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## **Victims who have done nothing or victims who have done nothing wrong: Contesting blame and ‘innocent victim’ status in transitioning societies**

### **Introduction**

In societies addressing a legacy of political conflict some distinction is usually made between those who are, and are not, ‘good victims’ (Madlingozi 2007), ‘worthy victims’ (Tilly 2008), ‘deserving victims’ (Dawson 2014), ‘real victims’ (Bernath 2016) and ‘innocent victims’ (McEvoy & McConnachie 2013). The ‘givers’ of victim status who grant or withhold these statuses (van Wijk 2013) often reify the socio-political dynamics that determine which victims and harms are given recognition (Carrabine et al 2004), mainly by favouring those victimised through certain violations of the criminal law (Dubber 2006). However, determining the worth or innocence of victims of political violence in this way is problematic because it elides the inherent ideological nature of the law in such contexts (Elias 1986; McGarry & Walklate 2015), it presupposes that all parties to the conflict accepted and operated to a universal legal regime, and it erroneously posits that criminal law is capable of capturing the full complexity of innocence and blame during conflict. What transpires is a reductive concept of blame that can be conveniently cast onto a few ‘officially guilty’ culprits (Jamieson 2016). Debates around innocence, blame and victimhood in societies transitioning out of conflict tend to merge legal responsibility and moral responsibility with competing identities, discursive regimes and political positions (Holstein & Miller 1999; Bouris 2007). Accordingly, to narrowly define innocence and blame in accordance with criminal law understandings is to misinterpret them as being divorced from, rather than infused with, competing political and moral understandings of any given conflict.

Nevertheless, ‘rule of law’ discourses in various transitioning societies continue to differentiate between victims in this way. This has two notable shortcomings. Firstly, it perpetuates a divisive ‘politics of victimhood’ that pitches ‘innocent victims’ against other victims (Lawther 2014; Jankowitz 2018). Secondly, it presupposes that further distinctions cannot or should not be made within this ‘innocent victim’ bloc itself. While the first issue has been extensively critiqued in studies on the Basque Country (Alvarez-Berastegi 2017; Alvarez-Berastegi & Hearty 2019), Cambodia (Killeen 2018), Peru (de Waardt 2016) and Northern Ireland (Brewer & Hayes 2011; Lawther 2014; Moffett 2016), the second problem has not been similarly critiqued. That is, whether potential lines of cleavage can be found within the ‘innocent victim’ constituency itself, what these might be and how they should be best understood remains under studied and under theorised in this victimological strand of the transitional justice literature.

This article moves to fill this lacuna by critically examining how ‘innocent victim’ status is granted or withheld in transitioning societies where disagreement over the nature of past violence remains. Using the North of Ireland as an empirical example, it deconstructs the ‘innocent victim’ bloc and critiques the discursive process behind the construction of the ‘innocent victim’ identity. In doing so, it posits that the term ‘innocent victim’ has been used to denote *two* distinct groups; those victims who have done *nothing* and those victims who have done *nothing wrong*. While a consensus mirroring traditional victimological understandings of the passive ‘ideal victim’ (Christie 1986) may coalesce around victims who have done *nothing*, the innocence of victims who have done *nothing wrong* is a more complex affair open to political and moral contest. This, it will be argued, arises from three overarching problems that pervade the process of victim identity construction; the natural incongruence between competing understandings of the past, the ‘moral elbow room’ these retrospectively afford, and the use of ‘discursive table-turning’ to widen the concept of ‘legitimate target’ and narrow that of ‘innocent victim’.

The article opens by outlining the competing frameworks used to define the violent past, before critically evaluating how these are adopted by the ‘givers’ of ‘innocent victim’ status. There follows a theoretical discussion drawing out the distinction between victims who have done *nothing* and victims who have done *nothing wrong*. Through applying a more critical victimological lens (Quinney 1972; Elias 1986; Walklate 1989; Miers 1990; Mawby & Walklate 1994; Rothe & Kauzlarich 2014; Fattah 2016) to public statements issued by non-state armed groups (NSAG) throughout the conflict it provides an insight into how victimisation was framed by those responsible during the ‘forensic moment’ (Douglas 1990) of perpetration. This will identify *how* and *why* victimisers attributed ‘overresponsibility’ to particular victims when they ‘other-blamed’ while simultaneously absolving other victims where they ‘self-blamed’ (Lamb 1996). The discussion concludes by critically examining to what degree victimiser interpretations of blame and innocence change once physical conflict gives way to transition out of violence. The constraints of space have unfortunately limited most of the current discussion to NSAGs, yet this should not be misinterpreted as discounting the state’s role in the conflict or in propagating certain victimological discourses. This has, however, been well-covered in existing studies on Northern Ireland (Ni Aoláin 2000; Rolston & Scraton 2005; Lawther 2014).

