

Pace University

DigitalCommons@Pace

Pace Law Faculty Publications

School of Law

Fall 2020

Trauma-Centered Social Justice

Noa Ben-Asher

Elisabeth Haub School of Law at Pace University

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Civil Rights and Discrimination Commons](#), [Environmental Law Commons](#), [Law and Gender Commons](#), and the [Law and Race Commons](#)

Recommended Citation

Noa Ben-Asher, Trauma-Centered Social Justice, 95 Tul. L. Rev. 95 (2020),
<https://digitalcommons.pace.edu/lawfaculty/1169/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Trauma-Centered Social Justice

Noa Ben-Asher*

This Article identifies a new and growing phenomenon in the American legal system. Many leading agendas for gender, racial, and climate justice are centered on emotional trauma as the primary injury of contemporary social injustices. By focusing on three social justice movements—#BlackLivesMatter, #MeToo, and Climate Justice—the Article offers the first comprehensive diagnosis and assessment of how emotional trauma has become an engine for legal and policy social justice reforms. From a nineteenth century psychoanalytic theory about repressed childhood sexual memories that manifest in female hysteria, through extensive medicalization and classification in the twentieth century, emotional trauma has evolved and expanded into its current status at the center of our twenty-first century social justice movements.

The Article reveals how the rhetoric and logic of emotional trauma is increasingly used to articulate legal and policy claims for racial, gender, and climate justice and how the current understanding of trauma is connected to the concept of abuse of power. While recognizing the positive and generative effects of the growing understanding of emotional trauma, the Article explores some hidden costs of the enthusiastic embrace of the “age of trauma” in quests for social justice. The Article observes that the prominence of trauma may limit the scope of political and legal claims for gender, racial, and climate justice; and that it may shape and perpetuate wounded identities of those on behalf of whom legal claims for justice are made. As lawmakers and policymakers proceed in engaging the legal and political systems in claims for meaningful social justice, they ought to carefully assess the negative implications of a trauma-centered social justice.

I.	INTRODUCTION.....	96
II.	THE RISE OF MODERN TRAUMA.....	100
	A. <i>The Early Years of Trauma Theory</i>	100
	B. <i>From War Veterans to Sexual Violence Survivors</i>	102
	C. <i>The “Age of Trauma”</i>	105
III.	THE CENTRALITY OF TRAUMA IN SOCIAL JUSTICE MOVEMENTS	106
	A. <i>Sexual Trauma</i>	106

* © 2020 Noa Ben-Asher, Professor of Law, Elisabeth Haub School of Law at Pace University. For insightful conversations about this project I thank Mehrsa Baradaran, Sarale Ben-Asher, Gabby Blum, Bennett Capers, Brenda Cossman, Bridget Crawford, Joseph Fischel, Kris Franklin, Linda Green, Aya Gruber, Janet Halley, Gil Hochberg, Lolita Buckner Innis, Osamudia R. James, Ido Katri, Amy Levine, Margot Pollans, Jedediah Purdy, Raffi Resnick, and Simon Stern. For excellent research assistance I thank Olivia Brenner, Samantha Mortensen, and Gabrielle Treiling. I thank participants of *Talking about #BlackLivesMatter and #MeToo* at Wisconsin Law School (May 2019), and the participants of the *Provocations in Queer Legal Studies* conference at Yale University (September 2019).

1.	Abuse-of-Male-Power.....	107
2.	Sexual Violence Law.....	108
a.	Reforming Rape Law	108
b.	Reforming Sexual Harassment Law.....	110
B.	<i>Racial Trauma</i>	112
1.	Abuse-of-Racial-Power.....	116
2.	Police Violence Law.....	117
a.	Stop Militarizing Law Enforcement Act.....	118
b.	Mandatory Implicit Bias Training	119
C.	<i>Climate Trauma</i>	121
1.	Abuse-of-Power.....	123
a.	Human Abuse of Nature	124
b.	Human Abuse of Other Humans	126
2.	Climate Laws	127
a.	Endangered Species.....	127
b.	Future Generations: <i>Juliana v. United States</i>	129
IV.	ASSESSING TRAUMA-CENTERED JUSTICE.....	131
A.	<i>Narrow Grounds for Legal-Political Change</i>	131
1.	Gender Justice.....	131
2.	Racial Justice	133
3.	Climate Justice.....	135
B.	<i>Perpetuating Wounded Identities</i>	138
V.	CONCLUSIONS	141

I. INTRODUCTION

Trauma has become a defining characteristic of our times.¹ It is used abundantly to understand multiple domains—from self-help,² to

1. See generally Eric Wertheimer & Monica J. Casper, *Within Trauma: An Introduction*, in CRITICAL TRAUMA STUDIES: UNDERSTANDING VIOLENCE, CONFLICT, AND MEMORY IN EVERYDAY LIFE 1, 5 (Monica J. Casper & Eric Wertheimer eds., 2016) (noting that we increasingly rely on trauma to understand ourselves and the world around us and that trauma has become a focus of the humanities and social sciences). The author goes on to note that “the register of trauma is ever more frequently employed to account for understandings of ourselves, our actions, and the things that are done to us (and that we do to others).” *Id.*; see also Nancy E. Miller & Jason Tougaw, *Introduction: Extremities*, in EXTREMITIES: TRAUMA, TESTIMONY, AND COMMUNITY 1, 1-25 (Nancy K. Miller & Jason Tougaw eds., 2002) (discussing modern trauma).

2. See generally MARK WOLYNN, *IT DIDN’T START WITH YOU: HOW INHERITED FAMILY TRAUMA SHAPES WHO WE ARE AND HOW TO END THE CYCLE* (2017) (exploring the

religion,³ psychology,⁴ and brain science⁵ to name a few. Trauma has also become a central tenet in twenty-first century social justice movements seeking, among other goals, gender, racial, and climate justice. Many social justice movements today rely heavily on the rhetoric and logic of emotional trauma. A critical assessment of this growing phenomenon is necessary. This is the task of this Article.

This Article offers the first comprehensive diagnosis and assessment of how trauma has become the engine of three key social justice movements of our time: #BlackLivesMatter,⁶ #MeToo,⁷ and Climate Justice.⁸ Legal scholars have examined the significance of emotional trauma in specific areas of law,⁹ and some have critically

generational effects of trauma and how to end them); PETER A. LEVINE & ANN FREDERICK, *WAKING THE TIGER: HEALING TRAUMA* (1997) (noting that trauma is a part of life and analyzing how transformative it can be).

3. See generally MICHELLE WALSH, *VIOLENT TRAUMA, CULTURE, AND POWER: AN INTERDISCIPLINARY EXPLORATION IN LIVED RELIGION* (Nancy Ammerman et al. eds., 2017) (examining how trauma affects communal relationships and religious practices); TIRZAH FIRESTONE, *WOUNDS INTO WISDOM: HEALING INTERGENERATIONAL JEWISH TRAUMA* (2019) (examining how trauma affects communal relationships and religious practices); MICHAEL J. THATE, *THE GODMAN AND THE SEA: THE EMPTY TOMB, THE TRAUMA OF THE JEWS, AND THE GOSPEL OF MARK* (2019) (considering the Gospel of Mark as a story of trauma).

4. See generally MARK EPSTEIN, *THE TRAUMA OF EVERYDAY LIFE* (2013) (exploring Buddha's life as an example of trauma and growth); JUDY K. EEKHOFF, *TRAUMA AND PRIMITIVE MENTAL STATES: AN OBJECT RELATIONS PERSPECTIVE* (2019) (providing examples of how trauma can be used for personal growth).

5. See generally BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014) (examining an approach to trauma that heals the mind, brain, and body); DAVID SCHNARCH, *BRAIN TALK: HOW MIND MAPPING BRAIN SCIENCE CAN CHANGE YOUR LIFE & EVERYONE IN IT* (1st ed. 2018) (describing how mind mapping can be used to deal with trauma).

6. BLACK LIVES MATTER, <https://blacklivesmatter.com/> [<https://perma.cc/LH8Q-MAVT>] (last visited Nov. 10, 2020); *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/> [<https://perma.cc/SX2G-BLGL>] (last visited Nov. 3, 2020).

7. ME TOO, <https://metoomvmt.org/> [<https://perma.cc/29QQ-ZG5G>] (last visited Nov. 10, 2020); TIME'S UP, <https://www.timesupnow.com/> [<https://perma.cc/UZ6Y-S4MK>] (last visited Nov. 3, 2020).

8. See EARTH JUST., <https://earthjustice.org/> [<https://perma.cc/CBX8-QH24>] (last visited Nov. 3, 2020); GLOB. JUST. ECOLOGY PROJECT, <https://globaljusticeecology.org/climate-justice/> [<https://perma.cc/5V6R-C2FD>] (last visited Nov. 3, 2020).

9. See generally Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399 (2019) (examining why the justice system discounts women's credibility); Mark A. McCormick-Goodhart, *Leaving No Veteran Behind: Policies and Perspectives on Combat Trauma, Veterans Courts, and the Rehabilitative Approach to Criminal Behavior*, 117 PA. ST. L. REV. 895 (2013) (discussing the jurisdictional differences among Veteran Treatment Courts in the United States); Mika'il DeVeaux, *The Trauma of the Incarceration*

considered emotional trauma as it relates to gender stereotypes, morality, or ethics.¹⁰ Legal scholars have also explored the implications of #MeToo,¹¹ #BlackLivesMatter,¹² and Climate Justice.¹³ Yet a comprehensive account of how trauma has shaped current conceptions of social and legal justice is lacking.

Experience, 48 HARV. C.R.-C.L. L. REV. 257 (2013) (arguing that incarceration causes trauma); Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457 (2016) (discussing the effect psychological trauma has on one who seeks asylum in U.S. immigration courts); Stuart L. Lustig, *Symptoms of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 HASTINGS INT'L & COMPAR. L. REV. 725 (2008) (examining the commonness of PTSD among asylum seekers); Taimie L. Bryant, *Trauma, Law, and Advocacy for Animals*, 1 J. ANIMAL L. & ETHICS 63 (2006) (arguing that exposing violence against animals is a traumatizing form of advocacy); Yxta Maya Murray, *Rape Trauma, the State, and the Art of Tracey Emin*, 100 CALIF. L. REV. 1631 (2012) (addressing the problems of the Rape Trauma Syndrome model and making suggestions for rape law reform).

10. Jeannie Suk, *The Trajectory of Trauma: Bodies and Minds of Abortion Discourse*, 110 COLUM. L. REV. 1193, 1201-06, 1214-23 (2010) (tracing ideas of trauma from the feminist movement back to Freud and criticizing the emergence of trauma narratives in abortion laws); Saira Mohamed, *Of Monsters and Men: Perpetrator Trauma and Mass Atrocity*, 115 COLUM. L. REV. 1157, 1177-98 (2015) (arguing that perpetrator trauma exists and merits attention and tracing a cultural evolution in the concept of trauma from a psychological category to a moral one).

11. See generally Ira C. Lupu & Robert W. Tuttle, *#MeToo Meets the Ministerial Exception: Sexual Harassment Claims by Clergy and the First Amendment's Religion Clauses*, 25 WM. & MARY J. RACE GENDER & SOC. JUST. 249 (2019) (exploring the intersection between sexual harassment law and the ministerial exception); Leslie Y. Garfield Tenzer, *#MeToo, Statutory Rape Laws, and the Persistence of Gender Stereotypes*, 2019 UTAH L. REV. 117 (discussing the unintended consequences of the #MeToo movement); Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 YALE L.J.F. 105 (2018) (arguing that sexual harassment law should develop a reasonable person standard that accounts for different intersectional and multidimensional identities); Lesley Wexler et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45 (discussing the cultural shifts and individual adjustments that need to occur for the #MeToo movement to have a successful transformation on society); Melissa Murray, *Consequential Sex: #MeToo, Masterpiece Cakeshop, and Private Sexual Regulation*, 113 NW. U. L. REV. 825 (2019) (examining the increase in private regulation seen in the #MeToo movement due to the lack of adequate state regulation).

12. See, e.g., Bridgette Baldwin, *Black, White, and Blue: Bias, Profiling, and Policing in the Age of Black Lives Matter*, 40 W. NEW ENG. L. REV. 431, 431 (2018); Helen E. White, Note, *Making Black Lives Matter: Properly Valuing the Rights of the Marginalized in Constitutional Torts*, 128 YALE L.J. 1742, 1745-52 (2019); Nicole D. Porter, *Expanding Public Safety in the Era of Black Lives Matter*, 70 U. MIA. L. REV. 533, 540-53 (2016); Osagie K. Obasogie & Zachary Newman, *Black Lives Matter and Respectability Politics in Local News Accounts of Officer-Involved Civilian Deaths: An Early Empirical Assessment*, 2016 WIS. L. REV. 541, 542-45; Samuel H. Pillsbury, *Black Lives Matter*, 13 OHIO ST. J. CRIM. L. 567, 567-69 (2016).

13. See generally JEDEDIAH PURDY, *AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE* (2015) (proposing a new form of politics that will help achieve a more stable

To concretize the phenomenon of what this Article calls “trauma-centered social justice,” consider three moments that have become engraved in collective public memory: (1) the comment of Dr. Christine Blasey Ford while testifying about Justice Brett Kavanaugh’s past sexual violence toward her: “neurotransmitter encodes memories into the hippocampus, and so the trauma-related experience then is kind of locked there”;¹⁴ (2) the anguish of Lesley McSpadden after County Prosecutor Robert McCulloch announced the decision not to prosecute White Ferguson police officer Darren Wilson who fatally shot her unarmed eighteen-year-old son, Michael Brown Jr.;¹⁵ and (3) images of climate refugees from Central America, detained at the southern border, separated from their families.¹⁶ What unites these singular, real, and distinctive instances of human suffering is that they have all been frequently understood through the lens of emotional trauma and have energized social justice movements, activism, and claims.

This Article names, frames, and examines the phenomenon of trauma-centered social justice. While recognizing the generative effects of growing social and scientific understandings of trauma, the Article sheds new light on two hidden costs of an enthusiastic embrace of trauma as a primary injury in a legal quest for social

economic future); Margot J. Pollans, *Food Systems*, in CLIMATE CHANGE, PUBLIC HEALTH, AND THE LAW 266 (Michael Burger & Justin Gundlach eds., 2018) (analyzing the relationship between climate change and public health law in the context of food security and sovereignty).

14. Maeve Reston, *I Will Never Forget: Christine Blasey Ford Recounts Her Trauma in Raw Testimony*, CNN (Sept. 27, 2018), <https://www.cnn.com/2018/09/27/politics/christine-blaysey-ford-raw-testimony/index.html> [<https://perma.cc/72Q9-ARPM>]. See also Noa Ben-Asher, *Of Trauma and Power: Celebrity Sexual Misconduct Tribunals*, 6 CRITICAL ANALYSIS L. 145, 157-61 (2019) (comparing the tribunals of Brett Kavanaugh and Avital Ronell and arguing that increasingly an abuse-of-power framework is taking hold in the law and politics of sexual misconduct).

15. DeNeen L. Brown, *For the Family of Michael Brown, Grief, Sorrow and Anger Play Out in Public Eye*, WASH. POST (Dec. 1, 2014), https://www.washingtonpost.com/politics/for-the-family-of-michael-brown-grief-sorrow-and-anger-play-out-in-public-eye/2014/12/01/4e919494-7294-11e4-8808-afaa1e3a33ef_story.html?noredirect=on [<https://perma.cc/FBB9-LDX7>].

16. See, e.g., Erik Kobayashi-Solomon, *Agriculture, Climate Change, and The Southern Border Crisis*, FORBES (Apr. 24, 2019, 10:51 AM), <https://www.forbes.com/sites/erikkobayashisolomon/2019/04/24/climate-change-agriculture-and-the-southern-border-crisis/#377f76a031c0> [<https://perma.cc/J4HZ-SB9P>]; Jonathan Blitzer, *How Climate Change Is Fuelling the U.S. Border Crisis*, NEW YORKER (Apr. 3, 2019), <https://www.newyorker.com/news/dispatch/how-climate-change-is-fuelling-the-us-border-crisis> [<https://perma.cc/3UWK-F36V>].

justice. First, the prominence of trauma in claims for social justice may end up limiting the scope of legal claims for gender, racial, and climate justice. Second, the reliance on trauma may shape and perpetuate wounded legal and political identities of those on behalf of whom legal claims for justice are made.

