**Chapter submission: Mary Corcoran**

**M.Corcoran@keele.ac.uk**

***Bereavement work in the criminal justice system.***

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**Bereavement work in the criminal justice system**

This chapter considers the false demarcation that operates in practice between the administration of criminal justice and the inadequacies in the system when faced with managing the personal elements of bereavement. From a criminological vantage point, the justice system appears to be indecisive in handling emotions arising from loss through death, despite the fact that acknowledging such emotions is essential to the very structures of justice. This leads to the curious neglect of bereaved people on the part of the criminal justice system. I will examine how bereavement work is sidelined from the overall process of justice, despite its essential role. The concept of secondary victimisation is central to understanding the marginalisation of the experiences of the bereaved (Walklate, 2007). Secondary victimisation occurs when the perspectives, needs, or involvement of victims or bereaved people are disregarded, which compounds their initial (or ‘primary’) victimisation caused by the original crime. Secondary victimisation occurs because the institutional culture of the criminal justice system is primed to investigate, prosecute and sentence offenders. Victims, the bereaved and their losses are unintentionally marginalised as ‘collateral’ in the justice cycle (Wolhuter et al. 2009). The chapter seeks to redress the analytical gap by examining the many ways in which the voluntary sector performs vital bereavement work both at different junctures in criminal justice procedures and by crossing ‘boundaries’ in offering support to all parties affected by death or homicide.

**Criminology and grief**

Criminology as a field of study and practice is essentially concerned with harmful or lawbreaking behaviour, its consequences for individuals and society, and the costs borne by harmers and the harmed. It is all the more surprising, then, that a sphere which is suffused by feelings of grief, loss, disgust, shame, outrage or anger, for example, is so inconsistent about the place of emotions in the development of our structures and concepts of justice. It is more accurate to suggest that loss, grief and bereavement hover in the background of criminological thought or they are relegated to the discrete sub-disciplines of victimology (Christie, 1977) or restorative justice (Braithwaite, 1999). In this sense, emotions are constant but often unspoken influences in myriad themes relating to crime, justice and punishment and restoration.

This is not to say that criminologists ignore emotions, but that it is to observe that they are rarely a direct and explicit object of inquiry, with some notable exceptions (Karstedt 2002: Karstedt & Farrall, 2007; Braithwaite,1989). According to these scholars, law and criminal justice systems are tasked to ‘deal with the most intense emotions and emotional conflicts, with individual as well as collective emotion’ (Karstedt 2002: 300). Susanne Karstedt (2002: 299) observed that the movement to bring ‘emotions back involves profound problems that go beyond the mere instrumental use of emotions in criminal justice’.

Karstedt goes on to identify three ‘core problems’ which are at the root of criminological contentions about the influence of emotions on systems of crime and justice. Firstly, there are questions about how the system deals with demands that, because emotional reactions are part of human experience, they ‘should occupy a prominent place in criminal justice’ (ibid: 305). Secondly, there are questions about how far strong emotions - such as empathy, intuition, disgust or shame - should be foundations for the moral principles of justice (ibid: 306). Thirdly, it must be seriously asked how far punishment should be weighted (if at all) against the perceived ‘authenticity’ of remorse or shame on the part of the perpetrators, or in relation to the victim’s emotional injuries and losses? In this vein, Karstedt asked, how should the criminal justice system deal with emotions that are invisible? At root, there is a tension between the sociological appreciation of emotions as integral to structures of justice in its social and human forms alongside a tendency to distance the formalities of law and legal procedures from potentially distorting or irrational influences.

From a more formal legalistic perspective, there is circumspection about this matter because of concerns that the ‘re-emotionalisation’ of public life might unbalance justice (Bandes, 1999), prompting legal checks and balances for diffusing potentially irrational elements in otherwise ‘neutral’ justice systems. There are enough examples of punitive outrage expressed in political or media discourse, purportedly in the name of the victim or survivors but servicing ulterior purposes, to validate these concerns (Boltanski, 1999). Gaucher (1998: 1) summarises the dynamics whereby the arousal of strong emotional states in relation to crime can turn into vigilantism: ‘In this context, the designation ‘victim’ is selectively applied to those cases which reinforce rightwing punitive justice ideology and serve to forward that agenda’. Some public ritualisations (such as the angry demonstrations during trials of particular notoriety, such as those of Thompson and Venables or Ian Huntley,[[1]](#footnote-1)[[2]](#endnote-1) for example, have been likened to ‘grief roadshow[s]’ (Appleton, 2002). Some members of the public create online vigilante networks in the wake of child murders, especially where there has been a sexual element. The content of such websites often express people’s fears and concerns about the lack of redress for victims, which are thought to be ignored by remote professionals and the justice system (Greer, 2004: 119).

