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The ‘punches behind the punch’: poetry as Victim Impact Statement

Abstract:

Recent years have seen developments in the affective function and textual form of Victim Impact Statements (VIS). First introduced in South Australia with the legislative institution of a new Act – the Criminal Law (sentencing) bill – taking effect in January 1989, VIS have since been adopted by almost every Australian state and territory as material tendered before the court by prosecutors for the purposes of informing the judge of the degree and extent of any loss or damage to property or any physical or mental harm, suffered by a victim as a result of a crime. In this paper, I explore the creative form VISs can take by looking specifically at examples of poetry as VIS. Presenting victims’ accounts of emotional and physical suffering using the form of poetry tracks affective shifts in the cultural expression of emotion and the political forums in which such expressions emerge publicly. From the perspective of humanism, I argue the poetry found in VISs present dual functions, both affective and rational.

Biographical note:

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Keywords:

Creative writing – Poetry – Victim Impact Statement (VIS)

Introduction

Recent years have seen developments in the affective function and textual form of Victim Impact Statements (VIS). First introduced in South Australia with the legislative institution of a new Act – the Criminal Law (sentencing) bill – taking effect in January 1989, VIS have since been adopted by almost every Australian state and territory as material tendered before the court by prosecutors for the purposes of informing the judge of the degree and extent of any loss or damage to property or any physical or mental harm, suffered by a victim as a result of a crime¹. Herein, I explore the creative form VISs can take by looking specifically at examples of poetry as VIS.

In his notes for the novella *Thirteen Ways of Looking*, author Colum McCann directs readers to the Victim Impact Statement (VIS) tendered in the proceedings of a court case consequential to a savage assault he endured on a New Haven street, Connecticut, in 2014. In his VIS, McCann writes about what he characterises as the ‘punches behind the punch’ (2015) – that lasting sensation of endangerment and insecurity that plagues victims of crime and those who love them. An exploration of the poetic narratives in many VISs reveals that these verse-forms pack something of those ‘punches behind the punch.’ The effect of crime lingers in the victim’s construction of reality as much in the ‘emotion discourse’ attempting to express in verse this aftermath of the aftermath. For Edwards, ‘emotion discourse’ is ‘*a way of talking*’ (1999: 278). Emotion discourse is a term used to define highly flexible narrative accounts and descriptions in which emotions are evoked. Edwards argues that emotion descriptions used in narrative accounts and explanations deploy ‘a flexible range of oppositions and contrasts that are put to service in the situated rhetoric of description and counter-description, narrative and counter-narrative’ (271).

VISs in the form of poetry tell us a great deal about the politics of emotion discourse in narratives of crime’s aftermath. In this examination, three particular concerns stand out as topically significant. Firstly, there is the matter of the poems themselves as a ‘way of talking’. Secondly, there is the import of this mode of speaking and its apparent power across various social and legal contexts. Thirdly, there is the matter of the wellbeing possibilities these statements might provide to Victims of Crime (VOC). In this respect, it is possible to apply to poetry as VISs Hanauer’s organisational concept of ‘individual moments of life’; that is, based on the understanding ‘that each individual poem offers a unique situation and as such occupies its own conceptual space. To an extent every usage of the lyric poetry assumes the individuality of the specific experience described’ (2010: 89). In this spirit, I aim to take an understanding of poetry as VIS one step further: as illustrating a kind of distinctive second language. Here, poetry as VIS characterises an individual’s own unique language of despondency, emotionally speaking, and the language of trauma learned by the VOC as a result of crime’s aftermath: a language of displacement occupying its own emotional space.

