Chapter 1

The victim, the State, and civil society[1]

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Crime victims are increasingly of interest to politicians, criminologists and criminal justice practitioners. However, their place in criminal justice is disputed. In this chapter I consider the proper roles of the State and the victim in relation to criminal justice. The discussion is largely framed by the issue of who properly 'owns' crimes: the State or the parties involved? However, before getting to that rather abstract question, it is worth briefly considering the growing importance of victims in contemporary criminal justice, and the reasons some scholars respond to this growth with suspicion.

The rise of the victim

The web page of the British Government ministry responsible for policy on crime claims that it puts 'the concerns of victims of crime at the heart of the work we do' (Home Office 2009). In the USA, there is an Office for Victims of Crime that has, since 1981, helped communities to celebrate an annual National Crime Victims' Rights Week. A similar event takes place every year in Canada, where there is also a federal Office for Crime Victims. More generally, there is a great deal of public discussion of victims' rights; politicians regularly surround themselves with victims whenever they announce new criminal justice policy; and statutes are often proposed and enacted while attached to the names of particular victims: Megan, Sarah, and Jessica Lunsford.[2]

It is important to distinguish two rather different, although interconnected, elements in 'the rise of the victim'.[3] First, a great deal has been done to improve the experience of victims during the criminal process. Much of this is at worst benign and at best to be welcomed. There is nothing

heinous or dangerous in improving the conditions of the waiting rooms in court buildings; in protecting vulnerable victim witnesses; or in trying to keep informed those victims who wish to be informed about the progress, or lack of it, in the investigation and prosecution (if any) of the case. That said, there is no reason to think that these kinds of welfare reforms are exclusive to crime victims. We surely have an interest in improving the experience of everyone involved in criminal proceedings so that there is, for example, no more reason to be concerned with vulnerable victim witnesses than vulnerable witnesses who are not victims. The fact that many of these reforms have been implemented by association with victims' rights is sociologically and politically interesting, but does not tell us anything in particular about the relative position of the victim, the State, and any other party in criminal justice.

The kinds of welfare reforms mentioned above need to be kept separate from the second, more fundamental, component in the rise of the victim. Recent debates have included the question of whether victims should have the right to make personal or impact statements and, if so, what role such statements should have; whether victims should play a role in decisions over whether to prosecute, over how much to punish, and over parole and other decisions regarding release from prison. Still more fundamentally, there is the proposal that the existing criminal justice paradigm should be rethought in terms of dispute resolution and restorative justice.

These proposals elicit varied and often hotly contested reactions. My purpose is not to take each proposal separately, but rather to approach them by asking about the relative position of the parties involved in criminal justice, where those parties include the victim, the offender, the State, and civil society. Before that, however, it is worth considering why some people and groups have reacted with such suspicion to the emergence of the victims' rights movement.

The grounds of suspicion

There is little doubt that while victims' rights movements have attracted a certain level of popular and academic support, many legal and social theorists have sounded a notably cautious tone both in general and in relation to specific measures. The arguments are many and complex; nevertheless it is possible to discern rather different sets of concerns that have motivated those who oppose, or are cautious about, recent developments in relation to victims.

First, there are those who see the rise of the victim as part of the process of increased punitiveness that characterises the UK and the USA. This is what Andrew Ashworth has neatly called 'victims in the service of severity' (2000: 186). Those worried by this development point to the fact

that some victims' movements actively lobby for harsher sentences; juxtapose the interests of offenders and victims in a zero-sum game; campaign for victim impact/personal statements that are little more than mechanisms to generate harsher penalties; and contribute to the demonisation of offenders.

Second, there are those who worry that the rise of the victim is part of the individualisation of late modernity. These worries can take a number of forms, and the relations between them are not at all clear. For some, the focus on the victim and the offender (rather than on the society and the State) is associated with a methodological invasion of rational choice theory from economics into sociology and the other social sciences; of *homo economicus* replacing *homo sociologicus*. For others, the individualisation of crime is evidence of a politics in which the focus is on individual offenders as rational actors rather than on the social causes of crime. It is not that 'there is no such thing as society', as Mrs Thatcher famously put it, but that society has abdicated its responsibilities under the pretence of restoring the individual to the centre of politics. For still others, the victim now takes centre stage as a point of reference in an individualised postmodern world in which the traditional sources of morality have receded. The victim's suffering offers something shared – in a world of diminishing shared moral values – on which to ground a 'victimalized morality' (Boutellier 2000).

