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SYSTEM ACCOUNTABILITY AND SEXUAL ASSAULT: THE
PAST AND FUTURE OF THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The #MeToo Movement and the rise in the public consciousness of the impact of sexual violence has made abundantly clear that the legal rape reform movement that began in the 1970s was largely unsuccessful in stemming the tide of sexual violence. That movement was directed at the procedures in criminal justice system that make rape prosecutions easier for the state, but it failed to address the state's role in enabling and perpetuating sexual violence. By failing to address those issues and by actively turning to carceral feminism, the state implemented a system in which sexual violence reporting remains low while prosecution and subsequent incarceration rates have increased. Feminist scholars today recognize the shortcomings of the state in such regard and have subsequently called for implementation of a new vision of justice based on accountability beyond the state as a way to bring about an end to sexual violence. Here, I analyze and critique both the legal rape reform movement that began in the 1970s and explore the ways in which the next generation of feminists suggests society move to a place where sexual violence is no longer as significant a threat.

INTRODUCTION

2018 was an exhausting year of high-profile sexual misconduct stories in the media. Sexual misconduct allegations were levied James Franco, Aziz Ansari, Harvey Weinstein, R. Kelly, Junot Diaz, Les Moonves, Asia Argento, Louis C.K, and Kevin Spacey, with almost none of them leading to criminal cases.¹ In January, Moira Donegan came forward as the creator of the Shitty Media Men list, an anonymous spreadsheet that collected incidents of sexual misconduct by about seventy men in media.² In April, after dozens of women came forward with allegations of assault, Bill Cosby was ultimately convicted for drugging and assaulting Andrea Constand in 2004.³ In September, Dr. Christine Blasey Ford testified in front of the Republi-

¹ See Elena Nicolaou, *A #MeToo Timeline to Show How Far We've Come - & How Far We Need To Go*, REFINERY29 (Oct. 4 2018), <https://www.refinery29.com/en-us/2018/10/212801/me-too-movement-history-timeline-year-weinstein>.

² *Id.*

³ Graham Bowley & Joe Coscarelli, *Bill Cosby, Once a Model of Fatherhood, Is Sentenced to Prison*, N.Y. TIMES (Sept. 25, 2018), <https://www.nytimes.com/2018/09/25/arts/television/bill-cosby-sentencing.html>; see also Brian Welk et al., *60 Bill Cosby Accusers: Complete Breakdown of the Accusations*, WRAP (Sept. 25, 2018), <https://www.thewrap.com/60-bill-cosby-accusers-complete-list-breakdown-guilty/> (detailing dozens of accusations against Bill Cosby).

can-male led Senate Judiciary Committee on live television about Supreme Court Justice (then nominee) Brett Kavanaugh assaulting her thirty years earlier. The Heritage Foundation unironically proclaimed that Kavanaugh was “innocent until proven guilty” in his Supreme Court nomination hearing.⁴ While outcomes have varied, the discussions surrounding these news cycles have highlighted an enduring societal problem with eradicating sexual violence. Rape allegations like those against Cosby, Kavanaugh, and many others that are tried in the court of media public opinion directly affect the treatment of sexual and gender violence in the criminal justice system and our greater culture.⁵ As society attempts to endure this wearying media cycle, it is easy to forget that our legal system has already experienced a feminist revolution regarding sexual violence. In our frustration, we have lost sight of the anti-rape movement that rose to national prominence in the 1970s and its impact on the criminal justice system.

There is ongoing debate about how to describe the story of the legal rape reform movement. Both versions start like this: in the 1970s, feminist activists created local rape crisis centers across the country.⁶ These centers structured themselves around non-oppressive practices, brought rape into the public conversation, and challenged rape culture in its legal and cultural forms.⁷ Anti-rape activists formed national networks and led ambitious campaigns to reform rape laws nationwide.⁸ Those who herald this movement as a legal success emphasize the “broadened definition of sexual assault, strengthened criminal due process protections for victims, [the] improved...medical response to rape, and [the] raised...public awareness.”⁹ Those who disagree with this telling view the movement’s trajectory as a cautionary tale of feminist organizers creating a helpful narrative for the state to bolster the war on crime and increase mass incarceration.¹⁰ In the latter version, legal reform has made little positive change for individuals and communities impacted by sexual violence, and the ongoing “carceral feminism” support for increased rape prosecution does infinitely more harm

⁴ Hans A. von Spakovsky, Opinion, *Kavanaugh is Innocent Until Proven Guilty - Not the Other Way Around*, FOX NEWS (Oct. 3, 2018), <https://www.foxnews.com/opinion/kavanaugh-is-innocent-until-proven-guilty-not-the-other-way-around>.

⁵ Samhita Mukhopadhyay, *Trial by Media: Black Female Lasciviousness and the Question of Consent*, in YES MEANS YES! VISIONS OF FEMALE SEXUAL POWER AND A WORLD WITHOUT RAPE 152 (2008).

⁶ ROSE CORRIGAN, UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS 1 (2013).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ See Aya Gruber, *Rape, Feminism, and The War on Crime*, 84 WASH. L. REV. 581, 585 (2009).

than good.¹¹ Critics of the narrative of success assert that the feminist reform efforts became problematic like other hyper-punitive movements, such as the War on Drugs and the War on Terror.¹² Rape became another government tool for public fear mongering, and victims became props to advance the carceral priorities of the modern state.¹³ Given this narrative and the current state of sexual assault in our society and legal system, it is unsurprising that so many contemporary feminist activists wanting to address rape and intimate partner violence in their communities reject any partnership with the criminal justice system.¹⁴

This article is concerned with those current feminists who regard the feminist legal rape reform movement as a failure. Undoubtedly, the past forty years of criminal procedural and substantive reform have legally enabled victims of sexual violence to report their crimes and prosecutors to convict their assailants.¹⁵ Yet reporting and conviction rates remain abysmal.¹⁶ Why haven't these reforms achieved greater success? To answer this question, this article traces the history of feminist grassroots activism around sexual violence and its attempted translation into the legal system. This article aims to acknowledge both the current state of rape prosecution and the victories of activists working within that system over the past forty years to contextualize the ongoing debate between full divestment from the criminal justice system and ongoing attempts to reform it. Within this discussion is the uncomfortable possibility that the goals of the carceral state and the goals of sexual violence victims and their communities are ultimately irreconcilable. However, there remains a moral imperative to examine

¹¹ See Erin Collins, *The Criminalization of Title IX*, 13 OHIO ST. J. CRIM. L. 365, 370, 371 (2016) (“[T]he notion of taking rape seriously has become synonymous with expanding the state’s power to punish, both in society at large and many feminist schools of thought. The resultant, and counterintuitive, orientation of feminism toward market-based, punitive responses have come to be characterized as ‘carceral feminism.’”).

