

Punishment, blame and stigma after conflict: The experience of politically motivated former prisoners in Northern Ireland
Punition, blâme et stigmatisation dans une Irlande du Nord post-conflit : l'expérience d'anciens prisonniers politique
Castigo, culpa y estigma en una Irlanda del Norte posconflicto: la experiencia de los ex presos políticos

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Résumé de l'article

Le présent article examine la relation entre la politique du blâme et le traitement des anciens prisonniers politiques dans l'Irlande du Nord post-conflit. S'appuyant sur des exemples de discrimination directe et indirecte tant dans les secteurs de l'emploi que dans l'accès aux services de santé mentale, l'article porte sur la façon dont l'opération discursive du blâme conduit à évacuer en même temps qu'à établir des culpabilités. Il soutient que l'octroi de tels blâmes a eu des conséquences matérielles très concrètes sur l'allocation des ressources, le refus de les allouer ou encore l'attribution des charges dans la communauté. L'article note aussi que la « cause des victimes » est souvent récupérée par la presse et d'autres acteurs politiques pour leurs propres intérêts, fréquemment en vue de bloquer la distribution de ressources publiques à un groupe particulier d'anciens combattants : les anciens prisonniers politiques. Il conclut en posant une série de questions au sujet du blâme, de la justice et de l'autorité morale de la victime dans un contexte de justice transitionnelle. L'article vise essentiellement à offrir quelques pistes de lecture pour comprendre la relation entre processus de blâme, stigmatisation et exclusion sociale.

Punishment, blame and stigma after conflict: the experience of politically motivated former prisoners in Northern Ireland

Ruth Jamieson¹

Abstract

This paper examines the relationship between the politics of blame in post-conflict Northern Ireland and the treatment of politically motivated former prisoners. Using the examples of direct and indirect discrimination in the areas of employment and access to mental health services, the paper considers how the discursive operation of blaming produces evasions and attributions of guilt. It argues that such blaming practices have very real material consequences for the allocation or withholding of goods and burdens in the community. The paper notes also that the "cause of victims" is often appropriated by the press and other political actors for their own purposes, frequently to block the provision of public goods to one particular group of ex-combatants: ex-politically motivated prisoners. It concludes by posing a series of questions about blaming, justice and the moral authority of the victim in a transitional justice context. The claim of the paper is simply to offer some starting points for understanding the relationship between processes of blame, stigma and social exclusion.

Keywords

Punishment, blame, stigma, political ex-prisoners, Northern Ireland.

Introduction²

This paper examines how the politics of blame and victimhood in post-conflict Northern Ireland shapes the treatment of former paramilitary prisoners. It draws upon the recent work of Charles Tilly (2008) on credit and blame to map the discursive and practical intersections of blame and victimhood in the local allocation of goods and burdens in the community.

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Using the examples of direct and indirect discrimination in the areas of employment and access to mental health services, the paper poses a series of questions about blaming, justice and the moral authority of the victim in a transitional justice context. It argues that what is at stake in such contestations of blame and victimhood is not simply the attribution (or evasion) of guilt or the acknowledgement of suffering, but an assertion of the moral authority of the victim to demand a punishment and disqualification of the blameworthy that goes "beyond the penal law" (Christie 2010). The potential consequences for those that are blamed in this way—in this case former politically motivated prisoners—are not merely rhetorical. They may entail very real material hardship for those who are stigmatised through these blaming and claiming processes. This has important implications not only for the way that criminologists conceptualise the relationship between punishment and blame but also for how we understand the warrant and reach of the moral authority of the victim both within and beyond the penal law. The aim of this paper is to develop some starting points for an analysis of the discursive and practical intersections between the politics of blame and the politics of allocating of goods and burdens in post-conflict Northern Ireland. It does not attempt to adjudicate particular claims about the rights or wrongs of the Northern Ireland conflict. Nor does it intend to denigrate in any way the victims of the violent conflict that raged there over more than three decades.

