

Victimology in transitional justice: Victimhood, innocence and hierarchy

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Abstract

Although addressing the needs of victims is increasingly proffered as the key rationale for transitional justice, serious critical discussion on the political and social construction of victimhood is only tentatively emerging in the field. Drawing from Anglo-American victimology, the first part of this paper suggests that victims of crime as a category are often perceived as the mirror opposite of perpetrators of crime. It suggests that such a perspective narrows the notion of victims' rights or needs so they become intrinsically linked to the punishment of perpetrators; that victims and perpetrators are reified and distinct categories; and that 'true' victim status demands innocence. The second part of the paper takes these insights and applies them to the context of transitional justice. In particular, it questions the notion of 'innocence' as a prerequisite for victim recognition and explores the ways in which victims and perpetrators are not always easily identified as distinct categories in conflicted or transitional societies. The paper concludes that incorporating blame in the calibration of human suffering results in the morally corrosive language of a 'hierarchy of victims'.

Keywords

Hierarchy, innocence, offenders, transitional justice, victimology, victims

Introduction

Across the spectrum of transitional justice practice – from local and international prosecutions, through to truth recovery, memorialization and reparations – recognition of

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the needs and rights of victims is often invoked as perhaps the key rationale for the existence of such institutions and processes (Clarke, 2009; Hayner, 2011; Parmentier et al., this issue; Waterhouse, 2009). As Susan Hirsch (2010) has described, victims in the field of transitional justice are routinely described as ‘deserving’ of global justice. Despite the claims by many transitional justice activists and scholars that the field is ‘victim centred’ (Robins, 2011), there is arguably something of a mismatch between the claims of transitional justice institutions and the views of those victims who are the supposed beneficiaries of such initiatives (Longman, 2006; Lundy and McGovern, 2008; Stover, 2007). An increased problematization of ‘top down’ understandings of transitional justice has heralded a parallel impetus towards assessing practical effectiveness, and an increased scepticism about some of the grander claims regarding victim empowerment and delivery on the ground (Clark, 2010; McEvoy and McGregor, 2008; Shaw et al., 2010). Some powerful critiques of transitional justice suggest that, despite the rhetoric, victims are (to varying degrees) instrumentalized in the pursuit of larger political and social goals such as reinforcing the rule of law, deterring future offenders, getting to the ‘truth’ of past violence and, of course, the pragmatic deal-making that is inherent in making peace (Drumbl, 2007; Henman, 2004; Mallinder and McEvoy, 2011).

This mismatch between the rhetoric and the reality of victim experiences in transitional justice resonates strongly with some key criminological writings regarding the treatment of victims in more settled democracies. The views expressed in this paper derive from fieldwork conducted over more than a decade in different transitional justice contexts.¹ Almost 300 interviews have been conducted by the authors in a range of conflict-affected and transitional jurisdictions. Those interviewed have included victims and victims’ organizations, ex-combatants, lawyers, judges, politicians, and human rights and political activists. In every context where the authors have conducted research, debates concerning the rights and needs of ‘victims’ have been highly contested.

At a general level, victim-focused challenges to the legitimacy of transitional justice institutions may reflect unrealistic or indeed undeliverable expectations (Gibson, 2009; Glasius, 2009). Certainly, a failure to manage victim expectations regarding prosecutions (particularly regarding the likelihood of mass prosecutions), reparations or the viability of ‘full’ disclosure in truth recovery is common in many of the sites we have studied. However, we would argue that such ambivalence speaks to an even more profound problem, that is, the ways in which victimhood is constructed and reproduced in transitional justice.

As a number of papers in this special issue underline, one cannot properly grasp the contours of victim-related discourses in transitional justice without first understanding the developments within the criminological study of victims, which are usually referred to as victimology in domestic criminal justice policy. The first part of this paper offers an overview of some of the key themes associated with the rise of the victim in Western criminological scholarship and policy-making, in particular concerning the politics of victimhood and the ways in which victims have increasingly been viewed as the binary opposite of the criminal or perpetrator. In the second part of the article, taking up a challenge made elsewhere regarding the lack of a criminological perspective on transitional justice (for example, McEvoy, 2007), we focus in particular on the insights that

victimology can provide regarding notions of innocence and victim hierarchy in a post-conflict setting.

