

VICTIMS, THEIR STORIES, AND OUR RIGHTS

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Abstract: Diana Meyers argues that breaking the silence of victims and attending to their stories are necessary steps towards realizing human rights. Yet using highly personal victims' stories to promote human rights raises significant moral concerns, hence Meyers suggests that before victims' stories can be accessed and used, it is morally imperative that requirements of informed consent and non-retraumatization are secured. This article argues that while Meyers' proviso is important, and necessary, it may not be sufficient. First, one potential problem with seeking to secure "informed consent" is that one has to ask for the consent, and in the act of asking one is potentially retraumatizing the victim. Secondly, the assumption that victims have ownership right over their stories, which is a key premise in Meyers's argument, is much more problematic than may appear.

Keywords: human rights, victims, ethics of asking, ownership rights, conflicts of rights, right to privacy.

The concept of human rights is a victim-centred concept. Human rights are concerned with areas of great injustice, and we appeal to the concept of human rights to provide us with a way of making sense of recurring instances of extreme cruelty, discrimination, and systematic abuse. We also know that the concept "victim" is pivotal to the function, aspiration, and practice of human rights discourse. But who are victims? And how can human rights speak on behalf of these victims? In *Victims' Stories and the Advancement of Human Rights*, Diana Meyers puts forward a forceful and compelling argument that greater scope and validity should be given to the epistemic status of victim stories as a legitimate tool to understand and address human rights violations. As Meyers rightly points out, it is imperative that human rights practitioners must not assume a priori knowledge of a great injustice; they must also hear the voices of the victims: "Breaking the silence of victims and attending to their stories are necessary steps towards realizing human rights" (2016, 17).

Meyers's book is in equal measures enormously rich and very absorbing, touching on many different aspects of interest to legal, political, and moral theorists working on human rights: the conceptualization of so-called victims; the relationship between structural features of

victims' stories and normativity; affective shortcomings in current conceptions of human rights; the role of empathy; and the ethics and politics of putting victims' stories to work.

It is beyond the scope of this article to do justice to all those aspects of Meyers's book; instead I will focus on only one fundamental question Meyers raises in the book: the ethical issues concerning the proper use of highly personal stories to promote human rights. In particular the focus here will be on human rights professionals (journalists, lawyers, academics, truth commissions, NGOs) who gather victims' stories to gain first-hand knowledge of human rights abuses, and who use that knowledge to promote a human rights agenda.

Starting from Meyers's crucial insight that there ought to be ethically sensitive guidelines on the way victims' testimonies are used by human rights professionals, I seek to show that although on one level Meyers's guidelines are sensible and uncontroversial, they are not sufficient to resolve some of the ethical tensions that arise between the respective needs of human rights practitioners and human rights victims. After a brief discussion of this tension in human rights discourse, I focus on two potential complications with Meyers's analysis of and solution to the conflict of interest between human rights practitioners and human rights victims: first, the burden on victims of "being asked" about their experiences, and secondly, the assumption that victims have ownership rights over their stories.

A Tension in Human Rights Discourse

Meyers deserves to be commended for bringing our attention to a tension at the heart of human rights practice between the intentions and objectives of human rights professionals, whose intention is to fight for the victims of human rights abuse, and the needs and rights of these victims, whose identities are inextricably linked to their stories of abuse and violation. Human rights professionals not only need to hear the victims' stories, they also need to use them as part of their practice, but in the process of using the stories of injustice for their human rights advocacy these very personal stories, which by their very nature are tragic and intimate, are being broadcast in the public domain.

Echoing the views of Amy Shuman (2005), Meyers is concerned as well about a potential clash between moral rights and duties. Shuman and Meyers both start from the assumption that victims have ownership rights with respect to their personal stories, yet publicized personal stories of abuse can enlarge audiences' concrete understanding of human rights and promote the enhancement of human rights: "Thus, all sorts of people who are working in various capacities to redress past abuses of human rights, to avert future abuses, and to build a

worldwide culture of human rights must strike a morally delicate balance between the entitlement of prospective storytellers to control their own stories and their practices of circulating victims' stories with the goal of solidifying and expanding human rights protections. Journalists, academic researchers, truth commissioners, the officials of international and domestic courts, and the staff of UN agencies and NGOs are all at risk of compromising victims' rights and using victims' stories unethically" (2016, 182–83).

In an effort to negotiate a morally delicate balance between the entitlement of prospective storytellers to control their own stories, on the one hand, and the practice of circulating victims' stories with the goal of solidifying and expanding human rights protections, on the other, Meyers suggests some guidelines that human rights professionals should follow in the interest of ensuring respect for victims in their capacity as narrators of their own lives.

