

“Victims’ Rights” As a Stalkinghorse for State Repression

Paul Wright

How the ruling class defines and punishes “crime” goes a long way towards demonstrating whose class interests are being served by the criminal justice system. The criminal justice system in the United States is used as a tool of social control to ensure that dangerous classes of people, primarily the poor, are kept disorganized, disoriented and otherwise incapable of mounting any serious, organized challenge to the political and economic status quo (D. Burton-Rose, D. Pens and P. Wright, 1998).

A key component of this strategy is to first define crime so that the poor are overly included and the wealthy and powerful are largely excluded and weeded out of the arrest, prosecution, conviction and imprisonment cycle. For an excellent discussion of this process, see J. Reiman (1978), *The Rich Get Richer, The Poor Get Prison*.

The flip, and equally important side of this process lies in defining who is a victim and who is not. At different levels some victims are defined as “worthy,” others are not. Recent years have seen increased activity by victims’ rights groups as well as legislatures who loudly claim concern for the victims of crime. While more questions than answers exist on this complex issue, to date, “victims’ rights” has been used primarily to expand state power and repression in a manner that police and prosecutors would otherwise have been unable to do directly (Elias, 1993).

The first step lies in defining who “the victim” is. An illustrative example are the steps being taken to add a victims’ rights amendment to the U.S. constitution. This amendment would require that prosecutors notify victims of any court hearings involving the defendant, give victims an opportunity to speak at sentencings, be consulted about plea agreements, et cetera. This amendment is due to be voted on by the U.S. Senate in the near future. A key change made after the bill was introduced was to define the term “victim” to include only the victims of violent crime. The victims of economic and property crime are excluded from coverage by this amendment. Since more people are victimized by economic and property crime than violent crime, apparently that victim majority is not worthy of protection.¹

The thousands of people bilked out of their life savings by the likes of fraudulent scamsters Charles Keating and Jim Bakker are among those

not considered worthy of protection as victims. Just as criminal activity by corporations and the wealthy is effectively decriminalized through lax enforcement of the laws or diversion into the civil justice system, so too are the victims of predation by corporations and the wealthy "devictimized." Workers killed in accidents that result from a company's cost cutting measures to maximize profit are not victims. Consumers killed by dangerous products knowingly marketed by corporations to make more money are also not victims.

A miner killed because his employer cut costs on safety measures is not a victim. His widow who loses her life savings due to fraud by bank owners is not a victim, even having her car stolen by local thieves does not make her a victim. But, if she is robbed at gunpoint of five dollars, she is now a victim worthy of constitutional protection.

GOOD VICTIMS AND BAD VICTIMS

Various studies have shown that a majority of incarcerated sex offenders were themselves sexually abused when they were children. At what point do the sexually abused cease being victims and become criminals? When they are arrested?

Getting beyond the defining of who is an official victim and who is not, lets examine the victims of violent crimes against the person (murder, rape, robbery and assault with bodily injury). Here the key issue defining a person as a victim is not merely a matter of economic loss but the key issues of the identities of the victim and the victimizer. Or, not all victims are equal.

A point raised by some prosecutors opposed to the constitutional victims' rights amendment, which has been largely ignored by the media, is that a substantial number of violent crime victims are themselves criminals with their injuries being the result of dispute settling among members of the lower class criminal element.

Sammy Gravano was given immunity for the murder of 19 of his fellow mafia compatriots, in exchange for his testimony against John Gotti. Obviously police and prosecutors and a judge decided that Gravano's 19 murdered mafia victims were not worthy of the definition. Under a victims' rights amendment would the families of Gravano's victims be allowed to speak out against his five year plea bargain sentence? When one drug dealer shoots another in a dispute over money or turf does the slower shot now become a victim?²

Every day across the U.S. police and prison guards kill, beat and brutalize the citizenry. Prisoners are also assaulted, sexually and otherwise, and subjected to bodily injury by their fellow prisoners and prison staff. However, the political establishment is not calling on rights for these victims. Abner Louima, a Haitian immigrant in New York City who was sodomized with a police truncheon in a police station bathroom by New York's Finest, is not referred to as a "crime victim." We never heard the term "crime victim Rodney King" because even when police are convicted of criminal acts, to call the brutalized people "victims" necessarily implies the police perpetrators are criminals. And we cannot have that.³

