

Aidan Wilcox

Victims or defendants – can there be justice for all?

The overall aim of *Justice for all (JFA)* is 'to rebalance the criminal justice system in favour of the victim and the community so as to reduce crime and bring more offenders to justice.' This essay will consider whether this aim is likely to be met by the proposals contained in *JFA*.

Given the supposed centrality of victims to the new sentencing proposals it is surprising to find so little space given to substantive changes in the victim's position in the criminal justice system. *JFA* lists 'five practical steps' to achieve the 'single clear priority' of rebalancing the system in favour of the victim, yet none of these mention the victim. One can only conclude that *JFA* assumes that victims' needs are best met by increasing the proportion of offenders convicted. This is a simplistic view of victims' needs which ignores research evidenceⁱ which suggests that more important to victims is recognition of, and reparation for, harms suffered as well as access to information and sensitive and respectful treatment.

Where victims issues are dealt with directly in *JFA* the proposals aim merely to extend and enhance existing services. What they do not do is fundamentally change the role of the victims so as to balance the criminal justice system in their favour, but can instead afford little more to victims than an increase in service rather than procedural rights.ⁱⁱ In outlining a 'better deal for victims and witnesses' the proposals include a victims' code of practice setting out what protection, support and information victims can expect and the appointment of a victims' commissioner. The proposals may be welcomed but it is fallacious to suggest that they put victims at the heart of the system.

What is the main thrust of *JFA* if it is not primarily concerned with improving the status of the victim? It is clear that the majority of the proposals are concerned with increasing a defendant's chances of conviction by removing due process safeguards. These crime control measures include removal of the double jeopardy rule for certain relatively serious cases, the restriction of trial by jury and allowing courts to hear about defendants' previous convictions. The motive behind this is to tackle declining conviction rates but runs the risk of making trials less fair and sending more innocent people to prison. The removal of these legal safeguards for only the most serious (and 'high profile') offences suggests a political motivation. If such protections are normally deemed necessary, what makes it right to remove them for certain offences? Taking double jeopardy as an example, if being tried for the same crime twice is unjust in one case then surely it remains unjust in all cases.

What these proposals have in common is their focus on offenders that have already been detected. We know from the British Crime Survey that fewer than one in five offences result in the apprehension of an offender and it is this stage in the criminal justice system which *JFA* should be addressing if it really wishes to reduce the 'justice gap'. The proposals for increasing the detection rate are limited to modest increases in police numbers and improved training and there is no empirical basis to believe that this will have any more than a marginal impactⁱⁱⁱ. By focussing on making changes to the latter stages of the criminal justice system *JFA* is placing too much of an emphasis on the ability of sentencing to tackle crime at the expense of addressing

the social causes of crime and has little relevance for the 80% of victims whose offenders are never caught. The erosion of defendants' rights is of no direct benefit to victims.

Returning to the 'single clear priority' it is clear that *JFA* has done little to promote the interests of victims but rather has used them as an extension of crime control measures. Far from being placed at the 'heart' of the criminal justice system they have instead been used in the service of system efficiency or even the service of severity. The reasons for this focus on offenders generally, and detected offenders especially are fairly obvious. The government has made clear it is concerned with high-visibility crimes such as anti-social behaviour and street robbery. One can view *JFA* as a sop to perceived hard line public opinion about shocking, but rare, crimes such as child abduction and also to high profile cases, such as the Stephen Lawrence case, where defendants were considered to have been unjustly acquitted. In turn, the government has responded by making highly visible changes to the prosecution and court system which can be seen to have an effect (in terms of increasing the conviction) rather than being effective at tackling known criminogenic factors.

So is there a way of giving a meaningful role for victims in the criminal justice system without curtailing the safeguards for those accused of an offence? One approach which would call for a shift in the values which guide the criminal justice system is restorative justice. Its argument that the reparation of the harm, both material and symbolic, caused by an offence should be our central concern may well do more to place victims at the heart of the criminal justice system than increasing their service rights or convicting more offenders. Restorative justice also aims to hold offenders accountable without isolating or stigmatising them as well as establishing circles of support in order to reintegrate them into the law-abiding community. Though restorative justice thinking has previously received support from the government (for example in the Crime and Disorder Act, 1998), in this paper it appears as an afterthought, in contrast to the crime control measures elsewhere in *JFA*. While restorative justice has its critics, such an approach is more likely to provide real justice for all, unlike the proposals in *JFA* in which the magnitude of the measures taken *against* defendants is far greater than what is to be done *for* victims.

ⁱ See Zedner, L (2002) 'Victims' in Maguire, M., Morgan, R. and Reiner, R. (eds.) *The Oxford Handbook of Criminology* Oxford: OUP

ⁱⁱ Ashworth, A. (2000). *Victims' Rights, Defendants' Rights and Criminal Procedure*. In Crawford, A. and Goodey, J. (eds.) *Integrating a Victim Perspective within Criminal Justice*. Ashgate Dartmouth; Aldershot.

ⁱⁱⁱ Sherman, L. (1997). *What works, what doesn't, what's promising?* Report to the United States Congress. <http://www.preventingcrime.org/report/index.htm>. (checked 20th Nov 2002).