

# UC Irvine

## UC Irvine Electronic Theses and Dissertations

### Title

"I Said #MeToo." Law, Culture, and Justice Discourse on Sexual Violence

### Permalink

<https://escholarship.org/uc/item/8qp597cf>

### Author

Ragan, Kasey Carmile

### Publication Date

2023

Peer reviewed|Thesis/dissertation

UNIVERSITY OF CALIFORNIA,  
IRVINE

“I Said #MeToo.”  
Law, Culture, and Justice Discourse on Sexual Violence

DISSERTATION

submitted in partial satisfaction of the requirements  
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

Kasey Carmile Ragan

Dissertation Committee:  
Professor Susan Bibler Coutin, Chair  
Professor Kirk Williams  
Professor Valerie Jenness  
Professor Elliott Currie

2023



## DEDICATION

To

My family who kept me going, believed in me, and supported me every step of the way. When I started this journey to finally get my Bachelor's degree, you all were there for me and your support never wavered. Thank you: Jeri Ragan, Ken Ragan, Matt Ragan, Shelley Ragan, Rodney Ragan, Emily Eubanks and Rowan Ragan.

I also dedicate this to Jennifer Lucas, Jennifer Peckham, Jessica Harck, and Jennifer Simpson.

Finally, I dedicate this to all the people affected by sexual violence, may your voices be heard.

## TABLE OF CONTENTS

	Page
LIST OF TABLES	iv
ACKNOWLEDGEMENTS	v
VITA	vi
ABSTRACT OF THE DISSERTATION	vii
CHAPTER 1: Introduction	1
Defining #MeToo	14
Literature Review	18
Methodology	27
CHAPTER 2: Survivor Justice	34
Punishment and Accountability in #MeToo	40
Healing, Restoration, and Transformation in #MeToo	54
CHAPTER 3: What About Due Process?	77
Due Process for the Accused	90
#MeToo and Due Process for Survivors	100
CHAPTER 4: Wild Justice	116
Holding Onto Boundaries of Power	119
Making Sense of Boundaries	134
CHAPTER 5: Conclusion	146
REFERENCES	155
Bibliography of Data	175
APPENDIX A: Code Book	188

## LIST OF TABLES

	Page
Table 1.1     Initial Terms for Coding	30

## ACKNOWLEDGEMENTS

I would like to thank my chair, advisor, and mentor Dr. Susan Coutin for your patience, compassion, and guidance. I am also thankful for the guidance and mentorship of Dr. Kirk Williams and for teaching me about self-compassion. Thank you to Dr. Valerie Jenness for sticking with me and pushing me from the beginning. Thank you to Dr. Elliott Currie for your calm reflections and for creating a space for students to explore a variety of ideas. Thank you, Dr. Roxanne Silver, for helping get this project off the ground.

I would like to also thank the members of Kirk's Lab for your support and thoughtful feedback: Dr. Amy Magnus, Dr. Deyanira Nevarez Martinez, Dr. Amanda Fisher, Alex Aguirre, Dr. Matt Barno, and Courtney Echols.

Thank you, Dr. Brandon Golob, Dr. Charis Kubrin, Dr. Nancy Wonders, and Dr. Ray Michalowski, for your kindness and support.

I am so appreciative of my colleagues and friends who hung in there with me, for the writing days, and encouragement; Dr. Gabriela Gonzalez, Dr. Kristen Maziarka, Dr. Marina Bell, and soon-to-be Dr., Veronica Valencia Gonzalez. Finally, thank you to Dr. Alison Miller, Dr. Kathryn Peterson, and everyone at The Academic Writer's Space, your support made this possible.

## VITA

### Kasey Carmile Ragan

- 2011 B.A. in Criminal Justice and Criminology, University of Missouri, Kansas City
- 2011-2013 Graduate Teaching Assistant, Department of Criminology and Criminal Justice,  
Northern Arizona University
- 2013 M.S. in Applied Criminology, Northern Arizona University
- 2014-2021 Graduate Teaching Assistant, Department of Criminology, Law and Society,  
University of California, Irvine
- 2018 Research Assistant, Department of Criminology, Law and Society,  
University of California, Irvine
- 2020-2022 Assistant Professor, Program of Criminology,  
Northwest Missouri State University
- 2023 Ph.D. in Criminology, Law and Society,  
University of California, Irvine

## FIELD OF STUDY

Gender-Based Violence and Justice Studies

## PUBLICATIONS

Williams, Kirk, Kasey Ragan, Amy Magnus, & Veronica Gonzalez. (Forthcoming 2022).  
“Death Under Review: Differentiating Lethal and Nonlethal Intimate Partner Violence.”  
In *Taking Stock of Homicide: Trends, Emerging Themes and Challenges*. K.F. Parker, R.  
Stansfield, & A. Mancik (Eds). Philadelphia: Temple University Press.



## ABSTRACT OF THE DISSERTATION

“I Said #MeToo.”

Law, Culture, and Justice Discourse on Sexual Violence

by

Kasey Carmile Ragan

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2023

Professor Susan Bibler Coutin, Chair

The #MeToo movement, an online social movement related to sexual violence, went viral at a time when several high-powered men were accused of sexual assault and harassment. There were significant tensions within and about the movement that played out in the media. This project employed content media analysis to explore the tensions, particularly around punishment, healing, due process, and counternarratives. The analysis revealed that while accountability was important in the movement and in the discourse, other kinds of justice were also necessary, especially the need to help and protect others. Due process for men accused of sexual violence was a major theme identified in this study. Though the potential for unfairly punishing someone without cause or evidence is a legitimate concern, the discourse and backlash tended to use this concern as a way to shut down the conversation, to suggest that sexual violence was not as big a problem, and to obscure the goals of leadership and many of the survivors—to support each other and heal. Also obscuring these goals was the backlash of the movement. Analyzing these key themes led me to develop two main concepts. First, survivor justice an abolitionist perspective focused on healing, survivors helping other survivors, and community accountability. Second, I argued that the due process claims reflect a kind of legal consciousness of legal procedures applied to explain everyday interactions, I call this social due process.

## Chapter 1: INTRODUCTION

*“If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.*

*Me too.*

*Suggested by a friend: ‘If all the women who have been sexually harassed or assaulted wrote ‘Me too.’ as a status, we might give people a sense of the magnitude of the problem.’ —Alyssa Milano in a tweet posted October 15, 2017.*

In October 2017, the world of Twitter and other social media sites seemed to be taken over by the MeToo hashtag, as women and men shared their own stories of sexual harassment and assault to demonstrate how rampant a problem it was (Santiago & Criss, 2017). They were responding to the shock and disbelief surrounding the film producer, Harvey Weinstein’s (founder of Miramax and The Weinstein Co.) case and that of other famous men who were being called out in the news for long and sordid histories as “sexual predators” (Almukhtar et al., 2018; Santiago & Criss, 2017). These claims were not anything new; in some of the cases the events took place many years ago and the survivors had even previously told their stories publicly. Through #MeToo tweets and news media about #MeToo, stories of sexual violence survivors told were reflective of the violence women have faced for years in their workplaces, homes, public spaces, hotels, cars, on dates, at conferences, and any other place where men felt they had the right to exploit the women around them. While these stories and acts of violence were nothing new, the events of the Fall of 2017 made it appear that something new was happening; in this particular historical moment, the survivors were telling their stories and people were believing them. Facing consequences, often for the first time, were men like Harvey Weinstein, Louis CK,<sup>1</sup> Kevin Spacey,<sup>2</sup> and Matt Lauer,<sup>3</sup> all famous, wealthy,

---

<sup>1</sup> A comedian accused of exposing himself to female comedians, he did admit to doing this.

<sup>2</sup> An actor accused of assaulting a man when he was a teenager.

<sup>3</sup> NBC Today Show Anchor, accused of assaulting several women.

white men with extensive power and connections that would have previously protected them. Rather quickly, according to the discourse, this hashtag became a social movement, a call to perpetrators that the time had come to face up to their actions and a call to survivors that they would be believed for coming forward, that they would have a chance to heal.

The goals of #MeToo, as a hashtag movement, were to bring to light the extent of the problem of sexual violence, to show its prevalence in U.S. society, and to give survivors the chance to be heard and believed (Gilbert, 2017). That the #MeToo movement took off as it did was not just due to Alyssa Milano tweeting her followers to post their tales of victimization, rather it was part of a historical moment that was likely primed by previous movements like Black Lives Matter. There was also frustration over the Trump election, an election which seemed to be a hypermasculine backlash to the perceived and real strides made by women, LBGTQ, and people of color in challenging white middle-class male dominance (Kimmel, 2017).

My goal for this project was to better understand how sexual violence and justice are defined or redefined in #MeToo narratives. Especially important was to have a clearer picture of survivors' views on justice and how the discourse on #MeToo focused primarily on one aspect—punishment. In this project, the narrow foci of the media and backlash discourse affectively changed the narrative to fit the belief that the movement was a “witch hunt” and unjustly ruined men's lives. The #MeToo movement set out to show how big the problem of sexual violence was; however, discursive obstacles made this goal difficult. This project demonstrates how important justice is for survivors, even for those who never reported to law enforcement, Human Resource (HR) departments, or bosses. Yet justice is a complex issue and the kind of justice the discourse highlighted is unlikely to occur for the majority of survivors.

This project puts forth a concept of survivor justice that makes it accessible for all

survivors, that does not run into issues of due process for the accused (because they are not a part of the survivor justice process), creates spaces for storytelling (another important aspect of #MeToo), for helping other survivors, and working to eliminate sexual violence. The last two appeared to be key to the justice needs of survivors, survivors wanted their stories of pain and suffering to have some positive impact on others, and survivor justice would achieve this through transformative justice community accountability. This project expands on abolitionist feminist scholarship that argues the criminal justice system is not only inhumane and ineffective for those who committed harm, but also for victims. Especially if those victims are black, brown, queer, disabled, or poor. Finally, this project expands on legal consciousness literature to show how social media and news media discourse impacts legal knowledge, in this case, of due process.

### ***Chronology of #MeToo***

Me too./#MeToo began in 2006 as a way to help “black and brown girls” find support in their healing process, to support survivors’ healing, promote community organization, and challenge power and inequality through “cultural transformation,” (Burke, n.d.; Jeffries Warfield, 2018; Langone, 2018). Tarana Burke began using the phrase in her work with Just Be Inc., an organization that mentors young women of color through empowerment and self-discovery (*Just Be Inc.: About Us*, n.d.). She then founded “me too.,” which is a community of advocates focused on healing and transformation for survivors of sexual assault, in particular for black and brown girls (*Get To Know Us | History & Inception*, n.d.). Burke spent the next 11 years working at the grassroots level to develop resources and support for survivors. It was not until October 5, 2017, when the first news article exposing the allegations against Harvey Weinstein was published, that it became the broader #MeToo movement of today (Farrow, 2017; Kantor & Twohey, 2017; Allagia & Wang, 2020).

After Alyssa Milano tweeted that first tweet, the movement exploded and the hashtag was

formed. Within 10 days of that first #MeToo tweet, 1.7 million people around the world had posted something featuring the hashtag (North, 2018a). By January 2018, hundreds of high-profile men had allegations levied against them, including Larry Nasser (doctor for USA gymnastics), Kevin Spacey, Matt Lauer, and Michigan Senator Al Franken. On January 1, 2018, 300 women in Hollywood formed Time's Up Legal Defense Fund to help survivors from all socioeconomic classes with filing complaints and lawsuits for workplace sexual harassment. As of October 2022, Time's Up helped around 6,000 survivors (Corbett, 2022).

