

Humanity

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Two Victim Paradigms and the Problem of "Impure" Victims

The contempt we always feel for losers—Jews in the thirties, Muslims now—combines with our disgust at the winners' behavior to produce the semi-conscious attitude: "a plague on both your houses."¹

In this passage, Richard Rorty is commenting on the failure of the United States and its European allies to take effective military action to stop the massacres and genocidal rape camps Serbians launched against Muslims during the 1990s wars in the former Yugoslavia. Instead of construing the problem as a question of what we owe to distant others or a question about the limits of national sovereignty, Rorty frames it in terms of moral psychology. "We" perceive victims as contemptible losers.² "We" perceive victimizers as disgusting brutes. Both are morally tainted and hence unworthy of "our" moral attention and response.

Stated baldly, this seems undeniably true and utterly bizarre. People shy away from trouble and extra responsibilities. So it's no surprise that "we" would stick our collective head in the sand during the Holocaust and the "ethnic cleansing" in the Balkans. Lost in this orgy of "there's blame all around"-ism is John Locke's firm distinction between wrongdoers and victims.

"In transgressing the law of nature," Locke avers, "the offender declares himself to live by another rule than that of reason and common equity."³ Such an individual "so far becomes degenerate, and declares himself to quit the principles of human nature, and to be a noxious creature."⁴ By injuring another person—a right-holder—the perpetrator becomes an enemy of the whole human species, more like a rogue elephant running wild and causing indiscriminate harm than an adult human being.⁵ In taking leave of reason, offenders forfeit their rights, which clears the way for others to punish them.⁶ In sum, Locke divides people into three rights-based categories: (1) bearers of rights who deserve protection from harm; (2) offenders who deserve to be punished for violating someone's rights; and (3) victims who deserve compensation because someone has violated their rights.

Admittedly, Rorty is discussing a far more complicated situation with very high stakes—military intervention in another state's treatment of its own citizens. However, Rorty does not comment on the niceties of international law, nor does he speculate about the possibility that intervening might cause greater loss of life and aggravate the trauma. Instead, he focuses on why humanitarian intervention is pretty much a nonstarter in the popular imagination—why "we" do not conceptualize the victims' peril and suffering, on the one hand, and their assailants' cruelty and brazen flouting of human rights, on the other, in Locke's crystalline moral terms. According

to Rorty, “we” perceive the people caught up in the crisis through schemas that render all of the parties despicable, thereby freeing us to guiltlessly ignore their plight.

In Locke’s moral world, a one-to-one correspondence obtains between recognized rights and cognizable violations of rights and between recognized bearers of rights and cognizable victims of rights violations. However, if Rorty is right about how onlookers frame human rights crises, these seemingly straightforward correlations have broken down. Indeed, I am skeptical that they ever held in practice. Yet the philosophical literature on victims is spotty. The main topics that grab philosophers’ attention are defending and interpreting human rights, proposing policies to recompense victims of rights violations or otherwise repair the damage wrought by rights violations, and demonstrating that social policy and legal institutions systematically occlude the victimization of members of historically subordinated social groups. Ignoring the question of how to conceptualize victims, philosophers implicitly adopt Locke’s view that victims are just people whose rights have been violated. I believe that things aren’t so simple—that prevalent conceptions of victims adversely affect our capacity to recognize violations of human rights and to secure the respect we owe to victims.

My argument proceeds in four stages. First, I analyze two victim paradigms that emerged in the late twentieth century along with the initial iteration of the international human rights regime—the pathetic victim paradigm and the heroic victim paradigm.⁷ Although I derive the paradigms from Amnesty International’s (AI) conceptualization of victims, I offer evidence that these paradigms have gained popular acceptance (at least in Western democracies). Second, I probe the requirement that a victim be innocent. Noting that the heroic victim paradigm countenances innocent agentic victims whereas the pathetic victim paradigm demands the passivity of victims as a guarantee of innocence, I argue that the pathetic victim paradigm is out of sync with established social practices regarding the acknowledgment of victims. If so, there is reason to be skeptical of this paradigm. Third, AI’s activism provides further grounds for skepticism inasmuch as it extends to two kinds of human rights violations and two categories of victims that the bifurcated paradigms don’t fit—women trafficked into sex work and prisoners on death row. AI does not let its paradigms get in the way of pursuing a broad human rights agenda. However, I argue that the popular hegemony of the two paradigms produces social and legal blind spots that perpetuate unjust treatment of trafficked women and prisoners sentenced to death. Finally, I propose modifications of the paradigms. In particular, I endorse greater attention to what people and the institutions they create do to other people, and I favor a presumption that unnecessary and severe humanly inflicted suffering is a human rights violation. Moreover, I reject the innocence criteria embedded in the two paradigms and urge that they be replaced by a burdened agency criterion. These modifications better align the concept of a victim with a realistic understanding of human subjectivity and agency and allow for a more capacious understanding of who is a bearer of human rights and under what conditions right-holders become victims of rights abuse.

Two Victim Paradigms

Since its inception in 1961, AI has been a vital force defending victims of human rights abuse. AI introduced its mission by coining the resonant phrase “prisoner of

conscience," which the organization still uses to identify victims of a broad range of human rights violations. Currently, AI characterizes these victims as follows:

People who are imprisoned, detained or otherwise physically restricted because of their political, religious or other conscientiously-held beliefs or because of their ethnic origin, sex, colour, or language and who have not used or advocated violence are considered by Amnesty International to be prisoners of conscience.⁸

This definition is both confusingly inclusive and curiously exclusionary. It includes both people persecuted for their beliefs and people subject to persecution merely because of their membership in an ethnic, racial, sexual, or linguistic social group. But whereas the label "prisoner of conscience" makes sense with respect to people under detention for their beliefs, issues of conscience are beside the point when people are persecuted for their ethnic origin, sex, color, or language. Before her release in 2010, Nobel Peace Laureate Daw Aung San Suu Kyi clearly qualified as a prisoner of conscience. However, it is misleading to regard the Jews, Roma, and gays and lesbians targeted by the Nazi Holocaust as prisoners of conscience, for they were in fact casualties of murderous bigotry. In this section, I argue that the two groups of persecuted individuals AI picks out in this passage fit two salient and implicitly gendered paradigms of victimization—the pathetic paradigm and the heroic paradigm.

The Pathetic Victim Paradigm

The starving people whom Allied soldiers found when they reached Hitler's concentration camps epitomize the pathetic victim paradigm. Hunted down by the Gestapo and then denied every necessity and sometimes singled out for additional torment, those inmates of the camps who survived were reduced to bare survival. Holocaust victims share several characteristics that are typical of pathetic victims: (1) they were innocent of any wrongdoing relevant to their treatment; (2) they were utterly helpless in the face of insuperable force; and (3) they were subjected to unspeakable suffering.⁹ Notable as well from the standpoint of the cognizability of these victims, the evidence for this severe, humanly inflicted harm is indisputable.

This sketch of pathetic victims coincides with the conception of a victim that Rorty says connotes being a loser—a conception that often rationalizes moral indifference. As well, this sketch evokes elements of a familiar Western stereotype of femininity—namely, purity and passivity. One reading of Rorty's observation would reduce his point to a pair of psychological truisms about human defense mechanisms and the persistence of misogynistic cognitive schemas. Easily triggered, defense mechanisms function to deflect awareness of moral responsibilities. Yet you might think that the feminization of this paradigm would motivate chivalrous attempts to rescue pathetic victims. In combination with responsibility-evading defense mechanisms, though, assumptions about women's second-class status and maternal instinct that are built into the feminine stereotype work to contravene such impulses. Women, after all, cannot expect to be treated as equals, and they are expected to endure the pain of childbirth gladly and to embrace the concomitant risk of mortality without hesitation. These lingering gender associations turn victimization into fate and reinforce moral indifference. Overcoming these psychological obstacles is a challenge NGOs must

confront to mount successful human rights campaigns. Still, I think there's a philosophical point buried in Rorty's rhetoric.

