

HIV-KILLER: THE CRIMINALIZATION OF HIV NON-DISCLOSURE

HIV-KILLER: A SOCIAL CONSTRUCTIONIST ANALYSIS OF THE
CRIMINALIZATION
OF HIV NON-DISCLOSURE DEBATE

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Lay Abstract

This thesis investigates the debate around the criminalization of HIV non-disclosure with an emphasis on the Canadian context. Adopting a social constructionist approach, particularly as it has been used in the sociological study of social problems, and building on the work of social problems theorist Donileen Loseke, the thesis explores three themes: 1) how claims-makers understand HIV as a condition based on whether they support or oppose criminalization, 2) how claims-makers who support criminalization vilify those who do not disclose their HIV-positive status, and 3) how claims-makers who oppose criminalization work to downplay claims to victimhood by partners of non-disclosers. This work contributes to our understanding of the definitional contests underlying the debate. More broadly, it contributes to our understanding of social problems claims-making processes.

Abstract

Over the past decade, there has been a dramatic increase in the number of cases of criminal charges laid against those who do not disclose their HIV-positive status to their sexual partners. The criminalization of HIV non-disclosure has generated an intense debate which is the object of this analysis. Using a social constructionist framework, particularly the work of Donileen Loseke, a leading social problems theorist, and documentary data drawn primarily from the internet, my goal is to shed light on the debate. More specifically, I am concerned with definitional contests or competing constructions inherent in the debate. The dissertation is organized around three papers. The first paper explores how the condition of HIV itself is socially constructed in the debate. Claims-makers who support criminal sanctions construct the disease as *deadly* and *devastating*, while claims-makers who oppose criminalization construct HIV as *chronic* and *manageable*. The second paper explores the rhetorical strategies used by those who support criminalization to construct non-disclosers as villains. I coined the term *techniques of vilification* to capture these strategies. The third paper examines the rhetorical strategies used by those who oppose criminalization to neutralize the label of *victim* for partners of non-disclosers. As a whole, the dissertation contributes to a better understanding of social problems claims-making processes, particularly around the construction of conditions and people. The dissertation also makes contributions to ongoing discussions in the sociology of health and illness, and victimology.

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Table of Contents:

INTRODUCTION	1
Responses to HIV Non-Disclosure	4
Social Constructionism	13
Method	23
Overview of Papers	28
PAPER 1: <i>Deadly Disease vs. Chronic Illness: Competing</i>	38
<i>Definitions of HIV</i>	
Introduction	39
The Criminalization Debate	42
A Social Constructionist Perspective	45
Method	48
HIV as a Chronic and Manageable Illness	50
HIV as a Deadly Disease	54
Discussion and Conclusion	59
PAPER 2: <i>Constructing an ‘HIV-Killer’: Techniques of</i>	71
<i>Vilification and the Criminalization of HIV</i>	
<i>Non-Disclosure</i>	
Introduction	72
Constructing Villains	75

Method	79
Techniques of Vilification	81
Discussion and Conclusion	94
PAPER 3: “ <i>It takes two to tango</i> ”: <i>HIV Non-Disclosure and the Neutralization of Victimhood</i>	103
Introduction	104
The Social Construction of Social Problems	106
Method	108
Strategies of Victim-Status Neutralization	111
Discussion and Conclusion	123
CONCLUSION	133
Paper Summaries and Contributions	134
Limitations	140
Future Research	144
APPENDICES	150
Appendix A: <i>Newspaper Sources</i>	151
Appendix B: <i>Google Document Sources</i>	152

Introduction

When he wasn't busy fornicating them to death, Johnson Aziga must have hated women. Alternatively, the former Ontario civil servant was entirely indifferent to females, without feeling or conscience as he introduced a silent killer – cloaked in lust – into their lives. Dishonest and duplicitous, thinking only of his immediate sexual gratification, the 52-year-old knowingly and intentionally exposed his unsuspecting lovers to the HIV virus right up until the morning of his arrest on Aug. 30, 2003. He cut a wide swath with his penis. On Saturday, after deliberating for three days, a Hamilton jury found Aziga guilty on two counts of first-degree murder, 10 counts of aggravated sexual assault and one count of attempted aggravated sexual assault.... He liked his women white, plain, even homely and probably lonely. They were co-workers, single-mom neighbours and ladies picked up in bars. Of course, to make love is not necessarily to like and clearly not to give a damn.

*The Hamilton Spectator, April 6,
2009.*

Through much of the early 2000's, the case of Johnson Aziga dominated news headlines in Canada and abroad. Aziga was a Ugandan-born Canadian residing in Hamilton, Ontario and working for the provincial government. In 1996, he was diagnosed with HIV. At the point of diagnosis – his wife by his side – a public health nurse informed Aziga that he was legally obligated to disclose his HIV-positive status to any potential sexual partners and to ensure that he practiced safe-sex. Between 2000 and 2003, separated from his wife and mixed up in a bitter custody battle, Aziga began seeking out the company of other women, engaging in intimate relationships without telling any of them that he was HIV-positive. In some cases, he simply failed to disclose while in others he lied outright to the women who asked explicitly about whether he had any sexually transmitted infections.

Responding to a series of complaints, the Hamilton Police arrested Aziga in August of 2003 and issued a statement declaring that the Aziga case was quickly

becoming one of the largest investigations of this nature in Canada. Initially, Aziga was charged with 24 counts of aggravated sexual assault, although this number was whittled down. After his arrest, two of the female complainants died as a result of AIDS-related cancer, leading to the addition of two counts of first-degree murder to the existing charges. After a lengthy trial, Aziga was convicted in 2009 of two counts of first-degree murder, 10 counts of aggravated sexual assault and one count of attempted aggravated sexual assault.

The Aziga case was precedent-setting on several levels. Aziga was the first person in Canada to be charged and convicted of first-degree murder for HIV non-disclosure. He was also the first person to be declared a ‘dangerous offender’ for this particular crime, a designation that allows him to be incarcerated indefinitely. But Aziga has hardly been the only person to face criminal sanctions for HIV non-disclosure. Indeed, his case reflects a broader trend, in Canada and elsewhere, towards criminalization of HIV non-disclosure. The trend has generated an intense debate about the appropriateness of using the criminal law, as opposed to a public health approach, to deal with the issue of non-disclosure. That debate is the starting point of my dissertation.

The dissertation is a social constructionist examination of the debate around the criminalization of HIV non-disclosure. More specifically, my concern is with a) how the debate constructs HIV as a condition that is either deadly and devastating or chronic and manageable; b) how the debate constructs HIV non-disclosers as villains who need to be sanctioned and held accountable for their actions; and c) how the debate constructs the partners of non-disclosers not as victims, but as individuals who are at least partly

culpable for the outcome of their decisions. My primary goal with the analysis was not to determine which understandings are right or wrong, but to uncover the social processes involved in generating these understandings and tracking their implications in connection with the positions taken in the criminalization debate.

The dissertation takes the form of a sandwich thesis, which means that it is comprised of three separate, stand-alone but related papers. Each paper addresses separately the literature more pertinent to its focus. Each paper is also informed by the same theoretical perspective (social constructionism) and draws from the same data. In addition, each paper includes a discussion of my theory and methods (which accounts for some repetition in the papers), but these discussions are necessarily brief. Therefore, I am using this introduction in part to provide a fuller elaboration of the social constructionist perspective and a more detailed discussion of the methodological approach I took. But I begin with a discussion of the debate surrounding appropriate responses to HIV non-disclosure, more particularly criminalization.

Responses to HIV Non-Disclosure

Since the discovery of HIV/AIDS and the start of the epidemic in the late 1980's, governments, policy-makers, health care providers, and activists have mobilized to stop the spread of the virus. Initial responses, at least in the West, were based on public health and community-based approaches. In Canada, for example, the emphasis has been on educating those who have tested HIV-positive about the dangers of transmitting the virus to their sexual partners and on educating the public generally about the dangers of

unprotected sex. Public health departments and community groups have implemented measures such as urging individuals to voluntarily get tested, post-test counselling, peer-counselling, and easier access to tools and community-based services known to impede the spread of HIV. In extreme cases, public health departments have the option to take coercive action. Indeed, Cain (1992) has written about an Ontario Ministry of Health proposal to designate HIV as a ‘virulent’ as opposed to “communicable’ disease, a designation that would have given public health officials the power to involuntarily hospitalize for up to four months any HIV-positive individual deemed a risk and “uncooperative.” Though the proposal was never enacted, public health departments do have the right to issue orders restricting the movement and behaviour of HIV-positive persons. However, these orders can only be issued by senior officials and only in cases where there is ‘credible evidence’ that the suspected individual is actually taking part in risky behaviour (Interagency Coalition on AIDS and Development 2010). Such orders are rare.

While a public health approach continues to characterize the response to HIV in Canada, there has been a shift over the past two decades towards the more frequent use of the criminal approach. The shift is reflected in the sharp increase in criminal interventions in cases of HIV non-disclosure. In Canada, since 1989, there have been approximately 184 cases where criminal charges have been laid for not disclosing one’s HIV-positive status (Hastings, Kazatchkine and Mykhalovskiy 2017). While some have characterized the increase as a case of ‘criminalization creep’ (see Dej and Kilty 2012; Mykhalovskiy and Betteridge 2012), recent data shows a different pattern, with 82

percent of cases where criminal charges have been laid occurring after 2004 and over 20 of these cases occurring in 2010 (Hastings et al 2017)

A report by UNAIDS (2012), a United Nations organization that serves as a global advocate in the fight against HIV, has found that the trend is worldwide. According to their data, the United States takes a significant lead in the number of criminal convictions for HIV non-disclosure, totalling 350 cases. With that being said, one may argue that the United States has a larger population and, therefore, a larger number of HIV-positive people. Canada comes in second with just under 100 convictions. Countries such as Sweden, Switzerland, Norway, Denmark and New Zealand, all trail significantly behind Canada and the United States with their total number of convictions falling below 50, yet they have much higher rates when conviction per capita is taken into account. That is, the number of convictions in relation to the number of people living with HIV in their respective country (UNAIDS 2012).

Apart from the pattern in terms of numbers, the data shows that some groups are more vulnerable than others when it comes to having charges laid against them. Current trends in Canada, and more specifically in Ontario, indicate a significant proportion of people who have been criminally charged for HIV non-disclosure are heterosexual males with female complainants (Mykhalovskiy et al. 2010; Mykhalovskiy and Betteridge 2012). There is also clear evidence of racialization in these patterns, with 50 percent of the heterosexual men who have been charged in Ontario also being black. These patterns raise obvious questions about the extent to which there is systemic racial discrimination within federal and provincial criminal justice systems (Mykhalovskiy et al. 2010).

Unlike the United States, where 24 States currently have HIV-specific criminal laws on their books (Galletly and Dickson-Gomez 2009), with penalties for non-disclosure ranging from a fine to imprisonment (Horvath, Weinmeyer and Rosser 2010), Canada has no such laws. Instead, the Canadian courts have relied on existing laws within the Criminal Code to sanction non-disclosers (Dej and Kilty 2012). The charge most frequently applied in these cases is ‘aggravated sexual assault.’

A formal connection between the charge of aggravated sexual assault and the non-disclosure of one’s HIV-positive status was established when the Supreme Court of Canada ruled in *R v. Cuerrier* in 1998. Henry Cuerrier, a British Columbia resident, was diagnosed with HIV in 1992. A public health nurse informed him at that time that he was obligated to notify any sexual partners about his HIV-positive status and to wear a condom during these encounters. After his diagnosis, he carried on two sexual relationships with women to whom he did not disclose. Both women consented to unprotected sex but later stipulated in court that they would not have done so if they had been aware of Cuerrier’s HIV-status. At the time of the trial, both complainants tested negative. The Crown charged Cuerrier with aggravated sexual assault based on the argument that the consent that was initially given was invalid because it was not *informed* consent. The trial judge acquitted Cuerrier, stating that, because consent was given, no assault took place. The British Columbia Court of Appeal upheld this ruling.

However, the Crown pursued the case at the Supreme Court of Canada (SCC) which ultimately overturned the ruling. In explaining its decision, the SCC noted that in order to prove that an act of aggravated sexual assault had taken place, the Crown was

obliged to prove that the life of the complainant was endangered by the act and that force was intentionally applied by the defendant without the consent of the complainant (*R v. Cuerrier* 1998). The Supreme Court Justices stipulated that the first condition was satisfied “by the significant risk to the lives of the complainants occasioned by the act of unprotected intercourse” (*R v. Cuerrier* 1998:372), referring to *Cuerrier’s* HIV-positive status. They determined that the second condition was met by establishing that non-disclosure was tantamount to fraud and that, therefore, the consent given was nullified.

The Supreme Court’s ruling on this matter ultimately set the parameters by which all subsequent cases of HIV non-disclosure would be dealt with by Canada’s criminal courts (Dej and Kilty 2012; Mykhalovskiy 2011). The ruling became the basis for many of the criminal charges that have been laid over the 2000s. Many of these cases have been high-profile. Apart from the *Aziga* case, to which I will return, they include *Trevis Smith*, a Canadian Football League Linebacker who was charged in 2005 with two counts of aggravated sexual assault; *Eliot Youden* who explicitly lied about his HIV-positive status to a sex worker; and *Clato Mabior* who was convicted of aggravated sexual assault after exposing six women to HIV, none of whom contracted the virus.

The *Mabior* case stands out because the appeal of the conviction of this case to the Supreme Court changed the parameters around the legal obligation to disclose one’s HIV-positive status. The appeal, which was ruled on in 2012, related to the terminology ‘significant risk.’ *Mabior’s* lawyers argued that the term carried too much ambiguity. As a result, the SCC changed the stipulation from ‘significant risk’ to ‘realistic possibility’ of bodily harm, noting that if a condom was used *and* the HIV-positive person has an

undetectable viral load, the legal obligation to disclose is not necessary (Adam, Elliot, Corriveau and English 2014; Symington 2013).

There are many activist groups who are concerned with the latest Supreme Court decision. They argue that the decision is actually a step backwards in that the recent addendum makes it so that if there is *any* risk of HIV transmission, no matter how small, there is a legal duty to disclose. From this perspective, this effectively expands the scope of the criminal law and opens up even greater possibilities for bringing criminal charges against HIV non-disclosers (Symington 2013).

The Johnson Aziga Case

The Aziga case deserves particular attention both because it was precedent-setting in generating the first successful first-degree murder conviction in Canada, but also because I refer to it frequently in my analysis. This makes it important to have a firm grasp of the case as background. Born in Uganda, Aziga immigrated to Canada in the 1990's. He attended university in Ontario and later became employed by the Ontario Ministry of the Attorney General. In 2003, he was arrested at his home in Hamilton, Ontario after police received numerous complaints from women who suspected that they had either contracted HIV from Aziga or had been exposed to the virus without their knowledge.

After several years of delay, Aziga's trial began in the fall of 2008. During the course of the trial, the women who had either been exposed to HIV in their encounters with Aziga, or contracted it from him, were heard by the judge and jury. The evidence also included the dramatic video testimony of a woman who had died as a result of AIDS-

related cancer before she had a chance to appear in court. In addition, the Crown brought to the stand a psychologist who spoke to Aziga's mental state; the public health nurse who confirmed that she had made Aziga fully aware of his obligation to disclose and stipulated that he was clear on what was expected of him; Aziga's ex-wife, who verified the testimony provided by the public health nurse; and experts to establish that the strain of HIV that the women carried was the same as Aziga's – a rare strain typically found only in Africa and one that established a link between Aziga and the complainants.

The defence worked diligently to prove that there was another suspect that the police had not considered – a man who carried the same strain of HIV as Aziga. The defence team also made attempts to establish that as a result of cultural barriers, Aziga had a difficult time fully comprehending his legal obligations and that this should be taken into account in assessing his culpability. Likewise, it was argued that his reckless behaviour was a result of mental illness and a brain disorder. Ultimately, the jury found the prosecution's argument more convincing; in the spring of 2009, Aziga was found guilty of two counts of first degree murder, ten counts of aggravated sexual assault and one count of attempted aggravated sexual assault.

Following the conviction, the Crown petitioned the court to have Aziga declared a "dangerous offender" at his sentencing hearing. In Canada, the dangerous offender designation is reserved for the most dangerous and notorious criminals, such as sexual predators and serial killers. The designation means that the offender can be jailed indefinitely or until such time as a parole board determines that the individual no longer represents a threat to the community. One example of an infamous criminal who has

been designated a dangerous offender is Paul Bernardo, a serial rapist and serial murderer who was convicted in 1995. After hearing the evidence in the Aziga case, Justice Lofchik ruled in 2011 that Aziga should be designated a dangerous offender, meaning that he will not be automatically released once his 25-year sentence is served, but must petition the parole board for release.

The Debate

The Aziga case and others like it have generated an intense debate about non-disclosure and whether the criminal law is an effective tool in combating the HIV epidemic. I come back to the terms of this debate in a much more focused way through the dissertation. I am interested here only in its main contours.

Attitudes are mixed. A Canadian survey conducted at Toronto Pride in 2005 found that 70 percent of respondents – most of whom were HIV-positive – supported criminalization (Adam et al. 2008). Another Canadian study interviewing 122 people living with HIV, found that a significant proportion of the participants felt that the prosecution of high-profile non-disclosers was justified (Adam et al. 2014). In an American study, Horvath et al. (2010) found that 65 percent of their sample, which consisted exclusively of men who have sex with men, agreed that unprotected sex without disclosure should be illegal. Looking beyond the numbers, however, there are questions about how the law is being applied. In Adam et al. (2014), study participants raised concerns about the presumption of guilt in cases where individuals are charged with non-disclosure and the burden of proof is on those individuals to bear.

These concerns are consistent with the position taken by many AIDS service organizations, who also point to the fact that criminalization places sole responsibility for practicing safe-sex on the person who is aware of their HIV-positive status (Adam 2006; Adam et al. 2008; Symington 2013; Adam et al. 2014). Adam (2006) argues that this particular ideology of responsibility is related to Western individualism and is indicative of a clear shift away from an earlier discourse that emphasized mutual responsibility when it comes to practicing safe-sex.

Those who oppose criminalization outright argue that if the goal is to stop the spread of HIV, criminalization is counter-productive. Criminalization only undermines public health measures that have already been established and shown themselves to be effective (Galletly and Pinkerton 2006; O’Byrne, Bryan and Roy 2013). Criminalization promotes high levels of fear and exacerbates the stigma that those living with HIV already experience (Jurgens et al. 2009; Mykhalovskiy et al. 2010). Criminalization also reinforces a moral approach to the behaviour of people living with HIV rather than encouraging concern for their health and for public health more generally. As Hoppe (2014:146) put the argument in connection with Michigan’s use of criminalization: “[r]ather than controlling HIV as a virus...Michigan’s HIV disclosure law serves to control HIV as a moral infection deserving of interdiction and punishment.”

Between the two extremes – for and against criminalization – lies a vast expanse of gray inhabited by those who tend towards one side or the other only with qualifications, and those who see merit in arguments on both sides of the debate. Some individuals who generally oppose criminalization would not object to the laying of

charges in particularly egregious cases. Likewise, some individuals who favour criminalization stress the judicious use of the law as a tool for dealing with non-disclosure. It is also true that positionings along the continuum of opinion shift over time as contexts shift. For example, the development of effective therapies has weakened the case for criminalization from the perspective of some individuals, but not others. For reasons that will become clear in my discussion of the theoretical concerns that informed this dissertation, my focus is more on the extreme positions at either end of the debate rather than in those who find themselves somewhere in the middle or taking more qualified positions.

Social Constructionism

I was drawn to the debate surrounding the criminalization of HIV non-disclosure because of the possibilities the case presents to explore a number of broader theoretical questions related to the social constructionist perspective as it has been applied to the study of social problems. Briefly, the constructionist perspective is concerned not with problematic conditions, but with the processes by which certain phenomena are defined as problematic (Loseke 2003; Loseke and Best 2003; Spector and Kitsuse 1977). I have been particularly influenced by the work of Donileen Loseke, who has elaborated a formulation of the constructionist approach that focuses analytical attention on the processes by which conditions, people and solutions are socially constructed. I explain this approach more carefully below. I want to start, however, with a more general discussion of the constructionist perspective, its emergence, development, and key debates.