It is noticeable from the above that the various explanations of the rise of the victim, and of the suspicions with which that rise has been met, do not fit neatly together. Critics of 'victims in the service of severity' worry that victims are, more or less willingly, being appropriated by politicians with substantive moralising, communitarian agendas. The victims' movement is to be feared because it is a tool of non-liberals who wish to use it to press home their critiques of modern value-less societies and to restore 'Victorian', 'Christian', or just 'old-fashioned' values to the public domain.[4]

This is in sharp contrast to those who fear victims' rights as representing the thin edge of an individualist, rational-choice wedge. These fears relate the rise of the victim to the triumph of free market individualism, the focus on citizens as individual rational actors, and the loss of community. On the one hand, the victim's claim is made on behalf of the restoration of community and old values (and resisted for the same reason). On the other, the victim's special significance is understood within the triumph (or disaster) that is the modern, pluralistic, disenchanted West where the old values have withered away.

The State and its citizens

Perhaps the confusion identified above suggests that one should approach the issue of the relative place of victims, the State, and civil society in

criminal justice by first giving an account of the State and its relation to morality and community – or at least by giving a series of such accounts – and then extrapolating from each to find the proper place of the victim given a certain understanding of politics.[5] This would be neat, but I do not think it can be done. Of course, it is true that political philosophers have long debated the merits of liberal versus communitarian understandings of politics. Moreover, it is also true that it is only possible to make sense of some policies or political phenomena given a certain understanding – liberal or communitarian – of the State. However, while one can work backwards in this way from a suggested policy to the presuppositions on which it rests, it is much more difficult to work from a general account of the State, such as is found in communitarianism, to specific concrete policy proposals. Nothing much can be said to follow from a communitarian theory of the State until it is established what kind of values inhere in the State, and what traditions and communities are properly embodied within it.

Similarly, there are contractarian theories of the State; that is, accounts of the legitimacy of the State that are grounded in asking what individuals would agree to in a hypothetical choosing situation (in a 'state of nature'). These are often associated with the individualistic neo-liberalism identified as problematic in the second account of the rise of the victim mentioned above. However, again it is very hard to see how anything as specific as the role of the victim in the criminal justice system can be derived from a contractarian theory of the State.

In short, theories of the State and/or of justice – whether communitarian or contractarian – generate rather abstract principles of justice or political authority that merely set parameters on public policy. No amount of abstract theorising, or of analysis of the debate between those who espouse communitarianism and those who favour contractarianism, will resolve fine-grained issues surrounding victims and their proper place in criminal justice.

One might conclude from the above that political philosophy cannot contribute much to the debate over the proper place of victims in the criminal justice system because its concern is with abstract and general principles and these seldom dictate specific policies. However, in what follows, I propose that there are at least two arguments that can be given to frame the debate between advocates of victims' rights and their opponents. First, all such debates need to be understood within parameters set by demands of justice and equality. Second, and more importantly, they need to be understood in a context in which the State – or a state-like entity – must take responsibility for the regulation of crime not simply because it is the entity most likely to be effective, but because its doing so is in part constitutive of what makes co-operative social life possible.

The narrow contribution of political philosophy

The narrow contribution that political philosophy can make to debates over policy, including policy relating to victims of crime, lies in the fact that parameters, while they cannot tell us precisely what to do, can tell us what not to do. For example, the most general statement about justice – that it requires that each gets his or her due – tied to the most general statement about equality – that it requires that relevantly like cases be treated alike – can shed light on, for example, the proper use of victims' personal/impact statements at sentencing and parole.

The argument turns on what counts as 'relevantly like'. For example, two otherwise similar crimes, committed by similar offenders, may result in very different financial costs to the victims. In assessing any court-ordered compensation to be awarded to the victim and paid by the offender, the court might legitimately consider this difference and do so by listening to a victim's statement. Here, the different financial impact of the crimes is relevant in distinguishing the cases.

Contrast this with two similar offenders convicted of similar offences with similar results for the victims, whose punishment – say, the length of their prison sentences – is different because the court was moved in one case by the eloquence of the victim's statement in favour of a harsh penalty prior to sentencing. Here, the difference between the cases – the fact that one victim is eloquent and the other not – is irrelevant and the demands of equality and justice are not met. Thus, if it can be shown that victims' statements, delivered at a certain point in the procedure, result in relevantly like offenders receiving different penalties, then that is unjust and the use of such statements in that way is improper.

