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## **Victimology with a hammer: the challenge of victimology**

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# Victimology with a hammer: the challenge of victimology

Lecture by  
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# Victimology with a hammer: the challenge of victimology

**Prof. dr. Antony Pemberton**

## **Lecture**

delivered on the public acceptance of the position  
of professor of Victimology at Tilburg University on December 11, 2015  
by Antony Pemberton

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# Victimology with a hammer: the challenge of victimology



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# Introduction: Nietzsche's challenge<sup>I</sup>

Dear Mr Rector Magnificus

Dear Mrs Dean of Tilburg Law School

Ladies and Gentlemen

I have already understood that the title of this lecture has given rise to some misunderstandings, and so to immediately put one misapprehension to bed, the hammer in the title is not a reference to the 1990s MC of that name, nor do I intend to convey the impression that any one of you *can't touch this*. Having said this, the philosopher to whom the title does refer, wrote a volume called *Ecce Homo* with chapter titles *Why I am so clever*, *Why I am so wise* and *Why I write such good books*.<sup>2</sup>

Whether or not Friedrich Nietzsche, actually wore *hammer pants*, he would definitely be my choice as the key thinker in Western history to be the first and foremost philosopher of victimology, the study of the experience of suffering wrongdoing.<sup>3</sup> This answer may seem odd, heretical even, given that many erroneously consider him to be guilty by association of some of the worst atrocities in history. In addition his verbal venom towards pity, sympathy, compassion and altruism, and his apparent support for aggression, cruelty and domination of the weak by the powerful hardly place him in pole position for a ringing endorsement by victimologists<sup>4</sup>.

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<sup>1</sup> Much of the work on this inaugural lecture was conducted with the support of the personal Veni-grant (451-13-019) awarded by the Dutch Science Foundation (NWO). In addition I am greatly indebted to Pauline Aarten and Eva Mulder who reviewed earlier versions of this lecture and to Vivi Hermans for all her help in organizing this inaugural address.

<sup>2</sup> See Nietzsche, F. (1898/ 1908/1967). *Ecce Homo*. Random House. New York. (Translation W. Kaufman).

<sup>3</sup> See for the importance of wrongdoing as a defining element of victimology Pemberton, A. (2014). Respecting victims of crime. Key distinctions in a theory of victims' rights. In Vanfraechem, I., Pemberton, A. & Ndahinda, F.N. (eds.) *Justice for victims. Perspectives on rights, transition and reconciliation*. Routledge, Oxon, Uk. Another one would be Voltaire, whose *The Lisbon Earthquake: a poem* stands out as early lament against the practice of victim blaming. See also the accounts of his thinking in Shklar, J. (1990). *The faces of injustice*. Yale University Press, New Haven, CT. and Neiman, S. (2004). *Evil: an alternative history of philosophy*. Princeton University Press, Princeton NJ.

<sup>4</sup> Jonathan Glover's otherwise epic tour de force *Humanity* is a case in point of this enduring misunderstanding of Nietzsche. See Glover, J. (1999). *Humanity a moral history of the 20<sup>th</sup> century*. Random House. London. However more often than not this is an instance of what Richard Schacht has called the "Blond Beast Blunder", in which Nietzsche's discussion of the 'noble morality' is taken to be his own normative standpoint, rather than a description of what he thought the existing normative framework was before the ascendance of the 'slave morality'. See Schacht, R. (2000). Nietzschean normativity. In Schacht, R. (ed.). *Nietzsche's postmoralism*. Essays on Nietzsche's prelude to philosophy's future. Cambridge University Press.

However, the case for my choice is not that difficult to make. Nietzsche may have philosophized with a hammer, but he positioned suffering, and the complexities or even impossibilities of finding meaning in suffering as some of the most fundamental forces in social life. This is clear from his most important works in this regard, the 5<sup>th</sup> volume of *The Gay Science*, *Beyond Good and Evil* and in particular *On The Genealogy of Morality/ Morals*.<sup>5</sup> Our morality and our self-understanding are rooted in the way we –throughout Western history- have attempted to make meaning in suffering.<sup>6</sup> The ancient and unreflective *noble morality* of Nietzsche’s *blond beasts*<sup>7</sup> merely duplicated their social structure in their value systems, with the characteristics of those strong and winning making up the category *good* and the characteristics of anyone unable to do so making up the category *bad* by default. The more reflective and clever *slave morality* sought to offer the losers - those suffering without possibility to impose themselves on the world, suffering in vain, with nothing to look forward to except their demise, without ever making their mark - an alternative mode of valuation in which they could turn the tables on the strong: by labelling the strong’s oppressive actions

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<sup>5</sup> See Nietzsche, F. (1882/ 1886/1974 ) *The Gay Science*. (translation W. Kaufman). Vintage. New York. Nietzsche, F. (1887/1973). *Beyond Good and Evil*. (translation R.J. Hollingdale). Penguin. London. Nietzsche, F. (1887/ 1967). *On the Genealogy of Morals*. (translation R.J. Hollingdale & W. Kaufman). Random House, New York. I will refer to *The Gay Science* as GS, *Beyond Good and Evil* as BGE and to *On the Genealogy of Morals/ Morality* as GM. For some of the most interesting secondary literature see Clark, M. (1990). *Nietzsche on truth on philosophy*. Cambridge University Press. Cambridge. Clark, M. (1994). Nietzsche’s immoralism and the concept of morality. In Schacht, R. (ed.). *Nietzsche, genealogy, morality. Essays on Nietzsche’s on the Genealogy of Morals*. University of California Press, Berkeley, CA. Ridley, A. (1998). *Nietzsche’s conscience. Six Character Studies from the Genealogy*. Cornell University Press. Ithaca, New York. Clark, M. (2000). On the rejection of morality. Bernard Williams’s debt to Nietzsche. In Schacht, R. (ed.). Nietzsche’s postmoralism. Essays on Nietzsche’s prelude to philosophy’s future. Cambridge University Press. Cambridge. Schacht, R. (2000). Nietzschean normativity. In Schacht, R. (ed.). Nietzsche’s postmoralism. Essays on Nietzsche’s prelude to philosophy’s future. Janaway, C. (2007). *Beyond selflessness. Reading Nietzsche’s Genealogy*. Oxford University Press. Oxford. Owen, D. (2007). *Nietzsche’s Genealogy of Morality*. Acumen, Stockfield, UK. Cambridge University Press. Clark, M. & Dudrick, D. (2012). *The soul of Nietzsche’s Beyond Good and Evil*. Cambridge University Press. Cambridge.

<sup>6</sup> See Aaron Ridley’s (1998) fascinating study of the characters in the *Genealogy*. That this is peculiar to Western history is evident from the current anthropological and moral psychological literature, see for instance Boehm, C. (2013). *Moral Origins. The evaluation of virtue, altruism and shame*. Basic Books. or Haidt, J. (2011). *The righteous mind. Why good people are divided by politics and religion*. Penguin, New York.

<sup>7</sup> This is the characteristic manner by which Nietzsche described the ‘nobles’. Subsequently the combination of first the ‘Blond Beast Blunder’ (see Schacht, 2000, note 4), and second the connection of the Blond Beasts to the notions of the Aryan race, contributed to the view of Nietzsche as anti-semitic.

against them as *evil* and themselves by omission as *good*.<sup>8</sup> The evil birds of prey and the good little lambs, the well-known metaphor Nietzsche used for this distinction.

But a mode of valuation which makes the nobles out to be evil, and offers the possibility of some *spiritual revenge*, is not enough. This does not resolve the underlying problem of the slave's suffering. More is needed, and is offered through the means of *the ascetic ideal*, the topic of the third essay of the *Genealogy*. Nietzsche points to the figure of the priest, the Christian, who, as Aaron Ridley writes:

*“persuades [..the slaves..] to make their rancor against life and the world absolute – to apply the evil side of their new distinction to everything temporal, immanent, this-worldly and the good side to whatever lacks these qualities – to the “beyond”, to God, to heaven. The ascetic ideal then makes life bearable, gives suffering meaning, by demonizing life itself. All good things come from heaven, all value transcends life.”*<sup>9</sup>

The cause of our suffering is life itself, to be overcome by those values that go beyond life.

But given that these transcendental values, including universal laws and reason, also contain a commitment to the truth, Nietzsche argues that we will eventually start to question whether the priest's stories are not just mere fantasies. Stories intended but more often than not intended failing to offer a form of comfort.<sup>10</sup> As he writes in *The Gay Science* “*The greatest recent event – that God is dead, that the belief in the Christian God has ceased to be believable is even now beginning to cast its shadows over Europe.*”<sup>11</sup> But the consequences of this event have been obscured from view. The event itself is too great to comprehend “*that what must collapse is all that was built upon it, leaned on it, grew into it, for example, our whole European morality.*”<sup>12</sup>

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<sup>8</sup> See in particular Schacht (2000), note 4.

<sup>9</sup> See Ridley 1998, note 5, p.9.

<sup>10</sup> For a long time people have laboured under a mistaken postmodern interpretation of Nietzsche's views: his work was put to use to make a full-blown case for cultural and moral relativism, in which the truth is fully in the eye of the beholder. In more recent years however it has become clear that Nietzsche had a profound commitment to the truth, and a “uniform respect for science, truth, and the facts” as Clark, 1990, note 5, expressed it. It his commitment to the truth, to scientific inquiry that supplies his main arguments for their limitations. It is the will to truth itself that will lead us to understand the limits of truth itself. See in more detail Clark & Dudrick, 2012, note 5.

<sup>11</sup> See Nietzsche, GS,343.

<sup>12</sup> See Nietzsche, GS 343.

