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Victimology: A Canadian Perspective, by Jo-Anne M. Wemmers

Abstract

The Canadian legal community finds itself in the midst of a debate about whether victims of crime deserve greater rights in its justice system. A stunning report, for example, from *The Globe and Mail* in 2017 that details the high rate of sexual assault reports dismissed by police forces across the country was met with calls for investigators to pursue justice on behalf of victims more forcefully. Parliament, meanwhile, enacted legislation designed to better prepare sexual assault survivors who may face credibility-impeaching evidence on the witness stand. Dubbed “the Ghomeshi law” by legal commentators (as it arrived not long after the high-profile acquittal, on sexual assault charges, of CBC Radio host Jian Ghomeshi), the legislation has proved to be controversial.

Book Review

***Victimology: A Canadian Perspective*, by
Jo-Anne M. Wemmers¹**JAKE BABAD²

THE CANADIAN LEGAL COMMUNITY finds itself in the midst of a debate about whether victims of crime deserve greater rights in its justice system. A stunning report, for example, from *The Globe and Mail* in 2017 that details the high rate of sexual assault reports dismissed by police forces across the country³ was met with calls for investigators to pursue justice on behalf of victims more forcefully.⁴ Parliament, meanwhile, enacted legislation designed to better prepare sexual assault survivors who may face credibility-impeaching evidence on the witness stand.⁵ Dubbed “the Ghomeshi law” by legal commentators (as it arrived not long after the high-profile acquittal, on sexual assault charges, of CBC Radio host Jian Ghomeshi), the legislation has proved to be controversial. Some have argued

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1. (Toronto: University of Toronto Press, 2017) [Victimology].
 2. JD Candidate (2019), Osgoode Hall Law School, Toronto, Canada.
 3. Robyn Doolittle, “Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless,” *The Globe and Mail* (3 February 2017), online: <www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309>.
 4. Ian Froese, “Civilian panel should help police investigate sexual assault, advocates say,” *CBC News* (10 August 2018), online: <www.cbc.ca/news/canada/manitoba/unfounded-sexual-assault-philadelphia-model-1.4780897>.
 5. Bill C-51, *An Act to amend the Criminal Code and the Department of Justice Act and to make consequential amendments to another Act*, 1st Sess, 42nd Parl, 2017.

it is unconstitutional.⁶ Most recently, former Chief Justice of the Supreme Court of Canada Beverley McLachlin made headlines when she addressed the topic of what duty is owed to sexual assault complainants at trial. Her speech, in which she insisted that survivors have no “right to a particular verdict,” was the subject of intense debate in the days that followed.⁷ On university campuses, in legislatures, and in the media, Canada is re-evaluating what rights and responsibilities a victim should hold in legal proceedings.

Jo-Anne M. Wemmers’s *Victimology: A Canadian Perspective*⁸ arrives at an ideal moment. Victimology, dating back to the late 1930s,⁹ is the study of victims which involves examining how society decides to apply that label, how people with that label are treated, and what commonalities and differences exist between members of that class. Victimology combines subject matter from criminology, law, and sociology. As Wemmers’s title suggests, her book offers “a broad introduction to the subject” through a Canadian lens with an “informed ... holistic, victim-centred approach that treats victims’ rights as human rights.”¹⁰

Wemmers begins her exploration with a fascinating summary of the history behind societal approaches to victims and how Canada has ended up with a system that, in the criminal context, largely places the victim outside the proceedings. She first looks at ancient Egyptian and Hebrew systems of criminal justice, in which victims had the all-important role of pursuing justice for themselves by bringing their offenders before judges and demanding restitution. Because of the centrality of the role of the victim in these legal traditions, Wemmers calls this era the “golden age of victims.”¹¹ She identifies a shift in the direction of the system we have in place in Canada today as occurring in the Middle Ages, when the Crown assumed the role of ‘keeping the King’s peace.’ This shift slowly

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6. Michael Spratt, “The Ghomeshi rules: Bill C-51 creates unprecedented case of reverse disclosure,” *Canadian Lawyer* (19 June 2017), online: <www.canadianlawyermag.com/author/michael-spratt/the-ghomeshi-rules-bill-c-51-creates-unprecedented-case-of-reverse-disclosure-3658>.
 7. Sean Fine, “Chief Justice Beverley McLachlin on sex assault cases: ‘No one has the right to a particular verdict,’” *The Globe and Mail* (29 October 2017), online: <www.theglobeandmail.com/news/national/chief-justice-beverley-mclachlin-on-sex-assault-cases-no-one-has-the-right-to-a-particular-verdict/article36763554>. See also David Butt, “McLachlin misses the mark with sexual-assault comments,” *The Globe and Mail* (31 October 2017), online: <www.theglobeandmail.com/opinion/mclachlin-misses-the-mark-with-sexual-assault-comments/article36778724>.
 8. Wemmers, *supra* note 1.
 9. *Ibid* at 17.
 10. *Ibid*, back cover.
 11. *Ibid* at 7.

