‘Victims’ Access to Justice: Historical and Comparative Perspectives provides an important and valuable contribution to our understanding of victim participation in criminal justice mechanisms across a wide range of jurisdictions with varied legal systems and political and social traditions. A key strength of this book is its comparative historical and contemporary view of the politicisation of and State responses to crime victims against a background of wars, terrorism, settler colonial violence, and gender violence. This excellent collection draws on perspectives of diverse cultural, geographical, and historical contexts to analyse the different trajectories of [some] victims’ access to justice as well as the factors that inhibit victim participation. In doing so, this book opens up problems and possibilities for scrutiny and reflection, enhancing the potential for improved policy responses to victims of crime more generally.’

Tracey Booth, Professor in Law Health Justice, University of Technology, Sydney
Why have many victim-centred policy initiatives met with so little success? How have those initiatives unfolded differently in different global jurisdictions over different periods of time? This book aims to address these questions.

Building on a major research project exploring victims’ access to justice over time and place, *Victims’ Access to Justice* considers the potentialities for victims’ participation in criminal justice systems and in victim programmes both in historical and comparative context. It considers a range of topics: ways of identifying and accommodating victims’ needs and senses of justice; the impacts for criminal justice systems of seeking to accommodate these; and the ways in which adversarial criminal justice systems, in particular, may enable or inhibit victim participation.

This is essential reading for all those engaged in understanding and working with victims of crime.

**Pamela Cox** is Professor in Sociology at the University of Essex, UK.

**Sandra Walklate** is Eleanor Rathbone Chair of Sociology at the University of Liverpool, UK.
Concerns about victimisation have multiplied over the last fifty years. *Victims, Culture and Society* explores the major concepts, debates and controversies that these concerns have generated across a range of disciplines, but particularly within criminology and victimology. As the impacts of globalisation, the movement of peoples and the divergences between the global North and global South have become ever more apparent, this series provides an authoritative space for original contributions in making sense of these far-reaching changes on individuals, localities and nationalities. These issues by their very nature demand an interdisciplinary approach and an interdisciplinary voice outside conventional conceptual boundaries. *Victims, Culture and Society* offers the space for that voice.

Each author adopts a strong personal view and offers a lively and agenda-setting treatment of their subject matter. The monographs encompass a transnational, global or comparative approach to the issues they address. Examining new areas of both empirical and theoretical enquiry, the series offers the opportunity for innovative and progressive thinking about the relationship between victims, culture and society. The books will be useful and thought-provoking resources for the international community of undergraduates, postgraduates, researchers and policymakers working within the broad field of victimisation.

*Edited by:* Sandra Walklate, University of Liverpool, UK and Monash University, Australia
Kerry Carrington, Queensland University of Technology, Australia

**Tackling Rape Culture: Ending Patriarchy**
*Jan Jordan*

**Victims’ Access to Justice**
*Historical and Comparative Perspectives*
*Edited by Pamela Cox and Sandra Walklate*

For more information about this series, please visit: www.routledge.com/Victims-Culture-and-Society/book-series/VICS
Contents

List of Illustrations ix
Acknowledgements x
Author Biographies xi

1 Introduction: Victims’ Access to Justice: A (Brief) Contemporary History 1945–2015 1
PAMELA COX AND SANDRA WALKLATE

SECTION I
Mapping the Historical Continuities of Victimhood 19

2 The Crown Against….: The Victim and the State in the Pursuit of Criminal Prosecution, 1840–1985 21
RUTH LAMONT

3 Divergent Victims in the Old Bailey, 1950–1979 37
HEATHER SHORE AND LUCY WILLIAMS

4 Using Crime Survey Data to Track and Measure Access to Justice: Problems and Possibilities 53
ELISA IMPARA

5 The Changing Landscape of Service Delivery for Victims of Crime in England and Wales in the Last Fifty Years 74
ROB I. MAWBY
### SECTION 2
**The Legacies of Adversarialism for Victims’ Access to Justice**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Gender, Sexual Violence, and Access to Justice in India</td>
<td>101</td>
</tr>
<tr>
<td></td>
<td>RAVINDER BARN AND VED KUMARI</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>‘I Want Your Tears and I Want Them to be Real’: Exploring the Construction of ‘Ideal’ and ‘Non-ideal’ Victims in the Independent Assessment Process for Indian Residential School Abuse</td>
<td>115</td>
</tr>
<tr>
<td></td>
<td>KONSTANTIN PETOUKHOV</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Analysing the Victim Review Scheme of Decisions Not to Prosecute in England and Wales and Within Comparative Jurisdictions</td>
<td>138</td>
</tr>
<tr>
<td></td>
<td>MARIE MANIKIS AND MARY ILIADIS</td>
<td></td>
</tr>
</tbody>
</table>