According to a press release issued in 2014 by the newly inducted NSW Attorney General, Minister for Justice, Brad Hazzard MP, ‘Victim Impact Statements allow victims to tell the offender, and the court about the impact of the crime on their lives. These statements can be immensely empowering and help parents, partners or siblings get closure’ (Hazzard 2014). Hazzard’s conclusion is supported to some degree in the research undertaken around the wellbeing implications of VISs. ‘Emotional catharsis’ (Kirchengast 2008), ‘therapeutic jurisprudence’ (Kirchengast 2007), ‘recovery process’ (Len et al. 2015) and ‘restorative tool’

(Shakel 2011: 214) are just some of the terms used in the current literature to frame the wellbeing and empowerment implications of VISs. While the growing body of research links the capacity to submit a VIS in court to substantial remedial advantages, the purpose of this paper is to explore selected VISs from the perspective of narrative in order to investigate two separate but interrelated points. The first of these is VIS as humanist narratives, that is, as life narratives ‘actively storied in ways that help us understand people socially and emotionally, and [link] stories to agency’ (Squire et al. 2014: 18). The second is understanding these narratives inwardly, that is, theorising VIS in terms of what they ‘do,’ rather than their political and legal effects within the context of juridical power structures and discourse.

In Australia, there exist four different forms of VIS. These are statements of harm about a crime: committed against oneself; committed against a member of their immediate family; given by a dependent of a victim of a crime; and, given by a person aiding the victim of a crime. By concentrating inwardly on statements of harm about a crime committed against oneself (including one statement submitted by family members about a crime committed against the VOC), this examination makes possible a treatment of their narrativity in terms of the tellers’ disclosures dealing with trauma, emotion, culture and wellbeing. Here, two particular issues are pointed out and examined in detail. First, that the ‘impact’ to be told is framed within another narrative genre, the story of how the teller was first made aware of the crime, which in fact emerges as a pivotal point of their emotional change. Second, it illustrates the crucial distinction between a narrative in the legal context, where the VIS is produced, obtained, and then formally tendered to the victim’s lawyer or their Victim Liaison Officer from the Office of the Director of Public Prosecutions (ODPP), in whose interests it is that the victim statement takes a position and the prosecutorial contexts of testimonial ‘impact,’ and where the teller’s decision to write the statement for the purpose of juridical talk, sometimes in the face of significant emotional conflict, can either offer a therapeutic effect or interrupt or even risk their recovery process.

Poetry as/in VISs

Court-related documents offering advice and instructions for creating a VIS use ‘poem,’ or ‘poetry’ as a collective (mass) noun to describe the form of verse-writing victims can submit as/with VISs. These terms, however inadequately, describe this form of writing because the ultimate question concerning these modes deals with language’s ability to articulate lived experience, and perhaps more importantly, to convey lived experience as a living aftermath. In this sense, ‘poetry’ emerges as a misnomer if attempting to categorise this writing using classical definitions, such as Shelley’s definition as ‘a record of the best and happiest moments of the happiest and best minds’ (1821, in Verkoren 1970: 504) or Edgar Allen Poe’s conception as ‘The Rhythmical Creation of Beauty’ (see, Harrison 1965: 275). David Hume, in *An enquiry concerning the principles of morals* (1751) stated the following in relation to the function of poetry: ‘Tis the business of poetry to approach every Object by lively Imagery and Description, and make it look like Truth and Reality: A certain Proof, that wherever that Reality is found, our Minds are disposed to be strongly affected by it’ (89–90).

While poetry as/in VIS in many ways aims to articulate a personal ‘Truth and Reality,’ as well as a ‘certain proof’ that what the Victim of Crime (VOC) experienced comprises a ‘strongly’ affecting reality, this writing is in fact both a specific mode as much as a particular genre.

Emerson's description of the Zoroastrian definition of poetry as 'apparent pictures of unapparent natures' (1875: 276) to some degree identifies the imagistic focus of Victim Impact (VI) 'poetry'. Yet poetry as VIS might be better understood in terms of the identifiable analogous characteristics and qualities of 'Gothic poetry'. David Punter, for instance, provides important insights into Gothic poetry that have resonance with the verse-writing of VOC, given its subject matter and emotive elements. For Punter, Gothic poetry deals with 'a close relation with physical mutability and decay,' is 'clearly in touch with the bodily, the physical,' and 'of the soul (the phantomatic, the unseen, the fleeting) but it is also of the body (the horror, the blood, the distortion of the frame)' (2014: 212). Gothic poetry is also concerned with 'intrusion of death into life,' as well as involving 'the *immediacy* of such an intrusion, as well as something of an exploration of the complex guilts which assail us when in the presence, or present absence, of death,' including 'doubt and repetition,' and 'dark materials, material and spiritual' (217).