During these first few months, the movement would see increases and decreases in media coverage. The coverage was still considerable but had calmed down in the early months of 2018. Then, in the late summer of 2018, Professor Christine Blasey-Ford came forward with allegations that the man President Trump had nominated for the Supreme Court had assaulted her when they were teenagers (*#MeToo*, n.d.). The Kavanaugh hearing and Blasey Ford's testimony in front of congress brought the #MeToo movement back into the media spotlight (*Me Too Rising*, n.d.). During this media attention, the movement #MeToo and the organization me too. came together and developed a comprehensive website to make resources and support accessible to all survivors. #MeToo grew to offer a Survivor Healing Series, Community Healing Circles, Leadership Training, and programs for college campuses (*Our Work*, n.d.).

***Conceptualizing Victim/Survivor:*** I use the terms survivor and victim interchangeably. While scholars and advocates argue for the use of survivor rather than victim as a way of destigmatizing sexual assault victimization, I argue that such terminology plays into a common belief that sexual victimization is shameful. It also panders to the narrative that claiming your suffering is somehow playing the victim, a discursive trope often used to discredit or gaslight people when they speak up about the pain they are experiencing (Manne, 2017). Instead of looking down on victimization, scholars, practitioners, and advocates need to send the message

that victimization, being a victim, and suffering are not shameful.

**Collective Action:** The #MeToo social movement worked as a type of connected or networked action movement with a call for action to help survivors and society heal, however, there were some elements of collective action, in particular in the shaming of people accused, along with shaming organizations that enabled the violence. Collective action theory looks at how people come together in pursuit of some kind of mutually agreed upon common good (Bimber et al., 2005). According to the theory, the “logic” of collective action relies on the organized, common goals of social movements. In contrast, though not exclusive from collective action, the “logic of connective action” is that there is little to no leadership and organization, rather these social movements are loosely related “personal expressions” shared through various social media platforms (W. L. Bennett & Segerberg, 2012). Modern movements that begin online often become more organized, such as the Black Lives Matter movement. The process of tweeting in support of these hashtags allowed people to find like-minded individuals and form more organized action. In referring to her work on the Tahrir Square uprising and the Arab Spring, Tufekci (2018, para. 3) wrote that social media played a role:

[I]n breaking down what social scientists call ‘pluralistic ignorance’—the belief that one is alone in one’s views when in reality everyone has been collectively silenced. That... was why social media had fomented so much rebellion: people who were previously isolated in their dissent found and drew strength from one another. (Tufekci, 2018).

For the newly connected, like-minded people, once the “silence” is lifted they can come together through social media and form more organized networked movements, social movements, and protests facilitated and organized through the “assimilation of digital technologies,” (Tufekci, 2017). Freelon et al., (2018, p. 991) in their study of Black Lives Matter tweets on police violence, stated that it is important to “take digitally enabled collective action seriously” and

that connective or networked action movements share all of the characteristics of traditional social movements. Though the #MeToo movement was a connective action or networked movement, it still met the key components of collective action, that people participating in the movement ultimately shared a common goal: to make our society a place free from sexual violence. At the same time, movement actors disagreed about how to do so.

As a social movement, #MeToo worked as an amalgamation of collective and connective/network action theories of social movements. The mere act of writing “Me Too” in a Twitter or Facebook post was an act of protest, a social movement action in an era where much of our personal lives take place in online communities. The #MeToo movement began online with a call to collective action, for every survivor to come forward and show the world just how rampant sexual violence was (Santiago & Criss, 2017). This call to action was reflective of traditional notions of collective action framing (Benford & Snow, 2000), in that it made claims about sexual violence (diagnostic framing), proposed solutions to transform individuals and society (prognostic framing), and called people to take action by participating, supporting, or making significant changes to themselves or demands for others to do so (motivational framing). Benford and Snow (2000) argued that for collective action frames to resonate with target audiences, the frame must be credible and salient. The frame is credible if it is consistent, points to evidence that the problem exists, and the claims are made by experts or people of high status. The salience of the framing is achieved when it reflects the experiences of the everyday lives of people (Benford & Snow, 2000).

The #MeToo movement, survivor stories, and media discourse tended to collide, as evident in this study, creating confusion and opportunities for the backlash or counternarratives to work against the movement. #MeToo suffered from a lack of clear leadership and controlling media narratives. A similar movement, Black Lives Matter, decentralized leadership by

developing chapters in many major cities and spreading the collective action work they were doing on the ground. Whereas for #MeToo much of the resources and leadership occurred online and in the media; thus, the messaging of the movement got lost in the discourse, which painted it as a movement for out-of-control vengeance. For social movements that have a large connective action component, like a viral hashtag, that is trying to create collective action, such as ending sexual violence and the culture that permits it, then, to be successful that movement needs to have clear and active leadership throughout the country. For #MeToo to be successful at cultural transformation and providing community healing, it has to be united in its messaging and get out into communities to physically work for radical healing. The action of #MeToo is the justice survivors need; decentralized, survivor-led #MeToo chapters, with consistent goals of healing and transformative justice work would be an example of survivor justice. Research on hashtag social movements is important because social media and media discourse will continue to inform a considerable amount of social knowledge, and there are bound to be more social movements like #MeToo.

### **Defining #MeToo**

In 2006, Tarana Burke, the founder of me too, wrestled with how to help the young girls she taught in her leadership program. She had been working with young Black girls to help them figure out who they were and whom they wanted to be, but as she did this work in Selma, Alabama, she learned that so many of them were trying to find themselves while also surviving sexual violence (Burke, 2021). After struggling to face the memories of her assaults and her inability to stand up to abusers in the past, she asked herself:

*How different would it all be if I just had a little bit more courage? But what was courage? ... How could I find it if I didn't know what it looked like? ... Maybe community creates courage? What if courage creates community? Maybe empathy creates courage?*



*How can you express empathy toward others if you can't empathize with yourself? Is the core of healing empathy and courage?* The questions were coming faster than the flashbacks now, but so were the answers. Not in my head but in my heart, which felt like it was going to burst wide open. For the first time in my life my story was completely out of my body and I had finally told it to the one person who needed to hear it most, myself.

I searched around for a blank piece of paper. I wanted to capture this while it was coming. I found a steno pad that hadn't been used and picked up a pen. I opened the pad and at the top of the page I wrote two words.

*me too.* [emphasis added] (Burke, 2021, p. 224)

After considering these questions and what *me too.* could become, she put together as much information as she could on survival and healing through empathy and held workshops with young people in the community. After each session, she would tell the attendees that none of them had to ever share their own stories but to simply write “*me too*” on paper, they could leave their names and contact information if they wanted, but it was not necessary (Burke, 2021). This was the beginning of the work that Burke did for nearly a decade before it would become the hashtag movement #MeToo.

*Me too.* was intended to be a way for young Black and Brown sexual assault survivors to find support with one another and to let each other know that they were not alone. The work focused on empowering girls and leading them toward healing. *Me too.* focused on survivors and their needs. Talking about the trauma, telling stories, and naming abusers was not a part of the original movement (Burke, 2021). According to Burke, “[i]t wasn't built to be a viral campaign or a hashtag that is here today and forgotten tomorrow...It was a catchphrase to be used from survivor to survivor to let folks know that they were not alone,” (Burke, as cited in Bey, 2017, para. 3). While telling someone their story was important, it was not the point. The

goal of the organization was to provide resources and a safe space for survivors to heal, connect, and regain control of their bodies.

One of the key aspects of me too. was to acknowledge the survivor's experiences, pain, and suffering (Burke, 2021). As the founder and leader of me too., Burke wanted a way to signal to young survivors that they were worthy of care and support. Studies show that the reaction survivors get when they disclose the violence can impact other outcomes, such as filing a police report, seeking available services for survivors, and mental health disorders (Ahrens, 2006; Orchowski & Gidycz, 2015). When victims of sexual assault and harassment are met with negative responses and disbelief, they are less likely to report or seek the services provided by advocacy groups, psychologists, and counselors (Ahrens, 2006; Relyea & Ullman, 2015).

Negative responses to disclosures are particularly common experiences for women of color when they disclose, making a movement like #MeToo. necessary for Black and Brown girls (Bumiller, 2008). Scholars have argued that Black and Brown girls and women are targeted and less likely to be believed because they tend to be overly sexualized. In her memoir, Burke wrote:

When it comes to sexual violence in the Black community, the culture of secrecy and silence is more complex than just wanting to protect the perpetrator. The long history of false accusations of sexual violence against Black men along with our tumultuous relationship with law enforcement is a factor. The pain of watching folks twist themselves out of shape finding new ways to blame little Black girls for their own abuse plays a part. And the general ranking of sexual violence as minor in the face of the things like structural racism and crippling poverty also play a role in how hard it is for us to stare down the monster that is sexual violence and call it out by name. (Burke, 2021, p. 211-12).

The Black experience with sexual violence, as well as other women of color, is rooted in our

history of colonization, slavery, structural inequality, and racism (Bumiller, 1987; Crenshaw, 1991; Hine, 1989).

The complexity of race and sexual violence is evident in the case of R. Kelly, a popular R&B singer who in the late 1990s became an international star after the release of his song “*I Believe I Can Fly*”. Several young black girls and boys reported being abused by the singer and he married singer Aaliyah when she was only fifteen years old. In 2008, he was acquitted of possessing child pornography and allegations of sexual assault, despite video evidence of him assaulting a fourteen-year-old girl (Crenshaw, 2021; Leight, 2021). Victims who came forward were shamed by their communities and R. Kelly fans all over the world. According to Crenshaw (2021),

[S]tereotypes that emerged from the racist past about Black women also prevail, even within Black communities. Black girls are still adultified and blamed for the abuses they experience. It’s why Black women, who make up 40 percent of domestic sex trafficking victims, are rarely featured in the documentaries, Hollywood films, media and social media narratives that hold up white girls as innocents to be saved. (Crenshaw, 2021, para. 12)

Similarly, there is often added pressure on women and girls of color not to disclose, including cultural fear of criminalizing black men, fear of deportation for undocumented victims (and their abusers), police violence against black men, and community pressure to protect black men (Crenshaw, 1991; Richie, 2000). For so many survivors, seeking justice comes with a price too big to pay; compounded by race, nationality, LGBTQ identities, and/or disability, sexual violence impacts marginalized people in different and sometimes more insipid ways. However, this tends to get little attention. Burke started me too. in 2006 to counter this in her community.

## Literature Review

Feminist scholarship in the last 50 years has attempted to explain the sexual violence and harassment of women. Until the mid-twentieth century in the United States, sexual assault and harassment were considered faults of the woman, that she put herself in a position to be harassed or assaulted, or that she failed to fight hard enough to stop the incident (Meloy & Miller, 2011). Despite the end of coverture law in the late 19<sup>th</sup> century, women were the property of men, (fathers, brothers, and husbands). When a woman was assaulted, she became “damaged goods” rather than someone who had suffered emotional and physical injury,” (Meloy and Miller 2011: 45). Beginning in the 1960s and 70s this prevalent view of sexual violence began to change as women’s rights movements challenged patriarchy and demanded that the justice system and society stop the violence and support survivors (Bumiller, 2008).