The History

The social constructionist perspective, which emerged in the late 1970's, stood in contrast to other theoretical approaches that studied social problems at the time. Functionalist approaches to the study of social problems dominated the field prior to the 1960's and these theorists understood social problems as conditions that hindered or obstructed the smooth running of society (Lemert, 1972; Spector and Kitsuse 1977; Gusfield 1984). Other social problems theories that were popular at this time included the Normative approach – understanding social problems as conditions that violate certain norms in society – as well as the Value-Conflict school of thought, which understood social problems as the social accomplishment of the public and not something defined by the sociologist (Spector and Kitsuse 1977).

The social constructionist paradigm, on the other hand, was less focused on *why* certain conditions or behaviours were problematic, a predominant feature of earlier theoretical approaches, and more concerned with *how* they came to be seen as problematic in the first place. The emergence of the perspective is typically traced back to the publication of Malcolm Spector and John Kitsuse's *Constructing Social Problems* (1977), a landmark contribution that transformed the research agenda in the sociological study of social problems. Spector and Kitsuse suggested that problems ought to be studied not as *objective* conditions, but as *social processes*. They based this recommendation on the observation that it is difficult for sociologists to establish on a factual or objective basis which conditions are problematic; such determinations always involve subjective judgments. Moreover, in making these judgements, sociologists often

rely on the expertise of other disciplines and are put in the position of making assertions in areas they know little about (Spector and Kitsuse 1977). For these reasons, Spector and Kitsuse proposed that sociologists set aside the quest for objective facts and explore instead the interactional claims-making activities that lead to the understanding of certain conditions as social problems. The shift from conditions themselves to claims-making processes is reflected in the definition that Spector and Kitsuse (1977:75) offered for the purposes of studying social problems as “*the activities of individuals or groups making assertions of grievances and claims with respect to putative conditions.*” (emphasis in original)

The shift in thinking that Spector and Kitsuse proposed raised an entirely different set of questions for sociologists to answer. Rather than looking for causes of, and solutions for, problematic social conditions, sociologists of social problems began to explore claims-making processes – claims-makers involved in these activities, the claims they made and their strategies for pressing claims about putative conditions that they found objectionable, offensive, disturbing or in some way problematic.

Development of the Social Constructionist Perspective

Since the publication of *Constructing Social Problems*, the number of studies that have applied the perspective to empirical cases of claims-making activity has grown and now constitutes a body of literature that can only be described as massive. Social constructionists have studied everything from the social construction of child abuse (Pfohl 1977), abortion (Linders 1998) and even margarine (Ball and Lilly 1982) as social

problems, to understanding the claims-making activities of prostitutes (Jenness 1993) and the NRA (National Rifle Association) (Maratea 2015) to the role that social media can play in the social problems claims-making process (Adorjan and Yau 2015), as well as the interplay between the construction of social problems and the relationship with technology (Sanders, Christensen and Weston 2015). This only just scratches the surface of the substantial amount of social constructionist work that has been published in this field.

As the empirical literature generated by social constructionists has grown, there have also been ongoing theoretical debates. One issue that has sparked considerable theoretical debate is the question of how consistently social constructionists apply their relativism to their analyses. In a paper published in 1985, Woolgar and Pawluch made the observation that constructionist studies exhibit ‘selective relativism;’ that is to say, to a greater or lesser degree, analysts treat some aspects of reality (typically the claims of claims-makers) as socially constructed and others as given (typically features of the social context within which these claims are made). They problematize the claims of the groups they are studying in the sense that they treat them as phenomena that need to be explained socially, but gloss over the fact that characterizing the social context within which claims are made also involves interpretative or constructive work. Woolgar and Pawluch (1985) refer to this inconsistency as “ontological gerrymandering.”

The “ontological gerrymandering” critique ultimately led to a schism among social constructionists. Those who sought to somehow resolve the ontological gerrymandering problem came to be known as ‘strict constructionists’, while those who

downplayed the inconsistency and insisted on the importance of studying claims-making activities within their social and cultural context, came to be known as ‘contextual constructionists.’ In the former camp are theorists like Ibarra and Kitsuse (2003) who attempted to narrow the focus of constructionists even more on the meanings and categories that claims-makers construct as part of their moral discourse, and on the uses that claims-makers make of rhetorical motifs, idioms and counter rhetorical strategies. The contextual constructionism position has been advanced most forcefully by Joel Best (2003) who insists that social constructionists sacrifice too much in not allowing themselves to explore social contexts and ask “why” questions about the claims-making activities that interest them. More recently, Lawrence Nichols (2015) has reasserted the merits of taking a contextual approach to constructionism by reflecting thoughtfully on all of the reasons why context matters in any analysis that seeks to fully grasp processes of social problems claims-making.

There have been other attempts at advancing the social constructionist perspective theoretically. Benford and Hunt (2003) have offered a way of integrating social constructionism with social movements theory. Miller (2003) and Schneider (2009) explore the common ground between social constructionism and postmodernism. Best (2015) has recently made a strong argument for moving beyond individual case studies and using meta-analyses to develop more general theories of social problems, offering a typology of axes along which different claims-making initiatives might be connected. Del Rosso and Esala (2015), building on the work of theorists like Dorothy Smith and Bruno Latour, have made a case for looking more closely at texts as interpretative

resources that claims-makers, distant in time and space from the production of those texts, can use in their claims-making efforts. Archer (2015) has urged that greater attention be paid to the construction of actors' interests and interest claims. These are just a few examples of the new conceptual ground that constructionists are exploring.

Both the steady stream of empirical work that social constructionists continue to generate and the intensity of the ongoing theoretical debates reflect the enduring usefulness of the social constructionist perspective.

The Contributions of Donileen Loseke

If social constructionism has thrived, particularly on an empirical level, considerable credit goes to Donileen Loseke (2003). As Loseke (2015:7) herself put it, while Spector and Kitsuse's *Constructing Social Problems* was pivotal in shifting how sociologists thought about the study of social problems, the book did not offer an explicit theoretical framework to guide constructionist analyses. Loseke's formulations have contributed in a major way towards filling this gap. They also provide the conceptual frame around which I have structured my dissertation.

Loseke draws attention to how claims-makers *typify* or *frame* social problems. More specifically, she has identified three types of framing processes; diagnostic, motivational, and prognostic. *Diagnostic framing* informs people in what ways and why a condition should be considered problematic. In doing so, claims-makers are also informing their audience of the magnitude of the problematic condition (Loseke 2003).

In addition, the diagnostic frame also establishes who or what is to blame for the condition.

According to Loseke (2003:60), there are number of ways that a condition can be defined as problematic, which can be categorized more broadly as *social causes* and *individual causes*. Social causes of a problematic condition can refer to *social structure* – for example, placing responsibility on the media for the problem of ‘school shootings’ – or *social forces* – identifying systemic racism within police services for the problem of ‘police shootings’. Each problematic condition can be framed in multiple ways. For instance, going back to the example of school shootings, claims-makers can use a *social structure* diagnostic frame to argue that media, family, and even the school system itself are at fault for the increase in number and severity of school shootings. On the other hand, claims-makers could frame school shootings as the outcome of *social forces*, pointing the finger at the bullying that the shooter experienced while in school. When defining school shootings as caused by the *individual*, claims-makers may point to the shooter’s mental illness as an explanatory factor. How the condition is framed – whether it is framed as a social or individual cause - ultimately impacts the proposed solutions to remedy the problem. This will be discussed in further detail below.

Motivational framing refers to the claims that claims-makers make regarding why people should care about the condition in question. Claims-makers encourage people to *think about* and *feel* in certain ways about the conditions, in a bid to draw attention to their claims among the many others that average citizens are exposed to over the course of their normal lives (Loseke 2003). Claims-makers can get audience members to engage

emotionally with issues by framing those issues in ways that resonate with some deeply held and much cherished *cultural themes* (Loseke 2003:63) and/or by pressing claims in ways that get the audience to focus on people and how they have been harmed or detrimentally affected by the condition (Loseke 2003:78). Often, these claims are personalized and presented in terms of the story of a particular individual. Motivational framing is so bound up with individuals and how they are experiencing conditions, that Loseke (2003:75) characterizes it as ‘constructing people.’ For Loseke, focusing on the process of people-construction is a way for social constructionism to harness the insights of the sociology of emotions.

Loseke (2003:89) suggests that most motivational frames follow a formula story which involves constructing some players as *victims* and others as *villains*. Underlying these constructions are a society’s ‘cultural feeling rules’ - culturally established norms about how we should feel about certain categories of people (Loseke 2003:30). For instance, victim typifications rely on feeling rules concerning who we deem deserving of sympathy. In order to successfully construct a victim-category, claims-makers must convincingly claim that the group has been harmed through *no fault* of their own, but also that the group is *morally worthy* and *deserving* of our sympathy (Loseke 2003:78).

While constructing people as victims is meant to evoke sympathy, the process of constructing villains is meant to evoke feelings of hatred in the public. For a group to be successfully constructed as villains, certain criteria must be met. Villains must be typified as *solely responsible* for their actions and for the harm done, as *deliberate* in their actions and *intending* to do harm, and there must be no *morally acceptable reason* for the

harm that was caused (Loseke 2003:83). With that being said, Loseke (2003:84) has noted that, at least in Western culture, constructing villain-categories can be tricky. People are more reluctant to demonize individuals and more inclined to attribute responsibility for problem behaviours to social structural factors or to illness. Feelings of hatred are difficult to conjure up when feelings of sympathy intrude. Moreover, from a claims-making stand-point, assigning blame invites counter-claims concerning the blame being assigned, which claims-makers prefer to avoid when possible (Loseke 2003:84).

Finally, claims-makers engage in *prognostic framing* when they incorporate into their claims preferred solutions to the problematic condition (Loseke 2003:97). Claims-makers need to convince their audience that the condition is problematic, but they also need to convey action-plans for solving the problem as well as identifying who is responsible for solving the problem. Solutions are informed by ‘social problems formula stories’, which “contain morals [that] tell us what is wrong and why it is wrong” (Loseke 2003:101), and claims-makers use prognostic frames to tell their audience how they will remedy the problem.

How the condition is defined, and what diagnostic frame is used, impacts how the solution is constructed (Loseke 2003). Going back to the example of school shootings, when the blame is placed on the individual and mental illness is determined to be the cause for the shooting, claims-makers may propose more funding for mental health organizations and institutions or develop public service announcements to help the public identify when there may be a ‘troubled’ teen in their midst and what to do about it. On the other hand, when the cause of the problem is framed as structural, say the media in

this case, claims-makers may petition the government to implement policy that censors violent media and encourage parents to watch out for certain kinds of music, video games, movies, etc. that may trigger a violent episode.

Among Loseke's contributions is the attention that she draws to the different dimensions of interpretative work in the construction of social problems and the fact that in constructing conditions, claims-makers are inevitably constructing people-categories – that is, typifying groups of individuals, invoking particular emotional responses to those individuals, and inviting particular reactions to them – and setting the stage for particular kinds of solutions to be sought or ameliorative action to be taken. Yet there are still many questions to be asked about the finer points of these interpretative processes. For example, while Loseke provides insights into some of the necessary elements in the constitution of a 'villain', it would be useful through empirical examples to provide a deeper understanding of the processes and strategies that claims-makers use in the construction of villain-categories. Moreover, Loseke devotes considerable attention to the construction of victims, but she does not look at cases where particular groups claim victim status (or have it claimed on their behalf) only to have their bid rejected, denied, or negated by counter claims-makers. Finally, Loseke's observations about how diagnostic, motivational, and prognostic frames are connected begs questions about how precisely these interconnections work.

In ways that the brief overview of the dissertation at the end of this chapter makes clear, each paper I have written addresses one or another of these questions in some way.

Method

As a way of getting at the discourse concerning the criminalization of HIV non-disclosure, I carried out a qualitative content analysis of a variety of documents, including the contents of a broad range of internet sites, legal briefs and rulings, Canadian newspaper articles along with the comments that followed them, and organizational position papers. I started my search by focusing on documents relevant to, and generated by, the Johnson Aziga case. Living in Hamilton, where Aziga was tried, I was well aware of the case and the attention it attracted. I knew as well that the case was a conversation piece in the sense that individuals felt compelled to comment and express their views in one form or another. My assumption was that the Aziga case itself would yield a sufficient amount of data for me to analyze, but also that the case could well lead to other venues where “talk” or discourse around criminalization might be found.

My first step was to consult LexisNexis Academic – a database which allows users to search hundreds of newspapers and legal documents. I conducted a search of Canadian news articles that made mention of Johnson Aziga at all in their coverage. In the end, I collected approximately 320 news items dating from 2003-2014. These were the years through which Aziga was arrested, tried, convicted, and sentenced, as well as when the debate about the criminalization of HIV non-disclosure was beginning to gain momentum. While I included data from even the smallest Canadian newspaper,¹ there were particular news sources that I relied on more heavily. The *Hamilton Spectator* was

¹ For a complete list of newspapers included in this analysis, please refer to Appendix A.

key. Since Aziga was a Hamiltonian and his trial was held in Hamilton, the local paper had extensive coverage of the case along with the debate on a more general level. So too did the *Toronto Star* and Canada's two main national newspapers – the *Globe and Mail* and the *National Post*. Since the two national papers are well known for reflecting opposite ends of the political spectrum (the *Globe and Mail* is viewed as liberal, while the *National Post* is seen as conservative), I was confident that I was tapping into a broader range of opinion on the question of criminalization. My analysis of news sources was not restricted to news stories themselves, but included opinion pieces, editorials, as well as comments posted by readers.

At one point, I looked into gaining access to Aziga's full trial transcripts with the goal of including them in my analysis. However, the cost proved prohibitive, and by that point in my project I knew that there were other sources on which I could draw. For example, many of the legal appeals that were filed by both the Crown and the defence were available online and covered much of how the case unfolded from the time of Aziga's arrest to his sentencing hearing. I was also able to gain access to the dangerous offender ruling. This 62-page document provided a detailed account of the entire trial, including summaries of some of the testimony as well as victim impact statements, adding depth to the discussions being analyzed.

The notoriety of the Aziga trial meant that discussion of the case extended well beyond the court documents and discussion in mainstream media. Other sources I examined included on-line material such as articles written for on-line sites. For example, *Tribe Magazine* (www.tribemagazine.com), a once free-print magazine based in

Toronto that has since transitioned to a social network emphasizing urban living, ran an article discussing the case. Likewise, *Queerty* (www.queerty.com), an alternative news site geared toward LGBTQ issues, posted an article referring to the problems with criminalizing HIV non-disclosure, which led to a lively debate amongst its readers. Besides reading the articles, I followed the comment threads that accompanied them. In addition, my general search led to some more informal sites such as *Fitnesspal* (www.fitnesspal.com), a weight loss site that provides tips and facilitates a support network, and *Baby Center* (www.community.babycenter.com)² that focused on parenting and pregnancy. These sources provided more unorganized, informal discussions of non-disclosure and non-disclosers, often providing an uncensored view of how the audience understood and perceived the issues. While there is no apparent link between any of the aforementioned websites, the one thing that they do have in common is that, at some point, Johnson Aziga and/or the issue of HIV non-disclosure became a focus of discussion on those sites. In order to find these discussions, I conducted a Google search using the key words “Johnson Aziga non-disclosure.” After omitting duplicate pages, the search generated approximately 95 documents that I analyzed along with the news stories and legal documents.

A documentary analysis, as opposed to an interview-based study, offered several advantages given my research questions. First and foremost, this approach gave me access to a broader range of points of view on the question of criminalization. In

² For a complete list of Internet sites included in this analysis, please refer to Appendix B.

addition to the opinions of those most directly involved in the debate, including lawyers, activists and organizational representatives, I was able to get a sense of how readers of news stories and members of the general public thought about these issues.

Moreover, since the web allows individuals to express their views anonymously, the access that I had was in many cases unfiltered. In other words, my sense was that the contributors were “talking freely” and that I was seeing their “true” feelings. I was able to avoid any observer effects or issues of reactivity – the impact the researcher has on their participants during the course of the research project (Aurini, Heath and Howells 2016). The range of discourse that I was able to tap into explains the difference in language and tone in the quotes that appear throughout the dissertation. Some of the quotes are more formal and moderate in tone. In other cases, opinions are expressed in extreme terms, often using profanities and offensive language.

That said, my approach to data collection tended to capture more extreme views at both ends of the spectrum rather than those that make up the gray area in between. This may be a function of the fact that individuals with strongly felt views one way or another are more likely to comment publicly than those who feel torn or have more qualified views. For my purposes, this was not a problem, since it was precisely the rhetoric at the extremes that I wanted to explore. However, the result is that readers may be left with the impression of a debate that is not as polarized as the dissertation suggests. I address this point more fully in the limitations section of my conclusion.

As a point of clarification, at no point did I interfere with, or join in on, any of the conversations that were taking place on-line. All of the documents that I analyzed were gathered from open-access sites and were, therefore, in the public domain. That is, I did not include as data any conversations that required membership as a condition of access. As an extra precaution and as a way of respecting the privacy of those who did not identify themselves and were writing anonymously, I was also careful in my writing to avoid including information that was not pertinent to the point I was making, but might make individuals identifiable or at least easy to track.

The analysis itself involved a ‘back-and-forth’, iterative process. This means that my reading of the documents was guided by analytical concepts suggested by social constructionism and more specifically Loseke’s work on typification, formula stories, and the construction of victims and villains. As I read each document, I identified themes relevant to the social processes that interested me and generated analytic memos along the way. After an initial read-through, several relevant themes began to emerge. I considered each theme in light of the theoretical literature and my initial research interests. Once I found points of clarity, I revisited the data with these themes and ideas in mind, aiming this time to deepen my understanding of the social processes that were unfolding in the data. This strategy allowed me to determine where there were gaps in the data and whether I would need to collect more data to strengthen and enrich my analysis.

Overview

In the pages that follow, I present three papers. Each paper explores a different facet of the debate around the criminalization of HIV non-disclosure. At a conceptual level, the thread that binds these papers together is the focus on the constructive work inherent in this debate. Guided by the concerns of a social constructionist perspective and building specifically on Loseke's formulations, I explore how participants in the debate create meanings and represent HIV, non-disclosers and their partners in ways that support the positions they make in the criminalization debate.

Paper One – Deadly Disease vs. Chronic Illness: Competing Definitions of HIV

The first of three papers that make up this dissertation can be described as a paper that deals with the construction of conditions. The paper looks at how HIV is typified in the discourse around the criminalization of non-disclosure. I show how those with different positions on the appropriate measures to take with respect to non-disclosers (a public health approach versus a criminal approach) construct HIV itself entirely differently.

While those who oppose criminalization understand HIV to be a chronic and manageable illness, those who support criminalization construct HIV using typifications more common in the early days of the epidemic – deadly and devastating. I use the findings in this paper to raise questions about how far the impact of social problems debates can extend beyond the social conditions at the heart of definitional disputes and how other aspects of reality can be affected. This paper has been prepared for submission to *Social Sciences and Medicine*.

Paper Two – Constructing an HIV-Killer: HIV Non-Disclosure and the Techniques of Vilification

The second and third papers of the dissertation focus more on the construction of people-categories and, more specifically, on the casting of victims and villains. While the processes by which victims are constructed have received attention in the literature, this is less so for villains. The second paper extends Loseke's work by using the case of HIV non-disclosers to explore precisely how people are typified as villains. I identify several strategies that are used to vilify non-disclosers. I refer to them as *techniques of vilification*. These include: (1) constructing non-disclosers as perpetrators of great harm; (2) constructing non-disclosers as having acted knowingly; (3) constructing non-disclosers as having nefarious motives or being callously indifferent; (4) debunking alternative explanations; and (5) debunking the argument for shared responsibility. This paper has been published in *Deviant Behaviour*.

Paper Three – “It takes two to tango”: HIV Non-Disclosure and the Neutralization of Victimhood

The third paper relates to the casting of victims, or more specifically, *challenges* to the construction of particular groups as victims. In this paper, I look at the “*it takes two to tango*” argument within the non-disclosure debate, which suggests that in an environment where the threat of HIV continues to be real and where public health messages for the past 30-plus years have been emphasizing the need to practice safer-sex, those involved in intimate relationships with non-disclosers bear some responsibility for their decision. I

show how those who oppose criminalization challenge the notion of partners as “innocent victims” of non-disclosers. I identify a number of strategies that they employ to do so.

This paper has been provisionally accepted by the *International Review of Victimology*.

