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Crime Victimhood and Intersectionality

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CRIME VICTIMHOOD AND INTERSECTIONALITY

Hadar Dancig-Rosenberg & Noa Yosef***

“The world breaks every one and afterward many are strong in the broken places.¹”

ABSTRACT

This Essay offers a thought experiment designed to challenge existing perceptions of crime victimhood by replacing prevalent social narratives with alternative ones in an effort to break the stereotypes that shape victimhood and, instead, to empower the victim. Using intersectionality as a theoretical framework, we suggest a different reading of the identity characteristic of crime victimhood: not as representing weakness and helplessness but as granting personal and social power. The proposed conceptual change is not merely symbolic but has important practical implications. The #MeToo campaign of 2018 and the Larry Nassar case illustrate our claim and show that recognition of the prevalence of crime victimhood affects the empowerment of the victims’ group in ways that enable the expansion of the modes of action by group members, eliminating the shame and transferring power to victims.

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INTRODUCTION

What do you think when you hear about someone who has suffered harm as a result of a crime? Most people tend to connect crime victimhood with helplessness. Crime victims are part of a social group that is almost automatically perceived as a weak group in society.² Victims are often described in a one-dimensional manner as inferior, passive, weak, ignorant, or pathetic.³ Victims of crime, especially of sexual offenses and domestic violence, are at times accused of bringing the harm upon themselves due to what are labeled in some societies as non-normative behaviors. Such behaviors include dressing revealingly, acting flirtatiously, and walking alone in

2. See, e.g., Justine A. Dunlap, *Sometimes I Feel Like a Motherless Child: The Error of Pursuing Battered Mothers for Failure to Protect*, 50 LOY. L. REV. 565, 576 (2004) (“[V]ictimhood carries a negative connotation. Victims are powerless and incapacitated.”); Pam A. Mueller, *Victimhood & Agency: How Taking Charge Takes Its Toll*, 44 PEPP. L. REV. 691, 699–704 (2017) (explaining that people usually view victims as passive and do not acknowledge their agency); see Carina Ljungwald & Kerstin Svensson, *Crime Victims and the Social Services: Social Workers’ Viewpoint*, 8 J. SCANDINAVIAN STUD. CRIMINOLOGY & CRIME PREVENTION 138, 145 (2007) (presenting findings that as a category, victims of crime are described as weak by social workers).

3. See Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1429–30, 1432 (1992); Jan van Dijk, *Free the Victim: A Critique of the Western Conception of Victimhood*, 16 INT’L REV. VICTIMOLOGY 1, 1–9 (2009) (elaborating on the source of the term “victim” and the development of the victim label).

dangerous places.⁴ In those instances, the victims may be held partially responsible for the harm suffered.

The link between victimization and marginalization is reinforced by social narratives that perpetuate the helpless image of victims of crime. These social narratives include the victimization discourse of radical feminism,⁵ the focus of classic victimology on the factors of victimization and its negative consequences,⁶ and the perception of humans as liberal and independent subjects, immune to harm.⁷ These prominent narratives generate considerable knowledge, but along the way they contribute to perpetuating the marginalization of crime victims. Additionally, the “otherness” discourse assumes that as long as individuals behave according to social norms, no harm will come to them.⁸ In this way, the prototype of the “victim” is created, and, at the same time, the social perception that victims of crime are located at the margins of society is reinforced.⁹

Yet, social hierarchies are human creations. As such, they are dynamic and changeable.¹⁰ This Essay offers an intellectual exercise

4. See Avigail Moor, *She Dresses to Attract, He Perceives Seduction: A Gender Gap in Attribution of Intent to Women's Revealing Style of Dress and Its Relation to Blaming the Victims of Sexual Violence*, 11 J. INT'L WOMEN'S STUD. 115, 115 (2010) (empirically examining rape myths regarding women's style of dress and its connection to victim-blaming); Francis X. Shen, *How We Still Fail Rape Victims Reflecting on Responsibility and Legal Reform*, 22 COLUM. J. GENDER & L. 1, 11–28 (2011) (elaborating on rape myths and their connection victim-blaming).

5. See *infra* Part II.B.i.

6. See *infra* Part II.B.ii.

7. See *infra* Part II.B.iii.

8. The phenomenon of otherness is explained by Melvin J. Lerner's “just world” theory, according to which people adopt a belief that bad things do not happen to good people. This belief reinforces a sense of security because it creates a stipulation that as long as people behave according to accepted norms, they are protected. A set of values and certain social norms follow from this belief including “otherness.” See Melvin J. Lerner, *What Does the Belief in a Just World Protect Us From: The Dread of Death or the Fear of Understanding Suffering?*, 8 PSYCHOL. INQUIRY, 29, 30 (1997); see also Hadar Dancig-Rosenberg, *Sexual Assault Victims — Empowerment or Re-Victimization? The Need for a Therapeutic Jurisprudence Model*, in TRENDS AND ISSUES IN VICTIMOLOGY 150, 160 (Natti Ronel et al. eds., 2008); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 607–08, n.9 (2009) (explaining the phenomenon of otherness in a broader sense).

9. See Todres, *supra* note 8, at 607–08.

10. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1350–51 (1988) [hereinafter Crenshaw, *Race, Reform, and Retrenchment*] (presenting and analyzing, based on the writings of Antonio Gramsci and Robert Gordon, the manner in which anti-discrimination law obscures the existing inequality and the place of the law in creating this consciousness); see also Frank Rudy

designed to challenge existing perceptions of crime victimhood by replacing prevalent narratives with alternative ones, breaking the stereotypes that shape victimhood in order to empower the victims. Using intersectionality¹¹ as a theoretical framework, we suggest a different reading of the identity characteristic of victimhood: not as representing weakness, which serves as grounds for exclusion and discrimination, but as granting personal and social power.

Intersectionality discusses the social stratification and hierarchy stemming from the presence of various identity axes.¹² An identity axis can be described as an imaginary line, with everyone located on it sharing a common characteristic. According to the theory, some identity axes are perceived by the prevailing social construction as

Cooper, *Always Already Suspect: Revising Vulnerability Theory*, 93 N.C. L. REV. 1339, 1367–70 (2015) (explaining the social construction of identities).

11. See Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) [hereinafter Crenshaw, *Demarginalizing the Intersection of Race and Sex*] (creating the concept of intersectionality); see, e.g., Patricia Hill Collins, *Gender, Black Feminism and Black Political Economy*, 568 ANNALS AM. ACAD. POL. & SOC. SCI. 42 (2000) (noting that the concept gained prominence in the 1990s, when it was integrated into Black feminist writing).

12. See *infra* Part I; see, e.g., Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STAN. L. REV. 1241, 1280–83 (1991) [hereinafter Crenshaw, *Mapping the Margins*] (claiming the treatment of those who are on intersecting subordinate identity categories may lead to the erasure of their experience and needs). Crenshaw discusses the way both racism and sexism affect women of color when dealing with violence, and how often only one dimension of the two will be acknowledged (according to the position advocated). *Id.* As she states:

[W]hen one discourse fails to acknowledge the significance of the other, the power relations that each attempts to challenge are strengthened. For example, when feminists fail to acknowledge the role that race played in the public response to the rape of the Central Park jogger, feminism contributes to the forces that produce disproportionate punishment for Black men who rape white women, and when antiracists represent the case solely in terms of racial domination, they belittle the fact that women particularly, and all people generally, should be outraged by the gender violence the case represented.

Id. at 1282.

See also Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful*, 9 FEMINIST THEORY 67, 68 (2008) (defining “intersectionality” as “the interaction between gender, race, and other categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power.”); Nira Yuval-Davis, *Power, Intersectionality and the Politics of Belonging* 4 (Aalborg: Inst. for Kultur og Globale Studier, Working Paper No. 75, 2011) (stating that intersectionality is “the most valid approach to analyze social stratification as a whole”).

axes of oppression, whereas others are seen as axes of domination. The axes of domination serve as the criteria with respect to which the other axes are measured and determined.¹³ Those who are positioned on the axes of domination enjoy social privileges, whereas those positioned on the axes of oppression generally experience discrimination.¹⁴ The convergence of various axes of identity creates an identity intersection. The intersection consists of a set of characteristics that affect each other in a way that creates complex and multi-dimensional identities.¹⁵ The classification of the axes at the intersection affects the classification of the intersection within the social hierarchy.¹⁶ Those located at high-status intersections, where several axes of domination meet, enjoy substantial social power that enables them to shape the boundaries of the norm and various social institutions.¹⁷ By contrast, those located at the intersection of axes of oppression suffer from oppression and discrimination.¹⁸

13. Devon Carbado, *Colorblind Intersectionality*, 38 *SIGNS: J. WOMEN CULTURE & SOC'Y* 811, 817–23 (2013) (arguing that the axes of domination are generally perceived as invisible, and similarly, so are the intersections between them. Thus, the intersection of the axes white-heterosexual-male is perceived as a high-status intersectionality, and traditionally serves as a frame of reference for all the other intersections).

14. Stephanie A. Shields, *Gender: An Intersectionality Perspective*, 59 *SEX ROLES* 301, 302 (2008) (explaining that categories and intersectional positions are relative, and so are the advantaged and disadvantaged people they create).

15. Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38 *SIGNS: J. WOMEN CULTURE & SOC'Y* 1019, 1020 (2013) (emphasizing the theory's ability to focus on the "awareness on people and experiences — hence, on social forces and dynamics — that, in monocular vision, are overlooked"); Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 11, at 149 (using the intersectionality metaphor to account for Black women's experience).