### **Framing the violent past**

Where the causes and consequences of any conflict remain contested the nomenclature of language used in reference to it mirrors conflicting political and moral discourses on violence, victimhood and responsibility (Jankowitz 2018: 14). Far from being mere descriptors, particular terms become value-laden frames for interpreting past violence. In Northern Ireland this has seen the terms ‘conflict’,

‘terrorism’, ‘ethnic cleansing’, ‘war’, ‘armed struggle’, ‘violence’ and ‘Troubles’ being competitively used in accordance with particular ideological perspectives (Alvarez-Berastegi 2017). When and where the causes and consequences of a conflict remain contested, the issue of victimhood becomes a proxy for making political and moral judgements about that conflict itself (McEvoy, Dudai & Lawther 2017). Whether or not the prefix ‘innocent’ is attached to the label ‘victim’ can either delegitimise or justify violence directed at particular groups or individuals (Moffett 2016). If the prefix appears it suggests that there was no legitimate reason for targeting that victim. If it does not appear, however, it implies that there was a legitimate basis for targeting them. By extension, categorising certain victims as the ‘most innocent’ or as ‘more innocent’ than others is to, at the same time, delegitimise their victimiser as ‘more guilty’ or the ‘most guilty’ (Hearty 2016). This reasoning typifies self-legitimising discourses on the past that gravitate around particular ideological interpretations (Baumann 2009), demonstrating the salience of ‘violence as discourse’ where the reasons for fighting remain contested through a meta-conflict (Lemarchand 1996).

Any prospective ‘giver’ of ‘innocent victim’ status will naturally hold an ideological perspective on a range of issues (van Wijk 2013) – in this instance, on the nature of political violence in Northern Ireland. They will grant or withhold ‘innocent victim’ status in accordance with whichever framework for defining the violent past matches their ideological perspective. The difficulty is that different frameworks offer different political and moral perspectives on who or what could be legitimately targeted. Who and what should be targeted during a war of national liberation differs from those targeted under a public emergency which differs again from those targeted through pro-state ‘counterterrorism’. A further examination of the frameworks available to the ‘givers’ of ‘innocent victim’ status in the North of Ireland demonstrates this point.

### *The Irish republican framework*

Irish republicans framed Irish Republican Army (IRA) and Irish National Liberation Army (INLA) political violence as a war of national liberation against British interference in Ireland (*An Phoblacht* 1996), relying on historicity and the right to self-determination under international law to support this interpretation (Sinn Féin 1987). This would contextualise it under International Humanitarian Law (IHL), notably Additional Protocol I which defines a war of national liberation as one ‘in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination’. Although IHL recognises the right of national liberation movements to engage in armed conflict it nonetheless sets thresholds for engaging that right and provides protection to certain parties and from certain actions (McCoubrey & White 1992). IRA and INLA violence, though, challenged this neat legalistic framework due to indeterminacy over

whether the requisite intensity for invoking IHL was satisfied, whether the conflict was international or non-international in nature, whether NSAGs distinguished themselves from the civilian population and over who could be legitimately targeted (Dudai & McEvoy 2012). Indeed, where socio-legal scholars have been prepared to critically apply an IHL lens to Northern Ireland this has been through the prism of an internal armed conflict satisfying Common Article 3 rather than through the Irish republican prism of a war of national liberation (Bell, Campbell & Ni Aolain 2004; Caesar 2017).

A NSAG cannot confer national liberation movement status onto itself under IHL. This is contingent on recognition by the state it is contesting and by the international community. States rarely oblige as doing so recognises that the state is racist, colonial or an occupying power (Clapham 2006: 274). Neither the British or Irish government nor major international bodies recognised the IRA and/or INLA as the legitimate representatives of the Irish people in a war of national liberation (Connelly 1987). However, as Olivier Bangerter (2011) argues, even if NSAGs are not formally recognised under or bound by IHL they can still endeavour to conduct their activities in some loose accordance with it. Thus, for the purposes of the present argument, the IRA and INLA continued to frame their campaigns as a war of national liberation - albeit their conduct not necessarily matching their discourse on every occasion (Bell, Campbell & Ni Aolain 2004).

### *The state framework*

When the violent past is framed as an armed conflict it reflects the political nature of that violence and acknowledges the underlying political grievances behind it (Dickson 2010: 5). Like others encountering political violence within its legal jurisdiction (Clapham 2006: 274), the British government framed the conflict as a domestic campaign of 'terrorism' rather than as an armed conflict. Political violence in Northern Ireland was subsequently presented – then and ever since - as the manifestation of an irrational sectarian conflict between warring factions wherein the British state tried to hold the middle ground through a combination of domestic criminal law and emergency provisions (Hearty 2014). As Ni Aoláin (2000) notes, while a de facto low intensity armed conflict did in fact exist, it was legally framed as a 'public emergency' rather than an armed conflict. This has implications for the granting or withholding of 'innocent victim' status.

Firstly, it places the actions of non-state actors outside the ambit of IHL and subjects them to domestic criminal law (Gasser 2002). Under a 'rule of law' framework this would automatically delegitimise *any* non-state violence – something salient to moral calculations on the innocence of those so victimised. Secondly, the sheer breadth of emergency legislation effectively deemed entire communities as 'suspects' to be targeted in the fight against 'terrorism' (Pantazis & Pemberton

2009). In contrast to the previous point, certain means of victimisation against certain constituencies can be deemed legitimate because there has been *no* breach of criminal law. Finally, and not unconnected to the previous points, the ‘public emergency’ backdrop saw a more relaxed judicial attitude to the use of lethal force by state agents (Ni Aoláin 2000), with claims that victims were either moving suspiciously or in the proximity of a riot often being used to justify the killings and deny ‘innocent victim’ status (Rolston & Scraton 2005).