pushed the victim outside of the proceedings, to the point where reparation was no longer paid by offenders to their victims, but rather by offenders to society (which often meant paying fines directly to the Crown's coffers).¹² This, according to Wemmers, is how we have conceived the criminal justice system in Canada: proceedings that do not consider what debt is owed to the victim and in which the victim need not be an active participant or even wish to be involved at all.¹³ She situates victimology as a response to this system, one that arose out of conversations about the Holocaust and emerged in full as crime rates increased in North America and Europe from the 1960s to the 1990s.¹⁴

Throughout the book, Wemmers is concerned with identifying and proposing solutions to the imbalances between victim and perpetrator that exist within the Canadian justice system. Importantly, though, Wemmers does not ignore early victimology's role in perpetuating many of the stereotypes that continue to haunt the concept of victimhood. Early victimologist Benjamin Mendelsohn, for example, devoted his work to placing victims on a spectrum that ranged from "the guilty victim" to "[t]he entirely innocent victim."¹⁵ It is not difficult to trace a line from this type of thinking to present-day judges who suggest that sexual assault victims should be "keeping [their] knees together."¹⁶ Wemmers thoughtfully examines the work that is left to be done by victimologists in overcoming assumptions about who is victimized and why, such as the failure of victim surveys to consider the effects of crimes without direct victims (*e.g.*, white-collar crime).¹⁷

From this historical introduction, Wemmers goes on to explore the topic from several angles, including the impact of victimization, secondary victimization, victims' rights, victim assistance, and integrating victims in criminal justice. She

12. *Ibid* at 5-10.

13. *Ibid* at 9-10.

14. *Ibid* at 37. An interesting side note on terminology is helpful here. As Wemmers acknowledges, the word "victim" may feel outdated in the context of current discourse about sexual assault. "Survivor" is now the preferred term for those who have experienced such crimes, as it suggests agency rather than passivity. But, as Wemmers sees it, one can only be a survivor after passing through the experience of having been victimized. She cautions scholars not to ignore the fact that the act of surviving requires difficult work and does not happen automatically (*ibid* at 2).

15. *Ibid* at 27.

16. The Canadian Press, "'Knees together' former judge Robin Camp makes case for reinstatement," *The Globe and Mail* (14 November 2017), online: <www.theglobeandmail.com/news/national/knees-together-judge-robin-camp-makes-case-for-reinstatement/article36970201>.

17. Wemmers, *supra* note 1 at 47.

does so largely from a Canadian perspective but also compares the Canadian system to international practices, giving the reader a general understanding of competing approaches around the world. Wemmers's research is thorough, her arguments are backed by strong and detailed data, and the information is presented in a coherent and digestible fashion.

Wemmers devotes her energy to presenting these statistics as clearly as possible and properly situating them in their historical and political contexts. Said data is likely to shock anyone outside the field. An early chapter on victimization surveys, for example, challenges widely held beliefs about victimization rates for immigrants to Canada¹⁸ and the gap (or lack thereof) in rates of victimization between Canadians and Americans.¹⁹ Other passages, however, would benefit from more commentary. A brief summary of a study in one chapter on victims' needs tells us that "[p]roviding victims with voice and a sense that their concerns are being heard enhances their confidence in the criminal justice system."²⁰ This begs to be analyzed in greater detail. Of what, exactly, are victims confident? And what does "victim confidence" bring to the pursuit of justice? Similarly, the contestable assertion that "crime is a social construct" is levied without further debate.²¹ But Wemmers can be forgiven for such small lapses, as her objective is to create an introduction to the topic. As such, there is an unavoidable price to be paid for an excellent summary of a diverse field.

Standout chapters include those on victims' rights, state compensation, and victim participation in the criminal justice system. In the victims' rights chapter, for example, Wemmers analyses both the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*²² and the *Canadian Statement of Basic Principles of Justice for Victims of Crime*²³ and critiques ambiguities—intentional and unintentional—hiding in these documents.²⁴ Her argument for why victims' rights deserve to be recognized as human rights is worthy of its own book altogether.²⁵

18. *Ibid* at 53.

19. *Ibid* at 57.

20. *Ibid* at 114.

21. *Ibid* at 5.

22. UNGAOR, 40th Sess, 96th Plen Mtg, UN Doc A/Res/40/34 (1985).

23. Canada, Department of Justice, "Canadian Statement of Basic Principles of Justice for Victims of Crime," by Policy Centre for Victim Issues, Catalogue No J2-210/2003 (Ottawa: Justice Canada, 2003).

24. Wemmers, *supra* note 1 at 122.

25. *Ibid* at 131.