16. Carbado, *supra* note 13, at 818 (noting that the certain axes construct high-status intersectionality).

17. *See id.* (elaborating on the code of conduct created by the hierarchy between the axes, and on the perception of the behavior of those located along the axis of domination as normative); *see also* Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 *YALE L.J. F.* 105, 110 (2018) (discussing the power of white men to shape laws, including those concerning women).

18. *See* Carbado, *supra* note 13, at 814 (explaining that those characterized by many axes of oppression are not always in an inferior position, and that being located at the intersection of axes of oppression may sometimes lead to advantages derived from "intersectional invisibility"); *see also* Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 *SEX ROLES* 377, 381 (2008) (explaining and elaborating on "intersectional invisibility" as the "general failure to fully recognize people with intersecting identities as members of their constituent groups. Intersectional invisibility also refers to the distortion of the intersectional persons' characteristics in order to fit them into frameworks defined by prototypes of

This Essay proposes to conceptualize crime victimhood as an axis of identity. This axis stands in itself as a characteristic of identity, and it is not limited to a given gender, economic, or social affiliation. Moreover, the axis of victimhood is based on a flexible characterization that extends across a spectrum: a wide range of types of crimes and different types of harm resulting from the commission of any given offense distinguish between different types of victims located at different points along the axis. Furthermore, intersectionality highlights that an axis will never stand alone but always intersect with other axes, creating social complexity.

However, the axis of victimhood is generally perceived as an axis of oppression. Replacing the common narratives with alternative ones may create a social-cognitive change that can help relocate the axis to a higher position in the social hierarchy. This Essay presents three possible theories for converting “disempowering” narratives into “empowering” ones: (1) adopting the discourse of cultural feminism over radical feminism; (2) embracing positive victimology theories over traditional victimology; and (3) replacing the perception of humans as liberal subjects with theories that emphasize the inherent human vulnerability shared by all people. The “disempowering” narratives have a widespread presence in the victims’ discourse. The proposed change in the perception of the axis of victimhood has important practical implications. Those positioned along the axes of domination enjoy flexibility in the design of social institutions. Therefore, they are more likely to easily promote their worldview. Thus, identifying crime victimhood as an identity characteristic located on a higher axis in the social hierarchy will enable crime victims to influence this design, and develop support mechanisms such as advancing crime victims’ rights, advocating restorative justice for the victims, and even changing social norms attributed to victims through public discourse. For instance, the #MeToo campaign of 2018 and the Larry Nassar case illustrate our claim and show that recognition of the prevalence of crime victimhood affects the empowerment of the group of victims in a way that enables the

constituent identity groups The social invisibility that people with intersecting identities experience by virtue of their non prototypicality gives them a mix of advantages and disadvantages compared to prototypical members of their groups.”); *see also* Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 11, at 140 (examining the intersection of black women and arguing that “Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender”).

expansion of the modes of action of group members, eliminating the shame and transferring power to members of the group.

Part I of this Essay presents the general theory of intersectionality. Part II analyzes the status of the axis of identity of crime victimhood. It also proposes adopting a conceptual change that would replace the stereotypical victim narratives with stories that emphasize victims' power and strength in coping with harm. Part III discusses the practical implications of the conceptual change. Finally, Part IV suggests future directions for developing the thought experiment proposed in this Essay.

I. INTERSECTIONALITY

Intersectionality is a conceptual framework developed by Professor Kimberlé Williams Crenshaw,¹⁹ which sheds light on social power relations and their stratification, and enables us to map them.²⁰ The theory traces elements of social similarity and variation that create a dynamic of hierarchy, subordination, and exclusion between different social groups, based on a multidimensional view of complex identities.²¹ The theory usually revolves around categories that define certain identity characteristics, such as sex, sexual orientation, and race, and around the social forces that construct these categories.²² Crenshaw explains that black women are at the intersection of two axes of oppression: an axis of sexist oppression, stemming from belonging to the biological axis as women, and an axis of racist oppression, stemming from their racial affiliation, which is African American. This position produces a life experience for black women that differs from that of white women, on the one hand, and that of black men, on the other, and establishes a system of discrimination that prevents recognition of their uniqueness and needs.²³ By exposing the social mapping, the theory of intersectionality helps

19. Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 11, at 140; *see also* Crenshaw, *Mapping the Margins*, *supra* note 12, at 1245 (continuing to develop the concept of intersectionality).

20. Yuval-Davis, *supra* note 12, at 4.

21. Sumi Cho et al., *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 *SIGNS: J. WOMEN CULTURE & SOC'Y* 785, 797 (2013).

22. *See, e.g.*, PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 18 (Routledge 2d ed. 2000); Carbado, *supra* note 13, at 813–14; Davis, *supra* note 12, at 68.

23. Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 11, at 140.

analyze the power structures that dictate and preserve the existing social structure.²⁴

In practice, those located at the intersections of oppression are discriminated against and deprived in various areas of life because of ignorance about their life experiences and unique needs. They are silenced and denied access to social resources.²⁵ To benefit from various social privileges, oppressed groups must show their similarity to the high-status intersection.²⁶ The need to resemble the ruling group also dictates what behaviors are considered normative and accepted. Those located along the axes and intersections of dominance dictate the behavioral norms in society.²⁷ At times, their point of view is accepted as the normative reference point, and they are perceived as authorized to speak for the general population.²⁸ This is not to say those located along the axes of dominance are entirely free of social constraints,²⁹ but their control of social resources gives them greater room to maneuver.

The power gaps and the imposition of a standard of behavior by those located at the intersections of dominance exist in the legal field as well. As Martha Minow explained, the legal treatment contains “an assumed point of comparison: women are compared to the unstated norm of men, ‘minority’ races to whites, handicapped persons to the able-bodied, and ‘minority’ religions to ‘majorities.’”³⁰ The comparisons are socially constructed by those with power — those located on axes of domination. They create a hierarchy between relevant and irrelevant traits, thus labeling what is

24. MacKinnon, *supra* note 15, at 1023; *see* Cho et al., *supra* note 21, at 790.

25. Cho et al., *supra* note 21, at 790–91 (explaining the silencing of black women due to the intersectional form of discrimination they face and their hardships in obtaining legal remedies).

26. *See* Carbado, *supra* note 13, at 818–41 (showing and analyzing examples of the need to demonstrate similarity to the dominant axes as a condition for receiving social approval).

27. *Id.* at 818.

28. *See, e.g.*, Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588 (1990); Cho et al., *supra* note 21, at 790–91.

29. *See* Emma Sleath & Ray Bull, *Male Rape Victim and Perpetrator Blaming*, 25 J. INTERPERSONAL VIOLENCE 969, 982–83 (2010) (discussing rape myths, which prevent the recognition of men’s experiences of sexually assault because of perceptions that a heterosexual male is always willing to have sex).

30. Martha Minow, *Foreword: Justice Engendered*, 101 HARV. L. REV. 10, 13 (1987).

“normal.”³¹ Legal rules and social arrangements reflect this construction and labeling.³²

The dominant culture also constructs victimhood.³³ To obtain legal recognition, one must adopt what the courts consider typical crime victim behavior.³⁴ Conversely, behavior outside of these norms as well as membership in a disadvantaged social category may lead to more severe punishments, the application of stereotypes of dangerousness, and discrimination by law enforcement.³⁵

II. CRIME VICTIMHOOD IN THE LIGHT OF INTERSECTIONALITY

A. The Current Approach: Crime Victimhood as an Axis of Oppression

In the current social discourse, victims of crime are seen as a relatively weak group in the legal system.³⁶ Radical feminist writing

31. *Id.* at 32–33.

32. *Id.* at 33.

33. Stephen L. Carter, *When Victims Happen to Be Black*, 97 *YALE L.J.* 420, 421 (1988); Leigh Goodmark, *When Is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 *YALE J.L. & FEMINISM* 75, 86–87 (2008) (stating that the battered women discourse has been shaped by white, middle-class, heterosexual women).

34. *See, e.g.*, Goodmark, *supra* note 33, at 78 (“[V]ictims of violence are encouraged to tailor their stories as closely as possible to the prevailing narrative to persuade the legal system of their need for protection.”).

35. *See, e.g.*, James Forman Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 *YALE L.J.* 101, 104 (2012) (elaborating on the mass incarceration of black Americans, especially those of low socioeconomic status); David A. Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 *MINN. L. REV.* 265, 310–19 (1999) (discussing disparities in police treatment at traffic stops for black and white people, and generally describing the frightening experience of driving while black); Darrell Steffensmeier et al., *Intersectionality of Race, Ethnicity, Gender, and Age on Criminal Punishment*, 60 *SOC. PERSP.* 1, 10–19 (2016) (presenting findings regarding the influence of the convergence of the axes of identity of sex, gender, race, and ethnicity on court verdicts).

36. *See* Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2 *BYU L. REV.* 255, 256–60 (2005) (describing the development of victims’ rights and victims as a group that is systematically harmed by the legal system); Kenneth O. Eikenberry, *Victims of Crime/Victims of Justice*, 34 *WAYNE L. REV.* 29, 47–49 (1987) (discussing the status of victims of crime in the American political arena and arguing that the rights of victims must be enshrined in the Constitution to ensure their existence in a changing political climate). *But see* David M. Paciocco, *Why the Constitutionalization of Victim Rights Should Not Occur*, 49 *CRIM. L.Q.* 393, 405 (2005) (arguing that crime victims in the United States are not a persecuted political minority).

links crime victimhood with female victimhood.³⁷ A victim's image is often one-dimensional and closely connected with powerlessness and passivity.³⁸ This image of the victim often leads to societal reactions of pity, condescension, and paternalism.³⁹ At the same time, victims also experience significant social benefits, including sympathy, social solidarity, compassion, attention, forgiveness, support, and compensation.⁴⁰ However, to enjoy the advantages of victimhood, individuals must conform with victim stereotypes.⁴¹ Actions inconsistent with these characteristics may result in denial of the benefits. As such, victims may think it is preferable to highlight their pain in order to receive social solidarity, including possible compensation.⁴²

At the same time, the perception of crime victims as weak is perpetuated by the phenomenon of otherness. Some are persuaded that victims of crime have brought the harm upon themselves because they did not act in accordance with the social code.⁴³ This idea often leads to victim-blaming.⁴⁴ Any behavior that is inconsistent with

37. See, e.g., CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989) [hereinafter MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE]; CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); see also Hadar Dancig-Rosenberg & Dana Pugach, *Pain, Love, and Voice: The Role of Domestic Violence Victims in Sentencing*, 18 MICH. J. GENDER & L. 423, 459–62, 469–70 (2012); Linda G. Mills, *Intimate Violence as Intimate: The Journey and a Path*, 9 CARDOZO WOMEN'S L.J. 461, 462–63 (2003).

