

THE LOGIC OF VICTIMHOOD: STRATEGIC HUMAN RIGHTS LITIGATION & THE USE OF SYMPATHETIC VICTIMS TO FURTHER HUMAN RIGHTS

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ABSTRACT

This Article addresses the problem of innocent victims within strategic human rights litigation. Advocates assert that human rights are universal and apply equally to all actors. But, in practice, advocates are often pressed to pursue the cases of innocent, sympathetic victims because they are more likely to garner the needed public support for success.

The practice of predominantly pursuing cases of passive, innocent victims delegitimizes the causes and suffering of victims who are seen as complicit, bad actors, or perpetrators. When told that a former terrorist is a victim of torture, one may respond that the terrorist is clearly a perpetrator instead because they are active and complicit.

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However, the delineation of the world into neat categories—mutually exclusive “victims” and “perpetrators”—fails to capture the complexities of reality.

I propose a change of language within strategic litigation towards a conception of “survivorhood,” which allows for the complexities of complicity and activity while still advocating that the person in question deserves help. Beyond the question of how to strategically deploy language in human rights advocacy, I argue that the utility of pursuing rights more broadly through strategic victim choice does not negate our ethical duty to advocate for complicit victims.

When you say that you’re a victim, that’s sickening.

Okay. What can I say? I lived a miserable life. I was imprisoned. I was tortured. I lived in fear. . . . It was my own fault for going, yeah, but I didn’t come out of it as a winner in any way.¹

INTRODUCTION

In her recent book, Helen Duffy examines the current practice of strategic human rights litigation and its “role, impact, and limitations.”² By strategic human rights litigation, she is referring to the practice of using litigation to pursue goals or interests that go beyond those of the immediate parties alone.³ Her key focus in the book is to determine how and why strategic litigation makes a difference and to draw out the benefits and limitations of using the courts as an avenue for advancing human rights.⁴

One problem or limitation that any advocate must face is the problem of pure, sympathetic, or innocent victims.⁵ The use of sympathetic victims allows human rights advocates to gain widespread support and success in their campaigns, but the use of only or mostly sympathetic victims undermines the ideal of universality of human rights. Research in social psychology has shed light on both the tendency to blame victims and on the decreased likelihood of aid from an

1. Quentin Sommerville, *Shamima Begum: What was Life Like for the IS Couple in Syria?*, BBC NEWS (Mar. 3, 2019), <https://www.bbc.com/news/world-middle-east-47435039>.

2. HELEN DUFFY, STRATEGIC HUMAN RIGHTS LITIGATION: UNDERSTANDING AND MAXIMISING IMPACT 4 (2018).

3. *See id.*

4. *See id.*

5. *See infra* PART III (discussing the inherent issues with innocent victimhood).

observer after an attribution of blame has been made.⁶ To be labeled legitimate, victims must meet the high threshold for classification as innocent in a society with a predisposition to erroneously attribute blame to victims.⁷ Choosing a sympathetic victim can be a strategic choice that garners the necessary public support to push forward a particular human rights agenda.

However, there are harmful consequences to those choices that should be evaluated and mitigated to the extent possible. For instance, if human rights are established on the basis of public and institutional sympathy for an “ideal victim,” those rights might not then be extended to the wide array of actual victims whose pain is real but whose circumstances are less sympathetic. At a basic level, the need for public support for successful human rights campaigns creates a tension within the advocate between the desire that the campaign succeed in advancing human rights (which requires an “innocent” victim) and the commitment that human rights are for everyone.⁸

The tension we see in the context of strategic human rights litigation is one instance of the problematic logic of victimhood: one must be an innocent victim to be advocated for and recognized, but human biases make being an innocent victim an incredibly high bar that few can meet. This Article will use strategic litigation as a means of examining the logic of victimhood and putting forward a solution to re-legitimize the claims of complicit victims more generally. Part I begins by examining the normative case and reasons behind why it is important to advocate for unsympathetic victims in the first place. Part II examines the case study of Shamima Begum, one of the schoolgirls from the United Kingdom who left home to become an Islamic State bride. Begum’s story is placed within the victim-perpetrator dichotomy to explain why the dichotomy breaks down. Part III discusses several basic concepts in social psychology that underlie victim-blaming that are used to attribute complicity to those who experience harm. Part IV raises concerns that arise when we talk about people experiencing harms within the victim-perpetrator dichotomy, including the risk of undermining claims about the universality of human rights, the

6. See *infra* PART III (explaining briefly the psychological bases for victim-blaming and the desire for innocent victims).

7. See *infra* PART III (acknowledging the high bar for innocent victimhood alongside society’s disposition for victim-blaming).

8. The United Nations defines human rights as rights that are “inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.” *Human Rights*, U.N., <https://www.un.org/en/global-issues/human-rights> (last visited Nov. 20, 2023).

potential to compel victims to tell only ideologically correct forms of the narrative of their victimization, and the creation of a harmful, arbitrary hierarchy of victims which leads to the delegitimization of otherwise valid claims of victimization. Part V examines proposals for how advocates can face the dilemma that comes with choosing a victim in strategic litigation. While we can only slowly chip away at the biases and connotations surrounding the word victim, we can instead shift our language to a term that allows room for agency and blameworthiness while still suggesting a need for sympathy and help— the term ‘survivor.’

I. THE NORMATIVE CASE

This Article has implications for our use of language, especially in strategic litigation and advocacy campaigns, but the use of only “innocent” victims is also normatively problematic and has negative ethical implications as well.

One could make the argument that, while it might be nice in an ideal world to advocate for every human rights violation, it is impossible given the current state of affairs. Advocates have limited time and resources and should use those in a way to ensure the most human rights or the least violations for the most people.⁹ Put differently, the utilitarian calculus works out such that we should advocate for the causes that are most likely to succeed and create real change. Using innocent victims for advocacy makes it more likely that the advocates will garner support and win real life cases. The ideal of universality of human rights is just an ideal that cannot be met given current resource and time restraints. Furthermore, the hope is that cases using sympathetic victims will forward human rights in a broader sense, potentially even leading to more human rights for complicit victims indirectly.

Before diving into the specifics of the utilitarian calculus, it is important to remember the strong, Kantian language espoused in our commitments to human rights. Treaties like the International Covenant on Civil and Political Rights (ICCPR) state that human rights “derive from the inherent dignity of the human person,”¹⁰ and to the

9. See *About Human Rights Defenders*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> (last visited Nov. 20, 2023) (noting that human rights organizations often have limited funding and that human defenders are frequently unpaid volunteers).

10. This language appears at the beginning of most human rights treaties. See, e.g., International Covenant on Civil and Political Rights, pmbl., *opened for*

“equal and inalienable rights of all members of the human family.”¹¹ Similarly, other treaties state that these rights are grounded in humanity’s “endow[ment] with reason and conscience.”¹² Human rights are grounded in our human dignity and equality which apply to all people universally, regardless of status or actions.¹³ At the very least, advocates have a theoretical commitment to advocating for the rights of complicit victims because they are humans endowed with dignity.

Despite the strong language in our treaties, the utilitarian calculus is appealing to adopt, especially when considering matters of strategy. There is a resource problem. We cannot advocate for everyone, and in some sense, we are always trying to pick cases and causes that will be successful. Having a successful case or cause pushes forward the human rights agenda and helps us progressively realize the most rights for the most people.¹⁴ Given that we cannot advocate for everyone, we ought to advocate in such a way as to secure the most rights for the largest number of people, and the way to accomplish that is through choosing predominantly sympathetic victims.¹⁵ The advocate’s moral commitment to universality is outweighed by practical considerations and the imperative to advance the moral cause of human rights more generally.

On a strict utilitarian view, the calculus may land in favor of using sympathetic victims more often than not. If we incorporate a distributive consideration into our account though, our picture starts to change. Under a prioritarian view, we should prioritize and give more weight to those who are worse-off.¹⁶ Insofar as complicit victims are

signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

11. *Id.*

12. G.A. Res. 217 (III) A, art. 1, Universal Declaration of Human Rights (Dec. 10, 1948); *see also* IMMANUEL KANT, THE METAPHYSICS OF MORALS 434–35 (Mary Gregor trans., Cambridge Univ. Press 1991) (1797) (writing that “[A] human being regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person . . . he is not to be valued merely as a means to the ends of other or even to his own ends, but as an end in himself, that is he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other beings in the world. He can measure himself with every other being of this kind and value himself on equal footing to them.”). *See generally* JEREMY WALDRON, ONE ANOTHER’S EQUALS: THE BASIS OF HUMAN EQUALITY (2017) (discussing the concept of basic equality).

13. *See* ICCPR, *supra* note 10.

14. *See* OPEN SOC’Y JUST. INITIATIVE, STRATEGIC LITIGATION IMPACTS: TORTURE IN CUSTODY 118 (2017) (noting that cases with sympathetic victims tend to make the most positive impact).

15. *See id.*

16. *See* Derek Parfit, *Equality and Priority*, 10 *RATIO* 202, 213 (1997).

among the worse-off, benefits to them in the form of advocacy should be given increased weight. Considering complicit victims may be subjected to torture, statelessness, cruel and inhumane treatment, rendition, and extrajudicial killings (among others), the case for complicit victims being-worse off is strong.¹⁷

One could object that, in choosing sympathetic victims, we are still benefiting those who are worse-off indirectly. Using a sympathetic victim, we could win important legal victories pertaining to those same rights that strengthen protections for everyone, including complicit victims. However, there are two things that are wrong with this reasoning. First, this reasoning assumes that for every specific rights violation there is an available and compelling innocent victim population that actually can forward the rights for the whole group. The conception of torture victims as being predominantly terrorists or criminals makes it harder to advocate for that right more generally, and allows states to “use national security as a pretext for torturing people.”¹⁸ Among those who are victimized for their participation in violations of national security and terrorism statutes, it is hard to imagine a sufficiently sympathetic victim.