### SECTION 3
**Victims’ Access to Justice: Lessons from Non-adversarial Jurisdictions**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>The Swedish Welfare Model and the Development of Social Services for Crime Victims</td>
<td>159</td>
</tr>
<tr>
<td></td>
<td>KERSTIN SVENSSON AND CARINA GALLO</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Victim Participatory Rights in Dutch Criminal Proceedings: A Review of Research on Their Potential Effectiveness</td>
<td>174</td>
</tr>
<tr>
<td></td>
<td>MAARTEN KUNST, JOYCE SCHOT, AND ANTONY PEMBERTON</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GEMA VARONA</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Evolution of Victims’ Access to Criminal Justice in Brazil</td>
<td>209</td>
</tr>
<tr>
<td></td>
<td>THIAGO PIEROBOM DE ÁVILA</td>
<td></td>
</tr>
</tbody>
</table>

**Index**

227
Illustrations

Figures
4.1 This plot shows the increment in size of the core sample of the CSEW until 2018 55
4.2 Assessing and defining access to justice via available variables in the Crime Survey for England and Wales 60
4.3 Life of some selected variables in the Crime Survey for England and Wales 63

Tables
4.1 The modules in bold were used to select variables for a proxy measurement of access to justice 58
4.2 Example of manipulation from individual-focus to incident-focus in the CSEW in the case of variables measured using a categorical variable 62
4.3 Example of manipulation from individual-focus to incident-focus in the CSEW in the case of variables measured using a Likert scale 62
7.1 Indian Residential Schools Independent Assessment Process: Compensation rules 118
7.2 Indian Residential Schools Independent Assessment Process: Consequential harm 119
8.1 Victims’ Right to Review Scheme Data 148
Acknowledgements

The editors would like to thank the generous support of the Economic and Social Research Council (ESRC) for the funding which facilitated the data collection on which several of these chapters are based. Not all members of that project team have contributed to this edited collection. Notable in their absence but not from their contribution to the wider ESRC project are Professor Barry Godfrey (Liverpool) and Professor Bob Shoemaker (Sheffield) whose contribution to lively team debates was not only fun but also much appreciated.
Author Biographies

Ravinder Barn is a professor of Social Policy in the School of Law and Social Sciences. Ravinder has a strong track record in policy-relevant impactful research in relation to racial/ethnic, social, and gender inequalities. She is the author/editor of 8 books and over 100 journal papers or book chapters. She writes on gender, ethnicity, child and youth welfare, and criminal justice. Her research on child welfare and migrant groups, and gender-based violence is highly regarded nationally and internationally. Ravinder is a mixed-methods researcher. Her academic base is interdisciplinary and spans social policy, sociology, social work, and criminology.

Pamela Cox is a professor in the Department of Sociology at the University of Essex. Her teaching and research spans social history, crime history, and interdisciplinary social science. She led the interdisciplinary ESRC project on Victims’ Access to Justice that inspired this edited collection. She is a member of the editorial board of the British Journal of Criminology and has served as chair of the editorial board of Cultural and Social History.

Carina Gallo is an associate professor in the Department of Criminal Justice Studies at San Francisco State University. Her research addresses historical and international trends in crime and welfare policy. Carina has recently published a book exploring the roots of the Swedish victim movement. This book is vital to informing the literature on how different societies have approached issues related to crime and victims.

Mary Iliadis is a senior lecturer in Criminology in the School of Humanities and Social Sciences at Deakin University and co-convenor of the Deakin Research into Violence Against Women Hub. Mary’s research adopts a socio-legal framework to examine, critique, and impact the rights and treatment of victims of sexual violence in criminal justice systems. Mary’s research is international in scope and explores the rights and protections afforded to victims in policy and practice across England and Wales, Ireland, and Australia, with a particular focus on representative and participation rights.
Elisa Impara is a senior research associate at the Institute of Psychiatry, Psychology and Neuroscience, King’s College London, and a visiting fellow at the Department of Sociology, University of Essex. With experience in advanced statistics and machine learning, she works across various disciplines, ranging from criminology to social epidemiology. She is passionate about data science and communicating research findings via interactive data visualisation techniques.

Ved Kumari is Professor of Law and Vice Chancellor of National Law University Odisha, India. She was also the Dean, Faculty of Law, University of Delhi, during 2016–2019. She headed the Delhi Judicial Academy from 2009 to 2011. She has published widely on areas of juvenile justice, gender justice, clinical legal education, and criminal law at national and international levels. Her books on Juvenile Justice Systems are pioneering publications in India on the subject and are highly recognised at national and international levels. She has conducted many trainings in Clinical Legal Education and Judicial Education.

Maarten Kunst is a professor of Criminology at Leiden University and is the chair of the Department of Criminology. He has a background in criminal law and clinical health psychology. He teaches several courses in the department’s bachelor and master programmes. His research focuses on three topics: the psychosocial impact of crime victimisation, crime victims’ experiences with legal procedures, and the impact of crime victims on legal decision-making. He has published tens of articles and book chapters on these topics.