**Secondary victimisation and its relevance to those bereaved by crime**

The perception that the criminal justice system is distanced from the emotional losses of the bereaved has been acknowledged as a source of injustice and grievance, encapsulated in arguments that they too have been victimised *by* the system. ‘Secondary victimisation’ occurs when those who have been directly affected by crime are subjected to ‘inadequate, insensitive or inappropriate treatment, attitudes, behaviour responses and/or practices by criminal justice and social agencies’ in ways that are thought to ‘compound their original trauma’ (Gekoski et al, 2013: 307). In particular, those bereaved by violent crimes or harms make up a largely invisible and forgotten group (Reiff, 1979). Some victimologists and practitioners propose that the term ‘secondary victimisation’ implies a hierarchy of suffering which subordinates the bereaved’s losses, arguing instead that they should be regarded as ‘survivors’ (Kelly, 1988) or even ‘co-victims’ (Armour, 2002). ‘Co-victimisation’ pays attention to the claim that bereavement equates with a substantial form of victimisation in its own right. For example, the stress, anguish and grief stemming from the homicide of a loved one may be ‘more closely aligned to trauma reactions than to what we might term “normal bereavement”’, which has led to an understanding of homicide’s contribution to ‘complicated mourning’ (Gekolski et al., 2013; 308). Others argue that the term ‘survivor’ needs to be reclaimed as it conveys a more positively pro-active language than the negative connotations of passivity and helplessness ascribed to ‘victims’ (Kelly, 1988). Either way, the range and depth of the additional suffering experienced by those bereaved by a death which comes under the remit of the criminal justice system was unmapped until fairly recently.

Once officialdom began to pay attention to this issue, they uncovered a tangled web of examples of secondary victimisation which accumulated at almost every juncture in the investigation, prosecution, sentencing and post-sentence monitoring of homicide cases. Consider the ‘*Review into the needs of families bereaved by homicide’* (2011) produced by Louise Casey, the first appointee to the post of Commissioner for Victims and Witnesses. Casey’s findings recount the corollary harms experienced by ‘families who have suffered a bereavement by homicide’ in terms that resonate with definitions of secondary victimisation at the hands of the authorities. Casey remarked, ‘I did think … [that] the system would be at its best, both in its prosecution of the offender and in its care of those *who through no fault of their own*, relied on it for justice. [However,] I found a deeply troubling mismatch between what I expected and what I found’ (Casey, 2011: 5, emphasis added). She went on to document the many ways in which ‘murder is devastating for those left behind’ (ibid). The wider impact on those whom homicide ‘leaves it its wake’ included multiple losses with ‘accessing counselling… lack of information about their case, and stonewalling’ by the justice offices (Casey 2011). Relatives were ‘doubly victimised’ by exclusion from the criminal justice procedures, especially by not being informed of developments in the criminal investigation or the withholding of details about the crime itself. Denying relatives elementary information underlined relatives’ perceptions that they were being ‘treated insensitively and uncaringly’, which ‘can both produce and exacerbate already existing feelings of frustration and powerlessness in the aftermath of homicide’ (Gekolski et al., 2013: 313).

The Casey review also unearthed significant, long-term difficulties faced by bereaved relatives which went far beyond the scope of procedural faults in the criminal justice system, as bereaved families reported that the death had led to ‘significant debt … housing problems, dissolved relationships’ or had their lives blighted by trauma, suicide attempts, depression, or mental and physical health problems (Casey, 2011). ‘Bereavement through crime is so often followed by loss of employment, the breakdown of relationships and mental health problems’ with financial and practical hardships being disproportionately borne ‘by those in our society who are already the least well off’ (Clarke, Foreword in Casey, 2011, 5).