¹² CORRIGAN, *supra* note 6, at 3.

¹³ *Id.* Micro-examples of disingenuous concern for rape victims play out even at the University of Richmond Law School, where speaker Ryan Anderson purported to align himself with rape victims to justify his crusade against trans people.

¹⁴ See Gruber, *supra* note 10, at 653.

¹⁵ See Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK U. L. REV. 467, 467 (2005) (describing laws that enable victims of sexual violence to report their crimes and prosecutors to convict their assailants).

¹⁶ Andrew Van Dam, *Less Than 1% of Rapes Lead to Felony Convictions. At Least 89% of Victims Face Emotional and Physical Consequences*, WASH. POST (Oct. 6, 2018), https://www.washingtonpost.com/business/2018/10/06/less-than-percent-rapes-lead-felony-convictions-least-percent-victims-face-emotional-physical-consequences/?utm_term=.5f413afaec5a (explaining statistics of reports and convictions of rape).

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emerging feminist visions of liberation from sexual violence to glean any opportunity for future criminal justice reform to achieve actual reform.

This article proceeds in three parts. Part I highlights key procedural and substantive criminal reforms of the past forty years intended to enable higher rates of sexual violence reporting and conviction. Then, Part II investigates why, despite these efforts, many contemporary feminists view state responses to sexual violence as a failure. This section also proposes that the movement's failure was the result of the legal system disregarding its role in perpetuating a distorted societal view of sexual violence. The legal system failed to acknowledge that over-policing and mass incarceration of marginalized communities rendered the criminal justice system inaccessible to and untrusted by victims in these communities. Both of these failures stem from a lack of systemic accountability to the communities the criminal justice system purports to serve. Finally, Part III analyzes current feminist strategy on ending sexual violence to garner opportunities for the next wave of criminal justice reform.

With sexual violence at the forefront of public dialogue, it is imperative that the criminal justice system reframe its vision for combating rape on a national level. By looking to current feminist frameworks on systemic accountability, the criminal justice system can address its structural and historical role in perpetuating sexual violence and gain institutional integrity by beginning to repair trust with the communities it has historically marginalized.

I. THE FIRST SEXUAL VIOLENCE REFORM MOVEMENT

Before the first wave of reform to rape and intimate partner violence laws, the criminal justice system was more explicitly misogynistic. Courts before the 1960s were virtually obsessed with the idea that a woman might fabricate a rape accusation and ruin her accuser's reputation.¹⁷ This mindset is evident in jurist Sir William Blackstone's eighteenth century definition of rape as "carnal knowledge of a woman forcibly and against her will."¹⁸ To prove that a rape contained the requisite force and resistance, the court required "prompt complaint and corroboration, including corroboration of unwillingness by proof that the victim had resisted to the utmost."¹⁹ While these legal requirements have evolved, Blackstone's core concepts of force and non-consent remain at the apex of the struggle around criminal rape re-

¹⁷ Stephen Schulhofer, *Reforming the Law of Rape*, 11 LAW & INEQ. 335, 336 (2017).

¹⁸ *Id.* (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *210).

¹⁹ *Id.*

form today.²⁰ Law students encounter queasy relics of this legal period in textbooks, often with the implication that they ought to marvel at how much progress has been achieved. The following excerpt from *Wigmore on Evidence* lays out the explicit need for character investigation of a female victim accusing a man of a sexual crime:

There is . . . at least one situation in which chastity may have a direct connection with veracity, viz. when a woman or young girl testifies as complainant against a man charged with a sexual crime. . . [Psychiatrists have demonstrated that] their psychic complexes are multifarious, distorted partly by inherent defects, partly by diseased derangements or abnormal instincts, partly by bad social environment, partly by temporary physiological or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offences by men. . . The real victim, however, too often in such cases is the innocent man; for the respect and sympathy naturally felt by any tribunal for a wronged female helps to give easy credit to such a plausible tale. . . . *No judge should ever let a sex-offence charge go to the jury unless the female complainant's social history and mental makeup have been examined and testified to by a qualified physician.*²¹

This passage summarizes the foundational assumptions about female sexual violence victims that the feminist activists of the 1960s and 1970s would have encountered: essentially, the prevailing view at the time was that female victims were emotionally disturbed and their alleged assailants were tragic victims of manipulated social beliefs until proven otherwise.²² The passage also illustrates a heightened requirement for purity and chastity of an alleged victim.²³ The language “at least one situation” indicates how singularly focused the criminal justice system was on scrupulous examination of victim character in sexual assault cases alone.²⁴ The legal system’s hostile treatment of rape cases and rape victims was in marked contrast to its response to other assault crimes, which focused only on the actions of the accused to establish criminal activity.²⁵

²⁰ *Id.*

²¹ JOHN HENRY WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW 459–60 (3rd ed. 1940), *reprinted in* GEORGE FISHER, EVIDENCE 322–23 (3rd ed. 2013).

²² *See id.* at 460.

²³ *See id.*

²⁴ *See id.* at 459–60.

²⁵ Carol E. Tracy et al., *Rape and Sexual Assault in the Legal System*, WOMEN’S L. PROJECT 1, 5 (June 5, 2012), <https://www.womenslawproject.org/wp-content/uploads/2016/04/Rape-and-Sexual-Assault-in-the-Legal-System-FINAL.pdf>.