The Article proceeds in three Parts. Part II examines the rise of trauma as a modern-scientific concept. From a nineteenth-century revolutionary theory about repressed childhood sexual memories that manifest in female hysteria—through extensive medicalization and classification in the twentieth century—the concept of “emotional trauma” has evolved and expanded into its current status at the center of twenty-first century social justice movements. Part III, the heart of this Article, examines the centrality of emotional trauma in current quests for social justice and its inter-connectedness with conceptions of abuse of power in three contemporary social justice contexts: #MeToo (subpart III.A), #BlackLivesMatter (subpart III.B), and Climate Justice (subpart III.C). Subpart III.A examines how the idea that sexual trauma is the consequence of abuse-of-male-power informs sexual violence reforms. Subpart III.B explores how the idea that racial trauma is the consequence of abuse-of-police-power against Black people has informed police reforms. Subpart III.C examines how the idea that climate trauma is the common consequence of abuse-of-power has informed recent climate litigation. Part IV considers some costs of relying on trauma in social justice advocacy. It argues that the trauma framework may limit our legal and political imagination (subpart IV.A) and that it may reproduce wounded legal and political identities (subpart IV.B).

II. THE RISE OF MODERN TRAUMA

A. *The Early Years of Trauma Theory*

Accounts of human *suffering* have existed for millennia,¹⁷ but the concept of emotional trauma is relatively new. In the late-

17. See, e.g., *Genesis* 3:16 (King James) (“Unto the woman he said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee.”); *The Four Noble Truths*, BBC, https://www.bbc.co.uk/religion/religions/buddhism/beliefs/fournobletruths_1.shtml [https://perma.cc/WKU3-84CT] (Nov. 17, 2009) (“I teach suffering, its origin, cessation and path. That’s all I teach.”); *Mark* 15:34 (New International) (“And at three in the afternoon Jesus

nineteenth century, the French neurologist Jean-Martin Charcot studied hysteria,¹⁸ a condition diagnosed in women, which included symptoms such as sudden paralysis, amnesia, sensory loss, and convulsions.¹⁹ Although for centuries it was thought that hysteria originated in the uterus,²⁰ Charcot hypothesized that the source of these symptoms is psychological, not physical.²¹

The young Sigmund Freud, who interned with Charcot and admired his work, later developed his own thesis about the psychic origins of hysteria with his medical colleague, Josef Breuer.²² Together, Freud and Breuer developed their “seduction theory,” according to which, in childhood, female hysterics had suffered a *traumatic sexual event* involving an adult, and that event was repressed by the patient into the unconscious mind.²³ They believed that through talking with the therapist, the patient could recall the traumatic event and heal.²⁴ Freud quickly abandoned that theory²⁵ and instead hypothesized that the repressed trauma was actually childhood

cried out in a loud voice, ‘Eloi, Eloi, lema sabachthani?’ . . . ‘My God, my God, why have you forsaken me?’”).

18. See generally CATHY CARUTH, UNCLAIMED EXPERIENCE: TRAUMA, NARRATIVE, AND HISTORY (1996) (explaining some of Freud’s theories of trauma, including his model of castration trauma and model of traumatic neurosis); RUTH LEYS, TRAUMA: A GENEALOGY (2000) (describing Charcot and Freud’s belief that hysteria was caused by an emotional shock); JOSEF BREUER & SIGMUND FREUD, *Studies on Hysteria* (James Strachey ed. & trans., 1957) (detailing the experiences of patients suffering from hysteria and outlining Freud & Breuer’s theories for its cause); RICHARD J. McNALLY, REMEMBERING TRAUMA (2005) (outlining the different ways in which victims remember traumatic events).

19. See CARUTH, *supra* note 18.

20. See *id.*

21. ALLAN YOUNG, THE HARMONY OF ILLUSIONS: INVENTING POST-TRAUMATIC STRESS DISORDER 5 (1995).

22. Freud was especially interested in ‘Anna O.’ whom Breuer had begun to treat in 1880. See generally RICHARD A. SKUES, SIGMUND FREUD AND THE HISTORY OF ANNA O.: REOPENING A CLOSED CASE (2006) (providing a history of Freud and Breuer’s study of the Anna O. case and arguing that their analysis and methods were fundamentally flawed).

23. BREUER & FREUD, *supra* note 18, at 129-34.

24. *Id.* See also generally JOHN FLETCHER, FREUD AND THE SCENE OF TRAUMA (1st ed. 2013) (describing Freud’s development and subsequent abandonment of his seduction theory).

25. Letter from Sigmund Freud to Wilhelm Fliess (Sept. 21, 1897), in THE COMPLETE LETTERS OF SIGMUND FREUD TO WILHELM FLIESS 1887-1904, 264, 264-66 (Jeffrey Moussaieff Masson ed. & trans., 1985).

fantasies of sexual seduction.²⁶ This theory would eventually lead Freud to his famous Oedipus Complex.²⁷

Overall, in the early years of what would become the science of psychoanalysis, male researchers associated trauma with femininity and diagnosed it through a range of involuntary symptoms, especially hysteria. A traumatic and repressed event that allegedly occurred in the female patient's past was understood to be the cause of her emotional distress. The task of the male therapist was to reveal the repressed events and heal the patient.

B. From War Veterans to Sexual Violence Survivors

In the course of the twentieth century, the study of emotional trauma expanded from Freudian psychoanalysis to a concrete tool of analysis and treatment after two World Wars and the Vietnam War left soldiers with severe symptoms of emotional distress (also referred to as "war neuroses" or "shell shock").²⁸ Public awareness of combat-related post-traumatic stress disorder (PTSD) increased in the twenty-first century.²⁹ The medical diagnosis of PTSD as a psychic harm caused by war was established by psychiatrists after the Vietnam experience.³⁰ The 1980 edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) was the first to list PTSD as a medical diagnosis.³¹

26. FLETCHER, *supra* note 24, at 88.

27. *Id.* at 123. For a fascinating account of Freud's anxiety about Jewishness, gender, and sexuality, see generally UNHEROIC CONDUCT: THE RISE OF HETEROSEXUALITY AND THE INVENTION OF THE JEWISH MAN (Daniel Boyarin & Chana Kronfeld eds., 1997) (analyzing the history of gender norms in Jewish society).

28. See generally BEN SHEPHARD, A WAR OF NERVES: SOLDIERS AND PSYCHIATRISTS IN THE TWENTIETH CENTURY (2000) (exploring the psychological impact of twentieth-century wars on soldiers); EDGAR JONES & SIMON WESSELY, SHELL SHOCK TO PTSD: MILITARY PSYCHIATRY FROM 1900 TO THE GULF WAR (2005) (evaluating past military psychiatric treatment in the context of modern medical knowledge and warfare technology).

29. For contemporary accounts of war-related PTSD, see generally S.M. BONEY IV, COMBAT MEDIC: A SOLDIER'S STORY OF THE IRAQ WAR AND PTSD (Julie Boney ed., 2016) (detailing a medic's experience in the Iraq War and his PTSD that followed); LEAH WIZELMAN, WHEN THE WAR NEVER ENDS: THE VOICES OF MILITARY MEMBERS WITH PTSD AND THEIR FAMILIES (2011) (discussing how common PTSD is in military members and the continuous effect it has on their lives, their spouses, and their families).

30. See generally ROBERT JAY LIFTON, HOME FROM THE WAR: VIETNAM VETERANS: NEITHER VICTIMS NOR EXECUTIONERS (1973) (analyzing the Vietnam War and its effect on the emotional wellbeing of its veterans).

31. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 236 (3d ed. 1980) (describing the cause of PTSD as exposure to a "stressor" that

Emotional distress of civilians as well, especially after the holocaust and other genocides, is now viewed as intergenerational trauma.³² PTSD is recognized both as a private and a national diagnosis.³³

Since the 1970s, many feminist reformers and theorists have embraced the idea that violence against women causes trauma.³⁴ In particular, sexual violence is understood as a leading cause of sexual trauma in women.³⁵ Advocates and legal reformers have created

would be markedly distressing to almost anyone, one “that is generally outside the range of usual human experience”); see also John P. Wilson, *The Historical Evolution of PTSD Diagnostic Criteria: From Freud to DSM-IV*, 7 J. TRAUMATIC STRESS 681, 691-93 (1994) (providing a brief history of PTSD’s inclusion in the diagnostic and statistics manual of mental disorders).

32. See, e.g., EMILY WANDERER COHEN, *FROM GENERATION TO GENERATION: HEALING INTERGENERATIONAL TRAUMA THROUGH STORYTELLING* (Cynthia Kane ed., 2017) (telling stories to illustrate how the Holocaust still affects each new generation); MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998) (detailing the ways in which societies attempt to heal from genocides and other mass casualty events).

33. See, e.g., EDWARD TICK, *WAR AND THE SOUL: HEALING OUR NATION’S VETERANS FROM POST-TRAUMATIC STRESS DISORDER* 151-72 (1st ed. 2005) (describing PTSD as a national diagnosis).

34. Suk, *supra* note 10, at 1200 (“Beginning in the 1970s, some feminists reinvested hysteria with new meaning and purpose, forging and promoting the idea of trauma with which legal actors are now familiar. They deemed violence and coercion, or their potential, to be constitutive of women’s experience of subordination.”); see also JUDITH HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR* 28-32 (2015 ed., 2015) (describing the history of public perception of domestic abuse); SEDELLE KATZ & MARY ANN MAZUR, *UNDERSTANDING THE RAPE VICTIM: A SYNTHESIS OF RESEARCH FINDINGS* 198-99 (1979) (studying the psychological impacts of rape on female victims); VERNON R. WIEHE & ANN L. RICHARDS, *INTIMATE BETRAYAL: UNDERSTANDING AND RESPONDING TO THE TRAUMA OF ACQUAINTANCE RAPE* 32 (1995) (studying the phenomenon of acquaintance rape and offering possible modes of intervention); Jacqueline M. Golding, *Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-Analysis*, 14 J. FAM. VIOLENCE 99, 116 (1999) (noting that eleven studies of PTSD among IPV survivors demonstrated a weighted mean prevalence of 63.8%); Loring Jones et al., *Post Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence: A Review of the Research*, 2 TRAUMA VIOLENCE & ABUSE 99, 100 (2001) (finding that a large proportion of female domestic abuse victims exhibit symptoms of PTSD); Sara E. Ullman et al., *Psychosocial Correlates of PTSD Symptom Severity in Sexual Assault Survivors*, 20 J. TRAUMATIC STRESS 821, 822 (2007) (finding that trauma is associated with “attributions of self-blame”).

35. The 1992 edition of *Our Bodies, Ourselves*, a leading sexuality book of the women’s movement, declared for the first time, as part of its definition of violence against women, that “[r]ape is always traumatic.” BOSTON WOMEN’S HEALTH BOOK COLLECTIVE, *THE NEW OUR BODIES, OURSELVES: A BOOK BY AND FOR WOMEN* 135 (1992).

concepts such as rape trauma syndrome (RTS)³⁶ and battered woman's syndrome (BWS)³⁷ to defend women who harm their abusers in self-defense or after provocation.³⁸ Some have argued that the feeling of objectification is traumatic.³⁹ The diagnostic criteria for PTSD now includes "[e]xposure to actual or threatened death, serious injury, or sexual violence."⁴⁰ Neuroscientists increasingly study how sexual trauma affects the brain⁴¹ and how a survivor of sexual trauma may be triggered.⁴² There is no doubt that feminist activism and

36. Suk, *supra* note 10, at 1204-05 ("The most significant legal impact has been the acceptance in most states of RTS evidence in rape prosecutions to bolster an accuser's claim that rape occurred, or to explain how her behavior was consistent with having been raped.").

37. See generally CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE, AND THE LAW* (1989) (detailing the injustices faced by female victims of domestic abuse); ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000) (describing the history of the American legal system's handling of domestic violence cases); LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (1984) (studying the characteristics exhibited by female victims of domestic abuse and outlining the theory of 'learned helplessness'); LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989) (recounting the stories of female victims of domestic abuse); David L. Faigman & Amy J. Wright, *The Battered Woman Syndrome in the Age of Science*, 39 ARIZ. L. REV. 67, 68 (1997) (finding that the use of BWS in court reflects the reception of Walker's work); Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379 (1991) (suggesting legal reforms to aid battered women who pursue self-defense claims); Regina A. Schuller & Neil Vidmar, *Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature*, 16 LAW & HUM. BEHAV. 273 (1992) (analyzing the use of battered women syndrome evidence in legal proceedings).

38. See sources cited *supra* note 37.

39. Haley Miles-McLean et al., *"Stop Looking at Me!" Interpersonal Sexual Objectification as a Source of Insidious Trauma*, 39 PSYCH. WOMEN Q. 363, 363 (2015) ("[T]he experience of sexual objectification is a type of gender-based discrimination with sequelae that can be conceptualized as insidious trauma. Clinicians may consider the impact of these everyday traumatic experiences when working with women who have clinical symptoms but no overt trauma history.").

40. AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 271 (5th ed. 2013) (emphasis added) (noting that symptoms include "[r]ecurrent, involuntary, and intrusive . . . memories"; traumatic nightmares or upsetting dreams with content related to the events; "[d]issociative reactions"; intense or prolonged distress after exposure to traumatic reminders; and "[m]arked physiological [reactivity]," such as increased heart rate, after exposure to traumatic reminders).

41. See e.g., VAN DER KOLK, *supra* note 5, at 1-3; Jonathan E. Sherin & Charles B. Nemeroff, *Post-Traumatic Stress Disorder: The Neurobiological Impact of Psychological Trauma*, 13 DIALOGUES CLINICAL NEUROSCIENCE 263, 263 (2011); see generally Katherine C. Hughes & Lisa M. Shin, *Functional Neuroimaging Studies of Post-Traumatic Stress Disorder*, 11 EXPERT REV. NEUROTHERAPEUTICS 275 (2011) (reviewing techniques being developed to apprehend emotional trauma through neuroimaging, such as tests that reveal increases in brain activity associated with post-traumatic stress disorder).

42. VAN DER KOLK, *supra* note 5, at 182.

reform since the 1970s have contributed significantly to the prominence of emotional trauma as the primary injury of social injustices.

C. *The “Age of Trauma”*

By the twenty-first century, the register of trauma is used for explaining small or large events in the lives of individuals and communities. Events such as 9/11, climate change, forced migration, genocide, and personal experiences of violence and loss are commonly understood through the lens of trauma. Trauma is now associated not only with bodily or psychical injuries but also with ethical or moral engagements of individual and legal systems.⁴³ It has been aptly suggested that we live in an “age of trauma.”⁴⁴

While psychiatric and medical approaches to trauma initially dominated the field of trauma studies, historians, cultural theorists, literary theorists, and social scientists have begun to pay critical attention to the prominence of trauma.⁴⁵ A growing body of literature now interrogates what it means to perceive injuries to bodies, minds, and communities as traumatic.⁴⁶

43. WERTHEIMER & CASPER, *supra* note 1, at 6 (citation omitted) (“[C]ritical trauma studies engages fundamental questions about our relationships with one another, the ‘natural’ world, and other species, with events, and with the very terms of our existence.”).

44. MILLER & TOUGAW, *supra* note 1, at 1.

45. See generally E. ANN KAPLAN, *TRAUMA CULTURE: THE POLITICS OF TERROR AND LOSS IN MEDIA AND LITERATURE* (2005) (analyzing not only how trauma affects the individual but also an entire nation); LEYS, *supra* note 18 (outlining the history of the concept of trauma); CATHY CARUTH, *TRAUMA: EXPLORATIONS IN MEMORY* (1995) (examining how trauma affects psychoanalytical theory and other cultural aspects); DOMINICK LACAPRA, *HISTORY AND MEMORY AFTER AUSCHWITZ* (1998) (analyzing the relationship between history and memory); ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* (1985) (analyzing physical suffering and its relationship with religion, politics, philosophy, and other aspects of culture); Maurice E. Stevens, *Trauma’s Essential Bodies*, in *CORPUS: AN INTERDISCIPLINARY READER ON BODIES AND KNOWLEDGE* (Monica J. Casper & Paisley Currah eds., 2011) (exploring the relationship between trauma and the human body); NIKOLAS ROSE & JOELLE M. ABI-RACHED, *NEURO: THE NEW BRAIN SCIENCES AND THE MANAGEMENT OF THE MIND* (2013) (exploring the concept of personhood through neurobiology).

46. See, e.g., WERTHEIMER & CASPER, *supra* note 1, at 3 (“The field [of critical trauma studies] seeks to reveal the processes by which things that happen are denoted as trauma. Critical trauma studies asks: What does it mean to use the discourse of trauma? To represent events as ruptures, breaks, and other deviations from the normal?”).