#### *The Unionist framework*

Unionists are also resistant to having the violent past framed as a conflict. Being of a pro-state persuasion, their narrative distinguishes between the forces of law and order (ie the security forces) and the illegitimacy of non-state violence as personified by the ‘terrorists’ (Lawther 2010). This legitimacy-illegitimacy dichotomy forged a ‘historical moral framework’ that affords more ‘moral credibility’ to the security forces than it does to the ‘terrorist’ (Simpson 2009: 36). Essentially, the matter is reduced to the moral difference between those who upheld the ‘rule of law’ and those who contravened it. Such a worldview, though, is premised on the ‘myth of magical legalism’ (Cohen 2001) which infers that the security forces did not contravene the ‘rule of law’ or, where they did, that their victims deserved it (Hearty 2016). Attempts to have the past defined as a war or conflict wherein the state played an active role are therefore dismissed as a ‘rewriting’ of the past designed to belatedly legitimise ‘terrorist’ violence by granting it ‘moral equivalence’ with the ‘rule of law’ (Lawther 2014).

#### *The loyalist framework*

Within the broader Unionist constituency there was also a militant loyalist subgroup that was actively involved in the conflict outwith the security forces. Believing that the ‘rule of law’ prevented the security forces from countering Irish republican violence, these loyalists were prepared to bypass it. Engaging in what they termed a campaign of ‘counterterrorism’, the Ulster Volunteer Force (UVF) and the Ulster Defence Association (UDA) pledged to defend the constitutional status of Northern Ireland through ‘retaliatory action’ (*Ulster* 1990) without ‘be[ing] hindered by any Yellow Card restrictions’ (*Combat* 1980). Their perspective on the past is that it was indeed a conflict wherein they took decisive military action the ‘enemies of Ulster’ yet were later criminalised by the state *and* by Unionist politicians who stirred up tension or paid lip service to that cause (Lawther 2017). Unlike Irish republicans, though, they did not draw on IHL discourse, reflecting how the aims and objectives of a NSAG can sometimes place it in opposition to IHL principles (Bangerter 2011).

#### **Disaggregating the ‘innocent victim’ bloc**

Within contexts of political violence the term ‘innocent victim’ is often conflated with that of non-combatant (Bouris 2007: 36), usually denoting a civilian who was not a member of any armed group. While this combatant-non-combatant dichotomy provides a consumable means of distinguishing between victims, it is nevertheless divorced from the complex reality of political violence. While the concepts of ‘innocent victim’ and ‘civilian’ are not mutually exclusive they are not necessarily reciprocal either. Under competing political-legal frameworks certain factors can mean that ‘innocent victim’ status is withheld even when victims do not belong to armed groups (Alvarez-Berastegi & Hearty 2019). Being a civilian, then, does not necessarily mean one will be automatically conferred ‘innocent victim’ status.

On the one hand, some civilians are readily acknowledged, even by their victimiser, as being ‘innocent victims’. On the other hand, there are others whose victimisation can be attributed by those responsible for it to something the victim in question did or did not do. Echoing the victimological phenomenon of ‘victim precipitation’ (Wolfgang 1957), the victim is deemed to have invited their victimisation by somehow violating the protective moral frameworks safeguarding innocents during conflict (Ignatieff 1998). Whether or not their conduct forfeited their innocence and justified them being targeted is of course given to political and moral contest. The incongruence of the competing political-legal frameworks used to define the past means that the disagreement becomes one over the rightness or wrongness of the victim’s conduct *and* the rightness or wrongness of their victimisation. It is worth elaborating on this distinction a little further with reference to existing victimological literature.

#### *Victims who have done nothing*

Victims have been traditionally understood as the *done by* rather than the *doing to* (Williams 2008). Because of this they are seen as objects violated through someone else’s wrongdoing rather than subjects violated because of their own wrongdoing (Lacerda 2016). Within contexts of complex political violence this nurtures a simplistic understanding of having blameless victims and blameworthy victimisers (Bernath 2016). The ‘innocent victim’ represents the binary opposite of the perpetrator who contravened some accepted norm in targeting the ‘innocent victim’ (Bouris 2007: 37). The ‘innocent victim’ of political violence therefore mirrors the ‘ideal victim’ found in victimological literature, while their victimiser mirrors the ‘ideal perpetrator’. The ‘ideal victim’ is one who having been victimised is most readily afforded victim status (Christie 1986: 18). Certain factors distinguish them from other victims; not only are they weak and vulnerable, but they are also victimised while going about their daily life and without having invited their victimisation in any conceivable way (Walklate 2007). Particular groups like women and children are seen to naturally fit

this 'ideal victim' typology (Moeller 1999; McAlinden 2014). The concept resonates with a stereotype found across jurisdictions and cultures (McGarry & Walklate 2015: 16), thus allowing it to shape victimological understandings regardless of its usefulness or appropriateness. Of course, the complex reality of political violence invariably defies the neat binary thinking that the concept is premised on (McEvoy & McConnachie 2013).

For all that, there are cases where the various parties to the conflict have readily given 'innocent victim' status to those on the receiving end of their violence. At the most abstract level, both Irish republicans and loyalists couched women and children in 'ideal victim' terms (*Republican News* 1971; *Combat* 1990a). More specifically, 'innocent victim' status has been given in cases of 'collateral killings' where a party to the conflict unintentionally killed someone when trying to kill someone else and in cases of 'mistakes' where a party to the conflict mistakenly targeted a specific person on the basis of mistaken identity (de la Calle & Sanchez-Cuenca 2006). Using the example of a botched booby-trap car bombing, a 'collateral killing' would be one where the relative of the actual target is killed as a passenger, whereas a 'mistake' would be where the bomb was placed under someone else's car in the mistaken belief that it belonged to a particular target. Both contexts are underpinned by the blamelessness of the victim; in the first their victimisation is a tragic by-product of an attack intended for someone else, while in the second the victimisation was not invited by anything the victim themselves had done but by a fatal oversight on the part of their victimiser. These victims are 'innocent' precisely because they have *done nothing* – that is, neither through act or omission can it be argued that they invited their victimisation. Here the victimiser is prepared to 'self-blame'.

