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**Too readily dismissed? A victimological perspective on penal populism**

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## 1. Introduction

It is no news that many Western societies are experiencing a period of populist punitiveness (Bottoms, 1995) or penal populism (Roberts et al., 2003; Pratt, 2007). In many countries tough-on-crime politicians endorse punitive laws and sentences as an apparent tool to improve their chances of re-election. The phenomenon is visible across the Anglo-Saxon world (Tonry 2007, 2009), but applies to my own country of residence - the Netherlands - as well (Van Swaaningen, 2004). Here the incarceration rate increased six-fold in the space of three decades, leading to the observation that ‘a beacon of tolerance has dimmed’ (Valkenburg, 2006).

The concept of penal populism is connected to the more general sociological literature on moral panics (Cohen, 1972) and draws from this literature a sense that penal populism is both irrational and manipulative (Ungar, 2001). The main evidence for the irrationality of penal populism is the absence of any real relationship between calls for law and order and changes in the crime rates, while most of the proposed policies are seen as manipulative as well, due to the fact that law and order mantra’s like ‘tough sentences will reduce crime rates’ fly in the face of available scientific evidence.

Law-and-order campaigns more often than not suggest that tougher sentencing and less emphasis on suspects’ and offenders’ rights are to the benefit of victims of crime. In Anglo-Saxon countries there is a tendency to name law and order legislation after individual victims of particular heinous crimes (Garland, 2001; Boutellier, 2002). Victims are supposed to have a preference for more severe punishment for offenders and/or a stronger procedural position within criminal proceedings with an eye to achieving this goal (Sarat, 1997). Like the general opinion about penal populism, many academics consider the use of victims’ needs in these cases as misguided and Machiavellian (Elias, 1990, Garland, 2001). Ashworth (2002) called it ‘victims in the service of severity’, while Elias (1990) found that the victims movement in the United States had been corrupted by right-wing political forces as a tool to strive for harsher, vengeful policies. He concluded that victims’ needs are used to support policies that are not in their interest. The large costs involved in law-and-order campaigns – lengthy prison sentences are notoriously expensive (Wacquant, 2005) – will reduce the available budget for measures actually improving the position of victims (e.g. Pemberton, 2010a).

Victimologists have taken great care to distance themselves from penal populism. There is a strong link between victimology and victim advocacy (e.g. Pemberton, 2010a). Many victimologists find their inspiration in the possibility that their research will relieve victims' suffering and/or improve their position.<sup>2</sup> However, it is rare to find an academic victimologist supporting law-and-order campaigns, even when victims' organisations are involved.

The victimological critique of penal populism is threefold. I will briefly mention the arguments here, before discussing them in more detail below. Firstly, it is argued that crime victim surveys reveal victims to be no more punitive than non-victims towards offenders. Secondly, a case is made that instead of retribution and revenge victims prefer different outcomes: for example compensation, support or a sincere apology from the offender. Finally, it is suggested that even if victims state they do want retribution or revenge, it will do them no good. Attempting to achieve these ends is more likely to lead to disappointment, than to any positive effects.

The central theme of this paper is not that these arguments can be refuted: for many or even most victims they will hold true. Instead, I will argue that one of the notions that underlies the charge of political manipulation can be turned on its head. Academics have stressed that law-and-order campaigns emphasize severe, but therefore rare cases and incorrectly generalize the features of these cases to *all* victims of crime (Scheingold et al, 1994). This is correct in my view. However, it also implies that findings drawn from research into the less severe and more routine forms of victimisation may not apply to the most severe cases. And this is, to a large extent, what victimology does.

As I will show in this paper, there is good reason to question the wisdom of assuming homogeneity throughout the victim population. Not only is the experience of victims of more severe crime different in a number of ways to the experience of relatively more mundane forms of victimisation, but the former group is a lot more likely to be involved in criminal justice procedures and will be overrepresented in measures designed to increase victim's participation in criminal justice.