Second, even if advocates can forward the rights generally *and* by doing so forward the specific rights relevant for complicit victims, states can create carve outs from those hard-won protections that exempt complicit victims from them. Using terrorism as a rationale or justification for a rights violation or derogation, for example, is not uncommon and seeks to explain away violations against complicit victims as no violation at all.¹⁹ The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism specifically noted the tendency of governments to seek these kinds of carve outs in national security contexts.²⁰ Carve outs are not limited to national security or international

17. See *infra* PART II (discussing Shamima Begum’s story as a complicit victim who is now arguably stateless).

18. AMNESTY INT’L, *Torture*, <https://www.amnesty.org/en/what-we-do/torture> (last visited Nov. 20, 2023).

19. See *In the Name of Security: Counterterrorism Laws Worldwide Since September 11*, HUM. RTS. WATCH (June 29, 2012), <https://www.hrw.org/report/2012/06/29/name-security/counterterrorism-laws-worldwide-september-11> (describing instances of human rights violations justified through appeals to national security and terrorism).

20. See Martin Scheinin (Special Rapporteur), *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, ¶¶ 36, 75, 76, U.N. Doc. A/HRC/4/26 (Jan. 9, 2007); See generally Martin Scheinin & Mathias Vermeulen, *Unilateral Exceptions to*

contexts. For example, New York City created a carve out for access to legal services in immigration cases. If an individual has been convicted of one of 170 different crimes, their legal fees will not be covered by the city even if the defendant is indigent.²¹ The assumption that the rights for sympathetic victims will somehow eventually “trickle down” to complicit victims ignores the concrete barriers to such a transference of rights.

We should want to advocate for the rights of those who are worse-off, including rights for those who are complicit in their own suffering. General advocacy alone is insufficient because of the nature of the rights violated and the potential for carve outs that limit the applicability of gains from general advocacy efforts. We should at least not *prima facie* exclude a subsection of victims without at least attempting to implement a strategy to make it possible to have success in these cases which advocate for victims who have a lot of suffering. The following Article gives a potential framework for advocacy of victims who are seen as heavily complicit in their suffering.

II. SHAMIMA BEGUM’S STORY

In February of 2015, at the age of fifteen, Shamima Begum and two of her schoolmates from Bethnal Green Academy in East London left England to join the Islamic State of Iraq and the Levant, or ISIL.²² After deceiving her parents about her plan, she travelled to Turkey using her older sister’s passport and then travelled to Syria.²³ The three girls were welcomed by others already living in Raqqa, a stronghold city of the Islamic State.²⁴ They were put up in a “house for women”

International Law: Systematic Legal Analysis and Critique of Doctrines that Seek to Deny or Reduce the Applicability of Human Rights Norms in the Fight Against Terrorism 20 (EUI Working Paper Law 2010/08, 2010), <https://www.corteidh.or.cr/tablas/r29030.pdf> (identifying and confronting doctrines and legal constructions that chip away at the applicability of human rights norms in the name of counterterrorism).

21. See IMMIGR. & NAT’Y L. COMM., *Ending the Funding “Criminal Carve Out” for Immigration Legal Service Providers*, N.Y. CITY BAR (June 1, 2018), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ending-the-funding-criminal-carve-out-for-immigration-legal-service-providers>.

22. See Robin De Peyer, *Families Fear Bethnal Schoolgirls who Travelled to Join ISIS are now Dead*, THE STANDARD (Aug. 7, 2017), <https://www.standard.co.uk/news/world/families-fear-bethnal-green-schoolgirls-who-travelled-to-join-isis-are-now-dead-a3605096.html>.

23. See *Syria Girls: Shamima Begum Used Older Sister’s Passport*, BBC NEWS (Feb. 23, 2015), <https://www.bbc.com/news/uk-31581739>.

24. See Gregory Walton, *Isil Defector Girls’ Families go to Turkey to Probe Disappearance*, THE TEL. (Mar. 23, 2015, 11:47 PM),

where newly arrived young girls waited to be married off as jihadist brides.²⁵ Within a few weeks, Begum was married to the much older Yago Riedijk, a Dutch-born IS fighter.²⁶ Shamima and her schoolmates had intermittent contact with their families until sometime around May of 2016.²⁷ Around that time, one of her schoolmates, Kadiza Sultana, was likely killed in an airstrike in Raqqa.²⁸ During this period of silence, Begum's family feared that she was dead.²⁹

In February of 2019, Begum resurfaced in a refugee camp in Syria and was interviewed by Anthony Loyd.³⁰ At the time, she was nine-months pregnant with her third child and weak from her journey across the desert to the refugee camp after the Kurds began closing in on Islamic territory.³¹ During the interview, Begum told of oppressions of people who she insisted were innocent, including her husband who was arrested and tortured as a suspected spy.³² She also told the interviewer that she was not fazed by the sight of a severed head she saw in a bin because the man was an enemy of Islam.³³ She described videos of beheadings of western journalists, stating that journalists who enter Syria illegally can be spies and may be a security threat to the caliphate.³⁴

While at times appearing to show continued support for the caliphate, Begum also stated that she did not think that the caliphate deserved victory because of its oppression and corruption.³⁵ At the time of the interview, she wanted only to return to Britain to raise her soon-to-be-born child in peace and safety.³⁶ In a later interview with the British Broadcasting Corporation (BBC), Begum stated that she did not regret her decision to travel to Syria even though she did not agree

<https://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/11491142/Isil-defector-girls-families-go-to-Turkey-to-probe-disappearance.html>.

25. Anthony Loyd, *Shamima Begum: Bring me Home, Says Bethnal Green Girl who Left to Join ISIS*, THE TIMES (Feb. 13, 2019, 10:00 PM), <https://www.thetimes.co.uk/article/shamima-begum-bring-me-home-says-bethnal-green-girl-who-fled-to-join-isis-hgvqw765d>.

26. *See id.*

27. *See De Peyer, supra* note 22.

28. *See id.*

29. *See id.*

30. *See Loyd, supra* note 25.

31. *See id.*

32. *See id.*

33. *See id.*

34. *See id.*

35. *See Loyd, supra* note 25.

36. *See id.*

with everything the caliphate had done.³⁷ She stated that she was shocked at the 2017 Manchester Arena attack that resulted in twenty-two deaths but viewed it as justified retaliation for military attacks on Islamic State strongholds.³⁸

Her husband, Yago Riedijk, surrendered to a group of Syrian fighters during their flight from Baghuz.³⁹ He is currently being held prisoner in a Kurdish camp and has admitted to fighting for the Islamic State.⁴⁰ Riedijk was tried in absentia in the Netherlands and convicted to a six-year prison sentence if he were to ever return to the Netherlands, and the Netherlands has stated that it will not take any action to repatriate IS fighters.⁴¹ Begum and her husband had three children, all of whom are now deceased as a result of malnutrition or illness. Her two oldest children both died before the age of two as Begum fled from bombings and atrocities across the desert.⁴² Her youngest child was born in a Syrian refugee camp and died only a few weeks later from pneumonia.⁴³

Begum, as a nineteen-year-old, has lost her three children, her husband is in prison, and she is indefinitely trapped in refugee camps. She has also been stripped of her U.K. citizenship and has little hope of ever returning home.⁴⁴ After losing her U.K. citizenship, Begum is arguably now stateless.⁴⁵ Britain claims that she potentially has Bangladeshi citizenship through her mother, but Bangladesh has repeatedly denied that she is a citizen because she has never sought citizenship or

37. See *Shamima Begum: IS Teenager's Family Challenge Citizenship Move*, BBC NEWS (Feb. 22, 2019), <https://www.bbc.com/news/uk-47326496>.

38. See *id.*

39. See Loyd, *supra* note 25.

40. See *Dutch Jihadi Who Married British School Girl Wants to Return to the Netherlands*, DUTCH NEWS (Mar. 3, 2019), <https://www.dutchnews.nl/news/2019/03/dutch-jihadi-who-married-british-school-girl-wants-to-return-to-the-netherlands/>.

41. See *Jihadi Yago Riedijk 'Will Not be Allowed to Live With his Family in Netherlands'*, DUTCH NEWS (Mar. 4, 2019), <https://www.dutchnews.nl/news/2019/03/jihadi-yago-riedijk-will-not-be-allowed-to-live-with-his-family-in-netherlands/>.

42. See Loyd, *supra* note 25.

43. See Martin Chulov et al., *Shamima Begum: Baby Son Dies in Syrian Refugee Camp*, THE GUARDIAN (Mar. 9, 2019, 4:16 AM), <https://www.theguardian.com/uk-news/2019/mar/08/shamima-begum-confusion-after-reports-newborn-son-may-have-died>; *Shamima Begum: IS Teenager's Baby Son has Died, SDF Confirms*, BBC NEWS (Mar. 8, 2019), <https://www.bbc.com/news/uk-47500387>.

44. See Chulov et al., *supra* note 43.

45. See *Shamima Begum: IS Teenager to Lose UK Citizenship*, BBC NEWS (Feb. 19, 2019), <https://www.bbc.com/news/uk-47299907>.

even visited the country.⁴⁶ Furthermore, if Begum were to attempt to enter Bangladesh, she would face the death penalty given to all those who violate the country's "zero tolerance" policy on terrorism.⁴⁷

Begum's family has appealed the United Kingdom's decision to revoke her citizenship status.⁴⁸ The Special Immigration Appeals Commission (SIAC) held hearings on the lawfulness of the revocation, including the question of whether the revocation has left Begum stateless in violation of international law,⁴⁹ and on whether Begum poses an ongoing threat to national security.⁵⁰ The Court of Appeals determined that Begum should be allowed to return to contest the revocation of her citizenship, but that decision was unanimously overruled by the Supreme Court,⁵¹ the highest court in the United Kingdom, even though the court determined that she could not have a fair hearing while being detained in Syria.⁵² Begum remains indefinitely confined in a Syrian refugee camp and is "de-facto stateless."⁵³ She has asked for public forgiveness even after these decisions and offers to help the United Kingdom fight terrorism if she is allowed to return, but the government still refuses to allow her to enter the United Kingdom.⁵⁴

Begum's case is one that would be difficult for a human rights advocate to take on as a part of a strategic campaign. Even though she

46. See Lizzie Dearden, *Shamima Begum: Bangladesh Says Isis Bride not a Citizen and has 'Nothing to do with us,'* INDEP. (Feb. 20, 2019, 6:52 PM), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-bangladesh-citizenship-isis-bride-british-uk-javid-stateless-a8788976.html>.

