

Comparative research, as is well known, is thwarted with difficulties. Give those difficulties Nelken (1994) is right to ask the question, 'What is the point of doing research in comparative criminology?' The same question might well be asked of victimology. There are, of course, a number of points to engaging in comparative work, as Nelken goes on to argue, not least of which lies in the potential for the theoretical

Is a victim a victim a victim?

Sandra Walklate suggests that differing responses to victimisation across Europe reveal differing conceptions of the relationship between the citizen and the state.

development of the discipline. It is in this respect that much is to be gained from a comparative appreciation of criminal victimization especially in a European context. The social and political upheavals of the last decade have made what was 'Eastern Europe' a particularly interesting context from which lessons might be learned. The questions to be asked here might be, for example, how far do social structures and culture impact on crime victims and the

"In countries like Poland and Hungary for example not only is the notion of volunteering relatively alien but it is also quite difficult to engineer in changing economic circumstances which demand people take more than one job to survive economically."

availability of informal help; how do different legal and welfare systems influence the structure of formal services; how do political changes affect the future development of victim services with respect to state provision as compared with market forces? (Mawby, 1995). Answering questions such as these poses real enough empirical and methodological problems and reflects the underlying tensions between whether or not it is possible to construct a universally applicable conceptual framework in which to make sense of such findings. Put simply, and to borrow from Ellingworth et al. (1995); is a victim, a victim, a victim?

International comparisons

The 1992 International Crime Survey reports that one third of all victims of crime who did not receive help would have welcomed it, with levels of demand being particularly high in Poland and Czechoslovakia. Indeed, various directives from the United Nations and the Council of Europe over the last decade have operated with the presumption that it is possible to establish international standards of service delivery for victims of crime. Such international recommendations do not, of course, guarantee the delivery of such services and what has clearly emerged is that such support services have, internationally, emanated from the voluntary sector. This is the first juncture at which lessons can be learned from comparative work. The very notion of volunteering is highly problematic for former 'Eastern European' countries like Poland and Hungary for example. As Bienkowska (1991: 12) has stated;

'The emphasis in the West on the development of services for victims has not really found favour in the East because it was thought that victims' interests were already catered for by the state'.

Recognised policy differences

Not only does this quote alert

victimology to the importance of understanding the state and the relationship between the citizen and the state, it also points to the importance of contextualizing criminal victimization and policy responses to victimization within particular contexts as well as more universal tendencies. In countries like Poland and Hungary for example not only is the notion of volunteering relatively alien but it is also quite difficult to engineer in changing economic circumstances which demand people take more than one job to survive economically.

Some commentators might suggest that the relative absence of voluntary services for victims of crime in some European countries is compensated for by the different structural role provided for the victim within the criminal justice process. A number of countries offer circumstances in which the victim may bring a private prosecution should the state not wish to prosecute. This exists in England and Wales, Germany and Poland. An alternative prosecution role may be as joint or subsidiary prosecutor. This exists in former socialist countries such as Poland and what was Czechoslovakia, as well as the Netherlands, Germany, Austria and Sweden. Perhaps of more significance is the role played by the victim in those countries based on Roman law. This provides the opportunity for the victim to act as civil claimant in the criminal court and is known as the 'partie civile' in France, Belgium, Italy and Spain, and the adhesion procedure in Germany and the Netherlands. Despite these structural variations, there seems to be very little evidence of victims' power in the courts and, certainly nothing like the victim impact statement process characteristic of some of the states in the United States.

Another avenue in which there have been international developments in responding to the victim of crime has been the establishment of compensation schemes. The Council of Europe Convention on State Compensation for the Victim of Crime was opened for signature in 1983 and has been ratified by the U.K., Denmark, Luxembourg, the Netherlands and Sweden. It has

also been signed by Germany, France, Greece, Norway and Turkey. Again there are national variations as to how such schemes are managed, implemented, and backed by state legislation. Despite these variations, in most cases compensation is not offered as a right but as a reward for the 'deserving' victim. Such a distinction constitutes a surface manifestation of a deeper relationship. That deeper relationship returns us to the question of the relationship between the citizen and the state.

