

WHAT'S GOOD AND BAD ABOUT BLAME AND VICTIMS

by
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This Article connects the notions of victimhood and blame and explores their weight in the politics of redressing state abuses. The central point is that, whether addressed to large groups or to specific individuals, blame simplifies reality by turning those blamed into the sufficient cause of a harm. This process implies removing from focus otherwise relevant contributions to the outcome. Through criminal trials, truth commissions, and public acknowledgement, blame is a valuable tool for integrating victims of state abuses to their own community. Protracted blame, however, blurs reality and the achievement of a broader consensus on the meaning of past deeds.

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I. INTRODUCTION

In 2005, in accord with Argentina's government's emphatic rhetoric on justice and the truth about the country's recent history, federal prosecutors are bracing to press charges against hundreds of military officers. The culprits, most of them retired and some of them dead, were allegedly involved in the so-called "Dirty War" of the seventies. Between 1976 and 1983, under four successive military juntas, the army set out to cleanse the country of "subversive elements." In pursuit of this goal, soldiers, policemen, and

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paramilitary personnel murdered, tortured, and abducted tens of thousands of citizens. These offenses epitomized the state-sponsored violence deployed during almost a decade. Indeed, between 1974 and 1976, and with the blessing of the right-wing Peronista administration, paramilitary groups and trade union gangs murdered, tortured, and abducted hundreds of students, artists, writers, and politicians.

Between 1983 and 1987, under a new, elected government, about thirty or forty army, navy, and air force officers were prosecuted and some of them sentenced to prison terms ranging from four years to life. However, because of the pressure exerted by junior military officers to end the trials of state abuses, the trials receded after Congress, following the civilian government's initiative, enacted two statutes now known as the *Impunidad Laws*. The first act imposed a deadline on future indictments, and the second availed officers under the rank of general with the exculpatory defense of having obeyed orders.

To render new prosecutions viable today, Argentina's Supreme Court is considering whether or not to uphold the annulment of the *Impunidad Laws* by several lower federal courts.¹ By and large, the trial courts' decisions were a response to an intimidation campaign waged by the military to compel Congress to terminate the trials. The instability the threats caused—the invalidation thesis goes—had so pressed members of Congress that the ensuing *Impunidad Laws* failed to express its real institutional will. A similar decision by the Supreme Court will thus expedite the renewal of hundreds of criminal actions.

The drive to reopen cases of state crimes perpetrated between 1976 and 1983, more than twenty-five years ago, is partly a consequence of the President's policy of fulfilling the expectations of human rights organizations. These organizations and their political backers claim that they represent the victims of human rights abuses. The prospect of new trials, however, has split public opinion into two camps. Many Argentines believe the officers should be brought to trial and made to pay for their crimes. The opposing camp includes a small extreme right-wing minority, which holds that the military regime had the right to defend itself from violent left-wing radicals. This camp also includes other Argentines with different political views who nevertheless agree that, despite the regime's inexcusable brutality, the time for the trials is now long past. They believe that reopening the "Dirty War" trials will recreate a political chasm and generate new, needless tensions. They also maintain that new trials would be inopportune given the pervasiveness of Argentine political and economic crises that demand that enough energy be preserved to sustain the democratic institutions.

For reasons other than those I have just sketched out, I too support the thesis that new trials would be untimely, and I set out to explain why officially sanctioned blame, chiefly for serious wrongdoing, fosters a black-and-white

¹ Annulment is indispensable because the constitutional prohibition of enforcing ex post facto criminal statutes renders the sole declaration of unconstitutionality insufficient. As usually construed, the principle of non-retroactivity establishes that the sole passage of a statute condoning a certain act shields the agent from indictment and conviction.

conception of politics. The realization of the victim-blame logic that the Executive is presently foisting upon the polity supports a seesaw vision of politics.² Though uniquely therapeutic at a certain point in time, pervasiveness of this logic in the realm of politics eventually becomes detrimental to the attainment of a pluralist, rights-based community. Most of all, protracted blame discourages the formation of a community of responsible citizens. My argument is not limited to the case of Argentina, but also to other societies emerging from extreme violence and grave injustices.

Since the Argentine transition toward constitutional rule in the mid 1980s, human rights trials and truth commissions have been widely set up to officially allot blame. Blame for gross abuses and injustices, perpetrated with the support of the state has thus befallen countries, governments, ethnicities, and individuals. Blame has been “narrow” and “broad” depending on whether it targeted individual, group, and even state actions. As occurred post-World War II, a new consensus is developing in the practice of assigning blame to powerful segments and individuals. Thus, there is a new drive in the Western world to place thousands of former state officials, military personnel, and top police officers “in the docket.” This development has important moral and political consequences. One of them is that, in the view of a wide audience, those who suffered at the hands of the blamed are now officially becoming their victims. However, there are millions of victims. Though indirect, a large number of relatives and acquaintances of the disappeared and the tortured are victims too, as are those who lived under great instability and fear. The mounting practice of blaming, and the resultant victims, seem to be changing the way we look at politics today. While, until the 1980s, it was quite common in Uruguay, Chile, and Argentina to view the tortured and the killed as the source of their own ill fate,³ blame and victimhood have now displaced this relevant agency and strongly suggest that victims’ own responsibility is now largely excluded from our moral recollection of past events. They are now victims and are, as such, essentially simple objects of someone else’s agency.

This is the subject of this Article: public blame and victimhood in politics, especially the blame that emerges from truth commissions and human rights trials. I intend to address the broader political goal of redressing gross inequities and human rights abuses committed against racial, cultural, and religious minorities, and also, brutal state-sponsored political persecutions. Unfortunately, examples of these practices are countless. They encompass a wide range from chattel slavery and discriminatory policies in America,

² Although I was one of the two main architects of the Human Rights Trials of the 1980s, I later became critical of them and their impact on the Argentine society. See JAIME MALAMUD-GOTI, *GAME WITHOUT END: STATE TERROR AND THE POLITICS OF JUSTICE* 141–45 (1996). This Article attempts to develop further reasons for skepticism about extending criminal prosecution of human rights offenders over a certain period of time after the offense was perpetrated.