47. *Shamima Begum: IS Bride 'Would Face Death Penalty in Bangladesh,'* BBC NEWS (May 3, 2019), <https://www.bbc.com/news/world-asia-48154781>.

48. See Dominic Casciani & Sean Seddon, *Shamima Begum Bid to Regain UK Citizenship Rejected,* BBC NEWS (Feb. 22, 2023), <https://www.bbc.com/news/uk-64731007>.

49. See *Shamima Begum: Stripping Citizenship put her at Risk of Hanging, Court Hears,* BBC NEWS (Oct. 22, 2019), <https://www.bbc.com/news/uk-50137470>.

50. See *id.*

51. See Holly Bancroft, *Shamima Begum: Timeline of Events Since she Fled to Join ISIS Six Years Ago,* INDEP. (Sept. 15, 2021, 10:44 AM), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-timeline-isis-interview-b1920479.html>.

52. See Yasmine Ahmed, *The UK Supreme Court Has Failed Shamima Begum: Neither Justice nor Security is Served by Leaving Shamima Begum in a Legal Black Hole,* HUM. RTS. WATCH (Mar. 2, 2021, 9:54 AM), <https://www.hrw.org/news/2021/03/02/uk-supreme-court-has-failed-shamima-begum>.

53. *Id.*

54. See Jennifer Hassan, *Former ISIS Teenage Bride who Left Britain to Join Militant Group in Syria Tells the Public: 'I'm Sorry,'* WASH. POST (Sept. 16, 2021, 11:08 AM), <https://www.washingtonpost.com/world/2021/09/16/shamima-begum-gmb-interview-isis>.

is someone who has suffered many intense harms, she is arguably at least complicit in terrorist activity. She does not express unremitting remorse, but she also does not express an unremitting commitment to continuing her life with the Islamic State. She lives in the unfortunate position between being a victim and being a perpetrator, which leads many to delegitimize her claims of victimization altogether.

III. WHY IT'S HARD TO BE A SYMPATHETIC VICTIM

Humans often fall victim to the belief in a just world fallacy, which dictates that bad things only or usually happen to people who deserve them.⁵⁵ We do not want to admit the possibility that something bad would happen to us, so we form the motivated belief that if we are good people, we will only receive what we deserve—i.e. good things.⁵⁶ This belief in the justness of the world is necessary to sustain one's belief that no harm will come to oneself,⁵⁷ which is vital to one's sense of safety.

A natural consequence of a strong belief in a just world is the tendency to blame victims for their suffering.⁵⁸ The world is just; therefore, bad things should only happen to someone if they are a bad person deserving of those things.⁵⁹ The inferential leap is a simple one: (1) something bad has happened to a victim, (2) bad things only happen to bad people, (3) therefore, the victim must be a bad person and worthy of blame.⁶⁰

Victim-blaming is ever-present in the media, especially when sexual assault is at issue.⁶¹ This phenomenon is an extension of the

55. See Rebecca M. Hayes et al., *Victim Blaming Others: Rape Myth Acceptance and the Just World Belief*, 8 FEMINIST CRIMINOLOGY 202, 203 (2013) (quoting Hein F. M. Lodewijkx et al., *In a Violent World a Just World Makes Sense: The Case of "Senseless Violence" in The Netherlands*, 14 SOC. JUST. RSCH. 79, 83 (2001)).

56. See *id.*

57. See *id.*

58. See *id.* at 204–06.

59. See *id.* at 203, 206.

60. See Hayes et al., *supra* note 55, at 204–06.

61. See, e.g., Neela Debnath, *Rape Victims Still Blamed for Sexual Violence in Somalia*, INDEP. (May 6, 2015, 4:13 PM), <https://www.independent.co.uk/news/world/africa/rape-victims-still-blamed-for-sexual-violence-in-somalia-10229605.html>; Matthew Whitaker, *Don't Blame Women's Drinking for Rape*, CNN OP. (Nov. 6, 2013, 11:42 AM), <https://edition.cnn.com/2013/11/06/opinion/whitaker-women-drinking-rape/>; Gabrielle Fonrouge & Kenneth Garger, *NYPD Union Chief Denies Victim-Blaming Tessa Majors, Says Critics 'Twisted the Words'*, N.Y. POST, <https://ny-post.com/2019/12/16/nypd-union-chief-denies-victim-blaming-tessa-majors-says-critics-twisted-the-words> (Dec. 17, 2019, 8:54 AM); Heidi Stevens, *El Hefe Puts*

belief in a just world fallacy.⁶² Victim-blaming occurs when observers pick out certain behaviors of the victim which show some level of responsibility for the harm they are suffering.⁶³ In the case study above, the media and the courts in the United Kingdom frequently point to Begum's culpable actions and lack of remorse even in stories that chronicle her suffering. Her culpable behaviors are the focus and are picked out over and above her suffering as a victim.

Potential helpers of those who have been victimized are influenced by attributions about the origin of the victim's needs.⁶⁴ Helpers respond more favorably to needs when victims are perceived to be "innocent," or when their need is perceived to be due to circumstances outside the individual's control.⁶⁵ One example of a prototypical "innocent" victim is an elderly woman who is attacked by a stranger on her way home from visiting relatives.⁶⁶ The old woman did nothing wrong to contribute to her victimization and could not have fought off her offender, making her both blameless and helpless.⁶⁷ In contrast, a need that is perceived to be caused by the actions of the victim, especially perceived wrongful actions, produces very little desire to help that victim.⁶⁸ For example, someone who was tortured because of their participation in terrorist acts is unlikely to garner public support in their claim for reparations from the torturing government. In Begum's case, the United Kingdom is unwilling to offer aid at all, a decision justified by Begum's lack of innocence. The belief in a just world causes us to downplay the significance of external factors or

Blame on Woman for her Alleged Sexual Assault. Humanity's in Short Supply, CHI. TRIB. (Jan. 2, 2020, 4:29 PM), <https://www.chicagotribune.com/columns/heidi-stevens/ct-heidi-stevens-el-hefe-sexual-assault-victim-blaming-0102-20200102-owh-hef6fq5hdpcggdx26kua23u-story.html>.

62. See Hayes et al., *supra* note 55, at 203.

63. See *id.* at 206.

64. See JOHN DELAMATER ET AL., *SOCIAL PSYCHOLOGY* 352 (8th ed. 2015).

65. See *id.*

66. See Nils Christie, *The Ideal Victim*, in *FROM CRIME POLICY TO VICTIM POLICY, REORIENTING THE JUSTICE SYSTEM* 17–30 (Ezzat A. Fattah ed., 1986).

67. See *id.*

68. See JAMES H. BRYAN & MICHAEL DAVENPORT, *DONATIONS TO THE NEEDY: CORRELATES OF FINANCIAL CONTRIBUTIONS TO THE DESTITUTE* 6–7 (1968), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/j.2333-8504.1968.tb00152.x>

(finding that more aid was given to destitute children that were victims of child abuse or medical problems, and less aid was given in cases where the destitute children committed moral transgressions, presumably since the latter is viewed as having been a fault of the victims in causing their difficulties); see also David L. Frey & Samuel L. Gaertner, *Helping and the Avoidance of Inappropriate Interracial Behavior: A Strategy That Perpetuates a Nonprejudiced Self-Image*. 50 *J. PERSONALITY & SOC. PSYCH.* 1083, 1084 (1986).

circumstances outside the individual's control that led to the ultimate victimization.⁶⁹ Ultimately, because we view the need as coming from an illegitimate source for which the victim is to blame, our empathetic response is undermined and with it the desire to engage in prosocial behavior to aid the victim.⁷⁰

Victims are thus in an unfortunate position. Observers are more likely to search for culpable behaviors to blame the victim. The then-discovered blame undermines public support and aid for the victim. We blame Shamima Begum. We seek out her culpable actions and emphasize them, and then demand that she be more innocent to deserve aid. We insist that victims be innocent and at the same time search for blame in dispositional factors, discarding the situational factors. Being a truly "innocent" victim is thus a high bar that very few victims can actually meet.

IV. CATEGORIZING VICTIMS & QUESTIONING THOSE CATEGORIES

The question of strategic human rights, the problem of choosing the "right" kind of victim for the purpose of advancing a cause, presumes that there are certain types of victims, some of whom are more sympathetic than others. This section reviews some of the ways that scholars have mapped the public perception of victims, and then proposes a more holistic model for these public perceptions. In drawing up this typology of victims, this part's ultimate goal is to show how that typology becomes internally incoherent and to show that this incoherence is a problem for the kind of human rights advocacy that stakes its efforts on finding the "right" kind of sympathetic victim.

Because of the nature of international human rights law, one of the most effective ways to create change is through public campaigns which "name" and "shame" countries and groups that violate human rights. When engaging in naming and shaming, human rights groups are most effective when there is clarity around three core issues: the violation, the violator, and the appropriate remedy for the violation.⁷¹ Kenneth Roth argues that when the responsibility for the violation is diffuse or questionable, the ability to effectively name and shame diminishes.⁷² Roth's claims bring to mind Makau Mutua's critique of

69. See DELAMATER ET AL., *supra* note 64, at 352–53.

70. See *id.* at 353.

71. See Kenneth Roth, *Defending Economic, Social, and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 HUM. RTS. Q. 63, 67–68 (2004).