## **2. Victimology versus penal populism**

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<sup>2</sup> In his address to the symposium of World Society of Victimology in 2003, former WSV president John Dussich concluded: *Victimology is not an exercise to amuse the curious, it is not an activity to enhance the careers of scholars, and it is not a ritual to soothe the conscience of politicians. In the final analysis it is a sincere endeavour to improve the human condition.*

*Victims are not more or less punitive than non-victims*

In law-and-order campaigns there is a presumption that a liberal is a conservative who has not (yet) been mugged (Unnever et al, 2007; King and Maruna, 2009). In other words, being victimized by crime will lead to a more punitive stance on crime issues. The adage implies that liberals can only maintain their liberal stance due to the good fortune of not experiencing criminal victimisation; once they do so, they will see the error of their ways.

The general victimological literature refutes this 'common sense' notion. Victims of crime, viewed as a whole, are no more punitive than non-victims (Maruna and King, 2004; Van Dijk, 2007). Analysis of a variety of crime victimization surveys across countries has shown that similar proportions of victims and non-victims find punishment given to offenders to be too lenient, support incarceration or community penalties of offenders and/or the death penalty (for an overview King and Maruna, 2009). The more general consequences of victimisation by crime for political attitude have not received much attention. In one of the sole exceptions, Unnever and colleagues found no relationship between being a victim of robbery or burglary and self-identification as a conservative or a liberal (Unnever et al, 2007).

*Victims are not as much interested in retribution and revenge as they are in other matters*

Improving the position of victims of crime within and outside of the criminal justice system involves (many) other things than the punishment of the offender (for an overview Pemberton, 2010b). Victim Support organisations across Europe have, for instance, emphasized the relative importance of improving services to victims rather than granting victims more rights (Pemberton, 2009; Strang, 2002). Initial drivers for reform within the criminal justice system focused on improving the treatment of victims within the process, preventing the phenomenon of secondary victimisation (Montada, 1994) and stressing the importance of (material) compensation and reparations as an outcome of criminal justice (Barnett, 1977). Indeed, much of the work of proponents of restorative justice concerning victims of crime has focused on their desire for restoration, rather than punishment, as is suggested by one of the leading texts on the subject, i.e. *Repair or revenge?* by Heather Strang (Strang, 2002).

*Even if victims express an interest in punishment it will do them no good*

A particular and extreme instance of penal populism concerns campaigns concerning the death penalty both as a general punishment and as a suitable outcome in individual trials. The death penalty is often regarded as a policy intended to serve the interests of the victims and those who love them, 'an undertaking to serve the needs of individual citizens for justice and psychological healing' (Zimring, 2003). Furedi (2004) comments that surrounding the trial of Timothy McVeigh, 'closure' was the most frequently used word. Allowing victim statements of opinion in death penalty cases is supposed to help victims achieve closure, so they can 'move on with their lives' and is one of the main drivers for their implementation (for a critical discussion Sarat, 1997).

However, evidence of victims achieving closure as a consequence of capital cases is non-existent (Pemberton & Reynaers, 2011). This in part relates to the fact that closure is in fact not normally used in recent psychological literature concerning therapeutic approaches to victims of crime. In fact, the evidence shows that the lengthy nature of the process leading to capital punishment prolongs victims' suffering, which is also the case for the offender's family (King, 2004).

More generally, it is argued that neither increasing the severity of sentences for offenders, nor giving victims influence over this outcome will contribute to victims' well-being (Van Stokkom, 2011). Research has yet to demonstrate additional benefit of increased sentences in terms of mental health outcomes (Orth, 2004). Victim impact statements are opposed on the grounds that victims are more likely to be disappointed by giving them influence over outcomes: their rising expectations will not be met (for instance Sanders et al, 2001). Even academic advocates of a stronger position for victims within the criminal justice find that victims do not primarily use these measures as a means to obtain a more severe sentence for the offender (Pemberton & Reynaers, 2011; Roberts & Erez, 2004; Roberts, 2009). More important is the opportunity that victim impact statements allow for 'voice'. It is not the influence on the sentence that is key, but the mere fact that the victim is given a role in the proceedings (e.g. Wemmers, 1996).

