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**Towards a Research - Based Victim Policy
Report of the General Rapporteurs
Part II**

by Jan J.M. van Dijk

A prologue about Jerusalem

The World Society of Victimology has taken a risk with the choice of Jerusalem as the site of its 6th symposium for two reasons. Firstly, the inevitable focus upon the victims of the holocaust may not have been generally welcomed by victimologists, many of whom were born after the Second World War. Secondly, Jerusalem is the capital of a society whose government is accused by many of contravening internationally established principles of justice. Is this a suitable place to discuss a UN declaration about the victims of crime and abuse of power? These issues must be addressed before a summary of the symposium's policy implications can be given in good faith.

The first day of the symposium was indeed largely devoted to the holocaust, culminating in a visit to the memorial museum of the holocaust. The main museum, but especially the adjacent museum commemorating the criminal death of hundreds of thousands of jewish children, will forever be engraved in our memories. And yet many of us experienced feelings of embarrassment or even annoyance during this first day. What was the point of this second rendez-vous of the WSV in Jerusalem? Nasty thoughts came to our minds (or should I speak only for myself?). Was this to demonstrate that the Jews have a special relationship with victimology? That they may even possess a kind of moral monopoly on the study of suffering? Shouldn't the WSV focus upon current forms of individual and collective forms of suffering rather than upon the holocaust? Outside the museum, in the heart-rending Garden of the Righteous we overheard two colleagues vehemently attacking the Israeli policies towards the Palestinians. Was this political debate a welcome outlet for mixed feelings similar to mine?

Back in my hotel, I tried to sort out my feelings and thoughts. For years victimologists have been writing and lecturing about the tendency to blame victims for their fate: the outsiders blame the victim, in order to defend themselves against painful and unsettling feelings of anxiety and guilt. Could it be that our own mixed feelings about the first day of the symposium were prompted by the same mechanism?

Since we are civilized persons, we cannot blame the holocaust victims for their fate. In order to put ourselves at ease, we can, however, blame the survivors for not allowing us to forget and start a debate about the policies against the Intifada in the Garden of the Righteous.

Since we as victimologists know the defense mechanisms of the human mind we should, more than others be able to control ourselves in the face of extreme suffering. A visit to the holocaust museum shouldn't be too much for us. So, let's meet once again with the WSV in Jerusalem in the nineties.

But what about the Intifada itself? Can it be justified to discuss the UN declaration about the principles of justice for victims of crime and abuse of power in a country which denies the Palestinians the right to establish a country for themselves on the territory where they were born? Word was passed to WSV members that the symposium ought to take place in order to prove that the situation was quite normal in Jerusalem. This message was interpreted by some WSV-members as an invitation to participate in a public relations effort of the Israel government. These members refused to come. Those who did come could see for themselves that the situation is actually not normal at all.

Israel is obviously waging a war within its own borders. This is tangible everywhere in the streets. The symposium, however, was obviously not controlled by the government nor political opponents, but exclusively by Sarah Ben David and family. The participants of the symposium had the occasion to listen to the presentation of a paper by a Palestinian social worker about the terrible impact of the military occupation and the Intifada upon the Palestinian children. During the debate about this rather polemical paper, Israel researchers, judges and police officers argued as much amongst themselves as with the lecturer. Leslie Sebba convened a special session about the political situation created by the Intifada where he expounded the position of the Peace Now movement. In the course of the week it did become obvious that in at least one respect Israel is indeed still functioning quite normally:

Israel's democracy seems alive and kicking. This feature of Israeli society is a basis for hope that its government will eventually start to comply with the various UN resolutions at issue, including the declaration prepared by the WSV about victims of crime and abuse of power. It also justifies the decision to hold the symposium in Jerusalem in spite of the ongoing war.

Introductory remarks

In consultation with the other general rapporteurs, I will try to draw out the policy implications of the papers given at the symposium. Although there is no logical reason for papers, given at a victimological conference to have policy implications, in practice many do. The symposium seemed to be primarily a platform for policy-oriented studies concerning crime victims. Some papers presented the findings of descriptive studies of characteristics of victims in order to identify target groups for policies. Others tried to depict the severity of the problems of particular categories of victims in order to raise the consciousness of the public or the government. A large third group of papers reported about evaluation studies of a variety of legal or social provisions for victims.

