
Marian Duggan (ed.), *Revisiting the 'Ideal Victim': Developments in Critical Victimology*, Policy Press: Bristol 2018

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I should confess from the outset that I was very much a latecomer to the seminal article by the late Nils Christie on 'ideal victims', which is the article that forms the inspiration for the book under consideration in this review. The work concerned¹ was first drawn to my attention by a colleague at Sheffield Hallam University² in one of those very productive conversations you can have waiting for the photocopier to do its work (or not). In fact, full disclosure is required: not only are two colleagues of mine at Hallam contributors to this excellent edited volume of insightful chapters,³ but its editor, Marian Duggan, is also a former colleague and is another person who has developed my fledgling knowledge of critical victimology.⁴

The book contains insightful chapters on the concept of the 'ideal victim' in relation to, for example: hate crime victims generally; Muslim women who wear the veil; LGB/T women; female sex worker victims; migrants; survivors of childhood sexual abuse; victims of domestic violence; elderly rape victims; online fraud victims; and male prisoners as victims. If I had to summarise the collective thrust of this book, it would be as follows: Too many victims of crime, and particularly too many female victims of sexual offending and crimes such as domestic abuse in its many forms, are treated as 'non-ideal' victims, and suffer a loss of dignity, respect, and any proper avenue to justice as a result.⁵ In sum, the non-ideal victim is in practice at great risk of being *non-powerful*. This is partly because, as Christie wrote, a "condition... for being an ideal victim, is thus that you are powerful enough to make your case known and successfully claim the status of an ideal victim".⁶ The alternative, Christie

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¹ Nils Christie, 'The Ideal Victim (1986)', re-printed in Marian Duggan (ed.), *Revisiting the 'ideal victim': Developments in critical victimology*, Policy Press: Bristol, 2018.

² Dr. Jenny Rainbow.

³ As well as Dr. Jenny Rainbow, my Hallam colleague Dr. Vicky Heap has also contributed a chapter to the book.

⁴ See Marian Duggan & Jamie Grace, 'Assessing vulnerabilities in the Domestic Violence Disclosure Scheme', (2018) 30(2) *Child and Family Law Quarterly* 145.

⁵ For an insightful and contemporary overview of these issues in the UK criminal justice system today, see Helena Kennedy QC, *Eve was shamed: How British justice is failing women*, Penguin: London, 2018.

⁶ Christie, *op cit.*, p.14.

concluded, is that a non-ideal victim may be "opposed by so strong counter-powers that you can not be heard".⁷ Doctrinal opposition from the courts as to the righteous nature of victims and victimhood where there have been failures to secure their safety, at least, is diminishing, in some ways.

In the spring of 2018, a case brought by a pair of the victims of John Worboys (the 'Black Cab Rapist'), in a claim known as *DSD*, saw the Supreme Court determine that the victims of serious sexual offending were entitled to damages under the Human Rights Act 1998 where "egregious and significant" errors in police investigations entailed a failure to apprehend an offender in a specific case.⁸ Lord Kerr, writing in *DSD*, rejected the idea that failings in the investigation of offences committed by Worboys were "largely attributable to a flawed structural approach"; arguing instead that there were sufficiently serious failings at a local police level that the claimants should be afforded a remedy against the Metropolitan Police, in the form of damages, in this particular case. The Supreme Court observed that in the cases concerned there were failures to record information in reports of crimes; failures to promptly interview witnesses; failures to collect CCTV evidence (from a police station no less!); and failures to link complaints from multiples victims to one man.⁹

The value of Duggan's work in bringing together 16 chapters from a range of contributors and perspectives is that this demonstrates to a largely black-letter legal audience (of which I am a member) that a single shift in the courts on a particular point of law, while important, will not be enough to recognise the challenges that victims of crime face, in the UK or elsewhere. The 16 chapters in this text make a significant contribution between them to the discourse of critical victimology, and take the problematic criminological concept of 'ideal' victimhood as their collective touchstone.

Many of the 16 chapters in the volume in turn address issues faced in the criminal justice system(s) concerned by ideal/non-ideal victims in particular groups or with particular identities. Sometimes the chapter authors address victimisation thematically. It might be that the authors had no choice in taking this approach, as statute law might shape and frame our analyses of the ideal/non-ideal status of victims. For example, Hannah Mason-Bish notes

⁷ *Ibid.*

⁸ Lord Kerr in *Commissioner of Police of the Metropolis v DSD and another* [2018] UKSC 11 at 29.