³ I deal with the issue of “blaming the victim” in *Game Without End: State Terror and the Politics of Justice*. GOTI, *supra* note 2, at 141–45. For a general view on this phenomenon, see SUSAN J. BRISON, *AFTERMATH: VIOLENCE AND THE REMAKING OF A SELF* chs. 4–5 (2002).

Australia, and New Zealand to the enslavement of entire civilian populations by the Nazis in Europe and the Japanese during World War II; from the genocidal ventures against the native population in the Americas to the campaigns against the Armenians, through those of the Jews and the Gypsies in World War II to the massacre of Cambodians by their own kin; from the mass killing of the Tutsi in Rwanda, and of Africans in Sudan to the slaughter of Muslims, Croats, and Serbs in the Balkans. A further example of these practices is the brutality deployed by dictatorial regimes in the later part of the twentieth century in Latin America, Asia, and Africa. The list is much longer.

Here, I am interested in the collective and official blame—"broad" and "narrow" blame—that these abuses elicit among the local and world community. Though insufficient in itself, the practice of collective blame is, at a certain point in history, highly influential in attaining a tolerant community. The most conspicuous version of "narrow" blame is embodied in criminal trials and some truth commissions. In a more general form, blame also originates in the official acknowledgment of wrongdoing. This is a "broad" notion of blame. Institutionally-sanctioned blame ascribes a new meaning to past events and musters a wide consensus on their moral value. This, I assume, is a crucial step in realizing a larger social goal, namely that of promoting general awareness of the citizenry's rights and responsibilities and, ultimately, in the development of an integrated, pluralist, and rights-based community.

Public blame, however, becomes detrimental if it is too long lasting. Extended over a certain time frame, policies grounded in shared public blame discourage a wide enough inspection of the factors that contribute to brutality. It is authoritative blame for gross criminal deeds that is fashioned to restrict the scope of the relevant moral agency and the resulting responsibility. The policy of public blame and the correlative victimhood it draws out not only results from, but also fosters, a special understanding of the political world. The dual victim-perpetrator logic eschews a complex, nuanced conception of moral agency and the correlative notion of responsibility required to shape an inclusive, rights-based community. Inculcation of a broad enough notion of individual and group responsibility is, as we shall see, incompatible with the blame-victim logic.

My central claim is rather simple: blame and victimhood are among the most appropriate political tools to establish an inclusive, fair, and pluralist society. I am referring to a society that is in radical contrast to dictatorial regimes and other grossly iniquitous political systems which are wrapped in a veil of secrecy. Yet the practice of blaming, and victimhood, can be, and often is, too long lasting. In this case, the blame-victim logic oversimplifies social reality. From a moral and political vantage point, this simplification militates against a wide enough perception and evaluation of the agents and groups involved in the violence. It also overlooks the political and social context that made the violence possible. I first broach the conceptual topic of the interdependency of the notions of blame and victimhood and lay the grounds to explain why and when they become a valuable political pursuit. I argue that, from the same moral and political perspective, limiting the policies leaning on

the victim-blame paradigm furthers the cause of a pluralist, rights-based community.

II. THE CONCEPTUAL BLAME-VICTIM RELATIONSHIP

In a first, broad sense, we think of victims as individuals and groups upon whom undeserved pain is inflicted. Suffering is paradigmatically undeserved when it results from events happening beyond the control of those who bear it.⁴ Thus, in this broad sense, we may be victims of human actions and natural events such as earthquakes and illnesses.⁵ Individuals and groups are victims if their suffering is the consequence of bad luck, of courses taking place beyond their will's control whether or not they are able to foresee the occurrence. This is at least, and in this broad sense, what we consider to be victims in common, everyday parlance.⁶ We are thus victims, in this first sense, of a cosmic disaster if our entire planet—which of course includes you and me—will hopelessly collide with an asteroid in February 2010. Foreseeability does not alter the luck ingredient of events nor our victimhood. We are the victims of events when they are haphazard.

In this Article, I address the notion of a victim in a second, narrower sense. I focus on individuals we consider victims of other people's doing, of their agency. This notion presupposes that the acts of the latter are, in some sense, also voluntary acts, and furthermore, that they are, at least *prima facie*, morally condemnable. Here, I focus on this distinctive, limited notion of agent-related victims and claim they correspond with acts that largely elicit blame, and especially, blaming we collectively share. My interest here is even more limited: the point I wish to stress refers to victims who suffer from gross abuses and injustices, mostly officially endorsed, as are political, ethnic, and racially motivated state-related wrongdoing and invidious practices. I am thus primarily referring to victims of intentional abuses, and maybe also of gross reckless mischief. This is because, in this second sense, victimhood links undeserved suffering to agency in a strict sense.

Let me clarify. You may say, for instance, I was the victim of a random incident caused by someone to whom you attach no blame, not even *prima facie* blame. You may believe, for instance, that the bullet that ripped my flesh was inevitable because, in your mind, it was itself the consequence of

⁴ I develop this point concerning luck in Jaime Malamud-Goti, *Rethinking Punishment and Luck*, 39 TUL. L. REV. 861 (2004).

⁵ It is true that you may also be a victim of undeserved suffering you may have elected to bring upon yourself. George P. Fletcher has pointed out that for an assortment of languages, a "victim" is the human offering to a god as was so typical of scapegoats in ancient Greece. Thus, if you elect to undergo the suffering, such suffering will be undeserved, but yet it would be the outcome of your will. GEORGE P. FLETCHER, *BASIC CONCEPTS OF LEGAL THOUGHT* (1996).