Victimology and the rise of ‘the victim’

Until the aftermath of the Second World War, victims of crime were largely absent in terms of criminal justice policy and politics in consolidated democracies (Goodey, 2005). Since that time, however, efforts to take account of the views of victims, in terms of both their experience of victimhood and their place in the criminal justice system, have been a constant feature of research and policy. Some early criminological studies focused on issues such as victim classification – categories that spanned from the ‘completely innocent’ to the ‘most guilty’ victim (Mendelsohn, 1956; Von Hentig, 1948) – and openly discussed the relationship between crime causation and victim precipitation (Wolfgang, 1958). From the 1980s onwards in particular, other variants of victimology sought to explore the prevalence of crime victimhood, its consequences for individuals and communities and its implications for policy and practice across the criminal justice system. International, national and localized crime surveys have offered increasingly accurate information on crime rates and their effects, and these in turn became key tools in the design and delivery of services by agencies such as the police, probation and youth justice (Goodey, 2005; Hough and Mayhew, 1983; Jones et al., 1986; Van Dijk et al., 1990; Van Dijk et al., 2008). Specialized surveys have been designed to capture ‘hidden crimes’ such as sexual assaults, domestic violence and violence against children (Cavanagh et al., 2007; Loseke et al., 2005), and these have provided further detailed information on victimization amongst particularly vulnerable groups.

Of course such processes were never entirely ‘scientific’ affairs. The increased relevance of crime per se as a political issue in the United States, the United Kingdom and elsewhere from at least the 1970s meant that ‘victimhood’ too became heavily politicized and was routinely deployed by political actors across the spectrum vying for resources, authority and political capital (Elias, 1993; Walklate, 1989). Although this process is sometimes characterized as having derailed an emergent disciplinary field from otherwise dispassionate and objective enquiry (Fattah, 1991), in practice an emphasis on the ‘service’ provided to victims in Western victimology literature is inherently political, and closely linked to a number of distinct ideological and theoretical perspectives (Davies et al., 2004; Mawby and Walklate, 1994; Newburn, 2008; Walklate, 2007).

For example, as Elias (1993), Laster and O’Malley (1992), Rock (2004) and others have detailed, victims have been at the very core of much conservative thinking on crime and criminal justice since at least the 1970s. The perennial calls for greater police powers, longer sentences (or indeed the death penalty), community notifications concerning sex offenders and a range of other punitive measures have all been demanded in the name of the ‘rights’ of victims (Waller, 2011; Wolhuter et al., 2009). Often such measures were framed as empowering victims, offering them greater agency and control over their own lives and a stake in the politics that affected them. However, as Jonathan Simon (2007: 136) has observed, the crime victim was and is celebrated as ‘an idealized citizen’ at least in part because his/her demands chime with what the state already knows how to produce relatively effectively, that is, punishment. An alliance

with 'the victim' became essential in the clamour for more punitive responses to crime, lending authenticity and moral purpose to treatment that might otherwise appear merely vengeful or abusive. Calls to condemn more and understand less about the causes of crime are more persuasive when underpinned by the emotional power of victim stories. In what Garland (2001: 102) has described as the watershed period of the 1980s in the UK and the US, much of the loudest political rhetoric associated with criminal justice focused primarily on the crime victim as the moral and political rationale for a 'zero tolerance' approach to crime and disorder.