The dissertation ends with a concluding discussion which summarizes my findings in the three papers along with their substantive and theoretical contributions. This section also considers the contributions of the dissertation as a whole and reflects on areas of future research

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Deadly Disease vs. Chronic Illness: Competing Definitions of HIV

Abstract

Today, many would agree that HIV has become successfully redefined as a chronic and manageable illness. This has been the accepted definition of the condition for over two decades within the scientific and medical communities, as well as AIDS service organizations, AIDS activists and people living with HIV. Yet, there continues to be some arenas where HIV is understood as it once was – a deadly and devastating disease. One such arena is found within the debate concerning the criminalization of HIV non-disclosure. This paper examines the competing constructions of HIV found within this debate. Those who support the criminalization of HIV non-disclosure frame the disease as harmful and deadly. On the other hand, those who argue against the criminalization of non-disclosure construct HIV as a condition that is chronic and manageable, not unlike diabetes. In this paper, I use this disagreement over the appropriate response to HIV non-disclosure to show how definitions of health conditions can become mired in larger social problems debates in ways that lead to contests over how best to understand the fundamental nature of those conditions

Key Words: HIV; Deadly Disease; Chronic Illness; Social Constructionism; Criminalization; HIV Non-Disclosure

There is a growing appreciation within the social sciences that disease – something that has traditionally been thought of as objectively given – is in fact a social construction (Conrad and Barker 2010; Pawluch 2016) and subject to the interpretative work of social actors. That interpretative work has resulted in behaviours, conditions, and states of being that were once considered normal, or part of the ‘natural’ order, to be defined as medical events that call for medical intervention. This trend has been well documented, for example, in connection with childbirth (Oakley 1984), infertility (Bell 2016; Scritchfield 2009), premenstrual syndrome (Figert 1996), menopause (McCrea 1983), erectile dysfunction and andropause (Conrad 2007), weight (Sobal and Maurer 1999), shyness (Scott 2006), dementia (Harding and Palfrey 1997), and even death and dying (Horwath 2007). Behaviours that were once seen as deviant or bad have also been reinterpreted or medicalized so that they now bear disease labels rather than moral labels (Conrad and Schneider 1992). These definitional shifts, as social accomplishments, have been studied in connection with mental illness (Szasz 1961), hyperactivity or ADHD in children (Conrad 2007), child abuse syndrome (Pfhol 1977), and sexual compulsivity (Levine and Troiden 1988). Likewise, just as diseases are brought into existence through social processes, they can be defined out of existence as well. Perhaps the most notable example is homosexuality, which was once considered a disease and legitimized by the Diagnostic and Statistical Manual as a psychiatric disorder, but has now become normalized (Spector 1977).

Citing the contributions of sociologists of medicine like Freidson (1970), Waitzin (1989), and Zola (1972), as well as drawing on developments in the sociology of science,

Brown (1995) has written insightfully about the importance of acknowledging the social forces and people's interactive meaning-making involved in shaping what we make of health and illness. Brown (1995:38) proposes a 'sociology of diagnosis', where diagnosis is understood as a matter of the "politics of definition" and where greater attention is paid to the processes of "naming and framing" (1995:35). As part of his proposal, Brown offers a typology of conditions, including some conditions around which there is consensus so that the condition is universally accepted as disease, and others where groups may still be seeking to have disease labels applied or where disease labels have been applied and contested. Examples in these categories include chronic fatigue syndrome, chronic pain syndrome, multiple chemical sensitivity, occupational and environmental diseases.

This paper is not so much about the contests over *whether* a condition ought to be viewed as disease, but about what *kind* of disease the condition represents. I look at competing constructions of HIV – HIV as a deadly, life threatening illness versus HIV as a chronic and manageable condition. When HIV was first discovered in the 1980's, it was generally understood to be terminal. The prognosis for anyone receiving an HIV-positive diagnosis was dire, carrying with it the expectation that they could expect to live, at best, only a few more months (Beaudin and Chambre 1996). Even in the earliest days of the epidemic, there were segments of the HIV community who resisted the fatalism in such a construction. For example, Gamson (1989) and Gillett (2011) have written about the refusal on the part of many people living with HIV to believe that their diagnosis was a death sentence, that their situations were hopeless and nothing could be done. By and

large, however, the virus generated a great deal of uncertainty – fear about the deadly and wasting nature of the disease itself, fear related to the lack of knowledge and understanding of how the virus is transmitted, and fear related to groups who were predominantly at risk of infection; primarily gay men, intravenous drug users, and sex workers (Herek and Glunt 1988).

The campaign to redefine HIV from terminal to chronic gained traction around the turn of the millennium. According to Beaudin and Chambre (1996:691), the shift can be attributed to “medical, epidemiological, and social factors”. Medically, more effective treatments became available. Antiretroviral therapies (ART), which began to be developed in the late 1980’s, were effective in at least slowing down the virus, and eventually gave way in the mid-1990’s to highly active antiretroviral therapies (HAART), which made it possible for people living with HIV to live out normal life spans (Samji, Cescon, Hogg, Modur, Althoff, et al. 2013).

Yet, there are still arenas where questions persist about how best to understand HIV and where a discourse of HIV and AIDS as a deadly disease can still be found. One such arena is the debate surrounding the criminalization of HIV non-disclosure. At the risk of oversimplifying a debate that is complicated and nuanced, it is fair to say that there is a tendency for those who oppose criminal sanctions against those who do not disclose their HIV-positive status – non-disclosers – to build their claims on an understanding of HIV as chronic. At the same time, there is a tendency for those who favour criminalization as an effective method for stopping the spread of HIV and sanctioning those who spread it, to promote a view of HIV as deadly and devastating.

In this paper, my goal is to use this disagreement over the appropriate response to HIV non-disclosure to show how definitions of health conditions can become mired in larger social problems debates in ways that lead to contests over how best to understand the fundamental nature of those conditions. I begin by providing a brief background into the issue of HIV non-disclosure and the debate about how non-disclosers should be treated. I then describe the theoretical perspective that informed the analysis of this debate. As a social constructionist, my concern is less with who is right and who is wrong, and more on how those involved frame their claims and advance their respective positions. After briefly describing the method I used, my analysis then focuses on the typifications of HIV inherent in the claims being made by both those who favour criminalization and those who oppose it. I conclude with a discussion about the value of better understanding the social contexts within which these disagreements arise. More specifically, I make the case for attending to the links between social problems claims-making and disease construction.

The Criminalization Debate

In Canada, along with many other Western countries, there have been efforts made to minimize the impact of the HIV epidemic since its discovery in the 1980s. Typically, there have been two predominant methods to impede the spread of the disease – the public health model and the criminalization approach. Despite the availability of criminal charges in Canada, for many years the most commonly used measure to not only stop the spread of HIV, but also in dealing with non-disclosers, has been the public health approach. This model focuses on educating those who have recently been diagnosed as

HIV-positive about the risks involved with having unprotected sex and their legal obligations to disclose their positive status to any potential sexual partner. When there is a case of non-disclosure that is reported to public health, behaviour orders may be issued, warning the person who has not disclosed their status. Only as a last resort will public health contact the police if the behaviour does not desist.

Since the early 2000s, there has been a move away from the primary use of the public health model in dealing with cases of HIV non-disclosure and a dramatic increase in the use of criminal sanctions. In Canada, between 1989 and 2009, there were 104 criminal cases with 98 individuals charged (Mykhalovskiy, Betteridge, and McLay 2010). Perhaps more significantly, Mykhalovskiy et al. (2010) note in their report that approximately 68% of non-disclosure criminal charges occurred between 2004-2009. Because there are no HIV-specific criminal laws on the books in Canada, the most commonly applied criminal charge is ‘aggravated sexual assault.’ Its usage was firmly entrenched with the 1998 precedent setting Supreme Court of Canada ruling in *R v Cuerrier*. The Supreme Court found that Henry Cuerrier, an HIV-positive man from British Columbia who did not disclose his sero-status to two women, committed an act of fraud, thereby nullifying the consent that was initially given by the affected women. As part of this ruling, the Justices established the ‘significant risk’ test, whereby an HIV-positive person is obligated to disclose their status to potential sexual partners if there is a significant risk of bodily harm; in this case meaning the possibility of transmitting HIV (Mykhalovskiy 2011).

The trend towards criminalization in Canada as well as other countries has generated debate and controversy. Many policy-makers and public health authorities, and most people living with HIV, along with HIV service organizations and activists, take the position that criminalization is not an effective tool for combating the epidemic. On the contrary, criminalization is seen to be counterproductive because it undermines public health measures by deterring HIV-testing (Galletly and Pinkerton 2006; O’Byrne, Bryan, and Roy 2013) and promotes higher levels of HIV-related stigma (Jurgens et al. 2009; Mykhalovskiy et al. 2010).

On the other side of the debate are those who support the criminalization of HIV non-disclosure. The rapidly rising number of instances where criminal measures have been enacted to deal with cases of HIV non-disclosure is, in itself, indicative of widespread support on the part of the institution of the criminal justice system, not just in Canada, but worldwide. In addition, support for criminal sanctions can be found among some AIDS service providers. In a study comparing two states in America – Alabama and North Carolina – Lichtenstein, Whetten, and Rubenstein (2014) found that 90% of the HIV providers in North Carolina supported disclosure laws with an understanding that not disclosing one’s status is a crime. O’Byrne, Bryan and Roy (2013) also found support in their review of the criminalization literature. Significantly, they found that most studies that reported participant support for criminalization were found in quantitative research – primarily survey based – and that some research pointed to support coming from those who had reported being HIV-negative, or never being tested at all. Some research has even pointed to support among people living with HIV of criminalization,

although often with mixed feelings as Adam, Elliot, Corriveau, and English (2013) found in their study. While there was some support for criminal sanctions, concern was also expressed that those who are criminally charged held the burden of proof and that there was a presumption of guilt until proven innocent.

The controversy around criminalization finds expression in the debates among authorities and various stakeholders, but can be found as well in conversations, exchanges, posts and comments on the internet. Focusing on such sources, I show in this paper that there is a clear pattern between the position taken with respect to criminalization and how the condition of HIV is typified and socially constructed.

A Social Constructionist Perspective

My analysis of these patterns is informed by a social constructionist perspective, particularly as the perspective has developed in the area of the sociological study of social problems. The development of constructionism in the social problems area mirrors interest in the perspective in the sociology of health. That is, through the same period that health scholars were raising questions about “disease” as a subjective interpretation and social accomplishment, those interested in social problems were raising the same kinds of questions about what constitutes a social problem. While there were precursors, the ground-breaking work of Spector and Kitsuse (1977) marked the beginning of a shift in the study of social problems. In a book titled *Constructing Social Problems*, Spector and Kitsuse (1977) took issue with the focus on objective conditions (poverty, family violence, crime, etc.) that characterized the area through the better part of the 20th century.

Insisting that conditions become problematic only by virtue of the subjective judgements that individuals make with respect to these conditions, they urged sociologists to stop studying social problems as objective facts and to consider instead how certain conditions come to be *defined* as problematic. Since social problems are a matter of social definition, and these definitions change over time, they insisted that the emphasis should be placed on the *process* by which these definitions come about and the claims-making activities that generate them.

Spector and Kitsuse's work opened up a virtual floodgate of research, with hundreds of case studies adopting this approach to the study of social problems. At the same time, those who saw value in this approach continued to develop and enrich the perspective theoretically and conceptually. One such scholar is Donileen Loseke (2003a). Since Loseke's formulations are germane to the analysis in this paper, they warrant further attention.

Building on the agenda that Spector and Kitsuse laid out for social constructionism, Loseke (2003a) specified three interconnected elements involved in the social problems claims-making process – the social construction of conditions (*diagnostic frames*), the social construction of people (*motivational frames*), and the social construction of solutions (*prognostic frames*). Diagnostic frames essentially communicate to audiences why a particular condition is problematic; motivational frames focus on the individuals connected with the condition as either victims or villains, thereby providing audiences with a rationale for caring about the issue; and prognostic frames suggest what needs to be done to ameliorate the condition.

In previous papers, I have studied motivational framing in the debate over the criminalization of HIV non-disclosure. Using the concept of *techniques of vilification*, I looked at strategies used by those who favour criminalization to portray non-disclosers as villains and dangerous perpetrators of great harm (Speakman 2017). In another paper, I focused more directly on the strategies used by those who oppose criminalization to counter or neutralize the typifications of those perceived to be harmed by non-disclosers as *victims* (Speakman *forthcoming*). This paper moves away from motivational frames and the social construction of people-categories and deals more with diagnostic and prognostic framing within the debate. How conditions are framed, Loseke (2003a) points out, is often related to the solution that is ultimately proposed, linking diagnostic and prognostic frames in decisive ways. She uses as an illustration of this connection the example of ‘transportation for disabled people.’ If the condition is framed simply as a problem with transportation itself, the solution is to call for more funding for adequate transportation. On the other hand, the framing of the problem as a violation of civil rights would call for looking beyond transportation issues at the broader institutionalized discrimination against those who are disabled,

Loseke (2003a) notes that, in some cases, the definition of the condition itself can become a point of contention between claims-makers and counter claims-makers. That is, there may be agreement about the existence of the condition, and perhaps even on the issue of whether the condition is problematic, but *not* about how to typify or characterize the condition. An example is the abortion debate. Some people view abortion as the killing of an unborn child. Others do not define the fetus as a child, but merely a cluster

of cells, and the removal of these cells not as “killing” but as a woman exercising her rights over her body. The debate around criminalization of HIV non-disclosure offers a unique opportunity to explore the issues that Loseke raises more deeply that involve competing definitions of a condition – in this case a disease (terminal or chronic) - linked to competing definitions of the appropriate solution (education or criminalization).

Method

The data for this project consisted of news, legal, and internet documents and comments, all relating to the discussion of the criminalization of HIV non-disclosure. To find these documents, I used the strategy of starting with one particular case in Canada – the case of Johnson Aziga – and then tracked commentary that was generated by coverage of this case wherever it led me in a snowball fashion. Johnson Aziga was a Ugandan born immigrant to Canada who was charged and convicted of two counts of first degree murder, ten counts of aggravated sexual assault, and one count of attempted aggravated sexual assault in 2009 in Hamilton, Ontario, Canada. This was the first time in Canada, and likely the world, that an HIV-positive person was convicted of murder for not disclosing their HIV status to a sexual partner. In 2011, the Crown petitioned the court to declare Aziga a dangerous offender, meaning he would remain in jail indefinitely. The Court granted this request and Aziga was given the title of *dangerous offender*, a sentence that is often reserved for Canada’s most heinous criminal offenders.

The strategy of using the Aziga case proved effective in the sense that due to its notoriety both in Canada and around the world, it fueled a more general debate in the

press and online about how non-disclosure ought to be handled. I started out by searching for anything that made mention of Aziga's name, however brief. This included legal documents related to Aziga's trial. While it was not possible to gain access to the trial transcripts themselves, I was able to access any court appeals filed either by the Crown or the defendant. In addition to the appeals, I was able to access a summary of the dangerous offender hearing, which provided a glimpse into the more important aspects of the trial itself along with summaries of the victim impact statements. I also scanned news articles dating from 2003-2014. I located these items using the Lexis Nexis database and included only Canadian newspapers.

I then conducted a comprehensive Google search looking for any documents or conversations mentioning Aziga and HIV non-disclosure. Using the search term "Aziga, Johnson non-disclosure", I followed the trail wherever it led me. Among the documents that I located were numerous comment feeds following articles discussing the issue of criminalization more broadly, websites such as *VNN.com* (a website catering to white supremacists) where criminal sanctions were fully supported because non-disclosure was framed as a problem of black men giving white women AIDS, and a *PlentyofFish.com* (a free dating website) forum debate referring to another case of non-disclosure where the person was convicted of two counts of aggravated sexual assault. More formal discussions were also included, such as posts from one of Aziga's lawyers, that laid out the problems with criminal sanctions in a thoughtful and logical manner.

There was a great deal of variability in the data as far as style, tone, and sophistication. While reporters on news and organizational sites typically identified

themselves, and are held accountable for what they produce, in comment feeds and on more general websites, individuals used a pseudonym or wrote anonymously. While some contributors wrote as interested parties (people living with HIV, clinicians, lawyers), others appeared to simply be members of the general public with an opinion on these matters. In some cases, the comments were detailed and more formal in tone. In other cases, they were brief and written casually, sometimes using profanities and negative stereotypes. In some cases, views were expressed in moderate terms; in other cases, in extreme terms. The latter was especially true for those who supported criminalization and wrote anonymously. Anonymity allows individuals to express themselves in unrestrained ways, since they cannot be held accountable for what they say (Kling, Lee, Teich and Frankel 1999). I did not exclude any comments I found precisely because it was my goal to capture as much as I could of the discourse or “conversation” going on around the issue.

I analyzed the data by initially coding them loosely with respect to where contributors stood on the question of criminalization. I then examined the contents more carefully, looking at how HIV was characterized in what was written. I identified themes in these typifications which ultimately became the basis for the analysis that follows.

HIV as a Chronic and Manageable Illness

An analysis of the discourse critical of the criminalization of HIV non-disclosure clearly reveals a picture of HIV as a chronic and manageable disease. This picture is reflected largely by referring to advances in treatment and new knowledge about lifestyle changes

that can mitigate the effects of HIV. Based on this new knowledge, critics argue that the dire prognosis that was once common for those diagnosed as HIV-positive has been greatly reduced and the probability of living a full and normal lifespan greatly increased. For example, a comment made following a *Globe and Mail* opinion piece noted:

BTW – HIV/AIDS is no longer a death sentence in this country [Canada]. Proper drugs and lifestyle can have those living long productive lives. (*Globe and Mail* [editorial] 2010)

Another comment found on a *Plenty of Fish* discussion thread discussing criminalization, makes the observation that, with advances in knowledge, HIV-positive people are, in fact, likely to die from causes other than AIDS, though the author does concede that AIDS plays a role by compromising the immune system:

Generally, people don't die from AIDS. They die from other diseases that result in death due to the weakened immune system. (www.pof.com [forum])

In a report, critical of the trend towards criminalization in Canada (Mykhalovskiy et al. 2010), the authors underline the dramatic medical advances that have taken place since the first precedent-setting cases were tried and insist that the law has simply not kept up with the science around HIV. The report argues that this disconnect may be partly a result of the “complex and rapidly evolving nature of scientific research on HIV sexual transmission risks” (Mykhalovskiy et al. 2010:26). In making that argument, they emphasize a view of HIV as manageable:

With the advent of effective therapy in the mid-1990's, life expectancy for people living with HIV has steadily increased. The World Health Organization and other leading health authorities consider that, with proper medical care, HIV is a chronic manageable condition, similar in many ways to other chronic conditions such as diabetes or cardiovascular disease. (Mykhalovskiy et al. 2010:26)

A similar argument is made in a comment thread on *Queerty* discussing criminal charges laid against an HIV-positive gay man:

Why is it, well over a decade after HIV disease became a non-instant death sentence, that Canadian authorities are beginning to pull crap like this? (www.queerty.com [comment thread] 2010)

In an article written for the *Globe and Mail*, the author goes even further in the claims for the effectiveness of current treatments, suggesting that they have made it possible to reduce the level of the virus in the system to a virtually undetectable level:

At the beginning of the AIDS epidemic, doctors had little means of treating the disease and most patients faced certain death. But medical advances transformed HIV treatment. Patients given highly active antiretroviral therapy, known as HAART, can now expect to live an almost normal lifespan. Furthermore, the drugs reduce HIV to undetectable levels in semen, vaginal fluids and blood (Taylor 2011).

The reference to the undetectability of the virus is significant in that it reflects the recent position that a number of HIV experts, including scientists, advocates, and organizations have taken in the last few years. Captured in a slogan first promoted by Prevention Access Campaign, a multi-agency health equity initiative launched in the US in 2016 (www.preventionaccess.org), ‘U = U’ (Undetectable equals Untransmittable) is the claim that HIV-positive individuals receiving better drug treatment and showing undetectable viral loads of HIV – 200 copies/ml or less - for at least six months, represent no infection risk to their partners.

Since its inception, the U=U movement has been aggressively promoting that individuals with undetectable viral loads should be under no moral obligation to disclose

their HIV-positive status to their sexual partners. In terms of the criminalization debate, the implication of the U=U campaign is that individuals cannot be held criminally responsible for an action (non-disclosure) which is within their rights. But the argument rests on a view of HIV as at least treatable and, once viral loads have decreased to a certain level, as no longer transmissible.