Papers about provisions for victims usually lack a clear theoretical orientation. Choice of subject and interpretation of findings are guided more by ideological preferences than by a set of clear and tested ideas about what works best for particular classes of victims. In my view, an awareness of the ideological foundations of our policy recommendations is an important first step towards a more mature victimology. In previous publications I distinguished between the offender-oriented rehabilitation ideology, the care ideology (state compensation, rape crisis centers, victim support), the justice for victims ideology and the abolitionist model. In this paper I will distinguish seven different ideological perspectives. The first three are the rehabilitation, the feminist and the insurance perspective.

Subsequently I will discuss two pairs of rivaling ideologies: professional counseling or voluntary aid and participatory rights for victims or rights to criminal justice services. In the course of the argument I will inevitably disclose some of my own ideological preferences. To conclude I will try to justify these preferences with reference to the findings of victimological research. In my view these preferences are based upon what I see as a victimagogic theory in the making, that is a theory about the best ways to guide and support crime victims¹.

¹Elsewhere I have coined a special name for this field of study: **victimagogics**, after the Greek verb *ajochain* (meaning to guide or to support). The use of the term **victimagogic** emphasizes the similarities with other intervention-oriented disciplines such as **pedagogics** and **andragogics** (the study of methods to assist socially deprived citizens).

The current ideologies of the victims movement

1. The Rehabilitation Ideology

In many countries the first schemes to help victims were set up by probation officers. It was generally felt that such services would help to build goodwill amongst the public for the rehabilitation efforts towards offenders. They might also in a practical way serve the rehabilitative aims by offering reconciliation between offenders and their victims as an alternative for punishment. Presently, many reconciliation or mediation programs are still inspired by this offender-oriented ideology. On the basis of present knowledge no firm conclusions can yet be drawn about the merits of these services for victims. At the symposium an attitude of skepticism seemed to prevail, for example in the paper by *Reeves*² on developments in the U.K.. Most victims seem to welcome compensation from the offender but also want to see their offenders brought to justice in the traditional way. Arguably, mediation programs might be beneficial for some categories of crime victims. However, no papers were given which would allow a targeting of such programs at particular groups of victims, for instance victims who are obliged to continue to meet their offenders. In the present situation the official support for such schemes seems to be determined above all by reasons of expediency, for example by the consideration that they might help to reduce the case-load of the courts. Some advocates of mediation programs seem primarily interested in securing a better deal for the offender. They jump upon the victims' train in order to promote their abolitionistic ideals. All this ought to make victimologists cautious. Critical evaluation studies are essential in this area.

2. The Feminist Ideology

Historically, the feminist movement has been a major driving force behind the victimological critique of the criminal justice system. Shelter homes and rape crisis centers have been among the first practical services for crime victims. In recent years new initiatives have been taken to draw attention to the sexual abuse of children. At the symposium only one paper was given which explicitly applied feminist theories to the problems of female victims. This may be an indication of a lessening importance of the women's movement. It may also testify to an emerging alienation between the women's movement and the victim's movement. Protagonists of the women's movement may have developed a dislike of the association of women's issues with "victims". At the same time governments may, for similar reasons, be less willing to sponsor special services for female victims

²*Reeves* 1988

only. If such a trend is indeed occurring, existing services for female victims must be integrated within general services, rather than remain gender-based. The nineties may see the emergence of victim services which provide differential services to a variety of different client-groups, such as victims of spouse-abuse, incest, serious violence, household crimes, molestation of homosexuals, racism, traffic offenses, and so on. This integration is facilitated by the dominant presence of women in the general victim support organizations.

3. State Compensation

State compensation funds or schemes belong to the first generation of victim services. In the past these schemes have been criticized for their stringent criteria of eligibility and bureaucratic procedures³. A major reason for such criticism was the suspicion that these limited services would serve as an alibi for not really addressing the wider range of problems of crime victims. There were no papers presented at the symposium which exclusively dealt with state compensation. The payment of restitution by the offender (rather than the state) is now central to the victimological debate. This one-side interest in what our American colleagues call "restitution" is unfortunate, since state compensation also deserves our attention.

Existing state compensation schemes in North America, Australia and North West Europe have not prevented the development of other services for victims, which shows that fears about their negative consequences may have been unwarranted. During the eighties, state compensation schemes have actually provided in the financial needs of increasing numbers of victims with severe injury. These developments suggest that state compensation schemes perhaps deserve a more favorable judgment by the victim's movement than they presently get. The question will have to be addressed how state compensation schemes can be made to work more effectively as part of a comprehensive victim policy. There should also be a renewed interest in the potential of private or public insurance schemes to include coverage of criminal losses of crime victims who have not suffered severe injury. Now that the economies of many countries seem to have recovered from the recession, there may be more political support for a victim-oriented extension of the welfare state.

