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Victims' Rights and Public Safety? Unmasking Racial Politics in Crime Discourses Surrounding Parole Revocation for "Lifers" in California

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Abstract: *This paper reports on an intensive day-long symposium on Proposition 9 (also called the Victims' Bill of Rights Act, or Marsy's Law) held inside San Quentin, a maximum security prison for men in Northern California. This new law essentially ends parole for inmates serving terms of 25-years-to-life by extending the wait time between a parole denial and a new hearing to fifteen years. Its sponsors have framed it as a victims' rights bill. This paper adopts a race, gender, and critical criminology perspective to challenge dominant criminal justice language and common-sense discourse such as "victims' rights," "public safety," and "equality." Dominant framings in criminal justice are deconstructed and their multiple meanings are explored from the position of diverse actors gathered at the prison symposium—Proposition 9 proponents, prisoners, crime victims, and prisoner-rights advocates. The paper argues that rather than protecting crime victims and promoting public safety (claims by Proposition 9 proponents) power and inequality inhere in mainstream criminal justice language whose dominant discursive framings mask a racial agenda and engender new forms of victimization—that of prisoners and their families. Politicized criminal justice talk surrounding "victims' rights," and the specific dichotomies it produces, ultimately denies rights and endangers the public by indefinitely removing parole-eligible "lifers" from their communities.*

Keywords: critical criminology; prisons; race; gender; discourse analysis; critical race theory; social control; critical legal theory; victims' rights; Marsy's Law

INTRODUCTION

"The law does not passively adjudicate questions of social power; rather the law is an active instance of the very power politics it purports to avoid and stand above." (Crenshaw, 1995:xxiv)

This paper analyzes how rights discourses and mainstream criminal justice language, captured in commonsense concepts such as "victims," "criminals," and "public safety," have helped to make California one of the most punitive states in the nation. The Victims' Bill of Rights Act of 2008 (also called Marsy's Law, or Proposition 9) vastly changes the way persons in prison

serving life terms with the possibility of parole, are considered for parole. The severity of this new law is perhaps most clearly seen in its presumption of a fifteen-year "wait period" between parole hearings, as opposed to the usual one-year wait period, for inmates who are denied parole.¹ Opponents of the Law argue that this amounts to an additional prison sentence. The following is an analysis of how The Victims' Bill of Rights Act claims to uphold equal rights and protections for California citizens—and for *particular* citizens. But this paper is not about the law, nor is it an instrumentalist critique of law's racially biased outcomes. Rather, it is about how laws in the liberal legalist tradition, and about how criminal justice language, construct and are constitutive of unequal social relations.

My main argument is that the justice language employed to frame the issue of crime by proponents of Proposition 9 masks and embodies racial, gender, and class power. Commonsense notions about crime, victims, and public safety belie the inherent power relations they represent and bolster a political agenda that reinforces white privilege and serves the function of excluding those not privileged. I seek to show how the Victims' Bill of Rights Act and Proposition 9 proponents have actively appropriated the very rights discourse used in the past by socially oppressed groups, and in so doing, reify white privilege into law. This paper asks: (i) who is being protected from whom through the Victims' Bill of Rights Act, (ii) who are the "victims," (iii) who are the perpetrators, and most of all, (iv) whose rights are at stake? I accomplish this analysis through a report on an unusual event — a deeply emotionally charged, day-long symposium on Proposition 9 held inside San Quentin prison, a maximum security prison for men in Northern California. I was invited to the event, held in October 2008, as a scholar and prison activist, one month before Californians voted to approve Proposition 9 by a 54% majority.² The Prison University Project³ sponsored this symposium, which was structured as a panel discussion-debate with outside guests and prisoners freely participating.

I deconstructed the criminal justice language and the discourse surrounding the Victims' Bill of Rights Act of 2008 using a discourse analysis of what was said during the seven-hour long symposium, and a textual analysis of campaign literature.⁴ In this discussion of how both proponents and opponents of Proposition 9 employed criminal justice discourse, I intend to demonstrate how The Victims' Bill of Rights Act, rather than an example of the neutral adjudication of interpersonal conflict between two parties—"victims" and "criminals"—represents the "active instance" of social power relations (Crenshaw 1995) and specifically masks racial power. I take a deconstructionist approach to make three main theoretical points: (1) the commonsense justice language of mainstream criminology relies on linguistic polarities, what I am calling *antagonistic dichotomies*, which, bolstered by liberal legalist discourse, are embedded in power relations; (2) racial and gendered power relations, found in the victim identity in particular, are associated with these antagonist dichotomies; and (3) "victims' rights," as a concept and as a movement, shadows other types of victimization and appropriates rights discourses in a way that reproduces power and privilege, a process I am calling *rights reversals*.

CRIMINAL JUSTICE LANGUAGE: THEORETICAL PERSPECTIVES AND ARGUMENTS

My theoretical approach incorporates an explicit analysis of power by framing this discussion within critical criminological, race, and feminist scholarship. I am primarily interested in exploring how both mainstream criminal justice language and liberal legal discourses masquerade as commonsense and neutral but mask power. As Raymond Michalowski (2009) reminds us, critical criminology is a critique of power—of laws and justice practices and language, and how they reproduce domination. In taking a critical criminology perspective, in which laws are seen as created by those who have power (Black 1976; Chambliss 1999; Chambliss and Seidman 1971). My aim is to broaden orthodox criminology's focus on interpersonal-harms to include an exploration of the state's *social harms/punitive crime policy*. While appearing to empower (particular) crime victims, such policy, in fact, serves the interests of, and empowers, the state. In turn, all citizens, whether inside or outside the prison walls, are harmed by a state committed to punishment over social welfare (Arrigo and Milovanovic, 2009). While I focus on language and rights discourse (specifically "victims' rights"), I also place the Victims' Bill of Rights Act within the broader social and political context of the "get-tough-on-crime" movement of the last four decades (see, for example, Beckett 1997; Feeley and Simon 1992; Simon and Feeley 2003). In this sense, the Victims' Bill of Rights Act of 2008 (hereafter referred to as the VBRA) can also be understood to be an extension of determinate sentencing and other mandatory sentencing schemes in today's era of mass imprisonment, and thus, is part of an increasingly punitive state apparatus.⁵

There is a considerable body of sociolinguistic scholarship as well as cross-disciplinary work on how language functions to construct the everyday reality we take for granted. Language, including legal and justice language, is embedded with meanings; it already embodies that which it pretends to be merely describing (see for example Beckett 1997; Coyle 2002; Fowler, Kress, Trew, and Hodge 1979; Hall, Critcher, Jefferson, Clarke, and Roberts 1979; Henry and Milovanovic 1996, 1999; Wood 1999, 2005). For instance, commonsense notions such as "crime victim" or "innocent victim" imply their opposite—a "guilty," "criminal," "perpetrator" (Coyle 2002), and idealized victims also imply less worthy or ignored victims (Wood 2005). Here I ask how criminal justice language and liberal legalist discourse produce social and racial/gender power relations through specific *antagonistic dichotomies*.

My overriding arguments about crime discourse rely on the feminist scholarship on intersectionality (Crenshaw 1995; Matsuda 1996). For example, Mari Matsuda (1996:64) encourages us to "ask the other question" such

that race and racism require an analysis of gender, social class, and other oppressions. Feminist legal scholars and cultural historians address how constructions of crime and crime victims draw on long-held American ideologies of the Black criminal and the protection of white women by white men within patriarchal social and legal institutions (Morrison 1993; Roberts 1997; Stabile 2006; Wood 1999, 2005). Foucault's (1977) critique of power-knowledge, whereby discursive power produces new social subjects who can be dominated, is also useful in order to understand how "crime victim" might constitute a new identity, one that reproduces unequal power relations. For example, I suggest that the Proposition 9 campaign and the VBRA reproduce and strengthen the victim identity: this new social subject, the "crime victim," in making claims to rights ("victims' rights"), in turn ironically denies and "reverses" the rights of others, in this case, those of California prisoners. The VBRA proponents use rights claims ("victims' rights") to *deny* the rights of prisoners by appropriating those very rights discourses traditionally used by oppressed groups in struggles for equality; hence the concept of *rights reversal*.