Ruth Lamont is Senior Lecturer in Law at the University of Manchester, UK. Her research has focused on children and the law, both in a historical and modern context. Her research has also focused on the rights and welfare of children within the justice system. She was a co-investigator of the ESRC-funded Victims’ Access to Justice project led by Professor Pamela Cox. Within the project, she led on identifying and analysing the emergence and revaluation of different iterations of victims’ entitlements in England and Wales over time. She was a joint author (with Professor Cox and Professor Sunkin) of a report into the constitutional powers of the Victims’ Commissioner in England and Wales.

Marie Manikis is an associate professor and William Dawson Scholar at the Faculty of Law of McGill University and a member of the Centre for Human Rights and Legal Pluralism and the International Centre for Comparative Criminology. She researches and teaches in the areas of criminal justice, criminal law, sentencing, criminal procedure, and victimology. In 2014, she completed her doctoral studies in law at the University of Oxford. Over the years she has published her work in several peer-reviewed journals and has provided consultation services to the Department of Justice in Canada,
the Federal Ombudsman for Victims of Crime, the Ministry of Justice in England and Wales, and the Canadian Senate.

**Rob I. Mawby** is currently a visiting professor in Rural Criminology at Harper Adams University, having previously been Professor in Criminology at the University of Plymouth. His work is internationally recognised for its contribution to victimology, particularly in relation to service delivery for victims of crime, an issue in which he remains actively engaged. He is the editor-in-chief of *Crime Prevention and Community Safety: An International Journal*.

**Antony Pemberton** is currently a professor at the Leuven Institute of Criminology and senior researcher at the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) in Amsterdam. As part of the latter position, he is seconded to Tilburg University as a professor of Victimology. He has a background in political science and criminology. His primary academic interests concern the broad topics of victims and society, in particular, cultural and narrative victimology and the ethics of victimology and of humane responses to injustice, including the study and implementation of restorative processes. He has published over 100 articles, book chapters, and books on these topics.

**Konstantin Petoukhov** is a Social Sciences and Humanities Research Council (SSHRC) postdoctoral fellow in the Department of Sociology, Social Policy and Criminology at the University of Liverpool. His postdoctoral research interests are in the area of critical victimology, with a specific focus on investigating the construction of ‘complex’ victims and perpetrators in restorative justice programmes. His graduate research critically examined the Canadian Truth and Reconciliation Commission, settler colonialism, and reparations. Konstantin’s doctoral dissertation explored the Indian Residential Schools Independent Assessment Process (IRS IAP), which was established to adjudicate claims of serious physical and sexual violence that former students had experienced. A portion of Konstantin’s research for this book chapter was funded by SSHRC.

**Thiago Pierobom de Avila** is Associate Professor of Law in the PhD Programme of UniCEUB, Brazil; Affiliated Researcher of Monash Gender and Family Violence Prevention Centre, Australia; Integrated Researcher of the Institute of Criminal Law and Sciences, University of Lisbon, Portugal; and Senior Prosecutor in Brasilia, Brazil.

**Joyce Schot** is a research assistant in the Department of Criminology at Leiden University. In 2021 she obtained her Bachelor of Science in Criminology. She is currently finishing her Bachelor of Laws and doing a master in Forensic Criminology, both at Leiden University. Furthermore, she is involved as an intern in a study on the right to deliver a victim statement
at the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR) in Amsterdam.

**Heather Shore** is a professor of History in the Department of History, Politics and Philosophy at Manchester Metropolitan University. She is the Director of the Manchester Centre for Public History and Heritage, the author of many historical books and journal articles, and has served as a committee member of the Royal Historical Society and as an organiser of the British Crime Historians group.

**Kerstin Svensson** is Professor in Social Work at Lund University, Sweden. Her research concerns organisations and professions in the field of criminal justice, victims support, social services, etc. Kerstin has recently published a book exploring the roots of the Swedish victim movement. This book is vital to informing the literature on how different societies have approached issues related to crime and victims.

**Gema Varona** is a lecturer in Victimology and Criminal Policy at the University of the Basque Country (UPV/EHU) and senior researcher at the Basque Institute of Criminology (Donostia/San Sebastian, Spain). Former coordinator of the degree in criminology (2013–2017), current coordinator of the UPV/EHU MOOC on Victimology (2016–present), and co-director of the Master in Victimology of that university (2014–present). She is also the co-editor of the *Journal of Victimology/Revista de Victimología*. She has authored books and articles on migration, human rights, restorative justice, violence against women, victims of terrorism, victims of sexual abuse, and environmental and animal victimisation.

**Sandra Walklate** is Eleanor Rathbone Chair of Sociology at the University of Liverpool (UK), conjoint Chair of Criminology in the School of Social Sciences at Monash University (Australia). Her research focuses on criminal victimisation, particularly in relation to violence against women. She is President of the British Society of Criminology and was previously the Editor in Chief of the *British Journal of Criminology* (2014–2019).