Blame and victimhood in Northern Ireland

Many people were exposed to political violence during the conflict in Northern Ireland but the harm suffered tended to be concentrated in the most deprived communities especially in the north and west of Belfast (Morrissey et Smyth, 2002). Hayes and McAllister (2001: 909) estimate that from the start of the conflict in 1968 to the signing of the peace agreement on Good Friday 1998 about 1 in 7 people had been a victim of the political violence, 1 in 5 had had a family member killed or injured and 1 in 4 had been caught up in an explosion.³ They argue that the people who had been exposed to violence were more likely to support the use of physical force by paramilitary groups than those who had not and that a significant minority of both communities supported the political use of violence. Hayes and McAllister (2001: 911) also suggest that "Perhaps more than anything else, the Northern Ireland conflict has been sustained by the popular ambiguity that exists towards the use of political violence." Yet despite the fact that paramilitary groups could not have operated throughout the conflict

³ See Hayes and McAllister (2001) Table 4.

without significant support from their own communities, many Northern Irish people reject the idea that responsibility for the conflict is a shared one.

The recent (2009: 56) *Report of the Consultative Group on the Past* (The Eames Bradley Report) provoked outrage in some victims groups in Northern Ireland by its suggestion that there was a need for both communities to reflect on that moral ambiguity:

In Northern Ireland we are dealing with communities that have been in conflict for a long time, each as likely as the other to be in denial of the wrong that has been done in its name and of the goodness of the other. One of the goals should be to enable these communities to face the past together in a way that enables *each to admit a substantial share in the accumulated and generic guilt of all the hostility-ridden years*. (Emphasis added.)

William Frazer (2009) a spokesperson for one of the more uncompromising victims groups wrote to the Secretary of State for Northern Ireland "in the Cause of Victims" making the following argument:

When I read the Eames-Bradley Report I see the answer they offer. It is that we're all to blame and we must now accept the 'truths' which motivated Republicanism such as "...the armed struggle was necessary...there was no alternative..." Then we are asked to engage in mutual forgiveness and *to stop asking for justice*. [...] and I refuse to accept that [the victims of Republican violence should] "admit a substantial share in the accumulated and generic guilt..." [...] Let me say simply that this will not happen; what Sinn Fein/IRA did not achieve at the end of a gun, Eames and Bradley will not achieve at the point of a pen. (Emphasis added.)

To say that politically motivated former prisoners are *not solely* responsible for the political violence in Northern Ireland and to invite others to reflect on how they may have contributed to the conflict is not the equivalent of saying that former paramilitaries should not be held responsible for their actions. Nor does an act of forgiveness amount to a denial of "justice" for victims unless justice for victims is construed as their having the prerogative to insist on the continued punishment and stigmatisation of individual or classes of persons once they have served their sentences. The idea that justice for victims necessarily entails a power to insist on the punishment of wrong some wrongdoers beyond that required by the penal law has great discursive and practical force in post-conflict Northern Ireland and I will return to this point later in my argument, but first it would be useful to provide some background to the formal framework for establishing the peace process nearly thirteen years ago.

The Good Friday Agreement

In the protracted discussions leading up to The Good Friday Agreement of 10 April 1998 it was recognised that it would be crucial to balance the need to acknowledge and support victims of the political violence with the need to recognise the *political* nature of the conflict. Consequently one of the first steps taken to facilitate reaching the peace agreement was the putting in place of institutional arrangements to address the needs of victims. A Victims' Commission was set up and in its first report set out an inclusive definition of a victim as "*surviving injured and those who care for them, together with those close relatives who mourn their dead*" Bloomfield (1998: para 2.13).

The Good Friday Agreement (GFA) also included provisions for the early release of politically motivated prisoners and acknowledged that they would need a range of supports on their return to the community. The proposed early release of paramilitary prisoners prompted the formation of a number of ad hoc alliances between victims' groups like FAIR and Homes United by Republican Terror (HURT) and anti-GFA Unionists who banded together to form Northern Ireland Terrorist Victims Together (NITVT). Despite their concerted opposition to it, the early release provision of the GFA was retained, but it is significant that the Agreement did not include any provision for an amnesty for political offences. Consequently, former politically motivated prisoners retain criminal records for their conflict-related convictions and as a result they are subject to a range of legal restrictions on their economic, social and personal lives. For example, having a conflict-related conviction especially for what is known as a "scheduled offence"⁴ debars them *inter alia* from adopting children, travelling to many jurisdictions, applying for criminal injuries compensation or many types of employment. There are also myriad other areas of everyday life where having a conflict-related conviction may mean being denied things like house insurance or a public vehicle (taxi) driver's license. In addition there has been a general lack of progress and lack of momentum in implementing the provisions of the Good Friday Agreement of 1998 (GFA) which were aimed at supporting politically motivated prisoners after their release, especially as regards restricted access to employment.

