9 Innocence
Shaping the Concept and Practice of Humanity

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The ethical category of innocence is central to modern secular notions of humanity; indeed, humanity, in its purest form, is imagined as innocent, fresh, and full of potential. We need only think of the images associated with organizations that protect humanity: innocence is figured centrally on webpages and in publicity materials, particularly in the form of the child. As former director of Médecins Sans Frontières (MSF) USA Nicolas de Torrenté writes, “deeply rooted images put a premium on the innocence of victims, making children, who are by definition blameless, the ideal recipients of care.”

The connection between humanity and innocence is not new, of course; we can trace it back to early theological interpretations. These locate innocence in the story of Adam and Eve, wherein innocence means not knowing the difference between good and evil; it means lacking worldly knowledge. Innocence is represented as a state of calm and repose, particularly in the Garden of Eden, before the fall of humanity, when Eve eats from the tree of knowledge. According to theological interpretations, the Fall helps to define humanity afterward; the loss of innocence is how we become human. But this changes with Enlightenment thinkers such as Jean-Jacques Rousseau and John Locke, who overturned the Judeo-Christian notion of humanity as soiled by original sin. Recalling the Garden of Eden, they saw humanity at its truest in the state of nature, as unsullied simplicity – as life that preceded the social contract and the political life of citizens. But they saw this purity as the essence of humanity, rather than its precursor – as the uncorrupt base from which all potential to act in the world arises. Innocence – as blank slate – is what enables us to imagine we can be the authors of our own future.

While the relationship between innocence and humanity is inherently unstable in that innocence derives from a mythical or imaginary past, and is thus always shifting, innocence nevertheless plays a central role in modern, secular discourses and practices of humanity. Where humanity is grounded on the principles of equality and dignity, innocence helps
define these principles, sometimes as their constituent outside, sometimes as their precursor, and often as their hope for the future. To be sure, innocence itself never embodies equality or dignity – it simply marks their limits. While I will be discussing the world of humanitarianism and human rights – a largely secular, liberal world, concerned with individual autonomy, freedom, justice, and rationality – innocence has persisting Judeo-Christian contours that give it power in these secular worlds, and even in the worlds that may border on illiberal or authoritarian. For instance, as with the Garden of Eden, our departure from the innocence of the “state of nature” (according to philosophers like Rousseau) is the beginning of our social existence, our state as political animals – this is the beginning of humanity as both a religious and a secular category. Perhaps unsurprisingly, then, those associated with innocence tend to be at humanity’s edges; they mark its border, in the sense that they are not corrupt (as is a normative humanity), yet nor are they fully human in the Enlightenment sense of having reason, will, or autonomy – they are not fully socialized creatures, and often get figured as incapable of being thinking, active, or informed subjects. As such, innocence acts as the boundary for liberal ideas of personhood, where this constituent outside is simultaneously idealized and denigrated. In this sense, playing with the borders of innocence also means playing with the borders of humanity: this is its power, and its danger.

In this chapter, I trace the way innocence and humanity come together in contemporary practices of human rights and humanitarianism. What does innocence show us about the ways humanity is practiced, and indeed, how it is practiced differently by these movements? Humanity is often understood as an equalizing principle; for instance, we say that all human lives have equal value and dignity, and all human beings have equal rights. Yet innocence plays a complicated role here; even as it promises to further such notions of equality by way of giving everyone the benefit of the doubt (in secular thought, innocence is the grounding of our potential as human beings) in practice, it inexorably constitutes hierarchies, distinguishing between deserving and undeserving. That is, while both human rights and humanitarian movements rely on and deploy the concept of innocence in their work, I am interested in exploring how far innocence goes to further the recognition of universality (whether as shared suffering, or as rights), and when it works instead to institute moral hierarchies. Sometimes, this depends on whether innocence functions as a noun rather than an adjective (i.e., an innocent action); that is, whether innocence is seen as an essential identity characteristic, or whether it simply concerns an act. I will argue that humanitarianism and human rights both work to buffer the tendency to use
innocence to create moral distinctions, albeit differently so, one through the concept of life, the other through the practice of law; despite this, I suggest that innocence primarily works to divide humanity, rather than to unify it as an affective, ethical, or political collectivity. Ultimately, innocence cannot escape its conceptual history as the limit of humanity; as we will see, in practice, this plays out by way of the unending redefinition of that limit, through moral distinction. For instance, innocence often works by protecting the rights of the exceptional, with a promise that this will eventually lead to rights for all – but this is an ever-elusive goal. In this sense, how might we begin to imagine humanity without innocence – can we decouple these concepts?