III. THE CENTRALITY OF TRAUMA IN SOCIAL JUSTICE MOVEMENTS

Claims for gender, racial, and climate justice often depict a causal connection between trauma and abuse-of-power. The injury—trauma—and its cause—abuse-of-power—have become focal points of social justice projects in the last several decades. This linking of trauma and abuse-of-power in legal and policy social justice platforms has been under-theorized so far. As this Part shows, in the context of gender, the trauma of vulnerable individuals—typically a woman or child—is posited as the consequence of the abuse-of-power of the exploiter, usually a man; in the context of race, the trauma of Black individuals or communities is understood as the consequence of the abuse-of-White-power; and in the context of climate change, the trauma of vulnerable humans and the planet are understood as the consequence of abuse-of-power of profit-driven individuals, corporations, or nations.

A. Sexual Trauma

The premise that trauma is the likely effect of sexual violence captures the zeitgeist of our times.⁴⁷ Sexual trauma is understood as the primary injury of survivors of sexual violence. This is reflected in philosophical,⁴⁸ film,⁴⁹ literary,⁵⁰ and TV representations of sexual

47. See, e.g., HERMAN, *supra* note 34, at 32 (“[I]t [is] clear that the psychological syndrome seen in survivors of rape, domestic battery, and incest was essentially the same as the syndrome seen in survivors of war. . . . There is war between the sexes. Rape victims, battered women, and sexually abused children are its casualties.”). Even those who emphasize workplace harassment that is not sexual view trauma as the main injury of sex-based harassment. See, e.g., Vicki Schultz, *Open Statement on Sexual Harassment from Employment Discrimination Law Scholars*, 71 STAN. L. REV. ONLINE 17, 20 (2018) (“Harassment includes many forms of sexism and abuse, not just sexual misconduct. Recent reports have focused mostly on unwanted sexual advances These acts seriously harm careers and lives. They humiliate victims, brand them as inferiors in the workplace, drive them away from jobs and industries they love, and cause lasting psychological anguish and trauma. The same is true of many other nonsexual forms of sexism and abuse women experience at work simply because they are women.”).

48. Martha Nussbaum’s “capabilities approach,” which identifies prerequisites for adequate human functioning, has included “[n]ot having one’s emotional development blighted by overwhelming fear and anxiety, or by traumatic events of abuse or neglect.” MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 79 (2000).

49. See, e.g., *THE HUNTING GROUND* (Radius TWC & CNN Films 2015) (exploring in a documentary film sexual violence on college campuses and featuring trauma as the main injury of survivors); *LEAVING NEVERLAND* (HBO 2019) (featuring three child survivors of Michael Jackson’s sex abuse (followed by an Oprah special)).

abuse,⁵¹ as well as in news and on social media platforms.⁵² Sexual violence is often characterized as abuse-of-power.

1. Abuse-of-Male-Power

The link between sexual trauma and abuse-of-power is not new. Since the 1970s, Catherine MacKinnon and other feminist legal reformers have advanced the idea that abuse-of-power, the primary structure of gender injustice, causes sexual trauma.⁵³ Sexual trauma has been the centerpiece of the feminist anti-subordination approach to law reform. Meaningful gender equality, under this approach, is only attainable by combating sexual exploitation in pornography, sex work, sexual harassment, and rape.⁵⁴ Although many feminists disagree,⁵⁵ this anti-subordination approach has gained force in the

50. See, e.g., generally ELIZABETH STROUT, *MY NAME IS LUCY BARTON* (2016) (presenting a moving narrative of the unfolding of traumatic childhood experiences and their shaping of self-perception in adulthood).

51. See, e.g., *Big Little Lies* (HBO 2017) (featuring a group of close friends living through various forms of male-inflicted trauma, including domestic violence and rape); *The Handmaid's Tale* (Hulu 2017) (presenting a dystopia, based on a novel by Margaret Atwood, in which a radical Christian sect takes over the United States, retracts many liberal rights, and forces traumatized women into assigned roles).

52. See, e.g., Gabriel H. Sanchez, *These Powerful Photos Show What Life is Like After a Sexual Assault*, BUZZFEED NEWS (Oct. 15, 2018, 4:58 PM), <https://www.buzzfeednews.com/article/gabrielsanchez/powerful-stories-from-survivors-of-sexual-assault> [<https://perma.cc/STD8-YFEK>].

53. For a taxonomy of feminist approaches, including anti-subordination feminism, see generally JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006).

54. See generally CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979) (arguing sexual harassment is a form of discrimination based on sex); CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (examining the sexual politics of everyday life and proposing a new feminist theory); Noa Ben-Asher, *How Is Sex Harassment Discriminatory?*, 94 NOTRE DAME L. REV. ONLINE 25 (2018) (discussing the problems of sexual harassment and the government's current approach at handling it); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515 (1982) (examining the alternatives to liberal feminism).

55. See, e.g., generally HALLEY, *supra* note 53 (offering a taxonomy of feminist approaches to legal theory and reform, including anti-subordination feminism, cultural feminism, sex-positive feminism, and equality feminism). Some have worried that it can perpetuate stereotypes about femininity and reproduce suffering. See, e.g., Anna North, *What I've Learned Covering Sexual Misconduct This Year*, VOX (Dec. 27, 2017, 1:10 PM), <https://www.vox.com/identities/2017/12/27/16803610/sexual-misconduct-harassment-reckoning-metoo> [<https://perma.cc/EE2M-R5EH>] ("When we think about sexual harassment, we can't think . . . how traumatic we think it ought to be. We have to think, also, of its effect on survivors' work, on their access to a workplace free from sex discrimination");

twenty-first century and has had a significant impact on feminist legal and policy reforms.

The link between abuse-of-power and trauma was recently voiced by Monica Lewinsky in reconsidering the events that led to the impeachment of President Bill Clinton in 1998.⁵⁶ While in the past Lewinsky repeatedly rejected the notion that President Clinton abused his power in his interaction with her, Lewinsky now characterizes Clinton's behavior as abuse-of-power and herself as a trauma survivor.⁵⁷ She credits the #MeToo movement for helping her revise her previous position and realize the exploitation and abuse-of-power, which she could not see before "[g]iven [her] PTSD and [her] understanding of trauma."⁵⁸ Lewinsky's personal shift of perspective reflects a broader societal shift to the now-dominant understanding of sex and power: powerful men abuse their power and cause sexual trauma. This premise often guides reforms regarding sexual violence.

2. Sexual Violence Law

a. Reforming Rape Law

Feminist reformers and theorists have invoked the abuse-of-power/trauma framework to criticize the now-leading standard in rape law: consent. Consent is a relatively new legal standard. In the eighteenth century, Blackstone defined rape as "carnal knowledge of a

Brenda Cossman et al., *Gender, Sexuality, and Power: Is Feminist Theory Enough?*, 12 COLUM. J. GENDER & L. 601, 613 (2003); Carine M. Mardorossian, *Toward a New Feminist Theory of Rape*, 27 SIGNS 743, 770-71 (2002); Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 ALB. L. REV. 973, 975 (1995); Holly Henderson, *Feminism, Foucault, and Rape: A Theory and Politics of Rape Prevention*, 22 BERKELEY J. GENDER L. & JUST. 225, 250 (2007); Martha Shaffer, *The Battered Woman Syndrome Revisited: Some Complicating Thoughts Five Years After R. v. Lavallee*, 47 U. TORONTO L.J. 1, 8-10 (1997); Melanie Randall, *Domestic Violence and the Construction of "Ideal Victims": Assaulted Women's "Image Problems" in Law*, 23 ST. LOUIS U. PUB. L. REV. 107, 121 (2004); Ben-Asher, *supra* note 14, at 156-57; Susan Stefan, *The Protection Racket: Rape Trauma Syndrome, Psychiatric Labeling, and Law*, 88 NW. U. L. REV. 1271, 1274 (1994).

56. Monica Lewinsky, *Monica Lewinsky: Emerging from "The House of Gaslight" in the Age of #MeToo*, VANITY FAIR, (Feb. 25, 2018), <https://www.vanityfair.com/news/2018/02/monica-lewinsky-in-the-age-of-metoo>.

57. *Id.* ("To be blunt, I was diagnosed several years ago with post-traumatic stress disorder, mainly from the ordeal of having been publicly outed and ostracized back then. My trauma expedition has been long, arduous, painful, and expensive. And it's not over.")

58. *Id.*

woman forcibly and against her will.”⁵⁹ Courts required prompt complaint and corroboration of unwillingness (by proof that the victim had resisted to the utmost).⁶⁰ In the 1960s, the Model Penal Code expanded this narrow concept of force to include nonviolent duress,⁶¹ but many states continued to define rape as a crime of physical violence.⁶² In the 1970s, another wave of reform eliminated procedural obstacles and protected victims from abusive cross-examination in the courtroom.⁶³ Today, as a drafter of the Model Penal Code has observed, it is broadly accepted that “‘no’ is always sufficient to establish non-consent, and . . . that force does not always have to be physical force—other coercive circumstances suffice.”⁶⁴

In the twenty-first century, as the connection between sexual trauma and abuse-of-power is solidifying, feminist legal reformers have criticized the consent standard in rape law. Catherine MacKinnon, for example, has claimed that sexual trauma and abuse-of-power are stronger indicators of sexual violence than the

59. 4 WILLIAM BLACKSTONE, COMMENTARIES *210.

60. Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. REV. 945, 947-48 (2004). See also STEPHEN J. SCHULHOFER, UNWANTED SEX: THE CULTURE OF INTIMIDATION AND THE FAILURE OF LAW 20 (1998) (“The code preserved the rules requiring a prompt complaint, corroboration of the victim’s testimony, and special cautionary instructions to the jury.”).

61. MODEL PENAL CODE § 213.1 (2) (a) (AM. L. INST., Proposed Official Draft 1962).

62. SCHULHOFER, *supra* note 60, at 1-10, 20-25.

63. *Id.* at 31, 33.

64. Stephen J. Schulhofer, *Reforming the Law of Rape*, 35 LAW & INEQ. 335, 342 (2017) (footnotes omitted) (“To be clear, even these basic points still are not universally accepted in United States law. We are still fighting these two elementary battles. But for the most part, these battles have been won.”). In many states, rape still requires both non-consent and some sort of force. *Id.* at 342-43, 343 n.49 (“listing Alabama, the District of Columbia, Kansas, Florida, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, and Washington as states that require both penetration without consent and without force” (citing CAROL E. TRACY ET AL., RAPE AND SEXUAL ASSAULT IN THE LEGAL SYSTEM 19-20 (2012))). In those states, sex without consent is not, in itself, a crime. *Id.* at 343 & n.50 (alterations in original) (“noting that in Massachusetts, the offense ‘encompass[es] two separate elements each of which must independently be satisfied . . . beyond a reasonable doubt . . . (1) . . . physical force, . . . nonphysical, constructive force, . . . or threats of bodily harm . . . and (2) at the time of penetration, there was no consent’” (quoting *Commonwealth v. Lopez*, 745 N.E.2d 961, 965 (Mass. 2001))); see also *id.* at 343 n.50 (alterations in original) (“[Thirty-one] American jurisdictions impose [criminal] liability on the basis of nonconsent alone, without requiring any added showing of force.” (quoting MODEL PENAL CODE 52-53 (AM. L. INST., Preliminary Draft No. 5, 2015))). Preliminary Draft No. 5 of the Model Penal Code from 2015 is no longer publicly available.

formalistic consent standard, which can be granted in uneven power situations.⁶⁵ MacKinnon characterized consent as “[d]issociation, . . . a consequence of repeated sexual abuse, including the trauma of multiple acts of violent sex inequality.”⁶⁶ Sexual violence is wrong, under this approach, because it is *unequal* sex and not because it is *unwanted* sex.⁶⁷ Women cannot meaningfully consent because they are unequally situated.⁶⁸ Namely, regardless of consent, what really matters is the external conditions of gendered power. The alternative proposed standard is abuse-of-power,⁶⁹ including “all the forms of force that someone, usually a man, deploys to coerce sex on someone with less power than he has.”⁷⁰ Under this standard, there are contexts in which sexual interactions will be deemed nonconsensual per se because of structural power imbalances.⁷¹ Trauma and abuse-of-power are situated at the core of this critique of the consent standard.

b. Reforming Sexual Harassment Law

The lens of trauma and abuse-of-power has also appeared in the context of sexual harassment law reforms.⁷² In 1986, in *Meritor Savings Bank v. Vinson*,⁷³ the United States Supreme Court recognized for the first time that workplace sexual harassment violates Title VII of the Civil Rights Act of 1964,⁷⁴ holding that

65. See, e.g., Catharine A. MacKinnon, *Rape Redefined*, 10 HARV. L. & POL’Y REV. 431, 447 (2016) (writing that consent is “routinely found in situations of despairing acquiescence, frozen fright, terror, absence of realistic options, and socially situated vulnerability”); see also JOSEPH J. FISCHER, *SCREW CONSENT* 82-83 (2019) (comparing MacKinnon’s approach to consent to Janet Halley’s approach).

66. MacKinnon, *supra* note 65, at 447.

67. *Id.* at 436 (“If rape is less a question of unwanted sex than of unequal sex, if equality not autonomy is its primary issue . . . the existing conceptual framework [of consent] . . . has been fundamentally beside the point all along.”).

68. *Id.* at 435-36.

69. See, e.g., FISCHER, *supra* note 65, at 82-89 (discussing status, dependence, and abuse of power).

70. MacKinnon, *supra* note 65, at 469.

71. Notably, even this radical critique of the consent standard frames the problem of rape as a problem of force, now defined as sex under unequal position of power.

72. See, e.g., Catharine A. MacKinnon, *#MeToo Has Done What the Law Could Not*, N.Y. TIMES (Feb. 4, 2018), <https://nyti.ms/2GOhQ3N> [<https://perma.cc/T9XL-KFQ4>] (expressing hope that the rise of the #MeToo movement will cause a dramatic shift in legal standards and suggesting that “[s]exual harassment law prepared the ground, but it is today’s movement that is shifting gender hierarchy’s tectonic plates”).

73. 477 U.S. 57 (1986).

74. *Id.* at 73.

actionable sexual advances must be (1) “unwelcome” and (2) “sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment.’”⁷⁵

Reflecting the anti-subordination rationale described above, feminist scholars, law reformers, and activists have argued for replacing the “unwelcomeness” standard in sexual harassment law with an abuse-of-power standard. For instance, Angela Onwuachi-Willig has argued that the unwelcomeness standard in workplace sexual harassment is flawed because it distracts decision makers from the behavior of the accused.⁷⁶ Onwuachi-Willig’s concern is that power differentials can lead subordinates to tolerate unwanted behavior due to concerns for job safety or promotion.⁷⁷ She proposes that behavior that enforces “the notion of the dominant and powerful man over the subordinate woman” should constitute a hostile environment under Title VII⁷⁸ and that acts that “unreasonably interfere with the complainant’s work performance, create a hostile or intimidating environment, and/or help to preserve patterns of sex segregation in employment.”⁷⁹ This approach reflects the abuse-of-power alternative in the context of workplace sexual harassment and is representative of a broader trend in feminist lawmaking, policy, and

75. *Id.* at 67-68 (quoting *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982)) (emphasis added). As I have observed elsewhere, “[t]he latter part of the test (‘sufficiently severe or pervasive’) fits well into the liberal-feminist judicial attitudes in the 1970s and 1980s that emphasized gender equality and the integration of women in the workplace.” Ben-Asher, *supra* note 54, at 25-26 (quoting *Meritor Sav. Bank*, 477 U.S. at 67); see also *Frontiero v. Richardson*, 411 U.S. 677, 688-91 (1973) (mandating the provision of equal benefits to both servicemen and servicewomen serving in the military); *Reed v. Reed*, 404 U.S. 71, 76-77 (1971) (recognizing under the Fourteenth Amendment the unconstitutionality of a statutory preference for males when selecting an estate administrator); Ben-Asher, *supra* note 54, 25-27 (analyzing the two-part test utilized by the Supreme Court to determine when sexual advances are actionable under Title VII) (citing *United States v. Virginia*, 518 U.S. 515 (1996) (holding that the Fourteenth Amendment precludes Virginia from maintaining a males-only public institution of higher learning in the Virginia Military Institute)).

76. See KATHRYN M. STANCHI ET AL., *FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT* 315-16 (2016).

77. *Id.*

78. *Id.* at 316.

