

Victims' Rights with Lenore Anderson

Christiane Wisehart, host and producer: I'm Christiane Wisehart, and this is Examining Ethics, brought to you by The Janet Prindle Institute for Ethics at DePauw University.

[music: Blue Dot Sessions, Single Still]

Christiane: When we're talking about ethics, and especially practical or applied ethics, there's often a lot of discussion about harm. And when we're examining harm as it relates to crime, we tend to focus on victims. However, my guest Lenore Anderson argues that we need to take care that our discussion of harm isn't centered on just one group of people.

Lenore Anderson: We have a problem in our criminal justice system of whose pain matters to the criminal justice system and whose pain really does not matter. There's been this long standing hierarchical lens through which the justice system has viewed people. And that lens really determines whether or not someone is even recognized as a victim of crime by the justice system or completely ignored.

Christiane: Stay tuned for our discussion on today's episode of Examining Ethics.

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Christiane: Lenore Anderson is the president of the Alliance for Safety and Justice. She's here to discuss the ethics of reforming the criminal justice system in the United States.

[interview begins]

Christiane: Lenore Anderson, welcome to the show.

Lenore Anderson: Thank you so much.

Christiane: So we're here to discuss your new book *In Their Names: The Untold Story of Victims' Rights, Mass Incarceration, and the Future of Public Safety*. So just briefly to start, why don't you tell us why you wrote this book and what this book is about?

Lenore Anderson: I've spent the last 20 years working to reform crime policy across the United States. I'm an attorney and an advocate. I've worked in states as diverse as California, Michigan, Florida, and others. And in all of those places, most of the time we're advocating for smart criminal justice reform, things like reducing incarceration and increasing crime prevention. This is the policy direction that most voters actually support, less incarceration, more prevention. But what I've seen in State House after State House is that it's actually very difficult to win these

changes because there's this pervasive myth that you can either be for public safety or for criminal justice reform, but not both.

A lot of policy makers have this notion that tough justice has been about protecting victims, but what I've learned is that tough justice has actually hurt victims. It's hurt the very people in whose name all of this mass incarceration policy has been enacted. And so what I wanted to do was write a book to tell that story. The book is really about the harms that have come to victims as a result of mass incarceration and the solutions that would work a whole lot better for public safety.

Christiane: So you've obviously got a lot of experience in the criminal justice system. What are some of the biggest misconceptions about public safety that you've noticed just over the course of your career?

Lenore Anderson: Well, there is a lot. And anyone who turns on a TV today, you'll probably, if you're seeing a political ad, it's likely that it's got some crime hysteria in it. Emotional fear-mongering-driven slogans have really been at the heart of criminal justice policy making for the last four decades. But what that hyperbole has done is really driven a lot of myths over facts, and ultimately it's hurt our nation's approach to public safety.

Let me tell you about just three of the most pervasive myths. The first is that more incarceration equals reduced crime. There's really not a lot of evidence to back this up. Tougher and tougher sentences have not reduced a lot of the pervasive challenges like drug addiction or gang violence, for example. In fact, in 2014, the National Academy of Sciences came out with this enormous book, this comprehensive look at the impact of incarceration and concluded that lengthy sentences are not effective as a crime control measure.

There have been other studies that have piled up saying similar things. It's not the amount of incarceration that really makes a difference for public safety, but there's more and more evidence that prevention actually can be a difference maker. When we're talking about prevention, we're talking about things like community-based violence prevention, street outreach workers, crisis assistance centers, trauma recovery centers, even after school programs and clean and safe parks can be a difference maker.

Here's some other myths. The second myth is this myth of the vengeful victim. This is really deeply embedded in our culture. It's driven a lot of political campaigns for tough justice. This is the idea that universally what all victims of crime want is the maximum punishment possible. But my organization over the last decade, we've interviewed I think about 10,000 victims of crime across the country, survivors from all kinds of backgrounds.

And what we found really flips that notion on its head. Instead of finding this constituency that's kind of obsessed with vengeance, instead we found really a lot of diverse opinions, nuanced opinions on crime policy. But the most consistent viewpoint is that we need to prevent crime and

rehabilitate people who commit crime as our top public safety strategy. So that kind of flips on its head what's out there in our broader culture.