The political problem for the advocates of "victims' rights" becomes even greater when prisoners suffer injury. The political discourse that has been created around "victim rights" steadfastly implies what it cannot openly say: "worthy" victims are nice, middle and upper class people, usually white, who are raped, robbed or killed by poor, violent strangers, especially Black or Latino strangers. If the police, media and politicians have made the universal face of crime that of a young black or Latino man, they have also strived mightily to make the face of the universal victim that of a middle or upper class white woman or child. Brutalized prisoners do not advance this political agenda. Hence, there is no concern whatsoever for the prisoner who is raped, robbed, beaten or killed, whether by prisoners or prison staff. Not surprisingly, no one speaks of "victims' rights" for the prisoners subjected to violent crimes against their person.⁴

Then we reach the forgotten victim: people wrongfully convicted and imprisoned or executed. Whatever one says or thinks should be done with people convicted of a crime, however crime is defined, what about the innocent? Some studies estimate that 1 - 2% of criminal convictions each year are wrongfully obtained, not in a legal sense, but as a matter of fact: the accused did not commit the crime for which they were convicted (Wisely, 1994). Recent cases in Philadelphia where hundreds of prisoners were released after successfully showing they had been set up and convicted on false drug charges by corrupt police are but one example.⁵ Whatever the actual numbers, as a matter of statistical probability, of 1.8 million people imprisoned in U.S. prisons and jails at least some are factually innocent. Few defenders of the criminal justice system claim it is infallible.

The U.S. Supreme court has held that it does not violate the U.S. constitution to execute the innocent, so long as the condemned received a "fair trial." Justice Blackmun commented that executing the innocent "bordered" on simple murder.⁶ If innocent people are convicted, imprisoned or executed for crimes they did not commit are they too not victims? Victims of a system no less, for unlike individual crimes committed by people acting alone, imprisoning and executing the innocent requires collusion by the police, prosecutors, judiciary, and sometimes juries and the media, to accomplish its end result. To call the imprisoned and executed innocents "victims" would call into question whether or not the entire criminal justice system is a victimizer.

A large part of the problem with defining who is and who is not a "victim" lies with the degree of impunity the perpetrators receive. Not surprisingly, brutalized prisoners and citizens and the wrongly convicted who suffer at the hands of police, guards, prosecutors and judges are not considered worthy of the title "victim" because the victimizing institutions of social control, prisons, police, judiciary and prosecutors, are rarely if ever held accountable for their misdeeds. People cannot become a "victim," not a worthy victim anyways, unless the social and political decision is first made by the ruling class to have a "criminal." Thus the same reasoning applies to why people who suffer economic and physical harm due to the predation of the wealthy and corporations are also not considered worthy victims.

THE POLITICS OF VICTIMS' RIGHTS

The political use of the victims' rights movement is seen by the rise of this movement as part of the overall trend towards increased state repression that began in 1968 but which accelerated markedly with the Reagan presidency. Virtually all the well funded victims' rights groups receive substantial portions of their funding directly from law enforcement agencies or groups linked to such agencies. The result, intended or not, is that these groups tend to parrot the party line of more police, more prisons, more punishment, more draconian laws. The Doris Tate Victims Bureau in California receives 85% of its funding from the California Correctional Peace Officers Association, the union which represents prison guards.⁷ The union also provides the Bureau with free office space in its Sacramento headquarters. Not surprisingly, the Bureau likes what

the union likes, especially things like “3 Strikes” laws which will help ensure full employment for prison guards.⁸

The net result is that those with the biggest vested interest in maintaining and expanding the prison industrial complex, police, prosecutors and politicians, eagerly use “victims’ rights” groups as their stalking horses to expand repressive state police power in a manner that would seem crassly self interested if they did so directly.