The U=U campaign reinforces the argument that in cases of HIV non-disclosure, the law has simply not kept up with science. Those who oppose criminalization juxtapose accounts of advances in HIV treatment and their effect on reducing the threat of death once linked to HIV against the trend towards greater criminalization. They point to the irony in the fact that as HIV becomes more manageable, criminal charges have increased in number. In a *dailyxtra.com* article, the author points to another consensus statement that takes a similar position:

Just last month, dozens of Canadian scientific experts released a consensus statement that said, “A poor appreciation of the science related to HIV contributes to an overly broad use of the criminal law against individuals living with HIV in cases of HIV nondisclosure... We are concerned that actors in the criminal justice system have not always correctly interpreted the medical and scientific evidence regarding the possibility of HIV transmission, and may not have understood that HIV infection is a chronic and manageable condition. This may lead to miscarriages of justice.” (Fouchard 2014).

The view of HIV as a manageable condition comes through as well in another argument that opponents of criminalization make, having to do with the precise charges laid in non-disclosure cases. Ultimately, critics take exception to the use of criminal charges altogether except in cases where HIV was deliberately transmitted. With that being said, there is the belief that the criminal charges that are applied do not equal the

severity of the ‘harm’ caused. In one case in the United States, an HIV-positive person was charged with bio-terrorism for allegedly biting a neighbour during an altercation. In commenting on this case, the author ridiculed the severity of the response:

...the wealth of research on HIV/AIDS over the last three decades contrasts sharply with ongoing public misconceptions that are codified by policies that criminalize disease--- paving the way for [people living with HIV] to find themselves susceptible to terror charges for actions that not only are demonstrably incapable of spreading HIV, but would, for a non-HIV positive person, carry much less serious sanctions. (Clark 2010)

Even those who would like to see some sort of consequence for non-disclosure insist that – given the nature of the virus – a more appropriate response would be a fine or a public health warning. The proposed response is a measure of the seriousness of the offence from the perspective of those who do not see HIV as life-threatening. That is to say, as a manageable condition, HIV does not warrant the kind of response that might be justified if it were, in fact, a death sentence. The ridiculing of current responses, juxtaposed against actions typically understood as examples of bioterrorism, serves to indirectly challenge a view of HIV as deadly and threatening.

HIV as a Deadly Disease

Proponents of criminalization rest their arguments on a sharply different view of HIV than those who oppose it. HIV is characterized in their rhetoric as a deadly disease, caused by a ‘killer virus’. References are made to actions of non-disclosers as ‘basically attempted murder’ (comment on a *Positive Living BC* discussion thread) and the virus they harbour as a ‘murder weapon’ (*National Post*). Criminalization, in the view of the supporter of this approach, feels entirely warranted given the gravity of the wrong

perpetrated on those who become infected as a result of their relationships with non-disclosers, as one commenter on *positivelivingbc.org* noted:

The fact is, they put their partners in tremendous danger by not disclosing their status. The law is reasonable and moral. (www.positivelivingbc.org [comment thread] 2014).

In another example, a comment made on the same comment thread draws an analogy between non-disclosure and drunk driving, emphasizing the deadly nature of HIV in the process:

If I drive home drunk, and [no one] gets hurt, I can still go to jail for a DUI. Attempted murder is a stretch, but HIV is a life-changing, potentially fatal illness, and someone who doesn't respect their partner enough to inform them should be punished. (www.positivelivingbc.org [comment thread] 2014).

This understanding of harm extends to instances where the affected partner may have not been infected, but has to live with the uncertainty and anxiety of not knowing if their test results will come back positive for HIV. In the case of Johnson Aziga, some of the women who were exposed did not contract HIV, but the psychological harm that they suffered was emphasized (Speakman 2017). One woman told the courts that waiting for the HIV test results was 'pure torture.'

For many of those who support criminalization, descriptors of non-disclosers and legal sanctions for their actions do not go far enough. In a comment thread following an article on *alternet.org* discussing the case where an HIV-positive man was arrested on terrorism charges, one commenter suggested that non-disclosers be characterized as terrorists:

If you have HIV and you bite someone then YOU ARE A TERRORIST. A Biological Terrorist. Period. (Clark [comment thread] 2010).

Some commenters call for non-disclosers to have their access to HIV medications cut off as a punishment for their non-disclosure. On *Plenty of Fish* discussing another Canadian case of non-disclosure – the case of Vincent Walkem - where the accused was sentenced to fifty-six months, one commenter argued:

I say keep him locked up, as a menace to society, and take away his drugs. Let him rot to death, carry out the death sentence he so willingly handed out. (www.pof.com [comment thread]).

Another supporter of criminalization called for the re-institution of the death penalty, which was abolished in Canada in 1976. Other supporters suggested some more extreme options:

Not only should it [criminalization of HIV non-disclosure] remain a crime but castration should be the punishment. (www.pof.com [comment thread]).

Since this guy has shown a willingness to expose others without telling them... Tattoo “HIV Infected” in inch high letters right across his face. (www.pof.com [comment thread]).

The extreme nature of the labels and sanctions that are called for in all of these instances have the effect of underlying the gravity of the harm caused by non-disclosers and, indirectly, the seriousness of HIV as a diagnosis.

The construction of HIV as dangerous and deadly is not restricted to anonymous online comments. The disease is framed in the same way in the comments of legal

experts and professionals. For instance, the Crown (the prosecution) referred to HIV as a “slow acting poison.” In addition, the judge who presided over Johnson Aziga’s trial emphasized during the sentencing hearing where a dangerous offender designation was requested by the prosecution, that the “...consequences of his actions were fatal”, and, as reported in *The Daily Gleaner*, Justice Lofchick stated that “Aziga “represents a gamble on the safety of the women in this community.” Throughout the summary of the hearing, Lofchick was more detailed and graphic in his elaboration, pointing out that two women had died as a result of AIDS-related cancers, and that those who were still alive reported having their teeth fall out, sores on their feet that prevented them from walking, and symptoms that persisted in spite of treatment.

Similarly, in the coverage of the Aziga case, the press quoted Mark Nagler, a retired sociologist, who specialized in studying disability, on a number of occasions. He referred to HIV as a “transmissible disability,” and argued that:

Society has a right to be protected from its maniacs, no matter where they come from, whether they have intention or not... This is the perspective that the law takes: that society is in need of protection. (Hemsworth 2005)

A challenge for supporters of criminalization, of course, is how to engage with the argument that opponents make, that while an understanding of HIV as deadly might once have been true, advances in treatment make that view no longer accurate. Many supporters appear to accept that developments in treatment have made a difference. However, they minimize the impact, insisting that while these treatments may have improved life for those living with HIV, they have *not* changed the fundamental nature of

HIV as a disease. A number of comments found following an article on *Positive Living*

BC illustrate this point:

I don't think it's OK to give someone a terrible disease just because the disease isn't **as** deadly as it used to be. (emphasis in original) (www.positiveliving.org [comment thread] 2014).

The whole "HIV is no longer a death sentence" argument is stupid. You've still been given a life-long incurable disease with potentially bad consequences. (www.positiveliving.org [comment thread] 2014).

I'm sorry but I don't want a disease that has no cure, no matter how good the treatments have become, or how long my life *could* be. (www.positiveliving.org [comment thread] 2014).

Another argument that supporters of criminalization make is that while there have been advances in treatment, not everyone has access to those treatments. They insist that 'victims' of non-disclosers may come from marginalized groups and groups with lower socio-economic status. These are precisely the individuals, it is argued, who have limited access to healthcare and/or may not be able to afford medications. For these individuals, they point out, HIV is just as deadly and devastating as it was 30 years ago. In the same comment feed referred to above, one commenter noted: "If you are poor, it is still a death sentence." Likewise, another commenter, referring to the affordability of medication, stated: "Which means that it's still a death sentence, if you are unemployed or the working poor." Focusing attention on those likely to come into contact with non-disclosers and characterizing those individuals as marginalized and poor allows supporters of criminalization to minimize the impact of advances in the science around HIV treatment and to continue to frame HIV as dangerous and deadly.

Discussion and Conclusion

In spite of a redefinition of HIV as a chronic and manageable illness among most medical professionals, the scientific community, and AIDS activists, understandings of HIV as it was once typified – as devastating and deadly – persist, setting up a definitional contest over how HIV should be viewed. The competing views of the disease are evident in the debate around the criminalization of HIV non-disclosure. Though there are many individuals with more subtle and mixed understandings of HIV, there is also a tendency for those who support criminalization to construct HIV as devastating and terminal, while those who oppose criminalization tend to conceptualize HIV as a condition that, with proper management, allows those who are positive to live out normal life spans. My aim in this paper was to reveal these competing views and to illustrate how they find expression in the criminalization of non-disclosure debate.

The case study suggests a number of more general points. First, the study is a good illustration of the socially contingent nature of understandings of HIV specifically, and disease more generally, and in that sense, adds to the literature on the social construction of health and illness. In a social context where individuals have access to the same scientific information about a condition – its manifestations, characteristics, symptoms, treatment options, and prognosis – the case shows that they can nevertheless adopt understandings of a condition that are dramatically different and at odds with each other.

Second, the case addresses *why* definitional contests can emerge in certain instances and provides insight into some of the factors that can potentially generate debate around how a condition ought to be understood. It would be impossible to say how firmly a definition of HIV as chronic and manageable would have taken hold in the absence of the non-disclosure debate. There might well have been a stronger consensus by now that HIV does not represent the threat it once did. But the fact is that the appropriateness of criminalizing HIV non-disclosure has emerged as an issue over the past decade, prompting discussions about the seriousness and nature of the harm perpetrated by non-disclosers, which has ultimately kept alive a debate about the very nature of HIV as a condition. The debate around criminalization, and more specifically the claims-making of those who favour a criminal response, are perpetuating a view of HIV (as deadly) that may have otherwise been supplanted by now.

The case of HIV underlines the extent to which how we view conditions and diseases is affected not only by scientific evidence and interpretations of that evidence, but by larger debates within which definitions may become embroiled. In other words, where there are differences in views about disease definitions, those differences may be related to broader social issues. Going back to Brown's discussion (1995), for example, it may be worthwhile to look at the conditions that fall into the "contested" category and to explore more deeply the social bases for those contestations. Many of the conditions he identifies (e.g. occupational diseases, multiple chemical sensitivity, environmental diseases) are linked to social problems debates about occupational and environmental hazards and risks. It is not unreasonable to suggest that their construction as either

legitimate or contested is connected to positioning in those debates and that whether they ever get recognized as “routinely defined” diseases rests to some extent on the outcome of those debates. Another example is transability, a condition characterized by a desire on the part of able-bodied individuals to acquire a physical impairment (i.e. amputation, paralysis, blindness). What type of condition transability represents (a psychiatric problem or a dysmorphic disorder like transsexuality) or even whether it is a disease at all and not simply an extreme form of body modification or art, are all questions being considered in the context of larger social debates about diversity and challenges to the notion of “disability.”

Finally, the case of HIV raises questions about *how* the construction of problems (diagnostic frames) and solutions (prognostic frames) are linked. One could ask about the criminalization debate; do individuals take a hard line on the criminalization of non-disclosure because they believe HIV is deadly and warrants severe sanctioning? Or is it the case that the pursuit of a “get tough” approach to non-disclosure encourages a more dire and fatalistic construction of HIV and an exaggeration of its impact in discourse about the issue as a way to justify continued criminalization? Conversely, do those who oppose criminalization do so because they really do see HIV as manageable and non-disclosers as benign; or does an anti-criminalization stance encourage as a discursive strategy the construction of HIV in more benign terms and minimization of its potential impact as a way of changing responses to non-disclosure?

Put more generally, the question becomes: do claims-makers seek out certain solutions because of how they understand the problematic condition in question, or does

the desire to enforce a particular type of solution affect how conditions are constructed? The data in this particular study do not offer any definitive conclusions. But, the pattern does suggest that more research on the question of the direction of the link between the construction of conditions and solutions would be fruitful. There are certainly cases within the literature that speak to this issue, suggesting that the construction of conditions can, in fact, be solution driven. One of those cases has been published by Loseke herself (2003b) in a paper on the resolution of the ‘problem’ of homelessness in New York City in the 1980’s. Loseke (2003b) discovered that when officials found themselves needing to respond to citizen complaints about the growing presence of the homeless on city streets, they sought to remove them against their will. However, to do so in a way that was legal and not seen as a violation of the rights of homeless people, they defined the homeless as mentally ill and used existing involuntary confinement provisions to forcibly remove them. Like the case of HIV discussed in this paper, this study underlines the imperative to consider and analyze more carefully the use of condition constructions as justificatory rhetoric in the pursuit of particular end goals and forms of social control.

One of the points raised by those who support criminalization, in response to the ‘HIV as chronic’ argument, is that there are those who are living with HIV that do not have access to the medications that make the illness manageable. Therefore, the disease remains deadly and devastating for them. There are a number of questions here that warrant further investigation regarding this issue that this particular project was unable to address. One question that needs to be addressed is how do those who oppose criminalization respond to this argument? Likewise, there are cases where people living

with HIV cannot afford medication or the medication is ineffective; how does the issue of the criminalization of non-disclosure affect those people? Regarding the anti-criminalization claims-makers, is non-disclosure only 'okay' when the medication is effective? What do they have to say about those not on medication unwillingly? What would, then, be an appropriate response to non-disclosers from this group?

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**Constructing an ‘HIV-Killer’: HIV Non-Disclosure and the Techniques of
Vilification**

Abstract

Donileen Loseke (2003) has argued that social problems claims-making typically involves the construction of ‘people-categories’ and more specifically the casting of victims and villains. While the processes by which victims are constructed have received attention in the literature, this is less so for villains. This paper extends Loseke’s work by using the case of HIV non-disclosers to explore precisely how people are typified as villains. I analyze discourse – or ‘talk’ – surrounding the criminalization of HIV non-disclosure and non-disclosers with a view to identifying some of the strategies used to vilify non-disclosers. I refer to these strategies as the *techniques of vilification*.

Key Words: Criminalization; HIV Non-Disclosure; Social Constructionism

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* Note, the following paper is presented as it has been published in *Deviant Behaviour* with no changes.

In recent years, there has been a shift away from dealing with instances of HIV non-disclosure using a public health approach across much of the Western world. While the emphasis was once placed on educating those with HIV, along with the public, about the risks of HIV exposure and the importance of safer sex practices, HIV non-disclosers are now increasingly being charged and sanctioned through the criminal courts. In Canada alone, between 1989 and 2009, criminal charges have been applied in 104 cases (Mykhalovskiy, Betteridge and McLay 2010), many of them occurring after 2004. Some of the better known cases include that of Trevis Smith, a Canadian Football League linebacker, who was charged in 2005 with two counts of aggravated sexual assault and Clato Mabior, who was convicted in 2008 on charges of aggravated sexual assault for exposing six women to HIV, even though none of these women contracted the virus.

One of the most notorious cases, and arguably the most sensationalized to date in Canada, is the case of Johnson Aziga. Emigrating from his native Uganda, Aziga came to Canada and attended the University of Guelph where he met his now estranged wife. In 1996, while still married, Aziga was diagnosed with HIV. After receiving complaints that Aziga had transmitted HIV to a number of women, the police in Hamilton, Ontario, where Aziga resided, put him under surveillance and in 2003 arrested him. In 2009, after a lengthy trial, Aziga was convicted of two counts of first-degree murder, ten counts of aggravated sexual assault and one count of attempted aggravated sexual assault. In 2011, the courts went further still and classified Aziga as a ‘dangerous offender’, a designation typically reserved for Canada’s most violent criminals and sexual offenders. The Aziga case stands out as the first successful conviction in the world for murder due to HIV non-

disclosure. This explains why the case was followed so carefully by the media, both within the country and internationally, and generated so much press.

Generally speaking, the literature on criminalization of HIV non-disclosure focuses on patterns and trends of criminal prosecutions (Mykhalovskiy et al. 2010; Mykhalovskiy and Betteridge 2012), concerns regarding the ambiguity of the legal definition of ‘significant risk’ (Dej and Kilty 2012; Mykhalovskiy 2011) and the overall effectiveness of criminalization as a strategy for slowing the spread of HIV (Jürgens et al. 2009). There are studies on how non-disclosure laws are understood by people living with HIV/AIDS (PLA) (Mykhalovskiy et al. 2010) and on how men who have sex with men, regardless of their sero-status, respond to criminalization (Adam, Elliot, Husbands, Murray and Maxwell 2008; Horvath, Weinmeyer and Rosser 2010). There are also studies on how AIDS service providers feel about and disseminate this information regarding PLA’s legal obligation to disclose (Mykhalovskiy 2011). Finally, there have been a number of studies looking at how criminalization has been depicted in the media (McKay, Thomas, Holland, Blood and Kneebone 2011; Persson and Newman 2008).

In contrast, my focus in this paper is on the rhetorical construction of individuals who do not disclose their HIV-positive status and, more specifically, at their typification as dangerous ‘villains’. I describe the strategies used in the typification of villains as *techniques of vilification*. Those familiar with the deviance literature will recognize the similarity to the concept of techniques of neutralization, so famously developed by Gresham Sykes and David Matza (1956). Sykes and Matza used the concept of techniques of neutralization to refer to strategies used by juvenile delinquents to

rationalize or justify their deviant acts and maintain a positive sense of self. They highlighted five techniques, which include: (1) denial of responsibility; (2) denial of injury; (3) denial of victim; (4) condemning the condemners; and (5) appeal to a higher loyalty. I use the concept of techniques of vilification to capture a different process – one aimed not at protecting self-definitions, but at vilifying others. My findings are based on an analysis of discourse, or ‘talk’, surrounding the criminalization of HIV non-disclosure and non-disclosers. While I draw heavily on the discourse generated by the Johnson Aziga case, I also include as data more general discussions in the media about HIV non-disclosers.

My framing of the central questions in this paper – the construction of HIV non-disclosers as villains and the processes of typification involved – is rooted in an approach to studying social problems known as social constructionism. Therefore, I start with an examination of the constructionist perspective, focusing on key concepts and formulations relevant to my research. This is followed by a brief discussion of other literature that deals with the fundamental issue of vilification. After discussing the methods I used to conduct my analysis I turn to my own findings, which focus on the ways in which HIV non-disclosers are vilified. The findings are organized according to the *techniques of vilification* I identified. These techniques include: (1) constructing non-disclosers as perpetrators of great harm; (2) as having acted knowingly; (3) as having nefarious motives or being callously indifferent; (4) debunking alternative explanations; and (5) debunking the argument for shared responsibility. My paper concludes with a discussion of the significance of these findings.

Constructing Villains

This study is situated within the social constructionist tradition, particularly as it has been developed and used in the sociological study of social problems. The constructionist perspective shifts the study of social problems away from understanding problems as objective conditions towards a study of the processes by which social conditions come to be seen as problematic (Loseke 2003; Loseke and Best 2003; Spector and Kitsuse 1977). The focus on processes has led to analyses of who engages in claims-making activity, the socio-historical circumstances under which claims-making occurs, the strategies that claims-makers use, how claims-makers frame their claims and the consequences of such activity (Best 2003; Loseke 2003; Spector and Kitsuse 1977).

Elaborating on these processes, Loseke (2003) has pointed out that audiences for claims need to be motivated to care about the problematic conditions to which claims-makers are trying to draw their attention. Claims-makers can get the public to engage emotionally with issues by framing them in ways that resonate with some deeply cherished ‘cultural themes’ (e.g., the innocence of children) and/or by pressing claims in ways that get the audience to focus on how people are being harmed or detrimentally affected by the condition in question. Often claims take the form of formula stories structured around victims and villains. Underlying these formula stories are a society’s ‘cultural feeling rules’ – culturally established norms about how we should feel about different categories of people (Loseke 2003). For instance, victim typification relies on feeling rules pertaining to who is morally worthy and who we subsequently deem deserving of our sympathy. Villains, on the other hand, must be typified as solely

responsible for their actions, as intending to do harm and as having no morally acceptable reason for having engaged in their actions (Loseke 2003). Loseke (2003) goes on to argue that it is easier for claims-makers to construct victims than villains because it is easier to evoke feelings of sympathy over feelings of hatred.

Loseke is not the only scholar to draw attention to the functions that villains serve. Klapp (1956), one of the first scholars to point out that the villain plays an important role in society, refers to two categories of villain roles: the highly visible and the less visible. The former, for instance, encompasses such groups as the rebel, the authoritarian and the monster. The rebel is perceived as a threat to society, seeking to overthrow the establishment, while the authoritarian is vilified because this person asserts their authority over others, potentially restricting the individual freedoms of others or imposing his/her will. Klapp (1956:338) characterizes the monster as a “bizarre villain whose acts and motivations are beyond the ordinary range of human comprehension and whose stature approaches the demonic.” The latter category, the less visible villains, includes, for example, the deceiver, a person who uses fraud and deception and is not what they seem; the corrupter who exerts a disconcerting influence over others, threatening their moral character; and the parasite, which can be characterized as a free-loader or a leech on society. Klapp (1956) argues that villains serve the function of providing a contrast from normal people, exaggerating or idealizing negative characteristics that a society seeks to discourage and in some cases creating a state of alarm around the occurrence of deviance. The construction of villains can be a form of isolating behaviour in cases of

extreme deviance or where the violation of social mores has been especially egregious (Klapp 1956).

