

Victimology and Victim Protection:

*Developments, Trends
and Future Perspectives*

- Introduction: Origins and development of victimology
- Areas and findings of empirical victim research
- New areas of victim research
- International victim policies

Introduction: Origins and Development of Victimology

- Initiated in the USA, late 1940s:
→ *"The Criminal and His Victim"* (Hans von Hentig)
- Adapted in Europe and Germany, late 1960s/early 1970s:
→ *"Das Opfer und sein Täter"* (Hans Joachim Schneider)
- 1980s all over (Western) Europe: Re-discovery/renaissance of the victim in criminal law
- Criminal-political movement, however with strong links to empirical research
- Foundation of the World Society of Victimology, following the 2nd International Symposium on Victimology in Zagreb (1985)
- Followed by the setting-up of various national, regional and local NGOs with different agendas, e.g., VDS
- Outcome: Substantial reforms in substantive and procedural criminal law, social law, and other areas of law



Areas and Findings of Empirical Victim Research



- The victim as provider of data on crime
 - New, additional approach besides the 'classical' research into the dark field
 - Victim surveys as new method of access
 - Originally focused on the measurement of victim rates (as accurately as possible)
 - Methodological problems (of measurement) were the main concern: sampling, selective forgetting, under-/over-reporting, telescoping
 - Substantive dimension of those phenomena (i.e., seen as an indicator of the individual relevance of victimizing events) was neglected for a long time

- The victim as provider of data on crime
 - Life perspective: (total) absence of victim experiences is statistically rather rare
 - Five year prevalence rate (remembered personal experience) often between 30 and 40 percent
 - Incidence rates > 1
 - Re-/multiple victimization dynamics
 - Small proportions of 'chronic' victims

Areas and Findings of Empirical Victim Research

- The victim as actor of social control
 - Gate keeper to formal criminal control
 - Motives for reporting
 - Motives for non-reporting



- The victim as 'co-producer' of, and participant in, crime
 - New attention to interactionist as well as to situative approaches
 - Combination of data from self reported delinquency and victim surveys:
 - » frequent status change offender – victim
 - » overlapping offender – victim roles
 - » victim-offender sequence (career)
 - Media picture of the mere 'innocent' victim is a stereotype, often even an artificial construct
 - Consequences for criminal law: Consideration of victim responsibility in sentencing? (reduction of guilt?)
 - Exclusion of victims with criminal records from victim protection?

- Subjective impact of victim experiences
 - Individual coping skills
 - Substantive dimension of forgetting/non-forgetting
 - Importance of the individual characteristics of the victimizing event and the victim
 - Impact of different categories of crimes: contact versus non-contact crimes; sexual crimes; burglary
 - Victim/non-victim status as isolated (artificial) variable cannot explain any effects on perceptions, needs and expectations of probands
 - *'The'* (general, generalizable) victim does is a fiction that does not exist in (empirical) reality

- (Basic) expansions of the victimological perspective
 - Expansion of the dimensions of victimization
 - » secondary victimization
 - » tertiary victimization
 - Expansion of victim typologies (according to the degree of involvement)
 - » direct victims
 - » indirect victims (*indirect victims as "co-victims"*, H.-J. Schneider)
 - Expansion according to the subjective perception
 - » real victims (victim as legal/penal category)
 - » self-perceived victims of all kinds of violations of dignity (victim as purely victimological category)

- Subjective perception of the risk of victimization
 - Research on fear of crime
 - Own area of victim research
 - Development of uniform, comparative survey methodologies (the 'standard items')
 - Different dimensions of fear of crime
 - Different correlates of fear of crime
 - Objective situation versus subjectively perceived risks
 - 'Crime perception paradox'

- Dimensions of fear of crime
 - Emotional

"are you fearful at night in your neighbourhood?"
 - Cognitive

"to what extent of probability do you expect you might become a victim of (certain) crime in the coming 12 months?"
 - Behavioral