Much of my analysis centers on how Critical Legal Studies (CLS) intervened into the liberal legalist tradition, which views law as an apolitical mediator of social conflict. CLS draws connections between law, power, and white supremacy (white domination within the social, legal and cultural spheres) illustrating how racial power operates within legal discourses (Crenshaw 1995; Harris 1995). Critical Race Theory, similarly, asks how laws are a constitutive element of race itself, how law both historically constructed race, "and shapes and is shaped by race relations" today (Crenshaw 1995:xxiv). At the prison symposium, race was, indeed, the elephant in the room: it was never mentioned neither by the advocates of the VBRA nor by the prisoners (all of the former were white, while the vast majority of the latter was Black or Latino).⁶ However, I am suggesting that race was ever present in the terms and tropes: "victims," "innocence," "criminals," "safety," and "rights," which disguised power and white supremacy.

Overall, I argue that criminal justice language sets up what I am calling *antagonist dichotomies*, which function as mutually exclusive categories. Through such polarities (for example, "victim" implies "criminal," "victims' rights" implies the lack of rights for "criminals" who are deemed unworthy of rights or protections), I seek to explore how mainstream justice language concepts are diametrically opposed, and without the possibility of reconciliation between seemingly autonomous entities. I claim that the dichotomies produced through criminal justice language are *antagonistic* because they function to exclude, and they derive from, and reproduce, explicit kinds of domination. Furthermore, I argue that these antagonistic dichotomies also constitute the very foundation of orthodox criminology and ameliorative

justice's focus on interpersonal harms. That is, antagonistic dichotomies—victim/criminal, public safety/danger—are embedded in mainstream justice language and appear to fuel methodological individualism, the interpersonal-harms focus of orthodox criminology.

This paper is organized into three sections. In the first section I explore the antagonistic dichotomies embedded in mainstream criminal justice language. In the second section I focus on the construction of the "crime victim" identity, and specific racial meanings of the concept of "innocent victim." I also include a discussion of rights discourses within liberal democratic states showing how groups who hold power use claims to rights to maintained class and racial inequality. In the third section, I give voice to the San Quentin prisoners and other opponents of the Victims' Bill of Rights Act, illustrating how they challenge and disrupt commonsense criminal justice discourse and its underlying tensions and dichotomies. The prisoners reframed the crime issue by focusing on the state's social harms, and complicated and reconstructed concepts of "victim," "criminal," "merit," "rights," and "public safety."

MAINSTREAM CRIME TALK AND ANTAGONISTIC LANGUAGE DICHOTOMIES

Approximately 50 individuals, myself included, filed into the San Quentin prison chapel: half were prisoners themselves, "lifers" serving terms of 25-years-to-life with the possibility of parole, and the other half, invited outside speakers and guests. The latter included several proponents of Proposition 9 as well as opponents of the bill, mostly activists, prison lawyers, and academics.⁷ The debate that followed played out as an excruciatingly tense exercise in opposites: commonsense, everyday justice language used by the proponents of the VBRA was marked by seemingly irreconcilable dichotomies, for example, victim/criminal, innocence/guilt, public safety/danger.

The extreme polarity of positions taken between proponents and opponents of Proposition 9, The Victims' Bill of Rights Act, and the difficulty of adequately articulating a response, left many of us feeling battered and worn. We lacked words for what felt intrinsically unjust about the proposed VBRA. At the core of the debate was the proponents' claims to rights as crime victims and the fundamental tension between orthodox and critical criminology—that is, the personal-harms versus social-harms focus of each side, which fueled the debate over this new law. Michalowski (2009) states,

Whereas mainstream criminology's focus is on interpersonal aspects of crime, critical criminology explores the *states'* social harms. While the ameliorative model relies on

determining individual motivations, etc. critical criminologists ask the larger question of what constitutes crime.

Normative or orthodox criminology is characterized by legal formalism, such that only acts designated by law are objects of formal legal study. It supports an ameliorative justice model, which only adjudicates interpersonal harms, rather than addressing harms and crimes that are committed by the state (including those inflicted by punitive crime policy) or by institutions upon communities. In the ameliorative justice model the entire focus is on *mens rea*, or individual intention, with regard to crime (Michalowski 2009). Social and community harms perpetuated by the state and by institutions are omitted from mainstream criminological discourse. In the case of the VBRA, victims' rights groups presented themselves as merely upholding the individual rights of crime victims—the right to protection against individual perpetrators of violent crime. Nowhere in their discourse was there mention or acknowledgement of potential unfair and unequal effects of this law, or the injustice it could incur for certain communities, let alone of broader social causes of crime. The exclusive focus of Proposition 9/VBRA proponents on interpersonal harms or ameliorative justice is founded on, and bolstered by, the victim/criminal dichotomy and claims to rights. Consider the following statements made by the VBRA proponents (emphases added):

- “This bill only goes after those who show *no remorse*.” (Mitch Zak, Yes on Proposition 9 Campaign P.R. Manager, 2008)
- “Proposition 9 is simply about giving *more rights to victims*...it puts the constitutional rights of crime victims on an *equal playing field* with those of defendants.” (Mitch Zak, Yes on Proposition 9 Campaign, 2008)
- “[Proposition 9] prohibits early release policies, so we won't *forfeit public safety* by reducing overcrowding.” (Belinda Harris-Ritter, crime victim and attorney, 2008)

These statements reveal the operation of antagonist dichotomies within justice language. The crime issue becomes reduced within the ameliorative justice framework to a matter of interpersonal harms, where rights claims hold a central place. The commonsense, criminal justice buzz-words: “lack of remorse,” “victims' rights,” and “public safety,” together with liberalist legal discourse about the “equal playing field,” are used to justify claims to rights, and provide the vehicles through which crime victims reduce the terms of debate to a matter of interpersonal wrongs which must be righted. The claim

that inmates have “no remorse” sets up a strongly antagonistic dichotomy between the victim and the (remorseless) offender who, apparently due to an inability to feel empathy, assumes a monstrous identity.

The Proposition 9/VBRA's proponents, whose specific language choices strengthen the focus on interpersonal harms and ameliorative justice, have set up three principle polarities through which they frame the crime issue. Table 1, below, shows how VBRA proponents' justice-language claims reduce the complex issue of crime and harm to what I am calling *antagonist dichotomizes*; that is, irreconcilable polarities, which rationalize an even more punitive response to crime.

Table 1. Individual Harms: Antagonistic Dichotomies

Individual Harms: Antagonistic Dichotomies	
▪ Victims vs. Victimizers	Proposition 9
▪ Safety vs. Danger	Increases public safety and
▪ Innocence vs. Guilt	decreases public danger

These language choices function dialectically such that victim/victimizer are reduced and reified into polar opposites, as are notions of safety/danger, equal rights/unequal access to rights, and so on. Moreover, these sets of antagonist conceptual dichotomies imply the impossibility of reconciliation. It would appear that victim status within the ameliorative justice/individual-harms model encourages and even necessitates polarization of identities and inherent antagonisms. For example, the “crime victim” is rendered his or her victim status through the way in which “victim” conceptually constructs its opposite (the “criminal,” who is assumed to be violent) such that victim and victimizer become calcified into diametrically opposing positions. The crime victim's demands for justice in the form of ever harsher punishment, in turn, seems reasonable, even expected: they are inherently justified through the oppositional constructions of “victims' rights/remorseless criminals,” innocence/guilt, and “safety/danger.” Significantly, these victim/criminal, innocence/guilt, safety/danger dichotomies carry an implicit moral overtone; they elevate the moral stance of crime victims and demonize offenders, crystallizing each identity.