The following poem, called 'Stripped of Soul' was penned by a victim of a serial rapist in 2000, an Adelaide mother of two known as 'Ginsh,' before her suicide. It was tended as part of her family's VIS (*Adelaide Advertiser* 2003):

Terror, indescribable pain
My soul had been ripped apart
Tears fall like acid rain
While blood drains from my heart
Months have passed and the memories remain
I see no respite in sight
Living daily with the pain
Of that horrendous night
My body erupts in tremors
While my thoughts remain inept
My mind chooses to remember
While my heart fights to forget
The faceless shadow, and rancid smell
Mine forevermore
His voice will haunt me till he rots in hell
His power too great to ignore
My journey is eleven months old
And I am becoming weak
Hope is my destination
And there, it's sanity I seek
Each torturous step I take
I yearn to be free
But my heart and soul remains in the hell
That the devil has cast upon me
Evil will not destroy another woman's heart
Because I won't share that pain I own
This is my weapon against his will
And it will remain mine and mine alone (Fewster 2001: 17).

The poem ‘Stripped of soul’ is clearly and identifiably ‘of the soul’ (Punter 2014: 212); ‘My soul had been ripped apart’. It is also visibly ‘in touch with the bodily, the physical’ (212); ‘Tears fall like acid rain/While blood drains from my heart’. The poem deals with ‘a close relation with physical mutability and decay’ (212); ‘The faceless shadow, and rancid smell’ as well as the ‘intrusion of death into life’ (217) – ‘His voice will haunt me till he rots in hell’. Finally, ‘Stripped of soul’ concentrates attention on what Punter suggests is ‘the *immediacy* of such an intrusion [of death into life], as well as offering something of an exploration of ‘the complex guilts which assail us when in the presence, or present absence, of death’ (217); ‘Hope is my destination/And there, it’s sanity I seek/Each torturous step I take/I yearn to be free’ (Ginsh 2000).

‘Stripped of Soul’ exemplifies the extent to which it is possible to read this form of VIS as humanist life narrative in which an event is storied ‘socially and emotionally’ while simultaneously linking ‘stories to agency’ (Squire et al. 2014: 18). Reading the poem as ‘emotion discourse’ proves fruitful as a means of understanding this narrative inwardly, that is, theorising ‘Stripped of Soul’ as a VIS in terms of what it ‘does’. For instance, terms such as ‘terror,’ ‘pain,’ ‘haunt,’ and ‘weak,’ not only map emotional categories of speaking in which talk performs a social action (Edwards 1999: 279), but presents as series of highly metaphorical images connecting states of emotion to bodily, physiological experience: ‘My soul has been ripped apart’, ‘My body erupts in tremors’, ‘Each torturous step I take’. The body is imagined as a site of rupture, an embodied antithesis of containment in which emotion itself is perpetually at risk of spilling over beyond corporal limits. Read another way, ‘the point of all those alternative metaphorical expressions is, surely, to enable certain things to be *said* and not just *thought*’ (Edwards 1991), such that the proliferation of metaphors may be motivated not only by their conceptual sense – as suggested by Lakoff (1987) and Gibbs (1994) – but by what they allow us to say and do’ (280).

Removing the value-judgements typically deployed to define ‘poetry’ and what it is, and is not, makes it possible to identify a more open category of writing which is normally highly emotive and historically-specific, while not necessarily requiring victims to produce examples of ‘good’ poetry. It is by adopting a fresh perspective of this form of writing as a subset – of ‘poetry’ or ‘verse,’ or some other recognisable form, for instance – as a functional rather than ontological category, in the words of Terry Eagleton (1996: 8), that an investment with meaning, identity and wellness is realised. By examining ‘the purposes it [this genre of writing] may be put to and the human practices clustered around it’ (8), it is possible to theorise how victims, as ‘selves,’ relate to language, and how victims use language to relate ‘impact’ and crime’s aftermath to questions of recovery and wellbeing. As ‘particularly sensitive narratives’ (Etxabe 2013: 112), VIS can offer victims a humanist mode of alleviating their grief and distress by publically narrating the impact of crime’s aftermath, thus not only creating a specific form of emotion culture, but also a means of ‘seeking coherence in meaning through belief’ (Handelman 1997) for which ‘poetry’ seems to provide a possible answer.

