

## Institute of Ideas and Institut français

### **Attention Seeking: multiculturalism and the politics of recognition**

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#### **Claim-making and recognition - cases in point**

A panel will look at the arenas politics, litigation, crime and health to see how the demand for identity lead to claims for recognition.

Speakers:

**Tracey Brown** contributor to Compensation Crazy: Do We Blame and Claim Too Much

**Phil Carney** researcher at Middlesex University

**Dr Michael Fitzpatrick** GP and author of The Tyranny of Health

**Chris Gilligan** lecturer in sociology at the University of Ulster and Research Fellow of the Centre for Irish Studies, University of Salford

Discussion chaired by **Tiffany Jenkins**

#### **Tracey Brown**

In 1989 at the Hillsborough Stadium, 95 people were crushed to death, and that's something I think that most of you here, even as young as many of you are, remember vividly in terms of the scenes, and the response to that as a socially exceptional and completely outrageous experience. We saw these horrible scenes of people's loved ones on television, in fact people saw their own loved ones on television suffocating and being crushed. The reaction to that experience was very much a social and a political one, where there was great frustration and anger at the way the police had handled the experience. And there was a great frustration and anger about the lack of reaction from officialdom at the time. What then happened, with that frustration and anger, with little political outlet and little place to go, channeled through the Hillsborough Steering Committee that was established shortly afterwards. This was 50 law practices representing 92 families who had been bereaved at Hillsborough. They sued the Sheffield Wednesday Football Club, the stadium engineers and the South Yorkshire Police Authority.

The reason I raise this case is that I think it marks a watershed in terms of the way people experience injury, and I want to use that as a starting point for where we are today. Because what you had there was a socially exceptional experience, and something that was experienced politically, which had an outlet through legal claiming, and ultimately became the legal claim, in the sense that several years later, through many court appearances and appeals and so forth, the Steering Committee has degenerated into a whole number of different types of claims very much marked by their ability to pursue redress. You have years and years of deliberation about that which was highly frustrating for all those involved.

So you have something which has as a starting point this socially exceptional experience and its end point was the ability to fit the individual circumstances in to categories of a legal claim of loss. When you contrast that to Britain today, where we have a routinisation of claiming and blaming as a way of advancing frustrations in the

sense of injury or unfairness, to such an extent that people actually experience life through that claiming and blaming framework. We have the routinization of claiming and blaming to such an extent now that the NHS has £600 million worth of claims each year, that councils and other bodies who are at the receiving end of many claims quite often spend more on paying out to slippers and trippers on their pavements than they do on building new roads.

It's routinized to the extent that when people have car crashes they immediately feel the back of their neck and start thinking about whiplash and looking at the boxes to tick for the categories of injury for the claims they make. It's very much routinised in the work place when you see over recent years the rise of claiming concerning harassment issues, stress issues, gradually developing diseases, discrimination and so forth. I would be very surprised that anyone who works in a workplace of thirty or more people not to be familiar with some sort of claiming going on. Many of these claims don't often go to court, they're handled through claims brokers, whose ethos is 'where there's blame, there's a claim.' In fact this is to such an extent that the claiming volume is large enough to support a highly competitive industry here. Looked at society wide, much of the claiming that we see today is largely about non-exceptional experiences, as the ads tell us, 'Bob fell off a ladder, Alex had an accident in the playground.' And in cases of workplace stress we can all testify how unexceptional that is. Similarly, failure at school, the basis of many of the claims people are making, can build up this body of claim making.

So the starting point of claim-making today is how you personally experience the world, and I think a desire to re-state the experiences of your every day life is exceptional. This is the means through which people seek attention, and rather than the way people have traditionally understood the experience of frustration, as we saw at Hillsborough, and then claim legally through the courts. I think what we have seen is that it is so embedded in our society that people now experience the world through that blaming and claiming framework. If you look at the current litigation, some of the more high profile litigation, things like the deep vein thrombosis claims against airlines, for example, where somebody's bereavement, their loss of a mother, through a medical condition is now put forward as trying to find somebody somewhere who might have held some sort of responsibility in that experience. So in a way claiming and blaming is an almost immediate reflex of that experience. Similarly, with the mobile phone litigation, where the parents of children with learning difficulties have sought to bring a case against people who put mobile phone masts on buildings, again seeking some kind of influence, some kind of ability to blame and claim within that experience. A similar thing with the anti-depressant litigation going on at the moment; again people experiencing the side effects of anti-depressants, their immediate reflex is to look at some sort of responsibility elsewhere.

