

## **Victimhood and Witnessing**

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### **Summary**

It is without doubt that the twenty-first century is marked by ever present twenty-four hour media. Mobile phones, I-pads and Wi-Fi networks mean that many people in many different parts of the world are ‘connected’ to each other and global events as they happen in ways not really imagined less than a century ago. Of course the nature of this connectivity is variable. It dominates more in some parts of the world than others, in urban areas more than rural, amongst wealthier communities more than poorer ones and perhaps amongst younger people more than older people. Such variations notwithstanding, it is the case that the minute by minute live reporting of events, as they happen, exposes the nature of those events to people not necessarily close to them or impacted by them, albeit vicariously. Such exposure means that people are potentially witnesses to events and images they would not otherwise have experience of. It is within this context this essay considers the concepts of victim, witness, and the linkages between them.

The concept of the witness has a varied history from its presence in the law, to its connections with religious affiliation to its legacy in experiences of atrocity. These different historical legacies are suggestive of different claims to victimhood. Simultaneously these different claims to the status of victim (who constitutes a victim under what conditions) have become conflated. In mapping the trajectories of each of these concepts it is possible to discern considerable fuzziness in the relationship between them suggestive of a continuum from the

victim as witness to the witness as victim. Moreover, when these two concepts are put in such a relationship with each other it is possible to observe how their transgressive capacity takes its toll on people, on how to make sense of the issues that concern them, and how best to respond to those concerns. This essay will consider the questions that the relationship between being a victim and being a witness pose, paying particular attention to who is and who is not considered to have a legitimate claim to victim status, and the role of ever present media coverage in contributing to such claims and/or even creating them.

**Keywords:** Victimhood, witnessing, victimology, trauma creep, suffering

## **Introduction**

July 2016 was a month in some respects marked by ever present 24 hour media outlets and shared across the (Western) world: the shooting of police officers in Dallas; a terrorist attack in Nice, France on Bastille Day; subsequent terrorist incidents in Germany (Ansbach and Munich); the murder of a priest in St. Etienne, Normandy, recorded for later viewing on YouTube; the killing of inmates in a home for the disabled in Japan; the coverage of the referendum decision to withdraw from the European Union in the U.K.; the nomination of the first woman to contend the post of president of the United States; the ongoing war in Syria; continuing violence in Iraq and Afghanistan and an attempted military coup in Turkey. These are just a few of the events from one month that hit the media headlines in the Western world. All of these headlines invoked a victim in one form or another. It was a month with such potential effect that some commentators suggested that the impact on those witnessing these

events would stay with them during the course of their lives. In other words, they were transgressive. Such claims, of course, are open to debate and interpretation. It is, however, without doubt that some events do make a claim for this kind of transgressive status (like for example, the assassination of President Kennedy, the fall of the Berlin Wall, or the terrorist attack on the Twin Towers in New York). The reach, speed of reporting, and visual nature of events such as these form the backcloth against which questions of witnessing, victimhood, and the potential impact of contemporary mediated communication, need to be understood. Moreover the ability to revisit events, repeatedly and frequently, through such media as YouTube, affords another layer to the world and how it might be experienced. As a consequence this means that events do not necessarily become distanced for individuals over time, either as experiences or memories.

This essay will develop an appreciation of these interconnected processes and the consequences that they have for making sense of both victimhood and witnessing. In order to do so it falls into four parts. The first discusses the concept of the victim. This discussion will introduce the various strand of victimology, identify their central concerns, and introduce the distinction between primary, secondary, and tertiary victims. The concept of a 'tertiary' victim, and its links with witnessing, affords the opportunity to consider the extent to which the mediated world, as outlined above, has the potential to make victims of us all. The second part discusses the concept of the witness. Here this discussion will identify the different ways in which the concept of witness can be understood; in law, in religion, in atrocities, and for campaigning purposes. Throughout this discussion the fuzzy boundaries between victimhood and witnessing will become apparent. Building on the concepts of witnessing and victimhood, the third part of this essay will develop an appreciation of the concept of a continuum, from the victim-witness to the witness-victim, as one way of

understanding the extent to which these two concepts have become intertwined. Utilising the later work of Richard Quinney, the distinction between ‘witnessing’ and ‘bearing witness’; will be drawn upon in order to delineate what role this might imply for the criminologist/victimologist in this mediated world. In the light of this discussion the conclusion will offer some comments on the implications of recognising these connections between witnessing, victimhood, and the media.

## **Victimhood**

McGarry and Walklate (2015: 7) suggest,

By definition a victim is someone who has suffered (suffering that in itself can be multi-dimensional and multi-faceted), sometimes willingly, sometimes not, as a result of forces more powerful than themselves.