For as Nietzsche emphasized in all his attacks on his fellow countryman Immanuel Kant, Western culture may have become more secular, but not less transcendental. We have not truly realized the consequences of *the death of God*, as we remain committed to reason, but for its own sake, universalism, but for its own sake, and truth, but for its own sake.<sup>13</sup> That was the case in Nietzsche's era, but remains so today. Our foremost *Last Utopia*, that of human rights, as Samuel Moyn's fantastic book of the same name demonstrates, still continues to be fully committed to a secularly grounded form of adherence to transcendental values, or in other words, transcendentalism.<sup>14</sup>

But cracks are appearing, and undoubtedly the re-discovery of Nietzsche as one of the most important thinkers in the history of ethics and moral philosophy can be seen in this light. What do we do when we realize that transcendental values of all kinds are merely comforting fantasies themselves? That they contain inherent contradictions, as our will to truth will to truth will finally expose the reality of untruthfulness in this will itself? That our attempt to use transcendentalism to overcome our own suffering involves a denial of the value of life itself? What do we do once we own up to the understanding that transcendentalism does not succeed in its goal and often contributes to suffering rather than ameliorates it? That our systems of morals drawn from the right and the good fail in the light of true large scale suffering?

Nietzsche knew that answers were needed, and he also was aware of his inability of giving them. Three possible answers appear in his work. The first is the moral nihilism with which he is often credited. His critique of the peculiar institution of European morality, as evolved in the Western world, is then taken to be an outright denouncement of ethical frameworks. We might just exclaim that life is full of suffering, that there is nothing to be done, and then go about the business of achieving as much hedonic and egoistic pleasure as the world might afford and/ or replace our sense of ethics with aesthetics.

The second one that might be most appealing to many people in this room, and to many people working in victimology in general, is to attempt to abolish suffering. However, as Nietzsche would have it, this is insufficiently truthful, as it is an unattainable ideal. It also threatens to reintroduce transcendental values

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<sup>13</sup> I take the "*Death of God*" to be the ejection of the divine as an argument in matters of philosophy and science, rather than a statement of fact, faith or lack thereof. Given that I am an agnostic myself and have found good cause myself to warm to organized religion I am hesitant to follow Nietzsche in a more literal interpretation of this phrase.

<sup>14</sup> Moyn, S. (2011). *The last utopia. Human rights in history*. Harvard University Press, Cambridge MA. See also Moyn, S. (2014). *Human rights and the uses of history*, Verso. London.

related to the abolishment of suffering. Indeed we might find ourselves becoming overly obsessed with safety, security, risk management, and the like.<sup>15</sup> Instead the third possible answer is the one I believe Nietzsche would have preferred. He called upon *the philosophers of the future* to start fully looking into the abyss of suffering, truthfully facing up to a life of immanence (suffering and all) and attempt to affirm it for it what it is. As Ridley says “*to harness our pain so that it turns towards life and the world, rather than away from it.*”<sup>16</sup> Fully grasping what this might mean and where this might lead us is the challenge he bequeathed to us all, and the challenge that I think victimologists should consider their guiding light.

In doing so we need to take heed of *the magnificent tension of the spirit* that Nietzsche identified: that between the *will to truth* and the *will to value*.<sup>17</sup> Science, although the most preferable manner to get to knowledge, cannot be fully sealed off from value judgements. If a particular phenomenon is universalizable, governed by general laws and causal mechanisms and conceptually and logically separated from value judgements, so much the better for our ability to use the scientific method as a vessel to achieve truth. But this should not be reversed into a requirement that truth concerns that which is universalizable, governed by general laws and causal mechanisms and logically separated from values. This reversal reflects a value judgement in and of itself, one which Nietzsche attributed to a *Mr Mechanic* and ridiculed in his characteristic fashion.<sup>18</sup>

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<sup>15</sup> Which is perhaps more so today than Nietzsche could have ever fathomed. There is much more to be said about Ulrich Beck’s view of the *Risk Society* (1992, Thousand Oaks, Sage), than I can do here, but it is undoubtedly true that in our late modernity notions of risk, security and safety have become almost ubiquitous.

<sup>16</sup> See Ridley, 1998, note 5, p.11.

<sup>17</sup> See GS 373 and GS 374. I have relied heavily on Clark and Dudrick (2012)’s recent detailed and well-argued interpretation, see note 5. The juxtaposition of instrumental rationality and value rationality, and the way this features particularly heavily in social science is the subject of Bent Flyvbjerg’s thought-provoking (2001) *Making Social Science Matter. Why social inquiry fails and how it can succeed again*. Cambridge University Press. Cambridge. A call to arms to start rethinking inquiry into social phenomena along the lines of Aristotle’s conception of phronesis, rather than the episteme derived from natural sciences.

<sup>18</sup> In GS 373: “*that the only rightful interpretation of the world should be the one which you have a right; one by which one can do research and go on scientifically in your sense of the term (you really mean mechanistically?) – one that permits counting, calculating, weighing, seeing, grasping and nothing else – that is a crudity and naivete, assuming it is not a mental illness, an idiocy ...a “scientific” interpretation of the world, as you understand it, might still be one of the stupidest of all possible interpretations of the world, i.e. one of those most lacking in meaning.*”

Where scientific explanations are possible they are preferable to non-scientific explanations. But this is not the same as maintaining that scientific explanation of all phenomena is possible, and that something is only real if it is subject to scientific explanation.<sup>19</sup> This statement is already true of the natural sciences, but all the more so of what Nietzsche considered to be the *unnatural sciences*. These sciences – better known to us today as the social sciences and the humanities – have humans as their subject. Similar to the scientist himself they also experience the magnificent tension of the spirit. As a consequence, what Anthony Giddens has called *the double hermeneutic* in the study of humans, arises.<sup>20</sup> The scientist himself cannot escape his will to value and the self-interpretation that follows in its wake, but the objects of study, humans going about their lives, do the same.

I think victimology can lay claim – in these terms – to being one of the most *unnatural* of all the social sciences, as its core subject involves the experience of humans making pivotal value judgements, more precisely those involving suffering value transgressions. This means that victimologists need to be fully aware of the value component of any attempt to get to the truth. Their subject will often not allow universalization and will defy general laws, and the victimologist needs to fully understand the perspective (s)he draws from philosophy, rather than pretend to operate under an ethical viewpoint *from nowhere*, and to separate the will to truth from the will to value.<sup>21</sup> As I will show throughout this lecture, much of the truth of the experience of victimisation lies in the idiosyncratic, the personal, the unrepeatable, the concrete. Nobody is raped, beaten, oppressed, or murdered in abstract: part of the essence of experiencing this firsthand lies in the impossibility of escaping into abstraction. Here is where transcendentalism falters in the face of our deepest suffering.

*Victimology with a hammer* then involves the challenge that fully grasping the experience of our subject of study poses for the way we conduct our inquiries and in tandem the manner in which this feeds into our normative frameworks. This in turn shapes the way we should interpret the complexities, difficulties and inevitable inadequacies of developing processes attempting to rectify or ameliorate the injustice victims have suffered. The challenge *for* victimologists

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<sup>19</sup> See Clark & Dudrick, 2012, note 5.

<sup>20</sup> See Giddens, A. (1984). *The constitution of society*. University of California Press. Berkeley, CA.

<sup>21</sup> These points are well elaborated in Shklar, J. (1998). The liberalism of fear. In Shklar, J. *Political thinkers and political thought*. University of Chicago Press. Chicago. See also Williams, B. (2005). In the beginning there was the deed. In Williams B. *In the beginning there was the deed. Realism and moralism in political argument*. Princeton University Press. Princeton, NJ.

here becomes a challenge to our conceptions of justice and the processes we devise in their wake.

In this lecture, I will try to illuminate some of the main issues in this challenge through a discussion of five dichotomies. Each of these dichotomies is in one way or another indebted to Nietzsche, although his influence is largely implicit.<sup>22</sup> And for each I will focus on one of the poles of the dichotomy, but caution that we should never lose sight of the fact that something of the magnificent tension of the spirit carries over to these dichotomies as well. To put it plainly: I am not suggesting that the pole that intrigues me most should fully replace the other side. We should not push back against transcendentalism, and the manner in which it feeds into science and justice, by erring in the same manner it does. That error would entail attempting to re-colonize the areas of social inquiry and social life that are best understood through science and are best regulated by justice processes. Instead, it is in trying to comprehend the tension between these poles that we, in my view, have the most to gain.

The following then:

- Jerome Bruner's distinction between the narrative mode of reasoning versus the logico-paradigmatic mode of reasoning.<sup>23</sup>
- Isaiah Berlin's distinction between knowledge of history and social science.<sup>24</sup>
- Avishai Margalit's deployment of the terms ethics and morality to describe the distinction between normative frameworks for thick and thin relationships.<sup>25</sup>

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<sup>22</sup> I will not spend too much time laying bear these connections, but will touch upon them were relevant.

<sup>23</sup> See Bruner, J. (1986). *Actual Minds, Possible Worlds*. Cambridge, MA. Harvard University Press. Bruner, J. (1990). *Acts of meaning*. Cambridge, MA. Harvard University Press. Bruner, J. (2000). *Making stories. Law, Literature, Life*. Cambridge, MA. Harvard University Press. The importance of narrative to victimology is further elaborated in Pemberton, A. (forthcoming). Empathy for victims in criminal justice. In Stannard, J. & Conway, H. (eds.) *Law and emotions: international perspectives*. Hart Publishing. Oxford. Pemberton, A. Aarten, P.G.M. Mulder, E (2015a). *Beyond restoration, retribution and procedural justice. Agency and communion in victims perspectives on justice*. Manuscript under review. Pemberton, A., Aarten, P. G. M. (2015b) *Stories as property. Narrative ownership as a key concept in victimology*. Manuscript under review.