The blamelessness of victims who have *done nothing* is evidenced by the willingness of their victimisers to acknowledge it; the UVF acknowledged the 'unfortunate' killing of an elderly man in a gun attack targeting his sons (*Combat* 1990b), the IRA expressed regret for killing a holidaying Englishwoman during a gun attack on the British Army in Ardoyne (*An Phoblacht* 1992), and the Ministry of Defence apologised to the family of a workman shot dead during the security force ambush of an IRA unit at Loughgall (Young 2014). The willingness to 'give' 'innocent victim' status in these cases reflects a victimological calculation that is both constitutive and discursive. Constitutively the 'giving' of 'innocent victim' status is aided by the 'ideal victim' worth of each case; the elderly father fitted the vulnerability needed for an 'ideal victim', the female victim was a holidaymaker with a natural gendered 'ideal victim' claim, and the workman was shot dead as he returned home from work. This added an extra layer of innocence to 'collateral killings' and 'mistakes' that are already naturally conducive to 'ideal victim' typologies. Discursively, 'giving'



‘innocent victim’ status in these cases *does not* challenge core ideological positions. Whether framed as ‘war’, ‘counterterrorism’ or ‘public emergency’, each context involves an onground reality whereby those that *do nothing* can get inadvertently victimised. ‘Innocent victim’ status can be given to these victims without ceding any ideological ground on the legitimacy of one’s own conduct; to ‘self-blame’ and legitimate such victims as innocent is *not* to simultaneously delegitimise oneself.

*Victims who have done nothing wrong*

By contrast, there are those who will not fit the ‘ideal victim’ typology because they somehow created or contributed to the conditions for their victimisation (Bouris 2007: 84). Although nonetheless recognised as victims, and perhaps even as civilians too, their innocence is contested because they lie between contrastive ends of the blameless victim-blameworthy perpetrator spectrum (Govier & Verwoerd 2004). This reflects the messiness of political violence wherein the victim-perpetrator dichotomy often collapses upon itself (McEvoy & McConnachie 2013); there are ‘primary participants’ who pull the trigger or plant the bomb, ‘secondary participants’ who give orders, provide intelligence and/or logistical support and then there are ‘tertiary participants’ who have no on ground role but provide political, moral or ideological support to those engaged in the conflict (Govier & Verwoerd 2004). This complexity is further heightened because the acts of resistance, acts of loyalty, acts of betrayal and acts of connivance that characterise political conflict also obfuscate perceptions of blamelessness and blameworthiness (Levi 2005; Drumbl 2016). Consequently, one could be a civilian yet also be a blameworthy ‘secondary participant’ or a ‘tertiary participant’ depending on how widely political-legal frameworks are prepared to stretch themselves. In such cases, NSAGs ‘other-blame’, and project ultimate responsibility onto the victim in a classic example of ‘victim blaming’ (Walklate 2007).

To understand this phenomenon, acts of political violence should be viewed within the politics and history of the relevant conflict (de Burca 2014: 1). In the North of Ireland this is naturally conducive to contestation given the irreconcilability of competing political-legal frameworks for interpreting the past. The various parties to the conflict will invariably contest the legitimacy of the violence of others, and in response justification, excuses and mitigating factors will be offered. Some of these might be self-serving, some may be plausible and others will raise genuine moral dilemmas (Elster 2004: 136). At the same time, the rationale offered by the victimiser and their victim’s perception of that violence remain at odds (Baumann 2009). A killing framed as an attack on a ‘legitimate target’ might then be otherwise construed as an unadulterated sectarian attack (Hearty 2014). Similarly, the victimiser might maintain that their victim was in the security forces or was a member of a NSAG even though this is disputed by others (Ulster 1978; *An Phoblacht* 1991). In withholding ‘innocent

victim' status in such cases, victimisers enjoy a self-granted 'moral tax break' that justifies, condones or excuses their actions in accordance with their ideological outlook (Williams 2008). Victims' families refuse to accept this, choosing instead to see a violation of the norms of the context in which it occurred (Jacoby 2015). The core issue of disagreement, then, is whether or not these victims did or did not do *something wrong* that led to them being legitimately targeted under any particular political-legal framework.

### **'Greying' victims who have done *nothing wrong***

In defying 'black and white' perceptions of innocence and blame, victims who have done *nothing wrong* are 'greyed' (Bouris 2007). Sitting uneasily between binaries of the blameless victim and the blameworthy perpetrator while at the same time *not* contradicting the civilian-combatant dichotomy, their 'innocent victim' status is contingent on how any 'giver' judges their conduct. This judgement is intrinsically rooted in whether or not the victim's conduct was sufficient to transform them from an 'innocent victim' into a 'legitimate target' under competing political-legal frameworks.

### *'Legitimate target' in a war of national liberation*

The Irish republican concept of 'legitimate target' differed in practice from the IHL concept of non-combatant. Where the latter would encompass those not directly participating in hostilities (ie civilians) (Caesar 2017), 'legitimate target' was a more fluid and less defined concept that evolved throughout the conflict (de Burca 2015: 57). This expansion beyond a restrictive IHL concept was for both moral and strategic purposes; it fed into their ideological worldview but at the same time it also reflected how the political violence they exercised manifest itself on the ground.