In Meyers's view, before victims' stories can be accessed and used for the sake of human rights advancement, the following two conditions must be in place: first, informed consent from the victims must be secured, and secondly, non-retraumatization of victims must never be risked: "All these projects [justice projects, aid projects, research projects] face the ethical question of how to respect victims despite instrumentalizing their stories in pursuit of human rights. Clearly, obtaining informed consent from victims is necessary to respect them, for informed consent ensures that the informant is telling her story voluntarily. As well, ensuring that recording victims' stories won't retraumatize them is necessary to respect storytellers, for protection from retraumatization ensures that no harm is done in the debriefing process. Since respecting free agency and safeguarding personal security are core moral norms, these two requirements—informed consent and non-retraumatization—apply to all three types of projects" (2016, 192).

Meyers is right, of course: informed consent and non-retraumatization must be at the forefront of our ethical concerns when dealing with victims of human rights violations. While I share Meyers's overall analysis and concerns, I want to raise two issues that are, morally speaking, more tricky than may be assumed, and therefore may require more detailed analysis: first, are there issues of an ethical nature not only in securing informed consent from victims but also in *asking* for this consent? Secondly, can stories be owned?

The Burden of Being Asked

Human rights professionals need victims' stories in order to secure the advancement of human rights, but how does a human rights professional procure these testimonies? This is what Meyers tells us:

I'll now turn to ways in which professionals can ethically *acquire* and use victims' stories (2016, 190, emphasis added).

These projects' [justice projects; aid projects; research projects] means of *collecting* victims' stories [are] . . . (192, emphasis added).

By recruiting openly and *soliciting* testimony from anyone who volunteers her story, aid and research professionals do all they can to prevent victimization by silencing (193, emphasis added).

Acquiring, collecting, soliciting. While at one level this terminology may appear innocuous, and therefore ethically unproblematic, that may not always be the case. For example, is it morally acceptable for human rights professionals to *solicit* testimonies from victims of human rights abuse? Meyers tells us that we need to secure the informed consent of the victims, which is right of course, but informed consent suggests that we *ask* victims for their consent.

Asking is a powerful and effective stratagem. As Federico Varese and Maid Yash (2000) demonstrate on empirical grounds in the context of the rescue of Jews in Nazi Europe, being asked is a significant predictor of helping behaviour. Two-thirds of the rescuers were asked to help; only one-third initiated their action. Moreover, nearly all (96 percent) of those who were asked to help Jews did so. What is significant about this research is that the desire to rescue Jews was widespread, and yet the vast majority of rescuers needed an extra reason to stimulate their helping behaviour, and being asked seemed to work as a trigger mechanism.

While asking seems to make sense on many different levels, Meyers's account is surprisingly silent about the ethics of asking. Asking a victim of human rights abuse for their stories could potentially involve inflicting further harm, albeit unintentionally, to the victim. The act of asking, or "soliciting," to use Meyers's terminology, is enough to propel victims into a public space, and inflicts a burden of moral obligation on them, since refusing the request by a human rights professional (journalist, academic, truth commissioner, NGO) could make one come across as non-cooperative, if not worse.

The act of asking a victim for her story gives the victim or survivor two options: to say yes, and make her story public, or to say no, and keep her story to herself, away from public scrutiny. But the act of saying no has hidden costs. While the victim may have the right to refuse to share her stories, she may also experience feelings of guilt for not doing her bit for the cause, and therefore not contributing to the fight against human rights violations. By withholding their information, victims may feel that they are being judged, that they are doing something wrong, that their decision not to share their stories is morally reprehensible. The very act of asking for or soliciting their consent may,

therefore, violate Meyers's guideline that non-retraumatization of victims must never be risked.

One concern is that victims or survivors of human rights violations should not be put under this type of pressure; they have suffered enough, and to be asked (indeed, to be expected) to do more is in itself a personal injustice. In the last analysis, even though Meyers is right to say that professionals must obtain informed consent from victims, she is silent regarding the question of how such consent is to be obtained. Asking for their consent may seem innocent, and no doubt well intentioned, but it is nevertheless morally problematic. What appears to be missing in Meyers's analysis is an account of the ethics of the mechanisms needed to "acquire" or "collect" victims' stories, before such stories are used by human rights professionals.

Ownership Rights to Personal Stories

Meyers (like Shuman before her) highlights a fundamental tension in human rights discourse: while their stories are crucial for the advancement of human rights, victims nevertheless have an exclusive right with respect to their personal stories. At the root of this tension is the philosophical supposition regarding the ownership rights of victims to their personal stories. This supposition is apparently so obvious, and uncontroversial, that Meyers doesn't feel it is necessary to justify it. Contrary to Meyers, I would argue that the ownership rights of victims over their personal stories are much more problematic than it appears.