<sup>24</sup> See Berlin, I. (1997a). The concept of scientific history. In Hardy, H. & Hausheer, R. (ed.) *The proper study of mankind: an anthology of essays*. London: Vintage. and Berlin, I. (1997b). The pursuit of the ideal. In Hardy, H. & Hausheer, R. (ed.) *The proper study of mankind: an anthology of essays*. London: Vintage. See also Flyvbjerg, 2001, note 17. We address these issues in more detail in Pemberton, A. Letschert, R.M. & Aarten, P.G.M.. (2015). *Narrative victimology, political realism and the aftermath of international crimes*. Manuscript under review

<sup>25</sup> See Margalit, A. (2002). *The ethics of memory*. Cambridge MA. Harvard University Press. See Pemberton, A. Aarten, P.G.M., Mulder, E. (2015c). *Playfulness and ethics in victimhood: toward a victimological theory of injustice*. Manuscript under review.



- David Graeber's recent elaboration of the differences between play and games.<sup>26</sup>
- Judith Shklar's understanding that doing justice and undoing injustice are two different dimensions rather than equivalent entities.<sup>27</sup>

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<sup>26</sup> See Graeber, D. (2015). *The Utopia of Rules. On technology, stupidity and the secret joys of bureaucracy*. Melville House. London and New York See also Sutton-Smith, B. (2001). *The ambiguity of play*. Harvard University Press. Cambridge MA. and Schechner, R. (1988). Playing. *Play and Culture*, 1(1): 3:27 See Pemberton, Aarten Mulder, 2015c, note 25.

<sup>27</sup> See Shklar, 1990, note 3. and Shklar, J. (1964/ 1986). *Legalism: law, morals and political trials*. Harvard University Press. Cambridge MA. See also Pemberton, Letschert, Aarten, 2015, note 24. Pemberton, A. & Letschert, R.M. (forthcoming). Justice as the art of muddling through. The importance of nyaya in the aftermath of international crimes. In In Brants, C. & Karstedt, S. (eds.), *Engagement, Legitimacy, Contestation: Transitional Justice and its Public Spheres*, Oxford: Hart Publishers.



# Bruner and narrative

First narrative. Understanding the vantage point of those most caught up in the crosshairs of cruelty and injustice requires understanding that experiencing victimisation has an essentially narrative quality. Where Theodore Sarbin once described narrative as *the root metaphor for psychology*,<sup>28</sup> my colleagues Pauline Aarten, Eva Mulder and myself have argued that this is particularly true of victimology.<sup>29</sup> The occurrence or threat of victimisation is most often the nucleus of stories: it is the emblematic form of *Trouble* that literary theorist Kenneth Burke posited at their heart.<sup>30</sup> As he summarized himself, “*If action, then drama; if drama, then conflict; if conflict, then victimage.*”<sup>31</sup>

A well-known book in the canon of victimology frames the consequences of victimisation in terms of *shattered assumptions*.<sup>32</sup> According to its author, the social psychologist Ronnie Janoff-Bulman, victimisation fundamentally calls into question some of our main assumptions about the way the world works: notions of safety, of justice, and of predictability. This is a perspective that should be fully endorsed. However, one assumption she does not discuss is that which is perhaps the most profound: the challenge that victimisation poses to people’s sense of *self-continuity*, of the self through time and of the self in relationship to others.<sup>33</sup> As personality psychologist Dan McAdams has shown in his many brilliant publications, this continuity is provided through narrative, the life stories that people construct from their adolescence onward.<sup>34</sup>

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<sup>28</sup> See Sarbin, T. R. (1986). The narrative as a root metaphor for psychology. In Sarbin, T.R. (Ed.), *Narrative psychology: The storied nature of human conduct* (pp. 3–21). New York: Praeger

<sup>29</sup> See Pemberton, Aarten, Mulder, 2015b, note 23.

<sup>30</sup> See Burke, K. (1945). The grammar of motives. New York: Prentice Hall. In the seven basic plots that Christopher Booker describes in the book of the same name (*The seven basic plots: why we tell stories*. 2004, Continuum, London.), only *comedy* appears to be without direct victimological content. Even though watching an episode of *Seinfeld* or *Louie* would suggest otherwise. From *Shrek* to *Macbeth* the (threat of) victimisation is a driver for narratives.

<sup>31</sup> Burke, 1945, note 30, p.343.

<sup>32</sup> See Janoff-Bulman, R. (1992). *Shattered assumptions: towards a new psychology of trauma*. Free Press. New York.

<sup>33</sup> See Pemberton, Aarten, Mulder, 2015b, note 23. See McAdams, D. P., & Pals, J. L. (2006). A new Big Five: Fundamental principles for an integrative science of personality. *American Psychologist*, 61(3), 204-217 and Hammack, P. L., & Pilecki, A. (2012). Narrative as a root metaphor from political psychology. *Political Psychology*, 33(1), 75-103.

<sup>34</sup> See for instance McAdams, D. P. (1993). *The stories we live by. Personal myths and the making of the self*. New York: The Guilford Press. McAdams, D.P. (2006). *The person: a new introduction to personality psychology* (4th edition). Wiley. Hoboken, NJ. McAdams, D. P. (2008). Personal narratives and the life story. In O. P. John, R. W. Robins & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (pp. 242-262). New York, NY: The Guilford Press. McAdams, D. P. (2013). The psychological self as actor, agent, and author. *Perspectives on Psychological Science*, 8(3), 272-295

These life stories are thrown into turmoil in the event of severe forms of victimisation, with the victimisation experience presenting a *narrative rupture* in these life stories.<sup>35</sup> How to understand the life preceding the event as continuous with the present, the event itself and the future? The efforts to make sense and meaning are concerned with coming to terms with the manner in which the past, the victimisation, the present, and the future can be reconceived anew to represent a coherent and continuous whole.<sup>36</sup> How to maintain a sense of synchronicity with our families, our communities, when life appears to stand still at the moment of the rape or of becoming aware of the loss of a loved one to murder? The narrative rupture also concerns the experience of being out of sync with the rest of society, with much of the worth of social support and acknowledgement lying in their contribution to this recalibration.<sup>37</sup> Failure to do so can give rise to the experience of *stillborn time*, where the victim feels locked in the past as the moment of victimisation eternally recurs.<sup>38</sup>

Understanding sense-making and meaning-making in terms of the unfolding life narrative of victims can also explain the way in which narratives of victimisation often span large swaths of time, particularly compared to narratives of offenders.<sup>39</sup> Where the narrative of the offender concerns the event

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<sup>35</sup> See Crossley, M. (2000). Narrative psychology, trauma and the study of self/ identity. *Theory and Psychology*, 10(4): 527-546.

<sup>36</sup> See Crossley, 2000, note 35, see also Park, C.(2010). Making sense of the meaning literature. *Psychological Bulletin*. 136(2), 257-301,

<sup>37</sup> This emphasizes the importance of communion in the experience of victimisation, See Pemberton, Aarten, Mulder 2015a, note 23. See for agency and communion Bakan, D. (1966). *The duality of human existence: Isolation and communion in western man*. Boston, MA: Beacon Press. The recent interest in his work has been rekindled by Abele and Wojziske's branding of agency and communion as The Big Two in social motivation. See Abele, A. E., & Wojciszke, B. (2007). Agency and communion from the perspective of self versus others. *Journal of Personality and Social Psychology*, 93(5), 751-763.

<sup>38</sup> Pemberton, Aarten, Mulder, 2015b, note 23 see also Hammack and Pilecki, 2012, note 33..

<sup>39</sup> See Baumeister, R.F. Stilwell, A, & Wotman, S,R (1990). Victim and perpetrator accounts of interpersonal conflict: Autobiographical narratives about anger. *Journal of Personality and Social Psychology*. 59(5),994-1005. Baumeister, R.F., 1997. *Evil. Inside human violence and cruelty*. New York: Henry Holt and Company. Nota bene : this is not intended to imply that narratives of offenders can not contain the same level of detail as victims narratives. Shadd Maruna's wonderful *Making Good* (2001, APA, Washington DC) is but one of the best examples of the use of studying offender's narratives, with John Horgan's work on terrorists being another (see Horgan.J. (2009). *Walking away from terrorism*. Oxon: Routledge.) However what becomes clear from *Making Good* is that the nucleus of the narratives of offenders is on their own sense of victimisation, and in the sample he interviewed their strength in overcoming the negative conditions that drove them to their deeds. The juxtaposition between victims' offenders and offenders' accounts, revolves around the particular situations in which victimisation and offending occurs. The pattern Baumeister and colleagues observed is visible even in relatively minor transgressions in everyday life. Apparently we are all prone to storying our victimisation experiences and reducing the narrative qualities of our own indiscretions.

itself - sealed off from other events, as something that is emphasized to be in the past - victim narratives typically chronicle the process leading up to the victimisation and a detailed examination of the motives and intentions of the actors involved in the victimisation, while connecting the past of victimisation to present (emotional) experiences with implications for the self in the future. I will return to this *moralization* or *magnitude gap* below. Here I emphasize that this also gives victimisation narratives an open-ended quality,<sup>40</sup> with current events being interpreted in the light of the history of victimisation, and vice versa offering the possibility of reinterpretation of the past. The story of victimisation is repeatedly retold and reconceived through the lens of the present. This is true for individual narratives of victimisation, but all the more so for collective tales.<sup>41</sup> The *Bloodlines* connecting our present political and cultural situations with key events in our past, mine our collective, national or ethnic history for narratives of victimhood, for *Chosen Traumas*, that are politically expedient in our current day and age. The reworking of ancient tales of martyrdom are clear cases in point, whether it is shi-ite Husayn ibn Ali's sacrifice at the battle of Karbala in 680 AD in modern day Iraq, or Tsar Lazar's choice for the heavenly kingdom while losing out to the Ottoman's in 1389 at the Field of the Blackbirds in Kosovo.