In asymmetrical conflict killings can be designed to weaken the enemy (ie attacks on the security forces) or to protect oneself (ie attacks on informers and collaborators) (de la Calle & Sanchez-Cuenca 2006). In some instances this precludes any neat separation into civilian and military targets (Benvenisiti 2009). Moreover, unarmed state officials are not only easier targets but they are also indispensable to the administration of the territory that the NSAG wants the state to cede (de la Calle & Sanchez-Cuenca 2006). While they might not be deemed combatants under a rigid IHL framework, they are nonetheless 'legitimate targets' as 'sectoral perpetrators' that facilitate policies that they do not directly enforce themselves (Borer 2003). On the one hand NSAGs may engage in 'generic killings' directed at the 'legitimate target' on the basis of their occupation (ie an agent of the state), yet at the same time they will also engage in 'selective killings' that are motivated by the victim's conduct (ie informers and collaborators) (de la Calle & Sanchez-Cuenca 2006). This suggests that political violence operates to a logic that is *ideological* where it corresponds with a particular

political worldview yet also *instrumental* where it serves a practical purpose. None of this is peculiarly Irish republican, with NSAGs that self-presented as national liberation movements in Algeria (Branche 2007), Timor Leste (Stanley 2009: 76) and the Basque Country (Clark 1986) conducting their armed campaigns in this way too.

At the same time, though, in choosing to attack certain targets the IRA and INLA were enacting a 'script of action' that legitimised their political violence (Alexander 2006). In directing their campaigns against 'the British war machine' (*Republican News* 1972) and 'British imperialism' (Starry Plough 1979a), they attacked the security forces, administrative targets and economic targets. 'Legitimate target' therefore ranged from trigger pullers on the 'front line' to 'high-ranking, policy-making civil servants and politicians and the industrialists' with 'far greater responsibilities' (*An Phoblacht* 1976). Prison officers, especially during the prison protests of the 1970s and 1980s, were also deemed 'legitimate targets' for their complicity in imprisoning and mistreating Irish republicans (Starry Plough 1977). Members of loyalist armed groups were also targeted (*An Phoblacht* 1993). In targeting the latter, Irish republicans engaged in a process of *discursive table-turning*. This involves strategically engaging with certain elements of an opposing discourse, rather than rejecting it completely, in order to turn it to your advantage and your opponent's disadvantage. Rather than rejecting the loyalist 'counterterrorism' discourse entirely, then, Irish republicans turned it back on loyalist groups to transform them into 'legitimate targets'; if loyalists were, as they claimed to be, an extension of the state apparatus that was engaged in violent conflict with Irish republicans then just like that state apparatus they would become 'legitimate targets' of IRA and INLA violence.

In addition to the above, anyone prepared to cooperate with 'the British war machine' also became 'legitimate targets'. Naturally this included informers (Dudai 2011), but it also encompassed others. Businesses servicing 'the British war machine' were deemed collaborators and their premises and employees attacked. While this involved targeting contractors who were helping to build or maintain military installations, it also included telecommunications companies providing computers, ferry companies transporting British soldiers, and those who serviced vending machines in security bases (*An Phoblacht* 1986). Even those offering leisure or social facilities to off-duty members of the security forces (*Republican News* 1976) or advertising in security force publications (Starry Plough 1979b) were included too. Irish republicans justified this on two grounds; morally as an attack on those prepared to 'war profiteer' (Nordstrom 2004) from British military engagement in Ireland (*An Phoblacht* 1985), and strategically because providing these services freed up members of 'the British war machine' for front-line duty (*An Phoblacht* 1986).

Given the significant ‘moral elbow room’ that underpins this ‘legitimate target’ concept, the legitimacy of attacking some of these targets is open to challenge by others. For instance, instead of seeing a collaborating contractor, they might see a civilian who was killed while trying to feed their family (Simpson 2009: 44). Likewise, informing might be seen as the performance of a moral and legal duty to aid the security forces rather than as a dereliction of the moral duty to assist the national liberation struggle. Moreover, while the INLA labelled female civilians who died along with 11 British soldiers in the Droppin Well bomb as ‘consorts’ (McKinney 2007), others might see young people enjoying a night out in a venue that happened to also be frequented by off-duty British soldiers.

In each case, the moral calculation rests on whether providing services to the security forces, co-operating with the security forces or fraternising with off-duty members of the security forces incurs blame and forfeits innocence. If the ‘giver’ of ‘innocent victim’ status believes that the past was a war of national liberation it *does*, but if they believe otherwise then it *does not*. The issue of contention therefore is not what the victim did per se but whether or not this was *wrong* in the given circumstances. There is no victimological middle-ground discernible here; either the victim is blameworthy or they are blameless.

A similar dynamic follows through to the targeting of part-time and/or off-duty locally recruited members of the security forces. Irish republicans regarded them as ‘the final line of defence for British colonialism’ (*An Phoblacht* 1989), hence as much ‘legitimate targets’ as externally recruited members of the British Army. Operating by the logic of guerrilla warfare expounded by Mao Tse-Tung (Tse-Tung & Griffin 2005) and Che Guevara (1998) that favours attacking the enemy when they are most vulnerable, Irish republicans felt morally and strategically justified in attacking locally recruited security force members where and when the opportunity arose - be that in or out of uniform, on or off-duty (Hearty 2014). Any pro-state ‘giver’ of ‘innocent victim’ status would, of course, be prepared to grant ‘innocent victim’ status here on the basis that they regard these attacks as acts of ‘terrorism’ directed at the legitimate forces of law and order (Lawther 2014), and because they couch such victims in terms of their civilian status as someone’s mother, daughter or wife rather than their role as an armed combatant in the security forces (Baumann 2009).

