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Justice, Prevention, Respect:
A Critical Investigation of Sexual Violence on College Campuses;
And a Denunciation of Carceral Feminism

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Abstract

Sexual violence is a “constructed” crime informed by race, class, and gender, although the effects of identity on the issue of sexual violence are often ignored in contemporary discourse. In the United States, the responsibility for holding sexually violent people accountable is laid upon the criminal justice system. However, the criminal justice system is inherently flawed and unjust, making the administration of true justice nearly impossible. Furthermore, mainstream feminists have long relied on the prison industrial complex to aid them in the fight against sexual violence, a phenomenon known as carceral feminism. A punitive, carceral feminist mindset has penetrated higher education institutions and influenced the criminalization of Title IX policy and practice. The criminalization of Title IX ignores that sexual violence is a result of systemic factors such as patriarchy, reinforcing instead the idea that sexual violence is idiosyncratic. Failing to address the systemic roots of sexual violence allows these acts of violence to continue. Specifically, fear- and shame-based rhetoric in U.S. sex education normalize violence and sex in youth culture. adrienne maree brown’s notion of pleasure politics allows us to imagine a more humanizing and pleasure-based way to educate about sex and sexuality. By validating and normalizing pleasure as a healthy element of sexual life, and as a form of restorative/transformatory justice, we can move towards a society in which sexual violence is eradicated and human relations are nurtured. This paper uses scholarly sources supported by personal experience to draw connections between academic theory and real life.

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Introduction

In January 2015 Brock Turner, a Stanford University swimmer, raped Chanel Miller (then known as “Emily Doe”) while she was unconscious. Although Turner was caught in the act and found guilty of three counts of felony sexual assault, he was given only six months in jail and three years probation by the judge overseeing his case, Aaron Persky. Brock Turner completed three months in county jail before being released, prompting outrage from the public for his comparatively minimal sentence, as he could have been sentenced to up to fourteen years. Aaron Persky was later recalled by voters in Santa Clara County because of his lenient sentencing of Turner.¹ In light of Persky’s minimal action against Turner, many people called for more severe punishment for those convicted of sexual assault. Some critics of Persky’s recall cautioned against encouraging more mandatory minimums because of the disproportionate effect harsher sentencing would have on less privileged individuals convicted of crimes. Responding to national outrage over Turner’s short sentence, California Governor Jerry Brown signed into law a bill requiring state prison time instead of probation for people convicted of sexually assaulting someone who is intoxicated or unconscious.² The bill was seen as a victory for many of Miller’s supporters.

¹ Richard Gonzales and Camila Domonoske, “Voters Recall Aaron Persky,” NPR, June 5, 2018, <https://www.npr.org/sections/thetwo-way/2018/06/05/617071359/voters-are-deciding-whether-to-recall-aar-on-persky-judge-who-sentenced-brock-tur>.

² Doug Stanglin, “Calif. Gov Signs Bill Mandating Prison For Sexual Assault,” USA Today, September 30, 2016, <https://www.usatoday.com/story/news/2016/09/30/calif-signs-bill-mandating-prison-sexual-assault/91335410/>.

The focus of the outrage from the Brock Turner case was funneled into increased punitive measures for convicted criminals. This reflects the public's general belief that justice can be adjudicated and administered by the state, implying that the criminal justice system is an institution through which true justice is achieved. However, sending perpetrators to prison invokes the prison industrial complex (PIC), a subsystem of criminal justice that contains deeply embedded anti-Blackness and racism. Prisons are ultimately an unjust institution and therefore unable to produce justice. If the prison apparatus can't provide justice, then what can? What would justice look like, outside of locking someone up for acts of sexual violence?

To answer this question, one must understand what justice is. "Just behavior or treatment" is the answer Google provides, "just" being defined as "based on or behaving according to what is morally right and fair." However, the word fair can be interpreted in terms of revenge, i.e. an eye for an eye. Revenge can be thought of as an individualistic venture, punishment for harm done, and the end goal includes both sides incurring the same amount of suffering. This ultimately perpetuates cycles of violence, and therefore is antithetical to community healing or creating a more humane future. So justice has to be sustainable, including effectively preventing people from committing acts of sexual violence again. Moreover, the point is not to just reduce repeat offenses, but to work to eliminate factors that lead to sexual violence. The true goal should be a society in which sexual violence does not happen at all.

In other words, what is needed is a form of positive peace, defined by Rama Mani as that "which represents the removal of structural and cultural violence... expediting the

eventual removal of the underlying causes.”³ This deeper understanding of justice is also informed by Waziyatawin, who describes reparative justice as the need “to ensure an infrastructure that will not allow oppression.”⁴ Rather than simply punishing, justice needs to involve a sustainable element which will not allow the harm that was caused to happen again. In other words justice needs to involve eliminating the infrastructure of violence.

Mainstream responses to sexual violence largely depend upon the neoliberal carceral state, even by people who call themselves feminists. Responses produced by the prison industrial complex are limited and are actually counterproductive to the cause of eliminating sexual violence from our society. In fact, the roots of the problem lie in carceral responses and warped sex education. Based on these tenets, what kind of justice is most appropriate to address both perpetrators and survivors of violence, harm, and trauma?

Concepts and Method

This paper is informed by scholarship on race, gender, and sex education. I include socio-political influences in my analysis of constructions and responses to sex and sexual violence. I primarily utilize academic sources because of their legitimacy and consistency. However, I have also included online news articles — specifically, as I researched more radical sex education curriculum, I found non-academic, online sources

³ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge, UK: Polity Press, 2002), 12.

⁴ Waziyatawin. *What Does Justice Look Like? : The Struggle for Liberation in Dakota Homeland* (St. Paul, MN: Living Justice Press, 2008), 167.

necessary. Inevitably, the way I interpret the information I have learned is informed by my positionality as a heterosexual, cisgender, middle-class woman of color. In addition, I am someone who is close to several survivors of sexual violence. My goal throughout this project was not to pretend that I can erase my biases and write purely objectively, but to acknowledge, be critical of, and explore how these subjectivities enter my work.

My positionality within heteronormativity has influenced my views on sexual violence, as my knee-jerk reaction to sexual violence is to think of it within a heterosexual framework, in which cisgender men are the perpetrators and cisgender women are the survivors. I understand that this is not inclusive of all sexual violence, however the sexual violence that I have seen in my life reflects this heteropatriarchal framework. It is important to reflect on positionality because the assumptions researchers make are influenced by personal experiences and identity. This can influence what sources are explored, premises research is based on, and definitions used. I mention my positionality because I want to allow readers to have an understanding of how my research may be mediated.

As someone who is firmly a supporter of survivors of sexual violence, I chose not to delve into the process of proving survivors' legitimacy in this paper. The legitimacy of sexual violence and of survivors' claims are already enough. This is not to say that I blindly believe anything a survivor says, but I believe in giving people who come forward about sexual violence legitimacy, patience, and compassion. I chose to use the word "survivor" to describe survivors/victims of sexual violence because the term "victim" erases its subject's agency and power. The term "victim" is often associated

with helplessness and incompetence⁵ and yet survivors are still powerful beings even after a traumatic experience like sexual assault. However, I recognize that every survivor may have their own preferences as to how they want to be described.

Constructions of Sexual Violence

According to the national Center for Disease Control, sexual violence “includes a continuum of behaviors such as attempted or completed rape, sexual coercion, unwanted contact, and non-contact unwanted experiences like harassment.”⁶ However, the definition of sexual violence changes depending on geography, identity, and time period. When looking at sexual violence within the context of legal ramifications, acts of sexual violence are defined differently depending on the state. The definition of rape, degree of sexual violence, and other more specific dimensions of sexual violence change depending on geographic location. However, definitions of sexual violence change based on more than just geography or institution.

Legal definitions, as well as normative social constructions of sexual violence and rape “are based on what men, not women, think violates women.”⁷ There is no federal definition of rape. However, the feminist legal scholar Catharine MacKinnon writes “The law, speaking generally, defines rape as intercourse with force or coercion and without

⁵ Michelle L. Meloy and Susan L. Miller, *The Victimization of Women: Law, Policies, and Politics* (Oxford: Oxford University Press, 2011), 45.

⁶ Jenny Dills, Dawn Fowler, and Gayle Payne, *Sexual Violence on Campus: Strategies for Prevention* (Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2016), 3.

⁷ Diana Scully, *Understanding Sexual Violence: A Study of Convicted Rapists* (Boston: Unwin Hyman, 1990), 48.

consent.”⁸ The phrase “and without consent” implies that force/coercion have the potential to be consensual, which is an inherently contradictory idea. In whose imagination could using force and acquiring consent be simultaneous? The two are mutually exclusive. However, it’s important to differentiate here between sexual activity that may include force and is consensual, such as sadomasochism, and sexual violence. While sexual activity such as sadomasochism may include force, it is not through force or coercion that sexual activity is agreed to. As Catharine MacKinnon writes, “Force is present because consent is absent.”⁹ Rape is also often understood as such only if it involves certain circumstances. This type of rape speaks to the popularized notion of a “typical rape,” which takes place in a dark but public area, is committed by a deranged man unbeknownst to the female survivor, and involves extreme force.¹⁰ This understanding of rape was coded into Michigan law — and then overturned after the 70s — in the “utmost resistance standard.” This standard required that the survivor physically struggle against the perpetrator the entire duration of the assault in order for it to be considered rape. “Typical” rape is almost the opposite of what rape commonly looks like, yet the majority of people consider evidence of struggle for the duration of the assault as the most significant proof of victimization.

To further investigate how sexual violence is now understood, we must understand the history of its construction and when it is understood as a crime. While crime can often include acts of violence, not all acts of violence are counted as crimes.

⁸ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989), 172.

⁹ MacKinnon, *Toward a Feminist Theory of the State*, 172.

¹⁰ Meloy and Miller, *The Victimization of Women: Law, Policies, and Politics*, 45.

Whether something is designated as a crime (an act that may be prosecuted and punished by the state) depends on the cultural and political landscape of the time, as well as the structures of power operating. Thus, violent acts have always happened, but whether they have received the social and political condemnation, and political feasibility to make them a crime, depends on many factors. Therefore, sexual violence is always violence, but whether or not it is constituted as a crime depends on the historical period and actors, among other things; specifically, when those in power deem it to be non-threatening to designate sexual violence as a crime, which can then incur punishment and/or accountability.

Whether sexual violence gets defined as such falls along racial lines: white male sexual violence against Black women in early U.S. history wasn't understood as sexual violence by dominant society because Black women were enslaved and considered property. To justify the rape of Black women by white slaveowners, Black women were stereotyped as hypersexual and thus less vulnerable to rape — not because they were protected from it, but because their perceived hypersexuality and status as property lowered the standard for what rape is.¹¹ At the same time, the myth of Black women's hypersexuality coincided with the criminalizing of Black men and their subsequent lynching by white men.¹²

Dating back to the 1800s, white middle-class women's virginites were the property of their patriarchs — either their father or husband.¹³ Rape laws were originally

¹¹ Rachel Hall, "'It Can Happen To You': Rape Prevention in the Age of Risk Management," *Hypatia* 19, no. 3 (2004): 5.

