Human Rights and Victims[1]

Victims are at the centre of human rights thinking. No other group of individuals has a more sacred place in human rights law.

Article 34 of the European Convention on Human Rights (ECHR) grants the right of petition to anyone claiming to be a "victim" of a violation of the Convention.

The Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) allows the UN's Human Rights Committee to receive communications from "victims" of transgressions of the ICCPR.

The UK's 1998 Human Rights Act, s.7, allows an individual who is a 'victim' of "an unlawful act of a public authority" to take that authority to court.

The UN is currently in the process of debating 'draft basic Principles and Guidelines' for victims of violations of international human rights and humanitarian law. These affirm that "victims should be treated with compassion and respect for their dignity, have their right of access to justice and redress mechanisms fully respected….together with the expeditious development of appropriate rights and remedies...[2]" This follows a number of 'soft law' initiatives and resolutions on victims by the UN and Council of Europe since the 1980s[3].

Most significantly, the Preamble to the Rome Statute, which established the new International Criminal Court (ICC), put justice for victims at the heart of its work. Echoing the sentiments in the Universal Declaration of Human Rights, drafted half a century earlier, it recalls that "during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity." The Statute expressly recognises that measures to guarantee the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and their families are

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[1] Francesca Klug, Centre for the Study of Human Rights, LSE, June 2003. With special thanks to Claire O'Brien, research officer at the Centre for the Study of Human Rights, for meticulous research.

[2] *Draft basic Principles and Guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law,* Annex to UN Doc E/CN.4/2000/62, 18 January 2000.

[3] For example, UNGA Resolution*, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* UN Doc. A/RES/40/34, 29.11.95; *Recommendation* No R(85)11 of the Committee of Ministers to Member States on the position of the victim in the framework of criminal law and procedure, 28.6.85.

essential to the work of the ICC. The prosecutor is required to take special measures to protect victims and witnesses[4] and the views and concerns of victims must be presented and considered at appropriate stages in the proceedings[5].

Human rights abuses by private parties under international law

The factor which distinguishes this focus on victims' rights in human rights law from the preoccupation of the current government with "re-balancing the criminal just system" – most people would assume – is that human rights law is focussed on *state* violations whereas the government is obsessed with crimes committed by *individuals.* The campaigns and comments of the main civil liberties NGOs in this country reinforce the impression that within the criminal justice system it is the rights of suspects, defendants and prisoners that human rights law is solely concerned with (though not, interestingly enough, Victim Support, which impressively recognises the potential of the Human Rights Act (HRA) for securing victims' rights)[6].

But is this assumption correct, either as a matter of law or discourse? There are various references in the Rome Statute which strongly imply that the ICC has jurisdiction over so-called 'non-state actors' who carry out "crimes against humanity" and allied abuses against civilian populations.[7]

The 'draft basic Principles and Guidelines' for victims of violations of international rights law likewise requires victims to be afforded "equal and effective access to justice *irrespective of who may be the ultimate bearer of responsibility for the violation.*[8]"

The UN Convention on the Elimination of All Forms of Discrimination Against Women requires states to take appropriate and effective measures to overcome all forms of gender-based violence, "*whether by public or private act.*[9]" There are parallel obligations on states to protect individuals from abuse by private parties under the UN Convention on the Elimination of Racial Discrimination and in the Convention on the Rights of the Child.[10]

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[4] Article 54 (1).
[5] Article 68 (3).
[6] See Human Rights Act*, Briefing Paper*, Victim Support, 2003.
[7] *Rome Statute* Article 7(2) (a) (e) and 2 (f).
[8] Op cit note 1, Article 3 (c). Emphasis added.
[9] CEDAW General Recommendation No. 19, 29.1.92 (para.. 24). Emphasis added.

[10] E.g. CERD Articles 2 (d), Article 4 and Article 6, and CRC Articles 2 (2), 3(2), and 19.

Obligations on states under ECHR

More significant, perhaps, for a country like the UK which has incorporated the ECHR into its law, is the evolving jurisprudence of the European Court of Human Rights (ECtHR). It is nearly 20 years since the Court declared that:

> "there may be positive obligations [on the state] inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the *relations of individuals between themselves*.[11]"

It is more than 10 years since the then European Commission on Human Rights held that the state was subject to a 'positive obligation' to provide adequate protection for a woman facing sustained sexual harassment by her ex-partner[12].

