

So What Now – Here's a few ideas

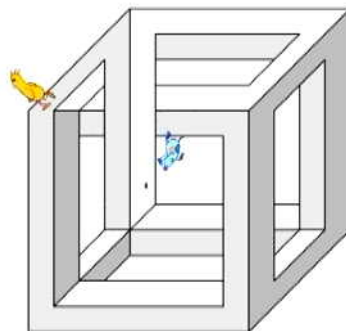
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New Ways Forward – Pathways to Change
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Escher Perspective



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Victim Assistance

Research shows that existing victim service programmes might not match victims' needs and / or expectations.
Is a new approach needed?



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Approaches to victim assistance United States Research

- A USA study revealed a significant mismatch between victims' needs (as reported by victims) and the services provided by victim assistance programmes (Skogan, Davis & Lurigio 1987).
- Over half of the victims said they had none of only one of the 'suggested' needs.
 - 28% - someone to talk to about feelings that were troubling
 - 18% - information about how to avoid becoming a victim again
 - 14% - protecting [yourself] from offenders
 - 13% - repairing a broken door or lock
 - 13% - installing better locks or improving security

(Skogan et al 1987, see also 1994)
- Most programmes focused on counselling services, HOWEVER, victims reported that family and friends usually fulfilled the need to talk about troubling feelings
 - Other four needs remained largely unmet by any of the victim assistance programmes
 - Two thirds of victims reported that they received no assistance with insurance claims
- Over all, about two-thirds of the services that the victim assistance programmes offered accounted for less than one-third of the needs reported by victims.



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Approaches to victim assistance United States Research

- Davis and others (1999) suggested that the emphasis of welfare-based victim services programmes might be misplaced.
- Sims *et al.* (2006) showed that there is no significant difference between victims who use these services and those who do not when it comes to improvement in their psychological functioning.

Approaches to victim assistance German Research

- While financial, legal and medical measures are important, these are 'less often offered' by victim services (Wyrsh 2002, p. 5).

England & Wales Research

- Research (2002) on Victim Support UK has primarily focused on victim satisfaction and there has been little evaluation of the effectiveness of the support in helping victims and witnesses to overcome the impact of crime, especially when compared with other services.
- Simmonds (2003) identified a mismatch between the types of services offered and the needs victims identified.



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Approaches to victim assistance Australian Research

- Victims often turn first to family and friends for help. Many also seek help from the police, while some use victim support services to aid their recovery.
- Victims want to be treated sensitively and constructively, as well as to receive accurate information on the support services available.
- They also often want practical help such as security devices; information on insurance and crime prevention techniques; and financial assistance to repair or replace property, to pay treatment costs, to install security devices and to cover transport to and from court, plus childcare.



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Approaches to victim assistance Risks for victims

- Victims who seek victim assistance can end up 'ensnared in a service referral maze' that does not necessarily meet victims' needs (Lucken 1999, p. 147)
- May "inhibit victims' coping and readjustment in the aftermath of crime victimisation" (Cook, David & Grant 1999, p. 40).



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Approaches to victim assistance

- Helpers' biases and misconceptions can seriously undermine the therapeutic value of victim-oriented interventions and unskilled support workers can cause secondary victimisation (Winkel, Blaauw & Wiseman 1999).
- van Dijk (1999, p. 5) warns 'vested professionals' (such as social workers) against fostering a 'culture of therapeutics', while Fattah (1999) says zealots in the victim industry might be causing more harm than good.



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Victim Assistance

The challenge therefore for victim assistance providers is to explore (using scientifically valid methods) the efficacy and effectiveness of interventions



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Law Enforcement

Some victim assistance is intimately connected with law enforcement priorities.

Are there philosophical and practical implications for victim assistance?



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The importance of the police for victims of crime

- Most victims' first contact with the criminal justice system is with the police.
- In Australia, most victims are generally satisfied with the initial police response, but this declines as time passes and is correlated with, amongst other factors, their views on how well the police kept them informed about the progress of their cases (Gardner 1990; Curtis & Pankhurst 2002; JSU 2000; VCCAV 1994; Wilkie, Ferrante & Susilo 1992).
- Victims of sexual assault, domestic violence and hate crimes, and victims from marginalised social groups, often feel the police are not sufficiently sympathetic (VCCAV 1994). Many of these people are not satisfied with the way police treat them.
 - In South Australia it was found that rape victims' satisfaction with the police tended not to decline as happened for other offences. This was attributed to the Police Sexual Assault Unit, comprising empathetic officers who provided specialist services (Gardner 1990).