¹² Hall, "'It Can Happen To You'," 4.

¹³ Meloy and Miller, *The Victimization of Women*, 45.

meant to protect the virginity of the daughters of wealthy, white families — benefitting the upper classes, white supremacy, and reinscribing white women’s status as objects. Thus, if someone raped a white middle-class woman, the rape constituted a crime because a man’s property was trespassed upon and damaged. This led to the exclusionary criminalization of white women’s rape in the early U.S. and laid the groundwork for what counts as legitimate sexual violence today.

After the passage of the 13th Amendment to the U.S. Constitution, newly freed Black men posed an economic and political threat to white communities. Therefore, in order to suppress the power of Black communities, white women would falsely accuse Black men of rape. This accusation would then be used as justification by white supremacists for the lynching of Black men.¹⁴ Thus, Black men’s sexual violence, falsified or legitimate, against white women has always been considered sexual violence, and has been constructed as a crime *worse than murder*. Race and property intersected, such that “White men used their ownership of the body of the white female as a terrain on which to lynch the Black male.”¹⁵

In addition, white women’s bodies are seen as more valuable and pure than other women’s bodies, in part because they are conduits through which the white race continues. This has served to make their bodies historically “immune” to sexual violence in white, heterosexual marriage. For example, the United States, following England’s precedent, adopted the marital-rape exemption in 1857. This law posited that (male on

¹⁴ Hall, “‘It Can Happen to You’,” 4.

¹⁵ Ibid.

female) rape could not occur between two married (heterosexual) people because when women enter marriage, they give up their civil identity and become the property of their husbands.¹⁶

Thus, in the 19th and 20th centuries of U.S. history, throughout both public discourse and the legal sphere, white womanhood has been understood as “sexually frigid and chaste”¹⁷ and Black womanhood as “animalistic and hypersexual,”¹⁸ although both constructions still result in women being the sexual property of white men. These myths (white women’s purity, Black men’s sexual criminality, and Black women’s hypersexuality) have all coincided, resulting in a system in which the identification of and accountability for sexual violence depends on each identity’s relation to race and property, even today.

Carceral Feminism and Its Effects

The issue of sexual violence is often dealt with by resorting to the law as a way to manage an organization’s response. Interrogating sexual violence’s factors, how to care for those affected by violence, how to change those who have perpetrated, or how to prevent more people from becoming sexually violent in the first place, are all secondary to staying compliant with the law. When a friend of mine in high school was sexually assaulted, she was automatically put into a system in which she had no control — she had little to no say in whether or not the police were called or whether they

¹⁶ Meloy and Miller, *The Victimization of Women*, 45.

¹⁷ Hall, “‘It Can Happen to You’,” 5.

¹⁸ *Ibid.*

investigated. She and her trauma were managed by the police and the school administrators, and the support she was given began and ended with a list of therapists' phone numbers. Few people checked in on her well-being, but the official requirements of the administrators and police were completed anyway. It became clear to me that while on some level administrators and the police were trying to help her, their main priority was fulfilling their legal duties, rather than respecting her agency and wishes. At the end of the day, their official job responsibilities were focused on those legal details at the expense of her sense of resolution. For example, she was already uncomfortable talking about the experience, but was forced over and over to describe what had happened in order for the police to investigate.

For the longest time I couldn't understand why we as young women had never been taught how to deal with a situation like this. One out of six American women has survived an attempted or completed rape in her life, and young women specifically are at a high risk of being assaulted: "Females ages 16-19 are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault."¹⁹ And yet my friend and I had received little to no preparation on how to support each other or cope with what had happened.

Locating this high school experience in the context of neoliberal America helped me to understand why the adults had responded in such a cold, distant, and managerial way. For a child born in the late 90s, neoliberalism was like carbon dioxide

¹⁹ RAINN, "Victims of Sexual Violence: Statistics," RAINN, Accessed March 24, 2020, <https://www.rainn.org/statistics/victims-sexual-violence>.

— invisible, yet permeating all aspects of life, in a poisonous way. Once neoliberalism was named though, I could see its influence everywhere.

The Origins of Carceral Feminism

During Ronald Reagan’s presidency in the 1980s, neoliberalism moved from the margins of political thought to the center. Neoliberalism is a belief that champions the free market, emphasizes individualism, advocates for the transfer of public services to private organizations, and supports the upward distribution of power.²⁰ During the 80s, the neoliberal slashing of government-funded social services resulted in “a generalized sense of insecurity that then led to more regulation of the poor and minorities”²¹ and a “culture of control.”²² The resulting crime control of this era encouraged the construction of criminality to further be informed by an essential “otherness,” which then allowed for the state to gain more power and surveillance.²³ By explaining criminality as inherent to deviant individuals, the state could justify its control over anyone designated as such. As with most extensions of state power, this exacerbated already existing racial discrimination against people of color and poor people, and they were criminalized the most. Neoliberalism became more than just an economic theory and morphed into an ideology defined by individualizing systemic problems, increasing administrative power, and encouraging punitive responses to social ills.

²⁰ Kristin Bumiller, *In an Abusive State* (Duke University Press Books, 2009), 5.

²¹ Bumiller, *In an Abusive State*, 6.

²² Ibid.

²³ Ibid.

During the same historical period, mainstream feminism took center stage in advocating for the victim's movement. This movement focused on violence against women in the U.S., specifically domestic and sexual violence. While the victim's movement put violence against women at the forefront of America's consciousness and compelled politicians to act, the focus was primarily on white women's needs, as it historically has been for mainstream feminism. Neoliberalism compounded the racialized history of constructions of and responses to sexual violence discussed above, which then encouraged the formation of carceral feminism and the professional purview of sexual violence.

Neoliberalism's influence on mainstream feminism between the 1960s and the 80s is demonstrated through the rise of carceral feminism, which relies on the prison industrial complex and the state to achieve feminist goals. Neoliberalism individualizes systemic problems, which — in this case — then allows for individuals to be punished for their perceived failings instead of addressing the environments that cause people to enact violence. Elizabeth Bernstein writes that the resulting phenomenon, carceral feminism, is influenced by neoliberalism because it

[...] locates social problems in deviant individuals rather than mainstream institutions... seeks social remedies through criminal justice interventions rather than through a redistributive welfare state... [and] advocates for the beneficence of the privileged rather than the empowerment of the oppressed.²⁴

²⁴ Elizabeth Bernstein, "The Sexual Politics of the "New Abolitionism,"" *Differences* 18, no. 3 (2007): 137.

Thus, while carceral feminism includes the term “feminism,” it is not truly liberatory for all people. In fact, it has further harmed communities already exploited by the PIC and failed to eradicate sexual violence from society.

Before there was the term “carceral feminism,” there was a whole infrastructure created that allowed for it to emerge. In the late 1800s, there was a wave of activism highlighting violence against women, with a radical understanding of its origin. The roots for violence against women was held, by many prominent white liberal feminists such as Elizabeth Cady Stanton and Susan B. Anthony, to be located in “a husband’s ownership of his wife as property.”²⁵ Initially, the movement tried reforming the institution of marriage and liberalizing divorce laws to give women more rights in order to stand up against their abusers. However, when these actions failed, white liberal feminists adopted a different strategy.²⁶ After trying to expose that domestic and sexual violence is rooted in women’s oppression, they instead began to encourage harsher punishments for men who were violent against women. For example, they supported whipping for men who abused their wives, or the death penalty for men who had raped women.²⁷

At the same time as white women were pushing for harsher punishment and the death penalty, Black women were organizing against lynching.²⁸ Ida B. Wells, a prominent anti-lynching activist, was one of the most powerful voices in this campaign. Far from condoning violence by Black men, Ida B. Wells recognized that too many of the

²⁵ Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge University Press, 2006), 119.

²⁶ Gottschalk, *The Prison and the Gallows*, 119.

²⁷ Ibid.

²⁸ Ibid.

charges accusing Black men of raping white women were false. In fact, they were often falsified for the sole purpose of covering up consensual relationships. In her book *A Red Record*, Wells writes that “the murderers invented the third excuse—that Negroes had to be killed to avenge their assaults upon women.”²⁹ Thus, Wells helped to expose the use of rape allegations by white women against Black men to justify the lynching of Black men. Furthermore

Lynching, she [Wells] warned, served to ‘stamp us a race of rapists and desperadoes.’ By portraying Black men as sexually uncontrollable and thus ‘incapable of self- government,’ whites could justify the denial of suffrage and civil rights to African Americans.³⁰

Thus, sexual violence committed by Black men against white women, true or not, could be used as a tool not only to enact violence upon individual Black men, but to discredit the Black community as a whole and repudiate their calls for human rights. The perspectives of Wells and other Black women like Mary Church Terrell and Pauline Hopkins were informed by the understanding of “sexual assault as a problem rooted in racial injustice that affected both men and women.”³¹ On the other hand, “white reformers... interpreted rape as a problem rooted in gender inequality and women’s exclusion from full citizenship.”³² Carceral feminism in the 1800s thus betrayed its radical roots and aligned itself with white supremacy. Had carceral feminists of that time period really been committed to feminist ideals, they would have supported the rights of

²⁹ Ida B. Wells-Barnett, *A Red Record: Tabulated Statistics and Alleged Causes of Lynchings in the United States, 1892-1893-1894* (Chicago: Donohue & Henneberry, 1895), 79.

³⁰ Estelle B. Freedman, *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Cambridge, Massachusetts: Harvard University Press, 2013), 106.

³¹ Freedman, *Redefining Rape*, 105.

³² *Ibid.*

all women and all people to move freely and safely in society. Today's carceral feminists draw on this past.

The anti-rape movement in the 1960s and 70s also had its origins in a feminism more radical than suspected. The movement was based on several radical notions that Gottschalk describes, including

[...] that violence against women was a fundamental component of the social control of women... that abused women needed to be transformed from victims into survivors... that reliance on the state for solutions risked co-optation... and that the ultimate solution to rape and domestic violence rested on overhauling the relations between men and women.³³

Initially, radical feminists focused their efforts on founding grassroots rape crisis centers, which were political and not associated with the state.³⁴ However, because of a variety of ideologies in the feminist movement, politicians' responsiveness to the issue of sexual violence, and a need for funding for rape crisis centers, the movement became co-opted by the state.

The ideology behind carceral feminism began to be popularized during the 1960s by a surprising coalition of right-wing Christian Republicans and liberal feminists who looked to "militarized humanitarianism"³⁵ as a solution to issues of sex work and sexual assault. These two groups were able to unite because of a focus on so-called "feminist family values," which Chloë Taylor describes as "white, middle-class feminists...

³³ Gottschalk, *The Prison and the Gallows*, 122.

³⁴ *Ibid.*, 124.

³⁵ Chloë Taylor, "Anti-Carceral Feminism and Sexual Assault—a Defense: A Critique of the Critique of the Critique of Carceral Feminism," *Social Philosophy Today* 34, (2018): 34.

