

## INCONSPICUOUS VICTIMS

by  
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*Recent debates on racial inequalities in the criminal justice system focus on offenders while neglecting the other side of the criminal equation—victims of crime. Such scholarly oversight is surprising given the similarly deep racial disparities in the treatment of victims, manifested in different stages of the criminal justice system. Delving into the underexplored territory of racialized victimization, this project bridges that gap and exposes the roots of the disparate treatment of Black victims in the American criminal justice system. These unprecedented times of the COVID-19 pandemic and racial tensions bring to the fore questions about governmental allocation of resources and emphasize, maybe more than ever, the importance of going back to the roots of such a systematic institutional neglect. Through the ideal victim framework, I argue that from the early days of the victims' rights movement to the present, Black victims have been considered non-ideal victims and, as such, unworthy of institutional and legal recognition. I further claim that the media has had an important role in such a social construction of the ideal white victim. I utilize a novel dataset spanning ten years of media coverage on homicide cases contrasted with federal and state level crime statistics from Virginia, Washington, D.C., and Maryland to offer empirical support for this claim. I find first, local news stories about white homicide victims are indeed more salient than stories*

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*about Black homicide victims, and second, that Black victims are systematically underrepresented while white victims are overrepresented compared to true victimization rates. This Article thus exposes yet another dimension through which Black homicide victims are excised from the public's consciousness as equal participants in the criminal process. More broadly, this Article calls for a discussion of the tight connections between the patterns through which we think about race and crime and offers directions to advance conversations on how to allow counter-narratives to enter the social discourse.*

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## I. INTRODUCTION

Since the mid-1960s, the victims' rights movement has altered social conceptions of victimization and has promoted meaningful institutional change in the criminal justice system.<sup>1</sup> Through civil engagement and both federal and state legislation, the voices of crime victims—"the human-interest element" of crime<sup>2</sup>—

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<sup>1</sup> See generally Francis D. Boateng & Gassan Abess, *Victims' Role in the Criminal Justice System: A Statutory Analysis of Victims' Rights in U.S.*, 19 INT. J. POLICE SCI. & MGMT. 221 (2017) (surveying victims' rights legislation in the U.S. while raising challenges pertaining to the implementation of these laws).

<sup>2</sup> STEVEN M. CHERMAK, VICTIMS IN THE NEWS: CRIME AND THE AMERICAN NEWS MEDIA 7, 62 (1995) (of the few, albeit outdated, studies focusing on victims in the news).

have been amplified in the criminal process.<sup>3</sup> From an early stage, however, the socio-political reality of crime and victimization has advanced a narrow form of victimization: The criminal justice system, imbued with deep racial inequalities, has cloned its institutional patterns into the realm of victims, creating a hierarchy of victim-worthiness, with Black victims consistently placed at the bottom of the hierarchy.<sup>4</sup> This ranking of victims has had a direct effect on the treatment Black victims received—and continue to receive—from the criminal justice system: from recent debates regarding police violence and use of force against Black Americans,<sup>5</sup> through lack of standing in criminal trials, hurdles in accessing health services for victims suffering from trauma,<sup>6</sup> and more. The COVID-19 crisis, which brings to the fore questions related to the institutional allocation of resources and societal power structures, reminds us of the significance of diving deep into the root causes of such an entrenched institutional neglect.

Despite the harmful effects of such unequal treatment, there is a surprising dearth of scholarship delving into the causes and consequences of racialized victimization. This Article bridges this gap by offering an empirical look into the roots of the racially disparate treatment of Black victims of crime. Specifically, in this Article, I claim that through the illusive concept of “the ideal victim,” the criminal justice system has blotted out specific groups of victims and deemed these victims as un-

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<sup>3</sup> See *infra* notes 28–42 and accompanying text.

<sup>4</sup> See Randall Kennedy, *The State, Criminal Law, and Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255, 1257, 1267 (1993) (discussing the failure of the state to provide support for communities of color); see also CAROL STABILE, WHITE VICTIMS, BLACK VILLAINS: GENDER, RACE AND CRIME NEWS IN US CULTURE 2, 99–100, 126 (2006) (an historical account on the racialized evolution of crime news from 1830s to the 1930s); KATHERYN RUSSELL-BROWN, THE COLOR OF CRIME 32–34 (2d ed. 2009) (discussing the distinct ways through which Black Americans are marginalized by criminal law and the criminal justice system). See generally Stephen L. Carter, *When Victims Happen to Be Black*, 97 YALE L.J. 420 (1988) (discussing the public’s fear of Black offenders and its effect on perceiving Black individuals as victims).

<sup>5</sup> For recent empirical studies on police use of force, see Osagie K. Obasogie & Zachary Newman, *The Endogenous Fourth Amendment: An Empirical Assessment of How Police Understandings of Excessive Force Become Constitutional Law*, 104 CORNELL L. REV. 1281 (2018); Osagie K. Obasogie & Zachary Newman, *Constitutional Interpretation Without Judges: Police Violence, Excessive Force, and Remaking the Fourth Amendment*, 105 VA. L. REV. 425 (2019); Osagie K. Obasogie & Zachary Newman, *Black Lives Matter and Respectability Politics in Local News Accounts of Officer-Involved Civilian Deaths: An Early Empirical Assessment*, 2016 WIS. L. REV. 541 (2016) [hereinafter Obasogie & Newman, *Black Lives Matter and Respectability Politics*] (using local news coverage as a proxy for public responsiveness to the arguments promoted by the Black Lives Matter movement).

<sup>6</sup> DANIELLE SERED, VERA INST. FOR JUSTICE, YOUNG MEN OF COLOR AND THE OTHER SIDE OF HARM: ADDRESSING DISPARITIES IN OUR RESPONSE TO VIOLENCE 8–10 (2014).

worthy of institutional recognition and protection,<sup>7</sup> while establishing social and psychological distance from those undeserving of societal empathy.<sup>8</sup>

The ideal victim is a socially constructed concept,<sup>9</sup> and as such, a rather flexible and mobilized one.<sup>10</sup> Nils Christie originally described the ideal victim as “a person or a category of individuals who—when hit by crime—most readily are given the complete and legitimate status of being a victim.”<sup>11</sup> Christie’s definition predominantly focused on situational circumstances of the criminal event, such as the activity pursued by the victim, his or her vulnerability, or the relationship of the victim to the offender and the offender’s traits.<sup>12</sup>

Indeed, in the U.S. context, these situational circumstances are strongly tied to racial predispositions and the socially-perceived reality of crime. Such ties have prompted a reality in which specific racial groups, predominantly whites, receive higher victimization status over minority groups, predominantly Blacks.<sup>13</sup> While the process of minority victims’ stratification can be explained primarily by historically discriminatory practices in the criminal justice system,<sup>14</sup> preserving such hierarchies of victimization is well synchronized with the current realpolitik in the U.S., which seems to capitalize on social tensions to augment a sense of social division.<sup>15</sup>

<sup>7</sup> Heather Zaykowski et al., *Judicial Narratives of Ideal and Deviant Victims in Judges’ Capital Sentencing Decisions*, 39 AM. J. CRIM. JUST. 716, 728 (2014) (illustrating the penetration of ideal victims’ narratives into sentencing decisions). See generally ANDREW KARMEN, CRIME VICTIMS: AN INTRODUCTION TO VICTIMOLOGY, 174–76 (6th ed. 2007) (offering a detailed discussion on the effects of social recognition of the ideal victim on the criminal justice system).

<sup>8</sup> David Scott, *Foreword: Thinking Beyond the Ideal*, in REVISITING THE “IDEAL VICTIM”: DEVELOPMENTS IN CRITICAL VICTIMOLOGY xiv–xv (Marian Duggan ed., 2018); see also Jewell Handy Gresham & Lerone Bennett, Jr., *White Patriarchal Supremacy; The Politics of Family in America*, 249 NATION 116 (1989) (providing an insightful, critical look into the racial subconsciousness of the American society).

<sup>9</sup> See Nils Christie, *The Ideal Victim*, in FROM CRIME POLICY TO VICTIM POLICY: REORIENTING THE JUSTICE SYSTEM 18 (Ezzat A. Fattah ed., 1986) (The seminal criminological article written by the Norwegian anti-criminologist, Nils Christie, is still considered pivotal to the development of victimology as a sub-genre in criminal law and criminology.).

<sup>10</sup> Kathleen Daly, *Reconceptualizing Sexual Victimization and Justice*, in JUSTICE FOR VICTIMS: PERSPECTIVES ON RIGHTS, TRANSITION AND RECONCILIATION 378 (Inge Vanfraechem et al. eds., 2016).

<sup>11</sup> Christie, *supra* note 9, at 18.

<sup>12</sup> *Id.* at 19.

<sup>13</sup> Lisa L. Miller, *The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality in Criminal Justice*, 44 L. SOC. REV. 805, 807, 834–36 (2010) (claiming that American-style federalism “has allowed the national government to escape pressure and responsibility for addressing inequality and stagnation in racial process” emphasizing such failure in the realm of Black victimization).

<sup>14</sup> ELIZABETH HINTON ET AL., VERA INST. OF JUSTICE, AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 1, 2, 10 (2018).

<sup>15</sup> See generally John J. Donohue, *Comey, Trump, and the Puzzling Pattern of Crime in 2015*

As in the past, the current definition of “ideal victim” has little to do with actual victimization rates. When examining the differential risks of homicide among the U.S. population, racial minorities confront much higher odds of violent death.<sup>16</sup> For example, a 2017 report published by the Centers for Disease Control and Prevention (CDC) demonstrated a consistent gap between the homicide rates of non-Hispanic Black and non-Hispanic white individuals. In 2015 alone, homicide rates were 5.7 deaths per 100,000 for the general population, 20.9 for non-Hispanic Black individuals, and 2.6 for non-Hispanic white individuals.<sup>17</sup> Moreover, public health studies consistently show that Black individuals are more likely to become victims of gun violence compared to white individuals (or other minority groups).<sup>18</sup>

Such disparity between the “ideal”—and thus protection-worthy—victims and the reality of crime bears meaningful consequences for the victims themselves. First, it bears directly upon institutional and legal recognition, and thus to federal and state support for victims and their families.<sup>19</sup> Equally important, these “second class” victims are deprived of their rights to complete and legitimate victim status, including recognition for being vulnerable and innocent.<sup>20</sup> This lack of recognition, in turn, can affect membership in society and participation within the criminal justice system, denying the “basic humanity conferred by victim status to African Americans.”<sup>21</sup> Moreover, the victims themselves may internalize these white ethnocentric narratives.

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*and Beyond*, 117 COLUM. L. REV. 1297, 1298–99 (2017) (giving recent examples as to how race and crime themes are represented from the top down, and reporting on the way such themes were used in Donald Trump’s presidential campaign).

<sup>16</sup> KARMEN, *supra* note 7, at 69–70.

<sup>17</sup> See Arialdi Miniño, *Age-Adjusted Rates for Homicides, by Race/Ethnicity—United States, 1999–2015*, 66 MORBIDITY & MORTALITY WKLY. REP. 839 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6631.pdf>. The rates for Hispanic individuals were 4.9 deaths per 100,000, more than white individuals but less than the general population. Given the deep historical roots through which Black individuals were defined as non-ideal victims, alongside data constraints, the important analysis on Hispanic victims is not within the scope of this Article.

<sup>18</sup> Wanda Parham-Payne, *The Role of the Media in the Disparate Response to Gun Violence in America*, 45 J. BLACK STUD. 752, 753 (2014) (providing data on victimization rates among Black individuals, while claiming that structural and policy resolutions to address gun violence among Black individuals are being excluded from national and political discourse). Similar patterns were identified in another recent report: *Black Homicide Victimization in the United States: An Analysis of 2016 Homicide Data*, VIOLENCE POL’Y CTR. 1 (May 2019), <http://vpc.org/studies/Blackhomicide19.pdf> (“The devastation homicide inflicts on Black teens and adults is a national crisis, yet it is all too often ignored outside of affected communities.”).

<sup>19</sup> Boateng & Abess, *supra* note 1, at 222.

<sup>20</sup> KARMEN, *supra* note 7, at 174–76.

<sup>21</sup> STABILE, *supra* note 4, at 4; Lisa M. Saccomano, *Defining the Proper Role of “Offender Characteristics” in Sentencing Decisions: A Critical Race Theory Perspective*, 56 AM. CRIM. L. REV. 1693, 1693, 1734 (2019) (arguing that the way “in which [American] courts weigh offender characteristic factors in sentencing is unfair . . . white cultural values are deeply embedded [in this

This Article suggests that no attempt to understand the social stratification of Black victims and the treatment they receive from the criminal justice system is complete without investigating the media's role in the construction of a racially-defined ideal victim.<sup>22</sup> Particularly, and building on literature concerning the psychological effects of exposure to racial misrepresentation in the media and the effect of this exposure on the mindset and policy attitudes of media consumers, this Article's underlying claim is that the media's crime reportage has contributed to the establishment of the "non-ideal" Black victim.<sup>23</sup>

Using a novel ten-year dataset, I investigate the racial portrayal of homicide victims to tease out who the media's "ideal victims" are. To this end, I analyze media coverage on crime by *The Washington Post* (*The Post*) (1997–2006), then contrast the coverage with true crime statistics collected from the U.S. Census Bureau, the FBI Uniform Crime Reporting Project, and archived state-level crime data from Maryland, Virginia, and Washington, D.C. Utilizing both content analytical and multivariate techniques, I fill a methodological and empirical gap in the current literature on the representation of crime victims in the public sphere as reflected through the media,<sup>24</sup> a field that is heavily concentrated on the coverage of suspects and perpetrators.

The data show, *first*, that despite purportedly equal mentions of Black and white homicide victims in both the local and national news, crime stories with white victims are on average more salient than stories on Black victims.<sup>25</sup> *Second*, on local

process]"). Privileged factors become mitigating factors and "poor characteristics" become aggravating factors, which highlights the inherent racial bias deeply embedded in an important institution—the court system. See STABILE, *supra* note 4, at 3.

<sup>22</sup> For a similar approach to assess public responsiveness to unwarranted social and legal issues through media analysis, see Obasogie & Newman, *Black Lives Matter and Respectability Politics*, *supra* note 5 (analyzing media coverage on police brutality cases).

<sup>23</sup> See, e.g., Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 402 (2007) ("[M]edia appears to influence public attitudes about criminal justice policies by instilling and reinforcing racial stereotypes and linking race to crime.").