### **3. Punitiveness in victims: questioning the victimological consensus**

The research showing that victims' views on punishment do not differ from non-victims employs self-report (victimization) surveys, like the International Crime

Victim Survey (Maruna and King, 2004). It is not possible for these surveys to view victims' opinions in the immediate aftermath of their victimisation. Instead, respondents are categorized as victims, when they self-identify as having suffered crime in a period of time (a year or sometimes even longer) preceding the survey (e.g. Van Dijk, 2007). The typical victim in these surveys suffered a relatively severe, but routine type of crime, like burglary or common forms of assault and threats. Victims of more severe crimes – like victims of prolonged sexual abuse, victims suffering permanent disability due to violence or the families of homicide victims – are often not included in the sample or constitute a negligible minority (see more extensively Pemberton, 2009).

A variety of research findings do suggest a relationship between victimisation experiences and both harsher opinions concerning criminal justice policy and more conservative political attitude. It is noteworthy that these studies differ in the method of data-collection, the target group and/ or the period of time passed since victimisation.

Qualitative research into victims of the most severe forms of crime - like co-victims of homicide - reveals that this particular group shows signs of increased punitiveness (Rock, 1998; Armour, 2007). In similar vein, recent research demonstrates victims suffering from high levels of posttraumatic stress to be more punitive as well (Lens, Pemberton & Groenhuijsen, 2010). This is in line with the comorbidity of posttraumatic stress disorder (PTSD) with anger, hostility and vengefulness (Orth & Wieland, 2006; Orth, Maercker and Muller, 2006).

Terrorist attacks may lead to a so-called 'conservative shift'. Bonanno and Jost (2006) show that high-exposure survivors of the 9/11 attacks in New York reported stronger support for conservative political policies, of which harsher punishment for crime is an example. This was the case for (former) Democrats and Republicans alike. Recent research by Canetti-Nisim, Halperin, Sharvit & Hobfoll (2009) in Israel reveals a relationship between the impact of victimisation by terrorism and extreme, right-wing, political attitudes. In particular the Cannetti-Nisim et al (2009) study shows the relationship between personal exposure and extremism to be moderated by the level of posttraumatic stress experienced by victims, with extremism related to elevated levels of stress.

In the immediate aftermath of crime many victims experience symptoms of posttraumatic stress, although in most cases these initial symptoms will dissipate (e.g.

Foa et al, 1995). Cannetti-Nisim et al (2009) theorize that this rise in stress levels in the immediate aftermath will be associated with increases in punitiveness and political extremism. They connect the experience of stress after victimisation with the extensive body of literature on Terror Management Theory (TMT) (Landau et al, 2004; Pyszczynski et al, 2003). TMT studies mostly involve priming subjects with thoughts of their own death, which has a marked influence on their worldviews, including their political positions. In a particular instance - asking students to complete a short writing task on their own death – a three to one preference for John Kerry in the 2004 US-presidential election was transformed into a four to one preference for George W. Bush (Landau et al, 2004).<sup>3</sup> As Cannetti-Nisim and colleagues (2009) argue: if merely thinking about one's own death for a short period has such pronounced effects it stands to reason that actually experiencing victimisation which threatens ones' life should have an impact as well.

In sum: the consequences of victimization have to be sufficiently large to change victims' opinions about criminal justice. Where the traumatic consequences of crime are still felt by victims –in the immediate aftermath or in the case they develop PTSD- the available evidence suggests a more punitive stance as a consequence. Suffering victimization of crime in itself, however, is not sufficient to do so, which is why general victim surveys do not find evidence of this phenomenon. To coin a phrase, it is maybe not victimisation, but rather traumatisation that may transform a liberal into a conservative.

#### **4. Addressing harms and wrongs, overlapping but distinct aspects of reacting to victimisation**

The formal reaction to crime takes into account that crime is both harmful and wrongful behaviour (Duff, 2001; 2003). Crime's wrongfulness lies in its nature as unjustifiable and inexcusable conduct that violates another's rights and this sets it apart from other, non-intentional, forms of harm, although the distinction between harms and wrongs is not always clear-cut and may include subjective elements (Gollwitzer, 2009). The difference between harms and wrongs is not only relevant to the formal reaction to crime, the criminal justice system, but is also relevant to the

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<sup>3</sup> The subjects were psychology students, which undoubtedly explains their initial liberal stance.



experience of victims of crime (e.g. Pemberton, 2010). This entails the recognition that they are wronged, not just harmed, and that delivering justice to them necessarily includes a reaction to wrongdoing (Duff, 2003; Darley and Pittman, 2003). Moreover, it speaks to the limitations of methods solely designed to undo harm, to simultaneously or additionally serve as adequate reactions to wrongs as well.

