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ABSTRACT

This paper provides a review of Benjamin Mendelsohn's delineation of a typology of criminal victims. The typology consists of six categories: (1) completely innocent victims; (2) victims with minor guilt; (3) voluntary victims; (4) victims more guilty than the offender; (5) victims who alone are guilty; and (6) the imaginary victims. It is noted by the author that of the six categories, only two are concerned with victims whose guilt is less than the guilt of the perpetrator, and an argument is presented that the strong orientation toward the culpability of the victim lies in the preponderance of rape studies on the victimology literature. It is suggested that one of the greatest needs in victimology is for data collection on victimization for a wide variety of offenses--rather than primarily on rape which may not be generalizable.
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THE CULPABLE VICTIM IN MENDELSOHN'S TYPOLOGY *

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In the late 1930's and early 1940's a barrister specializing in criminal defense work began a series of studies designed to assist defense attorneys in the preparation of cases on behalf of their clients. The barrister was Benjamin Mendelsohn, and his studies, notably one on rape (Rape in criminology, 1940), culminated in the delineation of a typology of criminal victims. This typology (1956:105-108) consists of the following six categories:

1. completely innocent victim (typically children or those who are attacked while unconscious);
2. Victim with minor guilt (often victimized because of ignorance);
3. voluntary victim, whose guilt is equal to that of the offender (a suicide pact, for example);
4. victim more guilty than offender -- one who provokes or induces another to commit crime;
5. victim who alone is guilty -- the attacker who is killed in self-defense;
6. the imaginary victim -- who has suffered nothing at all but who accuses another falsely.

This early typology, which has become a classic in the field of victimology, is a key example of the manner in which early victimologists have served to define the victim so as to exclude analysis of those who played no role in the crime perpetrated against them. Of the six categories, only two are concerned with victims whose guilt is less than the

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guilt of the perpetrator, and one of these is viewed as bearing at least a minor degree of guilt. Only one category is defined as "completely innocent." In contrast, four --more than half-- of the categories are devoted to types of victims whose guilt is at least as great as that of the perpetrator of the crime; and fully half of the categories concern victims whose guilt is greater than that of the perpetrator.

Mendelsohn provides no clue as to what he believes to be the relative size of the six categories. But he leaves the reader with the impression that the bulk of victims are in no sense "completely innocent." This impression appears to stem from two facts:

1) the number of categories -- when one category is devoted to innocent victims, and five to victims who are in some way culpable, the notion that the bulk of victims are at least partially guilty comes across.
2) the examples given of "completely innocent" victims -- The use of children and the unconscious as the prime examples of the innocent victim establishes a frame of reference in the mind of the reader, in which the conscious adult does not appear. By omission, therefore, it is assumed that any adult who is rationally aware and is the victim of a criminal act must have in some way encouraged or "asked for it."

Thus at this early point in the development of victimology, the "innocent victim" appeared as a very small, nearly insignificant portion of criminal victims, and emphasis tended to focus on the "criminal-victim relationship," in which criminal and victim appear as

co-conspirators. It is perhaps relevant to note that Mendelsohn has produced a major work on rape (1940), an area in which the supposed consent of the woman raped has long been a major issue. A major complaint of women's groups in recent years has concerned the manner in which rape cases are handled under the law. In anything other than statutory rape, when the victim is a child and by definition fits into Mendelsohn's "innocent victim" category, the partial cooperation -- or indeed the active participation of the victim is a major question which both prosecutor and defense attorney consider in dealing with the accused rapist. Women's representatives have complained that the typical common law rape case, in which the victim is an adult woman, is like no other criminal case. For in the course of the trial, the court feels free to delve into many questions as to the moral character of the victim: the extent of her sexual experiences, the degree to which she may have "invited" the rapist's advances, the extent to which she "resisted." Attention is so thoroughly diverted from the character of the accused to that of the victim that some have claimed that the victim is put on trial rather than the perpetrator.