72. See *id.* at 68.

the “damning metaphor” of the human rights movement.⁷³ The first dimension of the metaphor is the savage, portrayed as barbaric, cruel, and the negation of humanity.⁷⁴ The state being criticized is portrayed as the quintessential savage, violating the rights of its citizens by acting in illiberal, undemocratic, and authoritarian ways, redeemable only by the acceptance of the norms of human rights.⁷⁵ The second dimension of the metaphor is the victim who has suffered at the hands of the savage.⁷⁶ This individual is portrayed as helpless and powerless in the face of her offender, and thus in need of saving.⁷⁷ Furthermore, the classic victim is the innocent one who is blameless and undeserving of her current suffering.⁷⁸ The final dimension of the metaphor is the savior who rescues and frees the victim from the oppression of the savage.⁷⁹ The savior is usually seen as a redeemer who “protects, vindicates, civilizes, and safeguards,” saving the helpless victim from oppression and tyranny.⁸⁰

In reality, however, there is rarely a clear delineation between these dimensions, including the line between victims and savages. The completely “innocent” victim is not representative of victims of human rights offenses and is nearly impossible to find. And yet, advocates and litigators frequently use the most “innocent” or “sympathetic” victims, especially when starting a string of litigation on a given topic. For example, one of the earliest cases on torture conducted during the war on terror concerned an innocent victim of mistaken identity rather than someone who was tortured but was also a terrorist.⁸¹ Duffy writes that the choice to “[p]resent[] an innocent victim to a frightened American public may have proved critical to changing the discussion from one about the ‘rights of terrorists’ to one about the tragic consequences of abandoning the rule of law.”⁸² Even though the campaign may have been successful, the campaign’s tactics were still in tension with the fundamental principle that human rights are for everyone, even terrorists.

73. See Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT’L L. J. 201, 201 (2001) (explaining the common subtext of human rights which depicts a battle that pits savages against saviors and victims).

74. See *id.* at 202.

75. See *id.* at 203.

76. See *id.*

77. See *id.*

78. See Mutua, *supra* note 73, at 228.

79. See *id.* at 204.

80. See *id.*

81. See DUFFY, *supra* note 2, at 253–54.

82. *Id.* at 254.

Victims of atrocity can have a contradictory set of potential traits. Victimization portrays victims as powerless objects that are acted upon rather than agents themselves, potentially leading to degradation, disempowerment and lack of agency.⁸³ Victims also may feel a sense of power, however, because they have a type of moral high ground in comparison with the offender.⁸⁴ An idealized conception of victimhood claims that in order to be a true victim, one must be innocent or blameless to successfully occupy the moral high ground.⁸⁵ While this view of victims helps to heighten the moral rebuke toward the offender and restores faith in humanity through appeal to the virtuousness of victims, it also obstructs the claims of those victims who are not perfectly innocent.⁸⁶ Human rights advocates are torn between advancing the human rights of everyone, not just the innocent and likeable, and the need to have successful campaigns that further rights more generally.⁸⁷ Moreover, the reality is that public opinion influences the success of a particular movement. Public opinion's susceptibility to biases makes the choice of a sympathetic victim all the more important for garnering support.⁸⁸ In ending her short section on sympathetic victims, Duffy asserts that one goal of strategic human rights litigation should be a reassertion of the universality of rights and education to that end.⁸⁹

Another scholar frames the issue slightly differently. Diane Meyers begins by examining two victim paradigms derived from Amnesty International's conceptualization of victims: the pathetic victim paradigm and the heroic victim paradigm.⁹⁰ Pathetic victims are those who are innocent of any wrongs relevant to their current suffering, those who were helpless in the face of an insurmountable power, and those who experienced unspeakable, human-inflicted suffering.⁹¹ Heroic victims are courageous, idealistic, and committed to ideals of justice and human rights.⁹² They often bring about their victimization through

83. See CATHERINE LU, *Pathologies of Victimhood*, in JUSTICE AND RECONCILIATION IN WORLD POLITICS 69 (2017) (citing JUDITH N. SHKLAR, *Giving Injustice its Due*, in THE FACES OF INJUSTICE 38 (1990)).

84. *See id.*

85. *See id.* at 69–70.

86. *See id.* at 70.

87. *See* DUFFY, *supra* note 2, at 253–54.

88. *See id.*

89. *See id.* at 254.

90. *See* Diane Tietjens Meyers, *Two Victim Paradigms and the Problem of "Impure" Victims*, 2 HUMAN. 255, 256 (2011).

91. *See id.* at 257.

92. *See id.* at 258–59.

activism but are not complicit in that victimization because of their moral character and just beliefs—their cause is just so the harms inflicted on them are unjust.⁹³ The problem with this conception of the heroic victim can be seen that even though these victims might participate in activism, they are still seen through the prism of their suffering that can make them look like passive losers worthy of contempt. Richard Rorty discusses a similar situation when saying that those in rich, safe democracies, “we think of Muslims or the Jew being herded into concentration camps as animals.” Rorty is suggesting that when we see someone who is suffering, regardless of who it is, rather than simply identifying with the victim, we view them as “other” or different from us such that they are not even human, thus allowing a basis for rationalization of moral indifference to their plight.⁹⁴ When we view victims suffering through this lens, no amount of heroic actions can make them be seen as more than a pathetic loser. Sometimes a given victim can slide between being seen as heroic or passive, a slippage that suggests that these two categories share some underlying assumptions.

Indeed, both paradigms share a common assumption that the victim must be an innocent one.⁹⁵ The innocence required by the pathetic paradigm is a passive innocence whereas the heroic victim is an agentic victim.⁹⁶ Meyers gives two examples of groups of individuals who fail to fit into either paradigm but who should still be legitimately considered victims. Her first example is trafficked sex workers who have not been fooled about the reality of their employment prospects, but who nonetheless travel because there is no better avenue to economic advancement in their native land.⁹⁷ These women suffer psychological and physical abuse similar to those who were trafficked against their will, but they do not fit the mold of innocence.⁹⁸ Her second example is an inmate sitting on death row awaiting his execution.⁹⁹ If advocates focused only on pure victims, these trafficked sex workers and death row inmates would be precluded from being seen as people who—regardless of guilt—also have a right to life and to be free from cruel,

93. *See id.*

94. *See* Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* 113 (Stephen Shute & Susan Hurley eds., 1993).

95. *See* Meyers, *supra* note 90, at 260.

96. *See id.*

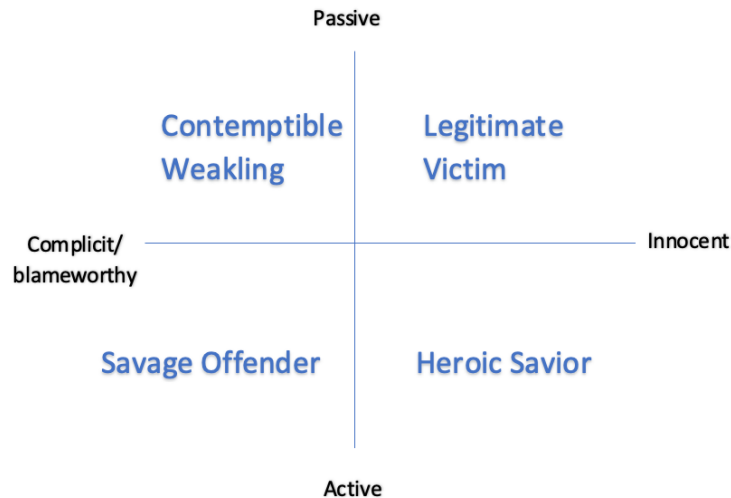
97. *See id.* at 262.

98. *See id.* at 263.

99. *See id.* at 264.

inhumane, or degrading treatment or punishment.¹⁰⁰ For advocates of the universality of rights, this prisoner's violation is just as legitimate as a violation against someone innocent.

The above paradigms of victimhood categorize victims across two main axes, innocence/complicity and activity/passivity. All of the categorizations mentioned can fit into the intersections of variations on these two properties. However, as we will see, the ways that we categorize people who suffer harms and the distinctions that we try to make between sufferers who are innocent and complicit, active and passive, quickly break down when we examine cases of actual victims. By first examining the paradigm that we use to categorize people who suffer harms, and then showing how it fails to capture the common situations that emerge in human rights courts, we can better understand how advocacy efforts might be adapted.¹⁰¹



The complicit-innocent axis is fairly straightforward. Because our categorizations are social identities rather than personal ones, one's innocence level is predominantly determined by the perceptions of others about a given victim.¹⁰² Innocence is not an on-off switch,

100. See Meyers, *supra* note 90, at 256.

101. Tara Weese, *Two Axes of Victimhood* (illustration).

102. See Meyers, *supra* note 90, at 267–68 (discussing how society attempts to label perpetrators and victims based on interpretations of innocence which

but rather a continuum from, for example, an unrepentant terrorist who has murdered many people to an unoffensive elderly grandmother who volunteers at her local library.¹⁰³

The passive-active axis is less straightforward. The active portion of the coordinate plane consists of individuals who completed some action that has affected the perception of their status. The active axis is a combination of whether (1) had the ability to act and (2) someone did act. One can be complicit and active in the sense that they committed some immoral or illegal act independent of their suffering. Begum, for example, allegedly committed immoral actions in taking part in the ISIS morality police. On the other hand, one who is active on the innocent side of the continuum may have acted heroically in the face of the actual event of their victimization by fighting back or standing up to protest the unjust harms they suffer. Passivity is not just a function of a lack of action, but of that lack combined with the ability or inability to act. A contemptible weakling is someone who could have fought and is seen as culpable for their failure to fight, push back, or take some specific action. People speak with contempt about domestic violence victims who did not leave or sexual assault victims who did not fight back. In the latter case, the lack of fighting can even be used to claim that no sexual assault occurred despite the lack of consent. The truly innocent victim, then, is the one who was hopeless and powerless such that we could not expect them to fight back successfully against their own victimization. A prototypical case would be an elderly white woman who is attacked and robbed by a large, male perpetrator.¹⁰⁴

Savage offenders are those who are complicit and active which this Article will call “offenders.”¹⁰⁵ Someone who is in the Savage/Offender category has committed some bad action that is often independent of their current suffering. For example, a terrorist who is being

“presuppose moral judgments about the acceptability” of actions taken during a victimizing situation).