⁴ The term "scheduled offence" refers to those offences deemed suitable for trial by judge alone and are defined in the schedules of successive Northern Ireland (Emergency Provisions) Acts. They comprise offences most likely to be associated with terrorism and range from common law offences like murder and kidnapping to offences relating to explosive substances or inchoate offences like aiding and abetting.

Because finding and keeping meaningful employment continues to be a very pressing problem for many former political prisoners regardless of whether they were released before or after the GFA the Office of the First Minister and Deputy First Minister (OFM/DFM) of the Northern Ireland Executive issued guidance to potential employers on when the conflict-related conviction of an employee or job applicant should be taken into account and when it should be considered irrelevant. The 2007 Guidance advised employers that

... conflict-related convictions of “politically motivated” former prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the [GFA] Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply.⁵

This *Employers’ Guidance* further advises that conflict-related convictions should not bar former politically motivated prisoners from employment unless the conviction was ‘manifestly incompatible’ with the job, facility, goods or service in question. But because this guidance only has the status of a voluntary code it does not impose any statutory obligation on employers to refrain from discriminating against people with politically motivated convictions. In other words, voluntary code has no teeth. In these circumstances it is not surprising that a number of recent studies of former paramilitary prisoners found that the code has made little or no difference to the number who being refused employment due to their record of imprisonment. For example, Jamieson et al (2010) found that only a third of former political prisoners are in full-time employment and that over half of both loyalists and republicans had been refused employment due to their having a conflict-related conviction.⁶

A second major concern for former paramilitary prisoners is the fact that, as a group, they are at greater risk of experiencing problems across the whole spectrum of well being dimensions, but especially in respect of mental health where the prevalence rate for mental health problems was more than twice as high as that of the Northern Ireland general population (Jamieson et al 2010). Furthermore, a significant number of the former prisoners who are experiencing psychological problems for which they need professional help are not getting it.⁷ A number of factors contribute to this. There is a stigma associated with help-

⁵ Office of the First Minister and Deputy First Minister (OFM/DFM) (2007: paragraph 2.5).

⁶ These findings are consistent with previous research, e.g. Jamieson and Grounds (2002; 2005 and 2008) and Shirlow and McEvoy (2008).

⁷ See Hamber (2005), Jamieson and Grounds (2002; 2008) and Jamieson et al (2010).

seeking in hypermasculine paramilitary culture where admitting to having psychological problems is seen as weakness. A lack of trust in state mental service providers' understanding of the paramilitary experience and the security of any confidential information also disclosed about historical offences also deter many from seeking help. An additional factor is that because many people in Northern Ireland are "war-affected" there is a high demand for state provided mental health services and the system struggles to treat all those who need psychological assistance. In these circumstances the playing out of the politics of credit and blame in the local allocation of services is of crucial importance. Unlike the provision of specialist mental health services to state ex-combatant groups like the RUC and the UDR,⁸ there is no recognition in public health policy or service provision that politically motivated former prisoners need equivalent forms of help. As a result there are no state-provided specialist treatment facilities for them despite ample evidence that such a need exists. Thus the situation is one where, politically motivated former prisoners must deal with the pressures of the material hardship of economic marginalization, the myriad restrictions associated with having a conviction for political offences and the adverse psychological effects of trauma and imprisonment as best they can. Much of the help they do get, for example, counselling, is provided by sympathetic community-based support groups.

Politically motivated former prisoners are excluded from full participation across many areas of economic, social and personal of life, but for the purposes of this discussion I will consider only two problem areas: employment and access to mental health services. Their restricted access to the social goods is not unrelated to the fact that virtually all of the blame for the conflict in Northern Ireland is concentrated on them. The aim of this paper is to understand why this is so.

Local justice and the allocation of goods and burdens

Jon Elster (1992) argues that the allocation of goods and burdens in the community is an inherently political process that reflects the playing out of "local justice". He points out that the allocation of goods and burdens must be made on the basis of some criterion, for example, on the basis of need, deserts, waiting lists, quotas, lotteries, seniority, etc. One might reasonably expect that a community "good" like access to mental health care would be allocated on the basis of need, and indeed, for some in Northern Ireland, i.e., former state

⁸ The Royal Ulster Constabulary (RUC) and the Ulster Defence Regiment (a locally raised infantry regiment of the British Army).

actors, it is. Specialist mental health services are provided for ex-state combatants on the basis of need, but there is no equivalent provision for politically motivated ex-prisoners who are equally likely to need it. To that extent the current distribution of goods and burdens in post-conflict Northern Ireland reflects a local justice that is shaped by the politics of blame and stigma associated with the past.

