

## Victims, Agency, and Human Rights

Written by Diana Tietjens Meyers

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DIANA TIETJENS MEYERS, DEC 9 2013

Fittingly I am taking advantage of Thanksgiving Day 2013 in the U.S. to start drafting this article. I say fittingly because this holiday memorializes the success of the Pilgrims' colonial venture in what is now the state of Massachusetts and the beginning of the centuries long, bloody campaign against the indigenous North American peoples – a campaign that culminated in the forced abandonment of their lifeways, their infection with previously unknown fatal diseases, their extreme impoverishment, and their confinement to reservations. Today, this history is often as a rolling crime against humanity and Native Americans now living, together with their ancestors, as victims of human rights abuse. However, at the time of those events there was no body of international human rights law and little, if any, sentiment that wrongs were being committed and that peoples living in accord with their distinctive cultural values and practices were being victimized.

Yet pointing this out in 2013 is not altogether salutary, for the appellation 'victim' is loaded with negative connotations. A "victim mentality" is a psychological malady to be resisted and overcome. Critics accuse so-called "victim feminists" of stripping women of their dignity and agency. Many individuals who have been sexually assaulted prefer to be called "survivors". This aversion to claiming victim status, even when warranted, is disturbing for we cannot have an effective system of human rights enforcement without claimants who have been victimized and responsible parties who deserve to be punished and/or who owe restitution. My aim here is to recuperate the concept of a victim from damning stereotypes by providing a realistic, morally tenable representation of what it is to be a victim.

### Two Victim Paradigms

So what are the stereotypes of victims? I set aside victims sacrificed to the gods – the original meaning of the term. I also set aside victims of serious diseases and natural disasters. I confine myself to victims of human rights violations.[1] Two victim paradigms preside over contemporary human rights discourse.

The most familiar paradigm and the one that now repels victims, is encoded in images of Nazi concentration camp inmates that circulated after the Allied victory in Europe in World War II. Pictures featuring lifeless eyes, faces drained of hope, and fleshless bodies with protruding bones linked victimhood to helplessness and passivity. The "pathetic victim paradigm," as I call it, dehumanizes victims because it pivots on nullified agency(2011). Recent photographs and video footage of weary, hungry, shaken refugees from combat zones rebroadcast and perpetuate this distancing, objectifying stereotype of victims, as do images of impassive, motionless people struggling to endure in the face of human caused and human avoidable famine.[2]

Yet, another well-known type of victim of human rights abuse is represented as the polar opposite of the pathetic victim. The courageous opponents of totalitarian regimes who prosecute their causes nonviolently and whom Amnesty International labels "prisoners of conscience" are victims of persecution – violations of core human rights take place on account of their political opinions (Hathaway 1991: 104-105). They may be extrajudicially incarcerated, tortured or threatened with death. However, they remain highly agentic in refusing to desist from protesting and inspiring others to follow. As moral exemplars fighting for justice and the common good, they are never portrayed as weak, let alone as helpless. Indeed, far from being dehumanized in the popular imagination these victims are super-humanized, living according to standards of conduct that most people admire but few emulate. I

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call this paradigm the “heroic victim paradigm” (2011).

Whilst it is undeniable that people can succumb to degradation as well as rise to moral heights, the polarization of these two victim paradigms arouses suspicion. Both pathetic victims and heroic victims are subjected to human rights violations. Moreover, as Claudia Card observes, “The term *victim* conveys a target or recipient of harm, not a response” (2013). Neither theoretical considerations, nor the stories victims tell, justify the belief that victimization entails either helplessness and passivity, or fortitude and agency. In fact, those classified as pathetic victims do choose and act, sometimes at great risk to themselves (Leydesdorff 2011). Likewise, people who are classified as heroic victims sometimes sink into despair and capitulate to the oppressive powers they oppose (Liao Yiwu 2013). These paradigms thus falsify the complex realities of victimization and it is necessary to reframe our understanding of what it is to suffer human rights abuse if the human rights regime is to secure the “inherent dignity” of persons that the Universal Declaration of Human Rights sets as its goal.