I have called this class of victims pathetic because the descriptor "pathetic" is ambiguous in a morally significant way. It is ascribable to persons whose attributes or circumstances move you to compassionate or contemptuous pity.¹⁰ Rorty's diagnosis of moral psychopathology notwithstanding, finding Holocaust victims or, for that matter, victims of the Srebrenica massacre contemptible would be unforgivably obtuse. Still, because contempt is not always a morally indefensible response to a sorry state of affairs, conscientious subjects need guidelines to help them differentiate (1) people who are legitimately claiming to be pathetic victims and who therefore deserve a compassionate response, from (2) imposters who deserve indignation if not contempt.

The pathetic victim paradigm requires claimants to have undergone severe, documentable, humanly inflicted harm that they are not responsible for incurring.¹¹ The irreproachable innocence of pathetic victims is crucial. Otherwise they can be accused of provoking their own suffering, whether because it is a foreseeable consequence of their actions or because it is a penalty for their wrongdoing. With regard to the innocence criterion, current discourse regarding pathetic victims has taken a troubling turn. In particular, subjection to force so overwhelming as to have reduced you to passivity stands in for nonprovocation. Thus, Jayashri Srikantiah observes that the political rhetoric surrounding the passage of the U.S. Trafficking Victims Protection Act of 2000 repeatedly underscored the meekness, helplessness, and passivity of trafficking victims in order to distinguish them from reviled undocumented economic migrants.¹² Gudrun Dahl points out that the "'Agent NOT Victim' trope" is pervasive in Swedish policy statements on immigration and development aid and in Swedish broadcast radio bromides.¹³ Joanne Baker presents interview data demonstrating the lengths to which young Australian women (ages eighteen to twenty-five) from diverse backgrounds will go to avoid the "victim" label and represent themselves as agents.¹⁴ In each case, being victimized is understood as excluding agency—that is, as entailing shameful albeit blameless passivity.¹⁵ Conversely, affirming agency is understood as proudly and knowingly taking responsibility for oneself. Pathetic victims, then, are people whose capacities for choice and action have been so completely neutralized that there can be no doubt but that they are innocent.¹⁶

The Heroic Victim Paradigm

The "prisoner of conscience" tag best fits victims who exemplify the heroic paradigm. Daw Aung San Suu Kyi has been a prime case of a prisoner of conscience because until recently she was held under house arrest for over a decade as a result of her nonviolent opposition to the Myanmar military dictatorship and her demands for democracy and human rights. Heroic victims, such as Aung San Suu Kyi and Martin Luther King, Jr., are particularly interesting to me because they disturb a key assumption of the pathetic victim paradigm—namely, that you must in no way be complicit in your suffering to count as a victim.

Heroic victims are idealistic and courageous. They take it upon themselves to face off against the police power of the state in the name of a just cause. They may stand

up for democracy and human rights, resist the subjugation of a social group singled out for oppression, or protest the misuse of military might. What heroic victims have in common isn't a single political agenda but rather a commitment to peace and justice. The governments they resist are often authoritarian police states like Myanmar. However, liberal democracies are not always loathe to detain people for their beliefs. Some heroic victims act alone. Others act as members of a movement or political party. Some engage in civil disobedience. Others confine themselves to "working within the system." Whatever their particular cause or methods, political officials regard them as sufficiently threatening to national stability and/or their own hold on power to deploy repressive tactics aimed at silencing them and defeating their cause.

The justice of the heroic victim's cause is indispensable, for states are plainly acting within their rights when they arrest, prosecute, and punish ordinary criminals. Fraudulent investigative methods, torturing people to extract testimony favorable to the prosecution, rigged trial procedures, and inhumane conditions of incarceration are widespread and abrogate human rights under the pretense of legitimate law enforcement. But imprisoned individuals whose rights have been violated in these ways are pathetic victims, not prisoners of conscience.

To qualify as a heroic victim, it is all important that your agency not be morally compromised. It is undeniable that heroic victims are not passive. In fact, they are quite stunningly agentic figures. They freely choose to engage in public dissent for the sake of their beliefs. Moreover, in persisting despite the known risk of persecution, they goad the state's repressive apparatus. In this respect, heroic victims conform to masculine warrior norms. Although it might seem that their crusading capacities for choice and action are all but crushed once they have been incarcerated, persecuting heroic victims sometimes endows them with an indirect form of agency—that is, the symbolic power of their personal sacrifices and their steadfast refusal to abandon the values they stand for may inspire others and fortify their resolve to uphold the cause. Such transitive, paradoxically enhanced agency has been the bane of government officials of many stripes.

Arguably, then, heroic victims knowingly act in ways that in effect court their own victimization. Yet both in virtue of acting peacefully and in virtue of acting in support of a just cause, the heroic victims' agency is beyond reproach—inoculated against the charge of complicity in bringing on their own suffering. Put another way, they exercise their rights to free expression and, depending on their strategies of advocacy, freedom of association and peaceful assembly as well. Despite the fact that these rights may not be recognized by the regimes they oppose, acting within the bounds of internationally recognized rights sanitizes the agency of heroic victims in the eyes of those who see the justice of their causes. Thus the nonviolent activism of heroic victims secures their innocence and justifies the charge that their right not to be arbitrarily imprisoned is violated when they are detained.

Heroic victims are routinely subjected to solitary confinement if not to torture in many parts of the world. Even so, they are not feminized, for they are not pictured in agony or broken down. Heroic victims are admired for their strength of character, especially their allegiance to their followers, and for their courage, despite the abuse

they are known to endure. Their resolute commitment to their beliefs secures their integrity and preserves their dignity. Abused for their supererogatory self-sacrifice, they are honored as moral exemplars.

Parameters of Innocence

To count as a victim at the mercy of a malign human power, both victim paradigms demand that you be innocent—that is, nothing you have done could reasonably be construed to imply consent to the harsh treatment you've endured. Yet there is an asymmetry between the innocence requirement of the heroic victim paradigm and that of the pathetic victim paradigm. Whereas a just cause and the nonviolent pursuit of a remedy confer innocence on the heroic victim, passivity confers innocence on the pathetic victim. For heroic victims, acting within their rights rules out charges of complicity in incurring harm. For pathetic victims, de-agentification rules out consent to harm. The heroic paradigm rests on standard understandings of innocence and nonconsent. In contrast, I argue, the pathetic victim paradigm's passivity criterion departs radically from familiar ways of thinking about victims.

There are a number of ways to analyze nonconsent. Permanent cognitive impairment and being too young to competently choose for yourself have gained notice lately in the United States as a result of court cases involving cognitively impaired or immature individuals who have committed violent crimes. Force, fraud, and coercion also preempt agency and hence consent. In addition to the exculpatory youth of child soldiers, for example, there are reliable reports that captors drug the abducted children to ensure their obedience or threaten to kill children who resist performing grisly acts.¹⁷ Likewise, there is plentiful evidence that international prostitution rings use strategies that combine deception and coercion. To lure them abroad, traffickers assure poor women that they will get respectable, well-paid jobs. Afterward, they confiscate their captives' passports, take photographs of them being raped, and threaten to send the pictures to their families.¹⁸ First deceived and then intimidated, the women submit to sex work, often under abhorrent conditions.