Innocence in Theory and in Practice

According to the Oxford English Dictionary, innocence means “freedom from sin, guilt or moral wrong in general,” “freedom from specific guilt,” “freedom from cunning or artifice.” This space of “freedom from” – this negative freedom – is so free indeed that it is seemingly free of content; it purports to be a state of moral and epistemic purity. Innocence is defined as a state of guilelessness, artlessness, want of knowledge or sense – in the terms of the OED, it is a state of ignorance, even a state of “silliness.” But innocence is a concept that – either because of or despite its very emptiness – has been deployed politically in more or less vigorous ways over time; and indeed, it is critical in the work of both human rights and humanitarian organizations. Insofar as these movements are instrumental today in shaping our political grammars, it behooves us to take innocence seriously.

Innocence promises a space of experiential or epistemic purity. Of course, innocence has many meanings: it comes into being in relation to various binary others, such as guilt, knowledge, and sexuality. While the concept does different work in relation to these binaries, in each case innocence works to regulate a space of purity: sometimes this means to be without knowledge, sometimes to be without intention, sometimes to be free from desire, and sometimes free from guilt. It works as a boundary concept, and in the process it helps produce and regulate human kinds and their constituent outsiders – it helps to imagine “humanity.” It becomes relevant to human rights and humanitarian organizations insofar as it helps to define the contours of the secular humanity that grounds these organizations; but insofar as purity structures moral categories, it also fills out binary notions of deserving and undeserving, the innocent and the guilty. How does this tension play out in practice? Under what circumstances does innocence work to construct moral distinctions, and
when does it enable a belief in and practice of universal equality? I ask this in the interest of fostering a politics of equality.

To further understand, let us begin with the archetypal figure of innocence: the child. Capturing innocence in the figure of the child reflects this search for purity in the secular world, this deep yearning for a time before corruption, a space beyond social norms. The child represents a mode of experience that is protected, controlled—it performs the part of tabula rasa, and as such it offers proof that as humans we can be anything, that we are not condemned by our sinful past. Of course, childhood was not always considered the epitome of innocence; this is a modern invention, dating to the eighteenth century. Following theories of original sin, which held that all humans carry the guilt of Adam’s disobedience, children were understood as inherently sinful; they were small, faulty adults in need of discipline, correction, or worse, since they had no idea how to control their various impulses. Notions of childhood as soiled by original sin shifted to the now more well-known ideas of romantic childhood, thanks in part to John Locke, who situated the child as simply a subject without experience and memory. For Locke, the child was an instance of natural humanity, revealing humanity’s capacity for knowledge and reason, without being tainted by the prejudices of actual knowledge in society. The child was pure and uncorrupt potential.

That said, locating innocence in the figure of the child leaves little space for actual childhood experiences. What happens when these experiences do not fit the parameters of innocence? Innocence carves out a conceptual space and time of unsullied hope, one that is linked to a freedom from knowledge. Yet the borders of this space are profoundly contested; rather than a given, this space is a political battleground. Understanding the work of innocence in relation to humanity requires tracing which types of knowledge are named or counted as pure (which experiences slip into a space of epistemic purity, unnoticed) and, by contrast, which ones somehow tip the balance and result in an expulsion from innocence.

Child soldiers, for instance, trouble the image of the child as innocent. And as Liisa Malkki has argued, child soldiers are seen as an abomination, a category mistake that leads to their being labeled “youth” or “teens” as opposed to “children” whenever possible, to set aside and protect a time of innocence, when they are still unworldly and untainted. Similarly, the undocumented minors crossing into the United States from Central America in great numbers in the summer of 2014 were not categorized or treated as children; they were called “minors,” no matter their age, and imprisoned in detention centers. While child soldiers are sullied by their involvement in war, the undocumented children were tainted by their association with gangs, drugs, and violence; they were rendered complicit
in these crimes by virtue of coming from the same place – racially, geographically, and socioeconomically.

As these examples demonstrate, the concept of innocence does not describe a clear-cut state of epistemic or other purity. Rather, it helps distinguish morally acceptable forms of knowledge, action, and experience, and these are inevitably tied to one’s being in the world. That is, innocence is defined not simply by a period of life called “childhood” or by outside standards such as age but by, as we just saw, class, gender, and racial background, among other positionalities, histories, and experiences. Certain conditions enable the space for an unsullied childhood; clearly class formation is important here, in configuring a space and time understood as pure, as empty or free of knowledge. But so is race: as feminist theorist bell hooks has noted, black children in the United States, particularly black boys, are never allowed to be children.7 This is also true for black girls, who, starting as early as five years old, are treated as more adult than their white counterparts, with presumed knowledge of topics like sex.8 Racial regimes mean that they are never allowed this period of untroubled and ignorant life; they are immediately interpellated into the structures and hierarchies of society, which render their knowledge suspect. Historian Robin Bernstein argues, in fact, that childhood innocence was from the very beginning racialized as white in the United States; it came into being in the second half of the nineteenth century in relation to its Other, the black child, who was constructed as a nonfeeling, noninnocent, juvenile worker.9 In this sense, childhood was forged in the context of capitalism and slave labor – and innocence worked to mark the boundary of allowable, exploitative, racialized labor. Innocence thus not only evokes moral distinctions, but also produces and regulates ontologies of human kinds. When one is a noninnocent child, one is no longer a child – one is simply expelled from the category.