Taylor uses Elizabeth Bernstein's definition of "militarized humanitarianism," which is a strategy of using humanitarianism as a way to justify state-sanctioned military interventions and carceral politics at the global level.

transitioned from analyzing violence within the family to combating threats posed to the family and its values,”³⁶ specifically sexual predators and commercial sex. While it seems like an unlikely alliance, “what binds together... these constituencies... is a historically significant consensus around corporate capitalist ideals of freedom and carceral paradigms of justice.”³⁷

Since many of the rape crisis centers were grassroots and run by volunteers, they needed funding, most of which was given by the state. These public funds came with their own set of parameters and restrictions. Specifically, Gottschalk writes that the Law Enforcement Assistance Administration (LEAA) Crime Victim’s Initiative “provided an important mechanism to co-opt the women’s movement and enlist it in the war against crime and the criminal.”³⁸ As the LEAA and state gained more power in the anti-violence movement, they depoliticized the issue of violence against women and reinscribed it as an individual rather than systemic issue.³⁹ At the same time, the rhetoric around crime, law, and order, was becoming more fervent. The movement capitalized upon this, playing the “crime” card to attract more money for rape crisis centers and “to broaden the base of the movement from middle- and upper-class white women to Hispanic and Black communities.”⁴⁰ Politicians were responsive to the issue of violence against women because of its political feasibility, and used it to fuel the overall carceral turn in the U.S. Politicians also created legislation that provided increased punitive measures for sex

³⁶ Ibid.

³⁷ Bernstein, “The Sexual Politics of the “New Abolitionism,” 144.

³⁸ Gottschalk, *The Prison and the Gallows*, 125.

³⁹ Ibid.

⁴⁰ Ibid., 128.

offenders and followed the neoliberal values of capitalism and individualism. For example, a number of high profile lawsuits prompted the creation of the Violence Against Women Act in 1994, which relies on incarceration and punishment to address violence against women. Additionally, many states increased sentencing for sex offenders, through laws that require “a mandatory minimum of twenty-five years to life for some sex crimes, [and] two-strikes laws that require life sentences for certain sexual crimes and make some sexual offenses eligible for the death penalty.”⁴¹ In addition to serving longer sentences, those convicted of sexual offenses “are subjected to the most intrusive forms of surveillance, such as sex offender registries, community notification, and indefinite detainment in psychiatric institutions after they have completed their prison sentences.”⁴² The increased legal sanctions encouraged an even larger prison population, which further strengthened the power of the state, through putting more people in prison, and reinforced the notion that sexual violence is caused by individual, idiosyncratic behavior.

Attention to the issue of sexual violence was positive in that awareness encouraged the public to accept sexual violence as a significant problem. In addition, the movement shed light on how medical and policing methods often ignored and retraumatized survivors, encouraging professionals in those fields to reform their practices.⁴³ However, the fight against sexual violence shifted away from an understanding of sexual violence as a cultural phenomenon, the result of systemic factors like patriarchy, poverty, racism, and colonialism. Understanding sexual violence as a

⁴¹ Taylor, “Anti-Carceral Feminism and Sexual Assault—a Defense,” 40.

⁴² Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009), 236.

⁴³ Gottschalk, *The Prison and the Gallows*, 131.

manifestation of these systems of oppression would mandate addressing these root causes in order to fight sexual violence. However, from the 1960s to the 1990s (and up through the present), sexual violence was constructed as an individualized problem. This has allowed for the medicalization and management of sexual violence and reliance on the carceral state. Ultimately this prevents the U.S. from eradicating sexual violence from society. Influenced by political feasibility rather than following the radical origins of the movement, white liberal feminists in the last half of the 20th century repeated the mistakes of white liberal feminists in the 1800s. They turned to punitive accountability instead of exposing and overhauling the racialized, classed and patriarchal root causes of violence. This fed the rise of mass incarceration, causing enormous harm to poor and Black communities in the 1990s and individualizing sexual violence.

Criminal “Justice”

Incarceration may seem like a plausible solution for privileged groups such as middle-class white women, but for populations that have been harmed by the carceral apparatus, it is not a useful solution, and is actually harmful in the long term to the mission of eradicating of sexual violence. Relying on the police to respond to violence, for instance, can be impossible for some communities. Because the police has such a thorough history of harming communities of color and queer communities, these populations are less likely to call the police to help them, and for good reason. For example, undocumented immigrant women, when calling the police to intervene in

domestic abuse, have instead been arrested and deported.⁴⁴ Black women have been routinely sexually assaulted by the police they have called upon for help.⁴⁵ In addition, Taylor writes, “Police are also among the most frequent perpetrators of sexual violence against homeless women, women of color, people in the sex trade, and queer/trans folks.”⁴⁶ Thus, by relying on the police to surveil and punish sexual violence, carceral feminists assume the needs of all survivors of violence are universal, privileging the interests of the white upper classes. Although only a few works are cited in this paper, there is a significant amount of scholarship that unveils the white supremacist and oppressive foundations of the PIC, including the police.⁴⁷

Oftentimes, a “successful” outcome in the framework of carceral feminism is designated as a perpetrator being brought to court and found guilty. For example, in the current moment/movement of #MeToo, there have been increasing calls for imprisonment as a response to high profile cases of sexual violence. However, even if a perpetrator of sexual violence is brought into the criminal justice process, a “successful” outcome is still not guaranteed for survivors. One study found that out of 441 reports of sexual violence to the police, only 33 people were persecuted, 13 convicted, and 9 jailed.⁴⁸ Because of these infrequent guilty verdicts, movements outside of the criminal justice

⁴⁴ Taylor, “Anti-Carceral Feminism and Sexual Assault—a Defense,” 32.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ For further reading on race and the prison industrial complex: *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander, *Are Prisons Obsolete?* By Angela Davis, and *Caught: The Prison State and the Lockdown of American Politics* by Marie Gottschalk.

⁴⁸ Ibid.

system, such as the #MeToo movement, are created out of necessity to raise awareness of the true reach of sexual abuse.

In addition to doing very little to hold perpetrators of sexual violence accountable, the criminal justice system is often retraumatizing for survivors — so much so that many survivors choose not to come forward because of the “second victimization they face in the criminal justice system.”⁴⁹ The criminal justice process decenters the survivor as the act of sexual violence becomes adopted by the state as a crime, and thus follows strict procedures regardless of the survivor’s wishes. On top of that, rape myths and stereotypes about sexual violence serve to create situations where “it [is] the victim, not the defendant, who [is] on trial.”⁵⁰ Finally, because the goal of prosecution is to win cases, prosecutors will “selectively bring forth cases involving “good victims,” women whose behavior conforms to traditional expectations and whose assaults involve unambiguous circumstances.”⁵¹ Therefore any survivor whose situation doesn’t match the “typical” sexual assault is largely abandoned by the criminal justice system.

The accounts of heterosexual, white, cisgender female survivors are already contested; however, the experiences of racial and sexual minorities are even more undervalued. University of Richmond law professor Erin Collins writes that “jurors continue to acquit or convict based on gendered and racialized rape myths that persist despite legal changes.”⁵² The criminal justice process undermines survivors with

⁴⁹ Meloy and Miller, *The Victimization of Women*, 46.

⁵⁰ *Ibid.*, 47.

⁵¹ Bumiller, *In an Abusive State*, 11.

⁵² Erin Collins, “The Criminalization of Title IX,” *Ohio State Journal of Criminal Law* 13, no. 2 (2016): 370.

marginalized identities and is also more likely to convict people of those same identities. Thus, few survivors are treated with credibility — even less so if they hold marginalized identities — and few perpetrators are put behind bars. The perpetrators who are convicted are most likely to be from communities of color, and their sentences tend to be harsher. For example, when the death penalty was used as punishment for sexual assault, it was overwhelmingly used against Black men convicted of raping white women.⁵³ Racial stereotypes play into the decisions of juries, and so by relying on the criminal justice system, carceral feminism allows for the incarceration of more men of color. This perpetuates the racism inherent in the criminal justice process, absolves white perpetrators of their violence, and leaves women of color behind.

Among other things, prisons allow for solitary confinement (a form of torture), obliterate communities, attach stigma to formerly incarcerated individuals for the rest of their lives, and condone the exploitation of a captive labor force. Not only do prisons perpetuate an already racist society but they are incredibly toxic places. Incarcerating someone increases their likelihood of self harm, mental health issues, and exposes them to abuse from prison guards. On top of that, people with marginalized identities are more likely to face violence in prisons. For example, in prisons around half the perpetrators of sexual violence are staff and the primary targets in men’s prisons are LGBTQ.⁵⁴ Overall, in the criminal justice system, those who have privileged identities will be treated better than their less-privileged counterparts.

⁵³ Gottschalk, *The Prison and the Gallows*, 131.

⁵⁴ Taylor, “Anti-Carceral Feminism and Sexual Assault—a Defense,” 32.

Sustainable justice necessitates a change in behavior. Therefore, justice should also include an effective encouragement of behavior change for those who have been sexually violent. In addition to deteriorating people's humanity, however, prisons are ineffective solutions to reducing recidivism of sexual violence. Sexual violence in prisons is extremely prevalent; for example, more inmates were raped in prison than women over the age of 12 in 2008.⁵⁵ What happens when someone who is already inclined towards sexual violence is put in an environment in which toxic masculinity and misogyny are encouraged, and sexual violence is normalized? Misogyny and unequal power are the roots of sexual violence, thus "the prison is the last place you go to learn to respect women."⁵⁶ Furthermore, traditional post-incarceration measures, such as the sex offender registry and civil commitment, may actually increase recidivism since they lead to "social isolation, unemployment, residential instability, depression, harassment, and feelings of shame, fear, and hopelessness, all of which are factors associated with a greater risk for reoffending."⁵⁷ Therefore, after enduring a prison sentence in an environment that encourages rape culture, formerly incarcerated individuals may be subject to measures that encourage recidivism. All of these negative aspects of the prison industrial complex indicate that alternatives, such as restorative and transformative justice, should be considered when determining how to address sexual violence.

⁵⁵ Ibid.

⁵⁶ Ibid., 33.

⁵⁷ Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (New Jersey: Princeton University Press, 2015), 211.

Professionalization

Towards the end of the twentieth century, the criminal justice system was designated as the system in which to put perpetrators of sexual violence. Survivors, on the other hand, were funneled into professional and administrative systems. Changing the behavior of perpetrators, because they were framed as “other” alienable criminals, seemed impossible. Thus energy went towards “treating” survivors instead, often through the therapeutic state (i.e. psychological help).⁵⁸ This included “retraining” survivors to protect themselves from future violence and to treat their psychological harm.⁵⁹ These trends resulted in professionals being trained to better assist survivors of sexual violence, which was seen as a good thing since professionals had often belittled or blamed survivors for their trauma in the past.

However, the professionalization and medicalization of sexual violence distracts from an understanding of sexual violence as collective, politicized gender violence, and focuses on individual instances of violence “as a chronic yet treatable problem.”⁶⁰ This understanding shifts the focus to treating victims rather than perpetrators. Thus, as Kristin Bumiller writes, “it has become nearly impossible to understand the causes and consequences of being a victim of violence in terms which do not fit squarely within the purview of medicine or criminal justice.”⁶¹ By taking the politicized, collective

⁵⁸ Bumiller, *In an Abusive State*, 64.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*, 13.