I think this tendency to experience the world, and the misfortunes of the world, in terms of the legalistic framework of claiming and blaming is no more apparent than in the breast implant controversy in the US, which was wonderfully written up by Marsha Engel, the editor of The New England Medical Journal, who sites one woman who stood up in court and said 'I am the evidence'. I think this very much characterises the way in which people experience their lives. Similarly, we see it with the way people handle the relationships with their neighbours where they document 'footsteps across the floor at 6am' and this kind of thing, from the outset establishing these relationships where they're anticipating potential problems with their neighbours, and therefore a legalistic framework of blaming and claiming. As this has

developed and become routinised I think it's become self-consolidating, and its given rise to some rather problematic developments.

One is, I think, the loss of the ability to see things in a broader social context. We very much look at the world now from the point of view of how things personally affect us, in many cases we can detect issues such as poverty, natural tensions of the work place, powerlessness, people's experiences of growing up on a horrible housing estate, and so on, being represented in terms of personal injury and therefore in terms of claim and blame.

The second thing I think it's given rise to is competitive claiming. Because as people around us start to define their experiences in terms of personal injury, it appeals to the rest of us to find that passive side in ourselves as well where we also all feel that we are special cases in our own lives. We expend the boundaries of harassment and stress and neglect to include the sorts of negative experiences that we think are perhaps very important in our lives, so we now start to define those experiences in reference to a claiming framework. For example, you'll notice, if you follow these sorts of stories regularly in the press, how many of them talk about recurring nightmares. It's almost now that I would defy anybody who has had a really traumatic experience in their lives not to have had recurring nightmares if they're going to pursue a legal case because that seems to be part and parcel of that experience. Similarly, it's very much the case that people who are physically injured, or emotionally distressed, or bereaved, that bereavement or injury lasts the length at least of a court case, it's never the case that somebody suddenly gets well in the middle of a court case. We're actually now experiencing things in a fundamental way in terms of that claiming framework.

I think just to posit where we have a problem is ultimately the cost of this to society is a very large one and when you compare it to the ability of the legal system to deliver to people what they're really asking for, which is negligible, I think the price we're paying as a society, the damage to our society of this highly individualised and competitive way we seek to understand our problems and resolve them, I think is a far greater damage than can be awarded in a court of law.

## **Phil Carney**

In the long aftermath of September 11<sup>th</sup>, it would seem an opportune time for the coldest of cold monsters, the sovereign state, to expand its punitive span, to deal more firmly with disorder and crime and to increase our security. But what if the arms of the state reached out to embrace and comfort the victim? What if the cold monster's all-seeing eyes filled with tears of pity? We all know by now the central rhetoric in the governments proposed major reform of criminal justice, the rebalancing of the system in favour of the victim, the rule that the criminal justice system will become the 'victim justice system'.

There is much in this to cause disquiet but let's take as an initial example something which apparently sweetens the punitive medicine, the concept of restorative justice. Of course it's a spectrum. At one end we find modest attempts to solve disputes between offenders and victims without going to the courts, especially useful with young offenders. Here the model is one of mediation, governed by discourses of conflict resolution, negotiated remedy, outside the normal circuits of punitive criminal control. At the other end of the restorative spectrum we find an altogether

more moralistic, psychotherapeutic and religious exercise, in which the expression of emotion is encouraged, tears are expected, a confession of remorse stipulated and sympathy which the pain of victim-hood demanded, an empathic curative communication between offender and victim is seen as a final closure: the victim's pent up anger released, the offender's conscience suitably stung, the victim's painful wounds, and the offender's wicked ways, finally mended. Emotions of pain, anger, guilt and shame become interior truths to be uncovered and piously expressed. A deeply worrying aspect of all this morbidity is the political and scientific respectability it is given in the otherwise sensible reformers and academics. There is even a discipline which calls itself therapeutic jurisprudence.

In this victim-centred climate, there is in restorative justice a great danger of slippage from benign mediation to an altogether more worrying ceremony of victim anger and offender humiliation. Leaving aside for now the invasion of justice by psycho babble, worrying enough, what really worries me is those forces of moralism and moralising politics that link together a public compassion for the victim with a greater will to punish. Here we are not so much dealing with the level of knowledge, where we discover recognition, but at the altogether more unstable register of sentiment, in which we find compassion. Like recognition, compassion is an everyday private event that should not be dragged into the sphere of public politics. The appeal to the feelings and rights of the victims is deeply ambiguous.