The citizen and the state

The brief excursion into what might be learned from developing a comparative victimology has demonstrated a number of different ways in which such comparisons might be constructed. In other words we can compare who the victims of crime are; we can compare the legal systems which offer different structural opportunities for the crime victim; or we can compare the kinds of services available to victims of crime. Each of these dimensions, in their different ways, reflect different conceptions of how a socially just society might be constructed. Underpinning these conceptions, and vital to the future theoretical development of victimology, are variations in the

presumed relationship between the citizen and the state. As political and economic processes continue to unfold across Europe it will be the nature of this relationship which will determine the kinds of policies and services which are put in place for the victim of crime. So whilst in experiential terms, a victim maybe a victim, maybe a victim; in structural terms those experiences are likely to be mediated by more fundamental processes.

Sandra Walklate is Reader in Criminology at University of Keele.

References

- Bienkowska, E. (1991) 'Crime in Eastern Europe', in M. Farrell and F. Heidensohn (eds) *Crime in Europe*. London: Routledge.
- Ellingworth, D., Farrell, G., and Pease, K. (1995) A Victim is a victim is a victim? Chronic victimization in four sweeps of the British Crime Survey. *British Journal of Criminology*, vol. 35, no. 3.
- Mawby, R. (1995) Final Report to the Research Council of Central Europe on a Comparative Study to Service Responses to Burglary Victims.
- Nelken, D. (1994) 'Whom can you trust? Questions for a comparative criminology', in D. Nelken (ed.) *The Future of criminology*. London: Sage.

The Labour party would remove the need for courts to ensure under 14's know right from wrong before convicting them; the Conservatives suggest that 17 year olds should once again be dealt with as adults. What light can jurisdictions in Europe throw on the likely reforms to the youth justice system in England and Wales?

The always difficult comparisons between legal traditions, judicial structures and correctional measures are even more complex in the juvenile field because of the role played

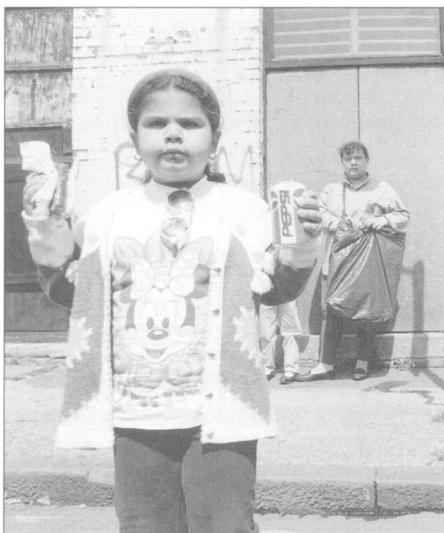
The age of innocence?

Rob Allen examines alternative approaches to youth justice in Europe.

in most countries both by penal and child welfare law.

Two issues stand out however. First, the ages of criminal responsibility in all three UK jurisdictions - 10 in England and Wales and Northern Ireland, 8 in Scotland - are in the lowest of three clusters among Council of Europe countries. Ireland, Greece, Cyprus, Malta, Liechtenstein and Switzerland also mark the age in the 7-10 range - the end of infancy.

More countries have chosen the onset of adolescence, in the range 12-14; France, Germany, Italy, the Netherlands, Austria,



Andrew Hughes

“Growing interest in the contribution of approaches such as Family Group Conferencing suggests that there may be widespread and fundamental dissatisfaction with punishment on the one hand and welfare on the other, however they are combined.”



Portugal and some of the countries of Eastern and Central Europe. At the top of the scale, the Scandinavian countries, Spain, Belgium, Luxembourg and some other Eastern countries do not put children before criminal courts until they are reaching the end of adolescence at 15, 16 or even 18.