⁶ I am overlooking victims in a sense George Fletcher has reminded us of, and that is those offered in sacrificial rituals. Though we might still believe that these victims suffer from undeserved pain, they may have chosen their own fate. In this latter case, victims suffer from what, in some broad sense, they willed.

happenstance. In this case, when the gun you grab inexplicably goes off, my suffering is not really agent-based. In such case, I am a victim only in the first, wider sense; a victim of a causal process that happened to course through my body. Strictly, I am not a victim of your agency.⁷ We do not claim to be victims of someone else's behavior if we refuse to grant that that individual exercised a certain degree of control over the event. If this is true, we don't consider someone your victim if you did not willfully direct the events toward the harm (or failed to adequately exercise such control to avert it). To phrase it differently, you consider me your victim only if your intended act was, *prima facie* at least, one I blame you of on account of what has happened to me. In the second, narrow sense, victimhood implies agency. From this point, I believe, we may derive interesting moral and political implications.

The correspondence between victims and blame is quite important to moral and political considerations because blame is a radically simplifying social practice. If it is victimhood in the second sense and it befalls active agency, blame sanctions single cause explanations about moral and politically sensitive topics as the harm some groups and individuals bring upon others. When I blame a certain agent A for causing the suffering of victim V, I am strongly suggesting I relieve you from searching for further explanations to explain V's condition. This includes, of course, the irrelevance of V's own actions. To claim, for instance, that the seventeenth century Inca were the victims of the Spanish Conquistadors, supports the belief that, besides the deeds of the Spaniards, we may relegate all other contributing facts, including other people's doing, to the background. In this case, I am suggesting that, in establishing a reason for a harm, blame allows us to ignore all additional information.

It follows that blame simplifies reality in two relevant ways. First, it suggests that, through their behavior, and implicitly assuming certain background conditions, the group or person we blame supplies a sufficient explanation for a certain harm. The recognition that I deserve the blame for your predicament advances the belief I need not take a further step to establish the way in which your state originated. You are my victim because of the way my behavior played out against *your* life, your body, and your interests, and this renders inspection of your own and other people's acts superfluous. Secondly and most importantly, blame taints, yet also absolves. A consequence implied by the single cause explanatory feature of blame is the removal of other actions and events from the scope of responsibility. Though the victim's actions may provide motivations for your conduct, the latter suffices to explain the outcome.⁸ This is clear in a criminal trial in which, in relation to the victim's

⁷ The reason lies in that, as we shall see, blameworthy active agency advances the notion of a sufficient cause. This is certainly not the case with omissions. The fact that, in accordance with Kofi Annan, we blame the UN for allowing the 1994 massacre in Rwanda does not in any way preclude other people's active agency as a sufficient cause for the same deed. *U.N. Chief Rues Rwanda Genocide Response*, *ABC News Online*, (March 27, 2004), available at <http://www.abc.net.au/news/newsitems/s1075138.htm> (last visited July 3, 2005).

⁸ I am not, of course, denying that we sometimes blame multiple individuals for an action, and also that properties attaching to the victim may contribute to her suffering. In

plight, the *real* focal point of the drama lies with the culprit's action. Acts executed by third parties are, in this way, as relevant to our conclusions as are background, natural events.

I concentrate on the interdependence between victims and blame because I believe that certain political events elicit public, shared condemnation and blame; yet this blame we share contributes, in and of itself, to shape our moral and political reality, our perception of social events. Through the construction of an individual or collective victim in the sense I just outlined, let me stress, blame is a significant tool to mould social reality.⁹ It has the peculiar power to re-signify our understanding of the past. The memory of an experience I shared with someone else, for example, is completely altered if I blamed my partner of being insincere. Awareness that she was not the kind of company I thought I had because she, say, is utterly disingenuous, affects the nature of the experience. Shared past events acquire a radically different shape once you establish that it was not friendship, but an interest in your social connections or your money, that brought him or her close to you. Shared blame effects radical shifts on the meaning of past events. It causes us to view them in a new, different light. Realization that events had a different, new meaning may transform even the way you see yourself: as fit or unfit for friendship, as truly generous or just gullible, and so on. These shifts are, of course, how we think of ourselves and what we went through after we begin to blame others for our condition; when we start to consider ourselves as victims of someone else's violence or cunning. The prominent case of the World War II Japanese Comfort Women presents us with a relevant example.

After their release by the Japanese army in the aftermath of World War II, Taiwanese and Korean sex slaves, known as "Comfort Women," saw themselves confronting an unwelcoming environment at home. Refusal to accept them as full members of their own community originated in the culture's sexual biases which, in turn, instilled in them the guilt of having been a willing party to their own fate. Blame, as we shall see, is most frequently addressed to those whose behavior we expect to contribute to. Conversely, blame is often muted by what seems to us as the inevitable. We experience this every day when we blame our children for visiting a dangerous district, exposing themselves to violent situations.

relation to the first, we either attach blame to the group as such or we attribute the agents as the sufficient cause for the harm. In connection with the latter, it is the suffering that lies beyond her control that interests me here. You are the victim of a torturer even though your previous conduct may have justifiably led to your imprisonment. Conversely, you are not the victim of the casino employee when he takes away your wager.

⁹ It is because of this reality that blame is often the object of great confrontations. Those who manage to impose their blame upon others also have the power to establish the meaning of events, to shape reality. SAUL BELLOW'S *THE VICTIM* masterfully depicts Leventhal, the main character and a decent man, on the verge of succumbing to an unwarranted, farfetched blaming by an insensible character named Allbee. If Allbee wins, Leventhal will interpret the fact according to the former and thus be compelled to take upon himself the multiplicity of burdens that haunt Allbee's life. (Penguin Books 1996) (1947).