Of course, such conservative discourses on crime victimization have not had things entirely their own way. Critical commentators and activists did much to move away from the 'victim-blaming' tendencies of early victimology (Clark and Lewis, 1977). Structural inequalities and variables in class, gender and race (in terms of both the experience of crime victimhood and treatment by the criminal justice system) became a regular feature of left-leaning academic criminology from at least the late 1970s (Walklate, 1989). In the UK, Mawby and Gill (1987) and Mawby and Walklate (1994) posited the need for a 'critical victimology' that could capture the lived 'reality' of victimhood, locating real suffering as a result of crime within broader political and structural contexts. These authors often argued that potential for advancement would be realized through focusing on victims' rights in the criminal justice process. Victims' 'rights', sometimes rather loosely defined (for example, Elias, 1993), have since become a staple in victim advocacy work on both the left and the right in the US and the UK (Ashworth, 2003; Hoyle and Zedner, 2007).

However, as 'the victim' became a more visible constituency in criminal justice policy, victims' needs were increasingly framed as being capable of being met only in inverse proportion to the extent to which offenders' needs were recognized. In conservative discourses, harsher punishment of criminal offenders was justified as a response to victims' needs. Similarly, the difficulties associated with realizing legally enforceable victims' rights were and are often juxtaposed directly by conservative commentators with the 'molly-coddling' of perpetrators (Henderson, 1985: 949). Police officers whose 'hands are tied' by red tape, overly lenient judges, 'cushy' prisons – the whole infrastructure of *offender-focused* corrections can be easily portrayed as an act of betrayal to the suffering victims, and as institutional complicity in their injury (Rock, 1998). Even the ultimate punitive sanction (the death penalty) may be cast as an act of kindness, a therapeutic intervention designed to assist with 'closure' for a victim's family (Garland, 2011: 66). From such a perspective, punishing the wicked is the most satisfying method of honouring the righteous victim.

In more progressive variants of victim-centred criminological discourses, the fate of the criminal or perpetrator also looms large. For example, advocates of restorative justice place significant weight not only on the successful reintegration of former offenders (as a way of preventing future victims) but also on maximizing opportunities for offenders to repair the damage they have inflicted on both victims and communities (Braithwaite, 2002; Johnstone and Van Ness, 2007). Indeed, one strong criticism of restorative justice is precisely that, in the drive to reintegrate offenders, victims may feel 'compelled toward compassion' (Acorn, 2005), a position which may not be in their interests, or even what they genuinely desire. Similarly, the long and in many ways successful campaign by

feminist criminologists and victimologists to have matters such as domestic violence, sexual violence (including marital rape) and other previously ‘hidden’ crimes ‘taken seriously’ by the criminal justice system has often focused upon the institutional leniency enjoyed by the perpetrators of such heinous crimes (Renzetti, 2009). Such a focus has had consequences. In particular, the reductive impulse to measure how seriously such crimes are viewed primarily by the punitiveness of the sentence has been criticized by some feminists as a serious flaw. In effect, such authors charge that some of the radical impulses of early feminism have been co-opted by rightist discourses, reifying neo-liberal crime control strategies and muffling the voices of already marginalised victims (Mardorossian, 2002; Bullimer, 2008).

In disaggregating some of the easy assumptions about the relationship between victims and perpetrators, it is necessary to look more closely at circumstances that blur the assumed distinctions between these categories. For example, ever more nuanced studies on prevalence rates and risks of victimization have shown that the poor and non-white populations are both the most likely to be victimized and the most likely to become adjudicated offenders (Coleman et al., 2008; Stuntz, 2012; Tonry and Melewski, 2008).² Certain vulnerable populations, such as the homeless, may have almost daily experiences of moving between criminality and victimization (Tyler and Beal, 2010). Putting it simply, people can be either victims or perpetrators at different times – these are not static categories. Of course, this does not mean that every victim is also a perpetrator, or vice versa. What it does mean is that the (sometimes literal) assumption of black and white distinctions between these categories does not always chime with lived experience, either in settled democracies or, as we argue below, in the arguably more ‘messy’ contexts of conflict-affected societies.