103. *See id.* at 268 (“Insofar as innocence is imagined as a straightforward yes-or-no matter, . . . [a]scriptions of innocence aren’t so simple in actual moral and legal practice.”).

104. *See* Christie, *supra* note 66, at 18–19.

105. In Mutua’s work, she predominantly views savages as the entities that are most often responsible for human rights violations, namely the state itself. However, if we look at the general characteristics of the savage category, we can create a parallel category for individuals who have been harmed but that are seen as bad actors as well. The categories in this chart are meant to apply to individuals who have been harmed, using Mutua’s analysis as a conceptual starting point and applying her general framework to individuals instead. *See* Mutua, *supra* note 73, at 202–04.

tortured because they committed reprehensible actions prior to their own suffering. The terrorist is a victim of torture, and their past actions are used to justify harming them. The savage offender is often not allowed to claim the title of victim even though the harms that they suffer might otherwise make them legitimate victims. The past actions of the savage offender are used to delegitimize their claim to being victims of present suffering. Indeed, the category of the savage offender opens up the possibility that a person who suffers harm can always have their past history dredged for bad behavior that can be used to illegitimate their claim for legal redress.

Heroic saviors are those who are both innocent and active. Even though heroic saviors have acted and potentially even brought about their own suffering, they are not seen as complicit because of their strong moral character and commitment to justice. A hero is someone who has suffered, but has taken actions for a just cause and who does not just “lie down” in the face of adversity. This category can be seen in both Mutua’s conception of “Saviors” who rescue the victim from the oppression and Meyer’s “heroic victims” who in some sense overcome their own victimization through action.¹⁰⁶ For example, an individual who shot an armed intruder who planned to hurt those inside has suffered and has committed an action that in the abstract seems immoral, namely shooting someone. But, through their strong moral character and will to protect innocents against an offender, the person becomes a heroic victim. Other heroic victims might be those who put their bodies on the line in front of a firehose during a peaceful protest. The heroic victim is selfless: acting in a way that others judge to be brave, and in a manner that is not solely for their personal benefit.

Legitimate victims are passive and innocent. The hero who suffers and the offender who is harmed while being punished are both victims who appear to be “active”: they have agency and their current situation is the result of them asserting their will, for better or worse. However, as Mutua and Meyer’s categorizations of victimhood suggest, many victims are passive.¹⁰⁷ The most common conception of a “true” victim is as one who is both passive and innocent. In this sense, Meyer suggests, the true and therefore legitimate victim is perceived as at least somewhat pathetic in that they are powerless against the victimizing force they face.¹⁰⁸ Legitimate victims are those who are in need of saving or aid and who are also deserving of it because of their

106. See Mutua, *supra* note 73, at 204; Meyers, *supra* note 90, at 258–59.

107. See Mutua, *supra* note 73, at 203; Meyers, *supra* note 90, at 258, 260.

108. See Meyers, *supra* note 90, at 257–58.

innocence. Given the human tendency to blame victims for their own suffering even when they are largely innocent, this category is a vexed one. The victim who is judged to be innocent (if somewhat pathetic) is the most likely to receive aid¹⁰⁹—but it is also the category that is the most difficult to land in. The challenge of being a truly “innocent” victim often relies on appearing to have almost no agency: the person who was just walking down the street, who did not run, or yell, or fight back when assaulted by a wayward law enforcement officer. The legitimate victim can be perceived as heroic if they are seen as restraining themselves—avoiding lashing out or fighting back as a matter of principle rather than a matter of weakness. Here, the difference between being pitiable and being heroic turns on how much will or agency or spunk the victim is perceived as having—whether they exercise that agency or not. This suggests that the division between heroic and pathetic victims depends, not on the actions that others observe but rather on a judgment of the sufferer’s capacity to act—in other words, it depends on a projection that is prone to any number of biases and assumptions. Indeed, all these categories—savage offender, heroic savior, legitimate victim, and contemptible weakling—depend on social perceptions that are often made with little evidence.

Contemptible weaklings are passive and complicit. The scholarly literature mostly focuses on the first three types of sufferers: heroic saviors who are active and innocent, savage offenders who are active and complicit, and legitimate victims who are passive and innocent.¹¹⁰ However, if our designations depend on mapping people who suffer onto the axes of agency and degree of complicity, then we are missing a fourth category: those who are passive and complicit, the “contemptible weakling.” These sufferers are those who are culpable *because* they are passive. Contemptible weaklings are hard to conceptualize at first because, for someone to be complicit or a bad actor, we often assume that they must have actually acted. The label of contemptible weakling, by contrast, is given to people who are judged to be responsible for the lack of action that they took in response to the harm that they suffered. One example of the prototypical contemptible weakling could be a victim of domestic abuse who stays with her abuser. One could conceptualize that person as being complicit in that failing to fight back, resist, or run away—they are judged to be blameworthy for not exercising their agency. It is worth noting that the contemptible weakling who is judged to be complicit in their own suffering is

109. See BRYAN & DAVENPORT, *supra* note 68, at 6–7.

110. See Mutua, *supra* note 73, at 201–04; Meyers, *supra* note 90, at 256, 260.

perilously close to the legitimate (and somewhat pathetic) victim who also shows little agency in the face of their suffering. The slippery justification that separates a contemptible weakling from an innocent victim is the idea that the contemptible weakling *could have* done something, but did nothing, while the pathetic victim *could not* have done anything to change their situation.

Taken together, these categories reveal two things. First, the social narratives that categorize a person who is suffering as one kind of victim or another can have serious consequences for how a given sufferer is treated and how legitimate their claim to victim status might be. Second, despite the serious consequences of being judged to be one kind of sufferer or another, the distinctions between these types of people are slippery at best. The savage offender seems to be both too active and too guilty to be able to claim the status of victim. But, in a sort of Goldilocks problem, one also cannot be too passive or else risk being labeled a contemptible weakling and having one's status being a true "victim" questioned. It is almost impossible to get the level of agency "just right" in order to be judged an innocent victim.

Given the problems of and inconsistencies in categorization and the serious, detrimental effect of being placed in one category rather than another, we should fundamentally reconsider the established paradigms.¹¹¹ Being a victim should not depend on innocence in the form of passivity or in the form of political altruism.¹¹² Instead, it should be based on the nature of the treatment that the individual has been subjected to and the burdened agency of that individual in the face of such treatment.¹¹³ Burdened agency functions as a type of middle ground that admits that victims are subjected to powers that cause them to suffer while still granting them agentic complexity and resilience.¹¹⁴ Under both the Mutua paradigm and the Meyers paradigm, however, it remains clear that those who are not "innocent" victims struggle to receive aid and struggle to have their claims of victimization legitimized because they do not fit neatly within the conception of victimhood held by the public at large. To see how these paradigms work in practice, it is worth considering how Begum's case does (and does not) fit into the paradigms of legitimate victims and savage offenders.

111. See Meyers, *supra* note 90, at 269–70.

112. See *id.* at 268.

113. See *id.*

114. See *id.*

A. Begum as an Innocent (Legitimate) Victim

In order to gain public support, Begum's advocates have operated under the pressure to make her appear to be as close to a perfectly innocent victim as possible. Advocates for Begum are attributing her victimization to circumstances that are outside of her control rather than dispositional features. Narratives of those who support Begum emphasize factors over which she had no control, especially her young age at the time she left the United Kingdom. They assert that Begum, through online videos and twitter accounts, was brainwashed and indoctrinated into Islamic extremism, entranced by the life that the propaganda promised. One such statement was given by an individual from Bethnal Green; she stated,

I was so shocked when I heard she went to Syria. She's quite young and she's a girl. I was so worried about her. She was a baby, she didn't know what was going on there. People played a game with her and brainwashed her. She was a child. . . . It wasn't just her decision to go, they tricked her. It's not her fault. No one can make such a decision when they're 15.¹¹⁵

Another resident echoed the same sentiments, stating "[w]hen she went to Syria, she was underage. She didn't know what was right or what was wrong. The government should help her come back."¹¹⁶ A letter written by Begum's lawyer describes her as being "groomed," radicalized, and a victim of child trafficking.¹¹⁷ The letter further blames her radicalization, in large part, on the failings of the U.K. government to protect Begum or alert her parents of her suspected radicalization.¹¹⁸ At other times, Begum's lawyer has stated that she was "damaged" and would need psychological support.¹¹⁹ Both Begum and her husband claim that she is no danger to the United Kingdom because she was just a housewife during her time in ISIL.¹²⁰ Some

115. Aamna Mohdin, *Let Shamima Begum Come Back, Say Bethnal Green Residents*, THE GUARDIAN (Feb. 14, 2019, 2:22 PM), https://www.theguardian.com/uk-news/2019/feb/14/let-shamima-begum-come-back-say-bethnal-green-residents?CMP=share_btn_tw.

116. *Id.*

117. Hanna Yusuf & Steve Swann, *Shamima Begum: Lawyer Says Teen was 'Groomed.'* BBC NEWS (May 31, 2019), <https://www.bbc.com/news/uk-48444604>.

118. *See id.*

119. *Shamima Begum: 'I Didn't Want to be IS Poster Girl.'* BBC NEWS (Feb. 18, 2019), <https://www.bbc.com/news/uk-47276572>.