³Van Dijk 1985

4. Professional Counseling or Voluntary Aid?

Many of the first victim assistance or support schemes have grown out of disillusionment with the services rendered to crime victims by the established helping professions. In many countries the first successful victim support schemes were set up by voluntary organizations as an alternative service. Presently, some Western governments are ready to set aside substantial budgets for specialized services for victims. The victims' movement may soon be in the favorable situation that it can choose to gradually professionalize its services or to continue its deployment of volunteers. At the symposium it surfaced that in Canada and Belgium and in parts of the United States and West Germany victim support organizations prefer to work with trained professionals.

A preference for professional counseling is usually based upon the assumption that only professionally trained persons can adequately apply tested methods of counseling or therapy. In dealing with victims methods to identify and unlock repressed memories and to attach meanings to them seem particularly important. It is questionable whether volunteers can be expected to acquire the professional expertise and skills required to apply such techniques. Other advantages of a fully professionalized organization seem to be the following:

- higher credibility among some categories of victims, e.g. those who are victimized as employees;
- better cooperation with other agencies like the police and other helping agencies;
- better conditions for the recruitment and training of qualified personnel on a permanent basis;
- better conditions for the management of an effective delivery of services to clients (e.g. stringent regulation of visits).

Against these arguments protagonists of voluntary organizations from the U.K., France and The Netherlands in particular, emphasize the unique helping potential of volunteers⁴.

⁴In Germany there is the Weiße Ring, a private non governmental victim assistance organization which is the biggest in the country, working solely with volunteers, with local representatives in every bigger German community. A different organization is the Working Group of Victim Assistance Programs

The visit by a volunteer is by definition a gesture of solidarity by a member of the same community. Volunteers are also more likely to be available at unusual hours and to have the time to assist in simple but highly appreciated tasks, such as escorting victims to meetings with the police or other agencies. It is further argued that the demand for better trained personnel can be met by improved training of volunteers and possibly by offering them some modest financial rewards.

The best method to test the validity of these competing claims would be a series of experiments testing the effects of professional and voluntary services. A major problem in designing such experiments is the selection of criteria for success. Standardized measures for symptoms of stress should in my view always be supplemented with valid measures of problems typically afflicting crime victims (i.e., a shattered sense of order and community, generalized mistrust, fear of strangers, alienation from social institutions).

Current research findings regarding the preferability of professionals over volunteers are far from conclusive. There is clear evidence that most victims greatly appreciate a visit by a volunteer⁵. Presumably the human solidarity expressed by the volunteer will often prevent the emergence of feelings of isolation, neglect or even resentment towards a careless environment. Although the voluntary help for crime victims is greatly appreciated by the victims, there is at this point no conclusive evidence that the beneficiaries actually fare better than other victims⁶. Some research even suggests that a single telephone call has no measurable effect upon the victim's well-being⁷. If the service is not delivered within days after the commission of the crime, even two or three structured sessions with a professional counselor may not have any effect, according to *D. Brom* in his presentation. In the delivery of victim-therapeutic services, time seems to be of the essence.

Almost no other general conclusions are permitted at this time. It is likely that future studies will show that voluntary aid is appropriate for victims of crimes like burglary but less so with victims who are particularly vulnerable (e.g., the very young, or mentally disturbed), victims of quite serious crimes and victims of crimes

(AdO), a roof organization of about 20 local private victim assistance programs working mainly with professionals (The Editors).

⁵*Maguire and Corbett 1987*

⁶*Davis 1987; Maguire and Corbett 1987*

⁷*Skogan and Wycoff 1987*

that were committed a long time ago. Integrated victim support schemes with a greater measure of collaboration between paid professionals and trained volunteers may well be the trend of the future.