Thus, it was the relatively recent campaign launched by several governments and international organizations to blame the Japanese government and the Japanese army that improved the Comfort Women's condition. Until this relatively recent drive toward blaming the Japanese began to succeed, survivors of sexual enslavement had been perceived as the sinful contributors to their own fate, and this perception deeply affected their sense of dignity and self-esteem.¹⁰ The authoritative nature of the blame on the Japanese neutralized the sexual biases and, with them, the self-blame and the blame by the women's communities of origin. Until this moment, very few of them had stood up to defend themselves by accusing their tormentors. It was thus blaming the Japanese that enabled the surviving Comfort Women and their progeny to gain the acceptance from their communities of origin.

Essential to achieving this assertion was the authoritative statement that these women had been (unilaterally) wronged, that it wasn't their own agency that accounted for their plight, because their ill fate resulted from someone else's control. Put differently, it was blame cast on an unjust regime that sanctioned their victimhood and their innocence. In the next section, I attempt to account for the advantages of turning people into other agents' victims by blaming the latter for their suffering. This is broad blaming; i.e., blaming governments and countries imply a wide range of anonymous agents.

III. WHAT IS GOOD ABOUT THE WORLD OF BLAME AND VICTIMS

The example of the Comfort Women depicts the effects of (broad) blame in regaining acceptance and in recovering self-respect and esteem. The past decades have witnessed a new drive toward broad and narrow institutional blaming for state related wrongdoing. In Europe, Latin America, and South Africa, and before the headquarters of international organizations, throngs of people have taken to the streets to vent their indignation at the outrages committed by some governments. They press new administrations and international fora to expose the depravity of former functionaries and state agents. We are, I believe, in the midst of a new era of politically related blame for the suffering of millions.

The courts, and sometimes truth commissions, are epitomized sources of "narrow blame," blame cast on singular agents or a defined group of actors. But they are not the only basis for institutionalized blame. Self-blame by authoritative personalities, blame that is usually widely shared, also contributes to the sanctioning of victims. Since the mid-eighties, and more intensely through the nineties, high officials in the Americas, Central Europe, and South Africa have blamed themselves and the political, racial, and ethnic factions they stood for, for the suffering of political dissidents and ethnic and religious minorities. Yet, unlike trials and truth commissions, the acknowledgments often refer to deeds that transpired long before the acknowledgements. In this sense, Pope John Paul II expressed contrition about the Crusades, the

¹⁰ See ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* (Johns Hopkins 2000).

Inquisition, and the treatment of the Jews. Similarly, several groups in the United States are now expressing remorse for the times when chattel slavery was in force, almost a century and a half after the end of the Civil War.

In Latin America, admissions of guilt began to take place once the military regimes relinquished power and, in Eastern Europe, after the fall of the Berlin Wall. What seems to be the rule about these declarations of responsibility is that the infringements were perpetrated during—and were therefore attributable to—earlier regimes. A similar trend is being followed by a number of civic organizations for crimes committed by certain individuals with whom these groups identified themselves. The victims are members of ethnic and racial and religious factions, as are political opponents from within and without the political community of the perpetrators.¹¹ In Argentina¹², Chile, and South Africa, high officials, military commanders, and high-ranking police officials are now acknowledging that personnel under their authority and command perpetrated heinous crimes against certain ethnic and religious minorities, as well as political dissidents. Furthermore, in the United States, several civil rights organizations have publicly expressed their regrets for the suffering of Native Americans and descendants of African slaves.

At first glance, one may find that some acts of recognition, contrition, and apology are quite perplexing. Consider the recent self-blame conveyed to the offspring of slaves of African origin over a century and a half after the Civil War. Several generations have gone by and the direct agents are now long dead. This is certainly the case with the world community's indignation at the refusal of the Turkish authorities to acknowledge the slaughter of Armenians in 1915. The expectation is indeed noteworthy, and looking at the direct targets of the wrongdoing and their descendants—and the wrongdoers and their progeny—will not render obvious the moral and political meaning of these acts.

What is central about institutional apologies is that blame attempts to redress the unevenness between perpetrators and the victims caused by the wrongdoing or the injustice. Blame addresses this inequality and aims at redressing it. This situation requires the vantage point of political morality; a point of view that considers how political institutions operate and the intra-community relations these institutions are designed to fashion. In what follows, I draw upon the example of the African-American community and attempt to shed some light on the meaning of the admissions of blame. By and large, blame attempts to level out perpetrators and their victims.

In the case of African-Americans, it is only too well known that this minority is, on average, worse off than individuals of European ancestry. The

¹¹ Swiss banks, for instance, formally expressed their contrition for misappropriating gold entrusted to them by Jewish escapees, some of whom unsuccessfully attempted to seek political asylum in Switzerland before and during World War II. See BARKAN, *supra* note 10, at 88.

¹² The army commander in chief, General Martin Balza, acknowledged the cruelty of the army of the 1970s on April 25, 1995. Declaration of General Martin Balza (released April 25, 1995), *available at* <http://www.nuncamas.org/document/militar/balza95.htm> (last visited July 3, 2005).

former have fewer educational and employment opportunities. Proportionally, many more African-Americans are jobless and tangled with the criminal justice system. Most importantly, the economic and social disadvantages of this minority, and the resulting loss of self-respect and esteem, place them on the fringes of community. Given this situation, apologies from governmental officials and civil liberties organizations seem to me to be a singular means of satisfying our sense of justice¹³ and quest for inclusion. Apologies are, I am suggesting, a means to strengthen a broader version of the U.S. national community. They are an official means of allocating blame on the person or group that issues them.

Like any adjudication of guilt for active wrongdoing, an apology sanctions, as I said, a single-cause explanation for certain outcomes and states of affairs.¹⁴ If we blame an individual or group of people for your present-day condition, we are turning you into someone else's victim and thus rendering the blameworthy agent or group into the sufficient cause of your plight. In the case of African-Americans, blame points to Americans, a broad category encompassing a vast class of citizens, namely white Americans. Up until a certain point in time, the consequence of self-blame tends to positively affect the victim. The emotions they experience, such as shame and resentment, are now largely explicable and also warranted by the blame: "It was U.S. institutions and practices that brought about your plight; it was they who wronged you." Insofar as we accept this premise, you are now a victim and, consequently, in no way responsible for the present state of affairs. You are, so to speak, beyond the pale.

