

**The relationship between victimhood and power:
Disempowering, Over-empowering and Empowering**

Submitted by Tamara Leonard, to the University of Exeter as a thesis for the
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Abstract

The words 'victim' and 'victimhood' are familiar to us all. They are widely used, and widely understood, but does that mean we all agree on what they mean, or how they should be used? Why do some seek out recognition as a victim, while others deny their victimhood? The aims of this thesis are: i) to demonstrate and discuss the existing inconsistencies in discussions about victimhood and attitudes towards victims, and to identify the root of these inconsistent attitudes by examining the complexities of the concept of victimhood, ii) to evidence the link between different approaches to victims, and the amount of power an individual recognised as a 'victim' experiences as a result, iii) to discuss the issue of victim blame, and iv) to identify a way to enable and facilitate the possibility of critical analysis of the actions and behaviours which may leave us more vulnerable to harm, without transferring the blame from perpetrators to victims.

I examine the power dynamics which surround victimhood in respect of three roles; the victim themselves, the perpetrator of harm, and the wider member(s) of society who bestow a person's victimhood. This comparison is undertaken using the 'Victim-Power Triangle' model, which I have formulated in order to evaluate and analyse the power dynamics between these three roles, with particular focus upon each individual's ability to achieve their intended effects with their speech. As I demonstrate throughout, there are occasions where recognition as a 'victim' can result in an individual becoming over-empowered, and there are cases where recognition as a 'victim' can disempower.

To avoid over-empowerment or disempowerment, I propose that the aim of victim recognition should be empowerment for the victim, and fair treatment for all parties involved, and that this aim can be achieved through a compassionate approach to victimhood, which recognises two main premises: we are all dignified agents, but we are also, frequently, victims.

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Introduction

The reality of our existence means that at all times we are at risk of suffering some level of harm, and it is very likely that at some point we already have. If being subject to harm is the definition of victimhood, then the majority of people could lay at least some tentative claim to victim status. However, it is generally accepted that some level of harm is to be expected as part of living our lives. We are all likely to suffer a headache from time to time, to lose a loved one, or to face some form of injustice. While most of us recognise that we have experienced harm, we do not all consider ourselves to be a 'victim' of that experience. There appears to be some indeterminable threshold where the accepted and perhaps even expected level of harm crosses into a level that we consider beyond the ordinary, and which therefore renders the subject a 'victim'.

If we compare the level of harm we accept with the harms suffered by someone we would acknowledge as a 'victim', for example someone who has been subject to a violent crime, it seems that one clear difference is whether the harm experienced is pervasive in nature, and continues to have an ongoing impact upon a person's life or behaviour beyond the time of the original event.

The state of victimhood has been explored across many disciplines, and in fact, victimology became an academic pursuit in its own right in the 1940s (Walklate, 2013). However, much of what has been written becomes ever more relevant, and takes on a renewed significance, in the wake of what has been coined the "#MeToo" era.

With acknowledgement of victimhood comes sympathy (Minow, 1993), support, and sometimes even power (Williams, 2008; Minow, 1993; Weeks and Johnson, 1980). Many have written about the power associated with victim status, and the potential dangers of this power. One of the prevailing difficulties around recognition of victimhood is its often unverifiable nature. Not only it is not always possible to verify whether someone truly has experienced the harm they claim, but perhaps more difficult to verify is the true extent to which this harm has affected and continues to impact other aspects of their life, and even their behaviour – whether the harm crosses our invisible threshold and constitutes victimhood.

Western society is increasingly facing charges of becoming a "victimhood culture", in which people emphasise their claim to victimhood, and even engage

in “competitive victimhood” (Campbell and Manning, 2014: 711). Campbell and Manning go on to claim that “advertising one’s victimization becomes an increasingly reliable way to attract attention and support”, while Ofer Zur (2008: 20) declares, “Today it is fashionable to be a victim.”

When the so-called “#MeToo” movement came bursting into the media in 2017, the question of where we individually and jointly set the ‘victim’ threshold became an issue for every member of society. As story after story filled the headlines, the lack of consensus around definitions for sexual assault, harm and victimhood became clear, and the topic of heated debates. While some accusations clearly reported a criminal offence, such as accusations of rape, debates were sparked about conclusions being reached without evidence or legal process. Other accusations invited arguments about what actions actually constituted sexual assault, “Rape is a crime. But trying to pick up someone, however persistently or clumsily, is not” wrote the authors of an ‘open letter’, where they criticised the #MeToo movement for in turn making victims of men “[whose] only crime was to touch a woman’s knee, try to steal a kiss, talk about “intimate” things during a work meal, or send sexually-charged messages to women who did not return their interest” (Chiche *et al.*, 2018).

The potential power of a claim to victimhood in a society awakened by the #MeToo movement has been a concern of noted feminist philosopher, Judith Butler, whose friend and fellow philosophy professor, Avital Ronell, was accused of sexual harassment by a former student in 2018 (Gessen, 2018). Butler (2018; cited in Gessen, 2018: Paragraph 27) wrote, “My worry, though, is that in public culture right now an allegation of sexual harassment can be immediately taken to be the proof of the claim. Since women complainants, in particular, have been conventionally disbelieved and discredited, the trend is now reversed so that whoever speaks is assumed to speak the truth. Legal procedures ... are sometimes sidestepped altogether as the media becomes the new public tribunal.”

The criticism that the #MeToo movement bypasses normal legal processes expected following an accusation of a crime is one that can be found in comments made here and there in the media, but is interestingly harder to identify in formal literature. There seems to be an attitude that there exists a complete dichotomy; either one is fully in support of the movement, or one is against it. Those who point out any potential issues that arise from the automatic

belief and support of any person who makes an accusation are quickly met with condemnation. Authors of the open letter opposing the #MeToo movement wrote, “the women who refuse to fall into line are considered traitors, accomplices!” (Chiche *et al.*, 2018: Paragraph 2). This backlash was felt by author Margaret Atwood (2018; cited in Conroy, 2018: Paragraph 6) when she questioned whether it was appropriate to assume that every woman who made an accusation was necessarily telling the truth, “To be clear, some women lie. Why not? They’re human beings. That doesn’t invalidate any of what we’ve been hearing. If you take the false position that no woman ever lies, you’re just going to be shot out of the sky pretty soon.”

While the #MeToo movement has been viewed as an important shift in the dynamics of truth-telling and gender (Gilmore, 2017), the assumption that any person who comes forward to make an accusation is necessarily giving a full and honest account of an event is clearly not logical. Those who continue to perpetuate this view as the basis for change could be seen to be jeopardising the ongoing success of the movement, because if just one prominent case is proven to be based on a false allegation, suddenly the entire movement can be questioned.

Equally, accusations that the #MeToo movement sidesteps the judicial process need to be addressed. If the movement is seen by some groups to be bypassing fair process, and “summarily and indiscriminately lynching the accused without fair trial” (Pipyrou, 2018: 417), it is unlikely to be sustainable, or have a lasting impact. As Minow (1993: 1413) stated, “uncritical acceptance of victim rhetoric can derail political efforts to challenge oppression.” Moreover, those who advocate in favour of believing and recognising every person who comes forward to report as a victim will face a dilemma when those who start claiming victim status are the accused themselves.

It is not only with regard to the #MeToo movement that the power of those claiming victim status is causing concern. In the UK, there is an ongoing debate, represented most clearly in the literature between Sir Richard Henriques, and Chief Constable Simon Bailey, about at what stage a person making an accusation should be called a ‘victim’. This debate, and the #MeToo movement, will be explored in greater detail throughout the dissertation.

The potential power of acquiring recognition as a victim has also been explored from the angle of psychotherapy by writers such as Wendy Kaminer

(1992), who pointed out that there is often a temptation in these reflective practises and in some fields of therapy to identify everyone as a victim. Since none of us will have lived unblemished lives, we will have each experienced some degree of harm. In a society focussed on self-help, we can be encouraged to draw on these experiences to claim victim status, and we can then seek to provide a defence for any of our own negative or harmful traits or behaviours that we may wish to detach from ourselves.

These ideas appear increasingly relevant in today's society, where there has been an increased focus on the importance of wellbeing and mental health in recent years. Thus, there is increased reflection and examination of past experiences to find explanations for current feelings and behaviours.

It can at times feel like we are being sold victim status, with such a cafeteria of pathologies being offered up that we cannot fail to find something we can stake a claim to. Once we have been granted or perhaps self-proclaimed our entitlement to victim status, we receive the benefits afforded to those recognised as victims; sympathy, attention, relief of responsibility, solidarity, and power (Minow, 1993; Campbell and Manning, 2014; Weeks and Johnson 1980).

This almost universal claim to victimhood is problematic for a number of reasons. One major issue being that when this indeterminable threshold for harm or abuse becomes substantially lowered to include as many 'victims' as possible, it leaves little room for distinction from more serious harms, "Finding intimate violence everywhere trivialises and obscures important distinctions in gradations of harm" (Minow, 1993:1427). Kaminer (1992: 27) warns that this loss of distinction puts "being raped by your father" into the same class as "not getting help with your homework."

While those referenced up to now have written about the power in claiming victimhood, many academics have also noted the potential loss of power for those individuals who become recognised as 'victims'. In fact, many reject the term 'victim' believing that to give someone this label suggests that there is something significant about the person the harm happened to, it "traps them in a specific moment" and "reduces their identification to that experience" (Hamber and Kulle, 2001: 10). Others believe the word 'victim' suggests someone passive and accepting (Dunne, 2005) or "someone with a weak physical constitution who passively suffers from severe long-term consequences" (Papendick and Bonher, 2017: 2). Williams (2008: 79) describes victimhood as "to do with being done by,

of being pacified, of being made to suffer others' ill-will against one's will". Because of these negative connotations, many victims prefer to be identified as a 'survivor'. Using the word 'survivor' represents strength, resilience and suggests "an active role in facing one's traumatic experience and recovery" (Williamson and Serna, 2017: 669).

In May 2019, Dr Edith Eva Eger, otherwise known as 'The ballerina of Auschwitz', addressed an audience at the Institute for Management Development (IMD). Eger, a Holocaust survivor, told the crowd "I was victimized, but I am not a victim" (cited in IMD, 2019: Paragraph 2). In saying this, Eger clearly does not mean to deny that she was held prisoner in a concentration camp, rather, Eger expresses her refusal to let her experiences at Auschwitz define her. Although she was victimised, she wishes to be defined by more than the sum of those experiences.

In June 2019, Kim Phuc Phan Thi, renowned as the young girl photographed suffering from the effects of napalm during the Vietnam war, said "I don't feel as though I'm a victim anymore" (cited in Kenosha News, 2019).

Despite these statements, the experiences these two women have endured mean that they fit perfectly into the dictionary definition of 'victim'; they are individuals who have been harmed as a result of a crime, accident, or other action or event, and these were significant and pervasive harms. Furthermore, neither Kim Phuc nor Eger would argue that they had not been harmed in this way; but for them there is something *other* about the word 'victim' from which they wish to disassociate.

These views about the perceived negativity of labelling someone a 'victim' have become so widespread that in some cases it seems the word is not just avoided, but prohibited. Ehrenreich (2009: 10) describes how the word has become "proscribed", considered to be full of self-pity, and "un-PC".

Many feminist academics, particularly those writing about domestic abuse, point out that because of the perceived weakness associated with victimhood, a person's victim status is often considered to render them less capable of making the best decision for their own safety, and the power to make decisions is often taken out of their hands. Legal prosecution policies referred to as 'victimless', 'no-drop' or 'mandatory' prosecution, which have been adopted in nations such as Canada, the USA and the UK, mean that a victim's view on whether to make a complaint or press charges against a perpetrator of domestic abuse is not the

deciding factor. This is considered by some to be representative of a “patriarchal notion that the state knows what is best for each individual woman, more than the woman knows for herself” (Dayton, 2003: 283). This argument will be explored in more detail later in the thesis.

On reviewing the wealth of literature that has already been written on the subject of victimhood, and which recognises a link between power and victimhood, this thesis builds upon the existing work and consider the increased relevance of these discussions through the historical lens of the #MeToo era.

Outline of dissertation

I will begin in Section 1 by demonstrating the complexities of victimhood and the prevalence of ambiguity about meaning and use of the word ‘victim’. This first section will examine Gallie’s theory of essentially contested concepts, how the meaning of words can evolve, how meaning is often only discernible through examining the particular context in which words have been used, and how this is problematic in finding a consistent approach to victimhood.

The second section of this dissertation will seek to demonstrate how applying the ‘victim’ label can result in placing the subject in a very powerful position, and consequently why some may consider recognition as a ‘victim’ as a desirable status.

In contrast, the third section will then explore how, in particular scenarios, to be recognised as a ‘victim’ appears to result in having power and autonomy taken away, and what factors influence these contrasting outcomes.

Having demonstrated that there are varying consequences of recognising an individual as a ‘victim’, Section 4 will focus on ‘victim-blaming’, fear of ‘victim-blaming’, and the consequences this fear and avoidance has upon the potential for discussions about how to keep ourselves and others safe from harm.

I will conclude by proposing that a response to victimhood which focusses on compassion, a view advocated by Martha Nussbaum, goes some way towards offering a solution which will empower, rather than disempower or over-empower, those identified as victims.

Preliminaries

This dissertation will focus on victims of interpersonal acts because the issues discussed are demonstrated most clearly in relation to interpersonal acts. It is beyond the scope of this dissertation to discuss which interpersonal acts constitute wrongdoing, and, in what circumstances a person should be considered a 'victim' from a moral perspective. As Nils Christie (2004: ii) said, "Crime is not a fixed concept and which acts are considered criminal varies historically and between societies", and therefore which acts result in recognised harms is not fixed either.

Throughout this dissertation I will give examples of the word 'victim' being used in different ways, with vastly differing consequences, which will serve to demonstrate that the concept is used differently by different groups. In many of these examples the disparity in the use and meaning of the word 'victim' has directly led to academic disagreements. The purpose of using these particular examples will be solely to demonstrate the existence of varying understandings of the word 'victim', and the diverse consequences of using this word. Therefore, my purpose is not to attempt to resolve these academic disputes – I address them only to evidence the existence of inconsistency.

Section 1: What does 'victim' mean?

Before demonstrating the variety of understandings of the word 'victim', it is worth exploring how a word with a definition that appears to be so widely agreed, and so readily employed, can have such a range of understandings.

The words we use are important. In ideal circumstances, we choose the words we use very carefully so that we have the best chance of conveying to our listener or interlocutor our *exact* meaning. Even the exchange of one word for a seemingly synonymous word can alter a statement completely.

Words are complex; beyond its most basic definition or 'denotation', a single word can carry with it a multitude of connotations. This means that two people could hear the same word and, while understanding a similar definition of that word, could interpret the meaning of the speaker in entirely different ways. This understanding of the connotation or second meaning of a word is dependent upon innumerable factors, for example, culture, religion, social status and gender.

There are many words which seem to be loaded with connotations beyond their most basic definition. When these words are employed, their general meaning is usually clear for all to see, like the surface of an iceberg, but the various connotations of the word throughout society are hidden from view, and often, interlocutors do not recognise that they are there at all. This can be problematic for communication as often we do not anticipate, nor recognise when there can be different secondary understandings of a particular word. Hume (1748: §VIII) recognised the prevalence of this problem, even between philosophers, when he wrote of the discussions over liberty and necessity, "It might be reasonably expected in questions which have been canvassed and disputed with great eagerness, since the first origin of science, and philosophy, that the meaning of all the terms, at least, should have been agreed upon among the disputants... [But] From this circumstance alone, that a controversy has long been kept on foot, and remains still undecided, we may presume that there is some ambiguity in the expression; and that disputants affix different ideas to the terms employed". When only a broad definition of a word or concept is shared or acknowledged, it is possible for the individuals engaged in a discussion to appear to be in agreement, or disagreement, and talk as if on the same terms, but fail to properly communicate with one another.

In some instances, the connotations which a person or group of people associate with a word or concept become related with the primary meaning of the word to such an extent that it becomes conflated with the meaning of the word. An example of this phenomenon is 'feminist'. I propose that the word 'feminist' is generally accepted to mean someone who thinks men and women should be treated equally, with equal rights and status. However, 'feminist' is also a word which carries with it a wide range of connotations, which are not found within the definition, but are for some people as closely associated with the concept as the definition itself.

Researchers at YouGov, a global public opinion and data company, undertook a survey in March 2018 in which respondents were asked if they identified as feminists (Abraham, 2018). However, in order to test the connotations of the word 'feminist', researchers chose to formulate three versions of this question, and respondents would randomly be asked one of these three versions;

- 1) *Are you a feminist?*
- 2) *One definition of a feminist is someone who thinks men and women should have equal rights and status in society, and be treated equally in every way. Are you a feminist?*
- 3) *Do you think men and women should or should not have equal rights and status in society, and be treated equally in every way?*

Researchers found that across all of the seven countries where the question was asked, 80-91% of respondents asked question 3 said that they believe men and women should have equal rights and social status. When presented with question 2, 42-70% of respondents identified as feminists. When respondents were asked only if they were a feminist, only between 8-40% said they were (Ibid.).

The researchers concluded that the results showed that people were hostile towards the word 'feminist' while actually "readily subscribing to the ideals the term represents" (Ibid.: Paragraph 9). This study demonstrates that there is something about the word 'feminist', some association or connotation which is not found in the definition of the word, which means that some people do not identify with the term. Despite these other concepts not being defined anywhere within the original concept, they have become so closely linked to the word that

they have become, for some, inextricable. Since these additional connotations have not been identified, we cannot assume that they are the same for every person, and therefore, when discussing feminism, it is possible that people may be talking past one another. Without knowing what these connotations are, however, we cannot be certain that the lack of identification with the word always arises from hostility. For instance, a person may subscribe to the idea of feminism, but may believe that a 'feminist' is someone who demonstrably campaigns for those views, rather than just subscribing to them. The hidden connotation for this person is that a feminist is an active campaigner, and while there is nothing in the definition which necessitates this, this connotation has become so closely linked with the concept that it is conflated with the definition.

Scharff (2009: 9) describes how her self-identification as a feminist is often met with responses such as "But you don't look like a feminist". Such comments suggests that there is something about the essence of being a feminist which would result in a particular type of appearance, but clearly there is nothing to suggest that someone who believes in the equal treatment of men and women would have any particular appearance.

There are some common negative connotations which have become conflated with the concept of feminism, such as feminists being man-hating and hairy-legged (Pollitt, 2003), bra-burners (Crossley, 2009), and having an unkempt appearance (Dyer and Hurd, 2018). These connotations have become so widely espoused that they are, for some, synonymous with feminism, and consequently women increasingly dis-identify with feminism, despite supporting feminist attitudes and values. However, others happily identify as feminists, unperturbed by accusations of misandry, for example, because they do not see any link between feminism and hating men.

Attempts at discussions about feminism can misfire when interlocutors believe they are talking about the same concept but, as Hume (1748: §VIII) describes, "affix different ideas to the terms employed".

The same ambiguity seems to exist with the concept of victimhood, resulting in some individuals rejecting the 'victim' label, while others seem to proactively seek acknowledgment as a 'victim' "leapfrogging over each other, publicly competing for the status of victim" (Zur, 2008: 3). While some consider identification as a 'victim' as indicative of weakness, and in some cases even consider this label to be an insult, others crave the power they see as attached

to a claim to 'victim' status. Not only do these perspectives seem to disagree about what it means to be a 'victim', they suggest that at least two quite fundamentally contrary understandings exist about the nature of victimhood; 1) being recognised as a 'victim' results in depletion of power, 2) being recognised as a 'victim' results in accretion of power.

As with 'feminism', it seems that the apparent disparity within society about the meaning of the word 'victim' may stem from a conflation of the definition and connotations of the word. Connotations linked with a word often come from a confusion between what something *is* and what something *does*. The connotations about feminism seem to stem from an assumption about what a feminist's core beliefs or values are, or the implications of a feminist's core beliefs and values. Truthfully, all that can be known about someone who says "I am a feminist" is that this person believes that men and women should be considered as equal, and should have equal rights. To assume any further knowledge about this individual is fallacious. There is nothing further within the word 'feminist' which can tell us anything about how this individual's beliefs manifest, and how this person acts as a result of their beliefs.

With regard to victimhood, if a 'victim' is identified, we learn nothing more about that individual beyond their having been harmed in some way, as a result of a crime, accident, or other action or event. To make a judgement about whether or not this same person is passive or proactive, weak or wilful, based solely on their victim status, would be an entirely erroneous assumption.

The Office of the High Commissioner for Human Rights (2020: Paragraph 1) defines victims as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, or economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal laws...including those laws proscribing abuses of power". Fohring (2018: 152) argues that this definition is too neutral and falls short of the "near-ubiquitous" negative stereotypes about victims, who are often scorned, ridiculed and ostracized. But Fohring's understanding of victimhood does not seem to align with those who argue that people desperately compete to demonstrate their claim to victimhood (Zur, 2008), and it is contrary to the positive reactions others have linked to victimhood, such as understanding, sympathy and power (Williams, 2008; Minow, 1993; Weeks and Johnson, 1980), and to what Christie (1986) describes as the benefits of victim status.

1.i. How meanings change

Before further examining existing views about victimhood, it will be useful to try to understand how we can know what words mean, and how word meanings can, and do, change.

Occasionally, we stumble across a scenario where the definition of a word actually changes because it has been used somewhat inaccurately within society over such a period of time that the understanding has become altered. Anne Curzan (2014), a Language Historian, gives the example of the word 'nice', which was historically defined as "silly, foolish, simple". According to the Oxford English Dictionary (2020a), the word 'nice' originates from the Latin words 'nescius' meaning 'ignorant', and from 'nescire' meaning 'not know'. In current use, the word 'nice' is far more positive, and is used to represent pleasant things.

This phenomenon is actually rather common, in fact, semantic change occurs so frequently that the various types of change have been given categories. In the example of the word 'nice', the meaning has moved from negative to positive, which is known as melioration, whereas, when the meaning of a word transforms from positive to negative, the term applied is pejoration (Hollman, 2009). According to Hollmann (2009: 531), "There are many cases where older meanings happily coexist with newer ones", a change of meaning does not always eradicate the previous meaning of a word. Hollmann provides the example of the word 'screen', which in more recent years usually refers to television or computer screen, while the previous definition, "a large wooden panel, used to shield off for example one part of a room" (Ibid.) still exists.

Hollmann also provides the example of the word 'gay', which in modern society is often used to refer to homosexuality, but can also mean "cheerful" (Ibid.). The latter, older definition of 'gay' is less commonly used in recent years, but the two definitions are so dissimilar they are unlikely to cause much confusion between interlocutors.

However, I suggest that words like 'feminist' and 'victim' appear to represent a quite unique form of change; these are examples of words where the definition seems only to have shifted for some groups, while the original meaning remains for other groups, and the various meanings seem to co-exist rather more unhappily, and often unnoticed. In these circumstances, certain connotations can

become so closely associated with a word that some members of society begin to recognise them as part of the definition, while the original definition still stands for other groups of people.

With regard to victimhood, conflation between what a victim is, and what traits a victim may have, seems to be heavily influenced through the media. The idea of what a 'victim' looks like, how they behave, and what kind of person they are is often very narrow; and this narrow idea is reinforced by the victims who are brought to our attention in the media. The depiction of the victim of modern slavery in the media is a useful example, usually focussing on the impact upon women and children rather than men (Craig *et al.*, 2019). This means that male victims are often overlooked: "awareness campaigns perpetuate a form of exclusion through the construction of a typical or 'ideal' victim of trafficking." (O'Brien, 2013: 315). It also means that women are "lumped in with children as categories of person requiring special protection" (Davidson and Anderson, 2006: 21). Advertising campaigns hoping to raise awareness of the issue often highlight the innocence and vulnerability of victims (Craig *et al.*, 2019; O'Brien, 2013). O'Brien (2013: 316) points out that this view of victims often only results in a "significant hindrance to attempts to combat trafficking" because by "misrepresenting the nature of the problem" we overlook victims who don't conform to this limited view.

1.ii. Meaning as use

The fact that the definition of a word can change over time reveals that meaning is dependent on use. Dictionaries often contain a range of definitions, including some historical uses, demonstrating that dictionary definitions reflect how a word *is* used rather than dictate how a word *should be* used. Curzan (2014) uses the example of the word 'peruse'. The American Heritage Dictionary (AHD) (2020) gives two opposing definitions of the word, the first being "to read thoroughly", and the second "to glance over, skim". The AHD (Ibid.) also provides the following 'usage note'; "Peruse has long meant "to read thoroughly" ...But the word is often used more loosely, to mean simply "to read" ...Further extension of the word to mean "to glance over, skim" has traditionally been considered an error, but our ballot results suggest that it is becoming somewhat more acceptable. When asked about the sentence *I only had a moment to peruse the manual quickly*, 66

percent of the [Usage] Panel found it unacceptable in 1988, 58 percent in 1999, and 48 percent in 2011.”

Curzan uses this example of the word ‘peruse’ to demonstrate that it is the people using a word who decide what it means.

The word ‘literally’ is another example of a word which is so commonly used in a way that is contrary to the originally accepted definition, that the definition has shifted. In 2012, the former UK Deputy Prime Minister, Nick Clegg, said in a speech, “It makes people so incredibly angry when you are getting up early in the morning, working really hard ...you are paying your taxes and then you see people literally in a different galaxy who are paying extraordinarily low rates of tax” (cited in Curtis, 2012). His use of the word ‘literally’ sparked a media debate, as it was clearly not Clegg’s intention to say that people were actually in different galaxies. But many social and political commentators came to Clegg’s defence, arguing that his use of the word was appropriate and reflected the common use of the word, and therefore the current meaning of the word; “Words only mean what people understand them to mean... the word has not meant solely "non-metaphorical" for centuries, if it ever really did” (Chivers, 2012: Paragraph 5).

As with the word ‘peruse’, if enough members of society use a word to convey a particular meaning, and enough members of society recognise the word as having that meaning, then that becomes one recognised definition of that word. While peruse was originally defined as “to read thoroughly”, it was so commonly used to mean “to glance over, skim”, and most importantly, was recognised as having that meaning, that this was consequently acknowledged as an alternative definition.

In ‘*Philosophical Investigations*’, Wittgenstein (1958: 20) said, “For a *large* class of cases—though not for all—in which we employ the word “meaning” it can be defined thus: the meaning of a word is its use in the language”. That is to say, to identify the meaning of a word we should look at how it is used, “Don’t think, but look!” (Wittgenstein, 1958: 31). Black (1974: 596) explains, “Wittgenstein is saying that in many cases, the term ‘meaning’, where the concern is with the definition (= explanation) of a word, can be defined as the use of the word in the language.” Lazarus (2011: 2) adds, “explaining the meaning of a word to children consists precisely in teaching them the use of a word”.