⁶¹ *Ibid.*

framework of sexual violence out of the equation, sexual violence cannot be eradicated from our society.

As mainstream feminists in the latter half of the 1900s started looking towards the prison-industrial-complex (PIC) to solve the issue of sexual violence, they reinforced the belief that sexual violence emerges from random and socially deviant behavior of individuals, rather than the socialization of oppressive cultural norms. Thus, carceral feminists implied that only individual people need to be held accountable for sexual violence, rather than the cultural influences that socialize these people into believing that sexual violence is normal and acceptable. This individualization of the problem parallels neoliberalism's emphasis on the individual subject. Therefore, the carceral feminist response to sexual violence does not serve the feminist purpose of liberation, and is in fact oppositional to feminism. It follows the larger agenda of neoliberalism to redistribute power to the white upper classes by relying on the prison industrial complex, further enforcing the myths that these institutions are based on meritocracy rather than constructed to police and surveil communities of color and poor people. Thus, the neoliberalized responses to sexual violence (carceral feminism and professionalization) can be understood as another iteration of white "feminism."

The general trends of carceral feminism include individualizing the problem of sexual violence, shifting the responsibility and site of intervention for sexual violence onto potential victims, professionalizing and bureaucratizing the problem, and relying on a punitive response to hold perpetrators accountable. Youth in higher education often sidestep the criminal justice process and are instead supposed to be held accountable for

sexual violence through Title IX at their schools. To fully understand how Title IX operates and how it relates to these larger national trends of neoliberalism and carceral feminism, we must look at its history and how it evolved to be the location for justice related to sexual violence in higher education.

Carceral Feminism in Higher Education

In 1972, Title IX of the Education Amendments was passed by Congress.⁶² Under this amendment, sexual violence was designated as a form of gender discrimination. In 1999, the Supreme Court ruled that student-on-student sexual violence could trigger the infliction of Title IX sanctions on educational institutions, and thus established institutional liability for individual behavior. However, it was not until 2011 that Title IX “garnered widespread attention as a vehicle for redressing sexual violence.”⁶³ In 2011, in light of highly publicized instances of universities *intentionally covering up* cases of sexual assault, Senator Joe Biden and the Office of Civil Rights’ Department of Education sent out the “Dear Colleague” letter to higher education institutions (HEIs). This letter threatened to pull federal funding from schools that did not comply with Title IX law. It also established institutions’ responsibility in preventing, responding to, and remedying the effects of sexual violence. After the “Dear Colleague” letter, the Campus Sexual Violence Elimination Act (SaVE Act) was instituted. The 2013 SaVE Act codified the expectations outlined in the Dear Colleague letter into official law.⁶⁴ This act

⁶² Collins, “The Criminalization of Title IX,” 373.

⁶³ *Ibid.*, 374.

⁶⁴ *Ibid.*, 374.

included requiring HEIs to provide education on students' rights, bystander interventions, and procedural rights for the respondent and survivor.⁶⁵ HEIs, under the "Dear Colleague" letter and SaVE Act, have three responsibilities regarding sexual violence: response, "the duty to respond effectively to individual acts of violence," prevention, "the duty to prevent future violence," and remedial, "the duty to remedy the effects of such violence on victims and the broader student community."⁶⁶

In response to the Dear Colleague letter, colleges and universities formed official Title IX offices and appointed coordinators for the primary purpose of preventing and educating students on sexual violence. These administrators

give advice on the options, whether it's filing a formal complaint, pursuing some sort of informal resolution, or going to the police... They make sure people who are sexually assaulted can get back on track, academically and otherwise. And they make sure offenders are punished.⁶⁷

Unfortunately, most of these coordinators over the past decade have been poorly prepared and lack institutional support and resources to do their job effectively. Most Title IX coordinators have other responsibilities in addition to addressing sexual violence on their campuses: in 2018 only 21% of Title IX coordinators were full-time.⁶⁸ In addition, the turnover of Title IX coordinators is extremely high. In 2018, 20% of Title IX coordinators had been at their schools less than a year, 64% less than three years, and 87% less than five years.⁶⁹ The high turnover rate and general lack of experience of Title

⁶⁵ Amelia Seraphia Derr, "A Culture of Compliance Vs. Prevention," *Contexts* 13, no. 2 (2014): 20.

⁶⁶ Collins, "The Criminalization of Title IX," 366.

⁶⁷ Sarah Brown, "Life Inside the Title IX Pressure Cooker," *Chronicle of Higher Education*, September 5, 2019. <https://www.chronicle.com/interactives/20190905-titleix-pressure-cooker> (accessed November 2019).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

IX coordinators, combined with the high demand for federal compliance and fear of litigation, has resulted in a culture of compliance rather than prevention.⁷⁰ This encourages policies that are focused on protecting the school from harm rather than restoring safety and trust in the community.

Title IX offices' high turnover rate and the subsequent difficulty locating nodes of power also makes it more difficult for students to understand the Title IX process and hold their administrators accountable for doing a sufficient job. This creates a situation in which universities are compliant with Title IX but ineffective — securing their legal safety but minimizing their ability to eradicate sexual violence on their campuses. This, along with confusing expectations about what a Title IX coordinator and office does, often leads to survivors feeling that the institution doesn't take their cases seriously.⁷¹

The role and practical application of Title IX directors exemplifies the way that HEIs have turned a piece of legislation that has the potential to address systemic issues (i.e. cultural norms supportive of sexual violence within campus environments) into a neoliberalized practice in which only individual actors are punished. HEIs therefore avoid being held accountable for creating or being passive in the face of environments that allow sexual violence to occur, and instead only punish the individuals that are products of these environments. This demonstrates the emphasis on liability and compliance rather than addressing the roots of the issue.

⁷⁰ Derr, "A Culture of Compliance Vs. Prevention," 21.

⁷¹ Jessica McMahon, et al., "Addressing Individual and Community Needs in the Aftermath of Campus Sexual Misconduct: Restorative Justice as a Way Forward in the Re-entry Process," *Journal of Sexual Aggression* 25, no. 1 (2019): 49.

A Culture of Compliance

Title IX is civil law as opposed to criminal law, so it is supposed to hold institutions accountable for allowing sexual violence to happen, instead of simply persecuting individuals — giving it the potential to undercut carceral feminism’s individualization of sexual violence. However, this does not happen in practice. In 1999 the Supreme Court ruled that institutions would be liable under Title IX for student-on-student sexual harassment or assault.⁷² This means that HEIs are liable for students’ behavior regarding sexual violence “not because the student perpetrator was acting as an agent of the university, but rather because the university failed to prevent and/or respond adequately to such violence.”⁷³ Since the government can withdraw their federal funding, institutions are afraid of not being compliant with Title IX. If an institution is non-compliant, it is also vulnerable to fines and litigation by either an individual student or the Office for Civil Rights. This fear of liability can prompt two responses from universities. The first is “to avoid knowledge about instances of sexual violence,”⁷⁴ which was common during the early stages of Title IX. Prior to 2011, colleges “discouraged reporting, made reporting difficult, delayed adjudication when high profile athletes [were] involved, and worked to cover up allegations of sexual assault.”⁷⁵ The second response is “to encourage broad mandatory reporting and to react

⁷² David L. Stader and Jodi L. Williams-Cunningham, “Campus Sexual Assault, Institutional Betrayal, and Title IX,” *The Clearing House* 90, no. 5-6 (2017): 200.

⁷³ Collins, “The Criminalization of Title IX,” 373.

⁷⁴ *Ibid.*, 377.

⁷⁵ Stader and Williams-Cunningham, “Campus Sexual Assault, Institutional Betrayal, and Title IX,” 198.

swiftly and punitively to reported acts so that it does not face liability for failure to protect the complainants⁷⁶ which is the more common response now.

Fear of liability, which also influences the Title IX director's role, leads to a neoliberal "culture of compliance"⁷⁷ in which HEIs prioritize following Title IX policy in its most severe and literal form. HEIs punish individuals rather than creating systemic change so that environments which encourage sexual violence no longer exist. The priority has become protecting the institution rather than survivor advocacy or addressing the roots of sexual violence. For example, many HEIs have instituted mandatory reporting — often designating all adult staff and faculty as mandatory reporters, as well as some student employees — as a way to stay compliant with Title IX law. Since the "Dear Colleague" letter and the establishment of mandatory reporting, there has been an increase in complaints filed.⁷⁸ However, by forcing staff and faculty to report whatever they know, Amelia Seraphia Derr writes "campus policies that mandate reporting irrespective of the victim's desire perpetuate a campus environment of silence and isolation and limit victims' options for confiding in trusted sources."⁷⁹ Thus, survivors' comfort and needs are decentered and prioritized behind the institution's fear of liability.

HEIs will often bring in risk-management consultants or will place Title IX directors in risk management offices in order to navigate this landscape of liability and compliance.⁸⁰ Since HEIs are more likely to be held liable for failing to punish

⁷⁶ Collins, "The Criminalization of Title IX," 377.

⁷⁷ Derr, "A Culture of Compliance Vs. Prevention," 20.

⁷⁸ *Ibid.*, 22.

⁷⁹ *Ibid.*

⁸⁰ Collins, "The Criminalization of Title IX," 375.

perpetrators severely enough, they're recommended to deliver harsher and swifter punishment.⁸¹ This in turn fuels the punitive attitude in Title IX policy and enforces the individualization of sexual violence. However this fear is almost unwarranted, as no university has experienced withdrawal of funds from the federal government over Title IX — HEIs have only lost money through individual lawsuits.⁸²

By focusing on “a desire to demonstrate zero tolerance for sexual violence through punitive responses and to hedge risk by overcompensating with harsh sanctions,”⁸³ colleges tend to lean toward more punitive measures. They mimic the criminal justice system even though Title IX is civil, not criminal, law, echoing carceral feminist ideals. This shift towards punitive responses can be seen through the emphasis on the university's response duty.⁸⁴ Calls for harsher punishment for respondents, such as setting mandatory minimums or requiring universities to report rapes to the police, have increased.⁸⁵ Thus, as Erin Collins argues, “the carceral feminist mindset — that a punitive response is the way to respond to, prevent, and remedy sexual assault — drives much of the current Title IX policy and procedure.”⁸⁶ Emphasizing the duty to respond is beneficial to HEIs because it minimizes what is expected of them, decreasing their liability. However, this distracts from the roots of sexual violence and absolves the college of any part it may have played in creating an environment where sexual assault can occur. While criminalizing Title IX “may validate the voices and experiences of

⁸¹ Ibid., 376.

⁸² Jennifer Doyle, *Campus Sex, Campus Security* (South Pasadena, CA: Semiotext(e), 2015), 24.

⁸³ Collins, “The Criminalization of Title IX,” 376.

⁸⁴ Ibid.

⁸⁵ Ibid., 380.

⁸⁶ Ibid., 374.

those who have, until recently, felt silenced or ignored,”⁸⁷ it does not solve the problem of sexual violence.