This way, to achieve a new political balance among segments of society, blame, as I have pointed out, entails a seesaw approach to past events and the outcomes that result from them. You are now in this particular condition because my behavior played out so that you are now suffering from material and social disadvantages.¹⁵ Also, because of me, you experience insecurity, a

¹³ I would like to distinguish three different sentiments concerning guilt. First, guilt that haunts the perpetrators for their misdeeds; second, guilt that the perpetrators' progeny experiences for the enjoyment of unjustified advantages gained by their elders; and third, guilt as a sentiment triggered by those who suffer on those who do not. This latter class stems, I believe, from the notion that we participate in building a community that, as such, requires a minimally egalitarian scheme. This is the reason we reject the common attempt to justify injustices by stating about the victim: "She would have been worse off if, instead of moving here, she had elected to remain in her country of origin."

¹⁴ I qualify this statement to "active" or "positive" wrongdoing. Admissions of guilt for omissions are not conclusive in this sense in that they allow enough room for other explanations. Expressing guilt for failing to avert the harm you suffered does not preclude admission of important causes relevant to understanding your plight. Thus, U.N. Secretary General Kofi Annan's admission that the U.N. failed to prevent the Rwandan genocide in 1994 does not suggest that we are not to meaningfully inquire about the nature of active wrongdoing by members of the Hutu minority. See *Rwanda Genocide Response*, *supra* note 7.

¹⁵ Interestingly, this notion of disadvantage is narrowly related to what George Fletcher calls a victim in his victim-centered justification of punishment: one who in some sense remains under the domination of the perpetrator. See George P. Fletcher, *The Place of*

sense of worthlessness, and so on.¹⁶ The effect of the way our institutions operated shaped your fate. It was not your fault; just your bad luck. There is no need to look for further causes.

To a great extent, our subject matter lies with the nature of blame for active as opposed to omissive wrongdoing. The central issue does not just rest, as some scholars have claimed, with the failure to remedy the aftereffects of the wrongdoing.¹⁷ The combined reasons lie in the harm done and the disadvantage you, the victim, now endure. To limit the account, as one may feel tempted, to the failure to correct ongoing injustices begs the larger political question about why apologize to the slave descendants and not to other minorities who are, on average, worse off.¹⁸ The issue, to be sure, is not just that of present-day disadvantages. Indeed, overlooking the issue of how the damage came about cannot answer the question of why self-blame should be limited to African-Americans and not to other communities now also suffering from a lower economic and social condition. If the reason for this situation were present inequity in the United States, one should perhaps also apologize to Central American immigrants and their descendants. The admission of guilt makes sense insofar as we are now also sensitive to the distant times of chattel slavery and the enduring suffering and inequity the institution is still causing today.

Historically active wrongdoing by our forbears lies heavily upon us today; the mischief—and the subsequent failure to rectify it by the intermediate generations and ourselves—explains how you are now faring as an African-American born in the United States in the seventies or eighties. This view, which originates in the placing of blame, victims, and political morality, retains its appeal when we extrapolate it to individual actions and the correlative outcomes of common offences. Broad and narrow blame—and agency—play similar roles. Without blame, we would resort to alternative explanations probably consisting of psychological, biological, and cultural accounts of the victims—and their community's—features that could yield an understanding of the cause of your predicament. Insofar as we accept (self-)blame for the outcomes, these explanations are now superfluous because my wrongdoing sufficiently accounts for your ill fate.

Along the lines I have laid out, trials of human rights abusers strongly suggest that, unlike revenge, this blame-based process causes a significant

Victims in the Theory of Retribution, 3 BUFF. CRIM. L. REV. 51 (1999); see also GEORGE P. FLETCHER, BASIC CONCEPTS OF LEGAL THOUGHT (1996).

¹⁶ For an interesting account, see Susan J. Brison's autobiographical search and her reflections on victimhood in SUSAN J. BRISON, AFTERMATH: VIOLENCE AND THE REMAKING OF A SELF (2002). Chapters 1 and 2 are most illustrative.

¹⁷ The omissive thesis has been interestingly laid out in Rahul Kumar and David Silver, *The Legacy of Injustice: Wronging the Future, Responsibility for the Past*, in JUSTICE IN TIME: RESPONDING TO HISTORICAL INJUSTICE 145–59 (Lukas H. Meyer ed., Baden-Baden: Nomos Verlagsgesellschaft 2004).

¹⁸ Some authors believe the central claim African-Americans have for rectification of the enduring harms caused by slavery lies in the omission by modern generations to rectify past wrongdoing. For an excellent defense of this view, see KUMAR & SILVER, *supra* note 17, at 145–58.

impact on the emotions of those we think of as the bearers of the wrongdoing. It boosts, in this case, their sense of dignity. For us, witnesses to their plight, blame drives all possible causal explanations away from them and their behavior. In other situations, blame may allay the guilt and the shame, and I presume this effect provides individuals and communities with a sense of worth. The practice, so far, contributes to the attainment of a pluralist, inclusive community.¹⁹

Single-cause versions about events such as court convictions and formal declarations of regret play the political role of explaining states of affairs and fashioning their meaning. Both punishment and apologies offer an explanation of why the world is now the way it is. To be victims of some specific—collective or individual—agent is a political means of shaping one's own social reality. Progressive blame is always simplifying. Broader blame is diminished or excluded by narrower blame. This is because every new act of blaming exculpates those who remain outside the focus of such blame. We water down the blameworthiness of nations if we persuade a large enough audience that it is fair to pin the blame on smaller groups and dilute the blame of the smaller groups once we convincingly zero in on individuals.²⁰ The nation whose pilot brings down a foreign plane at a time of peace may temper its broad agency blameworthiness by trying and convicting the individual wrongdoer, the pilot.