120. *See* Josie Ensor, *Shamima Begum was Cruel Enforcer in Isil's Morality Police, Say Syrian Witnesses*, THE TEL. (Apr. 13, 2019, 10:00 PM), <https://www.telegraph.co.uk/news/2019/04/13/shamima-begum-cruel-enforcer-isils-morality-police-say-syrian/>.

blamed the death of Begum's youngest child on the decision to strip Begum of her citizenship. Those making this argument reasoned that the U.K. Government did not send officials to rescue the child from the refugee camp even though it was determined that the child was a U.K. citizen, a decision which Shadow Home Secretary Diane Abbott called "callous" and "inhumane."¹²¹ Former Justice Minister Phillip Lee urged the country to reflect on its moral responsibility for the death of Begum's child.¹²²

B. Begum as a Savage Offender

In contrast to the advocates who emphasize Shamima's innocence, those who condemn Shamima focus on dispositional factors and behaviors that are within her control. Foreign Secretary Jeremy Hunt, among others, emphasized Begum's agency rather than factors outside her control, stating that Begum "chose to leave a free country to join a terrorist organisation."¹²³ He further elaborated that, "Shamima knew when she made the decision to join Daesh, she was going into a country where there was no embassy, there was no consular assistance, and I'm afraid those decisions, awful though it is, they do have consequences."¹²⁴ Begum's own father has come out in support of the U.K. government's decision to revoke her citizenship, citing her lack of remorse for joining ISIL and stating that her own actions are the reason she is stranded in a Syrian refugee camp.¹²⁵ In contrast to Begum and her husband's claims, members of an anti-ISIL activist group living under jihadist rule have claimed that Begum served in the "morality police," a group of women that ordered the imprisonment and lashing of women who did not follow Islamic rules regarding dress and travel.¹²⁶

121. *Shamima Begum: 'Not Safe' to Rescue IS Bride's Baby, Says Hunt*, BBC NEWS (Mar. 10, 2019), <https://www.bbc.com/news/uk-47512659>.

122. *See id.*

123. *Id.*

124. *Id.*

125. *See* Lizzie Dearden, *Shamima Begum's Father Says he 'Doesn't Have a Problem' with Daughter's British Citizenship Being Removed*, INDEP. (Feb. 24, 2019, 11:08 AM), <https://www.independent.co.uk/news/uk/home-news/shamima-begum-isis-bride-british-citizenship-removed-latest-father-sajid-javid-interview-uk-a8794141.html>.

126. *See* Ensor, *supra* note 120.

C. A False Dichotomy

Begum's story is a complex one with contradictory narratives abounding. As seen above, she displays elements that fall into legitimate victim and savage offender paradigms almost simultaneously. Media and advocates on either side of the debate seem to want to pin Begum into one category or the other, but the reality is that she is both. The desire for a completely innocent victim leads some to believe that Begum is not a victim at all, but rather a savage. Others, however, view Begum as a little too innocent to fit the prototypical savage category, leading them to classify her as a victim. The entrenchment of the savage and victim categories in Mutua's metaphor obscure the truth about Begum's story and lead to a failure on some to recognize her as, at least in part, a legitimate victim deserving of our aid.

D. Further Problems

Choosing only sympathetic victims has further negative consequences beyond undermining the claims of the universality of human rights. It may also force victims into telling only ideologically correct forms of their stories regarding their victimization, omitting or changing details that betray a shred of culpability.¹²⁷ If the receipt of aid or sympathy is contingent on being perceived as innocent, a victim will be more likely to tell the narrative of their victimization in whatever way makes them seem most innocent.¹²⁸ This pressure causes victims to alter or omit details of the narrative, and, if discovered, these alterations become an additional damning indictment of the victim's character and trustworthiness.¹²⁹ The Department of Justice's Proposed

127. See LU, *supra* note 83, at 78–79.

128. See *id.*

129. See generally, John McAvenia, *Getting Sex Crime Victims to Tell the Real Story*, LAW ENF'T Q., 7, 7-8 (1997) (stating that victims, especially those of sex crimes, will feel apprehension and embarrassment about their conduct and officers must take care to admonish victims to tell the complete story, keeping in mind the role of witness credibility in jury instructions). For example, a woman petitioning for a five-year restraining order against Dodger's player Trevor Bauer was accused of "lies of omission" by Bauer's attorney for not mentioning texts suggesting consent on her way to Bauer's house where she was subsequently assaulted and for sleeping in bed next to Bauer after the assault. These "lies of omission" cast doubt on the woman's story and allowed Bauer's attorney to argue that "the woman gave Bauer every indication she consented to the treatment she received during the nights they spent together at his home in Pasadena." The woman who omitted these details stated that she was afraid of the social consequences and being "paint[ed] . . . as the slut." See Andrew Dalton, *Trevor Bauer's Lawyer: 'Lies of Omission' in Woman's Sex Assault Story* NBC L.A., <https://www.nbclosangeles.com/news/sports/trevor->

Jury Instructions state that, “[t]he testimony of a witness may be discredited or, as we sometimes say, impeached by showing that he or she previously made statements which are different than or inconsistent with his or her testimony here in court.”¹³⁰ These instructions allow a victim or witness’ statements to be completely discredited on omissions and differences between the ideologically correct narrative that the victim is originally pressured to give and the actual details of the incident.

Keeping only innocent victims in the spotlight perpetuates potentially harmful stereotypes that only “real” victims who are powerless, helpless, and blameless are deserving of aid. Furthermore, the use of innocent victims creates an arbitrary hierarchy of victims that can be used to justify transgressions against less-than-innocent victims and to delegitimize valid claims of victimization.¹³¹ Victimhood is not based on amount or type of suffering, but rather on the perceived innocence of the victim. Take, for example, a man convicted of sexually assaulting a minor. Phrases like “you know what they do to people like you in prison” ring loudly, and stories of vigilante prisoners who murder child molesters are valorized.¹³² It is difficult for us to even begin to conceptualize the child molester as a victim even though he was wrongfully murdered in a gruesome manner. A victim of an extrajudicial killing is not seen as a victim at all, and his suffering and his family’s suffering are delegitimized.¹³³ Following a similar example, Lu observes that, “[h]e does not seem to possess any redeeming skill or knowledge that would make his death a social loss. It is precisely because he lacks virtue and any other kind of excellence that it is difficult to acknowledge him as a victim.”¹³⁴ On a larger scale, governments can use this hierarchy of victimhood to justify political violence as well. For example, the United States government uses the complicity of those affiliated with terrorist organizations as a justification for

bauers-lawyer-lies-of-omission-in-womans-sex-assault-story/2674147 (Aug. 17, 2021, 8:16 PM).

130. United States’ Proposed Jury Instructions at 15, *United States v. Hayter Oil Co.*, No. 2-93-46 (E.D. Tenn. Nov. 1, 1993).

131. See LU, *supra* note 83, at 71.

132. See, e.g., Caitlin O’Kane, *Inmate Confesses to Beating Two Child Molesters to Death in Prison*, CBS News (Feb. 21, 2020, 4:18 PM), <https://www.cbsnews.com/news/inmate-confesses-to-beating-two-child-molesters-to-death-in-prison-2020-02-21> (noting an instance where murders happened even though prison officials were warned before the attack).

133. See *id.*; see also LU, *supra* note 83, at 71.

134. LU, *supra* note 83, at 71.

rendition and torture, even if that affiliation is loose or unproven, and even if the person involved has not perpetrated any crimes himself.

V. PROPOSALS & APPLICATION

Given that legitimizing the claims of only certain types of victims is harmful, the logical next question is “What should we do instead?” Even if using innocent victims for strategic human rights litigation does have negative impact, it may be the case that rights are advanced further and faster through the use of victims who can successfully garner public support. Unfortunately, the belief in a just world fallacy prevents less-than-innocent victims from gaining widespread public support for their cause.

One potential option to get around this dilemma is through attempting to reframe the victim and their suffering as the product of situational factors. Highlighting some factors of a story while minimizing others or omitting them altogether can promote one interpretation over others.¹³⁵ Content analyses of newspaper coverage of intimate partner violence, for example, have shown a tendency to display episodic frames which limit the issue to the victimizing event without placing it within a broader social context.¹³⁶ The lack of contextual factors increases tendencies to blame victims and decreases the observer’s sense of responsibility for providing help to the victim.¹³⁷ To increase perspective-taking and decrease the tendency to attribute blame, portrayals should focus on and emphasize the social explanations for the incident by providing context.¹³⁸ To that end, advocates should also emphasize the need for community support as well as the prevalence of the situation in question.¹³⁹ This option is the one that Begum’s lawyer and family have employed in choosing to focus on her young age, lack of agency, and the negligence and indoctrination caused by others.¹⁴⁰

However, as Begum’s story also illustrates, there will likely be a counter-narrative that surfaces, and no one can predict with complete accuracy which narrative will stick in the minds of the public. Reframing through the omission of details could, if discovered, create distrust and skepticism toward even the parts of the narrative that are true and

135. See Kellie E. Carlyle et al., *News Coverage of Intimate Partner Violence: Impact on Prosocial Responses*, 17 *MEDIA PSYCH.* 451, 453 (2014).

136. See *id.* at 454.

137. See *id.*

138. See *id.* at 454, 465.

139. See *id.* at 465.

140. See Mohdin, *supra* note 115.

complete. Furthermore, engaging in this strategy still has the potential to undermine the advocate's claim that human rights are for everyone. If they truly were for everyone, there would be no need to consciously emphasize one set of variables over the other. Finally, this method still requires the victim to conform to the ideologically correct form of the story in order to be successful. Begum, young and with no one to advise her, gave a damning interview that has been used against her to bolster claims that she is a dangerous perpetrator.¹⁴¹ Her interviews did not conform to the ideologically correct narrative of Begum as a young, helpless, penitent girl, undermining her efforts to reframe herself to fit the mold of the victim.