Likewise, Alsford (2006) in his interdisciplinary examination of heroes and villains in contemporary popular media has argued that what a culture considers to be heroic or villainous speaks volumes about its attitudes and norms. Who and what we deem to be villainous is relative to our culture and to our societal values (Daynes 1997); these values shape our understandings and constructions.

Many of those who have studied the juxtaposition of victims and villains have noted that these categories are contextually situated within gender, race, and sexuality frameworks. When social workers are trying to determine which female drug users are most worthy of help, assigning them too much agency and perceiving them as rational actors renders them villainous and therefore less deserving (Frisaufova 2012). On the other hand, if these women are seen as victims of an unfair system who turn to drug use as a result, social workers are more inclined to become involved (Frisaufova 2012). Persson and Newman (2008) found in their research on the criminalization of HIV transmission in the Australian press that those who were vilified tended to be heterosexual, male immigrants from Africa. Past constructions of PLA focused on homosexual men, Haitians and intravenous drug users, all of whom were presented as groups who bore responsibility for their infections and were, therefore, undeserving of sympathy (Bardhan 2001). In the UK, headlines call those who are charged with HIV non-disclosure ‘AIDS Assassins’, ‘HIV Beast’, and ‘One-Man HIV Epidemic’. While the majority of criminal cases in the UK involve white people, the press

disproportionately focused its coverage on black heterosexuals (Persson and Newman 2008).

Scholarly work in the area of social movements has also contributed to our understanding of vilification, primarily as a strategy utilized by social movement organizations. McCaffrey and Keys (2000) found that vilification was used as a strategy to counter-frame the abortion debate in the United States. For instance, those supporting the pro-choice movement attempted to frame pro-life supporters as terrorists and urged the FBI to investigate them. The findings of the McCaffrey and Keys (2000) study confirms Vanderford's (1989: 166) conclusion that "[v]ilification is a rhetorical strategy that discredits adversaries by characterizing them as ungenune and malevolent advocates."

Another theme in the literature on vilification has to do with the consequences that these processes may have on the individual, the group, and on social policy more broadly. Corvo and Johnson (2003), for instance, examined how the vilification of the 'batterer' has had a significant impact on domestic violence research, intervention and policy, characterizing 'batterers' as underserving of help and closing them off from services and interventions. Likewise, Wakefield (2006) found that the 'extreme' vilification of sex offenders has had a significant impact on policy; harsh punishment rather than treatment is typically called for.

While the literature on vilification is useful in shedding light on the functions, contexts, and consequences of vilification, little of it addresses directly the “hows” of vilification. My study aims to fill this gap.

Method

As a way of getting at discourses about HIV non-disclosers, I analyzed a variety of documents – government documents and publications, news sources along with other internet sources. I started with data relevant to, and generated by the Johnson Aziga case, ultimately using his case as a touchpoint for the broader discussion about HIV non-disclosure and non-disclosers.

With reference to the Aziga case, I examined news coverage of the case itself. Using the *Lexis Nexis* database, I collected approximately 320 news items. There were a number of news sources I relied on particularly heavily. Since Aziga was arrested and tried in Hamilton, Ontario, the *Hamilton Spectator* had extensive coverage, as did the *Toronto Star* and Canada’s two main national newspapers, the *Globe and Mail* and the *National Post*, which are generally seen as reflecting two opposite ends of the political spectrum. I have included a list of all Canadian newspapers that were used in this analysis in Appendix A. My examination of these news sources included not simply reports on the trial and its aftermath, but also commentaries, editorials, and letters to the editor.

While the cost made acquisition of the court transcripts concerning the Aziga case prohibitive, I was able to obtain the Ontario Superior Court of Justice ruling that imposed

the “dangerous offender” designation on Aziga. This 62-page document provided a detailed account of the entire trial, including summaries of some of the testimony and victim impact statements, adding depth to the discussions within the news media.

The notoriety of the Aziga case meant that discussion of the case extended well beyond court documents and discussion in mainstream media. Other sources I looked at included online sources such as articles written for on-line sites such as *Tribe Magazine* (www.tribemagazine.com), a once free-print magazine in Toronto that has since transitioned to a social network emphasizing urban living, as well as *Queerty* (www.queerty.com), a news site geared toward LGBT issues. Besides reading the articles themselves, I followed the comment threads that accompanied them.

In addition, my general search led to more informal sites such as *Fitness Pal* (www.fitnesspal.com) - a weight loss site that provides tips and facilitates a support network- and *Baby Center* (www.community.babycenter.com), a webpage focusing on pregnancy and parenting. These sources provided more unorganized, informal discussions of non-disclosure and non-disclosers often presenting a much more uncensored view of how the audience understand and perceived the issues. A complete list of the sites and web pages analyzed can be found in Appendix B.

While there is no apparent link between any of the aforementioned websites, the one thing that they do have in common is that at some point Johnson Aziga and the issue of HIV non-disclosure was discussed. In order to find these discussions, I conducted a Google search with the key words, ‘Johnson Aziga non-disclosure’. After omitting

duplicate pages, as well as news articles that were already part of the analysis, approximately 95 documents were analyzed. Whether a document was chosen for analysis was dependent on whether there was any mention of Aziga in the article or conversation, regardless of whether he was the focus of discussion or just a minor reference, allowing for the analysis of more general discussions of HIV non-disclosure to take place.

Guided by analytical concepts suggested by the theoretical literature I used to frame the project, as I read each document, I identified themes relevant to the social processes I was interested in. Once I started to establish clarity in terms of the patterns I was finding, I went back over the data, looking more carefully this time for instances of what I ultimately began to understand as strategies of vilification. I present those strategies in the discussion below.

Techniques of Vilification

The premise of this paper is that the trend towards the criminalization of HIV non-disclosure hinges on the construction of “non-disclosers” as a distinct category of individuals (a people-category) and the typification of individuals who fall within this category as villains. But precisely how are these villain-types created? An analysis of the data shows that the vilification process involves several strategies or *techniques of vilification*.

Constructing HIV Non-Disclosers as Perpetrators of Great Harm

As Loseke (2003) points out, villains are defined in part by the harm they do. In the case of HIV non-disclosure, the vilification of non-disclosers begins with the characterization of HIV/AIDS as a great harm. There are repeated references in the discourse around non-disclosure to HIV/AIDS as a “deadly disease” or a “terminal” illness. For example, an article in the *National Post* carried the headline, “When AIDS becomes a murder weapon.” In addition, an editorial in the *Vancouver Sun* stated: “It is a fact that HIV/AIDS is a deadly virus...” In the same editorial, the author agrees with Aziga’s murder conviction, stating that “He knowingly and deliberately infected these victims with a *deadly* virus without their knowledge or consent. (emphasis added).”

The discourse presents the harm as occurring on several levels. There is a focus first on the physical aspects of infection. Apart from assumptions made about death as the likely outcome, there is a long list of additional painful symptoms included in references to the infection. In some cases, the physical harm connected with HIV/AIDS is presented in terms of personal stories of the suffering endured by specific individuals. For example, in the Aziga case, the impact statements of his victims outline a number of physical consequences resulting from their HIV infection. During the course of Aziga’s dangerous offender ruling, the judge, Justice Lofchik, summarized the physical suffering of one of the victims as follows:

She has had to have all of her teeth pulled out; she suffers from frequent migraine headaches; she has painful side effects from the HIV medication; and her feet have become inflamed and covered with sores making it difficult to walk, dance, bike and camp...

The irony in these constructions is that they stand in contrast to understandings of HIV/AIDS that have become prevalent since the 1990s. With the advent of antiretrovirals and other treatments for HIV/AIDS, AIDS service groups and public health professionals in particular, have been promoting a view of HIV/AIDS as a manageable, chronic condition as opposed to a terminal illness. However, in the context of the non-disclosure debate, to describe HIV/AIDS as chronic and manageable is to minimize the harm done by those who transmit the infection and to those who are living with it. The more harm done, the greater the possibility of heaping scorn and moral condemnation on those who knowingly infect others.

Another strategy for magnifying the harm done is focusing on the psychological, as well as physical, suffering involved. Going back to the victim impact statements referred to in the dangerous offender ruling, the statements included references to how difficult it was for the victims not to be able to work and care for their children. They spoke about their social isolation and depression. Some of Aziga's victims even admitted that they had contemplated or attempted suicide. Others spoke of the breach of trust and the difficulties they have had establishing new relationships. One of the victim impact statements, as summarized by Justice Lofchik, notes:

...the social isolation that she has experienced as a result of the offence committed by the offender. She doesn't go out; she doesn't associate; she doesn't like people touching her; she stays away from men. This victim feels that she has lost everything in her life and still cannot get over what the offender did to her. Once she learned that she was HIV positive she tried to commit suicide by taking pills but she survived. She has lost her appetite and suffers from insomnia.

Another statement is summarized as follows:

She has tried to keep the events and her subsequent HIV infection from others. It is “like a dark secret...it makes me feel dirty”. As a result of her HIV infection, this victim’s marriage has suffered as her husband’s children are upset with him being with her and are afraid that he will be infected and die. As a result of the stress he will say things like, “I am going to die because of you”. This victim fears the future and suffers from depression for which she must be medicated. She also suffers from sleep apnoea and has suffered a heart attack as a result of the stress.

Commenting on the victim impact statements, a psychiatrist involved in the case underlined the seriousness of the psychological effects: “people do better in response to a natural disaster as opposed to their response to trauma associated with betrayal of trust by another human being.”

The notion of psychological harm as part of the assessment of the harm caused by non-disclosure allows those who are vilifying HIV non-disclosers to count as victims not only those who have actually contracted the infection, but also those who did not, but were exposed to the virus. In physical terms, those who remain HIV negative are referred to as having “dodged a bullet”, but at a psychological level they too are described as dealing with the consequences of what has happened to them, particularly the betrayal of trust. One of Aziga’s victims – a woman who ultimately tested negative for HIV - described what it was like for her to discover what Aziga had done and then wait for her test results. She wrote in her impact statement: “[w]aiting for the results was pure torture.” At the point at which she submitted the statement (six years after her encounter with Aziga), she stated that she remained convinced that the results were somehow wrong and that she was, in fact, infected. The very fact that this woman was treated by the courts as a victim and allowed to submit a victim statement rests on the assumption that despite being HIV-negative, she was nevertheless harmed. The content of her victim

statement speaks to the nature and magnitude of the harm. Her case demonstrates clearly how broadly harm is understood to extend in non-disclosure situations.

The magnitude of the harm in non-disclosure discourse can also be augmented through the characterization of victims; the more pitiable, likeable and innocent the victim, the more despicable the non-discloser. In the coverage of the Aziga case, a news article in the *Globe and Mail* featured an account of the video testimonial of one of the women who died before the trial. A portion of the story reads:

Although terribly thin and weak, unable to raise her head from the striped pillows behind her, she nonetheless smiled her crooked smile often, and several times her silvery laugh filled the room. It was almost as though she was trying to put at ease the...young detectives in the room, and her own cousins.

The themes of resilience, courage and concern for others that runs through the quote also run through the discourse in general regarding victims. A *Plenty of Fish* forum includes the profile of a woman who had an encounter with Vincent Walkem, an individual charged with, and convicted for, not disclosing his HIV-positive status in Toronto, Canada in 2007. The profile was written by a friend, who expresses great admiration for the woman's strength in the face of adversity:

For my friend, the news of her infection helped her decide to get her studies started. She is now a full-time modern dance student. Touched by a horrendous betrayal and living through the fear of illness, her courage, drive, and passion are an inspiration to all those who know her. "It really put life into perspective for me," she told me. "While at first I felt sorry for myself, it has actually made me incredibly motivated."

Constructing Non-Disclosers as Having Acted Knowingly

The perpetration of great harm is a necessary but not sufficient condition for the successful vilification of non-disclosers. Another condition is that non-disclosers must be seen as having acted in full knowledge of their HIV-positive status and the risks that their actions entailed. Often the discourse on this point emphasizes both the level of general information concerning HIV that is available and the kind of counseling and education that particular individuals receive when they test positive. Implicitly, and often explicitly, the message is they should ‘know better’. A contributor to the forums on *Tribe*

Magazine’s site commented:

If you know that you are positive, and you know you are having unprotected sex, you essentially know, and are planning, to subject that person to a very good chance of a terminal illness

Likewise, a member on a *Plenty of Fish* forum discussing the Vincent Walkem case argues:

If he had actual knowledge of his HIV positive status, then he had a legal and moral obligation to share this with anyone he was sleeping with, whether he was using protection or not

In the Aziga case, lawyers for the prosecution went to great lengths to establish that Aziga had been counselled about the risks of being HIV-positive and the responsibility he bore to not only disclose to prospective sexual partners that he was HIV positive but to also wear a condom when engaging in sexual activity. Nurses testified that they believed that he had no problems comprehending the information given to him. Indeed, testimony was introduced to establish that Aziga had received repeated warnings. When his name kept appearing on the contact lists of women in the area who had tested positive, the evidence showed that the local Public Health department contacted Aziga

reminding him of his obligations. As a story in the *Times Colonist*, a Victoria, BC newspaper reported:

When public health nurses confronted him for continuing to have unprotected sex with unaware women while receiving treatment for HIV himself, he replied: "I understand, but I don't agree with it."

The importance of constructing the non-discloser as having acted knowingly was also demonstrated during the Aziga trial in the defence's strategy. Part of their strategy was to ultimately illustrate that Aziga, in fact, did not fully comprehend his responsibility to disclose, emphasizing possible cognitive and cultural barriers. Whether they were successful or not, the fact that the defence tried this approach demonstrates how pivotal Aziga's level of awareness was to his legal culpability. Legal culpability would have made him also morally culpable and to the extent that he was morally culpable, he could be vilified.

Constructing Non-Disclosers as Having Nefarious Motives or Being Callously Indifferent

Acting knowingly to cause great harm to others, particularly innocent others, immediately raises the question of motives. It is in the interest of those who seek to vilify to attribute the basest motives to non-disclosers. Non-disclosers become particularly reprehensible when their reasons are malevolent or nefarious. On the question of motives, the non-disclosure discourse makes reference to several possible motives. Amongst the most heinous of attributions is the charge that some HIV-positive individuals intentionally seek out others with the intention of infecting them. The following example makes reference to

“barebacking,” which is a term used to describe gay men intentionally having anal sex without a condom (Adam, Husbands, Murray and Maxwell 2008; Berg 2009), though not necessarily to infect others. The case involves Steven Boone, an individual who was arrested in 2010 in Ottawa for not disclosing his positive status. In reacting to the case, a commentator on *Queerty* claimed that Boone himself admitted in a profile that he once posted on a website called *bareback.com* that he actively sought out victims:

Boone himself said in his bareback dot com profile (now deleted): “...neg boys step to the front of the line. Love to breed neg bois with my poz seed”

In attributing motives, stereotyping based on race, gender, sexuality, and even class is often exploited as part of the vilification process. For example, in the Aziga case, much of the discourse emphasized the fact that Aziga was a black man, originally from Africa (Uganda), and suggested that he had misogynistic tendencies. In news as well as other media sources, he was sometimes portrayed as a black man preying on white women. A journalist for the *Toronto Star* wrote:

The accused is also black, originally from Uganda. The witness – like every other female who’s taken the stand against Johnson Aziga as alleged victim at this trial – is white. One might fairly surmise that Aziga liked his women white and plain and perhaps lonely.

Another article in the same newspaper stated:

When he wasn’t busy fornicating them to death, Johnson Aziga must have hated women.

Uncensored websites can be even more direct and extreme. A website geared to white supremacists, *Vanguard News Network Forum*, played on stereotypes of black men’s sexuality. The website posted a page titled “Niggers murder by HIV...” and

included a series of pictures of black men charged with non-disclosure, Aziga among them. The original post on this site claims:

AIDS is more common in niggers due to their lack of personal hygiene and sexual promiscuity. Other venereal diseases like herpes, syphilis and gonorrhoea are also rampant in niggers. Diseases which often cause lesions and inflammation allowing HIV to transmit more easily.

In a comment that followed the initial post, a contributor to the site stated:

Niggers will rape white women regardless of what they believe to be the cause of AIDS. Just as they will continue having unprotected sexual intercourse after being diagnosed with HIV. Their evolutionary strategy is to have sex with as many women as possible, not worry about the consequences of their actions.

While the discussion thus far has focused on nefarious motives and stereotypes that would support claims of intentional exposure and transmission, even simple indifference can be construed as reprehensible when the results are so consequential and can result in great harm. Referring to Aziga's dangerous offender hearing, an editorial in the *National Post* stated:

Exposing an unknowing sexual partner to a deadly disease and getting behind the wheel while drunk are both selfish acts in which the lives of innocent people are sacrificed to the potential killer's pleasure or convenience. These people are not murderers in the way that this word is usually understood - *they are not deliberately seeking to kill others*. But their behaviours betray the same indifference to human life and basic moral standards that characterize all serial violent criminals (emphasis added).

While the intent to do harm is not explicit, the point is that the behaviours and actions were reckless – the individual knew of the potential for great harm but did not take the necessary steps to prevent it. As a result, motive is not a necessary component in the vilification process; rather, being callously indifferent is sufficient.

Debunking Alternative Explanations

Loseke (2003) observes the tendency to respond to attempts to vilify individuals by finding explanations for their behaviours that preclude their construction as evil. To the extent that forces beyond an individual's control can be argued to be responsible for their behaviour, blame is deflected elsewhere – to the oppressive, marginalized, or difficult social circumstances within which individuals find themselves, an unfortunate upbringing, or some medical affliction from which they may be suffering. When the strategy is used successfully, it has the effect of transforming would-be villains into victims. Therefore, successful vilification requires the refuting or debunking of alternative explanations for individuals' behaviours – explanations that reduce or mitigate the culpability of the individual's involved.

In the Aziga case, the strategy of debunking alternative explanations began during the trial itself, but was even more readily apparent through the course of the dangerous offender hearing. In an attempt to stave off the dangerous offender designation, Aziga and his lawyers pointed to a number of external factors that may have contributed to Aziga's actions. Frequent reference was made in the news media to Aziga's low self-esteem due to an undescended testicle. The *Toronto Star*, reporting on the forensic psychiatrist's testimony during the dangerous offender hearing, stated:

"I asked Mr. Aziga why he thought he found himself where he was and he reported that his difficulties have root in the fact that he was born with one undescended testicle," Klassen testified. "He said that because of this abnormality he hid sexual information about himself all his life."

There were suggestions that Aziga's socio-cultural background was a factor that needed to be considered concerning his ability to disclose. His defence counsel argued that:

...Mr. Aziga was not given proper counselling...as the counselling did not take into account cultural nuances. If he had been counselled properly he would have been more likely able to disclose his HIV condition.

Aziga refers to some of these nuances as cultural and religious taboos surrounding the discussion of sex, as was reported in *Daily the Pak Banker*. In response, the Public Health nurses argued during the course of the trial that:

...at no time did the offender express that he had difficulty disclosing his HIV status due to his culture or religious upbringing. The offender presented as articulate and intelligent and maintained that he only had a couple of partners with whom he had engaged in sexual activity since his separation from his wife and gave the impression that he had no current sexual partners who required notification of the risk of HIV.

Other deflection-of-blame strategies in the Aziga case included references to the stress Aziga experienced because of his son's autism, the long hours he spent commuting to work, and the breakdown of his marriage. There were references as well to the sense of hopelessness that his HIV-positive diagnosis generated, the stigma he experienced as a PLA, the need to engage in what he referred to as 'survival sex' and his fear of rejection.

To obtain the dangerous offender designation the Crown was seeking for Aziga, the prosecution had to refute the power of these explanations as mitigating factors. To do so, they enlisted the testimony of a psychiatrist who examined Aziga after the trial. The psychiatrist conceded that Aziga was subject to stress in his life, but insisted that he was nevertheless able to function at work and in his recreational activities. He went on to

testify that while Aziga had personality issues, he suffered from no major mental illness.