Nearly every humanitarian and human rights website figures children prominently. This is perhaps not surprising; the most iconic images of suffering figure innocent children, from Kevin Carter’s 1993 photograph of a starving Sudanese child, crouched on the ground while being preyed upon by a vulture, to the 2015 photograph of Alan Kurdi, the three-year-old Syrian refugee whose body washed up on a Turkish beach in 2015. In the summer of 2018, figures of the migrant children separated from their parents by Trump’s draconian detention policies were featured all over the news, successfully pressuring the government to change their policy; unfortunately, the new proposed regulation does keep children with their families, but in a challenge to what is known as the “Flores settlement,” this would allow all of them to be kept for indeterminate periods in detention centers. It is images of suffering, solitary children that most
galvanize public response. The ideal victim – the innocent – is appealing, particularly for fundraising efforts. And yet, having just seen that innocence not only draws attention to children, but also works to determine who counts as a child, and therefore, who gets recognition, attention, rights or aid, we must ask: How do the organizations manage innocence’s tendency to categorize and qualify some as more deserving than others? In the name of humanity, how do they work to draw attention to those who are not deemed innocent – how do they protect these others?

One more aspect of innocence is worth noting here. Innocence helps to create a pure space for humanity, and both human rights and humanitarian regimes regularly draw on the concept to both ground and enact their missions. Yet both end up producing and enacting what Didier Fassin has termed “hierarchies of humanity.”¹⁰ Not only do they produce hierarchies among the people they seek to help or defend, but innocence also enables a distinction between those who help – human rights and humanitarian workers – and those whom they help. That is, while the concept of innocence shifts according to the constellation of experiences and histories in which it is located, it nevertheless always carries with it the desire to protect and the impetus to take responsibility for those whom – in their want of knowledge – cannot take care of themselves. Guilelessness evokes the need for care; innocents cannot take responsibility for themselves. But this means that it props up a feeling of control in those who care for the innocent; it assures them not only of their power but also of their knowledge, insofar as the innocent person is oblivious. It creates a class of saviors. As a space of purity, innocence itself appears outside history, and as such, it allows those who work as saviors to ignore the political and historical circumstances that created these victims.

This not only allows saviors to feel powerful or knowledgeable but also enables them to simultaneously capture innocence – to purify or absolve themselves. In other words, innocence also creates a savior class or subject, and they too make claims to innocence. If the people one is saving are understood as innocent, outside time and place, and one is intervening only to stop the suffering, how can this not be considered innocent too? For instance, while those inspired by humanitarian sentiments may try to bypass politics, claiming to act only as witnesses to injustice or in response to the immediacy of suffering, the political innocence they proclaim often ignores the privilege that allows them to act – it can masquerade as a refusal to acknowledge the structural inequalities that allow them to be humanitarians, witnesses, or saviors. And with human rights, innocence manifests in a belief that human rights are timeless, and that by protecting them, we protect a universal humanity; this ignores the historical and political contexts that produced the idea of human rights, and that
enshrine certain political ideals while precluding others. Is there a way to act in the name of humanity, without capturing or claiming innocence in the process — without using it to reify differences in power?

**Scales of Innocence in Humanitarian Action**

I move now to think about the place of innocence in human rights and humanitarianism, to see how innocence figures both theoretically and practically, and where moral distinctions come to play. While I focus primarily on the Euro-American context, I trace what I see as a transnational deployment of innocence; that is, I suggest that political and affective dimensions of innocence travel across borders and work to shape transnational spaces — we cannot keep these spaces or politics distinct as domestic or international. Even something like the Innocence Project — which I will discuss in the last section — has chapters in various countries now, shaped by similar affective and legal goals.

Contemporary humanitarianism is largely understood to address humanity as a collection of suffering victims. Innocence is only relevant insofar as it is understood to be the condition of all of humanity in the face of suffering: no one deserves to suffer. MSF’s four key principles clearly lay out the absence of moral or political distinction in their version of humanitarian action. According to de Torrenté, these include humanity (all people have equal dignity by virtue of their membership in humanity), neutrality (organizations must refrain from taking part in hostilities or conflicts that advantage one side over another), independence (humanitarian action only serves the interests of war victims, and not political, religious, or other agendas), and impartiality (assistance is provided based solely on need, without discrimination among recipients). Of these four, the last — impartiality — is the most relevant here. The innocence or guilt of those who suffer is irrelevant; suffering is not ascribed to moral failure.