Let's take child abuse. On the one hand who can argue with the need to protect children from the exploiters and predators, yet does sensible vigilance have to end in the vigilantism or scape-goatism of a Megan's law or the suggested Sarah's law? They along with many other measures have often been proposed by campaigning victims groups. When the *News of the World* conducted its name and shame campaign it was appealing to victims' rights, and we were treated to the spectacle of innocents hounded out of their homes by the mob. A pediatrician was the target of a group of particularly stupid and illiterate vigilantes. To what extent should victims be actively involved as more than normal witnesses in the criminal justice process? What extent should a certain care for the victim turn into the right to make victim impact statements and sentencing or parole hearings, such as we see with great regularity in the US? To what extent should victims demand as a right the blanket permanent surveillance of ordinary offenders released from prison?

Reading the literature of victim's rights campaigners yields a strange mixture of values. First we get genuinely useful propositions to protect and compensate victims of crime. Then a call for sympathy for wounds and anger; then an assertion of rights to be involved in the criminal justice process; and then a call for harsher punitive measure, initially against selected groups of offenders, and then against the offender in principle. All the time the reader of such literature is seduced by compassion, drawn into the text by reasonable proposals and then faced with the demand to increase punishment, the seemingly ineluctable consequence of sympathy. Quite quickly we find ourselves distracted from pragmatic restraint and caught up in an agitated pursuit of the suspect to satisfy the rights of the victim, much helped of course if we remove some of the obstacles in the way such as due process and civil liberties.

A recent academic study entitled *The Money Shot*, looks at that crucial moment in Oprah style entertainment when the victim of some kind loses control and sheds tears. Far from being an incidental moment this explicit event is the climax, as it were, of the programme. It is a strange melange of high ratings entertainment and

pious moralism. The United States is a special place in which a mixture of religious and therapeutic forces combine to give a particular moral fervour to the rights of victims to display their wounds, elicit their tears and call for action, whether it is in Oprah or on the court room steps. From sentimental public compassion we follow a path to increasingly punitive action, to a prison population soaring over the two million mark in the states, to the prison industrial complex, to the castrol archipelago. Let this be a warning. It all begins in the warm glow of compassion, in glistening tears caught in the bright lights of the photographic spectacle, whether in the talk show, the press conference, or the memorial service, and ends in the dungeon darkness of vindictive punishment where tears of despair are unseen and unheard. Rebalancing justice plays to the spirit of revenge, rebalancing justice leads to an unbalanced justice.

### **Chris Gilligan**

1<sup>st</sup> of January 1969 is a historic day in Northern Irish history. Forty students dragged themselves out of bed and gathered outside city hall in Belfast to go on a long march, an 80 mile march, which is a great feat if any of you know students. That's not what makes it an historic day, it was the context in which they were doing the march and what they were demanding that makes it historic. The demands were against the discrimination of the state in Northern Ireland, the way the Northern Irish state institutionally discriminated against Catholics, so the demands were for things like equal access to jobs, equal access to housing, abolition of the Special Powers Act, which gave powers to the state which were used exclusively against Catholics who were seen as seditious and trying to undermine the Northern Irish state. The other thing about the marchers was that these 40 left wing students were defying not only the Northern Irish state, they were also defying the civil rights movement and the respectable members of the civil rights movement who had appealed for calm in Northern Ireland and had said that Terence O'Neil, the Unionist prime minister, was saying there were going to be changes afoot, they just had to wait for things to calm down before these changes would materialise.

These students said to themselves: 'if we just keep quiet nothing's going to happen, we have to stir things up'. And they did stir things up. When they gathered outside City Hall they were harangued by Loyalist protestors and as they went along their march, it took them three days, marching from Belfast 80 miles to the second largest city in Northern Ireland Derry, as they reached their destination they were attacked by crowds throwing bricks, petrol bombs, and who ran down to start to beat them with cudgels, and the police force stood by and watched all this happening, and in some cases they stood and congratulated some of the people who'd beaten the protestors. When the protestors finally got into Derry the police force went on the rampage around the Catholic parts of Derry city and some people have said that it was on that night that the notion of 'Free Derry' was born. Local Catholics fought against the police and had running battles with the police.

I think it's worth contrasting that march with one that happened 30 years later in November 1999, that started off from Derry, or as the people who refer to it who were on the march 'Londonderry', because in a multicultural society you have to have different names for the same thing. And on this march, there were 400 on it rather than 40, and they were entirely Protestant and they were loyalists, and they were demanding that the Good Friday Agreement be done away with, that the Good Friday Agreement didn't really give recognition to Protestants, and the banner that

lead this march said 'We are the Real Victims'. The claim was that it was the Catholics who were posing as victims and were getting recognition in the Good Friday Agreement while the Protestants weren't really being recognised as victims.