This line of reasoning also suggests that the attempts to undo the consequences of the experience of victimisation through processes of (criminal) justice are better understood as a part of the story, rather than as a conceptually separate reaction to an experience of victimisation.<sup>42</sup> In the eyes of victims the justice process is not sealed off from its social surroundings, it forms part of it.<sup>43</sup> The justice reaction to victimisation is an element of the victim's narrative, which it in turn reshapes. The subsequent course of justice retrospectively alters the victims understanding – for better or for worse – of the events preceding it. The narrative nature of victims' processes of understanding their own situation does not sit easily with what Jerome Bruner has called the *logico-paradigmatic* mode of reasoning.<sup>44</sup> That is the abstracted, rational, logical, impersonal modes

<sup>40</sup> See also Hyden, L.C. (1997). Illness and narrative. *Sociology of health and illness*. 19(1): 48-65.

<sup>41</sup> See Volkan, V (1997). *Bloodlines. From ethnic pride to ethnic terrorism*. Basic Books New York .

<sup>42</sup> See Pemberton, 2015, Pemberton, Aarten, Mulder, 2015b, note 23.

<sup>43</sup> See also Ewick, P. and Silbey, S..S. (1998), *The common place of the law: stories from everyday life*. University of Chicago Press. Chicago. Poletta, F. (2006). *It was like a fever. Storytelling in protest and politics*. University of Chicago Press. Chicago.

<sup>44</sup> Bruner 1986, 1990, note 23 and Pemberton, Aarten, Mulder, 2015b, note 23.

of thinking most commonly associated with science and reason. Instead, the narrative mode of cognition is deployed to make sense of the idiosyncrasies of human experience, of the unexpected and in particular the unwanted events that shape our lives. This is the mode of thinking used in the situations where individuals try to make sense of and give meaning to the events and occurrences in their own existence.<sup>45</sup> These situations are often highly emotionally charged, given that emotions arise from the extra-ordinary, more so than from the ordinary.<sup>46</sup> Those deviations from the canonical that have moral consequences – relating to legitimacy, moral commitments and values – are fertile ground for narration, and this is particularly true of victimisation.<sup>47</sup> Understanding what happened and what it could mean might draw upon the knowledge base of the logico-paradigmatic mode of thinking, but cannot be reduced to it. Not only because it paradigmatically concerns exceptions to rules, but also because of the importance of intention, of morality, in these situations.

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<sup>45</sup> See Bruner, 1990, note 23, McAdams, 1993, note 34.

<sup>46</sup> Lazarus, R.C. (1991). Progress on a cognitive-motivational-relational theory of emotion. *American Psychologist*. 46(8): 819-834. Oatley, K.C. (1994). A taxonomy of the emotions of literary response and a theory of identification in fictional narrative. *Poetics* 23(1): 53-74.

<sup>47</sup> See Bruner, 1990, note 23.





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The narrative nature of victimisation also means it cannot be fully understood through the metaphor of something that has been broken (sickness), and in need of repair (health). Models that view victimisation primarily in terms of its negative impact on victims' health incorporate a view that what is key to victimisation is that it breaks or damages something. Bones, self-esteem, mental health and perhaps, if one looks further, identity and connection/ communion.<sup>48</sup> Our efforts are then geared to understanding what victimisation breaks, and how we can prevent or repair or restore this, to help and support victims recover from their ordeal. Who is vulnerable for further damage, or for repeat victimisation, who is resilient, what regularities we can see in this, what laws there are for the breaking that is a part of victimisation, and for the manner in which repair can and should take place.

These are worthwhile endeavours indeed. However, this medicalized model reduces the experience of victimisation to a health issue, shorn of its most interesting moral features. It thereby neglects the dynamic quality of victimisation, in which the autobiographical narrative will have to absorb or adapt to the victimisation experience.<sup>49</sup> In this respect, the victim's self has changed irrespectively of any enduring impact on the victim's physical or psycho-social functioning. A narrative understanding of victimisation would replace or supplement the medicalized view of victimisation with a view that takes the aspect of time and of individual choices more seriously. Both victimisation and the reaction to victimisation take place in time. Even when the repair efforts in the aftermath of victimisation are fully successful, and no physical, mental or moral scars remain, what lives on are the memory and the story of what has happened and their meaning. Severe instances of victimisation become part of the fabric of a person's life story, of the unfolding narrative of life.<sup>50</sup> Like with other profound experiences, victimisation contributes to this narrative, most often for worse, sometimes perhaps for better.

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<sup>48</sup> The latter however are severely undertheorized and under-researched in the avalanche of studies querying victims' mental health outcomes. Unfortunately too many of the colleagues working in the clinical and therapeutic fields seem oblivious to understanding the necessity of including interpersonal, sociological and moral/ political dimensions in their work, instead relying too heavily on a purely intra-psychic model of mental functioning. See Maercker, A. & Horn, A.B.(2013). A Socio-interpersonal Perspective on PTSD: The Case for Environments and Interpersonal Processes. *Clinical psychology and psychotherapy*. 20(6): 465-481. for an earnest attempt to start developing such an understanding of posttraumatic stress.

<sup>49</sup> See also Hyden, 1997, note 40.

<sup>50</sup> In McAdams terms, *nadir experiences*, e.g. McAdams, 1993, note 34.

The aftermath of victimisation is riddled with choices: the choice to avenge, to forgive, to seek justice, to despair and recoil. All these choices sing the same refrain. Whether or not they are suitable depends on the person in question, on the social, cultural, legal and political environment, and on the way the person understands him or herself and his or her environment. Often these choices will involve aims and goals that are incommensurable.<sup>51</sup> In Bent Flyvbjerg's terms, these are situations of true context-dependence, "*an open-ended and contingent relation between contexts and interpretations*", which reduces or negates the possibilities for scientific modelling.<sup>52</sup> These are radical choices in the sense that their outcome is not covered by set principles. Indeed, they offer the possibility to question and discard principles in any given context, while their outcome fundamentally reshapes the situation in which the victim finds him or herself.<sup>53</sup> An example is the act of truly forgiving, of "wiping the slate clean" as an opposite to an enduring sense of victimisation. As philosopher Trudy Govier remarked, forgiveness implies that "*the past will not be forgotten, but it will be the past,*" while a hallmark element of the experience of victimisation is precisely the connection between the past event and the present and the future.<sup>54</sup> True forgiveness severs this link. The purchase of the victimisation event on the present evaporates. The extent to which the victim still considers him or herself as such does so as well. Similarly, the choice and the act of revenge can have radical implications for the victim's situation. Revenge can be viewed as an attempt to communicate to and impress upon the victimizer the extent of the wrong visited on the victim, with the twin aims of undoing the injustice suffered, and turning the tables on the erstwhile victimizer.<sup>55</sup> Upon success, the story of the events is radically altered.

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<sup>51</sup> See Berlin, 1997a, note 24. Chang, R (ed.) (1997). *Incommensurability, Incomparability and Practical Reason*, Harvard University Press. Cambridge MA. Gray, J (2000). *Two faces of liberalism*. Polity Press. Cambridge.

<sup>52</sup> Flyvbjerg, 2001, note 17, p.43.

<sup>53</sup> See on the context of this type of radical choice, Pemberton & Letschert, forthcoming, note 26, Pemberton, Letschert, Aarten, 2015, note 24.

<sup>54</sup> See Govier, T., (2012). Public Forgiveness: a modest defense. In: B. Van Stokkom, N. Doorn and P. Van Tongeren, eds. *Public Forgiveness in Post-Conflict contexts*. Intersentia: Antwerp, p.26.. See on forgiveness Allais, L., 2008. Wiping the slate clean: the heart of forgiveness. *Philosophy and public affairs*, 36 (1), 33-68. I discuss the notion of forgiveness and victimisation at some length in Pemberton, A. (2014). Terrorism, forgiveness, restorative justice. *Onati Socio-Legal Series*, 4(3): 369-289.

<sup>55</sup> See for treatments of revenge French, P. (2001). *The virtues of vengeance*. University of Kansas Press. Lawrence. Miller, W. (2006). *An eye for an eye*. Cambridge University Press. Cambridge Gollwitzer, M. (2009). Justice and revenge. In: Oswald, M.E., Bieneck, S. & Hupfeld-Heineman, J. (eds.). *Social psychology of punishment of crime*. Wiley. Chichester, UK.

The view of victimisation and the aftermath of victimisation as an unfolding process, embedded in victims' life stories, as well as the role of radical choice in this process, emphasize the link between victimology and the manner in which Isaiah Berlin viewed the study of history. Including the manner in which he juxtaposed this with (social) science.

*"[...] there exist more ways to defy reality. May it not be that to be unscientific is to defy, for no good logical or empirical reason, established hypotheses and laws; while to be unhistorical is the opposite –to ignore or twist one's views of particular events, persons, predicaments, in the name of laws, theories, principles derived from other fields, logical, ethical, metaphysical., scientific, which the nature of the medium renders inapplicable?"*<sup>56</sup>

As Toynbee neatly summarized: History is "more often than not, one damn thing after another".<sup>57</sup>

Instead of the medical model of victimisation as breaking and repairing (health), we can also understand victimisation as a process of (individual) historical development. This is most obvious in the case of mass victimisation, which is the stuff that a large portion of historiography is made of. As Berlin notes in the first line of his essay *The Concept of Scientific History*: "History, according to Aristotle, is an account of what human beings have done and **suffered** (emphasis added)".<sup>58</sup> Much of the most important sites of our shared history are victimological in nature, but this applies to individual cases as well. In the experience of severe forms of victimisation, philosopher Alisdair MacIntyre's view that the question *what am I to do* will follow the question of *which story do I find myself part* is consistently confirmed.<sup>59</sup> The "scientific" inclination to abstract from the situation to uncover any underlying "laws of victimology" should therefore proceed under full awareness that abstraction itself can cloud our understanding; that abstraction itself will often run counter to the experience of victimisation; and that understanding important features of the experience of victimisation necessitates including its context-dependence, its application to the radically situated self-understanding of the person in question.<sup>60</sup> As anthropologist Clifford Geertz

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<sup>56</sup> See Berlin, 1997a, note 24, p. 58.