Thus, perhaps most significant, the rights-claims by crime victims produce new kinds of social subjects and identities. “The crime victim” identity lies at the core of the Proposition 9/VBRA's proponents' justification for a class of more and harsher punishment; punishment that would presumably allow crime victims to finally enjoy what are apparently absent rights to public safety and state protection against immoral criminals. Moreover, embedded in these claims is a hidden set of assumptions: “victims” as an identity becomes a kind of totalized, perpetual self-righteous identity. The unspoken assumption

is that victims could never themselves victimize others (for example, cause social harm). Additionally proponents' claim that crime victims deserve "equal rights," the same rights as offenders, embodies the absurd assumption that prisoners in fact enjoy *more* rights than free citizens. This is based on the false assumption that because we have a due process system, prisoners have constitutional rights that protect them in ways that ordinary citizens do not; they are part of a "protected" class. Finally, the claim that passage of the VBRA is a matter of "public safety" which the public should not "forfeit" by releasing lifers who are up for parole, assumes that lengthy incarceration makes society safer.

Ironically, it is these very antagonist dichotomies that veil *social* harms. For constructions such as "innocent victim/guilty criminal" reproduce power relations and hold implicit racial and gendered meaning within the context of ameliorative justice struggles and justice discourse surrounding the Proposition 9/VBRA. In much the same way as the former Bush administration's ameliorative justice claims about "evil-doers" were used to justify war, Proposition 9 /VBRA advocates' employment of justice language and rights claims served a purpose far less noble than avenging themselves against individual wrongdoers.

In the following sections, I explore how rights claims by "crime victims," in conjunction with methodological individualism (or mainstream criminology's exclusive focus on rectifying or reacting to interpersonal harms) mask social and racial and gender power relations by masquerading as neutral—as merely a matter of adjudication between two otherwise equal actors.

Race and the Inequality of "Equal Rights" (for Victims)

The claim by Mr. Mitch Zak, the Proposition 9/VBRA campaign's public relations representative, of merely "put[ting] victims on an equal playing field with defendants" is an example of how such liberal concepts of equality disguise the exercise of power. Michalowski (2009) points out that "critical criminology seeks to show where power and domination are obscured behind a veil of ideology." As Critical Legal Studies (CLS) has shown, under liberal forms of government, law purports to function as neutral but in fact masks power interests and relations. Kimberle Crenshaw (1995:xxv) argues that, whereas the liberal legalist tradition viewed law as a mere mediator of social conflict, critical legal studies revealed how "legal institutions *construct* social interests and relations" (my emphasis). Commonsense concepts of "victims," "rights," "equal protection," and "the equal playing field," within the context of the Proposition 9/VBRA campaign, become highly ideological constructs that are far from neutral.

How does ideology function with regard to Proposition 9/The Victims' Bill of Rights Act? That is,

how do claims to equal rights by crime victims in fact represent a highly ideological position and set of assumptions about "criminals," "victims," and "rights" that reproduce race and class domination? To begin with, the VBRA's ideological character can be uncovered perhaps most obviously in several striking and fundamental contradictions in the logic of this law. First, contrary to the claim by Mr. Zak (2008) that "Proposition 9 is simply about giving more rights to victims...[by putting] the constitutional rights of crime victims *on an equal playing field* with those of defendants" (my emphasis), this law does more than neutrally "mediate the threat posed by others [where citizens belong to a] community of equals" (Cook 1995:88), as legal formalism holds. Ironically, both sides do not share equal social status to begin with, nor are they equally rights-bearing citizens. The proponents of Proposition 9/VBRA are free citizens seeking "equal rights" with *prisoners*—an explicitly unfree and incarcerated population. Vast social class and racial differences also exist between these two groups.

Second, the Proposition 9/VBRA further subjugates those already incarcerated by undermining their constitutional rights (including the right to counsel, the overriding of the jury decision of life with the possibility of parole, and other rights).⁸ In this way, what parades as justice—avenging crime victims and punishing criminals—disguises attempts to deny prisoners their constitutional rights.

Third, the ideological nature of the Proposition 9/VBRA is seen in its deeply flawed overall logic. It places an irrational focus on those inmates (lifers) who are the *least* likely to be paroled in California in the first place; or if they are by chance paroled, to recidivate.⁹ In short, the illogic of proponents' calls for "equal rights with defendants," the challenge this law poses to prisoners' constitutional rights, and proponents' insistence on keeping the least-likely-to-be-paroled group of offenders behind bars for longer, all belie the neutrality of their equal rights-claims.

Law, I am therefore suggesting, does not merely arbitrate interpersonal wrongs between citizens, nor does it delineate "neutral boundaries defining the liberal equality of individuals within a community of equals" (Cook 1995). Rather, in states under liberal forms of government that are marked by class and racial inequality, ameliorative justice necessarily becomes far more than the neutral mediation of conflicts between members of a community of equals. The Proposition 9/Victims' Bill of Rights Act, through invoking the victim/criminal dichotomy and through its rights claims, masquerades as neutral but in fact *demarcates race, gender, and class boundaries*.

THE VICTIM IDENTITY

One way race, gender, and class boundaries are maintained is through the very construction of "the crime

victim” *identity* and through victims’ claims to rights. At the San Quentin symposium, Proposition 9/VBRA proponents reflected their strong investment in the victim identity. This identity was strengthened through repetition of personal stories of victimization and the details of the crimes committed upon them or their families (which in turn bolstered their demands for ameliorative justice). For example, before the roomful of prisoners, Ms. Belinda Harris-Ritter, an attorney and self-described crime victim, recounted the night an intruder drove onto her family’s property and murdered both of her parents in cold blood. She has repeated this story many times in her victims’ rights advocacy work. Similarly, the effect of the killings on her sisters has also reinforced her identity as a victim. She explained: “My sisters will always have to live with this: it’s affected them to this day,” equating their symptoms to Post Traumatic Stress Disorder (Harris-Ritter 2008). The retelling of these stories and horrific events allows these violations to be relived again and again, reinforcing and reifying the victim identity. For example, later that day, the same story was repeated to the CBS Television reporter covering the symposium. Harris-Ritter (2008) said, “I would wake up in the middle of the night for a long time, thinking ‘what’s wrong with *me* that my parents were murdered?’ It takes a long time to get over that.” The victim identity appears to leave little room for empathizing with other victims and other forms of victimization. For instance, earlier, when a prisoner stood up and explained that the VBRA denies rights to, and unfairly treats, parole-eligible inmates who are already serving long sentences, and pointed out the *ex post facto* nature of the Act¹⁰ by saying, “We have already *rehabilitated* ourselves” (San Quentin Prisoner 2008), Mr. Zak (2008) responded: “There are families who will never see their loved ones again.”

The victim identity, in its current form, is part of the larger victims’ rights movement whose key victory occurred in 1991 in *Payne v. Tennessee* (501 U.S. 808) when the Supreme Court ruled that victim impact statements were permissible in the penalty phase of capital murder trials and do not violate the constitutional rights of defendants (Smith and Huff 1992; Wood 1999). Austin Sarat (1997) claims that this ruling reified the victim identity into law; it blurred the line between vengeance and retribution, legitimating vengeance in modern legality. Victims’ Rights groups have been behind much of recent tough-on-crime legislation which has included mandatory minimum sentencing schemes and Three Strikes laws, restricting parole for offenders (as the VBRA does), requiring longer prisoner terms, and constraining judicial decision making during sentencing.

The victim is not a new political identity. For example, claims about the sexual victimization of white women were used to justify lynching and later, the death penalty. However, it has resurfaced in national politics in its current form in the victims’ rights movement. Indeed,

the crime-victim identity, used as a platform for avenging interpersonal harms, continues to perpetuate social harms (harms to the community committed by the state), and like before, harms that are disproportionately (and specifically) enacted against people of color. Jonathan Simon (2008), sociologist and speaker at the San Quentin symposium, discussed how the appearance of a victim identity in California and national politics has exaggerated violent crime and offenders per se (which are a small fraction of all crime), and this generates public fear of crime and justifies the subsequent expansion of the criminal justice system. This, in turn, detracts from the state’s ability to solve deeper social problems, as state monies are usurped from needed social services (see also Simon 1997). The victim identity that has surfaced in Californian political speech, Simon (2008) claims, essentially operates to reduce complex social problems to an issue of crime. For example, the media’s focus on looting during Hurricane Katrina, by drawing attention to unlawful behavior by flood survivors, detracted attention from the larger related social problem of climate change.