This manifestation of carceral feminism in Title IX reinforces the notion that punitive measures are a universal solution. By doing this, punitive action taken through Title IX masks the fact that sexual violence’s roots come from systemic, cultural attitudes that have been encouraged and socialized. It posits the responsibility on the individual and hides the influence of a larger patriarchal regime that allows and encourages sexual violence.

The history of affluent white women’s constructed vulnerability and corresponding violence prevention efforts influences the way prevention is manifested on campuses today. In the 1980s and 1990s, the “paternalistic myth of women’s vulnerability evolved into the neoliberal ‘risk management.’”⁸⁸ This shift changed the rhetoric around violence from danger to risk, which individualizes a number of problems so that they simply become “accidents” that happen to people.⁸⁹ Thus, as is true with the professionalization of sexual violence, the site of intervention moves away from the perpetrator’s actions and behavior, to potential survivors. This results in sexual violence prevention efforts based on teaching potential survivors to avoid assault rather than teaching potential perpetrators not to be violent. The act of sexual violence is separated from the person enacting it, and thus sexual violence “is constructed as the self-perpetuating subject of its own actions.”⁹⁰ This “empties rape of actions and agents

⁸⁷ Ibid., 389.

⁸⁸ Hall, “‘It Can Happen To You,’” 1.

⁸⁹ Ibid.

⁹⁰ Ibid., 8.

so it becomes phenomenal”⁹¹ and so the responsibility to stop sexual violence is put on the potential survivor. Women’s bodies, primarily, become spaces of danger, and thus the “risk factors” included in being raped include simply having a woman’s body.⁹² Not only does this encourage victim blaming, but it absolves our larger society of the responsibility of securing women’s “freedom to live, move, and socialize unharmed.”⁹³

Similarly, these individualizing influences are paralleled in the way that sexual violence prevention and education is discussed in higher education. HEIs are required to have educational programs about sexual violence for incoming and returning students.⁹⁴ The SaVE Act “requires that schools warn students that sexual assault is prohibited, define relevant terms (such as consent), and delineate the consequences of violating these prohibitions.”⁹⁵ In addition, it has requirements on how to educate potential survivors and bystanders, however “universities need not offer educational programs that seek affirmatively to change the attitudes or actions of potential perpetrators.”⁹⁶ Thus, the responsibility for preventing sexual violence is again posited onto potential survivors and bystanders rather than potential perpetrators. Not only that, but failing to address the systemic roots of sexual violence allows for these acts of violence to continue to occur. This was demonstrated by one study, in which no traditional once-a-year modules or

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid., 7.

⁹⁴ Collins, “The Criminalization of Title IX,” 382.

⁹⁵ Ibid.

⁹⁶ Ibid.

workshops on sexual violence “demonstrated lasting effects on risk factors or behavior.”

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By refusing to address potential perpetrators in prevention programming, universities show a “presumption that has motivated much criminal justice policy and procedure about sex offenders: that they are deviants who are essentially beyond rehabilitation, and that behavioral interventions are a waste of time and resources.”⁹⁸ This assumption then allows for a more intense criminalization of perpetrators, and even closer alignment to the criminal justice system. In addition, by individualizing sexual violence rather than making connections to patriarchy, “the figure of the rapist is rendered more monstrous, thereby creating absolute distance between him and the everyday man, between rape and other misogynist and heterosexist practices.”⁹⁹ This also “naturalizes rape in a manner that denies men's ability to stop raping women.”¹⁰⁰ This distances the act of sexual violence from other manifestations of patriarchy, separating the symptom from the root and preventing connections from being drawn between gender violence and greater power imbalances.

In contrast, addressing potential perpetrators in sexual violence education programs would imply that sexual violence is not inherent to people’s natures, but is a learned behavior based on cultural norms and attitudes of male domination. If HEIs were to address sexual violence as such, their response to sexual violence would have to

⁹⁷ David R. Karp et al., “A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses,” Skidmore.edu, April 2016, Accessed November 2018, https://www.skidmore.edu/campusrj/documents/Campus_PRISM_Report_2016.pdf, 17.

⁹⁸ Collins, “The Criminalization of Title IX,” 385.

⁹⁹ Hall, “It Can Happen To You,” 15.

¹⁰⁰ Ibid.

include changing the attitudes of their students rather than simply adjudicating and eliminating individuals who have caused harm. However, if perpetrators can't be changed, the only thing to do about them is to identify and remove them from campus.¹⁰¹ Thus, universities often turn to incapacitation as a solution. Unfortunately, blogger feministkilljoys writes that sexual violence is “not an issue of an individual person whose removal would remove the problem. Indeed the assumption that to remove a person is to remove a problem is often how the problem remains.”¹⁰²

For the survivor of sexual violence, the “Dear Colleague” letter encourages schools to help them “change living situations, granting requests for academic accommodation, instituting a no contact order against the alleged perpetrator, and assisting her in accessing medical, mental health, and other supportive services.”¹⁰³ The solutions for helping the survivor again become individualized and professionalized. For the community, after an instance of sexual violence, the Letter recommends “offering mental health and counseling services to all students affected by sexual violence, properly training employees and notifying students about how to identify and respond to sexual violence, and periodically assessing the efficacy of the university’s response to sexual violence.”¹⁰⁴ Individualism is again presented as the solution to sexual violence. No community discussions, community healing, or systemic analysis are encouraged. By reminding individuals of their responsibilities or the resources available to them, and

¹⁰¹ Collins, “The Criminalization of Title IX,” 387.

¹⁰² Feministkilljoys, “Resignation is a Feminist Issue,” feministkilljoys.com, August 27 2016, Accessed October 2019, <https://feministkilljoys.com/2016/08/27/resignation-is-a-feminist-issue/>.

¹⁰³ Collins, “The Criminalization of Title IX,” 387.

¹⁰⁴ *Ibid.*, 388.

failing to critique the current systems used to respond to sexual violence, sexual violence is implied to be idiosyncratic and rare. This serves to distract from the fact that sexual violence is a common occurrence on college campuses and does not proactively prevent further violence.

Addressing the issue of sexual violence through a neoliberal lens in higher education has created a state of response and management on behalf of the school, rather than an interrogation of sexual violence's factors, how to care for those affected by it, or how to change those who have perpetrated. Simply suspending a student for sexual violence does not ensure that their behavior will change, that when they eventually return they will be less likely to offend, that while they are gone they won't offend, or that the environment and systems that allowed for the violence to occur in the first place are eradicated. Thus, the current Title IX system does little to prevent future instances of sexual violence, covering only its most minimal duties.

Moving Towards Justice

Title IX, because it is supposed to hold institutions accountable for allowing sexual violence, has the potential to result in systemic change rather than punitive individual measures. A systemic lens would de-individualize the representation of sexual violence, locating the roots of the problem within patriarchy and power. Collins presents one recommendation for reforming Title IX, writing that a more systemic implementation of Title IX could include investigations that move beyond just the individuals involved, to an investigation of the institution's passivity with regards to environments encouraging

sexual violence. This type of investigation could ask questions such as: “[W]hether the university has a stake in covering up incidents of sexual violence because the accused is a member of a profitable sports team or whether the university dissuades students from speaking out about sexual violence.”¹⁰⁵ Following Collins’ line of thinking, an array of new questions emerges: Does the university actively educate its students on patriarchy and actively take a stance against it? In its education on sexual violence, does the university connect individual instances of sexual violence to larger systems of power, such as racism, colonialism, classism, and patriarchy? How does the university educate potential perpetrators on sexual violence? How does the university change the attitudes and cultures of those inclined to be sexually violent? By asking questions like these, we would move away from locating the responsibility of avoiding sexual violence on potential victims. This would also shift the discourse from the survivor being represented as an innocent, white, cisgender woman and move us away from stereotypical and racist constructions of criminality.

As for resolutions after sexual violence, rather than falling into the trap of compliance, universities should allow survivors to have more agency within the process of healing. This could include taking away the designation of mandatory reporting for faculty, staff, and student workers. It could also look like all HEIs allowing survivors to choose restorative justice or other forms of accountability rather than a formal investigation.

¹⁰⁵ Ibid., 392.

Restorative and Transformative Justice

The term “restorative justice” umbrellas a set of practices that can involve all individuals affected by an instance of violence, including the offender, survivor, and secondary victims such as family and friends of those directly involved. Restorative justice views “crime as a violation of people and relationships, causing harm for which offenders and communities are accountable and have an obligation to repair.”¹⁰⁶

Restorative justice avoids punitive measures and instead focuses on restoring trust within communities after harm has been done. Therefore, instead of asking which laws were broken and how the perpetrator should be punished, “restorative justice asks, ““Who was harmed? What do they need? Whose obligation is it to meet those needs?””¹⁰⁷ Some of the most common restorative justice practices are Victim-Offender Dialogues and conferencing, the roots of which come from traditional Indigenous practices.

In a Victim-Offender Dialogue, the survivor and perpetrator meet face-to-face. Prior to the meeting, the perpetrator must accept responsibility for their actions. Survivors set the agenda of the Victim-Offender Dialogue and often use the meeting to express the full impact of the offender’s violence, receive answers to their questions, and receive an apology.¹⁰⁸ Throughout the meeting, the survivor and their needs are prioritized, making the process significantly more survivor-centered than the criminal justice system. Meloy and Miller write that “Emotional expressions are valued and healing is emphasized, key

¹⁰⁶Mary Koss and Mary Achilles, “Restorative Justice Responses to Sexual Assault,” *National Online Resource Center on Violence Against Women*, (February 2008): 1.

¹⁰⁷ Sujatha Baliga, “A Different Path for Confronting Sexual Assault,” *Vox*, October 2018, <https://www.vox.com/first-person/2018/10/10/17953016/what-is-restorative-justice-definition-questions-cir cle>.

¹⁰⁸ Meloy and Miller, *The Victimization of Women*, 167.

occurrences for the goal of victim empowerment.”¹⁰⁹ While the focus of the Victim-Offender Dialogue is to acknowledge and validate the harm done, the survivor can also help develop a restitution plan for the perpetrator. Research shows that survivors are far more satisfied with restorative justice outcomes than the court system and are significantly less fearful of revictimization. Furthermore, offenders are more likely to complete restitution obligations and commit fewer and less serious crimes than their counterparts who go through the criminal justice system.¹¹⁰

Conferencing involves a larger circle of people invested in the harm that was caused. It involves a meeting of the survivor, the offender, and can also include the friends and family of all parties. This practice is based upon the premise that the offender will take responsibility for the harm caused, thus, like the Victim-Offender Dialogue, conferencing will not occur without this admission. Conferencing can include: the offender describing their actions and taking responsibility, the survivor stating the impact of the violence on themselves, the family and friends of all parties stating the impact of the harm on themselves, the offender acknowledging and responding to these comments, and discussion around a plan for the offender. This plan can involve making amends, repairing harm to all the parties affected, and making changes to their behavior in order to prevent recidivism.¹¹¹

Restorative justice methods can help to empower survivors since they prioritize survivors’ needs and put survivors in control.¹¹² Restorative justice approaches can also

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Koss and Achilles, “Restorative Justice Responses to Sexual Assault,” 7.