Instead of reframing, advocates could begin strategic litigation with prototypically innocent victims with the intent of setting helpful precedent to be used later for less innocent victims. For most, it is hard to imagine less sympathetic victims than the torture victims detained at Guantanamo Bay as prisoners in the "war on terror."¹⁴² One of the most beneficial outcomes of the *habeas* litigation in those cases was the "mere spectre of judicial review."¹⁴³ Indirect oversight of lawyers with newly granted access to detainees forced reevaluation of some cases, including many cases of mistaken identity and entirely empty files.¹⁴⁴ Immediately after describing mistaken identities, Duffy discusses the slow changes that are beginning to take shape in outsiders' perceptions of Guantanamo Bay, making the link between "innocence" and public support even more salient.¹⁴⁵ Despite some victories in litigation, Guantanamo Bay is still open and victims still remain inside with no prospect of release and no charges filed.¹⁴⁶ The focus on an innocent victim of mistaken identity at least somewhat successfully began to shift the narrative away from the terrorist designations of the victims to problems with the rule of law.¹⁴⁷

A similar strategy could have been applied in Begum's case as well. Advocates likely could have found a jihadi bride that appeared significantly less culpable than Begum. Perhaps she was kidnapped rather than leaving by choice, was younger than Begum when she left, or repeatedly denounced extremism and tried to escape the Islamic state. Beginning with those cases, advocates could have established

141. See Loyd, *supra* note 25.

142. See DUFFY, *supra* note 2, at 144.

143. See *id.*

144. See *id.*

145. See *id.* at 144–45.

146. See *id.* at 169.

147. See DUFFY, *supra* note 2, at 254.

precedent that may have helped Begum's case and may have shifted public opinion, mitigating some of the blame that was placed on her.

This strategy may often be successful, but it still carries a heavy price. Less innocent victims will have to wait indefinite amounts of time while suffering continued violations of their rights. Even if she had waited to bring her claim and was successful, Begum's youngest child still would have remained in the refugee camp long enough to fall ill and die. Allowing some victims to suffer continued violations implicitly establishes a hierarchy among victims which places innocent victims at the top. Innocent victims are deemed more legitimate, easier to accept, and deserving of a remedy sooner than those who are less innocent.

Another potential solution, albeit an idealistic one, would be to address the underlying causes of victim-blaming and thus the need for "innocent" victims. Even though the existence of victim-blaming and its relationship to belief in a just world have been established, very few studies propose solutions or methods of reducing that bias.¹⁴⁸ Rape myth acceptance, one form of victim-blaming, is heavily correlated with other societal problems like racism, sexism, and homophobia.¹⁴⁹ While we have literature on debiasing techniques for implicit biases,¹⁵⁰ one would need to get widespread commitment to applying debiasing techniques specifically to address bias against victims. Given that so far we have not successfully committed to debiasing racism or sexism alone, it is difficult to see a significant difference occurring anytime soon.¹⁵¹ Multiculturalism and social competence, by

148. See Hayes et al., *supra* note 55, at 203.

149. See Eliana Suarez & Tahany M. Gadalla, *Stop Blaming the Victim: A Meta-Analysis on Rape Myths*, 25 J. INTERPERSONAL VIOLENCE 2010, 2024 (2010).

150. For general guidance on combatting various forms of implicit bias, see generally Cynthia Lee, *Awareness as a First Step Toward Overcoming Implicit Bias*, in ENHANCING JUSTICE: REDUCING BIAS 289, 295 (Sarah E. Redfield ed., 2017) (noting that awareness and education, while not enough on their own, are first steps toward breaking prejudicial habits); Adam Lueke & Bryan Gibson, *Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding*, 6 SOC. PSYCH. & PERSONALITY SCI. 284 (2014) (explaining that viewing thoughts and feelings as mental events rather than as part of one's self produces better reflection of automatic processes that lead to implicit biases); PROJECT IMPLICIT, *Frequently Asked Questions*, <https://implicit.harvard.edu/implicit/faqs.html#faq14> (last visited Nov. 23, 2023) (advising changes in decision-making for hiring to reduce implicit biases in selecting candidates, including a suggestion to commit oneself to criteria in advance to avoid reactions based on "gut feelings" about the candidate).

151. See Suarez & Gadalla, *supra* note 148, at 2027 (noting that the structural nature of racism and sexism makes it difficult to achieve social change in remedying rape myth acceptance).

contrast, were significant moderators of rape acceptance,¹⁵² and are also moderators of implicit biases around race and gender more generally. Education and exposure to different cultures may lessen society's overall tendency to blame victims over time if resources were devoted to such an effort, but this potential future educational and training programs do not help advocates who are facing the dilemma of victim choice now.

How much an individual blames the victim also correlates with future orientation and an intolerance of personal uncertainty.¹⁵³ Becoming more tolerant of uncertainty or less future-oriented could reduce one's reliance on the belief in a just world fallacy and thus reduce one's tendency to blame victims.¹⁵⁴ Other studies of victim-blaming show correlations that seem to offer no practical guidance on mitigating victim-blaming. The tendency to blame the victim is higher for crimes like rape as opposed to robbery.¹⁵⁵ One's tendency to blame victims also varies with temporary fluctuations in mood, and those with positive moods are less likely to attribute blame to victims.¹⁵⁶ When an individual is happy, they may have increased affective coping capacity, making future uncertainty less frightening and lessening one's need to believe the world is just.¹⁵⁷ One study even found a correlation between an individual's height and their tendency to blame victims.¹⁵⁸

The empirical literature does not offer much that could be of use to a human rights advocate or litigator, but it does contain some insights toward the beginning of a solution. A 2012 study examined the

152. *See id.*

153. *See* Michèle Bal & Kees van den Bos, *Blaming for a Better Future: Future Orientation and Associated Intolerance of Personal Uncertainty Lead to Harsher Reactions Toward Innocent Victims*, 38 *PERSONALITY & SOC. PSYCH. BULL.* 835, 841 (2012).

154. *See id.* at 836, 842.

155. *See* Steffen Bieneck & Barbara Krahe, *Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is there a Double Standard?*, 26 *J. INTERPERSONAL VIOLENCE* 1785, 1790 (2011).

156. *See* Liz Goldenberg & Joseph P. Forgas, *Can Happy Mood Reduce the Just World Bias? Affective Influences on Blaming the Victim*, 48 *J. EXPERIMENTAL SOC. PSYCH.* 239, 242 (2011).

157. *See id.* at 242–43.

158. *See* Bao-yu Bai et al., *Physical Shortness Lessens Victim-Blaming: The Mediating Role of Belief in a Just World*, 40 *CURRENT PSYCH.* 1168, 1171–72 (2018).

effects of mimicry on victim-blaming.¹⁵⁹ Participants in the study were shown a video and then told to either mimic the person's physical movements or not to mimic them.¹⁶⁰ Participants who mimicked later showed reduced tendencies to blame innocent victims, even when the victim was unrelated to the individual that the participant had mimicked.¹⁶¹ Mimicry has been linked to one's ability to take the perspective of another and become more emotionally attuned and empathetic.¹⁶²

A later study examined the relationship between emotional disclosure and victim-blaming.¹⁶³ The study showed that emotional disclosure—or the release of negative emotions through writing—after viewing a woman being victimized, decreases the discussant's attributions of blame toward the victim.¹⁶⁴ Victim-blaming is caused by a negative emotional reaction to future uncertainty, and emotional disclosure provides a method of alleviating negative emotions.¹⁶⁵ Therefore, emotional disclosure can indirectly lessen one's tendency to blame victims.¹⁶⁶ Furthermore, “the more that participants confronted negative emotions [directly] in their writing, the less they blamed the victim”¹⁶⁷

A related study examined the differences in reaction toward victims in self-focused individuals and other-focused individuals.¹⁶⁸ Researchers manipulated self-focus and other-focus by asking participants to recall a time when they were focused on others or to recall a time when they were focused on themselves prior to providing the participants with the victimization scenario.¹⁶⁹ Being in the self-focused increased victim blaming and derogation and decreased willingness to provide aid to those victims.¹⁷⁰ One explanation for this phenomenon

159. See Mariëlle Stel et al., *On Mimicry and the Psychology of the Belief in a Just World: Imitating the Behaviors of Others Reduces the Blaming of Innocent Victims*, 25 SOC. JUST. RSCH. 14, 23 (2012).

160. See *id.* at 19.

161. See *id.* at 21, 23.

162. See *id.* at 15–16.

163. See Kent D. Harber et al., *Emotional Disclosure and Victim Blaming*, 15 EMOTION 603, 603 (2015).

164. See *id.* at 611.

165. See *id.*

166. See *id.*

167. *Id.*

168. See Michëlle Bal & Kees van den Bos, *Putting the “I” and “Us” in Justice: Derogatory and Benevolent Reactions Toward Innocent Victims in Self-Focused and Other-Focused Individuals*, 28 SOC. JUST. RSCH. 274, 274 (2015).

169. See *id.* at 279–80, 283.

170. *Id.* at 286–87.

is that maintaining self-focus when hearing of a victimization brings about feelings of fear and distress at the thought of a similar fate.¹⁷¹ By contrast, maintaining other-focus enhances the observer's empathetic response, leading to an increased likelihood of engaging in pro-social helping behaviors.¹⁷²

Taken together, these studies suggest that the way to overcome attributions of blame is to get observers to take the perspective of and empathize with the victim. Provoking that empathy involves portraying the incident as a whole rather than as one disconnected incident, which in turn increases the motivation to help the victim.¹⁷³ Attributions of blame can also be decreased through encouraging observers, witnesses, and the general public to engage in conversations and confront the negative emotions the incident has caused.¹⁷⁴ Some of these suggestions about framing the narrative and avoiding the creation of negative emotional reactions in the general public can be implemented into a strategic litigation plan, but it is unclear how successful they would be. One could attempt to reframe the narrative in an other-focused way and to allow the public a space to confront the negative emotions encountered. However, there will always be a potential counter-framing that does the opposite which less sympathetic individuals will be able to latch onto.

Additionally, these litigation moves still require an audience that is at least to some extent willing to engage with and listen to the narratives of victims that they believe deserve the harm that they have suffered. While using these dispositional reframing tactics might work on an already sympathetic audience, human rights advocates working to garner public support would still be asking the general public to sympathize with a terrorist or other bad actor and to metaphorically put themselves in the bad actor's shoes. Some might think that putting themselves in the mind of a terrorist is morally wrong in and of itself because, for example, it requires entertaining thoughts of violence. Some might claim that it is impossible for them, a moral person, to even occupy that mental space because it is so foreign.

The advocate is still unfortunately stuck in a dilemma. The claims of sympathetic victims are much more likely to garner public support and are therefore more likely to be successful. Successes, at least intermittent ones, are necessary in order to promote the human rights

171. *See id.* at 275–76.