Humanitarians work hard to stick to their principle of impartiality, and to avoid moral distinctions about who deserves aid, and one way they accomplish this is by a focus on the sacredness of life. That is, rather than a virtuous, dignified, or deserving life, the ultimate moral value in humanitarian action is human life itself — it is the survival of each individual. As Redfield states in his insightful ethnography of MSF, “they [MSF] assume that the lives of people around the world are precious and something to be saved through human intervention.” Human suffering in whatever form requires a response: all human life is worth saving.

An overriding ethical focus on life — any life, all lives — means that humanitarians agree to treat anyone who needs urgent medical attention,
whether victim or perpetrator. They do not make distinctions. In this sense, they recognize what Erica Bouris has called the "complex political victim," and the way in which victimhood is never pure or simple. Indeed, they work very pragmatically, making compromises and interacting with whomever they need to get access to conflict zones – this includes armed militias. For instance, MSF's Marc le Pape relates that in Caritas's work in Congo Brazzaville in the late 1990s they decided to accept military escorts on aid convoys in order to avoid being attacked, which was still common at that time, when groups of armed men would set up roadblocks to commit rape and other forms of abuse. Yet this occasionally involved taking on military escorts who carried the spoils of their plunder, which could provoke other groups, and threaten understandings of neutrality. He tells this story to say that humanitarians are constantly making decisions about which compromises to make: the point is that life itself is what drives their mission, not the moral status of those with whom they interact or treat.

A brief history of MSF reveals how life – particularly life in crisis – came to be held as the highest moral value; and yet this history demonstrates how innocence nevertheless still plays a role in defining what counts as "life." The founders of MSF – doctors and journalists, largely Marxist and Maoist inspired – were initially guided by the belief in a universal humanity grounded in equality and solidarity. But after the failure of 1968 to transform the social and political order and after the disappointment of anti-colonial revolutionary Marxist movements, Bernard Kouchner – one of MSF's founders – and many of his comrades from 1968 radically changed their views. They turned away from engagement with what they thought of as politics – engaging with power relations in the struggle for a collective future – and instead embraced the belief that one can ultimately address only individual suffering; in this sense, they attended to what they conceived of as a universal humanity composed of suffering victims. Kouchner and MSF brought a form of action that appealed in its purported ability to avoid Machiavellian politics. It was an ideology grounded in individualism, one that no longer allowed for the possibility of larger political change.

This "new humanitarianism" was shaped by a frustration with and refusal of politics; consequently, it was driven by the search for an uncorrupted space of action. Innocence offers such a space of imagination, even as it calls forth and protects different versions of epistemic and moral purity. In this sense, the suffering victim driving humanitarian action quickly inhabited the conceptual space opened by the notion of innocence, even if it was not always identical to it – of course, humanitarianism is not simply a politics of innocence, and innocence clearly travels beyond
its humanitarian deployments. While MSF maintains impartiality as a key principle, meaning that it offers assistance to people irrespective of their race, gender, religion, or political affiliation, in many humanitarian contexts—on the ground—innocence becomes the necessary accompaniment to suffering, required to designate the sufferer as worthy. That is, the suffering victim is best and most easily recognized by humanitarians when considered innocent—pure, outside politics, outside history, indeed, outside time and place altogether.\textsuperscript{18}

So while humanitarians are guided by the principle of impartiality, in practice, finite resources limit their action.\textsuperscript{19} The goal is to treat everyone equally, adjudicating based on need whether or not they are perpetrators or victims, but they themselves admit that they must triage, prioritizing those considered in the most serious and immediate danger. The concept of innocence helps in this process, as a way to grasp and measure vulnerability. Indeed, former MSF president Rony Brauman has criticized how moralist positions have marked humanitarianism, noting that the symbolic status of victim can in effect “only be granted in cases of unjustified or innocent suffering . . . . The point is that he [sic] must be 100\% victim, a non-participant.”\textsuperscript{20}

This process of triage is evident in the case of sexual violence. Before the early 2000s, survivors of sexual violence were not included in standard models of humanitarian aid delivery (see Swaine this volume). In the collection of essays by MSF about humanitarian practices in the Congo Republic in the late 1990s, \textit{Civilians under Fire},\textsuperscript{21} former MSF-USA executive director Nicolas de Torrenté and former MSF president Jean-Hervé Bradol admit that this is because relief organizations search for the “ideal victims.” On the one hand, they acknowledge that this is strategic, insofar as it is a way to get donors interested. On the other hand, they suggest that this focus, instrumental or not, pushes other categories of victims into the background. Survivors of sexual violence were not seen as innocent—as Bradol writes, “The raped woman rarely represents the ideal victim.”\textsuperscript{22} This is because such survivors raised a number of unsettling issues for practitioners around violence and gender roles, which they felt were too political to engage. As a result, de Torrenté states that MSF reproduced forms of prejudice against women in general and survivors of sexual violence in particular. These discussions are haunted by the histories and treatment of women victims of rape, who were (and still are) seen as responsible for and consenting to their own rapes because of how they dressed or behaved, or where they had chosen to be. They are seen as too knowing and too agentive to be innocent.