Yet how we understand who is, and who is not given the label victim and, as a consequence, who acquires or does not acquire victim status, is a highly contested process. It is a process largely informed by conceptualisations of the ‘ideal victim’ (Christie 1986) which in turn proffer differential status to different victims dependent upon where they find themselves in any ‘victim hierarchy’ (Carrabine et. al. 2004). This hierarchy is rendered more complex when gendered, ethnicised, classed, faithed and so on. In addition, Strobl (2010: 6) suggests four analytical possibilities in the construction of victimhood: the actual victim (someone seen by themselves and others as a victim), the nonvictim (not recognised as a victim by themselves or others), the rejected victim (seen by themselves as a victim but not by others), and the designated victim (regarded by others as a victim but not by themselves). Interestingly, as Furedi (2013) has observed, the term victim has only been intertwined with

crime in recent times and it is within these recent developments that it is possible to discern some of the confluences between victimhood and witnessing discussed here. However, before those issues are addressed it will be of value to reflect upon the nature of victimology and the different understandings found there on how the victim might be constituted.

Early victimology, emanating from the work of émigré lawyers cum criminologists, was very much informed by the notion of culpability. Indeed, it is easy to see how this kind of work, almost by definition, became occluded with the assignation of victim blaming (Antilla, 1974). This early embrace of culpability, alongside presumptions of who could be considered vulnerable to harm (the elderly, children, females, the disabled, those in ethnic minority groups etc.) became the mechanism through which victims were othered and pathologised: rendered different. Framed by the same assumptions found in early criminological thought concerning differentiation, determinism and pathology, victimology similarly assumed that the norm against which any victim was to be measured was the white, Caucasian, heterosexual male. Men were assumed not to be vulnerable and did not easily acquire the victim label. However since this early victim oriented work, victimology and understandings of victimhood, has become a space occupied by competing theoretical perspectives, all differently claiming to speak for the victim. Contemporarily it is possible to identify at least four perspectives in this arena: positivist victimology, radical victimology, critical victimology and an emergent strand of cultural victimology. Each of these perspectives highlights different ways of making sense of the victim and their experiences. Following McGarry and Walklate (2015) each of them reflect a different understanding of the relationship between choice, suffering and power relations in how the victim is understood. For the purpose of dissecting the confluences with which this essay is concerned, it will be of value to say a little more about each of these perspectives in turn.

### *Positivist victimology*

Miers (1989: 3) defined positivist victimology as being focused on:

The identification of factors which contribute to a non-random pattern of victimisation, a focus on interpersonal crimes of violence, and a concern to identify victims who may have contributed to their own victimisation.

This foundational work is rooted in the concepts of victim proneness and lifestyle both of which direct attention to the need to understand the regular patterning of criminal victimisation. Hindelang, et al (1978), for example, developed a lifestyle approach to understanding exposure to criminal victimisation and operationalised this through the increasingly sophisticated refinement of the criminal victimisation survey. More particularly, positivist victimology is underpinned by the presumption that the term ‘victim’ is itself non problematic. The victim is given by the criminal law. This insinuates a clear connection with the witness of law discussed below and serves as a reminder of the legal origins of this strand of thought. Thus the law provides the framework for the self-evident nature of the victim’s suffering. This assumption can have a number of different consequences: the co-option of the victim in the interests of a greater punitive stance towards the offender (Barker 2007; Ginsberg 2014) in which the victim’s voice on these issues is silenced; the failure to appreciate the victim as an individual, or a group, who has choices and makes choices; and an inherent static, functionalist view of society. Thus positivist victimology presumes victims and offenders exist in a zero sum relationship with one another and denies that these categories might overlap or indeed that there might be ‘delinquent’ victims (Miers, 2007). Thereby the constraints imposed by an inherently functionalist view of society restrict the vision of victimhood in this version of victimology. As a result the victim (of crime) and their

suffering is given by what is made visible in law, in which the victim has little choice, and in which the power relations underpinning this visibility are given scant attention.

### ***Radical victimology***

The origins of radical victimology are often attributed to Richard Quinney in an article published in 1972. In that essay Quinney asked the provocative question: who is the victim? He pointed out that ‘our conceptions of victims and victimisation are optional, discretionary and are by no means given’ (ibid: 314). Thus this version of victimology renders visible those made invisible by positivism: victims of state crime, victims of corporate victimisation, victims of oppression and so on: harm that goes on ‘behind our backs’. It adopts a human rights position, rather than a criminal law position, in setting an agenda for victimology. So for example, Rothe and Kauzlarich (2014) suggest an entry point for victimology focussing on harm and leading to a consideration of substantive topics from ‘street’ children, children in institutional ‘care’, the ‘Mukaradeeb Massacre’, the normalisation of civilian bombing, victimisation during and after war, through to Somali piracy, and the role of immigration policy in victimising the undocumented alongside displaced persons. This version of victimology centres the powerful as arbiters of harm and suffering and brings to the agenda a much wider appreciation of who can or cannot be a victim, including those who might be the least likely to acquire such a label (see also McGarry and Walklate, 2011). Here, in privileging the state and state power, individual choice is at best down played if not erased. The same might also be said in respect of suffering. Whilst suffering (harm) is clearly privileged in terms of its structural dimensions, a dilemma remains in terms of who defines which suffering counts, under what conditions, and how these issues relate to individuals’ accounts of their circumstances. Again there are some links to be forged here between this

kind of radical victimology and its human rights position and the emergence of what Ristovska (2016) has called ‘strategic witnessing’. It is also worth noting that the agenda suggested by Rothe and Kauzlarich (2014) has emerged, in part, from the visual culture and the 24 hour media coverage commented on at the beginning of this essay.