Inalienable rights provide another way to explicate the impossibility of consent and the absence of complicity in certain outcomes. Inalienable rights place moral limits on what you can freely agree to do. Possessing an inalienable right rules out divesting yourself of the right itself and, with very few exceptions, eliminates your option to forgo the benefit to which the right entitles you.¹⁹ Relying on the claim that inalienable rights limit the scope of morally cognizable choice and action, some opponents of sex trafficking argue that there is an inalienable right not to sell sexual services and therefore that it is impossible for a trafficked woman to consent to sex work.²⁰ If human rights are inalienable rights, they deny that anyone can meaningfully consent to perform certain acts or undergo certain types of treatment. By constraining agency, these rights guarantee the noncomplicity and innocence of anyone found to be engaging in activities or undergoing types of treatment that the rights prohibit.

Each of the analyses I have canvassed locates controversy about whether a claimant is a pathetic victim of a human rights violation in a different place. The cognitive impairment/immaturity analysis raises issues about what capacities are constitutive of responsible agency and what degree of development is necessary for a person to be

considered a responsible agent. The force/fraud/coercion analysis raises issues about what counts as overwhelming force, impenetrable fraud, and irresistible coercion—that is, what forms of force, fraud, or coercion agents are allowed to succumb to without falling into complicity in their own subsequent misfortune. The inalienable rights analysis raises questions about whether any or all human rights are inalienable and, if some are inalienable, what to make of people whose behavior conflicts with their rights. For purposes of explicating the victim paradigms, I find the force/fraud/coercion analysis most promising because it speaks directly to norms that underpin the dynamics of human agency.

There are countless measures you need not take to prevent or halt an attack on your rights. For one reason or another, they're considered too costly.²¹ Consequently, failing to take them doesn't entail sacrificing your standing as a victim should your rights be violated. Although your insurance company won't take kindly to your stolen car claim if you left your car unlocked with the keys in the ignition, it's not (yet) mandatory to have a working alarm system to attract attention to automobile thieves. Nor is it mandatory to post an armed security guard with your car when you leave it parked in a public place although it is easy to imagine a social order in which insurers could reasonably require you to do so. Paradoxical as this may seem, custom and law grant people some latitude to "cooperate" with possible violations of their rights.²²

Conceptions of force, fraud, and coercion specify socially acknowledged limits on obligatory noncooperation with actual or possible rights violations. In particular, they specify precautions and risks people aren't obligated to take in order to qualify as victims in the event that their rights are violated. A conception of force sets limits on obligatory self-protection—freedom you need not have sacrificed and dangers of interpersonal aggression you need not have taken every possible step to avoid in order to be considered a victim of force. A conception of fraud sets limits on due diligence—suspicions you need not have entertained and inquiries you need not have made to be considered a victim of fraud. A conception of coercion sets limits on tolerable risk—threats you need not have resisted to be considered a victim of coercion.

The heroic victim paradigm is premised on a universalist, absolutist stance regarding illegitimate applications of state power. Articles 18, 19, and 20 of the Universal Declaration of Human Rights underwrite this view. The rights to freedom of conscience, free speech, and peaceful assembly entail that self-censorship of dissent is not a mandatory form of self-protection. In other words, an individual who opposes injustice using nonviolent means is innocent of wrongdoing that justifies any punishment. Consequently, conscientious critics of the state are victims of force when they are incarcerated for expressing their beliefs.

Still, a universalist, absolutist view of force, fraud, and coercion is not always tenable. Because different conceptions of force, fraud, and coercion can be more or less reasonable depending in part on the social contexts they regulate, demarcating these concepts with respect to various species of aggression and malfeasance is among the principal tasks of law. Moreover, in defining specific types of force, fraud, and coercion, legal norms define spheres of freedom and agency in which individuals may act without becoming complicit in whatever harms may befall them and forfeiting their status as cognizably innocent victims. In international law as in U.S. federal law,

the grounds for recognizing pathetic victims are manifold, and uncontroversial types of pathetic victim are diverse. Consequently, whether claimants who are coming forward for the first time have meritorious or specious cases for admittance into the class of pathetic victims is a matter of judgment.

It is anomalous, then, that the pathetic victim paradigm goes to the absolutist extreme of mandating passivity as a criterion of innocence. Indeed, this anomaly signals an urgent need to rethink this paradigm given that realizing human rights is a work in progress. I reinforce my case for reforming the pathetic victim paradigm in the next section by considering two current debates about the scope of the class of pathetic victims.

Controversial Victims

AI's definition of a victim notwithstanding, the organization's human rights mission is not confined to clear instances of the two paradigmatic types of victims.²³ AI advocates for trafficked sex workers. But it is a stretch to maintain that all of them fit the pathetic victim paradigm, and they bear scant resemblance to heroic victims. As well, AI actively works to defend death row inmates, including those who cannot qualify as pathetic or heroic victims because they committed the crimes of violence for which they were sentenced to die. Using trafficking in women and the death penalty as test cases, I urge that the pathetic and heroic victim paradigms are not altogether salutary from the standpoint of advancing human rights.

Trafficked Sex Workers

Many trafficked sex workers don't fit the pathetic victim profile.²⁴ They aren't naïve country girls, and they aren't duped about their employment prospects abroad.²⁵ Rather, they are desperately poor women who have no avenues of economic betterment in their home countries.²⁶ Echoing the women she interviewed, Louisa Waugh characterizes them as "forced migrant labour."²⁷ They are driven to seek out traffickers by their utter hopelessness—their entirely reasonable belief that there is no other way to alleviate their own and their children's extreme deprivation.²⁸ Immigration quotas rule out getting work visas, and there are no adequately remunerated jobs in the failed economies of their own countries. Their options are few, and they are uniformly grim.

Still, these women do not describe themselves as victims.²⁹ Rather, they see themselves as "migrants who'd been brutalized because they'd had to resort to desperate measures, or else had believed they were being offered genuine legal jobs abroad."³⁰ The latter women—those who were convinced by false promises of good jobs—are victims of fraud. Because of this initial deceit and because handlers not only force them to work as prostitutes after escorting them to foreign countries but also threaten to harm their families if they try to escape, these women neatly fit the pathetic victim paradigm. Antitrafficking laws aim to bring the people who buy, sell, rape, beat, and exploit these women to justice. However, the former group of women—those who knowingly allow themselves to fall into the clutches of traffickers in order to immigrate—is excluded from the category of trafficked women. In Britain and the United States, they are considered "smuggled" women; their self-narratives of attempted

migration are summarily dismissed; and they receive none of the (meager) benefits antitrafficking laws confer on victims.

Although both “smuggled” and trafficked sex workers typically suffer abuse so severe and prolonged that it causes grave physical and psychological damage, the so-called smuggled women do not fit the pathetic victim paradigm because they initially cooperated with the people who subsequently abused them.³¹ Some choose to play along with the charade of counterfeit passports and tourist visas, while others pay to be taken by clandestine routes to more affluent countries. All know that they are destined for sex work.³² When they are deported or caught trying to cross the border, they think of themselves as “failed migrants.”³³ In an intriguing twist of feminist sensibility, some are offended that male undocumented immigrants are presumed to be smuggled and agentic, whereas female undocumented immigrants are presumed to be trafficked and helpless.³⁴ Plainly, these women insist on affirming their own agency. In what follows, I seek to respect the agency that they rightly claim while also clarifying what conceptual changes would be required to classify them as pathetic or heroic victims. Assimilating their predicament to the pathetic victim paradigm would necessitate a reconsideration of our understanding of coercion in relation to the human right not to be held in slavery or servitude.³⁵ Assimilating their predicament to the heroic victim paradigm would necessitate a reconsideration of what counts as non-violently pursuing a just cause.