In many ways, MSF’s collection of essays marks the shift in the humanitarian mandate; sexual violence now merits an immediate response
from aid workers. This was not because humanitarianism stopped looking for innocent subjects; rather, there was a shift to seeing these women as innocent enough to be compelling humanitarian subjects. This happened, in large part, through the medicalization of gender-based violence, which is a longer story related to its changing treatment by regimes of human rights and global health. Attention was transferred to health consequences such as infection with HIV, physical injury and trauma, unwanted pregnancies, reproductive health, and STDs. This medicalization of rape and sexual violence ended up shifting the blame and rendering the victims innocent of the harm they endured. More specifically, a focus on the vulnerable body in biomedical terms brackets off social and political identities and realities. The medicalization was helpful insofar as it allowed women to be abstracted from their political contexts, rendered blameless, and treated; it has been less helpful, however, insofar as it has worked to depoliticize the larger gendered inequalities that lead to such harm. Even if humanitarian aid now seems to be more inclusive, it risks perpetuating inequality by writing out politics, and the causes of such inequalities. This further enables the capture of innocence by those who provide aid; they frame their work as addressing the pure horror of gender violence. Yet, as Lila Abu-Lughod and Leti Volpp have argued, this yearning for innocence in certain feminists whose politics are grounded in the desire to save others, such as Muslim women, is based on their will to not know about their complicity in the disenfranchisement of those they are saving.

As Fassin notes in his book on humanitarian reason, humanitarian government tends to set up a “scale of innocence and vulnerability” that works to privilege some, like HIV-positive children who are the ultimate innocents, but in the process, it also works to penalize others, like their mothers. While humanitarianism purports to serve and protect a universal suffering humanity, with the conceptual help of innocence, it nevertheless enacts hierarchies on the ground.

**Human Rights: Just for Innocents?**

If in humanitarianism, humanity is understood primarily by way of life in crisis, for human rights movements, humanity is about protecting the basic rights of individuals, joining humanity less with a biological or medicalized conception of life than with a philosophically and legally defined one, whether real or ideal. All human beings, so the familiar phrase goes, are bearers of rights by virtue of their humanity (of course, who protects those rights is another matter). And if, in humanitarianism, innocence’s tendency to create moral distinctions and hierarchies is
mediated by a focus on life itself, in human rights practices, the focus on
the law attempts to serve as safeguard.

Human rights are for everyone, not just for the innocent. Human rights
organizations claim to protect every person whose basic rights are being
violated, including, for instance, those on death row, whose right to life is
being threatened. That is, in theory, one can be both a perpetrator and
a victim of human rights violations, as the idea of "complex political
victim" suggests. As with humanitarianism, if one's rights are being
violated, innocence should not matter – it should not depend on who
one is, or one's past history.

But, as with humanitarianism, innocence nevertheless comes to play in
human rights claims and responses. I will discuss two different ways that
innocence is written into human rights struggles and protections, despite
the affordances offered by the law to protect against moralisms. The first
involves women's rights, and the second pertains to the death penalty.

Women's Rights

Women's rights bring the question of innocence to the fore in a way like
almost no other group. While women have been figured as innocent,
particularly in the form of mother and child, for women by themselves,
chastity or sexual integrity has historically been the most important thing
about them, and in this sense, innocence is still inextricably tied to sexual
innocence. As we know, sex is a particularly dense site of struggle
between knowledge and ignorance; the term carnal knowledge illustrates
the battle over how to categorize different forms of action and
experience. Kincaid describes innocence as simply "virginity coupled
with ignorance." For women, then, sex is considered the primary cor-
rupring form of knowledge. To be innocent is to be chaste.

Sexual innocence comes to play in various ways in struggles for
women's rights. The most written about, perhaps, is the case of traffick-
ing. While current anti-trafficking laws are concerned with trafficking for
forced labor as well as for forced sex, trafficking for the purposes of sex
still receives the most publicity and emphasis transnationally, and one
reason for this is the focus on and appeal of innocence. As anthropologist
Carole Vance has long argued, the central characters in stories of sex
trafficking are teenage girls and young women, putatively devoid of
sexuality or knowledge, and sold into brothels. This requires a focus
on the blameless – not on the sexually active young women. Here, victims
lack not only (sexual) knowledge but also intention.