<sup>24</sup> See generally CHERMAK, *supra* note 2; see also Travis L. Dixon & Daniel Linz, *Race and the Misrepresentation of Victimization on Local Television News*, 27 COMM. RES. 547 (2000) [hereinafter Dixon & Linz, *Race and Misrepresentation*] (analyzing the representations of "Whites, Blacks, and Latinos as crime victims" in Los Angeles and Orange Counties); Eileen E.S. Bjornstrom et al., *Race and Ethnic Representations of Lawbreakers and Victims in Crime News: A National Study of Television Coverage*, 57 SOC. PROBS. 269 (2010) (describing one of few studies of national level TV coverage); Jeff Gruenewald et al., *Covering Victims in the News: What Makes Minority Homicides Newsworthy?*, 30 JUST. Q. 755 (2013).

<sup>25</sup> Salience was defined based on a uniquely designed *intensity* variable which captures journalistic techniques of expressing the prominence of a story (such as size of story, headlines etc.). See *infra* Section V: Data and Sample.

news, Black homicide victims are systematically underrepresented and white victims overrepresented compared to true victimization rates.<sup>26</sup>

These findings indeed substantiate repeated claims and concerns about the hierarchy of victimization across racial lines, one that is well imbued in society and its institutions. As the data show, such a hierarchy is socially formed and has little to do with the actual reality of crime. If anything, so I argue, and as official victimization statistics suggest, the pain and suffering inflicted on Black communities due to their increased victimization rates should have received more media attention. The data suggest otherwise. This Article thus exposes yet another dimension in which ideal victims—those receiving more recognition and social empathy—remain white. Black victims, on the contrary, are silenced, and stories about their loss and pain due to violent crime do not receive the attention and recognition they deserve.

Given the scholarship on media effects and the unsettling links between the portrayal of Black victims in the news and the treatment they receive from the criminal justice system, this Article aspires to start a conversation about potential ways to allow counter-narratives about race and crime to emerge. I thus briefly explore potential venues through which one could understand, assess, and rethink media representations of crime and race, as a first step in offering solutions to this long-lasting concern.

This Article proceeds as follows: Part II surveys the history of victims' rights in the U.S. and explores the concept of the "ideal victim," including its origins, socio-legal foundations, and integration within the criminal justice system. Here, it discusses this idea in the U.S. context and addresses its contribution to inequalities pervading the American criminal justice system. Part III discusses the existing literature on coverage of crime participants and situates this Article's contribution within the specific context of victims of crime. Part IV discusses how media coverage on crime participates in the social process of defining ideal victims. Introducing theories of social cognition, priming, schemas, and scripts,<sup>27</sup> I contend that cognitive linkage

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<sup>26</sup> See, e.g., Travis L. Dixon & Daniel Linz, *Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News*, 50 J. COMM. 131 (2000) [hereinafter Dixon & Linz, *Overrepresentation*]; Franklin D. Gilliam & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560, 565 (2000) (showing how exposure to local news coverage in Los Angeles resulted in support for three-strikes legislation and the death penalty); Gruenewald et al., *supra* note 24; Mary Beth Oliver & Dana Fonash, *Race and Crime in the News: Whites' Identification and Misidentification of Violent and Nonviolent Criminal Suspects*, 4 MEDIA PSYCHOL. 137, 150–51 (2002); Mark Peffley et al., *The Intersection of Race and Crime in Television News Stories: An Experimental Study*, 13 POL. COMM. 309 (1996) (The last three studies use lab experiments to investigate media effects but look at such effects from a rather narrow prism. As discussed in this Article, for legal scholars there is a growing interest in deciphering how media representations affect the criminal justice system).

<sup>27</sup> See L.J. Shrum, *Media Consumption and Perceptions of Social Reality: Effects and Underlying Processes*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 58 (Jennings Bryant & Mary

between social groups and social roles can be reinforced through media consumption. Part V discusses data and methodology. Part VI analyzes how homicide victims have been portrayed in *The Post* over a decade. Both descriptive and multivariate analyses show how coverage of white victims is consistently more salient than coverage of non-white victims. Moreover, at the local level, Black victims are underrepresented while white victims are overrepresented in crime stories compared to actual victimization rates. Such imbalance in media representation, I argue, preserves the divide between worthy and unworthy victims across racial lines. Through a multidisciplinary lens, Part VII briefly discusses potential explanations to these unwarranted findings as a starting point for thinking about potential solutions with an eye towards amplifying the voices of Black victims. The Conclusion discusses the implications of the findings with respect to the inequitable treatment of Black victims in the criminal justice system and, more broadly, the potential role of the media in amplifying the voices of Black victims of crime as a required step towards changing such treatment.

## II. ON VICTIMS' RIGHTS AND THE NON-IDEAL BLACK VICTIM

The origins of the victims' rights movement in the U.S. are usually traced to the mid-1960s, with the introduction of the first victims' assistance programs in states like California and Missouri.<sup>28</sup> From the 1960s onwards, the victims' rights movement has followed the growth and development of other social movements, simultaneously increasing their presence in the public space, such as the women's rights, civil rights, and law-and-order movements.<sup>29</sup> With a combination of incentives and focus, different initiatives to amplify victims' voices in the criminal process were suggested, culminating with the establishment of President Reagan's Presidential Task Force on Victims of Crime in 1982,<sup>30</sup> aimed at suggesting strategies to

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Beth Oliver eds., 3d ed. 2009) (introducing the heuristic processing model which works under two main assumptions: (1) the media enhances the accessibility of frequently presented concepts, and (2) heavy consumers overestimate the frequency of subordinate category on a superordinate category and thus are susceptible to heuristic processing—instead of systematic processing—during the construction of memory-based cultivation judgment).

<sup>28</sup> Boateng & Abess, *supra* note 1, at 222.

<sup>29</sup> Jon Kyl et al., *On the Wings of Their Angels: The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act*, 9 LEWIS & CLARK L. REV. 581 (2005) (discussing the social processes leading to the enactment of Crime Victims' Rights Acts); KARMEN, *supra* note 7, at 29–30; Boateng & Abess, *supra* note 1, at 222. Note that this Part only provides a brief, broad overview of the movement's development. A more nuanced and comprehensive look is outside the scope of this Article.

<sup>30</sup> See OFFICE OF THE PRESIDENT OF THE UNITED STATES, PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: FINAL REPORT (1982), <https://www.ovc.gov/publications/presdntstskforcprtr/87299.pdf>.



increase the participation of victims in the criminal justice system.<sup>31</sup> The Task Force's recommendations have led to several federal legislative initiatives, all with an eye towards establishing a more concrete victims' rights framework within the criminal justice process.<sup>32</sup> Key among these efforts was the Victims and Witness Protection Act (VWPA) of 1982,<sup>33</sup> followed by other legislation passed by Congress with similar goals in mind, including the Victims of Crime Act of 1984,<sup>34</sup> the Victims' Rights and Restitution Act of 1990,<sup>35</sup> the Violent Crime Control and Law Enforcement Act of 1994,<sup>36</sup> the Antiterrorism and Effective Death Penalty Act of 1996,<sup>37</sup> and the Victims' Rights Clarification Act of 1997.<sup>38</sup>

These laws, so it is argued, did not live up to their promise, leaving many crime victims deprived of their rights. The Crime Victims' Rights Act (CVRA) of 2004,<sup>39</sup> "the most sweeping federal victims' rights law in the history of the nation[.]"<sup>40</sup> was introduced as a response to the critique on the legislative initiatives preceding it. Attempts to establish a parallel regime of victims' rights within the state-level criminal justice system have been made over the years, and currently, almost all U.S. states and Washington, D.C. have in place legislation aiming to protect victims' rights.<sup>41</sup> The success of these reforms in advancing victims' rights, at both the federal and the state levels, is clearly acknowledged, alongside continuous debates by criminologists and criminal law scholars on the still much-needed reforms.<sup>42</sup> Specifically,

<sup>31</sup> Boateng & Abess, *supra* note 1, at 222.

<sup>32</sup> Kyl et al., *supra* note 29, at 583–86.

<sup>33</sup> Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (codified as amended at 18 U.S.C. §§ 1501, 1512–15 (2018)).

<sup>34</sup> Victims of Crime Act of 1984, Pub. L. No. 98-473, 98 Stat. 2170 (codified as amended at 34 U.S.C. § 20101 (2018)).

<sup>35</sup> Victims' Rights and Restitution Act of 1990, Pub. L. No. 101-647, 104 Stat. 4820 (codified as amended at 18 U.S.C. § 3771 (2018)).

<sup>36</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended at 34 U.S.C. §§ 12101, 12103–04 (2018)).

<sup>37</sup> Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

<sup>38</sup> Victim Rights Clarification Act of 1997, Pub. L. No. 105-6, 111 Stat. 12 (codified as amended at 18 U.S.C. § 3510 (2018)); *see also* Boateng & Abess, *supra* note 1, at 223.

<sup>39</sup> Crime Victims' Rights Act, Pub. L. No. 108-405, 118 Stat. 2260, 2261–65 (2004) (codified as amended at 18 U.S.C. § 3771 (2018)).

<sup>40</sup> Kyl et al., *supra* note 29, at 583.

<sup>41</sup> *Id.* at 584–86; Boateng & Abess, *supra* note 1, at 223. For a critique on CVRA, see Mary Margaret Giannini, *Equal Rights for Equal Rites?: Victim Allocation, Defendant Allocation, and the Crime Victims' Rights Act*, 26 YALE L. & POL'Y REV. 431 (2008) (emphasizing the participatory role of victims in sentencing after CVRA, while offering a critique on the imbalanced treatment of victims and defendants in sentencing it created).

<sup>42</sup> Paul G. Cassell & Steven Joffe, *The Crime Victim's Expanding Role in a System of Public Prosecution: A Response to the Critics of the Crime Victims' Rights Act*, 105 NW. U. L. REV.

an inherent—and often overlooked—flaw cuts through the initiatives, one that goes beyond the particular legal protections on victims’ rights: the exclusion of Black victims from the victims’ rights paradigm.

Since the early days of the victims’ rights movement, a specific vision of “a victim” has captured the hearts and minds of civil society activists struggling to introduce victims’ rights into the criminal process. The statement of the 1982 Presidential Task Force reflected this vision: “The specter of violent crime and the knowledge that, without warning, any person can be attacked or crippled, robbed, or killed, lurks at the fringes of consciousness.”<sup>43</sup> Such a view suggests that the Task Force’s goal was to offer official recognition and protection principally to weak and innocent victims. This approach goes hand in hand with the “ideal victim” conceptualized by Christie.<sup>44</sup> Christie suggests five non-exhaustive attributes in identifying ideal victims.<sup>45</sup> Three are directly related to the victim: the weakness of the victim, the activity the victim was engaged in (this should be decent),<sup>46</sup> and the location where the violent event happened (the victim should not be held accountable for being there).<sup>47</sup> The other two qualities are related to the perpetrator: the perpetrator was “big and bad” and has no personal relationship or familiarity with the victim.<sup>48</sup> The elderly and young children are the prototypical ideal victims.<sup>49</sup>

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COLLOQUY 164 (2010); 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 (2014). A recent article advocates that victim-offender reconciliation is integral to the Model Penal Code revisions aimed to “reduce prison populations . . . consistent with Supreme Court precedent and recent legislative trends . . . [and] public policy goals.” This argument illustrates the continual development in the victims’ rights movement and its need to focus on the “ideal victim.” Hugh M. Mundy, *Forgiven, Forgotten? Rethinking Victim Impact Statements for an Era of Decarceration*, 68 UCLA L. REV. DISC. 302, 302, 309 (2020) (advocating for “[r]eshaping retributive laws governing victim impacts statements” as essential to sentencing reform).

<sup>43</sup> PRESIDENT’S TASK FORCE ON VICTIMS OF CRIME, *supra* note 30, at vi.

<sup>44</sup> Christie, *supra* note 9, at 18–19.

<sup>45</sup> *Id.* at 19.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 19; *see also* Hadar Dancig-Rosenberg & Noa Yosef, *Crime Victimhood and Intersectionality*, 47 FORDHAM URB. L.J. 85, 90 (2019) (proposing to “conceptualize crime victimhood as an axis of identity. This axis . . . 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[ed] between different types of victims located at different points along the axis.”) Like Christie’s framework, Dancig-Rosenberg and Yosef’s perspective of “victimhood” looks specifically at the intersectionality of many different factors to redefine the roles and society’s understanding of the victim. Victimhood is not a single definition and this Article’s conceptualization of victimhood is one of several to consider. *Id.*

Inherent to Christie's conceptual view is the corollary that ideal victims "need—and create—ideal offenders[,]”<sup>50</sup> and both are highly correlated; the more ideal an offender (bigger, less acquainted with the victim, doing worse things to the victim, etc.) the more ideal is the victim and vice-versa.<sup>51</sup>

The concept of ideal victim accentuates how victimhood should not be understood as a given, objective term but rather as a dynamic social structure. The recognition (or denial) of victimhood should thus be explored and understood within broader social, political, and economic contexts;<sup>52</sup> and indeed, the “ideal” has undergone, and is still subject to, meaningful “theorization, analysis and re-conceptualization” due to the changing nature of societies, mobile technologies, and social networks.<sup>53</sup> In the U.S. context, ideal victims are traditionally divided across gendered and racialized lines, with white middle-class females idealized as victims.<sup>54</sup> Ideal offenders, in contrast, are usually male, poor, minority (predominately Black), uneducated, and erratic.<sup>55</sup>

This should not come as a surprise if one considers the history and evolution of victims' rights movements.<sup>56</sup> The advocates of the movements were primarily white,<sup>57</sup> and included in part conservative groups espousing a law-and-order agenda,<sup>58</sup> contributing to truth-in-sentencing, the federal Violent Crime Control

<sup>50</sup> Christie, *supra* note 9, at 25.

<sup>51</sup> *Id.*; Alice Bosma et al., *The Ideal Victim Through Other(s) Eyes*, in REVISITING THE “IDEAL VICTIM,” *supra* note 8, at 27, 27–42.

<sup>52</sup> Scott, *supra* note 8, at xiii–xv.

<sup>53</sup> Marian Duggan, *Introduction*, in REVISITING THE “IDEAL VICTIM,” *supra* note 8, at 1–10 (emphasizing the fluidity of the ideal victim definition and its susceptibility to social and cultural changes).