<sup>57</sup> See Toynbee, A. (1961). *A study of history*. Oxford University Press. Oxford.

<sup>58</sup> See Berlin, 1997a, note 24, p. 17.

<sup>59</sup> See MacIntyre, A. (1982). *After Virtue*. Duckworth. London.

<sup>60</sup> See again Flyvbjerg, 2001, note 17.

succinctly summarized in more general terms, abstraction “*does indeed simplify matters. It is less clear that it clarifies them*”.<sup>61</sup>

And again this strikes me as being particularly true for the victimological subject, more so than for many other areas of social inquiry. The aforementioned comparison between victims’ narratives and offenders’ reports of the same events was followed by an interpretation by both Roy Baumeister and Steven Pinker that viewing the situation scientifically would automatically dovetail upon the latter perspective.<sup>62</sup> Their perspective on science assumes that personal, idiosyncratic, moralized, narratives should be viewed with a good measure of suspicion, while a preference for simply “reporting the facts” automatically privileges perpetrator type accounts over victims’ stories. As Baumeister argues when he puts on his scientific glasses, he is in effect viewing a crime from the perpetrator’s side of the moralization gap: de-moralized, de-personalized, searching for causes instead of reasons, limited in scope and time-frame. Their analysis has much merit, but my conclusion would be the opposite. With Nietzsche I find this to be a *Mr Mechanic*-type perspective on the best way to accumulate knowledge and understanding. If gaining more insight into a particular social issue, problem or context is best approached through other means than science, or by relaxing certain scientific requirements, than gaining insight should prevail over science and these requirements.

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<sup>61</sup> See Geertz, C. (1995). *After the fact: Two countries, four decades, one anthropologist*. Cambridge, MA: Harvard University Press.

<sup>62</sup> See Baumeister (1997), note 39. Pinker, S. (2011). *The better angels of our nature*. Allen Lane. London.



# Margalit, ethics and morality

Understanding the narrative nature of the experience of victimization, as a process of historical development, in which the person's present experience maintains a strong and intimate sense of connection with the victimisation event, means that the relationship between the victim and this event is *thick*.<sup>63</sup> Here, an important line of thought draws on the work of Israeli philosopher Avishai Margalit. Much of his writing is relevant to the study of victimology. His main topics of humiliation<sup>64</sup> and memory<sup>65</sup> have many important victimological features, that repay careful consideration. Here another distinction is key. Margalit marshals the fact that the English language offers two (nearly) synonymous terms for the general framework of norms and values: *ethics* (from the Greek) and *morality* (from the Latin).<sup>66</sup> Where these terms are commonly used interchangeably, Margalit deploys them to denote different aspects of normativity, with morality covering the norms and values involved in our *thin* relationships with other humans, and ethics to cover the *thick* relationships.<sup>67</sup>

Margalit's thick relationships are best understood in terms of their relationship to a person's self-identity. Certain relationships are sufficiently vital to our personalities that they are key elements of our self-definition.<sup>68</sup> The two main forms of these relationships are first the ones that fall under relationships in an empirical sense. They are those people –family, friends, neighbors, colleagues – that an individual actually knows personally.

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<sup>63</sup> Another term drawn from Geertz' work. See Geertz, C. (1973). : *Thick Description: Toward an Interpretive Theory of Culture*". In Geertz, C. (ed.) *The Interpretation of Cultures: Selected Essays*. Basic Books. New York.

<sup>64</sup> In Margalit, A. *The Decent Society* (1996). Harvard University Press. Cambridge, MA.

<sup>65</sup> In Margalit, 2002, note 25.

<sup>66</sup> See Margalit, 2002, note 25.. also Williams, B. (1985). *Ethics and the limits of philosophy*. Routledge, Oxon, although his distinction is different from Margalit's. Williams explicitly refers to Nietzsche in his distinction, as he follows Nietzsche in believing that there is something fundamentally problematic with the concept of morality, while he understands Nietzsche as arguing that other normative frameworks do not suffer from the same conceptual problems (see also Williams, 1994 and Clark, 1994, 2000, note 5).

<sup>67</sup> For an overview of recent research that demonstrates the importance of different types of relationships to our moral psychology see Rai T.S.& Fiske, A (2011) Moral psychology is relationship regulation: moral motives for unity, hierarchy, equality, and proportionality. *Psychological Review*. 118(1):57-75.

<sup>68</sup> As Margalit – referring to Eric Erikson – notes, three elements constitute this self-identity; personal identity, the conditions assuring that it is the same person at different time periods; identity of personality, the conditions assuring that the same person at different times also concerns the same personality; and personal identification, what this person identifies with over the long turn. See Erikson, E. (1957). Identity and the life cycle. *Psychological Issues*, 1(1), 18–171.



The second form concerns the relationships that do not necessarily exist in a similar sense, but instead are formed by a shared membership of what Margalit calls an *encompassing group*, which is much too large for each member to know all other members.<sup>69</sup>

On the other hand Margalit understands morality to be the normative framework that guides our dealings with others -solely on the basis of our common humanity. The *thin* relationship does not have to amount to anything more than a purely symbolic sense of shared membership of the human race. For instance, Adam Smith's sympathetic but detached observers; Immanuel Kant's beings involved in pure practical reason, willing the moral law as a set of universally categorical imperatives; and John Rawls' participants in the original position, behind the veil of ignorance.<sup>70</sup> For all the substantive differences between them these normative frameworks apply indiscriminately to the whole of humanity. Indeed the purpose of adopting the perspective of the being of pure practical reason, the detached observer and the Jason Bourne-like participant in the deliberations in the original position is derived from the understanding that allowing personal relationships to influence reasoning about justice would undermine morality. Margalit notes that morality aims to undergird a normative framework in the cases in which we lack an empirical relationship to the person or persons involved. Rather than seeking to counter evil, morality is to be juxtaposed with indifference. We may have more to fear from the Banality of Indifference than from the Banality of Evil.<sup>71</sup> Moreover, if personal relationships are allowed to overrule moral norms, this can pervert the course of justice, as is evident in the case of nepotism.

However, Margalit maintains that something similar is true if we consider our normative obligations to the people in our thick relationships in the same terms.

<sup>69</sup> See Margalit, A, and Raz, J. (1990) National self-determination. *The Journal of Philosophy*. 87(9): 439-461, "An encompassing group has a common character and a common culture that encompasses many important and varied aspects of life." Those growing up in this group acquire the group culture and possess its special traits. Being a member of an encompassing group is better understood as a belonging than an achievement, although considerable self-esteem can be drawn from this membership, also due to the fact that the feeling of connection to other members of the group can allow an individual to bask in another member's glory. Both types of relationships are important for a person's self-identification: they also constitute a key elements of what it means to be human.

<sup>70</sup> See Smith, A. (1759). *The theory of moral sentiments*. Miller: London. Kant, I. (1785/ 1964). *Groundworks for the metaphysics of morals* (Translation H.J. Paton), Harper: New York. Rawls, J. (1971). *A theory of justice*. Harvard University Press. Cambridge, MA.

<sup>71</sup> See Arendt, H (1961). *Eichmann in Jerusalem: a report on the banality of evil*. Penguin. London.

What we owe to our children, family members and neighbors is of a different nature, and they have a right to expect more of us.<sup>72</sup> What this entails exactly is less clear: where Margalit's notion of thin relationships is relatively straightforward, he uses different ways of describing both the main features and the relevance of the distinction between morality and ethics. It is not always easy to pin down under which conditions Margalit considers a relationship to be sufficiently thick to find a framework of ethics warranted. In any case, where the normative framework of morality is governed by the importance of overcoming indifference, the normative framework of ethics is guided by caring. The lack of full conceptual clarity is an easy target for criticism,<sup>73</sup> but is better understood as a consequence of the way in which Margalit understands thick relationships and their relevance to normative frameworks. This is evidently not a view from nowhere<sup>74</sup>, but is embedded in the relationship, the norm in question, and the extent to which this combination is connected to the identity of the people forming the relationship. Certain relationships (parent-child) will always be thick relationships, while for others (shared membership of encompassing group) it will depend on the normative question at hand. That is not tantamount to saying that the difference between ethics and morality can be conceptualized as a continuum from thick to thin relationships, as the difference is qualitative in nature.

Certain issues relevant to my current argument are not (fully) elaborated in Margalit's work. First of all, although he emphasizes positive features of thick and ethical relationships, he also touches upon the possibility of a thick, but *negative* relationship. In his application of Heidegger's views to his own line of thinking, he notes:

*"There are those with whom we are involved – that is those with whom we have thick relations- and others of whom we have only a thin idea of their existence. Being involved does not mean being positively involved. **We are very much involved with people we hate.** (emphasis added)".<sup>75</sup>*

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<sup>72</sup> See also the notions of communal obligation in Sandel, M. (1982/ 1998), *Liberalism and the limits of justice*. Harvard University Press, Cambridge MA. and Taylor, C. (1989). *Sources of the self. The making of modern identity*. Harvard University Press, Cambridge, MA.

<sup>73</sup> See Poole, R. (2005). The ethics of memory. *Ethics*, 115(4): 834-838.

<sup>74</sup> See the title of Thomas Nagel's well known book. Nagel, T. (1986). *The view from nowhere*. Oxford University Press. Oxford.

<sup>75</sup> See Margalit, A. 2002, note 25. p.143. Heidegger, M. (1927/ 1996). *Being and Time*. State University of New York Press. Translation John Stambaugh.