These accounts successfully frame sex trafficking as a human rights
issue, and yet there are limits to who can benefit from these rights; Vance
states, "sexuality is made a special case in which only those who are sexually inexperienced, or those who frame their stories that way, are recognized as victims of human rights abuses." More specifically, only those who are considered sexually innocent are given protection; they have to present very particular, scripted stories about how they were smuggled over borders or kidnapped into prostitution or modern slavery. Indeed, Vance continues, "nowhere in human rights doctrine and activism are protections and remedies reserved only for the innocent." The necessity to perform innocence was true in my own research, in France, when I worked with undocumented immigrants; nearly all the undocumented immigrants who were categorized as "modern slaves" and who were therefore granted documents and rights were young girls who had supposedly come to France naively, sexually innocent, and often without a choice. There was no room for their complicity in wanting a better life or to provide for their kin. The girls were described as vulnerable, defenseless, lost, and excluded. They were portrayed as unable to comprehend their situations. Those with sexual knowledge or experience, who chose sex work as part of a better life, or took opportunities to leave their homes, often with the help of their families, did not qualify for these human rights protections. In the process, sex work as work was either rendered invisible, or criminalized.

We see similar kinds of questions about sexual innocence coming to play in claims to reproductive rights. Advocacy groups argue that women's right to comprehensive reproductive health services, including abortion, is rooted in international human rights standards guaranteeing the rights to life, health, privacy, and nondiscrimination. Many of the international human rights bodies protect reproductive rights as part of already existing human rights obligations. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on the Rights of the Child are two of the UN bodies that have worked to protect these rights, but cases have also been heard in the Inter-American human rights system, and the European human rights system, which have recognized state obstructions of lawful abortions as rights violations. In jurisdictions that generally prohibit abortion, claims aim to ensure access in exceptional cases such as to preserve the life of a woman or where pregnancy results from rape.

In an essay about abortion rights litigation in Latin America, Lisa M. Kelly makes a compelling argument about the centrality of narratives of innocence, and how these immediately circumscribe who gets rights. This is relevant in that these have become landmark cases in international human rights law, and the strategies and tropes of course circulate, just as do the laws and the activists. Starting from the 1990s,
she covers five successful claims in the Inter-American Human Rights system, each of which involved denial of a lawful abortion at a public hospital. Interestingly, these all involved young girls, who were raped or sexually abused, and became pregnant as a result. Of course, the lawyers chose cases that they felt would be high-profile internationally and could win both at law and in the court of public opinion. As we know, naming and shaming is one of human rights organizations' tried and true strategies, and for this, engaging with public opinion is critical (see Leebaw this volume). As Kenneth Roth, executive director of Human Rights Watch (also involved in advocating for abortion rights in Latin America), stated, "We are at our most effective when we can hold governmental (in some cases nongovernmental) conduct up to a disapproving public." With this in mind, the lawyers chose those who could best foreground the exceptional elements of cruelty and inhumanity in current abortion laws, creating the possibility for shaming: innocent sufferers.

Anti-abortion advocates and similarly inclined civil society groups are active in these Latin American countries. And in fact, anti-abortionists frame their struggle in terms of innocence: they pit a universal *fetal* innocence against the guilt or lack of moral fiber of the person requesting an abortion. In the Latin American cases, the lawyers arguing for abortion rights did not challenge this frame. Instead, they chose to take on the cases of those whom they could also configure as innocent, and who could therefore compete with the status of the fetus: they chose the figure of the child-like rape victim to personify innocence. In this sense, they limited their cases to girls, with no sexual experience, and who did not consent to sex. For instance, there was the case of Paulina de Carmen Ramírez Jacinto vs. Mexico. Paulina was a thirteen year old who became pregnant as a result of rape, and was unable to get an abortion because medical staff dissuaded her mother, citing the dangers of abortion. In the Inter-American Commission, Paulina's team argued for compensation, and that by failing to provide adequate procedures through which she could access lawful abortion, the Mexican state had violated its obligations under human rights treaties and declarations.

Kelly demonstrates how the language of childishness ("la niña") is used in each of these cases, to distinguish girls from teenagers, who are more likely to be seen as sexually active. Once again, we see innocence being used to draw the line between human kinds: girls deserve abortions, teenagers do not. Their arguments for abortion rights involved demonstrating the mental and physical health consequences of having their girlhood innocence violated – their grievous suffering – and as girls, their particular vulnerability.
Insofar as human rights movements agitate for political change, one can say all these cases were successful. However, they all draw on rape exceptions, which only provide safe access to abortion for a very few. They rely on women’s nonconsent to sex – their sexual innocence; this means that women who do consent to – or desire – nonprocreative sex do not have reproductive rights, and must resort to informal means of termination or take on unwanted pregnancies. It also disqualifies women who are economically vulnerable and financially unable to raise a child. In general, arguments based on innocence cast the majority of those who want abortions outside the realm of rights, framing only the exceptional as deserving. As with the case of trafficking, innocence in the form of sexual innocence steals into these struggles, making moral distinctions about who deserves certain kinds of rights.