He concluded his testimony by dealing point blank with Aziga's efforts to evade responsibility:

...in my experience with Aziga over the course of time with him was that he invested a good deal more energy into defending his position and attributing his difficulties to external factors than to taking responsibility for what happened or expressing concern for the victims or a sense of remorse...

Ultimately, the many explanations for his behaviour were perceived as excuses, as Aziga's inability to take responsibility for his own actions. These deflections were subsequently debunked by the psychiatrist and, in the end, by the courts, contributing to his vilification.

Debunking the Argument for Shared Responsibility

A final critical strategy in the vilification of HIV non-disclosers involves dealing with the argument that while the actions of non-disclosers cannot be justified or excused, they share blame for the harm caused with their sexual partners. Within the discourse, this stance is often referred to as 'it takes two to tango'. The essential point is that anyone who consents to unprotected sex is consenting to the risks that go along with it. Those who take this point of view insist that, especially in light of the educational and public health campaigns aimed at making people more aware of the dangers of unprotected sex, those who are uninfected should have known better and bear some responsibility for the consequences. As one blogger put it in their discussion of the Aziga case as well as the case of a 17-year old girl in Alberta who was charged for non-disclosure:

...[they] may not have been aware that their partner had HIV, but they undoubtedly were imminently aware of the fact that an unsheathed penis was going to be penetrating an orifice that itself was a la mode. It doesn't excuse the girl, or Aziga, but it sure as hell puts in question the level of responsibility the "victim" should have for their victimhood...

The quote makes clear that the 'it takes two to tango' argument challenges the construction of those who are infected by non-disclosers as victims. If they had a hand in their own demise, they are not victims. And without victims, there can be no villains.

To neutralize the 'it takes two to tango' argument and the idea that people 'ought to have known better,' those seeking to vilify non-disclosers respond with a 'blaming the victim' argument. In other words, they insist that in suggesting that those harmed by the action of non-disclosers have had a hand in their own misfortune is unfair and offensive. They strategically use analogous cases to press their point. For instance, the author of an article on *Finland for Thought* described the following scenario when discussing the first person to be charged with murder for not disclosing their HIV-positive status:

Let me explain it to you this way: If someone walked into a restaurant and ordered a meal, and the chef deliberately poisoned the meal, you could hardly say, 'Well, you agreed to eat the food, didn't you?' It's no different with the women in this case

A similar strategy is at play in the comments following an online article criticizing Canada's HIV laws found on *Slate*. The commenter argued:

By that logic, we know that bank robberies happen and usually involve fire arms. So, if we go to the bank without our bulletproof vest and get shot, the robbers shouldn't get charged because we know the risks and didn't go protected???

The analogies not only refute, but mock the position that unfortunate outcomes as a result of non-disclosure are a shared responsibility. They also bolster vilification claims by connecting non-disclosers with those whose status as villains is not likely to be connected, like those responsible for school shootings and burglaries or people who drink and drive. The strategy subtly involves relying on cultural feeling rules and on understandings of whom it is acceptable to hate.

Those who applied this strategy to the Aziga case made much of the fact that some of his partners had, in fact, exercised caution and asked if Aziga had been tested, to which he replied that he had been and that the results showed that he was negative. Other victims had tried to insist on using a condom, but Aziga refused. These observations went a long way towards allowing a construction of Aziga as solely responsible for the ensuing damage caused.

Discussion and Conclusion

Loseke (2003) suggests that vilification is difficult to accomplish. Yet, there are innumerable cases where individuals and groups have nevertheless been vilified. My purpose in this paper was to explore one such case – HIV non-disclosers. I sought to go beyond merely establishing the vilification of non-disclosers to look more deeply at *how* vilification is accomplished. While Loseke has written about the vilification process in general terms, my goal was to uncover the precise techniques that claims-makers use in constructing villain-types. Concentrating on discourse generated by the infamous Aziga case, I have identified a number of such strategies. These techniques of vilification, as I

call them, include: (1) constructing non-disclosers as perpetrators of great harm; (2) constructing non-disclosers as having acted knowingly; (3) constructing non-disclosers as having nefarious motives or being callously indifferent; (4) debunking alternative explanations; and (5) debunking the argument for shared responsibility.

At a conceptual level, the analysis begs the question of the extent to which these techniques are evident in other cases of vilification. That is a question that cannot be answered without further research. Comparative studies looking at the discourse around such groups as sex offenders, pedophiles, drunk drivers and others, would be useful in the sense that they would allow a teasing apart of claims that tend to be generic and are found across case studies versus group-specific claims. Another example rich in possibilities, particularly given recent global events, is the case of Muslim *jihadists* and other religious extremists. There are a plethora of studies dealing with media representation of Islam and Muslims, experiences of Islamophobia and the “othering” of Muslims. But there would be value in looking at the actual techniques of vilification that result in othering.

At a more substantive level, the case presented in this paper adds to current debates about the criminalization of non-disclosers. Most obviously, the analysis allows for a greater appreciation for the basis of the trend towards criminalization. The previous emphasis on a public health approach rested on a construction of non-disclosers that can be described as, at best, sympathetic and, at worst, neutral. Within the context of a frame where non-disclosers were not seen as accountable or culpable for their behavior, an educational approach to dealing with the problem of non-disclosure made sense. Criminalization, however, requires a different typification, one that establishes both the

accountability and blameworthiness of non-disclosers. The techniques of vilification discussed in this paper demonstrate how that blameworthiness was established.

In addition to contributing to a fuller understanding of the bases for the trend towards criminalization, the analysis goes some way towards explaining the intensity of the response to HIV non-disclosers outside of the realm of the criminal justice system. In newspapers and online sources, editorials and chat rooms, there have been calls to place draconian restrictions on those who test positive for HIV – restrictions on engaging in any sexual activity whatsoever, tattoos to warn the public, and quarantines. Others have called for castration and even bringing back the death penalty for those who do not disclose their positive status. These responses underscore the connection that constructionists have always asserted between the framing of condition and the framing of solutions. Only the successful vilification of non-disclosers explains the ferocity of the reactions and the kind of punitive, even cruel, responses that have been recommended.

Moving forward, there is a final observation that warrants further investigation. Most of the discourse around the criminalization of HIV non-disclosure, not just in connection with the Aziga case but more generally, assumes situations where heterosexual men, quite often black, are not disclosing to female partners. There are few references to non-disclosure within the gay community, despite the fact that disclosure and non-disclosure have been a central concern within that community since HIV/AIDS was first identified. The disproportionate attention to heterosexual male non-disclosure actually reflects patterns in criminal charges and prosecutions for non-disclosure. Mykhalovskiy et al (2010) note that only 18% of criminal cases for HIV non-disclosure in

Canada involved men who have sex with men, while 72% of charges were laid against heterosexual men. The same pattern is reflected in news reporting practices, not only in Canada, but the UK and Australia as well (Persson and Newman 2008).

Why is it that, in spite of representing over 50% of positive HIV reports in Canada (Mykhalovskiy et al. 2010), such a small percentage of gay non-disclosers have been criminally charged? Mykhalovskiy et al (2010) argue that it is possible that there may, in fact, be a greater understanding of the risks involved regarding unprotected sex within the gay community. However, there are other plausible explanations. Norms around disclosure may be different within the gay community. For example, the “it takes two to tango” argument that posits shared responsibility for avoiding infection, may have more currency within the community, making it less likely that infected partners would come forward to complain. The disproportionate numbers may also reflect decisions on the part of prosecutors about which cases of non-disclosure to pursue. For a myriad of reasons, including their stereotypes of the culpable predator, prosecutors may be prioritizing cases of heterosexual non-disclosure. While answers to these questions are clearly beyond the scope of this paper, the observation that there are differences in *who* among non-disclosers is vilified and subject to criminal prosecution points to the need to be more attentive to the contexts within which vilification takes place. Do processes of vilification look different in cases where gay men are the object of vilification? How do injection drug users fit into the picture? These questions too call for further research.

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“It takes two to tango”: HIV Non-Disclosure and the Neutralization of Victimhood

Abstract

There is a rich and fulsome literature on victims and the processes by which certain groups or individuals come to be constructed as victims. Less attention has been paid to the rhetorical moves employed as counter strategies by groups who seek to challenge victim status and the use of the “victim” label for particular groups. Using the debates around the criminalization of HIV non-disclosure as a case study, the aim of this paper is to contribute towards a better understanding of efforts to deny or neutralize victimhood. The paper identifies several strategies utilized by individuals and groups, the object of which is to raise questions about the appropriateness of a criminal response to HIV non-disclosure by constructing those who have had intimate encounters with HIV non-disclosers as equally responsible for their circumstances rather than as victims of non-disclosers.

Key Words: HIV Non-Disclosure; Criminalization; Victims; Social Constructionism

Speakman, Erica R. Forthcoming. ““It Takes Two to Tango”: HIV Non-Disclosure and the Neutralization of Victimhood.” *International Review of Victimology*.

For over a decade, there has been an increasing trend in the direction of charging those who do not disclose their HIV-positive status to their sexual partners with a criminal offence. The criminalization of non-disclosure represents a departure from initial responses to the HIV epidemic which emphasized a public health approach in dealing with such cases, along with campaigns aimed at educating individuals about responsible and safe sex practices (Dej and Kilty 2012; Mykhalovskiy and Betteridge 2012; Mykhalovskiy, Betteridge, and McLay 2010). The trend towards criminalization has been occurring throughout much of the Western world with the highest number of criminal charges being laid in the United States and Canada. Unlike many states in America, Canada has no specific law that criminalizes HIV non-disclosure. However, pre-existing criminal laws are being used to sanction non-disclosers; the most likely charge to be used for this purpose is ‘aggravated sexual assault’ (Dej and Kilty 2012). The formal connection between HIV-exposure/transmission and aggravated sexual assault was established with the 1998 precedent setting Supreme Court ruling in *R v. Cuerrier*. While the two women who were exposed to HIV in this case consented to sex with Cuerrier, they were not informed about his HIV-positive status. According to the ruling, the absence of disclosure nullified the consent and rendered the sexual activity an act of ‘fraud’ (Tan 1999). The ruling ultimately set out the parameters by which individuals could be charged for not disclosing their HIV-positive status to a sexual partner (Dej and Kilty 2012; Mykhalovskiy 2011).

Elsewhere (Speakman 2017) I have argued that the trend towards criminalization has both fueled and been fueled by a discourse that has successfully constructed

individuals who engage in sex without first disclosing their HIV-positive status as villains and their partners as victims. In that paper, I considered how those who do not disclose their status – or HIV non-disclosers – are constructed as villains. I coined the term *techniques of vilification* to describe the strategies involved in that process.

In this paper, I turn my attention to the claims made by those who oppose the criminalization of HIV non-disclosure. More specifically, I look at the argument that HIV non-disclosers should not be made to bear the full brunt of responsibility for a decision that they made together with their partners, that is, the decision to engage in unprotected sex. This argument, often referred to as the “*it takes two to tango*” position, relies on the assumption that in an environment where the threat of HIV/AIDS continues to be real and where public health messages for the past 30-plus years have been emphasizing the need to always practice safe-sex, it is not appropriate to think in terms of victims and villains and to, therefore, criminalize the behaviour of non-disclosers. Those who take this position insist that both parties are implicated in the decision to have unsafe sex.

As I see it, the ‘it takes two to tango’ position can be viewed as an effort on the part of those who oppose the criminalization of HIV non-disclosure to counter the construction of non-disclosers as villains by undermining the construction of their partners as *victims*. The process of challenging or neutralizing claims to victim status is the central concern of this paper.

My framing of these concerns relies heavily on the social constructionist perspective on social problems, so I begin with a brief overview of the perspective. I then describe the data I used for my analysis and present my findings. I discuss a number of strategies used by those who subscribe to the ‘it takes two to tango’ argument to neutralize the claims of those in favour of the criminalization of HIV non-disclosure. More specifically, I look at how they undermine the construction of the partners of HIV non-disclosers as victims in an effort to weaken the case for criminalization. This paper ends with a discussion of the implications of these findings, both in connection with the HIV non-disclosure debate and more generally for any debate where the victim status of a particular group is being contested.

The Social Construction of Social Problems

This analysis is situated within the social constructionist perspective as it has developed in the sociological study of social problems. The perspective was most clearly articulated in the seminal work of Spector and Kitsuse (1977), who argued that sociologists of social problems would do well to shift attention away from an understanding of social problems as objective conditions and focus instead on how certain conditions come to be defined as problematic. Since what constitutes a social problem is a matter of social definition and changes over time, they insisted that those concerned with studying social problems ought to analyze the processes by which conditions are subjectively constructed as problematic. They coined the term *claims-making* to focus attention on those processes, which they regarded as the proper subject matter for a sociology of social problems.

In the years since the publication of Spector and Kitsuse's work, the social constructionist perspective has become, arguably, the dominant perspective in the field, generating hundreds of case studies (Best 2015) and ongoing debates about its assumptions and possibilities. Theorists such as Best (2003, 2012, 2015), Ibarra and Kitsuse (2003), and Holstein and Miller (2003), to name just a few, have contributed significantly to the ongoing conceptual evolution of the perspective. A recent issue of *Qualitative Sociology Review*, edited by Loseke and Best (2015), was devoted entirely to considering the continuing relevance of the perspective and new frontiers that social constructionists are exploring. For the purposes of this paper, however, the refinements proposed by sociologist Donileen Loseke are particularly pivotal.

Building on Spector and Kitsuse's original formulation, Loseke (2003) specified more finely that social problems claims-making involves three interconnected elements – the construction or typification of conditions, people and solutions. Conditions are constructed through the use of diagnostic frames, which essentially identify and characterize a set of social conditions as objects of concern (Loseke 2003). People are typically constructed using motivational frames, that is, frames that personalize the social issues, characterize those connected with the issue as either victims or villains and tells audiences why they ought to care (Loseke 2003). Solutions are proposed in the context of prognostic frames, which lay out the possibilities as far as remedial action is concerned (Loseke 2003).

The frame most relevant to this particular analysis is the motivational frame. Again, motivational frames seek to engage audiences emotionally with an issue by

pressing claims in ways that get the audience to focus on people and how they are either harmed or detrimentally affected by the condition, or responsible for perpetrating the harm (Loseke 2003). Loseke (2003) suggests that most motivational frames follow a formula story which involves constructing some players as *victims* and others as *villains*. Underlying these constructions are a society's *cultural feeling rules* – culturally established norms about how we ought to feel about different categories of people (Loseke 2003). Victim typification relies on feeling rules pertaining to who we deem deserving of sympathy – the young, the innocent, the undeserving – while villain typification relies on feeling rules about whom it is appropriate to demonize or condemn – those who cause great harm intentionally and without justification .

The case of the criminalization of HIV non-disclosure presents interesting questions in relation to Loseke's formulation in that it represents a situation where the appropriateness of applying a "victim" label to a particular group is being openly contested by counter claims-makers. Therefore, the case offers a unique opportunity to interrogate not how victims are constructed, but how such constructions are contested as part of a counter claims-making strategy.

Method

My analysis is based largely on a particular case of HIV non-disclosure and the debate it generated. Johnson Aziga, a native of Uganda who immigrated to Canada in 1996, was arrested and charged in 2003 for not disclosing his positive status to multiple sexual partners, subsequently infecting seven of them. Two of these women died from AIDS-

related cancers not long before the trial. In 2009, Aziga was convicted of two counts of first-degree murder, ten counts of aggravated sexual assault and one count of attempted aggravated sexual assault. He was later deemed a dangerous offender by the judge because it was believed that he was at high-risk to re-offend. The dangerous offender designation is typically reserved for Canada's most violent offenders and dangerous sexual predators. The Aziga case is the first case in Canada, and likely the world, where HIV non-disclosure has resulted in a successful murder conviction. There was considerable media coverage of the Aziga case, locally, nationally and internationally. In addition, the case prompted considerable discussion and debate on social media as well as other internet spaces. While some of the discussion centered on Aziga, much of it dealt in a more general way with questions of whether non-disclosure ought to be criminalized and who bears responsibility in cases of non-disclosure. Other cases were also brought into the conversation, most notably Steven Boone. Boone, an Ottawa resident, was convicted of attempted murder and aggravated sexual assault (National Post 2012). His case received much attention from the gay community because in Canada, charges are pressed primarily against men who have sexual relations with women, whereas this case was one of the few where a gay man gained significant notoriety in the press for not disclosing his positive status to his male sexual partners.

Between the court documents, media coverage, and online debates that the Aziga case generated, there was an abundance of data to analyze. The larger project analyzed court appeals and rulings in the Aziga case as well as Canadian newspaper articles dating from 2003-2014 that had any mention of Aziga in them. For this particular paper, I have

pulled primarily from the data collected from the internet search. I located much of this data by entering the search term “Johnson Aziga non-disclosure” into the Google search engine. Once Google and I accounted for repeat entries and any overlap with the news articles already collected, a total of 95 documents were analyzed. These documents ranged in size and formality.

Some of the more ‘formal’ spaces of discussion of these issues included *Queerty* (www.queerty.com), a news site geared toward LGBT issues, and *Slate Magazine* (www.slate.com), an online magazine dealing with politics, culture and current affairs. In addition to analyzing the articles themselves, the comments following the articles were also included as part of the analysis.

As part of the general search, much more informal discussions pertaining to the Aziga case and the issue of criminalization of HIV non-disclosure more generally were generated. Some of the spaces where these discussions took place include *Plenty of Fish* (www.pof.com), an online dating site, as well as *Fitness Pal* (www.fitnesspal.com), a website that provides tips and tricks for losing weight along with a supportive social network. In addition to these conversations, blogs mentioning the Aziga case were also included for analysis.

Using analytical concepts informed by the social constructionist approach to social problems to guide me, I read through the data and identified relevant themes pertaining to the social processes of typifying people-categories. Once I was able to establish some clarity regarding the emergent patterns I was seeing, I went back over the

data and looked more carefully for strategies of victim neutralization. I discuss these strategies in the following section.

Strategies of Victim-Status Neutralization

To address how the victim status of those who have been intimate with HIV non-disclosers is challenged, it makes sense to begin with how those individuals are constructed as victims in the first place. According to Loseke (2003), “good victims” exhibit a range of features and characteristics. To the extent that individuals can be shown to have *suffered* horribly, to be *not responsible* for the harm caused to them, and to be *morally worthy* as opposed to belonging to some socially devalued group, they are more likely to be able to generate audience attention and sympathy (Loseke 2003).

These are the very qualities that permeate the construction of the victims of non-disclosers in the rhetoric of those who favour the criminalization of non-disclosure. That rhetoric emphasizes the ultimate harm that victims of non-disclosers suffer in cases where they die as a result of HIV/AIDS, but also the harm suffered in living with the uncertain prognosis that goes along with the diagnosis or even the possibility that as a result of exposure, one may eventually test positive (Speakman 2017). Harkening back to language used in the early days of the epidemic, victims are described as having been put at risk of contracting “a terminal disease” or “a death sentence.” The physical harm connected with HIV/AIDS is presented in terms of personal stories of the agonizing suffering endured by specific individuals. Heterosexual women rather than gay men feature particularly prominently. So too does the notion that victims of non-disclosers were unsuspecting and

that they were betrayed by non-disclosers who either lied about their HIV status or took advantage of their trust (Speakman 2017).

To contest these constructions, those who oppose criminalization have adopted a series of strategies, most of which focus specifically on challenging the innocence of victims. The first strategy involves claiming that victims *ought to have known better*, that is, that they were or should have been aware of the potential risks connected with having unprotected sex. The second strategy focuses on the *agency* of the victims and the choice they ultimately had about participating in the sexual encounter. The third strategy involves buttressing their claims using the voices of those individuals who refuse to adopt the victim label. I will discuss each of these in turn.

They Ought to Have Known Better

Those who challenge the victim status of individuals who have had encounters with non-disclosers rely heavily on the observation that since the discovery of HIV/AIDS there have been massive efforts to educate the public about the dangers of unprotected sex. This observation becomes the basis for a claim that, at this point in the epidemic's trajectory, safe-sex practices have become both a matter of both *common knowledge* and *common sense*. To argue that one "did not know" is either a deceit or reflects a state of ignorance so reckless as to itself be problematic. Those who know can hardly be viewed as *unsuspecting*. Those who did not know are cast as individuals whose ignorance is so extreme, incomprehensible and wantonly reckless that they bear some burden for what

happens to them as a consequence. In the Steven Boone case, the gay man in Ottawa charged with attempted murder, an article in *Queerty* elicited the following comment:

Unless they [his victims] have been living under a rock for the last 30 years, they cannot play innocent that HIV infection might be a possible outcome. (www.queerty.com [comment thread] 2010).

