

Season 4, Episode 10 (June 2023)

Victimhood and Victim Participation in Transitional Justice

Welcome to Justice Visions. The podcast about everything that is new in the domain of Transitional Justice (TJ). Justice Visions is hosted at the Human Rights Centre of Ghent University. For more information visit JusticeVisions.org.

Cira Palli-Aspero: Welcome to this new episode of Justice Visions. My name is Cira Palli-Aspero, and I will be the host of this special episode as today, our regular host, Tine Destrooper, will be sitting across the table as a studio guest. She will talk about the closing conference of her ERC project – Welcome Tine.

Tine Destrooper: Thank you!

Cira: And our other studio guest today is Cheryl Lawther. She is a Reader in the school of law and a fellow at the Mitchell Institute for Global Peace, Security and Justice at Queen's University Belfast. She will talk about her forthcoming book, 'Beyond Innocence and Guilt: Constructing Victimhood in Transitional Justice'. Welcome Cheryl.

Cheryl Lawther: Thank you.

Cira: A lot of cross-cutting topics, which we will explore today. A central notion to the book, which is also central to conference is the very concept of victimhood – which is not a stable or straightforward notion. Cheryl, could you explain how your book seeks to enrich or recast some of the often taken for granted assumptions about victimhood within the domain of transitional justice?

Cheryl: The starting point really was the growing awareness both in scholarly communities but also in policymaker and practitioner communities over the last number of years that if we really want to understand how victimhood is experienced and indeed constructed, reproduced and politicised in transitional justice; then we need to move away from thinking about those binary concepts of innocent victims and guilty perpetrators. And on the back of that, there has been an increasing awareness and attention paid to the idea of complex victims, or what someone call the complex political victim. And I think that is hugely important if we're going to understand the full range of harms, the reasons why people engage in conflict, and how victimisation is experienced across all different parties to conflict and human rights abuses. But as I was working in this field, I became increasingly aware that while we had this excellent starting point in respect to complex victims, the conversation about how victimhood is constructed in transitional justice had effectively stopped there. It hadn't gone any further, and as you can tell, I'm sure, from my accent I live and work in Northern Ireland. And what I realised is yes, we need to go beyond innocence and guilt, but we need to go further. To think about how victimhood is also constructed in relation to, for example, what voices do we hear, and what voices do we not hear? What happens when we perhaps freeze victims and survivors in one particular narrative and treat that one experience in their life as their total identity, their total voice? What about the practise of blame? Are they blaming the so-called other? Or, for example, how victims, survivors might, in fact plain themselves for what happened to them or to their loved one? But it's also

about how victims organisations and victims groups operate so, for example, by providing spaces of solidarity or means of identification of victims and survivors; but also sometimes what we see is where leaders and organisers are victims or organisations may take on the role of transitional justice entrepreneurs and begin to speak for victims and survivors and perhaps appropriate their voices for other reasons than responding to the objective needs of their constituencies.

But on top of that I'm also interested in what about the forms of victimhood that we don't see, or we don't hear? So, one of the phenomena here that I talk about in the book is the idea of silent victimhood. For some victims and survivors, silence is born out of a sense of fear that they don't want to raise their head above the parapet for fear of being re-victimised. For some, it's about protection. It's maybe about protecting loved ones from the traumas of the past or younger generations. For others silence is seen as a dignified silence that you got up and you got on and you rebuilt your life, and you didn't kind of "moan about it". But then there's also particular harms that are silenced, and one of the big forms of harm that we see silenced here, and which I reflect on in the book, is sexual violence. And then on top of that, to kind of continue this layered approach around how victimhood is constructed, I'm also interested in how victimhood is constructed and reproduced in the physical landscape around us. So, what about local forms of commemoration or memorialization? What narratives about the past did they tell us? But perhaps more importantly, what do they leave out and what gaps are left behind? So, essentially, the argument of the book is if we want to understand victimhood in transitional justice, then we need to engage with this much bigger range of thematic issues.

Cira: The notion of victimhood is also central in your work, Tine, and that of the Justice Visions project, with a special focus on the notion of victim participation. But participation is not a straightforward concept either, which evolutions are relevant to consider in terms of how victim's participation is understood?