5. Victim Rights: Rights to Participate in the Criminal Proceedings?

The second pair of rivaling ideologies within the victims' movement pertains to the contacts of the victim with the criminal justice system. The lack of agreement on the nature of the so called "victims' rights" became apparent in the debate about the declaration about the principles of justice of victims of crimes and abuse of power during the UN conference in Milan. According to the draft submitted at the conference, victims should have the right "to be present and to be heard at all critical stages of the proceedings". This sentence was copied from the US Presidential *Task Force on Victims of Crimes*³ and criticized by the delegations from the UK and the Netherlands. It was finally changed into the qualified phrase "allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with national legislation". The question whether victims should have the right to express an opinion about the punishment of the offender or not has remained controversial. In 1987 the Supreme Court of the USA decided that a Victim Impact Statement by surviving family members was unconstitutional in capital cases. Although the interpretation of this verdict is still being disputed, it obviously rejects the idea that views or concerns of the victim may be presented in such cases. For a European lawyer it is hard to understand why the legal arguments behind this ruling should only apply to capital cases. At the symposium several speakers reflected upon the implications of this ruling. During discussions, it became obvious that opinions about the ruling do still differ widely. *J. Stein*, of the National Organization of Victim Assistance in the USA, and to a certain extent also *C. Sumner*, Attorney General of South Australia presented the main arguments in favor of an involvement of the victim in the criminal procedures.

The participation by the victim in the trial is supposed to fulfill a desire for retributive justice. Such victim participation might have a therapeutic effect. The right of the victim to express an opinion is based upon the principle that the victim must at least have the same rights as the defendant. It is further argued that the judge must not be informed at length about the circumstances of the defendant without knowing something about the situation from the victim's perspective. The argument that the judges will be unduly affected by such information is rejected by

³USA 1983

saying that judges are trained to deal with conflicts and emotions. Also rejected is the argument that the victim's involvement might lead to more severe sentencing. Those who are opposed to more severe sentences should direct their criticism at the legislators or the judiciary, who determine sentencing tariffs, but not at victims who are only expressing an opinion at the trial.

The active participation by the victim in the trial was analyzed in a more critical vein by *Kirchhoff* of the FRG and *Groenhuysen* of The Netherlands. The various arguments levelled against such participation can be summarized as follows. From a legal-technical perspective, it is doubtful that the subjective consequences of the crime for the victim are relevant for determining the defendants culpability. Furthermore, the participation of the victim will tend to introduce a factor causing inconsistency and unpredictability in sentencing, particularly so if only a minority of victims will use their right to speak up in court.

More important, perhaps, are the reservations made with regard to the interests of the victim. During the trial, the victim's statement will often be contested by the defending counsel. The cross-examination may cause further trauma to the victim. The participation in the trial may afterwards prove to have constituted a psychological burden if the victim feels responsible for the outcome. The victim may feel to have failed or not to have been taken seriously by the court if the sentence is seen as lenient. If the sentence is seen as particularly severe, the victim may fear reprisal by the offender or develop feelings of embarrassment or guilt at a later stage.

6. Or Rights to Services by the Criminal Justice System?

Elsewhere, I have contrasted the active participation of the victim in the trial with the delivery of services for victims by the various agencies of the criminal justice system⁹. The services model of victims' rights sees the punishment of offenders as the exclusive responsibility of the state. It is considered to be wrong to involve the victim in the administration of criminal law for the dogmatic-legal and victimological reasons mentioned above. As a *quid pro quo* for the victims natural right to seek justice, the state, however, is obliged to inform the victims about the progress and outcome of the criminal proceedings and to assist them in their efforts to obtain compensation for civil damages from the defendant. These duties of the state must be laid down in administrative law provisions.

⁹ *Van Dijk* 1986

According to this model, the legal relations between the state and the defendant are governed by criminal law; those between state and victim by administrative law, and those between defendant and victim by civil law.

Practical implementations of the services model are:

- legal provisions which protect the victims from secondary victimization by the defending counsel;
- detailed and binding instructions for police officers and prosecutors about their duties towards victims (including the duty to invite victims of serious crimes for a personal interview);
- legal and organizational provisions for an effective arrangement of the payment of compensation by the offender (e.g. by means of the French *partie civile* provisions combined with a duty of the state to enforce the verdict and to pay an advance);
- a comprehensive insurance or state compensation scheme for victims of violent crimes.

According to the services model, all agencies concerned can be held accountable for an adequate delivery of victim services.

The *Bills of Victim Rights* passed in the USA by most states explicitly preclude any legal action against the state for non-compliance. Accountability, however, is the cornerstone of victim rights according to our alternative model. An example of such accountability is the ruling of the *National Ombudsman* in the Netherlands that victims who have indicated their intention to present civil claims to the penal tribunal, must be compensated by the Ministry of Justice if the prosecutor has failed to inform the victim about the date of the trial. The Ministry has since paid compensation to several victims for such reasons.