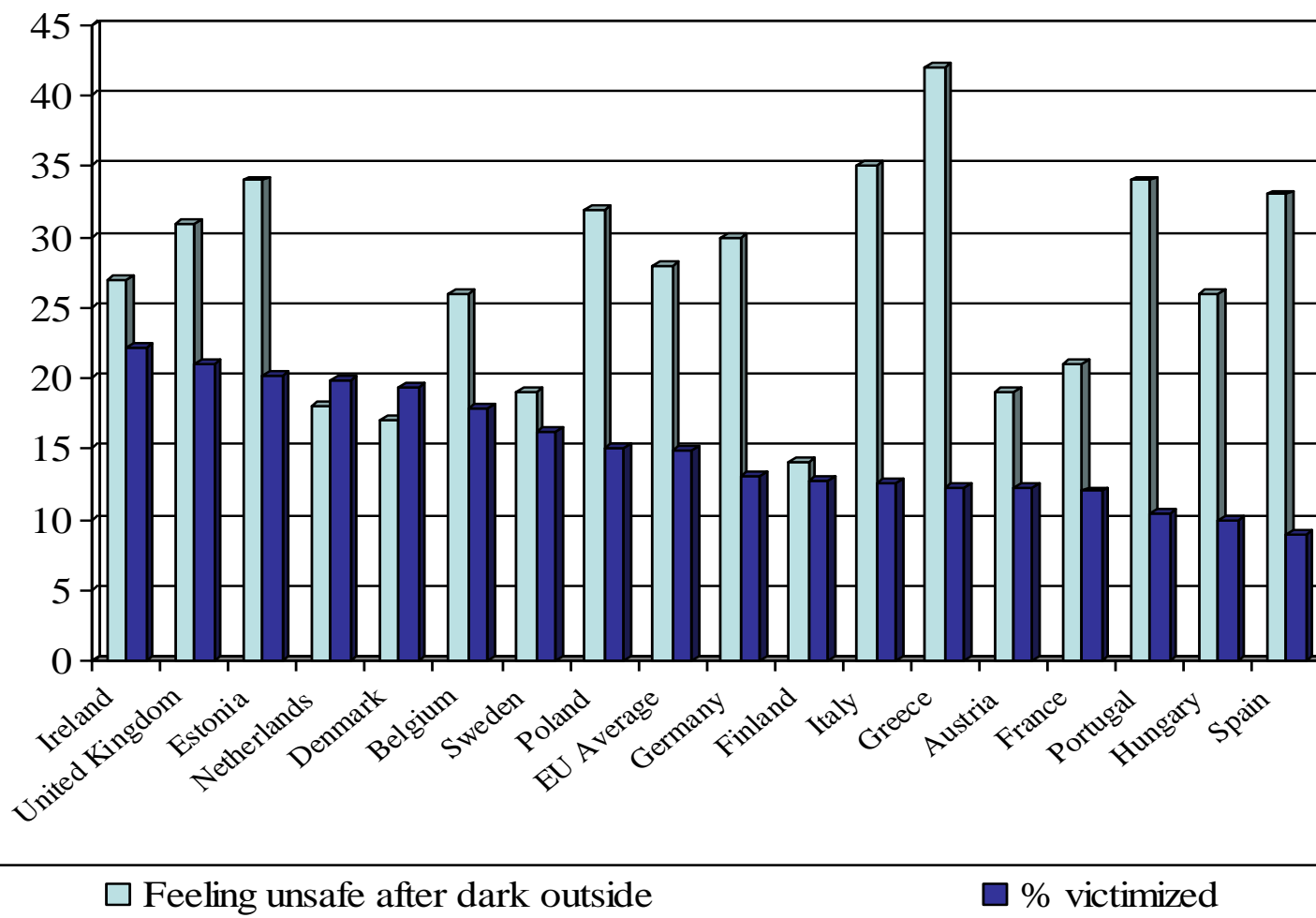
"would you mind undertaking a walk through a dark park at night?"
"did you implement any technical measures of protection against unlawful entry to your apartment?"
"do you have a weapon at home?" (USA)



- Correlates of fear of crime
 - Gender
 - Age
 - No significant effects: general victim/non-victim variable
 - 'Crime – fear paradox'

Areas and Findings of Empirical Victim Research

- Victimization vs. fear of crime (ICVS 2005)



- Impact and significance of fear of crime
 - Negative, normal, or perhaps even positive?
 - Can help to develop realistic assessments of actual risks and to exercise avoiding strategies
 - Significant parameter for (community) prevention policies
 - Important variable in the context of socio-ecological research approaches
 - Still controversial and unsolved phenomenon: crime – fear paradox

- Victims' needs and expectations
 - Related to the personal situation
 - Crisis intervention
 - Reducing/avoiding secondary victimization and re-traumatization
 - Financial restitution/compensation
 - Related to the treatment of the offender
 - Sanction-related expectations
 - Intervention more important than harsh punishment
 - Protection against re-encounter with offender

- Victims' needs and expectations
 - Related to criminal proceedings
 - Information
 - Options for more direct participation
 - *"Procedural justice"*
 - Related to the outcome of proceedings
 - Public acknowledgement of the violation (legal wrong)
 - Public acknowledgement of the offender's responsibility
 - Rather moderate expectations regarding punishment
 - Compensation, conflict resolution (mediation)
 - *"Just outcome"*