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The importance of the police for victims of crime

- Many victims of crime rely on the police for 'immediate crisis care'.
- Crisis care is not the only reason victims report crime to the police.
 - Others reasons include—
 - A desire to retrieve property
 - A moral obligation
 - An insurance requirement
 - To stop re-occurrence (prevent repeat victimisation)
 - A desire for the offender to be arrested
 - Fear of harm

The Police 'Crime Fighter' / Law Enforcement paradigm (model) and the 'Community Oriented' Service Provider paradigm (model)

Putting the needs of victims of crime at the centre

- Victims' rights are not true rights under existing charters / declarations, rather they are principles or guidelines governing treatment of victims of crime.
- Although victims' rights create obligations, they do not necessarily guarantee meaningful and appropriate improvements.
- The focus on victim assistance in policing has the potential to legitimise the crime fighter law enforcement paradigm that will ultimately do little to advance victim-justice.
- There is a risk that victims could be 'locked' into a conservative retributive justice.

(Eijkman 1994, pp281-83)

The Police 'Crime Fighter' / Law Enforcement paradigm (model) and the 'Community Oriented' Service Provider paradigm (model)

Putting the needs of victims of crime at the centre

- Victims expect to be supported by the Police and often want help in restoring their personal freedom or autonomy
- Police operating in a 'crime fighter paradigm that has a strict law enforcement emphasis tend to relegate victim support to the realm of welfare and social work; thus, not 'real' police work
- Crime control (law enforcement) is only one function of modern policing



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The Police 'Crime Fighter' / Law Enforcement paradigm (model) and the 'Community Oriented' Service Provider paradigm (model)

Putting the needs of victims of crime at the centre

Crime Fighter - Consequences for victims of crime:

- Exacerbates (increases) fear of crime while at the same time detracts from (or de-values) police work that is not focused on crime fighting / crime control
- Encourages, even legitimises, inappropriate behaviour and 'insularity'
- Links measures of police performance almost exclusively to crime control, yet the Police have little influence over the 'causes' of crime
- Failing to control crime reflects badly on the public perception of the effectiveness of the Police



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The Police 'Crime Fighter' / Law Enforcement paradigm (model) and the 'Community Oriented' Service Provider paradigm (model)

Putting the needs of victims of crime at the centre

'Community oriented' Service Provider :

- Complements the public (and victims') perception that the Police is a valued community resource
- Accepts that the Police function far wider than crime control, even crime prevention, to include victim assistance and alleviating fear of crime
- Encourages open, consultative and co-operative relationships
- Embraces a problem-solving ethos that complements non-confrontational elements in policing a civil society



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The Police 'Crime Fighter' / Law Enforcement paradigm (model) and the 'Community Oriented' Service Provider paradigm (model)

Putting the needs of victims of crime at the centre

Community Oriented Policing - Consequences for victims of crime:

- Help with victim restoration
- Focus on preventing victimisation
- Alleviates fear of crime
- Victim empowerment and community empowerment
- Aim to attain justice for marginalised people
- Recognition of victims' rights and the obligations for the Police



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Policing & Victim Assistance

- One of the principle objects of penal victimology is to attain equal justice for the victim and the offender.
- Victims' rights can be seen as a step towards this object.
- Victims' rights can also be seen as an attempt to make criminal justice systems more efficient, as mechanisms to improve accountability (but to who), and to engender public confidence.
- From this perspective, victims' needs are acknowledged but they are framed then used according to public agencies goals or priorities.
- The victim becomes a consumer and their satisfaction becomes a key measure of success, rather than whether the response has effectively dealt with the impact of the offence.



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A National Approach

Experience shows that victims move from jurisdiction to jurisdiction – place to place – yet in Australia and other nations, victim assistance is largely confined to jurisdictional borders.

What steps should be taken to facilitate cross-jurisdictional victim assistance



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A National Approach



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Issues for a national approach

- To enhance cross-jurisdictional responses to increase the level of assistance given to victims of crime
- To build common standards (based on good practice) related to victims of crime.
 - See, for example, National Victim Assistance Standards Consortium
 - See also, for example, Partnerships Against DV (1999), *Competency Standards*
- Develop & agree conventions on –
 - Assistance to victims of crime and the prevention of victimisation
 - Compensation for victims of violent crime
 - Crime happens in Australia
 - Crime happens overseas
 - See, for example, Council of Europe (2006) *Victims – Support & Assistance*
- Develop & agree conventions on –
 - Appropriate steps to ensure victims are given information
 - Appropriate steps to ensure information is exchanged across jurisdictions



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Mass Violence

Mass violence, including terrorism, is a global issue.
Are the existing victim assistance programmes adequate?



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- The meaning attributed in law to terrorism is crucial to establishing (and limiting) which acts or omissions are **criminal victimisation** but not so important in the context of **victimisation**.

Australian definition of terrorism:

Violence intended to further a “political, religious or ideological cause” through intimidation

AND

Specific examples, for instance tampering with electronic systems.



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Mass Violence

An intentional violent criminal act, that results in –
physical
emotional or
psychological injury
to a sufficiently large number of people as to significantly increase the burden of victim assistance for the responding jurisdiction.