Essentially, we cannot and should not rely on the dictionary definition of a word to understand what the word means, or whether it is being used appropriately. The dictionary definition of a word is a reflection of its use, and dictionaries are guides that document use of a word over time, but to use a dictionary definition of a word to try to prevent or reverse a societal shift in the use of a word is to beg the question. Conant (1998: 239) writes, “‘for a large class’ of occasions of speaking there isn’t anything which can properly count as asking the question ‘What do the words [that have been spoken] mean?’ apart from a simultaneous consideration of questions such as, ‘When was it said?’, ‘Where?’, ‘By whom?’, ‘To whom?’, etc.”

We begin to see that the question of what the word ‘victim’ means, is not a simple one. It is not merely the case that there is one fixed meaning that certain groups of people have inaccurately moved away from, and to brand certain understandings as correct or incorrect would be inappropriate.

One could go as far as to argue that to ask “what does ‘victim’ mean...?” is really only half of the question, and needs to be followed by the usage context which grounds the meaning of the word, “what does ‘victim’ mean when it is said by A, in situation B, at time C?”.

However, if we base our understanding of the meaning of a word in the context in which we hear it used, when it is used in a positive way, positive connotations will become attached, when it is used in a negative way, negative connotations will become attached. When it is repeatedly used in a negative way, for example, those same negative connotations may always be present, and eventually become conflated with the definition of the word. When the word is then used in a different context, the hearer is unable to properly ask the question, “what does this word mean when it is said by A, in situation B, at time C?”, because the very basic definition of the word has been lost to them, and the meaning becomes skewed. They are aware of only one way that this word has been used, and cannot on balance ask with which, of a range of usages, this current usage sits most closely.

If the media only portrays victims as innocent and vulnerable, and subsequently the word is used only to describe people who have been harmed *and* who are apparently vulnerable and innocent, if innocence and vulnerability become an essential part of what it is to be a victim, then evidence which undermines the innocence or vulnerability of a person is also considered to be

evidence which undermines their victim status, while in reality having no relevance to the fact that they were subject to harm.

In November 2018, a lawyer representing the defendant in a rape trial in Ireland encouraged the jury to consider the underwear the alleged victim was wearing on the night of the incident, “Does the evidence out-rule the possibility that she was attracted to the defendant and was open to meeting someone and being with someone? You have to look at the way she was dressed. She was wearing a thong with a lace front” (cited in Heylin, 2018: Paragraph 17). In raising this issue, the lawyer conflated two very separate issues; 1) the question of whether the alleged victim consented to having sex, or was a victim of rape, and 2) the question of whether she was dressed in such a way as to suggest she might be looking to meet someone for sex that evening.

In truth, this argument fails on both levels. The type of underwear someone is wearing is not sufficient to tell us very much at all about a person, and is a very poor basis on which to form assumptions about whether a person is looking to have sex that evening. However, there is no link whatsoever between the type of underwear someone is wearing and whether or not they consented to sex.

The lawyer’s aim seems to have been to convince the jury that the underwear the alleged victim was wearing was sufficient to suggest that this individual may have been open to having sex with a stranger. Although this suggestion would have no relevance at all in establishing that the alleged victim consented to having sex with the defendant, or whether she initially consented but then withdrew consent, establishing if there was consent does not seem to have been the lawyer’s intention. Instead, she hoped to undermine the claim to victim status by undermining the sexual innocence of the alleged victim, suggesting promiscuity, and appealing to the fact that for some groups of people purity and innocence have become inseparable from victim status, and that promiscuity is incompatible with victimhood.

In this example, it appears that the lawyer hoped to blur the lines between what it is to be a ‘victim’ and what it is to be an ‘ideal victim’. Christie (1986: 18) has perhaps most notably defined 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”. The ideal victim is usually a “young, innocent female out doing good deeds who is attacked by an unknown stranger” (Ibid.). Conflation between what it means to be a ‘victim’ and the concept of the ‘ideal

victim' often means that those who do not meet the "Little Red Riding Hood" picture of victimhood may consequently not be considered victims at all (Walklate, 2007: 144). This is particularly applicable in crimes with a sexual element, such a rape. Often there are specific attributes for what the public will recognise as a 'real' or 'legitimate' rape victim (Estrich, 1987; Walklate, 2007); if the victim was not doing something which is considered "respectable", if they wore revealing clothing, or acted in any way considered provocative, then the incident is instead perceived as a "regretted" sexual encounter (Bows, 2018: 231).

1.iii. What does 'victim' mean? How is 'victim' used?

To summarise some of the uses of 'victim' seen thus far, despite the basic definition being neutral, there are some negative connotations; victims perceived as weak, vulnerable, passive (Davidson and Anderson, 2006) small, and worthy of scorn (Fohring, 2018). Contrastingly, there are also positive connotations, such as innocence and blamelessness (Christie, 1986), worthy of understanding and sympathy (Minow, 1993), and being in a powerful position (Williams, 2008).

Interestingly, research suggests that many victims themselves carry negative connotations of victim status, and while some will accept that their situation technically means they are 'victims', they shun the label. When Fohring (2018: 155) asked victims of crime what they felt about the label, the responses were "overwhelmingly negative", although it was often acknowledged that it was not the true meaning of the word, but the connotations of the word that were negative:

"I don't think victim is a nice word ...I think you can have I don't know wrong connotations sometimes you know, if you're a victim then that makes you small, you've been trampled on or whatever and you could be trampled on again".

With these different conceptions of the essence of victimhood exposed, it becomes clearer why some people would push to be recognised as victims, while others will reject this recognition.

The use and potential misuse of language, particularly concerning the word 'victim', has recently been highlighted as an issue within the British legal system. In 2016, Sir Richard Henriques, a retired High Court Judge, published an *'Independent Review of the Metropolitan Police Service's handling of non-*

recent sexual offence investigations alleged against persons of public prominence'. Henriques was asked by the Metropolitan Commissioner of Police, Sir Bernard Hogan-Howe, to undertake the review of two high-profile investigations which had been undertaken by the Metropolitan Police, Operation Yewtree and Operation Midland. Operation Yewtree centred around allegations against television presenter Jimmy Savile, which were originally brought to light by ITV (television network) (Henriques, 2016). Operation Midland was an investigation centred on allegations of paedophilia, rape and murder reported to the Police by an individual who was originally given the alias of "Nick", against a number of "very high profile individuals" (Ibid.: 4). After an extensive investigation had been carried out in respect of these accusations, it was discovered that "Nick" had fabricated the allegations, but because Nick's allegations had been considered "credible and true" (Ibid.: 4) by officers when they were reported, the individuals he had named had been treated as suspects. In July 2019, "Nick" was convicted of 12 counts of perverting the course of justice and sentenced to 18 years in prison (Crown Prosecution Service, 2019).

For the purposes of his review, Henriques (2016) sought guidance from two publications, '*Operation Hydrant SIO [Senior Investigating Officer] Guidance*', written by the Chief Constable of the Norfolk Police Constabulary, Simon Bailey, and the report of the '*Independent Review into the Investigation and Prosecution of Rape in London*', which was chaired by the Rt. Hon Dame Elish. As a result of reviewing these texts, Henriques noted that the former report referred to the individual making a report of historic sexual abuse as "victim", while the latter referred to these same individuals as "complainants". Henriques felt that this was a discrepancy in the language which represented a significant issue, and one which required resolution.

It was apparent that, although the two words are often used interchangeably in everyday policing (Beckley, 2018), the authors of the two reports were very clear that these words had two very separate meanings. However, not everyone who had read the recommendations presented by Angiolini in her report had properly recognised that the word "complainant" was different to "victim", and Henriques (2016: 7) states, "In the MPS [Metropolitan Police Service] and CPS [Crown Prosecution Service] joint response to Dame Elish's 46 recommendations, every recommendation is set out with the word 'complainant' used, whilst the response invariably uses the word 'victim'."

In a consequent report commissioned by the College of Policing, Assistant Commissioner Rob Beckley (2018: Paragraph 3.4) noted that many police investigators spoken to said that they thought “too much was being read into the word [victim]”.

At this juncture, it is important to recognise that it may initially appear irrelevant or at most a minor issue if a person is referred to as a victim at the outset of an investigation, because the investigative and judicial process will continue regardless of the terminology used, and eventually a verdict will be reached in the traditional way, if it goes to trial. However, it is important to keep in mind that some police investigations are undertaken over many years before reaching court, while some cases will never reach court at all. For this reason, the language used during the investigative and any subsequent judicial process, and the impact this has, is not insignificant for any of the parties involved.

When writing his report, Henriques (2016), recognising the significance of the dispute between use of “victim” vs “complainant”, concluded with a recommendation that an individual reporting a crime to the Police should be referred to as the “complainant” throughout the investigative and judicial process, up until the moment that there is a conviction. He justified this conclusion by claiming that “the entire judicial process, up to [the point of conviction], is engaged in determining whether or not a ‘complainant’ is indeed a ‘victim’ (Ibid.: 8).

Henriques’ summation of the judicial process is inaccurate. The outcome of the judicial process is a determination on whether the individual accused of an unlawful act is guilty or not guilty, or more accurately, if there is sufficient evidence to show beyond reasonable doubt whether the accused is guilty or not guilty. The responsibility of a jury, after all, is to try the defendant, not the accuser (Ministry of Justice, 2020). It is easy enough to think of a hypothetical example where Police have identified a suspect, but in court there is insufficient evidence to prove they are guilty, or perhaps Police identified the wrong person, or were unable to identify a suspect at all. This does not negate the existence of the victim of that crime.

In the UK, the word ‘victim’ is widely used throughout investigative and judicial proceedings, both by those involved in investigating, and by external agencies who provide support to victims. For example, the word ‘victim’ is used to refer to the person reporting a crime when the details are recorded on crime databases, and the Home Office Counting Rules for reporting crime use the word

'victim' in the same way (The UK Home Office, 2013). Those who report a crime will be offered the support of a Victim Support Officer. According to Henriques (2016: 9), "Every accused person that I interviewed expressed the view that by describing his accuser as a victim, his guilt had been assumed and thus pre-judged".

For Henriques then, the word 'victim' should only be introduced at the conclusion of the judicial process, where a guilty verdict has been recorded. Using this word before that stage acknowledges that the alleged harm has taken place, before it has been proven. Furthermore, applying the word 'victim' as a label to one individual can be said to have a simultaneous effect upon the accused; to refer to Y as 'victim' is to coincidentally comment upon the guilt of the accused. While this is of course not sufficient to count as the final verdict for those cases which will be heard in court, for the period before a court verdict is reached, or in cases which do not reach court, this effect is not inconsequential.

Henriques argues that everyone involved in the investigative and judicial process should be completely impartial prior to the point of any potential conviction. By employing the word 'complainant' rather than 'victim', Henriques (2016: 13) believes impartiality can be achieved. In contrast, he proposes that employing the word 'victim' from the outset is a failure to be impartial, "Those who continue to contend for the use of the word are seeking to gain an advantage for complainants at the expense of those accused." Achieving victim status, by these standards, is not simply having been subject to harm, but being able to prove you have been subject to harm.¹

Again, we can see the potential for communication to misfire as the disputants in this argument affix different ideas to the word 'victim'. Henriques is describing a victim in the eyes of the law, but does not distinguish this from other types of 'victim'. For some groups of people being a 'victim' is an objective phenomenon; when someone has been subject to harm, they are a victim, regardless of whether this is recognised by society or in law. While Henriques' victim status is inextricably tied to legal recognition through judicial proceedings, and therefore to bestow victim status to someone who has not been through this process is incorrect.

¹ An added complication here is that you may be able to prove you were subject to harm, but not be able to prove who the perpetrator of harm was.

It may be difficult to see how being a 'victim' can be an objective phenomenon, since what constitutes harm is not objective, but often changes over time, and is not always governed by or related to law. There are some arguably clear cases where victimhood seems like an objective phenomenon. Alan Turing was posthumously pardoned in 2013 after he was convicted in 1952 for "gross indecency" for having a sexual relationship with another man (BBC, 2013). At the time his pardon was granted, Justice Minister Chris Grayling described the original conviction as something we would now recognise as unjust and discriminatory (cited in BBC, 2013). One could argue that Turing was always a victim, objectively, but it has only been recognised more recently; the recognition of victim status is new, but the objective victimhood is not. This will depend upon whether the person considering this issue uses 'victimhood' to describe societal recognition of harm. One could argue that Turing was not a victim at the time, but now that societal and legal perceptions have changed, we consider Turing to be a victim of what is now considered an unjust law.

The #MeToo movement, which will be discussed in more detail in later parts of this dissertation, also demonstrates the subjectivity of some harms. While some women would decry certain sexual comments as sexual harassment, others have argued that the freedom to decline a sexual proposition cannot exist without a man's "freedom to bother", and even that a woman could consider a man rubbing himself up against her on a subway as a "non-event" (Chiche *et al.*, 2018: Paragraph 11).

In 2019, a UK tattoo-artist was jailed for 40 months after he removed one man's ear, and split a woman's tongue, at their request, and with their written consent (The Guardian, 2019). It was found that, despite the consent of his clients, the tattoo-artist was guilty of causing grievous bodily harm with intent. What prosecutors and a jury saw as 'harm', the clients had requested and paid for.

Not only is 'harm' emerging as subjective, at least in some cases, it has become clear that being subject to harm is not sufficient criteria for victim status. As earlier discussed, many of us have experienced harm and yet do not consider ourselves 'victims', and furthermore, some levels of harm are considered acceptable as punishment. For example, imprisonment, and separation from family and friends, can certainly be considered harmful to prisoners. However, as

a society we do not often recognise prisoners as victims of the judicial process simply because they have experienced harm.

Christie (1986: 18) argues that being a victim is not an “objective phenomenon”, and there will be cases of disagreement about who is a victim, because much of what makes a person a victim depends not only on wider societal views, but also on the views of the person themselves, and their definition of the situation. Christie refers to his own experience of victimhood, in which he felt he was conned into agreeing to a race with a colleague, who turned out to be a champion runner. Although Christie has experienced theft and burglary, he did not recognise those situations as ones of which he had been a ‘victim’, but felt more strongly about the dishonesty he had experienced with regard to the race (Ibid.). Christie would perhaps then agree with Kim Phuc and Eger, whose comments suggest that victim status depends upon the subject’s perception of the situation.

Again, we can see that the word ‘victim’ has been used to describe many different phenomenon; ‘victim’ according to law, ‘victim’ according to society, ‘victim’ according to personal view, and ‘a person who has been harmed’, are all referred to with no clear distinction. With the word being used to cover so many different concepts, without the exact use of the word being defined, it is inevitable that confusion and miscommunication will arise.

In direct contrast to Henriques, Bailey (2015; cited in Henriques, 2016: 9) opposes the use of the word ‘complainant’, arguing that refusal to acknowledge someone as a victim during the investigative process “will have a significant detrimental effect on the trust victims now have on the authorities and fundamentally damage the efforts of many organisations re-built over the years.” For Bailey, referring to these individuals simply as a “complainant” is problematic and “reinforces a system based on distrust and disbelief” (Ibid.).

This view is supported by others who have argued that if a victim feels that they have not been believed, not only do they potentially not achieve the recognition they deserve, or justice, but this experience of not being believed can make them feel re-victimised (Hayes *et al.*, 2013).

Bailey argues that refusal to use the word ‘victim’ is not a sign of impartiality, agnosticism, or suspended belief, but of active disbelief or doubt. In a letter to Police and Crime Commissioners, the National Police Chiefs’ Council, of which Bailey is a member, stated: “to start an investigation from a position of

doubt is unlikely to encourage victims to come forward” (cited in Henriques, 2016: 14). Conversely, Henriques (2016: 20) describes doubt as “the hallmark of impartiality.”

This coincidentally serves as another example of that subtle but potentially hazardous issue that arises from a broad agreement about the primary meaning of a word, and a hidden discrepancy about the secondary meaning of a word. It is apparent that Henriques and Bailey do not have an entirely shared understanding of the concept of ‘doubt’. While the Oxford English Dictionary (2020b) records the definition of doubt as “a feeling of uncertainty or lack of conviction”, in general use, (and therefore in general meaning) to doubt something usually indicates that you believe something to be unlikely. To utter the phrase “I doubt it” would not be understood as “I am impartial”. Therefore, while Henriques sees ‘doubt’ as akin to indecision and impartiality, Bailey sees ‘doubt’ as distrust and disbelief. Both Henriques and Bailey agree that to *avoid* using the word ‘victim’ demonstrates doubt. Henriques may say “to demonstrate doubt is good”, and Bailey may say “to demonstrate doubt is bad”, but without sharing the same understanding of what it means to doubt, they are talking past one another.

Interestingly, Henriques (2016) believes that when someone simply applies the word ‘victim’ when referring to the individual making a complaint, they perform several actions at once. For example, they label the individual, they demonstrate a level of belief with regard to the allegation made, they imply to the accused that at this present snapshot in time they are considered to have committed the offence they are accused of, they attempt to reverse the burden of proof. Bailey also believes that when someone applies the word ‘victim’ with reference to the individual making an accusation they perform several actions at once. For example, they label the individual, they demonstrate a level of trust and belief in the credibility of the reporter, they reassure the reporter that they will be taken seriously. The multiple things we can *do* with words will be revisited shortly.

1.iv. Is the concept of 'victim' essentially contested?

As I hope to have demonstrated, despite the word 'victim' being used regularly, those who employ the term do not always do so with the same concept in mind.

I have demonstrated that the meaning of a word is found in the use of the word, and therefore, a person's understanding of the meaning of a word, and the connotations they attach to the word, will relate to the way they have experienced it being used. A person's exact interpretation of a concept will be "inextricably tied" to their experience of the use of that concept, and other background assumptions (Lukes, 2005: 30).

This may prompt us to ask if victimhood is an "essentially contested concept"; a phrase coined by Gallie to describe terms which, when the different uses are examined, are found not to have "one clearly definable general use" to set as the "correct" or "standard" use (Gallie, 1955: 168). Gallie gave the examples of art, democracy and Christian doctrine to demonstrate concepts which inevitably result in "endless disputes about their proper uses on the part of their users" (Ibid.: 169).

At first glance, this seems true of victimhood. However, an essentially contested concept is not simply a concept which is hotly contested, with no resolution reached. It is a concept for which resolution *cannot* be reached, a concept which has "contestation at the core" (Waldron, 2002: 149), the very essence of the concept is contested, and the dispute cannot be resolved by any argument at all (Gallie, 1955). Can this be said of the concept of 'victimhood'?

Waldron points out that the location of the dispute is key to establishing if something is essentially contested, or just highly contested. It is key to identify if the location of the dispute is at the core of the concept; do people disagree about what it is to be a victim? For some contested concepts (note, not *essentially* contested concepts), the dispute is not about the essence of a concept, rather it is about whether or not something meets the threshold to be counted as falling within the remit of that concept. Waldron (2002) gives the example of the colours blue and green. Two people can agree on what the colour blue is, but they may argue about whether a coat is blue, if the colour of the coat is on the outskirts of the blue spectrum. If one person says, "The coat is blue" and another says "I think it's more green", this does not mean they do not agree about what blue is, but in this case they dispute whether the coat colour has met the criteria to be counted

as blue. This is what Waldron (2002: 149) would describe as a “marginal case”. However, if the coat was clearly blue, a “paradigm” case of blueness, and one person said “The coat is blue” and the other replied “The coat is clearly red”, they would have a dispute about the concept of blue. When they said the word “blue” they would have had different concepts in mind.

So, in order to establish if the concept of victimhood is essentially contested, we must first identify where the dispute about the concept is located. In the case of a person shunning the victim label because they see victims as weak and powerless, I have argued that this is conflation of definition with connotation, which is often how the meanings of words change over time, but in this case, there are so many versions and different connotations associated with victimhood, one definitive change of meaning has not occurred. In this case, the associations with weakness and powerlessness, it appears to be a contestation not of what it is to be a victim, the concept of victimhood itself, but more accurately a dispute over what sort of person is most likely to become a victim. This does not demonstrate that victimhood is an essentially contested concept, but merely that assumptions are often made about the characteristics and behaviours a person who has been recognised as a victim may exhibit. These assumptions differ depending on the experiences each person has had both of victims first-hand, of hearing victims discussed, and of seeing them in the media, and represent connotations they will then associate with victimhood.

In the case of the dispute between Henriques and Bailey, *prima facie* the debate seems to be not what it is to be a victim, but rather *when* someone becomes a victim; at what stage someone meets the threshold to be considered a victim. This dispute sits on the margins of the concept, like the marginal applications of the concept of blue, but we assume paradigm cases of victimhood, very clear cases of victimhood, will be agreed.

However, it could be considered that the “when?” should be part of the definition of victimhood, and if Henriques believes that a person can only be recognised as a victim when they have been recognised as such in law, and Bailey believes they should be considered a victim as soon as they alert the appropriate authorities, perhaps the location of the dispute is at the core of the dispute rather than on the periphery. So rather than a victim being someone who has been harmed, a ‘victim’, for Henriques, is someone who has been harmed

and has had this proven in a court of law, and for Bailey a 'victim' is someone who has come forward and reported having been harmed.

If we were to accept that there is no objective state of being a victim (Christie, 1986), although there are widely accepted instances which are guided by our socially governed laws, there is no reason to suggest that either Henriques' or Bailey's definition would be closer to the truth than the other. This seems to fit with the definition of an essentially contested concept. We could say that there are at least two co-existing understandings of the concept of victimhood, which are "perfectly genuine", "not resolvable", and sustained by "perfectly respectable arguments" (Gallie, 1955: 169).

However, I do not think the above is an accurate outline of the dispute which remains between the views of Henriques and Bailey. In fact, I propose that Henriques and Bailey do not have any dispute over the concept of victimhood at all. Given all the relevant facts about a situation, I believe it very likely that Henriques and Bailey would agree over which individuals fall within the categorisation of 'victim', and which do not. Furthermore, I do not believe the dispute is about when someone becomes a victim, as I suspect that both would say that the true point of becoming a victim is neither at the point when a person approaches the authorities, nor when the perpetrator has been proven guilty in a court of law, but that the state of victimhood arises at the very point that harm takes place. Social acknowledgement at the time of harm is not necessary, as we can look back now at people who were not recognised as victims at the time of harm, and recognise that they were victims, despite not being recognised as such at the time.

The dispute between Henriques and Bailey is about the point in time at which it is appropriate to use the word 'victim', more specifically, how certain we need to be about a person's claim to the 'victim' label before we employ the word, and the consequences of our use of words.

1.v. What do we *do* with words?

Both Henriques and Bailey believe the use of the word 'victim' as a label is highly significant, and propose that improper use, or improper timing of the word *does* something; i.e. it tells the reporter that you believe them (Bailey), or it tells the accused that they have been assumed guilty (Henriques). These claims suggest

a strange phenomenon, our ability to *do* something *with* our use of words beyond the simple act of speech.

Austin (1962: 12) recognised this phenomenon when he said “to say something is to do something”, some types of utterance are performative, “the issuing of the utterance is the performing of an action”.

In fact, for Austin, when we commit the “act” of speaking a word or phrase, we can do *several* things at once. The first of these is the “locutionary act” which is the basic act of uttering a word or sentence. Further to this there is the simultaneous “illocutionary act”, which is what we are doing *with* our utterance, e.g. answering a question, giving an order, announcing our arrival. So, our locutionary act is our use of speech, and our illocutionary act is what we do *with* that speech. Austin explains, “in general the locutionary act as much as the illocutionary is an abstraction only: every genuine speech act is both” (Ibid.: 146).

Additionally, there is a third “act” we can perform when we speak, the “perlocutionary act”, which Austin defines as the “consequential effects upon the feelings, thoughts, or actions of the audience, or of the speaker, or of other persons” (Ibid.: 101). A locutionary act would be “he said that...”, the illocutionary act would be “he argued that...” and the perlocutionary act would be “he convinced me that...” (Ibid.: 102).

During a wedding ceremony, to say “I do” is an act of speech, an utterance of words, a locutionary act. In this special circumstance however, in this particular context, *in* saying “I do”, you marry; “Saying “I do” in the right context counts as – constitutes – marrying: that is the illocutionary act performed.” (Langton, 1993: 300). If in the same context you were to shout “Foghorn!”, you would commit a locutionary act, however, *in* saying this word you would not leave the church having entered into marriage. The act of saying “I do” is entering into marriage.

The matter of which illocutionary act is performed often depends upon the circumstances in which the speech act is performed, and who is performing the act; “it is always necessary that the circumstances in which the words are uttered should be in some way, or ways, appropriate... Thus, for naming the ship, it is essential that I should be the person appointed to name her” (Austin, 1962: 8).

This echoes the earlier discussion between meaning and use, and Conant’s proposal, “there isn’t anything which can properly count as asking the question ‘What do the words [that have been spoken] mean?’ apart from a simultaneous consideration of questions such as, ‘When was it said?’, ‘Where?’,

'By whom?', 'To whom?', etc." (1998: 239). Here, we see that Austin is making a comparable point, the kind of illocutionary act which is performed when using a certain word or phrase is clearly linked to the context; who said it, when, where etc. If any other person than that person appointed to name a ship were to leap in and proclaim "I name this ship the Mr Stalin", the ship will not have been named (Austin, 1962: 23). This is because there are certain conditions which speech must meet in order to determine which illocutionary act will be performed, the "felicity conditions" (Langton, 1993: 301).

Langton (1993: 302) demonstrates how powerful an illocutionary act can be when she gives the case of a legislator in apartheid-era Pretoria announcing "Blacks are not permitted to vote". When the legislator says this, they do not just state a fact, but the utterance itself makes the fact so. The act of uttering those words, when the felicity conditions are met (uttered by someone with the political power to set out legislation), is what prevents black people from being permitted to vote. Uttered by someone else, this would not have the same illocution, because the ability to have this illocutionary force is linked to whether the speaker has authority in the relevant field.

Langton (1993: 297) applied Austin's speech acts theory to pornography (which she argues is speech, since it is protected by the First Amendment) to demonstrate how pornography "silences" women. Following on from the work of MacKinnon, Langton's aim was to show not only that pornography depicts subordination (locution), and not only that pornography causes subordination (perlocution), but that pornography itself is an act of subordination (illocution). Langton (1993: 307) suggests that pornography seems to have the appropriate "authority" in the domain of "speech about sex" to tell those who listen what is appropriate and permissible in this realm. Therefore, by depicting subordination of women, it tells its hearers that this is part of the sexual game.

In depicting women as saying "no", when they mean "yes", within the sexual domain, pornography prevents women from having the ability to refuse in this domain. This is the "silencing" Langton refers to. It is not that women have their ability to speak, their locution, silenced, for they can still utter the word "no", but it is a different sort of silencing that Langton wants to demonstrate. Aside from this most obvious example of silencing, there are two further types that Langton presents. "Perlocutionary frustration" is when the intended effect of speech is not successful, e.g. one invites, but nobody attends the party (Ibid.: 315). But the type

of silencing referred to by Langton with regard to pornography is “illocutionary disablement” (Ibid.).