Do victims have an ownership right to their personal stories? Perhaps they do, but there are nevertheless four potential difficulties with this assumption that ought to be addressed: (1) How do we resolve conflicts of ownership rights, particularly conflicts of interest rights? (2) How does one come to acquire ownership of a story? (3) Are ownership rights based on a right to privacy? (4) Is an ownership right to a story a human right?

Resolving Conflicts

What is it about the personal story of a victim that secures the victim's ownership right to the story? There are two possibilities here. First, it is merely the fact that the story is "personal," in the sense that it deals with intimate aspects of one's life or identity-forming events. We own such stories because they speak to the self-ownership rights we enjoy. The right to self-ownership gives us ownership rights to our body as well as to the personal stories attached to our bodies.

But if ownership is attributed to stories that are personal, one would assume that perpetrators (or alleged perpetrators) also have ownership

rights with respect to their personal stories. Clearly this is problematic on many different levels, and undesirable. In order to avoid this conundrum, we could refine our position: it is not merely the fact that a story is personal that matters here but more specifically the fact that we are dealing with the personal stories of *victims*. Therefore, the reason victims (and not perpetrators) of human rights violations have ownership rights to their stories is because this adds a layer of protection to the victims, and it is in the interest of the victims to decide if and when to disclose details of their personal stories.

All this makes sense, but there is a further complication. If victims (and only victims) have a right over their stories, this right extends to other victims as well—for example, children born from wartime rape. It is almost impossible to have exact data on this phenomenon, but estimates suggest that worldwide more than half a million infants have been born of wartime rape or sexual exploitation over the past two decades. We know that children conceived in rape are more likely to suffer from severe psychological disorders, including post-traumatic stress disorder (PTSD), depression, and anxiety. As Carpenter (2007) reminds us, war babies also face great social stigma and discrimination, being identified with deviant genes, which has led many of them to be ostracized by families and communities. The fact that war babies are referred to in Rwanda as “devil’s children,” in East Timor as “children of shame,” and in Nicaragua as “monster babies” explains why many babies born of rape are abandoned or even killed.

Who has the ownership rights to the story of a wartime rape, the mother or the baby? It would appear that simply assuming that people enjoy ownership rights over their personal stories only creates a conflict of (ownership) rights between victims. For example, by exercising her ownership right to publicize her story, alleged victim V may violate war child C’s right not to disclose the fact that C is the offspring of wartime rape. While Meyers tells us that victims have ownership rights over their stories, she doesn’t offer us guidelines on how to resolve conflicts between ownership rights.

The conflict between victims’ ownership rights also arises in another context. We are told that the guidelines Meyers sketches for human rights professionals to follow are “in the *interest* of ensuring respect for victims in their capacity as narrators of their own lives” (2016, 183, emphasis added). This suggests that we are looking at an interest theory of rights—victim V’s right over her story is necessary to protect V’s interests. But a potential future victim (PV) also has an interest in V’s story to be made public, since knowledge of this story may stop perpetrator P from committing yet more human rights violations in the future. Thus we find that there is a conflict of interest rights between V and PV. Meyers does not address this potential conflict of interest rights.

One way of resolving a conflict of rights or interests is along utilitarian lines: if $PV > V$, that is to say, if there are more PVs than Vs, then the interest rights of PV take precedence over the interest rights of V, and therefore V's story should be made public, on moral grounds. Another solution is that the interests of V trump the interests of PV: in other words, there is a lexicographical ordering of interests, and V comes before PV. Both solutions have their merits, and of course other solutions are also possible. My point here is that Meyers doesn't tell us how conflicts of rights are to be resolved, even though such conflicts are inevitable when rights and interests are being invoked.

Owning Stories

Is the right that victims enjoy over their stories an *ownership* right? If so, exactly how does one come to *own* a personal story? There are two ways a person can come to own something. First, we own something because it is part of our original bundle of rights, or in other words it is part of our self-ownership. As part of our self-ownership right we have intellectual property rights, since what we produce with our mind is the product of our intellectual effort and energy, which are ours by right. But owning our story cannot be such. The ownership right we have over our story cannot be an intellectual property right, since the story is not the creation of one's mind—which is the standard legal definition of intellectual property right. If I were to write a book on Donald Trump, the book remains my property right and not Trump's, even though the book is about him. And anyway, the whole point of a victim owning her story is that the story in question is not the creation of one's mind.

The other way we come to own something is by acquiring it. According to Robert Nozick's (1974) *Principle of Acquisition*, on assuming self-ownership (the right to our own natural endowments) we acquire a right to the products of our labour through the Lockean labour-mixing argument. It is not clear whether something like this is what Meyers has in mind when she claims that victims have ownership over their stories. If there is a Lockean theory doing some work in the background in Meyers's theory, this should be spelt out—although it sounds odd to equate a violation of personal integrity with the “mixing of labour” metaphor.