Casey’s review was followed by a small number of official inquiries to establish how practices across the criminal justice system could be recalibrated to redress unfairness in this context. As with most systematic reviews, these inquiries produced a limited set of recommendations aimed at rectifying irregularities in the system. For example, the Northern Ireland Department of Justice (2014) *Research on the experiences of families bereaved through murder, manslaughter and culpable road death* found that survivors had been treated insensitively by Family Liaison Officers (specialist police officers assigned to families) to a point of ‘revictimisation’. The report found that this tended to occur to greater degrees if the FLO was inexperienced, unused to the type of criminal investigation, or if families were not informed about the temporary replacement of their assigned FLO by a colleague if taken ill or on leave (Department of Justice, 2014: 29). The report confirmed the roles of FLOs which ranged from keeping families informed to assisting the bereaved to deal with unwanted media attention. In the event of a culpable road death, FLOs were instructed to facilitate access to the accident scene ‘where possible and if the family member requests it’ (Department of Justice, 2014: 29). Research also found that co-victims were distressed by the use of graphic images or testimony in court, which might have been avoided if they had been forewarned.

Inquiries have also identified the bereaved’s frustrations with systemic blockages across different agencies. This ranged from the length of time that it can take to issue death certificates when a post mortem was required, to inadequate information from Coroner’s Offices about the condition of the deceased’s body or how and when the remains might be returned for interral. Other causes of distress arose through omission where an issue fell between the remits of different agencies. This was highlighted by the practice of charging families the cost of cleaning up the crime scene after the homicide of a relative. The charges included removing blood stains from carpeting and furnishing or steam cleaning homes to remove the debris of the forensic investigation itself. Victims Support lobbied for provision to be made by parliament for a public compensation scheme for cleaning (Evening Times, January 4l 2008).

A notable point of contention arises where victims’ families reported their shock on discovering that an offender was to be released from prison without their knowledge (Department of Justice, 2014: 24). Gekolski et al. (2013: 324) found that co-victims’ were not always given adequate guidance on court procedures or what sentences meant. As some of their research participants believed that a ‘life sentence’ meant a natural life term, the release on parole of the convicted person could lead to anger, frustration and disappointment. The role of informing families was added to the responsibilities of the police (Department of Justice, 2014: 24).

The adequacy or otherwise of the various recommendations of these reports cannot be dealt with in this chapter. The most significant contributions of the Casey review (2011) were that co-victims should have statutory rights enshrined in a ‘Victim’s Law’ which was intended to both set out the rights of the victim in the criminal justice processes and ensure that they ‘are actually afforded the specific services they are promised’ (Gekolski, 2013: 325). It is worth noting, however, that the Code of Practice for Victims of Crime (2013) has the status of statutory guidance and its measures are not legally enforceable as they would be if enshrined in statute. Compliance by agencies and practitioners is voluntary and the code cannot be used to pursue judicial review or to enforce aspects of the Code (Ministry of Justice, 2015).

**The ‘deserving’ and ‘undeserving’ bereaved**

As the opening discussion highlighted, there are valid reasons for vigilance against selectively dividing people bereaved by crime into those deserving of public support and those who are not deservedly bereaved. The nature of sentencing is such that decisions are made according to thresholds of guilt and punishment, or innocence and exoneration, and the criminal justice system recognises individuals as ‘perpetrators’ (the ‘guilty’) or ‘victims’ (the ‘innocent’). However, the experience of bereavement in the criminal justice system may cross the ‘victim/perpetrator’ polarity. For example, the homicide figures for England & Wales in 2015 showed that the number of people who died at the hands of a partner, family member or acquaintance (n=121) outnumbered those killed by a stranger or unknown suspect (n=80) (ONS, 2016). This is a consistent picture of homicide patterns, and for the purposes of this chapter, indicates that loss and bereavement are also experienced by offenders whose actions may have played a role in the death of a relative. This goes against the grain of commonsensical assumptions by showing strongly that being bereaved and a defendant or convicted person are not mutually exclusive conditions. Moreover, this crossover occurs in sufficient numbers every year to make this a noteworthy phenomenon.

Meanwhile, the normative boundaries between the so-called deservedly and undeservedly bereaved are upheld in the official reviews and policies where access to, and entitlement to, supports are explicitly and consistently assigned only to those who are described as blamelessly carrying the consequences of crimes. This is understandable as statutory authorities derive legitimacy to a significant degree by acting and being seen to act in defence of the wronged. The Casey Review (2011) offered some acknowledgement that the lines between perpetration and victimisation are blurred, but this fact tended to be submerged in the presentation of data, and there was little by way of explicitly stating the complications of grief that are presented. The likelihood that the links between being both a perpetrator and bereaved also arises in the case of culpable road deaths (Department of Justice response, 2014).