#### *‘Legitimate targets’ of ‘counterterrorism’*

Pro-state ‘counterterrorism’ involves NSAGs that support the state attacking those deemed ‘enemies’ of the state (Sluka 2000: 141). These groups respond to the threat posed by anti-state armed groups by directing a similar level of violence at those groups *and*, more problematically from

a victimological perspective, at anyone construed as their fellow travellers (McClintock 1992). In a frank admission of how this conditioned the loyalist mindset, the UVF conceded that its campaign was predicated on making the wider Nationalist population 'scapegoats' who would pay the 'price' for Irish republican violence. Exacting this 'price', by the UVF's own admission, included random assassinations and 'no warning' bombs against civilian targets (Progressive Unionist Party 2002). In so targeting the Nationalist population, the UVF afforded itself the latitude 'to strike at... those... who organise, support or give succour to any who wage war on our community' (*Combat* 1993b). The constructive ambiguity at the core of such a logic meant anyone from an active INLA member to someone who happened to just live in a republican district became a 'legitimate target'. A dual strategy subsequently emerged of targeting known republicans (and their families) and carrying out retaliatory attacks on easy targets.

Under the first limb of this strategy, loyalists assassinated known (or suspected) IRA and INLA members (*Combat* 1987a), former republican prisoners (*Combat* 1992a) and activists in various Nationalist political parties (*Combat* 1992b). Political activists are the most victimologically tasking example to adjudicate on here. On the one hand the argument exists that in consciously choosing to become politically active when an obvious threat exists against political activists, the victim knowingly subjects themselves to possible targeting (Lacerda 2016). Loyalists could rely on this to withhold 'innocent victim' status by pointing to their well known position that political activists in Sinn Féin and the Irish Republican Socialist Party (IRSP) were not to be differentiated from IRA and INLA operatives. This involves a degree of discursive table-turning whereby it uses the republican discourse on the 'Armalite and ballot box strategy' to justify targeting Sinn Féin members (*Ulster* 1984). However, an Irish republican 'giver' of 'innocent victim' status could alternatively grant it by arguing that under IHL joining a political party is *not* the same as joining an armed group – thus relying on a combatant-civilian distinction. Likewise, a 'rule of law' approach might also grant it here on the basis that joining a political party was not in contravention of the criminal law.

The issue is further obfuscated when attacks on the family and friends of known republicans are considered. For example, the UVF declared that anyone who associated with known republicans were 'legitimate targets' too (*Combat* 1990b). The outworking of this was the withholding of 'innocent victim' status from three co-workers who were killed alongside an IRA commander in a UDA gun attack at Castlerock. Although the three were not IRA members themselves they were denied 'innocent victim' status because they had voluntarily placed themselves in danger by continuing to work alongside 'known IRA killers' (*Combat* 1993a). Here, the decision not to distance themselves from those engaged in IRA violence, as opposed to actually engaging in it themselves,

has seen such victims seemingly forfeit 'innocent victim' status. While this fits the loyalist 'counterterrorism' worldview, for others it could amount to the 'overresponsibility' of holding innocent people responsible for the actions of others.

By the 1990s the loyalist 'counterterrorism' discourse was one of taking 'the war' directly to the IRA and INLA. However, even though they may have been hitting at republican targets with greater frequency by this stage, most of their killings were still random sectarian attacks on Nationalists – or more bluntly put, Catholics (Sluka 2000: 139). Instead of relying on 'selective killings' aimed at Irish republicans, loyalists still engaged in 'indiscriminate killings' that targeted the victim because of some perceived group membership (de la Calle & Sanchez-Cuenca 2006). Indiscriminate killings are invariably grounded in a political and moral reasoning that seeks to rationalise, legitimise and ultimately reify the targeting of certain groups (Rothbart & Korostelina 2011). For loyalists, the 'counterterrorism' justification lay in their belief that the Nationalist/Catholic community had provided the IRA and INLA with political and moral cover through allowing these organisations to secret themselves therein (Progressive Unionist Party 2002). Again, a certain degree of discursive table-turning is evident, with loyalists inverting the republican narrative of the IRA and INLA being popularly supported legitimate national liberation movements; if the wider Nationalist community did not shun and oust the IRA and INLA they must therefore tacitly support and approve of them. This transformed that whole community into 'tertiary participants' whereby even something as seemingly innocuous as attending a republican funeral made one a 'legitimate target' (*Ulster* 1991). In some cases it even framed them as 'secondary participants' that were providing the IRA and INLA with intelligence to target off-duty and part-time security force members (*Combat* 1987b).

Accordingly, loyalists afforded themselves considerable 'moral elbow room' when justifying indiscriminate attacks. In claiming the Greysteel pub shooting, for example, the UDA said it was retaliation against the 'Nationalist electorate' for an IRA bomb on the Shankill Road (Kilpatrick 2013). By the logic of this claim, even voting for Sinn Féin, or merely being in the company of those who might, can deem one a 'legitimate target'. Here discursive table-turning turns the Sinn Féin discourse on receiving a mandate for armed struggle from the Nationalist electorate to the discursive advantage of loyalist armed groups; to vote for Sinn Féin is to support the IRA, to support the IRA is to be a 'fellow traveller' of the 'enemies of Ulster' and being a 'fellow traveller' of the 'enemies of Ulster' makes one a 'legitimate target' of pro-state 'counterterrorism'. Likewise, in claiming the killing of five people in a Belfast bookmakers the UDA said it was retaliation for an IRA attack on contractors at Teebane, further justifying the target on the basis that the area was a 'cesspit of republicanism' (Jamison 2012). Now simply being resident in an area where Irish republicans are also

resident is enough to cast one as a 'legitimate target'. Other 'givers' of 'innocent victim' status will, of course, see these attacks as blatant sectarian attacks on soft targets.