### ***Critical victimology***

Chouliaris (2011: 38) states,

Critical victimology...engages in a twofold task: to cast light on the institutions and structural relations that favour specific images of victimisation at the expense of others (contextualization); and to draw attention to situations that, despite producing serious victimization, are not designated as such.

Thus, for critical victimology who is seen as a victim is a product of interaction between the cultural and ideological under particular socio-economic conditions. This agenda takes the power of the state seriously as a self-interested arbiter of the victims (and the suffering) that we see and do not see, but whose interests may vary across time and space. Consequently it places some significance on the power of the victim label, in and of itself, as a unifying device for ideological purposes that has inclusive and exclusive properties. So, at an individual level who counts, and whose voice counts as a victim, can change in the light of these properties. Embedded in this position are critical questions reflecting Christie’s (1986) concept of the ideal victim referred to above.

Importantly the thoughts of Christie (1986) and latterly van Wijk (2013) lay bare the role that notions of ‘innocence’, ‘legitimacy’, and ‘deserving’ play in the process of acknowledging



and assigning the victim label to either an individual experience or a collective one. Placing the notions of innocence, legitimacy and deserving centre stage led Carrabine, et al (2004) to identify what they termed a 'hierarchy of victimisation' (also referenced above). At the bottom of this hierarchy would be the homeless, the street prostitute, and the drug addict – indeed all those categories of people for whom it is presumed that they expose themselves to victimisation. Thus their claim to the label and status of 'victim' becomes very difficult since arguably what happens to these groups of people is a result of the choices they have made. They are not innocent, legitimate or deserving. At the top of this hierarchy would be the elderly person robbed in their own home, the child abused by their parents, and perhaps increasingly an elderly person abused by their children. In other words, these individuals/groups have been subjected to processes not of their choosing. They are innocent, legitimate and deserving. Nonetheless this hierarchy of victimisation can be applied in different contexts (as illustrated by the work of van Wijk, 2013) and can be used to facilitate an understanding of the ways in which its shape and form changes over time. Some groups and/or individuals acquire victim status and others lose it. Additionally it is important to note the work of Aradau (2004) who deploys the idea of a 'politics of pity' to make sense of the ways in which trafficked women came to be constructed as victims rather than women seeking work. In other words these women featured higher on this hierarchy as they were reconstructed as a group who were innocent, legitimate and deserving. On the other hand there is evidence to suggest that the political complexities lying behind the mass victimisations in Dafur clearly inhibited international recognition of those experiences as genocide (Hagan and Rymond-Richmond, 2009). So, being acknowledged as a victim is a complex process. All of the observations above have increasingly indicated a role for the 'cultural' in making sense of the victim's suffering that is seen and that which is not seen. Indeed Butler (2009) avers that how such 'seeing' is framed renders some lives grievable and

others not. This is starkly illustrated during the summer of 2105 by the media coverage given to the picture of three-year-old, Aylan Kurdi found drowned on a Turkish beach, having been washed overboard from the boat on which he and his Syrian family were endeavouring to escape from Syria to Europe and the subsequent consequences this coverage had.

### *Cultural victimology*

Mirroring developments in the criminological turn to the ‘cultural’, there has been a recent move towards cultural victimology (Mythen, 2007). This is ‘a victimology attuned to human agency, symbolic display, and shared emotion’ (Ferrell, et al, 2008: 190). Elements of this cultural turn can be found in Furedi’s (1997) observations about the emergence of a compensation culture in which we are all victims now (though it should be noted that Quinney, 1972, highlighted similar concerns). The increasing importance of the cultural is also alluded to in Valier’s (2004a) observations of a return to the Gothic: making public the suffering of the victim. Indeed the rising focus on such cultural pre-occupations cannot be divorced from the increasingly visual nature of social life which constantly and consistently places us beside the victim, encouraging us to feel what they feel. Thus Berlant (2004: 5) comments,

...members of mass society witness suffering not just concretely in local spaces but in the elsewhere brought to home and made intimate by sensationalist media, where documentary realness about the pain of strangers is increasingly at the center of both fictional and nonfictional events.