This protection cannot necessarily be provided by civil remedies. "…Where fundamental values and essential aspects of private life are at stake" as in sexual assaults "effective deterrence…can be achieved only by criminal law.[13]"

There is no direct reference to 'positive obligations' in the ECHR but the ECtHR has founded the doctrine on the basis of two substantive provisions of the Convention. First, the very first Article requires states to *secure* ECHR rights to everyone in their jurisdiction (not just refrain from abusing them). The Court has concluded that to be *secured,* rights have to be "practical and effective" and not "theoretical or illusory.[14]" In other words, it is no good having a right to life if the state does nothing to deter people from murdering you or fails to adequately investigate such a crime.

Second, Article 13 provides that *effective* remedies should be provided for arguable breaches of Convention rights. The ECtHR's case law has in effect established that the state's obligation to provide 'effective remedies' for violations of fundamental rights by private parties can be met through criminal and domestic law, adequately and sensitively administered. It is only when the state fails to provide such remedies that it has breached the ECHR[15].

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[11] *X &Y v Netherlands* [1985] 8 EHRR 235. My emphasis. In *Plattform Artze fur das Leben v Austria* [1991] 13 EHRR 204 para. 32 the Court declared that "like Article 8, Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be."

[12] *Whiteside v UK ,* Application no 20357/92.

[13] *X &Y v Netherlands* op cit, para 27.

[14] *Artico v Italy* [1981] 3 EHRR 1 para 33. See also *Soering v UK* [1989] 11 EHRR 439 para 87.

[15] E.g. *X &Y v Netherlands,* op cit note 13.

By 1998 the ECtHR was arguing in the contentious but authoritative case of *Osman v UK* that preventative *legislation* is not always enough; preventative *operational measures* may also be necessary to protect the fundamental rights of one individual threatened by another:

> "It is common ground that the State's obligation [under Article 2, the right to life]…extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.
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> It is thus accepted…that Article 2…may also imply in certain well-defined circumstances a positive obligation on the authorities to take *preventative* operational measures to protect an individual *whose life is at risk from the criminal acts of another individual*.[16]"

This said, the scope of a state's 'positive obligation' to secure Convention rights violated by private parties is still far from settled. What is certain is that it extends to vulnerable victims and potential victims of serious crime who are entitled to special protection, in particular children:

> "Sexual abuse is unquestionably an abhorrent type of wrongdoing with debilitating affects on its victim. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrents from such grave types of interference with essential aspects of their private lives.[17]"

It was this line of reasoning which led the European Court of Human Rights to find that the regular severe beating of a child by his stepfather was a breach of Article 3, which prohibits torture and inhuman or degrading treatment and which states have a responsibility to protect against[18].

For crimes affecting fundamental rights like life and freedom from torture, the ECtHR has also established a duty on the state to respond promptly, diligently and effectively, with

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[16] *Osman v UK* [1999] EHRLR 228, para 115. My emphasis. The court went on to say that this operational duty must not be interpreted to put an impossible or disproportionate burden on state authorities (and must still respect other individuals' Convention rights e.g. under Art 5 and 8). See also *T v UK*; *V v UK* "…states have a duty…to take measures for the protection of the public from violent crimes" [1999] 30 EHRR 121.
[17] *Stubbings v UK* [1996] 23 EHRR 213, para 62.
[18] *A v UK* (1998) 2 FLR 959.

official investigation backed up by criminal prosecutions.[19] This includes identifying possible witnesses, questioning suspects sufficiently early on and searching for corroborative evidence[20].

The police, in other words, had a 'positive obligation' to resolutely investigate Stephen Lawrence's murder and patently failed to do so.

In the last few years the ECtHR has extended the state's positive obligation to include the protection of victims and vulnerable witnesses in the court room. In a landmark case in 1996, the ECtHR extended its interpretation of Article 6, primarily concerned with the rights of defendants in criminal proceedings, to take account of the rights of vulnerable witnesses and defendants.