Of course, these are easy examples, but they demonstrate how even thin, general principles of justice (as well as formal principles of consistency, and so on) can show what ought not to be done. Moreover, clarifying the nature of the debate also helps in locating the proper battleground for the different parties. What often matters is what people count as 'relevant' in the demand that equality requires relevantly like cases to be treated in relevantly like ways. Putting it this way can help at least to make the issues clear. For example, consider a proposal that speeding fines should be in some way proportionate to income rather than be in simple fixed amounts. In discussing this, we can ask whether the millionaire and the poor pensioner who commit identical offences are subject to 'relevantly like' treatment if each receives a fixed penalty of, say, £60 rather than a penalty of 1 per cent of net monthly income. Similarly – albeit even more controversially – the debate over when and in what ways a history of previous offending ought to make a difference to current cases is clarified (although not, of course, resolved) if one asks whether there is anything about having a history of previous offending that renders one

offender relevantly different from another who, without such a history, is convicted of an identical offence.

The broad contribution of political philosophy

So far, I have made only modest claims for abstract theorising about the nature of justice or of the State. In part, this is because the kinds of issues addressed so far – victim personal/impact statements, humdrum welfare reforms, and so on – have been quite specific and, for reasons given above, political philosophy is not well equipped to deal with such detail. However, it is also in part because in order to make progress we need to step back from asking about the nature of the State and its relations to its citizens and ask the more basic question, 'why have a State at all?'

The question of why we should have a State at all arises because answering it sheds light on the issue of who owns a crime and its consequences. This is the heart of the matter. On the one hand, it is natural to think of crime as being 'between' the offender and his victim. On the other, crime is public. The debate, of course, is at its crudest between those for whom crime is 'owned' by the parties involved and 'stolen' by the State (Christie 1977), and those who think crime is the proper business of the State and the victim is little more than a contingent fact about this or that particular crime.

Ordinary language suggests that there is nothing wrong with thinking of crimes, offenders, and criminal proceedings as the victim's. Victims will often initiate the case by reporting it to the police; the wrong, if there was one, was done to them; they may well be the most important witnesses; and they may well have to sacrifice time and energy in the pursuit of the case. Given all that, it is natural to think of the case as 'theirs'. However, the case is theirs only in the sense that they are closely associated (perhaps, together with the offender, most closely associated) with it, not in the (possessive) sense that it belongs to them.[6] In all but exceptional circumstances, the case belongs to, and is prosecuted (in both the broad and narrow senses of that word) by the State. Moreover, the State does not prosecute the case on behalf of the victim, but on behalf of the public.

As noted above, this question of who owns the case lies at the heart of the most fundamental issues dividing those who think differently about the respective roles of the State and of victims in criminal justice. Moreover, on the face of it the State does seem to be the intruder: if D assaults V in the car park of a pub after a heavy drinking session, this would seem to be between D and V. The State, of course, might assist D in pursuing his dispute with V, or in establishing the facts about the incident, but in doing so it would be no more than a tool in a conflict between those directly involved. In what follows, I argue that this position cannot be defended and that crime does belong to the State. The

arguments are of two kinds. First, even if it is granted that a particular crime belongs to the parties involved, it is hard to stop the set 'parties involved' from expanding outwards to include the citizen body. Moreover, on at least one understanding of the wrong done (in part or whole) in a given crime, this is not a contingent matter. Second, and more fundamentally, the argument is that State ownership of crime is a constitutive element of one precondition of co-operative social life.

'The parties involved'

Grant for the moment that a particular crime does belong to the parties involved: the victim and the offender. What reason is there for the State, or any other body, to 'steal' the crime? One answer that does not depend upon any particular philosophical commitments arises if one asks who are 'the parties involved'. The example given above in which D assaults V might be thought to be a paradigmatic case of a crime – a conflict – that belongs to the assailant and his victim. However, the parties affected by D's actions extend far beyond V; even the most private of acts tend to have some public dimensions and this is no exception. D's actions, together with those of others, result in insurance premiums being higher than they would otherwise be; they may cause people to invest in expensive security; and they may cause people to forego opportunities for welfare (such as going to the pub) for fear of being assaulted (and this may be true of people geographically distant from the scene of the crime who have read about the assault in the newspaper).