I think the contrast between the two events helps to illustrate some of the things that have changed in that 30 year period. One of the things which has changed is the terms in which recognition has been posed. In 1969 recognition was a demand for access to material goods, to jobs, to housing, things like that. In 1999 it was in therapeutic terms which things were posed. In 1969 the demand was for equality, there was a recognition that Catholics and Protestants were treated differently, and the demand was that they shouldn't be treated differently, in the public sphere at least; these difference shouldn't be given any recognition in the public sphere. Whereas in 1999 the demand is that there are differences and that those differences be given public recognition.

A third thing I want to draw attention to is that in 1969 it was both Catholics and Protestants that were on the march, and one of their aims was to transcend the sectarian divide in Northern Ireland. They were concerned in the way in which the institutional structures of the state excentuated sectarianism in Northern Ireland. Whereas in 1999 the demand is to maintain the sectarian divide. Those marchers, while they were complaining about the Good Friday Agreement, their argument wasn't against that as such, their argument was against the balance of the settlement in the Agreement. They accept that there is a divide in Northern Ireland, which is what the Good Friday Agreement does, it says there is a sectarian divide in Northern Ireland so lets just recognise it and institutionally recognise it. Marchers in 1999 weren't challenging that, they were accepting that, they were just saying that the way in which the recognition was balanced was unfair to Protestants and gave more recognition to Catholics.

That is the problem with this form of recognition as it sets one group up against the other: if one group is getting something it might seem like the other group isn't. It makes things that people may have been hostile over to have conflict over. The marchers in 1999 were marching against the fact that the Orange Order parades weren't allowed to go ahead, so they were marching from Derry to Belfast as if they were trying to turn history back and traverse the route that was taken in 1969, and then go see their friend in Dumcrie where the Orange parades were. In a sense they're right, they have a point, because the parades weren't an issue before the peace process in Northern Ireland; although many Catholics didn't like the Orange parades, they didn't actively oppose them, that's a more recent phenomenon. So what the Protestants there were saying was that our culture is not being recognised by nationalists, and in a sense they're right. So, although I've given the example of a march by Protestants for recognition and it seems intolerant towards Catholics, it is something that works the other way round as well.

### **John Fitzpatrick**

I want to say something about how the law, the criminal law in particular, has dealt with this notion of identity as we've been talking about it today and I want to do so through some examples in respect of the offense of racially aggravated harassment and assault. Racially aggravated offenses were created by the Crime and Disorder Act in 1998, and an offense is racially aggravated if there's an offence, first if an offense takes place, an assault or harassment or damage to property or something

like that, and in addition to that, at the time the offence was committed, it was motivated by racial hostility or it was accompanied by racial hostility. And the significance of an offence being racially aggravated is that there is a significant addition in terms of the prison sentence that can be imposed. Racial hostility is defined in the Act as hostility to someone on the grounds of their race, their nation, their colour, their ethnicity, etc., so if an offence is committed with this dimension, you're looking at something very serious.

Let me give you some examples. Not long after the act came into force a black man was sitting on a television in a street, I think it was in Liverpool, and a white police officer approached him and asked him what he was doing, and who owned it, where he was going, where he had come from, and so on. After a while the black guy said to the police officer, I'll give you the words as I remember them, 'listen you fucking honky, stop hassling my black arse.' The black guy was arrested and convicted for racially aggravated harassment of the police officer.

A couple of years ago, very near here, there was a young guy on a bus who got into an altercation with the bus conductors, during which an assault was committed on her, and he was arrested, but the serious aspect of the offence was that he'd called her a 'stupid African bitch'. He went down for a substantial prison sentence. He appealed and he had to points in his appeal. The first was that the word 'African' did not connote a race, a nation, an ethnicity, or a colour. His council took the court through Africa, in respect of all the different colours, nations, ethnicities, races, that were there. The court sort of scratched its collective head at the prospect of this and in the end the judge just more or less threw his hands up and said 'well everyone knows that you meant a black African, so you're guilty on that one.' His second line of defense was 'alright well I'm West Indian, and I always see myself as an African, and as an African, I couldn't really insult another African.' That's not what this legislation was about it was about respect between different races, nations, ethnicities, etc. The judge thought about this for a while then said 'no, no, you can insult your own kind.' 'Kind' was interesting, another category was introduced.

Alright third example: I was acting last week for a seventy-five year old lady who was charged with racially aggravated harassment, and she's seventy-five, she's getting on, she's okay but she's eccentric and she's not all there all the time, and she spends a lot of time going up and down her back garden shouting and mumbling and grumbling, but it includes a lot of allegedly racial abuse in this to the next door neighbours, who have a mixed race child. So she was arrested for racially aggravated harassment on this account, and the magistrates decided to send her to the crown court for trial. The magistrates send people to the crown court for trial when they anticipate more than 6 months imprisonment being imposed. So it got to that stage where I arranged for a solicitor to represent her last Thursday, as it happens a Greek guy, and I arranged also for one of my students, as it happens an Indian guy, to go down with her to provide her with some report. When the magistrates read the charge to her they asked her 'do you understand the charge' she said 'no I don't, I'm sitting here between a Greek guy and a Hindu, and they're on my side, I can't be a racist.' So that case will continue.

