

## *From England*

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# **ON BEING INNOCENT: PROFESSIONAL AND OTHER RESPONSES**

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by Robert Shaw

I was very surprised after I was acquitted at how many people shunned me, in particular people who might have been thought to have an interest in how someone might suffer a miscarriage of justice — until I met Professor Sherman, the Wolfson Professor of Criminology at Cambridge, who in a few words helped me to understand the situation. As it has profound implications for the way we treat victims and offenders, it seemed worth recording and reflecting on my experiences.

### **‘You’re innocent, aren’t you?’**

When I was convicted and realised that I would be spending a lot of time with people who were not innocent, I thought it inadvisable to set myself apart by proclaiming my innocence. So I didn’t tell any of my fellow prisoners that I was innocent until one day, in the workshop about two weeks after my arrival, one of my fellow prisoners said, ‘You’re innocent, aren’t you?’ ‘Yes,’ I said. ‘We could tell by the way you behaved.’

I was astonished that it was so easy to tell who was innocent and who was not but I gradually realised that, when you are living in close contact with people, it is much easier to assess whether their actions match their words. In fact, as people become better at assessing qualities that concern them (Argyle, 1994) and prisoners want to know how reliable their fellow prisoners are, many develop the nonverbal skills to make such assessments. I later realised that prison officers who work closely with prisoners develop the same skills and may through their non-verbal communication convey their assessments to prisoners (Shaw, 2006).

### **‘You’re my friend’**

Some weeks later, after I had informed all my close friends of my situation, I was pleased and sad to find that only one, someone who loudly proclaims that he is a Christian, had shunned me. This does not mean that they all believed that I was innocent; anyone who has worked with serious offenders will know that a period of denial, which may last over a year, follows naturally

on from being confronted with the offence. But one friend put this succinctly when she said, 'I'm not interested in whether you are innocent or guilty; I'm visiting you because you're my friend.'

This seems to me the only proper Christian response. I met one prisoner, and I heard about a number of other prisoners who appeared to be in a similar situation, whose family loudly protested his innocence, making it very difficult for him to change his position. Some families seem able to cope with a prisoner acknowledging their guilt and the wives of a number of fellow prisoners stood beside them throughout their sentences; but others rejected their husbands once they acknowledged their guilt, the outcome most obviously feared by those trapped by their family's protestations of their innocence.

At the same time, a number of Christian groups who visit prisoners make it clear that they are only interested in guilty prisoners whom they can call to repentance; at the time I was surprised at this view of prisoners but I now realise that they were caught up in the same mechanisms as those who shunned me after my acquittal.

### **Mental energy**

I was particularly fortunate, and this has nothing to do with guilt or innocence, in having an almost complete understanding of the circumstances that had led to my conviction; so, though I did spend some time reflecting on those circumstances and coming to a clearer understanding of them, I did not have to spend time, as some innocent prisoners do, trying to make sense of my situation or coming to terms with one or more offences. Consequently, over the four and a half years I was in prison, I was able to learn a huge amount about prison and about the circumstances which contribute to people becoming victims and/or offenders, to write a considerable number of papers, several of which were shared with interested parties outside prison, and to draft five books, three of them drawing on what I had learned in prison. I naturally expected after all the effort I had put in while in prison that people outside prison would be interested in the experiences of an innocent prisoner.

### **Professor Sherman's comment**

But, after I was acquitted, apart from my close friends, only Alan Duce, Chris Marshall and my former MP continued to maintain contact and a significant number of Christians, including several whom one might have expected would want to help a fellow Christian who had been wrongly imprisoned, snubbed me. Then, when I was talking with Professor Sherman at a conference, he happened to say 'criminologists tend not to believe people are innocent' and the scales fell from my eyes.