A second argument appeals to the duty we have to one another as citizens to obey the law (at least, in most circumstances). On this account, the wrong done by the assailant is not just the violence inflicted on the victim, but also the wrong of failing to restrain the pursuit of his interests in accordance with the law. Since that is an obligation on us all, and since we accept it only as a reciprocal obligation, the assailant fails to honour an obligation he has to us all. He is a free rider and that part of his wrong is one that is done to all those who participate in society.

In short, both these arguments appeal to the thought that, even if we admit that the crime belongs to the parties involved, the actions of the parties involved have public dimensions and so the State has a legitimate claim on the case as the only institution with the resources to represent everyone. However, in granting in the first instance that offences are owned by the parties directly involved and then showing that it is difficult to stop the category of 'party involved' extending outwards, these arguments do not go to the heart of the matter. The traditional view is not that criminal offences are owned by the parties and, lo and behold, it turns out that we are all involved parties. Rather, it is that criminal offences are owned by the State and the wrongs done by criminal offenders are public wrongs, and not simply wrongs done to all of the public.

I think this view can be defended. To do so requires, as mentioned above, that we ask why we should have a State at all. Of course, the answers to this question are themselves hotly contested. In particular, those in the anarchist tradition deny that there is any need for, or legitimacy in, a State. Putting them to one side, though, one can identify an agreed purpose of the State that runs through a number of different writers and traditions, although it should be noted that the purpose of the State need not be the same as what makes it legitimate. This purpose is to protect those who reside within its borders and, to a (much disagreed-about) extent to secure their welfare.

The State and the condition of sufficient security

In order to achieve its ends, the State takes to itself what, according to Max Weber, defines it: a monopoly on the legitimate use of physical force (Weber 1948: 78). This need not be understood simply as an instrumental claim; that is, that it so happens that in order to secure the protection and welfare of its citizens, the State needs this monopoly. Rather, we can understand the State claiming this monopoly as essentially tied to the relevant idea of security. Consider Hobbes, who argued that the only way in which to secure peace was for each person 'to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will' (Tuck 1991: 120). This was necessary, according to Hobbes, not because he believed men to be innately savage or bad, but because he believed that unless an individual had 'sufficient security' that others, too, would submit their judgement to that of the Sovereign, that individual would have no reason to do so himself (Tuck 1991: 215).

In the modern jargon, what Hobbes identified is an assurance problem (Sen 1967). Each person has reason to co-operate (in a joint venture) only if she is assured that others will co-operate. In the absence of such assurance, the danger is not only that each person will defect from the agreement (or that no agreement will be possible), but that each will anticipate future non-cooperation and attempt to 'get her retaliation in first'. It is this that threatens to land people without a Sovereign to guarantee security to a life that is famously 'solitary, poore, nasty, brutish, and short' (Tuck 1991: 89). On this account, then, what is clear is that the State's monopoly on the legitimate use of physical force is not simply a means to security, but is in part constitutive of such security.

Although Hobbes is unusual in granting as much power as he does to the Sovereign, the idea that the State ensures peace (and all that goes with it) by taking to itself a monopoly on the legitimate use of physical force is by no means unique to Hobbes. Even those natural law theorists like Pufendorf and Locke, who believe that there is an obligatory law of nature such that individuals have a right to punish violations of it, argue that the

problems that would result from any such free-for-all are so severe as to require the concentration of the individual's natural right to punish at the level of the community and by delegation to the magistrate. For Locke, political power is thus defined as '*a Right* of making Laws with Penalties of Death, and consequently all less Penalties, for the Regulating and Preserving of Property' (Laslet 1988: ii, paragraph 3; see also Tully 1991: 2.5).[7]

That the State plays the role of guarantor of assurance can be found in other thinkers as diverse as the utilitarian Jeremy Bentham and the contemporary neo-Kantian John Rawls. What grounds their accounts is very different. For Bentham, the State is justified only if it promotes happiness. In order to do that, it must ensure stability such that people's reasonable expectations of the future will not prove to be false by removing, as far as possible, the chances of arbitrary interference in their plans (Burns and Hart 1970). Rawls, whose account is very different, also recognises the need to respond to the assurance problem. The problem, he writes, is that 'each person's willingness to contribute is contingent upon the contribution of the others'. So, what is needed is 'to assure the cooperating parties that the common agreement is being carried out'. Thus, he argues, 'to maintain public confidence in the scheme that is superior from everyone's point of view, or better anyway than the situation that would obtain in its absence, some device for administering fines and penalties must be established' (Rawls 1971: 270; cf. Kant 1991: 307–8).