If social justice is understood as being "accomplishment-based" as Sen (2009: 18) suggests it ought to be, then any determination of justice "cannot be indifferent to the lives that people *can actually live*". As we have seen, the combination of the failure of the Good Friday Agreement to include an amnesty on politically motivated offenses and the outworking of the politics of blame serve to concentrate the responsibility for the conflict on ex-paramilitaries thereby ensuring their continued marginalisation. While it is unlikely that the mental health policy makers in Northern Ireland are unaware of politically motivated former prisoners' need for mental health services, it is highly likely that they are anxious to avoid the public outcry from victims groups or opportunistic politicians which would accompany any attempt to provide specialist services for former paramilitaries, however great their need for them may be. The fact that there is no amnesty for political offences is also an aggravating factor in restricting access to mental health services. One effect of this is if former paramilitaries have psychological problems that relate to historical political offences for which they have not been tried or convicted, then they may risk criminal prosecution if their therapist discloses information given in counselling sessions. This concern about confidentiality prevents many politically motivated former prisoners who are in distress from seeking help.⁹ Therapists treating ex- state combatants are under the same obligation to disclose information about conflict-related wrongdoing, but we are not in a position to know what their practice is in regard to reporting the past politically-motivated misconduct of the police or security forces.

The state has a duty of care to provide mental health services to those who need it, but it is arguable that a criterion other than need is being applied in determining the allocation of

⁹ In some relationships, for example one between a lawyer and client or a therapist and patient any confidences exchanged are normally legally protected, but there can be exceptions. First, in certain circumstances the public interest in having particular confidential information disclosed may be deemed to outweigh the individual's interest in keeping it confidential. Second, in some instances there is a positive legal duty to disclose and a penalty with threat of imprisonment for failing to do so. For example, under s.19 of the *Terrorism Act 2000* it is an offence for a person not to disclose to the appropriate authorities as soon as reasonably practicable his or her belief or suspicion, and the information on which it is based, that another person has committed an offence under sections 15 to 18 of the Act, when that belief or suspicion is based on information which come to his or her attention in the course of a trade, profession, business or employment. See Bond (2008).

an important community "goods" like access to treatment for mental health problems. This cannot be explained simply as an instance of the *less eligibility* doctrine being applied in the case of former prisoners (Sparks 1996), although it is certainly the case that any measures that appear to benefit politically motivated former prisoners in Northern Ireland tend to be received with a public perturbation akin to that levelled against the allegedly soft prison conditions in "Club Fed". So just as debates about penal policy are highly politicised and emotive subjects in public discourse, so too is the issue of the allocation of "goods" and burdens to politically motivated former prisoners in Northern Ireland, where they are under the constant righteous scrutiny of politicians, the general public and a few very vocal victims groups. This is a clear instance of the inherently political nature of local justice processes and the way that they are driven not only by attributions of guilt and blame but also by demands for victims' justice. It is an issue that lies at the nexus of a set of intersecting discourses about punishment and blame that criminologists need to understand.

Conflict, Blame and stigma

Andrews (2007: 179) observes that the morality play rehearses the familiar Manichean contest between good and evil and for that reason it continues to be an emotionally compelling cultural form in the late twentieth and early twenty-first centuries, but in the realm of politics rather than the theatre or church. Douglas (1995) contends that these morality discourses are not simply about distinguishing the good from the evil; they also are about blame-shifting and the transfer and disposal of evil and that these scapegoating processes are basic to human life. Nowhere is this blame-shifting (or more accurately, blame concentration) more evident than in the current punitive turn in Anglo-American penal practice, wherein blame is invested in a few "viscerally plausible scapegoats" (Tonry 2004: 24). In the Northern Irish context however, a slightly different dynamic appears to be at work.