Recognizing that there may be overlaps between victims and perpetrators speaks to an important theme of direct relevance to transitional justice, which is the role of *innocence* in the construction of victim identities. Often the politics of claims-making with regard to victimhood appear to require a ‘deserving’ victim. As Geis (1990: 259) has argued with regard to the United States: ‘the fundamental basis of power of the victims’ movement lies in the public and political acceptance of the view that its clients are good people, done in by those who are bad.’ The ‘innocent’ victim should be the binary opposite of what Maruna (2001) has termed the guilty ‘Bogeyman’ who perpetrates wickedness. Thus, for example, campaigns to enact punitive laws directed against sex offenders such as ‘Megan’s Law’ in the US or ‘Sarah’s Law’ in the UK are often explicitly named after children who were abused or murdered by ‘monsters’ (McAlinden, 2007). The innocence and blamelessness of children is explicitly co-opted in the name of punishing the wicked. Recognition that convicted criminals are also victims, either simultaneously or at other stages of their lives, challenges the impermeability of these categories (Greer, 1994; Mawby, 2007: 341–2).

To sum up, significant elements of both conservative and progressive variants of victimology scholarship and policy suggest a dialectical understanding wherein the experience and politics of victimhood can truly be understood only in terms of its relationship to the perpetrators of crime. Several assumptions have become almost axiomatic in such discussion with regard to criminal justice in settled democratic societies. These are: that honouring victims occurs through the punishment of perpetrators; that victims and

perpetrators are distinct categories with diametrically opposed needs; and that 'true' victim status demands innocence.

Victimhood, hierarchy and innocence in transitional justice

Primo Levi has noted that, even in the horror of the concentration camps, the complex network of human relations could not always be reduced to 'two blocs of victims and persecutors' (1986: 23). Such generosity is unusual. As discussed above, the 'innocence' of a victim in the West is often juxtaposed with the wickedness of a perpetrator. In transitional contexts, this claims-making potential is if anything even more pronounced. In some instances, we would argue that the 'innocent' victim is placed at the apex of a hierarchy of victimhood and becomes a symbol around which contested notions of past violence and suffering are constructed and reproduced.

Of course there are myriad instances in conflicted societies where entirely blameless individuals and communities have violence visited upon them without any morally or politically justifiable reason. The wrongness of such actions and the absolute entitlement of those wronged to identify themselves as victims or survivors (if they so wish) is a given. What is more interesting from our perspective, however, is the view propagated by some actors that it is *only* those designated as completely innocent who can be considered to be victims at all. A hierarchy of victimhood, predicated on distinctions between what Madlingozi (2007) has termed 'good' victims and 'bad' victims, often maps onto both subjective views on the 'justifiability' of the suffering that was visited upon such victims and the strategies and tactics deployed by such victims in the transition and their attitudes to dealing with the past.

By way of example, in South Africa, although scholars and victim activists such as Madlingozi (2007: 111) acknowledge the suffering of white conscripts in the South Africa Defence Forces, Madlingozi's advocacy for social justice is narrowed to those 'who suffered the most'. Given the history of South Africa, such a view may be entirely understandable, but it does, by definition, entail a calibration of suffering. Madlingozi also well captures how the political sympathy for victim mobilization may ebb and flow depending on the prevailing political winds. The iconic victims' group to which he is affiliated (Khulumani) was once largely feted by liberation forces in South Africa, yet gradually came to be rejected by the new political elites, in large part because Khulumani continued to demand reparations for victims of human rights violations, and in doing so challenged the dominant (and politically convenient) political discourse that the past had been 'settled' by the Truth and Reconciliation Commission.³

In Northern Ireland, some pro-Unionist victims' groups have argued that only those considered 'innocent' can be designated true victims given their views on the unjustified nature of the IRA's campaign of violence. From such a perspective, other victims' groups that take an alternative view on how to deal with the past (for example, those who advocate for a truth process instead of prosecutions) are at best naive or, at worst, IRA front organizations (Lundy, 2010).

In Argentina, McEvoy encountered similar misgivings among victims' groups such as *Las Abuelas*.⁴ When asked whether support groups for the families of security force

members killed by guerrillas could be termed victims, opposition to such terminology by *Las Abuelas* was premised on the fact that pro-junta individuals and groups were not ‘innocent’ or deserving of the title ‘victim’ and that their support for amnesties (rather than prosecutions) was entirely self-serving.