Subsequently he argues:

*“In my account, an emotional relation to someone or something is an involved emotional relation. Being interested emotionally in other people is being involved with them for better or for worse. For better if the dominant emotion is of love and of caring, for worse if it is of hate or spite (emphasis added)”*<sup>76</sup>

Hate and spite might be mutual, as they would be in relationships characterized by cycles of revenge.<sup>77</sup> Blood feuds, enduring political conflict, even neighborly disputes would all constitute negative, but thick, relationships. We can, as history unfortunately has shown repeatedly, also hate and despise other encompassing groups.<sup>78</sup>

What Margalit does not discuss in any detail is whether a particular relationship can be considered to be thick and thin by different participants in the relationship. It is clear that Margalit understands the possibility that these perspectives might differ: *“Moreover isn’t the victim entitled to impose – if only he could - his memory of what happened to him on his tormentors?”*<sup>79</sup> but the consequences are not fully spelled out, not in the least because he does not offer a full answer to the question he poses. A particular area for normative friction would be the situation in which a relationship is experienced as thick by one party, making ethics appropriate, while it is seen to be sufficiently thin by the other party, to be considered a moral issue.

I noted before that victims and offenders have very different perspectives on the same event. It should be apparent by now that the experience of victimisation is fundamentally thick. This differs from the way offenders view these same situations:<sup>80</sup> whereas the victim has strong emotions concerning the offender, there is indifference, reification and lack of awareness concerning the victim on the part

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<sup>76</sup> See Margalit, A. 2002, note 25. p. 143-144.

<sup>77</sup> See the work on competitive victimhood, Noor, M. et al (2012). When Suffering Begets Suffering The Psychology of Competitive Victimhood Between Adversarial Groups in Violent Conflicts. *Personality and Social Psychology Review*. 16(4): 351-374.

<sup>78</sup> See for instance Waller, J. (2007). *Becoming Evil*. Oxford University Press. Oxford. and Kiernan, B. (2007). *Blood and Soil. A world history of genocide form Sparta to Darfur*. Yale University Press, New Haven, CT.

<sup>79</sup> See Margalit, A. 2002, note 25. p. 47.

<sup>80</sup> See above, Baumeister, 1997, note 39.

of the offender.<sup>81</sup> Victims, in other words, experience their victimisation in terms of a negative *ethical* relationship, while offenders will understand the events as *moral* if they even understand the situation in normative terms at all.

Even more so it appears that protecting the interests of the offender within criminal justice processes involves a thinning of the relationship.<sup>82</sup> I will discuss the manner in which the game-like quality of law contributes to this in the following section. Here I would like to observe the similarity between retributive punishment and money.<sup>83</sup> Both measure debt in a precise manner, and this exact measurement allows debt-creditor relationships to be dissolved upon payment of what is owed. And as I argued elsewhere: *The precise measurement of the 'debt' incurred by the commission of crime means that upon full retribution of the debt no further relationship between 'debtor' and 'creditor' need remain. [It]... dissolves the relationship between criminal, victim and society at large after the former's debt is paid.*<sup>84</sup> Where ongoing debts maintain relationships, exact quantification contributes to the dissolution of relationships in trade as well as in crime.

The issue here is that the interest in the dissolution of the relationship between victim and offender is something the latter shares with the rest of society. The offender seeks protection against the victim's wrath and the community's sense of moral outrage. Or in Nietzsche's terms

*"the community, throws him back into the savage and outlaw state against which he has hitherto been protected: it thrusts him away – and now every kind of hostility may be vented upon him. "Punishment" at this level of civilization is simply a copy...of the normal attitude to a hated, disarmed, prostrated enemy who has not only lost every right of protection, but all hope of quarter as well".*<sup>85</sup>

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<sup>81</sup> See Pemberton, Aarten & Mulder, 2015b, note 23.

<sup>82</sup> See the full argument in Pemberton, Aarten, Mulder, 2015c, note 25.

<sup>83</sup> See Pemberton, A. (2012). Occupy victimology. The relevance of David Graeber to the study of victims of crime. In Groenhuijsen, M.S., Letschert, R.M.& Hazeboek, S. (eds.) *KLM Van Dijk: liber amicorum Jan Van Dijk*. Wolf Legal Publishers, Nijmegen the Netherlands. Here the link to David Graeber was through his masterful *Debt: the first 5000 years* (2011, Melville House, New York and London).

<sup>84</sup> See Pemberton, 2012, note 83, p.301.

<sup>85</sup> See Nietzsche, GM 9.

Where Margalit sometimes speaks derogatively of indifference, the minimum of respect afforded to all humans is surely preferable to the negative ‘care’ that society and the victim will otherwise unleash upon the offender.

But as it turns out, societies also have an interest in dissolving this relationship.<sup>86</sup> Left to their own devices, victims will have to turn to revenge as the means to settle scores. However, revenge, unlike retribution, merely sets out a sphere of appropriate reaction, which falls short of exact quantification.<sup>87</sup> This implies that following revenge, the relationship between victim and wrongdoer remains, although the overreach in revenge may reverse the positions of wrongdoer and victim. Cycles of revenge occur because there is never a cancelling of debts. One overreaction follows another, maintaining the link between the feuding factions.<sup>88</sup> This underlies the fear of revenge, the wild justice, that *the more passion turns to, the more criminal justice needs to weed out*.<sup>89</sup>

Preventing these cycles of revenge is in the interest of society at large. Society therefore also seeks to thin the relationship between victim and offender. This, however, leaves the party with the thick perspective on the events with a feeling of mismatch between the justice process and their own needs.<sup>90</sup> Not only is the trial in the name of the offender, but it appears to be about something foreign to the victim’s own experience, with an overarching purpose with which it is at odds. In a very recent paper Pauline Aarten, Eva Mulder and myself argued that much of the value of victims’ instruments in criminal justice lies in the possibility they offer for victims to re-establish a sense of connection, of *communion*, in David Bakan’s terms, between their own experience and the justice process.<sup>91</sup> Given that damage to this sense of communion – the continuity of self with others – lies at the heart of victimisation experiences, the success and failure of vic-

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<sup>86</sup> Contingent on the threat an individual transgression of law might pose to society. As Nietzsche pointed out in GM 10, “As its power increases, a community ceases to take a transgression so seriously, because they can no longer be considered as dangerous and destructive to the whole as they were formerly”, and “As the power and self-confidence of a community increase, the penal law always becomes more moderate; every weakening or imperilling of the former brings with it a restoration of the harsher forms of the latter”

<sup>87</sup> See Elster, J. 1990. Norms of revenge. *Ethics*, 100(4): 862-885.

<sup>88</sup> This is also due to the different manner in which opposite sides will view their and the others’ actions, see Noor et al, 2012, note 69

<sup>89</sup> Francis Bacon’s well known adage.

<sup>90</sup> See more extensively Pemberton, 2015, Pemberton, Aarten, Mulder, 2015, note 23 and in a different setting, Pemberton & Letschert, forthcoming, note 26.

<sup>91</sup> See Pemberton, Aarten, Mulder, 2015a, note 23, Bakan, 1966, note 37.

tims' instruments in criminal justice can be understood in the extent to which they achieve this aim. This could be evaluated in addition to the extent to which they address more agentic concerns like the influence on the outcome of the process or more therapeutic/ emotional consequences.<sup>92</sup>

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<sup>92</sup> See in general Pemberton A. & Reynaers. S. (2011). The controversial nature of victim participation. The controversial nature of victim participation: therapeutic benefits in victim impact statements. In: E. Erez, M. Kilchling and J.A. Wemmers, eds. *Therapeutic jurisprudence and victim participation in criminal justice: international perspectives*. Carolina Academic Press: Durham, NC. For some recent empirical work into this phenomenon see current and former Intervict-colleagues, Maarten Kunst (for instance Kunst, M, Popelier, L. & Varekamp, E. (2014). Victim Satisfaction With the Criminal Justice System and Emotional Recovery: A Systematic and Critical Review of the Literature. *Trauma, Violence and Abuse*, 16(3): 336-358.), Malini Laxminarayan (for instance Laxminarayan, M. S., & Pemberton, A. (2014). The interaction of criminal procedure and outcome. *International Journal of Law and Psychiatry*, 37, 564-571) and Kim Lens (for instance Lens, K. M. E., Pemberton, A., Brans, K., Braeken, J., & Bogaerts, S. (2015). Delivering a Victim Impact Statement: Emotionally effective or counterproductive? *European Journal of Criminology*, 12(1), 17-34).

Graeber,  
play and games

As discussed in the previous section, the victim's relationship with the offence and the offender is best viewed as thick. Understanding the implication of the thickness of this relationship offers a new in-route to understand the phenomenon of revenge, which in turn reveals an important truth about victims' perspectives about justice processes. As Peter French notes in his *Virtues of Vengeance*, the relationship between avenger and target *becomes* a remarkably intimate one through the process and the act of revenge.<sup>93</sup> But from the perspective of the avenger (the erstwhile victim) it was never anything but intimate. Revenge's message includes making the target understand and acknowledge this enduring relationship, by mimicking the act the victimizer committed against the victim.<sup>94</sup> While retributive criminal justice seeks to thin the relationship, in effect adopting the offender's perspective on the strength of the relationship, revenge instead seeks to thicken it.

Judith Shklar had the following to say on the subject of revenge and retribution:

*“Even if legal justice must to some degree at least satisfy the vengeful urges of the injured and their friends, it cannot succeed consistently. Revenge is not detached, impersonal, proportionate or rule-bound. And it is because of its disorderly nature that as Bacon thought the law must weed it out”.*<sup>95</sup>

The disorderly nature of revenge involves the centrality of the personal imagination and creative choices of the avenger in a given situation, in which the goal is to undo the previous injustice, however futile this might turn out to be.<sup>96</sup> That revenge is a dish best served cold, exacted when the target of vengeance no longer expects it to happen, points to the importance of surprise, of shock, of unpredictability in revenge. Revenge fantasies are rooted in the imagination of the avenger, and their narration requires a full understanding of the peculiarities of the circumstances of the victimizing event, the victim and the victimizer.

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<sup>93</sup> See French, 2001, note 55.