Evaluation studies have supported the hypothesis that victims greatly appreciate an active notification policy by the police and the prosecutor¹⁰.

¹⁰Van Andel, Steinmetz et al. 1987

Victims have also been found to highly appreciate the efforts of officials to secure the payment of compensation by the offender¹¹, although the small amounts paid leave much to be desired¹².

State compensation schemes are not particularly popular with crime victims in general, due to stringent criteria of eligibility and bureaucratic delays. Those who actually receive substantial awards don't fail to be grateful, however.

In the present situation the available research findings do not yet allow any general conclusions on the preferability of either of the two models. Obviously, the value of each model must be assessed within the context of existing legal systems. Against the background of relentless cross-examinations by the defending counsel, typical for the adversarial system, it seems natural to demand a right for the victim to tell his or her own story in court. In other jurisdictions, such as the Dutch, the victim is only in highly exceptional cases obliged to give testimony at the trial. Here the costs of a more active involvement of the victim in the proceedings may far outweigh the benefits. The preference for either model will also be partly determined by political convictions. The participatory model is predicated upon the assumption that the victim himself is primarily responsible for the solution of his own problems. This approach may appeal more to those with a liberal conviction in the European sense. The services model emphasizes the responsibility of the state to support victims. This position seems more in line with a social-democratic view.

Conclusion

Ideally the contents of the papers given at victimological conferences would add up to a body of knowledge on the various problems of victims and the best ways to address these. Such a body of knowledge would give guidance to both researchers, policy makers and practitioners working with victims.

Unfortunately, even the foundations of such a theoretical perspective have not yet been laid. The art of helping crime victims is still largely based upon trial and error. In the absence of credible victimagogic theory, evaluators of professional counseling or social aid often borrow and apply concepts developed in other fields. Examples are concepts like post-traumatic stress syndrome, crisis intervention or coping mechanisms. The experiences of crime victims can undoubtedly be studied

¹¹Bonta et al. 1983; Shapland et al. 1985; Van Dijk 1985

¹²Reeves 1988

fruitfully as a form of "traumatic stress". By borrowing concepts from related disciplines, victimologists, however, may lose sight of the unique features of the experience of a criminal victimization. Those involved in victim support schemes tend to use their own terminology. They usually prefer to describe their subject-matter in colloquial terms - e.g. lending a listening ear, being a "good neighbor", providing recognition or confirmation. Unfortunately, such loosely defined terms do not lend themselves easily for the formation of a scientific theory.

In my view the experiences of crime victims cannot be understood without due regard for their social-legal dimension. According to the sociologist Luhmann, the everyday life of human beings is governed by a system of institutionalized trust. Without the trust that fellow citizens will behave in a predictable way, social life would be impossible. This sociological insight has great relevance for understanding criminal victimizations. Personal confrontations with crime shatter a person's basic social trust. The experience damages both the confidence in the community and the state and in one's own capacity as a social being¹³. In a nutshell, the experience to be the target of a crime leads to a crippling loss of confidence in the social order: the defining characteristic of crime victims is their shattered confidence in the community and in the rule of law¹⁴.

The above view leads me to hypothesize that the following ten factors facilitate a rapid recovery of crime victims:

1. a high level of social integration of the victim;
2. no previous victimizations by crimes or other asocial activities of fellow citizen or the state;
3. the perception of the crime as the rare act of a "psychopath" rather than as an event typical for life in a modern city;
4. the perception that the victimization could easily have been avoided;
5. the availability of natural support persons in the victims environment after the crime (related to 1);

¹³Janoff-Bulman 1985

¹⁴Van Dijk 1986

6. the experience of a sympathetic and reassuring interview at the day of the crime with a police officer;
7. a spontaneous visit by a sympathetic volunteer from the victim's own neighborhood and social milieu within days after the crime took place;
8. a letter from the police or the prosecutor which conveys the message that the state shares the victims indignation and takes all reasonable steps to bring the offender to court;
9. a speedy adjudication of the case;
10. the payment of compensation by the offender, preferably with a statement by the offender explaining his behavior and admitting that he behaved wrongly towards the victim.

I look forward to the next WSV-symposia to see whether data are presented which falsify or confirm these ten tentative victimagogic hypotheses.

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