79. *Id.* at 315.

scholarship that deems “unwelcomeness” an inadequate standard for workplace sexual harassment law.⁸⁰

In sum, the notion that sexual trauma is the primary injury of gender violence is increasingly playing a role in feminist legal reform. While consent is still the leading standard in criminal law,⁸¹ and “welcomeness” still the leading legal standard in workplace sexual harassment laws,⁸² feminist scholars, reformers, and lawmakers increasingly argue for the more accuser-friendly framework of abuse-of-power.⁸³

B. Racial Trauma

In many ways, at its essence BLM is a response to the persistent and historical trauma Black people have endured at the hands of the State. This trauma and pain, unresolved and unhealed lives on in our bodies, in our relationships and in what we create together. . . . It's not an easy road; healing individual and community trauma while organizing to make real change in Black lives, but it's what we know has to be done.—Blacklivesmatter.com⁸⁴

The national movement for Black lives arose in 2015 after a Ferguson police officer killed the unarmed eighteen-year-old Michael

80. For an example of how “unwelcomeness” is an inappropriate element in sexual assault, see Janine Benedet, *Hostile Environment Sexual Harassment Claims and the Unwelcome Influence of Rape Law*, 3 MICH. J. GENDER & L. 125, 165 (1995) (“In considering whether a similar approach should be taken in sexual harassment cases, the first question that must be asked is whether an unwelcomeness requirement should be used at all. . . . However, this concept should not form part of the plaintiff’s prima facie case. The idea of having the plaintiff in all cases prove that the defendant’s conduct is unwanted is an inappropriate echo of criminal rape law.”). For an example of how “abuse-of-power” is more encompassing, see Michal Buchhandler-Raphael, *The Failure of Consent: Re-Conceptualizing Rape as Sexual Abuse of Power*, 18 MICH. J. GENDER & L. 147, 151 (2011). The disconnect between rape as it is inflicted and sexual abuse as it is criminalized is most noticeable in the context of sexual abuse-of-power stemming from professional and institutional relationships. This Article uses the phrase “sexual abuse-of-power” to refer to cases in which a person in a supervisory position exploits his or her power, authority, dominance, and influence to compel an employee’s or student’s submission to unwanted sex.

81. See generally Schulhofer, *supra* note 64 (noting that the majority of courts apply the consent standard in cases of sexual assault).

82. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 67-68 (1986).

83. See Schulhofer, *supra* note 64, at 346-48; see also Ben-Asher, *supra* note 14, at 158-59 (arguing that to achieve justice in sexual-assault misconduct law, we must replace the legal standards of consent and welcomeness with trauma and abuse-of-power).

84. *Healing Justice*, BLACK LIVES MATTER, <https://blacklivesmatter.com/healing-justice/> [<https://web.archive.org/web/20181023041359/https://blacklivesmatter.com/healing-justice/>].

Brown and no criminal charges followed.⁸⁵ In the past several decades, mental health experts have underscored the traumatic impacts of racism in the United States.⁸⁶ Several studies have examined childhood trauma caused by factors such as racism and poverty.⁸⁷ Psychologists have developed models to address trauma caused by racist experiences and micro-aggressions.⁸⁸ Scholars have introduced the concept of historical mass-trauma, which may affect the emotional and physical health of large populations.⁸⁹ The clinical diagnosis of PTSD has been identified as a consequence of racism.⁹⁰ The term “post traumatic slave syndrome” (PTSS) has been coined to mark the experience of African Americans in relation to historical trauma.⁹¹ Accounts of the racial trauma caused by the criminal justice system have proliferated.⁹²

85. For background and history on the rise of #BlackLivesMatter, see generally KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION* (2016).

86. For a helpful summary of this literature, see DOTTIE LEBRON ET AL., *FACTS MATTER! BLACK LIVES MATTER! THE TRAUMA OF RACISM* (2015), https://mcsilver.nyu.edu/wp-content/uploads/2020/06/trauma_of_racism_report.pdf [<https://perma.cc/NTB4-W4HL>].

87. See RYSE CENTER, *REFLECTED. REJECTED. ALTERED: RACING ACES REVISITED* (2016), http://www.bmsg.org/wpcontent/uploads/2016/10/racing_aces_memo_october2016.pdf [<https://perma.cc/C337-WURW>].

88. See Thema Bryant-Davis & Carlota Ocampo, *The Trauma of Racism: Implications for Counseling, Research, and Education*, 33 *COUNSELING PSYCH.* 574, 574-78 (2005).

89. See, e.g., Michelle M. Sotero, *A Conceptual Model of Historical Trauma: Implications for Public Health Practice and Research*, 1 *J. HEALTH DISPARITIES RES. & PRAC.* 93, 93-98 (2006) (examining the issue of historical trauma and its implications for public health).

90. Janet E. Helms et al., *Racism and Ethnoviolence as Trauma: Enhancing Professional and Research Training*, 18 *TRAUMATOLOGY: INT’L J.* 65, 66 (2012); see also Lisa B. Spanierman & V. Paul Poteat, *Moving Beyond Complacency to Commitment: Multicultural Research in Counseling Psychology*, 33 *COUNSELING PSYCH.* 513, 520 (2005) (explaining how White people need to address racial issues by improving knowledge, awareness, and skills on the topic); Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 *COUNSELING PSYCH.* 13, 16-19 (2007) (calling for accurately employing the notion of “injury” when assessing crises caused by racist incidents or experiences).

91. See generally JOY DEGRUY, *POST TRAUMATIC SLAVE SYNDROME: AMERICA’S LEGACY OF ENDURING INJURY AND HEALING* (2005) (describing how the historical influence of the violence that permeated the lives of the ancestors of African Americans has shaped transgenerational attitudes and behaviors).

92. See generally BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* (2014) (depicting the founding of the Equal Justice Initiative and telling the story of one of its first clients, a Black man sentenced to death for a crime he did not commit).

In the era of #BlackLivesMatter, these themes of race and trauma have shaped public conversation about racism in the United States.⁹³ A recent study on how trauma and #BlackLivesMatter feature on Twitter revealed many tweets regarding trauma of racism,⁹⁴ the trauma of kids from communities of color, intergenerational or historical trauma,⁹⁵ and the traumatic effects of police violence against Black men.⁹⁶ Tweets on trauma and race peeked around Donald Trump's aggressive rhetoric in the 2016 presidential elections, which had traumatized children of color.⁹⁷

The language of trauma has become central in platforms for racial justice reforms. A leading activist Black youth organization's agenda, for instance, opens: "A collective moment of trauma in the wake of a not-guilty verdict in the killing of Trayvon Martin's pushed 100 young Black activists into creating [the organization, BYP100]."⁹⁸ Black men experiencing police brutality,⁹⁹ Black girls in the child welfare system,¹⁰⁰ and Black people suffering economic

93. See generally LAURA NIXON ET AL., TRAUMA, RESILIENCE, AND #BLACKLIVESMATTER: HOW DO RACISM AND TRAUMA INTERSECT IN SOCIAL MEDIA CONVERSATIONS? (2018), http://www.bmsg.org/wp-content/uploads/2018/07/bmsg_aces_trauma_resilience_black_lives_matter_twitter.pdf [<https://perma.cc/X2FL-6SUW>] (studying how trauma and racism are discussed on social media platforms).

94. *Id.*

95. *Id.* at 7-8 (quoting @prof_carrington, TWITTER (Oct. 18, 2014, 11:27 AM), http://twitter.com/prof_carrington/status/523495550629707776 [<https://perma.cc/8NB5-MRBN>]).

96. In July of 2016, after two Black men, Alton Sterling and Philando Castile, were killed in the hands of police within two days, there was a stark increase in tweets on BLM and trauma. *Id.* at 11.

97. *Id.* at 8.

98. TERRANCE LANEY & JANAÉ BONSU, BLACK YOUTH PROJECT 100, AGENDA TO KEEP US SAFE 4 (2014), <http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP100-Agenda-to-Keep-Us-Safe-AKTUS.pdf> [<https://perma.cc/6NZJ-23DG>]. BYP100 is a member of the Movement for Black Lives. See *About Us*, MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/about> [<https://web.archive.org/web/20180228174557/https://policy.m4bl.org/about/>]; see also Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1621-23 (2019) (considering the agendas of MBL and BYP100 as the prominent abolitionist agendas that have been put forth).

99. See Terrance Laney, Black Youth Project 100, *Introduction: State of Black Youth in the U.S. Economy* 6 (2016), http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP_AgendaBlackFutures_booklet_web.pdf [<https://perma.cc/GFU8-AM AQ>].

100. Thena Robinson Mock, et al., *An Immediate End to the Criminalization and Dehumanization of Black Youth Across All Areas of Society Including, but Not Limited to, Our Nation's Justice and Education Systems, Social Service Agencies, Media, and Pop Culture*, MOVEMENT FOR BLACK LIVES (2016), <https://m4bl.org/wp-content/uploads/2020/05/End-Criminalization-of-Youth-Policy-Brief.pdf> [<https://perma.cc/WZE6-FBSY>] ("Improve the child welfare system's identification of victims of abuse, implement a gender-

injustices¹⁰¹ are regularly considered under the general framework of racial trauma. Trauma is also an important component of the case for reparations.¹⁰² To clarify, the point here is not that racial trauma is not real. The starting premise of this Article is that American racism has been a source of tremendous injustice and suffering and must be resisted. The observation is that the *harms* of American racism are increasingly perceived through the framework of emotional trauma and that this comes with some potential costs.¹⁰³

responsive approach to victims of abuse, and use Medicaid funds to improve quality care and trauma-related services . . .”).

101. See Anja Rudiger et al., *A Progressive Restructuring of All Tax Codes at the Local, State, and Federal Levels to Ensure a Radical and Sustainable Redistribution of Wealth*, MOVEMENT FOR BLACK LIVES (2016), <https://m4bl.org/wp-content/uploads/2020/05/RestructureTaxCodes-OnePager.pdf> [<https://perma.cc/FH26-5ADW>]; Dara Cooper et al., *A Right to Restored Land, Clean Air, Clean Water, and Housing*, MOVEMENT FOR BLACK LIVES (2016), <https://m4bl.org/wp-content/uploads/2020/05/Restored-Land-Air-Water-Policy-Brief.pdf> [<https://perma.cc/4HB9-P54T>] (noting that racial discrimination and targeted disenfranchisement of Black farmers by the USDA have caused “severe economic consequences and emotional traumas that have never been undone”).

102. See Kesi Foster & Montague Simmons, *Reparations for the Systemic Denial of Access to High Quality Educational Opportunities in the Form of Full and Free Access for All Black People (Including Undocumented, Currently, and Formerly Incarcerated People) to Lifetime Education Including: Free Access and Open Admissions to All Public Universities and Colleges, Technical Education (Technology, Trade, and Agricultural), Educational Support Programs, Retroactive Forgiveness of Student Loans, and Support for Lifetime Learning Programs*, MOVEMENT FOR BLACK LIVES (2016), <https://m4bl.org/wp-content/uploads/2020/05/Free-College-Education-Policy-Brief.pdf> [<https://perma.cc/FTF4-JFJZ>]; *Reparations*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/reparations/> [<https://perma.cc/U964-C539>] (last visited Nov. 10, 2020) (“Reparations for the wealth extracted from our communities through environmental racism, slavery, food apartheid, housing discrimination and racialized capitalism in the form of corporate and government reparations focused on healing ongoing physical and mental trauma, and ensuring our access and control of food sources, housing and land.”); Arielle Humphries & Marbre Stahly-Butts, *Reparations for the Cultural and Educational Exploitation, Erasure, and Extraction of Our Communities in the Form of Mandated Public School Curriculums That Critically Examine the Political, Economic, and Social Impacts of Colonialism and Slavery and Funding to Support, Build, Preserve and Restore Cultural Assets and Sacred Sites to Ensure the Recognition and Honoring of Our Collective Struggles and Triumphs*, MOVEMENT FOR BLACK LIVES (2016), <https://m4bl.org/wp-content/uploads/2020/05/CulturalReparations-OnePager.pdf> [<https://perma.cc/7H4Q-FVB7>] (“We need cultural reparations to publically [sic] acknowledge the history of mass violence in the U.S. in order to begin to heal from the trauma.”).

103. See discussion *infra* Part IV.

1. Abuse-of-Racial-Power

Social justice narratives often posit racial trauma as the consequence of abuse-of-power.¹⁰⁴ An excellent and critical approach to the interconnectedness of abuse-of-power and trauma in race politics is found in the work of Ta-Nehisi Coates, *Between the World and Me*.¹⁰⁵ The belief in whiteness, according to Coates and many others, is achieved through ongoing violence against Black bodies.¹⁰⁶ White identity is created through subordinating Black people.

This racial abuse-of-power approach parallels the gendered abuse-of-power approach discussed previously in the following ways.¹⁰⁷ For MacKinnon, the categories “man” and “woman” are created through physical-material exploitation of female bodies.¹⁰⁸ For Coates, the categories of “White” and “Black” are created through physical-material exploitation of Black bodies.¹⁰⁹ MacKinnon and Coates both characterize gender and racial exploitation as traumatic. They both guide the reader’s attention from myth to reality, where real bodies are exploited.¹¹⁰ Coates urges his readers to engage the actual physical world—not the mythical world—in order to understand race.¹¹¹ MacKinnon makes the same move with gender. Just as for MacKinnon, the political identity of a “woman” occurs in the process of subordination to “man,” for Coates, “being named ‘black’ [is] just someone’s name for being at the bottom, a human

104. Lebron et al., *supra* note 86, at 10 (“Race is a socially constructed concept that was used to reinforce the rationale for the enslavement of persons of African descent for economic purposes during the Atlantic Slave Trade.”).

105. TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 7 (2015) (“Americans believe in the reality of ‘race’ as a defined, indubitable feature of the natural world. Racism—the need to ascribe bone-deep features to people and then humiliate, reduce, and destroy them—inevitably follows from this inalterable condition.”).

106. *Id.* at 8 (“[T]he elevation of the belief in being white[] was not achieved through wine tastings and ice cream socials, but rather through the pillaging of life, liberty, labor, and land; through the flaying of backs; the chaining of limbs; the strangling of dissidents; the destruction of families; the rape of mothers; [and] the sale of children . . .”).

107. See discussion *supra* subpart III.A.

108. See discussion *supra* subpart III.A.

109. COATES, *supra* note 105, at 8.

110. “Our world is physical,” Coates writes *Id.* at 33. “Learn to play defense—ignore the head and keep your eyes on the body.” *Id.* See also *id.* at 36 (“I loved [Malcolm X] because he made it plain, never mystical or esoteric, because his science was not rooted in the actions of spooks and mystery gods but in the work of the physical world.”).

111. *Id.* at 79 (“I believed, and still do, that our bodies are our selves, that my soul is the voltage conducted through neurons and nerves, and that my spirit is my flesh.”).

turned to object, object turned to pariah.”¹¹² These two influential theorists are representatives of subordination-centered approaches that have gained momentum in social justice movements in the twenty-first century. They view gender and race not as natural categories but as the *traumatic effects* of abuse-of-power and exploitation.¹¹³ These abstract ideas often manifest in policy and lawmaking.

2. Police Violence Law

The police’s relationship with African Americans has long been defined by force and brutality.¹¹⁴ Recall the image of George Floyd with a police officer’s knee on his neck,¹¹⁵ Eric Garner in an illegal chokehold, uttering “I can’t breathe,”¹¹⁶ and the body of eighteen-year-old Michael Brown left in the street for hours after being fatally shot by a police officer.¹¹⁷ These and many others have sparked a robust, vibrant, liberationist movement for Black lives. On March 2, 2015, a Task Force on Twenty-First-Century Policing appointed by President Barack Obama¹¹⁸ recommended expanding community policing and independent investigations into police killings.¹¹⁹ Indeed,

112. *Id.* at 55; see discussion *supra* subpart III.A; see also *id.* at 42 (“[T]he power of domination and exclusion is central to the belief in being white, and without it, ‘white people’ would cease to exist for want of reasons.”).

113. See COATES, *supra* note 105.

114. See generally BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION (2017) (addressing the long misuse of the policing power, especially on African Americans); LAW ENFORCEMENT IN THE AGE OF BLACK LIVES MATTER: POLICING BLACK AND BROWN BODIES (Sandra E. Weissinger & Dwayne A. Mack eds., 2018) (arguing for reforms to combat implicit biases in policing, such as a movement toward accountability and de-escalation).

115. *What We Know About the Death of George Floyd in Minneapolis*, N.Y. TIMES (Sept. 12, 2020), <https://nyti.ms/3ibI1U7> [<https://perma.cc/B4EW-6UUN>].

116. Ali Winston, *Eric Garner Death Was ‘Not a Big Deal,’ Police Commander Said*, N.Y. TIMES (May 16, 2019), <https://nyti.ms/2Ef1ILh> [<https://perma.cc/7JT7-6ATW>].

117. Raja Razek, *Missouri Police Officer Who Killed Michael Brown Faces No Charges*, CNN (July 30, 2020, 10:48 PM), <https://www.cnn.com/2020/07/30/us/ferguson-missouri-michael-brown-darren-wilson-no-charges/index.html> [<https://perma.cc/C9GZ-VLSV>].