> "It is true that Article 6 does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However their life, liberty or security of person may be at stake, as may interests coming generally with in the ambit of Article 8 [right to a private life]. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, *principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify*[21]*.*"

Where necessary, screens and other equipment can be used in court to protect vulnerable witnesses[22]. Recognition has been give to the special features involved in sexual offence crimes like rape. "In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the victim's private life.[23]"

It is not necessarily unfair in such cases, according to a determination by the former European Commission on Human Rights, to prevent the accused cross-examining

[19] *Aksoy v Turkey* [1996] 23 EHRR 553; *Aydin v Turkey* [1997] 25 EHRR 251*; Kaya v Turkey* [1998] 28 EHRR 1; *Kurt v Turkey* [1998] 27 EHRR 373.
[20] *Aksoy v Turkey ibid*.
[21] *Doorson v Netherlands* [1996] 22 EHRR 330, para 70.
[22] *X v UK,* [1992] 15 EHRR CD 113.
[23] *Baegen v Netherlands* [1995] A/327-B para 77.

vulnerable witnesses (including the complainant) provided there are other safeguards in place such as corroborating evidence or appropriate directions from the judge[24].

However, there has been no ECHR jurisprudence to date to support victims' demands to directly influence sentencing . A complaint by Mrs McCourt that she was not able to participate in the sentencing process of her daughter's murderer was struck out as manifestly unfounded by the former Commission. In their response the ECmHR did note that although there is no right for victims to be involved in Parole Board decisions in the UK, the Home Office does allow the Board to hear victim-submissions[25].

What's gone wrong with human rights discourse?

So if victims are at the heart of human rights thinking why is it commonly assumed that human rights law is

a) only concerned with safeguarding individuals from interference with, or abuse by, the state and
b) focussed largely on the protection of defendants and prisoners?

There are various layers to this but three stand out:

i) Established principles of international law
ii) The evolution of human rights law and
iii) Our home grown tradition of civil liberties.

First, as is well known, no liability can be imposed on private individuals as a matter of international law. This means that all cases at the ECtHR must be taken against the government in question. This has led to the assumption that all such cases concern *state* violations *only,* when a growing number relate to abuses by private individuals or companies which states are obliged to protect other individuals from.

Second, there is a tendency to confuse first wave rights treaties from the Enlightenment era – like the French Declaration and American Bill of rights which *were* preoccupied with freedom from *state* tyranny[26] – with the explosion of human rights treaties and declarations after the second world war, which had a broader focus [27].

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[24] Using similar reasoning, a rape trial was held to be not unfair even though the accused was not allowed to cross-examine a mentally unfit teenage victim in *HM Advocate v Nulty* [17 February 2000].
[25] *McCourt v UK,* [1993] 13 EHRR 379.
[26] See F.Klug *Values for a Godless Age, the story of the UK's new bill of rights* (Penguin, 2002) Chapter Three:*The Quest for Freedom, first wave rights.*
[27] ibid Chapter Four: *From Liberty to Community: second wave rights.*

This second wave in rights evolution occurred partly in response to the calamitous events which preceded it. Individual responsibility for committing gross violations of human rights – in which 'just obeying orders' was not a legitimate excuse – was acknowledged by the Nuremberg trials for the first time[28]. Similarly, there was awareness that the scale of the Nazi atrocities could not have been accomplished without the active collaboration of thousands of individuals throughout Europe.

Just as important was the range of cultural and philosophical inputs into the Universal Declaration of Human Rights(UDHR) from which all subsequent UN human rights treaties flow. The influences on it[29] were far broader than the liberal, Western orientation of the French and American bills of rights. The delegates were concerned to address the historic problem of how to protect individual rights without weakening the communities on which individuals depend. Values like dignity, equality and community underpin second wave rights charters as much as those of liberty and justice. The clearest manifestation of this orientation is found in Article 29 of the UDHR, repeated in the preambles to the enforceable treaties which flowed from the Universal Declaration[30]:

> "Everyone has duties to the community in which alone the free and full development of his [sic] personality is possible."

Limitations on rights, the Declaration continues, are therefore necessary to secure "due recognition and respect for the rights and freedoms of others..."

