

Victims of International Crimes: An Interdisciplinary Discourse

Thorsten Bonacker and Christoph Safferling (eds), Springer 2013.

What is the status of victims in international law? To what extent do victims participate in criminal trials? What is the role of victims in transitional justice processes? These are just a few of the questions raised in the edited collection *Victims of International Crimes: An Interdisciplinary Discourse*. The volume is a rich and comprehensive collection that brings together scholars and experts from various disciplines (including law, politics, history and sociology), with an aim to critically analyse the role of victims in international law and transitional justice processes. As the editors argue, victims of mass atrocities have long been ignored and neglected, rather than included and active, in such processes. Only after the 1990s with the collapse of the Soviet Union, the dissolution of Yugoslavia and the rampant increase of 'new wars' (Kaldor, 1998) did victims start to gain more prominence in international law.

The volume is separated into five sections. Part I contains two chapters. Theo van Boven provides a lucid exploration of the 'victim' in international law and argues that the transitional justice movement has brought victims from the margins into the focus of scholarly and activist attention. Gerd Hankel provides an interesting firsthand observation of victim issues in Rwanda. In his contribution, Hankel deals with the political implications of a 'one-sided' definition of victims. He argues that, rather than bringing together two former enemies (Tutsis and Hutus), *gacaca* trials have reinforced ethnic divisions between them.

Part II explores the definition of 'victim'. Michael Kelly analyses the International Criminal Court (ICC) Statute on victims and compares it with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which have largely ignored victim issues. However, Kelly problematizes the prerequisite contained in rule 85 of Procedure and Evidence, which requires an individual to meet the definition of 'victim' before they can qualify to participate in the proceedings. In his chapter, Kelly analysis the complex notion of the 'victim' and victimhood and argues for a more flexible, context based and broader interpretation of the definition. Michael Humphrey explores the role of

victims in truth commissions and trials. He, too, is more concerned with the role of social context in constructing victimhood, although within the historical context of Latin America. Humphrey argues that in transitional justice the 'ritual victim' of trials is the perpetrator, while in truth commissions the 'ritual victim' is the victim of violence (p. 72). In the following chapter, Susanne Buckley-Zistel argues that both women and men are victims of wartime sexual abuse and raises some of the consequences of labelling women only as 'victims'. Buckley-Zistel questions whether assuming the role of victim can bring gender justice to post conflict societies, or if it rather reinforces predominant stereotypes of gender and power, which see women as passive and vulnerable and men as active and dominant. She argues that one should be wary of acquiring the position of victim only since such a solitary position undermines women's efforts to be 'equal agents' in the post conflict society (p. 98).

Brigitte Bailer-Galanda situates her analysis of victimhood in the context of Austria and its post war identity. She argues that Austria, and its narrative of being the first victim of Nazi Germany, annihilates the acknowledgment of real victimhood by Nazi rule. Within the context of this narrative and the Allied powers' de-Nazification process enforced in Austria, the real victims of Nazi Germany in Austria were marginalised and later disappeared from public opinion almost completely. Mark Drumbl queries the fine-line distinction between the 'victim' and the 'perpetrator' in a case study of child soldiers. Legal attention to the question of whether child soldiers are victims or perpetrators was given by the ICC in its first trial against Thomas Lubanga Dyilo. Drumbl argues that prosecuting child soldiers is not unlawful, but it is seen as inappropriate. He argues against child soldiers being prosecuted, not because they are minors, but because they are low ranking participants in army operations; they are not 'conflict entrepreneurs or political leaders' (p. 14).

Part III of the collection analyses victim protection and participation in criminal trials. Daniela Kravetz, a prosecutor with the ICTY, explores the importance of victim participation and protection since victims are often intimidated both inside and outside of the courtroom. She argues that victim/witness protection is one of the most challenging issues for the prosecution, as they are often without key witnesses due to the serious threats and intimidations those witnesses experience. Kravetz argues that, with the closure of the ICTY, victim protection needs to stay in place and that the Residual Mechanism should assume this task after the ICTY closes. Natalie

von Wistinghausen questions the definition of 'victimhood' in the course of criminal proceedings. She argues that those who have been detained for more than ten years at the ICTR and then acquitted also see themselves as victims, and that the right to a fair trial is exclusively preserved for the accused and not for victims. Silke Studzinsky writes from her personal experience of working with victims about the challenges and problems in the implementation of a compensation scheme before the Extraordinary Chambers in the Courts of Cambodia (ECCC). Franziska Ecklemans explains the ICC victim participation scheme that, while still a developing process, is more advanced in comparison to ad hoc tribunals. The ICC established a number of units and sections that are specifically aimed at victims, such as the Victims and Witnesses Unit and the Victims Participation and Reparations Section. The last contribution in this section is by H.E. Judge Hans-Peter Kaul, which follows on from the last two chapters and brings in the judge's perspective on victim participation in criminal proceedings. The most challenging issue for judges is the practical difficulty of proving the victim's identification—an issue that often a single judge has to decide upon.

Part IV starts with Chandra Sriram's chapter in which she reflects on the 'justice vs. peace' debate. She raises the complexities and often irreconcilable demands of ex-combatants, victims and communities. In her analysis, she looks to Columbia and Sierra Leone, where victims have been requesting accountability while ex-combatants have no interest in acknowledging their role in armed conflict. Boris Bath looks at 'genocide' and its victims, and argues that 'genocide' and ethnic cleansing have become part of modern nation-building. He is, however, wary of the term 'genocide' and its usage; Bath suggests that it may not be as clear a term as it was in 1948. Stefanie Bock further explores victims of genocide by juxtaposing them with victims of civil wars. Bock argues that the challenge for transitional justice processes is to 'meet the needs of all' (p.263), whether civilians or soldiers. The following chapter by Thorsten Bonacker, Anika Oettler and Christoph Safferling analyses the increasing inclusion of victims in transitional justice processes and the ongoing risks of such inclusion. The authors question whether one can speak of a 'global norm for victim participation' (p. 295), and what such a norm means for local transitional processes. Raquel Aldana reflects on Guatemala fifteen years after the peace agreements. Aldana highlights extraordinary victim participation, which not only

secured trials and evidence, but also pushed judges and prosecutors to advance criminal law and bring it into accordance with international legal developments. The last chapter in this section is written by Katharina Peschke and sheds light on the ICC Trust Fund for victims, which has a mandate to provide reparations to, or in respect of, victims. The second mandate of the Trust is a general assistance mandate that provides physical, psychological and material assistance to victims and is aimed at the transformation and empowerment of victims.

Part V is about civil society actors. The first chapter is by Veit Strabner and focuses on Latin America, in which victims groups play important role in dealing with past wrongdoing. The second chapter by Christoph Sperfeldt explores the interplay between the ECCC, victims and civil society. He argues that civil society plays a key role in securing victim participation but also in monitoring the work of the ECCC. The final chapter by Marcel Baumann situates his analysis in Northern Ireland and South Africa. He argues that 'memory' is a social construction and policy-driven.

There is no doubt that this collection will contribute to the growing literature on transitional justice and international criminal procedures. It will also contribute to our understanding of the 'victim' and its various roles in criminal proceedings. The volume would benefit from editing and proofreading though. The author found a number of typographical errors that could have been avoided by careful editing. Otherwise, the book is a timely and valuable resource to scholars and policy-makers alike.

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