With regard to Langton’s argument around pornography, a woman may encounter perlocutionary frustration if she utters the word “no” to a man to refuse his sexual advances, and he hears the word, he understands her intention to refuse (her illocution), but it does not have the effect she desires, as he does not stop. This is, of course, rape. Illocutionary disablement, however, is where a woman says “no” to a sexual advance, but it is not acknowledged as a refusal, as the hearer does not recognise the word “no” coming from a woman in the sexual realm as constituting refusal. In pornography, there is no term represented which would be acknowledged as a woman refusing sexual advances. As a woman, in the sexual realm, refusal is not available, “Refusal-in that context-has become unspeakable for her” (Ibid.: 321).

Langton’s three types of silence are tied to the three types of speech acts Austin describes. Certainly, it is true that silencing of the traditional “locutionary” sort, preventing one from uttering the words at all, is not the only time we might feel silenced. However, it is not, I suggest, immediately clear that perlocutionary frustration, as described by Langton, truly represents a form of silencing. Langton gives the following examples of perlocutionary frustration; inviting people to a party, but they do not attend, voting to oust the government, but being outnumbered by other people’s votes, arguing a point, but failing to persuade others of your point of view (Ibid.). Initially, it seems dangerous to suggest that every person who does not get their own way can say that they have been ‘silenced’.

To get to the centre of the issue here, let us start by exploring the perlocutionary act, according to Austin. Austin (1962) says that to perform a locutionary act, we will normally produce certain consequential effects upon the feelings, thoughts or actions of those who hear us, which he labels the perlocutionary act. To some this may at first seem an odd claim; surely, the consequent feeling of someone who has heard me speak cannot be part of my action in speaking. However, if I say “Hi” to a friend, the illocutionary act is to greet my friend, but suppose they did not realise I was there, and by saying “Hi” I surprised them. It would make perfect sense for my friend to say “you surprised me!” suggesting that my act of saying “Hi” resulted in a further, perhaps unintentional, act which I have performed.

In some cases, the perlocutionary act will not be unintentional, it may in fact form a large part of the motivation for the utterance. Suppose you want to impress someone: you inform them that you have recently won an award (the illocutionary act here is to inform), but you hope that the consequence of your informing them of this will be that they are impressed. Unfortunately, they seem quite indifferent, and the perlocutionary effect you intended is unsuccessful, or in Langton's words, "frustrated". If the perlocutionary effect is part of a speech act, and maybe even the aim of the speech, it follows that something preventing the success of this speech act is considered "silencing", "If speech is action, then silence is failure to act" (Langton, 1993: 314). Ordinarily, we might think of silencing as preventing someone from speaking at all, e.g. gagging them, or, perhaps letting them speak, but discrediting them by pointing to some previous act of theirs which could demonstrate that they are not worthy of trust, so that when they speak they are less likely to be taken seriously by hearers, and less likely therefore to achieve the intended consequences of their speech. However, the type of silencing Langton describes here does not need to be implemented by someone else, silence simply means failure to perform the speech act intended, whether locutionary, illocutionary or perlocutionary.

Therefore, while at first it seems too strong a claim to say that someone who votes but does not get the outcome they intended when they submitted their vote has been silenced, it is important not to think of this as illocutionary or locutionary silence.

There are two particularly relevant features from Langton's paper that will be taken forward into this discussion of victimhood, and power. Firstly, that certain people have the power to do things with their words that others do not, because of the circumstances, and sometimes because of who they are, "To utter the words "mutallaqa, mutallaqa, mutallaqa" (literally "divorced, divorced, divorced") is to perform the illocutionary act of divorce in a country where Islamic law is in force, provided certain felicity conditions are met. Pronounced by a husband to his wife, it is an act of divorce. Not so if it is pronounced by the wife to her husband. No matter how hard she tries, a woman cannot succeed in divorcing her spouse by making that or any relevantly similar utterance. Divorce of that kind is an act that is unspeakable for women" (Ibid.: 317). It is not that the wife has made the illocutionary act of divorce but does not achieve her intended effect, it is that the illocutionary act of divorce is not available to her in the same way that

it is for her husband. Secondly, what Langton has shown is that the speech of one person or group of people, who have authority within that domain, can impact the ability of others to have successful speech within that domain. We can do things with our words, and one of those things is prevent other people from doing the things they intend to do with their words.

1.vi. What do we do when we use the word ‘victim’?

I believe it follows that, in addition to having the ability to prevent others doing what they intend to do with their speech, if the appropriate authority is present, there are alternative ways one person’s speech can affect another person’s speech; for instance, one speech act can result in another speech act being more successful. A Company Director has authority within his business to make decisions. During a meeting, the Director makes the following statement: “Going forward, Stephen will be making decisions about where we should invest our money”. Prior to this announcement, Stephen could make recommendations about where he felt the business should invest their money, but the speech act conducted by the Company Director, who has the authority to delegate power to his employees, has given Stephen the power to decide where the company money is invested. Now when Stephen says “I think we should invest our money in X”, with the perlocutionary intention of causing the investment of money in X, there is a much higher probability that Stephen will achieve his intended perlocutionary act, as a direct result of the Director’s speech act.

Now returning to the dispute represented between Henriques and Bailey, with some basic understanding of speech acts in mind, we may ask what we are doing *with* the word ‘victim’, when we use this as a label, particularly with regard to who uses the word, and at what stage in time.

Those sympathetic to Henriques’ view may argue that, for a person with some involvement in the investigative or judicial process (someone who therefore has authority in this domain), to use the word ‘victim’ to refer to an individual making an accusation, from the outset of the investigation, would be to commit the illocutionary act of acknowledging them as a genuine victim, and concurrently this demonstrates that you consider their account truthful, or at the very least, likely to be true. *In* calling them a ‘victim’, you make a judgement about the validity of their allegation. A possible consequence, or perlocutionary effect, is to make

the accused party feel that you believe the accuser, and to prematurely convey a guilty judgement onto them.

For those sympathetic to Bailey, to use the word 'complainant' when referring to the same individual is to commit the illocutionary act of actively doubting the accuser. *In* referring to them as 'complainant', you withhold trust and belief in their testimony. *By* calling them merely a 'complainant', the perlocutionary effect might be to damage the relationship between the authorities and that particular individual, and to reverse the improved relationship achieved in recent years between victims and the authorities, which has removed some barriers to crime reporting; "Evidence shows that a fear of disbelief or being blamed for what has happened is a barrier to people coming forward and reporting their crimes, especially for sexual offences or more personal crime" (Beckley, 2018: Paragraph 7.3.1).

Those who propose that victimhood is a social construct (Christie, 1986), may further argue that in using the word victim, you recognise this person as a victim, and that recognition itself is what makes them a victim (at least temporarily, as this recognition can be rescinded if evidence to the contrary comes to light). Wijk (2013: 160) claims that for a person wishing to claim victim status, "it is crucial that (s)he can frame him- or herself as a victim and consequently manages to convince 'us', the ones who legitimize his/her status, of being a victim." Just as when the legislator in Pretoria said "Blacks are not permitted to vote", they both described a state of affairs and made this the state of affairs, so too does a person recognising someone as a victim make it so.

If it is the case that the use of the word 'victim', employed by those with relevant authority, can have the effect of commenting upon the legitimacy of the accuser's account, and furthermore, can suggest disbelief of the accused party, and particularly if using the word 'victim' as a label for someone constitutes part of a formal recognition or bestowal of victim status, then we can see that it is a label that should be used only with careful consideration. Of course, not all discussions about 'victims' take place in these settings. While Henriques, Bailey, and their colleagues continue to debate at which point in the investigative and judicial process it is appropriate to introduce the word 'victim', it is important to recognise that this discussion has a wider application. Not all cases will be given a day in court. For example, if an individual reports being burgled, but no suspect is identified, there will be no opportunity for conviction. We would not want to

refrain from referring to the individual impacted by this event as a victim and refuse to offer him victim support because, as Henriques (2016: 8) might argue, it has not been determined “whether or not a “complainant” is indeed a “victim””.

So there are practical issues to the avoidance of assigning ‘victim’ status. In his review, Beckley (2018: Paragraph 3.4) revealed that in focus groups held with “police investigators”, it was acknowledged that “putting a person in the victim ‘box’” entitled them to support services and processes. With some trials taking place over a number of years, and some cases never reaching court at all, it seems appropriate that victims should not have to wait until there has been a conviction in order to receive victim support.

Henriques’ proposal that an individual be labelled a victim only once the court has convicted a suspect is also problematic, as it is based upon the assumption that the court will make the correct decision in every instance in which there is a genuine victim. Of course, this is simply not the case. For there to be a conviction in the British Legal System there is a high standard of proof, namely, that offence must be proven ‘beyond reasonable doubt’. Judges are advised to direct the jury that “before they can return a verdict of guilty, they must be sure that the defendant is guilty” (BAILII, 2009). It is inescapable that there will be cases in which there is insufficient evidence to reach this standard of proof, but where the defendant did commit the crime nonetheless: “a not guilty verdict does not necessarily signal actual innocence. One can be acquitted for reasons unrelated to actual innocence (e.g. because the state’s evidence is shaky or a jury’s sentiment overwhelms its commitment to accuracy or the defendant is an accomplished liar)” (Givelber and Farrel, 2012: 2). But, according to Henriques, the individual who has made the accusation cannot be referred to as a ‘victim’ if the court does not find the defendant guilty, although this does not mean the person who reported the offence is not a victim.

Prior to the publication of Henriques’ report, the Metropolitan Police had been working in line with a policy of automatically believing people who come forward to report a crime; a policy which is set out by the College of Policing, “At the point when someone makes an allegation of crime, the police should believe the account given and a crime report should be completed” (Henriques, 2016: 14). As a result of the recommendations made in Henriques’ report, Cressida Dick, Commissioner of the Metropolitan Police, announced in April 2018 that as a Police force they would end their application of this policy (Hamilton and

Sylvester, 2018). The policy was originally adopted following the investigation into crimes committed by former BBC presenter Jimmy Savile (Operation Yewtree) and was intended to encourage victims of similar abuse to feel empowered to come forward and report.

In light of Henriques' report, in July 2019, the College of Policing in the UK wrote to the Home Office requesting clarity on these policies. In a statement published at that time, the College of Policing (2019: Paragraph 4) wrote that Henriques had recommended "ceasing the instruction to believe a victim's account." This is again inaccurate, because Henriques actually recommends that there is not automatic belief of the 'complainant's' account, not the 'victim's' account. For Henriques, the issue of whether they are actually a 'victim' is the very reason why their account should not be automatically believed. I will propose a more neutral solution to the victim/complainant terminology disagreement in the conclusion of the dissertation.

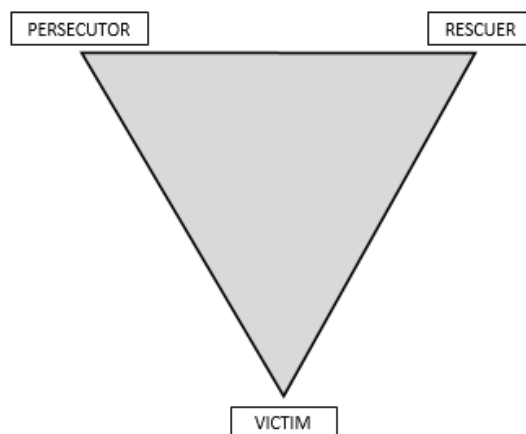
Here we have seen that questions of, 'When was it said?', 'Where?', 'By whom?' and 'To whom?', are important not only in establishing what a word means, but these contextual considerations are also relevant to what a word can do, what illocutionary force it can have, or what perlocutionary effect it may have.

Section 2: The Powerful Victim

2.i. The three roles in victimhood

Now, applying the theory of speech acts, and the idea that one person's speech can affect another person's speech (e.g. silence them, or make their speech more credible), we can begin to examine the effects of labelling someone a 'victim'. Before continuing, I will introduce a device I have formulated which I will call the 'Victim-Power Triangle'. This will assist in clearly demonstrating at each stage how the power dynamic can change when a person is recognised as a 'victim', depending on a number of conditions.

Triangles have been used extensively to demonstrate dynamics in relationships within psychology and sociology, and particularly within transactional analysis. Eric Berne, the father of transactional analysis, is reported to have advised his students, "Don't say anything that you cannot diagram" (cited in Karpman, 2019: 7). For example, in 1968, Karpman, a student of Berne, devised the 'Drama Triangle', which he used to illustrate the ways in which individuals interact with one another, particularly during conflict. This triangle has been widely adopted by therapists around the world, and many academics have proposed methods that can be used within psychotherapy to avoid or step out from within the triangle (Choy, 1990; Gunther, 1993).



The three positions of Karpman's Drama Triangle are Victim, Persecutor and Rescuer. During any form of drama or conflict, the disputants draw one another into the roles of the triangle, and throughout the conflict they will switch between at least two of the roles. The individual who takes up the Victim role need only self-identify as such, and will then draw in an individual who they identify as their Persecutor. The Rescuer role is a person drawn into the conflict

to defend or support the Victim in some way. In Karpman's triangle, the Rescuer can be a third party, but in some variations, the Rescuer role can be adopted by one of the two original parties in conflict, as they move around the triangle.

My own proposed 'Victim-Power Triangle' applies similar labels to Karpman's Drama Triangle, but looks at the three roles on a wider conceptual scale. It moves from the micro-level of focussing in on individuals engaged in conflict, to the conceptual macro-level, looking at groups of people, for example, how the power balance shifts when alleged victims approach the relevant authorities, drawing in investigators, prosecutors and, to some extent the members of wider society to recognise their victimhood, in relation to named Persecutor(s).

Those outside of the conflict, with the ability to recognise and assign victim status, will be referred to as 'Rescuer/Recogniser'. I propose that it is predominantly the views and reactions of the persons in the Rescuer/Recogniser role, those people who make up the wider members of society, juries, and those who represent public bodies like the police, that have the greatest bearing upon the power dynamic between the three positions, and the power of the Potential Victim's speech.

Those who are either recognised as 'victims', or attempt to be recognised as such, will be referred to as 'Potential Victim'. I have chosen to use this terminology, which is used in the UK Modern Slavery Act (2015), because within that act the term represents a person who is suspected to be a victim, but where a final decision on this status has not been made. Throughout the examples examined, there will be times where 'victim' or perhaps 'putative victim' might be a closer description of the position, but for consistency, I will use "Potential Victim" throughout. Those who are accused of being, or considered to be, the perpetrators of harm will be referred to as 'Alleged Perpetrator'.

2.ii. Power

In order to identify the power balance within a given scenario, it is necessary to address how 'power' is to be defined, and what features of power, thus defined, have measurable qualities.

Power is a concept that has been postulated at length by scholars across the disciplines, and which has been defined in many different ways. Voltaire

described power as “making others act as I choose” (cited in Arendt, 1970: 36). For Russell, power consists in achieving your intended effects, “It is easy to say, roughly, that A has more power than B, if A achieves many intended effects and B only a few” (cited in Lukes, 1986: 19). Power has been described as participation in decision-making (Lasswell and Kaplan, 1950), while Weber (1965: 152) defined power as “The probability that one actor within a social relationship will be in a position to carry out his own will despite resistance.”

If we consider these definitions with regard to powerful figures throughout history, we would most likely agree that a powerful leader, such as Adolf Hitler, certainly had the ability to make others act as he chose, and deciding who had more power between two politicians, we might well try to evaluate how many of their own intended effects they had each achieved.

Equally, outside of the political realm, when applied to powerful figures in literature, such as William Shakespeare and Jane Austen, we can imagine that each had the intention of creating multiple pieces of great literature, and they achieved these desired outcomes. However, we need look no further than Vincent Van Gough to realise that while his intention to create great art was achieved, in his lifetime he lacked the power that we might expect to coincide with his achievements, because his brilliance was only recognised posthumously. Had he received this recognition in life, it is likely that he would have had more opportunity to achieve his desired effects. Therefore, it would appear that the ability to achieve power does not merely reside with the bearer of power, but there is often some relation to recognition by another individual or group. This is evident if we consider the authority of the Law. The Law is only powerful while the people who are governed by it acknowledge it as authoritative. As Russell (2004: 25) said, “the Law is almost powerless when it is not supported by public sentiment”. The Law, and those who impose it, have authority over the people who are governed by it, but the people who are governed by it also have enormous collective power in this relationship, because without their recognition of the authority of the Law, it would not have the same power over them. It is a fragile and co-dependent relationship. This group power is also demonstrated by Tarnow (2002), who gives the example of the power a drill sergeant has over each individual recruit when the group are not lined up, compared with the power she then has when the recruits are all lined up, Tarnow (2002: 3) explains, “Each recruit knows that if he gets out of line, as long as he is the only one doing it, he

has to face a P [power] confrontation with the sergeant.” The recognition of the drill sergeant’s power by the other recruits means that each individual recruit is less likely to question it.

Recognition from others, then, is often a prerequisite for power, and group or societal recognition can increase power. Indeed, it is the fact that power depends so heavily upon recognition and acknowledgement from other members of society that means power is not static nor permanent, but can grow, and equally can be lost entirely in an instant.

Talcott Parsons (1963: 77) describes power as “a circulating medium, analogous to money” which has value only in exchange. Of course, interpersonal power can only exist between people, it cannot stand alone. Many of the interpersonal power dynamics we experience are based upon socially acknowledged roles and relationships; presidents with the power to make decisions, teachers with authority to control the class. Outside of our social reality, if these roles were no longer acknowledged, these power dynamics would no longer exist.

This idea that certain things only have a ‘social reality’ is one that has been written about at length by John Searle (1999: §16), who also uses the example of money, which has “rather uninteresting” properties, but takes on certain importance within society because we agree that it is important. Money only performs the functions it does because people agree that it has those functions. Searle explains that this applies to all manner of things within our social universe, from language to marriage, cocktail parties to Presidents (Ibid.). Each of these things only exist insofar as we mutually recognise their reality.

In the same way, some types of power also only exist within our social universe, and the powerful individual has power within society only while there is recognition of that power from the members of the society. As with the Law, the relationship between a person who is powerful within society and the people they have power over within society is a co-dependant relationship.

Attempts to more precisely define what social power is, or how it manifests, are likely to prove difficult. In fact, Lukes (1979: §15) has described the concept of power as being ‘essentially contested’, and argues that there will always be endless yet “perfectly genuine” disputes about the correct use or interpretation of the concept because all attempts to define it are “inextricably tied to further background assumptions”, and therefore the use will be different for different

groups of people within society. However, among this cafeteria of definitions or uses of the concept, there will be some over-arching themes which will be more widely accepted, and Lukes acknowledges that the different uses will serve “not-unrelated functions” (Ibid.). Therefore, I will endeavour to keep my measures quite broad.

2.iii. Measuring power dynamics

While it is common for individual people, or groups of people, to be described as powerful, in reality people do not possess power in a social vacuum, rather they may have power over someone, in a certain situation. This type of power exists within the relationships between people, not as an attribute of a person themselves, “to say that “X has power” is vacant, unless we specify “over whom”” (Emerson, 1962: 32). Since this is the case, a person can both appear to be very powerful in relation to one person, while being subservient to another (Ibid.).

When someone has power within a social situation, or perhaps over the other people within the situation, what does this look like? What is required for a person to achieve their intended effects or desired outcomes within that situation, or to have influence upon the decisions being made?

Those who have postulated the concept of power at length often fall into different camps. Some thinkers such as Mills (1956: 3) argue that people and groups can possess a general power over a wide range of situations and areas because of certain characteristics they possess, and pointed to the “power elite” who influence decisions which “mightily affect the everyday worlds of ordinary men and women”. Conversely, I believe, along with writers, such as Dahl, that power exists on more of a case-by-case basis, and that context needs to be specified. For Dahl (1958), we can only ascertain which person or group of people has the power within a situation when the given situation and context is specified, and the preferences of that person or group regularly prevails over the preferences of others.

In trying to identify what measurable attributes a person who holds power within a given situation may have, it is useful to think conversely about what lack of power may look like. A person may feel they lack power within a particular situation if their opinion does not seem to influence decision-making, or if they cannot seem to make their opinion heard at all. In contrast, a person with power

within a given situation may find that their voice is more significant than others in the room. Their opinion is sought out, and then considered as part of a decision-making process, or perhaps even supersedes other opinions. As Langton has explored within her work, there is a strong relationship between speech and power. She summarises (1993: 299), “To put the point crudely: powerful people can generally do more, say more, and have their speech count for more than can the powerless. If you are powerful, there are more things you can do with your words.” Strength of voice will be the first measure I will consider when assessing a person’s power within a situation. Strength of voice will be measured on a scale from 1-3:

Ability to make voice heard = 1

Voice considered as part of decision-making process = 2

Voice significant in decision-making process = 3

The second measure I will use in calculating power will be credibility. Credibility is often likened to trustworthiness and ‘expertness’ (Hovland *et al.*, 1953), and being truthful, believable, reasonable and competent (Schafran, 1995). Often, victims cite fear of not being believable, or not being credible, as a barrier to coming forward to report harm they have experienced. There appears to be a strong correlation between power within interpersonal relationships, and perceived levels of credibility, with women often being seen as generally less credible than men. Gilmore believes that the idea that women are not as reliable as men when it comes to truth telling is a cultural bias which is “woven into the application of justice” (Gilmore, 2017: 2), and Schafran (1995) concludes that women lack the credibility enjoyed by men because they are considered less competent, their harms and injuries are considered less serious, and because the context of claims is usually considered from a male perspective, because the world is “unused” to considering female points of view.

Since social and interpersonal power relies so heavily upon the uptake of other members of society, levels of credibility among peers is of great import in assessing the level of power a person has within a situation. I will suggest that credibility be measured on a scale of 1-3:

Low credibility = 1

Medium credibility = 2

High credibility = 3

Although I will compare the voice and credibility of the three roles of the Victim-Power Triangle, the power dynamic I am most interested in evaluating is the one which exists between the Potential Victim, and the Rescuer/Recogniser, as this will demonstrate how the speech of the Rescuer/Recogniser directly impacts upon the increase or loss of power for the Potential Victim.

Power could be evaluated as a function of Strength of voice and Credibility, such that: $P = V \times C$

Where:

P = Power

V = Strength of voice

C = Credibility

2.iv. The power in victimhood

The first type of scenario I will evaluate will be that in which being recognised as a victim influences the power balance in favour of the victim.

When Henriques, and those supportive of his views, debate the term 'victim', it is discussed as if it were a title to be earned, and as if a person's victimhood must be proven in a court of law. To simply assume an individual's 'victim' status from the outset is to risk bestowing upon this individual a title they do not deserve. There must therefore be benefits of the title. 'Victim' is a status recognised throughout society, and as we have seen, one which is often met with strong opinions and numerous preconceptions. Christie (1986: 18) described

victim status as a public status, and one which has a similar “type and level of abstraction as that of a “hero” or a “traitor””.

Both Henriques and Bailey appear to agree that once an individual has been recognised as a ‘victim’, that they concomitantly become credible, their words are deemed believable. This is precisely why Henriques wants to withhold this title until it has been decided by a jury, and also precisely why Bailey wants to apply the ‘victim’ title more leniently. To both sides then, it appears that the bestowal of the ‘victim’ title brings with it an element of power. Both sides could agree that when Rescuer/Recogniser uses the word ‘victim’ to describe someone, they commit the illocutionary act of declaring the accuser credible.

To depict Henriques’ and Bailey’s position in terms of the Victim-Power Triangle: recognising someone as having victim status represents significant power for that individual because their word is considered credible, and they themselves are worthy of sympathy, and are to be regarded with certain protected status. For Henriques (2016), this is appropriate once a guilty verdict for the accused has been reached in court, but inappropriate before this point.

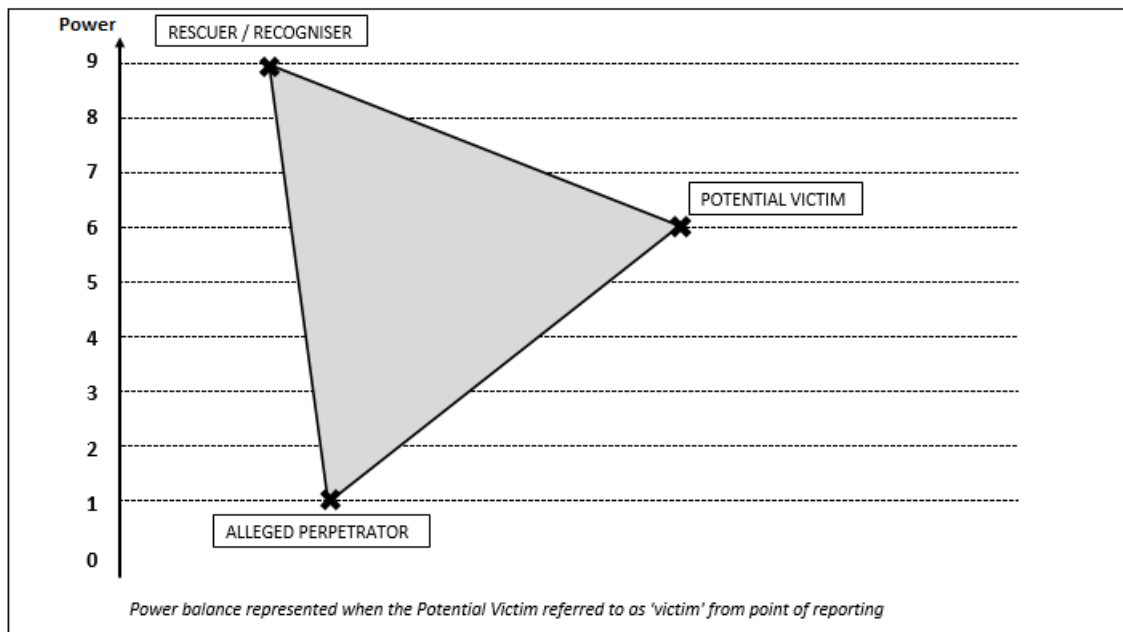
Considering the case at the centre of Operation Midland, where an individual making accusations is referred to as the ‘victim’ from the outset: The Rescuer/Recogniser has high credibility ($C = 3$), as their view is not being questioned. They also have a very powerful voice ($V = 3$), as their view is key to decision-making processes. The Potential Victim has full credibility having been immediately acknowledged as a victim. Their views will be considered as part of decision-making processes, but will not govern the investigative routes taken ($V = 2$). The Alleged Perpetrator has little credibility ($C = 1$), because their defensive account is in doubt, and their voice will be heard, but will not have much influence upon decisions made in these processes ($V = 1$).

Therefore, the power of each party could be evaluated as follows:

Rescuer/Recogniser: $V3 \times C3 = P9$

Potential Victim: $V2 \times C3 = P6$

Alleged Perpetrator: $V1 \times C1 = P1$



2.v. All-powerful victim and competitive victim claims

It is not difficult to see why Henriques wants to avoid giving this level of power and credibility to any individual who comes forward to Police to report that they have been a victim of crime, or why the Metropolitan Police have overturned their policy of automatically believing all reports after the errors made in Operation Midland. If every person who reports crime is instantly given victim status, without any requirement to provide proof, anyone can come forward and be taken at their word, and would continue to be unless evidence is found during the investigation which contradicts their account. While Henriques and Bailey disagree about how many people make false reports, with Bailey claiming it is around 0.1% of cases, they can both agree that at least some of those people who come forward reporting a crime, claiming 'victim' status, will be making false accusations (Henriques, 2016: 9).