The change in discourse did not, in most cases, have much of a lasting effect. Victim blaming, fear of reporting sexual violence, and the shame survivors carry with them continued (Kosloski et al., 2018; Meloy & Miller, 2011). While courts began adopting more victim-centered approaches to trials and communities put more efforts into advocacy programs to help survivors, many of the myths about sexual violence and harassment continued to play out in homes, workplaces, schools, bars, and anywhere where men and women might interact (Kosloski et al., 2018). Rape myths are sets of beliefs about sexual assault based on stereotypes about victims and perpetrators that seem to permeate discourse and American culture. These myths “delegitimize” rape by making claims about what “real rape” is and excuses that sanitize the actions of perpetrators (Kosloski et al., 2018). The concept of “real rape” refers to the characteristics of the victim and her/his reactions, typically based on stereotypes about race, ethnicity, socioeconomic class, etc.

Feminist literature on sexual violence examines perceptions and constructions of the

victim. Public discourse often privileges certain kinds of survivors. This “ideal victim” type is young, white, pretty, and innocent of any moral character flaw (Spalek, 2006). Victim ideology is rooted in pervasive rape myths or rape culture, and often leads survivors who do not fit this ideal type to defend their status as a “victim,” or feel like their victimization does not matter, potentially preventing them from coming forward (Kosloski et al., 2018). Several of the survivors whose stories appeared in this data sample expressed similar experiences and the reactions by men’s rights and supporters of the accused tended to attack those survivors they felt were not worthy of sympathy, belief, or justice.

When survivors do report their victimization, they are often treated with hostility, especially when they do not fit the “typifications” of the rape victim. Frohmann's (1991) study on prosecutorial rejections of rape cases, found that prosecutors often rely on these typifications and will reject cases where the victim may have some ties, no matter how tangential, to criminal activity or when their demeanor does not fit the prosecutor’s views of how a rape victim should act. American society also tends to infantilize survivors of sexual violence, viewing them as weak, which can cause many people to avoid identifying themselves as survivors. This played out in the #MeToo discourse, especially when people were critiquing the movement or calling survivors liars.

In their study on social media use in the Steubenville rape case, Kosloski et al. (2018) found that social media has become a place where rape myths continue to flourish. The Steubenville rape case occurred in 2012, when a group of high school students in Steubenville, Ohio posted pictures and videos of a sexual assault of another student to their social media accounts (Levy, 2013). When a blogger learned about the incident, she began reposting the images to call attention to the case; the images and the case became a viral sensation and brought attention to prevalent myths about rape and survivors as people around the world took to

the internet to condemn the survivor and/or the offenders (Levy, 2013; Kosloski et al., 2018).

Feminist scholars have spent the last 40-50 years challenging the common myths about sexual violence and harassment to provide more concrete theories of sexual violence (McLaughlin et al., 2012). To challenge the popular myth that sexual violence is perpetrated by “the disturbed psychopath lurking in the bushes,” scholars argue that sexually violent people are a heterogeneous group, they are often people the victim knows, and they typically do not express any overt signs of mental disorder (Meloy & Miller, 2011, p. 46).

To explain sexual violence, feminist scholars have drawn on structural and masculinity explanations that argue that stymied access to forms of power, authority, and other cultural masculine norms can lead men to act out their frustrations in violence toward women (Kimmel, 2007).

Rape is a good example of the acting out of these relations of power and of the outcome of fragile masculinity in a surplus-repressive society. In the testimonies of rapists one hears over and over again expressions of inferiority, powerlessness, anger...Rape is a crime that not only demonstrates physical power, but that does so in the language of male-female sex-gender relations. (Kaufman, 1987, p. 9).

While some traditional explanations of interpersonal violence focus on the behaviors of bad people (Meloy & Miller 2011), structural explanations argue that poverty, neoliberalism, and stratification of the poor and oppressed create conditions ripe for violence (Currie, 1997, 2016). These theories typically argue that interpersonal violence is a byproduct of social stratification and the brutalization of the oppressed (Currie, 1997). Adding to this stratification, Black and Brown women and LGBTQ are most likely to experience rape myths and be criminalized for reporting violence (Goodmark, 2023; Kaba, 2021). The compounding forces of race and structural inequalities allow for more violence. Abolitionist feminists argue that to counter these

violent forces and to be truly anti-violence, justice must be focused on fixing these inequalities. This is also central to survivor justice.

Feminist and masculinity scholars explain sexual violence by looking at how social stratification and poverty prevent men from achieving traditional goals of masculinity, so men and boys turn to violence or symbols of violence to maintain their masculinity (Carlson, 2015; Kimmel & Mahler, 2003; Messerschmidt, 2000). These scholars argue that “doing gender” requires men to constantly perform their masculinity and adjust their performance of gender according to the reactions they get from their “doing” of gender (Messerschmidt, 2009; West & Zimmerman, 1987). Men who are unable to achieve traditional goals related to work and authority perform their gender in alternative ways, often through violence and harassment towards women (Kimmel, 2007), especially if the woman does not “do” her gender appropriately, for instance, if she holds a position of authority over a man (McLaughlin et al., 2012).

Socialist feminist scholars examine the roles of patriarchy, capitalism, and cultural norms around masculinity and power dynamics in the workplace and the home that may lead men to enforce hierarchies on subordinate women through violence or the threat of violence (Eisenstein, 1977; Jurik, 1999; Renzetti, 2013). While radical feminists argue that male violence is the product of gender privilege that men maintain “through the control of women’s sexuality,” (Renzetti 2013, p. 39). Drawing on West and Zimmerman’s theory of gender production (1987), to maintain this patriarchy, men must maintain a hyper-heterosexuality, often referred to in popular culture as “toxic masculinity,” a performance of maleness that suggests they are the strongest and most powerful person in the room and that rejects femininity (Banet-Weiser & Miltner, 2016; Hess & Flores, 2018). Social and radical feminist scholars argue that to truly prevent sexual violence, there must be a systemic social change that fractures toxic masculinity

and patriarchal capitalism while promoting gender equity (Eisenstein, 1977; Lorber, 2011).

### *Survivors' Perspectives of Justice*

There have been studies that interviewed survivors about their experiences with social services and police and medical agencies (Campbell et al., 2001; Maier, 2008), but their focus was on secondary victimization and not on the experiences or thoughts on justice. Other studies of survivor experiences have looked at the contexts in which survivors label their experiences as rape or not (Kahn et al., 2003; Peterson & Muehlenhard, 2004).

A study of the experiences of sexual violence and how survivors conceptualize their experiences focused specifically on male survivors (K. G. Weiss, 2010). While this study importantly explores survivor experiences of sexual assault and masculinity, the narrative data came from the National Crime Victim Survey (NCVS) which were Bureau of Justice Statistics (BJS) summaries of what the survivors reported. In one particularly enlightening study, women were asked several open-ended survey questions regarding rape to learn how women might define or understand rape and whether their understandings and definitions reflected feminist constructions of rape (Chasteen, 2001). This study found that respondents did reflect feminist arguments about rape when determining the prevalence of rape and the reality that women were more likely to be raped by people they knew (Chasteen, 2001). This study, however, did not focus on survivors' justice needs.

There has been some research on the justice needs of survivors, these studies argue that survivors of sexual assault desire multiple forms of justice, and that justice is not just about filing charges, going to court, and seeing their abuser go to prison (Daly, 2017; McGlynn & Westmarland, 2018). Through examining research on victims' justice needs and interests, Daly



(2017, p. 115) listed the following as the “five elements of victims’ justice interests:”

1. Participation: being involved in the criminal justice process, being informed of the case, and having a say in the process.
2. Voice: allowing the victim to tell their own story and how it affected them, as well as acknowledgment of their story and suffering.
3. Validation: believing the victim about both the event and the impact it had on them.
4. Vindication: recognition from the law and community members that what happened to them was wrong. Daly adds to it that there be “public condemnation and censure,” (p. 118)
5. Offender accountability-taking responsibility: “*calling* alleged wrong-doers to account and *holding* them to account,” (p. 118).

These five elements, while significant findings and recommendations for how to meet the justice “interests” of survivors are derived heuristically through a meta-analysis of previous research dating between 1990 and 2014.

Expanding on Daly’s (2017) research, McGlynn and Westmarland (2018) developed a concept of justice they called “kaleidoscopic justice.” This concept came out of their research interviewing survivors of sexual assault. They conducted qualitative interviews with a group of sexual assault survivors who attended a workshop held on sexual violence and theories of justice (some did not attend the workshop). After the workshop volunteers were then interviewed about their views on justice. The interview subjects were recruited through a local victim advocacy organization, the researchers interviewed 20 women between ages 16 and 74, all were white, and they all came from the same region of the United Kingdom. Their study found that survivors expressed needs that were often changing and much broader than a traditional concept of justice—punishment. The “fluid” justice described in the interviews formed the basis of the

researchers' concept of kaleidoscopic justice, which includes their needs for consequences, recognition, voice, dignity, prevention, and connectedness (pp. 186-94).

The contributions of Daly (2017) and McGlynn and Westmarland (2018) are important to understanding the justice needs and interests of survivors and expanding our perceptions of what is justice. However, Daly argues for restorative justice to be defined as a mechanism of justice and still places much of the responsibility for justice on the state. McGlynn and Westmarland argue, instead, that their concept forms the “underpinnings” of a victim perspective framework. Similar to my concept of survivor justice, kaleidoscopic justice is a pluralistic perspective of justice that is based on the stories of survivors. However, kaleidoscopic justice includes consequences for the person who did the harm that are provided by state or nonstate methods.

Consequences and accountability were also important in the survivors' stories and discourse analyzed in the current study, however, my study also recognized that consequences and accountability through the legal system were unlikely and tends to cause more trauma and suffering for survivors. The key difference between kaleidoscopic justice and survivor justice is that survivor justice follows in the footsteps of abolition feminists and activists by recognizing the inhumanity and violence of the state. Instead of thinking about consequences through traditional methods, survivor justice looks at how to make the community and state accountable for creating the conditions that led to the sexual violence. It views justice as compassionate, humane, and accessible to all survivors regardless of whether they report or name their abuser.

#MeToo had the potential to be survivor justice, that initial act of just saying “me too,” storytelling, and believing survivors was survivor justice. However, the discourse and the lack of consistent messaging allowed for the message that the legal justice system is the only way to get justice and that punishment is the only method we have available to hold people accountable.

The research on justice and survivors typically focuses on those victims that are easier for researchers to find—the ones who report their assaults and harassment to law enforcement. Just as with public discourse, the research does not explore the justice needs of those survivors who never reported or whose cases were never adjudicated. There is a large swath of the population of survivors who either never report to anyone or report to law enforcement and for several reasons, the case never goes forward (Carbone-Lopez et al., 2016; Spohn, 2020; Spohn & Tellis, 2019). The assumption is that these survivors do not need justice or that there is nothing that we can give that would help them find justice. However, #MeToo has shown that is not the case, we just need to shift our perceptions of justice and consider what justice would look like when there is no formal legal system involved.

***Literature on #MeToo:*** In the more than 4 years since Alyssa Milano first tweeted that call for survivors to post “me too,” there has been a considerable amount of scholarship published about the phenomenon. Several articles and books about #MeToo are more theoretical and not based on empirical research specifically about the movement. However, they do provide significant insight into the movement, digital activism, sexual violence, intersectionality, and justice (Gash & Harding, 2018; Pipyrou, 2018; Rodino-Colocino, 2018; Wexler, 2019; Wexler et al., 2019; R. H. White, 2018). Two lengthy handbooks were published on #MeToo, with some original research, they offer important historical contexts and theoretically informed perspectives about the movement and its impact on social meaning-making, law, and implications for research (Chandra & Erlingsdóttir, 2021; Fileborn & Loney-Howes, 2019).