Victims of certain types of rape or harassment are routinely not believed because, if the event was random, it follows that the hearer could also be a victim of a similar event. Rather than believing that they might become a victim in the future, they deny the event took place or find a reason for blaming the victim (Dziech and Hawkins, 1998). For criminologists to believe that a person might be the subject of a miscarriage of justice, they would have to believe that they too could be a victim; rather than do that many, as Professor Sherman suggested, simply deny that the person was a victim of a miscarriage of justice or argue that ‘there is no smoke without fire’ — like the rape victim, the person must have done something wrong or they would not have become a victim.

Exactly the same thing happened to people who were sent to concentration camps by the Nazis. Concentration camps were set up under the German constitution, which permitted *Schutzhaft*, or ‘protective custody’ in the interests of state security, and initially housed opponents of the Nazis and then dissidents within the party before being used more generally as a means of terror (Bettelheim, 1979). A random selection of people from one group would be rounded up and sent off to concentration camp. They could not see any reason for their imprisonment, regarded it as a ‘mistake’ and expected their families to agitate for their release but most people outside did not believe there were any innocent camp inmates (Bettelheim, 1943). In the early 1940s Bettelheim was vilified for his description of concentration camps (Bettelheim, 1968) but it is now clear from our greater understanding of how victims are treated that the Nazis were able to take advantage of a normal reaction people have to victims of adverse, random events, namely to deny the event or blame the victim (Marshall, 2005).

### **Consequences for victims**

The immediate impact for a victim of not being believed is that they are denied access to their first two needs: ‘a safe space to speak’ and ‘validation’ of their experiences (Marshall, 2005). Without that, they cannot gain any meaningful support from family or friends to cope with their experience — as the innocent prisoners in the concentration camps found. Bettelheim (1943) warns that ultimately these prisoners became anti-social. Given the number of offenders who were victims long before they were offenders, how many of them became anti-social because, when they were victims, no-one believed them, no-one was prepared to give them ‘a safe space to speak’ or any

‘validation’ of their experiences? Even where the victim does not become anti-social, not believing them may, of course, create more victims because the offender is not identified as an offender and commits further offences.

Most victims do not want revenge or compensation (Strang, 2002); they want an apology and to be part of the process which enables the offender to get to the point of acknowledging the event and showing some remorse. But, if their victim-hood is denied or assumed to be their responsibility, they can never get the answers, let alone the truth-telling they desire; they can never be empowered to move beyond their victim-hood and the ‘profound ... uninvited, unhealthy, and deeply resented, relationship ... ‘ (Marshall, 2005, p. 6) they had with the offender may affect other relationships. Those who have been humiliated or violated may have low self-esteem which no amount of love or affirmation of worth can change or may find any form of close relationship difficult to handle and avoid or over-react to normal expressions of affection. If the cause of their feelings about themselves can never be acknowledged because no one is prepared to believe them or blames them for their victim-hood, there is no way out of the emotional prison in which they have been placed.

### **Consequences for offenders**

Many offenders sooner or later attain sufficient maturity to be able to acknowledge and show remorse for their offences but some become habituated to offending and create many victims throughout their lives; by denying that certain people are victims, we deny that other people are offenders. This often happens in sexual harassment cases where elaborate defences are erected by those who do not wish to acknowledge their offending (Dziech and Hawkins, 1998). It may happen in families, communities or organisations where acknowledging that a particular culture exists and therefore that particular offences may have been committed may incriminate other members of the family, community or organisation. Sometimes, people in a family, community or organisation are aware that offences are being committed but do not want the victim to draw attention to them because of the shame or other consequences that might befall the family, community or organisation. So the offender is permitted to continue offending.

But creating a situation in which an offender cannot acknowledge their guilt, show remorse and, where appropriate, offer compensation also locks the offender into an emotional prison. Some offenders try to escape that prison

by committing further offences for which they are punished but this solves nothing for the offender, for their victims or for society, particularly if there is no way of acknowledging and dealing with their earlier offending.

### **Psychological interventions**

Where professionals deny that someone is a victim, they either have to ignore the victim-offender relationship or give it a character quite different from its real character, which may include explicitly or implicitly blaming the victim for the situation. But, since the relationships a person has within their family or any wider system are all interlinked and changes in one relationship lead to changes in other relationships, a professional who ignores or distorts a relationship their client has always risks distorting their assessment and rendering their interventions futile.