When the person recognised as a victim has this level of power, automatically believing any accuser becomes potentially problematic. Suppose we agree that an accuser is a 'victim' automatically, and should remain a 'victim' until proven otherwise by a not-guilty verdict in court. This would align with the guidance provided by Her Majesty's Inspectorate of Constabulary in their 2014 report, *'Crime-recording: making the victim count'*, which recommends, "the presumption that the victim should always be believed is institutionalised." We believe the 'victim's' accusation against the accused, and the accused becomes guilty until *proven innocent*.

However, this may not be the end of the matter, for a not-guilty verdict does not *necessarily* demonstrate genuine innocence (Givelber and Farrel, 2012), in some circumstances it merely indicates that the evidence available is not sufficient to prove either innocence or guilt. Thus, in such cases, the 'not-guilty' verdict is not sufficient to show that the accuser is not a 'victim', only that their victimhood cannot be proven by legal standards. Therefore, there is no reason to stop referring to the person who made the complaint as 'victim'.

Further, not all cases will be heard in court. Before charges are brought against the accused in the British legal system, the Crown Prosecution Service will decide whether or not the case passes the evidential test, and if it appears that there is not a realistic chance of conviction the case will not go before the court in the first place, no matter how serious the allegation may be (CPS, 2018). This is only a test of the evidence, however, so this does not prove that the accuser is not a victim. Since the accused has not been *proven* to be innocent of the crime, there is no reason to suppose that the accuser is not a 'victim'; and so, it continues.

If it is indeed the case that an individual need only make a report to Police in order to acquire 'victim' status, in the case of one individual reporting against another, the accused need only make a counter accusation to the Police about the accuser, and they too automatically become a 'victim'. Arguably, this would be equally detrimental to the trust between the reporter and the Police as Bailey feared the term 'complainant' would be, as the accuser could quickly find that the person they have found the courage to report to the authorities is now also being referred to as a 'victim'.

This type of counter-claim attitude to victimhood has become evident in recent years. For someone accused of any form of misconduct, victimhood can

serve as the ultimate defence. If a person claiming to be a victim must be assumed credible, then there is no easier way to silence a critic than to claim 'victim' status for yourself.

In July 2018, Dr Christine Blasey Ford came forward to report that Brett Kavanaugh, who was at that time a Supreme Court nominee, had sexually assaulted her in the early 1980s (Brown, 2018). In September 2018, Ford appeared in front of the Senate Judiciary Committee to share her statement about the incident. Kavanaugh was then given the opportunity to share his own testimony in response to the allegations, and used the opportunity to highlight his own claim to victimhood. "Since my nomination in July, there's been a frenzy on the left to come up with something, anything to block my confirmation. Shortly after I was nominated, the Democratic Senate leader said he would "oppose me with everything he's got"... And then, and then, as no doubt was expected, if not planned, came a long series of false last-minute smears designed to scare me and drive me out of the process ... This has destroyed my family and my good name" (New York Times, 2018). President Trump, who nominated Kavanaugh, was very vocal in his support of him, apologising to Kavanaugh on behalf of the "entire nation" for the pain and suffering he had been forced to endure (Malloy, 2018).

Instead of an emphasis upon denying the allegations, or showing that the allegations were not true, both Kavanaugh and Trump seemed to focus their efforts upon establishing Kavanaugh's claim to victimhood, the highest standard of defence. The media have reported Trump's ability to "wield victimhood" as "his most powerful tool" (Noah, 2018). The case of Kavanaugh is not isolated. In the face of criticism, President Trump often appears to attempt to establish his own claim to victimhood, in fact it has been said to be critical to his popularity; "for President Trump, his state media and his cultish following, victimhood is central to their identity and critical to their mobilization" (Rubin, 2018: Paragraph 1). If this is true, Trump may have recognised that there is something special about the state of victimhood. If he can encourage others to acknowledge him as a victim, he will achieve a level of absolute credibility which comes alongside victim status. Trump also seems to use his very powerful position to serve out victim status like a gift to his allies and supporters. Those who are recognised by society as victims are often considered beyond reproach. This is not to say that Trump and Kavanaugh do not truly consider themselves to be victims, nor indeed that

they are not victims, only that an insistence on being recognised as such is seated in the power available to, and associated with, victims.

In fact, President Trump arguably owes much of his success to his ability to motivate his supporters through inverting traditional views about vulnerability, power and victimhood. Within his rhetoric there is recognition of the link between victimhood and power, and that certain groups of people who have at times been acknowledged as victims of discrimination, racism, injustice, and poverty, can benefit from a type of power that comes with a mixture of sympathy and respect, which society reserves for those who face some form of adversity. Recognition of the vulnerability of minority groups often results in an acknowledgment of the need to try to introduce policies to protect, or end policies which result in the victimisation of these groups. However, Bartlett (2016) proposes that many Republicans in the US see bias as a zero-sum game, where less discrimination against one group means more discrimination for other groups. He cites the following examples taken from quotes from US Senator Jeff Sessions, “Empathy for one party is always prejudice against another”, and former US Representative Michele Bachmann, “When you’re part of a favoured group, then you get special benefits that nobody else gets” (Ibid.). Bartlett believes that Trump has been able to tap into the victimhood that many white Republicans feel. These groups increasingly perceive the power that minority groups appear to benefit from through their claim to victimhood, as a threat to their own power, and this threat becomes their own claim to victimhood, through which they can reclaim power. Trump’s rhetoric helps his supporters to see themselves as victims of a “political tragedy centred around the displacement of “real America”” (Johnson, 2015: 230). He encourages his supporters to see how a claim to victimhood from persecuted minority groups has given people in those groups power, and encourages his advocates to use this same pathway to claim victimhood for themselves, thus acquiring the associated power, and reinstating the original power dynamic.

The type of victimhood here is not necessarily a matter of law, but it requires the same public status. However, the public recognition of victim status need not be unanimous within a society. When the dispute is seated in the media, rather than in the court, no definite or final verdicts are drawn, and it is often sufficient to self-identify as a victim when faced with some allegation to prevent the accuser from gaining an absolute victim status, and from attaining too much

of the power within the situation. A small group of supporters who recognise the claim to victimhood is adequate, and with that recognition and victim label comes “morality, innocence and deservingness” (Jankowitz, 2018: 218).

Such is the power that has become associated with a claim to victimhood, and the related moral superiority, bids to claim the label have become highly competitive, “victimhood has thus become a desired status” (Bilewicz and Stefaniak, 2013: 70). Recognition as a historical victim has become especially highly-valued (Ibid.), and members of groups who have been subject to historical injustice have been found in some studies to have a tendency towards taking less responsibility for their own wrongdoing because of their collective victimhood (Wohl and Branscombe, 2008). This further demonstrates the idea that people with some claim to victimhood can be consequently considered to be morally beyond question, and therefore, that a claim to victimhood can serve as an ideal response to an accusation of moral wrongdoing.

2.vi. Can acknowledging one person as a ‘victim’ silence another?

Rupert Butler, Counsel of 3 Hare Court, and associate of Henriques, described the policy of automatically believing victims before an investigation or trial as akin to assumption of the accused’s guilt until there is any evidence to the contrary. This way of thinking, he argued, results in three unacceptable consequences; that there is no investigation which challenges the complainant, that the suspect is disbelieved, and that the burden of proof is shifted onto the suspect (Henriques, 2016).

We have already discussed how a speech act performed by one person can affect the speech of another person, and in addition to lending some form of validation to the speech of a victim, how recognising a person with the title of ‘victim’ may make a person’s speech acts more successful, for example, if the perlocutionary intention of their speech was to persuade.

If the account of the accuser is accepted automatically, and the account of the accused contradicts the accuser’s account, the accused’s account cannot simultaneously be believed. Therefore, it could be said that the point at which the accuser is referred to as a ‘victim’, rather than a ‘complainant’, marks the moment the accused becomes disbelieved. Any statement uttered contrary to the accusation is, at that very instant, considered less credible than it was before the

accuser was pronounced a 'victim', and less believable than it would be in ordinary circumstances. Something has happened which impacts upon the accused's ability to use their speech in a way which successfully convinces their audience. The speech act applying the word 'victim' to recognise the status of the accuser, has had an effect upon the speech of the accused, whose own account concurrently becomes less credible and less powerful than that of the victim, and less powerful than the average person.

According to Austin's Speech Act theory (1962: 116), when we speak we seek to secure "uptake" from those we are speaking to, our interlocutors or audience, but this uptake does not always take place, and we can find that the words we speak do not do what we intend them to; our speech act is silenced. The accused's ability to use his words in the way he intends has been impacted by the perceived credibility of his accuser's account. The increased credibility of his accuser's account is a direct result of the accuser having been recognised as a 'victim' by a third party. We might say that the accusation alone does not impact his ability to perform certain acts with his speech, but the subsequent use of the word 'victim' by this third party when referring to the accuser changes the dynamic, and the balance of power between accuser and accused.

What sort of 'silencing' does the accused face? Which part of their speech is prevented from being successful? They are free to make whatever utterances they may wish. It may be the case that someone accused of a crime decides to be silent at the point at which their accuser is referred to as a 'victim'; they may decide to wait for advice from a legal representative after being presented with the standard Police caution (UK) or Miranda warning (US). This is a choice that the accused is free to make. Perhaps the accused had been keen to protest their innocence, but upon hearing that the accuser had now been labelled as a 'victim', they would then feel that an attempt to protest their innocence was futile, because their guilt had been assumed, as Henriques argued. However, there is nothing *preventing* them from performing a locutionary speech act should they so wish to, so there doesn't appear to be locutionary silencing.

Perhaps they face perlocutionary frustration, where the intended effect of their speech act is not achieved, for example, "one argues, but no one is persuaded" (Langton, 1993: 315). *In* speaking, the accused *protests*, which is the illocutionary act. They are successful as they are acknowledged to have protested. However, the intended perlocutionary effect of their speech was to

persuade, that is to say that *by* speaking they wished to persuade, but because the accuser has been recognised as a 'victim', and consequently their accusation deemed more credible, the subsequent speech act of the accused does not persuade. Perhaps they offer a counter explanation, but no evidence about this is available, and their version of events is not believed.

Undoubtedly, a person who finds themselves accused of any crime may experience perlocutionary frustration in this way, but this would occur regardless of whether the accuser was labelled as 'victim' or 'complainant'. It is the existence of an accusation which brings the suspect's account into question, meaning that their words alone are not sufficient to persuade without evidence to substantiate them. We are not accustomed to having our account of our whereabouts on a particular occasion doubted in the manner that someone accused of a crime would face. When a friend asks how you spent your weekend and you deliver your account, you expect one perlocutionary effect to be that your friend believes that you did indeed visit the beach at the weekend.

However, it is not the third party's act of labelling the accuser a 'victim' which causes this silencing. At the most, we can assume that the application of the word 'victim' to the accuser could further the perlocutionary frustration of the accused, as it arguably deepens the doubt of their account, and makes it ever more likely that their perlocutionary act will be frustrated.

What about "illocutionary disablement"? Is there any speech act which is no longer available to the accused, in the way that divorce through saying "mutallaqa, mutallaqa, mutallaqa" is not available to women in the Islamic religion? Some may argue that the recent so-called "#MeToo" movement demonstrates that this is the case.

This movement became well-known in 2017, but originates from 2006, when Tarana Burke founded 'Me too', with the intention of helping survivors of sexual abuse find "pathways to healing" (Me Too, 2020). In 2017, an American actor, Alyssa Milano, used the phrase "#MeToo" on social media to encourage people to share their own experience of sexual harassment and abuse with one another. Millions of people responded, and the media was filled with stories about #MeToo-moments. Many considered the movement positive, "those who were silenced spoke, witnessing their voices amplified by the collective force of millions" (Gilmore, 2017: 1). However, as momentum appeared to build, and each day more men in the public eye were accused of sexual misconduct, concerns

were raised that because of the media frenzy around such allegations, the distinction between being accused and being guilty was being disregarded.

Shortly before #MeToo hit the headlines, in 2015 Steven Galloway, chair of the University of British Columbia's (UBC) creative writing program, was suspended from his role following allegations of serious sexual assault. The allegations against Galloway were made public before they were investigated, and author and activist, Margaret Atwood (2018: Paragraph 7), who became involved in arguing the injustice of the case, wrote, "The public – including me – was left with the impression that this man was a violent serial rapist, and everyone was free to attack him publicly."

Shortly after the allegations were made, UBC commissioned an independent investigation into the claims, which was undertaken by former Supreme Court Judge Mary Ellen Boyd (UBC Accountable, 2016). Six months later, the University fired Galloway from his role. Later it transpired that Judge Boyd had found that "based on the balance of probabilities" the incidents likely didn't happen" (Mason, 2018), although Galloway did admit to having had a two-year affair with the individual who had made the allegations.

Atwood was one of the signatories to an open letter, "UBC Accountable", requesting an investigation into the treatment of Galloway. Atwood (2018: Paragraph 10), among others, compared the treatment of Galloway to the Salem Witch Trials, "in which you were guilty because accused." Galloway later said, "It's a totalitarian state when a finger pointed is automatically guilt" (cited in Mason, 2018). For many people, Judge Boyd's verdict with regard to the sexual offences was not sufficient to exonerate Galloway. In fact, Atwood (2018: Paragraph 8) claimed, "the not-guilty verdict displeased some people. They continued to attack". Galloway later disclosed, "even to this day there are people out there who have the audacity to say I got away with it" (cited in Mason, 2018).

Due to the nature of the alleged offences, no other witnesses were present and only two accounts were available, the accuser's and the accused's. To many, the accuser had been a 'victim' right from the outset, and due to this dogmatic approach, there was nothing that Galloway could say that could count as a defence. The recognition of his accuser as a 'victim' meant that certain illocutionary acts were no longer available to him. His speech was silenced, while his words did not become inaudible, the utterances he made were deprived of illocutionary force, "preventing those utterances from counting as the actions they

were intended to be” (Langton, 1993: 316). Moreover, it was the very recognition of the accuser as a ‘victim’ from the point of making the accusation that resulted in this illocutionary disablement of the accused.

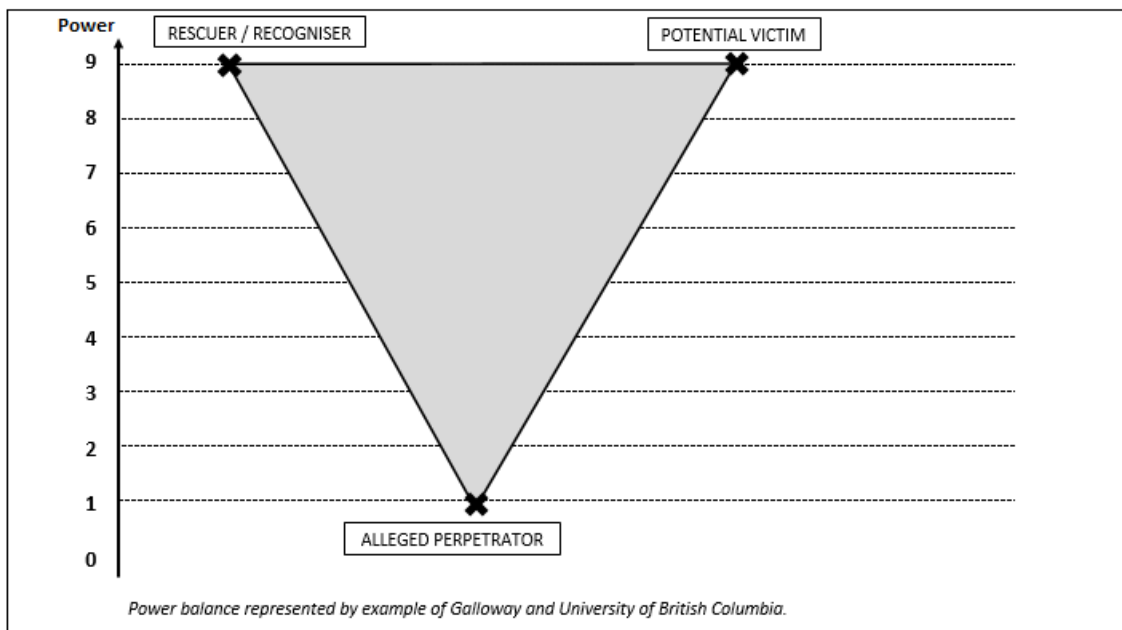
This example suggests that, at least in some cases, Butler may be correct (Henriques, 2016), an approach of automatic belief has the ability to render the accused disbelieved, and the burden of proof can be shifted on to the accused, who must somehow find a way to *prove* a negative, evidencing that an event did not take place. The accusation itself becomes tantamount to guilt.

I propose that this example would be represented on the Victim-Power Triangle showing both the Potential Victim and the Rescuer/Recogniser as being in balanced positions, since the Potential Victim’s speech has such power that it is able to influence the decision of the Rescuer/Recogniser, and the Rescuer/Recogniser’s speech in turn gives the Potential Victim’s speech credibility, while also having the power to declare guilt. The Alleged Perpetrator has been deprived of the ability to perform certain illocutionary acts, such as genuine denial, and therefore lacks the power available to the Potential Victim and the Rescuer/Recogniser:

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V3 x C3 = P9

Alleged Perpetrator: V1 x C1 = P1



2.vii. Impartiality

When the letter 'UBC Accountable' (2016) was penned, the aim was to request that the University "establish an independent investigation into how this matter has been handled by the Creative Writing Program, the Dean of the Faculty of Arts and the senior administration at UBC." Those who signed the letter expressed concerns about the fairness of the process: "UBC failed accused and complainants both" (Ibid.).

Those who signed the letter were concerned that UBC's treatment of Galloway perpetuated the idea that an accusation was tantamount to guilt. However, pointing out that an accusation did not necessarily indicate guilt, unavoidably opened up another possibility: the accuser could be making a false allegation. The signatories of UBC Accountable felt that by putting their names to such a letter they were being "fair-minded" and withholding judgement (Atwood, 2018: Paragraph 9). Others felt that the letter was not fair, nor impartial, but misogynistic and equivalent to accusing Galloway's accuser of lying. Atwood wrote the article "Am I a Bad Feminist?" in response to such accusations, stating; "now, it seems, I am conducting a War on Women, like the misogynistic, rape-enabling Bad Feminist that I am" (Ibid.: Paragraph 1).

My intention is not to examine here the full facts of the Galloway-UBC affair, nor does this dissertation seek to make any comment on the truth of any allegations made against Galloway. Instead, the case is presented to demonstrate the ostensible impossibility of entering into any useful conversation about impartiality from the moment an allegation is made. It appears that those who attempt impartiality, including resisting referring to the accuser as 'victim' prior to a thorough investigation, are seen as defending the accused; the situation is framed as a binary decision between committing to faithful belief of the accuser, and recognising their 'victim' status, or complete disbelief.

However, this is evidently a false dichotomy. By supporting UBC Accountable, it does not seem that Atwood and her co-signatories wished to presume that Galloway was innocent simply because they did not want to presume that he was guilty². Instead, they wanted to argue against any

² It is interesting to note that as of January 2018, at least 10 original signatories of UBC Accountable have removed their names from the letter because of the reactions they received, despite remaining signatories insisting "It was never about questioning whether Galloway is innocent or guilty of the claims made against him or saying or implying that the complaints and the complainants were wrong" (cited in *The Globe and Mail*, 2018).

presumptions being made at all. If any point of view other than unreserved acceptance of the accuser's account becomes instant defence of a potential criminal, we place potential victims in a bubble beyond the remit of rational examination. For those who recognise Galloway's accuser as a victim from the outset, without waiting for evidence to base a decision upon, and for whom even an investigation finding Galloway not-guilty is insufficient to change their thinking, their use of the word 'victim' renders the 'victim's' speech not only credible, but unfalsifiable. This dogmatic approach is clearly problematic, and leaves no room to account for those cases, no matter how rare, where the accuser is not a victim, and the accusations are false.

This view represents an inversion of Blackstone's ratio (1770), which states, "Better that ten guilty persons escape, than that one innocent person suffer", which instead becomes, "Better that ten innocent persons suffer than one genuine victim is not believed". Atwood's hope for impartiality seems more optimistic. However, is achieving impartiality as simple as just withholding judgement, as Atwood suggests?

Many legal systems around the world are based upon the presumption of innocence, which is addressed in the European Convention on Human Rights: "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law" (Article 6). This is clearly not a demonstration of impartiality, nor, I think, does it claim to be. If, when faced with an allegation, we presume the accused party is innocent of that offence, it seems to follow that we must presume that what the accuser says is not true, and consequently, that they are not a 'victim'. For we cannot presume that the accuser's account is true, and, at the same time, that the accused is innocent of the offence(s) outlined in the accuser's account. Some argue that this gives the accused party a "super-ordinate position" and the accuser a "subordinated status" with regard to rights, and further still, that these status positions can "inform judgments made throughout the process of justice including the reception of evidence" (Edwards, 2012: 31). Of course, an investigation should be prompted by an allegation, so the presumption that the accused is innocent, and that the accuser is not a victim, is theoretically temporary.

We saw earlier that Henriques has argued that to refer to the accuser as 'victim' is to presume that an offence has taken place, and Butler claimed that it shifts the burden of proof to the accused; if it were otherwise, there would be no

victim. It is also, therefore, to presume that the accused is guilty, until there is evidence that the accusation is false. This is clearly at odds with the presumption of innocence.

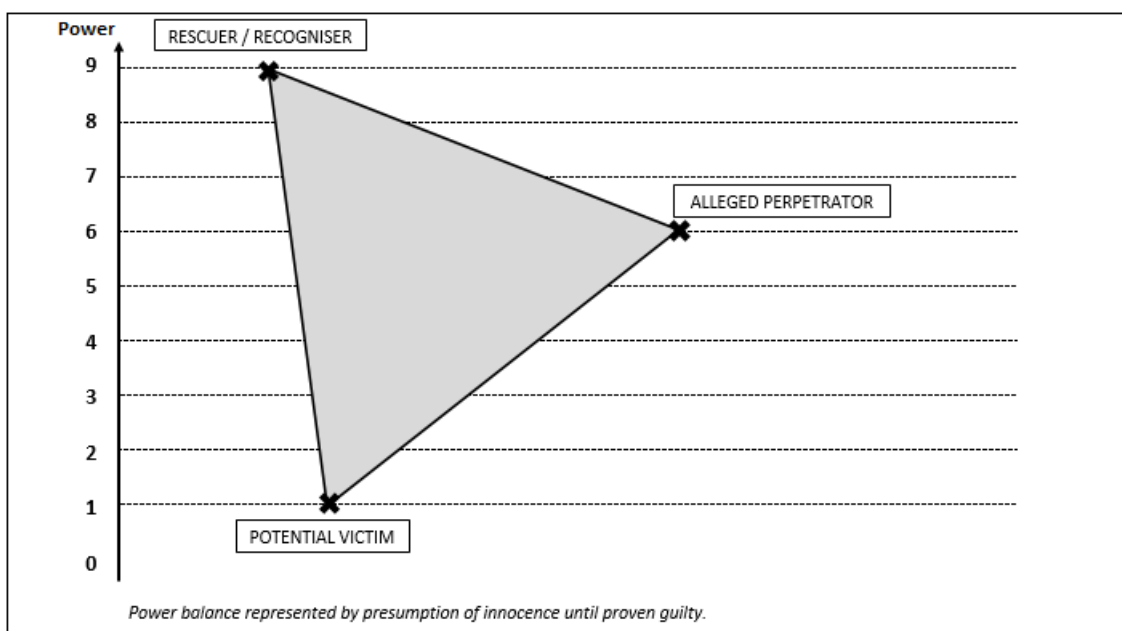
However, Henriques (2016) writes about wanting to achieve impartiality, but the presumption of innocence which he wants to uphold does not appear to have impartiality at its core. In fact, it would appear that the presumption of innocence concerns itself only with the fair treatment of the accused. The indictment that Henriques (2016) made regarding Bailey and his peers seeking to gain an advantage for complainants at the expense of those accused, could equally be made towards Henriques and Butler, and indeed our current legal system, in respect of seeking an advantage for the accused at the expense of the accuser.

The power balance represented by the presumption of innocence, as depicted on the Victim-Power Triangle, would look as follows:

Rescuer/Recogniser: $V3 \times C3 = P9$

Potential Victim: $V1 \times C1 = P1$

Alleged Perpetrator: $V2 \times C3 = P6$



The Rescuer/Recogniser, in this case people in a position to recognise an individual as a victim or reject their claim to victimhood, is at the top of the triangle as this decision rests with them. The person against whom an allegation has been made, the Alleged Perpetrator, has the benefit of the doubt during the

investigative and judicial process, so their account is assumed to be credible and true until proven otherwise. However, they do not have as strong a voice in the decision-making process as the Rescuer/Recogniser, as the decision to proceed with the investigation will be beyond their power, although their account being considered credible is a factor in the decision-making process. The Potential Victim has the least power in this scenario because the burden of proof sits with them, their account must be evidenced before it can be considered credible.

‘Impartiality’ is beginning to emerge as another example of a word which is widely used, and considered to be widely understood, but which has different connotations for different groups of people. While Henriques (2016: 20) called doubt the “hallmark of impartiality”, Bailey argued doubt of an accusation was not impartial, but favoured the accused.

For those who want to refrain from believing either party until an investigation is complete, as Atwood advocated with regard to Galloway, it is believed that withholding belief from both the accuser and the accused means the scales of justice will be balanced. However, Gilmore points out that, even at the point where only the account given by the accuser and the account given by the accused are on the table, the scales are often already tipped. This is particularly the case with “victims of sexual assault, especially the most vulnerable: Indigenous women, women of colour, young people, and trans people” (Gilmore, 2017: 2), because history has shown that accounts from people from these groups are less likely to be believed. Gilmore goes on to explain, “Woven into the application of justice is a cultural bias that says women are not as reliable as men, that they lie about sexual violence, ‘cry rape’ when they regret sex” (Ibid.).

Therefore, if the aim of impartiality is to ensure both parties are treated fairly, siding with the victim might be required to even out the playing field. Refusal to lend support to either side inadvertently favours the accused, who is automatically in a more favourable position. If impartiality means treating both sides equitably, that does not necessarily entail that we must treat both sides equally. Equality is the outcome we should aim for, but is not always reached by treating all people in exactly the same way. This was meaningfully noted in the words of Holocaust Survivor and Noble Peace Prize winner, Elie Wiesel (1986), “We must always take sides. Neutrality helps the oppressor, never the victim.”

It could be considered that to recognise and bestow 'victim' status upon the accuser, particularly in a sexual assault case where the potential victim belongs to a group who are often discriminated against, is to boost their credibility to counteract a system that will automatically favour the accused. If this is the case, considered in the light of the speech acts performed when referring to the accuser as a 'victim', the illocutionary act is to acknowledge the credibility of their account. *In* calling them a 'victim', you confirm that they have presented a credible account. The perlocutionary effect of referring to them as a 'victim', is to lend weight, to balance the scales of justice from the outset of the investigation.