A useful starting point for understanding the politics of blame in post-conflict Northern Ireland is Heinz Steinert's (1998) observation on the discursive effects of the *individualizing juridical mode* of justice that was adopted by the Nuremberg Tribunal to adjudicate war crimes committed by Germans during the Second World War. He argues that a serious limitation of this *individualising* mode of accountability is that, while it undoubtedly produced some officially guilty "culprits", it also produced a far greater number of "false innocents" who, not being officially guilty, felt free to absolve themselves from the obligation to reflect on their own part in supporting, tolerating or ignoring the wrongs that were done

under the Third Reich. Steinert's point about the individualising juridical mode producing a majority of false innocents is consistent with David Matza's (1969: 196) argument in *Becoming Deviant* on the discursive effects of signification and the *concentration* of evil: "Within a [Manichean] vision of concentrated evil, goodness may be conceived as pervasive."

The idea of the pervasive goodness of all but the "officially guilty" has obvious salience in Northern Irish context. As we noted earlier, despite the fact that a significant minority of both communities either tacitly or actively supported paramilitarism throughout the conflict (Hayes and McAllister, 2001: 912), some victims groups and politicians claiming to represent their interests still insist that former paramilitaries were primarily or solely responsible for the violence in Northern Ireland. Clearly these representations of blameworthy former political prisoners are part of a larger passionately contested discourse on the conflict, but the effect of concentrating responsibility for the violence in a few paramilitaries is to absolve others in Northern Ireland of any accountability for their own morally ambiguous part in animating and sustaining the conflict, for example by inciting of others to violence or by collusion, complicity, sectarianism, or obdurate unwillingness to compromise. A pertinent example from post-war Germany of the potency of the belief in the pervasive goodness of the majority was the widespread acceptance of the "myth of the clean Wehrmacht" (the idea that although the SS may have committed war crimes, the Wehrmacht did not) in spite of substantial evidence to the contrary (Beiss 2006, Wette 2006). Another example of postwar denial of responsibility is detailed by Utgaard (2003) in his analysis of remembering and forgetting in Austria, where the idea of "Austria-as victim" of the Nazis was tenaciously embraced by so many.

There are parallels between these post-1945 examples of the concentration of blame in Germany and Austria and the politics of blaming in post-1998 Northern Ireland. In the latter case on the denial of the *political* motivations of paramilitaries enables not only the concentration of guilt in a few but also makes it possible for those who supported the violence but did not perpetrate it themselves to evade responsibility and blame. Gormally (2001: 5) astutely observes that for Unionists in particular 'prisoners and former prisoners are the most obvious ex-combatants, the visible concentration of everything people feel about the conflict... they are perpetrators of numerous atrocities, the enemies of democracy and civilisation incarnate.' This enables a distinction to be drawn between the violent actions of

the paramilitaries and the morally ambiguous actions many politicians engaged in themselves. That is one of the reasons why Unionist politicians and some moderate Nationalists still insist on referring to Sinn Fein as "Sinn Fein/IRA".

McEvoy (2001: 352) suggests that that one of the effects of the Unionists' refusal to recognise the *political* motivation of paramilitaries was that it insulated them from the need for any acknowledgement of their own moral culpability in the conflict and that consequently "the British state"s de facto recognition of political motivation by the inclusion of provision for prisoner releases under the Good Friday Agreement was perceived by Unionists as a "fundamental betrayal of the fiction of [their own] blamelessness." This denial of the political motivation of paramilitaries which was such a salient feature of politics during the conflict continues to have both rhetorical force and material effects on the condition of politically motivated prisoners over a decade after the Good Friday Agreement. Understanding why this is so requires a closer examination of the relationship between blame, denunciation and punishment.

Charles Tilly (2008) has recently written on credit and blame noting the importance of such attributions in the post-war context. He argues that the assignment of credit and blame is inherently political, that "blame only makes sense when some relation exists between the blamer and the blamed" (2008a: 6). Thus the meaning and salience of blame only make sense in their social and relational context. One very important corollary of this conception of blame for this discussion is Tilly's (2008: 105) observation that relationship is that "justice becomes more salient and demanding in blame": "Every act of crediting or blaming, however implicitly, involves some standard of justice: she got or failed to get what she deserved" (2008: 6).