It seems to me that while Meyers is right to remind us that breaking the silence of victims and attending to their stories are necessary steps towards realizing human rights, it doesn't necessarily follow from this that victims have ownership over their stories, since stories are not necessarily something that can be claimed as ownership rights.

Right to Privacy

There is at least one more way to understand the claim that victims enjoy an ownership right over their stories: this right is fundamentally a right to privacy. This interpretation is appealing if, as Andrei Marmor (2015) suggests, we assume a general right to privacy grounded in people's interest in having a reasonable measure of control over the ways in which they can present themselves (and what is theirs) to others.

While the right to privacy is an attractive position to hold, it poses its own challenges. References to a right to privacy take us into feminist theory territory, which is one of the areas where Diana Meyers (1994 and 2002) has made invaluable contributions over the years, and for which her work enjoys the highest accolades. Famously Carole Pateman (1989) and Catharine MacKinnon (1987) have put forward strong arguments against the public/private dichotomy, in particular the right to privacy. As MacKinnon reminds us: “[The right to privacy] reinforces the division between public and private that is *not* gender neutral... It is a very material division that keeps the private beyond public redress and depoliticizes women's subjection within it” (1987, 102). The reason Pateman, MacKinnon, and many other feminist philosophers were suspicious of the right to privacy is because they saw this as an excuse for protecting dominating, abusive males within the family context, and therefore marginalizing women even further in a position of subordination.

MacKinnon and Pateman were right of course, and I suspect Meyers would agree with them. But in advocating that human rights victims have a right over their stories, Meyers could be interpreted as endorsing a right to privacy argument. There is nothing wrong with this *per se*, except that it creates a tension between the idea of a victim's right as a right to privacy and the idea that the right to privacy is an instrument of oppression. I suspect that this tension can easily be resolved, although perhaps Meyers ought to explain how we can appeal to this right of privacy in some contexts but not others.

One obvious solution to this problem is to suggest that a right to privacy applies only to victims, not to perpetrators. In other words, we lose the protection of a right to privacy when we become perpetrators of violence or human rights abusers, which is why only victims have a right to privacy. Unfortunately this solution is as problematic as it is attractive, and for similar reasons as we encountered in the “Resolving Conflicts” section above, namely: the ensuing conflicts between rights to privacy. Whose privacy ought to be protected with a right? The victim of wartime rape has a right to her story, based on a right to privacy, including the right to disclose the events of this human rights abuse, but the child born from this rape also has a right

to her privacy. Once we introduce the language of rights we are back to the pressing issue of finding ways to resolve conflicts between rights.

A Human Right?

Finally, even if we accept that victims have a right with respect to their personal stories, which may be an ownership right or a privacy right, it doesn't necessarily follow from this that we are dealing with a human right or, to be more precise, that victims enjoy a *human right* with respect to their personal stories.

Looking at the U.N. Universal Declaration of Human Rights, the closest we get to a human right with respect to one's own personal stories is in Articles 12 and 17. Article 12 states: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." According to this article, the right with respect to one's personal stories becomes a human right if we consider it a case of a right to privacy. But Article 12 states that the human right violation is not merely an interference with one's privacy but an *arbitrary* interference. In other words, it is the arbitrariness that morally speaking is doing the heavy lifting here. Therefore, even if we assume that victims have a right to privacy that covers their stories, mere interference with this privacy may not amount to a human rights issue.

Alternatively, we could consider Article 17: "(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property." According to this article, the right with respect to one's personal stories becomes a human rights issue if we consider it a case of a property (ownership) right. There are two problems here. First, as I said before, it is not clear why anyone has ownership rights over her own stories. Furthermore, Section 2 of Article 17 states that the human rights violation occurs when someone is *arbitrarily* deprived of his property. As in the case of Article 12, here arbitrariness seems to be a crucial issue. Therefore, even if we assume that victims have a property (ownership) right to privacy that covers their stories, mere interference with someone's ownership may not amount to abuse of human rights.

Conclusion

Meyers has written an invaluable book that should be required reading for anyone working on human rights. In chapter 5 she raises important questions about the ethics of working with victims of human rights,

especially in terms of using victims' stories for the sake of the advancement of human rights. In this respect, she suggests some ethical guidelines for human rights professionals to follow. Two key principles stand at the core of these ethical guidelines: informed consent and non-retraumatization. While these are important and valid considerations, in this article I've argued that there are further issues that require consideration. First, regarding the ethics of *asking* a victim to share her stories, and secondly, the fact that we cannot assume that victims have ownership rights over their stories. Notwithstanding these concerns, Meyers's general thesis regarding human rights discourse, and the central role of victims within it, remains extremely valuable, far-reaching, and powerfully innovative.

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