The concept of innocence in such settings is highly problematic because such a malleable term is often used to describe victims from ‘our’ community rather than ‘theirs’. Innocent victimhood in such contexts denotes not only suffering but also a means of *blaming* past violence on the other. As Tilly (2008) has contended, blaming has a particularly strong resonance in post-conflict contexts, but it ‘only makes sense when some relation exists between the blamer and the blamed’ (2008: 5). As he argues, institutions such as truth commissions are designed to assign blame to perpetrators while giving due credit to victims and survivors – ‘to draw a line between worthy and unworthy citizens’ (Tilly, 2008: 11). Post-conflict societies, where contested accounts of the past are often a cause of conflict and an impediment to its resolution, are particularly susceptible to such distinctions. Designations of deserving victimhood become an easy shorthand for *blaming* those deemed responsible for past horrors as well absolving those deemed *blameless*.

This intersection between innocence and blame presents significant difficulties for transitional justice, particularly where victims may also have themselves committed human rights abuses. As Claire Moon (2009: 101) notes, the South African Truth and Reconciliation Commission required South Africans to be designated as either ‘victims’ or ‘perpetrators’, but some of those who came before it could not easily be accommodated within such categories (see also [Borer, 2003](#)). One controversial figure (Robert McBride) who applied for and was granted amnesty for his actions during the liberation struggle (including planting a bomb at a bar, which caused the deaths of 3 people and injured a further 69) declared that he too had been a victim of the white Apartheid regime and that it was his determination to fight against that system that led to his involvement in armed struggle (Du Bois-Pendain, 2007: 213). The circularity in such claims-making – of people who become involved in violence because of their own or their communities’ experience of violence – has been a constant refrain repeated to us in literally hundreds of interviews with combatants and ex-combatants over the years.

Within transitional justice literature and policy-making, there are two notable exceptions where offenders may be considered victims: child soldiers and female combatants. Members of these categories are frequently defined as innocent victims of circumstance by virtue of their lack of agency (Duthie and Specht, 2010; Moser and McIlwaine, 2001; Ortega, 2009). Although again this may be true in some circumstances, as Drumbl (2012:7) has argued, law and policy now routinely typify the child soldier as a ‘faultless passive victim’, which in turn narrows discussion on the topic towards a rather ‘conformist and stilted conversation’ (Drumbl, 2012: 9). Similar dynamics are at play with regard to female ex-combatants, again often described as passive conscripted sex slaves or ‘bush wives’ and thus again eligible for the title of victim ([Mazurana and Carlson, 2004](#)). It is the narrowing of the combatant as victim axis to these categories that we would argue is reductionist.

In some contexts where we have conducted fieldwork, whatever the shades of grey between ‘volunteering’ to join armed groups or being physically or economically forced

to do so, the desire to maintain such delineations is still strongly felt. For example, one community activist in Bogotá, Colombia, suggested: 'We consider that differentiation between victims and perpetrators is completely basic, it's fundamental.' In Sierra Leone, a religious leader suggested the polar opposite to the same question: 'Victim, perpetrator, victim perpetrator, perpetrator, victim. Witness victim, victim witness. It's not just one, we have a chameleonic nature of the war, where at one point you see this person here in green. You go there, this same green turns into dark blue. . . . In that way victims and perpetrators share the same responsibility. There is no running away from it.'

The divergence of these views speaks directly to a central problematic. Human beings can move between kindness and wickedness in a single day, never mind across a lifetime lived in a society experiencing political or ethnic violence. Acknowledging that reality does not obfuscate individual or collective culpability. It does, however, expand the potential for human empathy to both victims and perpetrators – even when the former are not blameless or when the latter have carried out atrocious acts – or where the two categories directly overlap.