Reacting to the harm of crime involves attempting to restore the situation to that preceding the crime, (compensatory justice; Darley & Pittman, 2003) and striving to prevent the offender from repeating the offence (deterrence or behaviour control; Carlsmith et al., 2002). From the perspective of victims, the first avenue relates to a need for compensation, support and where necessary physical and mental health treatment, while the latter relates to a need for security and protection (e.g. Pemberton, 2009).

Recent research in social psychology demonstrates that two dimensions underlie the wrongfulness of crime (Wenzel et al., 2008; Gromet & Darley, 2009): power/status concerns and value concerns. Offenders symbolically and in many cases actually remove power from their victims. Rectifying this involves retributive justice (Carlsmith et al., 2002; Robinson and Darley, 2007), which routinely involves some form of punishment (see also Fehr and Gächter, 2002). In addition ‘an offence is a threat to community consensus about the correctness – that is the moral nature – of a rule and hence the values that bind social groups together’ (Vidmar, 2000; 42). Reacting to criminal wrongdoing therefore includes an effort to restore these values (value restoration; Wenzel et al, 2008). From the perspective of victims the latter relates to a need for societal or social acknowledgement of their victimisation. (Pemberton, 2009).

The fact that different reactions tap different needs suggests that implying necessary tension between these reactions, for instance a *choice* between repair and retribution (Strang, 2002) is misleading.<sup>4</sup> In many cases, in particularly severe instances of victimisation, both repair and retribution are important (Pemberton, 2010).<sup>5</sup> Responses to victimisation may serve different goals at the same time.

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<sup>4</sup> The same can be said about Strang’s equation of the criminal justice process with revenge, rather than retribution, (see for a discussion of the difference between these concepts Nozick, 1981).

<sup>5</sup> Moreover the supposed evidence of the preference for repair over retribution in, the equation of restorative justice procedures with repair and criminal justice procedures with retribution is misleading as well: as has been noted previously (Pemberton, Winkel and Groenhuijsen, 2008) these procedures address a more complex set of needs. For instance restorative justice procedures necessitate at least a suspect being apprehended and charged with a crime: it is quite likely that the typical victim-participant

Punishment of the offender may contribute to restoring values (Bilz, 2007), while ordering the offender to pay compensation or the offer of a sincere apology may have retributive and value restorative functions as well (Okimoto & Wenzel, 2008).

However, the extent to which responses are interchangeable is limited, as they relate to different needs, with the exact mix of needs (compensation/ support, security, retribution and acknowledgement) reflecting the circumstances and the characteristics of the victim, the offender and the crime committed in a given case. Victims of chronic violence, may emphasize the need for security, due to their high (perceived) risk of revictimization, while in other cases the symbolic functions of reacting to wrongdoing carry greater weight than either deterrence (Carlsmith, 2006) or compensation (Beven et al., 2005). Increased severity of crime is associated with a more punitive response, while a sense of shared identity with the offender may reduce the emphasis on retribution (Gromet and Darley, 2009).

The latter point ties into the current discussion. Committing severe crimes automatically conveys a sense of *otherness* on its perpetrators (Garland, 2001), which, taken together with the more pronounced power implications inherent to severe crime (Gromet and Darley, 2009) implies that retribution will play an important role in the reaction to these offenses (Pemberton, 2010; also Bilz, 2007). The severity of crime and its impact on victims is therefore a determinant of their need for retribution, which is not only evident from their stated preferences but also from their chosen method of participation in justice proceedings (Lens, Pemberton & Groenhuijsen, 2010). Participants in restorative justice procedures, for instance, commonly display low levels of traumatic symptoms (Winkel, 2007; Pemberton, 2010). This can be contrasted with the evidence that participation in victim impact statements is a function of high, rather than low impact, with most participants showing signs of probable posttraumatic stress disorder (Lens et al, 2010). Finally, the severity of crime restricts the extent to which other outcomes may tap power/ status concerns. Apologies on the part of the offender are less likely to be perceived as sincere in cases of severe crime (Ward Struthers et al, 2008) and in absence of a sense of community with the offender (Winkel, 2007).

