Victims - An Historical Perspective

The role and visibility of victims of crime in a criminal justice system varies according to jurisdictions. This role and visibility has also varied over time within jurisdictions. These variations reflect the historical evolution of legal concepts, as well as diverse approaches to the interpretation of such notions as that of individual responsibility. Whilst it is true that the victim of a crime plays, and has always played, a central role in Western criminal justice systems, that role today is much more passive, less visible and arguably less important than it was in the past (Kirchengast, 2006; Godfrey and Lawrence, 2014).

The 11th century British crime victim occupied a central position in common law, being responsible for the apprehension, charge and prosecution of offenders. However, the law at this time was feudal in character with little distinction between civil and criminal jurisdictions, and mainly served to protect the property of the landed gentry. Kirchengast (2006) argues that the growth of the state out of feudal relations is central to the relocation of the victim from criminal law and justice. Thus the role of the victim began to be weakened from the 12th century onwards mainly due to the rise of the jury, the rise of the constable and other policing methods, and the collective and individual obligation of citizens to keep the King’s peace. The 14th century saw the Crown and state taking an increasingly active role in managing and regulating civil society, such that they began solely to define what constituted 'crime'. This rise of the early state also saw discipline being consciously planned, designed, implemented and imposed on the population. By the 17th century, criminal justice, along with poor relief and public order law, had become the way to control society.

In western societies, the relationship between the offender, the offended, and criminal justice significantly altered during the period spanning roughly 1750 and 1950, but this change was due as much to broad changes in society as to the expansion of the remit of the state (Godfrey and Lawrence, 2014). There was no single turning point but, for example, developments over the 19th century in English and Welsh policing certainly had a great effect. These changes in policing were part of changing attitudes to violence. Weiner (2004) has shown that levels of interpersonal violence that would never be accepted today were accepted previously and, given the cost of bringing a prosecution, many violent cases were settled by the offender and the victim outside the court. For example, particularly in working class communities, 'fair fights' were a common way for working men (and sometimes women) to settle their disagreements. This continued through the 19th century and into the 20th as the New Police tended to ‘look the other way’ rather than interfere in a 'fair fight'. Other systems of informal justice were also accepted. Offences could have been dealt with by community action on behalf of or by the victim, such as ducking the offender in rivers and ponds; others still would have been dealt with by ‘rough music’ - public shaming rituals – often used for adulterous couples or henpecked men (Banks, 2014).

Ironically, then, changes in policing and increasing societal intolerance of violence have increased the *visibility* of the victim in the criminal justice process, as more cases came to court. However, the *role* of the victim diminished. Hay (1989) has shown that during the period 1750-1850, victims (or someone acting on behalf of the victim) brought 80% of all criminal cases to court rather than an agent of national or local government. However, by about 1950 the police, and since 1986 the Crown Prosecution Service, had more or less assumed responsibility for prosecuting a case in court.

The state therefore continues to be the power restricting the victim's access to the courts and ultimately the criminal trial. However, there have been attempts recently to redress this imbalance. In Britain, one such measure - the 2013 Code of Practice for Victims of Crime - states that extra support should be given to victims of the most serious crime, those persistently targeted, and vulnerable or intimidated victims. It includes new sections aimed at businesses and young victims of crime. The Code also allows victims to choose to make a Victim Personal Statement and to read it out in court if the defendant is found guilty. Along with enhanced victim services generally in Britain and elsewhere these changes go some way to restoring the role and visibility of the victim of crime in the criminal justice system.

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***See also:***

**Readings**

Banks, S. (2014) *Informal justice in England and Wales, 1760 – 1914: the courts of popular opinion*. Woodbridge: Boydell and Brewer.

Godfrey, B. & Lawrence, P. (2014). *Crime and justice, 1750-1950.* Abingdon: Routledge.

Hay, D. (1989). ‘Using the criminal law, 1750-1850: policing, private prosecution, and the state’ in D. Hay and F. Snyder (eds) *Policing and private prosecution in Britain 1750-1850*. Oxford: Clarendon Press.

Kirchengast, T. (2006). *The victim in criminal law and justice.* Basingstoke: Palgrave Macmillan.

Weiner, M (2004) *Men of blood. Violence, manliness and criminal justice in Victorian England.* Cambridge: Cambridge University Press.