This rationale for qualifying rights, flowing directly from the 'respect' individuals owe to the 'rights and freedoms of others,' is contained in a similar form in the ECHR. The European Court of Human Rights continually emphasises that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole.[31]"

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[28] "International wrongs are committed by individuals and not by abstract entities," trial of the Major War Criminals, International Military Tribunal, Nuremberg 1946 41 Am J Intl L 172.

[29] These included Islam, Judaism, radical Christianity, Confucianism, Socialism, Social Democracy and Communism.

[30] The preambles to the twin instruments, the ICCPR and the ICESCR [adopted in 1966] state: "Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant."

[31] E.g. *Powell and Rayner v UK* [1990] 12 EHRR 355. This approach has been explicitly adopted by UK judges applying the HRA, e.g. Lord Hope in *Clingham v Royal Borough of Kensington and Chelsea* [2002] UKHL 39 concerning classification of ASBOs as civil or criminal penalties.

Third, the UK's indigenous human rights movement and allied lawyers have until recently worked in a legal environment in which there were no international human rights treaties incorporated into domestic law and we had no bill of rights or constitution. Since 2000 the ECHR has been part of our law of course and its broad provisions are imitative of a bill of rights[32].

But much of the discourse around rights in the UK has not altered significantly from the pre-HRA era, when human rights bodies called themselves civil liberties organisations and human rights lawyers called themselves radical lawyers.

A literal, almost 'black-letter' approach to what is essentially a set of values expressed as broad legal principles, is not uncommon. Every word in Articles 6 of the ECHR, for example – the right to a fair trial – is exhaustively poured over for its possible meaning, by practitioners, for whom some the open textured drafting of the ECHR is relatively new. Yet the ECtHR has continually emphasised that the crucial point is whether the proceedings *as a who*le are fair, rather than whether each individual sub-clause of Article 6 is technically observed in isolation, regardless of the consequence for competing values like public safety[33]. This can include a consideration of the effects of Article 6 rights on other fundamental rights, as already explained[34].

Through this route, a range of additional rights have effectively been 'read into' the right to a fair trial by the ECtHR including, as we gave have seen, protection of witnesses or victims but also other defendant's rights which are not directly referred to[35]. Consistent with this values-driven reasoning, "only such measures restricting the rights of the defence which are *strictly* necessary are permissible under Article 6(1)[36]."

The human rights approach to criminal justice.

This paradigm provides the starting point for applying a human rights perspective to evaluating proposed reforms to the criminal justice system. It will only rarely produce clear-cut technical answers. More often it will provide a framework for assessing

[32] Most notably section 2 which requires ECHR jurisprudence to be "taken into account" but does not bind our courts to follow it, allowing other human rights treaties and jurisdictions' bills of rights to be cited.
[33] *Rowe and Davies v UK,* [2000] 30 EHRR 1, para 61. See also *Windisch v Austria* [1990] 13 EHRR 281; *Asch v Austria* [1991] 15 EHRR 597; *Ludi v Switxerland* [1992] 15 EHRR 173.
[34] See note 20.
[35] For example the right to participate effectively in criminal proceedings in *Stanford v UK.* (1994). See also Keir Starmer, *European Human Rights Law,* LAG 1999 p260
[36] *Rowe and Davies* op cit. Emphasis added.

competing claims. The most contentious proposals in the current Criminal Justice Bill – concerning hearsay evidence, double jeopardy and 'bad character' evidence – illustrate this point.

Taking **hearsay evidence** first, The Strasbourg court has developed three framework principles:

i) evidence should be produced in a defendant's presence
ii) the questioning of witnesses should be within an adversarial framework
iii) defendants should be given an adequate and proper opportunity to challenge a witness at some stage during the proceedings.

However there are exceptions to this and reliance on hearsay evidence does not, in itself, necessarily breach the ECHR. Given the place accorded to the principle of justice in a democratic society, "any measures restricting the rights of the defence should be strictly necessary; if a less restrictive measure can suffice that that measure should be applied.[37]" The question in each case is whether there has been overall fairness[38]. To be fair, convictions should not be based either solely or to a decisive extent on anonymous evidence[39].

So in a case where the defendant was charged with unlawful sex with a young boy who was in intensive psychiatric care, the ECmHR determined that, a) given that the interests of victims and witnesses are in principle protected by the ECHR b) the boy's psychiatrist gave live evidence instead and c) that there was other evidence to convict the accused, the trial overall was fair[40].