A good example of which transpired during August 2016 when the picture of a stunned, bloodied, and very dusty, five year old Omran Daqneesh, rescued from the rubble of his

home in Aleppo, featured in a wide range of media outlets, prompting calls for a ceasefire. Mirroring the coverage given to Aylan Kurdi in the previous summer, the excavation of feelings in newspaper headlines, television programmes, internet websites and so on has also for some (see *inter alia* Garland 2001), been an important component in the rise of penal populism in which the symbolic call on the victim has been a significant driver. Thus, McEvoy and Jamieson (2007: 425) observe, ‘Suffering becomes reshaped, commodified, and packaged for its public and didactic salience’ intermeshed with policy as ‘courting compassion’ (Walklate, 2012). This is not intended to imply that (criminal) victimisation does not take its toll on people. It does, from the mundane and ordinary consequences of burglary, to the wider harnessing of a culture of fear in the aftermath of terrorism (Mythen and Walklate 2006), to the human rights violations that occur during conflicts. The emergent power and consequences of contemporary visual culture is evident in this strand of victimological thought. However it is important to note, with Carrabine (2012: 467), ‘human suffering should not be reduced to a set of aesthetic concerns, but is fundamentally bound up with the politics of testimony and memory’. In the context of the discussion here it is useful to add the politics of witnessing to this list.

So, cultural victimology foregrounds suffering, our exposure to it, how it is presented to us, and what sense we make of it. It has less to say about either individual or collective choice. It does, however, afford the opportunity to think about politics and power relations. At every juncture in the public nature of suffering some voices are heard and others are silenced (as intimated in Wijk’s, 2013, discussion of the ideal victim of international crimes and as illustrated in the example of Omran Daqneesh, referred to above). Indeed, as Quinney (1972: 322) commented some time ago, ‘To exclude the Vietnamese civilian suffering from criminal war operations is to accept national military policies’. In some respects cultural victimology

adds an important dimension to critical victimology insofar as it has the potential to extend the latter's desire to situate victimhood within a wider political economy of the state in the context of the cultural. More specifically the role of the media in all its forms in offering understandings of social reality contributes profoundly to that cultural landscape. From a point of view, mediated representations of the victims that we see and those that we do not see, act as a conduit for a range of interests including those of the powerful.

To summarize: these four theoretical perspectives within victimology offer different understandings of the relationship between choice, power relations, and suffering. By far the most powerful of these positions has been, and is, positivist victimology. This approach to (criminal) victimisation has informed a wide range of survey work that reveals much about the characteristics many victims share in common. It has produced much work concerned with the impact of crime on different categories of victims who are usually categorised as primary, secondary and indirect victims depending upon the nature of that impact. Primary victimisation refers to the direct impact that crime has on a victim. This can range from physical injury, to financial loss to psychological distress; impact that can exacerbated should a victim be asked to attend as a witness in court. This is referred to as secondary victimisation. Here it should be noted that the capacity for experiences of secondary victimisation is not confined to victims who become witnesses (as is developed below). In addition work also points to the phenomenon of indirect victimisation. Here Spalek (2006) has argued that thinking more deeply about the diversity of the crime experience taps into what she calls 'spirit injury'. She suggests that this concept allows an understanding of not only the impact that victimisation has on the individual but also on the wider audience who might be indirectly victimised as a result of their shared 'subject position'. The idea of a shared indirect victimisation as a result of crime has some resonance with not only

appreciating the importance of cultural and ethnic difference (which Spalek's concept is designed to include) but also taps into other shared experiences of crime. In this sense indirect victimisation elides with a notion of tertiary victimisation: a term deployed to capture the wider impact of the media portrayal of the kinds of events with which this chapter began. Indeed it is within the appreciation of tertiary victimisation that it is possible to discern the roots of cultural victimology.

Within all of the above is a concern with suffering. Moreover, as Fassin (2012: 29) asks, and for the purposes of the discussion here an important question to consider, what are 'the consequences of this representation of the world through pain?' Indeed Wilkinson (2013: 2) adds what does it mean when, 'The overriding aim [is] to 'bear witness' to human affliction so as to raise moral objections to social practices, cultural conventions, legal decisions, or political processes that do harm to people'. The drive to give voice to people's lived experiences (of suffering), implied by these questions, is reflected in the gradually shifting focus within victimology from the positivist to the cultural. Elsewhere McGarry and Walklate (2015) have distilled this shift in the form of two narratives: a victim narrative and a trauma narrative and it is within this shift that the conflation between victimhood (experienced as primary harm done) to witnessing (as tertiary harm experienced vicariously), can be discerned.

Put simply, the victim narrative, informed by concepts emanating primarily from positivist victimology, lends itself easily to identifying the vulnerable (the elderly, the young, the frail, and so on highlighted above) on whom it could be assumed that victimisation would take its greatest toll. In the trauma narrative, informed as it is by the 'psy' disciplines, even those

least likely considered vulnerable (like soldiers for example) could find themselves categorised as vulnerable. Both of these narratives differently reflect a tendency to assume that the victim's pain is given and both of them also respectively use the terms victimhood and trauma as though they are universal, unifying, and undifferentiated categories. As a result it is easy to see how they have become melded together. Underpinning this melding it is possible to observe (qua Fassin 2012) the shift from pain as naturalistic (as given by the data of criminal victimisation surveys associated with positivist victimology) to pain as ironic (as routine and a possibility for all of us, a result of the tertiary victimisation associated with cultural victimology). Hence Furedi (1997) can suggest that we are all victims now. Indeed under the influence of an increasingly mediated world, in which we are exposed to constantly available, unchanging images of atrocity (Pollard 2011) it is possible to suggest that we are all ever more vulnerable to being seen as (tertiary) victims. This can be referred to as the trauma of witnessing. Yet it is also the case that individuals recover from bad experiences and have the capacity to deal with horrendous circumstances that happen to them in a myriad of different ways (see for example Eagle and Kaminer 2014). Nonetheless under the conditions of what might be called 'trauma creep' these capacities have remained somewhat hidden from view.