38. See Minow, *supra* note 3, at 1419, 1428–32 (discussing the traits associated with victims and victim talk).

39. *Id.* at 1429.

40. *Id.* at 1426; van Dijk, *supra* note 3, at 18.

41. See van Dijk, *supra* note 3, at 18.

42. Tyra-Ya'ara Toren, *Theoretical and Practical Aspects of Positive Victimology*, in POSITIVE CRIMINOLOGY 237, 242 (Natti Ronel & Dana Segev eds., 2015); Minow, *supra* note 3, at 1431; van Dijk, *supra* note 3, at 13–18 (elaborating on the harsh social response to victims who choose to respond actively and renounce the identity of the victim, and describing the criticism leveled at a mother of a murder victim who channeled her grief into social action for the benefit of casualties. According to the criticism, her lack of “debilitating grief” indicated that she had never loved her daughter).

43. See *supra* note 8. One may claim that victims have a certain responsibility for their harm because the norm provides individuals with desirable behavioral limits intended to warn them about conduct that can have harmful consequences. This argument is problematic because it blames the victim and ignores the fact that the boundaries of behavior that are considered “normative” are dictated by certain groups.

44. See, e.g., COLLEEN A. WARD, ATTITUDES TOWARD RAPE: FEMINIST AND SOCIAL PSYCHOLOGICAL PERSPECTIVE (London, Thousand Oaks & New Delhi eds., 1995); Martha R. Burt, *Cultural Myths and Supports for Rape*, 38 J. PERSONALITY &

social expectations further removes the victim away from the social center.⁴⁵

The inferior status of victims of crime is also reflected in the legal domain. Although victims are now recognized as a social group with certain rights,⁴⁶ they still suffer from unique difficulties in the legal world. In the adversarial system, victims of crime, as a rule, are not party to criminal proceedings, and, at most, participate only in relevant segments of the proceedings.⁴⁷ Gaps between laws and their implementation harm the protection of victims.⁴⁸ Many victims encounter difficulties in exercising their rights because of lack of legal knowledge and support systems.⁴⁹ In addition, victims' privacy is routinely violated by courts⁵⁰ and the media, often with support of the

SOC. PSYCHOL., 217 (1980) (analyzing cultural myths, including victim-blaming, and how they perpetuate the phenomenon of rape).

45. See Denise A. Donnelly & Stacy Kenyon, "Honey, We Don't Do Men" *Gender Stereotypes and the Provision of Services to Sexually Assaulted Males*, 11 J. INTERPERSONAL VIOLENCE 441, 447 (1996) (presenting findings on how the phenomenon of othering is reflected in the attitude of male agents of law enforcement toward male victimhood); Eliana Suarez & Tahany M. Gadalla, *Stop Blaming the Victim: A Meta-Analysis on Rape Myths*, 25 J. INTERPERSONAL VIOLENCE 2010, 2024 (2010) (explaining the connection between rape myths and other societal attitudes such as sexism, racism, and homophobia).

46. See, e.g., GWYNN DAVIS, MAKING AMENDS: MEDIATION AND REPARATION IN CRIMINAL JUSTICE 13 (1992); LESLIE SEBBA, THIRD PARTIES – VICTIMS AND THE CRIMINAL JUSTICE SYSTEM (1996); Erin C. Blondel, *Victims' Rights in an Adversary System*, 58 DUKE L.J. 237 (2008); Erin A. O'Hara, *Victim Participation in the Criminal Process*, 13 VAND. J.L. & POL'Y 229 (2005).

47. See Beloof, *supra* note 36, at 351–52 (distinguishing between a victim who is a participant in the proceedings and one who is a party to the proceedings for the realization of rights).

48. See Joanne Belknap, *Rape: Too Hard to Report and Too Easy to Discredit Victims*, 16 VIOLENCE AGAINST WOMEN 1335, 1338 (2010) (expressing that lawyers routinely violate rape shield laws); Paul G. Cassell et al., *Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed*, 104 J. CRIM. L. & CRIMINOLOGY 59, 59–60 (2014) (addressing the absence of victims' rights measure before an indictment is formally issued); Shen, *supra* note 4, at 8–9 (explaining the failures of rape law reforms).

49. See Susan A. Bandes, *Share Your Grief but Not Your Anger: Victims and the Expression of Emotion*, in EMOTIONAL EXPRESSION: PHILOSOPHICAL, PSYCHOLOGICAL, AND LEGAL PERSPECTIVES 263, 279–80 (Catharine Abell & Joel Smith eds., 2016) (discussing difficulties family members of victims of homicide face when they want to make a victim impact statement that is not aligned with a prosecutor's goal of obtaining a death penalty sentence); Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 OHIO ST. J. CRIM. L. 67, 77 (2015) (detailing the difficulties victims face in obtaining information about exercising their rights due to the lack of attorney representation).

50. Garvin & Beloof, *supra* note 49, at 77–80; see also Hadar Dancig-Rosenberg & Dana Pugach, *Between Secondary Victimization and Positive Victimology: The*

legal principles of First Amendment rights.⁵¹ This social and legal attitude may lead victims to feel shame, to withhold their testimony, and to provide different versions of testimony, negatively affecting their credibility.⁵² Rules created to protect crime victims in court cannot always prevent secondary victimization.⁵³ In fact, sometimes these rules can cause revictimization, such as in the treatment of battered women.⁵⁴ These rules are shaped according to the needs of a particular group — white, middle-class, heterosexual women — thereby preventing other women from gaining recognition as victims or receiving courts' help and protection.⁵⁵ Women's stories are edited to be compatible with the prevailing battered women narrative, a narrative that white, male, middle-class judges can recognize, sympathize and remedy.⁵⁶ Rape shield laws create similar issues. These laws are meant to protect victims of sexual assault by preventing an invasion of their privacy.⁵⁷ However, they contain

Case of Crime Victims' Right of Privacy, in POSITIVE CRIMINOLOGY 292 (Natti Ronel & Dana Segev eds., 2015) (presenting the tension between victims' right to privacy and defendants' rights).

51. See David E. Fialkow, *The Media's First Amendment Rights and the Rape Victim's Right to Privacy: Where Does One Right End and the Other Begin*, 39 SUFFOLK U. L. REV. 745, 760–71 (2006) (arguing that the victim's privacy interests outweigh the media's First Amendment interests in divulging sensitive information about the victim's identity); see also Ya'ara Barnoon & Elena Sytcheva, *Rape, Sexual Assault & Evidentiary Matters*, 13 GEO. J. GENDER & L. 459, 474–78 (2012) (providing examples of the harsh consequences that violations of the victim's privacy by the media might have for the victim and the legal proceedings).

52. See Scott D. Carman, *Commonwealth v. King's First Complaint Doctrine: The Voice of Injustice May Speak Loudly When Rape Victims Are Silenced*, 42 NEW ENG. L. REV. 631, 657–58 (2008) (elaborating on juror misconceptions regarding victims of rape, and on partial testimonies of rape victims because of shame and fear of the social reaction and of the response of the investigating officials).

53. See SEBBA, *supra* note 46.

54. See, e.g., Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1042–43 (2000) (observing that in the case of battered women of color, policies of mandatory arrests may “include the risk of police brutality, primarily against the batterer, but also against the victim; the risk that the victim will be arrested; the risk that police intervention will result in increased and ongoing state intrusion in the life of the victim; the risk of financial loss resulting from the batterer's arrest; and the risk of relationship loss”); see also *id.* at 1026, n.65–66.

55. See, e.g., Goodmark, *supra* note 33, at 90–91, 110–11 (stating that some states do not account for battering between lesbian partners due to the failure to acknowledge same-sex violence).

56. See *id.* at 91, 105–23 (finding that silencing victims leads to secondary victimization and stereotyping).

57. See Michelle J. Anderson, *From Chastity Requirement to Sexuality License: Sexual Consent and a New Rape Shield Law*, 70 GEO. WASH. L. REV. 51, 86–96 (2002).

broad exceptions that reinforce the perception of conventional and appropriate sexual morality among women, leading to a lack of protection for those whom the judge finds promiscuous.⁵⁸

B. The Proposed Change: Crime Victimhood as an Axis of Domination

In order to change the perception of victims from the axis of victimhood to the axis of domination, we must change the social narratives. Instead of stories of weakness and lack of autonomy, we suggest adopting theories that establish power and survivability among victims. We also emphasize vulnerability not as unique to victims of crime, but as a common characteristic of all humanity and devoid of negative connotations. This Section discusses current narratives and alternatives that make it possible to promote the proposed change. First, we suggest replacing the victimhood perception of radical feminism with the more autonomous attitude of cultural feminism. Then, we discuss the replacement of traditional victimology with positive victimology. Finally, we encourage the perception of humans not as liberal and independent, but as vulnerable subjects in accordance with Martha Fineman's vulnerability thesis,⁵⁹ which sees human vulnerability as the base for the state's responsibilities.⁶⁰

i. From Radical to Cultural Feminism and the Recognition of Multi-Gender Victimhood

Radical feminism sought to shed light on the power relations between men and women in society that perpetuate the inferiority and dependence of women, with an emphasis on the social context of private violence ("personal is political").⁶¹ The radical discourse sought to emphasize the connection between the axis of crime victimhood and those of sex and gender. They did so by emphasizing

58. *See id.*

59. *See* MARTHA ALBERSTON FINEMAN & JONATHAN W. FINEMAN, VULNERABILITY AND THE LEGAL ORGANIZATION OF WORK 3–5 (2018); Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J.L. & FEMINISM* 1, 8–12 (2008) [hereinafter Fineman, *Anchoring Equality*]; *see also infra* Part II.B.iii.

60. Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 *EMORY L.J.* 251, 255 (2010).

61. *See* MACKINNON, *TOWARD A FEMINIST THEORY*, *supra* note 37, at 119–20 (exploring the theory that personal relationships exist within a broader political power structure).

the social inferiority suffered by women, which unwillingly turned them into victims of the patriarchal regime⁶² and imprisoned them in a false consciousness regarding their abilities and desires.⁶³ As part of this conception, radical feminism created a connection between womanhood and crime victimhood.⁶⁴ It was not without reason that it was nicknamed “victim feminism.”⁶⁵

Yet, the radical approach, which advocates a paternalistic policy towards victimhood, exacts a heavy price. At the symbolic level, the narrative of victimhood contributes to negative perceptions of victims, who are labeled as weak, passive, and powerless.⁶⁶ Furthermore, victims’ behavior patterns are assumed to be limited by a false consciousness that prevents them from realizing their victimization, thus reducing their ability to make informed choices.⁶⁷ This assumption is reflected in policymaking regarding the treatment of crime victims, including paternalistic mandatory arrest policies and no-drop prosecution policies for sexual offenses and domestic violence.⁶⁸ According to these policies, if a police officer has probable cause to believe that violence has occurred between spouses, the officer must arrest the perpetrator and the prosecutor must issue an indictment.⁶⁹ These policies assume only one solution

62. See Anne Edwards, *Male Violence in Feminist Theory: An Analysis of the Changing Conceptions of Sex/Gender Violence and Male Dominance*, in WOMEN, VIOLENCE AND SOCIAL CONTROL 13–14 (Jalna Hanmer et al. eds., 1987); Jill Radford, *Policing Male Violence — Policing Women*, in WOMEN, VIOLENCE AND SOCIAL CONTROL 30–31 (Jalna Hanmer et al. eds., 1987).

63. See Goodmark, *supra* note 33, at 85–86 (finding that victimhood and traditional notions of womanhood are inextricably linked).

64. See *id.*

65. See Kathryn Abrams, *Songs of Innocence and Experience: Dominance Feminism in the University*, 103 YALE L.J. 1533, 1540–44 (1994) (reviewing KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* (1993)); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 863–67 (1990); Elizabeth M. Schneider, *Feminism and the False Dichotomy of Victimization and Agency*, 38 N.Y.L. SCH. L. REV. 387, 391–93 (1993).

66. See generally NAOMI WOLF, *FIRE WITH FIRE: NEW FEMALE POWER AND HOW IT WILL CHANGE THE TWENTY-FIRST CENTURY* (1993).

67. See Dancig-Rosenberg & Pugach, *supra* note 37, at 465–83 (offering an extensive analysis of radical feminism’s perception of domestic violence victims’ behavioral patterns).

68. *Id.* at 463 (citing David A. Ford & Mary Jean Regoli, *The Criminal Prosecution of Wife Assaulters: Process, Problems and Effects*, in LEGAL RESPONSE TO WIFE ASSAULT: CURRENT TRENDS AND EVALUATION 127, 150 (N. Zoe Hilton ed., 1993)).

69. Jessica Dayton, *The Silencing of a Woman’s Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN’S L.J. 281, 282 (2003).

and leave the authorities no room for discretion. As a result, the victims themselves are deprived of the freedom to make their own decisions.⁷⁰

Instead of the radical narratives that connect crime victimhood with weakness, cultural feminism seeks to integrate the feminine life experience and vision into the terms of autonomy and rationality.⁷¹ Under cultural feminism, victimized women have broader authority to choose how to react, which is regarded as an empowering and important factor in female victims' journey through the legal process.⁷² While still recognizing the tremendous practical achievements of radical feminism,⁷³ we suggest that changing the specific connection between victimhood and weakness may help victims. This change alone, however, is not enough. Both types of feminism suffer from essentialism⁷⁴ and reduce the experience of victimhood to a single-gender instantiation. The preoccupation with female victimhood contributes to the perception of men as abusers and women as victims.⁷⁵ But the axis of victimhood is not unique to women; men can also be harmed by crimes, which may be committed by men or women.⁷⁶ Men who are victims of sexual assault and

70. *Id.* at 282–83 (criticizing these policies).

71. *See generally* CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982) (presenting a cultural feminist approach in which traditionally female psychology and decision-making are understood as equally valid in their ethics and reasoning as those of men); *see also* NANCY J. CHODOROW, *THE REPRODUCTION OF MOTHERING* (1978); JEAN BAKER MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* (1976).

72. *See, e.g.*, Dayton, *supra* note 69, at 297.

73. The third wave of feminism, to which intersectionality belongs, does not seek to erase the contribution and influence of the second wave, which is still relevant today, but rather to shed light on unresolved dilemmas. *See* R. Claire Snyder, *What Is Third-Wave Feminism? A New Directions Essay*, 34 *SIGNS* 175, 175–76 (2008) (exploring the literature on third-wave feminism and its response to perceived shortcomings of the second wave).

74. *See* Katharine K. Baker, *Dialectics and Domestic Abuse*, 110 *YALE L.J.* 1459, 1464 (2001) (criticizing the problem of essentialism in the treatment and attitudes towards battered women); Harris, *supra* note 28, at 587–89 (criticizing the problem of essentialism in the feminist discourse).

75. *See, e.g.*, Heather C. Melton & Joanne Belknap, *He Hits, She Hits: Assessing Gender Differences and Similarities in Officially Reported Intimate Partner Violence*, 30 *CRIM. JUST. & BEHAV.* 328, 328–29 (2003) (noting there are two perceptions regarding domestic violence). The first, mostly supported by feminist views, is that domestic violence is gendered so that women are often the victims of men. *Id.* The second is the family violence perspective, claiming domestic violence “needs to be reconceptualized from a problem of woman battering to one of family violence.” *Id.*

76. *See* Curt Rogers, *Personal Story*, in *SAME-SEX DOMESTIC VIOLENCE: STRATEGIES FOR CHANGE* 11 (Beth Leventhal & Sandra E. Lundy eds., 1999)

violence often refuse to admit the abuse for fear of a dismissive social reaction.⁷⁷ Those men who overcome the social barrier and dare to expose their vulnerability often encounter contempt, distrust, and social and systemic insensitivity.⁷⁸ The stereotypes regarding male victims exacerbate the problem of victims underreporting crime and intensify victims' shame.⁷⁹

(presenting a personal testimony of a male victim of sexual crimes and violence by his partner in a homosexual relationship); Murray A. Straus, *The Controversy over Domestic Violence by Women: A Methodological, Theoretical, and Sociology of Science Analysis*, in VIOLENCE IN INTIMATE RELATIONSHIPS 17, 27–29 (Ximena B. Arriaga & Stuart Oskamp eds., 1999); Adrian W. Coxell & Michael B. King, *Male Victims of Rape and Sexual Abuse*, 11 J. SEX MARITAL THERAPY 297 (1996); Leslee R. Kassing et al., *Gender Role Conflict, Homophobia, Age, and Education as Predictors of Male Rape Myth Acceptance*, 27 J. MENTAL HEALTH COUNS. 311, 322–23 (2005) (elaborating on male victimhood of sexual violence perpetrated by men); Iain A. McLean, *The Male Victim of Sexual Assault*, 27 BEST PRACT. & RES. CLINICAL OBSTETRICS & GYNAECOLOGY 39, 39 (2013) (discussing the lack of recognition of male victimhood in various cases); Ronald E. Smith et al., *Social Cognitions About Adult Male Victims of Female Sexual Assault*, 24 J. SEX RES. 101, 102–03 (1988) (elaborating on male victimhood of sexual violence perpetrated by women).

77. See Donnelly & Kenyon, *supra* note 45, at 445–47.

78. See Rogers, *supra* note 76, at 14; see also Denise A. Hines & Emily M. Douglas, *Women's Use of Intimate Partner Violence against Men: Prevalence, Implications, and Consequences*, 18 J. AGGRESSION, MALTREATMENT & TRAUMA 572, 578 (2009) (reporting on men who claimed they were arrested even though their spouses had attacked them and confessed to doing so, which the authors attribute to existing policy in many states of mandatory arrest in cases of intimate partner violence). A recent example of the disparaging treatment of male victims of sexual abuse is that experienced by actor and former football player Terry Crews. In response to the #MeToo campaign, Crews revealed on Twitter that he had been groped by a high-level studio executive. See Ashley Lee, *Terry Crews Recounts Sexual Assault by Hollywood Exec: "He Just Grinned Like a Jerk"*, HOLLYWOOD REPORTER (Oct. 10, 2017, 2:17 PM), <https://www.hollywoodreporter.com/news/terry-crews-recounts-sexual-assault-by-hollywood-exec-he-just-grinned-like-a-jerk-1047475> [<https://perma.cc/N2UC-RBF4>]. In response, influential celebrities, such as rapper 50 Cent, ridiculed and criticized Crews. See also Rasha Ali, *Terry Crews to D.L. Hughley: 'Are You Implying I 'Wanted' to Be Sexually Assaulted?'*, USA TODAY (Jan. 28, 2019), <https://www.usatoday.com/story/life/people/2019/01/28/terry-crews-celebs-mocked-his-sexual-assault-metoo-movement-dl-hughley-50-cent/2699273002/> [<https://perma.cc/7RTR-FFV9>]; Sofie Tapia, *Celebrities Mock Terry Crews Sexual Assault Claims Because He's Too Strong to Get Assaulted, He Shuts Them Down*, BORED PANDA, <https://www.boredpanda.com/terry-crews-50-cent-sexual-assault-response/> [<https://perma.cc/LL3L-JYFP>] (last visited Oct. 29, 2019). In this incident, Crews, as a black man, decided not to act in self-defense at that moment because he believed that as a black man, he would have been the one arrested and charged. The intersection of his identities as a black male and as a crime victim axis came together to dictate how Crews experienced his assault and its aftermath. See Lee, *supra* note 78.