The lawyers and human rights activists argue that they use these exceptional cases for incremental change, that is, they hope that these cases will clear the way for further exceptions and for the eventual liberalization of abortion law and access. But can these exceptional conditions translate into more generalized arguments for universal rights? Or do such limitations fundamentally alter who we consider worthy of rights – do they work to sediment hierarchies of humanity? So far, looking at abortion debates in Latin America and in places like the United States and parts of Europe, such moves have simply narrowed the space of struggle, writing out others not only as different in age or experience, but as different in kind.

The Innocence Project

I turn now to another project that makes the case that protecting the rights of the exceptional will eventually lead to rights for all: the Innocence Project. Of course, this movement, unlike the others we have discussed, explicitly takes on innocence – but of a different kind. It refers to the presumption of innocence, or the idea that everyone should be considered innocent until proven guilty. This principle is enshrined in Article 11 of the UN Declaration of Human Rights – it is an understanding of innocence as universal, as something everyone should be granted if accused. Under the presumption of innocence, the legal burden of proof is thus on the prosecution, which must collect and present compelling evidence to the trier of fact. According to the deputy executive director of the Innocence Project, Meryl Schwartz, the Project was put into place to counter what they understood to be a creeping reversal of this presumption of innocence – it was to counter a turn to the racialized presumption
that certain people are a priori guilty. They wanted to show that innocence still matters.\textsuperscript{36}

Before I say more, I want to clarify the difference in the meanings of innocence here. If I have so far foregrounded the ethico-moral concept of innocence – as experiential or epistemic purity – and largely approached it in the secular, liberal context, the concept of innocence at play in the Innocence Project is based on its juridical version, to be free from specific wrong or guilt.\textsuperscript{37} In contemporary legal terms, innocence is about acquittal – a decision to acquit means that the judge or jury had a reasonable doubt as to the defendant’s guilt. It may be based on exculpatory evidence or a lack of evidence to prove guilt. It does not mean that there is absolute certainty, only reasonable doubt. To find someone innocent is not necessarily to make a judgment on who they are but on whether they committed a particular act. There is a distinction between innocent or guilty actions, and innocence as a kind or category of person. In other words, the legal concept has developed to judge acts, not identities (although, as Janet Halley has demonstrated, acts and identities may not be as easily distinguished as we might think).\textsuperscript{38} The legal concept leaves room for uncertainty; it does not presume absolute truth. This is not the case of innocence as an ethico-moral concept, which is much less flexible, much less compromising, and which helps to constitute identities or kinds in relation to purity.

With the Innocence Project, there are several versions of innocence at play. These include actual or factual innocence, and legal innocence. Actual or factual innocence means that the defendant did not commit the crime they are accused of, even if found guilty at trial – one might say that they are “truly” innocent. Legal innocence, again, is where one starts: with the presumption of innocence. For legal innocence, as stated above, one only needs to be acquitted based on reasonable doubt. The goal is not to prove that they did not commit the crime.

While the Innocence Project started with the goal of preserving and defending legal innocence in the United States, where the number of people incarcerated is extraordinary, they have expanded their network to other common law countries like Canada, the UK, and Australia; but in the United States, they now work only with actual innocence, to show that innocent people do get wrongly accused. They do this by way of DNA evidence, to exonerate those wrongly accused. They started in the early 1990s with the advent of DNA technology, which offered them a tool with which to push back against racist analyses; they saw forensic evidence as a way to make a case more “objective.” The Innocence Project’s legal team makes a point of staying up to date on the latest scientific technologies, holding firmly to these as the way to “truth.” For instance, as they
recount in their materials, they helped to exonerate Steven Mark Chaney, who was convicted in Texas for a grisly double murder on the basis of bite marks on the victim’s body. Drawing on forensic analysis, they challenged this evidence, and demonstrated his innocence. This resulted in a moratorium on the use of bite mark evidence in future criminal prosecutions in Texas, since it is a technique that cannot be scientifically validated.

In this sense, they do work to produce system reform by fighting for more sound procedures for everyone, from access to DNA testing, to police procedure reform in relation to eyewitness testimony; and they have also pushed mandatory video-recording of interrogations. But despite this, a desire for moral purity compels their work. DNA evidence is only available for a tiny fraction of cases, so right away, the cases they take on are exceptional. In looking for actual innocence, there is a claim to purity – to real innocence – that is grounded not just on legal, but moral distinctions. In an article “In Praise of the Guilty Project” – critiquing “innocentrism” – Abbe Smith writes about a flyer put up by one of the chapters of the Innocence Project, seeking clients, but stating in big font, “We do not help guilty inmates lessen their sentences or get off on technicalities.” This language purports to distinguish the deserving from the undeserving, the real from the malingerers or the fraudulent; and such moral distinctions get repeated in remarks like that of one of the founders, Barry Scheck, who stated that “he had not represented a guilty person in twenty years.”