New Areas of Victim Research

- (Further) expansions of the victimological perspective
 - International comparative research
 - Regional studies
 - Focus on new groups of victims
 - Shift from micro- to macro-victimological perspective
 - Victim-oriented reform of the systems of penal sanctions
 - Victims in the context of theory of punishment
 - Victim protection beyond criminal investigations and criminal proceedings (e.g., tort law, proceedings at civil courts in general; Kilchling 2017, forthcoming)
 - Victims in the context of crime prevention (Haverkamp & Kilchling 2017)

- Increased attention to particular groups of victims
 - Sexual abuse of minors
 - Domestic violence
 - Hate crime
 - Organized crime
 - Terrorism
 - Marginalized groups, ethnic minorities, foreigners
 - Victims of (civil) wars and other large scale conflicts
 - Refugees (see Kilchling, Freedom From Fear Magazine, issue 12/June 2016, <http://f3magazine.unicri.it>)

- From micro- to macro-victimological perspective
 - New dimension of victimization (quantitative)
 - New typology of victims (qualitative)
 - Individual victims
 - Collective victims
 - Special needs and expectations
 - More adequate attention for, and representation of, victims in trials at international courts (ICTY/ICTR vs. ICC)
 - Individual victims
 - Collective victims

- From micro- to macro-victimological perspective
 - Relevance of restitution/reparation in the context of international crimes (ICTY, ICTR, ICC)
 - Individual victims
 - Collective victims
 - New area of attention for restorative justice mechanisms in the context of post-conflict societies (particular peace-making potential, John Braithwaite)
 - replacing regular penal intervention (e.g., in South Africa)
 - amending penal procedures (e.g., in Rwanda)
 - *not applied in the Balkan region*

International Victim Policies

- The position of the victim is under transformation, upgrading him/her from a mere 'personal piece of evidence' to a legal subject endowed with a variety of explicit (legal) rights
- Different categories of rights can be distinguished
 - Information
 - Support
 - Protection
 - Assistance
 - (Legal) representation, (active) participation in trial
 - (State) compensation

Major International Actors

- UN
- Council of Europe
- European Union



- UN
 - Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

Article 1

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Article 2

A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization

Article 3

The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

Article 18

"Victims" means [further] persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

- Two main political actors who are in the position to launch framework legislation
 - Council of Europe (CoE)
 - » *'Europe 47' (including Turkey and other non-EU-countries)*
 - European Union (EU)
 - » *'Europe 28'*

- CoE Acts
 - European Convention on the Compensation of Victims of Violent Crimes (1983)
 - Recommendation 85(11) on the Position of the Victim in the Framework of Criminal Law and Procedure (1985)
 - Recommendation R (99) 19 Concerning Mediation in Penal Matters (1999)
 - Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters (CEPEJ(2007)13, 2007)
 - Recommendation 2006(8) on Assistance to Crime Victims (2006)

- EU legislation
 - *Framework decision on the standing of victims in criminal proceedings (2001/220/JHA)*
 - Directive relating to compensation to victims of crime (2004/80/EC)
 - Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EC)

- Founded in 1949 as an international organisation promoting a closer co-operation of all European states
 - Main areas of activity
 - » Human rights
 - » Democratic development
 - » Rule of law
 - Instruments: Conventions (= treaties), Recommendations
 - European Convention on Human Rights; CPT; European Court of Human Rights (Strasbourg)
- ≠ *European Union*
- » *EU is not yet a member of the CoE*



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→ **Victims' rights as a human rights issue**

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- Under the Lisbon Treaty the primary power to enact binding legislation regarding – specified – matters of criminal law and criminal procedure shifted from the national parliaments to the EU
 - » New legislative EU powers include, inter alia, the area of victims' rights (art. 82.2 TFEU)
 - » Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EC)
 - » Aim: implementation of uniform legal rules regarding the availability of support, protection and other rights (minimum standards) for all persons who were victimized within the EU – independent of a victim's nationality or residence
 - » Implementation in the Balkan region (and beyond) still to be evaluated

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 - » Directive establishing minimum standards on the rights, support and protection of victims of crime (2012)
- **Victims' rights as a matter of legal harmonization**
- » Implementation of uniform legal rules regarding the availability of support, protection and other rights (minimum standards) for all persons who were victimized within the EU – independent of a victim's nationality or residence
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Nagyon köszönöm – thank you!

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