79. See Smith et al., *supra* note 76, at 102–03 (discussing stereotypes and myths regarding male victims of sexual abuse); see also Donnelly & Kenyon, *supra* note 45,

Recognition of multi-gender victimhood is of great importance to the process of changing the status of the axis of victimhood. Understanding that the axis converges with axes of dominance will make it possible to change the narrative of inferiority and the perception of otherness that characterizes the axis today. The conceptual change is based on the recognition that victimhood is cross-gender, albeit the differences that might exist between victims of different genders.

ii. From Traditional to Positive Victimology

Victimology is a branch of criminology that deals with crime victims. Traditional victimology emphasizes the study of why some people become burdened by the role of the victim in the victim-perpetrator relationship, and by the relationship between victims and the institutions of society and law.⁸⁰ Although traditional victimology has increased awareness of the unique needs of victims, including the need to legislate for victims' rights,⁸¹ the development of positive victimology presents a welcome direction for the field going forward.⁸²

Positive victimology aims to bring about a positive change, at the lowest possible cost, and with minimal negative consequences.⁸³ In contrast to traditional victimology, which emphasizes the vulnerability and weakness of certain social groups, positive victimology seeks to present the resilience, ability to survive, and

at 447 (presenting findings on how stereotypes and myths regarding male victims are reflected in the attitude of male agents of law enforcement toward male victimhood).

80. See generally WILLIAM G. DOERNER & STEVEN P. LAB, *VICTIMOLOGY* (2008); LORRAINE WOLHUTER ET AL., *VICTIMOLOGY: VICTIMISATION AND VICTIMS' RIGHTS* (2009); Hans Joachim Schneider, *Victimological Development in the World During the Past Three Decades (I): A Study of Comparative Victimology*, 45 *INT. J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 449 (2001).

81. Over the years, the field of victimology has evolved from one that encouraged many elements of victim-blaming to one that focuses on assisting and supporting the victims. See ANDREW KARMEN, *CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY* 11 (8th ed. 2012); see also Lilia M. Cortina et al., *Beyond Blaming the Victim: Toward a More Progressive Understanding of Workplace Mistreatment*, 11 *INDUS. & ORGANIZATIONAL PSYCHOL.* 81, 82–87 (2018).

82. See generally *POSITIVE CRIMINOLOGY* (Natti Ronel & Dana Segev eds., 2015); see also Natti Ronel, *How Can Victimology Become Positive?*, in *SECOND INTERNATIONAL CONFERENCE OF THE SOUTH ASIAN SOCIETY OF CRIMINOLOGY AND VICTIMOLOGY* 333, 333–34 (K. Jaishankar & Natti Ronel eds., 2013).

83. See Ronel, *supra* note 82, at 333–34; see, e.g., van Dijk, *supra* note 3, at 9–10 (presenting findings from an analysis of eleven testimonies of victims who reported that while coping with their victimization and/or its implications, they discovered inner strengths).

growth potential that many victims realize during the recovery process.⁸⁴ The basis of positive victimology is the recognition that a positive experience, which may be derived from a traumatic event, is no less important than a negative experience. Such a positive experience might include positive psychological changes that follow the traumatic event and can be manifested in one's perception of self, growing personal strength, and appreciation for life and relationships with others.⁸⁵ These kinds of changes are named post-traumatic growth.⁸⁶ Positive victimology seeks to enable and focus on these changes while minimizing the negative effects of the injury.⁸⁷ This approach emphasizes victims' rights to a social response that prevents secondary victimization and maximizes the positive experience that can be achieved despite the circumstances.⁸⁸

At the basis of the theory are three goals. First, victims must be integrated in three levels: self-acceptance, spiritual acceptance, and social acceptance. Second, a positive and empowering experience should be created for crime victims. Third, it is important to create closure for victims and to moderate the effects of secondary victimization.⁸⁹

In practice, this approach advocates for the promotion and implementation of practices intended to empower victims, give them a voice, and channel the harm to positive patterns of action.⁹⁰ It emphasizes the autonomy of individuals and their ability to make informed choices.⁹¹ Positive victimology seeks to grant and

84. Nadia Wager, *Restorative Justice and Domestic Violence: A View from a Positive Victimological Perspective*, in POSITIVE CRIMINOLOGY 261, 261–63 (Natti Ronel & Dana Segev eds., 2015).

85. Mally Shecory-Bitton & Natti Ronel, *Posttraumatic Growth and Positive Victimology: The Case of Ultra-Orthodox Jewish Women Who Resided in a Shelter*, in POSITIVE CRIMINOLOGY 250, 256 (Natti Ronel & Dana Segev eds., 2015).

86. See *id.* at 252 (finding that post-traumatic growth (PTG) is a possible and positive outcome of a traumatic event, with “five areas of possible improvement or growth after trauma: new possibilities; relating to others; personal strength; spiritual change; and appreciation of life”).

87. See Natti Ronel & Tyra Ya'ara Toren, *Positive Victimology – An Innovation or “More of the Same?”*, 15 TEMIDA 171, 175–76 (2012).

88. See Natti Ronel, *Why Victimology Should Stay Positive – the Ongoing Need for Positive Victimology*, 18 TEMIDA 5, 8 (2015).

89. Toren, *supra* note 42, at 238.

90. See, e.g., *id.* at 237–38; see also Shecory-Bitton & Ronel, *supra* note 85, at 253–56 (presenting the importance of social belonging for the victim, and its positive effects on coping with harm).

91. See Wager, *supra* note 84, at 268 (noting that the “victim who has been disempowered in the abusive relationship, should be free to make her own choice as to the best solution/outcome”).

implement tools for coping with the problems that arise as a result of the harm.⁹² Among the tools offered are restorative justice procedures that bring together the victim, the offender, their relatives, and representatives of the community to discuss the harm and its consequences, and to formulate a restoration agreement that meets all the needs caused by the harm to the various parties.⁹³ Positive victimology may help promote the conceptual change, as it empowers rather than blames victims. Adopting this approach may help change the prevalent narrative in relation to the axis of crime victimhood.

iii. From the Liberal to the Vulnerable Subject

The proposed conceptual change is also based on the recognition of the universality of vulnerability and victimhood. Martha Fineman's vulnerability theory seeks to replace the concept of autonomous liberal subjects, in control of their fate and immune to harm, with the narrative of the vulnerable subject.⁹⁴ Fineman suggests looking at individuals in society and the institutions they construct as inherently vulnerable.⁹⁵ This approach recognizes that the image of the independent and fully functioning subject does not adequately represent human experience. Vulnerability is an integral part of humanity.⁹⁶ It is a manifestation of the relationship of a person with society and the environment.⁹⁷ It ought not be related

92. Toren, *supra* note 42, at 237–39.

93. “Restorative justice grew out of disappointment with the punitive approach.” Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 *CARDOZO L. REV.* 101, 104 (2013). This approach emphasizes that an offense harms, first and foremost, people and relationships, including the victim, the offender, and their social circles (the family and community). The purpose of the restorative procedure is to repair the harm by granting control over the conduct of the proceedings to the persons involved, taking into account the needs of all the parties involved. The proceedings are supervised by a state representative. Both sides must agree to participate in proceedings, and the offending party is required to take responsibility for the harm. See TONY F. MARSHALL, *RESTORATIVE JUSTICE: AN OVERVIEW* 5–6 (1999); HOWARD ZEHR & ALI GOHAR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 17–23 (2003); see also Wager, *supra* note 84, at 262–63 (showing the connection and compatibility between positive victimology and restorative justice).

94. See Fineman, *Anchoring Equality* *supra* note 59, at 9–12; see also FINEMAN & FINEMAN, *supra* note 59, at 3–5.

95. See Fineman, *Anchoring Equality*, *supra* note 59, at 9–10; see also Cooper, *supra* note 10, at 1343–44.

96. Fineman, *Anchoring Equality*, *supra* note 59, at 1.

97. See Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 *YALE J.L. & FEMINISM* 1, 23 (2014) (explaining the idea that it is not the personal trait that causes the vulnerability, but the way society treats it). For a similar argument

only to the inexperienced and the socially marginalized,⁹⁸ nor be conceptually associated with victimization, dependence, and pathology.⁹⁹ Vulnerability is a common denominator for individuals and social groups.¹⁰⁰

C. Crime Victimhood as a Complex Universal Experience

Under a social arrangement based on vulnerability, the essential characteristic of a crime victim is the potential for harm. When addressing the axis of crime victimhood from this perspective, we can obtain a picture of an axis on which all human beings are located. Internalizing the vulnerability genuinely harms the individual, even if at a very low level. According to Susan Brownmiller, from a young age, every woman internalizes her vulnerability, which stems from being a woman in a patriarchal world. Practices of sexual exploitation cause all women to live in fear and to internalize their vulnerability by virtue of their womanhood.¹⁰¹ Under this approach, all women are indirect victims of sexual abuse.¹⁰²

Although this claim was formulated in a gender context and applied to sexual offenses, the idea is valid in broader contexts as well, regarding all those who internalize their vulnerability to crime and change their behavior as a result.¹⁰³ For example, those who lock

regarding people with disabilities, see Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, 83 WASH. L. REV. 513, 525–26 (2008). This conceptualization coincides with the notion of identities and narratives as constructed by society. See *supra* note 10 and accompanying text (expounding on the dynamic and changeable nature of social hierarchies as human creations).

