

BOOK REVIEW – *The Moral Witness: Trials and Testimony after Genocide*, by

Carolyn J. Dean

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We often assume that the novel inclusion of victims into international criminal proceedings is an ultimately positive step in domestic and international legal frameworks, one in which victims can receive justice and reconcile their trauma. However, Carolyn J. Dean's *The Moral Witness: Trials and Testimony after Genocide* demonstrates that this assumption, while admirably placed, is not necessarily true. For instance, she writes that "the symbolic victim provides a rationale for the usurpation of victims' voice by lawyers, human rights' proponents, and politicians, and is thus also an alibi for the empowerment of voices other than those of the victims" (Dean, 2019, p. 142). Dean's work pushes us to wonder whether grouping vastly different cases of mass violence under terms such as genocide is truly beneficial. For instance, categorizing crimes is helpful legally because it provides a method with which to identify and prosecute crimes. However, assessing mass atrocities in comparison with one another often diminishes or overlooks the unique individual suffering experienced by victims in each case. This book is a powerful in-depth analysis of select trials and legal institutions that formed our public understandings of victims of mass violence over time and serves to challenge these narratives. Dean (2019) separates the evolving conception of the "moral witness" into four distinct historical categories: the avengers (1921-1950), the camp survivor (1950-1961), the Holocaust witness (1961-1990), and the global victim and the counter-witness (1990-present).

The concept of the avenger witness arose during the trials of Soghomon Tehlirian and Samuel (Scholem) Schwarzbard in the 1920s. The defendants were victims of the Armenian genocide and Ukrainian pogroms, respectively, and each assassinated individuals largely responsible for perpetuating these mass atrocities. Both were acquitted on pretenses of temporary insanity. Dean analyzes these trials, demonstrating how the defense cleverly put the genocidal crimes themselves on public trial, in a sense, and shifted attention away from the crimes of the defendants. At the time, there were not yet

any legal pathways or terminologies that could be used to address the genocidaires' crimes directly; thus, this was the only way to secure even a sliver of accountability for their mass crimes.

The concept of the camp survivor emerged in French libel cases that occurred in the late 1940s and early 1950s, when select French leftists tried to prove the existence of the Gulag to other leftists loyal to the Soviet Union by drawing comparisons between Soviet and Nazi camps. These trials were successful in depicting an image of and garnering sympathy for universal camp suffering, which drew necessary attention to the Gulag. This chapter, however, is an excellent example of the problem Dean (2019) forces readers to grapple with: whether comparing instances of mass suffering benefits or harms victims. The attempt to minimize differences in camp experiences across demographics and circumstances to highlight their similarities also resulted in the minimization of individual sufferings. Although there were notable similarities worthy of attention, each group, due to varying contexts, sustained specific traumas. As such, some Nazi camp survivors felt insulted by the comparison, as they believed it diminished their own unique sufferings. For example, the primary individual responsible for drawing the comparison, David Rousset, predominantly highlighted forced labor as the trademark of camps, rather than extermination – a hallmark of Nazi concentration camps and the Jewish experience of the Holocaust. Throughout these trials, Rousset and his colleagues also failed in their goals because they, unfortunately, became too enmeshed in Cold War political minutiae to be wholly effective in conveying their message about the horrors of the Gulag.

The Holocaust witness – the epitome of genocidal suffering and victimhood – came about during the trial of Adolf Eichmann, former head of the “Jewish Affairs” sector of the German Gestapo. Lawyers during this time debunked extremely pervasive victim blaming ideologies that faulted Jews for not resisting Nazi extermination, validating Jewish suffering during the Holocaust and restoring a degree of dignity to those blamed for their own persecution. The trial also presented “witnessing” as a moral duty that Jewish victims had to their dead Jewish relatives and friends – meaning that testifying became a moral imperative in a post-genocidal context. This paved the way for the emergence of the global victim and counter-witness.

Following the Eichmann trial, the global victim and counter-witness were further catalyzed by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) and exaggerated by the International Criminal Court (ICC) and international humanitarian organizations. Global victims are victims of mass atrocities who have had their individual experiences stripped from them in the name of a universal pursuit of reconciliation. The ICC, for example, seeks to provide victims with redress but recognizes victims as a *concept*, rather than

individuals who have experienced extremely different types and degrees of harm. Victims' individual experiences are drowned out by the voices of those trying to speak for them and claiming to know what they need. The counter-witness, on the other hand, represents the general populace who consumes atrocity media, which often perpetuates the very violence said consumers seek to end.

Dean's (2019) threading of these trials together illustrates an extremely nuanced understanding of victimhood and mass atrocity representation. The international community, including state and non-state actors, have made strong commitments to end impunity for perpetrators of mass violence and repair harm done to victims. Unfortunately, our collective attempt to humanize victims, to universalize violence most of us do not understand, has led us to let down victims. This piece was especially intriguing, considering my own research on ICC reparations in the Congo, and reminded me of *The Prosecutor v. Thomas Lubanga Dyilo* case. Victims were consulted on what they wanted in the form of reparations on several occasions, but the Court ultimately ordered the opposite. Victims and their legal representatives largely advocated for individualized reparations, yet the Court issued collective service-based reparations instead (International Criminal Court, 2021). While it is true that the ICC and Trust Fund for Victims had to consider several other factors aside from what victims wanted – such as funding and implementation ability, the possibility of escalating ethnic tensions, and advice from other involved parties – its decision is the perfect illustration of Dean's argument.

Not only does Dean (2019) provide an in-depth historical overview of moral witnessing, she also presents her readers with a dilemma: is the categorization of mass atrocities under terms like genocide actually a good practice? Yes, it can be helpful when seeking to prosecute mass crimes, but it may not necessarily be good for victims. For example, although both Jewish victims of the Holocaust and Tutsi victims of the Rwandan genocide experienced violence with similar ethnic and racial motivations, their actual experiences of that violence were vastly different and are difficult to adequately compare. This universalization of mass atrocities and conceptualization of global genocidal victims allows us to often make problematic comparisons. Would it instead be more beneficial for victims if we assessed each mass atrocity in isolation? The answer is not entirely clear.

Although she provides an excellent analysis of the historical progression of moral witness and victimhood, Dean does not explore a potential solution to the dilemmas she poses. For example, if trials are not exactly beneficial for victims, then should we start looking beyond trials when seeking justice for victims? Are there viable alternatives to criminal trials that would provide victims with a better platform to share their experiences, get recognition, and receive justice? It is completely acceptable that Dean did not explore any such solutions in her work, as that was not the objective of her book, but it does present

the scholarly and international community with a dilemma worthy of further investigation. Thanks to Dean's *The Moral Witness: Trials and Testimony after Genocide*, we have a better grasp on how the world has assigned moral value to certain victim groups over time, and how that moral assignment has affected those groups. We also now understand that our imagination of a moral witness to genocide and other atrocious crimes may have been, and still is, problematic. The imperative now is to find a better solution, one which addresses victims' needs. The first step to doing so, I argue, is to not only consult victims directly, but to also genuinely listen to them—as part of the problem is that actors seeking to advocate for victims end up speaking over them and disenfranchising them from the reconciliatory process.

References

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