On the other hand, where an investigating judge in a Dutch case took witness statements from police officers but the defence did not know the identity of these witnesses who, during the trial, were protected from view by screens, this was judged to be a breach of ECHR Article 6[41].

Moving on to **double jeopardy**, ECHR Protocol 7, Article 4, (which the UK has so far failed to ratify) restricts *retrials* for the same offence. However it explicitly exonerates "the *re-opening* of [a] case in accordance with the law ….if there is evidence of new or newly discovered facts or if there has been a fundamental defect in the previous

[37] *Van Mechelen and others v Netherlands,* [1997] 25 EHRR 647 para 59.
[38] *Unterpertinger v Austria* [1986] 13 EHRR 175. See also note 23.
[39] *Doorson v Netherlands,* op cit note 11.
[40] *MK v Austria,* [1997] 24 EHRR CD 59.
[41] *Van Mechelen and others v Netherlands* op cit, note 26.

proceedings which could effect the outcome of the case.[42]" The case law under Article 4 of Protocol 7 is almost entirely devoted to double punishment for the same offence rather than retrials.

The equivalent provision in the ICCPR (Article 14(7)) appears not to have the same 'get out ' for re-opening trials as the ECHR. But the 'General Comment' of the UN's Human Rights Committee – which seeks to clarify the scope of this clause – implies endorsement of the practice of "most states" which "make a clear distinction between a resumption of a trial *justified by exceptional circumstances* and a re-trial prohibited by the principle of ne bis in idem..[43]"

The UK's Joint Committee on Human Rights found the government's original proposals to order a second trial

a) only at the behest of the Court of Appeal[44]
b) and only where *compelling* evidence was found which "was not available or known to an officer or prosecutor at the time of the acquittal" broadly compatible with international human rights law[45].

Under the government's amended proposals – which the Joint Committee do not support – 'new evidence' has been defined to mean that which "was not adduced in the proceedings in which the person was acquitted.[46]" This arguably permits a new hearing on the grounds of evidence that could have been, but was not, used at the earlier trial and on the face of it could let sloppy original investigations off the hook.

On the other hand, the more that the new permissible evidence is restricted to what is classified as *compelling* new evidence, the more difficult it is to argue – using the ECtHR benchmark of the 'fairness of the proceedings as a whole' – that a defendant will receive a 'fair trial' in which the presumption of innocence prevails.

The UN Human Rights' Committee's 'General Comment' refers to a resumption of trials "justified by exceptional *circumstances*[47]" – which is not the same as exceptional or

[42] Clause 2. Clause 1 reads: " No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same state for an offence for which he has already been finally acquitted or convicted in accordance with the law an penal procedure of that State."
[43] *General Comment No.13* (13.04.84) UN Human Rights Committee. Emphasis Added.
[44] Which, arguably, conforms with the description 're-opening of a case' – permitted under the ECHR and ICCPR – rather than 're-trial' at the behest of the prosecutor, which may not.
[45] Joint Committee on Human Rights, Second Report, Session 2002-3, Criminal Justice Bill, HL Paper 40, HC 374, paras. 43-52.
[46] Joint Committee on Human Rights, *Criminal Justice Bill: Further Report* (Eleventh report of Session 2002-3), para. 36.
[47] Op cit note 32.

compelling *evidence*. This might be deemed to refer to situations like multiple murderers or rapes – for example – where new evidence comes to light, compelling or otherwise, that links a previously acquitted defendant with the crime. The exceptional circumstance could be the clear and present risk to the right to life of others that would prevail should the suspect be free to strike again. As we have seen, the state is duty-bound to take preventative action to protect fundamental rights[48].

Turning finally to so-called **bad character evidence,** the ECtHR has repeatedly said that neither the 'presumption of innocence' enshrined in Article 6(2), nor the 'equality of arms' provision in adversarial circumstances contained in Article 6(3) require states to adopt specific rules concerning admissibility of evidence. These are matters principally for regulation under domestic law[49].

The ECtHR has not established any specific rule of about the permissibility of bad character evidence and the Law Commission tells us that in a number of states which are signatories to the ECHR lists of previous convictions are routinely presented by the prosecution[50]. As is well known, 'similar fact evidence' and evidence of the lack of the defendant's credibility as a witness are already permitted.