**Lucy Williams** is a postdoctoral researcher at the University of Liverpool and has worked on many historically focused digital humanities projects, including Victims’ Access to Justice, which traced patterns in Old Bailey trials from the 1670s to the 1970s, and the Digital Panopticon, which traced London convicts in Britain and Australia from the 1780s to the 1920s.
Introduction


Pamela Cox and Sandra Walklate

Introduction

This collection of essays began life as one way of sharing findings from an interdisciplinary Economic and Social Research Council (ESRC)-funded project entitled ‘Victims’ access to justice through English criminal courts, 1675 to the present.’ Insights from this project inform the early chapters of this volume. However, as the proposal for this collection developed, the value of offering both a historical and a comparative view of victims’ rights and entitlements became ever more apparent. Thus, this book explores the ways in which victims’ senses of justice vary both over and through time, in accordance with geographical location, and how victims’ access to justice is approached in different jurisdictions as a result.

Taken together, the chapters in this collection differently explore three broad questions:

• How might victims’ senses of justice be best identified and accommodated? How do their senses of justice come to be known, conjured, and called forth over time and space?
• What are the impacts upon criminal justice systems of accommodating victims’ senses of justice and what kinds of policy mechanisms are used to do this in different parts of the world?
• How do different criminal justice systems currently enable or inhibit victim participation?

Overall, this collection illustrates the ways in which the accommodation of victims’ senses of justice has evolved over time, and how they continue to vary across time and space. Efforts to universalise these through, for example, international declarations have raised the profile of global profile of victims’ entitlements but have not eroded local differences. Uniquely, the collection brings together a historical appreciation of these local and global tensions emanating from both adversarial, inquisitorial, and more hybrid criminal justice and social policy processes bringing to the fore the different and parallel developments.
addressing the victim of crime in both the global North and the global South. In setting the scene for the chapters that follow, this introduction opens by offering a brief historical overview of the emergence and development of interests in the victim of crime from the context within which the ESRC-funded project referred to above began its life: England and Wales.

Setting the Scene

Contemporary academic and policy focus on victims of crime arguably has its origins in the First and Second World Wars. These origins have two strands. The first is documented in Fassin and Rechtman’s (2009) tracing of the emergence of ‘psychiatric victimology’ in the use of various treatments developed during and prior to the First World War for ‘shell shock.’ This focus on the psycho-trauma of suffering generated by workplace and war injuries provided the intellectual and therapeutic backdrop to the later identification of post-traumatic stress disorder in the early 1980s, and was quickly harnessed by the feminist movement as a way of capturing the impact of rape and sexual assault (Burgess and Holmstrom 1974). This ‘trauma narrative’ (McGarry and Walklate 2015) can be traced through to current preoccupations with the challenging experiences reported by some victims engaging (or not) with the criminal justice system and now often referred to as ‘secondary victimisation.’ The second strand can be found in the work of émigré lawyers and academics focusing on the Holocaust. Benjamin Mendelsohn (one of the founders of the ‘discipline’ of victimology) placed the Holocaust and associated atrocity crimes squarely within the orbit of victimology (Hoffman 1992). In constructing the term ‘victimology’ Mendelsohn (1956) went on to identify a number of victimising contexts including ‘individual or collective oppression, [by] caste, social class or political parties, up to and including genocide or war crimes’ (Mendelsohn 1976: 17).

Whilst Mendelsohn’s work set the tone for a radical victimology centring mass oppression and victimisation, when taken alongside the work of von Hentig (another key figure in the emergence of victimology whose work focused on the rather more conservative concept of victim proneness), the tone was set for the emergence of positivist victimology associated with the development of the criminal victimisation survey (see inter alia Hindelang et al. 1978). In different ways, the work of Mendelsohn and von Hentig contributed to the development of a victim narrative (Walklate 2016) from the 1970s onwards. This narrative, though contested by the feminist movement both conceptually and methodologically, nonetheless, ‘leant itself easily to identifying the vulnerable (the elderly, the young, the frail, and so on) on whom it could be assumed that victimisation would take its greatest toll’ (ibid., 7).

For Lippens (2016) this emergent victim culture was deeply embedded in the post-world war era in which the sovereign (the powerful) differently elicited support for various and varied projects of power, from notions of a
dependency culture to the emergence of discourses of human rights. These practices provided the cultural spaces in which victims' voices were heard, or not heard, and go some way to offering an understanding of the conflation of the trauma narrative with the victim narrative in the form of ‘trauma creep’ (Walklate 2016) so present in contemporary debates. The following overview offers a flavour of the key policy and political developments framing this sovereignty as it developed in England and Wales.