This was particularly evident in the assessments and treatment plans prepared by psychologists in prison. Many serious offenders were themselves victims, sometimes of quite serious abuse, before they became offenders. Yet anything to do with being a victim and any work to enable a serious offender to deal with the consequences of their victim-hood is either ignored or postponed until they have 'addressed their offending behaviour.' Meanwhile, all the relationships in which they were a victim are excluded from consideration and, in order to make sense of an incomplete account of the person's life, a fantasy version of their life is created.

A friend who had been abused as a young person and later committed similar offences against young people was very distressed at the fantasies that professionals invented about him right from the start of his case; as someone who had pleaded guilty and was prepared to 'address his offending behaviour,' he could not understand why people wanted to invent fantasies about him rather than deal with his real situation; when he came to do the Sex Offender Treatment Programme, he found that the psychologists who ran it were not interested in an honest account of his offending but in a fantasy about his offending, based in part on the material developed by the Offending Behaviour Programmes Unit of the Home Office, which he eventually accepted as the basis for completing the SOTP because, had he not accepted their fantasy account, he would have been deemed to have 'failed' the programme. His verdict, 'Psychologists prefer lies to the truth.'

I initially attributed this to the very prescriptive nature of the SOTP, which is run much like a mediaeval inquisition (Protestant or Catholic). There is a script provided by the Offending Behaviour Programmes Unit which takes

the place of the doctrine read out at an inquisition and the sex offender/heretic is required to assent to the doctrine. But, in the light of the fantasy the psychologists developed for my friend on the SOTP course, I think their real difficulty was accepting him not just as an offender but also as a victim. Unfortunately, the SOTP does not allow that; so they had to develop a fantasy to explain those aspects of his life which would have been explained by the victim-hood they had to deny.

When I completed a written psychological test, my 'risk of reoffending' was assessed as 'low.' (The test was based on the assumption that all prisoners are offenders and therefore could not produce a result of 'zero;' instead it came up with the next best result). Yet throughout my time in prison, every report written by a psychologist assessed my risk of re-offending as 'high.' The contrast between my fellow-prisoners who were able to identify my innocence within two weeks and the psychologists who never came to anything approaching that conclusion in four and a half years was striking.

However, what was particularly interesting about the most detailed report I received written by a 'psychologist' was that the justification for the assessment of 'high' risk did not arise from considering the facts of the case or my past history and then extrapolating an assessment of risk from them but from a fantasy about the person I must have been to have committed the alleged offences. I knew it was a fantasy as I had taught adult psychology for many years and knew it bore no relation to any available psychological research; so I was staggered that the chartered psychologist who was responsible for supervising the report (most prisoners are assessed by trainees ostensibly under the supervision of a chartered psychologist) was prepared to sign it off.

But the episode makes entire sense when you consider that I was alleging that I was a victim of a random event (a miscarriage of justice) and that the 'normal' response people have to victims of such events are to deny that the event took place or to blame the victim. By inventing a fantasy of what I was like, the psychologist could 'blame' me for having been convicted.

Once I had become trusted by fellow prisoners I received a large amount of evidence to suggest that most assessments of prisoners are unreliable; prisoners who spoke openly of their intention to re-offend would receive assessments of 'low' risk while those who were acknowledged by all prisoners as trustworthy people who would not re-offend were assessed as 'high' risk. My experience is mirrored in the research; probation officers underestimated the risk posed by Anthony Rice (Bridges, 2006) when all the signs pointed

to him being a persistent offender while Hood et al. (2002) found that over 70 per cent of sex offenders assessed as likely to offend did not offend and only 4.3 per cent of those who had committed offences within the family and had been assessed as 'high risk deniers' re-offended.

