

Beyond Vengeance and Forgiveness: Victims' Testimonies in the Eichmann Trial and South Africa's Truth and Reconciliation Committees

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The changing role of victims in international criminal law presents us with a riddle: While the architects of the Nuremberg trial declined to call victims to the witness stand, due to the fear that their testimonies would be biased, driven by vengeance, and undermine the legitimacy of the trial as a 'show-trial,' since the revival of ICL in the 1990s, and in particular since the establishment of the International Criminal Court (ICC), the participation of victims in international trials is seen as essential to achieving justice. What can explain this dramatic change? The common explanation offers a narrative of progression in ICL's understanding of the significance of victims' testimonies, together with a change in our perception of justice – from retributive to restorative justice. This article challenges the narrative of progression by comparing two constitutive moments in the development of our understanding of victims' testimonies: the Eichmann trial (1961), and the South African Truth and Reconciliation Commission (1995-1997). While both legal processes put victims' testimonies at their center, the literature tends to contrast these two processes as adhering to two different conceptions of justice: retributive-punitive vs. restorative-reconciliatory. However, when we focus on the way the two processes dealt with 'unwelcome' emotions, such as vengeance – we begin to notice continuity. In order to understand the challenge that feelings of vengeance or resentment pose to law, I turn to exploring the alternative treatment of such emotions offered by two poet-journalists who reported on the proceedings to the general public: Haim Guri in the Eichmann trial, and Antje Krog with the TRC. I argue that while the law is threatened by expressions of vengeance, these poets see them as important emotions that should be expressed in public, as they can trigger a collective self-examination and debate about issues of collective responsibility of civil society in relation to the victims.