Despite the cultural and social impact of the #MeToo movement, there is a dearth of original, empirical research, especially in the criminology and law and society disciplines. There are several law review articles discussing the impact the movement might have on affirmative consent, legal decision-making, non-disclosure agreements, defamation claims, and theories of

justice (Alabi, 2019; Tamer, 2022; Tippett, 2018; Weisbrott, 2020; Wexler et al., 2019; Wexler & Robbennolt, 2018). However, only a few were empirical, including Charlotte Alexander's (2020) study of public statements made by people who were accused of sexual violence.

The literature on justice and #MeToo typically focuses on the restorative justice aspects of #MeToo (Peleg-Koriat & Klar-Chalamish, 2020; Wexler & Robbennolt, 2018), exploring the possible impacts #MeToo might have on restorative justice. Exploring the backlash to the movement, Nutbeam and Mereish (2022, p. 1-2) found that tweets expressing negative attitudes towards the movement reflected six themes: (1) invalidating the accusations made as part of the #MeToo Movement; (2) insisting, and likely believing, that accusations made were false; (3) claiming that there were alternative motives for those accusations; (4) showing a concern for the harm that accusations may cause those accused; (5) exhibiting concerns about the effects of the Movement on male power, privilege, and status; and (6) questioning the integrity of the #MeToo Movement as a whole. Their findings are in line with what I found exploring the #HimToo countermovement.

### **Research Questions**

Building on this body of literature on sexual violence, I set out to better understand the stories of survivors and the discourse about those stories and the #MeToo movement. This project began with the goal of exploring the movement, interrogating the discourse, and understanding the narratives and claims about sexual violence and #MeToo. I wanted to settle the inner turmoil about achieving justice for sexual assault survivors while maintaining a commitment to compassion and humane responses to crime. To that end, survivors expressed multiple justice needs beyond punishment, survivor justice focuses on those needs that are achievable for all survivors, without the added trauma and violence of the criminal legal system.

Through an inductive and grounded approach to the data, I drew from multiple disciplines and

frameworks to analyze the data. Briefly, I drew on justice theories, abolition scholarship, and feminist research on sexual violence to answer the research question: What does justice mean in the movement and the discourse? In doing this analysis, I found that due process, or procedural justice, was a key theme in the data. Therefore, I applied research on legal consciousness, due process, and system responses to sexual violence to understand how due process claims were used in the backlash and discourse to challenge the movement. Building on the backlash related to due process, I also asked the question: How do the backlash and counternarratives challenge #MeToo narratives? Analyzing the data, I brought in several frameworks, including Kate Manne's concept of himpathy (the outsized sympathy given to men who are accused of violence). I also incorporated literature on moral/sex panics and legal consciousness to delve into the backlash or critiques of the #MeToo movement.

Answering these questions provides important information for online or hashtag social justice movements on how discourse obscures and manipulates the movement's messaging. This project enabled me to develop the concept of survivor justice by following in the footsteps of feminist abolitionists like Mariame Kaba and Leigh Goodmark, making justice accessible to all survivors and effectively working to end sexual violence. The analysis showed that justice for survivors is not solely about the pains of punishment; rather, it includes several elements that can be achieved through transformative work and advocacy beyond the state. This project also examined the legal consciousness of due process used to challenge and delegitimize the movement, I inferred from the data that we need to study this further, especially around race, legal consciousness, and due process.

### **Methodology**

To explore the tensions in the movement between accountability, punishment, compassion, and transformation, I conducted a qualitative media analysis of a randomized sample of news articles on #MeToo and #HimToo to elucidate the discourse and stories told

about sexual violence, due process, and justice. Studying the stories told by survivors, popular discourse, and countermovements, provided an important opportunity “to reveal truths about the social world that are flattened or silenced by an insistence on more traditional methods of social science,” (Ewick & Silbey, 1995, p. 199). Studying the stories and discourse on sexual violence revealed truths about the everyday lives and thoughts of survivors, commentators, and readers. It also provided important data on how “hegemonic” narratives were perpetuated and naturalized through the stories that people told and the discourse that framed those stories (Ewick & Silbey, 1995).

In this case, discourse on sexual assault tended to reflect myths and misconceptions about sexual assault and harassment, presented a one-sided view of justice, and failed to make sense of important aspects of sexual violence that came up in the movement, such as affirmative consent,<sup>4</sup> carceral feminism,<sup>5</sup> and victim-blaming.<sup>6</sup> The stated goal of the #MeToo movement was to support survivors, create healing spaces for survivors and communities, and transform cultural norms about sexual violence and toxic masculinity. The tension between the discourse, survivors’ stories, research, and the loose leadership of the movement presented necessary truths about justice and led to the justification for an abolitionist perspective of justice for sexual assault victims.

To examine how the #MeToo movement expanded and challenged perspectives of justice and sexual violence, this project utilized multiple sources of data to examine data from news coverage<sup>10</sup> of and about #MeToo and the counter movement #HimToo. These data were drawn from MediaCloud.org, a website that provides data on news media of sources such as newspaper

---

<sup>4</sup> “Yes means Yes” laws state that there has to be verbal or nonverbal consent for a sexual encounter.

<sup>5</sup> Carceral feminism is referring to feminists, as part of the anti-violence movement, pushed for harsher punishments for gendered violence, contributing to the high rates of incarceration in the United States.

<sup>6</sup> Victim-blaming is the act of applying stereotypes about rape, rapists, and rape victims to put the fault for the violence on the victim, instead of the person who committed the violence.

articles, magazines, Op-Eds, Letters to the Editor, and blog posts.<sup>7</sup> I searched for news coverage using the terms #MeToo, #HimToo, and himpathy, which elicited a sample of 19,534 #MeToo articles and 81 articles on #HimToo and himpathy. I whittled down (using the random number generator on Google) to a sample of 350 articles, consistent with other media studies of this size, written between October 1, 2017, and April 5, 2019. Since the #HimToo search resulted in a fairly low number of articles, I included all of them in the final sample.

All of the data analyzed came from news-mediated sources. Therefore, it is limited in that many of the statements and stories have potential biases from the author of the article. To mitigate this, I often examined the original tweets and statements from survivors. In some cases, I found other sources to help fill in any missing information. However, the bulk of the data and analysis is on the words of survivors and the backlash, with a focus on the discourse coming from or about them.

A thorough content analysis was conducted, following the steps identified by Altheide & Schneider (2013) and Saldaña (2021). The initial terms used in coding were heuristically drawn from preliminary research on #MeToo and feminist scholarship on sexual violence. After coding for these terms (see table 1), I coded 10-15 of the articles that were identified as having the most hits for that term. During this round of coding, I employed inductive coding to pull out the key themes and identified key terms for another round of coding. This round yielded a larger sample of data (see Appendix A for the codebook). I exported all of the data quotes to word documents and coded them again by hand for more clarity on the themes. After this, I read through the new sample for context and more themes. Ultimately the eight major themes identified in the data were:

1. Justice for survivors through accountability and punishment,

---

<sup>7</sup> The articles sometimes featured transcripts from radio broadcasts, podcasts, and videos.

2. Justice for survivors through believing them, support, healing, and transformation,
3. Concerns about due process for the accused,
4. Stories of victims’ negative experiences with disclosing to friends, family, and especially law enforcement,
5. Disbelief and accusations the movement was ruining men’s lives over nothing,
6. Confusion about consent and how to communicate it,
7. Fear of a moral/sex panic, and
8. Concern the movement adapted a carceral logic and mass incarceration.

**Table 1.1 Terms for First Cycle Coding<sup>8</sup>**

<b>Violence</b>	<b>Intersectionality</b>	<b>Justice</b>
Sexual Harassment	Black	Accountability
Sexual Violence	Brown	Vengeance
Rape	African American	Reckoning
Groping	Latina	Punishment
Toxic Masculinity	LGBTQ	Fair
Masculinity	Homophobia/Transphobia	Law Enforcement
Patriarchy	Disability	Criminal Justice
Power	ADA	Prison/Jail
Authority	Male Survivors	Healing
Boss	Immigrant	Support
Management/Supervisor		Forgiveness

---

<sup>8</sup> I had considerable data on justice, due process, and the backlash, so I decided to focus the dissertation on those key themes. Individual papers on rape culture and intersectionality are forthcoming.



## Chapter Summaries

To analyze the themes discovered in the data, I divided them into three main frameworks: justice for survivors, due process for the accused and the victims, and critiques about the movement. Each of these themes was explored in the following chapters.

### Chapter 2: Survivor Justice

The chapter explores news articles, Twitter posts, and public statements from survivors to theorize about what justice means for survivors and examines the debate between punitive justice and non-punitive justice. The chapter focuses on how deterrence, retributive, restorative, and transformative justice were desired and challenged in the survivor stories and the media discourse. The key findings were that there were strong beliefs that justice occurred when abusers were held accountable somehow. Accountability was achieved through public shaming, pressure from the public for sanctions (typically that the person would be fired), and formal sanctions. However, the survivors' stories told dual narratives about how the formal justice system had let them down and caused more pain and suffering, contradicting the idea that formal justice could be healing.

The chapter also examined justice through restorative and transformative means that promoted healing, and both individual and community transformation. The data also identified that victims also desired justice in other forms, similar to what McGlynn and Westmarland (2019) refer to as kaleidoscopic justice, justice that is fluid and everchanging. However, that dual narrative of wanting justice, but being unable to achieve it through a formal system suggested that justice for survivors should take place outside of the formal system. Using abolitionist scholarship, I argued for a "survivor justice" that is not part of the formal legal system, that would meet the needs of those survivors who never report, whose cases were dropped, or who felt dissatisfied with the outcomes of their cases.

### **Chapter 3: What About Due Process?**

This chapter untangled what due process meant in the rhetoric of sexual violence in the #MeToo era. Drawing on legal consciousness, procedural and administrative due process, and sexual violence literature I distinguished between procedural (criminal and civil) and administrative due process while also discussing how the media and detractors of the movement suggested that there was another kind of due process, one I call social due process. When the backlash and the accused appealed to social due process, they were attempting to maintain the status quo when it came to sexual violence and institutions of power. Social due process refers to the application of their understanding of a legitimate legal term to insulate them from challenges to power structures. Juxtaposing this discussion of due process for the accused was an equally strong concern over fair procedures for victims when they reported assaults. These two concerns over due process were reflected in the hearings for the nomination of Justice Kavanaugh, through public, media, and survivor responses to Christine Blasey-Ford's allegations that he had attempted to assault her when they were teenagers.

### **Chapter 4: Wild Justice**

While analyzing the data for justice and due process, several critiques or counternarratives came up about #MeToo. This chapter examined those critiques to better understand the public and media discourse on sexual violence and justice. There were two main categories of critiques. The first included critiques that were trying to maintain boundaries of power, including disbelief of victims, fear accusations were unjustly ruining men's lives, that it was a moral panic, and the movement was ruining sex. The second category was the critiques that were trying to make sense of the boundaries around sex, such as confusion about consent and how to communicate it. There was also concern that the movement was pushing carceral logics that could increase mass incarceration.