### **Denial, minimising and victim-blaming**

All prisoners go through a period of denial in the immediate aftermath of being charged which may last from a few days to a few years in the case of some serious offenders. As they emerge from the initial phase of denial, they often pass through phases of trying to minimise their offences or of blaming the victim but once prisoners have come to terms with the fact of their offending, these behaviours largely disappear, not least because of the encouragement from more experienced prisoners who recognise that, unless the prisoner gets through these stages, they have little hope of progressing personally, let alone within the system. The most dramatic example I saw of that happening was when a murderer on remand was taken to one side by fellow prisoners and asked to think carefully about the consequences of pleading guilty to a lesser charge (as he was saying he wanted to) rather than to murder. An experienced professional could not have handled it more sensitively.

Though I found very few prisoners beyond the early stages of their sentences who were in denial of their offences, many prisoners are labelled as 'in denial' by psychologists and probation officers. Among the explanations I came up with while in prison to explain why so many prisoners who were no longer in denial were labelled as 'in denial' were:

- *poor practice by probation officers and psychologists which discouraged prisoners from being open with them,*
- *prisoners who had suffered breaches of trust earlier in their lives being unwilling to trust others and so unwilling to talk about themselves and*
- *prisoners who were deeply ashamed about what they had done being unwilling to discuss their offences in any detail with anyone, even if that disadvantaged them.*

But another reason may simply be that they were unwilling to go along with the fantasy account of their offending which the professionals had created; some certainly said to me that they did not believe it was right to tell lies about their offending in order to get through the offending behaviour programmes even though their refusal to assent to the professionals' fantasy about their offending would normally 'disadvantage' them.

### **A sorry saga**

Though I encountered a number of competent probation officers, I also experienced an astonishing sequence of events associated with my first probation interview in prison. The Probation Officer's report contained some clear inaccuracies about me which I was sure could be put right by reference to available records. So I asked for that to happen; however, I was told that the Probation Officer would only correct the report if I put in a complaint. When I did, the Senior Probation Officer did not investigate the inaccuracies but sent me a fantasy account of my situation. So I complained about the Senior Probation Officer's (non-)investigation and got a further fantasy from the Assistant Chief Probation Officer and then a report from the Prisons and Probation Ombudsman which barely mentioned my original complaint and consisted largely of a weaving his own fantasies about me into the fantasies created by the Probation Officer, the Senior Probation Officer and the Assistant Chief Probation Officer.

However, I now realise that this whole saga really arose out of the Probation Officer's unwillingness to acknowledge that I might be a victim. After all, for a probation officer to admit that someone they are interviewing could be a victim of the system they are administering involves acknowledging that they too could be a victim and that some of the people with whom they work on a daily basis could be involved in their victim-hood. One of the principles of good professional practice is to 'assume good faith,' to assume that a failure by a colleague in the criminal justice system might lead to your victim-hood is frightening; so rather than acknowledge that this might happen they deny that people are victims or blame the victim.

What I thought of as 'inaccuracies' were in fact a fantasy about me created by the Probation Officer to avoid thinking about me as a possible victim; like the psychologists who assessed me as 'high risk,' the Probation Officer did not extrapolate from known facts about me but rather created a fantasy of me which justified her 'assessment.' When I presented myself as a victim of the Probation Officer's inaccuracies, the Senior Probation Officer reacted by creating the most elaborate fantasy of the four to which the Assistant Chief Probation Officer and the Ombudsman added their own embellishments.

Throughout this whole process, I kept producing rational arguments as to why the way I was being treated was 'unprofessional' but none of these carried any weight with the Assistant Chief Probation Officer or the Ombudsman. Having spent much of my life encouraging professional development, I was astonished

at these unprofessional responses. But I now realise that, because the Probation Officer's reaction to me at the outset was an emotional one based on being unwilling to consider me as a possible victim, no rational argument was going to carry any weight and the more I piled up the rational arguments the more the Probation Officers, and eventually the Ombudsman, responded emotionally rather than rationally to me.