Persons who may be grieving for the death of a person where they are later convicted for that death presents an awkward anomaly which is largely glossed over in official documentation. These cases are rarely considered as ‘bereaved’ and are not included in the recommendations of official reports.It is not proposed to discuss in depth the representation of ‘victimhood’ and ‘offending’ as entirely separate categories of experience, except to say that there are many contexts where the assumption that they represent competing interests is complicated by reality. That complexity is often understood and encountered by voluntary sector and bereavement service agencies who work outside the criminal justice system, as the next section explores.

**Bereavement work in criminal justice: crossing boundaries**

The most obvious difference between the criminal justice and bereavement support approaches is the guiding principle that all individuals need recognition for their loss which comes before considerations of public safety or criminal status. Bereavement carers proceed from a different set of first principles which holds services to focus on the universal experience of *loss through bereavement* and ‘to ensure that informal and practical and emotional support is available to people who are bereaved’ (Department of Health, 2013). The *National End of Life Care Programme* (Department of Health, 2013) recognised the universal and elementary need for people who have experienced bereavement ‘to have their loss recognised and acknowledged by professionals’ (Department of Health 2013: 4). Such recognition was both intrinsic to the dignity of individuals facing death and in the care of custody of the state, but underlined the wider costs socially and in terms of public wellbeing of unrecognised grief, such as ‘poorer mental health and physical health’. The report, which aimed to set thresholds of practice with respect to end of life care and bereavement care, also acknowledged that ‘the essential elements of high quality care and services for people who are bereaved must be structured around partnerships’ comprising ‘statutory, independent and voluntary organisations [which] will be involved in providing bereavement services and care’. It also called for the establishment of a bereavement forum could be used [in each locality] to identify opportunities for integrated working and share good practice’ and populated by health, statutory, voluntary and criminal justice agencies including police, prison and probation agencies (Department of Health 2013: 5). Furthermore, the report articulated an holistic model of bereavement care which should permeate all aspects of care work and crosscut occupational silos, recognising that bereavement care should be ‘provided by a workforce that has the relevant skills … It is equally important that professionals and volunteers have access to supervision and support to undertake their role’ (Department of Health: 2013: 11).

Additionally, the Care Quality Commission, the independent regulator of health and adult social care, outlined the essential thresholds of care that service users should expect including respecting and involving them; obtaining consent for care; cooperating with other agencies, and safeguarding service users from abuse. The promotion and formalisation of standards of dignity and respect, personal integrity, the inclusion of service users and patients and their partners/families and equality is a constructive development. Although the trend toward collaborative working is welcomed, it must be noted that important and sensitive bereavement work encounters a unique set of obstacles and challenges in custody settings, in this case prisons, secure hostels, bail hostels or police custody suites. Despite the careful scoping of potential opportunities to provide bereavement support in care institutions, prisons and places of custody do not feature a great deal in the design of bereavement care, and merit only cursory mention in the key reports.

The voluntary sector is a diverse source of bereavement services ranging from nationwide agencies such as Cruse, to more localised agencies or those with specialist expertise in services for child bereavement or for bereaved parents. Support for the bereaved is sometimes interwoven with campaigning charities which may have been formed in response to particular types of death or homicide. Examples include *Victim’s Voice*, founded by those bereaved by knife crime, *Support after Murder and Manslaughter Abroad* (SAMMA), those bereaved by road deaths, by medical negligence like *Death After Medical Negligence* (DAMN) or *Inquest*, which campaigns and brings judicial reviews on behalf of the families and survivors of people who die in custody or mental health facilities. Large nationwide charities such as *Victim Support* provides a court familiarisation visit to bereaved, whom they also support throughout the trial. Victim Support has commissioned *Cruse* in Northern Ireland to provide its specialist homicide support service for those bereaved through murder, manslaughter or deaths which come under a criminal investigative remit … especially for the most complex cases’ (Ministry of Justice, 2014: 27).

