

## Shame and Criminal Victimization: A Reappraisal

Conservative thinkers have assailed the disappearance of shame from American life, correctly noting the terrible consequences of this retreat. Shameless individuals, no longer fearful of social disapproval, now race to redefine the lowest common denominator, destroying the few remaining standards for public conduct in the process. When confronted, they denounce their critics as censors, the most damning charge one can make in this climate of relativism and tolerance. This debasement of public life has been accompanied by an equally disheartening corruption of private character. Shame is a powerful incentive for the cultivation of individual virtue, as a virtuous character is the best guarantee against shameful conduct; in the absence of shame, the only enticement to honorable behavior is the fear of legal penalty—a poor substitute, as the skyrocketing rate of drug abuse shows. In light of these consequences, it is clear that society has a compelling interest in promoting the restoration of shame to daily life.

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The argument is well reasoned, and William Bennett and his ilk are to be lauded for their efforts to reclaim the civic sphere. But given the expansiveness of their goals, it is curious that they adopt such a narrow definition of shame. The shame of which they speak is the shame associated with a voluntary act which the actor knows to be socially proscribed, but this shame—the trespasser's shame—is not the only form. There is, for example, the shame that disabled persons once felt because of a belief that affliction reflected divine disapproval. Disability shame once inspired malformed individuals to pursue excellence in some area of human endeavor, in hopes of easing God's harsh judgment. Even the non-believing were spurred to action by the assumption of a link between deformity and divine retribution, as the reproach of the religious minded goaded these individuals into socially beneficial undertakings. Sadly, disability shame has been abolished from American life; social engineering efforts like the ADA and changed attitudes about the nature of God have prompted the adoption of more 'progressive' attitudes towards the bent and crippled, and most disabled persons now lead lives as undistinguished as those of their whole and healthy neighbors.

Disability shame is not the only form of shame exiled from American life by social activism. During the 1960s, feminist reformers struggled against the many burdens imposed upon women. Though their objectives were sensible, their remedies often reflected a fundamental misunderstanding of the nature of civil society, a tendency most apparent in the feminist response to the problem of crime. The stigmatizing of victims of criminal behavior played an important role in deterring crime throughout human history, but in their zeal for reform, feminist activists rejected the possibility that this stigma might have social value. Instead, they saw it as simply another mechanism for subjugating women, and so they set about overturning the long held belief that there must be a penalty attached to criminal victimiza-

tion. Only a few forward thinking individuals opposed this assault on tradition; most Americans, caught up in the anything-goes atmosphere of the era, were happy to discard a doctrine that proposed such a high standard of individual accountability. Events of the past two decades have proven the critics correct: we now know that victim shame, the shame associated with involuntary participation in a socially proscribed act, played a crucial role in the enforcement of community standards, and its disappearance has hastened the collapse of public life.

**Individual behavior can be understood as the process of selecting among a range of possible levels of victimization**

There are several mechanisms by which the stigmatizing of crime victims contributes to the greater social good, the most immediate being the effect that the possibility of stigmatization has upon the behavior of potential victims. Rational choice theory tells us that the likelihood that an individual will engage in behavior that might result in victimization is inversely related to the likelihood of being stigmatized as a result of criminal victimization, all other things being equal. Thus, the combination of

social stigmatizing and the physical, emotional, and financial discomfort arising from victimization by criminal behavior is a greater inducement to safe behavior than discomfort alone. This holds true for any sort of victimization, with some forms of crime, notably those involving sexualized behavior or other activities with associated religious or moral content, being especially good candidates for deterrence through stigmatization.

In addition to promoting safer behavior on the part of potential victims, the threat of victim shame also encourages these individuals to agitate for policies and practices that reduce the possibility of being victimized. Individual behavior can be understood as the process of selecting among a range of possible levels of victimization, with any particular act having associated with it a probability that victimization will result as a consequence of engaging in that act. This probability is a function of current public policy, and is also dependent upon the nature of existing social institutions. For a particular mix of policies and institutions, some activities, though not physically impossible, may be impractical because the resulting likelihood of victimization is too great. Because of this, self-maximizing potential victims have a strong incentive to press for policies that enhance the security of the community, as these reforms will tend to increase the set of practically possible behaviors available to potential victims by reducing the likelihood that an individual will experience victim shame. In this way, the possibility of victim shame inspires a stronger commitment on the part of the community to public safety and effective law enforcement.

Of course, not all of the socially advantageous benefits of victim shame stem from its effect on potential victims. Community opinion, whether good or bad, attaches to an individual through her associates, and as a result, we can distinguish two modes of shameful experience. First order

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(direct) shame is the shame that comes from involuntary participation in a socially proscribed act, while second order (indirect) shame comes from association with an individual suffering first order shame. Victims tend to be among the least influential members of a community, making it far more likely that individuals in a position of authority, those with the greatest influence in shaping policies and institutions, will suffer indirect, rather than direct, shame. Economic logic tells us that the likelihood these individuals will pursue victimization-reducing reforms is in direct proportion to the likelihood that these individuals will experience second order shame; by eliminating the possibility of victim shame, reformers reduced the likelihood that persons in authority will experience indirect shame, and thereby reduced the incentive for these persons to pursue policies that reduced the possibility of criminal victimization. Any review of trends in crime-related legislation over the past half century shows this to be the case. As late as the 1950s, legislators showed great concern for the safety of potential victims. Extensive civil and criminal codes governed many forms of behavior, with special attention paid to those, like contraception, miscegenation, and sexual deviation, believed to be gateways to victimization. With the abolishment of victim shame, interest in these matters waned, and the past two decades have been characterized by a legislative focus on more glamorous criminal activity, like terrorism and drug trafficking.