98. See Fineman, *Anchoring Equality*, *supra* note 59, at 8.

99. See FINEMAN & FINEMAN, *supra* note 59, at 3–4.

100. See Fineman, *Anchoring Equality*, *supra* note 59, at 8–10 (claiming that we need to see “the term ‘vulnerable’ for its potential in describing a universal, inevitable, enduring aspect of the human condition”).

101. See SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 13–15 (1975).

102. *Id.*; see also R. Emerson Dobash & Russell P. Dobash, *The Nature and Antecedents of Violent Events*, 24 BRIT. J. CRIMINOLOGY 269, 286 (1984) (“[T]he majority of men who use violence against their wives usually enter verbal confrontations with the intentions of punishing, regulating and controlling their wives through various means including the use of physical force.”). This argument also echoes the understanding that hate crimes harm not only the assaulted individuals but also their entire social group. See Barbara Perry & Shahid Alvi, *‘We Are All Vulnerable’: The In Terrorem Effects of Hate Crimes*, 18 INT’L REV. VICTIMOLOGY 57, 62–68 (2011) (presenting findings on the community impacts of hate crimes and how group members cope with their vulnerability through changing their behavioral patterns).

103. For a similar view regarding the victimization of those who change their behavior out of fear, see Carter, *supra* note 33, at 422–29 (connecting the question of

their door for fear of break-ins and those who avoid going to certain public places for fear of becoming victims of violence absorb the indirect consequences of various offenses. Therefore, internalizing this vulnerability influences one's behavior and quality of life. In this way, the potential vulnerability is manifest in practice to the point where it can be seen as real harm, however low in intensity, and, by this logic, as a kind of victimhood.

Consequently, it is possible to present the axis of crime victimhood as one on which all people are located. Their position on it differs according to the varying degrees of harm that are connected to the nature of the various offenses and to the intensity of the vulnerability and the victimhood. In other words, "crime victim" is already a broad definition that encompasses the victims of varying crimes — from theft to murder. According to our suggestion, it can also include those that internalize their vulnerability to crime. All are located on the axis of crime victimhood. That is not to say that all are affected in the same amount or way. The crime victimhood axis is not linear or essential. It is a wide scale that acknowledges the differences between those located on it, differences that stem from the broad definition and the varying experience that crime victimhood contains.

As a result, it would be difficult to identify the axis of victimhood as an axis of oppression when it embraces such a large population of people. Subsequently, it would also be difficult to characterize those who are located along the axis of victimhood as "marginalized people." Although labeling the axis as one of oppression or domination refers to the social power of the group, rather than to the number of its members, it is difficult to ignore that the more individuals located along the axis, the easier it is to perceive it conceptually as more dominant. The intuitive (although not necessarily correct) tendency is to identify a majority with social power, or at least not to identify it with weakness. Theories that place the entire population on the axis because of the wide effect that vulnerability has on the individual, may help bring about the conceptual change.

A current example of this phenomenon is the #MeToo movement. When actress Alyssa Milano used the #MeToo hashtag, she sought to shed light on the extent and prevalence of the phenomenon of sexual

victim identity with racialism and racism, while suggesting a broader understanding of victimhood that might become "a prediction of the future rather than a description of the past").

abuse.¹⁰⁴ Both men and women responded to her tweet and exposed cases of abuse.¹⁰⁵ Although the future implications of the #MeToo movement are not yet clear, it already proved that there is strength in numbers. The large number of participants made it possible for many to share their personal experience without shame and fear of associated stigmas. Moreover, the subsequent #WhyIDidntReport hashtag revealed that reporting to the police is not always the best way (and sometimes not even a possible way) to react to sexual crimes for victims who fear that their story will be doubted, that they will be blamed for the assault, or that they will face retaliation. Alongside the call for socio-institutional change that would make it easier for victims to report sexual abuse, the campaign sought to recognize the legitimacy of various patterns of action taken by victims.¹⁰⁶

Despite the emphasis on the universality of the experience of victimhood, and the fact that the entire population is located on the axis, one should not ignore the differences between those located on it. The axis should be regarded as a scale, containing different groups in different locations along its length. In addition to the internal complexity of the axis, it also intersects with other axes of identity, thus creating complex intersections that affect the individual's vulnerability and resilience. Various victims along the axis require different responses depending on the type and intensity of the harm.

Recognizing the existence of a vulnerability scale that includes the entire population runs the risk of trivializing the harm and blurring the distinction between different injuries and levels of suffering, and the need for adapted treatment.¹⁰⁷ Moreover, even if all individuals are located on the same axis, access to social resources that meet the various needs is not equal, and it depends on additional intersections along the axis. Claims of this nature have been raised against the

104. Alyssa Milano (@Alyssa_Milano), TWITTER (Oct. 15, 2017, 1:21 PM EST), https://twitter.com/alyssa_milano/status/919659438700670976 [<https://perma.cc/62AF-CKL9>].

105. See, e.g., Helena Horton, *300,000 Men Join in with #MeToo Sexual Assault Hashtag*, TELEGRAPH (Oct. 18, 2017), <https://www.telegraph.co.uk/news/2017/10/18/300000-men-join-metoo-sexual-assault-hashtag> [<https://perma.cc/PU87-V6WX>].

106. See German Lopez, *#WhyIDidntReport Is a Sad, But Necessary, Rebuke to Trump*, VOX (Sep. 21, 2018), <https://www.vox.com/identities/2018/9/21/17887670/whyididntreport-trump-rape-sexual-assault-kavanaugh-ford> [<https://perma.cc/JTS9-V9Q4>].

107. See Minow, *supra* note 3, at 1423–26 (noting the importance of the distinction between various levels of suffering).

#MeToo campaign: for flattening the discourse, pushing to the margins of the discourse those who are not heterosexual white women, and creating unacceptable parallels between a wide variety of women's equality issues.¹⁰⁸ For example, the "MeToo" term was coined by activist Tarana Burke ten years before Milano used this hashtag.¹⁰⁹ When the hashtag gained momentum, Burke explained she felt the need to "insert myself in the conversation . . . to make sure that the marginalized voices I represent weren't erased."¹¹⁰ The marginalization of women of color in the #MeToo discourse is especially troubling, as noted by Professor Angela Onwuachi-Willig, given the fact that it was a woman of color who initiated it, and that "women of color are more vulnerable to sexual harassment than white women and are less likely to be believed when they report harassment, assault, and rape."¹¹¹ Furthermore, the undefined boundaries of the movement are raising many questions regarding what types of sexual crimes and behaviors are part of the movement.¹¹² But it is precisely the perception of the axis of victimhood as an axis with internal complexity, that always intersects other axes, that may be able to answer this criticism. The theory of intersectionality recognizes the importance of similarities as well as differences, allowing us to examine the topic from a complex and multi-dimensional perspective.

III. PRACTICAL CONSEQUENCES OF THE PROPOSED CONCEPTUAL CHANGE

Although the proposal this Essay is presented as a thought experiment, once change in consciousness takes seed, it will be possible to bring about changes in the practical world as well.

108. See Onwuachi-Willig, *supra* note 17, at 106–08 (criticizing the marginalization of women of color within the #MeToo movement); see also Megan McCardle, *Listen to the 'Bad Feminists'*, BLOOMBERG (Jan. 17, 2018), <https://www.bloomberg.com/opinion/articles/2018-01-17/listen-to-the-bad-feminists> [<https://perma.cc/A8BD-YRS7>]; Megan Garber, *Is #MeToo Too Big?*, ATLANTIC (July 4, 2018), <https://www.theatlantic.com/entertainment/archive/2018/07/is-metoo-too-big/564275> [<https://perma.cc/YMF8-CT9L>].

109. See Onwuachi-Willig, *supra* note 17, at 106.

110. *The Founder of #MeToo Doesn't Want Us to Forget Victims of Color*, PBS NEWSHOUR (Nov. 15, 2017), <https://www.pbs.org/newshour/show/the-founder-of-metoo-doesnt-want-us-to-forget-victims-of-color> [<https://perma.cc/RF4W-9K9G>].

111. Onwuachi-Willig, *supra* note 17, at 107.

112. See, e.g., Lesley Wexler et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45, 56–57 (2019).

A. Recognizing a Range of Modes of Behavior

Therapeutic approaches to the treatment of crime victims seek to identify the victim as a complex, multifaceted person with a range of possible legitimate behaviors.¹¹³ As Minow clarified, the individual's right and ability to act in accordance with their choices should not lead to the imposition of responsibility and blame on them.¹¹⁴

In the legal world, however, deviations from behavior that conforms to the social patterns expected of victims may harm victims' ability to exercise their rights and to receive legal remedies.¹¹⁵ Social institutions and the people acting on their behalf, including police officers and judges, often perpetuate stereotypical perceptions of victims' behavior. Those working for social institutions often make inferences from the conduct of victims about their credibility.¹¹⁶ Despite the psychosocial knowledge that has accumulated over the last few decades regarding the characteristics of post-trauma that accompany severe harm (such as violence and sexual abuse)¹¹⁷ — including dissociation, apathy, fragmentary memories, and emotional detachment — the reliability of crime victims is still at times measured by how they express or externalize their feelings.¹¹⁸

113. See Dancig-Rosenberg, *supra* note 8, at 160–62 (explaining the differences between legitimate behaviors in the therapeutic setting as opposed to in a criminal proceeding).