Before I present my account, I’d like to make it clear that I reject a view that some feminist human rights advocates adopt. I do not favor sex work abolitionism—the view that because freely agreeing to do sex work is a contradiction in terms, sex work should be wiped out.³⁶ It seems possible that in a nonpatriarchal, nonheterosexist context in which sex workers enjoyed the same legal safeguards as anyone else, some people would be willing to sell sexual services and others would want to purchase them for a fair price. If so, it is a mistake to condemn sex work as inherently degrading just because virtually all sex workers presently labor under abominable conditions and pimps confiscate their earnings. Agnostic as I am about how sex work might be structured in future, I won’t address the problem posed by allegedly smuggled sex workers by invoking an inalienable right not to perform sexual services for pay.

Instead I explore the relations between allegedly smuggled sex workers and the two paradigms I set out above. In my view, these “smuggled” sex workers resemble pathetic victims inasmuch as they are coerced. Some of these women also resemble heroic victims because they are willing to sacrifice themselves for the sake of superordinate values. That all of them are forced to risk their own right not to be sold into sexual bondage in order to secure subsistence argues for classifying them as pathetic or heroic victims who deserve the full protection of the law.³⁷ Yet standard interpretations of the victim paradigms rule out this conclusion.

Liberty rights and economic rights commingle in the Universal Declaration of Human Rights. Attacking both the right to work and the right to a decent standard of living, failed economic systems inflict inescapable poverty together with concomitant insupportable hardships.³⁸ Like the decisions of street crime victims to hand over their valuables, the coping measures people take in the midst of economic collapse are amalgams of rational choice and “no other choice”—instances, as it were, of coerced

free agency.³⁹ Reports on the financial rewards migrant sex workers reap are anecdotal. It seems clear, however, that wage bondage is pervasive. Some women use their paltry wages to buy back their freedom, but it is impossible to say how many succeed in sending money home.⁴⁰ Yet the prospect of achieving so little by risking so much is not a bad bargain for women who make themselves available to operatives known to traffic in women. They regard the alternative of downwardly spiraling, annihilating poverty as worse. However, according to liberal theory, a government can be an offender in Locke's sense—a perpetrator of wrongdoing—but a national economy cannot. If not, immigrants seeking relief from the depredations of a dysfunctional national economy can never count as pathetic victims.⁴¹

The stories “smuggled” women tell feature alcoholic or absent husbands, children to support, jobs lost and ensuing debt, and insufficient income to pay the rent.⁴² What they aim to accomplish in handing themselves over to known thugs is to save themselves, their children, and sometimes extended families from homelessness, chronic hunger, and other deprivations. Although their motives aren't base, these women do not have grand visions of justice, nor do they pursue political solutions like those that heroic victims characteristically fight for. They rely entirely on personal initiative to solve their problems. By regnant standards, these differences disqualify them as heroic victims. To be a hero, you must wage a public battle on behalf of the oppressed or campaign against large-scale suffering. Struggling to care for your family, even at great personal cost, doesn't qualify as heroic.⁴³ Yet many of these women live by a moral code that is analogous to the just cause and self-sacrificial ethic of the heroic victim. They stand for the worth and dignity of their children, and they are willing to suffer unimaginable abuse to try to give their children decent lives. In light of these morally significant similarities between so-called smuggled women and uncontroversial examples of heroic victimization, you might infer that the sexist presuppositions of the heroic victim paradigm should be expunged, and these women should be acknowledged as heroic victims. Yet as long as the heroic victim paradigm prizes public political action over private familial care, it must deny “smuggled” sex workers standing as heroic victims, thereby justifying the use of immigration policies to brand them as criminals, not victims.⁴⁴

Death Row Inmates

Among human rights attorneys it is agreed that the rights of prisoners, especially candidates for execution, are a very hard sell.⁴⁵ The victims of the crimes for which they were convicted are in the spotlight, and any abridgments of the prisoners' rights are likely to be sidelined as trivial by comparison. That the crimes punishable by death are among the most heinous compounds the difficulty of securing the rights of the subset of prisoners who occupy death row. As well, there is little public support in the United States for AI's contention that capital punishment is the “ultimate denial of human rights”—a violation of both the right to life and the right forbidding cruel, inhuman, or degrading treatment or punishment.⁴⁶ For opponents of abolishing the death penalty, the reason why death row inmates do not qualify as victims is simply that no one is violating their rights. Due in no small part to sensationalistic media

portrayals, these prisoners are widely viewed as irremediably vicious males—monsters whose testosterone-fueled aggression ran fatally amok.

I set aside claims for the deterrent effect of the death penalty, which in my view have no basis in fact. Nor do I confront the vexed question of the scope of Articles 1 and 5 of the *Universal Declaration of Human Rights* head-on. Instead, I ask how the victim paradigms that frame thinking about the death penalty interfere with acknowledging persons sentenced to die as victims. If the logic of prevalent American victim concepts precludes considering these individuals to be victims, it is no wonder that affirming that execution is a violation of their rights seems absurd.⁴⁷

The contrast between AI's position on capital punishment and the Innocence Project's is instructive. AI "opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the offender."⁴⁸ The Innocence Project is an American NGO founded in 1992 that seeks to redress "wrongful convictions."⁴⁹ Some of the organization's most celebrated cases have spared mistakenly convicted individuals from execution, and the organization's success in demonstrating the frequency of wrongful convictions in capital cases is credited with influencing former Illinois governor George Ryan to declare a moratorium on executions in 2000.⁵⁰ Yet, the organization's webpage does not endorse abolishing the death penalty, never mind couch the injustice of this practice in the language of human rights.⁵¹ As its name implies, the Innocence Project undertakes to exonerate people who didn't commit the crimes for which they were convicted and imprisoned, including but not exclusively or primarily those who have been sentenced to death.

The Innocence Project's revelations about miscarriages of justice in the United States have outflanked supporters of capital punishment and scored a number of successes for abolition. As a matter of expediency, it makes a lot of sense for death penalty opponents to undermine public confidence in the reliability of American trial procedures, for no one wants to be associated with killing demonstrably innocent people. Although I applaud the Innocence Project's achievements, it troubles me that their program implicitly endorses the absolutist version of the innocence criterion embedded in the pathetic victim paradigm.

To be pathetic victims, recall, persons must be innocent of any wrongdoing relevant to the harm that befalls them, and passivity in the face of force, fraud, or coercion ensures innocence. No one could be more at odds with this criterion, it seems, than a person who has correctly been judged to be guilty of a capital offense and who compounds his crime by withholding any expression of regret or plea for forgiveness.⁵² These individuals once exercised their agentic powers to commit the vilest crimes, and they now refuse to acknowledge the grievous harm they have caused. However badly they have misused their agency, they are by no means passive. Rather than challenging the liabilities of the pathetic victim paradigm, however, the Innocence Project reinforces its authority by abandoning death row's unrepentant, "recalcitrant guilty."⁵³

What the Innocence Project's framework mistakenly rules out is the possibility that someone who deserves to be punished nevertheless is a pathetic victim in virtue of the nature of the punishment to be inflicted.⁵⁴ Because the assumptions that under-

write AI's opposition to capital punishment countenance this possibility, they are more in keeping with robust human rights theory and morally grounded advocacy. To be sure, arguing that the death penalty is a violation of human rights, regardless of whether the person sentenced to die is guilty, has failed to rouse a surge of anti-death penalty sentiment in the United States. Be that as it may, the conceptual foundations of this approach are solid.