<sup>54</sup> As opposed to poor, minority, predominantly Black, female and even more so male individuals. ROBERT ELIAS, *THE POLITICS OF VICTIMIZATION: VICTIMS, VICTIMOLOGY, AND HUMAN RIGHTS* 60 (1986); Esther I. Madriz, *Images of Criminals and Victims: A Study on Women's Fear and Social Control*, 11 *GENDER & SOC'Y* 342, 353 (1997) (exploring women's fear of crime through in-depth interviews and focus groups and emphasizing the deep roots of racial anxiety); Zaykowski et al., *supra* note 7, at 717.

<sup>55</sup> Madriz, *supra* note 54, at 353.

<sup>56</sup> See KARMEN, *supra* note 7, at 27–39 (explaining how politicians and media were instrumental in the victims' rights movement, but often used attention-grabbing “victim-offender” relationships to garner public support and attention).

<sup>57</sup> Miller, *supra* note 13, at 809; Vanessa Barker, *The Politics of Punishing: Building a State Governance Theory of American Imprisonment Variation*, 8 *PUNISHMENT & SOC'Y* 5 (2006) (offering an insightful portrayal on the role of white communities in promoting policies affecting victims).

<sup>58</sup> ELIAS, *supra* note 54, at 19–21, 231; FRANKLIN E. ZIMRING ET AL., *PUNISHMENT AND DEMOCRACY: THREE STRIKES AND YOU'RE OUT IN CALIFORNIA* 175 (2001) (providing a detailed socio-legal account on the social forces that promoted California's extreme penal policy).

and Law Enforcement Act (1994)<sup>59</sup> and California Proposition 184 (also known as the “Three Strikes” law)<sup>60</sup> in the name of victims’ rights.<sup>61</sup> There may be no better evidence of the racialized and gendered division of ideal victims than thinking about the victims whose tragic events were pivotal to the institutional recognition in victims’ rights: Polly Klaas (whose murder ignited Three Strikes Laws in California),<sup>62</sup> Megan Kanka (whose murder led to the enactment of Megan’s Law),<sup>63</sup> Amber Hagerman (whose tragic story was memorialized with the Amber Alert),<sup>64</sup> Scott Campbell, Stephen Roper, Wendy Preston, Louarna Gillis, and Nila Lynn (whose devastating stories advanced the legislation of the Crime Victims’ Act),<sup>65</sup> and Marsy Nicholas (whose tragic death inspired Marsy’s law(s)).<sup>66</sup> These ideal victims were all considered innocent and weak. They were also predominantly young, white, and female.<sup>67</sup> They represent the social construction of the ideal victims in U.S. society—those entitled to societal empathy—and similarly reflect on those “others” who are affected by crime but are not entitled to be recognized as such.

The inequalities within U.S. society, and specifically within the criminal justice system, are preserved through the concept of ideal victims. Minority groups, mostly Black individuals, are often excluded from the ideal victim paradigm.<sup>68</sup> Such exclusion should be understood within wider social, economic, and political contexts.<sup>69</sup>

<sup>59</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended at 34 U.S.C. §§ 12101, 12103–04 (2018)).

<sup>60</sup> See CAL. PENAL CODE § 667 (West 2020).

<sup>61</sup> ELIAS, *supra* note 54, at 19–21; ZIMRING ET AL., *supra* note 58, at 159.

<sup>62</sup> ZIMRING ET AL., *supra* note 58, at 159–60.

<sup>63</sup> Megan’s Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified as amended at 42 U.S.C. § 13701 (2018)).

<sup>64</sup> Zaykowski et al., *supra* note 7, at 718.

<sup>65</sup> Crime Victims’ Rights Act, Pub. L. No. 108-405, 118 Stat. 2260, 2261–65 (2004) (codified as amended at 18 U.S.C. § 3771 (2018)); see also Kyl et al., *supra* note 29, at 583.

<sup>66</sup> Paul G. Cassell & Margaret Garvin, *Protecting Crime Victims in State Constitutions: The Example of the New Marsy’s Law for Florida*, 110 J. CRIM. L. & CRIMINOLOGY 99, 102 (2020) (concluding that Florida’s new law constitutionally protects victims while upholding defendant rights; the country is creating a consensus on types of rights victims should have; victims should have “standing” to assert and seek enforcement” of their rights, and Florida’s broad protections could “significantly expand the protections crime victims’ interests receive throughout the criminal justice process”).

<sup>67</sup> *Id.* at 106–07. The victim who inspired this legislation was also young, white, and female.

<sup>68</sup> Deborah L. Rhode, *Character in Criminal Justice Proceedings: Rethinking Its Role in Rules Governing Evidence, Punishment, Prosecutors, and Parole*, 45 AM. J. CRIM. L. 353, 356 (2019) (discussing “the role of race in character judgments, and the biases it introduces at every level of the criminal justice system: searches, arrests, pretrial detention, charges, sentences, jury selection, probation, and parole”).

<sup>69</sup> Cynthia D. Bond, *Laws of Race/Laws of Representation: The Construction of Race and Law in Contemporary American Film*, 11 TEX. REV. ENT. & SPORTS L. 219, 240 (2010) (contributing

The exclusion of Black victims from the ideal victim paradigm can be explained by the history of the victims' rights movements discussed above, but also by the interdependence between the ideal victim and the ideal offender,<sup>70</sup> and, more specifically, the myth of Black-on-Black crime. While data show that most violent crime is intraracial, regardless of a specific race, the myth of Black-on-Black crime suggests that on average Black victims know their offenders more than victims of other races.<sup>71</sup> For these reasons and others, Black victims are rarely treated as "ideal" and thus consistently overlooked by the criminal justice system.<sup>72</sup> From a deeper socio-pathological look into the national consciousness, the consistent estrangement of Black victims from the ideal provides a harsh reminder that we still fail to recognize Black victims as subjects of empathy, as "vulnerable human beings who sustain pain and love and hatreds and fears and joy and sorrows and degradations and triumphs."<sup>73</sup>

Exclusion from or inclusion under the umbrella of ideal victims should not be considered merely an academic debate. It has far-reaching consequences for laws, penal policy, and culture. As we have seen, ideal victims gain institutional legitimacy and public backing that consequently make compelling claims on government resources, including reforms in the criminal justice system and changes in cultural values.<sup>74</sup> Moreover, legitimate and blameless victims are better serviced by police officers,<sup>75</sup> and receive better, more respectful, treatment from prosecutors and judges.<sup>76</sup> From a societal perspective, unworthy victims are given social labels that emphasize their blame or responsibility in what happened to them.<sup>77</sup> Moreover, offenders justify their behavior based on the unworthiness of a victim.<sup>78</sup> Above all,

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to the notion that race is a societal construction and arguing that even film "helps construct race and its place in cultural attitudes about law . . . including the legal system itself and people's experiences with that system").

<sup>70</sup> Christie, *supra* note 9, at 23–26.

<sup>71</sup> HINTON ET AL., *supra* note 14, at 4.

<sup>72</sup> EQUAL JUSTICE USA, BRIDGING THE DIVIDE: A NEW PARADIGM FOR EQUAL JUSTICE USA ADDRESSING SAFETY, CRIME, AND VICTIMIZATION 10 (2014), <https://ejusa.org/bridging-the-divide-a-new-paradigm-for-addressing-safety-crime-and-victimization/> (a report submitted through a collaboration of a few civil society organizations aiming to amplify the voices of minority victims of crimes).

<sup>73</sup> Gresham & Bennett, Jr., *supra* note 8, at 120. While this Article focuses on victims, Gresham's work discusses Blacks (or Black individuals) more broadly, as a minority group that does not receive social empathy and adequate consideration from the white majority.

<sup>74</sup> See KARMEN, *supra* note 7, at 33–34; JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 75–76 (2007); Zaykowski et al., *supra* note 7, at 718.

<sup>75</sup> ELIAS, *supra* note 54, at 143–44.

<sup>76</sup> KARMEN, *supra* note 7, at 175; Zaykowski et al., *supra* note 7, at 728.

<sup>77</sup> KARMEN, *supra* note 7, at 104.

<sup>78</sup> ELIAS, *supra* note 54, at 84.

“second-class” victims themselves internalize such messages which rob them of their right to be vulnerable and innocent, an important part of their healing process.<sup>79</sup>

Moreover, as much as the image of the ideal, innocent, and passive victim dominates the criminal justice system, this image is fairly detached from the reality of crime. Victims often fall prey to violence from offenders they know, and usually not under random circumstances.<sup>80</sup> Moreover, while we imagine the victimization of “women, children, and the elderly . . . of the police, society, and government; and of middle and upper classes[.]”<sup>81</sup> in fact the victimized are more frequently non-white, particularly in violent crimes.<sup>82</sup> In other words, most victims are not “ideal” and are thus denied social recognition. A recent report published by the Bureau of Justice Statistics indeed shows that in 2016 men and women were equally affected by violent crime, and that Black victims were most likely to suffer from violent crime compared to other racial groups.<sup>83</sup>

Moreover, studies have consistently shown that when accounting for different measures of risk and probabilities, those real (non-ideal) victims are often left with feelings of revenge, anger, and injustice while having the least amount of opportunities to avoid crime and are thus more likely to also become offenders themselves.<sup>84</sup> And so, the cycle continues.

Ideal victims are social structures.<sup>85</sup> They reflect the social and psychological distancing of in- and out-groups. They mirror the subjects of empathy, alongside the subjects of fear and stereotyping. They preserve racial hierarchies and inequalities among the subjects of the criminal justice system with tenuous connections to the reality of crime. In this Article, I claim that the fallacy of the ideal victim, with its detrimental consequences for minority groups and the criminal justice system, cannot be fully addressed without investigating the role of the media in the construction of the “ideal.”

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<sup>79</sup> MEG GARVIN & SARAH LECLAIR, NAT'L CRIME VICTIM LAW INST., POLYVICTIMS: VICTIMS' RIGHTS ENFORCEMENT AS A TOOL TO MITIGATE “SECONDARY VICTIMIZATION” IN THE CRIMINAL JUSTICE SYSTEM 1–2 (2013).

<sup>80</sup> Zaykowski et al., *supra* note 7, at 718.

<sup>81</sup> ELIAS, *supra* note 54, at 60.

<sup>82</sup> Parham-Payne, *supra* note 18, at 753–55.

<sup>83</sup> RACHEL E. MORGAN & GRACE KENA, U.S. DEP'T OF JUSTICE, CRIMINAL VICTIMIZATION, 2016: REVISED 9–10 (2018).

<sup>84</sup> See ELIAS, *supra* note 54, at 116–17, 126; Diederik Cops & Stefaan Pleysier, *Usual Suspects, Ideal Victims and Vice Versa: The Relationship Between Youth Offending and Victimization and the Mediating Influence of Risky Lifestyles*, 11 EUR. J. CRIMINOLOGY 361, 364 (2014).

<sup>85</sup> Daly, *supra* note 10, at 378.

## III. IDEAL VICTIMS IN THE NEWS

Over the last two decades, scholars have realized the importance of studying the ways by which the participants of the criminal justice system are portrayed in the media. Similar to research on social and institutional preferences, the majority of the work has focused on the portrayal of perpetrators,<sup>86</sup> while neglecting crime victims.<sup>87</sup> At the turn of the new millennium, perhaps related to the passage of federal and state victims' rights statutes, scholars started paying more attention to the portrayal of crime victims.<sup>88</sup> This Article contributes to this growing body of work. It also fills a gap in studies on victims in the print media, as the majority of studies have focused on TV, and mostly local news.<sup>89</sup> Such a tendency should be scrutinized since newspaper coverage serves as the foundation for TV and radio news coverage,<sup>90</sup> and still has an important role in providing information to the public (perhaps even more so in this "fake-news" era).<sup>91</sup> Moreover, most of these studies have been conducted by psychologists, political scientists and media scholars, resulting in a limited

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<sup>86</sup> See CHERMAK, *supra* note 2, at 1–2; Dixon & Linz, *Race and Misrepresentation*, *supra* note 24; Robert M. Entman, *Blacks in the News: Television, Modern Racism and Cultural Change*, 69 JOURNALISM Q. 341, 343–46 (1992); Gilliam & Iyengar, *supra* note 26; Oliver & Fonash, *supra* note 26.

<sup>87</sup> CHERMAK, *supra* note 2, at 1–2.

<sup>88</sup> See, e.g., CHERMAK, *supra* note 2, at 2–3; Bjornstrom et al., *supra* note 24; Travis L. Dixon, *Good Guys Are Still Always in White? Positive Change and Continued Misrepresentation of Race and Crime on Local Television News*, 44 COMM. RES. 775 (2017); Dixon & Linz, *Race and Misrepresentation*, *supra* note 24; Kristen Gilchrist, "Newsworthy" Victims?: Exploring Differences in Canadian Local Press Coverage of Missing/Murdered Aboriginal and White Women, 10 FEMINIST MEDIA STUD. 373 (2010); Daniel Romer et al., *The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict?*, 25 COMM. RES. 286 (1998). For a most recent example, see Kailey White et al., *Whose Lives Matter? Race, Space, and the Devaluation of Homicide Victims in Minority Communities*, SOC'Y RACE & ETHNICITY 1, 2 (2020) (analyzing news articles written about homicide victims in Chicago during 2016, and finding that "victims killed in predominantly Black neighborhoods receive less news coverage than those killed in non-Hispanic White neighborhoods. Those killed in predominantly Black or Hispanic neighborhoods are also less likely to be discussed as multifaceted, complex people").

<sup>89</sup> MARIAN MEYERS, NEWS COVERAGE OF VIOLENCE AGAINST WOMEN: ENGENDERING BLAME 13 (1997); Ted Chiricos & Sarah Eschholz, *The Racial and Ethnic Typification of Crime and the Criminal Typification of Race and Ethnicity in Local Television News*, 39 J. RES. CRIME & DELINQ. 400, 403–04 (2002); Travis L. Dixon et al., *The Portrayal of Race and Crime on Television Network News*, 47 J. BROADCAST. & ELEC. MEDIA 498, 499 (2003); Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 553–55; Robert M. Entman, *Representation and Reality in the Portrayal of Blacks on Network Television News*, 71 JOURNALISM Q. 509 (1994); see also Entman, *supra* note 86, at 344.

<sup>90</sup> MEYERS, *supra* note 89, at 91; Richard J. Lundman, *The Newsworthiness and Selection Bias in News About Murder: Comparative and Relative Effects of Novelty and Race and Gender Typifications on Newspaper Coverage of Homicide*, 18 SOC. F. 357, 363 (2003).

<sup>91</sup> Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31

discussion of the legal implications of the findings. Furthermore, very few studies adopt a victimological approach that investigates the connections between media portrayal and the ideal victim framework.