The point of citing these different arguments and thinkers is not to say that there is universal agreement on the nature, purpose and justification of the State and nor is it to appeal to the argument from authority (if all these great men think this, then it must be true). Rather, it is to illustrate the positive argument, which is that the State – understood in a Weberian form – claims a monopoly on the use of legitimate force not merely as a means to securing security, but because the State's doing so is partly constitutive of one kind of security – the security that comes with assurance – which is itself a necessary condition for peaceful coexistence.[8]

It follows from adopting this vision of the State that cases that properly fall within the laws of the State belong to it. In return, the State must try to ensure that such cases are prosecuted (again in both senses) properly and impartially so as to contribute to mutual assurance. To allow a free-for-all in which disputes remain solely the property of the parties involved would introduce an arbitrariness that would undermine the condition of sufficient security that makes social life in the State possible.

However, to say that offences and their resolution are rightly the property of the State acting for the public is not yet to resolve the issue of the proper roles of the State and the victim in relation to *criminal* justice. First, clearly not all disputes are properly the property of the State. Second, to say that the State must try to ensure a proper and non-arbitrary prosecution of relevant offences is not to say that it must do so directly or

by itself. After all, in a sense the State acts merely as a guarantor in tort and family law and, on occasions, it delegates its powers to other bodies (such as the General Medical Council). Why then should the State not stand back and allow, as advocates of restorative justice would like, those directly involved to resolve their dispute under State guidance and regulation?

What these two issues point towards is the need for an account of criminalisation and the criminal law. That is, granting that some disputes are the property of the State, why should the State claim them as crimes and deal with them itself rather than allowing their status as disputes to be dealt with by those involved, albeit under the supervision of the State?[9]

Regulation and criminalisation

The argument so far is as follows: peaceful and successful social co-operation (in complex societies) requires the condition of 'sufficient security'; it requires that each participant is reasonably assured that others will co-operate in accordance with the rules. This condition is not contingently secured by the State – or by whatever State-like entity exists – but is rather constituted by the existence of the State as the monopoly guarantor of assurance. Thus, the State must 'own' those rules, and disputes over them, that together ensure the condition of sufficient security is met. Again, this is not a contingent claim – it is not that the State just happens to be best at securing assurance – it is constitutive: the State's ownership of these rules and disputes is part of the condition of sufficient security itself.[10]

Even if this is right, though, it does not explain the State's (and the victim's) role in criminal justice in particular. Why should the State move beyond regulation to criminalisation? And, more pertinently, is there anything about that move that changes the relative position of the State and those involved (including the victim)? In what follows, I shall only gesture at an answer to the first question. However, it seems unlikely that the answer to the second is affirmative. No matter how the State enforces the rules – whether through devolved regulation or direct criminalisation – it must retain ownership if it is to fulfil its function.

In addressing the move from regulation to criminalisation, it is worth considering what is peculiar about the criminal law. The answer cannot be simply that breaking the criminal law brings down on the offender, if caught, criminal prosecution and punishment. Moreover, the wrong done in core criminal cases is not only that the offender has failed to restrain himself in accordance with the law. Rather, with Antony Duff, we can say that the mark of the criminal law is that it calls the offender to account and, if no excuse or justification is forthcoming, it condemns him in the name of the public for his wrong (Duff 1986; Duff 2001).

For Duff, there is a distinct sense in which core criminal wrongs are public: they are wrongs in which the public share. Serious criminal wrongs, he writes, are 'wrongs in which the community shares . . . [and] as members of the community, we should see them not merely as the victim's wrongs but as ''our'' wrongs' (2001: 63). It is because of this that such wrongs are 'matters on which the community as a whole can and should take a stand, through . . . authoritative, communal condemnation' and that 'those who commit [such wrongs] should be called to account and censured by the community' (Duff 2001: 61).

If Duff is right then there is another sense of 'public wrong' (particular to criminal justice) that was not considered in the earlier part of this chapter and that might, by itself, account for the proper roles of the State and the victim in criminal justice. Serious wrongs are wrongs in which the community shares; they are wrongs done to the public as well as to the particular victim. However, although richly suggestive, I do not think Duff is right or that there is any such sense of a shared public wrong.