In a small society like Northern Ireland whose population is smaller than the city of Montreal rhetorical antagonisms around blame and victimhood are an entrenched feature of politics, with Unionists tending to blame Republicans (and on occasion also Loyalists) for the conflict, while Republicans tend to blame Unionists and the British state. For example, in answer to a question tabled (on 24 September 2007) in the Northern Ireland Legislative Assembly on what implications the employers' guidance on recruiting people with conflict-related convictions would have for Civil Service recruitment, the then Minister for Finance and Personnel, Peter Robinson MP MLA said:

... As the guidance has not been applied there have been no implications for recruitment to the Northern Ireland Civil Service. As the Minister responsible for recruitment to the Northern Ireland Civil Service it is not my intention to apply the guidance as I believe the existing recruitment policies and procedures provide appropriate arrangements for dealing with *candidates with criminal records*. (Emphasis added.)

So much for the voluntary code removing the barriers to the employment of politically motivated former prisoners. This sort of deliberate inaction or stalling on the implementation of measures designed to assist in their return to civil society is only one facet of the politics of blame in Northern Ireland. Denunciation is another. So too are attempts to veto or otherwise block the allocation of goods to 'unworthy them' by or on behalf of victims.

Blame, victimhood and justice

Northern Ireland has a well developed "victims sector" that represents a broad spectrum of interests and provides effective support to many of those who were harmed, injured or bereaved as a result of conflict-related violence. As we have argued, there is a tendency for the press, some politicians and a small number of very vocal victims spokespersons to scrutinise the local allocation (or withholding) of community goods in order to block any allocation of funding or support to "terrorists" and for such interventions to comprise an important part of their activities on behalf of victims. One of the forms this takes is the demand that a very narrow definition of victimhood is adopted as the criterion for the allocation of funding to support people affected by the conflict effectively in order to exclude former paramilitaries from benefiting. This sort of zero-sum argument was made by a group called Families Acting for Innocent Relatives (FAIR 2006):

The definition of victim is of fundamental importance to the development of a strategy. There is a matter of high principle where we could never endorse a strategy, which will define terrorists as victims and thus legitimise their activities. *In practical terms too, there is only ever a finite amount of assistance both financial and practical and the more groups and individuals that are defined as victims and eligible for such help will lead to those who are in genuine need receiving less.*' (Emphasis added)

FAIR styles itself "a non-sectarian, non-political organisation", but nevertheless frequently resorts to the denunciation of Catholics and Republicans as a central element of its discourse. One of the effects of these denunciations to shut down the possibility of an open dialogue about suffering by their insistence on the unbridgeable categories of "worthy us" / "suffering

us" and "unworthy them" (Beiss, 2006 : 52). As Hamber and Wilson (2002: 47) suggest the desire to denounce like the desire for revenge reflects as 'a profound moral desire to keep faith with the dead'. However sincere and laudable that is, maintaining "existing us-them boundaries sometimes bends the assignment of blame back in the other direction: we refuse to acknowledge the guilt of our own people" (Tilly, 2008: 104; Miron and Branscombe 2008). This deflection of *all* blame to "unworthy them" is not unique to post-conflict Northern Ireland, nor is the denial and neutralisation of responsibility by worthy us (Cohen 2001; Tavis and Aronson 2008). This point is well illustrated by Northern Ireland *Consultative Group on the Past* (2009: 52-53) in their recognition that

If these [different communities'] conflicting moral assessments of the past are to change, then all sides need to be encouraged and facilitated to listen and hear each other's stories. This listening must then lead to honest assessment of what the other is saying and to recognition of the truth within their story. In such a process it might be possible to construct a remembrance of our past which is more humane, comprehensive and rounded.

Kirchhoff (1991) and Elias (1993) have argued that like other grass roots movements victims groups are prey to political manipulation and that victims' issues are often used to promote conservative law and order agendas. It is not surprising therefore to find that in Northern Ireland more often than not the cause of victims is appropriated by politicians and the press for their own rhetorical and practical purposes. These discursive manoeuvres are usually constructed using the language of "justice" for victims or victims' rights. An instance of this is the recent unsuccessful attempt by a member of the Democratic Unionist Party (DUP) to introduce a bill¹⁰ into the Northern Ireland Assembly that would narrow the definition of victims and survivors under the *Victims and Survivors (Northern Ireland) Order 2006* so that it excluded all those with convictions either for perpetrating violent incidents or for membership of proscribed (paramilitary) organisations such as the IRA, UDA or UVF. This would have had the effect of disqualifying former paramilitaries but not ex-state combatants from any form of public support to address any harm or bereavement they may have suffered as a result of the conflict. The comment of the defeated bill's proposer posted on the DUP website was that

¹⁰ The *Victims and Survivors (Disqualification) Bill*, 16 November 2010, "A Bill to narrow the classes of persons who may benefit from the provisions in the *Victims and Survivors (Northern Ireland) Order 2006*", Northern Ireland Assembly (Bill 6/10).