### **Some implications for victims and offenders**

In *Measure for Measure* Shakespeare uses the device of the Duke in disguise to ensure that Isabella's victim-hood is eventually neither denied nor blamed on her suggesting that he too was aware of the difficulties victims have in being believed. But the ending, in which Isabella and Mariana plead for Angelo's life, is just as true to life; among the things victims want are emotional restoration and an apology (Strang, 2002). Nearly all the victims of abuse who spoke to me in prison wanted an explanation from their abuser of why they had abused them and an apology. Had Angelo been executed as the Duke initially ordered, neither woman would have had any chance of receiving emotional restoration or an apology from Angelo.

But we need to consider this in the context that:

- *a significant proportion of victims never disclose their victimhood,*
- *less than a quarter of victims of all forms of domestic abuse report it to the police,*
- *male victims are over twice as reluctant as female victims to report domestic abuse (Walby and Allen, 2004) and*
- *professionals are reluctant to treat some forms of victim-hood seriously (Denov, 2004).*

I am unclear, because I never asked, how many of the fellow prisoners who described their experiences of abuse to me had disclosed it to anyone else; the probability is that few had and even fewer had reported it to the police. It is possible that some only came to see themselves as victims as a result of the emphasis on 'victim awareness' in prison because men typically resist seeing themselves as victims (Owen, 1995).

But this raises a number of other questions; we know that some victims of similar abuse are 'forever scarred' while others are 'seemingly untouched' (Dziech and Hawkins, 1998, pp. xvi-xvii) whether because they have forgotten the abuse (Loftus et al., 1994) or because they have risen above it (Dziech and Hawkins, 1998). It therefore seems likely that the influence

victim-hood may have on an offender could vary from nothing to being central to their offending. If this is the case, and all the research into victims' experiences seems to point in this direction, then it is absolutely essential that any assessment undertaken to enable an offender to 'address their offending behaviour' should include an assessment of whether any experiences of victim-hood have had a lasting effect on them and thus may have contributed to their offending.

Refusing to acknowledge that some offenders may also be victims until they have 'addressed their offending behaviour' or blaming them for their victim-hood may have a high price for victims, offenders and society in general. It is difficult to see, in those cases where prisoners' victim-hood had a major impact on their offending, how efforts to enable them 'to address their offending behaviour' can succeed if a major influence on their offending is ignored. It certainly seems likely that failing to deal with victim issues with some prisoners while they were in prison may have made it more difficult for them to make constructive relationships on release which may in turn have led to them committing further offences.

By denying that people are victims, professionals deny them, among other things, a 'safe space to speak,' 'validation,' 'empowerment' and 'restitution or reparation' (Marshall, 2005). In some cases, this could mean that the offender never gets to the point of being able to acknowledge their own offending, repenting and showing remorse, thereby denying their victim 'emotional restoration and an apology' (Strang, 2002). Conversely, if victim-offenders are treated as victims and given the opportunity to receive an explanation and an apology from their abusers, they may be better able to express 'victim empathy' and to approach their encounters with and expressions of remorse to their victims more positively. More importantly, because many prisoners have experienced delayed development or trauma that has hindered their growth to maturity, efforts to increase their maturity that do not include taking a mature attitude to their victimhood are unlikely to help them to take a mature attitude to other aspects of their lives.

### **Understanding victims and offenders**

Most of the victims I had encountered before my imprisonment had spoken to me about their experiences without expecting me to do anything about their situations and so I had simply listened and responded in whatever appeared to be the most appropriate way for them. When I arrived in prison I met prisoners who wanted to talk about their offending and soon realised

that, while the stories victims had told me and the stories offenders were telling me did hang together and did make sense in terms of my understanding of human development and relationships, I had never read anything in the literature which linked these aspects of human experience in this way.

I soon realised that prisoners are rarely listened to; whenever they are interviewed, it is to a prescribed framework of questions. The surveys to which I responded as a prisoner rarely reflected any understanding of prison life and much of the literature about prison I have read since my release does not reflect the reality of prison life.