The Innocence Project comes armed, as Smith states, “with both justice and certainty, a lethal combination.” Here, we see moral distinctions not only between the innocent and the guilty, but also between the lawyers who claim their own version of innocence by way of helping only those they deem factually innocent.

There is no room for political complexity in those they defend; no place for the not-quite-innocent, who, with the presumption of innocence, still deserve to be fairly treated. They focus on people who are untainted, and separate them out from the rest – those who have not committed the crime, full stop – not those who might have been unfairly sentenced, or sentenced for something different from what they did, or who have extenuating circumstances that might explain why they committed a crime. It does not focus on local-level crimes, and those held for violating parole or minor drug crimes, which bloats the prison population. This emphasis on the pure reinforces the idea of good and bad criminals, and like the distinctions made between good and bad immigrants when innocence is used to give papers to some and deport the rest, this allows for the further mistreatment of those designated bad. In looking for truth, rather than proof, this type of innocence slips from legal to ethico-moral, and
once again, moves to create distinctions between people rather than protecting rights for all.

While the work of the Innocence Project is undoubtedly pathbreaking and important – some have called it a “new civil rights movement” – it nevertheless seems to cast doubt on the ability of the language of innocence to be flexible enough or to stretch enough to be able to address the injustice of those sentenced to life in prison for the most minor of crimes, such as stealing $50, as was the case with Alabama resident Alvin Kennard – or more broadly, for the injustices of the ever-expanding carceral system. So, we might ask, does the slippage in the concept of innocence (from legal to moral) preclude struggles for a different kind of justice? For more systemic equality?

A Humanity without Innocence?

Human rights and humanitarianism both depend on the concept of innocence to enact their work, and in so doing, both create distinctions and hierarchies in their practice of humanity. However, they have slightly different consequences. Humanitarians draw on the concept of innocence to determine who is most in need – tying need to vulnerability, which in turn is measured by way of innocence. But this is a practice of triage that could, presumably, have different measures. That is, precisely because of its minimalism – which is grounded in saving life itself, unqualified life – humanitarianism does not generally work to distinguish between human kinds; it makes distinctions based on the urgency of need. While this can and does result in the privileging of some over others, such distinctions are less about who one is or what one has done than how vulnerable one appears at a particular moment. In other words, the framing of need is flexible, and changes over time and context.

With human rights practices, however, it seems that innocence may (inadvertently) work to construct distinctions in human kinds; perhaps counter-intuitively, it is the identities that come to matter most, not the acts. I see this as related to the maximalism that is often a part of human rights practices, which, unlike humanitarianism, includes installing and protecting fuller versions of what it means to be human (i.e., dignity). As Michael Barnett describes in the introduction to this volume, this is linked to the progress narrative built into human rights projects. The goal of human rights discourses and practices is to create the conditions in which individuals can better flourish; as such, they try to support and amplify different qualities in the humanity they protect. Insofar as innocence is evoked as a special quality to be protected, betterment for a few is accompanied by the exclusion of many. That is, innocence works to
value some forms of life at the expense of others. People may fight for the rights of innocent young girls who have been raped—and in this sense, a different, better world is imagined, one that does not countenance these forms of gender-based violence. And yet, when the language of innocence is used to further these girls’ rights, their innocence necessarily produces the guilt of others (in this case, all women, or anyone with sexual experience). Innocence is a boundary concept, always working to create a space of epistemic or experiential purity, but in the process, it produces a constituent outside for the impure, contaminated or guilty. All those in this outside space are cast as unworthy or undeserving of rights or protections.

As such, when innocence comes into play in both humanitarianism and human rights work, it actually functions to further inequality: in the case of humanitarianism, while it may not be producing different and unequal human kinds, the use of innocence nevertheless can produce inequality in terms of life chances. In the case of human rights, it turns out, only some people deserve rights. We saw this in the case of anti-trafficking discourses; these not only exclude—but actually further penalize—those who cannot show they entered into sex work unknowingly and unwillingly. In the case of the Innocence Project, those who are not actually or factually innocent are similarly criminalized and condemned in a stronger sense, and deemed deserving of whatever sentences they may receive.

Innocence slips between its meaning as a lack of agency (helplessness, vulnerability, defenselessness), a lack of knowledge (naiveté), a lack of desire, and a lack of responsibility (blamelessness). It is a flexible concept that intimately shapes why and how we should care, for whom we should care, and whose lives matter: it constantly engages with the category of humanity, but it does so by defining distinctions in the category, and by circumscribing its limits. It seems unlikely, then, that humanity and innocence will be disentangled anytime soon. Even if humanity is differently practiced and understood by humanitarianism and human rights, with humanitarianism at least less dependent conceptually on the innocence of those it saves or helps, nevertheless, humanity is almost impossible to think without innocence; and insofar as innocence furthers distinctions rather than equality or inclusiveness, we must accept that humanity as a concept provides an inadequate basis for struggles for political equality.