From the ideal victim's perspective, the media's message is self-explanatory: victims that receive greater media coverage deserve to be acknowledged and to obtain social attention. They are the ideal victims. Those left out of the media frames are not. The construction of the ideal is comprised of a few hierarchical patterns. First, there are hierarchies in the types of crime covered, with homicide at the top.<sup>92</sup> Second, the type of victims covered are traditionally divided across racial, gender, and socio-economic lines. For example, as discussed earlier, old and young white women receive more media attention.<sup>93</sup> The victims receiving the most coverage and attention are portrayed as good women who are innocent and deserving of societal deliverance, as opposed to bad women who are "beyond redemption" and thus unworthy of recognition as victims.<sup>94</sup> Such dichotomy is strongly tied to race and social status, with poor and racial minorities usually depicted as blameworthy compared to middle and upper-class white individuals, especially women.<sup>95</sup> More generally, and although findings on the racial front are not straightforward,<sup>96</sup> the majority of the scholarship suggests that racial-ethnic victims, predominantly Black individuals, are generally marginalized in the context of crime news, especially compared to white individuals.<sup>97</sup> Moreover, these minority groups are more likely to be reported as offenders than as victims.<sup>98</sup> A comparison of the coverage of racial-ethnic groups with data on victimization rates<sup>99</sup> reveals a racial imbalance with white individuals usually overrepresented as victims compared to their actual victimization

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J. ECON. PERSP. 211, 224 (2017) (providing compelling and most timely empirical evidence to the public reliance on traditional print news media in consuming political news and information compared to social media).

<sup>92</sup> MEYERS, *supra* note 89, at 90; Gilchrist, *supra* note 88, at 375.

<sup>93</sup> Kenneth Dowler, *Comparing American and Canadian Local Television Crime Stories: A Content Analysis*, 46 CAN. J. CRIMINOLOGY & CRIM. JUST. 573, 575–76 (2004); Gilchrist, *supra* note 88, at 377.

<sup>94</sup> Gilchrist, *supra* note 88, at 375.

<sup>95</sup> ELIAS, *supra* note 54, at 84; MEYERS, *supra* note 89, at 95–97.

<sup>96</sup> Bjornstrom et al., *supra* note 24, at 270.

<sup>97</sup> Kevin Buckler & Lawrence Travis, *Assessing the Newsworthiness of Homicide Events: An Analysis of Coverage in the Houston Chronicle*, 12 J. CRIM. JUST. & POPULAR CULTURE 1, 4–5 (2005); Chiricos & Eschholz, *supra* note 89, at 415; Dixon & Linz, *Overrepresentation*, *supra* note 26, at 133–35; Gruenewald et al., *supra* note 24, at 758–59; White et al., *supra* note 88, at 2. Studies find similar marginalization, if to a lesser extent, also on Hispanics. White et al., *supra* note 88, at 9–13. From the reasons mentioned *supra* this study focuses on the victimization of Black and white populations.

<sup>98</sup> Studies adopting this internal approach described it as "inter-group." Dixon & Linz, *Overrepresentation*, *supra* note 26, at 133.

<sup>99</sup> Studies adopting this external approach described it as "inter-reality." *Id.* at 135.



rates,<sup>100</sup> and Black victims generally represented in accordance with their actual victimization rates.<sup>101</sup> The other side of the ideal victim equation, the ideal offender, is similarly reflected in the media's coverage of crime. Gender, race, and socio-economic status shape the construction of the "bad offender," usually male, from a racial minority group (mostly Black) and low socio-economic background.<sup>102</sup>

Taken together, although very few studies have attempted to point at the interconnections between the "ideal" victim recognized by the criminal justice system,<sup>103</sup> and the one created by the media, one should not disregard the natural links between the two. Such links, so I claim, participate in the creation of a cohesive, socially acceptable, and legally executable meaning of victimization—a meaning that systematically excludes specific racial groups from the social and institutional victimization cycle.

#### IV. MEDIA EFFECTS ON THE RACE AND CRIME PARADIGM

The connection between media portrayals of minority victims and the treatment these groups receive in the criminal justice system is best explained through the potential psychological effects of exposure to media messages on the mindset and policy attitudes of media consumers.<sup>104</sup> Theories of social cognition, priming, schemas, and scripts<sup>105</sup> contend that the cognitive linkage between social groups and social roles can be reinforced through media consumption.<sup>106</sup> While an increasing number of studies explore these questions, none addresses them in the context of

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<sup>100</sup> Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 562–63; Dixon & Linz, *Overrepresentation*, *supra* note 26, at 148–51.

<sup>101</sup> Dixon & Linz, *Overrepresentation*, *supra* note 26, at 148–51; Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 564; Gruenewald et al., *supra* note 24, at 758–60.

<sup>102</sup> See ROBERT M. ENTMAN & ANDREW ROJECKI, THE BLACK IMAGE IN THE WHITE MIND: MEDIA AND RACE IN AMERICA 94 (2004) (discussing the institutionalism of racial predispositions among news outlets); Chiricos & Eschholz, *supra* note 89, at 415; Itay Ravid, *True Colors: Crime, Race and Colorblindness Revisited*, 28 CORNELL J.L. & PUB. POL'Y 243, 286–87 (2018); see also Saccomano, *supra* note 21, at 1693 (highlighting recent examples of the American court system's inherent racial basis as having a negative impact on sentencing for Black and other racial minorities).

<sup>103</sup> Chris Greer, *News Media, Victims and Crime*, in VICTIMS, CRIME AND SOCIETY 20, 21–22 (Pamela Davies et al. eds., 2007) (illustrating the disparate coverage of crime stories in the United Kingdom that resembled in content but involved victims from different racial groups).

<sup>104</sup> Beale, *supra* note 23, at 449–50 (discussing study where "[e]xperimental simulations have shown that the standard script for local news coverage of crime affects public opinion" and concluding that "[t]he crime script's racial element appears to be a significant cue that triggers public opinion about crime and crime policy").

<sup>105</sup> Shrum, *supra* note 27, at 58.

<sup>106</sup> CHERMAK, *supra* note 2, at 176–77; Dixon & Linz, *Overrepresentation*, *supra* note 26, at 132.

this study—the criminal justice system.<sup>107</sup> The main claim in the context of crime coverage is that the prevalence of a specific narrative or script—i.e., crime is violent, perpetrators are non-white while victims are white, etc.—has become “an ingrained heuristic” for understanding crime and race,<sup>108</sup> reinforcing what Entman and others refer to as “modern racism.”<sup>109</sup> Such scripts clearly mirror the ideal victim framework. Moreover, schemas that are constantly activated by repeating racial cues will remain on the “top of the mental bin,” making them highly accessible to be used in judgments.<sup>110</sup> Crime schemas affect not only what is reported, but also what is left out of the media messages. Accordingly, racialized-crime scripts that are constant and repeated serve as “cognitive fillers” in stories when no information is presented. Thus, despite the actual reality of crime, audiences will attribute criminal activity to Black males, usually from low socio-economic status and victimhood to white female, usually from a mid-high socio-economic level.<sup>111</sup>

The idea of cognitive linkage created by the media has been found to be instrumental in either creating or reinforcing stereotypes on the racial reality of crime, specifically identifying Black individuals as criminal offenders and white individuals as victims.<sup>112</sup> Moreover, there is evidence that news content, even if distorted, reinforces beliefs about the unequal distribution of racial groups in the criminal process, identifying white individuals as the group most affected by crime.<sup>113</sup> Moreover, these beliefs that are supported by media representation can increase support for punitive crime policies.<sup>114</sup> Borrowing from the experimental literature on the effects

<sup>107</sup> See Gilliam & Iyengar, *supra* note 26, at 564; Mary Beth Oliver et al., *The Face of Crime: Viewers' Memory of Race-Related Facial Features of Individuals Pictured in the News*, 54 J. COMM. 88, 90 (2004).

<sup>108</sup> Dixon et al., *supra* note 89, at 501; Gilliam & Iyengar, *supra* note 26, at 560.

<sup>109</sup> Entman, *supra* note 86, at 342–43; J.B. McConahay, *Modern Racism, Ambivalence, and the Modern Racism Scale*, in PREJUDICE, DISCRIMINATION, AND RACISM 92–93 (John F. Dovidio & Samuel L. Gaertner eds., 1986).

<sup>110</sup> See David Domke, *Racial Cues and Political Ideology: An Examination of Associative Priming*, 28 COMM. RES. 772, 775 (2001) (offering a theoretical model for the processes underlying the formation of people's impressions); Thomas K. Srull & Robert S. Wyer, Jr., *Person Memory and Judgment*, 96 PSYCHOL. REV. 58, 60 (1989).

<sup>111</sup> Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 548–49; Gilliam & Iyengar, *supra* note 26, at 567–72.

<sup>112</sup> Travis L. Dixon & Cristina L. Azocar, *Priming Crime and Activating Blackness: Understanding the Psychological Impact of the Overrepresentation of Blacks as Lawbreakers on Television News*, 57 J. COMM. 229, 233 (2007); Oliver & Fonash, *supra* note 26.

<sup>113</sup> Oliver & Fonash, *supra* note 26, at 138.

<sup>114</sup> Gilliam & Iyengar, *supra* note 26, at 571–72; see also Beale, *supra* note 23, at 447 (“Framing is significant because it activates some ideas, feelings, and values more than others . . . [which] leads audiences to arrive at certain conclusions. For example, a . . . study analyzing *Newsweek* articles found that changes in the media's framing of the race issue brought about subtle shifts in racial policy preferences.”).

of media crime scripts on penal policy, I argue that the systematic focus on white victims may result in strong adherence towards adopting policy solutions that will protect mainly this group, while neglecting others. The reality of the victims' movement suggests this is in fact the case in the United States.

Indeed, the media studies and sociological approach on this issue is closely aligned to a more individualized psychology approach. Specifically, studies conducted by social psychologists, often in collaboration with media scholars, suggest that news content establishes stereotypical thinking. Theories of social cognition contend that consistent exposure to depictions of out-group members in a stereotypical role over a long period of time may form stereotypes.<sup>115</sup> In the context of victims, the unequal coverage across racial lines exacerbates the racial divide, including the fear of white individuals being victimized, and specifically, being victimized by Black perpetrators.<sup>116</sup>

While this scholarship provides essential insights for analyzing victimization in the media, most previous studies overlook an important component of the discourse: by neglecting to report on specific victimized groups, the media helps to preserve a hierarchy of victimization, differentiating between the "ideal"—and thus newsworthy—victims and other non-deserving victims.<sup>117</sup> As discussed, these "second class" victims lose their claim to a complete and legitimate victim status, including institutional recognition, societal attention and access to resources.<sup>118</sup> The ideal victim framework adopted in this Article advances the understanding of the correlation between racial division in the criminal justice system and victimhood status as formed by the media.

Current studies face several challenges that inhibit their ability to explore these correlations. *First*, most studies emphasize the importance of local news, overlooking national-level media coverage, making it difficult to examine social structures in a broader context.<sup>119</sup> *Second*, few studies use large longitudinal data sets.<sup>120</sup> Moreover, those few studies usually adopt a retrospective longitudinal design, thus limiting the ability to carefully trace changes and nuances over the studied period. For those interested in the potential effects of media representations on socio-legal reality, the stability of the messages is key, as changes in representations over time may alter

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<sup>115</sup> David L. Hamilton et al., *Social Cognition and the Study of Stereotyping*, in *SOCIAL COGNITION: IMPACT ON SOCIAL PSYCHOLOGY* 304 (Patricia G. Devine et al. eds., 1994); Oliver et al., *supra* note 107, at 91.

<sup>116</sup> Dixon & Linz, *Overrepresentation*, *supra* note 26, at 147–51.

<sup>117</sup> CHERMAK, *supra* note 2, at 82; Greer, *supra* note 103, at 22.

<sup>118</sup> Parham-Payne, *supra* note 18, at 759–62.

<sup>119</sup> For a notable exception, see Bjornstrom et al., *supra* note 24, at 271–74.

<sup>120</sup> Studies range from 55 days, for example, Entman, *supra* note 86, at 347, to 14 weeks, e.g., Romer et al., *supra* note 88, at 292, to one to two years, for example, Bjornstrom et al., *supra* note 24, at 277. Dixon, *supra* note 88, at 776, is an uncommon example of a study that lasted approximately five years.

cognitive links pertaining to stereotypical views of different groups.<sup>121</sup> Moreover, understanding the delicate and subtle ways by which racially divisive social structures are created and reproduced calls for a close read of the journalistic techniques used over sequential periods of time, which cannot be done under a retrospective design. *Third*, most studies to date adopt content analytical strategies to explore the ways victims are covered, despite a pressing need for multivariate techniques that allow the consideration of multidimensional aspects.<sup>122</sup> *Fourth*, as mentioned, most studies aiming to comprehend how coverage of victims varies across racial lines either compare the mean mentions of each racial group to other groups or to true crime statistics. However, this research approach unravels only part of the story as it neglects to investigate whether different reporting techniques are utilized in the coverage of victims from different racial groups. For example, these studies do not explore whether stories on a specific racial group are more salient based on journalistic cues such as location of story, headlines, etc.

This Article addresses these challenges. *First*, in order to explore both local and national contexts, I selected *The Post*, a media outlet that is both a leading national paper and a local newspaper, as my data source. This increases the external validity of the study compared to previous studies.<sup>123</sup> *Second*, by including a large sample of longitudinal data spanning ten years of coverage, I am able to carry out a careful and nuanced analysis up to the quarter level. Moreover, the novel coding scheme adopted in this study—adopting a multi-layered approach to identify race in an era of colorblindness—breaks down the patterns through which race reemerged over the years. *Third*, the study expands our understanding of the coverage of crime through a combination of content analysis and multivariate techniques. *Fourth*, it adds a new dimension of inquiry into victimization in the news through the proposed measurement of intensity—an index that captures a variety of journalistic techniques that reflect the salience of a crime story.

## V. DATA AND SAMPLE

The data for this study span ten years of coverage on crime in *The Post* between 1997 and 2006. *The Post* was chosen since, first, it is one of the leading national U.S. newspapers;<sup>124</sup> second, it is also a local newspaper for Washington, D.C., and parts of Maryland, and Virginia; and third, it is traditionally considered to fall on the liberal end of the journalistic spectrum. In particular, one would expect such a

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<sup>121</sup> See Dixon & Linz, *Overrepresentation*, *supra* note 26, at 131–35.

<sup>122</sup> See Buckler & Travis, *supra* note 97, at 4; Gruenewald et al., *Quantitative Studies on Media and Crime*, *ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 4234 (2014) (addressing the need to increase the number of studies focusing on this line of research).