The human rights question, therefore, is the precise terms of the extension of 'bad character evidence' and its effect on the fairness of the trial as a whole. It is difficult, in particular, to see how it is fair, overall, to include evidence that "the person has behaved, or is disposed to behave, in a way that, in the opinion of the court, might be viewed with disapproval by a reasonable person." It is difficult to entirely remove the suspicion that this provision is rather more about increasing clear up rates – by indirectly encouraging the police to roundup the usual suspects and so-called 'undesirables' – than increasing the protection of individuals from violent crime.

It is equally hard to understand how this new 'disapproval' provision is *necessary* and *proportionate* to protect the fundamental rights of vulnerable individuals. If it was convincingly demonstrated that the provision was absolutely necessary to save lives and protect other fundamental rights, and the discretion given to the judge to control the use of such evidence meant the proceedings were still fair *overall,* the conclusion, in human rights terms, might be different. The Law Commission, in their recent report on the non-accidental death of children, refreshingly acknowledge that "to focus" almost exclusively on Article 6 rights – as they had originally done in considering how to reform the law – "was an unbalanced approach." It "failed to give sufficient weight to other, *even more*

[48] See note 17.
[49] *Schenk v Switzerland* [1991] 13 EHRR 242; *Barbera, Messegue and Jabardo v Spain* [1989].
[50] *Evidence of Bad Character in Criminal Proceedings,* Law Commission No 273, 2001.

fundamental human rights which are in play" such as the right to life or freedom from inhumane treatment of children[51].

Conclusion

Victims, as we have seen, are (or should be) central to human rights thinking. This is not to suggest that 'the victim' is viewed the same way in human rights law as in domestic criminal law. Nor are victims conceived of as an 'interest group' in the sense that some victims groups might represent them.

Human rights law is based on a set of values that seeks to root out abuse of power – from whichever source – and secure respect for the essential dignity of every individual. As such, the framework in which victims' human rights has evolved gives a distinctive emphasis to psychological harm, privacy, the effective investigation of crimes, protection from intimidation in court, and even the effect on 'indirect victims' like close family members,[52] as well as the obligation on the state to prosecute suspects and deter crimes.

The state has a special role in international human rights law as the body charged with remedying abuses, whether by refraining from acting oppressively itself or preventing and restraining private parties from doing so. Whilst the origins of human rights law began with a focus on state violations, the search for remedies of abuse of power inexorably led it to embrace private power as well.

It was feminist literature and the women's movement which provided the original critique of a public law model of human rights which failed to recognise that for one gender, abuse within the home could be as much, if not more, oppressive than abuse by the state[53]. More recently anti-racist, children's and anti-capitalist critiques of human rights have developed this argument further.

The focus on defendants' and prisoners rights by human rights defenders – as crucial as these obviously are – can give the impression that the only victims human rights law is

[51] Law Commission Report, *Children: their non-accidental death or serious injury (criminal trials),* No. 279, 2003, paras 4.8 & 4.16. Emphasis added.
[52] E.g. Kurt v Turkey, 25 May 1998.
[53] Roger S Clark, *The UN Crime Prevention and Criminal Justice Programme, UPP 1994,* p183. See also e.g. C. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, 1987) p3, p104, and *Towards a Feminist Theory of the State* (Harvard University Press, 1989) pp187-90; K. O'Donovan, Sexual Divisions in Law (Weidenfeld & Nicholson, 1985) pp 7-8.

really concerned to protect are offenders and that the *true* abusers are the offenders' real-life victims who wish to limit their rights. In this Alice in Wonderland world it is not difficult for the Home Secretary to play the part of the Queen of Hearts and shout 'off with their heads' every time he spots a lawyer or judge. The sleepy dormouse – sadly – can be human rights.

If we are to move on from this Mad Hatter's tea party then we need greater clarity about the role of victims in human rights thinking. To this end, we need a consistent appreciation of both the founding values and evolutionary nature of international human rights law, As former UN Special Rapporteur on minorities, Erica Irene-Daes, once memorably remarked:

> "The world community should accept the thesis that the seat of human rights is primarily in the conscience of mankind and then in moral and positive law."