What is crucial in the case of Katrina is how crime discourse and the media functioned to invert the status of the (mostly Black) *victims* of the hurricane by rendering them *criminals*. Carol A. Stabile (2006) illustrates the American media’s inability to view Blacks as victims of the flood during Katrina. Moreover, she documents in detail this inability to conceptualize black people as victims, from slavery, to lynching, to human and civil rights violations including police brutality, pointing out that even in light of such obvious criminal treatment of blacks by whites as witnessed in the Rodney King case, consensus was created in favor of the dominant framing of white victims/ black criminals. This construct of blacks-as-criminals/ whites-as-innocent-victims permeates the American criminological imagination. America’s cyclical “moral panics” over crime and drugs have historically racialized the crime issue in a similar way, rendering black, brown, and Asian men criminals, and in recent decades constructing black women who use drugs as monstrous “crack mothers” who intentionally victimize their babies. Significantly, these scares are followed by punitive crime legislation (see for example, Beckett 1997; Cohen 1985; Edsall 1991; Hall et al. 1979; Reinerman and Levine 1997).¹¹

Rather than set up a debate about who is the more deserving victim, those subjected to interpersonal or to state harms, the aim of this analysis is to unveil these state harms. I am particularly concerned with how the construction of victims/criminals, while appearing to benefit white crime victims, empowers the state at the expense of *all* victims, and of the most disadvantaged and vulnerable communities in America. For example, besides failing to make our communities safer, punishment policies such as mass incarceration and a more punitive state have, more broadly in recent decades, superseded and

replaced social welfare policies and the state's distributive role. Simon analyzes how victims' rights movements serve to define the public as potential victims; the penal system, within the context of welfare state decline, is then used to mobilize public consent for welfare state reform (See Simon 1997). Indeed, fear, politicized by victims' rights movements, has had the effect of narrowing the focus of criminal law and criminal justice discourse to defend narrowly defined "victims." Within an individual harms/ameliorative justice framework, "victims' rights," narrowly defined and policed, obscures and at the same time perpetuates state harms.

The Raced and Gendered "Victim": White Innocence / Black Guilt

In the American cultural imagination, "victim" has specific racial implications such that innocence is imagined in terms of whiteness and criminal guilt, in terms of blackness. Our commonsense cultural understanding of a victim is a person lacking in culpability, one who is disconnected from motives such as those pertaining to political or social power, or who is associated with weakness and a lack of agency (Coyle 2002). Michael Coyle (2002) finds that "crime victim" is also synonymous with and implies "innocent victim," as concepts of victim frequently appear in the mass media as the duo, "innocent victim," especially in relation to children. Crime victims have also been viewed as persons who have been disempowered as a result of other's excessive investment in power (see Henry and Milovanovic 1996). What is crucial, however, about victims' rights movements and the punitive legislation they produce is how they construct and police a victim identity that is deeply raced and gendered. Understanding concepts of "innocence" and "victim" requires asking "the other question" (Matsuda 1996): finding integral connections between gender, race, and class. We must unearth these latter within crime policy to view their deep roots in American concepts of crime, victims, and criminals.

As indicated from the outset, another name for the Victims' Bill of Rights Act of 2008 is Marsy's Law. Marsy was a young, wealthy, Caucasian female and college student who was murdered by her boyfriend. Feminist and feminist legal scholars illustrate how constructions of white women's experience of victimization keep crime policy intact, for example, through legal constructions of an idealized crime victim who is white, female, and young (Wood 2005). As is the case with Marsy's Law, Jennifer K. Wood (2005) points out that much of our tough crime legislation revolves around these young, white females (and their fetuses), for example, Megan's Law, Jessica's Law, Lacey and Connor's Law, and others. She argues that this ideal victim shapes the parameters of the victim identity around which laws are passed; yet, the state ignores and fails to name similar cases of the violent

murder of young black girls and women, claiming "These cases [of ideal victims] illustrate how the emphasis on punishment-as-protection becomes the primary means through which racist, classist, and sexist practices are both reproduced and masked in crime policy" (Wood 2005:4). In addition, in policing the boundaries of who counts as a victim, laws derived from, and upholding, the state-as-protector of white females through punitive crime policy also determine who counts as a criminal. In this sense, they determine national membership and belonging. Through tough laws such as the VBRA, offenders are increasingly seen as nonhuman and deserving of indefinite detention, permanent removal from society, and only certain kinds of victims become martyred. Marsy's Law, in addition to reproducing the ideal-type young, white, middle-class, female victim, significantly amends the California Constitution (as the VBRA does) to redefine victims as including a crime victim's family members and explicitly *excluding* "a person in custody for any offense, the accused, or a person whom the court has determined did not act in the best interest of a minor victim" (Cal. Const., art.1, section 28(e)).¹² This law, then, defines victims in a way that explicitly delineates who is *not* a victim. That is, who is to be seen exclusively as criminal, thus preventing any understanding of how those deemed "criminal" (prisoners, even the accused, for example) might themselves also be victims—both of interpersonal violence and state violence, including poverty, let alone *their* family and friends who are victimized by the incarceration.

The ideal white, female victim, therefore, while obscuring other ways of conceptualizing victimization and other victims, supports state repression in that these images of ideal victims rely on racist constructions of threat or risk that criminalize African Americans and black men in particular. Veiled beneath the protection myth of the VBRA as protector of (white, female) crime victims are attempts to solidify a racist, androcentric version of the state, one characterized by its power to punish. These victim constructions draw on national crime narratives about "white male protection of white female victims" (Stabile 2006:33), and white men protecting white women from black and brown men, extend back to the beginning of the American republic (Spivak 1988). Stabile (2006:183) argues that historically, American society, and the white males in charge of it, constructed black males not as a direct threat to white supremacy (and white masculinity) but in an indirect way: through personal investment in their identities as protectors of white females and moral or family values such that historically, slave revolts and other "acts of insurrection against white supremacy were rendered as attacks on white femininity." Conservatives use this idealized victim icon of the VBRA to uphold the state's power to punish only when it serves its interests: "Muscular solutions remain the province of a system that is fundamentally androcentric, that cares about its feminized and female victims only insofar as they

further a wider agenda of punishment and a state oriented toward repression” (Stabile 2006:189).

White fear is a core component of both crime policy and rights. Toni Morrison’s (1993) historical analysis lends further insight into the racial meanings surrounding the unique features of the crime victim in California politics. She sees notions of innocence, formed in contrast to notions of blackness, which have historically served as a trope for white fear—for “the terror of European outcasts...[and] their powerlessness” in colonial America (Morrison 1993:37). Morrison draws connections in the American literary imagination between race, innocence, and newness—the newness and innocence of the early American nation-state and first European immigrants—an innocence that was juxtaposed to the racial Other which the un-free slave population represented. She states, “for a people who made much of their “newness”—their potential, freedom, and innocence—it is striking how dour, how troubled, how frightened and haunted our early and founding literature truly is” (Morrison 1993:35). Ideas of innocence and freedom have been racialized in the American imagination: they are associated with whiteness and juxtaposed against blackness. Moreover, that which white people feared became associated with Black people:

The black population was available for meditations on terror—the terror of European outcasts, their dread of failure, powerlessness...evil, sin, greed. In other words, this slave population was understood to have offered itself up for reflections on human freedom in terms other than the abstractions of human potential and the rights of man (Morrison 1993:37).