Sadly, one of AI's signal achievements—namely, formulating the heroic victim paradigm and mobilizing sympathy and support for heroic victims—may magnify the negative impact of the pathetic victim paradigm on death row inmates. By singling out a morally “pure” set of prisoners as deserving of concern, the heroic victim paradigm squeezes the rights of other prisoners and any abuse they may be subjected to out of the picture.⁵⁵ As a result, the only way to show that a person awaiting execution is a victim is to prove that the individual did not commit the crime, which is exactly what the Innocence Project attempts to do, leaving other death row inmates without moral or legal recourse.

What I am suggesting is that the saliency and rigidity of the pathetic and heroic victim paradigms render the idea of a victim of a human rights violation who has rightly been convicted of violating someone else's rights nonsensical.⁵⁶ The combined effect of the two victim paradigms is to deflect attention from the moral import of the treatment meted out to prisoners. Most pernicious of all, these paradigms deny the intelligibility of a death row inmate who is guilty as charged and who is also a victim of a human rights violation.⁵⁷ Although I have argued above that in actual legal practice innocence is an elastic concept, it plainly cannot be stretched enough to include those prisoners on death row who did what they were condemned for. If this is so, and if the death penalty violates the human rights of people sentenced to die at the hands of the state, the victim paradigms developed in the aftermath of World War II are inadequate to conceptualize today's human rights agenda. A conception of a victim that gives due weight to capitulation to overwhelming power used to inflict severe, unnecessary suffering and that acknowledges that some pathetic victims aren't altogether blameless is sorely needed if prisoners' rights, including those awaiting execution, are to be taken seriously.

Innocence Reconsidered

Our political and legal discourse makes it all but impossible to speak of violations of human rights without labeling some people victims and others perpetrators. But warnings about these polarized categories abound. Kay Schaffer and Sidonie Smith maintain that a cost of the gains made through the international human rights regime is that it “reifies the identities of ‘victim’ and ‘perpetrator.’”⁵⁸ According to Wendy Brown, this reification perverts rights claims into “sites of the production and regulation of identity as injury” when what is needed is “vehicles of emancipation.”⁵⁹ Richard Rorty laments the morally paralyzing dialectic of contempt and disgust that the victim/perpetrator polarity generates.⁶⁰ Roger Fjellstrom adds another layer to Rorty's diagnosis of the moral perils of assigning people to these dichotomized identities. Perpetrators of evil and their victims are “frightening” because they represent “what we constantly strive to ensure our wellbeing against.”⁶¹ Fear of being victimized

obstructs empathy with victims while also casting a shadow on the humanity of perpetrators. For these critics, the vocabulary of victims and perpetrators embedded in human rights discourse is morally deleterious, perhaps irremediably so.

Yet if I am right that human rights discourse currently relies on two victim paradigms, the connotations of the term "victim" aren't univocal, and these critiques aren't as damaging as they seem. The pathetic victim paradigm describes an objectified person who is all but incapable of autonomous choice and action. In contrast, the heroic victim paradigm describes an idealized figure whose shining integrity thwarts persecutors' nefarious designs. Apparently, to uphold the value of humanity by championing human rights is to imply the diminished humanity of some victims and the superhumanity of others. While pathetic victims may well stir up people's deepest anxieties about their own vulnerability, heroic victims represent such a high moral standard that most of us can only dream of living up to it. In view of this striking difference between the pathetic and heroic victim paradigms, it is clearly a mistake to generalize about the moral meanings and social consequences of being deemed a victim.

It would be a mistake, moreover, to regard these paradigms as they are presently constructed as definitive. Each paradigm "others" victims—either as less than fully human or as superlatively human. Yet all persons, as the familiar phrase goes, are bearers of human rights simply in virtue of their humanity. As bearers of human rights, all persons are potentially victims of human rights abuse. Consequently, it is strange that ordinary people are so different from paradigmatic victims. In one sense, this is as it should be, for victimhood isn't supposed to be the ordinary condition of right-bearers, and violations of human rights can change the individuals they target, destroying some and bringing out the best in others. To this extent, the pathetic and heroic paradigms make sense. However, the innocence criteria embedded in these paradigms are at odds with normal human impurity of motivation.⁶² A precondition for cognizability as a victim, not an effect of being victimized, the innocence criterion opens a gulf between our concept of a victim and our concept of a right-holder.⁶³

Retaining the innocence-as-passivity criterion is especially costly. So stigmatized is this identity that many who have suffered violations of their rights repudiate it, choosing instead to identify as survivors.⁶⁴ Survivors are fully agentic, responsible individuals who are bearers of recognized rights. This shift in vocabulary signifies individuals' full humanity despite what they have been through. Yet survivors must once have been victims if their rights-based claims are to gain traction. Since it is a mark of self-respect to stand up for your rights, the concept of a victim should not denigrate those whose rights have been violated. Nor should it rule out the possibility that a perpetrator could become a victim, but the innocence-as-passivity criterion has just this exclusionary consequence. Because they aren't believed to satisfy this innocence criterion, nonheroic prisoners occupy a "degrading and dehumanizing zone of no-rights."⁶⁵ Because "smuggled" sex workers aren't believed to satisfy this criterion, immigration officers scorn and deport them, thereby condemning many of them to re-trafficking. The source of much mischief and, I argue, superfluous at that, the innocence-as-passivity criterion should be abandoned.

It might be thought that the two-pronged innocence criterion is necessary to

defeat conniving claimants—people who pose as victims without being entitled to. Or it might be thought that the innocence criterion is necessary to halt the proliferation of victims and a flood of rights-based claims. Neither of these pragmatic concerns justifies retaining the innocence criterion in its present form, and I argue that there is compelling reason to replace it with a burdened agency criterion.

There is no way to avoid judging the moral merit of anyone's claim to be a victim. Not only must the truthfulness of the claimant's testimony be evaluated but also whether the claim is congruent with a credible conception of a victim must be settled. These are epistemological and normative questions that can't be circumvented by setting up a pseudo-absolute sorting mechanism. Insofar as innocence is imagined as a straightforward, yes-or-no matter, it might not seem preposterous to expect an unsailable, unidimensional imprimatur of innocence. Yet noble altruism and helpless passivity are merely analytical shortcuts that belie real-world moral complexity.

Ascriptions of innocence aren't so simple in actual moral and legal practice. The heroic victim paradigm confers innocence not only on the basis of the moral value of victims' aims but also on the basis of the nonviolence of their actions and the internationally recognized rights to conscience, free speech, and assembly. I have suggested as well that refusing to extend the heroic victim paradigm's conception of innocence so as to acknowledge the altruistic sacrifices that many immigrants make for the sake of their families back home is an artifact of gender ideology. The pathetic victim paradigm allows targets of street crime to innocently hand over their wallets to fend off assault. Moreover, I have suggested that refusing to interpret the pathetic victim paradigm's conception of innocence so as to accommodate the moral legitimacy of the claims of all enslaved sex workers, regardless of whether Western immigration laws consider them trafficked or "smuggled," is an artifact of liberal ideology. Determinations of innocence presuppose moral judgments about the acceptability of various types of agentic initiative in situations that are fraught with multifarious dangers. For purposes of human rights, innocence neither entails the absence of all initiative nor the enactment of transcendent virtue. To conclude this essay, I take aim at the passivity requirement of the pathetic victim paradigm and the political altruism requirement of the heroic victim paradigm, and I urge that both conceptions of innocence are invidious fictions.