## **Chapter 5: Conclusion**

This chapter summarizes the key findings of this research study and lays out future research plans, using the data from this study on rape culture, intersectionality, and Title IX. There are also implications for new research projects that explore survivor justice, social due process, and due process for victims.

## Chapter 2: Survivor Justice

It was a Thursday night, in the 1980s, and people all over the United States were tuned into NBC to watch *The Cosby Show*. They gathered together with their families to laugh as comedian Bill Cosby portrayed the head of the Huxtable family, raising five children with his wife Clair. Bill Cosby quickly became known as “America’s dad.” (Francescani & Fisher, 2021). While he was garnering praise for his family-friendly comedy and traditional values on television and in his standup, he was also drugging and raping women, sometimes even in his dressing room while filming the show (W. K. Bell, 2022; Redden, 2018). While his violent acts began in the 1960s, it was in 2005 that any of this came to light, when Andrea Constand filed a police report (Francescani & Fisher, 2021). At that point, other victims came forward with their own stories, however, the police report went nowhere so Constand filed a civil suit. At this point Cosby was offered a deal that whatever he said in his deposition for the case would not be used against him in any criminal trial, leading Cosby to admit to giving women drugs and having sex with them, claiming it was consensual despite most of the women being nearly unconscious at the time (W. K. Bell, 2022; Francescani & Fisher, 2021).

Though the assaults occurred long before the #MeToo movement, they would become symbolic of the movement and the fight for justice for sexual assault survivors. The #MeToo movement showed that survivors were repeatedly silenced, shamed, and ignored. It reflected the problems of our criminal justice system and how difficult it can be to convict someone, especially a powerful man. And in the end, it was another example of how justice through the criminal system is fleeting and often futile.

Drawing on four theories of justice: deterrence, retributive, restorative, and transformative, this chapter examines the data to see what justice needs are prevalent in the #MeToo stories and discourse, as well as efforts to achieve them. The Cosby case, along with

countless others, demonstrated a need for what I call survivor justice.

Survivor justice, an offshoot of transformative justice and abolitionist work, recognizes the endemic inequality and futility of our adversarial justice system to address sexual violence, leaving survivors dissatisfied and feeling revictimized by the process. Survivor justice is solely focused on survivors and their justice needs. These needs were identified in the #MeToo stories and discourse, importantly, they can be met without reliance on the legal system. This justice acknowledges that victims often do want accountability and sanctions while recognizing that for the majority, formal justice is impossible, even when they do report their assaults.

Sexual violence is one of the most underreported crimes, and of those who do report, their cases are likely to be dropped. The high attrition rates of reported cases (Spohn, 2016, 2020) coupled with the unreported assaults means that survivors of sexual violence seldom receive formal justice. This is also the case with workplace and campus sexual assaults and harassment. Despite this, victims still want and deserve some sense of justice. Formal justice, through criminal, civil, and workplace sanctions, was only one justice need to be identified in the present study. Data also showed that victims wanted to feel like their pain and suffering meant something, that it could be used to support other survivors, protect others from potential violence, and transform cultural and community norms. The data in this study also showed that doing these things, along with personal transformation, were essential for healing. Developing justice for survivors that includes non-punitive elements has many benefits for survivors and communities.

### **Survivor Justice—An Abolitionist Framework for Victim-Centered Justice**

Often overlooked in criminology literature on sexual violence and justice are the victims that fall in the category of the “dark figure of crime,” the ones who never report and who are silenced for one reason or another. Scholars and policymakers tend to point towards punitive

logics to explain the justice needs of victims (McGlynn, 2011). However, seldom do we ask, what is justice for the thousands who never report their victimization? How do we address justice for those who do report sexual assault but the justice system fails them? Thousands of victims never see any kind of formal justice. Some victims have sought justice through the civil courts, but that often comes to haunt them in the end. For example, some of the media and survivors' stories talked about survivors who sued or settled for money being portrayed as "gold diggers." They also spoke of times when the civil suit or settlement was used against them by defense attorneys and media to suggest they were lying about the abuse in an attempt to extort the person accused of violence. Survivor Andrea Constand was often accused of being a gold digger citing, as evidence, her previous settlement with Bill Cosby. In his defense during the second trial, Cosby's attorney accused Constand of being a "con artist" and that she lied about the assault so she could extort him for the \$3.4 million settlement she received (Stewart & Dillon, 2018)

It is also extraordinarily difficult for people, specifically the poor, undocumented, and people of color, to access the civil justice system. However, little of the criminological and sociolegal literature examines what justice might mean for the majority of victims whose perpetrators never get arrested, prosecuted, forced to resign, fired, or sanctioned in any way. What does justice look like for those victims? #MeToo provided a unique opportunity to examine what justice meant for sexual violence survivors, as well as those who did get formal justice. It was an avenue for victims to speak out and to be heard, to hear the voices of the silenced majority of survivors, regardless of whether they reported.

In this project, for people participating in #MeToo, the movement was still about radical healing and focusing on survivors, cultural transformation, supporting one another, and community transformation. However, when it became this broader, popularized hashtag movement, survivors, the media, and people reading the movement from outside the position of

survivor perceived it as a movement for shaming and punishment. Through the survivors' statements, tweets, and media discourse, it was clear that accountability and sanctions for abusers, while ideal, were unattainable.

According to the data, for some survivors, #MeToo was a way of not only telling their story and being believed, but also holding their abusers accountable and helping other survivors. It also provided a platform for allies and the public to hold abusers and their enablers accountable. It added pressure on companies to not only investigate allegations of sexual violence but demanding they do something about the allegations. In a Letter to the Editor in the New York Times, one commenter wrote that Senator Al Franken should not resign after a woman published that she had been groped by the Senator on a USO tour. The letter stated that “[t]he crowd justice we are experiencing lacks nuance and is dangerous,” (Badner, 2017). Accountability was identified as important for justice; however, time and again survivors and the leaders of #MeToo expressed that it was still a way of showing support, telling their stories, and finding people who believed them.

Numerous survivors and articles discussed that prior to #MeToo, their only recourse for justice and accountability was through the civil court system, but that it felt hollow for them. Justice was not just about formal or legal sanctions, survivors also wanted to feel like their pain meant something, that something good would come out of their experience. In survivors' statements about why they came forward, they talked about wanting to help and protect other girls, women, men, and boys or that they wanted to inspire other survivors to come forward.

The goal of this chapter is to explore what justice means in #MeToo. What kind of justice perspective prevails in the discourse, for the survivors? To explore the perspectives, this study draws on the following perspectives: deterrence (using punishment to influence behavioral choices), retributive (eye-for-an-eye vengeful justice), restorative (repairing the harm done to the

victim and community), and transformative (building up individuals and communities). Two other justice perspectives did not come out in the data, incapacitation (implementing punishments so that the offender is taken out of society for as long as possible) and rehabilitative justice (programming that focuses on changing behavior). Concerns about due process were rampant in the data; therefore, Chapter 3 is devoted to exploring what due process means and how these concerns were used to understand and/or delegitimize the movement. In an Opinion article, journalist Emily Yoffe was quoted saying:

This amazing moment has a chance to be truly transformative. But it could also go off track if all accusations are taken on faith, if due process is seen as an impediment rather than a requirement and an underpinning of justice, and if men and women grow wary of each other in the workplace. (Emily Yoffe, as cited in Edsall, 2017).

The main concern, as reflected in this quote, was that #MeToo was trampling over the rights of those accused in the allegations. This was particularly so around the hearings to confirm Justice Brett Kavanaugh to the United States Supreme Court. Due process for offenders going through the criminal and civil justice systems is an essential part of American democracy.

With the #MeToo movement, the justice discourse was particularly concerned with noncriminal cases, except for some infamous cases, such as Bill Cosby, Harvey Weinstein, and R. Kelly. The thing that resonated throughout this analysis was that none of these justice theories/perspectives focused completely on survivors/victims and what justice would look like for them.

Survivor justice draws on abolitionist and transformative justice perspectives that argue the current punitive model of justice, coupled with the adversarial legal system, is broken, exacerbates inequality, and is incapable of repairing people and communities. Therefore, they advocate for justice outside of the state, justice that is humane, destigmatizing, and healing.



Transformative justice, while being on the outside of the system and accessible, is primarily focused on the people doing the harm, not the harmed. Survivor justice is victim-centered, does not require confronting abusers, and is beyond the state. Survivor justice is for all victims, including those who never report or name their abuser, instead, survivor justice focuses on the other justice needs of victims, needs identified in this study. These needs include being able to support other survivors, working to prevent future violence, community and cultural transformation regarding sexual violence, and advocating for victims' rights.

In the following pages, I explore the four main justice perspectives that came out of the data, dividing the chapter into two parts. The first part starts by defining retributive justice and deterrence. Then it explores survivor and media narratives of punishment and accountability, in particular accountability through punishment and deterrence through shaming and punishment. The second part turns to restorative and transformative justice, beginning with defining each, and then examining how the data reflects the goals of healing, being victim-centered, and cultural transformation. Finally, I discuss the perspective of survivor justice, which builds on the research on sexual assault survivors' experiences with the criminal justice system and demonstrates that abolitionist perspectives and programs are effective for survivors. Often abolitionists get asked, "what would we do with the rapists" if we were to dismantle the criminal justice system (Kaba & Herzing, 2021). This chapter turns this question around and says what are we currently doing with the people who commit sexual violence? What are we doing for victims? The answer to these questions is we are doing relatively little. Survivor justice, abolition, and transformative justice are attempting to change that, to do something that has the potential to significantly impact victims and communities for the better.

## **Punishment and Accountability in #MeToo**

As #MeToo grew, more conservative social media users and public figures often commented that it was a movement of punishment, a way to tear down powerful men, to take power away from men; thus, reflecting a tension between deterrence and retributive and restorative justice. The data showed that retributive justice, while arguably meant to give victims justice was often cited as inaccessible for victims, even when victims made formal complaints to their bosses, HR departments, or the police. The reliance on formal complaints and police reports to get justice was unrealistic and regularly led to more suffering from having to navigate a hostile, adversarial system, where they often felt like they were on trial.

***Deterrence Theory:*** Rational choice is one of the earliest criminological theories, as utilitarian theorists they argued that we could deter potential criminals through punishment. Deterrence theory claims that when punishment is swift, certain, and severe, people thinking about committing a crime will choose to refrain (Kubrin et al., 2009; Nagin, 2013b). Rational choice theory is rooted in Bentham's hedonistic calculus, which claims that people will always act in their self-interest, to minimize pain while maximizing pleasure (Darley & Pittman, 2003; Mitchell, 1918; Nagin, 2013b). A simplified way of understanding deterrence theory is when it comes to crime, people weigh the costs and risks of the crime against the potential benefit, therefore to deter them from committing the crime, the costs and risks must outweigh the benefits (Nagin, 2013b; Piquero et al., 2011).

According to Piquero et al. (2011), certainty, the risk of being caught and punished, is often a justification for an increased police presence to prevent crime. The swift criterion means that the punishment should occur soon after the crime is committed and the perpetrators are caught. Severity suggests that the punishment or sanctions need to be harsh enough to outweigh any benefits of committing the crime (Kubrin et al., 2009; Piquero et al., 2011). There is some

evidence that there is a deterrent effect when there is a credible threat of arrest and informal sanctions, such as loss of reputation or going to jail; however, there is little evidence that increasing the pains of imprisonment and harsher punishment has a deterrent effect on behavior (Nagin, 2013a, 2013b). It could be argued that #MeToo was a way of making the sanctions certain through public shaming and putting pressure on the criminal justice system and businesses to sanction offenders. Whether or not the movement had a deterrent effect is beyond the scope of this project, but the data did indicate supporters of the movement felt that it could decrease incidences of sexual violence and harassment.