Tine: I think actually I want to just take Cheryl's answer as a starting point because I think a lot of what run through your answer, Cheryl, is also this very notion of agency. And I think that we talk about participation it's precisely that agency, but also that complexity which really comes to the fore, right? Because in the past two or three decades this whole concern victim participation has really come to dominate transitional justice scholarship, but also transitional justice practise because it was seen as both a space but also a driver of transformative change. And so, we've really seen that meaningful participation has been conceived of as foregrounding lived experiences, but also kind of facilitating reflexive understandings of rights that can then sort of kind of underpin various agendas for justice, for redress. And so, I think in an ideal scenario, we've seen that participation in, well, let's first talk about formal transitional justice mechanisms that that's been seen as a way to offer opportunities to people who've experienced violence to subvert those injustices. But we've also seen that these innovative participation schemes that have been developed as formal institutions that they've also sparked a very rich body of literature that has emerged, which started to address really these questions about participatory modalities, also starting to formulate a critique. And I think what's really relevant there is that it's become - thanks to that critical transitional justice scholarship - really widely accepted that if we really want to talk about meaningful participation, we really need to look beyond also the formal institutions of transitional justice. So, people, and there I return to what Cheryl was saying, people who've experienced violence, they often

have various identities, but they also often participate or mobilise or engage in various spaces, various processes, formal and informal. Sometimes before TJ, formal TJ starts, sometimes after, sometimes in the orbit of it, if you will. And that for us is kind of the starting point also to the conference, is that those kind of participation ecologies if you will, that complexity of participation.

So, we're not just talking about formal institutions, we're not just talking about interactions with those formal institutions, but also about grassroots mobilisation, about engagement at a grassroots level beyond what we typically see as a formal domain of transitional justice. But everything that people basically do in an attempt to pursue some sort of justice, some sort of redress for large scale human rights violations. And so, what I've really been interested in and what we're really trying to explore with the conference, which is coming up in March, also is this focus on trajectories of action undertaken by victims in their struggle for accountability, for truth, for memorization, for disruption, basically, of a harmful status quo. And those trajectories, I think it's important to underline, they unfold across these formal and informal spaces, and they involve multiple phases, more multiple forms of engagement, and that's really something that we want to explore in a kind of more open-ended way, if you will.

Cira: The dynamics of silence as well as resistance have also been front and centre in the work that Justice Visions have been doing. So, Tine, my question to you would be, what does that interplay between eraser and presencing look like in your work?

Tine: So that goes to the point that Cheryl was just making right, like some sources of violence do tend to get erased. And what's been interesting to me is that quite often don't know what we seem to understand the dynamic of erasure as something which is kind of something that formal or standardised institutions do right and that the work of presenting that that is done by civil society organisations and so we've also in our project really observed the opposite is that on the one hand these formal, standardised avenues if TJ they really continue to be very important for victims even if there is erasure happening. And at the same time, there's also an effect that, you know, civil society actors are not necessarily like the conflict-free ideal type spaces that are purported to be right. So, because there's also power inequalities there, and there's also erasure happening there. So, it's been really interesting for me and something that we also want to explore more during the conference is to really open up this question of how do we create also formal mechanisms which are more inclusive, more reflective of victims' needs. Because what we see is that also on the side of, let's say, more standardised TJ interventions. There is very often like an increasingly, or a growing awareness of the need to innovate. And so, what I think is important is to understand how these processes of erasure, but also the processes of presencing certain kinds of harm, certain kinds of violent certain people also, how those dynamics are shaped, how formal and informal processes interact one another across various levels. And so, for me, it's really important that we also continue to keep a focus on formal transitional justice institutions, because they can be very they can cause a lot of harm by the erasure that they do, but they can also be very powerful tools to further the interests of victims. And so some questions that I've been really interested in is, that question of how participatory rights but also modalities have evolved across TJ pillars, how they are being put into practice, also kind of what best practises we can be observing across these various pillars but then also the question of how formal and informal mechanisms can complement each

other to kind of counter this erasure but also to create more inclusive spaces for women for youth, for diaspora, for differently-abled persons, but also for elderly persons, LGBTQIA+ persons that otherwise risk being overlooked. I guess what I'm saying is also that these formal mechanisms they're there to stay, right? And so, the dynamic between formal and informal processes in terms of how they can be complementary, I think that's something that we really need to understand better and that's something that we want to try to do then.

Cira: Cheryl, how does that interplay between formal and informal processes look like in terms of shaping how we understand the notion of victimhood in the case you've been studying most extensively, which is Northern Ireland