It is true that victims need many other things than punishment of the offender. Framing the responses to victims' needs as a choice between mutually exclusive

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in a restorative justice procedure may find this fact alone appropriate retribution for what has happened (in particular in the case of juvenile offender of relatively lesser crimes).

avenues, however, does not do justice to the fact that different types of outcomes tap different needs. The prevalence of a need is not as relevant as the match between an outcome and a need, in a given case or for a certain subset of victims. In general addressing power/status concerns, through retributive justice, is a more pressing need for victims of severe, violent crime, than it is for other victims.

## **5. The importance of revenge and retribution**

In popular discourse, the criminal justice process is regularly portrayed as a means for victims to achieve closure (Furedi, 2004). This is, however, is highly unlikely. According to Fletcher (2005) the suggestion of this type of one-off catharsis is not supported by any empirical evidence, but also based on an outmoded view of trauma resolution. The deep-seated impact of losing a loved one will not be resolved by one, magical, instance of experiencing justice (Armour, 2007). Authors have therefore been quite right to criticize the role of the closure-argument in the development of criminal justice policy, in particular in the United States (Sarat, 1997).

The argument has had an unfortunate impact on the development of policy, but has also poisoned the scientific debate. Opponents of the expansion of victim's rights use closure as a straw man to dismiss striving for any type of 'therapeutic' benefit for victims in justice processes or even to outlaw research using 'therapeutic' constructs (Daems, 2007).<sup>6</sup> Elsewhere, I have argued against this position (Pemberton & Reynaers, 2011): there are victim-oriented, therapeutic constructs that do not suffer from the same shortcomings: they can be realistically achieved through the criminal justice process, mesh well with existing criminal justice goals and adequately reflect current psychological-victimological research and theories.

Minor reductions of anger and anxiety, for instance, are realistic goals of victim participation in the criminal justice procedure (Pemberton & Reynaers, 2011). Victims' sense of control over their own recovery is increased by participating in victim impact statements, while it contributes to their sense of justice as well (Lens, Pemberton en Groenhuijsen, 2010). In turn, experiencing justice after victimization is associated with reduced feelings of anger and vengefulness (e.g. Pemberton, 2007). Moreover, the repeated claim that victims' raised expectations will lead to

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<sup>6</sup> The qualification therapeutic has some unfortunate connotations - most often I find psychological or emotional are more appropriate terms – but is commonly used (e.g. Pemberton 2010).

counterproductive outcomes, is not supported by the evidence (Lens, Pemberton & Groenhuijsen, 2010), probably also due to victims' own realism. They do not expect the criminal justice procedure to be a panacea for all ills. In sum: criminal justice procedures can and do have, albeit small, beneficial 'therapeutic' effects for participating victims.

As to the importance of sentence severity, I find it is important to recognize, that although evidence of the positive effects of more severe or indeed ever-increasing punishment may be highly suspect, it is quite clear that *insufficient* punishment has negative effects. Acquittal of suspects, in particularly if the victim witnessed the commission of the crime can and does impede recovery: this has been well documented in intimate partner violence and rape cases (for instance Frazier and Haney, 1996; Jordan, 2004; Kelly et al, 2005). As Colb (2001) observes, acquittal is particularly painful in these cases as it calls into question whether what happened to the victim was actually a crime at all.

More generally, except for the direct power concerns inherent to punishment, a sentence that is perceived as being (far) too lenient can have a negative impact due to what it signals to and about the victim. Bilz (2007) shows criminal punishment to be 'also, importantly, a referendum on the social standing and worth of the victim. A successful punishment indicates that the community values the victim. A failure to punish indicates something less – perhaps indifference toward the victim, perhaps even disdain.' The consequences of this expressive function of punishment (Feinberg, 1970), not only concerns a lack of punishment, but also too lenient sentences (Bilz, 2006). Punishment is not only interpreted as a marker for value and social standing by the victim, but by a wider audience in the community as well (Bilz, 2006). Importantly, this will translate into poorer treatment and relative devaluation of the victim in the case of too lenient sentences (Bilz, 2007) while this lack of social acknowledgement has real, negative consequences for victims' recovery and is related to poorer mental health functioning (Maercker and Muller, 2004).