Thus far, I have laid out the moral significance and role of blame as a means to create victimhood. The blame-victim logic, I emphasize, is a quite powerful means to envisage—and put forward—a clear-cut version of the political world. Its appeal is even stronger in societies already split by the dictatorial political friends-and-foes conception of the world. A number of recent examples illustrate this point. I have in mind the case of the Hutus and the Tutsi, of Serbs and Muslims, of Communists and dissenters in Eastern Europe and, in Latin America, military “crusaders” and civilian “subversives.” Blame levels out certain agents and those who suffer from their deeds. Yet, over time, its oversimplifying effect may prove to be paradoxically detrimental. It might stand in the way of the process of creating a pluralistic community that seeks to reinforce the notion of equality and rights. Success in this undertaking demands a rich—a strong and wide—sense of individual and collective responsibility. The simplifying effects of blame discourage this sense of responsibility.

¹⁹ For a discussion about this topic in the field of punishment and state criminals, see Jaime Malamud Goti, *The Moral Dilemmas about Trying Pinochet in Spain*, in JUSTICE IN TIME: RESPONDING TO HISTORICAL INJUSTICE 299 (Lukas H. Meyer ed., Baden-Baden: Nomos Verlagsgesellschaft 2004); Christian Tomuschat, *Comments on: Jaime Malamud Goti, “The Moral Dilemmas of Trying Pinochet in Spain,”* in JUSTICE IN TIME: RESPONDING TO HISTORICAL INJUSTICE 315 (Lukas H. Meyer ed., 2004); Jaime Malamud Goti, *Emma Zunz, Punishment and Sentiments*, 22 QUINNIPAC L. REV. 45 (2003).

²⁰ Joel Feinberg, *The Expressive Function of Punishment*, in DOING AND DESERVING 105 (1970).

IV. WHAT IS BAD ABOUT MAKING VICTIMS?

Historians and social scientists are often critical of the limited way in which trials and truth commissions generate awareness of the past. Knowledge through truth commissions, for example, should provide their audiences with a more complex, rich view. This view requires more than establishing the simple deeds of specific individual and collective agents and exposing the suffering of those who bore the brunt of the abuses. Thus far, the approach to past political events is, at best, a poor historical testimony of the relevant events and, at worst, a distorted account of the past. We won't learn enough about the circumstances that brought about the abuses to teach us to prevent similar injustices just by looking at a group of wrongdoers who confess to their own killings or get to serve time in South African prisons. It is not enough to learn about the character traits and purposes that, on the one hand, guided murderers and enforcers of abhorrent institutions and about their victims on the other hand.

Nor can we understand the vengeful campaign against the Argentine "subversives" simply by reading the report of the Argentine truth commission. A realistic enough explanation of past events requires a broader view, one that includes rich, contextualizing notions of how power and interests combined to generate conflict and dictatorial trends.²¹ Exponents of the need to attain this view are indeed numerous.

To understand the Argentine case, Professor Greg Grandin, for instance, refers to the need to grasp the institutional and economic factors that determined the 1976 military takeover, to canvass the country's power structure and so forth.²² In a similar vein, Professor Charles S. Maier reminds us of truth commissions' blatant disregard for complex institutional settings and social developments.²³ Critics of truth commissions and trials of state criminals are right in one way and wrong in another. Maier is right in pointing out that institutional blaming through the courts and truth commissions usually turns a blind eye on important factors that historians cannot neglect. The "truth" that results from blame is only a halfway and limited truth.

We may rightly claim the blame that engendered the 1994 Rwanda genocide trials—the narrow blame—is proving to be clearly insufficient. Among other things, the shallow half-truth that results from these trials is generating among the Hutu the sense of being unjustly persecuted. Implemented through domestic and international trials, the resulting verdicts seem to ignore Rwanda's genuine and rich history. They overlook the

²¹ See, e.g., Greg Grandin, *The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile and Guatemala*, 110 THE AM. HIST. REV. 46 (2005). As I have myself, Grandin discusses the simplicity of the truth that resulted from the trials and truth commissions in Latin America.

²² *Id.* at 8–9.

²³ Charles S. Maier, *Doing History, Doing Justice: The Narrative of the Historian and of the Truth Commission*, in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS (Robert I. Rotberg & Dennis Thompson eds., 2000).

important fact that, before the mass murder of the Tutsi by the Hutu militia and its henchmen, Hutus had suffered from Tutsi privilege. Furthermore, the domestic trials of the 1994 massacre perpetrators were partly devised to divert the world's attention from the fact that some Hutu had been brutalized by the Rwanda Patriotic Front (RPF),²⁴ the Tutsi-run army.²⁵ The Tutsi-Hutu conflict is but a tragic example. The international trials devised to bring justice to the Balkans raise similar objections, especially among the Serbs,²⁶ who believe they are now the victims of kangaroo courts.²⁷ Some social scientists propose completing trials and truth commissions with other means of achieving a richer truth. I don't believe in the feasibility of such complementarities, precisely because blame is geared against such truth. Indeed, blame would lose its purpose if a search for a richer truth were to succeed.

Institutionalized blame is neither geared for, nor intended, to provide a rich, comprehensive account of the past. As I have repeatedly claimed, blame is precisely designed to simplify our view of past events. It is tailored to zero in on the group or generation we now seek to rescue from the effects of the brutality and injustice committed upon them. Truth commissions and trials are geared to offer a very simplified notion of the past—a notion limited to the concrete deeds of individuals and groups, and a set of authoritative rules. These rules are explicit in the case of trials and often assumed by the reports of truth commissions. They are supposed to muster as wide a credence as possible in their trustworthiness about the facts and the correct rules and principles.