Moreover, within the creeping presence of the trauma narrative the space has been made available for the media, in all its forms, to inform wider audiences about the victim/witnesses that are to be recognised as well as those who are not. This is not a simple or a straightforward process so it will be of value to discuss some of the features of trauma creep in a little more detail since this affords an important link between this discussion of victimhood and the one to follow on witnessing.

### *Trauma Creep*

The work of Alexander (2012) offers one understanding of how The Holocaust achieved the status of a master narrative when equally atrocious events did not. He identifies four variables required for the emergence of such a master narrative. These are: the kind of pain incurred; who the victim is; the capacity to relate the victim's trauma to a wider audience; and the attribution of responsibility for that pain (Alexander 2012). All of which were evident surrounding the recognition of the Holocaust. Events, it is interesting and important to note, formed the major backdrop to the work of the early victimologists particularly that of Mendelsohn. In many ways these four variables have been increasingly present for the victim (of crime) from the mid-1970s through to the early 1980s to the present day. These include, the proliferation of criminal victimisation survey and its associated findings documenting the pains of criminal victimisation; the evidence generated by those surveys of a relatively powerless victim (gendered, aged, classed and racialized); the proliferation of victim-centred organisations making claims on behalf of victims' voices (see inter alia Barker 2007); and, in the light of these data and the claims of these organisations, the attribution of responsibility to criminal justice practitioners in particular, and systems of justice more generally, for the further pain endured by victims of crime. Indeed Barker (2007: 624) reports:

‘For many crime victim groups, a “good” and “just” society was a society in which the experience of victimisation was regarded as significant, traumatic, and legitimate.....that victimisation could be a life altering experience....’

Arguably lying behind Barker's observation is Lasch's (1979) notion of a culture of narcissism. This kind of cultural context presumes that all experiences are equally valuable and worthy of response and it is this kind of cultural presumption in which it is important to

situate contemporary media and popular images of the victim and victimisation. This adds a voyeuristic element to Lasch's (1979) culture of narcissism and constitutes the fifth ingredient of trauma creep.

For example, it is now common place for the chief investigating officer at the conclusion of a trial in a particularly gruesome or problematic case especially when that involves a child or a serial killer, to speak to waiting reporters about the evil of the offender and the road to recovery for the victim and/or victim's family. The baying crowd venting its feelings as a prison van takes a convicted offender away from court is also a commonly reported image. Media images of hostages, videotapes of beheadings on YouTube, 'of the moment' recordings from smart phones uploaded to the Internet, are all intended to move us in some way. As indeed are more formal criminal justice responses like Family Impact Statements or conferencing. Moreover as Valier (2004a) has pointed out, this visual culture travels rapidly with contemporary tele-technologies, and are viewed in locations and circumstances distant from their point of production. The cartoon of the prophet Mohammed published in Denmark resulting in demonstrations against its publication in different countries around the world alongside the multiplicity of demonstrations under the banner of 'Black Lives Matter' in the summer of 2016, are both good examples of the power of this visual culture. These examples illustrate the presumption that all experiences matter equally and that everyone is equally interested in, and wants to be exposed to them, albeit vicariously.

Trauma creep is evident in all of the above. Indeed the increasing presences of a wide range of victim centred organisations all claiming to speak for the victim of crime makes public their pain for all to see. Taken alongside the role of media coverage as a means of validating



that pain and offering, a conduit for its recognition, and what we witness in this way, constitutes, according to Peters (2001: 709) ‘the paradigm case of a medium’. So much so Wieviorka (2006) suggests we now live in the era of the witness. The question remains, of course, as to why this matters. For the purposes of this discussion it matters because the conflation of the victim narrative with the trauma narrative simultaneously glosses some of the complexities surrounding both. It also matters because there is evidence to suggest criminal justice policy initiatives are being built on these shaky foundations.

### **Witnessing**

Fassin (2012: 220) notes, ‘The witness has become a key political figure of our time’. Moreover, he goes on to observe; ‘.....third person testimony gives way to first-person narrative while the auctor imposes his authority’ (ibid 221). These features of witnessing are evident in the conflation of, “testes” (the testimony of a person as a third party in a trial or a law suit) with “superstes” (a person who has lived through something and can thereby bear witness to it)’ (Agamben 1999:13). In this conflation the witness is presumed to be a homogenous being. However, as this discussion unfolds it will become evident that such a presumption is highly problematic. Following on from trauma creep, this victim/witness voice is often presumed to speak for all victims similarly victimised and provides a basis on which policy proceeds (see inter alia Barker 2007; Walklate 2016). Yet, as a recent obituary on Elie Wiesel asks, ‘why do we assume that pain yields wisdom or moral clarity?’ (Friedberg, 2016). Questions such as these pose a particular dilemma for criminology and criminal justice policy since they point not only to the conflation signalled by Agamben (1999) but also to a conflation of the different historical legacies of witnessing highlighted by

Peters (2001) which simultaneously hides the differential relationship of the witness to victimhood.