114. See Minow, *supra* note 3, at 1441–42.

115. See, e.g., Bades, *supra* note 49, at 279–80 (discussing difficulties family members of victims of homicide face when they want to make a victim impact statement that is not aligned with a prosecutor's goal of obtaining a death penalty sentence).

116. *Id.* at 280–83 (discussing “correct” and “incorrect” feelings in testimony before judges and jurors, and their influence on the perception of the credibility of the victim).

117. Post-traumatic stress disorder (PTSD) is a clinical disorder that arises as a result of exposure to a traumatic event (one-time or ongoing) and is characterized by physiological and emotional responses, including emotional detachment, apathy, excessive arousal, and more. The various symptoms initially serve as protective mechanisms of the psyche, designed to help cope with the trauma, but may prevent the victim from processing the events and coping with them before recovery. See DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 271–72 (American Psychiatric Association eds., 5th ed. 2012–13), <https://dsm.psychiatryonline.org/doi/full/10.1176/appi.books.9780890425596.dsm07>.

118. See Sara Landström et al., *The Emotional Male Victim: Effects of Presentation Mode on Judged Credibility*, 56 SCANDINAVIAN J. PSYCHOL. 99, 99, 103 (2014) (presenting findings that female victims who express strong negative feelings are perceived by police officers and jurors as more credible and less responsible for their situation than those who demonstrate restraint or distance. Expressions of emotion in men who are victims of crime have no similar effect); see also Tasha A. Menaker & Robert J. Cramer, *The Victim as Witness: Strategies for Increasing*

Deviation by victims from the “normative” behavior patterns may raise doubts about crime having taken place. For example, escape and reporting absolve the victim of culpability, and allow her to enjoy the unqualified legal recognition of her harm. On the other hand, more complex and reluctant behaviors may raise serious question marks.¹¹⁹ At times, in order to fit victims into the victimhood narrative and grant legal remedies, judges emphasize victims’ helplessness, weakness, and victimization, while concealing elements of choice, power, awareness, and strength.¹²⁰

With regard to male victims, the range of legitimate behaviors is even more limited because of the difficulty in identifying male victimhood.¹²¹ Yet, at least until recently, the perception of “proper” behavior in cases of victimhood has been shaped from a masculine perspective, even with regard to women, because the male axis has enjoyed a high position in the social hierarchy.¹²² Over the years, the feminist struggle has gradually strengthened women’s power in society by some measures,¹²³ but it seems that we have not yet reached a stage in which the spectrum of feminine behaviors has become universally accepted.¹²⁴ A conceptual change may encourage

Credibility Among Rape Victim-Witnesses in Court, 12 J. FORENSIC PSYCHOL. PRAC. 424, 430 (2012).

119. See, e.g., Minow, *supra* note 3, at 1442 (arguing against blaming women who stayed in an abusive relationship for being battered); see also Leora Bilsky, *Giving Voice to Women: An Israeli Case Study*, 3 ISR. STUD. 47, 55–56 (1998) (discussing court hardships with the concept of date-rape and detailing questions addressed to a crime-victim in an attempt to examine how normative her behavior was).

120. See Baker, *supra* note 74, at 1468 (stating, in the context of battered women, that “[i]n the cases of women who kill, advocates must prove that the killing was the result of a kind of a dysfunctionality (something like ‘learned helplessness’) engendered by the abuse”).

121. See generally McLean, *supra* note 76.

122. See Onwuachi-Willig, *supra* note 17, at 109 (arguing that “sexual harassment law must adopt a reasonable person standard that accounts for these different intersectional and multidimensional identities” as opposed to the current standard, which is male-biased); see also Dancig-Rosenberg & Pugach, *supra* note 37, at 459–60 (noting that solutions offered to battered women are shaped by male perspectives).

123. See, e.g., Natasha Bach, *More Than 100 Women Elected to the House for the First Time Ever*, FORTUNE (Nov. 7, 2018), <http://fortune.com/2018/11/07/record-number-of-women-elected-to-house> [<https://perma.cc/T4ED-EKUU>].

124. Many still accuse female victims of being responsible for their harm or criticize their subsequent conduct. A recent example is President Trump’s tweet, regarding Justice Brett Kavanaugh’s appointment to the U.S. Supreme Court, stating that Kavanaugh’s accuser Professor Christine Blasey Ford did not complain to the authorities in real time. See Donald J. Trump (@realDonaldTrump), TWITTER (Sep. 21, 2018, 6:14 AM), <https://twitter.com/realDonaldTrump/status/1043126336473055235> [<https://perma.cc/8VCQ-4SGM>]. This tweet led to the creation of the

the opening of a range of legitimate behaviors for victims.¹²⁵ A perception whereby all people are located on the axis of victimhood makes it possible to reduce elements of othering, increase social acceptance, and enable the opening of the scale of possible social and legal responses.

B. Deploying Inclusive Practices

A boost in the status of the axis of victimhood will enable the implementation of positive victimology practices. Positive victimology places great emphasis on the voice of the victim. Various social organizations worked to promote the integration of victims' voices at trials by means of legislation enabling testimony or the submission of statements by victims.¹²⁶ Making one's voice heard, whether through direct testimony, victim impact statements, or mediation, is an act of great therapeutic value.¹²⁷ It enables victims to regain some of their lost strength and to obtain recognition for the harm they suffered.¹²⁸ The testimony of the victim helps emphasize the personal, human aspect of the harm, and the various stories prevent the belittling, trivialization, and dehumanization of the victims.¹²⁹

A recent example of the effectiveness of deploying therapeutic practices at trials is that of the female Olympic gymnasts' victim

#WhyIDidntReport hashtag, in which a large number of female and male victims shared the difficulty in filing a report because of stigmatization, secondary abuse, mistrust, and criticism. *See Lopez, supra* note 105. Counter-reactions to the #MeToo campaign also attest to the difficulty in gaining recognition of the legitimacy of women's range of behaviors. A survey conducted a year into the #MeToo campaign shows a slight increase in mistrust of victims. *See After a Year of #MeToo, American Opinion Has Shifted Against Victims*, *ECONOMIST* (Oct. 15, 2018), <https://www.economist.com/graphic-detail/2018/10/15/after-a-year-of-metoo-american-opinion-has-shifted-against-victims> [<https://perma.cc/9J4D-5TCT>].

125. *See, e.g.*, Baker, *supra* note 74, at 1468–69 (discussing the advantages of expanding the range of legitimate actions of victims of violence by separating them from the helpless victims' image); *see also* Dancig-Rosenberg & Pugach, *supra* note 37, at 459–62 (explaining that the limited solutions offered to battered women today reflect male ways of thinking and arguing for recognize more solutions that meet women's needs).

126. *See* Beloof, *supra* note 36, at 257–61.

127. *See* Amy D. Ronner & Bruce J. Winick, *Silencing the Appellant's Voice: The Antitherapeutic Per Curiam Affirmance*, 24 *SEATTLE U. L. REV.* 499, 499–503 (2000); *see also* Roger Warren, *Public Trust and Procedural Justice*, in *JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS* 132 (Bruce J. Winick & David B. Wexler eds., 2003).

128. *See* Dancig-Rosenberg, *supra* note 8, at 153–55.

129. *See* Minow, *supra* note 3, at 1435.

impact statements in the criminal proceedings against Dr. Larry Nassar. Nassar was the physician of the U.S. Olympic gymnastics team, who was convicted of sexual abuse and exploitation of more than 150 girls and young women on the team, over approximately two decades. Judge Rosemary Aquilina of Ingham County Circuit Court, Michigan, allowed the 156 gymnasts whom Nassar abused and exploited to make victim impact statements¹³⁰ at the trial against him.¹³¹ One of the gymnasts, Olympic champion Aly Raisman, said the following in her statement in court:

Larry, you do realize now that we, this group of women you so heartlessly abused over such a long period of time, are now a force and you are nothing. The tables have turned, Larry. We are here. We have our voices, and we are not going anywhere. And now, Larry, it's your turn to listen to me Imagine feeling like you have no power and no voice. Well you know what, Larry? I have both power and voice and I am only beginning to just use them. All these brave women have power and we will use our voices to make sure you get what you deserve — a life of suffering spent replaying the words delivered by this powerful army of survivors.¹³²

The importance of making one's voice heard is not confined to the courthouse; it has great value in other social spaces as well. For example, many victims find the opportunity to make their voices heard on social networks where they can tell the story of the harm in their own words and satisfy needs that the legal system is unable to

130. "Victim impact statements are written or oral information from crime victims, in their own words, about how a crime has affected them. All 50 states allow victim impact statements at some phase of the sentencing process. Most states permit them at parole hearings, and victim impact information is generally included in the presentencing report presented to the judge." *Victim Impact Statements*, NAT'L CTR. FOR VICTIMS OF CRIME, <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements> [<https://perma.cc/9T8Z-GLAT>].

131. See Tom Lutz, *Victim Impact Statements Against Larry Nassar: 'I Thought I Was Going to Die'*, *GUARDIAN* (Jan. 24, 2018, 2:34 PM), <https://www.theguardian.com/sport/2018/jan/24/victim-impact-statements-against-larry-nassar-i-thought-i-was-going-to-die> [<https://perma.cc/ET8V-ZYTL>].