A blogger discussing the Aziga case as well as the case of a young woman who was charged in Canada for not disclosing her positive status to her sexual partners argues:

...in an age where the occurrence of sexually transmitted infections is resurgent and knowledge of the risks of HIV and AIDS is widespread, you have to wonder why the other person in the equation took the risks they took as well...[they] may not have been aware that their partner had HIV, but they were undoubtedly aware of the fact that an unsheathed penis was going to be penetrating an orifice that itself was *a la mode*... (Deep Cortex [blog] 2011).

The comment above demonstrates particularly clearly how attention is deflected from the non-discloser to “the other person in the equation” and what that person ought to have known about the risks inherent in having unprotected sex.

The effect of this strategy is that instead of being constructed as pitiable victims, those who have had encounters with non-disclosers are cast as individuals of questionable judgement and intelligence. In responding to an article on *Slate* discussing why the criminalization of non-disclosure is problematic, one individual commented:

It’s incredibly stupid and irresponsible to assume that the person you’re sleeping with must be HIV-negative. That doesn’t mean it’s okay for HIV-positive people to fail to disclose their status before sex. It just means it’s a two-way street. (www.slate.com [comment thread] 2014).

In the same comment feed, another individual notes:

I'm sorry, but in this day and age, excluding married couples and supposedly monogamous relationships, it's 100% idiotic to have casual sex without a condom. Any adult that has casual sex without a condom and catches a STD is no more a victim than someone who willingly plays Russian roulette. (www.slate.com [comment thread] 2014).

The problematization of victims' judgements is accentuated through the use of analogies, such as the above Russian roulette comment and the following scenario:

Another analogy would be if you got into a car at 2 am knowing there's a fair chance the driver of the car had been drinking, never attempted to take the keys or inquire about the amount of alcohol consumed, and decided not to wear a seatbelt. Another example would be if you decided to walk down the middle of [the] highway and were then hit by a car. While it might be easy and convenient to shrug your [shoulders] and place responsibility for your safety on others, I'm suggesting your role and your actions should not be discounted, both morally and legally. (www.slate.com [comment thread] 2014).

In both scenarios, the assumption is that reasonable individuals are well aware of the risks involved and know better than to take a chance. Those who harm them – the drunk driver or the motorist – may not be totally absolved of responsibility, but those harmed have played a role in their own misfortune. Linking those who enter into sexual relationships with others armed with knowledge that they had – or should have had – effectively spreads the responsibility for the outcome. Taking a chance with unprotected sex is the equivalent of venturing on to a busy highway.

The claim that so-called victims “ought to have known better” gets at least some of its force from the fact that the same observation is made to discredit the defence on the part of non-disclosers that they are not culpable because they did not know what they were doing. If non-disclosers cannot plead ignorance of the risks as a defence and are

therefore forced to suffer the consequences of their actions, the argument goes, neither can those who have unprotected sex with such individuals.

They Had a Choice

A related strategy involves emphasizing the agency of the individuals involved. As Loseke (2003) points out, typifying individuals as victims works best when the victimization is constructed as random and individuals can be constructed as having done nothing that leads to their victimization. Drawing on the cultural theme of individual responsibility, audiences tend to sympathize more with those they perceive to have no responsibility for the harm they may be suffering. Other scholars who have written about how the concept of responsibility works have also commented on how responses to parties harmed are contingent on whether the individuals involved have acted in some way as to bring on the harm (Cross 2015; Frisaufova 2012). As Cross notes (2015:189) in her work that examines how victims of online fraud typically do not elicit support or sympathy, "...the popular discourse surrounding online fraud victimization is very much founded upon notions of blame and responsibility levelled towards the victims themselves for their failure to avoid victimization in the first place." To the extent that individuals can be said to have put themselves in harm's way, they are less likely to be seen as victims.

Hence, rather than constructing the partners of non-disclosers as individuals to whom something is done, they are constructed as individuals with choices who have *actively* made a series of decisions that contributed to the outcomes that have so impacted

their lives - decisions about whether or not to inquire about the sexual health of their partners, decisions about whether to take what they are told by their partners at face value, decisions about having unprotected sex and decisions about incurring the risks involved in doing so. They *consented*; they *chose* not to ask; they *chose* to believe what their partners told them; they *chose* not to use protection. This position was clearly reflected in a reader's response to an editorial in the *Globe and Mail*:

Yet there must be some degree of responsibility and acceptance on both sides. If you decide to have sex with someone you accept some degree of risk – that they might not know they are infected with HIV for example. (Globe and Mail [comment] 2012).

Similarly, an online article written for *asrsq.ca*, a primarily French-Canadian site promoting citizen participation in matters of justice, asked:

Shouldn't people who consent to unprotected sexual relations, through consent, also be considered to be consenting to a certain risk and assume responsibility for protecting themselves? (Lavoie 2009).

There were similar reactions in the aftermath of the Aziga case. For example, while strongly critical of Aziga's actions, this blogger felt that it was important to consider the actions of Aziga's partners:

In this particular scenario, the risk taken by the victim was a massive contributing factor to the fact that they became a victim of something. (Deep Cortex [blog] 2011).

When the dangerous offender ruling in the Aziga case was announced, another commenter wrote:

Does anyone have info on whether he gave fake documents that said he was clean? Because while I think this is a scummy thing to do, at the same time women have to take responsibility for their own actions to a certain extent. Just because someone says they are clean, doesn't mean they are, and you should be using protection otherwise you need to know you are possibly endangering yourself... (www.sp411.com [comment thread] 2011).

As the comment above suggests, there is an underlying gendered current in some of the discussions aimed at raising questions about the responsibility that victims bear. Those less inclined to see these individuals as victims use a feminist discourse to explicitly or implicitly reject the idea of women as passive actors, powerless to control their own fate, especially in matters related to their sexuality. Women, no less than men, are typified as agents with “minds of their own,” capable of making their own decisions and therefore responsible for the consequences of those decisions. Criminalization of non-disclosure, from their perspective, smacks of paternalism and sends the message that women need to be protected from male perpetrators. In a scathing criticism of the use of criminal sanctions in cases of HIV non-disclosure, one blogger stated:

Now, society locks up “HIV Monsters” because it thinks female members of society need protecting from them, as if they did not have a sexuality or choice in whether or not to have sex with their suitor. (emphasis in original) (Bernard 2011).

But the argument is by no means restricted to women as victims. A tendency to reject the idea of victimhood can be found as well in cases involving gay men. This tendency may be a function of themes that have long characterized the conversation about sexuality and HIV within the gay community. The community has been at the forefront of advocacy for safe and responsible sex. Among those who are raising questions about the appropriateness of framing non-disclosure in terms of victims and villains, it follows that

there would be a reluctance to legitimize the victim status of those infected by non-disclosers. In a comment feed following a discussion of the Boone case, one comment read:

...is it not a question of he said/he said? Obviously, those who had unprotected sex with Boone [chose] for themselves to act [with] careless disregard to their own protection. And, how can a fair judgement be made when the so-called victims willingly engage in unsafe sex? (www.queerty.com [comment thread] 2010).

In the same comment feed, another member argues:

Where is the responsibility of the men he slept with? it doesn't sound like this was non-consensual, so these men made a decision to have unsafe sex with someone they didn't know and met online. it's absolutely their decision to make, but they are well aware that they are putting themselves in a situation where contracting HIV is a real possibility. (www.queerty.com [comment thread] 2010).

The emphasis on agency within these forum discussions led to additional discussions about *consent*. Several participants in the discussion argued that the partners of non-disclosers could not be labelled as victims because they ultimately consented to the sexual encounter and all of the risks that go along with unprotected sex. One commenter responded to a blog post:

I agree...that Aziga's actions are monstrous. That said, every person is responsible for their own health. If there is consent to sex, there is consent to multiple medical risks. (Turley [blog] 2009).

In addition, an author of an article for an online source noted:

The gold standard many HIV advocates would like to see adopted centers around consent. They argue relying on consent reinforces personal responsibility without infringing on the right or ability of HIV positive people to choose not to disclose their status, and thus avoid stigma attached to the illness...if a person gives consent to have unprotected sex they are taking on the assumed risks and should be as culpable as the positive person. (Clarence 2010).

To those who counter-charge that holding victims partially responsible for their own victimization is tantamount to “blaming the victim,” adherents of the “it takes two to tango” position respond by qualifying the circumstances under which they would be prepared to see individuals as victims. When rape is involved, they point out, one can reasonably argue that individuals have been victimized because they did not consent and had sex forced on them. In all other cases, they insist individuals acted of their own accord. As one commenter puts it:

The victim blaming analogy falls apart because both individuals made a decision of their own free will to have sex with another person... Unless they were raped, everyone bears some personal responsibility in becoming infected with HIV through sexual encounter. (www.slate.com [comment thread] 2014).

This sentiment was shared by others who felt that rape would be the only scenario where individuals were deprived of choice and, therefore, truly victimized.

A somewhat extreme version of the argument that those infected by non-disclosers are not victims posits that the complete recklessness demonstrated by certain individuals in the decisions they make about their sexual encounters actually reflects suicidal tendencies. In other words, the suggestion is that some individuals go into risky sexual encounters knowing and perhaps even expecting that the consequences may be life-threatening. They are, in fact, seeking to die. For instance, on a dating website where the discussion of a case of non-disclosure came up, one contributor noted:

okay first of all, I have to say, it's more like the woman chose to commit suicide, becuz why do we all forget that these women have a mind of their own...not to say his

behaviour was correct, but we can't completely forget that the act of sex requires two willing participants. (www.pof.com [forum]).

In this version of the argument, the logic that non-disclosers are guilty of attempted murder leads naturally to the conclusion that those who intentionally make themselves vulnerable to the threat that non-disclosers pose are inviting the harm done to them. In relation to the Boone case, a commenter on *Queerty* noted:

so many people that support trying him for attempted murder seem to forget the inconvenient fact that his sexual partners willingly had unprotected sex with him. they made a choice. by the logic of the "attempted murder" crowd, the sexual partners should be charged with attempted suicide. fair is fair, after all. (www.queerty.com [comment thread] 2010).

The victim/villain table is almost turned in this formulation. Those infected bear most culpability by seeking out dangerous sexual encounters, while non-disclosers can almost be seen as victims of their designs.

"I am Not a Victim"

The claims of those who take the "it takes two to tango" position are buttressed by the voices of individuals most directly affected by an intimate encounter with a non-discloser, who reject the victim label for themselves and for others like them. These are individuals who understand the responsibility for protecting themselves against HIV infection as a *shared responsibility* and are therefore not willing to have non-disclosers unilaterally demonized, nor to have themselves painted as passive victims.

For example, in an interview with an HIV-positive individual for *hivplusmag.com*, inquiring about their opinion on matters related to the criminalization of HIV non-disclosure:

There were two actors in transmitting HIV from him to me. I am just as responsible. I've accepted my role. (Ryan 2009).

Another individual was prepared to give his partner the benefit of the doubt as to whether he was aware of his HIV positive status at the time of the encounter. He goes on to assert, however, that whether the person was aware or not, both parties were involved in the decision to have unprotected sex:

I have recently discovered my status as positive. I assume that the person who transmitted this to me...did not know of their status. That being said, I still must take responsibility for my half of the transmission. I was in the room at the time. It is always a two way street, but moving forward, that does not remove me of my future obligation to inform my partners. (Globe and Mail [editorial comment] 2010).

Similarly, an HIV-positive woman writing about her experience in *thedailybeast.com* commented:

While I was certainly upset at the man who gave me HIV, I am more upset with myself for choosing to risk my own life when, arguably, I knew better. (Hoffman 2009).

In responding to *thedailybeast.com* article, a reader elaborated further on, and affirmed, the logic of the position the woman took with respect to her own culpability:

[The author], who became HIV-positive after she had unprotected sex with a positive partner after inquiring about his status and, as she says, “took a calculated risk”, also argues that the criminal justice system puts too much blame and responsibility on the positive partner(s), rather than having both partners equally responsible in the event there is transmission...[The author] argues that if a person gives consent to have unprotected

sex they are taking on the assumed risks and should be as culpable as the positive person. (Clarence 2010).

It is difficult not to notice that the rejection of victim status on the part of those constructed as victims of non-disclosers is similar to themes stressed in the HIV/AIDS movement of the 1980s and 1990s. Those who have written about the history of the movement have drawn attention to the emphasis the movement placed on moving beyond self-pity to action and beyond victimhood to self-empowerment. People living with HIV/AIDS were encouraged to “challenge the perception of the disease as inevitably terminal” (Gillett 2011:43) and to think of themselves as survivors rather than victims (Crossley 1997). A goal of the movement was to mobilize the HIV/AIDS community to demand both attention and action. As part of the self-empowerment thrust of its message, the community itself took steps aimed both at improving service provision and prevention. And a strong thrust of the prevention messages was the responsibility that everyone bore to ensure that sex was practiced safely. In a sense, then, the movement created a context within which victimhood is rejected and responsibility for oneself and others is stressed. While these themes pertained to the HIV threat more generally, they find expression in how many individuals think about the disclosure issue.

That there are those who are prepared to publicly, forcefully and unequivocally reject the notion that they are victims undermines the argument of those who seek to villainize and criminalize non-disclosers on the strength of the harm that they and they alone have inflicted on their victims. When the alleged ‘victims’ refuse to see themselves

as victims, arguing instead that they bear partial culpability, the case for those who seek to apply a victim/villain frame to the issue of non-disclosure is significantly weakened

Discussion and Conclusion

This paper has identified and discussed a series of rhetorical strategies aimed at neutralizing the victim label in debates surrounding the criminalization of HIV non-disclosure. More specifically, I looked at how those who oppose criminalization advance the case for considering partners of non-disclosers not as victims but as individuals who share with non-disclosers responsibility for any harm they may have suffered. They do so by asserting that 1) these individuals knew (or should have known) about the risks connected to having unprotected sex, 2) they exercised agency in making a series of decisions that contributed to their predicament and 3) many individuals in this predicament will themselves reject the victim label and concede that they bear some responsibility for the outcome.

In relation to the HIV non-disclosure debate, the findings contribute towards a more in-depth appreciation of the shared responsibility and anti-criminalization side of the debate and rhetorical constructions its proponents use to challenge current understandings of non-disclosers and their sexual partners. Yet, criminal charges continue to be laid against non-disclosers, non-disclosers continue to be seen as criminally culpable, and their partners continue to be seen as victims. This suggests that while proponents of the “it takes two to tango” position have been sufficiently vocal to keep the debate going, they have not been sufficiently persuasive to stem the tide towards

criminalization. Though they have attempted to address head on the charge that their position amounts to “blaming the victim,” it appears that this is precisely how their arguments are heard.

Even as debate continues, however, the ground on which it is occurring is shifting. A potentially game changing development in the area of HIV-related drugs are preventative drugs such as PrEP (Pre-Exposure Prophylaxis). PrEP gives individuals who are at high-risk of HIV infection a means to reduce that risk. How the availability of PrEP will change the terms of the non-disclosure debate is uncertain. It may be that new, efficient pharmaceutical ways to protect oneself against infection will strengthen the case of those who argue that safe sex is a shared responsibility and that partners of non-disclosers should not be viewed as victims. There may be less inclination to speak in terms of victimization when “victims” are seen as having reasonable and readily available opportunities to avoid the harm they have suffered. On the other hand, if the prevalence of safe-sex campaigns have not mitigated the responsibility and legal culpability that non-disclosers are seen as bearing, new ways of practicing safe sex may not either.

Moreover, drugs like PrEP must be taken on a daily basis and are recommended only for individuals at high risk of infection. The drugs are not necessarily appropriate for more general usage. Therefore, if they have the effect of undermining the possibility of claiming that one was victimized by a non-discloser, this would be true only for certain individuals or groups and not others. This observation is connected to another aspect of the findings that warrants further investigation: How does the social status of individuals figure in the construction of individuals as victims or in challenges to those

constructions? I pointed out in my analysis how some of the discussion around how to view partners of non-disclosers blended into discussions of how to view women and included appeals to feminist rhetoric about women and their sexuality. I pointed out as well that the gay community seems less inclined to think in victim/villain terms given the educational and public health approach to AIDS prevention that the community has tended to favour. Data shows that criminal charges are more likely to be laid when women, rather than gay men, are involved as partners (Mykhalovskiy et al. 2010). But the role of gender and sexuality, or race, class, age etc. was not really the focus of my analysis. There would certainly be value in exploring differences along these axes more systematically.

At a more theoretical level, the paper's findings make a contribution to the field of victimology. The victimology literature has explored questions related to social movement framing of victims, how victims of crime see themselves and understand their victimhood, and how individuals seek, claim or project victim status vis-à-vis certain audiences (Dunn 2008). The literature also addresses, as Loseke (2003) does, what features constitute a "good" victim (Lamb 1996) and how far the net of victimhood has been cast with the emergence since the 1960s of an ever-growing ideology of victimhood and victim industry (Best 1997). However, there is little in the literature that looks in a detailed way at attempts to contest victim status. In that sense, this paper fills a gap and also raises questions about other areas where this process could be further explored. For example, one could look at debates about whether health care benefits should be extended to those who smoke and overeat, whether injured athletes (e.g. football players) can be

seen as victims when the risks of concussion involved in certain sports are well known, or how much assistance should be provided to individuals who choose to live in flood plains or other areas prone to natural disasters.

With additional case studies of this nature, comparisons become possible as does the goal of establishing the more generic features of the victim contestation process. This is precisely the type of meta-analysis of case studies that Best (2015) has called for as a way of pushing social problems theory to a higher level of abstraction. The focus on individual case studies that has to this point characterized constructionist analyses of social problems has meant, in Best's (2015:19) words, that "devising more generalized theories...rarely occurs in the sociology of social problems." Focusing analytically on victim contestation as a process and exploring how this process plays out in the context of different social problems debates could lead to a deeper understanding of the social problems game and how it is played.

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Conclusion

In this dissertation, I have presented three separate but connected papers. Adopting a social constructionist approach, particularly as it has been applied to the study of social problems, I analyzed the debate surrounding the criminalization of HIV non-disclosure, focusing primarily on the discourse related to the Canadian context and the Johnson Aziga case. I illustrated how HIV is represented in the competing narratives that make up the debate as well as how the formula stories inherent in these narratives construct and typify victims and villains. In this conclusion, I will provide a brief summary of each of the three papers, highlighting the contributions that each paper makes. I then move on to a discussion of the limitations of the dissertation. I conclude with a brief look forward, proposing areas for future research.

Paper Summaries and Contributions

Paper One – Deadly Disease vs. Chronic Illness: Competing Definitions of HIV

In the first paper, I examined two conflicting definitions of HIV that have emerged in the discourse surrounding the criminalization of HIV non-disclosure. Theoretically, the paper presents a case in the social construction of conditions. As Loseke (2003) has noted in her discussion of diagnostic frames, in some cases, the definition of a condition itself can become a point of contention between claims-makers and counter claims-makers. That is, there may be agreement about the existence of a condition, and perhaps even on whether the condition is problematic, but *not* about how to typify or characterize the condition. She has also pointed out that how conditions are framed is often related to

the solution that is ultimately proposed, linking diagnostic and prognostic frames in decisive ways.

The debate around the criminalization of HIV non-disclosure offered a unique opportunity to explore these issues. The definitional contest at the heart of the paper was not about *whether* HIV ought to be viewed as a disease, but about what *kind* of disease it represents. Typically, claims-makers who oppose the criminalization of HIV non-disclosure construct HIV as a *chronic condition*, one that should no longer be viewed as a death sentence. As a result, they take considerable exception to the use of criminal sanctions as a solution, primarily because the charges – such as aggravated sexual assault and even murder – do not match the harm caused to the ‘victim.’

On the other hand, claims-makers who favour the use of criminal sanctions in cases of HIV non-disclosure construct HIV as *deadly* and *devastating*, thereby justifying the extreme measures taken to punish those who are convicted for not disclosing their status. In constructing HIV as deadly, supporters of criminal sanctions rely on fatalistic and evocative rhetoric and images when talking about the disease and those who carry it.