Confronting an unabashedly misogynistic and skeptical male-dominated legal system, the early feminist reform movement focused on two enduring issues: (1) the requisite level of force employed by the assailant and (2) victim credibility. Visible pushback to the explicit legal misogyny emerged in the 1960s, when the Model Penal Code expanded Blackstone's narrow concept of force to include nonviolent duress by an employer or abusive partner as long as the invoked threat could prevent resistance by "[a] woman of ordinary resolution."²⁶ The transformative idea at play in this emerging reform effort was that the force necessary to commit sexual violence existed on a continuum and could take a multitude of forms that were specific to each victim's circumstances.²⁷ These could include "the knife at your throat, the threat to throw you in jail, the threat to take away your job or your children, [or] the need to placate a thesis supervisor."²⁸ In 1995, a Pennsylvania statute defined forcible compulsion to include "[e]motional or psychological force, either express or implied."²⁹ By expanding the definition of requisite force, reformers aimed to give a greater range of sexual violence victims the opportunity to report and seek prosecution.³⁰ These reforms were not seamless, but they did have popular support. When the Supreme Court declined to expand the scope of necessary force in a 1988 case regarding a law used to prosecute sex traffickers and interpreting that law to only apply to those who used legal or physical compulsion,³¹ Congress overruled that decision and specified that coercion included psychological, financial, or reputational harm.³²

Alongside and often working with statutory reform movements, women's rape crisis centers emerged in the 1970s to respond to social and systemic apathy towards rape and hostility towards victims.³³ These centers provided emotional and legal support for survivors of rape while also working on criminal reform projects.³⁴ Organizers of these rape crisis centers formed advocacy groups credited with eliminating procedural obstacles and putting laws on the books that protected victims from abusive cross-

²⁶ Schulhofer, *supra* note 17, at 337 (citing MODEL PENAL CODE § 213.1(2)(a)) (AM. LAW INST., Proposed Official Draft 1962).

²⁷ *Feminist Perspectives on Rape*, STAN. ENCYCLOPEDIA PSYCHOL. (May 13, 2009), <https://plato.stanford.edu/entries/feminism-rape/#ComTheLibRadCon>.

²⁸ Schulhofer, *supra* note 17, at 337.

²⁹ *Id.* at 339 (citing S. 1995-10, 1st Special Sess. (Pa. 1995)).

³⁰ *See id.*

³¹ *United States v. Kozminski*, 487 U.S. 931, 932 (1988).

³² 18 U.S.C. § 1591(e)(4) (2019).

³³ Amy Kasparian, Note, *Justice Beyond Bars: Exploring the Restorative Justice Alternative for Victims of Rape and Sexual Assault*, 37 SUFFOLK TRANSNAT'L L. REV. 377, 382 (2014).

³⁴ *Id.*

examination in the courtroom.³⁵ They understood the systemic forces at play implicitly condoning sexual violence, but nonetheless focused their reform efforts on specific aspects of the criminal process. These specific aspects included special rules of evidence, cautionary instructions to juries, and spousal exemptions, all of which were thought to contribute to abysmal prosecution rates.³⁶ Their work had tangible results: between the 1970s and 2000s, “state and federal legislatures enacted sexual assault shield laws, provided privileged protection of counseling records, repealed marital sexual assault exceptions, eliminated evidentiary corroboration requirements, and abolished the statutory ‘reasonable mistake of fact’ defense. By 1987, every state in the nation had enacted some measure of rape reform.”³⁷ To address the issue on a national level, Congress passed the Violence Against Women Act (VAWA) in 1990 to provide federal funds for “investigation and prosecution of violent crimes against women.”³⁸

Today, laws regarding sexual violence vary among jurisdictions.³⁹ Terminology around sexual violence remains inconsistent as rape, sexual abuse, sexual assault, and even consent have different meanings in different states.⁴⁰ As Part II will discuss, these changes failed to meaningfully reduce rates of sexual violence or social perceptions of sexual violence victims.

II. HOW AN ANTI-RAPE MOVEMENT FAILS

The changes to laws around sexual assault prosecution resulting from the anti-rape movement of the 1970s to the 1990s were satisfyingly tangible. These tangible changes to the text of substantive and procedural sexual violence laws were undoubtedly meant to send a larger message about the evolving values of the court system.⁴¹ The age of Blackstone’s “carnal knowledge of a woman forcibly and against her will” was ostensibly over.

Nevertheless, the past several years of news coverage and contemporary statistics have fed the growing belief that these formal legal changes have not brought about their anticipated cultural changes.⁴² Rape is still far less

³⁵ Schulhofer, *supra* note 17, at 337.

³⁶ Kasparian, *supra* note 33.

³⁷ *Id.* at 388.

³⁸ *Id.* at 389. *See generally* Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994).

³⁹ Tracy et al., *supra* note 25, at 3.

⁴⁰ *Id.*

⁴¹ *See* Kasparian, *supra* note 33, at 388.

⁴² Collins, *supra* note 11, at 365–66.

likely to be reported to police than other physical assaults.⁴³ The rape crisis extends to reporting and conviction as well:

Rape is not only underreported in the United States, but of the 40% of rapes that are brought to the attention of the police, only half resulted in an arrest. Worse, only 58% of prosecuted cases result in convictions. Ultimately, fifteen out of sixteen sexual assault victims in the United States can expect no significant accountability from the criminal justice system on the perpetrator.⁴⁴

Additionally, activists continue to accurately point to the long-cited statistic that one-in-five college women experience sexual assault.⁴⁵ Actors within the criminal justice system “continue to discount and undervalue the accounts of those who report violence, particularly when those reports come from racial and sexual minorities.”⁴⁶ These reform laws, however symbolically meaningful, “have not deterred the number of sexual assaults committed, enhanced reports or prosecution of those crimes, or increased conviction rates.”⁴⁷

Even as the rates of sexual assault remain high and conviction rates remain low, the prison system required to accommodate those and other convictions has grown massively. In 2018, the American criminal justice system held almost 2.3 million people in state prisons, federal prisons, juvenile corrections facilities, and other incarceration centers.⁴⁸ In 2018, 164,000 adults were in state prisons for rape or sexual assault crimes.⁴⁹ The fatal end product of the criminal sexual assault revolution was that the “notion of taking rape seriously became synonymous with expanding the state’s power to punish, both in society at large and [in] many feminist schools of thought.”⁵⁰ These abysmal statistics are noted not to illustrate “failings” of grassroots activists but to focus on the incorporation of their vision into the criminal justice system.

Meaningful as the changes to legal procedure over the past forty years have been, they defined justice too narrowly: as conviction and punishment of an individual bad actor. The enduring adversarial system of victim verses assailant allowed the state to fade into the background, retaining its position

⁴³ Kasparian, *supra* note 33, at 383.