Peters (2001: 707) reminds us that the process of witnessing, and what might be understood by that, raises interesting questions about the relationship between truth, experience and perception. All of these are fundamental to all forms of communication. In extending the analysis proffered by Ellis' (2000) adage 'we cannot say that we did not know', Peters (2001) offers a more optimistic appreciation of the contemporary power of witnessing. For him witnessing is a void waiting to be filled. This is a void that compels us to take responsibility for how it is filled. Thus Peters (ibid 708) connects witnessing to its 'historical baggage' found in the law, religion, and atrocity. To this baggage it is possible to add two more recent iterations of the witness: that of strategic witnessing (following Ristovska 2016) and that of the criminologist as witness (following Quinney 1998). It will be of value to say a little about each of these different forms of witnessing in turn.

### ***The witness in law***

In law a witness is party to the process of criminal or civil proceedings designed to contribute evidence on what actually happened in a specific set of circumstances. In law a witness can be the complainant (victim) or can be a third party who witnessed (saw/heard) what happened. In both meanings the testimony of this witness provided to the criminal justice system, either to a police officer at the scene of an event or in court, can be subjected to further interrogation and/or cross examination. The problematic nature of eye witness testimony offered at the scene of an event is well established within the literature. Two

people do not necessary 'see' the same event in the same way even in respect of describing objects present (like, for example, the colour of vehicles). However, it is under the circumstances of cross-examination that witnesses, whether third party actors or complainants, can experience the criminal justice system as a process of victimisation. Thus the witness in law introduces the distinction between, what victimologists might call, primary and secondary victims. Primary victims are those actually impacted by an event. In law these are the complainants. Secondary victims can be those close to the primary victim or a third party to the events which happened. Primary victims and third party actors can both feel the impact of re-victimisation/victimisation of the criminal justice system in different ways and victimologists have done much work that documents this kind of impact.

The challenging experience of being a witness or a witness complainant in any criminal justice system has been well documented in cases of sexual assault (see Clay-Warner and Walklate, 2017) but is not confined to such cases. Many witnesses, including those called as 'expert' witnesses, can feel at the least frustrated, if not indeed made to feel angry, when the veracity of their testimony is called into question particularly when under-cross examination. The intimidation experienced as a result of this process has led some researchers to suggest that this amounts to secondary victimisation. The potential for secondary victimisation is derived from the tension between the desire on the part of victim/complainant/witness to be believed and the criminal justice professional pre-occupation with the search for evidence. This is particularly problematic for complainants of sexual assault for whom the criminal justice system routinely responds from a presumption of disbelief rather than belief. This was well illustrated in 2016 by the 'Stanford rape case', widely reported in social and other media, with the victim impact statement submitted to the court going viral (The Conversation

9<sup>th</sup> June 2016). Part of that statement, describing the questioning the victim-complainant was subjected to, is reproduced below.

How old are you? How much do you weigh? What did you eat that day? Well what did you have for dinner? Who made dinner? Did you drink with dinner? No, not even water? When did you drink? How much did you drink? What container did you drink out of? Who gave you the drink? How much do you usually drink? Who dropped you off at this party? At what time? But where exactly? What were you wearing? Why were you going to this party? What'd you do when you got there? Are you sure you did that? But what time did you do that? What does this text mean? Who were you texting? When did you urinate? Where did you urinate? With whom did you urinate outside? Was your phone on silent when your sister called? Do you remember silencing it? Really because on page 53 I'd like to point out that you said it was set to ring. Did you drink in college? You said you were a party animal? How many times did you black out? Did you party at frats? Are you serious with your boyfriend? Are you sexually active with him? When did you start dating? Would you ever cheat? Do you have a history of cheating? What do you mean when you said you wanted to reward him? Do you remember what time you woke up? Were you wearing your cardigan? What color was your cardigan? Do you remember any more from that night? No? Okay, we'll let Brock fill it in. (B-Turner VIS: 4)

This more than illustrates the search for 'evidence' in support of a case, in this instance the case for the defence, which pointedly puts the victim-complainant to the test. Moreover, as has been suggested above, this experience of secondary victimisation is not the sole preserve of victim/witnesses. The families of those who have been murdered (Rock, 1998; Gekoski, et al, 2013), families of serious offenders (Condry, 2007), and those who have been subjected to wrongful convictions and their families (Jenkins, 2013), have all been shown to be subjected

to secondary victimisation by the criminal justice system. Indeed so much so that Gekoski et. al. 2013) refer to these experiences as traumatic.