1945–1975: Welfarism and the Politicisation of the Crime Victim

The early twentieth century was characterised by the demise in the role of the victim as an active participant in the criminal justice system (Godfrey 2018; Cox and Godfrey 2019; Cox, Shoemaker and Shore forthcoming). Of course, victims remained involved in the system since without them much of the work of the courts would cease to exist (Shapland 1986; Mawby and Gill 1987). However, victims lacked a political or policy voice. This began to change after the Second World War, notably through the work of influential justice reformer, Margery Fry. Her book, *Arms of the Law*, published in 1951, called for new means of reconciling the victim and the offender, and her writings later in that decade called for the creation of certain forms of victim compensation (Fry 1957). These interventions informed a political debate that eventually led to the creation of the Criminal Injuries Compensation Board (CICB) in 1964, modelled on the Workman’s Compensation Act and a similar scheme (the world’s first) introduced in New Zealand in 1963. The CICB was seen by all parties concerned as an extension of the post-war welfare state (Mawby and Walklate 1994) in the sense that it represented an extension of the state’s responsibilities for the welfare and protection of its citizens. Significantly, all of this happened without consultation with victims themselves. Mawby and Walklate (1994: 76) argue that the establishment of this scheme could be viewed as the final brick within the building of the post-war welfare state through its endorsing of ‘a logic built on notions of insurance, contract and individual responsibility’ although they also note that its eligibility criteria enshrined notions of deserving and undeserving victimhood. In his detailed analysis of the establishment of the CICB and its associated processes, Miers (1978, 2007, 2019) has pointed out that this also marked a new politicisation of the crime victim: a process which has continued apace since. In turn, Waller (1988) hailed these early CICB schemes as ‘trailblazers’ for victims and as policy mechanisms which many other countries subsequently adopted.

During the early 1970s, crime victims became more visible on the policy scene as a result of voluntary sector and related statutory initiatives. Most significantly, perhaps, a Bristol-based Victims-Offender group evolved into England’s first local ‘victim support’ scheme in 1974 – a model that relied on the police routinely sharing victims’ information with trained volunteers to enable an
offer of support to be made. In addition, the first women’s refuge had opened in Chiswick in west London in 1972, and the first rape crisis centre in north London in 1975. These initiatives relied much less heavily than the Bristol scheme on police information about victims and instead nurtured models of self-identification and referral. A Select Committee on Violence in Marriage, also in 1975, recommended that one family place per 10,000 residents should be available in a refuge. These emergent developments, shaped by the voluntary sector, were to play a major part in shaping policy responses to the victim of crime for the next 15 years.


Many of the voluntary sector initiatives of the early and mid-1970s were scaled up and formalised in the years that followed. The Bristol model of victim support was adopted across England and Wales and, by 1980, had developed into a federated organisation, Victim Support (first known as the National Association of Victim Support Schemes), that would go on to be part-funded by the Home Office. Working with a politically neutral image of the victim (Rock 1990) and aligning with Conservative government endorsement of voluntary action during the 1980s, the growth and development of Victim Support leant support to the power of the victim motif (Bottoms 1983).

Other key developments during the 1980s included the introduction of first neighbourhood and then national crime surveys that shed vital new light on the scale of unrecorded victimisation (Hough and Mayhew 1983, 1992). In relation to sexual violence, ‘rape suites’ were opened by many police forces following public outrage at a 1982 ‘fly on the wall’ television documentary featuring Thames Valley police officers interviewing a complainant of rape. The ‘rediscovery’ of child sexual abuse in the aftermath of a diagnostic scandal in Cleveland in northeast England in 1987 prompted some courts to offer the facility for children to give evidence by video-link in certain cases. Home Office circular 60/1990 reminded police officers of their powers of arrest for incidents of domestic violence following on from a Women’s National Commission Report set up by Margaret Thatcher. There were also legislative attempts to strengthen the potential for dispositions from the court to include compensation to be paid for the victim in the 1982 Criminal Justice Act, and the 1988 Criminal Justice Act. The 1988 Act introduced anonymity for rape victims for life following on from the experiences of Jill Saward, whose identity was revealed against her will by newspapers, following what came to be known as the ‘vicarage rape’ case in 1986. That legislation also introduced the possibility of appeals against unduly lenient sentences. Importantly, the introduction of the Crown Prosecution Service in 1985 marked a significant break with the past by separating the prosecution process from the policing process. Until that point, and unlike many other jurisdictions around the world (including
Scotland, much of Europe, and the United States), England and Wales did not have a clear system of public or state prosecution. Although a Director of Public Prosecutions had been created in the late nineteenth century, their role had been limited to overseeing a small number of prosecutions considered to be of national or political significance (see Cox, Shoemaker and Shore forthcoming; Rock 2004a).

All these initiatives were supplemented by the recommendations made in the first Victim’s Charter published in 1990. In many ways this Charter encapsulated the policy move from situating crime victims within a welfare response model to what can be described as a consumer model.