<sup>123</sup> See Bjornstrom et al., *supra* note 24, at 273.

<sup>124</sup> See, e.g., *Top 10 U.S. Daily Newspapers*, *CISION: CISION MEDIA RES.* (Jan. 4, 2019), <https://www.cision.com/2019/01/top-ten-us-daily-newspapers/>.

venue to demonstrate an increased awareness of potential racial biases, especially in an era of colorblindness. Any pattern of coverage identified in *The Post* thus serves as a litmus test for media representations (or misrepresentations) of race and crime; if unequal treatment is identified, the challenge of tackling racial media schemas on victimization may be greater than expected. The study's time frame reflects the era before the "explosion" of the information age, just before social media and alternative online outlets gained their current dominance in providing public information.<sup>125</sup> The study thus captures a decade in which newspapers served, alongside TV, as the main providers of public information.<sup>126</sup> This social-cultural context provides a relatively straightforward environment to study the potential effects of news coverage on silencing the voices of Black victims.

I adopted a "Constructed Week" sampling strategy, a method frequently used by scholars aiming to approximate content for larger populations of textual data in content analysis projects. "Constructed Week" sampling is a form of stratified random sampling, in which researchers identify all Sundays, Mondays, etc., within a chosen period and randomly sample from those "grouped" days to create a fictitious week.<sup>127</sup> This sampling strategy ensures the sample of stories is unaffected by the seasonality of news events and coverage decisions.<sup>128</sup> Studies provide compelling evidence that, at least for daily American newspapers, this method is the most effective in capturing variations within days of news coverage.<sup>129</sup> Two constructed weeks are sufficient to provide a representative sample of a year of newspaper coverage.<sup>130</sup>

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<sup>125</sup> Facebook was founded in 2004 but was opened for all only in 2006. Josh Boyd, *The History of Facebook: From BASIC to Global Giant*, BRANDWATCH (Jan. 25, 2019), <https://www.brandwatch.com/blog/history-of-facebook/>. Twitter was launched in July 2006. John C. Abell, *March 21, 2006: Twitter Takes Flight*, WIRED (Mar. 21, 2011, 7:00 AM), <https://www.wired.com/2011/03/0321twitter-first-tweet/>. Huffington Post was launched in May 2005. David Sarno, *A Brief History of the Huffington Post*, L.A. TIMES (Feb. 7, 2011, 12:00 PM), <https://www.latimes.com/archives/la-xpm-2011-feb-07-la-fi-huffington-post-timeline-20110207-story.html>.

<sup>126</sup> See Allcott & Gentzkow, *supra* note 91, at 224.

<sup>127</sup> DANIEL RIFFE ET AL., ANALYZING MEDIA MESSAGES: USING QUANTITATIVE CONTENT ANALYSIS IN RESEARCH 114–15 (2d ed. 2005); Harry L. Marsh, *A Comparative Analysis of Crime Coverage in Newspapers in the United States and Other Countries from 1960–1989: A Review of the Literature*, 19 J. CRIM. JUST. 67, 71 (1991); Daniel Riffe, Charles F. Aust & Stephen R. Lacy, *The Effectiveness of Random, Consecutive Day and Constructed Week Sampling in Newspaper Content Analysis*, 70 JOURNALISM Q. 133, 133 (1993).

<sup>128</sup> RIFFE ET AL., *supra* note 127, at 113.

<sup>129</sup> *Id.* at 139; Stephen Lacy et al., *Sample Size for Newspaper Content Analysis in Multi-Year Studies*, 78 JOURNALISM & MASS COMM. Q. 836, 837 (2001); Douglas A. Luke et al., *How Much Is Enough? New Recommendations for Using Constructed Week Sampling in Newspaper Content Analysis of Health Stories*, 5 COMM. METHODS & MEASURES 76, 78 (2011).

<sup>130</sup> See Lacy et al., *supra* note 129, at 839 (showing that two constructed weeks from a year or nine weeks from five years is sufficiently efficient unless variations are large and then 10 weeks

As this study offers a nuanced and detailed portrayal of coverage on crime in the print media over a decade, I sampled four constructed weeks per year, drawing one week per quarter, which allowed for both yearly and quarterly analysis. The final sample included 4,689 stories on crime: 1,279 national level stories and 3,410 local level stories.

### *A. Codebook Development and Coder Training*

The codebook was developed in two stages. First, I conducted a pilot coding process in which 35% of the yearly data were sampled. The coders were provided with an initial coding scheme containing a detailed definition of each variable. Coding began after an individual and group level training conducted by the main researcher. The pilot reliabilities were analyzed under Cohen's Kappa ( $\kappa$ ) reliability measurement, which allows the assessment of multiple coders and has been established as a strong measure of reliability.<sup>131</sup> Coders then held seminar-like group discussions on coding decisions, specifically where lower reliability values were obtained. Changes to the protocol were made based on the reliability measurements and the group discussion. Overall, coders were trained at the individual and group level for a total of approximately 10–13 hours. To maximize the reliability of the coding process, Krippendorff's recommended coding guidelines were adopted: employ pilot content analysis, indicate clear instructions for coding, use skilled coders and engage in training sessions, code independently, and use clear criteria and a single classification principle.<sup>132</sup> Using these guidelines increases the reliability of the coding process.<sup>133</sup> Inter-coder reliability was assessed based on a randomly selected 10% of the full sample, ranging from 0.74 to 0.96 with an average  $\kappa$  coefficient of 0.82.

### *B. Coding Scheme and Operationalization of Variables*

The units of data collection are *stories* on crime in the newspaper. *Crime* was broadly defined as a behavior pertaining to a lawbreaking act or social reaction to lawbreaking. The felonies coded reflect the National Archive of Criminal Justice Data ("NACJD") index of felonies. Terror-related incidents, espionage, corporate activity, tax evasion, car accidents that do not involve negligent manslaughter, other non-violent felonies (such as car theft), and crime stories occurring outside the U.S.

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should be selected; Luke, Caburnay, and Cohen suggested that six weeks from five years should suffice).

<sup>131</sup> Dixon & Linz, *Overrepresentation*, *supra* note 26, at 139–40; Andrew F. Hayes & Klaus Krippendorff, *Answering the Call for a Standard Reliability Measure for Coding Data*, 1 COMM. METHODS & MEASURES 77, 81 (2007); Klaus Krippendorff, *Reliability in Content Analysis: Some Common Misconceptions and Recommendations*, 30 HUM. COMM. RES. 411, 416 (2004).

<sup>132</sup> Hayes & Krippendorff, *supra* note 131, at 79.

<sup>133</sup> Krippendorff, *supra* note 131, at 422.

were excluded. Two sections were coded: main and local, the latter categorized by the local (“Metro”) section specified for each state. To provide a detailed and comprehensive account, the study covered different modes of news reports on crime, including hard news, editorials, letters from readers, and cartoons. The analysis included two main groups of variables:

*Intensity.* This group captures the prominence of the coverage on crime based on several proxies uniquely collected for this study; the location of the story (page number, main or local edition), size of the story (in inches), and its proportions compared to other stories in the same page, size of the headline and proportions compared to other stories in the same page, whether a visual exists, its size and proportions compared to the story and other stories, and the total number of stories within a page. The overall intensity of a story is the sum of all proxies running from a minimum of one to a maximum of 13. Given that intensity of coverage has two dimensions: (a) how a story is presented and (b) the number of stories on crime per day, the overall intensity of a day in the sample is determined by combining all stories’ intensities for that day.

*Content.* This set of variables captures the content of a crime story. It analyzes the type of story (specific report on a crime or a more general policy-related story), felonies covered, details about gender, race, and age of both the perpetrators and victims and details about what is included in the visual(s) referring to a story. Under visuals, different categories were offered in the codebook: felon, victim, law enforcement and lawyers—all categorized by race and gender.

*Race.* This included six categories, following the NACJD classification: white, Black, American Indian or Alaskan Native, Asian, Pacific Islander, and other. Ethnicity was also defined, reflecting Hispanic origins.

*Identification of race.* Three ways to communicate race were considered: explicit, implicit, and visual. Under *explicit* mention, coders were asked to code any clear textual reference to race (i.e., “a white suspect was identified”). Under *implicit* mention, coders were asked to code the race based on a few indicators inferring the race (family of felon/victim) or usage of language alluding to racial stereotypes (i.e., “inner-city” or “ghetto” for Black individuals).<sup>134</sup> To err on the side of caution, name only was not used as an implicit reference under the assumption that it may be altered. Moreover, geographic location of neighborhoods was also not coded as

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<sup>134</sup> TALI MENDELBERG, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY 122–23 (2001); Jon Hurwitz & Mark Peffley, *Playing the Race Card in The Post-Willie Horton Era: The Impact of Racialized Code Words on Support for Punitive Crime Policy*, 69 PUB. OPINION Q. 99, 107 (2005) (showing that whites’ racial attitudes were much more important in shaping preferences for punitive policies when introduced to racially coded words); Tali Mendelberg, *Racial Priming Revived*, 6 PERSP. ON POL. 109, 113 (2008); Nicholas A. Valentino et al., *Cues that Matter: How Political Ads Prime Racial Attitudes During Campaigns*, 96 AM. POL. SCI. REV. 75, 87 (2002) (showing that a wide range of implicit racial cues can prime racial attitudes).

implicit reference given lack of sufficient knowledge on racial composition within states during the years of the study. Under *visuals*, race was coded based on the visual attached to a story, allowing multiple participants in each visual. The coding book allowed for multiple perpetrators, victims and visuals to be coded. Coders were asked to code individuals whenever possible and had the option of coding a group if the story did not provide any specifications pertaining to perpetrators.

*Felonies.* Felonies were defined based on the NACJD 12-level-felonies classification, and included murder, sexual assault, robbery, aggravated assault, other violent crime (such as kidnapping and negligent manslaughter), burglary, larceny, fraud, drug possession, drug trafficking, weapon offenses and other.<sup>135</sup> The coding spreadsheet allowed coding of up to four felonies per story. Table 1 displays descriptive statistics of the variables that are part of the subsample utilized in this Article, divided by local and national news. The data refer only to homicide stories in which a victim's race was mentioned.

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<sup>135</sup> See *Special Data Topics at NACJD*, NAT'L ARCHIVE CRIM. JUSTICE DATA, <https://www.icpsr.umich.edu/web/pages/NACJD/index.html> (last visited May 26, 2021).



Table 1. Descriptive Statistics All Dependent and Independent Variables

Variable	Observations	Mean	Standard Deviation	Min	Max
<b><u>Local</u></b>					
Sexual Assault	227	.026	.161	0	1
Robbery	227	.145	.353	0	1
Aggravated Assault	227	.181	.386	0	1
Other Violent	227	.018	.132	0	1
Black Felon	227	.216	.412	0	1
White Felon	227	.176	.382	0	1
Black Victim	227	.388	.488	0	1
White Victim	227	.383	.487	0	1
Female Victim	221	.398	.491	0	1
Felon Mentioned	227	.423	.495	0	1
Policy Story	227	.013	.114	0	1
Intensity of Coverage	227	5.317	1.779	1	11
Stories Per Day	227	23.256	10.528	5	45
<b><u>National</u></b>					
Sexual Assault	112	.062	.243	0	1
Robbery	112	.071	.259	0	1
Aggravated Assault	112	.232	.424	0	1
Other Violent	112	.027	.162	0	1
Black Felon	112	.107	.311	0	1
White Felon	112	.384	.489	0	1
Black Victim	112	.438	.498	0	1
White Victim	112	.429	.497	0	1
Female Victim	104	.462	.501	0	1
Felon Mentioned	112	.509	.502	0	1
Policy Story	112	.018	.133	0	1
Intensity of Coverage	112	7.304	2.828	1	12
Stories Per Day	112	19.777	9.241	3	44

*Note:* Descriptive statistics for observation of homicide stories in which the race of the victims is mentioned. Source: "Washington Post" 1997–2006.

VI. COVERAGE OF VICTIMS IN *THE WASHINGTON POST**A. Internal and External Layers of Analysis*

As discussed, the issue of racial portrayal of victims in the media, especially in the print media, is still underexplored in the literature. Studies on victimization are sporadic and rely on small samples and limited time periods.<sup>136</sup> This study tackles these challenges by providing three conceptual viewpoints to understand coverage of victims and race: two internal and one external. First, two internal viewpoints are examined: (a) the frequency with which victims from each racial group are covered, and (b) the variation in the journalistic techniques through which each racial group is covered, reflecting on the salience of coverage of these group (intensity). Then, this study looks at one external viewpoint: (c) comparing the mean mentions of victims to official victims' homicide rates. Triangulating these three viewpoints provides a uniquely rich picture of the racial portrayal of victims in crime stories, and is one that mirrors the construction of the ideal victim by the media.

One of the challenges of analyzing victims' data, however, stems from different sources of data collected by different entities. The statistical abstracts of the United States Statistical Bureau rely on both the Uniform Crime Reporting (UCR) and National Crime Victimization Project,<sup>137</sup> and thus provide a relatively rich account on victimization at the national level. States, however, provide mainly data which conforms with the UCR, e.g., data on homicide victims. Given that (1) more than 50% of the stories analyzed in the sample are homicide stories (when stories include other felonies), and (2) there were no statistically significant differences in the extent to which homicide is covered at the national and local level, I decided to focus only on homicide victims' data.