One reason is that interviews, whether of victims or offenders, are tailored to clarifying their roles as ‘victim’ and ‘offender’ and not to understanding them as people. When victims are interviewed it is with an eye to what will stand up in court and victims rarely get ‘a safe space to speak’ about their experiences — perhaps one reason why some victims had chosen to speak to me about their experiences when I could do nothing about them other than listen. When offenders are interviewed, it is to confirm the label ‘offender’ rather than to understand the person behind the ‘offence.’

Consequently, much of the material on which researchers rely to understand victims or offenders is incomplete and may have inherent bias because

- *both victim and offender are constrained in different ways in what they can say,*
- *most reports have a purpose within the criminal justice system which does not allow a full picture to be given,*
- *most surveys are based on an inadequate understanding of the criminal justice system which then feeds back positively to increase the misunderstanding of the criminal justice system,*
- *by the time victims or offenders are interviewed by people who are not part of the criminal justice system both will have become aware of what are ‘acceptable’ answers to professionals and*
- *at least some reports on victims and most reports on victimoffenders are likely to involve an element of ‘denial’ or ‘victimblaming’ by the professionals who wrote them.*

So, even those criminologists who are not caught up in the tendency ‘not to believe people are innocent’ (Sherman, 2007) will be working from evidence which is inherently biased or incomplete, in particular about victim-offenders’ experiences, and any research, for example, into ‘What works’ (Cullen and

Gendreau, 2001), is likely to produce unreliable results because an unknown proportion of the records have been biased in one direction. Usually a tendency for bias in one direction is cancelled out by a tendency in the opposite direction but in this case there is no bias in the other direction which is likely to cancel out professionals' fantasies about victim-offenders or victims of miscarriages of justice.

Not fully understanding the experiences of victims at best contributes nothing to reducing the number of victims and at worst increases the number of victims because, being less able to understand how people become victims whether of offenders or of miscarriages of justice, we do not have the means to protect them from becoming victims. One consequence of the current failures of the criminal justice system to reduce the number of victims has been ever more strident calls for longer deterrent sentences. However deterrent approaches are agnostic as to the guilt or innocence of those convicted, because the effect is assumed to act on the rest of society, which may have contributed to an increase in miscarriages of justice.

### **Some implications for restorative justice**

There are many reasons for welcoming the development of restorative justice (Strang, 2002; Liebmann, 2007); not only does it fit more comfortably within Christian ideas about justice (Marshall, 2001), it also offers a more effective way of helping many victims and offenders by, among other things, giving them the opportunity to tell their stories reasonably soon after the event within a 'safe space' (Marshall, 2005). Though it may appear unlikely that those involved in restorative justice will get caught up in the tendency to deny victims' stories or to blame them for what has happened to them, it is such a widespread tendency that it cannot be ruled out and some victims may be denied restorative justice because they have not been believed. But it does seem likely that the process of labelling one person the 'victim' and the other the 'offender,' a process which is built into most of the statutory restorative justice programmes in Europe, may inhibit the opportunities for victim-offenders to tell all aspects of their stories, including the aspects of their victim-hood which may be relevant to their offending.

Though current research into restorative justice (Strang, 2002; Shapland et al., 2007) suggests that it has more positive outcomes for both victims and offenders than traditional approaches, a significant minority of victims and offenders do not find it beneficial and it may be worth exploring whether the tendency 'not to believe' that some people are victims is one of the contributory factors.

## Christians in prison

It is now clear to me that a number of Christians whom I encountered in prison were caught up in the same tendency as some criminologists. As people who worked closely with the system, they could not imagine that they could, apparently arbitrarily, be locked up for an offence they had not committed in spite of the many examples in the Bible from Joseph to Paul. In some cases their unwillingness to engage with certain prisoners may also have been because they did not want to acknowledge that there are victim-offenders in prison. Fortunately, most of them had no responsibility for writing reports about them and so any fantasies they may have had about particular prisoners remained a secret — though a couple of chaplains did expose their fantasies about particular prisoners and in one case I was able to disabuse a chaplain of the fantasies created about a particular prisoner by the chaplain of another prison, though the explanation I gave for those fantasies was rather less gracious than the one I would give now.

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