⁴⁴ *Id.* at 377.

⁴⁵ Collins, *supra* note 11, at 370.

⁴⁶ *Id.*

⁴⁷ Kasparian, *supra* note 33, at 389.

⁴⁸ Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, PRISON POL’Y INITIATIVE (Mar. 14, 2018), <https://www.prisonpolicy.org/reports/pie2018.html>.

⁴⁹ *Id.*

⁵⁰ Collins, *supra* note 11, at 372.

as omnipotent referee guiding the two parties towards a just result. This approach excused the criminal justice system from reckoning with its own systemic role in upholding, condoning, and perpetuating centuries of sexual and intimate partner violence. It simultaneously foreclosed any reckoning within the criminal justice system of its over-policing and mass incarceration of victims in marginalized communities and how the reform of isolated criminal procedure rules failed to address the larger inaccessibility of the criminal justice system for victims in these communities.⁵¹ In so limiting reform to the rewriting of procedural laws, the criminal justice system side-stepped addressing rape as a social and systemic problem.

A. The Adversarial System's Role in Perpetuating Sexual Violence

Focusing on the trial and punishment of individual offenders has downplayed the role of the state and criminal justice system in enabling sexual violence and limited the exploration of remedies beyond the criminal justice system.⁵² Based on data collected from 2012 to 2016, the Rape, Abuse, & Incest National Network, a national anti-sexual violence organization, reports that for every 1000 rapes, 230 will be reported to the police, and of those reports, only nine will get referred to prosecutors.⁵³ As feminist scholar Mari Matsuda explains, "if a woman is raped, we look to the rapist for recourse' and not from a 'system that creates and condones rape.'"⁵⁴ This focus exempts law enforcement from liability when they may be best suited to prevent and predict rape and exempts the state that plays a major role in creating an ideological system that makes rape possible.⁵⁵ This approach concurrently "reifies state power and positions the state as the savior of women."⁵⁶

An enduring emphasis on conviction and incarceration leaves few alternative paths for victims who seek a different form of justice.⁵⁷ Legal scholar Amy Kasparian notes that "rape victims seek justice in many different ways."⁵⁸ While some seek conviction and incarceration, others prefer com-

⁵¹ See *id.* at 371.

⁵² *Id.*

⁵³ *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> (last visited Jan. 26, 2019) [hereinafter RAINN].

⁵⁴ Collins, *supra* note 11, at 371 (quoting Mari Matsuda, *On Causation*, 100 COLUM. L. REV. 2195, 2202–06 (2000)).

⁵⁵ *Id.* (citing Mari Matsuda, *On Causation*, 100 COLUM. L. REV. 2195, 2202–03 (2000)).

⁵⁶ *Id.*

⁵⁷ See Kasparian, *supra* note 33, at 377.

⁵⁸ *Id.* at 377–78.

pensation from the offender or the state, a meaningful opportunity to tell their story to the community or offender, or for the offender to publicly acknowledge and apologize for the harm caused.⁵⁹ For people who are victims of sexual violence, justice can manifest in many forms beyond the traditional criminal justice idea of punishment.⁶⁰ A 2015 survey by the American Civil Liberties Union found that many survivors' goals did not align with the goals or operation of the criminal justice system. Responses supporting this conclusion fell into three main categories: (1) discontent with a lack of options other than punishment and separation from an abuser, (2) fear of a loss of control within the criminal justice system, and (3) fear of additional trauma from the criminal justice process.⁶¹

A laser focus on merely tweaking the adversarial legal system means core roadblocks to sexual assault conviction remain impediments. For all the substantive and procedural changes to the law over the past fifty years, the same basic limitations still arise regarding court perception of victim credibility. Prosecutors routinely decline to charge cases deemed "difficult" based on a mass of subjective non-legal factors, in particular the perceived lack of credibility of the reporting victim.⁶² These pervasive walls fuel distrust and anger among victims towards the criminal justice system.

In October 2018, four women in Utah were fed up with their local district attorneys' failure to prosecute the sexual assaults they had reported.⁶³ They sued the state under a Utah constitutional provision allowing crime victims to request that the state Supreme Court appoint a prosecutor if a district attorney refuses their case.⁶⁴ If the women's petitions are granted and their cases go to trial, they still must endure an often-brutal adversarial system. Despite changes to the type of evidence that can be brought into court to discredit or shame a victim, cross-examination is still frequently retraumatizing.⁶⁵ Because many rape cases focus on the survivor's testimony as the

⁵⁹ *Id.* at 378.

⁶⁰ *Id.*

⁶¹ AM. CIVIL LIBERTIES UNION, RESPONSES FROM THE FIELD: SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND POLICING 2 (2015), https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf.

⁶² CORRIGAN, *supra* note 6, at 4.

⁶³ See Deanna Paul, *Utah Refused to Prosecute Four Sexual Assault Cases, So The Alleged Victims Set Out to Do It Themselves*, WASH. POST (Oct. 22, 2018), https://www.washingtonpost.com/nation/2018/10/22/utah-refused-prosecute-their-sexual-assault-cases-so-four-women-set-out-do-it-themselves/?utm_term=.230c1e9d1f0d.

⁶⁴ *Id.*

⁶⁵ Simon McCarthy-Jones, *Survivors of Sexual Violence are Let Down by the Criminal Justice System - Here's What Should Happen Next*, CONVERSATION (Mar. 29, 2018), <http://theconversation.com/survivors-of-sexual-violence-are-let-down-by->

only evidence, an effective defense attorney will attempt to undermine the survivor's credibility and reliability.⁶⁶ Tweaks to evidence rules and use of force requirements have not altered the inherently adversarial two party legal-system, which by its nature forces a victim's credibility and character on trial, while simultaneously encouraging the prosecution to paint the most damning picture possible of the accused sexual assailant. As the drama (and almost inevitable trauma) play out in the courtroom, the state itself fades into the background, never accountable for its active and passive role in failing to prevent sexual assault.