Duff's argument is (as always) subtle and nuanced. However, it is also hard to pin down. In what sense are the victim's wrongs also 'ours'? One answer appears in an earlier paper in which Duff and his co-author Sandra Marshall offer the examples of sexually, and racially, motivated attacks. In these cases, they argue, 'an attack on a member of the group is . . . an attack on the group – on their shared values and their common good' (Marshall and Duff 1998: 19).

Marshall and Duff's examples are well chosen, but even so it requires some imagination to get the argument to work. A small close-knit community of women in a society in which women are generally discriminated against may come to think of themselves as sufficiently interconnected for a wrong done to one of them to be a wrong done to all (and much the same could be said in the racial case). However, in run-of-the-mill criminal cases – even core, serious cases – it is implausible to think of wrongs as shared in this way. When someone is the victim of a gang-related murder in Nottingham, I do not feel that I share the wrong as a *wrong done to me*. Moreover, that is not because I do not share in an (admittedly fairly minimal) moral community that is united around liberal values including the value of life. The point is that I may – indeed, do – feel that a serious wrong has been committed, but it is not a wrong in which I share as a victim.[11]

Perhaps the answer lies in separating Duff's (and Marshall's) claim that the wrong is done to the public from the other claims cited above: that serious criminal wrongs are 'matters on which the community as a whole can and should take a stand, through . . . authoritative, communal condemnation' and that 'those who commit [such wrongs] should be called to account and censured by the community'. For Marshall and Duff it seems that the community must take a stand because the wrong is done to the community (as well as to the victim), but it seems more plausible

to say that the community must take a stand because of the seriousness of the wrong done to the victim, because only communal condemnation can convey the appropriate degree of censure for that degree of wrongdoing, and because it is a violation of a rule the affirmation of which by the State in part constitutes a necessary condition of co-operative social life.[12]

Conclusion

The argument above depends on two claims about the nature and purpose of the State. First, by effectively taking to itself the monopoly on the legitimate use of physical force it removes a degree of uncertainty that would undermine trust and the conditions of social co-operation. Second, it is a carrier of values – values, as Duff puts it, 'by which the political community defines itself as a law-governed polity' (2003: 47) – and core criminal wrongs violate these values. As a constitutive element of sufficient security, the State must own the rules, and disputes over the rules, which constitute the 'game' of social co-operation. As the bearer of values, the State has reason not merely to regulate some disputes, but to consider them as 'offences' and to condemn those who commit them for their serious wrongdoing.

To say this, though, is to leave unanswered many aspects of the question: what are the proper roles of the State and the victim in relation to criminal justice? I want to end with three comments on what is not resolved.

First, nothing follows from the above arguments in relation to the humdrum welfare reforms mentioned at the start of the chapter. Second, a great deal is left open about the exact roles victims should play in processes of criminal justice. For example, if restorative conferences are effective – as they seem to be for some crimes, some offenders, and some victims – then the State may use them. However, this is not to say that the arguments above have nothing to contribute to the debate between advocates of restorative justice and advocates of more traditional approaches. The argument requires that all procedures within the criminal justice system must guarantee (as far as possible) just and equal treatment for those involved. If some restorative justice practices fail to do so then they are unacceptable. Moreover, restorative justice practices are, according to this argument, manifestations of the State's power and authority. They exist, and have legitimacy, only insofar as they are invoked by the State. They are not, then, an alternative to the State's ownership of criminal cases – or, to use the dominant contemporary jargon, an alternative paradigm for criminal justice (see Ashworth 1993) – but rather are simply different ways of realising the State's role in criminal punishment. Whether, as a matter of fact, restorative justice practices are

good or bad in achieving their goals is, of course, hotly debated (the literature is vast and good arguments, on both sides, can be found in Crawford and Goodey 2000; and von Hirsch *et al*. 2003).

Third, and finally, I think that it follows from this picture of the State and its legitimate authority that, in conditions in which sufficient security does not obtain, all political (and, in my view, moral) bets are off. That opens up a whole new way of thinking about the issue of victims. That is, I have concentrated in this chapter entirely on claims made by, and on behalf of, those victims of crime who are, or wish to be, involved in the processes that follow a crime. However, this is a tiny percentage of the overall number of victims. For most victims of crime – even when they report the crime – questions of possible involvement in decisions over prosecution, penalties, and release are entirely irrelevant. The case stops with the police officer, or community support officer, leaving the house after having recorded what has happened. The challenge those victims pose for a political theory of the kind I have just defended is a substantial one. It may make it both reasonable and legitimate for groups to suspend their commitment to the political association whether by retreating to a gated community or by organising local private protection groups. However, that is an issue for another time.[13]

Notes

1 Earlier versions of this paper were given at the Cropwood Conference hosted by the Institute of Criminology at Cambridge in 2005; the Morrell Theory Workshop in the Politics Department at York; and the Issues in Criminal Law Theory seminar series in the Law School at Birmingham. I am grateful to Tony Bottoms, Amanda Matravers, Sue Mendus, Julian Roberts, Stephen Shute, and to the participants at the above gatherings for their comments.