In my view, being a victim of a human rights violation hinges on two considerations: the nature of the treatment you are subjected to and your burdened agency in the face of it. Victimizing types of treatment are defined by the content of human rights. Highlighting this criterion accents the quality of the inflicted suffering and its disrespect for humanity. Moreover, because the content of human rights is a matter of ongoing debate, negotiation, and litigation, this consideration explains why the innocence of victims cannot depend solely on preexisting international accords specifying the scope of permissible freedom of action. Burdened agency acknowledges that victims cannot escape from powers that inflict or threaten to inflict needless and terrible suffering on them, but it doesn't strip them of the agentic complexity and resilience that are characteristic of humanity.⁶⁶ Moreover, burdened agency unites pathetic and heroic victims under a common liability. Both kinds of victims are wronged in the encumbrances that are imposed on their ability to choose and act.

The paradigmatic pathetic victim's rights to security of the person are at stake. The paradigmatic heroic victim's rights to political participation are at stake. Still, they share the suffering of illegitimately constrained agency.

Unlike the stark contrast between innocence-conferring passivity or nonviolent political activism, on the one hand, and culpability-conferring striving or other-directed violence, on the other, the contrast between burdened and full agency spreads out along a spectrum. Burdened agency is defined in part by qualitatively different kinds of agentic incapacitation. Compare, for example, the reluctance of many Jews to leave Nazi Germany before it was too late, submission to a manipulative and violent sex trafficker, and incarceration in a maximum security prison. Moreover, because there are degrees of agentic incapacitation, agency can be more or less burdened. How diminished or distorted a person's agentic capacities become depends on the force, fraud, or coercion applied and also on the particular victim's agentic resources. Burdened agency is clearly not equivalent to passivity. People are more or less agentic in different spheres of life, and their agentic capacities are more or less impaired when they are impaired at all. There is no reason to think that you must be totally under another agent's control in order to be a victim—inmates of the Nazi death camps helped one another, even rebelled; trafficked women bargain for phone privileges and medical services; death row inmates file appeals. Likewise, heroic victims symbolically uphold a cause by enduring imprisonment and refusing to back down. Still, all of these people have been agentially incapacitated in other respects. Because the burdened agency criterion doesn't entail abject disempowerment, it spares victims that humiliating stigma. Contrariwise, because this criterion spotlights the contraction of political prisoners' agency, it places heroic victims on a continuum with pathetic victims. In keeping all victims within the orbit of humanity, this criterion comports with the values that ground human rights.

Throughout this essay, I have noted that the two victim paradigms coincide with prevalent Western gender stereotypes. Gender stereotypes are to be condemned whenever they falsify the experience of actual people and pressure them to comply with defective norms. It is all the more appalling when such misguided thinking subliminally seeps into unrelated conceptual frameworks so as to validate calamitous moral failures. My proposal to abandon the innocence-as-passivity criterion and to recognize the burdened agency criterion for the pathetic victim paradigm disrupts the feminization of this type of victimization. Pathetic victims need not be so helpless and naïve that they seem like "losers." Likewise, the burdened agency criterion supplies an appropriately nuanced understanding of heroic victimization. It repudiates the masculinization of heroic victims by allowing heroes to be human—that is, to suffer and despair, even as they lead and triumph. Setting aside the innocence-as-passivity criterion also makes room for heroes who engage in violent resistance but who are incarcerated as much for their beliefs as for their actions—I have Nelson Mandela in mind.⁶⁷ All of these implications are salutary departures from dichotomous moral categories that simplify moral judgment by concealing relevant moral distinctions.

The innocence-as-passivity criterion pivots on the apportionment of blame, and any blame attributable to claimants vitiates their standing as victims. The burdened agency criterion coupled with the malign treatment criterion focuses on the experi-

ences victims undergo—the victim's perspective. It is undeniable that determinations of responsibility for wrongdoing are necessary to address human rights claims. However, to pack preconceptions regarding blamelessness and blameworthiness into victim paradigms is to shut out new claimants by freezing human rights discourse in current understandings about innocence and guilt.

Tyrants wielding new forms of power never tire of dreaming up novel assaults on human rights. There seems to be no historical precedent for “extraordinary rendition”—the Bush and Obama administrations' practice of turning over prisoners to regimes that can be counted on to use torture to conduct interrogations.⁶⁸ Likewise, technological innovations give rise to new possibilities for abuse and new kinds of victims. A heated debate is currently in progress about how to protect people from abuses of knowledge gained through advances in genetic testing procedures. Moreover, social movements embolden new claimants to come forward and argue for modified interpretations of human rights. People who were once regarded as contemptibly pitiful—for example, women raped during armed conflict—may come to be seen sympathetically and eventually as victims whose suffering should prompt efforts to apprehend and prosecute those who caused it. Albeit belatedly, the 1998 Rome Statute of the International Criminal Court codified rape in war as a crime against humanity.⁶⁹

The culture of human rights is a work in progress. In the second half of the twentieth century, we witnessed the consolidation of the pathetic victim paradigm and the heroic victim paradigm. We should expect additional permutations of the concept of a victim in future. The criteria I endorse welcome them.

NOTES

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1. Richard Rorty, “Human Rights, Rationality, and Sentimentality,” in *On Human Rights: The Oxford Amnesty Lectures*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), 113.

2. Rorty's “we” is composed of people “in the safe, rich democracies.” Ibid.

3. John Locke, *The Second Treatise of Government* (Indianapolis: Hackett, 1980), chap. 2, section 8.

4. Ibid., chap. 2, section 10.

5. Rorty echoes Locke's characterization of offenders, saying that “we” see them as “beasts of prey,” and he adds that we see victims too as animals—we see them as “cattle” being herded. Rorty, “Human Rights, Rationality, and Sentimentality,” 113.

6. Locke, *Second Treatise*, chap. 2, sections 10 and 11.

7. I'll have little to say about the historical events, institutions, and social forces that subvert Locke's correlation of rights, violations, and victims. Nor will I say much about the ulterior

motives that undoubtedly shore up divisions between rights violations and ascriptions of victimhood.

8. AI Health Workgroup in Bergen, Norway, http://www.uib.no/isf/people/amnesty/what_isoi1.htm (accessed December 17, 2008).

9. I leave aside SS claims that their victims were really criminals or enemies of the state as well as controversies about the complicity of the Jewish Elders in the deportation of members of their communities. The former were lies, and the latter overlook the ultimate inescapability of the genocide.

10. *Merriam-Webster Collegiate Dictionary*, 11th ed., s.v. "pathetic."

11. It's worth noting that the *Oxford English Dictionary* tells us that use of the term "victim" to denote someone "who is put to death or subjected to torture by another" or someone "who suffers severely in body or property through cruel or oppressive treatment" precedes applying the term to victims of natural forces—such as disease and "acts of god"—by nearly 150 years. Whereas the pathetic victim paradigm first appeared in English in 1660, victimization by yellow fever did not enter usage until 1803, victimization by earthquakes not until 1890. *Oxford English Dictionary*, 2nd ed., s.v. "victim."

12. Jayashri Srikantiah, "Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law," *Boston University Legal Review* 87, no. 1 (2007): 160.

13. Gudrun Dahl, "Sociology and Beyond: Agency, Victimization, and the Ethics of Writing," *Asian Journal of Social Science* 37, no. 3 (2009): 391–92.

14. Joanne Baker, "Claiming Volition and Evading Victimhood: Post-Feminist Obligations for Young Women," *Feminism and Psychology* 20, no. 2 (2010): 186–204.