B. Over-policing, Mass Incarceration, and Resulting Inaccessibility

Another major shortcoming in our criminal justice system's structure for addressing rape is its singular focus on incarceration. For victims undeterred by the often-brutal court confrontation process and who have the luck or privilege to be found credible by the law enforcement, prosecutors, and judges working on their case, the ultimate administration of justice they can expect from participating in the criminal justice system is their assailant going to jail. "The limited number of domestic violence victims who actually engage with the criminal justice system is an important metric in determining the effectiveness of this system."⁶⁷ Seventy-seven percent of rape victims chose to not report their rape to law enforcement, and seven percent of those choosing not to report disclose that their decision was motivated by not wanting to get the assailant in trouble, while twenty percent feared retaliation and thirteen percent believed the police would not do anything to help.⁶⁸ This issue of incarceration becomes even more complicated when considering that thirty-three percent of people who report sexual assault were in an intimate relationship with their offender and only nineteen percent of victims didn't know their assailant at all.⁶⁹ While some victims may desire the incarceration of their assailant, others are clearly troubled by this outcome, or at least feel it would be ineffective in attaining safety. In our singularly prison-focused system, victims who are disillusioned with the state's carceral solution are left without state-sponsored alternatives.

the-criminal-justice-system-heres-what-should-happen-next-94138.

⁶⁶ *Id.*

⁶⁷ Kimberly Bailey, *Lost in Translation: Domestic Violence, the Personal is Political, and the Criminal Justice System*, 100 J. CRIM. L. & CRIMINOLOGY 1255, 1257 (2010).

⁶⁸ RAINN, *supra* note 53.

⁶⁹ Kathryn Casteel et al., *What We Know About Victims of Sexual Assault in America*, FIVETHIRTYEIGHT (Jan. 2, 2018), <http://projects.fivethirtyeight.com/sexual-assault-victims/>.

The transformation of rape crisis centers from grassroots organizations into federally funded nonprofits under VAWA provides a helpful example of carceral, punitive frameworks undermining the goal of assisting sexual assault victims. Today, many publicly funded shelters for people who have experienced sexual or intimate partner violence unintentionally re-victimize their clients by over-policing women of color, people who have struggled with addiction, and mothers.⁷⁰ Reporting other residents who break even minor shelter rules is encouraged, which replicates the controlling and hostile environments many of the residents have just escaped.⁷¹ One former resident and activist observed that “[m]any safe houses seemed more like prisons... that prevented the disabled and women of all races, ages, classes, and religions and ethnic groups from entering.”⁷² While VAWA provided consistent funding to the original community rape crisis centers, it also promulgated the same carceral and punitive models employed in the criminal justice system.

Amidst the criminal rape revolution, lawmakers prioritized emphasizing carceral punishment over “affirmative rights to be free from gendered violence or substantive rights to benefits and supportive services” that would empower sexual violence victims to craft a response effective for them.⁷³ Tweaking law and procedure with the end goal of enabling more efficient incarceration left a narrow path for victims who chose to report their assault. The criminal justice system overlooked its history of over-policing and mass incarceration of poor communities, communities of color, and the LGBTQ community.⁷⁴ Police bias against historically marginalized groups including women, racial minorities, immigrants, LGBTQ people, poor people, youth survivors, and survivors with mental health or drug abuse problems remains a major concern among service providers and survivors in these communities.⁷⁵ Thus, reforms to the criminal justice process for rape victims often remained inaccessible to and untrusted by these communities.⁷⁶ “Experiences with institutionalized racism may make it difficult for women of color to trust the systems and institutions that are supposed to help them,” including law enforcement, social service agencies, and

⁷⁰ See Emi Koyama, *Disloyal to Feminism: Abuse of Survivors Within the Domestic Violence Shelter System*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 210 (Incite! Women of Color Against Violence ed. 2006).

⁷¹ *Id.*

⁷² See *id.* at 213.

⁷³ Collins, *supra* note 11, at 371.

⁷⁴ AM. CIVIL LIBERTIES UNION, *supra* note 61, at 8–9.

⁷⁵ *Id.* at 1.

⁷⁶ *Id.* at 2.

healthcare providers.⁷⁷ True sexual assault reform requires expanding accountability and justice beyond the punitive criminal law framework.⁷⁸

C. Sidestepping Rape as a Social and Systemic Problem

The state's continued allegiance to carceral solutions ignores the reality of sexual violence as a social and systemic issue that has repercussions throughout all areas of society, including the media, rather than as an isolated problem of individual bad actors. While the Heritage Foundation's demand of "innocent until proven guilty" for Justice Kavanaugh's Supreme Court nomination or President Trump's suggestion that if Ford were telling the truth, she would have proof from police reports or legal charges both were personally maddening, these comments illustrate the porous relationship between the criminal justice system and the public conversations on sexual assault.⁷⁹ Asking how well the criminal justice systems treat survivors of sexual violence is not only important to survivors; it also signals to members of society like Donald Trump and the Heritage Foundation how sexual violence should be viewed.⁸⁰

Regardless of the legal rape reform movement, the criminal justice system still embodies a dominant culture where certain bodies are historically more valued and more worthy of protection than others.⁸¹ These values are reinforced not only in our legal system, but also by the rape cases that are "tried" in our culture through our media.⁸² Feminist scholar Samhita Mukhopadhyay traces the legal trajectories of white and black female bodies in our legal system and society and identifies them as distinctly separate.⁸³ In contrast to white women whose legal rights to report rape were intertwined with coverture, the trajectory for the legal and social perception of black women's bodies is tied to slavery, resulting in the enduring dual narrative of black women's bodies as possessions and inherently seductive.⁸⁴ Women of color in the media are often "portrayed as promiscuous or hyper-

⁷⁷ *Racism & Sexual Assault*, CONN. ALLIANCE TO END SEXUAL VIOLENCE (last visited Jan. 1, 2018), <https://endsexualviolencect.org/resources/get-the-facts/woc-stats/>.

⁷⁸ Collins, *supra* note 11, at 366–68.

⁷⁹ See Christina Cauterucci, *Donald Trump May Not Have the Most Advanced Understanding of How Sexual Assault Trauma Works*, SLATE (Sept. 21, 2018), <https://slate.com/news-and-politics/2018/09/donald-trump-christine-blasey-ford-police-report-memory.html>; Spakovsky, *supra* note 4.

⁸⁰ McCarthy-Jones, *supra* note 65.

⁸¹ See Collins, *supra* note 11, at 370, 372.