Apart from demonstrating the clear link between diagnostic and prognostic framing, and in that sense contributing to the social problems literature, the paper also offers insights that may be useful to sociologists of health. The case underlines the extent to which how we view diseases is affected not only by scientific evidence and interpretations of that evidence, but by larger social problems debates within which definitions may become embroiled. In the debate about the appropriate response to HIV

non-disclosure, how HIV itself is constructed has as much to do with the kinds of solutions that claims-makers are seeking as it does with what the “scientific evidence” may or may not show. In demonstrating the socially contingent nature of our understandings of HIV, the paper illustrated what constructionists working in the area of health and illness have long argued – that our understandings of any condition are a matter of definition.

Paper Two – Constructing an HIV-Killer: HIV Non-Disclosure and the Techniques of Vilification

In the second paper, I wanted to understand the strategies that were used to successfully vilify HIV non-disclosers. To do this, I drew from Loseke’s (2003) conceptualization of *motivational frames* and the social construction of *people-categories*. Loseke has argued that in order to persuade audiences, claims-makers must get them to care about the putative conditions to which they are drawing their attention. In order to motivate audiences to care, claims-makers draw on cherished ‘cultural-themes’ or widely shared values or beliefs about how the world should work. One way to gain the public’s attention is to construct *victims and villains* – those who are harmed by the problematic condition and those who are responsible for perpetrating the harm.

Loseke (2003) has noted that in order for an individual or group to be successfully constructed as a villain, they must be constructed as entirely *responsible* for their actions, they must have *intended* to do harm, and there *cannot be any morally acceptable* reason for their actions. She goes on to argue that claims-makers have a much more difficult

time convincing the audience to vilify an individual or group, primarily because it is easier to evoke feelings of sympathy for a victim than it is to evoke feelings of hatred. Constructing villains also welcomes challenges by counter claims-makers, who may argue that it was not the ‘villain’s’ fault for the harm but, rather, society, bad parents, mental disorder, and so forth. In other words, the audience is sometimes willing to give the individual an ‘out’ because of the appreciation that there are often outside factors that can affect the actions of an individual.

Looking at the larger literature, there has been considerable research on the construction of victims and processes of victimization, but less on villains. I developed the concept of *techniques of vilification* to describe strategies used to typify non-disclosers by those who favour the criminalization of non-disclosure. I identified five specific strategies: 1) constructing non-disclosers as perpetrators of great harm; 2) constructing non-disclosers as having acted knowingly; 3) constructing non-disclosers as having nefarious motives or being callously indifferent; 4) debunking alternative explanations; and 5) debunking the argument for shared responsibility.

The first three techniques involve the active labelling of non-disclosers as villains, emphasizing harm, responsibility, and intent. The latter two techniques involve defusing or neutralizing counter constructions. In the case of the HIV non-disclosure debate, for example, those seeking to vilify non-disclosers sought to uncover the ‘flawed’ logic in arguments made in defence of non-disclosers. More specifically, they rejected arguments that any condemnation of non-disclosers represented a form of *victim blaming*, since non-disclosers too were in circumstances that invited more compassionate understanding; or

suggestions that non-disclosers could not be held accountable for their actions in an era when safe sex is a ‘shared’ responsibility.

The concept of *techniques of vilification* may be one of the most significant contributions of the dissertation. I believe that in focusing attention on vilification as a process, the concept invites further investigation into situations where individuals or groups become the object of scorn and condemnation. There have been a number of high profile cases in the news recently to which the concept could be usefully applied, including the sexual assault cases of Jian Ghomeshi, Bill Cosby and Harvey Weinstein. There is a growing literature on Islamophobia that also becomes relevant, as do discussions about the polarization of the Left and the Right in the current political climate. Looking at all of these cases through the lens of *how* questions – *how* do claims-makers construct villains – it becomes possible over time to develop a deeper understanding of vilification as a generic social process. Moving in this direction would be consistent with the suggestion that Best (2015) has made for social constructionists to take their analyses beyond individual case studies to look at social problems processes more generically and ultimately to theorize about the processes at a more abstract level.

Paper Three – “It takes two to tango”: HIV Non-Disclosure and the Neutralization of Victimhood

For the third and final paper of this dissertation, I focused on claims-makers who argue against the criminalization of HIV non-disclosure, taking an “*it takes two to tango*” position. In condemning the use of criminal sanctions against non-disclosers, claims-

makers relied implicitly on understandings of the ‘ideal victim.’ They used these understandings to challenge the construction of those who had engaged in intimate contact with non-disclosers as victims, thereby also challenging constructions of non-disclosers as villains.

Here again, the paper fills a small but important gap in the larger literature on victims and villains. Processes of victimization have been well studied, with analyses focusing on such issues as how social movements frame victims, how victims see themselves, how individuals seek, project or claim victim-status in relation to particular audiences (Dunn 2008), and how the victim industry has grown in recent years (Best 1997). But the question of how claims to victim status have been contested or challenged has received less attention. As in my first two papers, I relied heavily on Loseke’s conceptualization of frames, specifically *motivational frames*, to explore this question in relation to HIV non-disclosure.

Three primary strategies of victim neutralization emerged from the data. The first strategy involved making the argument that the ‘victim’ *ought to have known better*. The argument builds on the observation that, over the past several decades there have been massive public awareness and education campaigns informing the public about the risks of unsafe-sex. That observation becomes the basis for suggesting that it is a matter of common knowledge or common sense that not using a condom means risking exposure to a sexually transmitted infection. The second strategy focused on the *agency* of the victim, arguing essentially that nobody forced the so-called victim to have unprotected sex, therefore, that individual is at least partially responsible for the harm they suffered. The

third strategy involves harnessing the perspective of those who have had intimate contact with non-disclosers and have contracted HIV as a result of that contact, but who *refuse victimhood* status for themselves. Since they, as the individuals most directly impacted by the actions of non-disclosers, do not see themselves as victims, for anyone else to characterize the partners of non-disclosers as victims and the non-disclosers themselves as villains, is an inappropriate use of the victim/villain frame.

In elaborating on the notion of *neutralizing victimhood*, the third paper contributes to the social problems literature as well as to the literature in victimology. The paper invites a more focused gaze on situations where claims to victim status are being contested. Apart from the insights into the processes and strategies of contestation involved, such inquiry has the potential to generate fuller appreciation of how audiences understand what it means to be a victim and how these understandings may change over time. There may be practical benefits as well to moving in this direction. The insights gleaned could be used by policy makers and social service workers to reflect on their own organizational perspectives on who is deemed worthy of support and who is turned away.

Limitations

As with any study, this dissertation has its strengths, but also its limitations. Perhaps the most major of its limitations is that my analysis did not include a temporal dimension. In other words, while I identified and analyzed the competing understandings at the heart of the criminalization debate, I did not contextualize these understandings in terms of *when* certain claims were made. As a result, my analysis did not capture ebbs and flows in the

debate precipitated by key moments in the HIV/AIDS trajectory. The data collected for this research spanned from 2003-2014, a time frame during which there were dramatic developments. Among them was the trial, and precedent-setting murder conviction of Johnson Aziga; the 2012 Supreme Court ruling that revisited the *Cuerrier* decision and redefined the ‘significant risk’ test; a number of scientific and medical advancements such as the implementation of PrEP and the consensus reached by those in the AIDS community that an undetectable viral load largely precludes the possibility of transmitting the virus. The analysis does not allow one to consider how some of these changes may have affected the currency, relevance, or bases of the claims made on either side of the debate. Nor does it allow one to look at how positions of certain individuals and groups changed in light of these developments. From the point of view of documenting the discourse around criminalization, this is a critical gap.

By way of explanation, there were reasons that I did not attend to the temporal context of the claims-making I analyzed. My focus going into the dissertation was with the theoretical questions I have raised about the construction of disease, and of victims and villains. I used the criminalization debate as a case study that allowed me to explore these questions since the debate was very much about these generic social processes. I was not seeking to systematically document or provide a history of the debate itself, which would certainly have necessitated consideration of the development and evolution of the arguments.

Another consideration that guided my decision has to do with a debate within social constructionism itself. There has been a fairly intense debate among social

constructionists about whether there is a place in constructionist analyses for consideration of the socio-historical context within which claims are made. Constructionists are divided between those who take a contextual and those who take a strict approach. Contextualists argue that it is fruitful, even necessary, to situate claims within their broader social context (see Best 2003). Strict constructionists have pointed to the ontological and epistemological conundrum this presents for the theory. If the premise of constructionism is that all “realities” are constructed, on what basis can constructionists posit in objective terms a socio-historical context within which these processes of construction occur? Put differently, strict constructionists consider it problematic to treat claims as relative, while at the same time treating the analyst’s characterization of the social context within which claims are made as objective or given. The problem is only compounded when these objectified or fixed contexts are then used to *explain* the claims-making activity. In an effort to avoid these theoretical inconsistencies, strict constructionists tend to focus on features of discourse itself and studiously try to avoid pulling in notions of context (see Ibarra and Kitsuse 2003).

Sympathetic to the arguments that strict constructionists make, my own inclination was to look at *how* claims were framed to either support or challenge criminalization. I was less interested in *when* or *why* certain claims were made. I worked hard to remove myself from the debate and to avoid taking a stand, trying instead to keep the emphasis on ‘the talk’. In fact, it may be my sensitivity to the position of strict constructionists that led me to ask the questions that I did in this dissertation.

Still, anyone looking for a detailed and complete overview of the debate and its development over time will not find it in these pages. Such an exercise would certainly be worthwhile. Approached from a contextual constructionist point of view, attending to the temporal dimensions of the debate would open the analysis up to inquiry well beyond the *how* questions I have restricted myself to here.

There are also some limitations connected with my methodological approach. I noted in the introduction to the dissertation the benefits of using a qualitative content analysis of internet documents, pointing out that these documents allowed access to conversations and points of view that I might not heard had I restricted myself to interviews. One drawback of using such data, however, is that it tends to capture the opinions of those who have clear and firm views on criminalization; it is less likely to capture the perspectives of those who are uncertain or have more subtle and nuanced opinions that fall somewhere between for and against. As a consequence, my discussion may leave the impression of a debate more polarized and black or white than it actually is. For my purposes, particularly those having to do with the competing typifications of HIV as a condition, non-disclosers and their partners, it was important to focus on the extremes of the opinion continuum. At the same time, it is important to recognize that for many individuals these are opposing poles to which their understandings more or less tend rather than opposing “either/or” camps into which they clearly position themselves. A systematic exploration of less extreme points of view and the “messiness” of the debate is also worthy of further study, perhaps with a focus on the moral dilemmas individuals

find themselves confronting as they consider where they stand on the question of criminalization.

Another limitation of my methodological approach is that I was not able to ascertain with any certainty the demographic characteristics of the population discussing the criminalization of HIV non-disclosure. On many of the websites, particularly comment feeds and forums, I was not able to determine the gender, race, age, sexuality, etc. of the person voicing their opinion, unless it was explicitly specified. This limited me in terms of what I could say about *who* was making certain claims, whether there were patterns in where certain groups positioned themselves in the debate or what motives claims-makers might have had in making the claims they did. In some cases, I was able to allude to the social identity of those joining in on the conversation based on the space they were contributing to, i.e. forums geared towards AIDS deniers or websites designed to give the LGBTQ community a voice. On the whole, however, the anonymous nature of many of these spaces made it virtually impossible for me to say anything about the identity of the claims-makers with any degree of certainty. While my questions centered more around the discourse itself and *what* was being said as opposed to *who* was saying it, delving into the claims-makers themselves would certainly yield a fuller picture.

Future Research

In summarizing the dissertation's contributions, I have made an effort to point out where the papers invite further study. More specifically, I discussed the potential payoffs of looking more carefully at three areas of inquiry: 1) How understandings of what

constitutes health and illness, and the ways in which states of health and illness are typified, are connected to social problems claims-making and the kinds of responses or solutions that groups are seeking for conditions they see as problematic; 2) the techniques of vilification that claims-makers use in the process of constructing villains; and 3) the situations in which, and processes by which, victim status for certain individuals or groups is challenged and contested.

On a broader level, the ways in which the concerns of the three papers interconnect, with elements of the diagnostic, motivational, and prognostic rhetorical frames weaving in and out of the analyses, begs questions about the nature of the interconnections. While the dissertation certainly demonstrates how discourses about conditions, people and solutions are linked, I juxtaposed those linkages more than raising precise questions about them. Nor did I consider the directionality of the linkages. For example, the dissertation does not address whether those who support criminalization of non-disclosure do so because they see HIV as deadly or whether, favouring criminalization as a response, it is in their interests to typify HIV in dramatic and less hopeful ways. While there is merit in separating out analytically talk about conditions, people and solutions, there is also merit in taking a more holistic view and asking more focused questions about how the different elements relate. Does there have to be consistency between frames? Who determines consistency? Can the issue of inconsistency become a resource in claims-making activity in the sense that claims-makers may fault each other for calling for solutions that are able to describe as not fitting

the problem as it has been characterized in the first place? There is new ground here for future research.

All of these are conceptual questions, related to the advancements of sociological debates about the construction of health/illness, social problems and reality more generally. Apart from these questions, there are others related more to the non-disclosure debate that warrant further investigation. Future research would benefit from a closer look at the social characteristics of those who are being typified in particular ways. I noted earlier the disparities in the conviction rates for HIV non-disclosure, underlining the fact that heterosexual and racialized men are more likely to be charged and convicted. On the other hand, while gay men represent 50 percent of HIV-positive reports in Canada (Mykhalovskiy, Betteridge and McLay 2010), they are less likely charged for non-disclosure. Exploring why that would be the case could lead to a more direct questioning of how race, class, gender and other axes of social status play into claims-making activities and the social construction of people-categories.

As the debate around the criminalization of HIV non-disclosure continues, the ground on which it is based is shifting. There have been significant scientific and medical advances since the beginning of this project. One such development – the development of the HIV prevention drug known as PrEP (Pre-Exposure Prophylaxis) – has the potential to be a real game changer. The drug reduces significantly the risk of contracting HIV in those individuals considered to be high risk. How using the drug, or refusing to use it, affects the decisions that HIV-positive individuals make about disclosure, and in turn responses to non-disclosure, are obvious questions to ask. Will PrEP strengthen the

“it takes two to tango” position in providing individuals with an even greater measure of protection in cases where they are engaging in risky sex? Will PrEP have the effect of making it more difficult to argue that HIV-positive individuals, and they alone, are responsible for ensuring that sex is safe?

Similar questions arise in relation to the U=U (Undetectable = Untransmittable) movement. The movement’s mandate is to eliminate HIV stigma as well as the epidemic itself. The movement’s campaign relies heavily on scientific data that indicates that it is virtually impossible to transmit HIV when individuals stay on their medications and have reached a point where their viral loads are consistently undetectable. To the extent that the U=U movement gains traction, how will it change the terms of the non-disclosure debate? Here too, there is more ground for analysts to explore.

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Appendices

Appendix A

Newspaper Sources:

- Hamilton Spectator – Hamilton, Ontario Canada
- Toronto Star – Toronto, Ontario Canada
- Globe and Mail – Toronto, Ontario Canada
- National Post – Toronto, Ontario Canada
- Vancouver Sun – Vancouver, British Columbia Canada
- Ottawa Citizen – Ottawa, Ontario Canada
- Star Phoenix – Saskatoon, Saskatchewan Canada
- Advertiser - Grand Falls – Windsor, Newfoundland Canada
- The Daily Gleaner – Fredericton, New Brunswick Canada
- Kamloops Daily News – Kamloops, British Columbia Canada
- The Telegraph-Journal – Saint John, New Brunswick
- Daily the Pak Banker – On-Line Source
- Alberni Valley Times – Port Alberni, British Columbia Canada
- Prince Rupert Daily News – Prince Rupert, British Columbia Canada
- Windsor Star – Windsor, Ontario Canada
- Calgary Herald – Calgary, Alberta Canada
- The Leader-Post – Regina, Saskatchewan Canada
- Edmonton Journal – Edmonton, Alberta Canada
- The Gazette – Montreal, Quebec Canada
- The Vancouver Province – Vancouver, British Columbia Canada
- Times Colonist – Victoria, British Columbia Canada
- St. John's Telegram – St. John's, Newfoundland Canada
- Nanaimo Daily News – Nanaimo, British Columbia Canada
- Guelph Mercury – Guelph, Ontario Canada
- Prince George Citizen – Prince George, British Columbia Canada
- Carleton Place – Carleton Place, Ontario Canada
- Waterloo Region Record – Waterloo, Ontario Canada

Appendix B

Google Document Sources:

- Plenty of Fish – www.pof.com
- Positive Women’s Network – <http://pwn.bc.ca>
- Positive Lite – www.positivelite.com
- POZ Blogs – www.poz.com
- Queerty – www.queerty.com
- Questioning AIDS – www.questioningaids.com
- rabble.ca – www.rabble.ca
- Selwyn Pieters Blog – www.selwynpieters.blogspot.ca
- Ms Nikki Thomas – www.msnikkithomas.com
- Sky Gilbert Blog – www.skygilbert.blogspot.ca
- Above Top Secret.com – www.abovetopsecret.com
- Abuse Wiki – <http://abusewikia.com>
- Altnet – www.altnet.org
- Articlesbase – www.articlesbase.com
- ASRSQ – www.asrsq.ca
- Community: Baby Benter – <http://community.babycenter.com>
- Baltimore Sun Talk Forums – <http://talk.baltimoresun.com>
- Bedbugger.com – <http://bedbugger.com>
- The Bilerico Project – www.bilerico.com
- nomorepotlucks – <http://nomorepotlucks.org>
- CANOE – <http://blogs.canoe.ca>
- Walt Whitman’s World – <http://waltwhitemansworld.blogspot.ca>
- Canada First.net – <http://updates.canadafirst.net>
- Canada.com – www.canada.com
- Positive Living BC – www.positivelivingbc.org
- Cerebvellum.com – <http://cerebvellum.com>
- National Center for Biotechnology – www.ncbi.nlm.gov
- Canoe News – <http://cnews.canoe.ca>
- Criminal Lawyer Etobicoke Blog – www.criminallawyeretobicoke.com
- The Dominion – <http://dominion.mediacoop.ca>
- Daily Xtra – <http://dailyxtra.com>
- Finland for Thought – www.finlandforthought.net
- Fitness Pal – www.myfitnesspal.com

- Selwyn A. Pieters – Barrister & Solicitor – www.selwynpieters.com
- Free North America – www.freenorthamerica.ca
- Freely Shout – <http://freelyshout.com>
- Gates of Vienna – <http://gatesofvienna.blogspot.ca>
- Gay Globe Media – <http://gayglobe.us>
- Global Criminalisation Scan – <http://criminalisation.gnpplu.net>
- May First/People Think – <http://lists.mayfirst.org>
- Health Medicine Center – <http://healthmedicinenet.com>
- Herpes Girl – www.herpesgirl.com
- Criminal HIV Transmission – <http://criminalhivtransmission.blogspot.ca>
- HIV Justice – www.hivjustice.net
- Plus – www.hivplusmag.com
- I Luv SA – <http://iluvsa.blogspot.ca>
- Universite de Montreal – www.iro.umontreal.ca
- Jer's Vision – www.jersvision.org
- Jonathan Turley – <http://jonathanturley.org>
- Kinsey Confidential – <http://kinseyconfidential.org>
- Lawyers and Settlements: Lawsuits and Legal News – www.lawyersandsettlements.com
- MacLean's Magazine – www.macleans.ca
- McGill Reporter – <http://publications.mcgill.ca>
- Anova Health Institute – www.mediaaids.org
- Motherboard – <http://motherboard.vice.com>
- Murderpedia – <http://murderpedia.org>
- Aidsmap – www.aidsmap.com
- National Justice Network Update – www.rbjc.ca
- Network 54 – www.network54.com
- Outwords – <http://outwords.ca>
- The Dirty – <http://thedirty.com>
- Vanguard News Network Forum – <http://vnnforum.com>
- The New Gay – <http://thenewgay.net>
- This Magazine – <http://this.org>
- canandthelaw - <http://canandthelaw.wikispaces.com>
- Tribe Magazine – www.tribemagazine.com
- Unlocking HIV – <http://unlockinghiv.com>
- Women in and Beyond the Global – www.womeninandbeyond.org

- WordMag – www.wordmag.com
- Idasa's Weblog – <http://idasa.wordpress.com>
- World Heritage Encyclopedia – <http://worldheritage.org>
- SP411 – www.sp411.com
- StateMaster.com – www.statemaster.com
- The Court – www.thecourt.ca
- The Canadian Bioethics Companion – <http://canadianbioethicscompanion.ca>
- Topix – www.topix.com
- The Grid – Toronto – www.thegridto.com
- Slate – www.slate.com