There are no doubt many reasons for this variation, but at root, in most of Europe, young people must be a good deal older than in the UK before they are considered to possess the intellectual, moral or personal capacities needed to justify holding them to account through the criminal law.

Social maturity

Second, a number of countries have more extensive and robust safeguards than *doli incapax* for assessing the capacity of children above the age of criminal responsibility. In addition to establishing that a minor has 'discernment' (knows right from wrong in the case of the particular offence), courts in many jurisdictions must be satisfied that a minor has reached a level of social maturity in a much broader sense before convicting him.

In Germany, a minor under 18 is only penally responsible if at the moment of the crime his moral and psychological maturity is such that he understands the unjust nature of his action and that he can behave according to this understanding. If he is deemed immature, only welfare or educational responses can be made. In France, a penal

condemnation and sentence can only be imposed if the circumstances and personality of the juvenile demand it. In Italy, any accused must have the capacity to intend and exercise will before he can be convicted. A special assessment of the 'chargeableness' of those between 14 and 18 is conducted before any penal sanctions can be imposed. Incapacity derives not only from an inadequate development of moral conscience, but insufficient development of intellectual skills and of willpower, (deemed necessary to resist temptation).

In much of Europe therefore, children between the basic threshold age of criminal responsibility, whatever that is, and 18 benefit from an intermediate zone which takes account of their differing stages of development. In England the narrow and fragile safeguard of *doli incapax* applies only to under 14's. A defendant above that age is presumed responsible and culpable 'entirely as if he were 40'.¹

At the top end of the age range, in Germany at least, there is in addition to juveniles (up to 18), a further category of 'adolescents' covering the age range 18-21. While in general held to be fully criminally responsible, if a judge decides that a defendant has a moral or mental development comparable to a juvenile, or the case is a typically youthful offence, he can be dealt with under juvenile justice law. This appears to happen a great deal in practice, even in more serious cases.

Community responses

As for measures for juvenile offenders, there has been a move to strengthen community based alternatives to prosecution and custody in several countries. The HALT programme in the Netherlands was commended by the Audit Commission in *Misspent Youth*,² while the system of

social contracts in Denmark was seen as worthy of further exploration by the Home Affairs Select Committee in 1993.³ Perhaps surprisingly, a number of countries allow children younger than 15 to be sentenced to prison; in France, Germany, Italy and the Netherlands prison is available for all above the age of criminal responsibility, although in practice it is used with restraint.

The backlash against juvenile offenders seen in Britain since 1993 has not been entirely absent abroad. Norway for example saw demands for a crackdown on persistent young offenders in the early 1990's.⁴ More constructively, several Northern

European countries have begun to introduce interventions based on the aims of restorative justice.

Conciliation between offender and victim is common in Finland and Norway, while initiatives in Belgium and Holland have been established to encourage juveniles to take responsibility for their action, and to make amends either to the particular victim or the community in general. Growing interest in the contribution of approaches such as Family Group Conferencing suggests that there may be widespread and fundamental dissatisfaction with punishment on the one hand and welfare on the other, however they are combined.

Rob Allan is Director of Policy Research and Development at *NACRO* and author of *Children and Crime - Taking Responsibility* published by the Institute of Public Policy Research earlier this year.

References:

1. Smith (1845) 1 Cox cc 260 per Erle J
2. *Misspent Youth* - Audit Commission 1996
3. *Report on Juvenile Offenders* 1993
4. Allen R *Responding to Youth Crime in Norway* Howard Journal. Feb 1993

1996 CJM Back Issues

"I think CJM is one of the unappreciated gems"

Roger Graef, Film-maker and author

1996 Back issues at £3.00 (UK p&p included)

- Sport & Crime
- Debating Drugs
- Crime & Justice USA
- Law and Order Politics (£4.00)

Order from Julie Grogan, ISTD, King's College, London, Strand, London WC2R 2LS.

Cheque with order please.

Bulk orders: 10-50 (discount of 50p per copy)
50+ (discount of £1 per copy)

Why not subscribe now?

See back cover for details.