A few prison officers undertake some specialist bereavement training as one aspect of their jobs, but generally this work is either assigned to social or health care professionals or handed on to the voluntary/third sector. The voluntary sector has been contributing skilled and specialist service to the work of prisons by supporting prisoners and staff for decades, and continues to do so despite the obstacles placed by the current restrictions and emergencies that restrict voluntary sector involvement in prisons (Mills & Meek et al., 2016: 163-166). Too often, the voluntary sector in prison is applauded by government for addressing gaps in service while suffering the misapprehension that it is a cheaper alternative to state provision (Jaffe, 2012: 19-28). Bereavement work is largely undertaken, therefore, by mental health nurses, prison chaplains, psychologists or clinical staff. Prisoners who are on drug and alcohol rehabilitation programmes may be referred by the CARAT (Counselling, Assessment, Referral, Advice and Throughcare) team for bereavement services if it is believed they will be of benefit. However, the severe strain on the prison system has brought it to a point of crisis. Prison psychologists have linked inadequate mental health resourcing with rising levels of violence, self-harm, suicide and homicide in custody (Guardian, May 24 2014). Social workers are seconded by local authorities to work in prisons, but their case load is under strain, while the outsourcing of most of the Probation Service in 2015 has created confusion among prisoners as to whom to approach for help. Most welfare work is the province of prison officers acting in the role of ‘personal officers’, but:

‘In practice, officers and other support staff may not recognise a bereaved prisoner’s needs because they have a limited understanding of the grieving process and its length’(Potter, 2009: 22).

Studies suggest that there is an increased risk of a poor outcome to a bereavement in a prison setting because emotional support required by the bereaved is not always forthcoming from internal sources (Vaswani, 2014: Wilson, 2010). In addition, the ‘powerful sociocultural prescriptions’ and closed nature of prison environments as well as the distance from family or community, ‘can cause the grief of prison inmates to be profoundly disenfranchised and demonstrates how this can impact hugely negatively on their coping ability’ (Masterson, 2014: 56).

Cruse provides specialist bereavement care in prison settings through its volunteers and paid staff. The primacy of security considerations and the shortage of prison staff (who are required to escort prisoners or volunteers to meeting places) has led many organisations to customise their one-to-one and group supports structure to the particular demands of secure environments. Cruse, for example also offers access to bereavement materials to prisoners on the prison intranet (where that is available) and have developed specialist training modules for volunteers to work within the difficult demands of secure environments (Pritchett & Wilson, 2013). It is also less well-known that prisoners act as a source of support to other prisoners including those grieving and bereaved. The Samaritans operate a Listener scheme in almost every prison in England and Wales. Listeners are trained Samaritans who are also prisoners, providing the confidential support according to the Samaritans model as far as possible in the conditions of confinement (Jaffe, 2012). Evidence in non-prison settings suggest that peer support can benefit individuals by alleviating anxiety or depression (Pfeiffer et al, 2011), improving attitudes and behaviour related to substance misuse (Black, Tobler & Sciacca, 1998), reducing bullying and fostering an environment of care (Naylor & Cowie, 1999). More research is needed to see how mentoring might apply specifically to alleviating distress from bereavement.

The voluntary sector takes on the bereavement needs of those who are left behind by crime, disaster or are caught in the tailwind of the criminal justice process. In important respects, the justice system has outsourced the difficult work of channelling loss and grief towards healing or reconciliation to the care system and civil society agencies. There is considerable crossover between the voluntary sector and the complicated experiences of the bereaved whether they are offenders, their victims, communities and survivors (families or loved ones). Most bereavement services are available to the whole community. The invitation to offenders to access these services is often tacit; whilst victims and survivors are openly invited, few services that work with the criminal justice system explicitly state that their services are for offenders. This may be a response to punitive beliefs that offenders, who have committed harm have forfeited their claim to civic privileges and are therefore ineligible or undeserving of the right to grieve. Nevertheless, this indispensable facet of criminal justice work, while not widely publicly recognised, continues unassumingly.

1. [↑](#footnote-ref-1)
2. Robert Thompson and Jon Venables were convicted of murder in the in Liverpool 1993 for the murder of Jamie Bulger (aged 2 years). They were the youngest people sentenced with murder in the 20th century. Ian Huntley was convicted of the murders of Holly Wells (aged 10 years) and Jessica Chapman (aged 14 years) in 2003.

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