By far the most interesting thread running through *Victimology* is the question posed by “multiple victimization.” As Wemmers identifies early on, researchers have long known that prior victimization is a strong predictor of future victimization, but the precise nature of causation is still unclear.²⁶ Wemmers devotes chapter five, “Theoretical Victimology,” to exploring the hypotheses underpinning these findings. This is where the work is being done to reverse the stereotypes and bias historically shown to victims, including by early victimologists. This, too, is where the potential value of victimology is most strongly felt: the development of tools for preventing victimization and advocating for greater reparation to victims. As with other areas of the book, however, the chapter leaves the reader slightly frustrated by the brevity. One wishes Wemmers had more space to devote to this topic given her expertise.

Wemmers’s book joins the ranks of other publications in the nascent field of victimology, many of which focus on particular jurisdictions or crimes and are often weighted towards specific fields, such as criminology or sociology.²⁷ As an introduction to the topic, condensed into a mere 200 pages (not including appendices), this book is more accessible than others on the market, including Israel Drapkin and Emilio Viano’s five-volume approach, *Victimology: A New Focus*, originally published in the mid-1970s.²⁸ Those interested in Wemmers’s approach to victims’ rights as human rights should seek out Robert Elias’s book *The Politics of Victimization: Victims, Victimology, and Human Rights*,²⁹ on which Wemmers draws in her work.³⁰

The real significance of Wemmers’s book is undoubtedly that it approaches the topic from a Canadian perspective. Recent works from Tammy C. Landau,³¹ J. Scott Kenney,³² and Hannah Scott³³ have begun to explore Canada’s relationship to the field, but Wemmers brings a new level of legal analysis to

26. *Ibid* at 56.

27. See e.g. LeRoy G Schultz, *Rape Victimology* (Springfield, Ill: Charles C Thomas, 1975); Don John O Omale, *Restorative Justice and Victimology: Euro-Africa Perspectives* (Oisterwijk: Wolf Legal, 2012).

28. (Lexington, Mass: Lexington Books, 1974-1975) vols 1-5.

29. (New York: Oxford University Press, 1986).

30. Wemmers, *supra* note 1.

31. *Challenging Notions: Critical Victimology in Canada*, 2nd ed (Toronto: Canadian Scholars’ Press, 2014).

32. *Canadian Victims of Crime: Critical Insights* (Toronto: Canadian Scholars’ Press, 2010).

33. *Victimology: Canadians in Context*, 2nd ed (Don Mills: Oxford University Press, 2016).

the task.³⁴ Of particular interest are the instances in which Wemmers identifies differences in how victims' rights movements have developed in Quebec and English-speaking Canada, and the differences between Canada and the United States. Canada, for example, developed victims' rights activism much later than the United States, despite similar crime rates and the visibility of US activists.³⁵

As interesting as these historical differences are, it is Wemmers's analysis of Canadian victims' rights legislation that is most compelling. Take, for example, her reading of Bill C-479, whose short title is *An Act to Bring Fairness for the Victims of Violent Offenders*, but full title is *An Act to Amend the Corrections and Conditional Release Act (fairness for victims)*. Wemmers has much to say about the optics of the two different titles and cautions that simply restricting the rights of the accused is not the same as expanding the rights of the victim; these are not two ends of a spectrum with a zero-sum result.³⁶ She cautions that "it is important to ask who benefits from [victim-centred policies] and to be suspicious of programs that pursue other goals in the name of victims."³⁷ Her analyses of the *Canadian Victims Bill of Rights*³⁸ and the *Criminal Code* of Canada³⁹ are just as sharp.

Wemmers's incisive approach to Canadian history and social policy is unfortunately not felt in all sections of the book. In some instances, the Canadian content arrives as a coda in chapters that explore a topic from a more global perspective, or is omitted altogether. Where present, however, it makes an irrefutable case for the necessity of more scholarship in this area.

Ultimately, any critique of this book amounts to a desire to read more of Wemmers's work. She has assembled an accessible, efficient introduction to her topic of expertise and provides, along the way, insight that sparks interest for greater exploration. This publication comes at a time when Canada is looking for responses to urgent questions about victims' needs in a legal system that may have fallen behind the times. *Victimology* is certain to be used in many fields.

34. Hannah Scott, for example, is less concerned with the history of legal approaches to victimization and more concerned with breaking down data by specific criminal offence. See *ibid.* On the other hand, J Scott Kenney places special emphasis on the emotional impact of victimization. See Kenney, *supra* note 32.

35. Wemmers, *supra* note 1 at 35.

36. *Ibid* at 38.

37. *Ibid* at 39.

38. *Canadian Victims Bill of Rights*, SC 2015, c 13.

39. *Criminal Code*, RSC 1985, c C-46.