118. See generally TAYLOR, *supra* note 85, at 131 (“Obama hastily organized the committee in the heat of the first national waves of protest . . . to create the appearance that the federal government was responsive to the demands of popular protest.”).

119. David Jackson, *Obama Task Force Urges Independent Probes of Police Killings*, USA TODAY (Mar. 2, 2015, 2:48 PM), <https://www.usatoday.com/story/news/nation/2015/03/02/obama-task-force-on-21st-century-policing-ferguson/24258019/> [<https://perma.cc/B4FK-5KEU>].

several recent police reforms often link racial trauma and abuse-of-police-power. Consider two examples.

a. Stop Militarizing Law Enforcement Act

President Bill Clinton, who had campaigned extensively on his toughness on crime, championed what would become the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), which provided for over 100,000 more police to be hired, expanded the death penalty and new prisons, and created “three strike” provisions.¹²⁰ Consequently, in the 1990s, the Pentagon donated military equipment to local police enforcement.¹²¹ The Crime Bill and its companion Welfare Reform became central components in policing Black men and women in the United States.¹²² After the attacks of September 11, 2001, the political branches agreed that national security was a top priority,¹²³ and the Pentagon continued to distribute military ammunition, worth millions of dollars, to local police agencies.¹²⁴

As Keeanga-Yamahatta Taylor has observed, militarizing local police forces “had its greatest impact in African American communities,” against whom for more than three decades, a War on

120. The Crime Bill was funded with \$30 billion, among other things. TAYLOR, *supra* note 85, at 120.

121. See, e.g., Radley Balko, *A Decade After 9/11, Police Departments Are Increasingly Militarized*, HUFF POST (Nov. 12, 2011, 8:12 AM), https://www.huffpost.com/entry/police-militarization-9-11-september-11_n_955508 [<https://perma.cc/4GWS-JYM7>] (“[I]n the first three years after the 1994 law alone, the Pentagon distributed 3,800 M-16s, 2,185 M-14s, 73 grenade launchers, and 112 armored personnel carriers to police agencies across America.”).

122. See generally FELICIA KORNBLUH & GWENDOLYN MINK, *ENSURING POVERTY: WELFARE REFORM IN FEMINIST PERSPECTIVE* (2019) (discussing the Personal Responsibility and Work Opportunity Reconciliation Act’s (PRWORA) effect on welfare reform, especially among women); JANE L. COLLINS & VICTORIA MAYER, *BOTH HANDS TIED: WELFARE REFORM AND THE RACE TO THE BOTTOM IN THE LOW-WAGE LABOR MARKET* (2010) (examining the relation between welfare and low-wage working mothers in light of the Work Opportunity Reconciliation); KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017) (examining the lack of privacy poor mothers who depend on government assistance face).

123. For critical review and analysis of some of the policies and debates around the state of emergency in the aftermath of 9/11, see generally Noa Ben-Asher, *Legalism and Decisionism in Crisis*, 71 OHIO ST. L.J. 699 (2010).

124. See Balko, *supra* note 121. In 2012 alone, the military transferred \$546 million worth of supplies to local police departments. Associated Press, *AP IMPACT: Little Restraint in Military Giveaways*, NPR (July 31, 2013, 7:32 PM), <https://www.npr.org/templates/story/story.php?storyId=207340981> [<https://perma.cc/BJ4T-AYT6>].

Drugs had been waged.¹²⁵ An investigation published after the Ferguson killing revealed that “[B]lack[s] are stopped, searched, arrested and imprisoned at rates higher than people of other races[,] [and] . . . the most remarkable thing about Ferguson, Missouri, might be just how ordinary it is.”¹²⁶ The militarized police is an important factor in the rise of the liberationist Black lives movement.¹²⁷

In an attempt to address the problem of the over-militarized police, Senator Elizabeth Warren co-sponsored the bipartisan Stop Militarizing Law Enforcement Act (Stop Militarizing Act), which would bar any Department of Defense property from being transferred to federal or state law enforcement agencies.¹²⁸ The Act, supported by a range of human rights organizations,¹²⁹ seeks to prohibit the transfer of military weapons and equipment that are unnecessary and inappropriate for local policing, eliminate incentives for the inappropriate use of military weapons and equipment, and require oversight and transparency of a current program that enables the Department of Defense (DOD) to transfer surplus military equipment to federal, state, local, and tribal law enforcement.¹³⁰ This Act illustrates the core rationale behind many racial justice policies today: in order to heal racial trauma, police reform is necessary.

b. Mandatory Implicit Bias Training

The Obama administration’s 2015 Task Force on Twenty-First Century Policing included implicit bias training on its list of best

125. TAYLOR, *supra* note 85, at 122.

126. *Id.* (quoting Brad Heath, *Racial Gap in U.S. Arrest Rates: ‘Staggering Disparity’*, USA TODAY (Nov. 19, 2014, 2:24 PM), <https://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207/> [<https://perma.cc/P4YR-JGHG>]).

127. *Id.* at 154 (“Maybe it was the military hardware the police brandished when protests against Brown’s death arose. With tanks and machine guns and a never-ending supply of tear gas, rubber bullets, and swinging batons, the Ferguson police department declared war on Black residents and anyone who stood in solidarity with them.”).

128. H.R. Res. 1714, 116 Cong. (2019); Jenavieve Hatch, *How 2020 Contenders Are Approaching Police Brutality and Criminal Justice Reform*, HUFF POST June 22, 2019, 8:00 AM, https://www.huffpost.com/entry/2020-democrats-police-brutality_n_5d0d079ae4b07ae90d9c99d5?ncid=NEWSSTAND0001 [<https://perma.cc/N6AW-2KQZ>].

129. *See, e.g., Coalition Letter of Support for the Stop Militarizing Law Enforcement Act H.R. 1714*, HUM. RTS. WATCH (Mar. 28, 2019, 12:50 PM), <https://www.hrw.org/news/2019/03/28/coalition-letter-support-stop-militarizing-law-enforcement-act-hr-1714> [<https://perma.cc/5VCW-BN7F>].

130. *Id.*

practices.¹³¹ The idea behind implicit bias training is that everyone—those charged with law enforcement included—has unconscious biases that influence behavior, judgments, and decisions.¹³² Research has in fact shown that even the most progressive individuals tend to associate Black faces with negative words and White faces with positive words.¹³³ Most also associate Blacks with crime due to stereotypes that associate Blacks with violence, dangerousness, and crime.¹³⁴ Law enforcement officers may exhibit racial bias with respect to the decision whether or not to shoot a suspect.¹³⁵ Such biases can be altered through training,¹³⁶ and some states and cities have made implicit bias trainings for police officers mandatory.¹³⁷

131. Tom James, *Can Cops Unlearn Their Unconscious Biases?*, ATLANTIC (Dec. 23, 2017), <https://www.theatlantic.com/politics/archive/2017/12/implicit-bias-training-salt-lake/548996/> [<https://perma.cc/BX4G-PSLW>]; see also *id.* (discussing the theory of “implicit bias,” how it can influence police officers, and whether it can be unlearned); Justin Nix et al., *A Bird’s Eye View of Civilians Killed by Police in 2015: Further Evidence of Implicit Bias*, 16 CRIMINOLOGY & PUB. POL’Y 309, 317-21 (2017) (examining data from fatal police shootings and using it as evidence of implicit bias). Another example of such an approach is the End Racial and Religious Profiling Act, which was introduced in the Senate by Sen. Ben Cardin (D-MD) on February 16, 2017. The bill was introduced in the House of Representatives by Rep. John Conyers (D-MI) on March 10, 2017, as the End Racial Profiling Act. *End Racial and Religious Profiling Act*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/end-racial-religious-profiling-act> [<https://perma.cc/98K6-DSBR>] (Mar. 10, 2020).

132. See generally Nilanjana Dasgupta, *Implicit Attitudes and Beliefs Adapt to Situations: A Decade of Research on the Malleability of Implicit Prejudice, Stereotypes, and the Self-Concept*, in 47 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 233 (Patricia Devine & Ashby Plant eds., 2013) (noting that implicit bias attitudes and beliefs often occur without an individual’s intent or awareness); IMPLICIT RACIAL BIAS ACROSS THE LAW (Justin D. Levinson & Robert J. Smith eds., 2012) (examining how implicit racial bias manifests in law and society); see also Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCH. 1464, 1475 (1998) (finding that implicit prejudice often exists even when explicitly disavowed).

133. See sources cited *supra* note 132.

134. See generally Cynthia Lee, *Race, Policing, and Lethal Force: Remedying Shooter Bias with Martial Arts Training*, 79 LAW & CONTEMP. PROBS. 145 (2016) (discussing the deeply rooted stereotypes that link Black people with crime and violence).

135. For discussion of shooter bias, see Cynthia Lee, “*But I Thought He Had a Gun*”: *Race and Police Use of Deadly Force*, 2 HASTINGS RACE & POVERTY L.J. 1, 14-33 (2004) (discussing numerous cases in which a police officer shot and killed an unarmed Black person, thinking the person was armed); Lee, *supra* note 134, at 151 (discussing the deeply-rooted stereotypes that link Black people with crime and violence).

136. See generally Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCH. REV. 242 (2002) (emphasizing the need to pay more attention to what influences social biases); Nilanjana Dasgupta, *Mechanisms Underlying the Malleability of Implicit Prejudice and Stereotypes: The Role of Automaticity and Cognitive Control*, in HANDBOOK OF PREJUDICE, STEREOTYPING, AND DISCRIMINATION

These two police reforms attempt to reduce or prevent racial trauma by reducing the police's use of unjustified force.¹³⁸ The Stop Militarizing Act attempts to eliminate tools of excessive destruction; implicit bias trainings try to cure the false tendency to view Black people as dangerous. What unites these policies is that they center on changing the behavior of the aggressor *before* committing physical violence that causes racial trauma. While there is no doubt that meaningful social justice cannot arrive without stopping police violence against Black people, the two policies briefly discussed here demonstrate how the trauma and abuse-of-power frameworks play out in current racial justice policies. But while police reform is necessary, it is not enough. As elaborated in Part IV, while policies aimed at reducing police violence are important and desirable, they are narrowly focused on the *violent physical act itself*, not on the underlying (wealth, health, educational) disparities that precede it.

C. Climate Trauma

In recent years, the concept of “climate trauma” has become popular in political debates, popular culture,¹³⁹ the sciences,¹⁴⁰ and the

267 (Todd D. Nelson ed., 2009) (explaining that implicit biases can be altered); Bertram Gawronski & Galen V. Bodenhausen, *Associative and Propositional Processes in Evaluation: An Integrative Review of Implicit and Explicit Attitude Change*, 132 PSYCH. BULL. 692 (2006) (highlighting the differences between implicit and explicit biases).

137. See, e.g., Booker Hodges, *IACP 2018 Preview: Unconscious Bias Training for Law Enforcement*, POLICE1 (Oct. 3, 2018), <https://www.police1.com/iacp-2018/articles/481622006-IACP-2018-preview-Unconscious-bias-training-for-law-enforcement/> [<https://perma.cc/ZSW3-K9ZB>] (“Unconscious bias training recently became mandatory for every police officer in Minnesota to take in order to maintain their peace officers license.”). In 2018, for example, the New York Police Department began a training program on implicit bias. Al Baker, *Confronting Implicit Bias in the New York Police Department*, N.Y. TIMES (July 15, 2018), <https://nyti.ms/2JpMznN> [<https://perma.cc/C5FM-FL9T>].

138. Another key policy is mandatory body-camera reforms. See generally DAVE MCCLURE ET AL., HOW BODY CAMERAS AFFECT COMMUNITY MEMBERS’ PERCEPTIONS OF POLICE (2017), https://www.urban.org/sites/default/files/publication/91331/2001307-how-body-cameras-affect-community-members-perceptions-of-police_4.pdf [<https://perma.cc/997U-9L2E>] (analyzing two different implementations of body-worn cameras in one police department); Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897 (2017) (exploring the effect of body-worn cameras on judicial review and criminal procedure law); Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363 (2018) (analyzing whether the use of body-worn cameras actually enhances police accountability and improves police-community relations).

139. See, e.g., *Big Little Lies: The End of the World* (HBO 2019) (depicting a schoolgirl found in closet in school having a panic attack, not because her parents are going through crisis but because the world is ending). For analysis of climate trauma in film and

humanities. Many consider climate change to be the most serious challenge for twenty-first century global and national politics. Trauma is perceived as the inevitable consequence of climate change.¹⁴¹ The term “climate trauma” typically refers to the emotional devastation caused by a growing awareness of the planet’s climate crisis or to the emotional response to actual climate-change-related catastrophes, such as hurricanes or droughts. Headlines such as ‘*Climate Grief: The Growing Emotional Toll of Climate Change*’¹⁴² are now a part of daily reality in the United States.¹⁴³ Mental health professionals are adjusting guidelines to define and treat climate related distresses.¹⁴⁴ One medical expert has observed that “[c]limate change seems to

fiction narratives, see generally E. ANN KAPLAN, *CLIMATE TRAUMA: FORESEEING THE FUTURE IN DYSTOPIAN FILM AND FICTION* (2015).

140. See generally Glenn Albrecht et al., *Solastalgia: The Distress Caused By Environmental Change*, 15 AUSTRALASIAN PSYCHIATRY SUPPLEMENT S95 (2007) (analyzing the emotional impact that is caused by environmental change); SUSAN CLAYTON ET AL., *BEYOND STORMS & DROUGHTS: THE PSYCHOLOGICAL IMPACTS OF CLIMATE CHANGE* 18 (2014) (citations omitted) (“Disasters carry the potential for immediate and severe psychological trauma from personal injury, injury or death of a loved one, damage to or loss of personal property (e.g., home and pets), and disruption in or loss of livelihood. Terror, anger, shock, and other intense negative emotions are likely to dominate people’s initial response to a disaster. Acute traumatic stress is typical.”); *Majority Rules: American Attitudes on Climate in 7 Stats*, CLIMATE REALITY PROJECT (May 29, 2018), <https://www.climatealityproject.org/blog/majority-rules-american-attitudes-climate-7-stats> [<https://perma.cc/37UF-2B2J>] (discussing American attitudes on the climate crisis); LESLIE DAVENPORT, *EMOTIONAL RESILIENCY IN THE ERA OF CLIMATE CHANGE: A CLINICIAN’S GUIDE* 56-67 (2017) (examining the current issues surrounding climate change and the recommended treatments for each issue).

141. See sources cited *supra* note 140.

142. Avichai Scher, ‘*Climate Grief: The Growing Emotional Toll of Climate Change*’, NBC NEWS (Dec. 24, 2018, 4:35 AM), <https://www.nbcnews.com/health/mental-health/climate-grief-growing-emotional-toll-climate-change-n946751> [<https://perma.cc/7DMW-F8XY>] (“Extreme weather and dire climate reports are intensifying the mental health effects of global warming: depression and resignation about the future.”).

143. See, e.g., Andrew Sullivan, *New Hope and New Danger on the Left*, INTELLIGENCER (Feb. 15, 2019), <https://nymag.com/intelligencer/2019/02/andrew-sullivan-new-hope-and-new-danger-on-the-left.html> [<https://perma.cc/F4BP-3F6A>] (“[W]e may be underestimating what the constant drumbeat of news about the accelerating sixth great extinction has been doing to us psychologically. . . . Humans are committing countless species to death; we are destroying the life of our oceans and skies; we are changing the planet’s ecosystem more quickly than at any time since the asteroids wiped out the dinosaurs. From the perspective of life itself, we are conducting a holocaust of the natural world. How is the knowledge of this not traumatizing?”).