Cheryl: I think this is really timely question and feeding off what Tine said. In Northern Ireland, victim identity has been shaped, highlighted but also denied and somewhat downplayed by the range of different formal and informal transitional justice mechanisms that we have in play here. And if we think about the more informal or like local end of the spectrum, there's a really rich tapestry in Northern Ireland of examples, of victim mobilisation and victim participation, that are wonderful examples of empowerment and the exercise of victim's agency and organic forms of like campaigning or other forms of artistic and creative work, and we can see that in local storytelling projects or what we have are memorial quilts where different individuals have created small squares in relation to their loved one and they've been put on display alongside other squares made by other victims and survivors. And that has those quilts have travelled around the community. So, you have this wonderful kind of array of work at the local level. Then somewhat at the more formal level, participation and victim agency has been enhanced by some of our formal processes of transitional justice. And I'm thinking particularly about the campaign for a pension for those who were seriously injured during the Northern Ireland conflict. Historically in Northern Ireland levels of compensation, financial compensation, were very low and about approximately 11 years ago, possibly slightly more than that now, a Belfast based victim's organisation called WAVE they had a number of members who were seriously physically injured during the conflict, and they had received very little overdrafts or indeed acknowledgement of the harms that they had suffered, and they led a very difficult but ultimately very successful campaign to have a pension paid to anyone who was seriously physically or psychologically injured during the conflict. What was particularly unique about that campaign was the very idea of victim participation, in that it was those who were physically injured, who led the campaign, did all the campaigning work and rather than using for example, rather than trying to hide or side step the different forms of physical disability, they actually foregrounded the use of wheelchairs or prosthetic limbs or home adaptations in their campaigning efforts as a way to say we're not passive, we're not vulnerable, we're survivors, but simultaneously this is what we have to live with and it's, you know, in recognition of that, that that was such powerful visual imagery and the participation of those individuals that led to the success of that campaign.

But then on the other end of the spectrum, I'm thinking again about formal participation or formal forms of transitional justice. As many listeners will be aware and at the moment the British Conservative government is passing or attempting to pass a piece of legislation called the Northern Ireland Troubles Legacy and Reconciliation Bill and that piece of legislation is an attempt to deal with the legacy

of the conflict in Northern Ireland in the sense that we've never had a formal process of truth recovery, but in fact what that legislation is doing is its closing down available avenues for truth recovery. So, it's closing down inquest, civil actions, the possibility of further criminal prosecutions or public inquiries, for example, and it's establishing a new truth recovery body that has very limited powers in respect to recovering truth and is predicated on giving an amnesty to those who come forward to it. What is really crucial about it is that this is not a piece of legislation that has been designed in consultation with victims and survivors. So, we have a very complex picture here of victim participation and what that means that the formal and the informal levels.

Cira: A lot of what Cheryl is saying indeed relates to forms of activism that doesn't easily fit in the mould of how participation is typically understood, right? So maybe my question to you, Tine, would be: how important are these in other contexts?

Tine: Yeah, I think that's super interesting, Cheryl, what you are saying because of course these forms of activism, they defy kind of easy categorization as transitional justice or participation and transitional justice and so, we were actually exploring what happens when people who experience violence decide to engage in justice seeking efforts beyond the realm of transitional justice, because there can be a host of reasons to not use the formal institutions of transitional justice, from not feeling represented by formal institutions, to lack of trust or lack of access to, not just transitional justice, but justice institutions per se, right.

What it's really interesting for me is that we see that people sometimes bypass formal justice institutions, but they'll be mobilising transitional justice. But when they do so in that kind of context, some of the practices had a characteristic of being artistic or cultural practices. Sometimes you know, even in ways that propose nonverbal, non-narrative ways of again surfacing or presenting these experiences of violence, which is, you know, very difficult in a kind of more standardised TJ mechanism. Sometimes people will also seek to reappropriate and to re-signify these existing transitional justice narratives, if you will, by using, say, arts as a means for truth seeking. And what's interesting to me there is that these kind of very critical or artistic engagements with transitional justice often what we call *aparadigmatic* cases where mainstream transitional justice approaches can be carbon copied anyway.

These kinds of engagements, they often look beyond participation in a formal sense and that they've really tried to again to re-signify some of the process of TJ, some of the concepts of TJ that they really have a potential, not just to contribute to some of the kind of normative goals of transitional justice, like truth seeking, like accountability, but that they also really have a potential to recast the paradigm of transitional justice and of participation in transitional justice, and to really open that up and to inscribe, for example, resistance into that notion of participation in ways that is much more victim-focused. These are not things happening, just kind of in parallel or in the margins, but for me they really hold pointers in terms of where that paradigm of transitional justice is moving and really thinking through where it is going when people are mobilising it in a completely new way.

Cira: This logic of pushing the paradigm in a different direction, is that also something you see in your work on victimhood Cheryl? Which paradigm is emerging there if we stop thinking along the binary victim-perpetrator categorization?