Essentially, founding American freedoms and rights established by, and for, white people were hashed out and understood in opposition to those who were denied rights and freedom. The racialized meanings found in crime discourse are fortified by a politics of fear and a perceived increased risk of victimization. It is telling perhaps that while exiting the prison at the end of the symposium, Ms. Harris-Ritter (2008), when pressed about her commitment to the VBRA bill in light of the fact that “lifers” are the prison population least likely to recidivate, exclaimed: “I know it’s irrational—but I’m *scared!*”¹³ Stabile shows how current research on public fear of crime reveals underlying fear by white people of a loss of power, including underlying resentment of black people, who are perceived as usurping this power: both fears are often expressed as a “fear of crime.” “Mainstream discussions of fear of crime act as a code language through which segments of the population express racial hostilities that can no longer be voiced in a directly antagonistic or racist language” (Stabile 2006:181).

It appears, therefore, that black and brown people are excluded from the victim category in direct proportion to the power to punish that white victims afford the state. White identity in the U.S. since slavery has relied on a sense of superiority and exclusion. White innocence and purity today play out in capital sentencing such that white victims are exalted above other victims. Many studies have found that jury decisions in capital cases indicate a special valuation of white victims (Dieter 1998). David Baldus and his colleagues (1994) found that defendants whose victims were white were 4.3 times more likely to receive a death sentence than similarly situated defendants whose victims were black. Studies also found that where white victims are involved, black defendants disproportionately received death sentences. Notably, it is mostly all-white juries and prosecutors seeking and assigning these death penalties (Baldus et al.1994).

The victim/criminal dichotomy, then, reinforces, and is reinforced by, punitive crime laws that protect only certain kinds of victims and punish only certain kinds of criminals. Capital punishment exemplifies this, where the lives of white victims are valued more highly than the lives of victims of other races, as well as how ideas of whiteness-as-purity and blackness-as-filth still permeate our language and laws. Claiming that “The assigned... inferiority of blacks necessarily shaped white identity,” Cheryl Harris (1995:283) illustrates this through the historical “one-drop” rule that demarcated the racial line: “purity and contamination are invoked—black blood is a contaminant and white racial identity is pure.”

Essentially, I have argued that “innocent victim,” while it underlies putatively neutral rights claims, such as those embodied in the Victim’s Bill of Rights Act of 2008, must be understood as an oppositional identity that is race and gender-laden. “Innocent victim” is an idea born of the intimate relationship between white women and their white male “protectors” against a threat, disguised in criminal justice language, associated with black masculinity and black people in an effort to invoke state power through punitive criminal laws.

Rights (for “Victims”) and Racial Exclusion

The way those who inhabit the crime victim identity negotiate rights, specific rights as and for *victims*, holds specific racial meanings. Harris (1995:283) shows how rights themselves, for example property rights, imply exclusion and are inexorable from white identity. “The right to exclude was the central principle...of whiteness as identity, for whiteness in large part has been characterized not by an inherent unifying characteristic, but by the exclusion of others deemed to be ‘not white’.” In addition, Harris (1995:280) sees property—personal possessions from which one has a legal right to exclude others—as synonymous with white skin privilege and white identity itself. “Whiteness—the rights to white identity as

embraced by the law—is property if by ‘property’ one means all of a person’s legal rights” (my emphasis). Thus, whiteness can be understood as a legally protected *identity* and in this sense, as a kind of exclusive possession. If property is defined as rights (“all of a person’s legal rights”), whiteness is therefore synonymous with *rights*, including the right to exclude. “Rights” then, which indicate *white* rights and privileges, implies here a non-white Other who is presumably undeserving of rights. As Harris (1995:283) argues, “Whiteness is to be understood as a theoretical construct evolved for the purpose of racial exclusion...*White supremacy* is at base, not mere difference” (my emphasis).

The dichotomous and mutually exclusive relationship between those deemed to be deserving of rights and those deemed undeserving of rights is echoed in the structure of the Victims’ Bill of Rights Act of 2008. Table 2, below, shows these dichotomous rights claims by each side of the VBRA debate.

Table 2. Oppositional Rights Discourses

Proponents (Interpersonal Harms Focus)	vs.	Opponents (Social Harms Focus)
<ul style="list-style-type: none"> • Crime victims as merely upholding their own rights 		<ul style="list-style-type: none"> • Crime victims as denying “lifers” their constitutional rights

I am arguing that those who politically identify as crime victims are privileged to an array of new entitlements. “Victim,” like whiteness, becomes a legally exclusive identity, an exclusionary status, now engraved in the California Constitution, explicitly stating, as mentioned, that offenders serving time cannot be victims. It paints offenders as undeserving of rights and inherently criminal. I have shown that “victim” has a long history as a trope for whiteness, either as a privilege reserved for white women in the past, or in current victim rights laws named after white females, or as an identity that more often results in capital punishment on behalf of white plaintiffs. Needless to say, most of the men and women, serving time or otherwise, who are most affected by the Victims’ Bill of Rights Act are people of color. The language we use to talk about liberal rights and crime masks these state harms as a common good, as “public safety.” Rights for some victims that exclude rights for others are social structural harms that are kept outside the system of criminal study because laws are created by those who have power.

PRISONERS SPEAK: DISRUPTING DICHOTOMIES, COMPLICATING MAINSTREAM JUSTICE DISCOURSE

“The voices of all should be heard in a democracy...” (San Quentin Prison Chaplain, 2008)

I now turn to foregrounding the voices of prisoners, the voices that the Victims’ Bill of Rights Act of 2008 silences, and whose testimonials expand the definitions of victim and criminality. At the prison symposium, San Quentin inmates spoke about the Victims’ Bill of Rights Act in ways that challenged mainstream criminal justice language and its antagonist dichotomies. Their seldom heard accounts pushed the framing of the crime issue beyond the boundaries of interpersonal-harms and turned upside down notions of “victims,” “rights,” “public safety,” and “criminals.” Overall, the opponents of the initiative revealed explicit social and community harms that underlay the VBRA. Below, I bring prisoners into the conversation, illustrating the juxtaposition of ameliorative justice perspectives and mainstream criminal justice language with social-harms perspectives typically left out of criminological debates. Here, I attempt to loosen and dislodge entrenched constructs of “victim” and “criminal” and further expose their raced and gendered underpinnings.

Expanding the Boundaries of “Victim”

To begin with, two core oppositional framings of “victim” can be identified in the VBRA opponents’ and proponents’ discourse.

Table 3. Oppositional “Victim” Discourses

Proponents	vs.	Opponents
<ul style="list-style-type: none"> • Crime victims who seek rights are innocent (apolitical) • Crime victims are a monolithic group 		<ul style="list-style-type: none"> • Crime victims who seek rights are a politicized, a special interest group • Crime victims are a diverse group: many oppose Proposition 9 and advocate restorative justice

First, despite being framed as a neutral quest for victims’ rights by the VBRA advocates, the Proposition 9 Campaign was actually a highly organized political effort created and supported by many individuals who are not survivors (or victims) of violent crimes.¹⁴ Second, “crime

victim” is not a monolithic category: while the VBRA advocates and victims’ rights movement present themselves as speaking for all crime victims, opponents of the bill, who themselves had been injured by violent crime, challenge the universality of the term “victim.” For example, a panel speaker working for restorative justice who opposed Proposition 9 described her own ordeal of gang rape and false imprisonment as a child, which she likened to “torture,” yet she did not identify herself as a “victim.” Instead, she emphasized that she chooses to call herself a “survivor,” not a victim, today (Karroll 2008).¹⁵

As they recounted stories of rape and murder against member of their own families, prisoners challenged the exclusivity of “victim” identity as a privilege held by those with power. The police never investigated many of these crimes. The following quotations summarize the prisoners’ claims:

- “Punishing me also punishes my mother: I’ve been in since age 16, with 26 more years to do; if I get a 15-year deferred parole, I’ll be in my sixties when I get out.” (San Quentin Prisoner, 2008)
- “My brother was murdered by a stranger while he was pumping gas...to this day, there hasn’t been an investigation... My mother didn’t get to have her voice heard.” (San Quentin Prisoner, 2008)
- “My daughter was raped; I couldn’t help her here in prison—I nearly went crazy.” (San Quentin Prisoner, 2008)

The idea that offenders can also be crime victims complicates the criminal/victim polarity and widens the parameters of the victim identity. In effect, the “monolithic view” of victim proposed by the victims’ rights movement is only possible by “erasing” the diverse others in the victim discourse; and it is done by vilifying the racial Other. By challenging this antagonistic dichotomy between victims and criminals, it becomes clear that these linguistic constructions are not fixed but fluid concepts. By revealing that “criminals” and their families can also be crime victims, the limited concept of interpersonal-harms is reframed, and the scope of such harms is expanded to include community harms. For example, the prisoner who included himself in the category of “victim,” illustrated the lack of state protection or justice in poor communities. By doing so, he was quietly questioning white hegemonic claims to innocence (innocent victims merely seeking their rights). This inmate’s calm but indignant commentary about how his mother became a victim too when his brother was ruthlessly murdered (a crime that was never pursued by the police) emphasizes this African American inmate’s “invisible” victim status. How members of communities of color and their families are treated after such events reveals how victim status and rights are

uniquely linked to whiteness: the police simply did not investigate his brother’s murder case. The law often fails to operate in black poor communities when African Americans become crime victims (see for example Venkatesh 2008), yet easily renders them defendants.