144. See generally SUSAN CLAYTON ET AL., *MENTAL HEALTH AND OUR CHANGING CLIMATE: IMPACTS, IMPLICATIONS, AND GUIDANCE* (2017), <https://www.apa.org/news/press/releases/2017/03/mental-health-climate.pdf> [<https://perma.cc/2YED-CUAN>] (suggesting ways for mental health professionals to treat climate-related anxiety in patients).

embody a trauma response on a grand scale—the greatest trauma on the grandest scale.”¹⁴⁵ Psychiatrists have coined the term “solastalgia” to describe “the distress that is produced by environmental change impacting on people while they are directly connected to their home environment.”¹⁴⁶ An expert has characterized climate trauma as “a kind of global holocaust unfolding in slow motion.”¹⁴⁷ Climate justice advocacy groups have incorporated the language of trauma to describe various injuries of climate change.¹⁴⁸

1. Abuse-of-Power

Dominant understandings of climate trauma mirror the abuse-of-power narratives regarding racial and sexual trauma. Dominant accounts of climate trauma rely on abuse-of-power explanations of two sorts.¹⁴⁹ First, humans are understood as exploiters and

145. Benjamin White, *States of Emergency: Trauma and Climate Change*, 7 *ECOPSYCHOLOGY* 192, 196 (2015). White added that “[t]he persistent state of traumatic stimulation and vigilance that develops in response to trauma exposure is most relevant to our understanding of climate change. . . . [T]rauma is quite alive in our relationship to nature itself and to climate change.” *Id.* at 195; see also Eric Holthaus, *How Climate Trauma Led to Support for Bold Action*, GRIST (Feb 12, 2019), <https://grist.org/article/how-climate-trauma-led-to-support-for-bold-action> [<https://perma.cc/F3HH-7BQH>] (“There’s a new vein of psychology that is starting to analyze climate change from the perspective of a massive, shared trauma, and its conclusions are profound: ‘Climate trauma’ can only be addressed by naming the enormity of what we’re facing. Only then can we process how we feel about it, and move forward together, to solutions.”).

146. Albrecht et al., *supra* note 140, at 95 (observing “increase in ecosystem distress syndromes matched by a corresponding increase in human distress syndromes”).

147. Zhiwa Woodbury, *Climate Trauma: Toward a New Taxonomy of Trauma*, 11 *ECOPSYCHOLOGY* 1, 1-2 (2019) (“After all, when we say the words ‘climate change,’ are we not talking about a pervasive, continual assault on the global biosphere? One that threatens mass extinction and overwhelms our emotional capacity? Is this not the very definition of trauma? . . . We must therefore recognize that the climate crisis is not just a crisis *in relation to* and with episodic trauma but instead represents an entirely *new order* of trauma itself.”).

148. See, e.g., Renee N. Salas et al., *The Case of Juliana v. U.S.—Children and the Health Burdens of Climate Change*, MED. SOC’Y CONSORTIUM ON CLIMATE & HEALTH (June 6, 2019), <https://medsocietiesforclimatehealth.org/op-eds-and-ites/case-juliana-v-u-s-children-health-burdens-climate-change/> [<https://perma.cc/G2S9-4VWD>] (“Finally, there is evidence that the mental health effects experienced by children today may have a long-lasting impact that extends to future generations. Among the 200,000 children who were displaced because of Hurricane Katrina, 50% of preschool-aged children and 71% of middle school-aged children met the criteria for post-traumatic stress disorder.”).

149. See generally NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE* (2014) (exploring the relationship between climate change and capitalism); CHRISTIAN PARENTI, *TROPIC OF CHAOS: CLIMATE CHANGE AND THE NEW GEOGRAPHY OF VIOLENCE* (2011) (arguing that struggling and wealthy states need to work together to combat

dominators of the planet or nature. Second, economically powerful humans, populations, and nations are understood as exploiters and dominators of vulnerable ones. The former can be captured through the image of dying polar bears, the latter through the image of climate refugees. In both, climate change is portrayed as the direct cause of physical and emotional climate trauma.

a. Human Abuse of Nature

Earlier understandings of climate change focused on the injuries inflicted by humans on *nature*. In *The End of Nature*, for example, Bill McKibben offered one of the well-known manifestations of this idea. “We have changed the atmosphere,” he wrote, “and that will change the weather. The temperature and rainfall are no longer to be entirely the work of some separate, uncivilizable force, but instead in part a product of our habits, our economies, our ways of life.”¹⁵⁰ Humans have exploited nature so much that it no longer exists in its original sense.¹⁵¹ Although humans did not intend this,¹⁵² “it turned out that the carbon dioxide and other gases we were producing in our pursuit of a better life—in pursuit of warm houses and eternal economic growth . . . —*could* alter the power of the sun . . . [W]e are ending nature.”¹⁵³ Human greed is leading to nature’s demise.

Geologists have called this human destruction of nature the “Anthropocene” (the age of humans),¹⁵⁴ referring to the global “human-driven alterations of i) the biological fabric of the Earth; ii) the stocks and flows of major elements in the planetary machinery such as nitrogen, carbon, phosphorus, and silicon; and iii) the energy balance at the Earth’s surface.”¹⁵⁵ The term Anthropocene means that

climate change); JEDEDIAH PURDY, *THIS LAND IS OUR LAND* (2019); DAVID WALLACE-WELLS, *THE UNINHABITABLE EARTH: LIFE AFTER WARMING* (2019) (addressing the need to focus on the well-being of all people while attempting to combat the environmental crisis).

150. BILL MCKIBBEN, *THE END OF NATURE* 40 (1989).

151. *Id.* at 41 (“In the past, we spoiled and polluted parts of that nature, inflicted environmental ‘damage.’ But that was like stabbing a man with toothpicks . . .”).

152. *Id.* (“Deep down, we never really thought we could [wreck nature]: it was too big and too old; its forces—the wind, the rain, the sun—were too strong, too elemental.”).

153. *Id.*

154. Will Steffen, et al., *The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature?* 36 *AMBIO* 614, 614 (2007).

155. *Id.*; see generally PURDY, *supra* note 13 (considering a robust and humane democratic politics in an era in which the fate of humans and the environment are critically intertwined).

“the Earth has now left its natural geological epoch, the present interglacial state called the Holocene.”¹⁵⁶ Starting with the Industrial Era (1800-1945),¹⁵⁷ they explain, “[h]uman activities have become so pervasive and profound that they rival the great forces of Nature and are pushing the Earth into planetary *terra incognita*.”¹⁵⁸ Humans have become wreckers of the earth.¹⁵⁹ The human mastery of fire began the journey to the Anthropocene,¹⁶⁰ but a “Great Acceleration” (1945-2015) with more rapid changes in ecosystems¹⁶¹ has led the earth to “its sixth great extinction event, with rates of species loss growing rapidly for both terrestrial and marine ecosystems.”¹⁶² Scientists now measure the ways, pace, and extent to which humans damage earth and have urged governments and individuals to mitigate climate change.¹⁶³

156. Steffen, *supra* note 154, at 614. Holocene (“recent whole”) is the name given to the geological epoch of the past ten-to-twelve-thousand years. 6 THE NEW ENCYCLOPEDIA BRITANNICA: MICROPAEDIA 14 (15th ed. 2002).

157. Steffen, *supra* note 154 at 614 (“Before the advent of agriculture about 10,000-12,000 years ago, humans lived in small groups as hunter-gatherers. . . . [T]he human imprint on the environment may have been discernible at local, regional, and even continental scales, but preindustrial humans did not have the technological or organizational capability to match or dominate great forces of nature.”).

158. *Id.* (adding that “[t]he Earth is rapidly moving into a less biologically diverse, less forested, much warmer, and probably wetter and stormier state”).

159. *Id.* (“The phenomenon of global change represents a profound shift in the relationship between humans and the rest of nature.”).

160. *Id.* (“The mastery of fire by our ancestors provided humankind with a powerful monopolistic tool unavailable to other species, that put us firmly on the long path towards the Anthropocene.”).

161. *Id.* at 617.

162. *Id.* (footnote omitted) (“The atmospheric concentrations of several important greenhouse gases have increased substantially, and the Earth is warming rapidly. More nitrogen is now converted from the atmosphere into reactive forms by fertilizer production and fossil fuel combustion than by all of the natural processes in terrestrial ecosystems put together.”); *see also id.* at 618 (citation omitted) (“[We understand] the Great Acceleration . . . [based on] quantification of the human imprint on the Earth System, using atmospheric CO₂ concentration as the indicator. . . . Nearly three-quarters of the anthropogenically driven rise in CO₂ concentration has occurred since 1950 (from about 310 to 380 ppm), and about half of the total rise (48 ppm) has occurred in just the last 30 years.”).

163. *Id.* at 620 (footnote omitted) (“Enormous, immediate challenges confront humanity over the next few decades as it attempts to pass through a bottleneck of continued population growth, excessive resource use and environmental deterioration. In most parts of the world the demand for fossil fuels overwhelms the desire to significantly reduce greenhouse gas emissions. About 60% of ecosystem services are already degraded and will continue to degrade further unless significant societal changes in values and management occur.”).

b. Human Abuse of Other Humans

Others have underscored the ways in which climate change involves human abuse of other humans. They have characterized the current climate crisis as a social justice crisis for which capitalism and colonialism are responsible. Naomi Klein's *This Changes Everything: Capitalism v. Climate* is representative of this view.¹⁶⁴ As Klein puts it,

What concerns me is less the mechanics of the transition—the shift from brown to green energy, from sole-rider cars to mass transit, from sprawling exurbs to dense and walkable cities—than the power and ideological roadblocks that have so far prevented any of these long understood solutions from taking hold on anything close to the scale required.¹⁶⁵

The problem, according to Klein, is corporate power.¹⁶⁶ Poor people, communities, and nations suffer more from climate change and are predicted to suffer more in coming decades. Climate migration is one of the biggest crises facing this century.¹⁶⁷ Jedediah Britton-Purdy has also observed how climate change unequally affects vulnerable communities,¹⁶⁸ and powerful humans in the Anthropocene are often violent toward vulnerable others.¹⁶⁹ For Klein, Purdy, and others,

164. See generally KLEIN, *supra* note 149 (discussing how capitalism has caused the current climate crisis); see also BEFORE THE FLOOD (National Geographic 2016) (telling a story about power and exploitation where wealthy nations emit carbon at a significantly higher rate than everyone else, creating conditions that will hurt vulnerable nations).

165. KLEIN, *supra* note 149, at 24-25.

166. *Id.* at 25.

167. See, e.g., Lauren Markham, *A Warming World Creates Desperate People*, N.Y. TIMES (June 29, 2018), <https://nyti.ms/2IBrM02> [<https://perma.cc/9V9W-ASQY>]; Chesney McOmber, *What Does It Take to Build Climate Resilience—Especially Among the World's Most Vulnerable?*, WASH. POST (Nov. 2, 2018, 5:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/02/and-what-does-it-take-to-build-climate-resilience-especially-among-the-worlds-most-vulnerable/?noredirect=on> [<https://perma.cc/DWZ2-MAUC>].

168. PURDY, *supra* note 149, at 21 (“[I]t’s the effects some of us are having on the planet, unequally visited on others, through the medium of the world itself, its floods and droughts and killing heat.”).

169. *Id.* at 73 (“[I]n a post-natural world, the fact of being on one planet, sharing one atmosphere, does not mean we are in this together. Catastrophe will be manageable enough for the wealthy that it will not really feel like catastrophe, anyway not for a while. . . . In any case, imagining that they will be fine, and so will most of their grandchildren, is enough for them. At the least, for them this bet seems better than the risk of opening up economic life and global order to the challenges that would come from an honest confrontation with climate change.”).

meaningful climate policies must address domestic and global power imbalances in a world in which the oblivious behavior of powerful groups and individuals causes irreversible consequences for vulnerable others.

2. Climate Laws

Two litigations exemplify this interconnectedness of climate trauma and abuse-of-power: one protecting endangered species and the other addressing future generations. Both litigations defend victims of the Anthropocene while underscoring climate trauma and abuse-of-power.

a. Endangered Species

For many Americans, the reality of climate change and the image of suffering polar bears are intertwined.¹⁷⁰ In the spring of 2008, after pressure from environmental groups and scientists, the U.S. Department of the Interior listed the polar bear as a threatened species under the Endangered Species Act of 1973 (ESA).¹⁷¹ Interior Secretary Dirk Kempthorne clarified, however, that it would be “wholly inappropriate” to use the new status of the polar bear as a tool to reduce greenhouse gases as environmentalists had hoped.¹⁷² Since then, scientific evidence has increasingly shown that the polar bear’s habitat is warming twice as fast as the rest of the planet.¹⁷³ The Obama Administration named climate change as the biggest threat to the existence of the polar bear.¹⁷⁴ A number of states, environmental

170. See Alice Gabriner, *Polar Bears and Climate Change: The Photographs That Moved Them Most*, TIME (Feb. 27, 2017, 9:49 PM), <https://time.com/4684019/polar-bear-photos/> [<https://perma.cc/9BQY-J3XF>].

171. Larry Greenemeier, *U.S. Protects Polar Bears Under Endangered Species Act*, SCI. AM. (May 14, 2008).

172. Felicity Barringer, *Polar Bear Is Made a Protected Species*, N.Y. TIMES (May 15, 2008), <https://www.nytimes.com/2008/05/15/us/15polar.html> [<https://perma.cc/PD6V-VEQZ>]. While giving the polar bear some new protections, the Interior Department added stipulations that would allow oil and gas exploration and development to proceed in areas where the bears live, as long as the companies continue to comply with existing restrictions under the Marine Mammal Protection Act. *Id.*

173. P.C. Taylor et al., *Arctic Changes and Their Effects on Alaska and the Rest of the United States*, in 1 CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT 303, 304 (David D. Dokken et al. eds., 2017).

174. Erica Goode, *Human-Driven Global Warming Is Biggest Threat to Polar Bears, Report Says*, N.Y. TIMES (Jan. 9, 2017), <https://nyti.ms/2ianFy7> [<https://perma.cc/39WQ-9S48>].

organizations, and industry groups have argued for greater protections for polar bears but have so far failed.¹⁷⁵

While polar bears have become charismatic megaphones for climate change, extensive litigation has emerged to protect other less charismatic species.¹⁷⁶ Recently, lawsuits were launched under the ESA to protect the grizzly bear,¹⁷⁷ bull trout,¹⁷⁸ longfin smelt,¹⁷⁹ Hermes copper butterfly,¹⁸⁰ Marron bacora (a plant),¹⁸¹ Sierra Nevada red fox,¹⁸² red tree vole,¹⁸³ gopher tortoise,¹⁸⁴ Berry Cave salamander,¹⁸⁵ Puerto Rico harlequin butterfly,¹⁸⁶ Yellowstone bison,¹⁸⁷ and the rusty patched bumble bee.¹⁸⁸ In these litigations,

175. See, e.g., *In re Polar Bear Endangered Species Act Listing and § 4(d) Rule Litig.*, 709 F.3d 1, 12 (D.C. Cir. 2013) (holding that Fish and Wildlife Service (FWS) listing rule was not arbitrary and capricious, after a number of industry groups, environmental organizations, and states brought actions challenging the FWS rule listing polar bear as a threatened species under Endangered Species Act); *Alaska Oil & Gas Ass'n v. Jewell*, 815 F.3d 544, 565-66 (9th Cir. 2016) (upholding the FWS's designation of critical habitat for polar bears, and holding the district court had improperly required that FWS identify specific elements within the designated critical habitat areas that were essential to polar bear conservation and currently in use by polar bears).

176. For a helpful and elaborate database of 104 legal cases under the Endangered Species Act and other climate litigation, see *U.S. Climate Change Litigation*, CLIMATE CHANGE LITIG. DATABASES, <http://climatecasechart.com/us-climate-change-litigation/> [<https://perma.cc/SAS9-LM52>] (last visited Nov. 3, 2020).

177. Complaint for Declaratory and Injunctive Relief at 1, *Ksanka Kupaqa Xa'łç'in v. U.S. Fish & Wildlife Serv.*, No. 9:19-cv-00020-DWM (D. Mont. Jan. 25, 2019) (claiming that federal agencies failed to comply with the Endangered Species Act when they authorized the Rock Creek Mine project in the Cabinet Mountains in northwest Montana because the project would tunnel under one of the region's last undeveloped habitats for two threatened species, grizzly bear and bull trout).

178. *Id.*

179. Complaint for Declaratory and Injunctive Relief at 2, *Ctr. for Biological Diversity v. Bernhardt*, 946 F.3d 553 (9th Cir. 2019) (No. 3:19-cv-02843-JSC) (alleging that the U.S. Fish and Wildlife Service (FWS) was in "flagrant violation" of its obligations to protect eight "highly imperiled species").

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. Complaint for Declaratory and Injunctive Relief at 1, *Buffalo Field Campaign v. Bernhardt*, No. 1:19-cv-01403 (D.D.C. May 15, 2019) (alleging that the threats imperiling the Yellowstone bison include climate change and moving to compel the U.S. Fish and Wildlife Service to list the Yellowstone bison as an endangered or threatened species.).