Cheryl: I think there are a lot of critical reflection on the shape of the broad field of transitional justice, and within that there, there is a lot of reflection and a lot of kind of scholarship and efforts being directed towards thinking: what can transitional justice do better? If we think of the ultimate starting point of transitional justice, it is to respond to the needs of victims and survivors. And I think that we can see that in this sort of the expansion of transitional justice concepts and what the fields or the areas where transitional justice is sort of being exported to. So, for example, if you think of historical institutional abuse, whether that is in Ireland or in Canada or Australia, but there kind of the paradigm of transitional justice and the foregrounding of victims and survivors is increasingly reflected. What is effectively a range of domestic harms in the case of institutional abuse, there is now a real importing of the ideas and the practises of transitional justice, so you see the language, for example of truth or justice or reparations or forgiveness, and the importance of apologies imported into these different spheres of transitional justice work, these different paradigms. But we can also see the expansion. I think of the areas where transitional justice is relevant. Also thinking about legacies of racial injustice, about slavery, about colonialism, in respect to the environment, for example. So transitional justice is having increasing applicability across a range of harms. But at the same time, while I think that is very important and potentially very valuable. I think it's also important that we don't uncritically export those ideas. So, while it might sound very appealing to say we must centre victim participation, we must centre victims' voices or, for example, we must prioritise truth or reparations. We need to be very clear that we take the lessons of what we know about, for example, victim participation or reparations in transitional context, and we don't just apply them or just fit them into the mix uncritically in these different spheres and be very pleased that transitional justice has expanded in these ways. I think the paradigm of transitional justice is taking on new forms, but we should be very clear that we don't get over enthusiastic or perhaps uncritical about the knowledge that we do already have.

Cira: This complex picture also challenges our approaches are the very fundamental level, right, Tine?

Tine: Yes. I think when we understand victimisation but also part of participation as I lived experience you can't but foreground that live lived experience and complexity really starts to really become the name of the game. So, people who step in and out of these formal or informal participation spaces or justice processes if you will, they bring certain expectations, they bring certain experiences and epistemologies and ambitions with them that really, I think, alter the spaces because of the way in which they are participating. So, I think it's really important that we better understand how do victims, survivors, people who experienced violence navigate and negotiate or reshape or reject participation, transitional justice; how do these formal spaces shape and informal spaces and vice versa... So, there's a lot of relational dynamics here in participation that I think we really need to understand better, and that's something we'll try to do with the conference also, because I think if you want to engage with these kinds of questions. The very kind of foundational principles of what we call transitional justice are really called into question. So, I think thanks to the work of critical transitional justice scholars, we're now really living in an era that we're

deconstructing the taken for granted dimensions of transitional justice and other kind of predominant legal approach. So, I think the crucial next step for us now, which we also try to do at the conference, this start reconstructing also, right, that practise of transitional justice based on more inclusive knowledge about approaches and based on practice.

Cira: I really like this idea of reconstructing transitional justice. As we are approaching the end of this episode, Cheryl, I will invite you to share some concluding remarks and maybe to reflect on what makes you hopeful and where you look for inspiration.

Cheryl: I think I find inspiration in a variety of different contexts. So, for example, podcasts and the opportunity to engage with scholars such as yourselves gives me hope and inspiration. When you see such wonderful creative work being done, but also work that pays really close attention to the lived experiences of victims and survivors and takes that complexity and that breadth and depth of experience into consideration, I think that is quite exciting and I think there's real genuine transformative potential there. I for one I am very much looking forward to the conference. But I also get inspiration from the people that I work with. So, as I mentioned earlier, I did a lot of field work in Northern Ireland and I sit on a number of different boards that deal with the needs of victims, survivors. But I've also worked in a number of other transitional contexts such as Colombia and Cambodia, and I constantly get inspired by the people that I work with. The people who sometimes have suffered the most appalling harms but conduct themselves with such grace and such determination not only to better their own lives but to better the lives of other victims and survivors. And I think that is a constant source of hope and inspiration.

Cira: And I will post the same question to you, Tine, what makes you hopeful and where do you look for inspiration?

Tine: I can only echo what Cheryl was already saying. And I'll also say that just listening to you, Cheryl, I'm also really looking forward already to the book, which I hope will be out soon enough. But what gives me hope also is methodological innovations in a way, because I think the way in which we now study participation and engagement really gives much more space for people's stories to also be heard in a much more open-ended way, so that I think is something that's also really inspiring to me. And then yes, of course, I am really looking forward to be inspired also during our conference in March where we will be talking about exactly those issues, which Cira also asked about today, right, which is what is happening on the side of formal institutions. What does it mean to understand participation as lived experience? How does that impact upon our knowledge approaches, but also which initiatives do we see beyond participation that really push the paradigm of transitional justice of victim participation in a new direction? So that I think is very inspiring. Also, the fact that for us and that goes to the point about talking with the people that we're working with, we are organising 8 local events in the run up to this international conference to really also make sure that we stay in touch and also talk with the people that we're working with, so enough inspiration there for sure.

Cira: Some logistical information here. The call for papers for that conference which will take place between the 13th and the 15th of March 2024, here in Ghent and also

www.JusticeVisions.org

online - has just been launched this week! So, for those interested in joining us, you can have more information in the [Justice Visions](http://www.JusticeVisions.org) website and for our listeners we will be back with a new season in September.

Cheryl: Thank you everyone!

Tine: Thank you!