Providing victims with 'voice' may counteract this (e.g. Pemberton, 2010). Participation in 'their' case offers victims a sense of acknowledgement as well (Roberts and Erez, 2004). However, there is evidence that the extent to which procedural justice can undo the negative effects of a poor outcome of a process relates to the importance of the outcome for the victim, and thereby to the severity of the crime (Hickman and Simpson, 2003). The more severe the crime, the more important

the outcome, relative to the process. Moreover the distinction between procedural variables, like voice, and outcome variables may be more murky in these situations than is often recognized. Recent research shows that the most important component of revenge is its ‘messaging effect’ (rather than the suffering of the offender *per se*, Gollwitzer & Denzler 2009), with the message being that the punishment of the offender is payback for what the offender did to the victim, rather than a breach of an abstract law or even random misfortune. Giving victims voice in criminal proceedings allows victims to perceive the outcome of the trial in their name (e.g. Bilz, 2007). Voice therefore not only contributes to a sense of procedural justice, but effects a qualitative change in the message the outcome conveys.

The value of punishment is related to the impact of the crime. For relatively low impact crimes, the importance of the punishment of the offender for the victim will be negligible. In these cases any retributive desires of the victim may be serviced by the mere apprehension and cautioning of the suspect (e.g. Allen et al., 2006; Robinson and Darley, 2007). The length of time between victimization and the final sentence –in the Netherlands well over six months – implies that most victims will have fully recovered by the time of the outcome (Bonanno, Westphal & Mancini, 2011), which in turn will reduce their stake in the verdict. One of the main reasons for non-participation in justice processes appears to be that the residual impact of crime is insufficient to make victims care very much about (influencing) the outcome of the trial (Lens, Pemberton & Groenhuijsen, 2010). The reverse is also true. When victims do suffer from high levels of traumatic complaints, (influencing) the outcome will be an important consideration, even years after the fact.

None of this supports the notion that imposing draconian sentences is in the interest of victims of crime: it merely suggests that *sufficient* retribution can be an important consideration. What this means in individual cases will co-vary with the impact of the crime. For low impact crimes, the outcome of the trial is not likely to matter much: victims may be more likely to have lost interest in the process by this time. For high impact crimes however, sufficient retribution is both an important consideration for victims themselves and may impact the way they experience the treatment by their social environment.

## 6. Conclusion

Most people who have suffered victimization by crime are no more or less in favor of severe punishment than non-victims. There are a variety of other outcomes that are more important for many victims than the punishment of the offender and there is no evidence that imposing increasingly lengthy or even draconian sentences on offenders will do victims any good. It certainly will not provide closure. There is therefore good reason to view proposals that suggest otherwise in a critical fashion: they misrepresent victims' interests and amount to manipulation.

However, this does not mean that there is no truth whatsoever in the claims law and order advocates make about victims of crime. There is evidence and theory showing victims of high-impact, severe forms of crime to be more punitive than non-victims. The extent to which other outcomes, or elements of the procedure can serve as a replacement for the need for retribution and revenge also depends on the impact of crime: retribution is more important for victims of severe crime. Finally, although there is no evidence for ever-increasing sentences as being beneficial for victims of severe forms of crime, there is evidence showing that sentences that victims experience as far too lenient are likely to have negative effects.

Research into victims of crime's vengefulness and punitiveness is still piecemeal. Many of the findings discussed in this paper are in dire need of further elaboration and confirmation or falsification. However, there seems to be a virtual taboo on victimological research into these subjects, perhaps due to the curious tendency in criminology and victimology to equate a colleague's research subject with his or her own personal opinion. This is, I find, academically unfortunate, but also constricts the extent to which academic victimology can provide an convincing alternative to populist calls for law and order.

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