188. Complaint for Injunctive and Declaratory Relief at 2, *Nat. Res. Def. Council, Inc. v. Bernhardt*, No. 1:19-cv-00078, (D.D.C. Jan. 15, 2019) (challenging the U.S. Fish and Wildlife Service's failure to designate critical habitat for the rusty patched bumble bee, which

environmental organizations seek protection of species harmed by climate change. They embody the logic of trauma to endangered species caused by the abusive destruction of the planet by humans.

b. Future Generations: *Juliana v. United States*

A fascinating display of the trauma and abuse-of-power framework is *Juliana v. United States*,¹⁸⁹ in which twenty-one plaintiffs (ages ten to twenty-one) filed a lawsuit against the U.S. government.¹⁹⁰ Plaintiffs claimed direct personal impact by climate change: some live on farms being affected by drought; others have lost their homes due to floods or face health issues due to forest fires. In this high-profile lawsuit, plaintiffs accuse the federal government of violating the younger generations' constitutional rights to life and liberty by failing to take action against climate change. This is part of global "atmospheric trust litigation,"¹⁹¹ meaning that the government is failing to protect essential public trust resources like air and water, which are vital to survival.¹⁹² The plaintiffs demand that governments prepare energy plans to move away from use of fossil fuels.

was listed as endangered on January 11, 2017, and alleging that the species had disappeared from 87% of the counties it once occupied and identified habitat loss, pesticide use, climate change, and disease as threats to the bee); *see also* Complaint for Declaratory and Injunctive Relief at 1-2, *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 441 F. Supp. 3d 843 (D. Ariz. Dec. 20, 2018) (No. 4:18-cv-00605-JGZ) (challenging the failure to designate critical habitat for the northern Mexican garter snake and the narrow-headed garter snake); Complaint at 1, *WildEarth Guardians v. Zinke*, No. 4:18-cv-00048-RCC (D. Ariz. Jan 30, 2018) (challenging the Mexican Grey Wolf Recovery Plan).

189. 217 F. Supp. 3d 1224, 1227 (D. Or. 2016).

190. For elaborate detail and sources about this lawsuit see *Juliana v. United States: Youth Climate Lawsuit*, OUR CHILD.'S TR., <https://www.ourchildrenstrust.org/juliana-v-us> [<https://perma.cc/5XAZ-RAC2>] (last visited Nov. 3, 2020).

191. *See, e.g.,* Steve Kroft, *The Climate Change Lawsuit That Could Stop the U.S. Government from Supporting Fossil Fuels*, 60 MINUTES (June 23, 2019), <https://www.cbsnews.com/news/juliana-versus-united-states-climate-change-lawsuit-60-minutes-2019-06-23/> [<https://perma.cc/74N7-7QRX>].

192. As part of this ongoing litigation, a federal judge recognized that access to a clean environment was a fundamental right. *Juliana*, 217 F. Supp. 3d at 1250 ("In this opinion, this Court simply holds that where a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem, it states a claim for a due process violation, [sic] To hold otherwise would be to say that the Constitution affords no protection against a government's knowing decision to poison the air its citizens breathe or the water its citizens drink. Plaintiffs have adequately alleged infringement of a fundamental right.").

Climate trauma is the lynchpin of this litigation. Several plaintiffs allege severe emotional distress caused by climate change.¹⁹³ One plaintiff claims that “Defendants have caused [her] psychological and emotional harm . . . as a result of her fear of a changing climate, her knowledge of the impacts that will occur in her lifetime, and her knowledge that Defendants are continuing to cause harms that threaten her life and well-being.”¹⁹⁴ Another claims that “[w]atching beaches erode away and disappear has emotionally harmed [him].”¹⁹⁵ And another plaintiff is “emotionally distressed by the increase in superstorms in the Northeast [after being] harmed by Hurricane Sandy.”¹⁹⁶ After an eleven-year-old plaintiff’s house and school flooded he also suffered “emotional trauma from climate change and his government’s conduct in causing it.”¹⁹⁷

The *Juliana* and Endangered Species Act litigations manifest the interconnectedness of trauma and abuse-of-power in climate justice movements. They are analogous to gender and racial justice movements in three ways. First, like policy reforms regarding sexual violence and racial violence, the youth and polar bear litigations are launched in the name of victims of climate change: future generations and endangered species. Second, in analogy with policies on sexual and racial violence, these climate litigations demand action from the aggressor (the government, representing older generations) to mitigate traumatic wounds caused by climate change. Third, and perhaps most importantly, these two types of climate litigation demand redress for a *particular traumatic wound*: climate trauma.

In sum, contemporary understandings of gender, racial, and climate justice reveal (1) a rhetoric of emotional trauma and (2) an analogous structure of abuse-of-power. In the domain of gender

193. First Amended Complaint for Declaratory and Injunctive Relief at 6-9, *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Or. 2016) (No. 6:15-cv-01517-TC).

194. *Id.* at 7 (“As a result of the acts and omissions of Defendants, [the plaintiff] believes that she will not be able to continue to do all of the things described in this Complaint for her life, health, and enjoyment, nor will she one day be able to share those experiences with her children.”).

195. *Id.* at 26.

196. *Id.* at 27.

197. Plaintiff-Appellees’ Answering Brief at 11, *Juliana v. United States*, 947 F.3d 1159 (9th Cir. Feb. 22, 2019) (No. 18-36082), 2019 WL 981552, at *11 (“[Another plaintiff] suffered physical and emotional trauma when her Louisiana home flooded during the extreme weather events in 2016 and 2017, extreme conditions that will continue to worsen with time.”).

justice, proponents of #MeToo and anti-subordination feminist approaches have promoted a narrative in which the exploitation of female (and children's) bodies causes sexual trauma; in the domain of racial justice, many social justice platforms have similarly accepted the notion that exploitation of Black bodies causes racial trauma; and in the domain of climate justice, climate advocates have claimed that the exploitation of nature and vulnerable populations causes climate trauma. The next and final Part will consider some shortcomings of the centrality of trauma in social justice legal claims and policies.

IV. ASSESSING TRAUMA-CENTERED JUSTICE

Human suffering is real and painful. The current emphasis in claims for gender, racial, and climate justice on trauma is often effective because it invokes empathy toward those who suffer. But there are also significant costs to the centrality of trauma in social justice jurisprudence. This Part explores two such costs. First, from the perspective of *framing* legal strategies and policies, when trauma is understood as the main injury, the horizons of change are often limited. Second, tying emotional trauma to social justice claims may have harmful impacts on individual and political identities.

A. *Narrow Grounds for Legal-Political Change*

The heavy reliance on trauma in claims for gender, racial, and climate justice often leads to laws and policies that are *narrowly construed to respond to specific traumatic events or injuries*. When laws and policies are geared toward particular trauma-inflicting behavior, such as police violence, sexual violence, or carbon emissions, broader structural injustices can be overlooked. There is a risk in emphasizing particular trauma at the expense of broader structural injustices. Consider examples from each of the three domains of social justice considered here.

1. Gender Justice

When sexual trauma takes center stage in public conversation about workplace discrimination, deep structural injustices may slip under the radar screen. Many high profile #MeToo incidents have involved individuals such as Harvey Weinstein, Bill Cosby, Louis C.K., Kevin Spacey, Brett Kavanaugh, and others. But as scholars and journalists have observed, the discriminatory structures that enable

and breed sexual misconduct in the workplace and elsewhere are often left untouched.¹⁹⁸ The rise of #MeToo has invigorated interrogation of these unjust structures.¹⁹⁹ Several legal scholars have recently argued that it is misguided to focus on erotic behavior.²⁰⁰ Lawmakers should be “attending to structural factors such as sex segregation in order to reduce harassment.”²⁰¹

What this Article adds to these powerful critiques of workplace structural inequality is the observation that the emphasis on *sexual*

198. See Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1172 (1998); Masha Gessen, *One Year of #MeToo: Punishing Individual Abusers Is Not the Same as Justice*, NEW YORKER (Oct. 10, 2018), <https://www.newyorker.com/news/our-columnists/one-year-of-metoo-punishing-individual-abusers-is-not-the-same-as-justice> [<https://perma.cc/S36E-DHZZ>] (“The institutions do not collapse into non-presence, the way some of the men have seemed to. But with the curtain pulled back they stand exposed, demystified, and, inevitably, de-legitimized.”); Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2094-2103 (2003) (arguing that structural inequalities should be the target of sexual harassment law and workplace reform); Katherine M. Franke, *What’s Wrong with Sexual Harassment?*, 49 STAN. L. REV. 691, 693 (1997) (arguing that the real problem with sexual harassment is that it reinforces gender norms and stereotypes in the workplace); Janet Halley, *Sexuality Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT LAW 182, 192-83 (Catharine A. MacKinnon & Reva B. Siegel eds., 2004) (criticizing the excessive focus on eradicating sexuality in the workplace); Jessica A. Clarke, *Beyond Equality? Against the Universal Turn in Workplace Protections*, 86 IND. L.J. 1219, 1251-66 (2011) (warning against a universal approach to workplace protections and instead recommending a hybrid approach).

199. See generally Murray, *supra* note 11 (examining the increase in private regulation seen in the #MeToo movement due to the lack of adequate state regulation); Garfield Tenzer, *supra* note 11 (discussing the unintended consequences of the #MeToo movement); Onwuachi-Willig, *supra* note 11 (arguing that sexual harassment law should develop a reasonable person standard that accounts for different intersectional and multidimensional identities); Lupu & Tuttle, *supra* note 11 (exploring the intersection between sexual harassment law and the ministerial exception); Wexler et al., *supra* note 11 (discussing the cultural shifts and individual adjustments that need to occur for the #MeToo movement to have a successful transformation on society).

200. Schultz et al., *supra* note 47, at 34-35. Schultz notes that “[a]lthough sexuality is often used as a weapon of sexism, it is important to recognize that sexual talk and behavior are not inherently discriminatory or degrading to women at work” since “[s]uch sweeping prohibitions [on sexual conduct] tend to be unhelpful.” *Id.* at 35. Moreover, they

[F]ail[] to promote equality for women, while leaving LGBTQ people, men of color, and others who are stereotyped as overly sexual vulnerable to disproportionate punishment and job loss. Labeling all sexual expression harassing without attention to context can also chill interactions among employees and can reduce equality and solidarity by hindering close ties between men and women at work.

Id. (footnote omitted).

201. *Id.* at 36-37 (conveying “the need for concrete, localized, and holistic plans for achieving full equality, inclusion, and freedom from unwelcome, sex-based harassment for all employees”).

trauma is connected to the misguided efforts, under sexual harassment law, to eradicate sexual behavior in the workplace. For several decades, the unified message from mental health experts, television, film, legal experts, social media, families, and friends is that *sexual trauma is the primary injury* of gender discrimination.²⁰² Other injuries, such as inability to pay medical bills²⁰³ or being ignored in an airport line because you are a Black woman, seem less socially urgent.²⁰⁴ The hyper-focus on *sexual* trauma risks trivializing and ignoring *non-sexual* injuries.

2. Racial Justice

A parallel phenomenon appears in racial justice policy reforms. National attention to police-inflicted racial trauma has led lawmakers to a variety of much-needed police reforms.²⁰⁵ But narrow conceptions of racial trauma may limit meaningful visions for racial justice. As scholar and activist Keeanga-Yamahatta Taylor has sharply observed, when President Obama and his administration narrowly focused on policing practices, they failed to address the bigger concerns of social justice at the core of racial inequality in the United States.²⁰⁶ For example, when in 2015 President Obama referred to Camden, New Jersey, as “a symbol of promise for the nation,”²⁰⁷ he was “not referring to economic health or stability; he was referring to its approach to policing.”²⁰⁸ Police reforms are not enough for

202. See discussion *supra* subpart III.A (discussing the origins and prominence of trauma in feminist legal reform and expertise).

203. BRIDGES, *supra* note 122, at 130-32.

204. Claudia Rankine, *I Wanted to Know What White Men Thought About Their Privilege. So I Asked*, N.Y. TIMES MAG. (July 17, 2019), <https://nyti.ms/2JPAsTh> [<https://perma.cc/S36E-DHZZ>].

205. See discussion *supra* subpart III.B.

206. TAYLOR, *supra* note 85, at 132-33; see also Alex S. Vitale, *Obama's Police Reforms Ignore the Most Important Cause of Police Misconduct*, NATION (Mar. 6, 2015), <https://www.thenation.com/article/obamas-police-reforms-ignore-most-important-cause-police-misconduct> [<https://perma.cc/9M9T-7285>] (arguing that Obama's police reforms failed to address the history of racial inequality in the legal system).

207. Jeff Brady, *Obama: Camden, N.J., Police a Model for Improving Community Relations*, NPR (May 22, 2015, 4:26 PM), <https://www.npr.org/2015/05/22/408824877/obama-camden-n-j-police-a-model-for-improving-community-relations> [<https://perma.cc/6CHL-X9SQ>].

208. TAYLOR, *supra* note 85, at 132 (explaining that in 2013, Camden eliminated a 250-officer police force due to corruption malfeasance and the expense of unionized cops, and replaced it with a larger force—of 411 police officers—directed by the county). Community policing has meant more foot patrol and closer relationships with the people in

meaningful social justice because racism in the United States is about poverty, unemployment, education, and other structural inequalities.²⁰⁹ Racial justice must be conceptualized more broadly, beyond police inflicted trauma, to respond to a range of social racial inequalities.²¹⁰

An overinvestment in emotional trauma is a distraction and a hindrance to robust racial justice reforms, as the example of Camden, New Jersey, demonstrates. Efforts to fix the problem of police violence in Camden did not solve the core issues of social and economic inequalities. While it is crucial to end police violence against Black people through policies such as those discussed in subpart III.B,²¹¹ aspirations for racial justice can be more robust—as Coates, Taylor, #BLM activists, and other leaders of the Black liberation movement have asserted. The strength of the phrase “Black

the community. *Id.* In fact, just over its first year of “new and improved” policing, Camden had the largest amount of complaints of “excessive force” in New Jersey. *Id.* (citing *Policing in Camden Has Improved, but Concerns Remain*, ACLU (May 18, 2015), <https://www.aclu.org/press-releases/policing-camden-has-improved-concerns-remain> [<https://perma.cc/KE3P-22RJ>]). The Camden police also fully embraced “broken windows” policies. *Id.*

209. TAYLOR, *supra* note 85, at 133 (“What have not changed or been reformed are Camden’s depressed economy, its unemployment rate, and its failed housing market. Camden is 95 percent Black and Latino, 42 percent of the city’s population lives below the poverty line, and between 30 and 40 percent of the population is unemployed.”). Taylor concludes that “[t]he new focus on fees, fines, citations, and arrests for frivolous crimes threatens to increase poverty and unemployment. President Obama, then, said more than he probably even knew when he lauded Camden as a ‘national symbol.’” *Id.*

210. *Id.* at 219 (“The challenge before us is to connect the current struggle to end police terror in our communities with an even larger movement to transform this country in a way that the police are no longer needed to respond to the consequences of this inequality.”).

211. The Ferguson Action website, which is no longer available at the original domain, compiled a comprehensive list of movement demands, including demilitarizing the police, passing anti-racial-profiling legislation, and collecting data documenting police abuse, among other measures. *Ferguson Action Demands*, NEIGHBORHOOD FUNDERS GRP., <https://www.nfg.org/resources/ferguson-action-demands> [<https://perma.cc/8DE2-E3VQ>] (last visited Nov. 3, 2020). Hands Up United also called for “[i]mmediate suspension without pay of law enforcement officers that have used or approved excessive use of force.” *Demand*, HANDS UP UNITED, <http://www.handsupunited.org/demands> (last visited Nov. 3, 2020) [<https://perma.cc/EM3V-MP89>]. #BlackLivesMatter has called on the Attorney General to release the names of police who have killed Black people over the last five years “so they can be brought to justice—[sic] if they haven’t already.” *National Demands*, #BLACKLIVESMATTER, blacklivesmatter.com/demands/ [<https://web.archive.org/web/20150531071903/http://blacklivesmatter.com/demands/>].

Lives Matter” is that it does not require any particular trauma or injury for Black lives to really matter.²¹²

The narrow framework criticized here is *not* that of Black liberation activists. These inspiring activists have, since the rise of #BlackLivesMatter, pursued broad, non-trauma-based policies and strategies for economic justice. One example is the struggle to raise the minimum wage to \$15 an hour.²¹³ As activist Mwenda Katwiwa explains,

The #BlackLivesMatter movement goes beyond a call to end police brutality and murder against Black people—it is a recognition that Black life is valuable while it is still being lived. Valuing Black life means Black people should have access to their basic human dignity at their workplace—especially Black youth who are disproportionately impacted by unemployment and are over-represented in low wage jobs.²¹⁴

Another example of a non-trauma-related racial justice policy is the education justice movement, which has challenged educational policies such as privatization of schools and “zero tolerance” policies that have disproportionate negative effects on Black students.²¹⁵

3. Climate Justice

The trajectory of climate trauma also limits the scope of climate justice ambitions. The litigations involving future generations²¹⁶ and endangered species²¹⁷ are both narrowly based on a specific understanding of climate trauma in which the oppressed (future generations, polar bears) turns to the oppressor (the government) for relief. While these litigation strategies are important and can be

212. See TAYLOR, *supra* note 85, at 182-83 (“The long-term strength of the movement will depend on its ability to reach large numbers of people by connecting the issue of police violence to the other ways that Black people are oppressed.”).