Before saying something more about the particular issues raised by those cases, I think it's important to situate this particular legislation in the broader context that we've been talking about, about how the law relates to the issues we've been discussing. The law has many functions and preoccupations and one of them is to maintain its legitimacy, and as Tracey was saying, it is about providing connections,

it is about providing responses for perceived needs, and of course its also about shaping and directing the understanding of those needs and what might be done about them. I think the legislation, this particular piece of criminal legislation is very much in that category, although I think it's an example of the legal response to the issues we're talking about that has every prospect of unraveling.

Let me just say one or two things about the specific issues arising in respect of this legislation. There's an element in which all those examples where the racial issues, the identify issues, was not at the heart of the exchanges or the difficulties that were involved, and there's a real danger that the legislation is at the very least over-emphasising, singling out one dimension, and at the very worst, fixing the identity issue as a crucial issue in this particular situation. It's not as if I think any of the parties we're talking about probably saw the crucial thing as to the particular dispute in these terms, but that is what the law's done.

Another issues is of course that it doesn't actually protect, in the way that it ostensibly purports to do, those who are especially vulnerable on account of their identity as the state sees it. It's also divisive in that it does the singling out and doesn't pick out other sensibilities or needs in terms of addressing them. What it does is it says 'you can say you're stupid, or you're a bitch, but you can't say stupid African bitch.' You can't pick up on these other things. Most of all though, I think this is the biggest problem with it, it starts to undermine and to deny the promise that the law will apply equally to everybody. It says it does, but a lot of us have spent a long time saying it should, but it doesn't. Let's make it apply equally to everybody.

Now I think we're taking a step back when we say 'well its not going to apply equally to everybody even at the formal level, the promise of the equal application of the law to all is compromised by building in this idea that certain people will get certain protection. The whole thrust of this particular legislation is not then simply to protect or to respond to particular needs, or the particular perceptions of the importance of identity, however difficult and however actually impossible it is to define, the whole thrust is to promote the categories. The whole thrust is to promote those categories to everybody in society.

### **Tiffany Jenkins**

Thank you to our panel. The last session deals with the question whether the state should be in the recognition business, so I've got one question for the panel. I want them to ignore that question for the last speakers to answer. What I'm interested in you all saying a little bit on is this idea that was pushed in the last session, and Tracey you touched upon it, that we are in the business now of creating problems, we are creating a situation where we have institutionalised anger, we are creating a diagnosis. Tracey you seem to be suggesting that you see that with compensation, and John you seem to be suggesting that we're creating racism where it doesn't exist, Chris with problems where they don't exist, or rather the kind of preservation of those problems rather than moving on, and a kind of glorification of a victim situation. Can you relate your experiences a little bit to the question of whether we're creating problems rather than solving them?

### **Tracey Brown**

I think that's something that's happening on a number of levels. I think its happening formally in the way in which certain kinds of claim making are sponsored, I mean I used the Hillsborough example to start with because I think coming out of



that is quite interesting because of course we're talking about the late 80s, we're talking about a sensibility there in officialdom to things such as race riots and poverty riots, so there was a welcoming of other channels through which people could pursue their grievances. And what we've seen following on from that is a welcoming of other ways in which people seek some sort of authority or some sort of authority intervention in their lives, and that's been through things like the consumer protection legislation, the citizen's charters and so on.

So in a sense yes, I think it is official and we see it with new ones being constantly innovated, where people put forward a set of claim about things like DVT, which again gets an official response, which means that next time litigation is launched on a particular risk issue of course it will follow the similar pattern, seeking an official response. I think it also happens informally, which is very evident in a workplace situation where if somebody is claiming for harassment, of course the implication of their claim is that they are singling themselves out as being particularly vulnerable or having a particularly difficult time, and rather like the competitive workload thing that goes on at work, you also have competitive claiming, where people think 'well if they've got a case, so have I'. You do I think start to take on those sorts of terms and see things in the terms that dominate our society, so I think people use words like 'harassment' fairly spontaneously now, to explain what's going on in their lives, and I think it's quite profound the way that's entered into consciousness.