In transferring his analysis of rape, which appeared in 1940, to the study of victims in general, Mendelsohn has promoted the transference of the "culpable victim" view, which permeates the analysis of rape, to other crimes as well. This position may in large part be due to his position as a barrister (1974:3) who is called upon to defend accused criminals. In this role he must search for any available characteristic of the victim which might decrease his client's culpability. One might

question the wisdom, however, of extending the defense attorney's extensive and laudatory efforts on his client's behalf to a theoretical analysis of the role of the victim. While it is no doubt true that some victims provoke, invite, entice, or otherwise incite another individual to commit a crime, it is questionable whether all or even most of them do. Unfortunately, Mendelsohn's early formulation of a typology dominated by the notion of the culpable victim has oriented the study of victimology toward the analysis of the culpable victim only.

Let us turn now to an analysis of research on victims to determine the manner in which Mendelsohn's notion of victim culpability has been used, and the relative frequency of each type. The two polar types of the formulation are the "innocent victim" and the victim whom Mendelsohn would say is "guilty alone." The empirical data available do not permit the fine distinctions between Mendelsohn's intermediate types. But they may provide us with a clue as to the relative size of the "innocent" versus the "somewhat guilty" categories.

There are some relevant studies on the culpable victim, based on homicide data, where the victim-precipitated homicide (VP) is distinguished from the non-victim-precipitated homicide (non-VP). According to Wolfgang's definition, victim-precipitated homicides are those in which the victim was ". . . the first in the homicide drama to use physical force directed against his subsequent slayer. Victim-precipitated cases are those in which the victim was the first to show and use a deadly weapon, to strike a blow in an altercation -- in short, the first to commence the interplay or resort to physical violence" (Wolfgang, 1974:80).

Thus VP homicides would fit into Mendelsohn's Category 5, in which the "victim alone is guilty." Because of the nature of coding the cases, the definition may overlap somewhat with Category 4, in which the guilt of victim and offender is equal. For example, in Wolfgang's study of 588 homicides in Philadelphia, several of the VP Cases involved mutually aggressive actions, such as family or lovers' quarrels. In these cases it would have been difficult to conclude, on the basis of police records, which party had initiated the aggressive activity, particularly in view of the fact that the victim is in the morgue and unable to present his side of the matter.

In Wolfgang's study 150 of the 588 cases (26 percent) were designated as victim precipitated (1974:82). In the remaining 74 percent, the victim may be presumed to have been less guilty, or at least no more guilty, than the offender. Hence, we can conclude that in three-fourths of homicides the victim is at least "partially innocent" (to reverse Mendelsohn's terminology).

The size of the category of "totally innocent" or "almost totally innocent" victims might be estimated if it were possible to obtain information about the criminal records of victims. Presumably those with criminal records, especially of personal offenses, would be persons more likely to engage in the type of behavior which would entice or invite a homicidal attack, either by initiating the aggression or by engaging in other behavior which might incite the wrath of another. Shafer notes that our data concerning the character of the victim, particularly with respect to his criminal record, are scarce. But he estimates that

". . . close to half of the victims [of homicide and other violent crime] have a criminal record containing one or more offenses against the person" (Shafer, 1968:84; emphasis added).

Thus close to half of the victims of violent personal crimes are persons who themselves are prone to such behavior, and may, therefore, bear some degree of guilt in their own injury. By extension, however, one might conclude that in the other half of the cases, the victims were not individuals prone to such activity, and may, therefore, be presumed to be "innocent victims." Of course, one might argue that some of this group might in fact be violent by nature, but their violent tendencies have never resulted in a criminal record. Even were we to grant that many of the so-called "innocent victims" fall into this "latently violent" type (perhaps another 15 to 25 percent of the victims), we still have one-fourth to one-third of the victims remaining as "totally or substantially, innocent." Unfortunately the available data on the innocence or guilt of the victim relate to the crime of homicide. If data were available on other crimes, such as robbery, it is probable that the number of non-victim-precipitated crimes would be even greater.

In Shafer's study, which considered assault and violent theft as well as homicide, ". . . only 6 percent of the cases involved direct provocation by the victim; an additional 4 percent involved passivity. . ." (1968:56-57, 81; quote at 81). Using these figures, nine-tenths of victims are "innocent victims." This is not an insignificant number of persons who have been the victims of personal violence, perhaps resulting in serious injury or death, and whose only contribution to their own demise may have been their presence in the wrong place at the wrong

time. I suggest that this is a category of victimization which is of sufficient size and importance to be accorded attention in the victimization literature.