*1. Internal Layer*

To assess the first level of comparison between the coverage of Black and white victims, I calculated the mean media mentions of each racial group separately at the national and local level. The data show that there are marginal differences in the absolute values by which these groups are covered: at the national level Black victims were mentioned in 43.75% of the stories and white victims in 43%, and at the local level Black victims were mentioned in 39% of the stories and white victims in 38%. These differences were not statistically significant.<sup>138</sup> Graph 1 displays the differences in the mean mentions of homicide victims. These findings suggest that at the

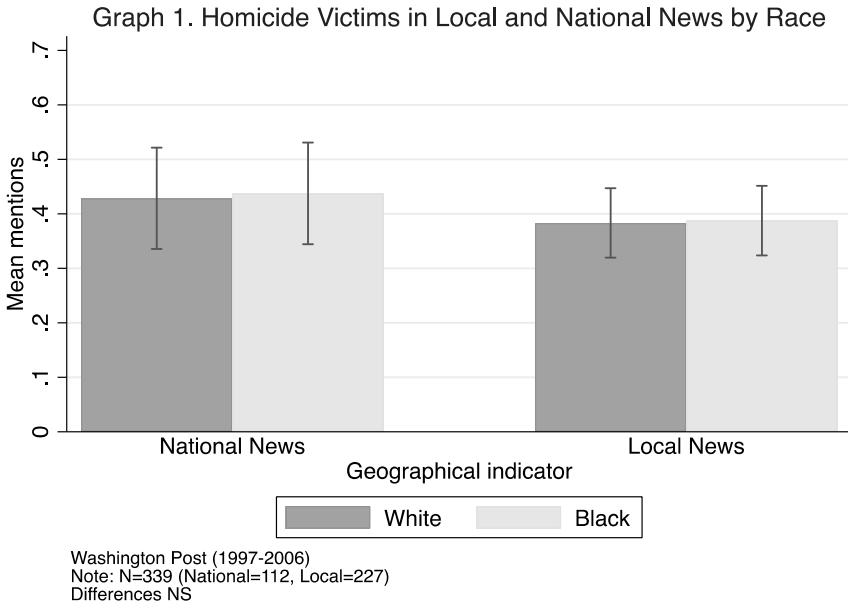
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<sup>136</sup> See Greer, *supra* note 103, at 42–43; Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 555.

<sup>137</sup> *Crime Types*, BUREAU JUST. STATS., <https://www.bjs.gov/index.cfm?ty=tp&tid=3> (last visited May 26, 2021).

<sup>138</sup> Binomial proportion test yielded non-statistically significant results for the differences in means:  $z=0.13$  for national,  $z=0.29$  for local. To address concerns of bias relating to the specific

internal level, there are no meaningful differences in the likelihood that one racial group will be mentioned as homicide victims at either the national or local level.



Several studies report their findings regarding equal or unequal representation of different racial groups solely based on this level of analysis.<sup>139</sup> Indeed, the frequency by which victims from different racial groups are mentioned in the criminal context can project on whether one specific racial group is covered more than another. However, the incidence of each racial group's coverage only partially captures differences (or lack thereof) in the coverage of Black and white victims as communicated to the public. For example, imagine that stories mentioning Black and white victims are equal in number, but while most stories on white victims get to the front page, stories on Black victims are hidden deep within the inner pages. Under these circumstances, white victimization will remain more prominent in readers' minds, contributing to the general societal perception of the worthy victim as white. The

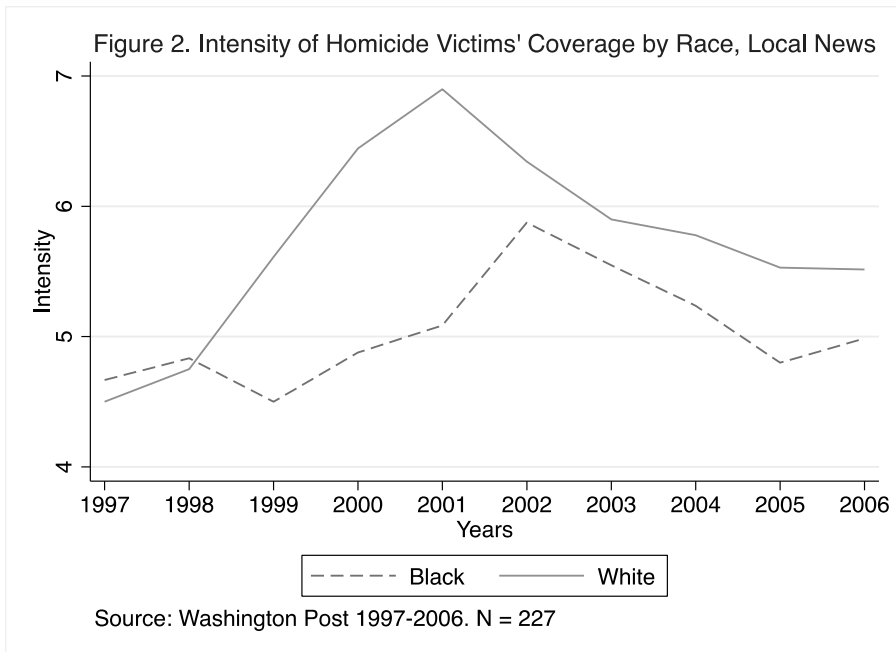
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characteristics of the murder felony and how it is being covered by the print media, I also analyzed the mean mentions of victims for the full sample (for all type of felonies). The results were similar, showing no statistically significant difference between the frequencies by which Black and white victims are mentioned both at the local and national level.

<sup>139</sup> Chiricos & Eschholz, *supra* note 89, at 403–04.

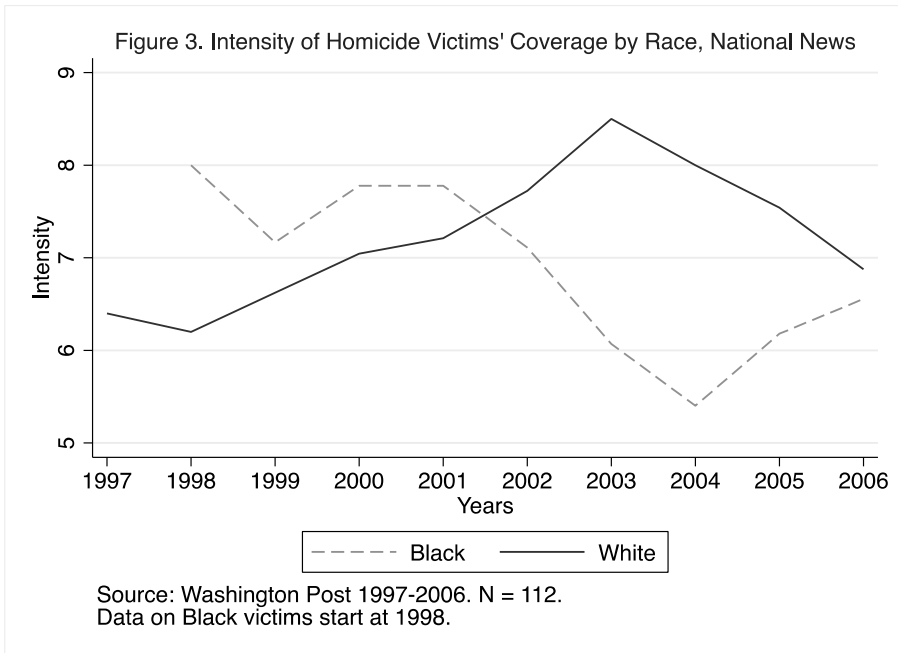
intensity variable (which classifies the salience a story receives based on several proxies)<sup>140</sup> captures these differences, as it goes beyond the mere mentions of each racial group to investigate whether reporting styles differ based on the victim's race.

Stark differences emerge when examining ten years of intensity data gathered for stories on homicide victims by race. As shown in Figure 2, at the local news level, stories on white homicide victims consistently receive higher intensity scores than stories on Black homicide victims. This suggests that despite the parity in the absolute number of stories on Black and white victims (Figure 1), stories on white victims are more salient than stories on Black victims.



At the national level, as illustrated in Figure 3, the patterns of coverage are more complex and suggest two distinct time periods: from 1997/1998 to 2001, where on average stories on Black victims were more salient than stories on white victims, and 2002–2006, where this pattern flips so that stories on white victims received greater journalistic emphasis than those on Black victims.

<sup>140</sup> See *supra* Part V.B: Coding Scheme and Operationalization of Variables.



Given that intensity can be the result of a host of factors, multivariate analysis helps to decipher whether race is indeed a dominant component in defining the prominence that homicide victims received in *The Post*. To this end, the intensity variable was regressed on the binary variable, which captures whether a Black victim was mentioned (=1) at the national and local sections. Two models were specified: a baseline mode—Model 1 (no controls)—and Model 2 (with controls and year fixed effects; the latter control for aggregate time-series trends). Controls include the perpetrators' race, the victim's gender, whether the story covers a specific incident or broader policy implications, whether a perpetrator was mentioned, whether other violent crimes were also covered, and the overall number of stories a day. Table 2 displays the OLS regression results under each of these models. As the table indicates, under the more robust Model 2 at the local level, Black victims are associated with lower intensity levels compared to non-Black victims (predominantly white), at the 5% significance level. In local news, stories on Black victims receive an average of 0.53 intensity units less than non-Black victims. At the national level, while the negative association is qualitatively consistent, it is significant at the 10% level, with Black victims receiving an average of 1.48 intensity units less than non-Black victims.<sup>141</sup> These findings correspond to Figures 2 and 3 to suggest a systematic difference in the intensity of coverage (or lack thereof) Black victims receive at the *local news* level, and suggestive evidence with regards to the national level news.

<sup>141</sup> It should be noted that I considered including additional controls in the models, among

Table 2. OLS Regression of the Intensity of Coverage on Victim's Race, National and Local level Coverage

VARIABLES	Local		National	
	Model 1	Model 2	Model 1	Model 2
Black Victims	-0.50** (0.231)	-0.52** (0.230)	-0.866 (0.531)	-1.32* (0.67)
Observations	227	221	112	104
R-squared	0.020	0.110	0.023	0.150
Number of years		10		10
Controls	No	Yes	No	Yes
Year FE	No	Yes	No	Yes

Note: This table shows OLS regression results. Source: "Washington Post" 1997–2006. The dependent variable is the intensity of coverage. The key independent variable=1 if a Black victim is mentioned and =0 if non-Black victim is mentioned. The sample includes only the stories in which a victim's race is mentioned. Controls include the victim's gender, the perpetrator's race, whether a story focuses on a specific incident or has broader policy implications, whether a perpetrator is mentioned, whether other violent crimes are also part of the story (violent crimes: sexual assault, robbery, aggravated assault, or other violent), and the overall number of stories in a day. Changes in sample size are due to the inclusion of the victim gender variable. Robust standard errors in parentheses. \*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ .

which the victim's age and the perpetrator's age and gender. However, due to missing data, their inclusion resulted in a significant drop in the sample sizes—a 60% drop at the national level, and a 50% drop at the local level—and so the final models excluded these controls. Moreover, I conducted sensitivity analyses to assess the robustness of the results to alternative analytical strategies (tables with author). First, given the discrete nature of the intensity variable, ordinal logit models were adopted. Under Model 1, the negative association between Black victims and intensity was again significant at the 5% level at the local news ( $\beta = 0.61$ ,  $p < 0.05$ ) and at the 10% at the national news ( $\beta = 0.58$ ,  $p < 0.1$ , coefficients in odds ratio). Under Model 2 (various controls and random effects), the negative association remained significant only at the local level ( $\beta = 0.56$ ,  $p < 0.05$ , coefficients in odds ratio). The analysis provides additional support to the robustness of the analysis regarding the disparate treatment Black homicide victims receive at the *local news*. Second, I increased the sample to include not only mentions of murder victims but victims of all felonies. The negative associations between Black victims and intensity again remained significant under both models at the local level. (under model 1:  $\beta = -0.52$ ,  $p = 0.01$ , under model 2:  $\beta = -0.52$ ,  $p < 0.05$ ). At the national level, the negative association between intensity of coverage and Black victims was also significant at the 5% level in both models: for model 1:  $\beta = -1$ ,  $p < 0.05$ , for model 2:  $\beta = -1.14$ ,  $p < 0.05$  respectively. Tables with author).

Triangulating the three levels of the internal analysis—absolute value of victims' mention by race, the average salience of stories by racial division, and the multivariate analysis—offers a rich and nuanced understanding of the differential racial treatment in the coverage of homicide victims. It also indicates the potential effects of such differential reportage on the readers' cognitive shortcuts when thinking about the socially acceptable ideal victim.

## 2. *External Layer*

Although these findings reflect the internal news narrative pertaining to victims and race, they do not take into account the reality of crime, that is, actual victimization rates by race. Therefore, the above analysis cannot answer the question of whether specific racial groups of victims are over- or underrepresented in crime news: this is particularly true of the patterns identified in *The Post* data, where Black and white homicide victims are equally represented in the media (see Figure 1). Any claim as to whether coverage is indeed distorted across racial lines thus demands further investigation. To address this issue, and following the work of Dixon and Linz,<sup>142</sup> additional data were collected for the studied years from three different sources: (1) FBI Unified Crime Reports on victimization, (2) State police reports from Maryland, Virginia and Washington, D.C., and (3) census data from the statistical abstract series of the U.S. Census Bureau.<sup>143</sup>

I first conducted the analysis at the local level. Based on the state-level reports on the racial composition of homicide victims between 1997–2006, the average homicide victimization rate for Black victims in these jurisdictions was 76.9%, while the rate for white victims was only 21%. When it comes to coverage in *The Post* however, Black victims are covered as homicide victims in 39% of the stories while white victims are covered in 38% of the stories. Black victims are therefore covered 37.9 percentage points *less* than their actual victimization rates, while white victims are covered 17 percentage points *more* than their actual victimization rates. These differences provide a sense of the disparities between newspaper coverage and the proportions of each racial group in actual victimization rates.<sup>144</sup> To assess over- or underrepresentation, taking into account the sampling error, I calculated 95% confidence intervals (CI) around the sample estimate of the mean media mentions of

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<sup>142</sup> See Dixon & Linz, *Race and Misrepresentation*, *supra* note 24.

<sup>143</sup> See U.S. CENSUS BUREAU, STATISTICAL ABSTRACTS SERIES (1997–2006), [https://www.census.gov/library/publications/time-series/statistical\\_abstracts.html](https://www.census.gov/library/publications/time-series/statistical_abstracts.html); UNIFORM CRIME REPORTING SEC., VA. ST. POLICE, CRIME IN VIRGINIA (1996–2006), [https://www.vsp.virginia.gov/Crime\\_in\\_Virginia.shtm](https://www.vsp.virginia.gov/Crime_in_Virginia.shtm); Uniform Crime Reporting Program, SERVICES, FED. BUREAU OF INVESTIGATION, <https://ucr.fbi.gov/ucr> (last visited May 26, 2021); Metro. Police D.C., *MPD Annual Reports*, DC.GOV, <https://mpdc.dc.gov/page/mpd-annual-reports> (last visited May 26, 2021).

<sup>144</sup> See Dixon & Linz, *Overrepresentation*, *supra* note 26, at 135.

each racial group.<sup>145</sup> Percentage point differences between media mentions and actual victimization rates that are larger than the confidence interval suggest that the under- or overrepresentation expressed by the mean mentions are statistically significant.<sup>146</sup> Following this analysis, the data reveal that at the local level, the underrepresentation in the coverage of Black homicide victims and the overrepresentation in the coverage of white homicide victims are statistically significant.