Those responsible for scuppering the Bill to change the definition of a victim have done a gross disservice to innocent victims throughout Northern Ireland. [...] Whilst we are presently stuck with the immoral UUP-backed definition, I am determined that this is not the end of the line for the Bill. The DUP will keep fighting on this issue and we appeal to the public for wider support. I know that many people who voted for the SDLP and Alliance will be disgusted that they support the continuance of the odious definition that equates innocent victims with the people responsible for inflicting their suffering.¹¹

As the title of the bill suggests the contested definition of victimhood is not solely about the specific classes of persons to benefit from the provisions of the Victims and Survivors Order. It is also very emphatically about the *disqualification* of politically motivated ex-prisoners from victim support whatever degree of conflict-related harm, loss or bereavement they may have suffered themselves. The contestation of victim status is not merely rhetorical; it has very real material and social justice consequences for the lives politically motivated ex-prisoners are actually able to live.

Citizenship and social justice

Demands for justice for victims require us to think about the purpose and modalities of punishment and since we are considering the treatment of politically motivated former prisoner we need to consider imprisonment. Vaughan (2000) has argued that imprisonment entails a form of *temporary* loss of liberty or "conditional citizenship" for inmates, one in which full citizenship may be restored on rehabilitation or release. But what Vaughan's characterisation of imprisonment as conditional citizenship fails to consider is the continuing stigmatisation and disqualification of former prisoners *after* their release due their having a criminal record. This point is well made by David Matza (1969 : 196) in his assertion that, "even at the conclusion of the signification process—imprisonment and parole—the process of becoming deviant remains open." The idea that imprisonment involves only a temporary loss of liberty fails to take account of the possibility that the state or members of civil society to permanently marginalise former prisoners on their return to their communities. The relationship between punishment and citizenship is complex and a useful starting point for thinking about it is Bryan Turner's (1993: 2) conception of citizenship as "that set of practices which define a person as a competent member of society, and which as consequence shapes the flow of resources to persons and social groups". Turner argues also that that the process

¹¹ See 'Weir Comments on Victims Bill' at <http://www.dup.org.uk/articles.asp?ArticleNewsID=2945>

of determining social or civic membership tends to work on the basis of dividing society into two groups, one comprised of people who enjoy full citizenship and the other which is comprised of those whose status or condition debars them from it. A further aspect of the relationship between punishment and citizenship is the ambit of state's authority to punish—and the question of whether the state enjoys exclusive authority to punish is a central issue for this analysis.

Although it is "counter intuitive to think of a subjective experience [of victimisation] as establishing a publicly valid authority" (Sarat, 1997: 164 quoting Culbert, 1995: 8) that seems to be what is happening in the working of local justice in Northern Ireland where the politics of blame wealds such powerful rhetorical force. If, as Tilly (2008: 105) suggests, "justice becomes more salient and demanding in blame", and if every act of blaming involves some standard of justice, we must ask the question, what standard of justice is being asserted by victim groups like FAIR or the proposer of the disqualification bill? It is arguable that the standard of justice asserted by uncompromisingly retributive victim groups may subvert post-conflict justice in a number of ways. First, it entails a foreclosing the possibility of redemption for political offences. Second, it has the effect of imposing a condition of permanent less eligibility on the officially guilty (politically motivated ex-prisoners) while absolving all others. Third, it imposes *de facto* permanent conditional citizenship on the one group of ex-combatants in whom responsibility for harm is concentrated, former politically motivated prisoners.

So in Northern Ireland at least the active enforcement of the stigma of a "criminal" past does not appear to be the sole prerogative of Leviathan as Matza suggests, but an assertion of the moral authority of the victim to insist on the perpetual stigmatisation and marginalisation of particular ex-combatants, that is politically motivated former prisoners, but not those state actors who may have committed illegal harmful acts. Therefore, as, it behooves us to reflect on three related questions:

- What is the basis of the moral authority of the victim?
- How precisely does the moral authority of the victim exert itself in local justice?
- What is the relationship of the standard of justice *implied* in any particular instance of blaming to the standards of formal law, human rights and citizenship?