Let me talk about just one more myth, and that's the myth about who's most vulnerable to being hurt by crime. This one, it really matters when we talk about how we invest our public safety dollars. So who are victims? Well, there's this really big gap between who gets attention as a victim of crime and then who's actually most commonly hurt by crime and violence. Looking at our media, politics, even what happens in the courtroom, there's disproportionate attention in particular to white women victims of crime, even though this is actually a demographic that is statistically less likely to be a victim of things like kidnap or homicide. Instead, when you look at who is most likely to be hurt by crime and violence, you'll find low income communities, communities of color, young people, unhoused people, people with disabilities, people with old criminal legal records. Those are community members who are actually more vulnerable to be hurt by crime and violence. If protecting victims was our nation's sort of top public safety goal, then you would want to see a lot more support for programs that help these survivors, even though that's not what the media shares with us. That's really where we should draw our attention.

Christiane: And that's one of the things that I really appreciated about your book is that you have got lots of facts and figures. You've got lots of empirical data to back up your arguments, but you also have a lot of stories, stories of actual victims and lots of stories that illustrate the fact that victims of crime often intimately know the person that hurt them, that they're often nested together in familial or friendship networks. So help us kind of bust some of those myths that you mentioned by helping us with a story. Walk us through a typical post crime journey for a typical victim of crime in America.

Lenore Anderson: There's profound misunderstandings about what happens in the aftermath of crime, the common misunderstanding that the victim reports and then there's a prosecution and the person goes to prison. That's really not the typical experience. Just a couple quick facts and then I'll share examples. First, for most victims, there's very low trust in the justice system. So a lot of crime and violence is not even reported to the criminal justice system. Then for crime and violence that is reported to the justice system, less than half results in a conviction. And so even for the small percentage of victims, when there is a prosecution and a conviction, a lot of victims experience a system that is traumatizing and undermining of them.

Just one thing that a lot of people don't realize, victims of crime do not have attorneys. So when you're talking about criminal courts, you're talking about a contest between the state and the person being accused of a crime. So in that setup of that adversarial system, victims of crime are witnesses at best and oftentimes railroaded by that very system. So they experience a lot of retraumatization through the process. They also report feeling very limited in having a voice in what happens. This sort of one size fits all, there's a conviction and you go to prison or there's an acquittal, that really hasn't given most survivors a lot of options. Things like restorative justice, community service, even mediation; these are things that many survivors want to see happen, but don't have that choice in our adversarial criminal courtroom process. The other big

piece of the story in terms of that post crime journey, what happens after you've been a victim? There's also a myth that most victims get help.

The realities are starkly different than that. Most victims of crime do not receive help in the aftermath, and this leads to more vulnerability and can even increase the likelihood that victims become a victim of crime again. So let me just give you an example. We work with an organization called Detroit Friends and Family. They're doing frontline violence prevention work and victim services. One young man was a bystander and he was shot resulting in him becoming paralyzed. That injury made it such that he could no longer work in his line of work, and he also needed housing accommodations as a result of that injury. These are massive barriers that many victims of crime face after being hurt by violence. It can really change your whole life trajectory. So he applied for victim compensation, which is a program that most states have to get emergency help after you've been hurt. But his application was denied.

He applied again and again and it was denied several times. He became so desperate just for survival money that he began to sell his own pain medication just to have money to survive, and that resulted in a conviction for selling drugs. This is not someone who had ever had that type of conviction or engaged in that before. Ray Winans, my colleague who runs Detroit Friends and Family, he reflected on what happened and talked about how this survivor was a victim of one public health crisis, gun violence, and then contributed to another in terms of drug addiction, all because he was not recognized as a victim of crime and given even basic levels of help to recover. So that's really what we're talking about when we talk about the post crime journey for thousands upon thousands of survivors.

Christiane: You write that one in four Americans will be victims of crime at some point in their lifetimes. You also point out that spending on prisons and law enforcement has never been higher, it's the most it's ever been right now. So what's going on here? Why doesn't this extra spending on law enforcement in prisons help the one in four Americans who have been victims of crime? Isn't the spending at least like a symbolic win for victims?