¹¹² Baliga, “A Different Path for Confronting Sexual Assault,” *Vox*.

help to unveil the interpersonal roots of the problem, like cycles of abuse that the offender may have experienced. For example, one practitioner of restorative justice wrote that “Many men I’ve met in restorative justice circles in prisons speak about the sexual abuse they endured as children and how that unresolved trauma gave rise to their offending.”¹¹³ This aspect of restorative justice is extremely important because, unlike traditional criminal justice, it allows an opportunity to address the source of the problem — in this case, trauma faced by men as boys who were abused — rather than just the symptom.

Restorative justice can be attractive to students who want to have some kind of resolution with the offender, but don’t want to see them be expelled or suspended. Similar to larger trends in the effectiveness of restorative justice, one study in higher education found “high levels of satisfaction among harmed parties and consistent improvement in student offender learning and development compared with traditional approaches.”¹¹⁴ Furthermore, restorative justice often produces lower recidivism rates for the offender. A study done in California found that juveniles who participated in a restorative justice program were 44% less likely to reoffend compared to those in the traditional criminal justice system.¹¹⁵ HEIs like the College of New Jersey, Skidmore, and the University of Arizona are all implementing various restorative justice methods. Unfortunately, given our neoliberal society, many schools are afraid that restorative

¹¹³ Ibid.

¹¹⁴ Karp et al., “A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses,” 31.

¹¹⁵ Baliga, “A Different Path for Confronting Sexual Assault,” *Vox*.

justice methods won't comply with federal law, funneling them toward using punitive measures instead.

The caveat of restorative justice is that all parties need to be on board with restorative methods and the offender needs to be willing to acknowledge the harm they caused. The offender also needs to be willing to take action after the dialogue or conferencing in order to change their behavior. By removing accountability for sexual violence from the public sphere, restorative justice practices may also reinforce the idea that sexual violence is a private, invalid matter.

Restorative justice has increasingly begun to be adopted by government agencies, risking its co-optation, and making it a potentially coercive practice. Additionally, while restorative justice can identify some causes of sexual violence, especially those in the interpersonal lives of survivors and offenders, it doesn't address systemic factors that contribute to violence. On the other hand, Taylor writes that "Transformative justice practices... go much further than restorative justice in trying to understand the context that gave rise to a harmful act, and how it was supported and sustained by the community. In this way, an entire community is held accountable for the harm that was done, rather than the individual offender alone."¹¹⁶ Transformative justice often includes practices similar to that of restorative justice, i.e. mediation or conferencing. The difference between the two is that transformative justice incorporates critiques of structural oppression like sexism, ableism, and racism.¹¹⁷ As of 2016 though, there were

¹¹⁶ Taylor, "Anti-Carceral Feminism and Sexual Assault- A Defense," 42.

¹¹⁷ Ibid., 45.

no empirical studies evaluating transformative justice's efficacy in reducing recidivism or eradicating the factors that lead to sexual violence.¹¹⁸ Given the impact of racism and patriarchy on sexual violence, it would seem that transformative justice has a better chance of handling the problem than the more conventional restorative justice approach.

Learning About Sex and Sexual Violence

In her book *Pleasure Activism*, adrienne maree brown writes, "Part of transformative justice is getting to the root of harm."¹¹⁹ Following this notion, I want to identify how we as a society have prepared our youth to not be sexually violent in the first place. What education have we received on being respectful and safe sexual beings? If we as youth were taught how to act responsibly in all other realms of social interaction (i.e. table manners), what and how were we taught about the realm of sex? Title IX deals with young adults, especially young men, who have been bombarded by messages supporting sexual violence. As a result, many sexually violent men may understand sexual violence as synonymous with sex. Diana Scully, author of *Understanding Sexual Violence*, explains that for many men convicted of rape "regardless of how brutal their behavior, from the perspective of these men, almost no act is rape and no man a rapist."¹²⁰ Given this education on sex and sexual violence, how can we then hold people accountable in a just way? One way to deconstruct the way that sexual violence and sex

¹¹⁸ Collins, "The Criminalization of Title IX," 395.

¹¹⁹ adrienne maree brown, *Pleasure Activism* (Chico, CA: AK Press, 2019), 193.

¹²⁰ Diana Scully, *Understanding Sexual Violence*, 97.

are represented so similarly in our society, is as Catharine MacKinnon says “to know what is wrong with rape, know what is right about sex.”¹²¹

The neoliberalization of Title IX reflects our lack of an imaginative, pleasure-focused politics against sexual violence. The punitive, individualistic, managerial response to sexual violence that we’ve created is reactive rather than proactive. As of now, we are reacting to a culture that is sexually violent rather than thinking proactively about how to eliminate sexual violence in all aspects of our lives. We can be content with and rely on carceral feminist measures because, as Cara Page says, “this world begs of us to be, to move out of scarcity, move out of fear, move out of crisis, and not imagine anything abundant or transformed.”¹²² Instead of coming from this place of fear, we should use Audre Lorde’s notion of the erotic as power: “It is an internal sense of satisfaction to which, once we have experienced it, we know we can aspire. For having experienced the fullness of this depth of feeling and recognizing its power, in honor and self-respect we can require no less of ourselves”¹²³ To utilize the erotic as power, feminists aspiring towards a society free of sexual violence can tap into pleasure. One way of doing this is through engaging with adrienne maree brown’s concept of pleasure activism: “the work we do to reclaim our whole, happy, and satisfiable selves from the impacts, delusions, and limitations of oppression and/or supremacy.”¹²⁴ By applying pleasure activism to sex and sexual violence, we can center pleasure within sex — thereby delineating what sex is, and consequently, what sex is not. Further, through

¹²¹ MacKinnon, *Toward a Feminist Theory of State*, 174.

¹²² brown, *Pleasure Activism*, 48.

¹²³ Audre Lorde, *Sister Outsider: Essays and Speeches* (Trumansburg, NY: Crossing Press, 1984), 54.

¹²⁴ brown, *Pleasure Activism*, 13.

centering pleasure in activism as well, we need not only be resisting the oppressive structures we are trapped in. As Cara Page says about the legacy of Audre Lorde's erotic as power, "If we're not imagining where we're going, then it will constantly just be pushing back outside from inside of cages, as opposed to imagining what's happening outside of cages."¹²⁵ As we move forward in the #MeToo era, with different forms and layers of gender violence being peeled back, things are being "unveiled." Page says, "at the end of the unveiling, we have nakedness. And that nakedness calls for new desire."¹²⁶ In *Pleasure Activism*, when Cara Page reflects on grassroots organizing in New York City, she quotes their leaders: "'What are we going to build? What are we going to create?'" And that to me is the erotic as power."¹²⁷ Following this line of questioning, I not only wanted to look back at the restrictive messages about sex young adults in the U.S. have received, but look forward to what kind of liberatory sex education is possible for future generations.

In order to transform how U.S. society holds people accountable for sexual violence, I trace how sex education has been taught, and what potential it has to be revolutionized. Through the process of writing and researching this thesis, I discovered a "hidden curriculum" around sex. What had I learned, what had my peers learned, about sex and sexual violence? And how did those preconceived notions of sex and sexual violence influence the way that our sexual lives would play out? In my experience, aside from a brief talk about the perils of teen pregnancy I received from my mom, and my

¹²⁵ brown, *Pleasure Activism*, 39.

¹²⁶ *Ibid.*, 49.

¹²⁷ *Ibid.*

online courses in sex ed, I received very little formal education on sex from any of the adults in my life, and none of it included discussions of consent, healthy relationships, or how to be a respectful and safe sexual partner. An informative discourse around sex and sexual violence may not have been possible, based on my parents' or teachers' limited education of these topics. Yet this begs the question of how anyone is supposed to learn about sex or sexual violence when there is no opportunity to talk about them? One goal of this paper was to find out "how we can begin to deconstruct rape culture through both a pleasure politic and pleasure practices."¹²⁸ It is through using pleasure activism and the erotic as power in sex education that "we can shift from a rape/punishment culture to a culture of enthusiastic consent and clear, respected boundaries."¹²⁹ But first, there has to be conversation happening between children and adults about what sex is, why sexual violence happens, and how to relate to other human beings on sexual terms in a respectful way.

Silence Around Sex

Historically, the topics of children and their sexuality were a natural pairing. The idea that the topic of sex was harmful to children, and even the belief of a child's sexual innocence, was constructed only recently. In fact, Judith Levine argues "the concept that sex poses an almost existential peril to children, that it robs them of their very childhood, was born only about 150 years ago."¹³⁰ In the late 19th century, a child's innocence was

¹²⁸ Ibid., 193.

¹²⁹ Ibid.

¹³⁰ Judith Levine, *Harmful to Minors: The Perils of Protecting Children from Sex* (Minneapolis: University of Minnesota Press, 2002), xxvii.

constructed as an absence of social and political contamination and sexual knowledge and desire.¹³¹ As “the child” was distinguished from other types of humans, the association of childhood innocence, which distinguished a child from an adult, became synonymous with sexual ignorance.

For many adults, either educators or parents, having sustained and thorough conversations with children about sex is taboo and the manner in which it is done is contentious. In one survey of 15-17 year olds, only 51% of teens had discussed with their parents “how to know when you are ready to have sex.”¹³² Judith Levine writes that “Our crudest and oldest fear about letting out too much sexual information is that it will lead kids to ‘try this at home’ as soon as they are able.”¹³³ Behind this wariness of talking to youth about sex is the idea that talking explicitly about sex is harmful to children. Take, for example, obscenity law. Obscenity law is the area of law that determines what is and is not allowed for individuals to see. The harm the content allegedly causes “is not physical or even measurable, but metaphysical: the content may cause bad thoughts.”¹³⁴ The harm that the government is afraid might be inflicted upon children is that viewing sexually explicit materials, specifically pornography, will lead to antisocial and sexual abnormalities.¹³⁵ However, “Evidence of the harm of exposure to sexually explicit images or words in childhood is inconclusive, even nonexistent.”¹³⁶ The two most famous

¹³¹ Ibid.

¹³² Advocates for Youth, “Are Parents and Teens Talking About Sex?,” Advocates for Youth, November 13, 2008, <https://advocatesforyouth.org/resources/health-information/parents-52/>.

¹³³ Levine, *Harmful to Minors*, 8.

¹³⁴ Ibid., 11.

¹³⁵ Ibid., 12.

¹³⁶ Ibid.

American commissions on obscenity and pornography — the 1970 U.S Commission on Obscenity and Pornography, aka the “Lockhart Commission,” and the 1985 Commission on Pornography, aka the Meese Commission, could find no link between porn and bad behavior and actually found the opposite: sex criminals, including rapists, were usually exposed to porn less than other kids, and the majority of people with paraphilias had been brought up in an environment which repressed or defiled the topic of sex.¹³⁷

Paradoxically, our culture is saturated with sex and sexualized images; however, because of these laws and the hysteria surrounding them, adults exposing a child to sexually explicit images, even to educate them about sex, is precarious. For example, prior to 1997, the Unitarian Universalist Church had a progressive sex education program called About Your Sexuality, where they showed explicit images of people engaging in sexual activity. In these program sessions “educators showed filmstrips featuring naturalistic, explicit drawings of people engaged in sexual activities from masturbation to two men kissing.”¹³⁸ Two parents in Concord, Massachusetts protested and CBS got hold of this story. A poll after the airing of this story showed that 74% of CBS viewers believed that it’s never okay to show sexually explicit images to teenagers, even if it’s for sex education.¹³⁹

The topic of sex also revolves primarily around avoiding danger, and other social elements related to sex like trust, safety, and desire are barely discussed. Topics such as stranger danger or avoiding sexual abuse are emphasized the most, and fear around

¹³⁷ Ibid.