⁸² Mukhopadhyay, *supra* note 5, at 153–54.

⁸³ *Id.* at 153.

⁸⁴ *Id.* at 153–54.

sexual,” perpetuating the idea that “women of color cannot be raped because they are willing participants in all sexual activity.”⁸⁵ While black women are technically entitled to the same legal protections as white women, “the cultural legacy of previous laws has maintained a set of conditions, including dominant narratives, structural inequities, class inequities, and cultural practices, that make it difficult for black women to prove that they have been raped.”⁸⁶ Other women of color are also subject to disturbing sexual narratives impacting both our legal system and larger society. One analysis of thirty-one porn sites found that nearly half of all depictions of women being raped or tortured were Asian women.⁸⁷ Sexism and racism, both tools of oppression, impact society’s and the criminal justice system’s ability to believe and serve women of color who are victims of sexual violence.⁸⁸

Some speculate that the reason we look to the media cycle to put sexual misconduct claims “on trial” is because we “have no expectation that the legal system will adjudicate such crimes fairly.”⁸⁹ Collectively, we “have witnessed endless instances of powerful people, mostly wealthy men,” committing crimes and deception without consequence.⁹⁰ As journalist David Dayden points out, marginalized sexual assault victims, like lower-wage women, “are simply at a disadvantage if internet outcry becomes the main accountability mechanism for sexual misconduct.”⁹¹ Even the current #Me-Too Movement has been criticized for failing to include the voices of people of color.⁹² An attempt by our criminal justice system to actually reduce rates of sexual violence needs to consider a much wider scope of socio-economic factors than previously analyzed. One stark and unaddressed factor in the prevalence of sexual violence is poverty; people with household incomes of less than \$7500 reported sexual assault at a rate twelve times that reported by those with household incomes greater than \$75,000.⁹³

⁸⁵ *Women of Color and Sexual Assault*, CONN. ALLIANCE TO END SEXUAL VIOLENCE, <https://endsexualviolencect.org/resources/get-the-facts/woc-stats/> (last visited Jan. 14, 2019).

⁸⁶ Mukhopadhyay, *supra* note 5, at 154.

⁸⁷ *Women of Color and Sexual Assault*, *supra* note 85.

⁸⁸ *Id.*

⁸⁹ David Dayden, *How Our Broken Justice System Led to a Sexual Harassment Crisis*, NEW REPUBLIC (Nov. 22, 2017), <https://newrepublic.com/article/145964/broken-justice-system-led-sexual-harassment-crisis>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Casteel et al., *supra* note 69.

⁹³ *Id.*

In its focus on the traditional adversarial legal system of victim (or state) verses assailant, the legal system severely limits its own ability to reduce and eliminate rape on a massive scale. Without taking responsibility and seeking recourse for its role in upholding sexual violence, or in over-policing and mass incarceration of marginalized communities, the legal sexual violence reform movement is doomed to be re-traumatizing and ineffective. Disappointing

III. RESULTING CRITICISM FROM CONTEMPORARY FEMINISTS

Like today, many feminist activists associated with the first legal rape reform movement were suspicious of government partnership.⁹⁴ While reform focused on the concrete goals of re-writing legislation and criminal procedures, many activists still situated their views “within a larger critique of structural subordination and inequalities.”⁹⁵ Rape was the act of an individual, but “many feminists understood the state itself as complicit in the perpetuation of gender subordination...and sexual violence.”⁹⁶ Therefore, “[they] were skeptical of enlisting the state's power to redress violence.”⁹⁷ These suspicions continued into the next generation of feminist activists who witnessed the first reform’s disappointing results. As symbolically powerful as new legal language was, many critical feminist scholars believe that these legal and legislative victories came at a high cost.⁹⁸ The alliance between feminist advocates and conservative actors increased the reach of the state while having little positive impact on communities.⁹⁹ This counter-intuitive embrace of police tactics has come to be known as “carceral feminism.”¹⁰⁰ The resulting sentiment of several feminist grassroots organizations is that partnering with the criminal justice system is both morally compromising and a waste of energy.¹⁰¹ In the words of feminist legal scholar Aya Gruber, feminists should “begin the complicated process of disentangling feminism and its important anti-sexual coercion stance from a hierarchy-reinforcing criminal system that is unable to produce social justice.”¹⁰²

⁹⁴ Collins, *supra* note 11, at 369.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 372.

⁹⁹ *Id.* at 366.

¹⁰⁰ *Id.*

¹⁰¹ *See id.* at 372–73.

¹⁰² *Id.* at 373 (quoting Aya Gruber, *Rape, Feminism, and The War on Crime*, 84 WASH. L. REV. 581, 653 (2009)).

What are the contemporary criticisms and emerging strategies of feminists who are distrustful of the state's capacity to respond to sexual violence? These scholars and activists are the next generation poised to either spur government reform, or instead divest from government partnership and combat sexual violence in their own communities, on their own terms. Their critique of state responses to violence addresses the lack of victim autonomy in the criminal justice system, the depoliticization (and resulting muting of state responsibility) of understanding sexual violence and its impact on marginalized communities, and the use of unnecessary state intervention to revictimize.¹⁰³ Understanding both their criticisms and emerging strategies is essential if we are to embark on a genuine quest to vanquish sexual violence on all social and institutional levels.

When feminist advocacy for sexual violence victims was ultimately incorporated into the criminal justice system, prioritizing victim autonomy was sidelined. The early anti-sexual violence movement saw a place for victim autonomy within new domestic violence policy.¹⁰⁴ They initially envisioned that victims would control “when the criminal justice system would intervene when they experienced violence in their personal lives.”¹⁰⁵ This early vision of victim autonomy was not translatable within the context of the American criminal justice regime, where “[c]rime is viewed as a violation against the state, not just the victim.”¹⁰⁶ As a result, complete victim autonomy has no space within the criminal justice system, and even partial victim autonomy remains a low priority of the current criminal justice response to violence.¹⁰⁷ The early vision of victim control over the state criminal process initiated on their behalf was lost in translation, sacrificed to prioritize criminal state control over the criminal prosecution process.