15. Paul Ricoeur's account of characters in a narrative seems to echo this polarization of individuals. According to Shaun Gallagher, Ricoeur holds that characters are either agents or sufferers, not simultaneously both agents and sufferers. Shaun Gallagher, "Self-Narrative, Embodied Action, and Social Context," in *Between Suspicion and Sympathy: Paul Ricoeur's Unstable Equilibrium (Festschrift for Paul Ricoeur)*, ed. Andrzej Wiercinski (Toronto: Hermeneutic Press, 2003), 12. See also <http://pegasus.cc.ucf.edu/~gallaghr/gallonline.html>.

16. For fascinating discussion of a historical exception to this rule, see Didier Fassin's and Richard Rechtman's analysis of the politics of victimization following the Vietnam War. American veterans who had committed war crimes against Vietnamese civilians and enemy soldiers were classified as victims on the grounds that they were suffering from post-traumatic stress disorder. Didier Fassin and Richard Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood* (Princeton: Princeton University Press, 2009), 84–95.

17. See, for example, "Stopping the Use of Child Soldiers," *New York Times*, April 22, 2002; Nina Bernstein, "Taking the War Out of a Child Soldier," *New York Times*, May 13, 2007; Jeffrey Gettleman, "The Perfect Weapon for the Meanest Wars," *New York Times*, April 29, 2007; Melanie Thernstrom, "Charlotte, Grace, Janet and Caroline Come Home," *New York Times*, May 8, 2005; Human Rights Watch, "Sold to Be Soldiers: The Recruitment and Use of Child Soldiers in Burma," <http://www.hrw.org/reports/2007/burma1007/2.htm> (accessed March 12, 2011). Also see Ishmael Beah, *A Long Way Gone: Memoirs of a Boy Soldier* (New York: Farrar, Straus and Giroux, 2007), esp. chaps. 13 and 16.

18. For documentation of confiscated passports, see, for example, Michael Specter, "Traffickers' New Cargo: Naïve Slavic Women," *New York Times*, January 11, 1998; Kirk Semple, "Nurse Claims Employer Enslaved Her," *New York Times*, July 10, 2008; Regan E. Ralph, "Testimony

before the Senate Committee on Foreign Relations Subcommittee on Near Eastern and South Asian Affairs," <http://www.hrw.org/en/news/2000/02/21/international-trafficking-women-and-children> (accessed March 12, 2011). For evidence of the use of photographs, see Glen Carey, "Dubai's Promised Land of Luxury Lures Women into Sexual Slavery," http://www.bloomberg.com/apps/news?pid=20601109&sid=amKSCFA_Fm3s (accessed March 12, 2011); Carmen Galiana, "Trafficking in Women" (Brussels: European Parliament, 2000), http://www.europarl.europa.eu/workingpapers/libc/pdf/109_en.pdf (accessed March 12, 2011).

19. Diana T. Meyers, *Inalienable Rights: A Defense* (New York: Columbia University Press, 1986), 23–37, 51–52.

20. It is worth noting that the scope of this argument is extremely broad. If it is sound, it follows that no one can consent to doing sex work, whether or not she or he has been trafficked and regardless of the conditions of work.

21. In the case of child victims, the measures aren't merely too costly. Rather, children don't have the agentic capacities that would make it sensible to expect them to take any action whatsoever.

22. For related discussion of the role of variable social expectations in ascriptions of responsibility, see Marion Smiley, *Moral Responsibility and the Boundaries of Community* (Chicago: University of Chicago Press, 1992).

23. Many human rights violations don't imprison or physically restrain people. Rather, they consist of institutionalized discriminatory exploitation or subordination that stops far short of the Third Reich's concentration camps and extermination technologies. For example, most American states deny same-sex couples the right to marry, and very few governments elsewhere countenance same-sex marriage. AI advocates for these victims too. Unfortunately, I do not have space to consider this and other forms of victimization in relation to the two victim paradigms.

24. For purposes of the present project and in the interest of space, I limit my discussion to prevalent patterns of vulnerability in parts of the former Soviet Union and trafficking practices within Eastern Europe and into Western Europe.

25. Siddharth Kara, *Sex Trafficking: Inside the Business of Modern Slavery* (New York: Columbia University Press, 2009), 7; Louisa Waugh, *Selling Olga: Stories of Human Trafficking and Resistance* (London: Orion Books, 2007), xiv, 63.

26. Suzanne Dayley, "Rescuing Young Women from Trafficker's Hands," *New York Times*, October 16, 2010; Kara, *Sex Trafficking*, 7, 23–30, 115, 142; Waugh, *Selling Olga*, 3, 73.

27. *Ibid.*, xv. See also Kara, *Sex Trafficking*, 16.

28. Liz Kelly, "'You Can Find Anything You Want': A Critical Reflection on Research on Trafficking in Persons within and into Europe," *International Migration* 43, no. 1/2 (2005): 248. Kelly adds a layer of complexity to the coercive economic forces brought to bear on these women. Many "smuggled" women borrow money from relatives to seek their fortunes in foreign sex industries. If they are deported and return empty-handed, they are unable to repay their debts and feel compelled to submit to re-trafficking in the hope of making good on their debts if not improving family finances.

29. Christine M. Jacobsen and May-Len Skilbrei, "Reproachable Victims? Representations and Self-Representations of Russian Women in Transnational Prostitution," *Ethnos* 75, no. 2 (2010): 197–201; Waugh, *Selling Olga*, xv.

30. Waugh, *Selling Olga*, xv. Kara notes that in Central and Eastern Europe seduction coupled

with promises of lifelong romance in the West is another common ploy to lure women into trafficking schemes. Kara, *Sex Trafficking*, 9.

31. Dayley, "Rescuing Young Women"; Kara, *Sex Trafficking*, 115, 143; Waugh, *Selling Olga*, 25, 33, 80–81.

32. Waugh, *Selling Olga*, 37, 50, 63, 80, 142; Kara, *Sex Trafficking*, 7.

33. Waugh, *Selling Olga*, 39. Also see Lucinda Joy Peach, "Victims or Agents: Female Cross-Border Migrants and Anti-Trafficking Discourse," *Radical Philosophy Today* 4 (2006): 101–18.

34. Waugh, *Selling Olga*, 80.

35. Universal Declaration of Human Rights, Art. 4.

36. Srikanthiah, "Perfect Victims and Real Survivors," 15.

37. See Dina Francesco Haynes, "Used, Abused, Arrested, and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers," in *Women's Rights: A Human Rights Quarterly Reader*, ed. Bert B. Lockwood (Baltimore: Johns Hopkins University Press, 2006), 440. For discussion of the problem of defining trafficking and distinguishing it from smuggling as a problem in research methodology, see Kelly, "'You Can Find Anything You Want,'" 238.

38. Universal Declaration, Arts. 23, 25.

39. See Ann Cudd, *Analyzing Oppression* (Oxford: Oxford University Press, 2006), 125–26, 198.

40. Evidence of wage or debt bondage in the worldwide trafficking underground is extensive. See, for example, the 2002 Human Rights Watch report on Bosnia and Herzegovina, "Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution," *Human Rights Watch* 14, no. 9 (2002), <http://www.hrw.org/legacy/reports/2002/bosnia/Bosnia1102.pdf> (accessed April 12, 2009); the 2007 International Organization for Migration report *Assessment of Mobility and HIV Vulnerability among Myanmar Migrant Sex Workers and Factory Workers in Mae Sot District, Tak Province, Thailand* (Bangkok: IOM, 2007); and Sean O'Neill, "Crime Gangs 'Expand Sex Slavery into Shires,'" *The Times*, September 28, 2007. Evidence of remittances to sex workers' families is spottier. Laura María Agustín argues that the payments are substantial. Laura María Agustín, "Contributing to 'Development': Money Made Selling Sex," *Research for Sex Work* 9 (2006): 8–11. However, testimony concerning wage bondage in Europe leaves the impression that trafficked sex workers there seldom if ever escape from its grip.