132. See Mahita Gajanan, *'It's Your Turn to Listen to Me.'* *Read Aly Raisman's Testimony at Larry Nassar's Sentencing*, *TIME* (Jan. 19, 2018), <http://time.com/5110455/aly-raisman-larry-nassar-testimony-trial> [<https://perma.cc/4WD9-3C3A>]. In her victim impact statement, the athlete Rachael Denhollander said: "I do want to thank you, first, Judge Aquilina, for giving all of us the chance to reclaim our voices. Our voices were taken from us for so long, and I'm grateful beyond what I can express that you have given us the chance to restore them." *Read Rachael Denhollander's Full Victim Impact Statement About Larry Nassar*, *CNN* (Jan. 30, 2018), <https://edition.cnn.com/2018/01/24/us/rachael-denhollander-full-statement/index.html> [<https://perma.cc/LFG7-CJDY>].

meet.¹³³ Locating the axis higher in the social hierarchy may also make it possible for the victims to access formal platforms enjoyed by the strongest groups in society, such as law and communications. This would allow victims to more easily have their voices heard and their needs met. Besides the personal therapeutic contribution to the individual, making victims' voices heard is the basis for social changes that take into account the needs and desires of different social groups.

Another important goal of positive victimology is acceptance.¹³⁴ Natti Ronel suggests that social acceptance is examined in two circles: acceptance of the individual as part of a group and acceptance of the group as part of society as a whole.¹³⁵ The statement that we are all on the axis of crime victimhood entails the recognition that victims are an integral part of society. Social acceptance plays a significant role in developing personal and social resilience. Society provides a significant support network for individuals: it can prevent them from faltering when being harmed, and can bolster their ability to cope with secondary or future harms.¹³⁶ In addition, increasing the status of the axis of victimhood in the social hierarchy by placing the entire population on it can obviate the need to conceal the harm out of shame. This will prevent separating the victim from society and will make it easier to rehabilitate the individual.¹³⁷

C. Increasing State Involvement and Adapting Social Institutions to the Needs of the Group

Adoption of the vulnerability theory aims the spotlight on the responsibility of the State to provide individuals with the tools needed to increase their resilience.¹³⁸ Some argue that beyond the obligation of the State to prepare individuals for possible harm, it also has the duty to prevent the perpetration of criminal offenses. This obligation is derived from the individuals' renunciation of their right to self-defense in light of the obligation of the State to protect them. A

133. See, for example, Facebook pages intended to provide a safe space for female victims, such as WARRIORS by BTFP. *See* Warriors by BTFP, FACEBOOK, <https://www.facebook.com/WARRIORSbyBTFP> (standing for "Brock Turner for Prison"); #metoo, <https://www.facebook.com/groups/121597301853586/> [<https://perma.cc/R3LL-6V7Z>] (last visited Oct. 17, 2019).

134. *See* Ronel & Toren, *supra* note 87, at 172–74 (elaborating on the centrality of social acceptance in positive victimology).

135. Natti Ronel, *How Can Criminology (and Victimology) Become Positive*, in POSITIVE CRIMINOLOGY 13, 24 (Natti Ronel & Dana Segev eds., 2015).

136. Ronel & Toren, *supra* note 87, at 174.

137. *Id.*

138. *See* Fineman, *Anchoring Equality*, *supra* note 59, at 19–22.

criminal violation against them is an expression of the failure of the State to meet its obligations.¹³⁹ Moreover, the State has a monopoly on the enforcement of criminal law,¹⁴⁰ and therefore is responsible for crime victims and must provide treatment and prevention services.¹⁴¹ The State must establish tools to help crime victims develop resilience, and aid in rehabilitation and empowerment. With all of society included in the victimhood axis, the State must develop coping and rehabilitation mechanisms in order to implement positive change in the status of the axis over time.

Fineman argues that society must furnish each individual with three main types of assets to increase their resilience and reduce their vulnerability: physical assets that provide a material basis (goods, wealth distribution); human assets that create emotional and intellectual resilience and help the person to make the most of a particular situation (education, health); and social assets, such as a social network that surrounds individuals and provides them with support (family, workers' organizations).¹⁴² The various means need to be made available to the entire society, depending on the level of vulnerability of different groups.¹⁴³ By providing these assets, the State meets its responsibility toward vulnerable subjects, prepares them for possible difficulties, and helps them cope, even thrive, when these difficulties materialize.¹⁴⁴ In regard to crime victims, the responsibility of the State should be to prevent the marginalization of victims by social and legal institutions. Today, criminal law mainly revolves around the accused and their rights,¹⁴⁵ while victims experience secondary victimization in their contact with the judiciary

139. See Richard L. Aynes, *Constitutional Considerations: Government Responsibility and the Right Not to Be a Victim*, 11 PEPP. L. REV. 63, 84 (1984).

140. See William J. Stuntz, *Substance, Process, and the Civil-Criminal Line*, 7 J. CONTEMP. LEGAL ISSUES 1, 28 (1996).

141. See Dana Pugach & Michal Tamir, *Nudging the Criminal Justice System into Listening to Crime Victims in Plea Agreements*, 28 HASTINGS WOMEN'S L.J. 45, 48 (2017) (stating the "state's duty to uphold human rights, including those of the victim").

142. Fineman, *Anchoring Equality*, *supra* note 59, at 13–15.

143. See Ani B. Satz, *supra* note 97, at 526–27 (making a similar argument regarding the population of individuals with disabilities).

144. See Fineman, *Anchoring Equality*, *supra* note 59, at 19–23 (explaining the need for stronger State involvement, to create resilience to harm before it occurs and to facilitate the coping of individuals after it occurs).

145. See Dancig-Rosenberg & Pugach, *supra* note 37, at 482; see also Wager, *supra* note 84, at 262.

and the media.¹⁴⁶ The state needs to encourage the development of social assets while eliminating shame and otherness (for example, through open discussions, providing therapeutic assistance to victims and their surroundings, and encouraging mutual support and reporting channels). These might help victims process the events and reintegrate them into the community (as also endorsed by positive victimology that emphasizes social acceptance). As a result of the increased status of the axis of victimhood, the State deploys systemic changes taking into account the needs of victims and reinforcing the various support systems offered to victims.

Some may argue that the implementation of the proposed conceptual change may harm victims of crime. Some may think that crime victims are offered solutions to meet their unique needs as a result of their perception as a weak group. However, such a claim is doubly problematic. First, it is an incorrect assumption that the needs of crime victims are broadly met. Second, this argument perpetuates the idea that society only meets the needs of crime victims because of their disadvantaged position. Leaving the hierarchy in place means responding to disadvantaged groups only when they succeed in bringing their needs to the attention of society, and only when those located at the intersections of control recognize these needs as problems that require addressing. The result is the perpetuation of the present situation, in which those located at intersections of oppression are at the mercy of those located at the intersections of control and are forced to demonstrate victimhood to receive relief.

CONCLUSION

A given position in the social hierarchy has far-reaching implications for individuals. Social relations create a hierarchy based on social narratives, which position certain groups at the top of the hierarchy and others at the bottom. Moreover, the position along the hierarchy is not fixed. By changing perceptions and attitudes, it is possible to change the social status of a given group and enable it to move up the hierarchy. Recognition and acceptance provide social power, which in turn enables groups to advance their needs and insert their point of view into the various social structures and institutions.

146. See Dana Pugach et al., *Lingual Injury Crime Victims Between the Criminal Justice System and the Media*, 24 INT'L. REV. VICTIMOLOGY, 1, 3 (2018) (discussing the secondary victimization of family members of murder victims, created by the legal system and the media).

This Essay focused on opportunities that may arise from abandoning the conventional perspective that identifies vulnerability with weakness and inferiority. Such a conceptual change may produce benefits for victims of crime and for society as a whole. At the same time, such a change may also have some drawbacks. Do the benefits and opportunities outweigh the cost and the dangers? Will the benefits of the victims of crime turn to losses as they climb the social hierarchy? This Essay does not purport to conduct a cost-benefit analysis and answer this question. It seems that only reality can provide indications. Instead, an open social and academic debate is necessary in order to help understand the phenomenon of crime victimization as multidimensional.

Boosting the status of the axis of crime victimhood in the social hierarchy sends a message about the importance of recognizing and protecting victims' rights. The realization of the proposed conceptual change will provide easier access to those located on the axis of crime victimhood to the resources and social mechanisms by which social norms can be shaped. The stronger the voices of victims, the higher their level of acceptance and vice versa. They strengthen each other. Presiding over the Larry Nassar case, Judge Aquilina said: "I've said what I needed to say to the victims. I have a little bit more to say: you are no longer victims. You are survivors, you're very strong and I've addressed you individually."¹⁴⁷

This statement, in this particular case that involved many victims, shows the power victims hold both as individuals and as a group. The size of the group made it impossible to ignore. The personal testimonies remind us of the diversity and uniqueness of each group member. Judge Aquilina's statement also emphasizes the importance of the distinction between victimhood and victimization by offering a new narrative for victims.

This Essay lays the theoretical foundation for the emergence of practical changes in social and institutional attitudes towards crime victims. Further, this Essay offers a basis for a course of action that may be developed in the future regarding different identity characteristics and other types of social groups. As Ernest Hemingway said, "The world breaks everyone."¹⁴⁸ It is our

147. Alice Park, *Judge Aquilina Delivers Powerful Statement Before Sentencing Larry Nassar: "I Just Signed Your Death Warrant"*, TIME (Jan. 24, 2018), <http://time.com/5116872/judge-larry-nassar-sentencing> [<https://perma.cc/6XTJ-J8P6>].

148. HEMINGWAY, *supra* note 1, at 216.

responsibility to allow as many individuals as possible to come out strengthened from the broken places.