fair to hide and ignore the reality faced by victims' families, who had no choice in the events that happened, but that the defendant, whose actions caused the harm, should have their situation and mitigating circumstances acknowledged and considered?

Conclusion

- It is important to have a CJ process that respects & acknowledges the concerns of victims & their families
- It is important that the harm and loss suffered is acknowledged & that victims have an opportunity to state how the crime has effected them, to be given a "voice"
- But it is also equally important that those accused of an offence are treated fairly and also have their rights respected and their liberty protected.
- This is not disputed, but how this balance can be achieved is.

Issues in Criminal Justice – Suspect's rights

Dennis Gough

My argument

- There is no 'competition' between victims and suspects. . It is all about professional power and both groups are marginalised
- Through the notion of re-balancing the system there is the potential for false expectations for victims and their families.
- The move towards a crime control model has been at the expense of suspect's rights, justified under the heading of victim rights, public safety and protection.
- Crime and punishment is used for political purposes
- Criminal justice should be based on rationale thinking and decision making, sound reason, proportionality, the balancing of rights not emotional stories of victimisation

What does the Criminal Justice System do?

- Main aim is conviction and appropriate punishment of guilty AND acquittal of innocent
- Wrongful conviction of the innocent must therefore be avoided
- For this to be achieved the defendant HAS to be at the centre of the criminal proceedings

Power and criminal Justice

- Remember criminal justice system represents the state against the suspect in terms of
 - Police powers and investigations
 - Sentencers and Punishment
 - Professionals against citizens
- Suspects are the least powerful group in the criminal justice system
- They need the greatest rights to protect their innocence or be treated fairly
- Suspect's rights do not detract from victim's rights
 - both groups are marginalised by criminal justice professionals (Christie 1977)

Current criminal justice system

- Government talks about need to reduce crime and the fear of crime, to dispense justice fairly and efficiently thereby promoting confidence in the rule of law
- Discusses the need to redress the balance between victim's and defendants' rights, suggesting CJS has been unfairly weighted in favour of defendants
- *Should the criminal justice system be reshaped towards victims? I can think of nothing worse. Surely we want to prioritise what is reasonable, proper and proportionate in relation to those cases which come before the courts, as opposed to the inevitable emotion that some victims of crime – for all the right reasons – inspire. Leave reason and proportionality behind and we are on the slippery slope towards state-sanctioned vigilantism in our courts, with the law being administered according to media sensation and moral panic (Wilson)*

Rights and the Labour government

- Justice for all White paper – 2002
- 'rebalance the system in favour of victims, witnesses and communities'
- Given Royal Assent in 2003
- Contained **no explicit new** rights for victims of crime
- Government stated that the changes would ensure more criminals caught and prosecuted and as such 'victims would get a better deal'
- 'Victim' has taken on a totemic meaning (Cape, 2004:3)

Why do suspects need rights?

- The consequences of a conviction are enormous and the suspect needs to remain at the heart of the proceedings if only the guilty are to be convicted
- This requires assumption of innocence until proven guilty
- Burden of proving guilt rests on prosecution – which has all the resources of the state at its disposal
- Reflected in Article 6 (2) of the European Convention on Human Rights:
- *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*

- *It does not serve the interests of victims of the wider community for an innocent person to be convicted while the true offender remains undetected, possibly to re-offend.*

» *(Rethinking, 2005: 2)*

How have suspects and defendants' rights been compromised?

- Since 1997 Labour gov. has created over 360 new criminal offences and numerous initiatives pertaining to law and order
- Narrowing the Justice Gap – 2002
- Criminal Justice Act 2003:
 - i. Lifts restrictions on allowing evidence of previous misconduct
 - ii. Requires defence to give more detailed advance disclosure of its case than previously required
 - iii. Changes in the 'hearsay' rule of evidence
 - iv. Relaxing 'double jeopardy' rule
 - v. Allowing prosecution to make an application to court for a trial on indictment without a jury.
- Changes to PACE (1984) increased period suspect can be held from 24 to 36 hours.

Victim Impact Statements

- Erez – generally victims not interested in changing sentence decisions, and that victim impact statements do not increase sentence severity
- Sanders – over half of victim sample who made VIS did so for instrumental purpose
- They have been criticised as being a 'quick fix' resulting in defendant's interests being compromised without any significant benefit for victims
- *Question*- Should the punishment fit the crime (rational considered thinking) rather than the individuals victim's ability to communicate however eloquently their experience (emotion)

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(cited in CAPE, 2004)

Crime control

- 'An oppressive and mystifying process that worked through legislation, law enforcement, and ideological stereotyping to preserve unequal class relations' (Chambliss, 1976 in Rick, 2002: 65)
- Radical criminological approach would argue that criminal justice is used to direct attention away from state.

Anti-terrorism laws

- 5 major pieces of legislation under labour government:
 1. Terrorism Act 2000
 2. Anti-Terrorism, Crime and Security Act 2001
 3. Prevention of Terrorism Act 2005
 4. Terrorism Act 2006
 5. Counter Terrorism Act 2008
- 6. Been criticised for proportionality and erosion of human rights
- UK has the longest period of pre-charge detention in any comparable democracy

Victims/suspects?

- Can be overly simplistic to separate the two groups
- Research indicates that offenders also run a greater risk of being victims of violence) than non-offenders
- Factors associated with an increased likelihood of being 'victimised' also relate to offending – social exclusion

More penal populism?

- Guardian - Moral panics in the dock
- Appointment of Sarah Payne as Victim's Commissioner
- Populist punitivism:
 - *'Intended to convey the notion of politicians tapping into and using for their own purposes what they believe to be the public's general punitive stance'*
 - *'penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness' (Bottoms, 1995:40)*

The power of a professionalised criminal justice system

- ...or what goes wrong when suspects have no rights.
- See the case of two judges Mark Ciavarella and Michael Conahan, Pennsylvania took payoffs from private company Western PA childcare between 2003 and 2006 of \$2.6 million (actually been doing this for 7 years)
- Juveniles suspects appeared without legal representation as judges and probation told them they didn't need one.
- Of 5,000 typical cases;
- Youth sentenced to 3 months custody for creating a mock Facebook page of the school head teacher (not an offence)
- Significant number of youth received custody for misdemeanour offences
- 17 year old boy received 3 months for being present when another boy committed act of theft/shoplifting
- Children's parent told (and complied) to remain outside of the court room.
- The private company then paid the judges for keeping the prison full.

Conclusion

- *Neither the interests of victims, nor those of society as a whole, are served by reducing the rights of defendants to make it easier to convict them. Protections for defendants exist for good reasons: no one benefits from a person being found guilty of an offence that he or she did not commit. In appealing to victims' rights to justify its criminal justice policies, the Government masks real tensions between victims and defendants.*

» *(Rethinking, 2005:3)*

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