Conclusion

This paper has sought to draw out a few key themes from Western victimology that may be relevant to victimhood in transitional contexts. In drawing upon victimology literature from established democracies, we are conscious of the possible charge that we are not comparing like with like. The developments in victimology in the West have taken over 50 years in settled democracies with long-established 'rule of law' traditions. Certainly the contexts of, for example, Colombia or Sierra Leone are very different. Notwithstanding the obvious material differences, we would argue that the apparently exceptional contexts of transitional justice often belie themes of ideology, politics and power relations that are very familiar in Western contexts (see also Posner and Vermeule, 2004).

From victimology literature, we know that, although ever more nuanced scientific knowledge about victims' needs is necessary, such knowledge is inevitably socially and politically constructed and open to political manipulation. We know that all too often the forms of political claims-making associated with the needs and rights of victims of crime lend themselves to being inversely linked to respect for the needs and rights of offenders. We know that the monochromatic distinctions between victims and offenders that sometimes pervade elements of victimological and indeed criminological scholarship do not correspond with the lived reality of victimhood and offending experienced by many individuals and communities in the West. In post-conflict societies, a critical appreciation of these and other themes in victimology must be mapped onto the competing narratives of community, nation and the past, which are often the fault-lines around which victimhood in transitional justice coalesces. In the occasional fog of such contexts, victimology literature helps us to *see* more clearly the forces at work and to apply (with due deference to the local context) what we know.

To conclude, as Bouris (2007: 10) has suggested, perhaps what is required in such societies is to construct a more nuanced understanding of the politics of victimhood. Such a version of victimhood would be informed by all of the above variables in general and would countenance in particular a victim 'who is no longer chained to

characteristics of complete innocence and purity, but remains a victim nonetheless'. To require victims to cleave to the notion of innocence is, in our view, a politically invidious approach to victimhood that factors blame in the calibration of human suffering and inevitably results in the morally corrosive language of victim hierarchies. This has particular dangers for politically contested societies. Furthermore, as victimologists in the West were to ultimately conclude with regard to 'victim blaming' classifications of the 1940s and 1950s, such notions cannot withstand even the most cursory level of critical academic scrutiny.

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Notes

1. The methodology deployed in these projects has been replicated across three comparative studies. In 1995–6, McEvoy (with B. Gormally) conducted comparative fieldwork in South Africa, Italy, Spain, Israel and Palestine on questions related to the release and reintegration of paramilitary prisoners. In 2006–8 (with H. Mika), the authors conducted fieldwork in South Africa, Rwanda, Colombia, Sierra Leone, Colombia and Northern Ireland on the theme of transitional justice from below. Finally, in 2008–11 (with L. Mallinder and B. Dickson), McEvoy again carried out comparative fieldwork on amnesties in transitional contexts in South Africa, Uganda, Uruguay, Argentina and Bosnia-Herzegovina. More recently (with C. Lawther), he has been conducting further interviews with a range of victims' organizations on matters related to dealing with the past in Northern Ireland.
2. To offer a concrete example, young black people make up just 15 percent of the population in the 10–18 age group in London but account for almost two-thirds of all people murdered in that category. In Britain as a whole, black people are 5.5 times more likely than white people to be the victim of homicide. At the same time, black people of all ages are five times more likely to be sentenced to imprisonment (Home Affairs Select Committee, 2007).
3. Interview with authors, 14 March 2006, 13 May 2008.
4. Las Abuelas de la Plaza Mayor grew from the iconic Madres de la Plaza Mayor, the famous victims' organization that used to assemble in the Plaza Mayor in Buenos Aires from 1977 until 2006 in protest at the disappearance of their children by the military junta. Las Abuelas (the grandmothers) was a non-governmental organization formed to protest against the loss of their grandchildren. Many of these children were forcibly taken from women disappeared by the military regime and 'adopted' by military families. Las Abuelas have led the campaign for the DNA testing of such children and their return to their biological families. Las Abuelas argue that to afford pro-junta groups the status of victims would constitute a de facto acceptance of the pro-junta myth that the Argentine conflict represented a shared history of violence from right and left that, implicitly at least, required a violent response by the state – and which creates a contemporary imperative to forgo prosecutions in the interests of national reconciliation. Interview conducted 24 November 2008. See, further, <http://www.abuelas.org.ar>.

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