Of course, in law, each of the participants in the criminal justice process start from a different position in terms of their role and the expectations associated with it (Mawby, 2007). However in understanding the role of the witness in law, the discussion above alludes to the conflation of ‘ “testes” with “superstes” (Agamben 1999:13) and is evident in the recognition of secondary victimisation. The consequences of this conflation are further evidenced below.

### *The witness in religion*

In religion, the concept of witness is intimately connected to the act of martyrdom and the associated fervour of belief. In different ways to the witness in law, this witness is an active witness: choosing to speak for and/or die for their belief as an expression of their belief. The suicide bomber who declares their belief at the moment of the detonation of their bomb arguably captures this version of the witness. However, as religion, and religious institutions have declined in their role in providing people with protection from suffering though beliefs of different kinds, religiously based practices, arguably have not. Theocratic practices, in the form of commemoration, are self-evidently present and reconstituted as a form of this kind of witnessing. These practices are intimately connected with the recognition of suffering. In the U.K., for example, the public commemorative practices based in Wootton Bassett in respect of soldiers being repatriated from Iraq and Afghanistan can be seen through this kind of lens (see Walklate et. al. 2011). As can the witnessing which is conjured by the annual ‘run for the wall’ by motorcyclists in the U.S. to remember those lost and unrecognised consequent to the

Vietnam War. Simko (2012) offers some similar comments in respect of the September 11<sup>th</sup> commemorations and the All Souls Altar of Remembrance in Trinity Church, Manhattan, affords the same kind of opportunities. These are just a few examples of the ways in which witnessing, as an expression of shared suffering in the religious sense, continues to be a significant mode of expression. Here it is possible to see the traces of cultural practices formed in times of narcissistic voyeurism that have begun to inform a cultural victimology.

### ***The witness in atrocities***

The witness of atrocity is, as Howie (2012: 25) expresses it, is ‘one who has seen too much’. As suggested above, the Holocaust and its impact has been seminal in the recognition of this witness and indeed informed the development of victimology itself. This kind of witnessing centres the traumatic experiences of both individuals and collectivities. It focuses on storytelling. Freiburg (2016: 5) in discussing the life of Elie Wiesel, states that he ‘described Holocaust survivors as those who had “emerged from the Kingdom of the Night. We know that every moment is a moment of grace, every hour, an offering; not to share them would mean to betray [the dead]”.’ This form of witnessing then not only centres suffering but also carries with it the obligations of survival. To speak for those who did not survive in order to ensure that both they, and what they experienced, is never forgotten. These acts of witnessing are also, by implication, moral acts. As Valier (2004b: 148) observes, ‘An atrocity is a flagrant violation of a fundamental more value’, the impact of which it to be appalled, ‘..to be confronted with that which seemingly cannot be accepted *under any terms*, by anybody’ (ibid. 147). The ethical questions raised here for the contemporary relationship between victimhood and witnessing informed by narcissistic voyeurism will be returned to in the conclusion.

### *Strategic witnessing*

The capacity for, and access to, modern technology has contributed to the development of what Ristovska (2016: 3) calls 'strategic witnessing'. This refers to the potential for, and actual development of, political activism through using various media to strategically target particular agendas. In many ways the presence of this kind of witnessing has grown incrementally as people have increasingly used their own media, primarily mobile phones, to record what is going on around them. Footage of this kind, for example, was a key feature in securing the identification and arrest of the Boston Marathon bombers in 2013. Here there is an interesting interconnection between this kind of accidental strategic witnessing and the witness in law discussed above that poses some dilemmas on the efficacy of footage of this kind in the criminal court and how people make sense of it. The impact of this kind of witnessing should not be under-estimated however, as the recent presence of the Black Lives Matter demonstrations have illustrated both in the U.S. and the U.K, informed by the presence of 'accidental' witnesses using their mobile phones to record events as they happened. However Ristovska's (2016) introduction of strategic witnessing is intended to capture the more organised and focused use of media of this kind as campaign data to give voice to victims' experiences. She documents the ways in which video activism, using the human rights organisation interesting titled WITNESS as a case study, 'underscores the relationship between the sufferings caused by human right offenses throughout the world and the strategic network that seeks to capture, expose and change them' (Ristovska 2016: 13). Herein lies not only a provocative link with radical victimology discussed above but also an implicit connection with the notion of bearing witness brought to criminology by Richard Quinney.

### *The criminologist/victimologist as witness*

In separating witnessing from ‘bearing witness’, Quinney proffered a particular understanding of the role of the onlooker, particularly the academic onlooker.

He had this to say about the role of criminologists as witness:

We are witnesses to the contemporary suffering brought about by poverty, exploitation, violence in its many forms, hate and greed, brutality, prejudice and inequality. And we are also witnesses – and as witnesses also promoters – of those things which finally alleviate suffering: compassion and loving-kindness. As witnesses, we are part of the process of changing the world. Witnessing is an active vocation, one that is grounded in a particular moral stance toward human existence’. (Quinney 2000: 194)

This observation, echoing the distinction made by Peters (2001) between active and passive witnessing, offers up a vision of witnessing beyond ‘media events’ (Howie 2012: 25) and beyond witnessing as merely what we see. Following Carrabine (2012) quoted earlier this implies setting the complexities of the ‘witness’ apart from the role of being a simple onlooker. Walklate et.al. (2014: 265) suggest, this differentiates

“‘witnessing’ from ‘bearing witness’. The former is what we ‘see’ (such as the symbolic and figurative observations of victims and their experiences), and the latter involves ‘seeing beyond what we see’ (including the State’s political reaction to victimising events such as terrorist attacks).”