### **John Fitzpatrick**

Well I would agree, I think that, again in the examples I was talking about, the way in which the people involved were encouraged to see the conflict they had been a part of in terms of their identities seems to me entirely destructive. It creates a problem for them, because the channel is available for them to complain in that way and to get vindication along that channel, but also the encouragement is there for them to see it in that way, to report the incident through the prism of that understanding, to begin to internalise the importance of this issue in their lives. It's also creating a problem for the law. You get this ridiculous, and I think degrading prospect of a judge having to turn cartwheels in order to make sense of legislation, to make sense of categories that have no scientific basis, that have no basis at all, and the judge is trying to make those because it has been perceived that this is a way in which we can encourage people to see the world. That reflects on everybody. I should say that the defendant in that case is called Mr. White.

### **Tiffany Jenkins**

Phil, are we creating victims?

### **Phil Carney**

I'm not sure. I was interested by this discussion of the public and the private and the boundary that should exist between the public and the private, and how the public is a kind of, let's say in ideal terms, a kind of civic sphere with formal rights that are equal, and so on and so forth. I think what's interesting in the role of the media, and the role of the mass media, because that's creating a whole other public sphere in which there's no such thing as 'rights', I think it's irrelevant to the discourse, it's much more to do with sentiment and moralism as far as I can see. And entertainment and gossip and sport and all this sort of stuff. And I think that there is a major problem with populist politics which I think is part of the equation which helps to construct victimhood, and populist politics emerges from a triangle of politicians, the people and the media, and I think it's a very big problem. I'd be interested to hear from anyone in the audience who's connected with the media, how they feel about this.

There was a case on the BBC news the other night where a lorry driver had crashed into a car and killed two people. He'd fallen asleep at the wheel, but apparently he suffered with a sleep disorder. It had gone to appeal, and the sentence was reduced from 8 to 6 years. Instead of actually reporting what the incident was about, this particular news item involved a journalist interviewing relatives of the victims on the steps of the court, in which the relatives were saying how appalling the case had been, how appalling that the sentence had been reduced, and that this was not just. It struck me that that was a piece of great laziness on the part of the journalists and editors involved, but it is, in addition, if you like, playing to that populist politics of victims and punishment. One of the points I'd like to make is that there is a direct link between victim-hood and punishment. That is very much part of the populist equation. Yes indeed, the answer to that is yes indeed we are magnifying and exaggerating victim-hood, but it's part of a larger political picture that needs to be understood, and I'm not sure I fully understand it myself.

### **Chris Gilligan**

I wouldn't like to say that problems have been creating in Northern Ireland where there weren't problems before. Its more the way in which they've been framed as different, and the assumption about what the source of the problems are or people's capacity to dealwith the problems that confront them is something which is framed differently. I think the thing that I've been looking at most recently where this comes out most clearly is an assumption that people are traumatised by the conflict or will have been traumatised by the conflict, the assumption at the Holy Cross school was that the children will have been traumatised by trying to get to school through a barrage of abuse from protestors, and many of the children were counseled for trauma. I think, however, that the trauma is a consequence of the peace process rather than a consequence of the conflict, and where you get a clear illustration of this is that amongst Republican prisoners, I don't know about Loyalist prisoners but it could be the case with them as well, and amongst former RUC members, many of them present themselves as traumatised now, and what they're saying is 'what was it all for?'

The RUC men are saying 'I took up arms to stop people taking over the country and now they're in government. Gerry Adams and Martin McGuinness are in government.' So they look back at all of their work career and say 'what was it all for?' it seems meaningless to them, and for Republicans its like 'we didn't fight for 30 years to put Gerry Adams and Martin McGuinness in government, we fought for a bit more than that.' So it means they look back at their experiences through that light.

### **Tiffany Jenkins**

Thank you. Lets go to the audience.

### **Audience Member 1**

Bill Durodie, Kings College London. The question that I've got really is that it's always been the case in law that it's always been possible to have laws that are legitimate yet immoral, and an example that might spring to mind is that certain religious campaigners might consider the abortion law to fit into that category, for instance, and I'm sure you could find some on the other side. Isn't there a greater tendency today to find laws that are illegitimate, but promoted as moral? For example, armed intervention in Kosovo was presented in such a way, and US possible intervention in Iraq, if it breaks UN resolutions would be illegitimate but is presented as moral conflict. The problem I'm really trying to allude to is that there is

a decline in legitimacy both at a formal level, by which the US can ignore the international community in that example, but more importantly on an actual level, in as much as legitimacy is ultimately legitimacy in the eyes of us, we are the people who grant the law legitimacy. Yet we no longer engage in the political process, as we can see from voter turnouts in general elections of 50% or less and governments elected by a quarter of the population. At that level, therefore, all western governments are illegitimate and the consequence of that is that they have to present their actions as moral acts, because they find themselves as isolated elites, needing to self-justify and self-affirm their actions, hence there is an explosion of moralism in the field of law as a consequence of the decline of legitimacy.

