

Preface

DAVID: CITIZEN, VICTIM AND HIS POTENTIAL FOR JUSTICE

David¹ was one of the people interviewed for this book. His is a story difficult to classify. If the system does prefer ‘ideal’ victims then David is not one of them. He would not see himself as a victim. He said he was able to look after himself. He articulated a number of motivations in turning to the law following an incident of violence against him, and expressed preferences for what he wanted to see happen. To these he gave reasons and context.

Over the course of three interviews, David used his experiences with the justice entities he encountered to reflect on the idea of justice and how it applied to people like him. It is David’s own references to his membership of the community that inspired the radical re-positioning of victims as citizens in this book.

I first met David after a neighbour had threatened him with a knife and after police had charged that person with an offence. David was living in a small, public-sector apartment in the city. Though it was a bright day, the curtains were drawn, the air was smoky and David was sleepy. Asked why he turned to the law after the incident, he said he wanted to make the person go away and this seemed the easiest way. But he also said he ‘was raised not to “dog” and not go to the cops. But now I haven’t offended for four years or more and am trying to work and was worried about my girlfriend’. When I asked about his idea of justice prior to the incident he said it was about ‘police and the court system’. Perhaps these images were to the forefront of his mind in part because David also had a prior history of non-violent offending (fraud, drugs). He thought ‘cops’ understood crime but that magistrates were ‘too soft’. He wanted his neighbour to ‘do as much time as possible’ for the offence against him. ‘Punishment’ was the principle he prioritized. On this occasion, I was struck by his frankness about his past and about himself.

¹ All names used in this book for the lay participants are pseudonyms.

The second time I interviewed David, some ten months later, he was staying temporarily with his mother. I could not ignore the fresh injuries to his face from another assault. Perhaps it was this alongside what he said on this occasion that made me more aware of how articulate he was. By that stage the earlier case had finished and I asked him about both the prosecution and the court. He had given evidence and the person had been acquitted. He said, 'I'll never call the cops again. It was a waste of time and effort.' He went on to say that:

I wanted to change my life and I went to the police but its left a bad taste. They did their best but there wasn't enough evidence. We all waited around, I gave evidence but they brought up my old mental health history and that I wasn't a competent witness.

He said that, when he had been offending, 'they treated me well and kept me out of prison'. This time, he felt he had been discriminated against and treated 'unfairly'. He reckoned 'if it had been a little old lady threatened, it would have been different ... they would have put a more experienced lawyer on it'. The young prosecutor, David said, did not respond to the attacks on him. As an offender, he said he had barristers defending him. This time, 'because I was an ex-offender, live in public housing and am a young man there was no effort in it'.

On the third occasion, at our final interview a further six months later (and some 16 months since the actual incident), David and his girlfriend had been allocated a new house by the Housing Department in a new suburb. It was far away from his old life but he reiterated he would not call for help again except 'if it was someone else then maybe'. Again he said:

if it was an old lady they would have done something. Maybe they think because of my history. It's much harder as a victim. I guarantee you that ... I wouldn't call or help them. I've never really felt like a member of the community really. Living in refuges etcetera you feel like a piece of shit. You get looked at. I'd deal with it myself next time.

Reflecting on being a participant in the process David said:

I was always there. I did what I was required to do and testify and meet the prosecutor in advance. I wanted to change who I was and didn't want to hurt others ... I see it's not like the movies or TV. It's based on money and circumstances.

Asked if he thought ‘justice had been done’, David said, ‘if they try its sort of being done. They invest money and time but the way they treat the victim isn’t justified. You get torn to pieces on the stand. It’s ridiculous.’ His final comments were that:

Before I thought I had a choice to be a responsible citizen but now I see it’s also how they see you. Is it about the past or the circumstances of the past? I can understand it to want to help an old lady rather than me. Unless we design a computer program, we can never be objective or completely fair to everyone. There are definitely differences between rich and poor. It’s hypocritical.

A person such as David (or any of the 33 lay people interviewed) is generally not allowed the luxury of self-representation, and almost certainly not in the public space of criminal justice. As a citizen-victim his capacity for reflexive and contextualized thinking is untapped. There is no room provided for thinking such as David’s that unfolds; nor for thinking that connects with different objects of value or different principles important in his life. The capacity, capability and embeddedness of a person such as David is rich in potential for justice.

In the rigid and scripted confines of criminal justice, socially and politically situated reflections such as David’s are routinely ignored. Whether he is an ‘ideal victim’ or a ‘good citizen’ or neither of these, David is simply a *thing* in the institutional space.

David is a critical thinker about his world where a focusing event – and process – has served to shift generalized opinion to something specific. Arguably both justice and democracy require just such critical thinkers. David is also explicit in drawing attention to his social and political status. These senses of himself exist prior, during and after his engagement with justice as a victim: ‘it’s how they see you’, he says. So this story is also then about a relationship with ‘they’ – power-holders who represent the state.