What might seeing beyond what we see entail? Spencer (2010: 49) suggests, ‘...the work of the researcher is always a work of mourning. If memory testifies to the fact that we can never fully recollect the past, then mourning affirms that we are never finished with the past: that



the task of comprehending the past always lies ahead of us.’ Bearing witness in this sense implies transgression through time and space. Using all those sources documented by Quinney in which:

Criminologists, for instruction on the bearing of witness, can become familiar with the many kinds of witnessing that are evident in a host of sources. Journalists, photographers, artists, social scientists, and many other writers report the sufferings throughout the world (Quinney, 1998: 59).

We are therefore compelled to use what we see as a point of reflection as well as observation, to consider what can be ‘seen’ beyond the image. In this sense the connections between making sense of victimhood and bearing witness to victimhood become intertwined with the moral/ethical stance of the criminologist/victimologist.

### **Conclusion: Victim as witness – witness as victim**

In the gradual slippage from positivist victimology to cultural victimology, underpinned by trauma creep culturally characterised as narcissistic voyeurism, is it possible to discern one way of making sense of the movement from the victim as witness in the legal sense to the witness as victim in the cultural sense. This continuum affords the capacity for events that have occurred in the past to be subjected to further witnessing, and additional witnesses in the present and the future. Thus it adds a further layer of complexity to these shifting processes and our capacity to make sense of them. At this particular point in time this continuum makes particular demands on those making claims both to speak on behalf of victims whether that claim is legal, religious, strategic, academic, or some mixture of these. This complexity foregrounds the different possibilities in understanding what ‘actually happened here’.

Additionally it puts to the fore, ‘Witnessing is far more than merely watching or seeing. Witnesses are never passive. Witnessing is active, performed, embodied, even when it occurs at a distance.’ (Howie, 2012: 20). Indeed it is arguably this witnessing at a distance in which the role of the media has, and continues to have, unprecedented potential impact. This impact carries with it practical, theoretical, and ethical responsibilities. This is the void of witnessing of which Peters (2001) has spoken.

In relation to policy, it is evident that the melding of the victim-witness is influencing policy initiatives in ways not necessarily either required or in the interests of those who have been harmed by what has happened to them. For example, Wright (2016) documents the ways in which bereaved mothers constructed as victim-heroes have informed media campaigns for justice in New Zealand, campaigns on which action has been taken and has been ‘interpreted as undermining legal history’ (ibid.: 15). This is just one example. There are many others (Megan’s Law in the U.S.; Clare’s Law in the U.K.) in which legislation has been implemented on the back of vociferous voices rather than evidence of efficacy. Initiatives so informed, take their toll on all members of society, not just those targeted by such interventions since not all voices are equally heard. Thus the need for further work on the politics of witnessing alluded to earlier in this paper.

In relation to theory, there is an implied denial of people’s capacities to respond to life’s harms and manage them endemic in trauma creep. This is problematic since it articulates a partial and partisan appreciation of the human condition in which, as C. Wright-Mills (1959) commented results in personal problems becoming social ills, and whilst the two are related, one does not substitute for the other. This kind of denial of human agency carries with it other

implications. The presumption of the homogenous victim and the homogenous witness erases culture and difference in its desire to render all experiences equal. Such presumptions deny the compelling evidence differently available from the different perspectives on victimhood discussed here, that such equality of experiences are not borne out by this evidence. The denial of this evidence relates to the third problem to be considered here: the question of ethics.

Valier (2004b) poses this issue quite simply: whose tears are seen? To this question it is possible to add, how, why and for what purpose? This is the sense in which it is always important to go beyond what it is that is seen. This is not the place to consider the debates of what might constitute a public criminologist or victimologist but those debates are certainly pertinent to understanding the role of the academic as the witness as onlooker. Nonetheless the ethical requirements of going beyond what we see demands hard questions are asked about the purpose and availability of images and atrocities of all kinds to which we are all exposed. Questions such as, whose interests are served by these practices and the frequent lack of transparency that accompanies them? As an example, the perpetual presence of the images of 9/11, can be the 'haunt[ing] witnesses who are less frequently heard' (Walklate, et al, 2014: 267). Such hauntings concern us all. Going beyond what we see affords the possibility that those less frequently heard are given a space to be listened to. To reference Quinney (2000: 194) 'Witnessing is an active vocation, one that is grounded in a particular moral stance toward human existence'. Moreover, as Ellis (2000) reminds us, and for the purposes of this discussion the 'us' is the academic onlooker, we cannot say that we did not know.

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