### **Victimological critical self-reflection**

The transition out of protracted political violence does not see the parties involved suddenly rejecting their core interpretation of the conflict and accepting that of their opponents, nor does it see their victims belatedly accepting the justifications they offered. Neither suddenly concludes that 'I was wrong all along and you were right all along'. While this fundamental disagreement remains, the political and moral justifications of the past retain their victimological usefulness in attributing blame for the devastation of the conflict more generally (Alvarez-Berastegi & Hearty 2019). But this politicking over blame *does not* mean that those previously engaged in conflict cannot at least become more critically self-reflective in their approaches to victimhood as society moves beyond the 'forensic moment' of victimisation.

The first form of critical self-reflection might be an attempt to understand the perspective of one's victims on a basic human level (Baumann 2009; Hearty 2014). This does not challenge pre-existing ideological beliefs because it is entirely possible to acknowledge the victimhood of one's former enemies on a human level without politically recognising them as 'innocent victims'. This amounts to recognising the pain and hurt they suffered within the context of political conflict but that does not translate into saying that it was politically or morally wrong for them to be targeted during that conflict. The first is an *apolitical acknowledgment* of victimhood whereas the second would be a *political acknowledgment* of 'innocent victim' status. Substantively these are very different; one makes no political or moral endpoint about the rights and wrongs of the conflict but the other inescapably does. Rather than seeking to 'self-blame' or 'other-blame' the first approach eschews the issue of blame altogether, focusing instead on gaining an empathetic insight into the *consequences*, rather than contesting the *causes*, of victimisation.

The second form of critical self-reflection is slightly more taxing because it involves a degree of 'self-blame' by conceding that *certain* actions may have fallen short of the moral standards expected during conflict. This, though, does not apply to *every* action taken during the conflict even if it is acknowledged in *some* cases. While this might then involve belatedly reassessing the 'innocent victim' status of *some* of those victimised by a particular group, it will not mean doing so with *all* those victimised by that group.

Loyalists, for example, have shown this second type of critical self-reflection by belatedly conceding 'innocent victim' status in the Greysteel (Cunningham 2013) and Belfast (Jamison 2012) cases

discussed above. 'Innocent victim' status here stems from the fact that these 'indiscriminate killings' failed to target those personally involved in Irish republican activity. Group membership, rather than any individual victim's behaviour, ultimately sealed their fate hence they can be absolved of blame as 'innocent victims'. However, conceding 'innocent victim' status in these cases of 'indiscriminate killings' does not contradict the loyalist political-legal framework in the way that conceding it to Sinn Féin voters or activists would. The former may now be seen as the unfortunate reality of pro-state 'counterterrorism' but the latter will still be viewed as an attack on 'legitimate targets' who were the 'enemies of Ulster'. One is to say that loyalist NSAGs morally erred in their use of 'indiscriminate killings' throughout the conflict whereas the other would be to say that they did so in every killing - including 'selective killings' of Sinn Féin activists. Moreover, although there may now be a tentative moral re-evaluation of 'indiscriminate killings' there is still a belief that they were strategically successful in reducing Irish republican violence (Progressive Unionist Party 2002).

Irish republicans have shown critical self-reflection too. The first form of critical self-reflection has been implicit through Sinn Féin's 'Uncomfortable Conversations' initiative that involved acknowledging the victimhood of members of the security forces (*An Phoblacht* 2015). The same initiative has also seen the second type of critical self-reflection by accepting the innocence of victims of 'collateral killings' stemming from IRA attacks on economic targets in Britain (*An Phoblacht* 2013). Here, though, the legitimacy or efficacy of launching such attacks is not in itself questioned even if there is something of a re-evaluation of whether or not certain risks in the course of these attacks should have been taken. This demonstrates how granting 'innocent victim' status in the latter case does not contradict their political-legal framing whereas doing so with those in the first *does*. In other words, 'giving' 'innocent victim' status to security force members, collaborators and informers cannot be done without ceding political and moral ground in relation to the legitimacy of their violence. Accepting that these victims were not 'legitimate targets' is accepting that Irish republican political violence lacked justification. Acknowledging the victimhood of and accepting the innocence of these more complex victims are two different undertakings; while one *can* be done without having to buy into an opposing political-legal framework the other *cannot*.

The state, too, has shown critical self-reflection, most notably in its response to the Saville Report into the shooting dead of 14 civil rights marchers on Bloody Sunday. When Saville declared the dead innocent, then Prime Minister David Cameron made a public apology accepting their innocence *and* acknowledging state responsibility for their deaths. More pointedly, he said Bloody Sunday was 'unjustified and unjustifiable' and 'should never, ever have happened' (*Hansard* 2010: 739 – 740). This willingness to 'self-blame' decades later stands in contrast to the 'other-blaming' that



immediately followed the 'forensic moment', where the – since discredited - Widgery tribunal concluded that 'there would have been no deaths if those who organised the illegal march had not thereby created a highly dangerous situation in which a clash between demonstrators and the security forces was almost inevitable' (BBC 2010). The state position has thus evolved from one of 'other-blaming' and attributing 'over responsibility' to the march organisers, the protestors and the dead, to one of 'self-blaming' and accepting responsibility for the deaths.