Mawby and Walklate (1994) were among the first to scrutinise the 1990 Victim’s Charter. Whilst it was considered by many to be a commendable attempt to offer an integrated framework for understanding the nature of the victim’s relationship with, and journey through, the criminal justice process, they argued that it was a non-binding code of good practice despite being presented under the rhetoric of more binding rights. Indeed, the enforceability of subsequent iterations of the Charter in the form of Victims’ Codes continues to be a challenge today (Cox, Lamont and Sunkin 2020). The Victim’s Charter framed victims as ‘consumers’ of the justice system in the same way that the Patient Charter of the same era framed General Practitioner (GP) and hospital patients as ‘consumers’ of the health system, and the Citizens Charter looked to empower citizens as individuals who, above all, exercised personal consumer choice rather than contributing to, and drawing from, collective welfare services. That said, it is also worth noting that the CICB was put on a statutory basis in 1996 becoming the Criminal Injuries Compensation Authority (CICA) with the consequent curtailing of discretionary payments to claimants (Miers 2007).

To summarise: by the early 1990s Victim Support had become the mainstream support model for victims of crime in England and Wales, with similar schemes having been developed in Scotland and Northern Ireland. The work of Victim Support had grown apace through the piloting or sponsoring of ‘demonstration projects’ that evidenced its expertise. Such projects focused attention on particular challenges, such as the families of murder victims, the victim/witness in court, children as victims of crime, racial harassment as well as rape and domestic violence. Whilst feminist activist voices that had inspired earlier provision for victims of domestic and sexual offences were still present, the rise of Victim Support arguably resulted in the marginalisation of those voices at this time within policy-making circles since they were not represented in the same way or to the same degree. Nevertheless by the time New Labour came to power in 1997, awareness of the impact of crime on the victim, and the importance of the victim as a witness for the criminal justice system, was much more fully recognised and supported by data gathered by victimisation surveys (Walklate 2007). The 1998 Crime and Disorder Act added a new dimension to the policy presence of the victim by making a strong play for restorative justice.
At the turn of the twenty-first century, the policy pre-occupation with the victim of crime was crystallised into a rebalancing agenda as articulated in the government White Paper Justice for All (Home Office 2002). Rock (2004b) intimates that Jack Straw, the then Home Secretary, interpreted the Human Rights Act 1998 as giving entitlements to protection for victims as well as for suspects. When combined with a presumed greater willingness to listen to women’s experiences of the criminal justice system in pursuing complaints of rape, alongside the unfolding legacy of the 1999 Lawrence Inquiry report by William MacPherson into the killing of black teenager, Stephen Lawrence, in south London in 1993, these developments contributed to a review of the overall policy direction in relation to victims of crime.

Thus, the special measures introduced for vulnerable or intimidated witnesses under the Youth and Justice and Criminal Evidence Act 1999 marked the beginning of a decade of policy activity directed at support for victims and witnesses. (For more detail on the special measures introduced, see Fairclough and Jones 2018:215–17.) The Criminal Justice and Court Services Act (2000) introduced the National Probation Service and confirmed the re-orientation of that service towards victims of crime, first signalled in the 1990 Victim’s Charter. In 2001, the Crown Prosecution Service introduced the Direct Communication with Victims scheme, and in the same year, the Victim Personal Statement scheme offered a new means of court participation. The ‘No Witness No Justice’ project in 2003/04 established Witness Care Units, and the Domestic Violence, Crime and Victims Act followed in 2004. This legislation created a statutory Victims’ Advisory Panel and statutory powers to create a (further) Code of Practice for Victims of Crime (which became operational in April 2006) and a Victims’ Fund (supported by a levy from fines and fixed penalties for motoring offences) to support voluntary sector organisations dealing with the impact of serious offences. Importantly, the 2004 Act (section 52.2) defined the term ‘victim’ as ‘a victim of an offence, or a victim of anti-social behaviour,’ noting that it is ‘immaterial that no complaint has been made about the offence, or that no person has been charged with or convicted of the offence.’ This new definition was influenced by the 2001 European Union Framework Directive on the standing of victims in criminal proceedings, which had defined a ‘victim’ (in Article 1a) as a ‘natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State’ (EU Framework Directive 2001). These new definitions allowed a gap to open between ‘victims’ and ‘complainants,’ a development that would have important repercussions.

The Prosecutors Pledge followed in 2005; the Victims’ Advocates Scheme piloted in 2006–2008 and incorporated into the Victim Focus Scheme under the Crown Prosecution Service in 2007; Victim Support Plus was introduced
in 2007; and the Witness Charter in 2009. In 2010 a National Victims’ Service was launched with Victim Support at the helm. If we were to add to this list the range of policy and practice initiatives flowing from the Lawrence Inquiry, further efforts to address sexual violence, and the range and development of initiatives under the rubric of restorative justice, then the focus of activity around ‘victims’ and victimisation is impressive. Yet Louise Casey, the first Victims’ Commissioner appointed in 2010, still referred to the victim as the ‘poor relation’ of the criminal justice system. Such statements are clearly illustrative of the extent to which the politicisation of the victim had by this time become embedded in policy and political rhetoric but are also illustrative of deeper political and policy misunderstandings of what ‘rebalancing’ might mean.