The discourse data expressed that the goal of #MeToo was to deter future crime through punishment, in particular, that public shaming would make people think twice before harassing or assaulting someone. Public shaming could lead to loss of reputation, jobs, friends, and family. It was argued that these informal sanctions were enough punishment to deter potential sexual harm-doers. On the other hand, many survivors and commenters on the movement talked about the impossibility of getting justice, yet they still wanted some sense that a wrong had been righted. The belief in the criminal justice system and formal punishment remains in the discourse and in the hope expressed by survivors who came forward.

***Retributive Justice:*** Drawing on Kant (2002), retributive justice argues that there is a moral obligation to punish an offender for a wrong done and that justice cannot be restored until some kind of proportionate punishment is meted out (Wenzel et al., 2008; Wenzel & Okimoto, 2016). The purpose of retributive punishment is to exact pain from the offender to satisfy the justice needs of the survivor and society (Carlsmith & Darley, 2008; Clark, 2008; Wenzel et al., 2008). Whereas other theories of punishment, like the more utilitarian deterrence theory, argue that punishment should be a means to some other end, like preventing recidivism or rehabilitating the offender; with retributive justice, the punishment is the end itself (Carlsmith & Darley, 2008;

Wenzel & Okimoto, 2016). It is through the act of punishment and inflicting pain, that justice is achieved (Markel & Flanders, 2010; Wenzel et al., 2008).

For retributive justice, the key component in determining the punishment is the “moral outrage” caused by the crime (Carlsmith & Darley, 2008; Darley & Pittman, 2003). Punishment decisions and perceptions of fairness depend on how much outrage there is about the crime (Carlsmith & Darley, 2008; Darley & Pittman, 2003). For example, the child molestation of a young girl by her local priest may carry more moral outrage than a car theft, so it is expected that the offender in the first scenario would receive a harsher punishment than the second offender. When this is not the case then the punishment is deemed unfair, as in the public outcry over the infamous punishment of Brock Turner. After the Stanford student was convicted and received a light sentence for sexually assaulting an unconscious woman (Stack, 2016), a petition was started to impeach the judge who sentenced him. While there was moral outrage over the crime and the sentencing, this case was not unique in how the victim was treated or how the case was handled by the courts. It was unique only in the fact that it gained ample public attention when thousands of other rapes did not.

In the current study, retributive justice was called for when people were outraged over violent acts. Retributive justice has the potential to satisfy the needs of survivors, however, like deterrence, was unlikely to happen before and after #MeToo. Punitive justice cannot accomplish what survivor justice can for those survivors who never report or whose cases are dropped. Retribution also does little to prevent future crimes, something that survivors often declared as a necessary outcome for coming forward with allegations. The data indicated that there were strong beliefs that deterrence and retribution could occur by calling out and shaming abusers through the #MeToo hashtag. Some survivors and others engaged in the movement also claimed that accountability through formal processes and sanctions would allow them to heal and move

on from the violence they experienced. However, there was a dual discussion of the suffering and revictimization survivors experienced when they did seek formal justice, thus, supporting the need for survivor justice.

### ***Deterrence and Retribution Through Shaming***

There were some instances in the data when deterrence and retribution were brought up, especially around the idea of public shaming. In an article for The Atlantic, scholar Catharine MacKinnon wrote:

Sincere revulsion against sexually harassing behavior, as opposed to revulsion at reports of it, could change workplaces and schools, even streets. It could restrain repeat predators as well as the occasional and casual exploiters, as the law so far has not. Shunning perpetrators as sex bigots who take advantage of the vulnerabilities of inequality could transform societies. (MacKinnon, 2019, para. 26).

Arguments, like MacKinnon's, intimated that the public allegations and pressure for organizations to remedy sexual harassment would cause potential abusers to not harass or assault others.

According to Felstiner et al., (1980), in their research on disputing behaviors, they found that transformation from a perceived injurious experience (PIE) to a legal dispute involves three steps: naming, blaming, and claiming. Naming is when the injured individual names the injury, they tell themselves that they were harmed (Felstiner et al., 1980). The second step, where the PIE becomes a grievance, is called blaming. This is when the injured person makes allegations about a specific person, organization, or social institution (Felstiner et al., 1980).

The third step is claiming, when the injured person "voices it to the person or entity believed to be responsible and asks for some remedy," (Felstiner et al., 1980: 635). In the criminal legal system, the state takes over as the injured entity in claiming. In this system, the

victim only gets to participate in the claiming phase if the perpetrator is found or pleads guilty, then the victim can give an impact statement allowing them to tell the perpetrator about their specific injuries.

Before #MeToo there was no chance for survivors who never reported a crime or filed a suit to experience the claiming stage, they never got that formal “justice” through the criminal or legal system, and they remained silent until this movement came along (Gash & Harding, 2018; Wexler, 2019). Often survivors never got to the blaming stage, they remained in the stage where they knew they were injured but for various reasons were unable to come forward (Alaggia & Wang, 2020). In an opinion piece for Huffington Post, Blake Warenik, the director of communications at the National Children’s Alliance, wrote:

The agony of male survivors stalks the halls of the schools we attended as children. It lurks in the locker rooms where we went to football camp. It haunts classrooms where after-school tutorials turned to abuse. It infests the margins of our memories, crowding out the boyhood joys of scouting, of learning or of sports with private pain. That old poison, sexual abuse, leads men and women to despair, depression, drinking and even early death.

The first course of the antidote to this poison is belief — belief in the victims of sexual violence, the acknowledgment of their bravery, and the understanding that they risk so much, and often stand to gain so little, by telling what has happened to them. (Warenik, 2019, para. 6-7).

The reality of sexual violence and lack of justice did not just haunt child survivors, it haunted all survivors, especially those survivors who remained in the naming phase.

When #MeToo came along, it allowed survivors to publicly name and blame their injuries, to put the blame on the party they held responsible, and to make claims about the injury

in a way that the person or organization responsible would hear them. As with any other dispute, attrition happened during these stages, typically because of the survivor's perceptions of how they would be treated if they followed through with blaming and/or claiming. For a considerable number of survivors, both in this data and in general, the process stopped in the blaming phase, especially if their first disclosure was not handled properly by the person to whom they disclosed (Ahrens, 2006). Commenting on the movement, Catherine MacKinnon stated:

Until #MeToo, perpetrators could reasonably count on their denials being credited and their accusers being devalued to shield their actions. Many survivors realistically judged reporting to be pointless or worse, predictably producing retaliation. Complaints were routinely passed off with some version of 'She isn't credible' or 'She wanted it' or 'It was trivial.' A social burden of proof effectively presumed that if anything sexual happened, the woman involved desired it and probably telegraphed wanting it. She was legally and socially required to prove the contrary...

Over the prior year, during which long-buried reports of sexual abuse had exploded, the survivors speaking out cut across sex, gender, age, race, class, and politics, perfectly displaying the kaleidoscope that collectivities of butterflies are called. After four decades- or thousands of years, depending on when you start counting the pervasive silence that walled off reports of sexual abuse crumbled. What was previously ignored or attributed to lying, deranged, or venial discontents and whiners began to be treated as disgraceful and outrageous misconduct that no self-respecting entity, including companies or schools, could accept being associated with. This unprecedented wave of speaking out has begun to erode the two biggest barriers to ending all forms of sexual abuse in law and life: the disbelief and the trivializing dehumanization of victims. (MacKinnon, 2019, para. 7 & 10)

The #MeToo movement, with its emphasis on hearing and believing survivors, made it safer for survivors to blame and claim their injuries, but in a more public way than Felstiner et al. (1980) likely imagined.

It could be argued that the #MeToo movement added a fourth step to the dispute process, shaming. Public shaming put pressure on the system to hold accountable the entity responsible for the violence. It also shamed countless organizations and other enablers who failed to address allegations previously reported to them. For example, the allegations by Dylan Farrow claiming that her father, director Woody Allen, had reportedly molested her were typically ignored before #MeToo. However, after #MeToo, things changed for the director and the actors he cast.

‘It’s extremely toxic, and why would you want to surround yourself and your career with potential damaging consequences?’

Fans who support the #MeToo movement and the Time’s Up campaign – which grew out of the Harvey Weinstein sexual abuse scandal – will reject actors who choose to be in Allen films...(Danny Deraney, as cited in Levin, 2018, para. 11-12).

Data demonstrated that there was some belief in the potential deterrent effect of #MeToo shaming. In a statement from The Academy of Motion Picture Arts and Science Board of Governors wrote about their reasons for kicking Harvey Weinstein out of the Academy stating:

We do so not simply to separate ourselves from someone who does not merit the respect of his colleagues but also to send a message that the era of willful ignorance and shameful complicity in sexually predatory behavior and workplace harassment in our industry is over. What’s at issue here is a deeply troubling problem that has no place in our society. The Board continues to work to establish ethical standards of conduct that all Academy members will be expected to exemplify. (Statement cited in Frej & Russo, 2017 para. 4).



One reporter called for more people to expose “predators,” stating “the rest of us ordinary citizens can do the same [posting #MeToo and allegations]. Just like prominent people are doing now. Ideally, this will strike fear of exposure into potential predators and protect their actual and prospective victims from abuse,” (Nemzoff & Offner, 2017). Quotes like this suggested that the main goal of posting #MeToo was to call out abusers, shame, punish, and deter others from committing violence or enabling it. Whether there was an actual deterrent effect was beyond the scope of this project, but it did seem there was public support for deterrence through informal sanctions, which have shown to be effective in other studies (Nagin, 2013b).

Often there were claims that the public shaming from #MeToo would make people think before committing sexual violence and for failing to address claims of sexual violence. One survivor of sexual harassment, a doctor who was allegedly groped by another well-known physician at a conference, stated that “nothing will change unless people are able to name people and institutions are held accountable...I don’t think without massive public discourse and exposure that things will change,” (Jennifer Gunter, as cited in Jewett, 2018). The discourse focused more on general deterrent effects (when punishment was harsh enough to make the public choose not to commit a crime).

For survivors engaged with #MeToo and commentators, the public format of #MeToo for naming, blaming, claiming, and shaming was viewed as necessary to see broad changes in workplaces and social events. Referring to the myriad of sexual allegations made against a bar owner in India, one article discussed the problems that victims often faced with coming forward and that public shaming, or “trial by social media” was the only avenue they had left for justice.

Even as stories of Irani’s obnoxious behaviour piled up, through anecdotes backed by screenshots, it was invariably the women who were subjected to a trial by fire: a litany of whataboutery, ifs and buts, whys and wherefores, dragged the discourse down to the

appalling pits of victim-shaming. If that's the arsenal with which men want to hit out at women speaking about a deeply hurtful private experience, it's not so unusual for women to also want to out and shame their abusers in public.

While a trial by social media may, by no means, be an ideal or legitimate route to justice, it's hard not to see its temptation, especially in a society like India. Recently, the judiciary of this nation set a shameful example by acquitting a rape convict on the ground that the victim's denial of consent wasn't loud enough — her 'feeble no', the honourable Delhi High Court decided, was ambiguous. (Ghoshal, 2017, para. 13-14).

Whether in the United States, India, or anywhere else in the world, publicly blaming and shaming abusers became a large part of the #MeToo movement, especially in the media discourse on the movement.