In terms of the Victim-Power Triangle, Gilmore would advocate for the role of Rescuer/Recogniser to lean towards the individual in the Victim role, particularly in the case of victims of sexual assault, where the victims are often more vulnerable. Gilmore would argue that failing to support either side during the investigative and judicial process, and remaining completely removed from the situation, would subsequently give an advantage to the accused; where Henriques considers this impartiality, Gilmore sees injustice.

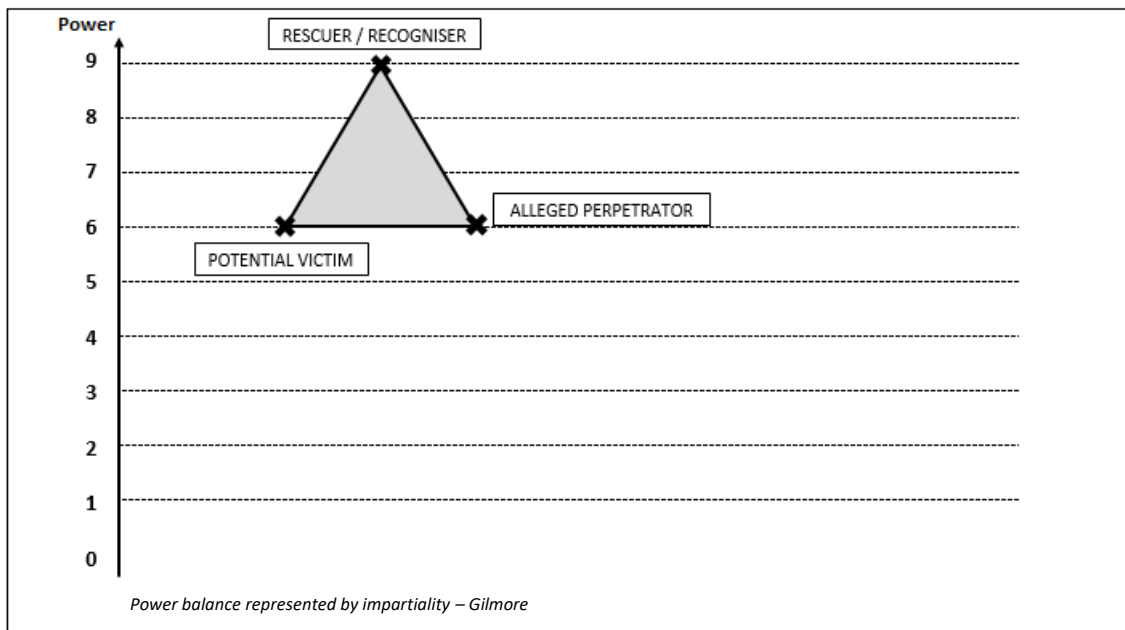
I propose Henriques' traditional view of 'impartiality' would be presented as in the previous Triangle demonstrating the presumption of innocence. Again, the ultimate decisive power sits with the third party Rescuer/Recogniser, the one with the ability to recognise or validate the accuser as a genuine victim. Their failure to support the potentially vulnerable individual who has made an accusation, and instead remain detached from the situation will not result in the Alleged Perpetrator and Potential Victim being on equal footing, but more power for the Alleged Perpetrator in relation to the Potential Victim. The Alleged Perpetrator's speech is more likely to be considered credible and true.

But for Gilmore, true impartiality, where the individuals on both sides are positioned equally, is to recognise ‘victim’ status from the outset, which spins the Triangle to put accuser and accused on the same level:

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V2 x C3 = P6

Alleged Perpetrator: V2 x C3 = P6



The College of Policing (2020) sets out guidance regarding impartiality during investigations, within which it states, “treating everyone fairly does not mean everyone is treated the same”. This statement is open to individual interpretation. For those who reject the use of the word ‘victim’ during the investigation, such as Henriques and Butler, an example of two individuals being treated differently in the interests of fairness is the accused person being presumed innocent, and the accuser carrying the burden of proof. For those who see the value in the policy of believing those who come forward with a claim to victimhood from the outset, such as Bailey and Gilmore, the ‘victim’ being believed from the outset demonstrates fairness in the process.

2.viii. The unfalsifiable victim

However, even for those who believe that to automatically lean towards the side of the potential victim is merely a way to even the scales of justice at the outset, to avoid giving the accused a head-start, if no amount of investigation or evidence to the contrary will allow you to change your mind, your belief of the potential victim becomes unfalsifiable.

Bailey was careful to address this issue while advocating for automatic victim-recognition, and he made it clear that while he encourages an initial stance of belief, this must be followed by “an independent and impartial investigation” (cited in National Police Chiefs Council minutes, 2018). However, in the case of Galloway, for those who refused to take the investigation and findings of Judge Boyd into consideration, it is unclear if there is anything that could deter them from their belief in the testimony of Galloway’s accuser. In the rise of the #MeToo movement, many of those accused of misconduct or sexual harassment were not, and have not since been, subject to any investigation. However, even without investigation or trial, many of those accused began to feel the impact of those accusations.

Just as Atwood (2018) had compared the treatment of Galloway to the Salem Witch Trials, in January 2018 an open letter was written, and then signed by over 100 influential women in France, which compared the #MeToo movement to “the good old witch-hunt days” (Chiche *et al.*, 2018). This open letter, published in *Le Monde*, stated that the movement had led to a campaign of “public accusations and indictments against individuals who, without being given a chance to respond or defend themselves, are put in the exact same category as sex offenders” (Ibid.). This backlash against the #MeToo movement, supported by renowned writers, journalists, actors and other high-profile women in Paris, centred on the argument that the signatories did not want to be perceived as automatic victims just because they were female. For these women, while claiming to help and protect women, in reality the #MeToo movement would “enslave them to a status of eternal victim and reduce them to defenceless prey” (Ibid.).

While one group of women saw the shift in attitudes as something which had the potential to redress a power imbalance between the men and women involved (Gilmore, 2017), giving women the power to be heard, to be believed,

and to call perpetrators out for their inappropriate actions, the other group saw something which only gave one type of power by taking another form of power away. This idea of power being acquired through a claim to powerlessness has in the past been called “victim feminism” (Wolf, 1994) or “fainting couch feminism” (Hoff Sommers, 2017). For this second group of women, the purported ‘power’ of being automatically believed, and taken at their word to be a ‘victim’, is not an advantage but an exchange. It is acknowledgment and recognition of ‘victim’ status in exchange for recognition as a fully autonomous and independent adult. Many of those writers who denounce this view of women as victims compare the treatment of women with attitudes toward children. For Hoff Sommers (2017) “victim feminism” stems from an “infantilized view of women”, while the authors of the open letter published in *Le Monde* wrote that those who advocate for #MeToo believe women to be “children with adult faces who demand to be protected” (Chiche *et al.*, 2018). Contrary to Gilmore’s belief, for these women, to automatically recognise a female accuser who comes forward with a report as a ‘victim’ is not to balance the power between accuser and accused, but to drive forward an unhelpful and inaccurate view of women as vulnerable and powerless, and then to compensate them with the power which comes with automatic belief, as a result of this powerlessness.

For Atwood too, the assumption that when the accuser is female they should be automatically believed is not one that fits with a true feminist perspective. For Atwood, feminism is simple: “Women’s rights are human rights because women are human. It’s not a hard concept” (cited in Conroy, 2018). But, accepting that women are human, and equal to men, is to accept that they are flawed, capable of both good things and of bad things. “To be clear, some women lie. Why not? They’re human beings...If you take the false position that no woman ever lies, you’re just going to be shot out of the sky pretty soon” (Ibid.).

If the #MeToo protestors are right, when we assign the ‘victim’ label to women at the point an accusation is made, we risk treating them very differently to other accusers. The illocutionary act of labelling an accuser as a victim right from the outset of an investigation is to declare the accuser’s account believed, and, in adopting this label too quickly where the accuser is female, the perlocutionary effect is to recognise women not as being equal to men but as significantly distinct from men; to brand women as powerless, vulnerable, and in need of protection. On this view, a strange trade-off takes place where women

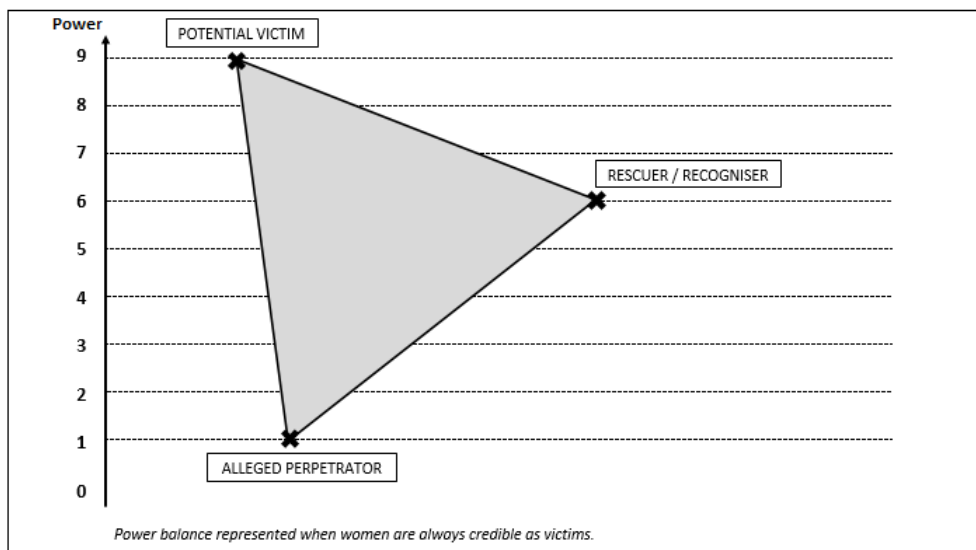
are placed inside a protective bubble, granted a position in which their words are met with absolute and unquestioning acceptance, and yet this protection seems to result in a denial of recognition as an autonomous being with capacity for decision-making and responsibility.

How would this view be presented on the Victim-Power Triangle? For the first time, the Potential Victim would demonstrate the most powerful position in the interaction, not only believed, but also protected and safeguarded against the Alleged Perpetrator by the Rescuer/Recogniser. Both credibility and strength of voice would be maximal for the Potential Victim. The Rescuer/Recogniser is in a position of power to recognise and protect the Potential Victim, while their credibility must be shown as lesser than the Potential Victim, whose status decrees their speech as having a distinctly special and almost infallible credibility. The Alleged Perpetrator will be shown as having very little power, their credibility is low, as someone who has been condemned as guilty merely by accusation, and they will find they have little influence over the decisions being made:

Rescuer/Recogniser: $V3 \times C2 = P6$

Potential Victim: $V3 \times C3 = P9$

Alleged Perpetrator: $V1 \times C1 = P1$



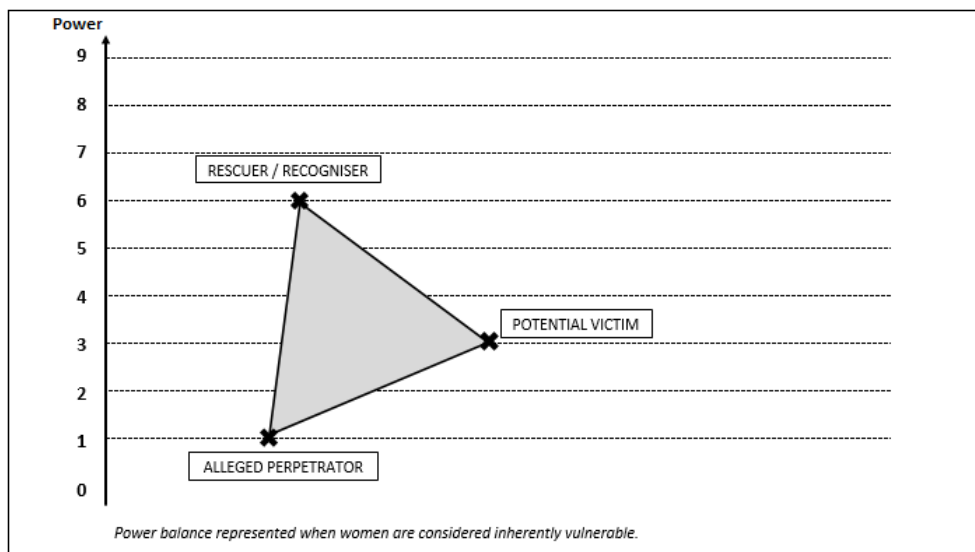
However, when the price of being recognised as a 'victim' is to concurrently accept recognition as a person who is inherently more vulnerable and in need of protection than others, the Potential Victim becomes very reliant upon the Rescuer/Recogniser, and in some ways seems to relinquish a certain amount of their own autonomy and power to the Rescuer/Recogniser. The

Rescuer/Recogniser remains the keeper of much of the power, and any power the Potential Victim has depends upon the continued recognition of the Rescuer/Recogniser. Therefore, there is an alternative view of the power dynamic in this scenario:

Rescuer/Recogniser: $V3 \times C2 = P6$

Potential Victim: $V1 \times C3 = P3$

Alleged Perpetrator: $V1 \times C1 = P1$



Section 3: When victims are disempowered: The Rescuer

In previous sections of this dissertation, the scenarios examined have predominantly centred around subjects who seek to be recognised as 'victims', and in most cases those who have appealed to a third party for recognition, triggering some form of investigation or review of the circumstances in order to determine their eligibility for 'victim' status. In terms of the Victim-Power Triangle, it has been the case so far that the triangle is instigated by someone who perceives themselves in the victim role, and the other characters are identified from that point onwards.

However, in reality, recognition of victimhood does not principally rely upon the victim themselves reporting the situation, and as a society we have developed proactive ways of identifying potential victims of all manner of harms, and subsequently seek to safeguard them. This changes the commencement of the Victim-Power Triangle, starting instead with some individual or organisation sat firmly in the Rescuer/Recogniser seat, who then identifies Potential Victims and Alleged Perpetrators.

Well-intentioned though such initiatives undoubtedly are, such undertakings highlight (but rarely ever seek to address) some very important issues around victimhood: When we consider if an individual is being harmed, whose idea of harm are we referring to? To what extent can an individual consent to being harmed without the perpetrator committing an offence? Should we use evidence of harm against a potential victim even when the potential victim does not want to make a complaint?

On the whole, it seems positive to be part of a society that sees the protection of potentially vulnerable individuals as everyone's business. For example, the Care Act (2014) sets out strict guidance which must be adhered to with regard to safeguarding vulnerable adults. Even outside of legislation, charities and other organisations campaign and raise awareness, encouraging members of the public to be aware of the signs that may suggest someone is a victim of domestic abuse, or modern slavery, for example. We are encouraged to be prepared to seek out victims rather than simply wait for them to come to us, to be the Rescuer/Recogniser. However, unlike the scenarios explored hitherto, in a situation where an individual is given the 'victim' label without actively seeking

recognition or 'rescue' for themselves, there is a risk that this individual's opinion about their own victim status is disregarded.

This issue could be examined in one of two ways. The first is with regard to the question of moral relativism. Some acts are considered immoral within certain cultures, but are permissible and perhaps even encouraged in other cultures. For example, women who have been subjected to female genital mutilation are considered victims in Western culture, but not so in certain parts of Africa, the Middle East and Asia. So perhaps some women who have been subjected to this rite of passage would not recognise themselves as victims (though some most certainly would). As stated at the outset of this dissertation, it is beyond the scope of this particular discussion to enter into a debate about which acts constitute wrongdoing and when, consequently, an individual is or is not a victim.

The second and more pertinent issue for the purposes of this dissertation, is the scenario in which an individual qualifies as a 'victim', for example someone who has suffered harm as a direct result of the actions of another, and perhaps even recognises and accepts this themselves, but does not want to receive the treatment or partake in the processes which are attached to victim status. This is a scenario in which rescue is not desired or consented to, but arrives nonetheless.

An example of such a case is examined by Shelley Cavalieri (2011). In 2003, the International Justice Mission, an American Evangelical Christian organisation, together with a coalition of local organisations and Thai law enforcement officers, raided a brothel in Chiang Mai, Thailand (Ibid.). The coalition referred to the event as a "rescue" (Ibid.: 1411). As a result of being "rescued", the victims were involuntarily detained, despite not being charged with any offences, deprived of their belongings and savings, which were inside the brothel, and many were eventually deported back to Burma. The authorities identified these individuals as victims and, without their consent, they consequently removed these women from the situation, thereby making decisions about what would be in the best interests of these individuals without seeking their opinions, or their knowledge about their own personal situation. Furthermore, in the case of those women who were then deported to Burma, a place they had fled from because of the danger they faced there, the authorities sought to "rescue" these women from one situation which they themselves

considered unsafe, but did not show the same concern about any similarly unsafe situation these women may then find themselves in as a result of the “rescue”. This suggests that the motivation behind the “rescue” was not an entirely altruistic concern for the welfare of vulnerable women, since their ongoing welfare did not seem to be the key motivator.

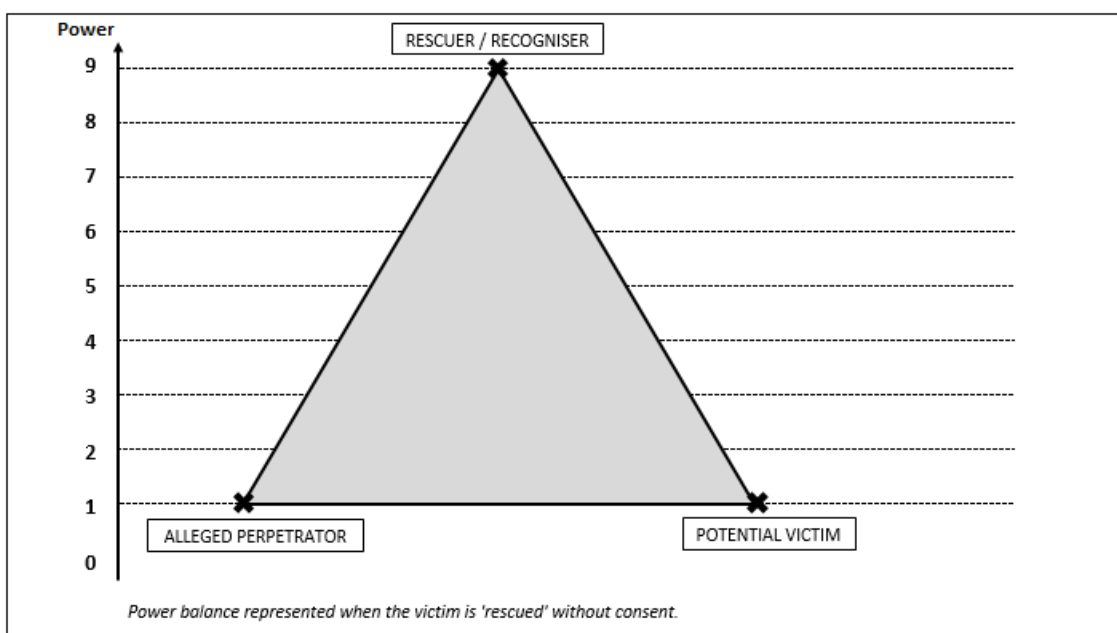
Cavalieri, who visited Thailand after the raid, gathering accounts from trafficked women, former sex workers, and social services providers, believes that the victims involved would have experienced these actions as “both harmful and alienating” and yet these actions took place “under the guise of rescuing them” (Ibid.: 1412). Furthermore, the women Cavalieri interviewed who had managed to escape the brothel before the raid took place reported that both they, and the women they knew who had been “rescued”, had been working at the brothel of their own volition.

Cavalieri’s report of this so-called “rescue” mission in Thailand, in which the authorities made decisions about what should happen to the individuals they identified as victims, without seeming to take any consideration of the victims’ points of view, would be reflected on the Victim-Power Triangle as follows:

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V1 x C1 = P1

Alleged Perpetrator: V1 x C1 = P1



The Rescuer/Recogniser maintains complete power over the Potential Victim, making decisions on their behalf, which the Rescuer/Recogniser identifies as the best course of action. In the same way that the authorities who represent the Rescuer/Recogniser position dominate and remove power from the Alleged Perpetrator, the authorities who acted as Rescuers/Recognisers exerted their own power over the Potential Victims too, overpowering all involved.

In this situation, where the Rescuers/Recognisers used the word 'victim' to label the workers in the brothel, the illocutionary act was to identify these individuals as vulnerable and in need of rescue. The perlocutionary effect was to make decisions on the behalf of these women, removing their ability to make decisions about their own future. *In* labelling them as 'victims', they grouped them as people lacking control in the situation they were in. *By* labelling them as 'victims', they took all the remaining power away from these women, who had made a choice about their own lives, and had this option taken away from them.

Reflecting back to the various connotations of victimhood noted earlier, it seems that these particular Rescuers/Recognisers have a view of 'victims' which closely aligns with definitions Fohring (2018) found victims themselves trying to move away from; weak, and vulnerable, someone who has been trampled on and could be trampled on again.

A caveat is required here: Cavalieri (2011) explains that there are myriad perspectives about trafficking from the organisations and individuals working against trafficking in Thailand, and it is likely that some of those involved in raiding the brothel may have considered the illegal immigration status of the workers as the main issue, thereby viewing the sex workers as perpetrators of immigration offences before considering their victim status.

3.i. Do all victims need rescuing?

If these women truly were at the brothel under their own volition, it is appropriate to ask if they should be considered victims, and more pertinent still, even if they can be defined as 'victims', if they required 'rescue'.

There are all manner of reasons why women may enter into sex work. I propose that each of these numerous reasons can be categorised as one of the following: the woman made a choice, or she had little choice. It is true that many women end up working in the sex industry against their will, often as a result of

human trafficking. These women suffer significant harm as a result of the actions of the traffickers, and certainly fall into the definition of 'victim'. It is likely that the majority of women who suffer these experiences would agree that they are victims.

However, a woman may choose to work in the sex industry because she can earn more money this way than she could in other professions, or perhaps even because she finds the idea exciting. Nussbaum (1998) has written extensively about the reasons behind the stigma attached to sex work. For Nussbaum, if a woman with plenty of alternative choices chooses to engage in sex work, this should not bother us as members of society. Only those women who have little choice, or whose choices are heavily constrained by lack of alternative options, should cause us any concern (Ibid.).

The purpose of my exploring the example of women working in the sex industry is not to engage in a discussion about the ethics surrounding the sex industry. There is plenty of literature in which feminist academics argue that sex work is empowering (Klinger, 2003; Zatz, 1997), while others argue that it is always and essentially exploitative (Barry, 1995; Dworkin, 1993; MacKinnon, 2007) and some have compared it to paid rape (Raymond 1995). While it may well be the case that some women (and indeed men) enter into sex work wholly voluntarily, while having the option to enter into other forms of employment, as this dissertation centres on victimhood, the focus here will be upon women who are working in this industry with little choice.

In the case of the brothel raided in Chiang Mai, if reports from the women who spoke with Cavalieri are true, the workers were free to come and go, they were not in debt bondage, and they were there by choice. Therefore, it follows that there was some alternative choice for these women; they could have decided not to work at the brothel. However, if the alternative to working at the brothel was not to work at all, and consequently to be unable to raise enough money to survive, it is certainly debatable whether their decision to work at the brothel represents *true* choice. If alternative options are not truly feasible, the women are arguably bound to the brothel not physically, nor by fear or debt bondage, but by the reality of their situation. As MacKinnon (2007: 159) remarks, "If prostitution is a free choice, why are the women with the fewest choices the ones most often found doing it?".

Certainly, lack of alternative is a very troubling issue when it comes to consent; extreme poverty is very coercive. The women in question were predominantly ethnically Shan women from Burma. They originated from an area stricken with poverty, and social service workers who spoke with Cavalieri (2011) explained that, as these women were members of the Shan indigenous group, back home they faced a high risk of detention and rape at the hands of officers of the Burmese junta. Travelling to Thailand to work in a brothel represented a chance to escape the authorities in Burma, and to earn money to send home to their families.

It is important to remember that, even when options are limited, choices between those limited options can still be made. Perhaps it is difficult to compare the choices made by these women to the sorts of choices we make every day; there seems to be something about the nature of 'choice' which is not satisfied in this scenario. We can imagine that if these women had more choices they would not be working in a brothel, but that does not seem to preclude them from having made a choice in this situation, limited as the options may have been.

Others would disagree with this view, arguing that such is the exploitative nature of sex work, it is impossible to say that someone has consented to it. Barry (1995) states that nobody can consent to violation, and argues that inability to see any alternative does not equate to consent. MacKinnon (2011: 298) suggests that sexually abused and exploited children, who cannot consent to being in the sex industry, are no different to the sexually exploited women, because in many cases "they are the same group of people at two points in time". MacKinnon's argument certainly seems reasonable, a woman who has been in the sex industry since she was a child does not suddenly continue to work in the industry in a different capacity at the very moment she turns 18 years old. It seems nonsensical to imagine that on one day the men who profit from her are exploiting her but the next, the day of her 18th birthday, it is no longer exploitation.

While Barry and MacKinnon make interesting and thought-provoking points about the issues at hand here, I believe it would be a mistake to overlook the fact that women, such as those in the Thai brothel, have made a choice; they have proactively sought out an improved situation for themselves. To dismiss or disregard this choice because the options were limited is to enormously undervalue the difficulty, the importance and the bravery behind the decision to leave their homes and travel to Thailand. These women alone are in a unique position

to see all the possibilities they feel are available to them, to weigh them up, and to decide how they wish to proceed. While the choice is limited, and the options available each present them with danger and a level of personal intrusion difficult to imagine, a choice has been made nonetheless. Undeniably, it is not a very free decision, and while all decisions have finite alternatives, the constraints of these limited options cannot be ignored, but with the alternatives being the threat of starvation through poverty, or staying in Burma to face discriminatory abuse from the authorities, the choice to work in the brothel has a certain “logic” Cavalieri (2011: 1412). These women are able to use their autonomy in the face of each scenario to garner some power over their situation, to weigh up the pros and cons, and to make a choice. They could have acted otherwise, but they chose which path to take.

I believe it is important to distinguish between three categories of women working in the sex industry; (i) those women who were forced into the sex industry through trafficking, and prevented from exercising any choice, (ii) those women who may initially have decided to enter into this industry and now want to leave, but are prevented from doing so through physical force, debt bondage, or fear, and (iii) those women who are not prevented from leaving, but choose to continue to work in the sex industry because, in their opinion, it represents the better option of the few available to them.

While women from each category may be described as victims – perhaps of poverty, racial discrimination, human trafficking and sexual exploitation – they do not all require the sort of immediate intervention which could be described as ‘rescue’. What differentiates these three groups of women is that some of them lack alternative, while others do not. Those who have been prevented from making the choice to leave their situation would likely welcome the intervention of a third party, to take up the Rescuer/Recogniser role on the Victim-Power Triangle, and facilitate in redistribution of power. The Rescuer/Recogniser in this situation needs to take care to act in a way which empowers the victim, giving them the power to make decisions and act upon those decisions. However, women who are there because they’ve chosen to be would not welcome the interference of a Rescuer/Recogniser, who might consequently limit the options available to the victim further by removing them from their current situation.