At the national level, however, I did not find either over- or underrepresentation of Black or white victims, with small percentage point differences between actual victimhood rates, collected from the FBI UCR for victimization, and the frequencies by which each of these racial groups is mentioned in crime stories. Table 3 summarizes the findings at the local and national level under the external comparison to homicide victimhood rates.

Table 3. Race of Homicide Victims in Crime Stories Compared to Actual Victims Data, National and Local

Race	Mean Mentions %	%Victimization Rates	% Point Difference	95% Confidence Interval
<u>National</u>				
Black	43.75	48.3	-4.5	+/- 6
White	43	47.8	-4.8	+/- 6.5
<u>Local</u>				
Black	39	76.9	-37.9	+/- 4.5
White	38	21	+17	+/- 4.5

*Note:* N=333. Differences in mean mentions are not statistically significant. Homicide victimization rates of Blacks and Whites. Percentage point difference: Newspaper % - Victimization %. Sources: Washington Post 1997-2006, Virginia Crime Reporting Section, DC Metropolitan Police Department Annual Reports, MD Central Records Division, FBI Uniform Crime Reporting.

<sup>145</sup> See DAVID S. MOORE & GEORGE P. MCCABE, INTRODUCTION TO THE PRACTICE OF STATISTICS 437 (3d ed. 1999).

<sup>146</sup> Dixon & Linz, *Overrepresentation*, *supra* note 26, at 144.



## VII. MOVING BEYOND NEWSWORTHINESS

*A. Summary of Findings*

Assuming that media coverage serves as a cue for social recognition, this Article adds to the literature by providing a deeper exploration of different media manifestations through which an image of an “ideal homicide victim” emerges. As discussed, such an image develops a life of its own that goes well beyond the newspaper pages, becoming a signifier of worthy versus non-worthy victims that creeps into social and institutional structures.<sup>147</sup> As the data show, the “ideal victim” is deeply entrenched in racial stereotypes about crime in society that may be far removed from the reality of crime. Such racial division may persist in various dimensions of reporting on crime even if it has become less easily identifiable as the use of explicit language on racial categorization has decreased.<sup>148</sup> The novel design offered in this study responds to this challenge.

A first-level analysis of the data reveal that in both the local and the national sections of *The Post* white and Black homicide victims are equally mentioned, suggesting no racial bias actually exists. Indeed, past studies attempt to research the existence of racial bias in crime media coverage (or lack thereof) based solely on comparisons of mean mentions of each racial group.<sup>149</sup> A more nuanced analysis, however, suggests that this alleged equality camouflages other expressions of racial bias in covering murder victims. Adding a measurement of intensity or salience, however, suggests local-level stories on Black homicide victims are consistently less salient than such stories on white homicide victims. Using multivariate analysis adds another dimension to such racial division, showing that the mention of Black victims is associated with a decrease in the intensity of coverage, even when considering other factors that might affect the salience of a crime story. The data suggest that similar negative association is likely to be found also at the national level, although given current data limitations such conclusions should be cautiously inferred. In sum, these findings suggest that despite an equal number of stories on Black and white victims in *The Post*, white homicide victims still receive greater media attention compared to Black victims.

Moreover, and moving beyond the internal comparison on the coverage of crime, an external “inter-reality” comparison between the mentions of each racial group and true victimization rates suggests it is not only that white victims receive greater prominence. At the local level whites were also overrepresented as homicide victims while Black victims were underrepresented compared to actual victimization

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<sup>147</sup> White et al., *supra* note 88, at 2–3.

<sup>148</sup> MENDELBERG, *supra* note 134, at 66; Ravid, *supra* note 102, at 264.

<sup>149</sup> See Bjornstrom et al., *supra* note 24, at 279; Buckler & Travis, *supra* note 97, at 10; Hurwitz & Peffley, *supra* note 134, at 107; Lacy et al., *supra* note 129, at 839.

rates. Taken together, the data identify clear patterns of unequal coverage of homicide victims across racial lines, especially at the local level.

In light of the cognitive processing and media effects literature discussed above, this hidden disparity translates into the corroboration of the white ideal victim in the eyes of the public, alongside the exclusion of Black victims. As the literature suggests, such a consistent portrayal of whites as the main group affected by crime means that this schema is the most immediate and vivid in the public consciousness, which consequently turns it into a cognitive shortcut to understanding crime in society. As such, it sends a broader message with regards to whose life—and death—we value and creates a division between those worthy of empathy and social recognition and those who are not.

*B. Amplifying the Voices of Black Victims—Making Sense of Racially Imbalanced Crime Reportage and a Path Forward*

The racial disparities in the coverage of victims, as identified in this Article, are intriguing, especially when found within the pages of a liberal news outlet such as *The Post*. Over the years, this publication, like other liberal media sources, has expressed concerns regarding the media's role in cultivating distorted views about crime and corroborating stereotypical thinking of race and crime. Indeed, as will be shortly discussed, *The Post* adopted a policy with the express intent of reducing racial bias and counteracting the coverage's role in replicating biased views. Yet, the findings here imply that attempts to tackle these concerns have been too limited.

While this study's main goal is to empirically probe how different racial groups of homicide victims are covered in the news, it also wishes to start a conversation about the reasons why such an unequal coverage persists, with an eye towards offering potential solutions.

The main traditional scholarly approach to explaining racial disparities in the coverage of victims builds on the idea of newsworthiness: the illusive concept that aspires to grasp multiple factors affecting the decision of whether or not to select "occurrences to be made into news."<sup>150</sup> Theories of newsworthiness aim to explain the selection bias in the coverage of crime, and particularly stories on specific felonies (predominantly homicide) and specific racial or gender differences among story participants.<sup>151</sup> Scholars—perhaps no less than newsroom editors—have found it difficult to disentangle the complex set of factors that affect the subjective decision to find a story to be "newsworthy." Consequently, much empirical work adopts a retrospective approach to analyzing journalistic decisions in covering specific stories.

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<sup>150</sup> Lundman, *supra* note 90, at 359; CHERMAK, *supra* note 2, at 79–80; Buckler & Travis, *supra* note 97, at 2; Gruenewald et al., *supra* note 24, at 756–58.

<sup>151</sup> CHERMAK, *supra* note 2, at 79–80; MEYERS, *supra* note 89, at 88–89; Gilliam & Iyengar, *supra* note 26, at 561–63; Gruenewald et al., *supra* note 24, at 756.

Newsworthiness is often assessed in terms of two key components, both strongly linked to market-driven considerations: novelty, or relative frequency,<sup>152</sup> and race and gender typification.<sup>153</sup> The novelty explanation posits that the “ordinary and routine are not news.”<sup>154</sup> Consequently, unusual stories are more likely to be selected as news.<sup>155</sup> In the racial context, street murders involving Black victims are considered relatively commonplace and “no news,” and as such are less likely to be covered.<sup>156</sup> An increasing body of literature suggests that the novelty argument is a rather weak predictor of newsworthiness.<sup>157</sup> The race and gender typification component of newsworthiness suggests that journalists make decisions based on typifications that mirror existing stereotypical thinking and social structures,<sup>158</sup> including those that “nourish race and gender stratification.”<sup>159</sup> Typifications draw the line for symptomatic crimes, and these become heuristic shortcuts (or ready-made scripts) for journalists covering crime.<sup>160</sup> Accordingly, crime stories where Black offenders and white victims are involved are more likely to be covered as they conform to scripts grounded in white fear of Black crime.<sup>161</sup> Indeed, the same racial scripts that appeared in the first act.

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<sup>152</sup> CHERMAK, *supra* note 2, at 80, 171.

<sup>153</sup> Lundman, *supra* note 90, at 359; Pamela E. Oliver & Daniel J. Myers, *How Events Enter the Public Sphere: Conflict, Location, and Sponsorship in Local Newspaper Coverage of Public Events*, 105 AM. J. SOC. 38, 46 (1999) (emphasizing the circular process of news production that preserves the ease of coverage under specific racial schemas).

<sup>154</sup> Lundman, *supra* note 90, at 360.

<sup>155</sup> MEYERS, *supra* note 89, at 96; Lundman, *supra* note 90, at 360; Oliver & Myers, *supra* note 153, at 45–46; David Pritchard & Karen D. Hughes, *Patterns of Deviance in Crime News*, 47 J. COMM. 49, 61–63, 65 (1997).

<sup>156</sup> Beth Schwartzapfel, *When Does Murder Make the News? It Depends on the Victim's Race*, MARSHALL PROJECT: JUSTICE LAB (Oct. 28, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/10/28/when-does-murder-make-the-news-it-depends-on-the-victim-s-race>.

<sup>157</sup> Gruenewald et al., *supra* note 24, at 756–58; Lundman, *supra* note 90, at 378; Pritchard & Hughes, *supra* note 155, at 63–64.

<sup>158</sup> Gruenewald et al., *supra* note 24, at 756–58; Lundman, *supra* note 90, at 360.

<sup>159</sup> CHERMAK, *supra* note 2, at 180; TEUN A. VAN DIJK, 6 ELITE DISCOURSE AND RACISM 247 (1993); Beale, *supra* note 23, at 458 (“Racial typifications refers to the media’s stereotypical portrayal of crime as a minority phenomenon.”); Entman, *supra* note 86, at 343–46; Lundman, *supra* note 90, at 36; Richard J. Lundman et al., *News About Murder in African American Newspaper: Effects of Relative Frequency and Race and Gender Typification*, 45 SOC. Q. 249, 251 (2004).

<sup>160</sup> Gilliam & Iyengar, *supra* note 26, at 561–63; Gruenewald et al., *supra* note 24, at 756–58.

<sup>161</sup> Bjornstrom et al., *supra* note 24, at 276; Franklin D. Gilliam et al., *Crime in Black and White: The Violent, Scary World of Local News*, 1 HARV. INT’L J. PRESS 6, 8 (1996); see, e.g., Marian Meyers, *African American Women and Violence: Gender, Race, and Class in the News*, 21 CRITICAL STUD. MEDIA COMM. 95, 97, 105, 111 (2004).

The reaffirmation of such racial typifications are often a product of a racial bias dominating the newsrooms.<sup>162</sup> Such bias may be explained through the theory of ethnic blame discourse, which postulates that routinely used ethnocentric narratives shape the mental setting of those exposed to these narratives.<sup>163</sup> White individuals, for example, refer to outgroup members (non-whites) as criminals and to in-group members as victims.<sup>164</sup> Ethnic blame thus views behaviors of ethnic others as inter-group conflict affecting the in-group.<sup>165</sup> With respect to bias in the media, the claim is that journalists and news editors reproduce white-centric narratives in order to appeal to their consumers who are themselves engaged in ethnic-blame discourse. After all, decisions on coverage are filtered through a “predominantly Western, White, heteronormative, middle-class, male lens.”<sup>166</sup> With time, the ethnic blame discourse is embedded in the institutional DNA,<sup>167</sup> and becomes a “routine,” albeit incognizant, social racism that influences news practices.<sup>168</sup> Thus “years of training, cultural orientation, and institutionalized neglect” lead editors and journalists—who are mostly white—to reproduce racially biased news coverage.<sup>169</sup> The latter process is explained in parts through structural practices and institutional inertia,<sup>170</sup> or through market-driven forces: the need to make decisions that will conform to audience preferences.<sup>171</sup> The context of this study, given *The Post’s* predominately Black readership especially in D.C., complicates the classic ethnic blame discourse narrative. There is not only in-group and out-group discourse, but also intra-group disparities among Blacks, with Black elites potentially adopting narratives that unintentionally support the violent-dangerous Black schema.<sup>172</sup>

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<sup>162</sup> ENTMAN & ROJECKI, *supra* note 102, at 172; Dixon & Linz, *Race and Misrepresentation*, *supra* note 24, at 548; Entman, *supra* note 86, at 359–60.

<sup>163</sup> VAN DIJK, *supra* note 159, at 242; Romer et al., *supra* note 88, at 286.

<sup>164</sup> VAN DIJK, *supra* note 159, at 79; Romer et al., *supra* note 88, at 289.

<sup>165</sup> Dixon, *supra* note 88, at 786.

<sup>166</sup> Gilchrist, *supra* note 88, at 374.

<sup>167</sup> ENTMAN & ROJECKI, *supra* note 102, at 73.

<sup>168</sup> 2 PHILOMENA ESSED, UNDERSTANDING EVERYDAY RACISM: AN INTERDISCIPLINARY THEORY 222–23 (1991) (comparing daily racial encounters of Black women in the U.S. and the Netherlands. One of the first attempts to combine phenomenological approach to describe a structural account of inequality in society); DON HEIDER, WHITE NEWS: WHY LOCAL NEWS PROGRAMS DON’T COVER PEOPLE OF COLOR 52 (2000).

<sup>169</sup> Entman, *supra* note 86, at 353–55.

<sup>170</sup> Such as information gathering, availability of sources, fast-paced work place, and commitment to deadlines. See Buckler & Travis, *supra* note 97, at 2; Ravid, *supra* note 102, at 279.

<sup>171</sup> CHERMAK, *supra* note 2, at 171; Gruenewald et al., *supra* note 24, at 762.

<sup>172</sup> JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 114–15 (2017) (By studying the decisions that Black mayors, judges, and police chiefs made, Forman finds how these political and professional elites supported “tough on crime” policies with the belief that this would contribute to stabilizing struggling Black communities).

Two main conclusions can be drawn from the literature on newsworthiness. First, it highlights the inertia controlling newsrooms and how such inertia produces racially biased crime reportage. Second, both traditional explanations to newsworthiness support market-driven rationales. The novelty component derives from the assumption that consumers are more likely to watch news that covers violent and out-of-the-ordinary crimes (e.g., deviant murder stories) with attractive and unusual victims (often depicted as white).<sup>173</sup> The typification component, when juxtaposed with ethnic-blame discourse, predicts that typified cases will be preferred by viewers because they conform to existing scripted assumptions,<sup>174</sup> and reaffirm in-group and out-group relationships of those in power, also comprising the majority of the newspaper's readership.<sup>175</sup> In sum, the literature suggests that white victimization simply sells better.

However, the concept of newsworthiness produces expectations that can, and should, be assessed empirically. While such an assessment is beyond the scope of this Article, further research is required in order to decipher whether newsworthiness captures the full scope of potential explanations to the unequal racial coverage of homicide victims.