172. *See id.* at 276, 286–87.

173. *See* Carlyle, *supra* note 135, at 454, 465.

174. *See* Harber et al., *supra* note 163, at 611.

agenda. However, choosing only sympathetic victims undermines the foundational claim that human rights are for everyone. Choosing a sympathetic victim is a move that one could make in the name of strategy, but advocates must realize the inherent trade-offs in such a strategy and continually remind the public that human rights are for everyone.

Instead, however, an advocate could move away from the loaded term “victim” altogether. “Victim” has deep connotations of passivity, blamelessness, helplessness, and moral superiority to an offender.¹⁷⁵ The tension in question arises because we are forcing advocates to deal solely within the realm of *victims* of human rights violations. Each victim fits somewhere along the spectrum of innocence and passivity, and those who are the closest fit to what the public views as a legitimate victim are the ones whose claims and stories are put forward. Culpable victims are just not seen as actual victims in the public eye, so there is pushback against their narratives of victimization. Maybe the problem of innocent victims is actually a problem with the term victim itself.

Instead, we need a term that does not bring with it all the troubling connotations and associations that exclude those who have legitimately been wronged. Advocates could label those who have suffered or been wronged as “survivors” rather than victims. “Victim” denotes passivity and helplessness.¹⁷⁶ Complicit victims are usually those who have acted in some way, usually culpably, so a passive term like victim seems jarringly incorrect.

“Survivor,” by contrast, is consistent with and arguably requires an agent who has acted because surviving connotes and often is an action.¹⁷⁷ Even on an intuitive level, the two terms have very different connotations. If, for example, I was to tell you that someone was a cancer survivor, you would likely call to mind words like “fighter” or think of them as someone who “beat” cancer.¹⁷⁸ Both of these are terms that involve actively doing something. If instead I were to tell

175. See Amy Leisenring, *Confronting “Victim” Discourses: The Identity Work of Battered Women*, 29 *SYMBOLIC INTERACTION* 307, 326 (2006) (discussing traits of victims attributed to them by society); Scott Kaufman, *Unraveling the Mindset of Victimhood*, *SCI. AM.* (June 29, 2020), <https://www.scientificamerican.com/article/unraveling-the-mindset-of-victimhood/> (noting that many victims report experiencing moral elitism).

176. See Leisenring, *supra* note 175, at 326.

177. See *id.* at 312.

178. Renee Twombly, *What’s in a Name: Who is a Cancer Survivor?*, 96 *J. NAT’L CANCER INST.* 1414, 1414 (2004) (discussing the meaning and history of the term cancer survivor).

you that someone was a cancer victim, however, the associations would be quite different. You would likely think of someone who was not a fighter—someone who was more passive, helpless in the face of the disease, and likely died from their illness. Both the victim and the survivor were harmed in this scenario and both are deserving of our sympathy because of the hardships that they encountered, regardless of whether they did or did not act. Furthermore, both can be seen as needing and being worthy of help from outside parties. Both the cancer victim and the cancer survivor likely have medical expenses that the community can rally around to provide support.

“Survivor” is defined as “a person who survives,” where the action of surviving consists of “continu[ing] to live or exist, [especially] in spite of danger or hardship.”¹⁷⁹ Under this definition, someone like Shamima Begum would be a survivor, even if it seems wrong to call her a victim. Begum continues to live in a Syrian refugee camp despite frequent danger and the hardships of losing three children and having her citizenship revoked. A terrorist who was tortured in the CIA rendition program would also be a survivor on this account because they continued to live despite the danger to one’s life posed by torture and rendition and despite the hardships that come with surviving torture.

One possible difficulty with this terminology is that it seemingly requires the person who was harmed to actually survive.¹⁸⁰ That would rule out as a survivor anyone who was killed by the harm in question. So, a terrorist who was tortured and died as a result would be excluded from survivorhood because of their death and would also be excluded from victimhood because of their culpability. Even if we accept the linguistic shift, the argument goes, we still have not come up with a term that applies to the experiences of all the legitimate victims we originally had hoped to capture.

In response, it is still an improvement to broaden the category even if we have not successfully broadened it all the way. So even if this objection is entirely successful, it does not undermine the project as a whole but rather merely limits its scope. Additionally, while we may not technically be able to categorize the deceased as a survivor, we can shift the label to those who would be receiving the reparations for the harm the deceased suffered. In losing a family member to a human rights violation, the family suffers a hardship that would

179. THE OXFORD AMERICAN COLLEGE DICTIONARY 1391 (2002).

180. See *id.*; see also *Survivor*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/survivor_n?tab=meaning_and_use&tl=true#19448173 (last visited Sept. 29, 2023).

categorize them as survivors.¹⁸¹ In that way, advocacy could still happen under the label of survivorship on behalf of the relatives of the deceased who could receive compensation in ways that the deceased would be unable to.

Switching to the term “survivor” also helps us break the false dichotomy that we saw with Shamima Begum at the end of the case study. Victims are seen as diametrically opposed to perpetrators.¹⁸² Because of this conceptual opposition, it becomes impossible for a person to occupy both positions at the same time even if they have both harmed and been harmed. Even though that dichotomy is a false one, it is one that is commonly held both implicitly and explicitly. The response of the public is to insist on placing people into one category or the other even though it miscategorizes those like Shamima Begum and delegitimizes the harms they have suffered. By contrast, survivors do not have an intuitively opposing term, except perhaps deceased.¹⁸³ Calling someone a survivor then does not put them in the middle of a problematic conceptual dichotomy and allows the public to clearly categorize anyone who has survived serious danger or hardship as a survivor regardless of their complicity or agency.

One might mistakenly be concerned that this is a purely linguistic shift that will likely have no practical effect even if it was taken up by human rights advocates. While there is not yet any empirical evidence to support this shift, there is evidence behind other movements that were originally denounced as purely linguistic. One early proponent of Person First Language, Beatrice Wright, wrote that studies in semantics, “show that language is not merely an instrument for voicing ideas but that it also plays a role in *shaping* ideas.”¹⁸⁴ Person First Language advocates a shift away from using terms like “disabled person” toward using a person first phrase like “person with disabilities” under the rationale that the second centers the person rather than the

181. See, e.g., Margriet Blaauw & Virpi Lähtenmäki, ‘Denial and Silence’ or ‘Acknowledgement and Disclosure,’ 84 INT’L R. OF THE RED CROSS 767, 780 (2002) (discussing how the suffering inflicted on a family of a missing person can amount to a human rights violation itself, entitling the family to compensation for its losses and suffering).

182. See Kieran McEvoy & Kirsten McConnachie, *Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy*, 9 EUR. J. OF CRIMINOLOGY 527, 531–32 (2012).

183. See *Survivor*, *supra* note 179.

184. Beatrice Wright, PHYSICAL DISABILITY – A PSYCHOLOGICAL APPROACH 7 (1960).

condition, lowering the stigma that those with these conditions face.¹⁸⁵ On its face, this is a purely linguistic change for advocacy efforts, and it has largely been a successful one that has been adopted across a wide range of different conditions and identities because it has been empirically shown to reduce stigma against these groups.¹⁸⁶

While Person First Language is not a perfect parallel to the shift this Article is proposing here, it at least provides hope for the project. Purely linguistic shifts can have psychological effects that lessen the stigma against groups that there is a psychological bias against.¹⁸⁷ Complicit victims have a psychological bias against them that is deeply rooted in the fundamental attribution error and the belief in a just world fallacy. So, even though we do not currently have empirical support for the linguistic change from victim to survivor for complicit victims, we have enough reason to believe that it ought to be tried and studied.

AIDS advocates in The Denver Principles wrote, “We condemn attempts to label us as ‘victims,’ a term which implies defeat, and we are only occasionally ‘patients,’ a term which implies passivity, helplessness, and dependance upon the care of others. We are ‘People with AIDS.’”¹⁸⁸ The connotations of victim are clear as scholars and advocates have shown, and it is hard to shift the biases and connotations embedded deep within us around certain terms. However, even though we may not be able to shift the connotations themselves, we can change the words that we are using in our advocacy efforts to mitigate those harmful biases.

CONCLUSION

Mutua and Meyers seem correct in their diagnosis that the delineation of the world into neat categories—mutually exclusive “victims” and “perpetrators”—fails to capture the complexities of reality.

185. See Paula T. Fernandes et al., *Stop Saying “Epileptic,”* 50 *EPILEPSIA* 1280, 1282 (2009) (studying Person First Language using the terms “person with epilepsy” and “epileptics” to show that language choice has consequences in exacerbating social stigmas).

186. See *id.*; see also Roger Collier, *Person-First Language: Noble Intent but to What Effect?*, 184 *CAN. MED. ASS’N J.* 1977, 1977 (2012) (“The global movement to promote person-first language has been extremely successful. It is now standard in government documents around the world, as well as in scientific journals and many other publications.”).

187. See Fernandes et al., *supra* note 185, at 1282.

188. ADVISORY COMM. OF PEOPLE WITH AIDS, *THE DENVER PRINCIPLES* (1983).

Victims are not entirely innocent, and savages are rarely entirely evil. In addition to being incorrect, the categories actively harm victims who are perceived to be not innocent enough. Victims are held to a high standard of innocence in a civilization that is prone to erroneous attributions of blame. However, scholars and advocates must be realistic and recognize the human tendency toward categorization will not vanish over-night. While we slowly chip away at the false dichotomy by resisting the urge to deny victim status to those who are both victims and perpetrators through debiasing and other efforts, we should make a linguistic shift toward calling complicit victims “survivors” instead. “Survivor” is a term that is consistent with the agency and lack of helplessness and blameworthiness, while still connoting a need for sympathy and help. This shift allows advocates to put forward the claims of less sympathetic victims with a higher chance of garnering public support. If advocates can successfully advocate for these survivors and gain public support, then they will no longer have to face the tension between successful advocacy practice and the belief that human rights are for everyone.