41. For a powerful account of how globalization and 1990s International Monetary Fund policies sparked an explosion of sex trafficking, see Kara, *Sex Trafficking*, 25–30.

42. Not surprisingly, some women tell stories that smack of ambitions to upward mobility rather than escape from poverty: Jacobsen and Skilbrei, "Reproachable Victims?," 199–200. However, because stories of desperate flights from severe poverty and/or domestic abuse and the need to support family back home predominate, I center my discussion on that background narrative. Also see Waugh, *Selling Olga*, 15–16, 31–32; Gail Pheterson, *A Vindication of the Rights of Whores* (Seattle: Seal Press, 1989), 227–30.

43. I thank Michael Kühler for bringing this point to my attention. For relevant discussion, see Virginia Held, "Birth and Death," *Ethics* 99, no. 2 (1989): 362–88.

44. From another standpoint, what my argument shows is something that many human rights advocates know intuitively—namely, that refusing to recognize all of these women as victims has nothing to do with the authenticity of their victimization. At best, it has only to do with an

excessively rigid, yet attractive interpretation of the concept of a victim. At worst, it has to do with a xenophobic politics underwritten by erroneous calculations of crass self-interest on the part of workers and citizens of more affluent societies.

45. Francine Banner, "Rewriting History: The Use of Feminist Narrative to Deconstruct the Myth of the Capital Defendant," *New York University Review of Law and Social Change* 26, no. 4 (2000–2001): 20; Kay Schaffer and Sidonie Smith, *Human Rights and Narrated Lives: The Ethics of Recognition* (Basingstoke: Palgrave Macmillan, 2004), 160–62.

46. Universal Declaration, Arts. 1 and 5. Data from Amnesty International confirms that in 2008 there were 138 countries—or more than two-thirds of the countries in the world—that abolished the death penalty in law or in practice. See <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries> (accessed March 31, 2009).

47. In light of the evidence I present that Europeans also conceive pathetic victims as innocent in virtue of their passivity, it is an interesting question why the European Union's ban on capital punishment is not seen as controversial. Unfortunately, I cannot pursue this issue here.

48. See <http://www.amnesty.org/en/death-penalty> (accessed March 31, 2009).

49. See <http://www.innocenceproject.org/about/Mission-Statement.php> (accessed January 2, 2009).

50. Frank R. Baumgartner et al., *The Decline of the Death Penalty and the Discovery of Innocence* (Cambridge: Cambridge University Press, 2008), 64. With Governor Pat Quinn's signing of the death penalty repeal bill passed by the Illinois legislature, the moratorium has been converted into a permanent prohibition. Dave McKinney, "Quinn Signs Bill Repealing Illinois Death Penalty," *Chicago Sun-Times*, March 9, 2011.

51. The Innocence Project and the Center for Wrongful Convictions at the Northwestern University Law School are affiliated. Unlike the Innocence Project's website, which does not express approval for abolishing the death penalty, the website of the Center for Wrongful Convictions states that "the only sure way to avoid executing an innocent person is to abolish the death penalty." See <http://www.law.northwestern.edu/wrongfulconvictions/aboutus> (accessed January 3, 2009). This statement is better than silence on the issue of abolition, but it stops well short of asserting that the death penalty is a violation of human rights.

52. Of course, a case can be made that no crime can justify cruel and inhuman punishment. Although that approach to rejecting the death penalty complements my argument concerning the two victim paradigms, I won't pursue it here.

53. I borrow this language from Schaffer and Smith, *Human Rights and Narrated Lives*, 186.

54. I thank Florian Zimmermann for prompting me to develop this line of thought.

55. I note as well that in principle the heroic victim paradigm rules out regarding Nelson Mandela and activists with similar pasts as prisoners of conscience during their imprisonment.

56. Although Locke sets limits on the severity of punishment, his doctrine that offenders forfeit their rights comports with this mistaken view that rightly convicted prisoners cannot be victims of human rights violations.

57. For valuable discussion of the victim-perpetrator polarity in human rights discourse and its malign impact on prisoners' rights, see Schaffer and Smith, *Human Rights and Narrated Lives*, 160–86.

58. *Ibid.*, 232, also 160, 151, 156; McShane and Williams, "Radical Victimology: A Critique of the Concept of Victim in Traditional Victimology," *Crime and Delinquency* 38, no. 2 (1992): 262.

59. Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton:

Princeton University Press, 1995), 134. Martha Minow, "Surviving Victim Talk," *UCLA Law Review* 40 (1993): 1411–45. Following Schaffer and Smith and Brown, it might be argued that the trouble with our conception of a victim is not the simplistic views of innocence that are in play but rather that victimhood is construed as a personal identity as opposed to a transitory position vis-à-vis a certain event. I think there is something to this point. Perhaps some experiences of victimization counterproductively congeal into identities. Yet, over-identifying with victimization would not be so harmful if it didn't mean identifying with passivity. I hasten to add, however, that some forms of victimization seem all but impossible to "get over," perhaps shouldn't be "gotten over"—genocide is an obvious case in point. For these victims, acknowledgment of their agency in the midst of horror can be pivotal to psychological survival. Also see McShane and Williams, "Radical Victimology," 62.

60. Rorty, "Human Rights, Rationality, and Sentimentality."

61. Roger Fjellstrom, "On Victimhood," *Sats: Nordic Journal of Philosophy* 3, no. 1 (2002): 103.

62. For an elegant critique of morally innocent persons, as opposed to moral innocence with respect to actions, see Elizabeth Wolgast, "Innocence," *Royal Institute of Philosophy* 68, no. 265 (1993): 297–307.

63. For additional critique of the innocence criterion, see Fjellstrom, "On Victimhood," 110–12.

64. Jennifer L. Dunn, "'Victims' and 'Survivors': Emerging Vocabularies of Motive for 'Battered Women Who Stay,'" *Sociological Inquiry* 75, no. 1 (2005): 1–30.

65. Schaffer and Smith, *Human Rights and Narrated Lives*, 179. That so many prisoners worldwide—"detainees" in the "war on terror"—are now dragooned into this no-rights zone is all the more cause for alarm.

66. Here, I am suggesting that Fjellstrom's impotence criterion is too strong and that it is absolutist in a way that resembles the innocence criterion he criticizes himself. Fjellstrom, "On Victimhood," 112–13.

67. John Braithwaite points out that Dick Cheney and some other Western leaders opposed releasing "Mandela the terrorist" from prison. John Braithwaite, "Narrative and "Compulsory Compassion," *Law and Social Inquiry* 31, no. 2 (2006): 435. Braithwaite condemns the "stupidity" of their position, and I would argue that the two paradigms I set out underwrite this stupidity. Although I think many people now regard Mandela as a heroic victim despite the fact that he committed and advocated violence to end apartheid, he seems to be the exception that proves the rule. Both because apartheid was so indisputably abominable and because Mandela turned out to be such an exemplary leader after his release, people endorse this exception without modifying the paradigm.

68. According to Khalili, "The outsourcing of torture to proxies in what has come to be known as extraordinary rendition, [is] certainly an innovation of the Bush administration, even if the basic process of rendition has historical precedent in British practices and legal scaffolding erected by the Clinton administration." Laleh Khalili, "On Torture," *Middle East Report* 249 (Winter 2008), <http://www.merip.org/mer/mer249/khalili.html> (accessed April 12, 2009).

69. In related developments, mass rape has been prosecuted and convictions have been gained both at the International Criminal Tribunal for Yugoslavia and at the International Criminal Tribunal for Rwanda.