The broader social harms caused by these oppositional discourses were repeatedly illustrated in the prisoners’ comments. Referring to his own youth, another prisoner asked:

What about a set of victims we don’t hear about? We are all affected by our environment. The 1970s prison mentality gave youth a false sense of manhood, gang culture formed and forced others into it. Aren’t these innocent children who fall into the gang trap? Can we agree there are many environmental failures that allow these kids to fall into that gang trap? Who was there to protect *them*? (San Quentin Prisoner, 2008)

The idea that youths growing up in economically deprived communities are innocent and gullible challenges the narrowly framed victim concept and the interpersonal-harms focus of the VBRA by depicting how an entire community is victimized by poverty, neglect, and cultural messages about masculinity that promote violence. Moreover, the idea of community (i.e. environmental) exposure increasing the risk for delinquency and criminality in vulnerable youth reinforces the concept that interpersonal and social harm are inextricably linked. This again, discredits the narrow monolithic view set forth by proponent of Proposition 9.

Once the link between interpersonal harm and societal harm is made, one must consider how gender, race, and class play into invisible forms of victimization: socialization into black and brown masculinity had become linked to prison and gang culture for those growing up in poverty, which in turn contributes to these youths’ victimization and incarceration. The above testimonial also inverts mainstream notions of youth of color as a generation of “predators” (a term popularized in political speech) who are deserving of harsher punishment, by holding society responsible for failing to protect vulnerable, at-risk youth. It is perhaps ironic that convicted criminals, those society deems dangerous and depraved, are contesting these constructs of “victim” and “criminal.” For, in addition to their stories of community harms, some of these offenders or their families, like Ms. Harris-Ritter, are also victims of interpersonal crimes and violence. Yet, these men speaking about their experiences of victimization are not easily or ever fully heard in the U.S., if they are heard at all. Rather, it is the voice of Ms. Harris-Ritter and the image of Lacy and Megan and Marsy—the idealized victims—that come to mind, evoking recognition and sympathy. If African American communities are particularly criminalized, offenders in general are vilified

and dehumanized. Speaking of the crime news media in the U.S., Stabile (2006:183) writes:

Constructing African Americans as criminals, priming white audiences to understand race and racial issues solely through the prism of crime, these narratives denied African Americans the status of victim and thereby robbed them of one of the most powerful cultural avenues for sympathy and restitution.

Like the “Zero Tolerance” policies for which they advocate, victims’ rights proponents show zero sympathy for offenders. Such dichotomized thinking perpetuates the invisibility of all but society’s ideal victims, dehumanizes those whose behavior has offended, and hides the state’s harms against disadvantaged citizens and communities of color. These discursive constructions of “victims” are strengthened through the admissibility of victim testimony at death penalty sentencing and are even reiterated by Supreme Court justices (Wood 1999); yet, it is not the victim we must humanize, but the defendant (Wood 1999; Dubber 2002). The antagonistic dichotomies of the oppositional victim discourse begin to reveal how state harms, specifically the punishing state, hurt the most vulnerable citizens and inhabitants of the U.S.—poor people and communities of color—and the specific ways our punishment system dehumanizes those who are caught up in it.

Remorse, Rehabilitation, and Merit

As they came up to the microphone in the San Quentin Prison chapel, the prisoners consistently countered claims about their inherent criminality that had been made by Mr. Zak and the other VBRA proponents. In so doing, they recast themselves as meritorious beings who had spent decades in prison seeking all the available rehabilitation they could find. Indeed, the VBRA proponents’ claims about remorse (“this bill only goes after those with no remorse”) cannot be separated from racialized notions of merit and rights.¹⁶ In Table 4, below, I identify several additional justice concepts and liberal ideologies— those of remorse, rehabilitation and merit—through which to further explore challenges to dominant criminal justice language dichotomies.

The victims’ rights proponents’ framing of offenders as violent killers with no remorse was countered by the opponents’ state-harms focus that revealed the violence of contemporary punishment. “No remorse” claims have been employed to justify more and harsher punishment, and has constructed offenders as essentially non-empathetic and lacking in humanity. By extension, such a being is beyond reform and unsuitable for rehabilitation, an assumption the prisoners avidly contested through stories of their own rehabilitation. In a key statement that showed how the

Table 4. Oppositional “Merit” Discourses

Proponents	vs.	Opponents
<ul style="list-style-type: none"> • “Lifers” (perpetrators) are violent killers 		<ul style="list-style-type: none"> • Many “lifers” are non-violent offenders caught in draconian laws (Three Strikes...)
<ul style="list-style-type: none"> • Perpetrators are remorseless and dangerous, deserve harsh punishment 		<ul style="list-style-type: none"> • Offender are human beings with potential for change through rehabilitation
<ul style="list-style-type: none"> • Perpetrators as “takers” (of lives, etc) 		<ul style="list-style-type: none"> • “Lifers” have a special ability to give back to their communities and to society

VBRA, by empowering the state to punish, hurts *all* citizens, one inmate emphasized that: “rehabilitation is the only true way to public safety” (San Quentin Prisoners 2008). The inmates also pointed out that many lifers are nonviolent offenders who are over-punished under today’s harsh sentencing schemes.¹⁷ The putative neutrality of law within the liberalist legal tradition relies heavily on the notion of merit. Yet what counts as merit is itself a product of power. Crenshaw (1995:xxix) explores how racial power plays out through the myth of the meritocracy, explaining that race-based critiques of liberal individualism “reveal how certain conceptions of merit function not as a neutral basis for distributing resources and opportunity, but rather as a repository of hidden, race-specific preferences for those who have the power to determine the meaning and consequences of ‘merit’.”

As the San Quentin Prisoners, one by one, got up and spoke, perhaps the single most common statement made was about their rehabilitation and hard work. They said: I’m not the same person I was 20 years ago;” “We have done the work [of rehabilitation];” “Proposition 9 takes away hope: hope is what makes rehabilitation possible;” “What is justice to you?;” “Please dialogue with us so we can be of service to you” (San Quentin Prisoners 2008).¹⁸ Additionally, the prisoners pointed out that lifers play a key role in maintaining prison calm, saying: “We hold the prison together...and help maintain calm: if lifers lose hope all hell will break loose in here” (San Quentin Prisoners 2008). In this way, the prisoners’ claims about rehabilitation suggested that they can and do change. They also countered the strong assumption in the VBRA proponents’ discourses that they lacked merit, arguing that in fact, lifers play a crucial leadership role once back in their communities, saying “Put these old bulls back in the bull pen – we can make our communities safe” (San Quentin Prisoner 2008). Through their self-descriptions as

meritorious beings, the prisoners were in fact redefining commonsense notions of “public safety.”¹⁹ Moreover, if their claims about rehabilitation disrupted constructions of the hardened criminal, these “lifers” also depicted themselves as in fact leaders *within the prison community* and as playing an important role in maintaining the order and calm of the prison. This is a fact that is generally accepted by corrections officials.²⁰

Overall, opponents of the Victim’s Bill of Rights Act challenged this law on the grounds that it:

- “Ends hope” for prisoners serving life
- Removes potential leaders (fathers, sons, mothers) from their communities
- Diminishes social capital within poor communities
- Redirects money away from state social services, and from rehabilitation, towards prisons
- Erodes younger generations’ belief in redemption and hard work
- Exacerbates determinate sentencing and other punitive laws.