Given that transitional justice in Northern Ireland is inescapably about the politics of credit and blame, it will be difficult to change the allocative code of local justice from one of blame and disqualification to one that prioritises social justice and need. Two things follow from this. First, without the "deconcentration of evil" in post-conflict Northern Ireland through the enacting of an amnesty for politically motivated offences former paramilitary prisoners is unlikely ever to get assistance they need. Second, without greater insight into the responsibility of the many via some form of truth recovery process, there is a chance the conflict will start all over again. What these post-conflict blaming practices reveal with particular clarity is that, for the moment at least, it appears that the infliction of punishment and disqualifying stigmatisation is not the sole prerogative of the state, but also apparently a prerogative based on the moral authority of the victim. And this appears to be the case regardless of whether such moral authority it is asserted directly by victims themselves or by political actors who appropriate the moral authority of the victim as a means of to discrediting or disqualifying their opponents.

Implications of this analysis of the politics of punishment, blame and victimhood are wider than questions of local justice for politically motivated former prisoners in Northern Ireland. Understanding the nature of the relationship between blame and the moral authority of the victim to punish either "inside the penal law" Christie (2010: 117) or through the outworking of local justice politics is a task that criminology must not ignore. Michael Tonry's (2010: 73) observation about "justice" for victims, to the effect that treating defendants badly is not treating victims well is pertinent to this discussion of the politics of blame and punishment. Treating politically motivated former prisoners in Northern Ireland badly does not amount to treating victims well unless one assumes that victims are entitled to the personal satisfaction of revenge. But as Tonry (2010: 75) insists, the interests of the victim are the interests of society, *not more*.

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Résumé

Le présent article examine la relation entre la politique du blâme et le traitement des anciens prisonniers politiques dans l'Irlande du Nord post-conflit. S'appuyant sur des exemples de discrimination directe et indirecte tant dans les secteurs de l'emploi que dans l'accès aux

services de santé mentale, l'article porte sur la façon dont l'opération discursive du blâme conduit à évacuer en même temps qu'à établir des culpabilités. Il soutient que l'octroi de tels blâmes a eu des conséquences matérielles très concrètes sur l'allocation des ressources, le refus de les allouer ou encore l'attribution des charges dans la communauté. L'article note aussi que la « cause des victimes » est souvent récupérée par la presse et d'autres acteurs politiques pour leurs propres intérêts, fréquemment en vue de bloquer la distribution de ressources publiques à un groupe particulier d'anciens combattants : les anciens prisonniers politiques. Il conclut en posant une série de questions au sujet du blâme, de la justice et de l'autorité morale de la victime dans un contexte de justice transitionnelle. L'article vise essentiellement à offrir quelques pistes de lecture pour comprendre la relation entre processus de blâme, stigmatisation et exclusion sociale.

Mots clés

Punition, blâme, stigmaté, anciens prisonniers politiques, Irlande du Nord.

Resumen

El presente artículo analiza las relaciones entre la política de la culpa y el tratamiento de los ex presos políticos en la Irlanda del Norte post conflicto. Apoyándose en ejemplos de discriminación directa e indirecta tanto en el sector del empleo como en el del acceso a los servicios de salud mental, el artículo toma en cuenta la forma en que la operación discursiva de la culpa conduce a evasión al mismo tiempo que a distribuir culpas. Muestra que la distribución de culpas ha tenido consecuencias materiales concretas respecto a la asignación de recursos y a la atribución de cargas dentro de la comunidad. El artículo destaca también que la “causa de las víctimas” con frecuencia es recuperada por la prensa y otros sectores políticos para defender sus propios intereses, con frecuencia con el fin de bloquear la distribución de bienes públicos a un grupo particular de excombatientes, ex presos políticos la mayoría. Concluye planteando una serie de preguntas sobre las culpas, la justicia y la autoridad moral de la víctima en un contexto de justicia de transición. El artículo busca esencialmente ofrecer algunas claves de lectura para entender mejor la relación entre el proceso de la culpa, la estigmatización y la exclusión social.

Palabras clave

Castigo, atribución de culpas, estigmatización, ex prisioneros políticos, Irlanda del Norte.