The possibility of indirect shame reduces the individual propensity to commit criminal acts, as well. Typically, the victim's pain and suffering are externalities from the perspective of the assailant; that is, the perpetrator has little basis for sympathizing with the subjective experience of the victim. This absence of any basis for empathy is significant, as research into criminal motivation shows that those individuals who are inclined to commit socially proscribed acts are less likely to do so if they have a basis for empathizing with a potential victim. In a culture in which victim stigmatization is the norm, there exists the possibility that a potential assailant may experience indirect shame through his own association with a victim. In consequence, potential assailants are more likely to have internalized the costs associated with victimization, making them more sympathetic to potential victims, and less likely to commit victim-focused crimes.

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The relationship between a declining social propensity to shame criminal victims and increasing rates of criminal activity is supported by the statistical evidence, with the post-war increase in criminal activity in American society closely paralleling the success of the feminist effort to eradicate victim shame. Of course, some skeptics argue that the marked decline in reported rates of criminal activity in recent years proves that any such link is weak when compared to the relationship between criminal activity and the rate of GDP growth. This reasoning ignores the fact that the past decade has been characterized by a growing willingness on the part of

mainstream society to stigmatize those groups that have, historically, been most likely to commit crimes and to be victimized by crimes. Though this stigmatization has taken place as part of a broader policy initiative aimed at fostering greater individual accountability on the part of the poor and members of minority communities, it has had the unintended but pleasing additional consequence of reducing the rate of criminal activity.

In this way, the abolition of victim shame produced an increase in criminal victimization, eroded the community's commitment to public safety, and contributed to a greater propensity on the part of individuals to commit criminal acts against others. While the self-esteem of a few has been protected, countless more individuals have been victimized as a result of this scheme. Given these results, it is clear that this disastrous experiment must be reversed. This will be no easy task, as there are many powerful factions with an interest in preserving the status quo. Therapists, trauma nurses, and grief counselors—all of them depend upon the perpetuation of a mindset that fosters the creation of more victims. Still, a carefully conducted campaign may be able to reverse the mistakes of the past. Any such program must be pursued on two fronts: the veil of privacy drawn around victims of crime must be lifted, and measures discouraging victimization must be instituted.

**...the community must be made aware of the victims in its midst**

Before stigmatization can take place the community must be made aware of the victims in its midst. Towards this end, laws and administrative rules that guarantee the privacy of victims must be immediately reversed, and victim related information made readily available. The Internet is a fantastic tool for distributing materials of this sort: searchable online databases like those already in place for disseminating information about convicted sexual predators could also provide free access to victim data. Billboards, milk cartons, and advertising on public transit have all proven to be effective means of broadcasting law enforcement's message, and should be employed, as well.

The success of the program depends upon enlisting the mass media in this effort. Appeals to the broadcasting community's civic spirit will not prompt changes to established practices; law enforcement officials must be creative in their outreach efforts. One promising idea is a variation of the perp walk: law enforcement assistance to a victim could be made dependent upon the victim's willingness to walk a gauntlet of cameras, a practice that would guarantee prominent coverage on the nightly news. And just as there are television programs dedicated to publicizing the deeds of criminals, similar shows should expose their victims. "America's Most Willing," would offer scathing profiles of these persons, with care taken to highlight the self-defeating behavior that makes victimization possible.

Unfortunately, drawing public attention to the victims of crime will not be enough to restore victim shame to American society. Ours is a celebrity-

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obsessed culture, and many individuals would willingly expose themselves to the possibility of criminal victimization in exchange for a few moments in the spotlight. Some might even go so far as to intentionally arrange their own victimization, in order to gain the associated media attention. To deter this possibility, criminal victimization must be made an experience to be avoided at any cost; the full resources of the state should be deployed in an effort to disincentivize criminal victimization. Government subsidies like food stamps and Medicare must be made dependent upon a history free of victimization. Student loan eligibility, currently conditional upon a drug-free history, should be linked to victim-free status, too. Institutionalized delays in issuing marriage licenses, mandatory counseling for individuals seeking to wed crime victims, restricted access to public housing—all of these measures would promote an attitude of zero tolerance for the victims of crime. And this effort must be accompanied by an equally vigorous campaign aimed at denying victims the opportunity to profit from their experience. Just as criminals are not permitted to benefit financially from media treatments of their crimes, victims must not be allowed to reap any financial rewards from their victimization. Confiscated profits should be turned over to a charitable fund, perhaps one set aside for the families of law enforcement individuals killed during hostage rescue operations.

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Any discussion of reform must also address the possibility of reviving the scarlet letter. Though civil libertarians would likely declare any kind of mandatory apparel marking to be unconstitutional, there exist other possibilities almost as worthwhile. Special characters could be appended to the tax, social security, and other identifying numbers associated with victims, making it easy for individuals and institutions to recognize them. License plates and drivers licenses could be similarly modified, and private firms should be offered incentives to customize their own identity cards. There may be additional benefit in segregating victims within public settings, as well.

Free enterprise has a key role to play in this crusade. Private entities should be allowed to consider an individual's history of victimization when determining eligibility for benefits and services, and victim status must be made an allowable basis for employment discrimination. There is every reason to believe that these reforms will be well received by the business community: banks will welcome the opportunity to further differentiate their customer pool, and health insurers, only too aware of the financial costs associated with society's tolerant attitude towards victims, will rejoice at the cost-rationalizing consequences of this program. Credit card companies, in particular, must be encouraged to wield their institutional resources in such a way as to make victim status inconvenient and personally disruptive. As with any other policy matter, one can assume that an appropriate mix of tax incentives and regulatory relief will inspire private efforts far more effective than anything the state might attempt.



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