### ***Accountability and Punishment***

One of the dominant issues victims and news articles discussed was a history of being gaslighted or blamed for their victimization by not only their abusers but also bosses, law enforcement, attorneys, friends, and the public. This had a silencing effect on not only the victims experiencing it, but other survivors who came after them. After one popular Canadian radio host, Jian Ghomeshi was charged with sexually assaulting and choking a woman, a former producer and previous victim spoke out about her own experiences with Ghomeshi telling reporters that:

[S]he eventually left her job when Ghomeshi faced no consequences despite her harassment complaints...Borel wanted to show people the 'institutional disincentives' in place that often prevent women from coming forward when they're sexually harassed in the workplace. 'There is such a system of justifying this kind of behavior within these kinds of hierarchical structures that I was gutted when nothing happened, and completely

unsurprised at the same time, because it was par for the course. (*Sexual Harassment at Work Is a Global Problem. Now, the World Is Finally Talking about It.*, 2017, para. 11).

Inaction seemed to be the common response survivors got, until #MeToo put pressure on organizations to do something and forced abusers to consider their actions.

Survivors frequently stated that their reason for coming forward in the movement was to get some kind of accountability for what happened to them. For example, Rachel Crooks came forward with allegations about President Donald Trump. Writing in an Op-Ed, she stated:

Though I stayed out of the limelight as much as possible for the following year, watching the incredible, long overdue #MeToo movement unfold (and powerful men in various industries being forced to suffer the consequences of their actions) made me realize, again, that silence was no longer an option. The double standard of not holding the most powerful man in the world to account made me angry, and I decided I would come forward. I wasn't just angry at Trump; I was angry at the lack of integrity in our elected officials, wondering how they could face themselves in the mirror knowing they shielded a sexual predator because it was politically expedient. So, in December, I agreed to go on CNN alone to discuss what Trump had done to me because I felt it was a responsibility I could not ignore. A week later, I spoke publicly on the Today Show and at a news conference with Samantha Holvey and Jessica Leeds. Despite having already shared our stories, we felt that Congress should no longer avoid addressing the #MeToo movement and its implications for the president. (Crooks, 2018, para. 7-9).

Crooks demonstrated here that there was an inconsistency with holding people accountable through #MeToo: while victims came forward with allegations against President Trump, nothing came of them.

Inconsistency in public accountability was also reflected in discussions of President Bill

Clinton and his history of taking advantage of young women like Monica Lewinski. It was discussed that even in #MeToo there did not appear to be any consequences for his past like there were for others. When Bill Clinton was allowed to account for his actions in a #MeToo era NBC interview, he talked about how the affair negatively impacted him. He then went on Stephen Colbert's show "The Late Show" where:

Clinton admitted the NBC interview wasn't his 'finest hour,' when Colbert pressed him about being perceived as 'tone deaf.' Colbert said: 'Examples of men who were not held accountable for their behavior, especially men in power with younger women or people who worked for them, is [sic] worthy of being readjudicated or adjudicated for the first time, no matter how long ago it happened.' Clinton said: 'People need to know I apologized. I meant it then. I mean it now. ...And I still support Me Too. And I think we all need to keep doing better. And I would never dispute that.' Then came the qualifier. The former president said it was very painful and he had to 'live with the consequences every day since.' (Bill Clinton and Stephen Colbert, as cited in Appell, 2018, para. 16-19).

The author then stated, "go talk to Monica about consequences," (Appell, 2018). Bill Clinton was left largely unaffected when plenty of others became persona non grata.

Inconsistencies with accountability aside, when allegations were made through #MeToo, people were fired, forced to resign, lost their reputations, quit comedy tours, had television shows and films canceled, or lost their families. Feminist scholar and frequent commentator, Catharine MacKinnon, wrote for The Atlantic:

Many social sectors are beginning to recognize their obligation to foster environments free from sexual objectification, pressure, or aggression. Reporting of sexual abuse is starting to be welcomed rather than punished, on the view that accountability, not

impunity, should prevail for individuals and institutions that engage in or enable such abuse. (MacKinnon, 2019, para. 25).

There were suggestions throughout the data that accountability was the key component of #MeToo, playing into this tension between justice perspectives and whether the movement was fully centered on survivors or on their abusers.

While not the intention of #MeToo leaders, it became clear that for survivors holding abusers and enablers accountable was an essential part of the movement. Frequently articles discussed the firing and resignations of those accused during #MeToo while stating that prior to #MeToo, nothing had been done about the allegations. For example, one article titled “The Weinstein Effect: Avalanche of Allegations Usher in a New Era,” focused on the different powerful and famous men punished in some fashion after allegations came to light.

Amazon Studios Chairman Roy Price, another sexual predator who was often inebriated and whose behavior went unchecked until the Weinstein allegations broke, abruptly resigned from Amazon in mid-October after allegations emerged about his sexually harassing young actresses. Two other executives were fired along with Price, whose superiors claimed not to have known of their behavior. His boss, Jeffrey Blackburn, wrote that ‘Roy’s resignation followed new information that surfaced last week’ and that ‘we will use these events as an opportunity to review our sexual harassment policy and processes to ensure they are doing their job to provide a harassment-free workplace. And if they are not, we will make the necessary changes.’ It’s about time! (Nemzoff & Offner, 2017, para. 4).

It appeared for some survivors and the media discourse, that this accountability through #MeToo might have had a positive effect, changing policies and workplace procedures investigating sexual harassment. However, it is not known and beyond the scope of this project to make any

claims about efficacy. Though it can be said the discourse and participants expressed hope that these consequences would have lasting effects.

The discourse on retribution, deterrence, and punishment in some cases had an element of cultural transformation, with commentators claiming that punishment of inappropriate behavior would lead to changes in social norms around sexual violence and harassment. In a question-and-answer piece on Slate, reporter Isaac Chotiner and scholar Kate Mann talked about the #MeToo movement and the role of punishment and accountability, where the claim was made that these punishments would lead to larger cultural changes.

I think for people who [sic] it's not pathological, that if they knew they really might get fired for something, punishment is important. [Isaac Chotiner]

I think that's got to be right. And it's why I try to define a threshold for people who are particularly misogynistic and particularly consistently misogynistic. Because I think there are a lot of people, if you say, who will be misogynistic only in particular local contexts—where the boss is very permissive of that or even actively rewards that. I think if there were real risk of being fired or otherwise demoted, yeah, I think financial incentives can be, and career-based, and hierarchy-based, status-based incentives are very powerful in changing cultures quickly. (Mann as cited in Chotiner, 2017, para. 31-32).

Retributive punishments do seem to make some victims and the public feel safer and vindicated. However, for those who view the justice system as an avenue for change, for protecting and preventing crime, the reality, as reflected in research, is that retributive punishments do little to solve those things (Wenzel et al., 2008)

Prison is not the place to rehabilitate and change behavior (Hudson, 1998). Harsh punishments and the stigma that comes from incarceration make successful reentry harder for offenders and often the violence experienced in prison brutalizes the person even more (M. Bell,

2021; Hudson, 1998; Ilea, 2018). #MeToo showed that there was moral outrage when it came to sexual assault and harassment and that a sense of justice was necessary for victims and society. At the same time, retributive justice was inadequate at restoring justice for victims of sexual violence because it was unlikely to occur, furthering the point that “survivor justice” is necessary. When I first started this project, the conviction of Bill Cosby was an example of retributive justice and provided a sense of justice for survivors. However, in the last year, his conviction was overturned (Savage, 2021), creating a vivid illustration of the futility of the criminal justice system.

Research has provided little evidence to support deterrence through punishment (Nagin, 2013b). Sexual violence typically goes unpunished or offenders receive relatively light sentences (Hudson, 1998). Punishment also does little to alter behavior and treat offenders so that when they get back out, they are no better than they were before. As with retributive punishments, when you add in the stigma of incarceration, firing, or public shaming, abusers’ stress levels and anger are likely to increase making it more likely they will assault someone else.

Punitive logic does little to alter structural inequality and social power dynamics that perpetuated sexual violence, meaning that deterrence and retribution are inadequate at meeting the justice needs of victims. As Powell argues, “when conceived of solely as punitive state-sanctioned outcomes, ‘justice’ continues to elude the vast majority of rape victim-survivors,” (2015, p. 573). This reality played out in the data, suggesting that there is a need for a new conceptualization of justice, a survivor justice that remains outside of the state. This kind of justice would draw on transformative and abolitionist practices and provides opportunities for survivors to make meaning out of their suffering, to help and support other survivors, and to work towards ending sexual assault— without ever having to rely on the criminal justice system.

## Healing, Restoration, and Transformation in #MeToo

Healing, support, and transformation were the cornerstones of the movement. #MeToo was intended to erase the injustice of sexual violence. Through the lenses of restorative and transformative justice perspectives, the data demonstrated that healing, regardless of whether there was formal justice or not, was essential for survivors. Feeling whole again was a major component of justice.

***Restorative Justice:*** While some scholars and legal actors advocate for retribution as a satisfying emotional response to crime (Darley & Pittman, 2003), others argue that the criminal justice system needs to focus on preventing future crime by reforming offenders and simultaneously focusing on the needs of the survivor and communities impacted by the crime (Zehr & Mika, 2004). Even though there is considerable public support for retributive justice, studies have shown that it does not go far enough in helping restore the survivor; rather survivors are more likely to feel justice was served when they felt “the offender gets the message,” (Wenzel & Okimoto, 2016). Coming out of the second-wave feminist movement and the conservative “War on Crime,” the victim’s rights movement called for a renewed victim-centered approach to the criminal justice system, in particular focusing on how to help the survivor feel whole again (Zehr & Mika, 2004). During this time, criminologists began to think about an alternative framework for punishment and responses to crime, calling it restorative justice.

As part of the American criminal justice system, restorative justice was promoted as a way to deal with the “needs which crimes create,” (Zehr, 2002: 13).<sup>9</sup> As a victim-centered approach to crime, restorative justice brings the key stakeholders impacted by the crime together,

---

<sup>9</sup> Restorative justice is used all over the world for a variety of crimes. In this paper, I focus on how it is used at the individual and community levels, but it is also used at the macro level to address state violence, such as genocide (Daly 2002).



including victim-offender mediation and healing circles. For restorative justice, one of the main things that needs to happen is that the person who caused the violence must acknowledge the crime they committed and the pain and suffering it caused the victim.

Restorative justice centers around repairing the harm by addressing the physical, financial, and psychological needs of the victim/survivor. Restorative programs, while often reliant on the criminal justice system, involve the victim in every step by listening to their needs and creating individual plans to restore them to some semblance of who they were before the violence. Restorative justice is not just about repairing the harm done to the victim but also repairing the community and the accused. The goal is to determine what needs to happen to repair the harm done by the crime. Restorative justice also requires the offender to admit what they did (Braithwaite, 1999; Morris, 2002; Strang & Sherman, 2003; Zehr, 2002; Zehr & Mika, 2004).

According to Daly (2002, p. 56), advocates for restorative justice make four key claims: 1) Restorative and retributive justice are opposites; 2) Restorative justice practices are derived from Indigenous justice and were the dominant form of justice for a lot of human history; 3) That restorative programs are based on care and are therefore feminine, while retributive justice represents masculine norms; and 4) It is “expected to produce major changes in people.” However, Daly (2002) argues that these claims are really myths and do not reflect the reality of what their research showed. Instead, Daly found that instead of strictly adhering to restorative ideals, the conferences in her study drew on multiple perspectives of justice, including retributive, rehabilitative, and restorative justice (59). In the United States, restorative programs often adopt a more punitive logic to appear more legitimate in a time and place where harsh punishment and deprivation are the norms.