It is important to note, however, that not all victims’ rights groups fall into this category. Murder Victim Families for Reconciliation (MVFR) and the restorative justice movement are the most notable examples of victims’ rights groups that are not political pawns for those who seek to increase state repression. But, this also proves the point. Who thinks of MVFR or restorative justice when discussing victims’ rights? They are neither well funded nor well publicized. Because their goal of actually helping the victims of property and violent crime deal with their loss does not advance a broader political agenda for the dominant class they are largely ignored.

The current criminal justice system ill serves the victims of crime, all crime, not just that which the ruling class frowns upon, and it ill serves the criminal defendant. Most people who suffer the loss of property would prefer compensation to the thief’s incarceration. Of course, those robbed by the rich usually get neither compensation nor imprisonment as satisfaction.

For the victims of personal violent crime committed by poor individuals the current system offers only punishment. (Which any discussion with the majority of victims’ rights advocates quickly leads to the conclusion that no amount of punishment is ever enough). Punishment rarely gives the victim the closure or the perpetrator any type of empathy, understanding or rehabilitation. But as long as the purpose of the criminal justice system remains that of the tool of social control over the poor this is unlikely to change. Likewise, this is exactly what makes it unlikely that restorative justice will make inroads into the criminal justice system. Even less likely is that any organized voice will call for the inclusion of all victims of violence and theft, even if the perpetrators are agents of the state, the wealthy and corporations; even if the victims of these crimes are poor, imprisoned or socially disadvantaged.

For the foreseeable future victims will continue to be defined as the occasional white, middle and upper class person who is killed, raped, robbed or assaulted by a stranger who carries out this act in person.

Unless critics of the criminal justice system begin to question and expose the current role of the “victims’ rights” agenda its veneer of legitimacy and influence will go unchecked.

.....

PAUL WRIGHT IS A WASHINGTON STATE PRISONER AND THE CO-EDITOR AND CO-FOUNDER OF *PRISON LEGAL NEWS* (“PLN”). PLN IS A MONTHLY MAGAZINE REPORTING LEGAL AND POLITICAL DEVELOPMENTS AFFECTING THOSE INVOLVED IN THE CRIMINAL JUSTICE SYSTEMS. SUBSCRIPTIONS ARE \$25.00 (USA) FOR INDIVIDUALS; \$60.00 FOR INSTITUTIONS AND PROFESSIONALS, AND \$15.00 FOR PRISONERS. FOR A FREE COPY, CONTACT: PLN, 2400 N.W., 80TH STREET, #148, SEATTLE, WASHINGTON, U.S.A. 98117. WEBSITE: www.prisonlegalnews.org.

ENDNOTES

1. *The Nation* and the *New York Times* have reported extensively on this amendment since it was put forth.
2. The *New York Times* and *Time Magazine* covered Gravano’s deal and his testimony against John Gotti. [For Canadian example, see editorial in this issue].
3. For an analysis of The Abner Louima case, see the *New York Times* coverage and *Human Rights Watch* (1998).
4. Every issue of *Prison Legal News* contains verified accounts of violent crimes against prisoners.
5. For details of this case, see coverage in the *New York Times*.
6. See *Herrera v. Collins*, 113, s.c.t. 853 (1993).
7. The *Sacramento Bee* and *Los Angeles Times* have reported upon this connection.
8. See also, Wright, 1995.

REFERENCES

- Burton-Rose, D. (ed) with Pens, D. and Wright, P. (1998). *The Ceiling of America: An Inside Look at the U.S. Prison Industry*. A *Prison Legal News* book. Monroe, Maine: Common Courage Press.
- Elias, R. (1993). *Victims Still: The Political Manipulation of Crime Victims*. Newbury Park: Sage.
- Human Rights Watch*. (July, 1998). “Shielded from Justice: Police Brutality”. *New York Times*. Various, 1994-1998.
- Reiman, J. (1978). *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. New York: Macmillan Publishing Company.
- Wisely, W. (Oct. 1994). “The Forgotten Crime Victims”, in *Prison Legal News*. Seattle: *Prison Legal News*.
- Wright, P. (1995). “Three Strikes Racks ‘Em Up” in *Journal of Prisoners on Prisons*, Vol. 6, No. 2.