2 Megan's Law is named after Megan Kanka, a seven-year-old who was raped and killed by a known child molester in New Jersey; a campaign for a similar law in the UK is named after Sarah Payne, another child murder victim. The Florida Jessica Lunsford Act followed the rape and murder of a nine-year-old of that name. I should note that my concerns in this chapter will be limited to developments in UK and US politics and law, and the philosophical analysis will similarly be in the Anglo-American analytic tradition. I am sure that there would be a great deal to learn from a comparison of Anglo-American and Continental European developments, but (sadly) I am not in a position to offer such an account.

3 I am conscious that the phrase 'the rise of the victim' is rather too crude. Moreover, there is always the professional hazard in writing papers of this kind that posterity might judge that one had mistaken a short-term fashion for an important development. For what it is worth, I think the rise of the victim a genuine, if complex, phenomenon that has the potential to alter significantly the shape of (parts of) the criminal justice system. That said, even if it is a

short-term fashion, the proposals that have emerged from the victims' rights movements still need to be critically assessed.

4 This is perhaps more apparent in the USA, where there seem to be implicit and explicit connections between some victim advocacy groups (particularly those concerned with homicides and the death penalty) and some of those advocating the return to the public domain of Christian values and the reassessment of the constitutional separation of church and State.

5 The best summary of the arguments is Mulhall and Swift (1996).

6 It is interesting to note that when authors refer, for example, to victims being informed about the progress of their case, the 'their' is very often put in scare quotes. A quick trawl through the literature revealed (among others) the following: 'how much ... victims should be told about the sentencing of ''their'' offender' (Williams 2005: 495); 'the importance attached by victims to being kept informed of the progress of ''their'' case' (Zedner 2002b: 432); 'victims are encouraged to demand better information about the progress of ''their'' case' (Zedner 2004: 145); 'several American states now permit individual victims to make recommendations to the judge prior to sentencing, and to put their views to the parole board prior to the release of ''their'' offender' (Garland 2001: 179); 'The ''rights'' of victims in relation to ''their'' cases' (Sanders 2002: 211).

7 I am very grateful to my colleague, Jon Parkin, for his comments. He should not, however, be held responsible for the interpretations of Hobbes, Locke and Pufendorf offered here.

8 A contemporary variation on this argument can be found in Loader and Walker's rich and interesting book, *Civilizing Security*. They, too, argue that security is a good, and for the 'necessary virtue of the State in delivering the public good of security' (Loader and Walker 2007: 195).

9 I want to put to one side the issue of what offences ought to be criminal (assuming that some should be). This issue is of the first importance, but it is not one I can deal with here. I will, therefore, take examples from core *mala in se* offences, which I assume are rightly criminal (if anything is).

10 Modern States, of course, came into existence for all sorts of different contingent reasons. The claim here is not historical, but conceptual. In reconstructing why we should have a State at all, ensuring the condition of sufficient security is part of the answer, and thus part of the justification of the State. It is not part of any story of the State having come into existence. I am grateful to Gordon Woodman for encouraging me to clarify this point.

11 Duff might retort that this is because I have too thin a notion of 'belonging' to a community (see, for example, his contribution to the debate with Andrew von Hirsch in Matravers 1999 and Duff 2001).

12 This conclusion shares something with the conclusion of Grant Lamond's paper, 'What is a Crime?' Lamond (2007) argues that core criminal wrongs are public 'because the public is responsible for punishing them', rather than because they are wrongs done to the public. However, his argument for why the public should be responsible for punishing core criminal wrongs is rather different from the above.

13 I should note that I am not saying that the modern State has broken down, or that we live in Hobbes' State of nature. Nor do I mean to contribute to a 'dangerous penal pessimism' (Zedner 2002a). Rather, I raise the issue as a

conceptual possibility. That said, I do think such analysis is useful when thinking about issues such as gated communities and how to do penal justice in a distributively unjust society (see Matravers 2000: ch. 9).

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