⁹ *Ibid.* at 51.

that: "'Hate crime' is the ultimate 'ideal victim' crime in that legislative approaches have specified very particular groups of victims as worthy of the enhanced protection that such laws afford."¹⁰

But it is also often the case, in terms of group-labelling by the state, that possible victims may instead be potentially criminalised. As Catherine Donovan and Rebecca Barnes have concluded:

...black and minority ethnic women and men, and lesbians and gay men have historically been constructed not only as unreliable witnesses [to their own victimisation], but also, especially those who are black or belong to other minority ethnic groups, as well as gay men, as potential criminals to be the subject of surveillance rather than as potential victims of crime.¹¹

On finishing my reading of this collection of chapters, with their combined, and impressive swathe and scope, I was left wondering if society would only pursue and harm more victims through (re)creating their identities; labelling them effectively, and in practice, as non-ideal. This process might occur even as we increasingly, in a scholarly sense, identify barriers to the 'ideal' status for victims under our academic gaze. Perhaps the non-ideal victim is shamefully intrinsic to us, because of our tendency to stigmatise.¹² Buried in the text, in the chapter by Alice Bosma, Eva Mulder and Antony Pemberton, is a point that any of the chapters in this excellent collection could have concluded on: "[I]s it the extent to which the victim is ideal that influences reactions to them, or do reactions to the victim establish to what extent they are ideal?"¹³

I am conscious that I began this book review with an eye to the development of increased human rights protections for victims of serious sexual offences, as a particular shift in case law, but also something that is a progressive development for victims' rights: and I would still

¹⁰ Hannah Mason-Bish, 'Creating ideal victims in hate crime policy', in Marian Duggan (ed.), *Revisiting the 'ideal victim': Developments in critical victimology*, p.43.

¹¹ Catherine Donovan and Rebecca Barnes, 'Being "ideal" or falling short? The legitimacy of lesbian, gay, bisexual and/r transgender victims of domestic violence and hate crime', in Marian Duggan (ed.), *Revisiting the 'ideal victim': Developments in critical victimology*, p.83.

¹² Classically, see Erving Goffman, *Stigma: Notes on the management of spoiled identity*, Penguin, Harmondsworth.

¹³ Alice Bosma, Eva Mulder and Antony Pemberton, 'The ideal victim through other(s)' eyes', in Marian Duggan (ed.), *Revisiting the 'ideal victim': Developments in critical victimology*, p.27.

explain it as such. However, there is then the issue of less-serious sexual and/or violent offences and their report and investigation through to prosecution. The UK courts have maintained (in a way that the *DSD* judgment does not preclude) that criminal offences are on a ‘sliding scale’ of seriousness in human rights terms – with some offending not warranting proper protection (in the sense of a strictest duty of investigation) under the absolute human rights across the panoply of those available under the European Convention on Human Rights. These include the comparatively inflexible Article 3 ECHR: the right not to be subject to inhuman or degrading treatment. Article 8 ECHR which entails the right to respect for private and family life, is inherently not so protective or so strict.

Lavender J has mused whether "a case which fell within the scope of Article 8 could also be seen as part of [a] sliding scale, and that a case which fell within the scope of Article 8 but not Article 3 would fall further down the scale than a case which fell within the scope of Article 3".¹⁴ However, Lavender J also noted the "English courts have yet to consider the circumstances in which such a duty might arise under Article 8 on a case which does not also fall within the scope of Article 3".¹⁵ Gross LJ has concluded that "it would be necessary to think long and hard before acceding to any claim raising the prospect of some generalised positive obligation on the State to intervene under Art. 8, without the closest scrutiny of the limits of any such postulated obligation".¹⁶ Gross LJ surmised that the "ramifications otherwise could be most unfortunate – not least, the unhappy prospect of widening the scope of Art. 8 still further".¹⁷

I confess, in conclusion, that this book has made me consider a different “unhappy prospect”. Currently, any legal discussion of victims' rights shows that there is still work for the black-letter law to do in terms of encompassing the breadth of challenges facing victims whose experiences warrant dignified treatment, and whose reported crimes morally deserve investigation. The book under review, in its 16 chapters, highlights how this development of the law and practice might be best informed by scholarship in the field of critical victimology; and in particular, recommendations of the status of 'ideal/non-ideal' victims.

¹⁴ *R (MLIA and another) v Chief Constable of Hampshire Constabulary* [2017] EWHC 292 (QB) at 189.

¹⁵ *Ibid.* at 185.

¹⁶ *Allen v. Chief Constable of the Hampshire Constabulary* [2013] EWCA Civ 967 at 57.

¹⁷ *Ibid.*