### **Audience Member 2**

Vanessa Pupovac, University of Nottingham. I was very struck with Phil's discussion of victims' justice in terms of his outlining of the implications for the defendant, but I think there are very serious implications for the victim. Victims' justice implies the requirement for the rehabilitation for the victim as well. It problematises the victim's personal emotions. This comes out particularly in international victims' justice, nevertheless its implicit as well in domestic victims' justice. If the victims' traumatised memory is not processed, then the victim is in danger of disfunctionalism. What underlies the therapeutic jurisprudence is a notion of cycles of trauma and violence.

### **Audience Member 3**

One question regarding the anti-discrimination policies in the UK. I understand that the Amsterdam Treaty, the European Treaty, really has a lot of influence over the anti-discrimination policies in the UK. But I wonder why if at the European level this legislation talks about general grounds of discrimination, why in the UK apparently it was only focused on racial grounds? I mean discrimination because of the colour of your skin.

On the other hand I would also like to have a comment if you, as a lawyer, have not only considered the problem with the law that it is applied in an unequal way to different people, but also how societies consider the impact of crime. Our organisation, for example, is working with police officers who, as a normal procedure, at least in some areas in London, the first thing they do is contact the representative of the ethnic minority. For example, if one black child has been the victim of one crime immediately the police has the order to go and contact the representative of that ethnic community, and when we ask why they say 'well the black community is suffering especially because of this attack.' So our organisation wanted to know why only the black community and not all of the community is suffering because of one crime.

### **Audience Member 4**

Barbara Huson, Barrister. I just had a very quick question for the panel on what they thought about the role of the judiciary in all of this, because to a certain extent we as lawyers have to plead guilty to the fact that yes we do piggyback on these emotional public campaigns for justice in circumstances in which the legalities of the claim maybe somewhat dodgy, but nonetheless a client wants us to take the case so hey we will. But I think the more troubling aspect of the current situation in the courts is the extent to which the judges themselves do not seem to be immune from the special pleading that seems to go on increasingly in our courts, whether it's the criminal courts with victims demanding recognition, or various other categories of

claimant demanding that they should be allowed to claim irrespective or not of whether their claim has real legal legitimacy.

I just wanted to mention the fact that judges are under increasing political pressure now to buy into whatever seems to be the acceptable political populist program, whether its you know, being tough on particular types of criminal, or whatever it may be. Judges are subjected to an enormous amount of PC training behind the scenes which people know very little about. The Judicial Studies Board and others organise programmes at which the judges are subjected to a type of special pleading and propaganda, and I just wondered if the panel thought whether we are now getting to a stage where our judges are losing their independence of thought and of function?

#### **Audience Member 5**

We always used to have a slogan, 'pull yourself together man, for Christ's sake' but now, when you have this government which has no social base in society, the Blair government, they try to seek as many rules as possible. If you can turn us all into victims, where you're a victim, you're demanding protection, and the form that that protection comes in is more legislation. Here we are getting more and more laws every day in order to protect these victims. It's a logical consequence, well what do you expect? All we can say is pull yourself together for Christ's sake. There's an article in *spiked* on the web from this guy that was sodomised by this priest, it didn't end his life, its exactly like rape, rape's social violence as well, because it implies that for the woman something terrible has happened, that she's different, you know it's something physical and not the problem it used to be. It's exactly the same as with this guy, Peter Tatchell said it's a more intense experience....

#### **Audience Member 6**

Tessa Mayes, Journalist. I want to respond to what Phil was saying about confessionism because I think it's true, more and more in the news now you do see the prevalence of victims being interviewed as if they're experts or the only people that can comment on traumas or news events. It's not happening in every news bulletin, but it's certainly happening a lot more and its very disturbing. There was one case where I was watching the BBC local news, and it was about the victims of stalkers and it was a news bulletin about the police's launch of their new stalking guidelines, and they had the victim, the police officer launching the report, and the reporter. Suddenly the reporter turns round and says 'I was a victim too.' And the rest of the news bulletin, this is a news bulletin, was all about her experiences, and it was at this point that you begin to realise that this has gone too far: this is not news, this is a three minute item about a reporter's personal experiences which are perfectly valid, don't get me wrong, but do they have a place as a news bulletin? I don't think so.

Just to finish, I think its very important what you said about the connection between victim-hood and punishment. I think the two are connected, I think the sort of elevation of victims and their experiences really reveals a suspension of analysis, and in the case of new bulletins, the removal of facts and inquiry. At the same time the impulse to punish is really connected, it's a reaction. So instead of being open to criticism of our victim culture, those who support it ban criticism and want to try and censor criticism, as it apparently insults the victim.