From outside of a situation, of course, it is almost impossible for any third party to know if victims have chosen to be somewhere, or if they are being held

there against their will. Therefore, it is important for those in the Rescuer/Recogniser position to provide a safe space to all victims, removed from those who may be acting in the Alleged Perpetrator role, so that they can freely make and convey decisions about whether they want help to be removed from a situation. It is equally important to respect the decisions made by these women, if there is no reason to doubt their freeness or mental capacity to make such a decision, even if the decision is not what the Rescuer/Recogniser thinks is in the best interest of the victim.

In the case of the Thai authorities who sought to rescue the workers in the brothel, it is not known if the women's ability to make a choice to be there was taken into consideration at all in the 'rescue' mission. Often it is the case that we project our own values onto a situation and make assumptions that these values and preferences are objectively held. Rescuers/Recognisers may presume to understand the choices any individual would make within a given scenario, and further, may assume that any decision a victim makes which is contrary to their own value demonstrates a lack of mental capacity to make appropriate and informed decisions. Therefore, they assume that victims want to be removed from a situation, and 'rescued' in the way they deem best, and even if these victims do not want to be removed from the situation, it is the place of the Rescuer/Recogniser to do so, in their best interest, overruling any opposing preference. This being so, in either circumstance it would therefore have been considered unnecessary for the Thai authorities to consult the victims as to their preferences.

Similar reactions to sex work are seen around the world. Connelly (2015: 155) argues that in UK, anti-trafficking non-government organisations seem to be rooted in "benevolence" at first glance, but are also often coming from an "abolitionist ideological standpoint", from which it is assumed that those involved in the industry both "require and desire rescue".

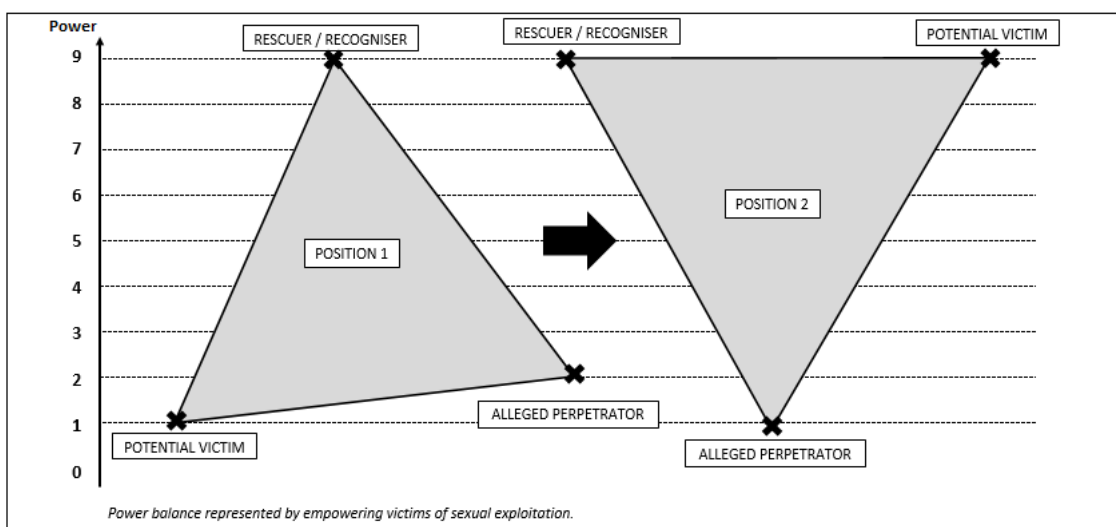
In truth, it is not always possible for a third party to comprehend fully the complexities of the situation or the alternative choices open to someone, nor, therefore, what is in the victim's best interest. If the Rescuer/Recogniser seeks to empower the victim, this entails creating the conditions in which the victim is given the opportunity to make their own decision about their future, and accepting that the victim has the right to make a decision which differs from that which the Rescuer/Recogniser would make, and even which the Rescuer/Recogniser may

consider 'unwise'. In the UK, the Mental Capacity Act (2005) states that, in deciding whether someone has the capacity to make a decision, it is only relevant to ask if they can understand the information relevant to the decision they need to make, if they are able to retain that information for the length of time it takes to make that decision, and if they are able to use or weigh up that information as part of the process of making the decision. It is not appropriate to assess the validity of their decision upon whether it is a decision which anyone else would make, or whether the decision the individual makes might be described by someone else as "unwise" (Ibid.). We each have rights to make decisions for ourselves, based on our preferences, without the need to consult other members of society to adjudicate the objective wisdom of our decision.

If the identified Potential Victim does not wish for intervention once they have been given the opportunity and space to access support, this is not to say the Rescuer/Recogniser should not act at all. 'Rescue' can be looked at from a more macro-level approach, exploring ways to improve the situations which have led to victims becoming victims, and ways to improve life for victims such that they will experience more alternative options opening up for them in the future. In this way, the Rescuer/Recogniser does not overpower the victim, but empowers and provides opportunities for the victim to continue to be more empowered in future³.

This means the power within the Victim-Power Triangle is transferred from the Alleged Perpetrator, through the intervention of the Rescuer/Recogniser, to the benefit of the Potential Victim, moving from Position 1 to Position 2:

³ Nussbaum and Cavalieri each provide their own ideas about approaches they would advocate in order to empower women working in the sex industry. An exploration of these ideas, among others, will be included in the final part of this dissertation.



Position 1:

Rescuer/Recogniser: $V3 \times C3 = P9$

Potential Victim: $V1 \times C1 = P1$

Alleged Perpetrator: $V2 \times C1 = P2$

Position 2:

Rescuer/Recogniser: $V3 \times C3 = P9$

Potential Victim: $V3 \times C3 = P9$

Alleged Perpetrator: $V1 \times C1 = P1$

3.ii. 'Victimless' prosecution

A clear omission from the discussion so far is the question of prosecuting the Alleged Perpetrator. The focus is not often solely on the Potential Victim. In this example above, those who sit within the Alleged Perpetrator role of the Victim-Power Triangle have committed a criminal offence. In reality, the individual, group or authorities who take up the Rescuer/Recogniser role are also likely to be engaged in an investigatory and law enforcement capacity.

In the example of raiding a brothel, these two separate roles do not necessarily present any conflict for the Rescuer/Recogniser who wants to allow the Potential Victim to make their own choice about supporting a criminal case against the Alleged Perpetrator, because the offence of managing a brothel could

be proven without individual victim testimony. For example, evidence that an individual owned or was leasing the premises, evidence found within those premises, evidence of proceeds made from the business, and so on. While it would be likely to strengthen the case if victims were to support prosecutors by providing their account, it is likely prosecution can go ahead without. Therefore, if the Potential Victim wishes to remove themselves from the situation, not to share their experience, even to continue to work within the sex industry, their decision does not hinder the prosecution of the Alleged Perpetrator.

There are instances, however, in which prosecution of the Alleged Perpetrator and identification of the Potential Victim are necessarily linked. This is usually the case where the crime committed is against one particular individual, and there is little or no corroborating evidence of the harm. Criminal investigations of domestic abuse exemplify this, and such cases raise complex dilemmas for those people who sit within the Rescuer/Recogniser role of the Victim-Power Triangle.

Dempsey (2009), a former domestic violence prosecutor in the US, explored this dilemma in her own '*Philosophical Analysis*'. Dempsey describes a radical shift in the approach towards prosecuting domestic violence, moving from the traditional view, "wherein such cases are typically dismissed unless the victim insists upon prosecution", to a new approach of "pro-prosecution" or "mandatory prosecution", "wherein the victim's request for dismissal is disregarded in prosecutorial decision-making" (Ibid.: 4). Dempsey herself implemented such policies while working in a specialist Domestic Violence Prosecution Unit, and states, "the scope of domestic-violence cases was defined broadly; charging decisions were taken irrespective of the victims' wishes; witness subpoenas were routinely issued for victims to testify in court; and charges were not dismissed pursuant to the victims' requests" (Ibid.).

To provide some context for this discussion, in the UK, prosecutors make a decision about whether to pursue prosecution with regard to the Full Code Test (CPS, 2018). This test has two stages, firstly, the Evidential Sufficiency Test, which examines whether there is enough evidence for a successful prosecution, and secondly, the question of whether the prosecution is in the public interest. For example, in the case of a physical altercation between two acquaintances, where neither participant was left with significant injury, and where one party reports the incident to the Police, the normal investigative procedure would be

instigated. During the course of any subsequent investigation, the Police may find corroborating evidence, statements from witnesses or CCTV footage, for example, which corroborate the account provided by the reporting party. However, if this individual later decides to withdraw their complaint, it is unlikely the Police would continue to investigate or go on to prosecute the other party, even if there is strong evidence. Although it may be possible to meet the evidential test without the reporting party's statement, it is not likely to be considered in the public interest to pursue the case because the Potential Victim has not been seriously harmed, and the Alleged Perpetrator is unlikely to be a threat to the public.

For victims of domestic abuse, the decision to withdraw a complaint is less likely to be heeded by Prosecutors, due to the seriousness of this offence. Dempsey (2009: 4) claims that, at any given time "up to 85 per cent of the named victims in my caseload requested dismissal of charges against their alleged batterers" and the majority of these requests were refused. It is important to note that Prosecutors do not act solely on behalf of the victim, but in the public interest, so the more serious the crime, the more likely they are to pursue prosecution, and this is not limited to domestic abuse. It has been proposed that prosecution of domestic abuse cases should be perceived not as individual cases, but part of establishing on a wider socio-cultural scale that perpetrators of domestic abuse will not be allowed to get away their actions (Hanna, 1996), and will be held accountable (Ogden, 1998). No-drop policies are seen as the antidote to the historic view that domestic abuse is a private matter, recognising instead that there are wider social costs, in addition to the experience of the particular victim; "Each time a man hits a woman and gets away with it, all women suffer, both from the risk of harm that has not been prevented, and from the retardation of the movement toward societal equality" (Robbins, 1999: 207). The evidence-based approach moves domestic abuse from a private issue into the public realm (Nichols, 2014).

This evidence-based approach is also intended to protect victims in cases where they may feel pressured by the perpetrator to request that charges are dropped, or to withdraw their statement, despite actually wanting their abuser to face punishment. It is common for victims of domestic violence who are afraid of reprisals to withdraw their complaints, later claiming either that the incident did not occur, that it was less serious than previously alleged, or that it was their own

fault (Edwards, 2012). These retractions are “well-recognised survival strategies” (Ibid.: 47). It is recognised that in cases in which the victim experiences ongoing fear of the alleged perpetrator this will have a significant impact upon normal investigative and judicial proceedings. In making a judgement on ‘R v Horncastle and others (2009)’, the Court of Appeal made the following comments, “A witness who is in fear may be as effectively unavailable as a witness who is dead, ill, or overseas” (Spencer, 2014: 355). For this reason, special processes and procedures are in place to ensure that evidence provided by victims who are in fear can still be included and considered in proceedings.

For example, evidence-based prosecutions often rely on ‘Hearsay’ evidence. ‘Hearsay’ refers to a statement made outside of the court, and such evidence is not commonly admissible in court proceedings because it cannot be cross-examined as statements made within the court can be. However, there are some exceptions laid out in the Criminal Justice Act (2003) which allow statements made prior to the court proceedings to be included as evidence:

These are, if at the time of the proceedings the person who made the statement:

- *is dead (Section 116(2)(a))*
- *is unfit to be a witness because of their bodily or mental condition (Section 116(2)(b))*
- *is outside the United Kingdom and it is not reasonably practicable to secure their attendance (Section 116(2)(c))*
- *cannot be found although such steps as it is reasonably practicable to take to find them have been taken (Section 116(2)(d))*
- *does not give (or does not continue to give) oral evidence through fear (Section 116(2)(e))*

(CPS, 2003).

The above list is not exhaustive as there are also a number of common law exceptions, which allow hearsay statements to be included, including ‘Res Gestae’. Res Gestae statements are statements which are either made when a person is so “emotionally overpowered” by an event that the “possibility of concoction or distortion can be disregarded”, statements which are made accompanying an act which mean the act can only be properly evaluated in conjunction with the statement, or statements relating to a physical or mental state (Ibid.).

Res Gestae is more commonly called upon in cases of domestic abuse. These exceptions allow Prosecutors to use a victim's words during the court process even if the victim does not come to court to give evidence themselves, and in some cases, even if the victim does not consent to their words being used within the court proceedings. An example of this is the case of 'Lee Stewart Barnaby v The Director of Public Prosecutions (2015)'. The defendant, Barnaby, was convicted of battery against his partner, Gibb. On the day of the alleged event, Gibb contacted Police in three separate calls to Police, during which she stated that Barnaby had attempted to strangle her. When Police officers arrived on the scene, Gibb reiterated that Barnaby had tried to strangle her, and had also bitten her cheek. Gibb did not make a formal statement and refused to pursue a complaint. During court proceedings the Prosecution did not call on Gibb to attend court, but used the content of the recorded calls to Police and the account she had given to the Officers who had attended, which they argued were admissible under the principle of Res Gestae. This decision was upheld by the High Court during appeal, where it was found that "given Ms Gibb's emotional state throughout the various conversations, the court was entitled to dismiss the possibility of concoction or distortion."⁴

The benefits to evidence-based prosecutions and the inclusion of hearsay statements in cases of domestic abuse are quite apparent. Victims of domestic abuse are quite often in a unique position, having a personal relationship with the perpetrator. There is a level of acceptance, forgiveness and desire to defend the perpetrator which is unlikely to be present in a case where the perpetrator of a criminal offence is a stranger, or not intimately known to the victim. As a result of the existing relationship, many victims of domestic abuse are known to question whether they are to blame for angering the perpetrator. Feelings of guilt or self-blame are more prevalent in domestic abuse than for victims of other violent crimes (Buzawa and Buzawa, 2003).

Being victim to domestic abuse often contributes to a lack in confidence, "the self-image is attacked and weakened", and the victim can feel guilt or anger at themselves for not being "robust" enough (Javier and Herron, 2018: 111). In turn, the victim can become less emotionally resilient, and may believe

⁴ Lee Stewart Barnaby v The Director of Public Prosecutions [2015] EWHC 232 (Admin), [31]

themselves incapable of the strength required to leave the situation, resulting in a type of adaptation and blunting of the abuse with false hopes of reprieve (Ibid.).

Victims of domestic abuse are likely to fear the repercussions of pursuing a complaint against their abuser, and are often further victim to threats and intimidation (Buzawa and Buzawa, 2003). In domestic abuse cases, perpetrators have intimate knowledge of the victim, their family, and places they frequent. This intimate knowledge means that perpetrators are able to make more personal threats, for example, threats to kidnap children, or to report the victim to authorities with exaggerated or fabricated information that could result in children being taken away from the victim (Ibid.). Domestic abuse victims may also be financially dependent upon the perpetrator, which could provide additional reluctance to report abuse. Finally, in these cases, the victim is likely to have an emotional tie to the person causing the harm, and a desire to protect them from prosecution, giving a further uniqueness to domestic abuse cases.

All of these factors mean that victims of domestic abuse are often more vulnerable, and in many cases less likely than victims of other types of crime to pursue a complaint against the perpetrator. In some cases, the victim may wish to support the proceedings, but undertake what Dempsey (2009: 17) calls “performative victim withdrawal”, in which they “make a public showing of requesting dismissal and/or recanting their statements” but covertly indicate to prosecutors a wish to see the perpetrator prosecuted.

The strength of the evidence-based approach is that it takes the burden of the decision to prosecute from the victim, and places it with the prosecutors. This takes the control that the abuser has over the victim, and the usual methods of control such as threats and intimidation, out of the equation. Instead of allowing the perpetrator to extend their power and control into the courtroom (Corsilles, 1994), the victim’s personal feelings are removed from the equation. However, in some cases, such as in the above example of *Barnaby v The Director of Public Prosecutions* (2015), the only evidence available for the evidence-based approach is the account given by the victim (be this in a statement, through recordings of calls etc.) and thus the evidence-based approach still puts the victim’s account very much at the centre of the proceedings.

Some feminist academics argue that the evidence-based approach, in which the victim’s personal judgment appears to be overlooked, is grounded in “an unjustified paternalism” toward victims (Dempsey, 2009: 23). Victims may be

left feeling that at the stage the prosecution team are introduced that they lose control over decisions, “It was just a disagreement that went overboard. I had no control-they [prosecution team] took over” (Hare, 2006: 623).

It is argued that those decision-makers who advocate for evidence-based prosecution appear to consider themselves in a better position than the victim to make decisions about the victim’s life, suggesting “the victim may be blind to the serious nature of violent domestic abuse” (Clark, 1987: 268). In an approach which appears ostensibly unique, the evidence-based approach treats the victim in a very unusual way, considering their preferences to be somewhat irrelevant to proceedings. Hall (2009: 262) compares the treatment of these victims as treatment of parties with reduced capacity, “somewhat akin to children or the mentally ill.”

Such a blanket approach seems to provide little room to differentiate between those victims who may be undertaking “performative victim withdrawal” as Dempsey describes, due to fear of reprisal, and those who want to make a genuine withdrawal of support for the proceedings, based on their unique personal understanding of the factors of the situation, and their own weighing up of the potential outcomes, in the way that victims of other crimes are often free to. Moreover, it is claimed that there is little evidence that victims are safer in cases where they have no control over filing charges (O’Sullivan *et al.*, 2007).

The debate about the conflict between victim-agency and evidence-based approach remains very active. Many advocates of evidence-based prosecution argue that victims of domestic abuse are not making a genuine “choice” when they refuse to support proceedings against the perpetrator of their abuse, and their decision does not indicate any “special understanding” of how best to deal with the situation (Robbins, 1999). It is of course important to recognise that decisions made in, and restricted by, fear are not the ideal decision-making circumstances we would perhaps hope for. However, it is also important to note that the victim and the prosecutor are in fact addressing two quite different questions; while the prosecutor may be concerned with asking if the prosecution of the perpetrator is in the public interest, the victim is unlikely to take such an objective view, and instead asks if they will personally be safe, what will happen to their children, how the bills will be paid, if the potential punishment truly fits the crime, and so on.

Robbins (1999) argues that the idea that victims should be given a choice about whether the perpetrator is prosecuted feeds into the dangerous misconception that victims of domestic abuse actually make a free choice to stay with their abusers, which in turn allows some portion of blame to be imparted on to the victim when people ask “Why did they stay?” given that there was a ‘choice’.

This begins to echo our previous discussion about constrained choices, earlier explored with regard to the sex workers in the Thai brothel. Robbins is right to distinguish between people making free choices, and people who *appear* to be making free choices, but where lack of alternatives have constrained them to the extent that they may feel they have very little choice at all. It does not appear to be a free choice to stay with an abuser if there are no genuinely viable alternatives, and women in this situation may need additional support. However, equally important to note is that while someone may have limited options, or their decisions may be restricted, this does not invalidate their ability to make a decision between the remaining options available to them. It does not follow that because a person’s options are limited when making a choice that any choice should subsequently be taken away from them entirely. Hall (2009: 262) argues that such policies are “predicated on an assumption that domestic violence victims withdraw complaints because of some form of reduced capacity”, rather than acknowledging a victim’s capability for making decisions based on rational and practical factors.

3.iii. The freedom to make ‘unwise’ decisions

Similarly to the ‘rescue’ mission undertaken at the brothel, the evidence-based prosecution approach, and use of Res Gestae statements, puts those people acting on behalf of the Prosecution in the position of Rescuers/Recognisers. To some extent, the Rescuers/Recognisers are deemed more capable than the Potential Victim of making a decision about what is in the victim’s best interests. The approach can appear paternalistic (Dempsey, 2009), perhaps even patriarchal (Dayton, 2003), and is quite uniquely applied to crimes like domestic abuse and sexual exploitation, which are offences of which the victims are more likely to be female (Office for National Statistics, 2019a). The implementation of such policies appears to perpetuate the idea that individuals recognised as

victims of these particular types of abuse are not capable of making their own decisions about supporting a prosecution in the same way that victims of other offences are generally entitled to. Furthermore, although making a decision that may seem to others 'unwise' does not indicate that someone lacks the mental capacity to make decisions, victims of these particular crimes are not even given the opportunity to make potentially unwise decisions, and thus appear to be automatically treated as someone who has reduced mental capacity (Hall, 2009).

Considering this interpretation in terms of the Victim-Power Triangle, when the word 'victim' is used to label a person who has experienced domestic abuse, by a person with authority in this arena, and when *Res Gestae* is then employed in order to include statements the Potential Victim has made, even when this individual has not given their consent for this statement to be used, the effect is to silence the Potential Victim by causing perlocutionary frustration when in subsequent speech acts they attempt to persuade the Prosecutor not to pursue prosecution. Furthermore, it is not only perlocutionary frustration, but illocutionary disablement, since the Potential Victim attempts to use their speech to withdraw their statement, or deny the original account, but these are illocutionary acts which are not available to this person from the time they have been labelled a 'victim'. Once the victim of domestic abuse is recognised as such, their subsequent speech is less powerful.

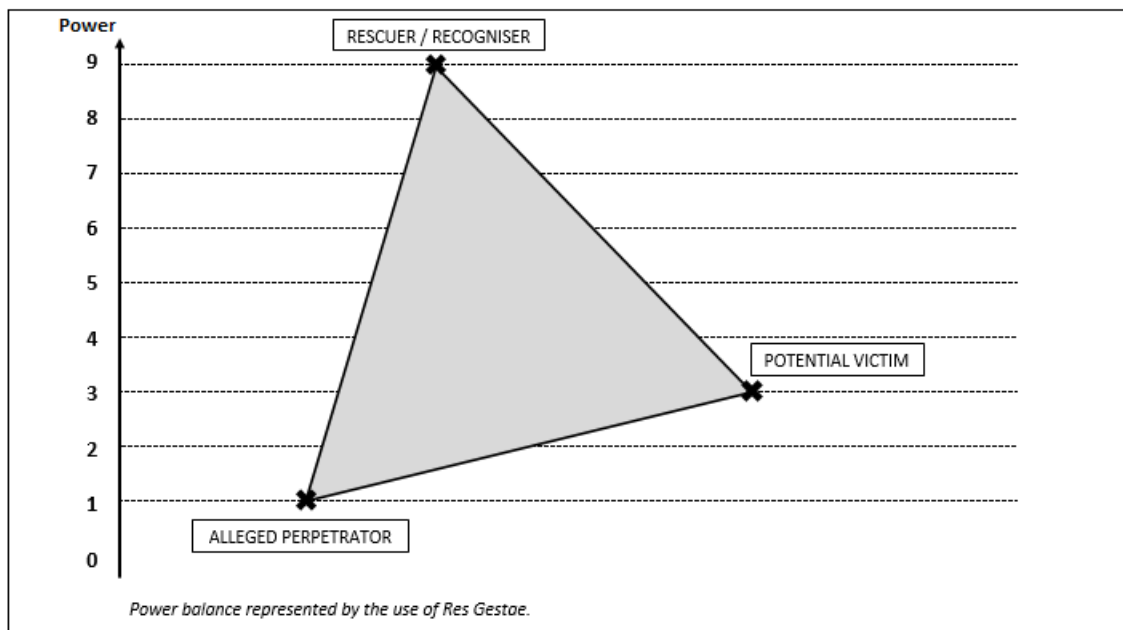
However, simultaneously, in relying on *Res Gestae*, Prosecutors have concurrently given the original statement(s) made by the victim an increased power, in declaring that "the possibility of concoction or distortion can be disregarded", and therefore that that particular speech should be considered more credible than other speech. Consequently, the Potential Victim is not required to have this statement cross-examined, or questioned in the way that other statements given in evidence would be, which adds to the impression that the Potential Victim's words have a heightened credibility.

The Rescuers/Recognisers, who are the prosecutors in this scenario, have maximal power in this relationship, since only they are able to contribute to the decision about whether to take the case forward or not. The Potential Victim has minimal voice, as their views are not influential, but they have maximal credibility, since their original account is considered to be without concoction or distortion. The Alleged Perpetrator has minimal voice and credibility in this scenario, since they have no influence over the charges brought against them.

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V1 x C3 = P3

Alleged Perpetrator: V1 x C1 = P1



3.iv. Public interest vs individual interest

It could be argued that these policies allow Rescuers/Recognisers to 'rescue' Potential Victims by giving power to their original claim, then subsequently disempowering them, and refusing to let the Alleged Perpetrator extend their power into the courtroom, but not by a means of redistributing power to the victim, but by continuing to disempower the Potential Victim themselves.

I propose that this is in danger of becoming too narrow a view of this issue, however. As already stated, it is key to appreciate that Prosecutors are not considering the prosecution of the Alleged Perpetrator solely in relation to the identified victim. Prosecutors have a duty to consider the public interest of a prosecution. On their website, Humberside Police (2020) have the following statement relating to "victimless prosecution", which they have linked uniquely to domestic abuse; "We strive to work with our victims and their wishes, however the police have to assess the risk to the public and the potential of serious harm reoccurring. We sometimes have to make the decision to progress with an

investigation despite the victim not wishing to put a complaint in when the offence is deemed so serious and we have enough evidence to progress without the victim contributing in any way.”

In December 2019, television presenter Caroline Flack was arrested and charged with assault by beating. Police were alerted to the incident when Flack’s partner, Burton, called emergency services claiming Flack had tried to kill him (Swerling, 2019). Burton later issued a request through solicitors for the charges against Flack to be dropped, and Flack’s lawyer argued that Burton was not a victim, but a witness (Ibid.). Providing a further example of disagreements about meaning and connotation, the Prosecution responded by arguing that Burton was a victim since he had sustained a significant injury to his head (Ibid.). The Prosecution also introduced the recording of Burton’s call to the emergency services. As a result of the hearing, Flack was placed on conditional bail, with one of these conditions being that she was unable to have contact with Burton before the trial.

Two months later Flack took her own life. Burton (2020) took to social media to express that, despite “asking and asking”, he had not been “allowed” to be with her. The decision to pursue the conviction, and the conditions of Flack’s bail were contrary to the victim’s wishes. However, these actions were deemed necessary as prohibitive and punitive measures for the intentional or reckless application of unlawful force to another person (CPS, 2020). It is likely that the testimony of the police officers who arrived on the scene, with their body-worn camera footage, the recording of the victim’s call to the emergency services, and the photographic evidence of the victim’s injury would have been abundant evidence of this act.⁵

When a serious crime has been committed, Prosecutors have a duty to prosecute in order to protect the victim, to protect the public from any risk associated with the accused party, and to give a message that this behaviour is unacceptable. In some respects, from the point in time that the victim reports a crime, the evidence-based policy means that the burden of any further decisions is taken from them (Corsilles, 1994). The crime that has been committed is against the law, not just against the individual victim.

⁵ As was the case in ‘Lee Stewart Barnaby v The Director of Public Prosecutions (2015)’.