As a social practice, blame is meant to focus narrowly on a single individual or group of wrongdoers and exculpate all other agents including, most importantly, the victim. In this process, blame removes from the limited eye of the mind all other factors that, by a broader view, contribute to the present state of affairs. This is because, to some degree, trials and truth commissions seek to expedite redress for the wrongdoing.

To alleviate the plight of certain groups and individuals, and to incorporate them in their own community, blame becomes the instrument through which we attain quick consensus on the negative moral weight of certain acts. Thus

²⁴ Many observers view the RPF's invasion of Rwanda as that of an army of occupation. See MAHMOOD MAMDANI, *WHEN VICTIMS BECOME KILLERS: COLONIALISM, NATIVISM AND THE GENOCIDE IN RWANDA* (2001).

²⁵ See, e.g., Alison Des Forges and Timothy Longman, *Legal Responses to Genocide in Rwanda*, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* 49 (Eric Stover & Harvey M. Weinstein eds., 2004). For an interesting account of how the Tutsi failed to report on the violence they had earlier perpetrated upon the Hutu, see Timothy Longman and Théoneste Rutagengwa, *Memory, Identity, and Community in Rwanda*, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* 162 (Eric Stover & Harvey M. Weinstein eds., 2004).

²⁶ For an interesting account of the development of Tutsi privilege by the Belgian colonialists, see MAMDANI, *supra* note 26.

²⁷ See Laurel E. Fletcher and Harvey M. Weinstein, *A World Unto Itself? The Application of International Justice in the Former Yugoslavia*, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* 29–48 (Eric Stover & Harvey M. Weinstein eds., 2004). See also ELIZABETH NEUFFER, *THE KEY TO MY NEIGHBOR'S HOUSE: SEEKING JUSTICE IN BOSNIA AND RWANDA* (2002).

blame subsequently sanctions victimhood. This is a relatively expeditious and efficient way of accounting for how the victims were wronged. To blame some Hutu perpetrators today will likely contribute to the Tutsi recovering some dignity and self-esteem because the Tutsi learn that neither their national community nor the world at large is indifferent to their suffering. It helps individuals who bear the brunt of brutality to return to their homes and blend into their own community. The truth is limited to the disclosure that the individuals were wronged so that a vast audience will understand that they did not deserve their fate. Agreement on the value and disvalue of complex historical deeds would simply be unattainable if we appealed to a richer reality that referred not only to concrete events, but also to structural social, cultural, and political features relevant to historians and anthropologists.

What shared truth could we offer to the survivors of the Rwanda 1994 massacre and to the relatives of those who perished? A complex and encompassing truth would barely muster a reasonable consensus in three or four decades. To be sure, Argentines still debate on the nature of events that occurred over a century ago, and Argentines and Chileans have never agreed on the most basic historical facts about Patagonia. What should we expect from the intricacies of the history of Rwanda? How could we expect Serbs and Muslims to concur on the ethnic conflicts in Bosnia in the last century? We can only seek consensus through a meek account of the deeds of a limited number of agents and in reference to a limited set of authoritative rules.

Blame serves the purpose of simplifying social facts by singling out the morally relevant cause of some harm. We thus blame those who cause our suffering by transgressing our moral principles and values. But this descriptive approach provides no insight into the actual appeal of blaming wrongdoers as a social practice—the *why* and the *when* we actually blame agents for their legal and moral infringements. To account for the latter requires resorting to a manipulative, forward-looking version of blame that requires two conditions to become operative.

The first is emotional: we cannot seriously claim to sustain a moral principle if its breaches do not arouse reactive emotions, largely resentment and indignation.²⁸ Second, blame requires that we implicitly or explicitly expect to provide reasons to discourage the wrongdoer and others from committing the wrong again. Prosecutions and trials are forms of making our blame public, of widely sharing our condemnation of certain acts. This implies an expectation that others share our emotional make-up and background assumptions about facts and values. When some degree of support is hopeless, public blame loses its basic appeal.

By this token, in the 1940s and 1950s we would not have expected a large enough segment of the community to share a privately held belief that many

²⁸ See Bernard Williams, *Morality and the Emotions*, in *PROBLEMS OF THE SELF* 207 (1973) (maintaining that there is a non-empirical connection between moral judgment and the emotions. This connection lies in that sincere judgments on transgressions of moral rules and principles reveal emotional reactions. Without the latter, our judgments would not be truly moral.).

industrialists were to blame for polluting our rivers and lakes. When an infectious disease was contracted, the community shifted their blame to the intoxicated water drinker or the swimmer, considered reckless in those days. The same is true with the effects of state terrorism and the process of targeting blame. In the eyes of many Argentines, it was also the victims' recklessness and stupidity that caused their suffering at the hands of their abductors and torturers.²⁹ Devoid of its moral underpinnings, blame frequently befell the victim, hoping this would persuade others to adjust to the tyrant's demands.

Variations in the practice of blame are peculiar to political transitional processes.³⁰ For example, the systematic assassinations by extreme right-wing groups under the Peronista Administration in Argentina during 1973–75 remained away from public focus. The single most egregious abuse was perpetrated by one of these groups in March 1973, when it massacred a number of the rival Peronista faction near the airport where Peron was expected to land on his return from a long exile in Spain.³¹ Hundreds of youth were slaughtered in this gruesome incident, yet it is likely that, if these abuses had not been overlooked, prosecutions of these groups would have been viewed as a political device to advance the partisan interests of the politicians in office. At the time of the post-dictatorial 1985 human rights trials, the focus of the prosecutions were almost exclusively military officers. Accidentally, unwittingly, and even unconsciously, prosecutors failed to take action against ultra right-wing Peronista henchmen for the systematic assassination of dissidents. Nor did they press charges against those who set alliances with generals to abandon them after the failure of the military junta's economic policy and the Falkland-Malvinas military fiasco.³² Very few of these actors were ever targeted by prosecutors. The obliviousness was thus caused by emphasis on consensus in the attainment of democratic authority.