The translation of rape crisis centers' visionary models of response to sexual violence into government funded agencies and the judicial system fundamentally warped these models by sterilizing their message. Feminist scholar Emi Koyama wrote in her essay *Disloyal to Feminism: Abuse of Survivors Within the Domestic Violence Shelter System* that

the process of “institutionalization” and “professionalization” of the “battered women’s movement” and its ills have been widely discussed among long time activists who created early domestic violence shelters...[r]adical feminists view the institutionalization and profession-

¹⁰³ See *id.* at 370–72 (arguing that the criminal justice system is inept at responding to sexual assault and routinely ignores how race, class, and sexual orientation impact how “justice is meted out”).

¹⁰⁴ Bailey, *supra* note 67.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

alization of the movement as a continuous process of “depoliticization” fueled by patriarchal backlash and cooptation.¹⁰⁸

Koyama’s observation paints a picture of a movement that partnered with state agents to grow and impact the state itself, but lost its core values in the process. Rather than analyze the system that creates and condones rape, we look to the individual rapist and victim.¹⁰⁹

When the state is excused from interrogating its role in perpetuating sexual violence, state intervention remains harmful for victims historically marginalized by the state. The “funding” created for these organizations by the sexual assault reform movement comes at a high cost.¹¹⁰ This problem extends to sexual and domestic violence organizations (once rape crisis centers) that “leverage state intervention as the primary strategy for prevention and response.”¹¹¹ Frequently, “systemic violence...[is] considered secondary to...interpersonal violence.”¹¹² This classification of permissible violence allows state systems “to express and leverage racism, sexism, homophobia, and class oppression while responding to intimate and community violence.”¹¹³ The feminist collective generationFIVE (G5), in their pamphlet *Towards Transformative Justice*, comments that “the vast majority of sexual and domestic violence organizations leverage state intervention as the primary strategy for prevention and response,” which is problematic for victims in communities historically targeted or marginalized by the state.¹¹⁴ Institutions receiving government funding are pushed in the direction of harsher sentencing, incarceration, and surveillance.¹¹⁵

Mandatory state intervention and the re-shaping of organizations in the state’s carceral and punitive images perpetuates sexual violence. Rather than progressing towards an ultimate goal (a future without sexual and intimate partner violence) the criminal justice system remains cyclical.¹¹⁶ Its cycle of revictimization works in tandem with other government agencies whose policies disenfranchise victims and embolden abusers.¹¹⁷ The effects of revictimization are felt intensely by marginalized communities who have

¹⁰⁸ Koyama, *supra* note 70, at 213.

¹⁰⁹ Collins, *supra* note 11, at 2202–06.

¹¹⁰ See GENERATION FIVE, TOWARDS TRANSFORMATIVE JUSTICE 8 (2007), http://www.generationfive.org/wp-content/uploads/2013/07/G5_Toward_Transformative_Justice-Documents.pdf.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ See *id.* at 12.

¹¹⁷ See *id.* at 11–12.

experienced targeted violence by state actors.¹¹⁸ The Northwest Network of Bi, Trans, Lesbian, and Gay Survivors of Abuse, in its handbook *It Takes a Village*, includes a power and control wheel addressing how state passive and active participation in violence against LGBT people is leveraged by abusers.¹¹⁹ The legal system and state institutions remain complicit in the power structures leveraged against LGBT people by abusers by enabling the victimization of children because “many LGBT people are not allowed to be the legal parent of their children,” “leveraging institutional violence and isolation” and “lack of civil legal protections,” and permitting “discrimination based on sexual orientation and gender identity.”¹²⁰ Without addressing the historic state oppression of communities like LGBT people, the state will continue to perpetuate abuse by protecting methods of leveraging power over victims in those communities.

Current critiques of the state response to sexual violence emphasize the lack of victim control over their own case, the depoliticization (muting of state responsibility) of understanding sexual violence and its impact on marginalized communities, and the use of state intervention to revictimize the most vulnerable victims of sexual violence. These critiques have foundationally shaped the emerging vision for liberation from sexual violence.

A. A New Vision

The new vision of liberation from sexual violence is founded on accountability first and foremost. A lesson learned from the failure of the criminal sexual assault reform movement was that, despite changes in the language of laws and policies, the criminal justice system remained unable to adopt new solutions beyond incarceration.¹²¹ Any attempt to create integrity and community trust around sexual violence in the criminal justice system requires a reckoning with the inherent limits of the system’s structure. The criminal justice system has a fundamental design flaw that prevents the eradication of sexual violence by its adversarial two-party system. With sexual assault and intimate partner violence at the forefront of public dialogue, the criminal justice system has a second chance to reframe its response to these issues. By looking to current feminist organizational

¹¹⁸ *See id.*

¹¹⁹ Connie Burk et al., *It Takes a Village, People!: Advocacy, Friends and Family, & LGBT Survivors of Abuse*, NW NETWORK BI, TRANS, LESBIAN, & GAY SURVIVORS ABUSE, <https://static1.squarespace.com/static/566c7f0c2399a3bdabb57553/t/566c9be29cadb6bf7efc8e1e/1449958370563/It-Takes-A-Village-People-Web-Version.pdf> (last visited Jan. 20, 2019).

¹²⁰ *Id.*

¹²¹ *See* GENERATION FIVE, *supra* note 110, at 6.

frameworks regarding systemic accountability, the state can address its structural and historical role in perpetuating sexual assault and intimate partner violence and achieve greater success and legitimacy as an institution.

What path to accountability could the state realistically offer? For G5 and others like it, the preselected responses to violence cannot lead to liberation from violence.¹²² G5 declares that “[t]he lack of alternatives to State intervention, combined with our inaction and willingness to resort to state intervention, allows the violence to continue.”¹²³ These preset responses are limited to state incarceration and resulting family disintegration.¹²⁴ Today’s feminist visionaries demand a liberatory framework for the eradication of violence, and the same must be expected of the criminal justice system.¹²⁵ G5 also writes that, “we will not be successful in mobilizing masses of people to transform current political, economic, and social apparatuses if we do not have a concrete vision for the future. The goal of dismantling oppressive structures is shortsighted, and perhaps impossible, if we are not also prepared to build alternatives.”¹²⁶ Responding to violence through the criminal justice system focuses on retribution and punishment rather than accountability and transformation. The reactive rather than preventative mindset in our criminal justice system must be challenged to create new solutions.¹²⁷

A criminal justice system that cannot hold itself accountable cannot change the problem of sexual violence, because sexual violence itself demands accountability first and foremost. To begin this transformation, we must define accountability in order to integrate that definition into a new response to sexual violence. Activist and organizer Shannon Perez-Darby began her definition by exploring accountability of the self.¹²⁸ “Self accountability is about looking at your own actions and choices and if they align with your values. There will always be a gap. Our daily actions won't always match up 100%. It's doing the daily reconciliation that's self-accountability. It doesn't have to involve anyone else.”¹²⁹ Activist Kiyomi Fujikawa, when asked how she became involved with community accountability work, noted that “I heard more about survivors who didn't call

¹²² *See id.*

¹²³ *Id.*

¹²⁴ *See id.*

¹²⁵ *See id.* at 3–4.