<sup>94</sup> See for the messaging effect of revenge the work of Mario Gollwitzer and his colleagues., Gollwitzer, M. (2009). Justice and revenge. In M. E. Oswald, S. Bieneck & J. Hupfeld-Heinemann (Eds.), *Social psychology of punishment of crime* (pp. 137-156). Hoboken: Wiley. Gollwitzer, M., & Denzler, M. (2009). What makes revenge sweet? Seeing the offender suffer or delivering a message? *Journal of Experimental Social Psychology*, 45(4), 840-844. Gollwitzer, M., Meder, M., & Schmitt, M. (2011). What gives victims satisfaction when they seek revenge? *European Journal of Social Psychology*, 41, 364-374.

<sup>95</sup> See Shklar, 1990, note 3, p. 93.

<sup>96</sup> That revenge is most often unsatisfying is undoubtedly true, also given that its aim is often impossible to reach..



It is not readily conceivable what an abstract, rule-bound revenge fantasy could entail. The repeated view that there *needs be no generality in revenge*<sup>97</sup> is often taken to mean that an avenger would act differently if the same circumstances repeated themselves. However, the only way to achieve the generality that makes retribution possible requires abstracting from the particular circumstances at hand: it is this abstraction that is already incompatible with revenge. There is no generality in revenge, because revenge is a fully context-dependent activity.

The importance of creativity, unpredictability, and context-dependence in revenge, means that revenge may be seen as a form of *play*, as distinct from *games*. In his recent *The Utopia of Rules: on Technology, Stupidity and the Secret Joys of Bureaucracy*, anthropologist and social theorist David Graeber provides an illuminating discussion of the distinction between play and games.<sup>98</sup> Referring to the famous work by Dutch sociologist Johan Huizinga *Homo Ludens*,<sup>99</sup> he states that games have certain common features:

*“First they are clearly bounded in time and space, and thereby framed off from ordinary life. There is a field, a board, a starting pistol, a finish line. Within that time space, certain people are designated as players. There are also rules, which define precisely what those players can and cannot do. Finally there is always some clear idea of the stakes of what players have to do to win the game. And critically: that’s all there is. Any place, person, action, that falls outside that framework is extraneous; it doesn’t matter; it’s not part of the frame”.*<sup>100</sup>

Even though play and games are often conflated, Graeber finds them to be polar opposites when viewed in a specific light.<sup>101</sup> Quoting the Indian philosopher of science Shiv Vivanathan, he emphasizes the Hindu tradition of understanding play

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<sup>97</sup> See Nozick, R. (1981). *Philosophical explanations*. Harvard University Press. Cambridge MA. French, 2001, note 55. Zaibert, L. (2006), Punishment and revenge. *Law and Philosophy*, 25: 81-118.

<sup>98</sup> See Graeber, 2015, note 26, p. 190-191.

<sup>99</sup> See Huizinga, J. (1949). *Homo Ludens*. Oxon: Routledge.

<sup>100</sup> See Graeber, 2015, note 26, p. 159.

<sup>101</sup> As Graeber notes the work of Huizinga does, and also the overview in Sutton-Smith 2001, note 26.

*“A game is a bounded specific way of problem solving. Play is more cosmic and open-ended. Gods play, but man is unfortunately a gaming individual. A game has a predictable resolution, play may not. Play allows for emergence, novelty, surprise”.*<sup>102</sup>

This is a much more expansive understanding of the nature of play than is regularly found in Western theories of play. Here Graeber’s views channel those of Richard Schechner: *“Playing is a creative destabilizing action that frequently does not declare its existence, even less its intentions”.*<sup>103</sup> Where games are rule-bound, play is an imaginative enterprise that fundamentally contains freedom and arbitrariness. Where games have a clear beginning and end, and have clear boundaries to indicate what and who does and does not belong to them, in play all these things are ambiguous. Play may seep into other activities, has porous borders, if any, and does not (have to) make explicit who is and who is not part of it. Where games are an attempt to confine, restrict or even rule out the possibilities for play, play can and often will generate new games.

The relevance here is twofold. First, the playful nature of revenge can be generalized to the full experience of victimisation: that this narrative, historical, thick and idiosyncratic experience is inherently playful, seeking apparently arbitrary, but context-dependent solutions to the exact circumstances in which victims find themselves, however odd the positive connotations of playing may seem when applied to the pain and suffering of victims. Second, although Graeber targeted bureaucracy as his *Utopia of Rules*, as pure rule-governed action, the clearest instance of a game-like structure in our societies is the law. Here Judith Shklar’s masterful critique of the ideology of *legalism* lays bare this connection in the following quote:

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<sup>102</sup> See also more extensively Schechner, 1988, note 26 and Sutton-Smith, 2001, note 26.

<sup>103</sup> Schechner 1988, note 26, p.16.

*“The legal system is “there”: a body of accepted rules. Professor Hart’s obsession with games as the paradigm for legal activity is very revealing in this respect. Law is thus pictured as a matter of combat, but one in which both “teams” accept the rules as a matter of self-evidence.”*<sup>104</sup>

It also includes the other elements of games that Graeber describes. It is a self-contained system of norms, which is separated in time from other social functions. It begins at the footsteps of the place of legislative activity and is finalized with a legal decision. It is a game with very particular views on the manner in which social problems issues should be approached:

*“The dislike of vague generalities, the preference for case-by-case treatment of all social issues, the structuring of all possible social relations into the forms of claims and counter-claims under established rules, and the belief that the rules are “there”- these combine to make up legalism as a social outlook.”*<sup>105</sup>

Law, like a game, seeks to seal itself off from the rest of social reality, and in its shape as retributive criminal justice attempts to neutralize, dilute, and preempt revenge and other context-dependent and seemingly arbitrary responses to which the victim might feel otherwise compelled.<sup>106</sup> But this sealing off comes at a cost. The issue is not, or not primarily, that this attempt often fails, with retribution presenting as a frustratingly inadequate substitute for revenge.<sup>107</sup> Instead, the issue is that the business of sealing of law as a game erects a barrier between society’s response to victimisation and the experience of victimisation itself. This runs counter to the victim’s fundamental need for communion, while the law is not equipped to deal with the context-dependence in which this operates. Shklar therefore found this type of a priori models of formal legalism to offer generic responses to sui generis problems and thereby to be inadequate to the situation of victims.

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<sup>104</sup> See Shklar, 1964/ 1986, note 27. p. 10. Legalism is the *“The ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules”* See for analysis of Shklar’s *Legalism* also Forrester, K (2012) Judith Shklar, Bernard Williams and Political realism. *European Journal of Political Theory*. 11(3): 247-272. Moyn, S. (2013). Judith Shklar versus the International Criminal Court. *Humanity: an international journal of human rights*, 4(3): 473-500. Misra, S. (2014). Doubt and commitment: Justice and skepticism in Judith Shklar’s thought. *European Journal of Political Theory*, doi: 10.1177/1474885114543571

<sup>105</sup> See Shklar 1964/ 1986, note 27., p. 10.

<sup>106</sup> Shklar, 1990, note 3.

<sup>107</sup> While revenge is most often frustratingly inadequate itself, see above.

The redundancy of countering criticism against the use of justice processes with King Ferdinand's lament that "justice must be done", indeed "even though the world perishes", becomes painfully clear in the current practice of the reaction to international crimes. Rianne Letschert and I recently called upon those who still warm to this view to realize that the reality of international criminal justice rephrases this as '*let some poor, imperfect, selective, disproportional, slothlike justice be done, though the world perish*<sup>108</sup>'.

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<sup>108</sup> See Pemberton & Letschert, forthcoming, note 27. See also Pemberton, A. Letschert, R.M. De Brouwer, A-M. and Haveman, R.F. (2015). Coherence in international criminal justice: a victimological perspective. *International Criminal Law Review*, 15(2): 339-368.

Shklar,  
justice and injustice

But this should not be taken to mean that victimologists should favor doing away with justice processes. Shklar herself painstakingly made the case for law as most often the best way of going about doing justice, also in the case of international crimes. As she noted “*This does not diminish the value of legalistic values or of legalistic institutions. To show that justice has its practical and ideological limits is not to slight it.*”<sup>109</sup> In the aftermath of homicide or rape we undoubtedly agree that apprehending, prosecuting and sentencing an offender is equated with doing justice, while the manner in which this is conducted needs to follow the requirements of due process. By definition this is law and rule bound. As Shklar emphasizes “*The ethical ends of a theory of justice, as of justice itself...respond to the requirements of juridical rationality, impersonality, fairness and impartiality...That is as it should be.*”<sup>110</sup>

Importantly, though, what the analysis of play and games makes clear is that doing justice through law is a game that was generated by the playful drive to counter injustice, which it at once attempts to contain.<sup>111</sup> The development of the game of justice was a qualitative move away from the experience of injustice. This also means that the rule-bound game of doing justice cannot be fully equated with the playful activity of undoing and/ or coming to terms with injustice. Let alone that the former is a superior manner of achieving what the latter intends to do.

Indeed, in *The Faces of Injustice*, Judith Shklar argued that justice and injustice are not merely two poles of the same dimension, nor that injustice may be conceived as the absence of justice. Instead ‘doing justice’ and ‘undoing injustice’ are two separate phenomena. Doing justice embodies the type of values that are associated with transcendentalism, Rawls’ first virtue of social institutions.<sup>112</sup> The reign of secular transcendentalism has expanded the areas where justice is deemed the supreme virtue, often by semantically latching it on to areas with which its essence may conflict, - *economic justice, social justice, political justice*- and simultaneously securing its primacy by adopting legalist

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<sup>109</sup> See Shklar, 1964/ 1986, note 27, p.122.

<sup>110</sup> See Shklar, 1964/ 1986, note 27, p.123.

<sup>111</sup> See Pemberton, Aarten, Mulder, 2015c, note 25.