Adapted from USA publication



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Ripple Effect

Who is affected by terrorism?



Need to avoid narrowly defining victims e.g. by geographical region..



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Victims of criminal mass victimisation suffer physical, emotional, and mental trauma.

The devastation an act of terrorism can inflict victim service providers with tasks, including:

- facilitating immediate care
- counselling
- compensation

(US Dept of Health & Human Services 2004)

The victims' rights and needs should not be overlooked.



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Review on victim assistance

- Services were challenged by the severity and magnitude of victims' needs.
- Found that although there were similarities, the needs of victims of mass criminal events were unique compared with the needs of victims of other crimes.
- "compared with emergency management and response to natural disasters, mass criminal victimization demands specialized response strategies that address the complex toll on people"
- Existing models "were not developed to take into account the human impact of mass criminal incidents and did not recognise the social, psychological, and economic toll that might manifest itself in physical or emotional symptoms.
- The magnitude of the terrorist attacks and the resulting victimisation forced them to adapt existing systems rapidly on an unprecedented scale.

(USA Office for Victims of Crime 1999, 2000 & 2001)

Victim Assistance

- On-Scene Interventions
 - Psychological First-Aid
 - Crisis Interventions
- Immediate Interventions
- Long-Term Interventions

- Community Outreach

(Office for Victims of Crime (USA) & American Red Cross no date)



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Assistance for Victims of Crime

- Protect victims' rights
- Ensure control over media contacts
- Provide criminal justice information
- Facilitate access to compensation
- Prevent / reduce secondary victimisation



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Victim Assistance Providers

- An efficient response is more likely if victim service providers and emergency responders are thoroughly trained in advance.
- First / Emergency responders should also be taught how to cope with their own emotional responses.



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Victim Assistance in Australia

- Need for preparedness, including developing response plans.
- Need to recognise the dramatic, even devastating, human impact of mass criminal victimisation.
- Need to integrate victim services seamlessly into disaster response.



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Victims' Rights

Victims' rights are intended to improve the standing of the victim of crime, in particular in (but not limited to) the criminal justice system. Do victims' rights improve justice and, if so, for whom?



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Victims' Rights Instruments

- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985):
 - Guide-book on victim assistance;
 - Guide-book for policy-makers.
- Commonwealth Statement of Basic Principles of Justice for Victims of Crime (endorsed by Senior Law Officers for the Commonwealth 2005):
 - Commonwealth Guidelines for the Treatment of Victims of Crime: Best Practice.
- National Charter on Victims' Rights (endorsed by the Standing Committee of Attorneys-General, Australia 1993):
 - SCAG Secretariat
 - SCAG Communiqué



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Australia's Declarations / Charters

- Victims of Crime Act 1994 (ACT);
- Victims Rights Act 1996 (NSW);
- Victims of Crime Rights & Services Act 2006 (NT);
- Criminal Offence Victims Act 1995 (QLD);
- Victims of Crime Act 2001 (SA);
- Victims Charter Act 2006 (VIC);
- Victims of Crime Act 1994 (WA); and,
- Commitment to UN Declaration (TAS).



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Common features of declarations / charters

- **Services**
 - Help lines, counselling programmes & victim-compensation
- **Information**
 - Booklets, contact officers & victim-letters
- **Consultation**
 - Bail (e.g. conditions) & prosecution process (eg charge-bargaining)
- **Participation**
 - Victim Impact Statements, family conferences & parole



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A General Criticism

- There is **no statutory obligation** on public officials to compel them to advise victims of their rights and ensure victims understand their rights.

This presumes victims are conversant with their rights and are aware that they must take some action such as requesting information.



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Common Observations

- Providing for victims' rights is a central plank in criminal justice policy.
- Victims' needs, however, have become tied largely to the criminal justice system; yet only some victims deal with that system.
- For public agencies, especially criminal justice agencies, the victim has become a bargaining chip for increased resources.
- Implementation of victims' rights has been "patchy".
- Acknowledging the unsatisfactory / negative treatment of victims by bestowing victims' rights is not necessarily equal to responding to victims' needs.



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Common Observations

- Victims' rights declarations / charters are often worded to suggest that victims (who in general ask) can expect certain responses.
- Victims are encouraged in different ways to exercise these rights and utilize various services and, if these rights are not honoured or the services are not delivered, to complain. Some victims elect to complain. These victims can become, in a political context, representative of all victims. Governments then use these victims' complaints to justify law reforms, restructure services, revamp programmes and so on.
- For public agencies, especially criminal justice agencies, the victim has become a bargaining chip for increased resources.
- Acknowledging the unsatisfactory / negative treatment of victims by bestowing victims' rights is not necessarily equal to responding to victims' needs.