Yet, as previously submitted, victimless prosecution is more prevalent in cases of domestic abuse, where the victim is more likely to be female, while the approach taken to serious assaults which are not domestic in nature seems to be quite different. At the same time that the no-drop prosecution approach for domestic abuse was being introduced in the US (Dempsey, 2009), researchers in the UK undertook a study of victims of assault being treated in a local hospital, and the approach taken by the legal authorities towards these assaults. Contrary to the attitudes towards victims of domestic abuse, researchers found that even in cases of serious assaults the Police would not initiate an investigation until they confirmed that the victim actually wanted to make a complaint. In one case, Police were present as the victim was taken to hospital with a severely injured hand, while the perpetrator “about whose identity there was no dispute” was still at the scene, but the Police did not arrest the perpetrator until several days later when the victim confirmed he would like to make a “complaint”, which was considered additional to merely “reporting” the incident to the Police (Cretney *et al.*, 1994: 19). Cretney *et al.* (Ibid.) claim that in the cases they examined, “reporting an assault is one thing, ‘complaining’ quite another. It is this second stage in the process which commits the victim (and the police) to an investigation of the offence and, where possible, to prosecution of the offender.”

Thus, a further disparity is demonstrated between the approach to domestic abuse cases and others. If domestic abuse cases must be considered with regard to public interest, and consequently, the victims do not get to decide if prosecution is pursued, then victims of domestic abuse appear to be held to a higher account than victims of other types of crime. Comparatively, victims of other types of assault seem to have a choice between simply reporting the crime and actually instigating an investigation, and the Police allow for these victims to have this discretion, despite the perpetrators of these crimes also being a risk to the public.

Arguably, on this basis, the victim of domestic abuse does not have a weight taken off her shoulders, but she now carries the additional weight and responsibility of the public interest, and supporting the Prosecution with their case against the accused. In fact, domestic abuse victims have been prosecuted themselves for refusing to support the prosecution of their abusers, charged with

perverting the course of justice, and imprisoned.⁶ The trial Judge in R v Renshaw explained his decision to prosecute a victim, claiming that by refusing to tell her story she was striking a blow “not only at the Crown...but at the law. If they get away with that, others will follow...the whole process is destroyed, and the men concerned are encouraged to continue”, and that the victim was “failing the court of women” (cited in The Times, 1989 and The Independent, 2010).

In making such a statement, this Judge places some of the responsibility for instances of future domestic violence upon the victim who refuses to engage. In his view, the victim who refuses to support the prosecution fails in her duty as a victim; fails to be a ‘good’ victim, fails to comply with her own rescue, fails to consider others, fails to conform with the processes and procedures in place, fails to be the ideal victim.

I believe that evidence-based prosecution, used with careful consideration, is a positive and progressive policy, which opens up the possibility of prosecuting offenders who historically may have been protected by inciting fear in their victims. That it is used predominantly in relation to crimes of which victims are more likely to be female, but applied with more discretion in relation to other offences, could be perceived as paternalistic, suggesting that there is something about these female victims which makes this course of action more necessary. However, I would argue that the gender of the victims is not the relevant connection between the crimes where the approach is more commonly engaged, but instead that the use of this approach is more closely linked to the seriousness of crimes like domestic abuse and sexual exploitation.

Nevertheless, however well-intentioned the policy is, to apply it generically looks like a refusal to consider taking the victim’s personal understanding of the situation or the individual circumstances of each case into account. Furthermore, the insistence these victims should have to carry the weight of the “court of women” in their decisions, places a responsibility for preventing domestic abuse onto domestic abuse victims. Additionally, the suggestion that victims can somehow ‘encourage’ men to commit domestic abuse is to suggest a causal link between the victim’s behaviour, and the commission of an offence by domestic abuse perpetrators. The comments made by Judge Pickles in R v Renshaw lay

⁶ R v Ashley [2010] EWCA Crim 2913; and R v Renshaw [1989] Crim LR 811

some responsibility for further offences onto victims, and such views represent 'victim-blaming'.

Section 4: Victim-blame and the risk of victimhood

In Section 1, we briefly touched upon what Christie (1986) described as the “ideal victim”. Those who have been harmed, but who fall short of the attributes of the ideal victim, which include being weak (sick, old or young), carrying out a respectable task, and being harmed by someone unknown and ‘big and bad’, will struggle to attain victim status, and the associated sympathy and support, compared with someone who does look like the ‘ideal victim’. One of the attributes Christie (1986: 19) lists as essential for the easiest access to victim-recognition is that the individual be somewhere they “could not possibly be blamed for being” when they came to harm. The difference between someone who is readily accepted as a victim and someone who is less ‘ideal’, and consequently struggles to get the same level of recognition, is based in how clear it is to the recognisers that there is nothing the subject could have done to make themselves less likely to have been a victim, and therefore that there cannot be any blame assigned to them.

Victim-blame has been shown to be more prevalent in cases of sexual assault and rape, and this has been demonstrated in a number of studies (Gurnham, 2016; Gray *et al.*, 1993; Allison and Risman, 2013). Furthermore, a survey by Sprankle *et al.* (2018) found that respondents were presented with a newspaper article describing an incident of sexual assault, in the version where the victim was labelled a sex worker, respondents were more likely to assign higher levels of victim-blame. They concluded that this was demonstrative of less victim-empathy for sex workers. One reason for this is undoubtedly that sex workers fall short of the ‘ideal victim’ paradigm. They are not doing something ‘respectable’ in the eyes of society when they come to harm, and often the lines between what is considered to constitute consent are further complicated by the introduction of money in exchange for services. Sex workers do not fit the Little Red Riding Hood (Walklate, 2007) idealistic picture of an innocent and virginal victim, and are therefore less likely to garner sympathy.

However, I propose that there is another way this difference in social reaction could be perceived, which is not about higher blame for the sex worker. While neither the Little-Red-Riding-Hood-like figure or the sex worker deserve or should be blamed the harm they have endured, and while the perpetrator in both scenarios is entirely to blame for their actions, there is another significant

difference here from the point of view of the members of society (recognisers) hearing about both cases: the likelihood of the event. I propose that for many people hearing of these two cases of harm, and these two victims, the main difference is how likely the events were to take place, with the risk of a sex worker coming to harm being much higher because of the vulnerability which comes alongside working in the environment she works in. This is not a question of which of these victims is more to blame for the harm, but rather which scenario is more shocking because of the expected vulnerability to risk.

There are many myths surrounding rape and sexual assault. 'Rape myths' are "attitudes and generally false beliefs about rape that are widely and persistently held, and that serve to deny and justify male sexual aggression against women" (Lonsway and Fitzgerald, 1994: 134). These include blaming women for their own sexual assault (Carline and Easteal, 2014), belief that rape is caused by overwhelming sexual desire, and belief that women wearing certain forms of clothing invite rape (McGee *et al.*, 2011). In May 2020, a US Senior Court Judge was removed from the bench after asking a sexual assault victim if she had tried to prevent being sexually assaulted by closing her legs, and asked her to confirm she had once worked as an exotic dancer (Parmley, 2020). Although the ideal victim concept has become less restricted over recent years due to "increased social and legal awareness of violence against women", many still find themselves disqualified when providing their own account of sexual assault experiences (Randall, 2010: 397).

In a study concerning victim and perpetrator blame, Landström *et al.* (2016) presented participants with four different scenarios of sexual assault and harassment, some of which described the victim as being "flirtatious". The concluding remarks of the study stated, "this study showed that the participants attributed considerably more blame to the perpetrator than to the victim" (Ibid.: 8). This remark represents an erroneous conflation of concepts. The study used several quite different concepts interchangeably, questions about the victim's "blame", "responsibility", "fault" and views on the victim acting "improperly", were all "summed" and recorded on the same 'victim blame scale' (Ibid.). However, there are important distinctions between these concepts. While there are undeniably some people who believe that victims of sexual assault can invite harm and are in some way to 'blame' for the harm they experience, such as those people who accept rape myths, someone who believes that a victim can have

some *responsibility* for their actions within a given scenario, or that a victim may have acted *improperly* in that scenario, is not necessarily saying that the victim deserves any *blame* for any harm they later experience. Recognising that a person being subjected to harm does not render their preceding or subsequent behaviour without relevance to the situation, and recognising that a victim is an agent who has performed certain actions is responsible for those actions, and that these actions could be in some way relevant to later events, is a very different concept to the 'blame' which is assigned to the perpetrator of the harm. The perpetrator of harm has acted in such a way which constitutes wrongdoing, and is to blame for those actions. While contrastingly, the victim may have acted in ways, (in some cases unwittingly), which has increased their risk of being harmed. Even if the choice to act in a certain way is made with full awareness of the level of risk associated with this behaviour, and the individual is then subject to harm after taking that risk, blame is not an appropriate word. Acting in a lawful way, which could potentially render you more vulnerable to harm, does not equate to any degree of blame for harmful actions you then experience, which are performed by another person.

If using 'blame' here is not appropriate, what concept captures the distinction between those victims who acted in a way which increased the risk of being harmed, and those who have minimised their risk of harm? Consider, for example, of an individual who is robbed while walking through a deserted alleyway at night. Despite warnings from friends about the risk of being robbed in this area of town, he continues with this course of action. Despite warnings from his mother about carrying valuable possessions displayed clearly in outer pockets, he does not alter his habits. In contrast, another man is robbed the next day. He is on his lunch-break at midday, and taking a walk through the park when the robbery takes place.

Neither man has performed any action which is worthy of blame. The first man does not invite harm by simply walking in an alleyway at night, he may even have done so on previous occasions without coming to harm. However, in comparison to the man in the second example, this first individual has acted in a way which he is aware will incur a heightened risk of harm, and while he could have taken simple precautions to lessen this risk, he chose not to adapt his behaviour and continued in a way which was knowingly high-risk. This individual is responsible for his own actions and decisions, which he made based on

awareness of the situation. He is not responsible for the actions of the perpetrator, and therefore not responsible for the harm he has experienced. As Wallerstein (2016: 326) comments, “The idea of prior fault makes sense when discussing the offender’s liability, for he is the one causing harm. It does not, however, make sense to refer to (prior) fault when discussing actions of victims.”

The conflation between blame for harm experienced, and responsibility for personal actions which increase risk, is hazardous. Without this distinction, any discussion about what a person can do to avoid a heightened vulnerability to harm is discounted as victim-blaming. Evaluation of victim-behaviour is then socially proscribed, and advice given to reduce vulnerability is seen as transferring blame from perpetrators of harm to victims of harm. Further, failure to distinguish between these views means that any studies looking at social perceptions of victimhood will group all discussion of prior victim behaviour into the ‘blame’ category, and the nuances of this distinction, and “the possibility that participants of the relevant research studies might have been expressing something other than victim-blaming attitudes” (Gurnham, 2016: 261) is potentially lost.

The position I am advocating here, that a victim can be said to have responsibility over risk management, differs from other recently proposed views on responsibility and blame. For example, Curchin (2019) argues that victims of sexual assault are never blameworthy, but that it may be possible to identify choices they made that form part of a causal chain resulting in violence. Curchin proposes that the victim contributed to *causing* the harm, but is not morally responsible. However, I suggest, the scale of responsibility for increased risk of vulnerability to harm is entirely separate to the scale of responsibility for the act which causes the harm. Nobody but a rapist can cause rape. Rape cannot be incited; a rape victim *does not* in any way cause the rape, and crucially *cannot* cause the rape. Rape can only be caused by a rapist. A victim could potentially act in such a way as to put themselves at a heightened risk of vulnerability to being raped, and still not be raped, because the rape itself is entirely the act and thus the responsibility of the perpetrator. Unless she crosses paths with a rapist, she will not be raped. To say that a victim *caused* the violence by acting in a certain way, in my opinion, crosses into victim-blaming. Equally, Lamb (1996: 54) fails to identify this subtle but fundamental distinction when she proposes, “crucial to our dignity is being held responsible for things that have happened to us”. Lamb

conflates a person's responsibility for risk management, and for their own behaviours, with responsibility for harm they experience. While being acknowledged as an agent with the ability to make choices relating to risk will inevitably mean we will be considered responsible for taking risks, this is not the same as being considered responsible for another person's actions which cause us harm.

A person's responsibility for risk management should be calculated on an entirely different measure to any scale which looks at blame or responsibility for harm. In the case of rape, the extent to which a victim acted to manage the potential risk of harm is an unrelated variable to the question of responsibility for any subsequent harm. The two scales are incommensurable. A rape victim who took no precautions to protect themselves from being at risk of harm still cannot have any responsibility for the act of rape.

4.i. Safety planning and victim-responsibility

Why would it be necessary to distinguish between the preceding actions of the 'ideal victim' and the 'non-ideal victim'? After all, a person who has been harmed and recognised as a victim should not be treated any differently regardless of the circumstances in which the harm took place. The processes and the approach should not differ if the victim is considered to have acted in such a way as to increase their vulnerability to harm. Yet, the actions which lead to an increased vulnerability to harm are the key to the distinction, because the unfortunate but undeniable reality of our world is that there are people who will cause others serious harm, either with the intent of causing harm, accidentally, or as a means to another end. Awareness of this reality, and knowledge of how to protect oneself from harm is vital, and to some extent, some of this awareness and knowledge stems from the occurrence of harm, and the ability to review what can be done differently in future to mitigate risk of further harm and victimisation.

If we accept that there is a distinction between, on the one hand, blaming a victim and holding them responsible to some extent for the harm they have been subjected to, and on the other, some evaluation of victim action and behaviour that may increase vulnerability to harm, where does this distinction lie? There is a risk, with the focus being too heavily on ways for a victim to avoid vulnerability to harm, that the onus is perceived to be on the victim to avoid harm.

If this is played out, the victim who is harmed may be told they did not do enough to avoid harm, and this looks very much like placing responsibility for that harm back with the victim.

Examination of the actions that can leave someone more likely to experience harm, and consequent guidance advising people to avoid these actions, can quickly reflect victim-blaming. The analysis of patterns identified within reports of rape led to publication by the NHS and the Home Office of a poster which read: “One in three reported rapes happens when the victim has been drinking”, which was widely criticised in the UK as victim-blaming (cited in Gurnham, 2016: 259). It was argued that the focus on the victims rather than the perpetrators of rape, and suggestion that there was a link between the harm and the victim’s behaviour, was not appropriate.

While the message of the poster had unfortunate connotations, I submit that it was clearly not the intention of the poster to say that those one in three victims were to blame for their assault. More likely, those who commissioned this poster thought it would remind people that when they have consumed a high volume of alcohol, they are more likely to be vulnerable to harm. With this awareness, a person might decide to take additional precautions to keep themselves safe when drinking alcohol.

With knowledge that drinking alcohol could render them more vulnerable to risk, a person who chooses to drink has responsibility for accepting and managing this heightened level of risk when making further choices. However, their responsibility ends there, “that is all that it amounts to—prior responsibility (and prior choice) to putting oneself at risk, to becoming vulnerable” (Wallerstein, 2009: 327), but not responsibility for any subsequent harm.

Safety planning is a widely recommended intervention for domestic violence and sexual assault victims (Logan and Walker, 2018), and most organisations which support victims of these types of harm will include safety planning as part of their program (Davies *et al.*, 1998). The reality of the risk they face means that plans to protect oneself are entirely necessary and appropriate. This does not mean that the victim is responsible for avoiding harm, nor that failure to avoid harm transfers any level of responsibility for that harm onto the victim.

Safety guidance for women with regard to risk of vulnerability to sexual assault and rape, however, is often seen to cross the boundary, from

responsibility for risk management, to victim-blaming. Social media has been used to demonstrate women's "fed-upness" (Rentschler, 2015: 354) with the focus on safety guidance for women, which has been described as "paranoia-producing" and absurd. Advice about watching your drink and not walking alone after dark (Marwick, 2019) is often considered to be supporting the view that it is a woman's responsibility to prevent sexual assault, while the focus should be on perpetrators.

Common themes often emerge in relation to types of crime. For example, in the UK, statistics show that men are more likely than women to be victims of robbery and vehicle-related theft, and students are almost twice as likely to be victim of 'theft from the person' than the average adult (Office for National Statistics, 2017). Statistics also show that there is a greater risk of being victim to violent crime at night (Office for National Statistics, 2019b). Crime data is collected and analysed to highlight these patterns and themes, and this information is then used to influence policy and planning around crime prevention.

Crime prevention based on encouraging potential victims to change their behaviour, in response to indications that certain situations lead to heightened risk, is referred to as situational crime prevention (Wortley, 2010). Most of us take certain precautions in our daily lives to lessen our vulnerability to crime, shutting windows when we leave the car, and locking the doors of our homes. It is proposed that the situational crime prevention approach can assist with "advice on what measures are most effective" (Ibid.: 886). However, this approach has also been accused of victim-blaming, "insidious social control", creating a "distrustful society", and enforcing the "status-quo" by accepting these crimes and moving focus on to victims preventing them instead of perpetrators (Ibid.).

Aside from sexual offences, advice on safety planning and risk management for other types of harms is widespread, and often more readily accepted. For example, online-associated harms such as security breaches and fraud are significantly less likely if the internet-user takes precautions, and more likely if the user opens unexpected email attachments or links in emails, downloads malware, or uses weak passwords (Shillair *et al.*, 2015). In fact, the internet-user (potential victim) is described as the key factor in online security or cyber-security (Anderson and Agarwal, 2010; Davinson and Sillence, 2010). The high level of risk of becoming vulnerable to these online-associated harms means

that the necessity of talking about avoiding risk and our responsibility for avoiding risk is clear. This does not mean that responsibility for any actual harm is shifted from the perpetrator to the victim, but “enhancing a user’s sense of personal responsibility” is described as a “necessary precursor to effective online safety interventions” (Shillair *et al.*, 199).

In the UK, the Crimestoppers website (2020) provides guidance on keeping safe from crimes from vehicle theft to business fraud. The advice, interspersed with statistics and research, does not imply that victims of these types of harm who have not followed the advice are to blame for their victimisation, merely that there are ways to lower your vulnerability to these harms. What is different then, in the advice aimed at avoidance of increased vulnerability to sexual assault?

One key difference is the existence of those rape myths already considered. The fact that victims of rape and sexual assault have so often been faced with the blame for their own harm, despite it having been inflicted by the actions of the perpetrator, means that attempts to look at risk reduction on behalf of the victims of these harms is more fraught and politically charged (Gurnham, 2016). While comparatively no such clear history is present with victims of online-based harms. Further, some anti-sexual assault advice for women is so closely aligned to rape myth that it does not stand alone, for example, advising women not to dress provocatively stems from the rape myths that rape is caused by overwhelming sexual desire (McGee *et al.*, 2011), and that men are unable to control their sexual impulses (Henderson, 1992).

Secondly, women are more likely to be the targets of advice on avoiding sexual harm (Stanko, 1996; Campbell, 2005; Fanghanel and Lim, 2015). Advice which encourages women to dress in a more conservative way, and to avoid certain behaviours, such as drinking too much alcohol, is considered by some feminist academics to reflect a patriarchal society which wants to police women’s behaviour (Fanghanel and Lim, 2015).

However, similarly harmful myths exist in relation to domestic abuse, for example, that women in abusive relationships could leave whenever they want, but choose to stay (Robbins, 1999). It could equally be perceived that the idea of safety planning for victims of domestic abuse is putting the onus on the victim to look after themselves, moving responsibility from perpetrators to victims. But, the reality of the prevalence of domestic abuse, in conjunction with the hidden nature

of this type of harm, means that there is a need to work with victims to help them identify their risk of harm, and identify ways to avoid harm. To ignore the agency of victims of this type of abuse, and to dogmatically focus solely on the role of perpetrators in preventing domestic abuse, is idealistic, and an unhelpful eschewal of the practical reality. Women are also more likely to be targets of this safety planning advice simply because women are more likely to be victims of domestic abuse (Office for National Statistics, 2019a).

The need for safety planning in domestic abuse is based in realism and pragmatism, and the victim needs to be at the centre of this planning, while supported by an advocate (Campbell, 2004). There is a very real need to help victims accurately determine their own risk, and victims themselves are often in the best position to judge their own risk of re-assault (Campbell, 2004; Goodman *et al.*, 2000; Weisz *et al.*, 2000). This approach in no way omits nor denies the need for a focus on perpetrators, and their responsibility for the harm they have caused. Indeed, there continues to be a strong focus on working with perpetrators of domestic abuse to support them to change their behaviours, and of course, strong punishment through the judicial process for those who commit domestic abuse. Some advocate for a more joined up approach where victims and perpetrators of intimate partner violence attend counselling sessions together (Stith *et al.*, 2011; Almedia and Durkin, 1999; Bograd and Mederos, 1999) which both “addresses danger and uses the existing strengths in couples’ relationships as the basis for change” (Stith *et al.*, 2011). While there have been concerns that this approach results in “erosion of personal responsibility” (Ibid.), if all such programs are considered alongside programs which focus on perpetrator culpability and the need for change then there is no reason that a joint focus need be mutually exclusive with recognition of perpetrator responsibility.

Victim-blaming is a very real phenomenon and needs to be addressed when it occurs. It forms part of a culture where violence against women is normalised (Buchwald *et al.*, 1993). However, avoiding all scrutiny of victim-behaviour is equally damaging. Unfortunately, the line between a sensitive but pragmatic consideration of any victim-behaviour which could have led to increased risk, and mere victim-blaming can at times be quite difficult to distinguish. The alternative to talking about the existence of risk-avoiding behaviours is to entirely ignore the actions of the victim, to perform no evaluation of risk, and to merely report harm without putting any measures in place to

contribute to the avoidance of further harm in future. Perhaps not even to report on the actions of the victim to avoid any notion of evaluation.

Applied to digital fraud, the idea of avoiding any discussion or sharing of information about activities or common mistakes which are known to increase a person's risk of becoming a victim appears ethically irresponsible, and seems only to service perpetrators of these crimes. Safety advice is prevalent in our everyday lives; we find ourselves cautioned against approaching dangerous offenders⁷, engaging in fraudulent phone calls⁸, travelling because of dangerous weather conditions,⁹ because of health risks¹⁰, or because of a political situation¹¹.

4.ii. Victims as agents

The consequences of proscribing talk about a victim's behaviour are three-fold. Firstly, as previously mentioned, failure to examine preceding actions in terms of risk avoidance deprives us as a society of useful information about how to lower our risks of falling prey to these harms. Secondly, we give victims a special status, placing them beyond scrutiny and applying to them a reduced expectation of responsibility for their own actions. Finally, if we refuse to acknowledge that there are ever any actions that a victim could have taken to reduce their vulnerability to harm, we declare their actions inconsequential, reducing their agency.

If applied particularly to women, because accusations of victim-blaming are more prevalent in crimes of which women are more likely to be victims, by refusing to acknowledge their responsibility for risk management, we treat them

⁷ An example: Merseyside Police (2020) *Wanted: Conor Bayne* [online] (2 January 2020). Available at: <<https://www.merseyside.police.uk/news/merseyside/news/2020/january/wanted-connor-bayne/>> [Accessed 06 March 2020]

⁸ An example: Pembrokeshire County Council (2019) *Phone Scam Warning* [online] (20 December 2019). Available at: <<https://www.pembrokeshire.gov.uk/newsroom/phone-scam-warning-dec-2019>> [Accessed 06 March 2020]

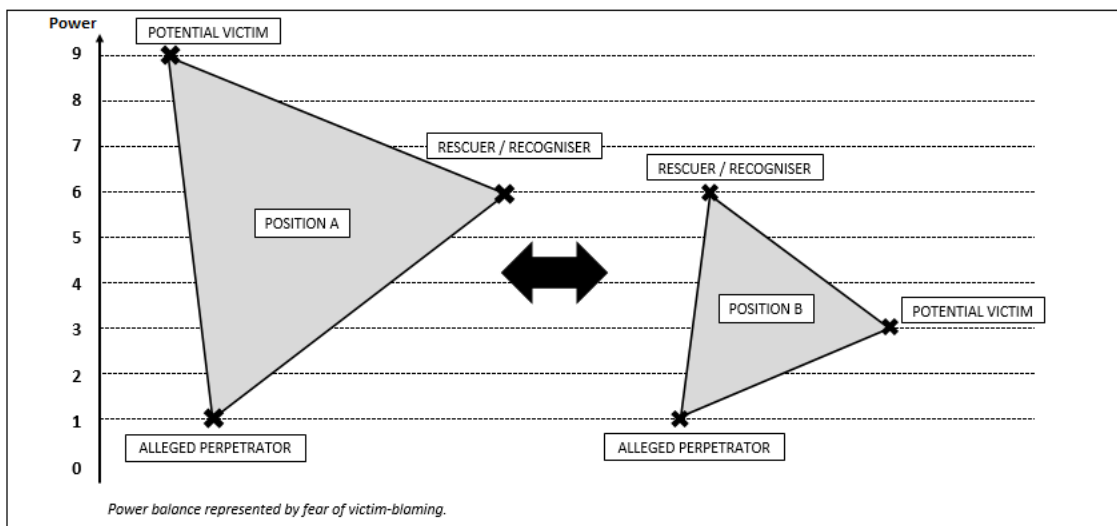
⁹ Examples: Reines, J. (2019) 'Don't drive' warning as Highways England issues severe weather alert for road disruption, *Cornwall Live*, 1st November. Available at: <<https://www.cornwalllive.com/news/cornwall-news/dont-drive-warning-highways-england-3494313>> [Accessed 06 March 2020]; and BBC News (2019) Australia Fires: Travel warnings issued over 'catastrophic' conditions, *BBC News*, 21st December. Available at: <<https://www.bbc.co.uk/news/world-australia-50876469>> [Accessed 06 March 2020]

¹⁰ An example: UK Government (2020) *Foreign Travel Advice China* [online] (4 March 2020). Available at: <www.gov.uk/foreign-travel-advice/china> [Accessed 06 March 2020]

¹¹ An example: U.S Department of State (2020) *Iran Travel Advisory* [online] (26 February 2020). Available at: <travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html> [Accessed 06 March 2020]

differently to men. We risk perpetuating the infantilised view of women decried in arguments against “victim feminism” (Hoff Sommers, 2017) explored back in Section 2.

When considered on the Victim-Power Triangle, I propose that these outcomes would be presented as oscillating between two contrary positions: At Position A, the Potential Victim being very powerful, protected by their victim status, and their actions beyond scrutiny, but at Position B, the Potential Victim is considered as a someone whose actions have less impact than another agent, and someone who could not have been expected to, or was perhaps incapable of acting in any other way to protect themselves. The Potential Victim is always very credible, but their voice is less significant once they are seen as someone with a reduced capacity for decision-making, less responsibility for their own actions, and incapable of self-preserving action:



Position A:

Rescuer/Recogniser: V3 x C2 = P6

Potential Victim: V3 x C3 = P9

Alleged Perpetrator: V1 x C1 = P1

Position B:

Rescuer/Recogniser: V3 x C2 = P6

Potential Victim: V1 x C3 = P3

Alleged Perpetrator: V1 x C1 = P1

In both versions, the Rescuer/Recogniser will have the strongest voice, the most influence over decisions made in the course of any investigation. The Potential Victim will have the highest credibility as their account is accepted and their prior actions will not be questioned. The Alleged Perpetrator will have the least power, both in terms of voice and credibility.