Human rights trials and truth commissions serve the purpose of incorporating individuals and battered segments into their own community. Incorporating these groups of guilt and shame-ridden people, who keep asking, "why me?", requires expeditious institutional relief—an official signal to let them know that they count. Without this signal, these people find it hard, if not impossible, to reinsert themselves into their own community as equal members. A necessary condition to this effect is that those surrounding these people believe it was not their fault, that they are only victims of someone else's brutality. Some of these people, who lost friends and family in retaliation for their own political militancy, now require that someone else be blamed.

²⁹ See MALAMUD-GOTI, *supra* note 2.

³⁰ See STEPHEN HOLMES, *PASSIONS AND CONSTRAINT: ON THE THEORY OF LIBERAL DEMOCRACY* (1995).

³¹ See MARTIN EDWIN ANDERSEN, *DOSSIER SECRETO: ARGENTINA'S DESAPARECIDOS AND THE MYTH OF THE "DIRTY WAR"* (1993).

³² I hyphenate Falkland-Malvinas to avert two kinds of accusations. First, that of being disloyal to Argentine tradition, according to which the islands' name is Malvinas. Second, that of being unrealistic enough to ignore that the islands have now been under the British rule for over a century, with the explicit acquiescence of their inhabitants.

The blame-victim logic serves a different purpose than that mentioned by British Admiral Sir George E. Creasy in his strong critique of the conviction of German Admiral Karl Doenitz at Nuremberg: “We are still comparatively close to the events of the Second World War and it will be many years before those events are reviewed by the calm dispassionate eye of the historian. But when that day does come, I personally believe that your reputation as a Naval Officer and as a fighting Admiral will stand secured and established.”³³ Blame and victimhood are rapid responses. Responses that, in the case I just quoted, may have been addressed to incorporate battle hardened Allied officers into their home communities, as relieved as possible from the weight of their own wrongdoings. The remedy needs to be quick but open to future historians’ comprehension of events. The victimhood of the so called “subversives” of the Argentine military dictatorship was, for the reasons I pointed out, also the declaration of their innocence.

The process of keeping our own guilt in check through blame is certainly not new. Opposite factions often battle over who is to be blamed and who is the victim. Trials by the victors of the war, over the crimes of the vanquished, are probably more strongly aimed at attaining the absolution of the former than exacting revenge on the latter. When the smoke of the war clears, we seek to expunge our own dirty hands by blaming the losers. Nothing portrays this more clearly than the collection of letters by Allied judges and military officers in protest against the conviction of Admiral Karl Doenitz, the head of the German U-boat fleet during World War II.³⁴

The impact of trial decisions, reports by truth commissions, and public recognition of blameworthiness relies on the authoritativeness of the source in which they originate. Verdicts, judgments, and declarations affect the lives of the members of an association to the degree to which those who speak in their names—judges, functionaries, and generals—are authoritative. Belief in the true justice of a statement is belief in the expertise and good judgment of the person or office in which it originates. Yet, as I have claimed elsewhere,³⁵ the authoritativeness of courts and truth commissions are essentially contingent upon the intensity of the conflict to which their judgment implicitly refers. It is hard to envisage a court’s conviction of Serbian officers drawing enough credence among the Serbs themselves. This is because the courts cannot disassociate themselves in trying a few individuals from the ethnic and political conflict underlying their deeds.

A good example of the problem with authority in cases involving great conflict is the relatively recent declaration signed by Serbian intellectuals. In spite of their staunch opposition to the politics of ethnic cleansing in the Balkans, they believed the international tribunal “was exclusively an instrument

³³ See DOENITZ AT NUREMBERG: A REAPPRAISAL 115 (H. K. Thompson, Jr. & Henry Strutz eds., 1983).

³⁴ For the best evidence available, see the testimonies collected in DOENITZ AT NUREMBERG: A REAPPRAISAL, *Id.*

³⁵ See GOTI, *The Moral Dilemmas about Trying Pinochet in Spain*, *supra* note 19.

for the persecution of Serbs.”³⁶ Verdicts, reports by truth commissions, and public acknowledgments can only achieve a limited consensus because the personal and institutional authoritativeness of those who issue them is limited, as is credence in the rules. The problem with the limited truth conveyed by the International Criminal Tribunal for the former Yugoslavia is that it seems to release from blame all actors left outside the limited group of those indicted. It also supports the assumption that those who were not convicted are innocent. The consequence is the resulting certainty that it has become superfluous to examine their own responsibility. However staunch their support of the generals and their methods, many Argentines have long and enthusiastically embraced this view.

V. CONCLUSION

My reflections have now taken me full circle to where this Article started, with the pros and cons about the drive to start new trials of the Argentine military. This second attempt to try army officers once more in Argentina will absolve a host of violent actors and their associates in the eyes of the general audience. A general obliviousness has taken hold of Argentina and many other places where brutality reigned supreme. There are times when, deliberately or inadvertently, public blame has served this purpose. As some authors point out in connection with the trials in Rwanda: “Trials of genocide suspects—and a pointed avoidance of substantial legal cases against RPA [the Tutsi controlled militia] soldiers or others who have engaged in abuses—have sought to shape public perception to recognize the moral failings of many Hutu leaders while raising the moral standing of the current [Tutsi] leadership.”³⁷ The need for a rich historical truth is still lacking in most places with traumatic pasts. However, to the degree that it is possible, agreement on a rich truth will not depend on the blame apportioned in the criminal courts and truth commissions, but largely, on open deliberation between honest and informed actors.

³⁶ See NEUFFER, *supra* note 27, at 310.

³⁷ DES FORGES & LONGMAN, *supra* note 25, at 61.