Miers (2007:337) observed that the metaphor of ‘rebalancing’ the criminal justice system, whilst first used in the debates surrounding the establishment of the Criminal Injuries Compensation Board in 1964, is contentious. This is a metaphor that not only puts victims/witnesses (complainants) and offenders (defendants) in an oppositional relationship with one another (a relationship that may be more imagined than real), it also begs the question as to the purpose of the criminal justice system itself. In an adversarial system the case against the defendant is made on behalf of the state, not on behalf of the victim/complainant per se. So, the observation made by McBarnet (1983:300) some time ago, that if the victim feels that no one cares about his/her pain, it is because, institutionally, in an adversarial system, no one does, remains pertinent. This central problematic also raises the questions of what or who is being rebalanced and in what direction?

Interestingly, and more recently, support services have undergone further significant change as a result of the introduction of Police and Crime Commissioners through the Police Reform and Social Responsibility Act (2011). By 2010–11 Victim Support was costing government £57.8 million per year (Shapland 2018) and it was also running the Witness Service aiding primarily prosecution witnesses giving evidence in court. Having been subjected to increasing demands for tighter accountability and requests for output measures, this national service was finding it increasingly difficult to continue with its original goals and service coverage (see the chapter by Mawby in this volume). The introduction of local commissioning of victim services under the auspices of Police and Crime Commissioners (PCCs) has had, and will continue to have, a significant effect on support services for victims of crime. In the first round of commissioning Citizens Advice secured the Witness Service, the Salvation Army services for trafficked victims, Rape Crisis for rape victims, Women’s Aid and Refuge for domestic abuse and Victim Support secured the homicide hotline. Other victim services (burglary and so on) are localised under the auspices of PCCs and as Simmonds (2016) has illustrated such services are variable, patchy, and contingent upon PCC priorities.

One of the aims of ‘rebalancing’ the system was to seek ways in which the victim might receive better, or more favourable, treatment within the criminal
justice system. Yet recent developments stand somewhat in contrast with, or at least raise questions about, the ability to deliver on this. Moreover, if the State is institutionally the victim, as it is in an adversarial system, how might the desire for better or more favourable treatment for the victim of crime be translated into practice? Importantly, what might all these questions imply for what is understood as victims’ ‘access to justice.’ At this juncture (and ending this review in 2015) service delivery for victims of crime has arguably gone back to the future, carried by a politics of amnesia.

Understanding Access to Justice

Cappelletti and Garth (1978) suggest that a society with good ‘access to justice’ is one with fair criminal justice and legal systems which are accessible to all and deliver outcomes which are individually and socially just. A growing number of studies are exploring this concept as it relates to victims of crime. Some draw on procedural justice approaches centring the concept of legitimacy, exploring victims’ trust in justice agencies, and exploring public compliance and cooperation with the law (Jacobson, Hunter and Kirby 2015; Hough and Sato 2011). In broad terms, procedural approaches explore the fairness of processes implemented by agencies in positions of authority. When victims assess the legitimacy of those in such positions, they tend to be more concerned with how they are treated as individuals, rather than with the actual outcome of the encounter (Thibaut and Walker 1975; Lind and Tyler 1988). Procedurally oriented research on victims’ participation in the criminal justice system also suggests that victims’ treatment within that system can impact both on their own recovery and their perceptions of that system (Elliott et al. 2011; Cattaneo and Goodman 2010; Wemmers 2008). Further studies have focused on the need for vulnerable victims to seek access to the law as a means of securing their safety (Clarke, Williams, and Wydall 2016). Overall, this body of existing work argues that understanding the experiences of different groups of victims and their different interactions with criminal justice agencies is fundamental to understanding, and securing, access to justice for them.

This collection seeks to extend a critical and broader geographical approach to the concept of victims’ access to justice. One striking theme of our overview of victim–related policy in England and Wales from 1945 to 2015 is the ever-increasing politicisation of the figure of the victim of crime and their relationship with, and experiences of, the criminal justice process has taken place despite the fact that very few victims of crime ever encounter the criminal justice system (Walklate 2012). As crime surveys over the last thirty years have shown, many victims of crime are either unable or unwilling or prefer not to report alleged offences against them. Where victims do report, and a police investigation initiated, very few cases go on to be prosecuted (Cox, Impara, Lamont and Walklate 2021). The attrition dynamics of police and prosecutorial decision-making have been much researched (see, for example, French 1977;
McConville, Sanders and Leng 1991; Hohl and Stanko 2015). Whatever the causes, some victims do not, or are unable to, seek access to justice if we define this in terms of access to the law. By contrast, other victims and campaigns around them can exert a very powerful and often highly politicised policy influence (see, for example, Barker 2007; Ginsberg 2014; Walklate 2016). In this sense, access to justice can be clearly partial, partisan and contested, and subject to different forms of ‘justice gap.’