The passage of the Victims’ Bill of Rights Act perpetuates social harms committed by the state. Lynn Cooper (2008), scholar and speaker on the prison panel, discussed the destabilizing effects and “collateral consequences” such as loss of social capital for communities where men ages 17-35 are missing (incarcerated), and the even larger impact on families of women “lifers” affected under the VBRA.²¹ These social harms are hidden insidious crimes, committed by invisible actors against victims rendered invisible by antagonistically dichotomous constructions of racialized and gendered victims/criminals. For, as Stabile (2006:183) states:

U.S. society has (*sic*) denied blacks a victim status at all. Invested in reproducing the mandates of racialized androcentrism, this system of meaning and practices offers up explanations that effectively decriminalize its own actions. In this fashion, the historically most vulnerable are rendered as the most significant threat to the dominant social order.

By inserting themselves into the victim discourse San Quentin prisoners disrupted the interpersonal harms/ameliorative justice framing of crime, and the victim/criminal dichotomy. They questioned victim as a monolithic category, which is subsumed in the everyday justice language of “crime victim,” “merit,” and “rights,” thereby challenging victim status as an exclusively white privilege, and they redefined this language. Most significantly, by illuminating the antagonistic dichotomies found in criminal justice language, the prisoners unearthed

Table 5. Community Harms: Reversal of Dominant Discourses

Community Harms: Reversal of Dominant Discourses (Complex non-polarized view)	
• Victims can be victimizers	Proposition 9 <i>increases</i>
• Offenders can be victims	public danger and
• The “innocent” can be guilty	decreases public safety

and brought to light the class and racial tensions and struggles at the base of this law. In short, where white supremacy disguised as “victims’ rights” vilified them as remorseless monsters, the prisoners faced these powerful discursive constructions of race, reframing the crime issue and restoring their essential humanity.

CONCLUSION

I have tried to illustrate how everyday, commonsense justice language is marked by antagonistic dichotomies that carry racial and gendered meanings. These dichotomies bolster an interpersonal-harms, ameliorative justice focus that, when politicized through Victim’s Bill of Rights Act of 2008, strengthens the state’s power to punish. Victims’ rights claims lie on a historical continuum with earlier racial and gendered constructions of victims and criminals in the service of maintaining white male privilege as “protectors” of white women. The hidden racial meanings invoked by (black) criminal and innocent (white, female) victim reify racial antagonism into criminal justice discourse, making some victims invisible, and silencing the racial Other. Advocates’ claims to rights for crime victims mask harm to the community and to *communities*. Our definition of “victim” in America, which has become increasingly narrowed within victims’ rights discourses, blinds us to social harms such as poverty, injustice, and the state’s punishment. The VBRA, with its underlying antagonistic dichotomies, insidiously *justifies* more punishment; it veils social and racial power, contributing to the mass warehousing of (black and brown) peoples in California prisons, a concept discussed by John Irwin (2005).

By co-opting the “Bill of Rights” in its title, the Victim’s Bill of Rights Act ironically empowers the state to punish Americans rather than protect them. This Act also represents an insidious inversion of rights discourse, or *rights reversals*. It appropriates and inverts the very concept of rights and oppression. For example, rights-based political movements were and are traditionally fought by those who lack social power, the truly oppressed, as seen with the Black civil rights movement and the women’s movement.

Our challenge as scholars and critical criminologists is to move through and beyond these dichotomies, even in our *analyses*. We must show how *all* are victimized when we empower the state to punish (Arrigo and Milovanovic 2009). Rather than to create a hierarchy of victimization or privilege community harms above interpersonal harms, instead we must show how rights claims, politicized within victims' rights movements, reinforce the punitive state as protector of (only some) victims. We also must show how current criminal justice policies empower the-state-as-punisher and dismantle the-state-as-provider. This harms all crime victims and all citizens, especially the most vulnerable citizens. Our task, then, as critical criminologists, is to develop a new criminal justice language, what Henry and Milovanovic (1996) call a "replacement discourse," to answer the dichotomizations in crime discourse, one that recognizes interpersonal and state harms, and that will address social harms in a way that dislodges racial power from liberal law and mainstream criminal justice talk. Our work must also include dismantling the punishment systems these discourses sustain. We might start by foregrounding the experience and words of those most oppressed. As Mary Bosworth and her colleagues suggest, by going into the prisons we "demonstrate people's fundamental humanity" (Bosworth, Campbell, Demby, Ferranti, and Santos 2005:260). Such work in prisons and communities can clear a space for the voices of those who are silenced and most oppressed by the rights, freedoms, and very language we take for granted.

Endnotes

¹The Victims' Bill of Rights Act of 2008, or Proposition 9, severely curtails the possibility of parole for "lifers" (those serving 25-years-to-life in state prison with the possibility of parole). It holds a presumption of a 15-year wait or denial period between probation hearings for parole-eligible inmates who are denied parole (previously, the rollover period was one to two years). The Act's advocates claim it merely provides "more flexibility" to parole boards (Zak 2008). Yet, Proposition 9 sets the strict standard of "clear and convincing evidence" to *prevent* this 15-year denial period (if it is prevented, the Board can require a rollover of three--unlikely--to five, seven, or ten years). The Board of Parole Hearings (BPH), essentially, must choose the 15-year maximum deferral except in cases of extraordinary circumstances surrounding an inmate's parole eligibility. The Act's other provisions, many of which reiterate those of an earlier California law, include: expanded access to parole hearings by giving crime victims access to, and to information about, parole hearings whether or not they have a specified relationship to the victim of the crime; preventing early release of prisoners even to reduce overcrowding; requiring notice be

sent to any victim of any felony for which the prisoner has been convicted; requiring automatic restitution be paid to crime victims or their families; redefining the term "victim"; and amending Proposition 9 to the California Constitution.

²The public knew little about this bill, which was scarcely debated in public. It was sponsored by the billionaire, Henry Nicholas (brother to Marsy, who was murdered by her boyfriend in 1983). Nicholas spent \$4.8 million dollars of his own money on this campaign, while only \$450,000 was spent by opponents of Proposition 9. (Ironically, due to several unrelated criminal charges against Nicholas that had surfaced, the Proposition 9 campaign distanced itself from Nicholas.)

³The Prison University Project, a nonprofit organization directed by Jody Lewin, operates through the accredited private Christian Patton University in Oakland, California; it offers a college degree to inmates who complete courses taught by instructors and teaching assistants inside San Quentin Prison. The aim of the October 2008 symposium was to air the ideas of both sides, bringing together inmates and the public in an atypical discussion that would give voice to those most affected by this law: California prisoners. It was also meant to draw publicity and educate the public (through the media attention) about Proposition 9.

⁴To conduct this analysis I relied on handwritten notes, since electronic devices (tape recorders, computers, etc.) were not permitted in the prison (only a pen and notepad were allowed inside). I collected about 20 pages of notes that day, for which I used a mix of a grounded theory approach (See Strauss and Corbin 1990) and content analysis. I identified concepts and organized themes, summarized from the various claims made by each side into "issue frames" (see for example, Beckett 1997). For example, I organized my data to show how concepts such as "victim," "merit" or "public safety" were framed by both sides, and I analyzed the oppositional nature of these framings that are presented in the Tables and Charts in this article. I also categorized key direct quotations used by both sides under thematic headings in the text, which allowed for further analysis. Where possible I include direct quotes from the prisoners and other opponents of Proposition 9, as well as from its advocates; in some places I had to reconstruct quotes from my notes as closely as possible. Finally, I relied on the text of the Victims' Bill of Rights Act and the Proposition 9 campaign literature for clarification.