¹²⁶ *See id.* at 6.

¹²⁷ *See id.*

¹²⁸ *See* Interview by Mariame Kaba with Kiyomi Fujikawa & Shannon Perez-Darby, Anti-Violence Activists, Bernard Ctr. for Research on Women, in N.Y.C., N.Y. (Oct. 26, 2018).

¹²⁹ *Id.*

against people. And my friends saw no justice in the criminal legal system...And seeing survivors stuck without options. Where you go to the criminal legal system or nothing happens. Getting creative around that.”¹³⁰ Fujikawa’s vision of accountability directly rejects punitive justice for sexual assailants by declining to “call against” them.¹³¹ The accountability process described by Perez-Darby will require a frank assessment of the values at play in the criminal justice system before attempting to align those values with its actions and outcomes.

Current sexual violence reform movements explore solutions outside the government.¹³² State-focused reformers must prioritize understanding these critiques and subsequent alternatives to shape a criminal justice system that provides a better sense of justice to victims of sexual violence in marginalized communities. Other governments have already begun the accountability process by addressing their own role in perpetuating sexual violence in their marginalized communities. In New Zealand, the Ministry of Justice recently considered alternative models to the criminal adversarial system for sexual violence because New Zealand was experiencing low reporting and conviction rates that suggested serious problems with the existing legal framework.¹³³ The models focused on the inability of the current criminal justice system to respond to the diverse needs of victims and offenders, and the need for tailored responses for women with disabilities and historically alienated cultural groups.¹³⁴ New Zealand has even considered shortening sentences based on evidence that longer sentences may actually deter some victims from reporting crimes.¹³⁵ While the success of New Zealand’s reform process remains to be seen, its recognition of the failings of sexual assault conviction as tied to historic alienation of certain cultural groups is an essential starting point in the state accountability process.

An existing approach to the accountability process that may be useful to the American criminal justice system is the transformative justice process. The transformative justice framework grew from critique of the existing restorative justice practice.¹³⁶ Critical feminist theorists felt that restorative

¹³⁰ *Id.*

¹³¹ *See id.*

¹³² Gruber, *supra* note 10, at 603–05.

¹³³ Kasparian, *supra* note 33, at 386.

¹³⁴ *Id.* (citing *Improvements to Sexual Violence in New Zealand: Public Discussion Document*, N.Z. MINISTRY JUST. 26–27 (Aug. 2008), <http://www.justice.govt.nz/policy/supporting-victims/sexual-violence/documents/6064-2-MOJ-SV-discussion-document-ff-WEB.pdf>).

¹³⁵ *Id.*

¹³⁶ Collins, *supra* note 11, at 394–95.

justice failed to address pre-existing power imbalances.¹³⁷ In response, transformative justice considers the interaction of race, gender, and other modes of domination to place individual acts of violence in a larger context of structural violence.¹³⁸ G5 views transformative justice as a possible means of responding to violence from racism, colonization, patriarchy, and heterosexism to achieve justice at every level.¹³⁹ Transformative justice de-emphasizes retribution and punishment, seeking instead to “prevent future abuse by [addressing] the social conditions that perpetuate and are perpetuated by’ such abuse.”¹⁴⁰ It was specifically developed as an alternative to relying on the state, incarceration, or policing, but its framework may (in a perfect world) provide the state itself with an accountability mechanism.¹⁴¹

CONCLUSION

Despite nearly fifty years of reform, the negative and non-credible perception of rape accusers still thrives in popular culture, as reflected in the ongoing media coverage of rape accusations.¹⁴² This viewpoint remains stubbornly present in the legal system as well.¹⁴³ While the work of early rape crisis centers and grassroots feminist groups from the 1970s onward was nothing short of revolutionary, reforms that neglected to address the state’s role in enabling and perpetuating sexual violence failed to produce a meaningful decline in rape. A group of feminist scholars today call for radical departure from government methods of addressing sexual violence and center their new vision for justice on accountability outside of the state. If the legal system wishes to actually succeed at reducing sexual violence and repair the harm it has caused with sexual violence victims and their com-

¹³⁷ *Id.* at 394.

¹³⁸ *Id.* at 395.

¹³⁹ GENERATION FIVE, *supra* note 110, at 4.

¹⁴⁰ Collins, *supra* note 11, at 395 (quoting GENERATION FIVE, TOWARD TRANSFORMATIVE JUSTICE 22 (2007), http://www.generationfive.org/wp-content/uploads/2013/07/G5_Toward_Transformative_Justice-Documents.pdf).

¹⁴¹ See GENERATION FIVE, *supra* note 110, at 22 (explaining the capacity for accountability mechanisms made by cross-community response to State intervention).

¹⁴² See Margot Cleveland, *Christine Blasey Ford’s Changing Kavanaugh Assault Story Leaves Her Short on Credibility*, USA TODAY (Oct. 3, 2018), <http://www.usatoday.com/story/opinion/2018/10/03/christine-blasey-ford-changing-memories-not-credible-kavanaugh-column/1497661002/> (explaining that setting aside Dr. Ford’s testimony as an emotional performance, her testimony was not credible because it was inconsistent).

¹⁴³ See Ken Armstrong & T. Christian Miller, *When Sexual Assault Victims Are Charged with Lying*, N.Y. TIMES (Nov. 24, 2017), <http://www.nytimes.com/2017/11/24/opinion/sunday/sexual-assault-victims-lying.html> (reporting on Cody Wilkerson’s testimony about the dismissal and prosecution of credible victims of sexual assault).

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munities, it must seriously examine these critiques and embark on its own accountability process.

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