¹³⁸ Ibid., 14.

¹³⁹ Ibid.

sexuality is invoked most often in times of social change. For example, as a response to the new sexual freedom of young women in the 1800s in the U.S., which aggrieved conservative Victorian social and religious norms, and the exploitation these adolescents faced, which angered feminists and socioeconomic reformers, a sexual moral panic energed.¹⁴⁰ Another sexual moral panic arose in response to the wave of Chinese, southern European, and Irish immigrants, and Black southerners migrating to the North.¹⁴¹ In the 1940s when WWII ended and people returned to their homes, another enemy was required to “make the renewed old order more attractive”¹⁴² as opposed to the more modern and progressive norms established during the war (i.e. women joining the workforce). This new enemy would be gay and sexually aggressive men. As Levine puts it “[B]efore FBI director J. Edgar Hoover and Senator Joseph McCarthy began painting that menace red, they set their sites on pink: the first targets of their inquests were homosexuals in the State Department”¹⁴³ and the gay community became an example of perverts gone wild. The anxieties about masculinity prior to the war were directed at sex between men, and child molesters in the mind of the public became synonymous with the LGBTQ+ community.¹⁴⁴

More recently, there were “popular anxieties about women working outside the home and leaving their children with others. But these fears were given shape and heft by a certain world view, which was attached to a certain political agenda. It was that of the

¹⁴⁰ Ibid., 30.

¹⁴¹ Ibid.

¹⁴² Ibid., 31.

¹⁴³ Ibid.

¹⁴⁴ Ibid., 32.

religious Right with the cautious endorsement of feminist sexual conservatives.”¹⁴⁵ After the rape and murder of seven-year-old Megan Kanka, Megan’s Laws were created, which require paroled sex offender registration and community notification.¹⁴⁶ By 1999 all fifty states had passed Megan’s Laws. Like the other moral panics mentioned, these sexually violent crimes against children had not increased, but the media’s coverage of this violence led to increased paranoia. Ultimately, fear and moral panic has been a response to social transition, not a reflection of rises in sexual violence. This shifts the focus from what sex could and should be to how to stay safe.

Twenty-first Century U.S. Sex Education

Given that talking about sex is supposed to be harmful to children and that conversations with kids about sex often focus on avoiding danger, how could we possibly educate children about sex in a positive and healthy way? And if we can’t educate about sex, how can we teach kids how to be safe, respectful sexual partners? For many children, formal sex education comes from the schools that they’re in, so it’s important to examine what public sex education curriculum looks like. When sex is talked about, it’s only through an extreme medicalization of the act, or through euphemisms. Sex education is based primarily on the health risks rather than the social and emotional ramifications that sex can have.

During the 1970s, with the combination of the sexual revolution, the passing of Roe vs. Wade in 1973, the new right for women to have access to birth control

¹⁴⁵ Ibid., 35.

¹⁴⁶ Ibid., 42.

information and services, and the establishment of programs to provide them, many government clinics began reporting on teen sex.¹⁴⁷ The backlash to this progress from conservative organizations consisted of reports stating that there was a teen pregnancy “epidemic,” when in fact, the rate of teen pregnancies had peaked in the 1950s and since then had dropped.¹⁴⁸ However, the teen pregnancy epidemic “focused public anxiety about teenage girls’ newly unfettered sex lives,”¹⁴⁹ reflecting again the way that young girls’ sexuality is policed. When Ronald Reagan was elected in 1980 and the Senate was flipped to the Republicans, the Republican Party capitalized upon this paranoia and mounted an attack on reproductive rights and sex education. This began a two-decade-long period in which conservative organizations pushed through programs in public education that prioritized abstinence over everything else. For example, in 1997, as part of an omnibus welfare-reform bill, Congress allocated a quarter of a billion dollars over five years to states that would teach only abstinence education.¹⁵⁰ Levine sums up the effects of this policy in her book *Harmful to Minors*, saying: “In a country where only one in ten school-children receives more than forty hours of sex ed in any year, the regulations prohibit funded organizations from instructing kids about contraception or condoms...”¹⁵¹

By 1999 one-third of all public school districts were teaching abstinence-only sex education.¹⁵² However, “there is no evidence that lessons in abstinence, either alone or

¹⁴⁷ Ibid., 96.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid., 91.

¹⁵¹ Ibid., 92.

¹⁵² Ibid.

accompanied by a fuller complement of sexuality and health information, actually hold teens off from sexual intercourse for more than a matter of months.”¹⁵³ As of 2017, only 13 states required sex education to be medically accurate and 37 states mandate that abstinence be covered — even though abstinence isn’t effective, and actually correlates to increases in teen pregnancy.¹⁵⁴ In contrast, in many Western European countries, sex education is comprehensive, explicit, “even enthusiastic,”¹⁵⁵ and doesn’t teach abstinence. It’s assumed that youth will engage in sexual activity, and sexual expression is part of growing up. Therefore, abstinence doesn’t need to be part of the conversation in sex education.¹⁵⁶ Their average age of intercourse is similar to the United States’, but their rates of unwanted teen pregnancy, abortion, and AIDS are significantly lower than ours.¹⁵⁷ In the U.S., sex education is medicalized and often unscientific, ignoring the social, emotional, and relational aspects of sex and intimacy. So sex is left as an individual act, rather than a terrain upon which communication and relationships unfold.

Feminists for years have been critiquing sex education because of its negative focus and “promulgation of discourses of risk and danger.”¹⁵⁸ This focus on risk aversion prevents discussions of pleasure, positive sexuality, human relationships, ethics, or social justice to enter into conversations of sex education.¹⁵⁹ Many sex education programs

¹⁵³ Ibid., 93.

¹⁵⁴ VICE Staff, “What If Sex Ed Focused On Teaching Pleasure,” Vice.com, March 12, 2019, https://www.vice.com/en_us/article/yw8ed7/what-if-sex-ed-focused-on-teaching-pleasure.

¹⁵⁵ Levine, *Harmful to Minors*, 102.

¹⁵⁶ Ibid., xxxii.

¹⁵⁷ Ibid.

¹⁵⁸ Vanessa Cameron-Lewis and Louisa Allen, “Teaching Pleasure and Danger in Sexuality Education,” *Sex Education* 13, no. 2 (2013): 122.

¹⁵⁹ Cameron-Lewis and Allen, “Teaching Pleasure and Danger in Sexuality Education,” 122.

include fear- and shame-based tactics to try to prevent teen sexual activity. These messages are often embedded in sexist myths about female virginity and are ineffective. For example, students in one Mississippi school were told “to unwrap a Peppermint Pattie chocolate, pass it around and take note of how it soiled... the lesson was designed ‘to show that a girl is no longer clean or valuable after she's had sex — that she's been used.’”¹⁶⁰

In addition, few states include consent, sexual violence, or healthy relationships in their sex education curriculum. As of 2018, only eleven states and the District of Columbia even mention those phrases in their programs.¹⁶¹ Without these topics being covered by sex education, the main factors contributing to sexual violence cannot be addressed. This is evidenced by one Harvard study, in which

[m]any respondents had never had a conversation with a school adult, for example, about the “importance of not pressuring someone to have sex with you” (48%), the importance of “not continuing to ask someone to have sex after she or he has said no” (50%), or the importance of not having sex with “someone who is too intoxicated or impaired to make a decision about sex” (46%).¹⁶²

There are some new laws pushing for consent and sexual violence to be covered in sex education. However, most of these laws still construe consent and sex education around the ethos of danger and punishment, rather than taking an ethical and pleasure-based focus to sex education. Thus youth in the U.S. are left with little

¹⁶⁰ Dana A. Raphael, *The Effect of Sexual Education on Sexual Assault Prevention* (WomenNC, April 2015), 19.

¹⁶¹ Sarah Shapiro and Catherine Brown, “Sex Education Standards Across the States,” Americanprogress.org, May 9, 2018, <https://www.americanprogress.org/issues/education-k-12/reports/2018/05/09/450158/sex-education-standards-across-states/>.

¹⁶² Richard Weissbourd, et al., *The Talk: How Adults Can Promote Young People's Healthy Relationships and Prevent Misogyny and Sexual Harassment* (Harvard Graduate School of Education), 17.

knowledge of how to go about their sexual lives with respect and safety. As Debra Haffner, the 1997 president of the Sexuality Information and Education Council of the United States, said: “When we treat sexuality as adults-only... we abandon teenagers to learn about their sexuality on their own, by trial and error.”¹⁶³

Pleasure-Based Sex Education

Although sexually active people in the U.S. are taught many medicalized reasons to avoid sex, such as risk of STIs and unwanted pregnancies, rarely is the question raised of whether or not they want to engage in sexual activity, and what the ethics are behind that activity. The question of what sex and intimacy should feel like — physically, emotionally, mentally — for youth, and even adults, is rarely addressed. And if the question of what good, consensual sex looks like/feels like, sexually active people in our society are left to figure it out for themselves. The focus of sex education on medical health and teen pregnancy “has resulted in a self-centered ethic of sex in which the ethical treatment of sexual partners and goals of care and mutuality are forgotten...”¹⁶⁴ Sharon Lamb has argued. As sexologist Leonore Tiefer said, “It is impossible to separate issues of coercion and consent, regret, neurosis, harm, or abuse from a culture in which there is no sex education.”¹⁶⁵ So what would a holistic, relational, social-justice-focused, ethical sex education look like? And are there programs out there already doing this type of sex education? What does this have to do with sexual violence?

¹⁶³ Levine, *Harmful to Minors*, 109.

¹⁶⁴ Sharon Lamb and Renee Randazzo, “From I to We: Sex Education As a Form of Civics Education in a Neoliberal Context,” *Curriculum Inquiry* 46, no. 2 (2016): 149.

¹⁶⁵ Levine, *Harmful to Minors*, 134.

Sex education should be comprehensive and based on “ethical erotics,” termed by Western Sydney University professor Moira Carmody, which “places focus on the importance of sexual intimacy being ethical, one’s responsibility to be sexually ethical and the importance of young people learning information and skills to be able to do this effectively.”¹⁶⁶ Ethical erotics would center pleasure and sex positivity. Pleasure-based sex education

normalizes the idea of giving and receiving pleasure not just in sexual activity, but in relationships as a whole. When sex education is pleasure-based, students develop healthier relationships both with themselves and their partner, increasing their overall life satisfaction and happiness.¹⁶⁷

Therefore, the ethos around sex would no longer be danger and fear, but would point to sex as a place of pleasure, communication, and human relations. Pleasure-based sex education would also respect and emphasize that “our sexuality is an integral part of who we are, and is healthiest and most developed when explored with trust, respect, and curiosity.”¹⁶⁸ Included in a comprehensive sex education would be an understanding of social justice as well, for it is not possible to fully address the range of ethical human relations without considering systems of oppression such as white supremacy, patriarchy, and capitalism. Currently, there are sex education programs that include the social aspects of sex. These programs directly address “sexism, racism, heterosexism, and social problems such as rape, widespread proliferation of sexist, violent and racist pornography,

¹⁶⁶ Cameron-Lewis and Allen, “Teaching Pleasure and Danger in Sexuality Education,” 125.