VIS ‘poetry’: reimagining empathy, wellbeing and humanism

Adopting a scholarly approach to the function and form of verse in VIS holds broad implications for theorising the potential of ‘poetry’ for re-envisioning the meaning and utility of empathy, wellbeing and humanism. Poems of this type align with Stearns and Stearns’

concept of ‘emotionology’ (1985) as ‘a way of referring to the collective emotional standards of a culture as opposed to the experience of emotion itself’ (Herman 2013: 221). By this, I am suggesting that VISs in the form of poetry not only conceptualise emotions in a particular way, but effectively provide a framework accounting for the causes, effects and manifestation of those emotions within, and specific to, VOC. From the perspective of emotionology, poetry as VIS document offers not only a response to social and cultural attitudes ‘toward basic emotions and their appropriate expression’ but also a response to the ‘ways that institutions reflect and encourage these attitudes in human conduct’ (Stearns and Stearns 1985: 813).

In documenting the emotive centre of the victim’s experience of violent crime’s aftermath, poetry also transposes empathy across the various individuals affected by the crime. This has the effect of necessarily centralising the place of victims within their cultural, historical and national contexts, and the forces of law and order, bringing them to the moment in which their utterance – their VIS – represents an appeal not only for empathy, or the self or other, good or bad, right or wrong, but for how the action of another impacts the self as much as issues of identity, security, wellness and wellbeing. ‘Poetry’ as a mode of expression is paradoxical: expressing the inexpressible – and, as Michael Lewis has claimed ‘expressing it in terms of the unforgettable’ (Untermeyer 1955: v–vi). The highly emotive circumstances of the experience of violent crime and the extent of the impact of violent crime’s aftermath brings to the fore the basic paradox of the victim’s attempts of expressing the significance and degree of effect; of ‘impact.’ Defining the paradox is the ‘impossibility of expression and, though doomed to fail, the attempt at it’ (Nelson 1992: 56). Yet, just as ‘poetry demonstrates that the literature of wellbeing, written by some of the world’s greatest writers, can be deeply complex and intellectually stimulating’ (Pawelski and Moores 2013: 39), so too can the poetry included in VIS be acutely involved and cogent. Using poetic forms as narrative mode not only attempts to express the emotional reaction to violent crime as an embodied experience, but a modality of constructing ‘emotion narratives’ contributing to juridical proceedings as ‘emotion discourse’ (comprising ‘word meanings [concepts], and samples of talk and text [situated usage]’) (Edwards 1997: 192–193). From the perspective of humanism, this form of writing can be read using a eudaimonic approach, that is, examining how victims of crime ‘construct their views of reality’ (Funder and Fast 2010: 673) and thus, the extent to which their writing ‘focuses on meaning and self-realization and defines well-being in terms of the degree to which a person is [or is not] fully functioning’ (Ryan and Deci 2001: 141).

The following is the poem trial attorney Nance L Schick wrote to a defendant five days after he assaulted her.

I Don’t Know You Yet

I don’t know you yet,
 But I know you were born
 With the same potential as I.

I don’t know if you have
 Two parents who wanted you,
 But I know they love you,
 Even if they suck at expressing it.
 Mine did, too.

I don't know your friends,
But I know the people
Who put you in harm's way
Are not your friends.
Mine weren't, either.

I don't know who guides you,
Or if you try to do it all alone,
But I know you want
Something more than what is.
I do, too.

I want you to have opportunity
And joy
And love
And fun
And freedom.

I want you to be who you came to the world to be
To lead
To laugh
To love
To share.

I want to be what's possible
For you
For me
Through love
And courage.

I don't know you yet,
But maybe I do (Schick 2015).

On the day of his sentencing, Schick hoped to publically orate 'I don't know you yet' as part of her VIS. Schick's aim in creating the poem was to 'plead for changes in his [her attacker's] lifestyle' (Schick 2014). While the opportunity to read the poem to the accused never eventuated (he failed to appear), Schick makes clear the 'emotion discourse' she hoped her fourteen-year-old assailant might have offered in the form of 'an effective and complete apology':

I asked for a Restorative Justice plea conference, hoping to hear an effective and complete apology that would assure me and everyone in the system that he had learned his lesson and was no longer a danger to society. He and his parents instead fled just before his sentencing, and it wasn't until he was arrested on one of six other crimes that they were located (2016).