## Revamping the Concept of a Victim

Many theorists strike cautionary notes when discussing victims. Kay Schaffer and Sidonie Smith lament that human rights discourse “reifies the identities of ‘victim’ and ‘perpetrator’” (2004: 232). Wendy Brown adds that rights claims have become “sites of the production and regulation of identity as injury” (1995, 134). Richard Rorty condemns the morally paralyzing dialectic of contempt and disgust that victim and perpetrator identities generate (1993:113). Roger Fjellstrom worries that bystanders fear both perpetrators of evil and their victims because they represent “what we constantly strive to ensure our wellbeing against” (2002, 103). Martha Minow notes that claiming victim status thwarts progress because it prompts those accused of victimizing the claimants to counter-claim that they are the real victims (1993: 1417). Worst of all, victims are stigmatized and often blamed for their plights.[3]

Despite the perils of adopting a victim identity – a self-conception organized around being wronged – it is understandable that some people do so for formidable obstacles stand in the way of gaining recognition for rights claims and access to justice. Moreover, jettisoning victim discourse is not feasible. When people or institutions contravene the duties correlative to human rights, those who are targeted have claims of justice precisely in virtue of having been victimized. If this logic is inextricable from human rights discourse, it is incumbent on us to de-polarize our conception of what it is to be a victim, not to scrap the category of victim.

Like all extremely laudatory and derogatory stereotypes, the polarized victim paradigms sketched above arm the morally and intellectually lazy with shortcuts for what they take as insight. In the case at hand, the two victim paradigms furnish tools that supposedly separate genuine victims from spurious ones. If the claimant was reduced to passivity, he/she could not have provoked or been otherwise complicit in bringing on the harm. If the claimant was exercising his/her civil and political rights to protest injustice, those actions should not be punished. Thus, satisfying one of the paradigms confers innocence on a claimant. This thereby guarantees that the harm inflicted was wrong and the claimant is a genuine victim.

On the contrary and as pointed out earlier, victims of acknowledged human rights abuse should not be placed in polarized categories of either being reduced to passivity or of exercising their agency in unfailingly noble ways. It is troubling that the influence of these paradigms impedes recognition of many types of victims of human rights abuse. Consider the following:

1. Women who are subjected to violence by their domestic partners but who do not leave home and try to placate their assailants;
2. Political activists, such as Nelson Mandela, who give up on nonviolent protest and finally resort to violence to overcome oppression;
3. Prisoners guilty of the heinous crimes for which they are convicted and are awaiting execution on death row;
4. Desperately poor women in the Global South who cooperate with traffickers in order to migrate but who are forced into sex work and held in debt bondage at their destinations;
5. Hostages who commit barbarous acts at the bidding of their captors.

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We may disagree as to whether these examples should count as genuine victims of human rights violations however, it is sufficient to note that none of the individuals described are innocent in the simplistic ways that the victim paradigms dictate.

An account of “burdened agency” is necessary to make sense of the experiences victims report and to reconcile their agency with the rightfulness of their rights claims (Meyers 2011). Individual agency is burdened when choices and actions are placed under systemic constraints that are incompatible with the dignity of persons – that is, when options are structured by unrealized or violated human rights. Although all of these victims are at the mercy of powers that inflict or threaten to inflict needless and terrible suffering on them, their responses to their predicaments are heterogeneous. Passivity and supererogation are not typical.[4] To varying degrees, victims strategize to relieve their own suffering and to help others. To varying degrees, they yield to dread and despondency. This holds true of pathetic victims and heroic victims alike. All are wronged in virtue of the illegitimate encumbrances that are imposed on their ability to choose and act. Thus, burdened agency unites pathetic and heroic victims under a common liability.

## Conclusion

Conceptualizing victims of human rights abuse in a way that respects the complexity and resilience of human agency has important implications for categorizing who counts as a victim and thus impacts many areas of international and domestic law. Once legislatures and courts recognize that the absolutes of pitiable passivity and unsullied righteousness are defective gauges of innocence, they will need to undertake reforms that grapple with the diverse ways in which victims defy and/or surrender to attacks on their human rights. In particular, they will need to draw subtle moral distinctions among the ways that victims express agency, and they will need to make difficult moral judgments about when agency is sufficiently free to rule out victimization. It will also be important to disseminate this richer understanding of victims to the wider public. Removing the stigma associated with victims and recognizing a common humanity with victims is imperative if a culture of human rights is to thrive.

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[1] For purposes of this paper, human rights are those enunciated in the international covenants pursuant to the Universal Declaration of Human Rights.

[2] For discussion of the role of democracy and freedom in averting famine, see Sen 1982.

[3] For the psychology of victim blaming and the resulting stigma attaching to victims, see work on the Just World Hypothesis pioneered by Melvin Lerner (Lerner 1980; Ross and Miller 2002; Furnham 2003).

[4] For helpful discussion of human dignity and the "simplistic contrast between agency and passivity," see Nussbaum 2001, 405-414.