Lenore Anderson: Symbolism's what's been driving criminal justice policy for the last four decades in the United States, and it's really critical that we take a hard look at how that hasn't worked. All of that spending has grown these enormous criminal justice bureaucracies, but that hasn't really resulted in a lot of support for most victims, especially the most common victims of crime. Couple of things to take a hard look at when we think about why that is. First, most crimes aren't reported and of those crimes that are reported most don't result in a conviction. So a lot of victims are just not even seeing justice in a courtroom at all.

The second reality is that we've built up this criminal justice system that has never been very good at distinguishing between dangerousness and vulnerability. So all that build up in police and prisons and all that tough justice, it meant that the criminal justice system got better and better at mass surveillance and mass incarceration, mostly in communities of color. And it got better at that than it did at stopping cycles of crime, especially some of the hardest cycles of crime to stop. A lot of vulnerable people, especially in the communities that experience the most

surveillance, are more likely to be arrested for minor infractions than treated as people deserving protection, dignity, or support.

And there's a lot of kind of examples I can point to for this kind of treatment. In New Orleans, prosecutors were literally arresting and jailing victims of crime to compel their testimony in court, even in cases where it was a misdemeanor arrest and the person accused of the crime didn't spend a day in jail. Police in Cleveland arrested and jailed a survivor who had made a harrowing escape from a serial killer, and they arrested her and jailed her because she had a probation violation stemming from drug addiction when she was attempting to report this horrific, horrific crime.

So instead of listening to her, she sat in jail. And those are just a couple of examples of what I'm talking about in terms of what was going on in New Orleans and what happened in Cleveland. There are thousands and thousands of examples of this. Victims of crime and survivors of harm, especially in low income communities of color, who get treated by the justice system as suspects, as opposed to people deserving of protection.

One thing to note is that there was a lot of money that drove this direction of criminal justice policies. So in the 80s and 90s when there was this call for victims' rights and public safety, there was a huge transfer of cash from the federal government to cities all across the country. And that transfer of cash really built up these justice practices of surveillance and control as opposed to community partnership and stopping cycles.

Christiane: So one of the things that we like to talk about a lot on this show, it's an ethics show, so we end up talking a lot about harm. So I was particularly interested in the ways that you write about harm, and you have this really interesting phrase called "hierarchy of harm." So explain to us what that is.

Lenore Anderson: The hierarchy of harm, it's really a way of understanding that we have a problem in our criminal justice system of whose pain matters to the criminal justice system and whose pain really does not matter. There's been this long standing hierarchical lens through which the justice system has viewed people. And that lens, that hierarchy really determines whether or not someone is even recognized as a victim of crime by the justice system or completely ignored. There's a long history here. This used to be legally defined, the history of exclusion of who gets to be a victim. This is something that we haven't as a society acknowledged very much, but it doesn't take a lot to look back over the last 200 years and see that it's really only a small percentage of people who have ever even been given that legal right.

And what do we mean by legal right to be a victim? Well, who used to be able to report crime, testify in court, be a witness, expect restitution, those sort of are the legal expressions of what victims are afforded. And for much of the last 200 years, it's mostly been white men in particular who've been eligible for that recognition.

So a ton has changed, obviously. And we now have a justice system that is obligated to protect all victims of crime. But there's much that hasn't changed at the same time. When you look at... You could just take for example, which victims are eligible for victim compensation. And you can see that we still have this drastic hierarchy that shows up the exclusions on who's eligible to become a recipient of compensation. This is emergency money that many people need when they're hurt, especially by violence. But when you look at who gets access to that money, it's very disparate. We see people of color in particular excluded from access to victim compensation at very high rates at the same time that these are the same communities that are more likely to be vulnerable to things like neighborhood violence. So that's what we're talking about when we're talking about the hierarchy of harm, is who do we see through our justice system as deserving of protection?

Christiane: So another thing we end up talking about a lot on this show is how can we take action on these issues if they're interesting to us? So what are some of the ways that we might break the cycle of trauma that results from being involved in the criminal justice system in the United States?

Lenore Anderson: For people like me who've worked inside violence prevention and public safety systems for the last 20 plus years, there's this saying, hurt people hurt people. There's a parallel saying, healed people heal people. The cycle of trauma is absolutely interruptible. We would just have to care to interrupt it in terms of our approach to public safety. There's a lot of examples of model community based safety programs that are interrupting that cycle of harm and the cycle of trauma and doing it in really innovative ways. I'll just give you just one example. There's a model program called a trauma recovery center, and this is a program that works at the neighborhood level and combines crisis assistance for victims of violence. Things like getting stable housing, getting employment, helping your kids get help in school when someone's been hurt by violence. Combining that with clinicians in long term mental health support.