In contrast, to focus on what we can do to protect ourselves from becoming victims, while still giving full acknowledgement of the perpetrator's blame for harm, could be considered empowering. Ensuring that victims and potential victims are equipped with the skills and knowledge to safeguard themselves from harm, and recognising that they have the agency to do so, is to recognise them as able and powerful, rather than passive and essentially vulnerable.

Again, it is necessary that the subtle but crucial distinction between responsibility for risk management and responsibility for harm is made. It is not, as Lamb (1996) proposes, being held responsible for things that happen to us which gives us dignity, but being recognised as someone who has the power to make decisions, and in turn accepting responsibility for those decisions. Lamb (1996: 55) suggests that a victim of multiple sexual harms should question what it is about them which makes men perpetrate these harmful actions, and this is how they should take responsibility. It is clear that Lamb conflates these two entirely separate types of responsibility.

To accept that there are steps women can take to lower their risk of experiencing harm through sexual assault (Curchin, 2019), and that their choices regarding whether to take these precautions are their responsibility, is pragmatic and conscious of the social reality we inhabit. In a utopia, of course, no individual would have to take any precautions or alter their behaviour in order to lower their risk of interpersonal harm, because there would be no perpetrators of harm. Unfortunately, a situation of total safety, a "safety utopia" (Boutellier, 2004) may be desirable, but it is not attainable.

It has been argued that women feeling that they should avoid certain activities or behaviours in order to avoid risk of harm limits their freedom; the obligation for women to keep themselves safe in public spaces is considered to be counter to the imperative to be free (Foucault, 2008; Deleuze, 1992; Fanghanel and Lim, 2015).

However, within a society, personal freedom does have limits. Restrictions on one person's personal freedom are often required in order to allow another person a level of freedom. As Abraham Lincoln (1864) stated, when a shepherd drives the wolf from the sheep's throat, the sheep considers this liberty, but the wolf will consider this as a prevention of liberty. In order to create a society in which we can be free enough to thrive, we have had to introduce boundaries which ensure our safety, "Vitality and safety are two sides of the same coin"

(Boutellier 2004: 2). We are left with a paradox, in order to enjoy our freedom, we must accept boundaries. Proactive and defensive behaviour may feel like a limitation on total freedom, but undertaking these actions and thus limiting our risk vulnerability to harm allows us to continue enjoying other freedoms.

4.iii. A duty to protect

There is another party to consider when we think of responsibility for reducing a potential victim's risk of vulnerability to harm; those same people who may perform the role of Rescuer/Recogniser, the members of our society.

The Victim-Power Triangle has demonstrated already the importance of the role of the Rescuer/Recogniser. In all variations of the Triangle it has been the variance of views and reactions of the person or people in the role of Rescuer/Recogniser that has had the greatest bearing upon the power dynamic between the three positions, and the power of the Potential Victim's speech. It is the role of the Rescuer/Recogniser, who are members of society, members of juries, representatives of organisations and political groups, to take responsibility for bringing perpetrators of harm to justice, to analyse and research risk and share these findings and recommendations with other members of society, to fund and implement protective measures to lower risk, to provide education and support to enable perpetrators and potential perpetrators to change their behaviour, and to put measures in place which make commission of harm more difficult.

Section 5: What do we want for victims?

Throughout this dissertation I have demonstrated that there are many different and sometimes opposing ideas associated with the concept of victimhood; who can be a victim, when someone becomes a victim, how we should react towards victims, and who is responsible for a person's victimhood. These different views influence how the victim is treated, and to what extent their voice and opinions are considered when making decisions. I have argued that it is the speech act of whomever is in that Rescuer/Recogniser role, the act of labelling the individual a 'victim', which directly affects the voice of the victim, and what they are able then to do with their words. In some circumstances, the act of calling the individual a 'victim' will amplify the voice of that individual; it will allow their words to mean more, to *do* more. This means that being recognised as a 'victim' can be desirable. In some circumstances, the act of the calling the individual a 'victim' will take power away from the individual by stifling their voice and the actions available to them through their speech, and depriving them of autonomy.

In the latter section I have suggested that fear of victim-blaming can prevent even basic levels of evaluation of an individual's actions preceding their experience of harm, and that while victim-blaming is an unfortunately prevalent and harmful exercise, not all discussions about a victim's actions seek to apportion blame for the harm experienced. Evaluation of all events leading up to the point of harm allows us to understand risk to that victim, and to other members of society.

Having discussed what effects the 'victim' label can have upon an individual, their ability to do certain things with their speech, and to successfully perform certain speech acts, in this final section I want to question what effects we would ideally want the 'victim' label to have upon an individual, by considering what the power dynamic should look like between Victim, Perpetrator and Rescuer/Recogniser, and to identify a realistic and consistent approach to claims to victimhood. Although step-by-step guidelines about how to approach victimhood are impractical, I hope to propose general guidance which will reduce the disparate responses towards victims and claims of victimhood.

Firstly, I suggest that we should seek for a victim, or a Potential Victim, to be treated fairly. We are looking to identify a real-world solution, so I do not propose that we approach this from a state akin to Rawls' Original Position

(1999), because it is important to acknowledge and include knowledge of the existing realities of our society in this consideration. Complete justice and absolute fairness live alongside the 'safety utopia'; desirable but unattainable. I propose instead that we consider that each and any one of us could become a victim, and that we start with this premise: "people are dignified agents, but they are also, frequently, victims" (Nussbaum, 2001: 406).

Victimhood should not be seen as an attribute or characteristic that certain people, or certain types of people possess, but a state that any of us, and indeed many of us, enter into as a result of experiencing harm. Equally, becoming or being recognised as a victim does not negate our agency, the two are not incompatible (Ibid.). We have seen that, in cases where victims are considered to have less agency than other people, they can be disempowered, having choices made which directly impact them, without their consultation or consent; but they can also be over-empowered, their voice given more power than another member of society as a result of their victim-status, for example, being automatically believed, or their behaviour and actions placed beyond scrutiny, as if they could not have acted otherwise.

In order to avoid either disempowering or over-empowering those we identify as victims, we must both recognise the harms they have experienced, but simultaneously recognise them as agents. This means treating people with compassion, and providing the right levels of support and information to allow them to make informed decisions for themselves, while continuing to acknowledge that if, when armed with all the information and opportunities open to them, that individual makes a choice which we consider to be 'unwise', this decision should still be respected, accepted and supported. As agents, we have the right to make decisions which may be considered unwise to others, but we must also expect to be considered responsible for the decision that we make. The freedom to act in accordance with our own choices inevitably gives us ownership over those choices.

Cavaliere provides an example of how this pro-support and pro-choice approach can work in practise with her 'third way' feminism. Cavaliere (2011: 1445) seeks to find a middle-way between the "dominance" feminist approach to sex work, which she believes "mutes the voices" of those sex workers who consider that sex work has some "liberatory purpose", and the liberal feminist approach which contrastingly focuses too closely on individuals and does not

address the societal structures and systematic oppression of women. Cavalieri's approach encourages Rescuer/Recogniser intervention for sex workers, which provides information and resources, giving women the opportunity to overcome the power differentials, which can only be understood through perceiving oppressions from a wider social perspective, but catering each intervention to the individual's situation (Ibid.). Through this approach, individual agentic choice is not overlooked, and while a good understanding of the existence of oppressions and limitations on women's choices in these situations is key, this understanding will assist in ensuring that the right information and resources are offered to the individual, while still recognising the unique experience of the individual and her situation. Through providing the knowledge and resources, the choice of how to oppose the oppression she faces remains with individual women, and allows for agentic action (Ibid.).

5.i. Our responsibility as members of society

Individuals need to take responsibility for their actions, as agents, and this is the case both for victims and for potential victims. As argued in Section 4, while responsibility for harm sits with the perpetrator of harm, some responsibility for risk of vulnerability to harm must reside with each agent, who can choose to act in ways which can reduce or heighten their risk. However, as a society we must also take some collective responsibility for the safety of individuals within our society. It is not enough to simply react to harm, punishing perpetrators and recognising victims. There needs to be proactive measures implemented to prevent harm and to protect potential victims. In order to present victims and potential victims with the appropriate resources and information to allow them to make their own agentic choices, there is a need to proactively understand the risks they face, and this will include analysis of previous harms experienced by members of our society, including factors which caused increased vulnerability. This demonstrates the necessity of examination of victim-behaviour prior to harm. In addition to a person-centred approach when dealing with individual victims, as members of a society we must also be aware of and tackle the wider overarching issues within our society which make harm more likely. As Cavalieri (2011) promotes in her approach, simply providing opportunities for independent agentic action on a case-by-case basis is insufficient; we must look at the wider picture

and also focus our efforts on larger scale interventions by influencing law and public policy.

As members of society, it is possible to both hold individuals accountable; perpetrators for harm, victims for their actions, and also consider our own responsibility for creating a safer society. However, analysis of harms and the sharing of information about how to avoid harm could be perceived as parental, and counter to respect for people as agents. Further, focus upon existing vulnerability to harm has been viewed as perpetuating and normalising systematic harms. The focus on women as vulnerable to sexual assault, and the resulting plethora of rape avoidance literature, has been perceived as rendering sexual violence against women as inevitable and unavoidable, encouraging women to see themselves as “always vulnerable” (Campbell, 2005: 121), and to “wallow” in a victim state (Friedan, 1998: 245). This is often considered to both normalise sexual violence rather than discouraging it, and at the same time to control women by limiting their freedoms and autonomy by emphasising and perhaps even exaggerating the danger they face in public, and therefore constraining their movement through personal fear of harm (Campbell 2005, Naffine 1998, Warr 1985; Gardner 1990).

In contrast, awareness and knowledge of risks, and advice on how to lower risk, can be seen as liberating and allowing for increased autonomy. Risk assessment is not about eliminating risk entirely, but about identifying and managing risk, and adapting to reach desired outcomes with the minimal risk. Knowledge of strategies to avoid harm are considered to be beneficial in supporting survivors of sexual assault moving forward by helping to develop personal agency and a sense of safety (Herman, 2015). Accepting that we are each vulnerable to victimhood does not deny us our dignity or agency. There is no stark binary choice between victimhood and agency (Nussbaum, 2001).

5.ii. Compassion

The ideal response to a claim to victimhood should seek to empower the individual by providing support, information and resources, providing the opportunity for agentic action, while allowing space for the individual to act in accordance with their own will, and in reaction to individual circumstances. How this offer of support looks should be considered on a case-by-case basis, but will

be guided by a knowledge base which is built upon proactive research and awareness of past and existing harms, on both macro and micro scales. Policies such as the no-drop policy should not be applied generically, but should be a considered option if it is thought to be in the best interest of both the individual victim and the public. Such policies should be used only when full rationale is provided.

This approach can only work when employed hand in hand with larger scale interventions which seek to balance power and target systematic harms by influencing legislation, public policy to create a fairer and safer society, with education which creates awareness for would-be and actual perpetrators of harm, and with punishment for those who perpetrate harm. In pursuing these aims, we help to create a fairer and safer society which allows for increased opportunity of agentic action for victims, and which reduces the necessity for proactive and defensive action from individuals to limit their risk of vulnerability to harm.

The ideal response will be based upon the understanding that an individual being recognised as a 'victim' tells us only that this is a person who has been harmed, but we cannot make any further assumptions about this person from their victim status alone. Each and every member of our society is vulnerable to experiencing harm, and thus, experiencing 'victimhood'. The fact that someone has been harmed does not simultaneously inform us of anything about that individual's ability to make decisions about their own safety; agency and victimhood are not mutually exclusive. This perspective can be achieved when we employ compassion; Nussbaum (2001: 414) states that compassion provides a "motive to secure to all the basic support that will undergird and protect human dignity." To be more specific about how this approach can work in relation to empirical examples, let us examine this in relation to some previous examples already raised.

5.iii. A policy of automatically believing claims of victimhood

In Section 1, an ongoing dispute about the use of the words 'victim' and 'complainant' was introduced. The argument centres around the appropriateness of timing of the use of the word 'victim', which suggests that someone has been harmed, often before it has been proven beyond reasonable doubt that their

account of events is true. Both parties in this dispute seemed to agree that using the word 'victim' to describe someone who came forward with a report of experiencing harm suggested that their account was believed. Some parties felt this was the appropriate course of action (Bailey), and others felt this was assuming the guilt of the accused despite having an existing system which assumes the innocence of the accused (Henriques and Hare).

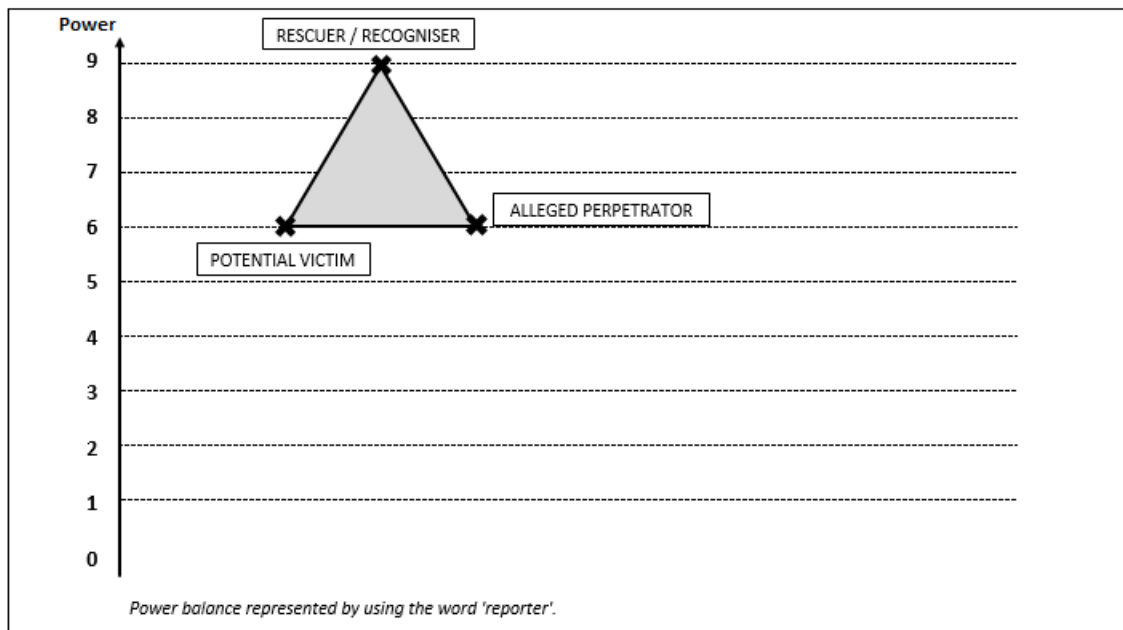
What sort of response will be generated when applying a compassionate approach? A compassionate approach needs to take into consideration both the potential victim and the potentially falsely-accused. I propose that a neutral term can be employed, between 'victim', which suggests belief in the guilt of the accused, and 'complainant', which carries with it negative connotations such as complaining, moaning or whining (Oxford English Dictionary, 2020c). The word 'reporter' represents a neutral concept, which suggests provision of an account of an event which could equally be true or false. I suggest that a reporter who comes forward to provide an account to the Police should not be automatically believed, but should automatically be considered credible; not believed, but believable. Both the reporter and the accused person should be assured of a thorough and objective investigation to establish all available facts, and the opportunity to provide their own account. Both parties will be provided with support and all appropriate information which allows them to understand the processes, and the options available to them at each stage. Both accounts of events, if contradictory, should be considered equally credible until such a time as there is sufficient evidence collated to suggest otherwise. While it is contradictory to say that both accounts are believed to be true, it is not contradictory to assume that both accounts are credible.

In terms of the Victim-Power Triangle, this would be represented as follows:

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V2 x C3 = P6

Alleged Perpetrator: V2 x C3 = P6



The Rescuer/Recogniser is credible because they do not make assumptions about who is more or less likely to be telling the truth based on personal biases, but they do acknowledge that both parties are credible. Any consequent investigations following an account being provided by the 'reporter' will be evidence-based and objective. The Rescuer/Recogniser has a stronger voice than the Potential Victim and Alleged Perpetrator because it is the Rescuer/Recogniser who holds the power to recognise a person as a victim, and it is the Rescuer/Recogniser who decides when the investigation is complete. Both the Potential Victim and Alleged Perpetrator are to be considered credible, able to be believed. The playing field is even. They do not, however, have much influence over the direction of the investigation.

5.iv. The 'victimless' prosecution

In certain circumstances the duty to both support the victim and increase opportunity for agentic action, the duty to implement policy which protects the public from risk of harm, and the duty to punish the perpetrator may appear to conflict. For example, faced with all the relevant information and options available to them, a victim of domestic abuse may wish to make the decision to withdraw a statement they have made to the Police, and to return to their partner. However, it may be considered that the perpetrator of harm poses such a risk to the victim, and to the public, that measures must be put in place to prevent the perpetrator from contacting the victim, and that legal proceedings against the perpetrator must continue. In these circumstances, the victim may feel that they have had their right to make a choice taken away from them, however, this lack of choice more accurately demonstrates a limitation on the choices and freedoms of the perpetrator. The victim has been free to withdraw their support for the prosecution, but this may not mean the prosecution is not pursued nonetheless. While efforts should be made to support and facilitate a victim's choices with regard to their own future, this does not extend to an overriding of normal legal and judicial processes relating to perpetrators of harm. A victim is empowered to make choices about their own life, not given the power to make choices about processes which do not directly relate to them. The punishment of an offender may at times be counter to the wishes of a victim, but to allow the victim to decide whether a member of society should face punishment for an action which is counter to legislation, and to deny judicial process which is in the public interest, is to give the victim's voice an overly heightened authority.

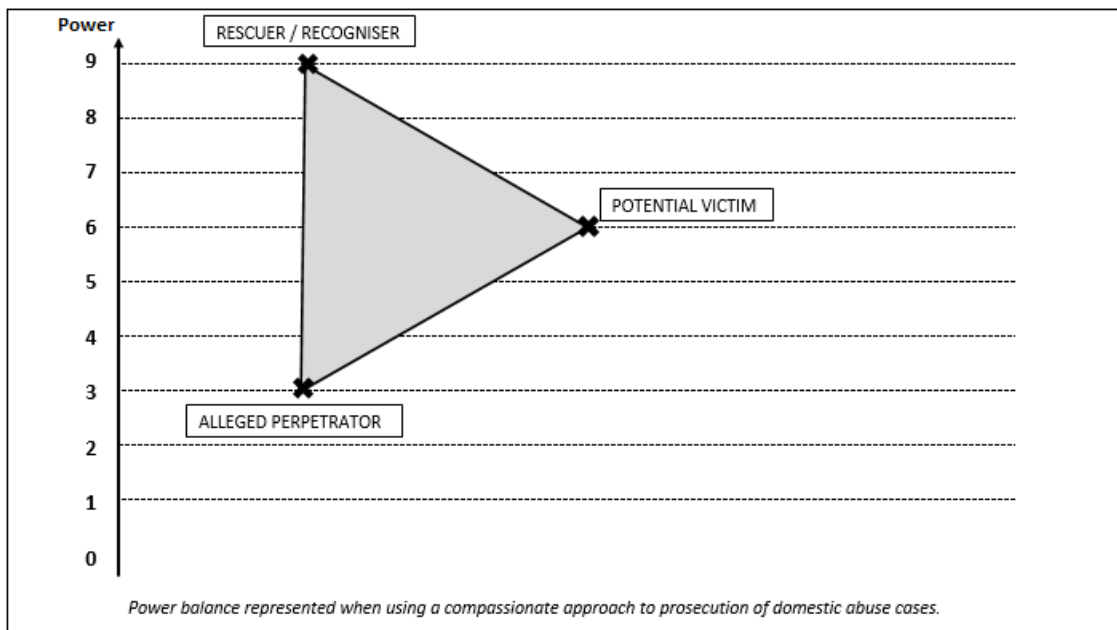
A compassionate approach here will seek to provide appropriate emotional and legal support to all parties, throughout the process. The unique person-centred support provided to the victim or potential victim will take into account the individual circumstances of the case, and combine this with the understanding obtained from awareness of wider, over-arching societal issues, and learning from previous cases, to give space for the opportunity for agentic-action. This will depend on the unique circumstances, but could include counselling for the victim and offender, education courses, support with safety planning, or financial support to enable independence and prevent dependence upon the perpetrator from being a factor preventing the victim from leaving,

should they wish to. Therefore, a compassionate approach will not support a generic policy, such as the no-drop policy, to be applied to all cases, but an evidence-based prosecution could be pursued if it is deemed that prosecution of the offender is the best course of action in the public interest.

Rescuer/Recogniser: $V3 \times C3 = P9$

Potential Victim: $V2 \times C3 = P6$

Alleged Perpetrator: $V1 \times C3 = P3$



Again, the Rescuer/Recogniser is credible because they are knowledgeable of the over-arching social issues relating to power dynamics between victims and perpetrators, but also consider the unique case in question, and its individual complexities. They seek to arrive at the best outcome, balancing public interest with the victim’s safety, and punitive measures for those who have acted in contradiction with the law.

In this case too, the Rescuer/Recogniser has a stronger voice than the Potential Victim and Alleged Perpetrator because it is the Rescuer/Recogniser who holds the power to recognise victim status, and it is the Rescuer/Recogniser who has the power to make decisions about investigation and judicial process. Both the Potential Victim and Alleged Perpetrator are to be considered credible, able to be believed. However, in this instance the Potential Victim’s voice is comparatively stronger than the Alleged Perpetrator since the Potential Victim’s

views may have some bearing on the proceedings, where the Alleged Perpetrator is unlikely to have much influence.

5.v. Tenuous claims to victimhood

We have seen that the state of victimhood can at times bring with it credibility, trust, sympathy, protection, and power over others, (Williams 2008, Minow 1993, Weeks and Johnson 1980), and that this status can even render a person's actions beyond criticism. As a result, people can seek recognition as a victim in order to obtain these approvals, sometimes without a genuine claim or experience.

We know that causing wrongful harm is not always a legal matter; there may be no investigation, no proof or opportunity for both sides to put forward their account. This means that there is opportunity for any individual to make a claim of victimhood, and to receive some degree of sympathy, and added credibility without having experienced a corresponding harm.

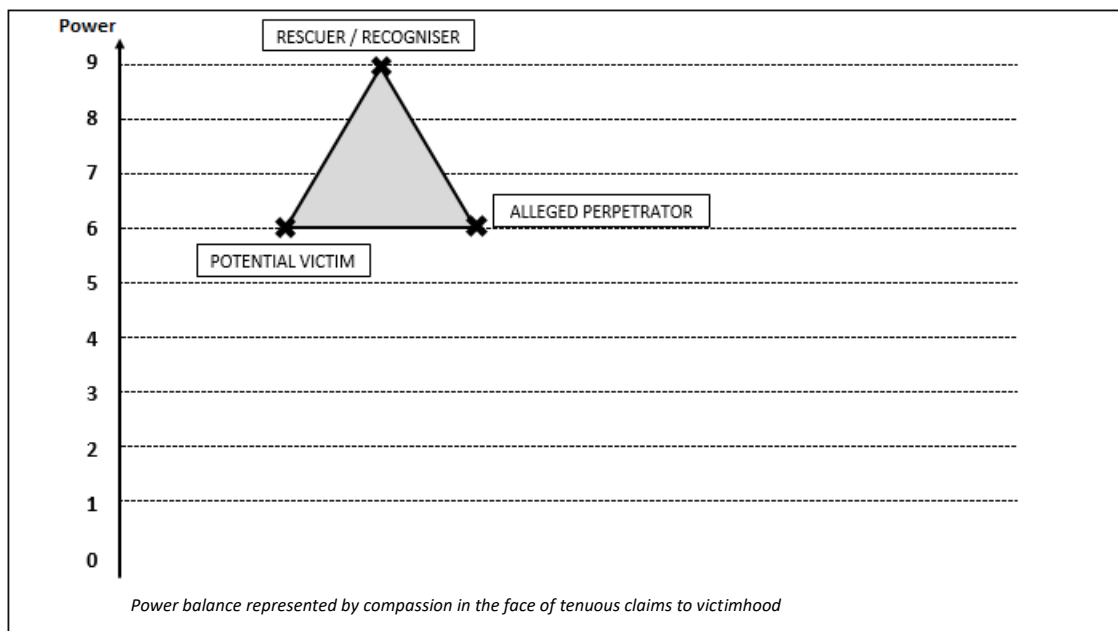
In cases where victim's actions are placed beyond evaluation, where their voice has an amplified power due to their victim status, it is quite apparent why we, as a society, would not want those with no legitimate claim to access these advantages. However, when victims are no longer over-empowered, but are instead empowered, met with compassion, while being recognised as agents whose actions are not beyond scrutiny, fraudulent or tenuous claims to victimhood will be less appealing. Recognition as a victim will only be beneficial to genuine victims who seek support and empowerment. An individual who reports a false allegation, either formally through the authorities, or informally through other outlets, would not be automatically believed, and this will protect the wellbeing of, and represent compassion towards the accused, who could be a victim of a false allegation. At the same time, the reporter and potential victim will be considered credible, believable, but not automatically believed. This represents a compassionate view on both sides, and neither party are disempowered or over-empowered. The potential victim will be offered support to access the choices available to them, but they will still be treated as an agent. The 'victim' title may present them with additional opportunities and access to support that would not otherwise be available to them, but this would not be advantageous to any individual who is entirely falsifying a claim to victimhood, as

this support, such as counselling, advocacy or enabling services will only benefit someone who is in need of this support.

Rescuer/Recogniser: V3 x C3 = P9

Potential Victim: V2 x C3 = P6

Alleged Perpetrator: V2 x C3 = P6



A compassionate approach acknowledges that anyone can be a victim. By respecting victims as agents, and acknowledging the credibility of their account, we can ensure that the act of labelling someone as a victim will neither diminish their ability to do things with their speech, nor apply to it any special status which would over-empower this individual. This allows for examination of victim-behaviour without victim-blaming.

A compassionate approach allows for fairness for the victim, the potential victim and the accused party. Using the term 'reporter' places the potential victim in a position between 'victim' and 'complainant', while leaving the perpetrator in a position to provide an equally credible defence.

With regard to the issue of the different connotations assigned to 'victim' throughout society, there is no single way to resolve the wide variations in the use or understanding of the connotations of this word. If the word is used negatively, it will be associated with negative ideas, and consequently used to convey negative ideas. However, if a compassionate and empowering approach

to victimhood is adopted by those who have authority in a relevant field, e.g. police and legal professionals, the use of the 'victim' label will begin to take on a more neutral association insofar as positive and negative connotations are concerned. If victim status is no longer associated with gaining power, being disempowered, or indicating that a person is less powerful than others, and is used by those with relevant authority simply to label a person who is recognised as having been wrongfully harmed, this could become the predominant meaning of the word. When used by people with relevant authority, it is likely that the perlocutionary effect would be to influence the understanding and the use of the word 'victim' for members of wider society.

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