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Common Observations

- Implementation of victims' rights has been "patchy".
- Although declarations / charters 'proclaim' victims' rights (or at least principles), they do not (in general) mandate procedures by which to enforce them.
- One of the greatest challenges is ensuring compliance. In fact, compliance with victims' rights should be a priority.
- Victims' rights are illusory if there is no redress for victims
- Holding public officials and agencies accountable under a victims' rights declaration / charter is right – because victims' rights are right.



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Efforts to Strengthen Victims' Rights



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Victims' Rights & Human Rights

Is it time to look beyond the frustration, even anger, and ask if there is an alternative approach to advancing victims' rights?



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Victims' Rights & Human Rights

- Victims playing a direct role in the criminal justice system (at all stages) is often opposed on grounds that it would unduly prejudice the rights of the defendant.
- Excluding victims from the system, however, raises significant human rights concerns.



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Victims' Rights & Human Rights

- Victims' rights should be placed in a human rights framework.
- A human rights oriented criminal justice system, for example, would be fair to all parties.
- Victims' rights in this context should be looked on as requiring the criminal justice system rather than restricting that system (Hilf 2008)



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Victims' Rights & Human Rights

- From this perspective it is difficult to mount strong opposition to victims' rights:
 - Post-victimisation – restoration, compensation, rehabilitation
 - Investigation – involved in bail decisions, including setting conditions, & right to ask for a review of the decision
 - Prosecution – right to initiate proceedings, to be involved in charge bargaining & other key decisions
 - Court – right to appear as the co-accuser & make submissions on sentence
 - Post-trial – right to aftercare
 - Pre-release – right to make submissions that having standing in the decision making process
 - Post-release – right to be protected



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Victims' Rights & Human Rights

- International Criminal Court – *Lubanga Case*:
 - Criteria to establish victim status
 - “victim’s personal interests are affected” or “whether the victim is affected by an issue arising during ... the trial because his or her personal interests are in a real sense engaged by it.”
 - Modalities of victim participation
 - Approved access to filed documents pertaining to the prosecution’s case
 - Legal representation for victims
 - Protective and special measures for victims
 - Rejected submissions that anonymous victims should never be permitted to participate in the proceedings.
 - Dual status of victim-witnesses
 - Protection of victim applicants



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Victims & Restorative Justice

Restorative justice has been offered in different ways to improve justice for victims. Is the victim really better off in restorative justice programmes (many of which grew out of concern for offenders)?



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Victims & Restorative Justice

- Many so-called RJ programmes have only minimal input from victims (Pemberton et al 2007).
- Several of the so-called 'bench-mark' programmes have low victim-participation.
- Some of the "real" restorative justice programmes are more likely to be offender oriented (Miers 2001)



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Victims & Restorative Justice

- The bulk of research that favours restorative justice as improving the situation of the victim in criminal justice proceedings focuses on 'victim satisfaction'
 - Victim satisfaction scores range from about 75% to almost 98% (Aertsen et al 2004)
 - Restorative justice programmes have been rated as fair by about 8 in 10 participating victims (Daly 2001; Strang 2002; Latimer et al 2005)
 - Victims who said the process was fair, often felt they were treated with respect and that their opinion mattered (see also Cannon 2005)
 - Certainly, victim satisfaction in general for victims who participated is higher than that for victims whose cases were dealt with in conventional criminal justice systems.



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Victims & Restorative Justice

- Victims' rights are, says Hilf (2008) related to the:
 - Personal situation of the parties
 - Treatment of the victim
 - Treatment of the offender
 - Criminal procedure
 - Outcome of criminal proceedings
- She points out that there is a difference between:
 - Procedural justice
 - Material justice



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Victims & Restorative Justice

- Pemberton Winkel & Groenhuijsen (2007, p5) point out that most evaluation of restorative justice consists of measures of “**general victim satisfaction or satisfaction with aspects of procedural justice**”.
- Much of the research therefore is based on an analysis of one variable – **victim satisfaction**.
- Pemberton et al (2007, p5) state, “... **satisfaction is inadequate if the goal is to understand if and how restorative justice achieves its core element of assisting victims recovering from crime, as this entails more than (satisfaction with) a fair procedure, more information, and some possibilities for compensation.**”



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Victims & Restorative Justice

- Winkel (2008) takes this argument further
 - Single face-to-face meeting
 - Positive exposure (to offender (who has admitted offending) in a safe setting; to positive information)
 - Positive interaction (builds some rapport; sincere apology)
 - Healing (PTSD recovery; anger reduction; less self-blame)
- He asks whether “**brief exposure**” as happens at a restorative meeting works having regard to the efficacy of therapeutic interventions.
- **Research ignores nocebo (ie a nocebo effect is an ill effect caused by the suggestion or belief that something is harmful) and anti-therapeutic effects (Winkel 2008)**



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Escher Perspective