Here, the writing of the poem itself as VIS did not provide a satisfying level of restoration to the VOC in that Schick craved a more specific emotion discourse, claiming 'He is in jail now, but I will not give up hope of hearing':

I'm sorry that I targeted you because you were a woman walking by herself at night. I have not been respectful to women and girls (based on his Facebook page), and I am reading about the

contributions of strong, powerful women so I remember that men aren't the only ones who have built and who build this world. I know I have prejudices that cloud my views of other people, and I am committed to overcoming them. I will not use my physical strength to harm women or girls ever again. I'm sorry that I even thought to steal from you. I know it is not right to take what belongs to others. Now that I am old enough to work, I am going to get a job so I can buy what I want. I will never steal again (Schick 2016, italics in original).

In this case, while Schick's poem operates as a specific form of speaking about emotions and its affect, it cannot successfully 'distinguish the collective emotional standards of a society from the emotional experiences of individuals and groups' (Stearns and Stearns 1985: 813), precisely because the emotionology of the courtroom, as a social institution, both encourages and sanctions the expression of certain kinds of emotions, while appearing ambivalent or impartial to others. But as itself a particular way of speaking, this VIS suggests that the expressive action of verse held particular implications for the expression of emotions. In the words of John Stuart Mill (1833), 'Poetry is feeling confessing itself to itself, in moments of solitude, and embodying itself in symbols which are the nearest possible representation of the feeling in the exact shape in which it exists in the poet's mind' (1833/1973: 80).

Structurally, verse forms as/in VISs are typically informal, in that they are commonly free of any deliberate or formal literary devices and techniques, favouring instead, unstructured approaches and/or free-form characteristics which often appropriate a miscellany of poetic conventions – occasional poetry, narrative poetry, free verse, didactic poetry – depending on the writer's familiarity or skill. This is no surprise perhaps given the apparent absence of creative writing workshop-type opportunities in which to instruct and teach VOCs possible techniques and modes of poetic expression. By extension, authorial choice of diction – formal, informal, colloquial, poetic – can also vary greatly. They are narrative in their intent – a focus on storytelling; telling the story of violent crime's impact and violent crime's resonant aftermath – but lyric in nature in that they are characterised by a single speaker presenting a state of mind or an emotional state. In this sense, the overarching tone of this form of writing is characteristically elegiac – that is, mourning or expressing grief for that which is irretrievably and irrecoverably past. Like poetry itself, VIS as poetry is 'of the nature of soliloquy' (Mill 1833/1973: 80). Even though VISs represent a genre of writing fulfilling a variety of functions in the context of juridical discourse, it is similarly important to bear in mind that in the choice to write poetry as/within the VIS genre, writers attempt to bring experiential knowledge to their audiences; that the poetry this experience has generated is not without reason, not without some acute event linking loss to emotion; that the effects linking loss to emotion produces a loss difficult to articulate; that utilising verse forms to give an evidentiary account of loss, trauma and violence, is not unsuitable as a plausible, viable, and representative oratory mode. Poetry as/in VIS straddles both documenting violence as a human experience and presenting a mode of communicative action.

A number of findings support the therapeutic – though at times short-lived – benefit of catharsis as a 'well-being' effect (Erez, Kichling and Wemmers 2011; Graham et al. 2004; Leverick, Chalmers and Duff 2007; VSA 2009). However, 'catharsis' is not the most important and lasting effect of a VIS. Analysis of the firsthand experiences of VOC supports the finding that the core therapeutic value of the VIS lies in the opportunity it provides for VOC to 'reframe' their experience (Bowman 1999). Facilitating a narrative means which empowers the VOC to choose how their experience is understood by a wider audience (in the VIS), simultaneously

empowers the VOC as regards the victim's coping with, and management of, his or her experience (Tait 2015). It is important to be aware therefore of how healing and recovery can be impacted by this type of writing (in cases where victims may express harmful experiences).