This attention has not been forthcoming, however. Studies which direct their attention to the Culpability Dimension are concerned largely with the culpable rather than the innocent end of the scale. There are several analyses of the offender-victim pair (von Hentig, 1974:45; Boudouris, 1970), or what Mendelsohn called the "penal couple" (Shafer, 1968:41). Such analysis is largely centered upon the offender-victim social relationship and the way in which it culminated in violence.

When innocent victims are included in a study they often are not the central object of study but are included as a control group, against which the more interesting culpable victims may be compared. For example, in Wolfgang's study, conclusions drawn all center around characteristics of the culpable victim: they involve blacks more frequently than whites; VP victims are usually males; VP homicides are interracial more often than non-VP; and so on (1974:82, 86). The central unit of analysis is the culpable victim, not the innocent *one*.

This is not to say that the innocent victim is ignored in the literature. Worse than being ignored, he is the object of attempts to redefine him into the guilty victim category. A striking example is a work by Stephen Shafer. Reversing the notion of The Criminal and His Victim proposed by von Hentig (1948), Shafer speaks of The Victim and His Criminal (1968). Thus the very title of his book implies that the victim is the initiator, searching about for someone he could lure into crime. The victim is the actor; the offender, the misled innocent. In

Shafer's theory of "functional responsibility," the guilt of the victim is not limited to cases in which he was the first to strike a blow, as in Wolfgang's study. He is also seen to be ". . . functionally responsible for a great many more types of motivating behavior . . . . The victim's crime precipitation may range in intensity from making a person conscious of criminal opportunity to simple passivity, a higher degree of irritation, incitement, instigation, or provocation" (Shafer, 1968:80). At another point Shafer comments: "In a way, the victim is always the cause of a crime . . . . All crimes necessarily have victims, and, necessarily, the existence of the victim or something material or immaterial that belongs to him makes for crime and may actually produce a criminal effect" (1968:79).

In Shafer's attempt to locate the functional responsibility for crime, the least action on the part of the victim is viewed as provocative. In this sense, the owner of a car is responsible for its theft; for if he had no car, it could not have been stolen. The theft of social security and ADC checks is quite common today -- clearly this is the responsibility of the ADC recipient or the retiree; if he had no check, it could not be stolen. Thus the victim is dealt a double blow. He has suffered injury, loss of property, or death at the hands of another. Now he is told that his suffering was his own doing, even though he knows of no direct action on his part to provoke another's wrath.

Why do social scientists fail to focus upon the innocent victim? Perhaps we can learn the answer from an analysis of the few existing studies which concentrate upon the non-culpable victim. An example is a study of interracial forcible rape in Oakland, California (Amoian,

et al., 1974:93). This study considers such factors as the location, day of the week, and degree of submissiveness of the victim. It found that most interracial forcible rapes occurred on weekday, involved unescorted women, and that alcohol was not a significant factor. They concluded that the social interaction theory of crime does not apply to interracial rape (Agopian, et al., 1974:101).

In their conclusion there perhaps lies the key to why social analysts of crime have neglected the innocent victim. Generally social scientists who analyze crime begin their studies with two assumptions:

1) They are seeking an explanation for criminal behavior; and
2) They presume that this explanation will lie in social factors, rather than psychological or biological factors.

Analysis of victims is undertaken largely in the light of either or both of these assumptions. But in terms of either assumption, the innocent victim is much less interesting than the culpable victim.

In the first instance, the victimization of innocents provides little or no explanation for crime. If a victim can be found to have engaged in some sort of aggressive or enticing behavior prior to his victimization, then a study of his actions may help us to understand why the criminal act originated and how it was carried out.

Example: A woman flirts with her date in a bar all evening; when he takes her home he forces her to have sexual relations with him. An analysis of her actions helps us to understand why he committed a forcible rape.

But if a victim has done nothing out of the ordinary, a study of his actions contributes nothing to our knowledge.

> Example: A woman is walking in the park, as thousands of women do without incident. Suddenly a man steps from the shadows, pulls her into the bushes, and rapes her.

An analysis of her actions would provide little clue, if any, as to the explanation of this crime.