¹⁶⁷ The Education Team, “That 8-Letter Word: Including Pleasure in Sex Education,” Planned Parenthood of the St. Louis Region and Southwest Missouri, July 2, 2018, <https://www.plannedparenthood.org/planned-parenthood-st-louis-region-southwest-missouri/blog/that-8-letter-word-including-pleasure-in-sex-education>.

¹⁶⁸ The Education Team, “That 8-Letter Word: Including Pleasure in Sex Education,” Planned Parenthood of the St. Louis Region and Southwest Missouri.

dating violence, homophobia, sex without consent, etc.”¹⁶⁹ One example of this type of education comes from the Sexual Ethics for a Caring Society curriculum. This curriculum encourages students to think about sex in the world’s current context: “It is our hope that reasoning about sex in terms of justice, human rights, consent, benevolence, and caring will encourage sound decision-making and subsequently prevent pregnancy, disease, abuse, and victimization.”¹⁷⁰ This curriculum involves topics such as religion and sex, consent, coercion, media and objectification, porn, sexual pleasure, and human rights.¹⁷¹ Ultimately, it encourages students to “consider what is ethical sexual behavior in a society with multiple injustices.”¹⁷² Ideally, this focus on ethics could be utilized not only in understanding and navigating sexual situations, but also everyday living.

So how does this relate to sexual violence? The majority of sexual violence is committed by people the survivor knows—“nearly ninety percent of the time the victim knew her perpetrator,”¹⁷³—thus, “a focus on relationships and empathy is crucial to reducing violence and preparing students for more meaningful lives.”¹⁷⁴ Ultimately, a comprehensive, pleasure-based, ethical sex education would be a way “we can begin to deconstruct rape culture through both a pleasure politic and pleasure practices.”¹⁷⁵ For example, by discussing how topics such as care relate to sex, conversations about the

¹⁶⁹ Lamb and Randazzo, “From I to We,” 149.

¹⁷⁰ Sexual Ethics for a Caring Society, “Philosophy,” Sexual Ethics for a Caring Society, Accessed March 2020, <https://www.sexualethics.org/work#/philosophy/>.

¹⁷¹ Lamb and Randazzo, “From I to We,” 151.

¹⁷² Ibid.

¹⁷³ Raphael, *The Effect of Sexual Education on Sexual Assault Prevention*, 4.

¹⁷⁴ Grace Tatter, “Sex Education That Goes Beyond Sex,” Harvard Graduate School of Education, November 28, 2018, <https://www.gse.harvard.edu/news/uk/18/11/sex-education-goes-beyond-sex>.

¹⁷⁵ brown, *Pleasure Activism*, 193.

necessity of consent would come about naturally. By interrogating why asking for consent is important, there is potential for people to unveil and unlearn the rape culture that is so deeply embedded in our understandings of sex — moving us towards a society in which the act of asking for consent is enthusiastic and second nature.

Conclusions and Implications

In the spring of 2016, my senior year of high school, I was running on a treadmill at my local gym. Prior to that day, I had only been able to motivate myself to run a mile and nothing more. On that day, however, I was watching the news on the TV in front of my treadmill and coverage of the Brock Turner case came on. The story was that he had only received a six-month sentence for raping Chanel Miller, a punishment severely less than what most offenders got. As I watched the TV reporter announce the news, I became more and more enraged. How could someone who had committed such a horrifying crime only receive six months in prison? After Miller had been raped, discredited, and then had her pain displayed on the national stage, how could the judge only administer this meager sentence to Turner? Fuming over the injustice of this, I managed to run three miles that day while watching — triple the distance I had been able to run up until then.

My rage about the Brock Turner case was at the same time influenced by my personal experience with the issue of sexual violence. That same spring, two close friends of mine had been sexually assaulted. While the Brock Turner case was unfolding at the national level, I was trying to support my friends as they attempted to navigate their own cases. My initial reaction to these painful and confusing events was to demand justice as I

understood it, in the carceral feminist framework: I wanted the perpetrators of all of these cases (my friends' and Chanel Miller's) to be punished. Even though Turner had been caught in the act, the criminal justice system still did not treat his violence as a crime worthy of punishment. Turner it seemed, could return to his life with minimal disciplinary action, even though he was responsible for all the harm done. And yet, my friends, along with many other survivors, were suffering consequences for a situation they had not caused: they were discredited, silenced, and blamed for a harm they did not cause. Parallel to Turner, the peer who had sexually assaulted one of my friends seemed to continue as if nothing had happened, while she could barely make it through the day.

I sustained my anger and desire for punishment for the duration of my first two years in college. I joined several sexual violence prevention groups on campus — one facilitated by the administration and one created by students outside of administrative purview. My anger and corresponding desire for punishment grew as I saw several male students, who I had heard were sexually violent, walking around campus. I believed the rumors about them because I had faith in survivors' accounts and assumed the rumors were grounded in truth. Watching them joke with their teammates, their friends, and professors brought back my rage from senior year and left me questioning the institution I was attending — its alleged progressive ideas and ways of treating us, its students. Again, it seemed like these men had caused harm and were getting away with it. The response from those around them seemed to be a lack of acknowledgement of what they had done, a corresponding lack of accountability, and thus compliance in rape culture — even though allegedly “everyone” knew what had happened. The silence from students and

leaders of the institution was unacceptable, disgusting, and hypocritical to me. Macalester students sometimes have a sense of moral superiority, possibly because of our progressive political orientation and our ideals of “service to society,” which are reflected in our claim to fame as change-makers. We claim to be the intellectual and moral elite. So how could so many politically active, social justice-oriented Macalester students be silent when it came to these men and their acts of violence?

By my junior year, the sexual violence prevention groups I had joined seemed ineffective and slow in their attempts to make change. The group facilitated by the administration seemed to be dispassionate and removed — an organization whose purpose was merely fulfilling an obligation to making the college appear to be anti-sexual violence. We rehashed the same ideas, with nothing emerging for an entire year. My attempt to politicize sexual violence and connect it to its basis in patriarchy was met with silence and awkward gazes from those around me. The consequences of sexual violence was being separated from its roots right in front of my eyes. In the student groups, I began to conclude that few people were willing to make a real commitment to eradicating sexual violence. Students who seemed interested in the issue stopped showing up to meetings, or would only show up to big events. Some specific people would only show up to individual events throughout the year to air their grievances, but for some reason couldn't commit to a sustained action against sexual violence. I also began to notice the ways in which white, cisgender women were overtaking the conversation around sexual violence. It seemed to me that white women's voices were the loudest, often fighting and drowning out others, not in an attempt to be productive or to create change, but in an

attempt just to have a voice. I could empathize to an extent with their desire to be heard because I remembered how silenced my friends and I felt in high school. But it impeded any action we could have taken. Ultimately, I felt like nothing was getting done.

During my junior year, I took Critical Prison Studies, a requirement for the American Studies major. I learned about the abuses of the prison apparatus, the failure of punitive measures to create behavioral change, and I learned about the roots of sexual violence. This shifted my understanding of the issue. Rather than being committed by inherently broken and sick individuals, sexual violence occurs because of socialized oppressive attitudes that teach people, especially men, that women's bodies are property to which they are entitled. Sex is constructed as being a violent act, a terrain on which to demonstrate power. Thus the line between sex and sexual violence begins to fade in these men's minds. Prison, the place I had wanted to throw all perpetrators in at one time in my life, was revealed to be a white supremacist, classist apparatus. By the time I finished the course, prisons were an incredibly limited option for addressing sexual violence in my eyes.

At the same time, someone I knew was accused of sexual violence, reversing the situations I had found myself in prior. Trying to comprehend why this person had been sexually violent, and how I could respond to it, tested my understanding of sexual violence and what I understood justice to be. My immediate reaction used to be to criminalize and alienate perpetrators, but my perspective was much more complicated now as a result of being exposed to the complexities of carceralization. Part of me wanted to support this person, and part of me wanted to distance myself from them completely.

After separating myself from this person for several months, I wanted to restore the trust between us again. I allowed them the opportunity to take responsibility for the harm they had caused and offered my support in helping them hold themselves accountable.

I mention all these memories and experiences because even today, they're still so salient, and each prompted my different interrogations of sexual violence. Until that initial run on the treadmill, I had been repressing my anger about sexual violence and the injustice inherent in the act. It was at that moment, though, that I realized how connected I was to the issue. Most of my honors thesis has been directed by the questions stemming from the frustrations I felt at all these different times. Following the Brock Turner case, I wondered how our society could respond to the atrocity he committed with only a six-month sentence. After watching my friends deal with the ramifications of sexual violence, the question was: As eighteen-year-old-women, how is it possible that nobody taught us what sexual violence was, how to support each other through its aftermath, or what justice could look like afterwards? After taking Critical Prison Studies, I wanted to interrogate why the common response to sexual violence is to criminalize perpetrators. Following my activity with sexual violence prevention, the questions were "Why was it so hard to get anything done in the university setting? Why was it so threatening to connect sexual violence to other forms of patriarchal violence?" As I began work on my honors thesis, the question became: How do we hold people accountable for sexual violence in a way that will avoid the PIC, will change their behavior, and attain justice for everyone involved?

This project has been my attempt to intellectualize the several emergences of sexual violence in my life and to find some answers to the many questions I've had regarding these experiences. Through researching neoliberalism, carceral feminism, restorative justice, and pleasure-based sex education I am able to untangle some of the confusion and pain in these memories and better understand how sexual violence operates in our society. While not every question from every experience has been answered, the concept of what justice can be when it comes to sexual violence is clearer. While restorative and transformative justice may not be universal solutions, neither is the prison system. After having done this research, I no longer believe it's possible to recommend a type of justice that is hard and fast — rather, the search for and application of justice needs to be specific (to the individuals and the circumstances) and sustainable (attending to the underlying causes) per context. Not every instance of sexual violence is equally destructive, and not every sexually violent person may have equal potential for transformation. Thus, in some cases justice could entail some combination of retributive and restorative methods in order to address the spectrum of violence and the spectrum of transformation.

To reiterate the example Cara Page puts forth, “If we’re not imagining where we’re going, then it will constantly just be pushing back outside from inside of cages, as opposed to imagining what’s happening outside of cages.”¹⁷⁶ Within the context of this paper, perhaps we can define these cages as the pervasive structures of oppression that trap our minds and bodies in a carceral framework. Ultimately what I’ve realized and

¹⁷⁶ brown, *Pleasure Activism*, 39.

what this thesis argues, is that from these cages, alternative forms of justice and pleasure-based sex education can offer a key to freedom.

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