A second theme emanating from the above overview centres on the high level of policy activity characterised by implementation failure. This generates a different way of thinking about access to justice that focuses on ‘implementation gaps.’ For example, Jan Van Dijk and Marc Groenhuijsen (2018) consider the extent to which compliance with the European directive on minimum standards on the rights, support, and protection of victims of crime has been achieved. Using the results of desk research on developments in law and data from recent rounds of the International Criminal Victimisation Survey (primarily from 2005 and 2010), they suggest that whilst there has been substantial legal compliance, implementation of, and victim satisfaction with, implemented policies shows a significant lag. Even in those countries whose responses to victims have been in place for some time (like, for example, the Netherlands and the United Kingdom), satisfaction levels with service delivery remain somewhat stationary, and the authors introduce the interesting concept of ‘victim fatigue’ as a possible explanation for this finding (see also Cox, Impara, Lamont and Walklate 2021). Further exploration of the implementation gaps they comment on might lead to a more detailed consideration of the role of history and the cultural context in making sense of these gaps (see also Booth and Carrington 2018 on Australia; and Walklate and Brown 2011 on implementation gaps in the sexual violence policy field).

However, also at play here is a fundamental ‘conceptual gap’ located in the space between different conceptualisations of ‘the victim.’ As noted above, the English and Welsh adversarial criminal justice system is organised – until the point that a verdict is reached – around complainants/witnesses and defendants, rather than around victims and offenders. Indeed this is a fundamental principle of many justice systems around the world. Victimhood as defined by the 2004 Domestic Violence, Crime and Victims Act presumes a version of social reality which may not in fact be borne out by available or admissible evidence. Put more simply, the historical politicisation described above may have so blurred the boundaries between victim experiences and adversarial criminal justice processes that those involved in developing victim policy find it very difficult to engage with both of these at the same time. It may be instructive here to consider an insight from an early evaluation of criminal justice interventions. A 1978 article by US policy scholars Lewis and Greene identified three reasons why such interventions often failed to fully deliver: first, ‘programmatic overexpectation,’ often amplified by ‘overadvocacy,’ could exaggerate ‘expectations of success’; second, ‘conceptual failure,’ caused by inconsistencies within the underlying
conceptual or theoretical framework of the intervention, could weaken that intervention; and third, ‘implementation failure’ could result when the ‘causal impact model’ underpinning the intervention could not, as a result, be coherently developed or tested (Lewis and Greene 1978:168). Coming back to the present, defining, delivering and monitoring ‘access to justice’ for victims today is certainly challenging. The tensions between current conceptual frameworks of victimhood need to be exposed and explored, in part through a deeper engagement with the history of those frameworks. Similarly, the tensions between assertions of victims’ rights and mechanisms for implementing and enforcing those rights need to be more fully acknowledged. Finally, processes of politicisation need to be understood in both their past and present contexts.

About This Book

The chapters in this collection take a broad approach to the issue of access to justice. Whilst some draw on aspects of the procedural approaches outlined above, others look beyond these to more experiential approaches.

Section 1 explores the insights from recent historical research into victims of crime. The opening chapter by Lamont examines developments in law and policy surrounding adversarial prosecution in England from the mid-nineteenth to the mid-twentieth century. It traces the gradual means by which, ‘without reflection or design,’ victims moved from a primary role as prosecutors to a much more minor role as third parties in adversarial criminal proceedings. It suggests that by the late-twentieth century, the victim of the offence did not feature in the underpinning conception of the Crown Prosecution Service which was instead concerned to remedy the patchwork system of state prosecution that had developed through ad hoc means. Lamont argues that this lack of focus on the victim underpinned the lack of formalised status and limited participation attributed to the victim of crime in trial processes in England today. The lack of a formal legal structure left the victim of crime to legitimate state prosecution of the defendant without having a clear stake in the outcome of any trial (see also Miers 2019:29). Efforts to enhance victims’ participation in adversarial proceedings today are prompted, in part, by these historical developments.

The chapter by Shore and Williams draws on victim engagement with criminal trials in twentieth-century London. It analyses key trends in a data set created from Times newspaper reports of over 2,000 Old Bailey trials that took place between the 1950s and the 1970s, focusing on the engagement and representation of victims who might be variously regarded as ‘divergent’ or ‘non-ideal’ (drawing on Christie 1986). The chapter seeks to fill a gap in historical and criminological understandings of victimhood in England and Wales, noting that few studies have addressed twentieth-century trial experiences. The chapter compares the representation of three different groups of ‘divergent’ victims: women and girls who experienced sexual offences; ‘homosexual’ men