Feeling 'better' after writing a VIS does not necessarily refer to an amelioration of feelings of frustration, sadness, anger and/or mental or emotional distress resulting from the crime. By their very nature as emotional appeals poetry as/in VISs in many ways blur the boundaries 'as to where the line between ... victim-impact testimony ends and an appeal to passion, the human reactions, emotive reactions of revenge, rage, empathy – all of those things – begins' (Matsch and Shanker 1999). The VIS invites VOCs to proactively challenge themselves to contemplate their crime experience and assess its impact. If, as Tait suggests it is through the VIS that VOCs 'fashion' (2015: 194) their perception and awareness of not only what has happened to them, but also the meaning of that event 'in the present through the perspective of their past and how they will make sense of it into their future' (Tait 2015: 194), then it is important to be aware of how healing and recovery can be impacted by this type of writing (where victims are expressing harmful experiences). The process of reflection through poetry can be both emotional and intellectual. However, as Pennebaker points out, because reflective writing does not provide opportunities for meaningful and reciprocal interactions with others (1990: 204), this kind of writing can offer the writer a form of insulation that is counterproductive to growth and well-being. To avoid this insularity, the writer must also be encouraged to engage with/consider other forms of writing which provide opportunities for meaningful and reciprocal interactions with others (such as collaborative writing, writing groups, writer's workshops, and 'critical' friend interaction).

Conclusion: poetry and crime's aftermath

This examination has argued that, as empathy narratives, this form of writing emphasises the power of emotions by appealing to the affective power of human emotional responsiveness, that is; '*understanding* – putting oneself in the position of another, *sympathy* – sharing another's feelings or having a similar feeling in response to another's feelings, and compassion – feelings of wanting to help in response to another's distress' (Schoenfeld 2014: 173). By extension, introducing into proceedings victim-led modes of expressions – such as poetry as/in VISs intended to be canted in public; intersecting the genres of narrative and lyric – therefore services movements in common law jurisdiction to demonstrate an 'increased willingness to admit into the criminal process, and into decision-making, emotional responses' (Hoyle 2011: 276), and to provide victims a space for not only emotions (Booth 2012), but a public context for emotional expression in judicial proceedings; 'the theory behind their use in court is closely related to the replacement of objective evidence with subjective stories' (Nathanson and Young 2006: 259). Writing their VIS can offer some VOC a humanist mode of easing their sense of powerlessness, grief and distress. And if, in humanist terms, 'seeking coherence in meaning through belief' (Handelman 1997) is important, then writing crime's aftermath through verse-forms in VISs may provide VOCs a poetic mode as much as an expressive means in seeking that coherence.

In the final analysis, although victims' emotional expressions are appropriated in the interests of the state, poetry as expressive forms of the emotional impact of crime deserves a particular place in the study of VISs and public good. Thus, approaching poetry as emotion discourse

helps to shift the focus on what these forms of VISs ‘do’ in terms of social action. Indeed, while poetry as/in VIS exemplifies Sternberg’s contention that ““emotional discourse” about self and/vs. other is no less partial, gapful, unreliable, and accordingly in need of correlation with all the relevance complements and correctives (interior, framing, metonymic, actional, gestural, body-linguaged, even verbal *and* figurative yet obliquely emotive) than the rest of “positioning” speech’ (2009: 478), it is precisely those subjectivities, corporealities, breaches and irregularities which renders this mode of writing so distinctively and characteristically unique as an individually-centric form of speaking about crime’s aftermath. When the VOC chooses the form of poetry to report events of rape, violence, theft and other criminal acts, the emotion discourse the VOC adopts is an experientially-based plane of involvement that articulates, and indeed rejects, certain kinds of social actions committed against them. And, while this form of poetry might not make possible the victim’s escape from the terrors of the violent crime’s aftermath, the poem in and of itself does represent an individual and unique expression of creativity, and by extension, created in order to give some meaning to the impact of crime, its aftermath, and the importance of creativity to being human.

Endnote

1. The exception is New South Wales, which as yet is the only Australian jurisdiction that will not take into account victim impact statements in the sentencing of homicide offenders (see New South Wales Law Reform Commission 2012).

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