At best, the study of innocent victims may provide demographic characteristics relating to criminal victimization: age, sex, race of victims, the time of day or season in which offenses occur, and so on. But these fail to fulfill the second assumption on which social scientific analyses of crime rest, for these characteristics do not really relate closely to social relationships. We tend to search for explanations of crime and other behaviors in the social ties which people have with each other. The "penal pair" notion of Mendelsohn and the "differential association" theory of Sutherland and Cressey are prime examples. But as Agopian and his associates point out, the social interaction theory of crime does not fit forcible rape (1974:101). Nor, I suggest, does it fit most examples of innocent victimization, in which the social relationship pattern (A acts, B reacts, A re-reacts, etc.) is absent. If the victim is truly innocent and passive, then the explanation for this crime must lie elsewhere -- in the criminal himself, perhaps, where biological and/or psychological factors would apply. But the socially oriented analyst is unlikely to accept this, so he ignores the innocent victim who raises the problem. At best, the existence of the

innocent victim directs us toward such factors as the social situation (where the crime occurred, who else was present, social factors affecting the offender, etc.). But the analysis of such factors can easily be undertaken without a study of the victim. Again the innocent victim can easily be bypassed.

I believe it is safe to say that innocent victims who have engaged in no direct act to provoke another, make up at least a substantial minority, probably a majority of the victims of criminal acts. Yet the victimology research ignores them in favor of studies of the culpable victim, the results of which are often applied to innocent victims as well. And theoretical victimology persists in defining the culpable victim in such a manner as to include the great bulk of victims. The innocent becomes guilty, the offender becomes the innocent. The effect of this has been to eliminate offenders' responsibility for their acts. This philosophy has even permeated the mass media, where a public service announcement once begged: "Lock your car! Don't lead some poor boy into crime!"

This tendency to view the criminal victim as the culpable party also appears in analyses of patterns of submission or resistance to a criminal act. On the one hand, it is recognized that resistance may be provocative, and many police departments counsel citizens not to resist a robber or rapist, lest they suffer even greater harm. Thus Agopian notes that rape victims who were submissive were much less likely to suffer other physical violence (beatings) than those who resisted (Agopian, 1974:97). And Shafer suggests that resistance on the part of a victim may provoke an offender (1968:81).

Hence it would appear that the "innocent" victim should not resist. On the other hand, in victimology literature, lack of resistance is often viewed as complicity. In Fattah's typology (1966) of victims, for example, only by exhibiting an attitude of "denial or repulsion" (Category 1, the "Nonparticipating Victim") can a victim truly qualify as innocent. If he participates in any way, even by passively going along in order to forestall any more dire consequences to his own life and/or safety, Fattah claims he has "participated" in the crime. Under one formulation, the victim who does not resist is culpable because he is a passive contributor to the crime. Yet if he does resist, another formulation would define him as a contributor, on the grounds that resistance itself is provocative. Shafer goes even further in suggesting that the resister cannot be defined as a victim at all. He notes: "Fighting back indicates resistance, thus this victim is less a victim type than the one whose resistance is overcome by the superior strength of the criminal" (1968:48). This puts the innocent victim of a criminal act in somewhat the same position as the man who is asked if he has stopped beating his wife yet. Were such a victim on the witness stand, the interchange might be as follows:

Defense Attorney: You say my client asked for your money. Did you resist?

Victim: No, I was afraid to.

Defense Attorney: If it please the court, I move that my client be acquitted since it is obvious this witness gave up his money freely.

Victim: But I didn't want to -- I tried to figure out how to get away.

Defense Attorney: Oh! Then you did resist!

Victim: Yes, as much as I thought I could.

Defense Attorney: Then if it please the court, I move for my client's acquittal on the grounds that he did not take advantage of anyone weaker than himself. This exchange of money was a fair fight between two strong men.

Resisting or passive, the victim appears to be responsible for his own victimization. Some proponents of victimology seem determined to define its topic of study to include only those victims who make some contribution either to the origin of criminal behavior or to its successful completion. The innocent victim is thoroughly scrutinized to determine if he is really innocent or if he in fact may bear some shred of responsibility. The victim who is found to have played no part in the development of crime is accorded little, if any, attention.

I suggest that one major reason for victimology's strong orientation toward the culpability of the victim is the preponderance of rape studies in the victimology literature, from Mendelsohn's typology to studies of the resistance-submission dimension. One might wonder whether the pattern of resistance to rape, with its highly moralistic overtones, would be applicable to most other criminal acts. Perhaps the single greatest need in victimology is for data collection on victimization for a wide variety of offenses, rather than attempting to generalize from one offense to another.

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