⁵In 1977, California abandoned the rehabilitation ideal and indeterminate sentencing, an open-ended sentencing policy which left discretion to parole boards and allowed "good time credits" to earn early release for certain

offenders. These were replaced by determinate sentencing in 1977, which mandates fixed prison terms that are on average longer than under the previous system (Feeley and Simon 1992). Since that time, California has passed over 100 new determinate sentencing laws. California's Three Strikes Law and Proposition 21 (the "Juvenile Three Strikes") are among these. Fixed or determinate sentencing terms are typically long, 25 years, and many more offenses, including many nonviolent offenses, now fall under Three Strikes and other mandatory sentencing policy, dramatically increasing the length of time convicts spend in prison, spurring mass incarceration prison overcrowding.

⁶About 65% of the inmates in the prison chapel was Black, as was the prison Chaplain and presiding prison law attorney on the panel. Several activists and academics were also people of color. The remainder of prisoners was divided about equally between Latinos and whites.

⁷The prison symposium was well-attended and emotionally charged: television media were there, emotions and tensions ran high on both sides and so much was at stake for the men inside the walls of San Quentin. We, the invited guests and speakers, filed in through the two rows of heavy iron gates, slamming shut behind us, then into the courtyard, flanked by death row cell blocks on one side, and the prison chapel on the other, and the American flag flying in between, an odd symbolism. The symposium was held in the prison chapel. It consisted of panel of speakers. The Proposition 9 campaign members and proponents present were: Belinda Harris-Ritter, attorney and victims' rights advocate, who was accompanied by another woman, presumably also a crime victim, who did not speak or identify herself, and a man named Mitch Zak, the Proposition 9 campaign manager and public relations professional. The rest of us, who greatly outnumbered them, opposed the bill: the Prison Chaplain; about, 25 prisoners (all "lifers") who sat among us in the audience, about ten of whom spoke on the panel; a self-proclaimed survivor of a crime, Jaimee Karroll, who runs a restorative justice project in San Quentin; a prisoner rights attorney; and about 25 invited guests and activists and academics, of which I was one. We made up an unlikely brotherhood and sisterhood: the inmates in blue prison tops reading "San Quentin" across their backs, and blue jeans and tennis shoes, sat, composed, in the pews on the right side of the podium. The activists and academics sat on the left side. Mr. Zak, the first speaker, was seated on the panel next to the prison attorney and Chaplain.

⁸According to the *Fresno Bee* (12-14-08), certain portions of Proposition 9 have been blocked by a federal judge, since they conflict with rights gained in a 14-year class action lawsuit in Sacramento federal court (Olsen

2009). However, the 15-year rollover period remains intact among other provisions.

⁹Lifers are the prison population least likely to recidivate; they have a recidivism rate of about one percent. Ironically, the Proposition 9/VBRA focuses on them, and not the 70% of inmates who are at risk for re-offending (in California 7 in 10 inmates recommit crimes, not this one percent.) Additionally, parole is extremely rarely granted for homicide in California—in the last 20 years, only .05% of those convicted of second-degree murder or manslaughter who were eligible for parole were granted parole. The question becomes, how does deterring the .05% each year make us safer?

¹⁰This law, as one inmate noted, "changes the rules of the game midway through." By legislating such an extreme delay between parole hearings. It seems to retroactively change the original sentence conferred on the defendant at trial, of 25-years-to-life *with* the possibility of parole.

¹¹Historical "moral panics" over crime and drugs have been cyclical, the most recent being the War on Drugs of the 1980s. They have been potent discursive tools through which governments have reduced complex social problems to a matter of crime and called for more law and order (Hall et al. 1979; Beckett 1997; Reinerman and Levine 1997; Musto 1973). The public's fear of external dangers has been rallied since Prohibition, most typically by equating crime and drugs with a racialized Other—Blacks Chinese, Mexicans, immigrants. Dorothy Roberts (1997) claims that the "crack baby," the central image of the War on Drugs, painted Black mothers as monsters who intentionally harmed their children.

¹²Prior to the passage of Proposition 9, the victim was defined under the Penal Code as "the person against whom a crime had been committed." Under the VBRA, the California Constitution now defines "victim" as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or a delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated." The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds did not act in the best interests of a minor victim." (Cal. Const., art. 1 section 28(e).)

¹³While exiting the prison, my companion, a law student, informed me that she was able to chat with Belinda Harris-Ritter casually, just minutes earlier. This quote about fear was conveyed to me from the report of their conversation.

¹⁴The Proposition 9 campaign is part of an organized and well-funded victims' rights interest group in California, for which Mitch Zak was a paid public relations professional. Victims' rights group members are known for showing up at the parole hearings of inmates to whom they have no intimate or family connection whatsoever. This group and movement, with its tough-on-crime agenda and success in passing harsh criminal legislation, constitutes more than a group of survivors of violent crimes.

¹⁵Jamee Karoll, who is active in restorative justice at San Quentin, offered an account of her own psychological healing, which necessitated understanding that her perpetrators were also suffering and of the need to pave the way for offenders to give back as a way to restore justice. While "survivor" might work to reverse innocent victim/criminal constructs, it too may carry certain moralizing implications and may not represent the full range of violent crime victims, especially those who either did not survive, or have not survived the traumatic effects of a crime.

¹⁶The VBRA proponents claim to be establishing a neutral baseline (an "equal playing field") for crime victims and offenders. The irony is that the poor (including inmates) are structurally denied opportunities to demonstrate merit because of the persistence of inequality (or lack of rehabilitation programs in prisons); they are excluded from the playing field. Those with power in fact determine the meaning of merit. As Crenshaw states, "The putatively neutral baseline from which Affirmative Action is said to represent a deviation is in fact a mechanism for perpetuating the distribution of rights, privileges, and opportunity established under a regime of uncontested white supremacy" (Crenshaw 1995: xxix).

¹⁷This inmate was given a life sentence in the mid 1990s on a conspiracy charges in a robbery of a business, in which no one was killed. He announced on the panel that he had no gun, a car was hijacked, and a security guard was knocked unconscious. A Latino inmate later discussed with me his charges: he was given a third strike and thus an automatic 25 years-to-life in prison for three nonviolent felonies (two residential burglaries and one attempted burglary). This is typical in Three Strikes sentencing whereby many defendants whose offenses are non-violent are incarcerated for long terms or life terms.

¹⁸Lifers with parole are in fact more motivated to take advantage of any rehabilitation programs offered in the prison than those inmates serving long, determinate sentences *without* the chance parole. However, the VBRA proponents' claims imply that offenders are beyond rehabilitation due to their inherently inhumanity.

¹⁹It is significant that the prisoners contested notions of meritocracy by constructing themselves as preservers of *public safety* as opposed to criminal predators: even more important than their peace-keeping role within the prison, they illuminated their potential role, as fully rehabilitated men, as providers, leaders and role models, especially for youth, in their own disadvantaged communities, once (and if) released.

²⁰It is telling that the powerful California prison guards union, the California Correctional Peace Officers Association (CCPOA), which typically heavily backs punitive laws such as Three Strikes and Proposition 21, refused to back VBRA. One inmate told me that this is because the CCPOA was well aware of lifers' instrumental role in maintaining prison order and calm, and understands the repercussions for prison guards if prisoners lose the incentive to behave well or seek rehabilitation. Additionally, "lifers," as keepers of order, demonstrates an ironic reversal of the image of the remorseless, monstrous criminal at base of the VBRA advocates' argument.

²¹In addition, denial of parole also results in a loss of community and familial mechanisms of social control, of youths especially, in poor communities, where the police then take on this role. Cooper (2008) also stressed that the VBRA destroys hope and the belief in hard work, change and redemption by severely undermining the incentive for rehabilitation. She pointed to the social harms of long-term incarceration for neighborhoods and communities, describing a "tipping point" effect when nearly one percent of community members in poor Black and Latino communities is in prison, causing whole communities to become destabilized.

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