213. *Id.* at 183 (“There is a logical connection between the low-wage workers’ campaigns and the Black Lives Matter movement. The overrepresentation of African Americans in the ranks of the poor and working class has made them targets of police, who prey on those with low incomes.”).

214. *Black Youth Project 100 (BYP10) Declares #BlackWorkMatters at Protests in Chicago, New Orleans & New York City*, COPYLINE MAG. (Apr. 20, 2015), <https://copylinemagazine.com/black-youth-project-100-byp100-declares-blackworkmatters-at-protests-in-chicago-new-orleans-new-york-city/> [<https://perma.cc/5NLM-JKK8>].

215. TAYLOR, *supra* note 85, at 184.

216. See discussion *supra* subpart III.C.2.

217. See discussion *supra* subpart III.C.1.

effective, their focus on a particular trauma—climate trauma—makes them representative of a narrow, trauma-based version of justice.

Consider a broader, non-trauma-based climate justice approach. On February 7, 2019, Representative Alexandria Ocasio-Cortez and Senator Edward Markey released a resolution for a Green New Deal.²¹⁸ The resolution calls for a ten-year plan whose primary goals include providing all people in the United States jobs with family-sustaining wages and appropriate benefits; high-quality health care; affordable, safe, and adequate housing; economic security; and access to clean water, clean air, healthy and affordable food, nature, resources, training, and high-quality education, including higher education.²¹⁹ In addition, the resolution calls for switching to clean, renewable, and zero-emission energy sources; repairing and upgrading infrastructure; building or upgrading to energy-efficient, distributed, and ‘smart’ power grids; working to ensure affordable access to electricity; upgrading all existing buildings in the United States and building new buildings to achieve maximal energy efficiency, water efficiency, safety, affordability, comfort, and durability, including through electrification; and many other related goals.²²⁰ The Green New Deal resolution stirred a full-blown political

218. H.R. Res. 109, 116th Cong. (2019) (recognizing the duty of the Federal Government to create a Green New Deal). See also Salvador Rizzo, *What’s Actually in the ‘Green New Deal’ from Democrats?*, WASH. POST. (Feb. 11, 2019, 3:00 AM), <https://www.washingtonpost.com/politics/2019/02/11/whats-actually-green-new-deal-democrats/?noredirect=on> [<https://perma.cc/ASR4-GFD7>] (discussing the “Green New Deal” and its proposals to cut greenhouse-gas emission); Lisa Friedman, *What Is the Green New Deal? A Climate Proposal, Explained*, N.Y. TIMES (Feb. 21, 2019), <https://nyti.ms/2GCKHjg> [<https://perma.cc/RSD5-JR47>] (explaining the “Green New Deal”).

219. H.R. Res. 109.

220. *Id.*

storm.²²¹ Many politicians and public figures expressed support.²²² Many dismissed it as “socialist.”²²³

The actual proposal was short-lived,²²⁴ but in many ways it was a brilliant success because it launched a political conversation about social justice that is *not* narrowly tailored to popular imagery of climate trauma (such as those highlighted in the ESA and future generations litigations).²²⁵ Instead, it presents climate change as a social problem that is connected to social inequalities in employment, health, and education. As Jedediah Britton-Purdy has put it,

In a time when sweeping ecological crises are rooted in the very structure of the economy, and the political will to change that structure is hard to muster partly because politics is fractured and sapped by mutual mistrust, a vision of economic reengineering and renewed social solidarity is an integral part of realistic climate policy.²²⁶

221. *Id.*

222. Supporters include Senators Kirsten Gillibrand, Kamala Harris, Elizabeth Warren, and Bernie Sanders. Zoya Teirstein, *Kirsten Gillibrand Doesn't Just Support the 'Idea' of a Green New Deal, She's Wholly Behind It*, GRIST (Jan. 24, 2019), <https://grist.org/article/kirsten-gillibrand-doesnt-just-support-the-idea-of-a-green-new-deal-shes-wholly-behind-it/> [<https://perma.cc/F3HH-7BQH>]; Michael Burke, *Kamala Harris Endorses Ocasio-Cortez's 'Green New Deal'*, HILL (Jan. 28, 2019, 11:14 PM), <https://thehill.com/homenews/campaign/427386-kamala-harris-endorses-ocasio-cortezs-green-new-deal> [<https://perma.cc/DV9V-L3YD>]; Ben Geman, *Elizabeth Warren Backs 'Idea' of a Green New Deal*, AXIOS (Jan. 2, 2019), <https://www.axios.com/elizabeth-warren-backs-idea-of-green-new-deal-8585d278-ca96-484a-8e22-1f616956c034.html> [<https://perma.cc/AKS4-4FBW>].

223. President Donald Trump called the Green New Deal a hoax, like the Russia probe. Tim Pearce, *Trump Calls Green New Deal a 'Hoax,' Like Russia Probe*, CLIMATE CHANGE DISPATCH (May 15, 2019), <https://climatechangedispatch.com/trump-green-new-deal-hoax-rally/> [<https://perma.cc/9QAK-J3RP>]; see also Justin Haskins, Opinion, *Green New Deal Would Destroy American Dream, Create American Nightmare*, FOX NEWS (Feb. 17, 2019), <https://www.foxnews.com/opinion/green-new-deal-would-destroy-american-dream-create-american-nightmare> [<https://perma.cc/FDX7-6UL9>] (discussing the negative impacts the “Green New Deal” would have on the United States).

224. On March 26, 2019, Republican Senators called for an early vote on the resolution without allowing discussion or expert testimony. See 165 CONG. REC. S1969-71 (daily ed. Mar. 26, 2019). In protest, forty-two Democrats and one Independent who caucuses with Democrats voted “present,” resulting in a 57–0 defeat on the Senate floor. *Id.* at S1971.

225. See also David Montgomery, *AOC's Chief of Change*, WASH. POST (July 10, 2019), <https://www.washingtonpost.com/news/magazine/wp/2019/07/10/feature/how-saikat-chakrabarti-became-aocs-chief-of-change/> [<https://perma.cc/PW2P-F9EK>] (“The interesting thing about the Green New Deal . . . is it wasn’t originally a climate thing at all.”).

226. PURDY, *supra* note 149, at 18–19; see also Jedediah Britton-Purdy, *Environmental Justice Was Once a Social-Justice Movement*, ATLANTIC (Dec. 7, 2016), <https://www.theatlantic.com/science/archive/2016/12/how-the-environmental-movement->

The Green New Deal is an excellent illustration of envisioning social justice and coalition-building beyond the narrow scope of climate trauma.²²⁷ A broader vision for climate justice tackles the deeper and interconnected unequal structures that are interwoven in the current ecological crisis. By contrast, a trauma-based legal system that is driven by particular instances of sexual, racial, and climate traumas when they emerge is not imaginative. It is a whack-a-mole legal system.

B. *Perpetuating Wounded Identities*

In *United States v. Windsor*, same-sex couples won a civil rights victory.²²⁸ In the same decision, however, they were portrayed as suffering, wounded, weak political subjects.²²⁹ Marriage equality in the United States has depended, at least rhetorically, on the alleged humiliation and suffering of those denied access to marriage.²³⁰ A “weak dignity” thus emerged in *Windsor* and *Obergefell v. Hodges*.²³¹ The Court “assume[d] that all those in same-sex relationships—and their children—have been seriously injured and

can-recover-its-soul/509831/ [https://perma.cc/C6SE-YC9V] (“There’s no need for environmentalists to stop being experts, or to abandon the institutions and establishment alliances they have painstakingly built up over decades. But they should be clear that their mission is more than technical. They are working to defend a living world that is under assault at every point, from the global climate to the most vulnerable communities. Economic power, racial inequality, and the struggles of indigenous peoples are not optional or supplemental. They are at the heart of the work.”).

227. See, e.g., Guido Girgenti & Aru Shiney-Ajay, *The Green New Deal Isn’t a Wish List—It’s Good Strategy*, NATION (Apr. 23, 2019), <https://www.thenation.com/article/archive/the-green-new-deal-must-be-all-encompassing/> [https://perma.cc/JK72-DMYH]

(“The Green New Deal . . . is a long-awaited victory for the US climate movement. Finally, there’s a plan to transform the US economy at the speed and scale needed to avoid disastrous warming, while securing prosperity and justice for millions of Americans—especially those most vulnerable to climate change and most impacted by centuries of historic harm and marginalization.”).

228. 570 U.S. 744, 771 (2013).

229. See generally Noa Ben-Asher, *Conferring Dignity: The Metamorphosis of the Legal Homosexual*, 37 HARV. J.L. & GENDER 243 (2014) (discussing the impact *Windsor* on the ‘legal homosexual’).

230. *Id.* at 282.

231. *Id.* at 246 (“*Windsor*’s use of dignity is weak for three principal reasons. First, the *Windsor* Court does not present human dignity as inherent in all humans. Instead, dignity is understood by the Court to be conferred by individual states at their discretion. Second, and relatedly, *Windsor*’s concept of dignity is far narrower than theories of dignity offered by contemporary moral and legal philosophers.”); see also *Obergefell v. Hodges*, 135 S. Ct. 2584, 2591 (2015) (invalidating state restrictions on same-sex marriage as violating Due Process and the Equal Protection Clause).

humiliated by laws such as [the Defense of Marriage Act (DOMA), and] [t]his assumption . . . reflects a problematic and self-perpetuating politics of injury and pity.”²³² The Court also assumed that DOMA “demeans the couple,”²³³ “imposes a disability on the class,”²³⁴ and “humiliates tens of thousands of children now being raised by same-sex couples.”²³⁵ Millions of Americans were characterized as traumatized and in need of redemption.²³⁶ The risk is that when such notions of trauma, shame, and humiliation enter the official domain of law, they often shape and perpetuate *wounded* individual and group identities: individuals or communities may come to perceive themselves as wounded, traumatized, or in need of redemption.

A similar concern arises with the three social justice causes at the center of this Article. The concern is that the centrality of emotional trauma in social justice agendas may encourage individuals and communities to understand themselves primarily through a lens of sexual, racial, or climate trauma (or a combination of those) and to react to that trauma. With the exception of polar bears, one risk of heavy reliance on trauma in law and policymaking is the solidification of a wound at the core of individual and group identities. The organizing principle of citizenship becomes trauma.

Monica Lewinsky’s emphasis on sexual trauma is telling here.²³⁷ Just as Lewinsky now understands herself as a trauma survivor,²³⁸ at a societal level trauma and PTSD are now understood as the primary injuries of sexual misconduct.²³⁹ It’s not that Lewinsky is lying today or that she lied in 1998—she may have been truthful all along. But the

232. Ben-Asher, *supra* note 229, at 246.

233. *Windsor*, 570 U.S. 744 at 772.

234. *Id.* at 775.

235. *Id.* at 772.

236. *See id.* at 772, 775; *see also* Paula Ettelbrick, *Since When Is Marriage a Path to Liberation?*, 6 OUT/LOOK: NAT’L LESBIAN & GAY Q. 9, 14 (1989) (“[A]ttaining the right to marry will not transform our society from one that makes narrow, but dramatic, distinctions between those who are married and those who are not married to one that respects and encourages choice of relationships and family diversity. Marriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture; and the validation of many forms of relationships.”).

237. *See* discussion *supra* subpart III.A.1.

238. Lewinsky, *supra* note 56 (“I was diagnosed several years ago with post-traumatic stress disorder, mainly from the ordeal of having been publicly outed and ostracized back then. My trauma expedition has been long, arduous, painful, and expensive. And it’s not over. . . . For two decades, I have been working on myself, my trauma, and my healing.”).

239. *Id.*

world has changed. *Trauma has become a new source of private and public intelligibility*. That is, trauma has become the new gravitational center of societal, legal, and political conceptions of gender, racial, and climate justice. Trauma now shapes individual and community experience. We make sense of our world through the lens of trauma. And the rhetoric and logic of trauma ends up perpetuating the very injury it seeks to heal.

Coates's *Between the World and Me*, discussing race politics in the United States, can be seen as a call to resist wounded racial identities.²⁴⁰ On the one hand, Coates asks his son (and readers) to remember the injuries of race in the United States,²⁴¹ that Black individuals and communities are "survivors of catastrophe,"²⁴² and that the history of this country is one of ongoing racial plunder.²⁴³ On the other hand, he urges his son (and readers) not to let the ongoing brutality of racism *be life-defining*. He writes: "Our moment is too brief. Our bodies are too precious. And you are here now, and you must live—and there is so much out there to live for, not just in someone else's country, but in your own home."²⁴⁴ The ongoing injuries of racism can generate strength and Black power instead of wounded attachments.²⁴⁵

240. COATES, *supra* note 105, at 70.

241. *Id.* ("Never forget that we were enslaved in this country longer than we have been free. Never forget that for 250 years black people were born into chains—whole generations followed by more generations who knew nothing but chains. . . . They were people turned to fuel for the American machine.").

242. *Id.* at 149 ("We have made something down here. We have taken the one-drop rules of Dreamers and flipped them. They made us into a race. We made ourselves into a people. . . . As do black people on summer blocks marked with needles, vials, and hopscotch squares. As do black people dancing it out at rent parties, as do black people at their family reunions where we are regarded like the survivors of a catastrophe. . . . As do all of us who have voyaged through death, to life upon these shores.").

243. *Id.* at 151 ("It was the cotton that passed through our chained hands that inaugurated this age. It is the flight from us that sent them sprawling into the subdivided woods.").

244. *Id.* at 146-47.

245. *Id.* at 149 ("This power, this black power, originates in a view of the American galaxy taken from a dark and essential planet. Black power is the dungeon-side view of Monticello—which is to say, the view taken in struggle. And black power births a kind of understanding that illuminates all the galaxies in their truest colors. . . . We have made something down here. We have taken the one-drop rules of Dreamers and flipped them. They made us into a race. We made ourselves into a people."); *see also id.* at 151 ("And still I urge you to struggle. Struggle for the memory of your ancestors. Struggle for wisdom. . . . Struggle for your grandmother and grandfather, for your name. But do not struggle for the Dreamers. Hope for them. Pray for them, if you are so moved. But do not

Once trauma enters the core of political and legal consciousness and becomes an engine of social justice, individuals and communities may identify fully with it, come to be defined by it, and become attached, reactive, and dependent on it. The risk is that individuals and communities therefore perceive themselves as weak, traumatized, and vulnerable and seek recognition or approval from those perceived to be powerful. This risk was evident in the alleged shame and humiliation attributed to same-sex couples in *Windsor* and *Obergefell*;²⁴⁶ this risk is what Coates warned his son about when he urged him not to hope for the awakening of White people;²⁴⁷ this risk is apparent in feminist critiques of Monica Lewinsky's self-portrayal as a trauma survivor of a powerful White man;²⁴⁸ and unless climate activists and policymakers resist the solidifying narratives of climate trauma, tragic, wounded attachments will be the legacy of future generations.²⁴⁹

V. CONCLUSIONS

The science of trauma emerged with a nineteenth-century interrogation of female hysteria by White male scientists. By the twenty-first century, many political and legal identities are understood primarily through the lens of trauma and suffering. When social justice movements rely heavily on trauma, the female body is often viewed as the subject of sexual trauma; the Black body, of plunder and racial trauma; and nature and vulnerable populations, of climate trauma. But alongside trauma-driven laws and policies, all three quests for social justice have also generated more radical and visionary reforms for social justice that have included economic, educational, and health justice. The wounds of gender, race and

pin your struggle on their conversion. The Dreamers will have to learn to struggle themselves . . .").

246. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600-01 (2015); *United States v. Windsor*, 570 U.S. 744, 771 (2013).

247. See *supra* note 245.

248. See, e.g., Ben-Asher, *supra* note 14, at 160-62.

249. See, e.g., Greta Thunberg, Speech at United Nations Climate Action Summit (Sept. 23, 2019), <https://www.nbcnews.com/news/world/read-greta-thunberg-s-full-speech-1057861> [<https://perma.cc/57HC-SNB4>] ("You have stolen my dreams and my childhood with your empty words and yet I'm one of the lucky ones. People are suffering. People are dying. Entire ecosystems are collapsing. We are in the beginning of a mass extinction and all you can talk about is money and fairytales of eternal economic growth. How dare you!").

climate injustices are real, and the suffering they cause is real. Rather than let those wounds generate involuntary symptoms, our task is to transform them into new dreams for growth and social justice.