The language used by Cameron clearly shows an acceptance that, on Bloody Sunday, the state acted unjustifiably. In doing so, the state has - at surface level at least - been receptive to the second type of critical self-reflection. At the same time, though, it was not prepared to extend this 'self-blame' to *every* case of state violence. Indeed, in the same apology Cameron was keen to portray Bloody Sunday as the exception, rather than the norm, of British Army conduct in Northern Ireland. While accepting that 'some members of our armed forces acted wrongly', he argued that most 'served with distinction in keeping the peace and upholding the rule of law in Northern Ireland' (Hansard 2010: 739). Just like NSAGs, then, when being critically self-reflective the state uses the discursive tactic of 'spatial isolation' (Cohen 2001) to separate certain problematic incidents from its wider conduct during the conflict. Consequently, accepting that Bloody Sunday was 'unjustified' and that the victims were 'innocent' does not require the state to forfeit its 'rule of law' narrative. If anything, this underpins Cameron's spatial isolation of the event. Even if the victims are now 'given' 'innocent victim' status, they are still seen as victims of peacekeepers who momentarily transgressed the law in a 'public emergency' context rather than as victims of an armed party to the conflict.

While this more critically self-reflective approach by victimisers has certainly nuanced understandings of victimhood in *some* cases it has nonetheless failed to settle the core victimological disagreement pertaining to *most* victims who have done *nothing wrong*. That is, although it allows for a 'thin' consensus around acknowledging the human aspect of victimhood (Hearty 2014) it makes no advance on solving the question as to whether or not it was legitimate to target these victims. By necessity it decontextualizes their victimisation through excising the relevant, yet contested, *causes* of victimisation in favour of simply acknowledging the *consequences*. This demands an unnatural decoupling of what came 'before' and 'after' the act of victimisation itself (Terhoeven 2018: 5). Although an attractive victimological aspiration, it is in fact this very nexus between 'before' and 'after' that remains highly relevant in the contested 'politics of victimhood' (Alvarez-Berastegi & Hearty 2019) and in how victims are 'seen' by the 'givers' of 'innocent victim' status (Miers 1990). In the absence of an agreed political or moral framework on what came 'before', then, observations

found in critical victimology about the lack of a 'taken-for-granted' concept of victimhood (Quinney 1972), the value of victims in the self-legitimation of their victimisers (Fattah 1976) and the fallacy of simplistic morality play representations (Fattah 2016) all remain applicable to victims who have *done nothing wrong*.

This is *not* to suggest that the critical self-reflection tentatively shown so far by victimisers has not progressed victimological debates already. While it has not satisfactorily adjudicated on blame vis-à-vis victims who have done *nothing wrong* it has, however, rehumanised them as 'grievable' (Buter 2009), which in itself encourages the victim construction process to accept that there is 'an equal right to moral acknowledgement' owed to *every* victim on the basis of common humanity (Terhoeven 2018: 4) – no matter how they are or were labelled. From acceptance of this common 'grievability', audiences beyond victimisers have tentatively shown a willingness to adopt similar critical reflection on victimhood that challenges initial positions. For example, a change in the official discourse has meant that some Unionists now take a more critical view of Bloody Sunday (Aiken 2015). The willingness, too, of some members of NSAGs like Brighton bomber Pat Magee to take personal responsibility for the hurt caused by their actions has led to some victims trying to understand their victimisers' motives (Norrie 2019). While hardly a panacea for longstanding political and moral disagreement over the past, these developments demonstrate the post-conflict victimological usefulness in 'narrative criminology' (Presser & Sandberg 2015) engaging personal pasts in a constructively reflective, rather than morally condemnatory, way. So although retaining competing and irreconcilable political-legal frames for understanding the past, some constituencies are nonetheless prepared to now take a more nuanced victimological view of particular victims than they took of them in the past.

## Conclusion

Innocence, blame and victimhood are complex and contested concepts in transitioning societies that remain divided over the violent past. The absence of any agreed legal, political or moral base position on the nature of past violence has left different political and moral interpretations of what an 'innocent victim' is or is not. The term 'innocent victim', as this article has shown, cannot be reductively restricted to those who were not actively involved in political violence at firsthand or to those who did not contravene the criminal law. While it may be true that such victims often have a natural claim to 'innocent victim' status and are readily given it in *some* cases, in *other* cases 'complex political victims' (Bouris 2007) were framed as 'secondary participants' or 'tertiary participants'. The 'moral elbow room' granted by the looseness of competing political-legal frameworks for interpreting the past has withheld 'innocent victim' status from contractors,

business owners, those who voted for certain political parties and even those who lived in particular areas. These victims would otherwise be readily given ‘innocent victim’ status in other everyday contexts, yet under competing political-legal frameworks for defining the violent past the legitimacy of targeting them remains wed to the general legitimacy of an armed group’s campaign.

This is not to say, though, that they cannot be seen as victims, even by their victimisers, but at the same time seeing them as victims is very different to seeing them as ‘innocent victims’. Although there may be some apolitical acknowledgment of the suffering and hurt of these victims on a human level, this will *not* translate – in the vast majority of cases at least - into political acknowledgement that victimising them was outside the permitted moral or political boundaries subscribed to by their victimiser. So while an increasing degree of critical self-reflection by victimisers might foster a more empathetic understanding of the violent past that is based on the consequences of victimisation through political violence, it has not, and indeed it cannot, settle the core victimological disagreement about the causes of that victimisation that continues surrounding victims who have done *nothing wrong*.

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