### **Tracey Brown**

Well of course people are experts on what happens to them in their own lives and I think if we accept the premise that individual experiences and individual outlooks are the defining characteristics of the issues that confront us then I think we have to accept the fact that we go no further than how somebody individually defines their experience. What I'm concerned about is not that the legal system can't deliver on that, which I think is a legitimate point, but that it actually undermines our ability to affect any form of social and political change. To give an example, what you experience individually as workplace stress is no basis for collaboration, which provides a very stark contrast with the past, where people really thought their experiences at work were the basis for collaboration, and that give rise to large movements for social and political change. I think we can really see the reverse in effect now as there are fewer and fewer bases on which to organise any form of collaboration or solidarity with other people.

### **Phil Carney**

I came across Adam Smith's *Theory of Moral Sentiments* recently, and there is a bit in it which should be read to try and understand what's going on. He wrote in a time of public punishment, and he said that basically what goes on is that, when someone is victimised by a criminal they suffer, we suffer with them, and it is that joint suffering which leads to a joint anger which then leads to the punishment of the criminal. What Smith also said was that a natural compassion for the criminal will limit that punishment. So what he's doing is producing a self-regulating system of punishment based on desire and compassion, not dissimilar in fact to that self-regulating system he talked about to do with the market. I'm actually very worried about that, and I wonder, just as a question, whether there are any connections between *The Wealth of Nations* and *Theory of Moral Sentiments*?

I think just very briefly about judges, because I heard the question. I don't know anything about judges, but judges are supposed to administer justice and one of the things about justice, I believe, is that its supposed to be a process in which there is discretion, but it strikes me increasingly within justice its being turned into a type of machine, where you read the punishment off from the offense. It strikes me that this reduces the role of the judges more and more. It used to be said that judges were stupid, or that they were class biased or that they were this or that. I'm not sure whether anyone ever talks about judges any more in those terms as they're now part of a punitive machine.

### **Chris Gilligan**

In relation to this question about legitimacy versus morality, I'm not sure it's because of a lack of participation by people in politics that there's an attempt to gain legitimacy through morality, because the Northern Ireland case doesn't seem to bear that out. In fact in Northern Ireland its seen that there's too much participation in politics, as people are seen to be too keen to participate even in passive terms of voting, so the reason why the Assembly has been suspended and there isn't an election on it is because there's concern it will be another referendum of the Good Friday Agreement. It seems to be that the way that the state relates to the citizens is different. There's an attempt to circumvent or render less important those mechanisms through which the state is held accountable by the electorate, and institute kinds of relationships that are more like the therapeutic one, where accountability doesn't come into it.

**John Fitzpatrick**

Three quick responses. I think that on the judiciary, I'm very sympathetic to the apprehensions you expressed concerning the growing power as a result of the Human Rights Act and developments in the common law. I mean, we can't go into it here, but I think I would see the judicial encroachment and large power as an instance of the encroaching power of the law generally, and the enhanced role of the law in people's lives. I don't think the judges as a whole were ever stupid, but they were certainly class biased in the past.

On legitimacy, especially in the international dimension, the point that was raised there, as a matter of fact the interesting thing is how the weakness of America is expressed in them repeatedly going to the United Nations for some legitimacy from some legal process. I mean that's the interesting thing counter-intuitively at the present time, they've gone back and back again to get that. I mean obviously the international sphere is very different in terms of legitimacy and illegitimacy in law. I think in the domestic sphere there is legitimacy, and this is something we have to cope with: this isn't just coming from the state and the legislators. There is a legitimacy in the legislation I was describing, amongst significant sections of the population – and not always those to whom the legislation is addressed. Tracey brought out very well, I think, just how much people want the law to intervene and to be on hand for their usage, and so I think there's a lot for us to talk about there.

Finally then, on the point that you raised, yes you're quite right the domestic legislation and the municipal legislation in respect of anti-discrimination is not as advanced or as extensive as in Europe: I'm not sure if that's a good or a bad thing, I suspect a good thing. I think that in the situation that you actually described, it seems to me that if it is appropriate for the police to respond in a particular way when a particular crime happens to particular people to inform themselves more fully about what's happened then they should do that. The crucial thing is this: I'm suspicious of the term 'community', of the category of community and the context in which you used it. I think the important thing is this: I'll return to a comment that Kenan Malik made this morning – we should be dealing with people, not cultures. That's what should receive the emphasis and what we're talking about today in this session is the way in which the law recognises identity. It seems to me, from my point of view at least, that the extent to which it is promoting, in the examples I have given you, a recognition of identity, is quite illegitimate.