In this Article, I plant the seeds for an additional, if counterintuitive, explanation—*The Post's* colorblind policies in the coverage of crime. As discussed, the newsworthiness paradigm is mainly attached to market-driven considerations. However, some of these considerations are in fact the root cause of the racial disparities in the coverage of crime victims. As such, policies that aspire to intervene in market dominated processes—in hopes of altering these unwarranted disparities in coverage—have emerged over the year. Of these policies, I will focus on what I consider colorblind policies in the coverage of crime.

In recent decades, media outlets have adopted policies aimed at minimizing the official presence of race in reporting—similar to policies that are now ubiquitous across the U.S. in various institutional settings including housing, education, politics, employment and more.<sup>176</sup> Under the assumption (which now appears too na-

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<sup>173</sup> Pritchard & Hughes, *supra* note 155, at 61–65.

<sup>174</sup> Lundman, *supra* note 90, at 361.

<sup>175</sup> ENTMAN & ROJECKI, *supra* note 102, at 91; HERBERT J. GANS, DECIDING WHAT'S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK, AND TIME 60 (2d ed. 2004) (recognizing the role of race in news making and specifically in the coverage of crime, based on a qualitative research approach including interviews and observations); *id.* at 6; Gruenewald et al., *supra* note 24, at 762–63.

<sup>176</sup> EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 53 (5th ed. 2018) (tracing the emergence of colorblindness as a new racial ideology from the early sixties to the days of Trump's America, and claiming that "Jim Crow Structure has been replaced by 'new racism' . . . a new power ideology [that] has emerged to defend the contemporary racial order").

ive) that eliminating racism requires the delegitimization of explicit racial expressions in the public sphere, direct discriminatory practices have been slowly abolished, clearing the space for euphemized race-free ones. While these policies did not necessarily define themselves as “colorblind,” they in fact followed the rationales and justifications that other colorblind policies followed. Specifically, *The Post’s* “Deskbook on Style” mentions that “[i]n general, race and ethnic background should not be mentioned unless they are clearly relevant.”<sup>177</sup> In the context of perpetrators, *The Post’s* style book states that in crime stories race will only be used when there is sufficient specific identifying information to publish a description of a suspect.<sup>178</sup> The rationale—reflected in *The Post’s* ombudsman column admonishing the-then Metro editor for not publishing information about a suspect in a specific case—was to stop feeding dangerous and unfair racial stereotyping.<sup>179</sup> “Using race with no relevance to the story belongs to the past” explained the editor, to “a time when newspapers pandered to the racism in society.”<sup>180</sup> It should be noted that other newspapers have adopted similar policies. For example, The New York Times’s “Manual of Style and Usage” reflects a similar policy according to which “race should be cited only when it is pertinent and its pertinence is clear to the reader.”<sup>181</sup> Given the aspirations of these policies to break the cycle of market-driven forces that often lead to unequal racial treatment in the coverage of crime, I argue here that further exploration as to the potential effects of colorblind policies on the coverage of victims is required, a domain that was left unexplored by the literature. Such an exploration is beyond the scope of this Article. However, and taking into account the cognitive effects of policies aiming to eliminate the presence of race from crime reportage, I contend that these policies might in fact have a surprisingly negative effect on amplifying the voices of Black victims.

In sum, we should further pursue the questions relating to the relationship between principles of newsworthiness and colorblind policies in crime coverage and their individual and cumulative effects in producing the racially unequal portrayal of homicide victims found in this Article. Such a pursuit will open the gates for a more complex and nuanced understanding of the mechanisms that lead to the unwarranted unequal representation of Black victims in the news. Moreover, it will also allow the consideration of strategies that may tackle such a representation.

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<sup>177</sup> THE WASHINGTON POST DESKBOOK ON STYLE 178 (Thomas W. Lippman ed., 2d ed. 1989).

<sup>178</sup> Richard Cohen, *Profiles in Evasiveness*, WASH. POST (Oct. 11, 2001), <https://www.washingtonpost.com/archive/opinions/2001/10/11/profiles-in-evasiveness/155db8b9-c415-4474-bd3d-2354bf51c118/>.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> ALLAN M. SIEGAL & WILLIAM G. CONNOLLY, THE NEW YORK TIMES MANUAL OF STYLE AND USAGE 267 (5th ed. 2015).

### C. Limitations

In closing, some limitations of this study should be addressed. *First*, regarding the study's external validity, as discussed, this Article diverts from the majority of related scholarship by analyzing both national and local level news. Such a methodological decision in fact heightens its generalizability compared to many past studies that examine local news outlets only.<sup>182</sup> However, the present study still remains limited by its focus on a single media outlet that reflects a distinct political perspective, and the findings offered should be understood through this limitation. Further research exploring additional media outlets with diverse political perspectives is thus a much-needed path.

*Second*, given various societal changes since the era of the analyzed data, one may claim that changes in the representation of race and crime have taken place, reducing the stark racial divisions identified in this study. Such a claim has a marginal relevance to the key finding of this Article: the role the media *has had* in the creation and corroboration of the racialized ideal victim. However, even if one claims that deep institutional changes in journalistic practices have occurred to the extent that these altered the portrayal of crime victims, such a claim should *first* be empirically supported, and *second* be explained either by changes in the social significance of crime that may reduce the attention it receives from the media, or by deep social change pertaining to racial stereotypical thinking on victims and crime. I am doubtful that both these explanations can be empirically or logically supported. As for the social fixation on crime, recent studies show that despite a systematic decrease in crime rates, U.S. society remains fascinated, not to say terrified, by crime.<sup>183</sup> Indeed, since 2006 a host of other issues has fascinated the American audience, first and foremost terrorism inside the U.S. However, terrorism became a dominant topic of coverage much earlier, after the events of 9/11; yet this era is captured by the data analyzed in this study that show no reduction in the coverage on crime. As for deeper social changes, scholars of race and the law often reiterate the idea that President Obama's promise for substantial social change was only par-

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<sup>182</sup> Bjornstrom et al., *supra* note 24, at 273.

<sup>183</sup> Donohue, *supra* note 15, at 1297, 1306, 1308, 1352.

tially kept, and that deep racial inequalities remain pervasive.<sup>184</sup> The recent “Bridging the Divide” initiative (2016) or the Vera Report,<sup>185</sup> suggest that the unequal treatment of Black victims is still an acute and undertreated problem. The mass protests taking place throughout 2020 in the U.S. and around the world,<sup>186</sup> expressing rage and frustration from the murders of George Floyd, Breonna Taylor, Ahmaud Arbery and other members of minority communities killed by police officers,<sup>187</sup> expresses—maybe more than any scholarly work—how far we are from an actual change.

In the specific context of race and crime in the media, the data suggest that even well-meaning intentions that aspired to offer counter-narratives on race and crime long before the Obama Administration were not very successful. In short, there are few reasons to assume a meaningful change has occurred. Moreover, as of this writing, the three published analyses of data from a period more recent than the present study (from 2008 to 2016) reveal that the overall unequal racial representation of victims persists, even with the passage of time.<sup>188</sup> A claim that media narratives have thus substantially changed such that new ideal victims have emerged seems unlikely.

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<sup>184</sup> NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA’S LARGEST CRIMINAL COURT 3 (2016) (offering a story of the criminal justice system in action in the largest criminal courthouse in the country, emphasizing the ways by which criminal justice professionals “participate in the incarceration ‘machine’ despite obvious racial divides,” and challenging the notion that modern colorblind racism is different from past overt racism); BONILLA-SILVA, *supra* note 176, at 237; MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 103 (2012) (ebook) (discussing colorblindness as the latest in a series of racist ideologies and raising similar critiques to those offered by Bonilla-Silva, *supra* note 176, in criminal contexts); Michael Tonry, *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*, 39 CRIME & JUST. 273, 280 (2010) (“American social, economic, and legal institutions have evolved over time in ways that have maintained white dominance and protected the interests of whites as a class. When one mechanism for maintaining white domination broke up, another replaced it.”).

<sup>185</sup> EQUAL JUSTICE USA, *supra* note 72, at 14; HINTON ET AL., *supra* note 14.

<sup>186</sup> Gideon Rachman, *2020: A Year in Protests*, FIN. TIMES (Dec. 24, 2020), <https://www.ft.com/content/6e95f7d8-508b-40db-9d0d-4fb561cbfa48>.

<sup>187</sup> *Id.*

<sup>188</sup> The first study (Travis L. Dixon & Charlotte L. Williams, *The Changing Misrepresentation of Race and Crime on Network and Cable News*, 65 J. COMM. 24, 34 (2015)) used a small sample of national level and network news data, and identified the “invisibility” of Black victims. The second study analyzed local TV in the Los Angeles area, Dixon, *supra* note 88, at 788, and showed that white individuals remained significantly overrepresented as victims while Black individuals were covered according to their victimization rates. The authors themselves claimed that the findings do not suggest a meaningful departure from previous research on the positive depiction of whites in the context of crime. The most recent study published on this topic is White et al., *supra* note 88 (2020), which once again showed that victims killed in predominately Black neighborhoods receive less news coverage than those killed in non-Hispanic



## VIII. CONCLUSION

*“As long as only xxx are concerned and no whites are disturbed, great leniency will be shown in most cases... The sentences for even major crimes are ordinarily reduced when the victim is another xxx.”*

*“For offenses which involve any actual or potential danger to whites, however, xxx are punished more severely than whites.”*

(Myrdal, 1944)<sup>189</sup>

*“Existentially, the concept of [B]lack people as vulnerable human beings who sustain pain... is not yet permitted in the national consciousness. Hence the constant need of the dominant society, in age after age, to enforce linguistic and ritualistic symbols that deny [B]lack humanity.”*

(Gresham, 1986)<sup>190</sup>

In 2006, narratives were challenged when Crystal Gail Mangum, a non-ideal victim, accused Reade Seligmann, David Evans, and Collin Finnerty, non-ideal offenders, of raping her.<sup>191</sup> She was a Black stripper, escort, and dancer working at a party on behalf of an escort service. The accused were three young men, the captains of Duke University’s lacrosse team. The criminal investigation stirred emotions nationwide, juxtaposing issues of race, class, and gender. What started as a tale of progressive law enforcement efforts to bring the “white elite” to trial, has evolved into a complicated story of law, media bias and racial politics, and ended with the accuser being blamed for fabricating the story and risking the futures of three innocent kids.<sup>192</sup> The accusations were dropped, and with them the light tremors in the “national consciousness” stopped.<sup>193</sup> Blacks will be Blacks. Whites will be whites. In 2016, a decade later, ESPN released the documentary “Fantastic Lies,” chronicling

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white neighborhoods. The study also found that those killed in predominantly Black or Hispanic neighborhoods are less likely to be discussed as multifaceted complex people (White et al., *supra* note 88, at 2).

<sup>189</sup> GUNNAR MYRDAL ET AL., AN AMERICAN DILEMMA: THE XXX PROBLEM AND MODERN DEMOCRACY 551 (5th ed. 1944) (racial epithets omitted, omissions can be replaced by the word “Blacks”).

<sup>190</sup> Gresham & Bennet, Jr., *supra* note 8, at 120.

<sup>191</sup> William O’Connor, *Speed Read: The Juiciest Bits from a New Book on the Duke Lacrosse Scandal*, DAILY BEAST (Apr. 8, 2014, 1:20 PM), <https://www.thedailybeast.com/speed-read-the-juiciest-bits-from-a-new-book-on-the-duke-lacrosse-scandal>.

<sup>192</sup> Jen Yamato, *The Stripper Who Cried ‘Rape’: Revisiting the Duke Lacrosse Case Ten Years Later*, DAILY BEAST (Mar. 12, 2016, 2:53 AM), <https://www.thedailybeast.com/articles/2016/03/12/the-stripper-who-cried-rape-revisiting-the-duke-lacrosse-case-ten-years-later>.

<sup>193</sup> O’Connor, *supra* note 191.

the events of this controversial rape case.<sup>194</sup> The message was clear: Whites had once again been victimized by Blacks. Indeed, history works in mysterious ways; the nuances and complications of the case have been replaced by a clear racially typified narrative. As journalist Jen Yamato of the *Daily Beast* claims:

*Fantastic Lies'* resounding message is not that America should reflect even *more* deeply now on the sharp race and class divides that yielded such incendiary circumstances in Durham, North Carolina, a decade ago. Its message is that the world owes an apology to these resilient young athletes and their families—the *real* victims.<sup>195</sup>

This Article explores the racialization of victims in the American criminal justice system. From Myrdal's work in the mid-1940s on the racial problem in the U.S., through the establishment of the victims' rights movement, to the present day, a straight, sharp line of racial inequality cuts through the status of Black victims in the criminal justice system. Through their definition as non-ideal victims, Blacks have been systematically excluded from law and policy aiming to improve victims' rights, and more broadly have not been recognized—socially and institutionally—as legitimate subjects of crime. This discourse has persisted despite true crime statistics, which show that Blacks are the racial group most vulnerable to violent crime, particularly homicide.

This Article claims that the media has had a meaningful role in the social construction of the ideal, and consequently the non-ideal victim. By analyzing a novel dataset of ten years of coverage on crime in *The Washington Post*, and through a triangulation of content and multivariate analysis, this Article provides empirical support for this claim, showing the different manifestations through which white victimization is consistently deemed more important than Black victimization, especially in local news. Moreover, this Article shows that at the local level Blacks are underrepresented as homicide victims while whites are overrepresented compared to true victimization rates.

These findings raised a conundrum regarding the persistence of racial typifications of victims even among liberal news outlets. These outlets were well aware of the need to offer narratives that counter those cultivated by news consumers after decades and decades of unequal and inaccurate racial representations of victimization. Yet the racial disparities remain evident in newsprint. This Article took a step further in laying the groundwork for future discussions about the potential mechanisms that can explain such a racially disparate coverage of homicide victims. It first addressed the traditional approach to explaining the consistent patterns of unequal representation of Black victims, that is the newsworthiness paradigm. This market-driven paradigm builds on the twin concepts of novelty and the preference for racial

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<sup>194</sup> Yamato, *supra* note 192.

<sup>195</sup> *Id.*

typifications. In the context of crime, the vast literature on newsworthiness predicts that stories that include white victims (and Black perpetrators) are most likely to be covered as they follow both these concepts. However, this Article planted the seeds for further exploration of alternative mechanisms, predominantly colorblind policies in the coverage of crime, that can either individually or cumulatively explain the persistent underrepresentation of Black victimization.

Recognizing the complex and nuanced mechanisms that affect the representations of Black victims of crime in the news is a necessary step for those hoping to enhance the voices of Black victims in the media. Such media enhancement and recognition are essential to the reconstruction of the ideal victim as perceived by the criminal justice system and by society as a whole.