This is a community based model that has been growing across the country and it shows remarkable results. Recipients of help through trauma recovery centers do so much better than victims of crime who haven't gotten that kind of help. We see lower PTSD rates. We see lower depression rates, improved housing stability, improved employment. You see people who have been hurt by crime and violence get that kind of real time help such that they can be on a pathway to stability. This is kind of common sense, but it's surprising how little of our public safety dollars go to these kinds of solutions.

Christiane: So you mentioned, that the criminals should be involved in this trauma or breaking the cycle of trauma. So for anybody who's skeptical about this, why would it be important to take into consideration the trauma of the perpetrators of a crime as opposed to just the victims?

Lenore Anderson: Well, it gets us right back to the prior question around myths. Another myth that drives crime policy is this myth that there are permanent perpetrators and then permanent victims and never the twain shall meet. Nothing is further from the truth when you look at cycles

of harm and cycles of violence and trauma. There's an overwhelming and undeniable overlap in the life experiences of people hurt by crime and violence and people who have committed crime and violence. And that overlap finds itself in the world of exposure to trauma. That's one of the core life experiences that you'll see. When you look at who's entering our criminal justice system through convictions, 90% of the people going into incarceration have been hurt by crime and violence long before ever committing a crime. That means everything from chronic exposure to violence as a child to being a direct victim of violence before ever committing a crime.

It's important to ask ourselves if that's the prior life experience that later leads to involvement in crime, why wouldn't we want to do everything we could to support recovery and prevent that cycle from continuing? Reducing trauma for both people who have committed crime as well as people who have been hurt by crime is the most effective way to improve public safety. And really it stands in stark contrast to what the justice system does on a day to day basis. When you look at the conditions inside most prisons and incarceration facilities, these are actually trauma causing conditions. We literally put people who have been convicted into systems that are more likely to exacerbate trauma than solve it.

Christiane: So why do you care about this? What brought you to this particular issue?

Lenore Anderson: There's been a couple of aha moments for me in my advocacy on crime policy reform over the years. Like a lot of white Americans, I got into trouble as a kid and was given second chances. Teachers passed me in classes I didn't pass. Police brought me home instead of bringing me to juvenile hall. My parents had resources to help me in my trouble making phase. I did not have a lot of understanding at that time of the privilege that I was being given to be seen as a person who was worthy of a second chance.

Fast forward a decade later and I'm representing young people who have been committing crimes as an attorney and my aha moment was noticing that these are kids who made the same mistakes I made and were not given a second chance. Mostly kids of color, mostly low income, and their journey in the criminal justice system didn't start off very different in terms of decision making as mine. So that was my first aha moment that led me to commit my career to advancing racial justice in our criminal justice system. And then a second aha came around that same time when I was working with young people who were facing years behind bars.

One of the things that sort of shocked me was to recognize that nearly every single young person I have ever met who was arrested and sitting in juvenile court facing a conviction was a victim of crime long before and no one ever supported their recovery. This was sort of a sinking and devastating aha because this was early in my career as a lawyer 20 years ago, and that was at the height of the mass incarceration era. This was in California, the home of a lot of that sort of tough justice political call and the home of the birth of the US of victims' rights movement was also in California.

And I remember thinking, where were their rights as victims when they were abused in foster care or witnessed neighborhood violence or attacked on the way to school? These are young people whose life circumstances prevented them from being safe and there was no justice system or victims' rights movement calling for their protection. And yet, fast forward years later when they themselves get in trouble with the law, we have a justice system that has literally billions of dollars to incarcerate them. So that was sort of a second aha that drove me to really want to spend my career advocating for dignity and humanity for both people who have been hurt by crime and violence as well as people who have been hurt by our incarceration system.

[Interview ends]

[music: Latché Swing, Songe d'Automne]

Christiane: If you want to find more about our guest's other work, download a transcript or learn about some of the things we mentioned in today's episode visit prindleinstitute.org/examining-ethics.

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