<sup>112</sup> See Rawls, 1971, note 70, Shklar 1964/ 1986, note 27.

means to reach any outcomes and/ or offering legalist means as the baseline framework from which developments should be judged.<sup>113</sup>

Against this, Shklar notes that justice is both wider and narrower than responding to injustice. Its overarching aim is well-oiled social functioning. Its focus is countering arbitrariness and ensuring predictability. It is universal, impartial, impersonal and rational. But it includes only what is relevant to its main social aim, not all that matters about misfortune and injustice. Undoing the latter, she argues, is context-bound, personal, idiosyncratic and imbued with emotion. In the terms used before, it is a playful activity. Therefore, Shklar considers justice as a matter of law to be best understood in a more limited manner: as the most legal of all the virtues, but as one virtue among many nevertheless. As Shklar noted “*it comes into play at all in only two specific instances: when rules concerned with the distribution of powers among individuals are involved, and when adjustments of conflicting claims that arise under any system of such rules are made.*”<sup>114</sup>

We should be aware that even successful attempts at doing justice cannot be taken to mean that the injustice visited on the victims has been undone and/ or that it is the only choice open to us in the face of injustice. The ‘*limits of the law*’, which Hannah Arendt observed were “*exploded by the enormity of evil*” in the Second World War, are also quickly surpassed at lower levels of wrongdoing.<sup>115</sup> It is in the aftermath of the more severe forms of injustice that the lack of equivalence between doing justice and undoing injustice is most keenly felt. The sad truth of victimology entails the realization that the greater the injustice visited on victims, the more a solution that might repair the damage is needed, but the less likely that this is feasible. The psychological law that *bad is stronger than good*<sup>116</sup> also means that what we hold dear can be swept away in the blink of an eye. Its resurrection, ever doubtful, is a long and arduous process to which our rule-bound institutions of justice are poorly equipped, if at all. As Shklar argues:

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<sup>113</sup> See Shklar, 1964/ 1986, note 27

<sup>114</sup> See Shklar, 1964/ 1986, note 27. P.114-115.

<sup>115</sup> See Arendt, H. (1970). *On violence*. Harcourt: Orlando. See Pemberton & Letschert, 2015 for an elaboration of the extent to which the limits of the law are also breached at lower levels.

<sup>116</sup> Baumeister, R.F.et al (2001). Bad is stonger than good. *Review of general psychology*. 5(4):323-370.

*“the normal model of justice continues to have severe problems in coming to terms with victims. It limits itself to matching their situation against the rules, which is an inadequate way of recognizing them as victims...Indeed we often negotiate settlements... simply to move on with our various projects and the victims “have to learn to live with them.”*<sup>117</sup>

The reality of even our best laid plans for conceiving justice is that those bearing the brunt of life’s most brutal features will often have good cause to consider them part of the problem, rather than part of the solution. Even if this is not the case, the extent to which the justice process will undo the wrongfulness visited on the victim can only be limited. As Voltaire already knew: *“Do not presume to soothe such misery/ With the fixed laws of calm necessity.”* The reality of dealing with large injustices is besotted with tragic questions<sup>118</sup> and moral failures<sup>119</sup>; incommensurable dilemma’s which offer no hope of a neat, correct and replicable answer. Instead, here the best we can do involves the avoidance of as much manifest injustice as that can be mustered in a given and concrete situation.<sup>120</sup>

Again this is not an argument against justice per se, as Shklar succinctly summarizes *“It may be the best we can do.”*<sup>121</sup> But it is a twin argument against complacency that this is so, and against arguments denying the reality of victims’ experiences by referring to the rational underpinning of the legal institutions. Explaining that the law simply works this way, implying that any additional suffering this causes victims is so by necessity, and therefore is misfortune rather than injustice,<sup>122</sup> neglects first that the law is a socially

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<sup>117</sup> See Shklar, 1990, note 3, p. 37.

<sup>118</sup> See Nussbaum, M.C. 2000. The costs of tragedy:some moral limits of cost-benefits analysis. *The Journal of Legal Studies*, 29(2):1005-1036.

<sup>119</sup> See Tessman, L. 2014. *Moral failure*. Oxford. Oxford University Press.

<sup>120</sup> Following Amartya Sen’s lead (see Sen, A. (2009). *The idea of justice*. Allen Lane, London.) Rianne Letschert and I have taken to using the Sanskrit notion of nyaya as the vessel to express this idea. See Pemberton, A. and Letschert, R.M. ( 2012). Global justice and global criminal laws. The importance of nyaya in the quest for justice after international crimes. *Tilburg Law Review*.17(2): 296-303 and Pemberton and Letschert, 2015, note 27.

<sup>121</sup> Shklar, 1990, note 3, p.37.

<sup>122</sup> See Hayek, F. 1976. *The mirage of social justice*. University of Chicago Press: Chicago. As so often Hayek’s analysis is remarkable and his reasoning faultless, while I have to take full issue with his conclusions. See to an even stronger degree his essay *The economic condition of interstate federalism*, that accurately described the complexities of the current day European Union, over 75 years ago. Hayek, F. 1939. The economic condition of interstate federalism. In Hayek, F, *Individualism and economic order*. University of Chicago press: Chicago.



constructed phenomenon and not a natural force.<sup>123</sup> There is good reason to choose to constitute our legal institutions in this fashion, but this is a choice nevertheless, and as Shklar makes clear in *Legalism*, a fundamentally political one to boot. Moreover, the good reason for this choice in general does not rule out in any logical way that it fails in the particular situations in which victims find themselves. Instead, at a minimum, the lived experience of injustice should serve to draw our attention to necessary changes in the content and appropriateness of our rules.

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<sup>123</sup> As Shklar, 1990, note 3, shows in her discussion of Hayek, a similar observation applies to economics.



Final remarks

Shklar's perspective on the relationship between justice and injustice mimics Nietzsche's position on science and does so for the same reasons. In many instances, doing justice is the preferred manner of coming to terms with social evil, but this should not be taken to mean that it is the only means to do so, as its own features can reinforce the experience of injustice itself and/ or run counter to attempts to undo or make meaning in injustice. Pinpointing exactly where doing justice is at its most useful is - in my view - an impossible task, given that this issue is situated in exactly the type of context-dependence that makes such an a priori, law-like generalization foolhardy.

Three things do strike me as important though. First, that any attempt to evaluate the use of doing justice requires an incorporation of the views of victims living in these contexts. As Shklar notes "*Those who believe themselves to be on the receiving end of social evils have a distinctive perspective on society and a detailed or "thick" view of social evils that political theories ignore at their peril*".<sup>124</sup> If our main challenge is to face –without recourse to full transcendentalism as a means to sidestep reality – the lived experience of suffering, our normative framework needs to take the experience of those acutely alive to the reality of cruelty and/ or humiliation as its focal point.<sup>125</sup> As I have argued, this reality is experienced in narrative, as an ongoing individual or collective historical development, while the thickness of this relationship also carries over to the normative framework through which victims understand their own ordeal. A thickness that is it at odds with the thinning quality of (criminal) justice processes.

Second, that the question of the appropriateness of doing justice as a means to counter injustice is a political one. Concern with the experience of injustice lies within what Jeremy Waldron's has called the *circumstances of politics*, rather than the *circumstances of justice*.<sup>126</sup> The extent to which the conditions of the latter apply is contingent on the question whether the institutions of the game of law are sufficiently underpinned by their historical development, and is rooted in the

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<sup>124</sup> See Shklar, 1990, note 3, p. 7.

<sup>125</sup> See Galston, W. (2010) Realism in political theory. *European Journal of Political Theory*, 9(4): 385-411. for an overview. This is true in particular of so-called *negative morality*. See Allen J. (2001). The place of negative morality in political theory. *Political Theory*, 29(3): 337-363. See also Shklar, 1998, note, 21 and Margalit, 1996, note 64. For a masterful insight in the manner in which this line of thinking can offer a politically centered base for normative thinking see Bernard Williams posthumous collection, *In the Beginning was the deed*, note 21.

<sup>126</sup> See Waldron, J. (1999). *Law and disagreement*. Oxford University Press. Oxford.

experience of legitimacy of those they seek to represent.<sup>127</sup> In for instance societies in transition in the aftermath of mass injustice, neither of these conditions obtain.<sup>128</sup> Coming to terms with injustice here unavoidably involves the type of radical choice that Berlin found key to our experience of political freedom. It repeatedly involves choosing between incommensurable goods, and perhaps better between which evils are to be avoided, while simultaneously calling into question the rules and institutions we may have considered a priori to be appropriate. That is indeed a playful activity, however strange the term playfulness may seem in this context.

And third and finally, coming full circle to where *victimology with a hammer* started. Shklar's perspective on legalism contains the idea, that the case for it, why it is our best course of action, is contingent on full recognition of its limitations and shortcomings, while acknowledging its nature as a *primus inter pares* of possible expedient choices between others. There are indeed many areas of social life and social inquiry for which transcendentalism is appropriate. What *victimology with a hammer* has sought to clarify is the role that narrative, history, thick relationships and ethics, and playfulness play in the experience of suffering injustice. In addition it emphasizes that this means that both our scientific inquiry and our justice reaction need to be fully aware of their radical limitations in coming to grips with this experience. In many instances, *victimology with a hammer* will consider (social) science the best way to increase our understanding and justice processes the best way to counter injustices, but always under the full awareness that *it ain't necessarily so*.

And of course coming full circle means that I have to finish with three somewhat abrupt last words.

Stop.

Hammer time.

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<sup>127</sup> See Shklar, 1964/ 1986, note 27 and Samuel Moyn's revisiting of Legalism in Moyn, 2013, note 104.

<sup>128</sup> Which means we might need to rethink the use of the term transitional 'justice'. This is one of the arguments in Pemberton, Letschert, Aarten, 2015, note 24.



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Jij. Want jij bent dan niet alleen het slimste, leukste, grappigste en mooiste meisje van de wereld, maar Eve, je bent ook het geweldigste wat papa ooit is gebeurd.

*I have spoken.*



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