For the leaders and survivors, the #MeToo movement frequently brought up hopes for

healing and restoration. In an Instagram post about Matt Lauer being fired from NBC, *Top Chef* host Padma Lakshmi discussed her shock over the allegations he had assaulted women in his office. She spoke of her hope for the movement, saying:

But I stand in solidarity with the victims. And while this is a painful period in our cultural history, it is a good and necessary purging of one of the most harmful aspects of the ‘old boys club’. There is always pain when the thorn gets pulled out of the flesh. But only when it’s gone can the healing begin. (Padma Lakshmi, as cited in Springer, 2017).

Offered as an alternative to more traditional, punitive forms of justice, restorative justice is one response to major problems with the justice system in the United States, including that it does very little to prevent crime and support the victim. “We have, as is often said, a punishment system not a justice system,” (Hudson, 1998, p. 388). While restorative justice recognizes this problem, programs tend to operate through the criminal justice system and fail to create meaningful change or reform because it “has been confined, to a large extent, to its role as an alternative to the criminal legal system that also leaves that system intact (Kim, 2018, 2021). However, thanks to women of color in the early 2000s, a new perspective—transformative justice—developed that would take on the carceral state and its impact on marginalized people.

***Transformative Justice:*** Often lumped together with restorative justice, transformative justice involves programs and initiatives that deal with crime outside of the criminal justice system and focuses on the underlying causes of crime—the inequalities in communities that perpetuate crime and interpersonal violence (Kaba, 2021). The key mechanisms of transformative justice are social and cultural changes that prevent future crime by building protective factors through the support of friends, family, and communities (Kim, 2021; S, 2020). The central theme is to empower people and their communities. They are doing the hard work to address the underlying causes of violence, work that the other types of justice perspectives cannot or will not do.

The expansion of the carceral state in the United States, often referred to as mass incarceration, can be linked to certain policies and political alliances, most notably the War on Drugs (M. Alexander, 2010). Another cause, salient to this project, was the convergence of the feminist anti-violence movement with conservative advocates for crime control (Bumiller, 2008; Goodmark, 2018; Gruber, 2020; Kim, 2021; Richie, 2000, 2012). Carceral feminism, as the anti-violence movement would come to be known, is the “pursuit of enhanced criminalization and, hence, active participation in the construction of U.S. policies of mass incarceration,” (Kim, 2021, p. 164). In response to carceral feminism and the larger problem of mass incarceration, some organizations, typically led by Black women, adopted a transformative justice perspective that eschews carceral logic and the state legal apparatus. The goal of transformative justice is to look toward the root causes of crime, and do the complex work to alleviate inequality and injustice at the individual, community, and societal levels. Essential to transformative justice is that transformation is beyond the realm of police and the criminal justice system (Dixon, 2020).

Transformative justice advocates have formed numerous organizations since the early 2000s, but in the beginning, there was INCITE!, which worked with “women, trans and gender non-conforming people of color and their needs,” (Kim, 2021, p. 168). They formed to reject both gender-based and state violence, creating programs that did not rely on the state to enact justice. At the same time generation-FIVE, led mostly by adult survivors of childhood sexual assault, was formed to address child sexual abuse through transformative justice practices (Kim, 2021). According to Kim (2021, p.168), they offered “collective, community-based responses.” Other transformative justice organizations and initiatives would follow, adopting similar views that interpersonal harm could only be prevented when the “systems of structural harm” are changed.

Like restorative justice, transformative justice often focuses on those who harm. Their

commitment to ending mass incarceration and their necessary advocacy for harm doers can turn off victims, which might cause survivors to turn away from the organization.

According to Kasparian (2014) justice, in the U.S. criminal justice system, occurs when the abuser is convicted and serves a punishment. However, there are various acts that victims perceived as doing justice, including compensation, being able to tell their story, or when the abuser acknowledges their harm and makes amends (378). Justice, for survivors, can also occur informally through “public and counter-public online spaces and communities in civil society,” (Powell, 2015, p. 573). Social media, such as Twitter, Facebook, TikTok, and Reddit, give survivors a space where they can seek out this kind of justice (Powell, 2015). The #MeToo online movement is a prime example of that, while in some cases online, informal justice has led to formal or punitive sanctions, such as job loss, criminal charges, and/or reputational damage, what occurred through #MeToo was typically informal, outside of the state and HR departments. For the multitude of survivors, #MeToo was a chance to get justice, sometimes through shaming, but a lot of the time it was through the act of telling their stories and actively trying to change the culture around sexual assault and harassment.

In October 2017, when Alyssa Milano tweeted the now infamous tweet asking people to respond “me too” to show the magnitude of sexual violence and harassment the movement appeared to be something altogether different (Wexler, 2019). Writing in an Op-Ed for Time Magazine, Milano clarified that #MeToo was about healing and a call to believe and support survivors:

We tend to push down the things that hurt us so they don't come to define us, but those traumas end up becoming a bigger part [of] us when we haven't healed. To be able to take your experiences out, dissect them and share your stories with others is a powerful thing. We have communities of like-mindedness for pretty much everything — religious

communities, Fantasy Football, everything of interest to human beings. But because we've been so silent — and silenced — about this issue, we don't realize there is a community out there that's ready to embrace and support us. (Milano, 2017, para. 4).

Restorative and transformative justice appeared to most closely fit the justice of #MeToo, especially when it came to healing. While accountability was an important theme in the discourse, the reality of the ineffective and traumatizing criminal justice system tempered the efficacy of punishment to satisfy survivors. By focusing on the other aspects of justice expressed in the movement, a transformative, survivor justice would provide survivors with a more effective alternative.

### ***Restoration and Transformation Through Radical Healing***

In 2006 when Tarana Burke first started me too. it was not meant to be a hashtag nor was it meant to be a widespread movement, rather it was a way to say easily and quickly that “I am with you.” It was the full sentence, the full statement, “[w]hat’s happening now is powerful and I salute it and the women who have disclosed but the power of using ‘me too’ has always been in the fact that it can be a conversation starter *or the whole conversation* [emphasis added],” (Burke as cited in Bey, 2017, para. 6). Burke envisioned me too. to be a movement for what she called radical healing. According to the me too. website, radical healing is survivor-led healing through empathy.

As survivors we have the knowledge, skill, experience, imagination, vision, and creativity to identify, address, and bring radical transformation to our communities and institutions. To support and activate survivors, The ‘me too.’ movement engages an innovative model of survivor leadership with a ‘whole-self approach’ to healing from sexual violence, that grows out of understanding survival. Pathways to healing must include wrap-around interventions and support mechanisms to best embrace survivors as their whole selves.

This includes healing through engagement in community organizing, where survivors are empowered to fight sexual violence with courage and conviction. (*Get To Know Us | Our Vision & Theory of Change*, n.d.).

Describing her intentions and that of the leaders of #MeToo, Alyssa Milano wrote:

#MeToo, which I started tweeting in the wake of the Harvey Weinstein allegations, was an opportunity to take attention away from the predator and bring it back to the victims. We're so focused on these villains, these horrible people who do these horrible things, and that doesn't help their victims feel like they can come forward or heal. To give women a platform where they don't have to say how, when or where they were hurt if it's too painful — where all they have to do is stand in solidarity — enables us all to feel how enormous of an issue this kind of abuse is. (Milano, 2017, para. 2)

Me too was about the transformation of the self as survivors and transforming social norms through community healing and education.

Trauma tends to hang in the air like a pungent gas, slowly destroying people, until someone lights a match. Healing trauma at both the individual and community levels is important as it builds safer communities, builds trust among community members, and empowers individuals and organizations to improve their communities. In an article for CBS News, Burke stated that “me too’ is a movement to, among other things, radicalize the notion of mass healing...as a community, we create a lot of space for fighting and pushing back, but not enough for connecting and healing,” (Burke as cited in Bey, 2017, para. 8). For transformative justice, healing is an essential aspect. Transformative justice recognizes that those who commit harm and the people suffering the harm are often the same people (Carbone-Lopez et al., 2016). To build up communities and to do meaningful work to eradicate violence and crime, they spend considerable effort on healing (Kim, 2021).

Radical healing, essential to the combined me too. and #MeToo, involved sharing stories of trauma, offering support and care, and letting people know that they were not alone and that they were believed (Our Work, n.d.). According to leaders, radical healing did not have to involve the police or any kind of formal sanction through the criminal justice system. The movement, it was expressed by supporters, allowed survivors to “(e)nvision a moment of truth and a movement of transformation for the sexually violated toward a more equal, therefore a more peaceful and just, world,” (MacKinnon, 2019). Radical healing was about giving survivors a way to move forward, not to forgive and forget, but to move on with their lives and carve out a space where they could thrive.

While radical healing was important, #MeToo was also about challenging social norms and the conversation around sexual violence. “Reframing the conversation challenges the systems of oppression that endanger us all. Together, we have the power to shift culture and build safer futures,” (*Healing in Action*, n.d.). Although accountability was important to the survivors in my data, it was not the direction that the leaders of #MeToo were driving toward. In one article about Tarana Burke, the author highlighted this fact, stating “Burke has been working to ensure that Me Too doesn’t lose sight of its mission: to connect survivors of sexual assault to the resources they need in order to heal,” (Harris, 2018). Burke was also quoted as saying “I want to teach people to not lean into their trauma. You can create the kind of joy in your life that allows you to lean into that instead,” (Tarana Burke, as cited in Harris, 2018). As a transformative justice organization and movement #MeToo, the intended focus was on its key “tenet” to empower through empathy (*Get To Know Us | Our Vision & Theory of Change*, n.d.).

### ***Survivors Supporting Other Survivors***

Accountability was an important finding, another striking finding was that survivors often stated their reason for coming forward with allegations, whether reporting to the criminal justice

system, a journalist, or leaders at their workplace, was to help other survivors, a need supported by previous research (McGlynn & Westmarland, 2018). For some survivors, for example, Andrea Constand, it was about getting formal justice for herself and other victims of Bill Cosby. Andrea Constand's case against the former "America's Dad" became a symbolic justice for all survivors. In an article about the guilty verdict in Bill Cosby's second trial, the journalist wrote:

Constand's case was never just about herself. In her statement, she also wrote with clarity and conviction about the tremendous responsibility of serving as the only witness in two criminal trials, and about the weight of a single case that became symbolic of a much larger movement. (Giorgis, 2018, para. 4).

According to another woman who alleged that Cosby had drugged and assaulted her, the guilty verdict was not just a win for the survivors of Cosby. Instead, "[i]t is also a victory for womanhood, and it is a victory for all sexual assault survivors, female and male," (Lili Bernard, as cited in Andone, 2018, para. 8). Plenty of his victims talked about wanting to help other survivors and to work to put an end to sexual violence.

Stating she came out to help other survivors, talk radio host Leeann Tweeden posted her story of allegedly being groped and forcibly kissed by Senator Al Franken on a USO tour in 2006. In the post, she wrote about her inner turmoil and whether she should make her story public. Ultimately, she decided to go forward with her allegations, stating:

I wanted to shout my story to the world with a megaphone to anyone who would listen, but even as angry as I was, I was worried about the potential backlash and damage going public might have on my career as a broadcaster.

But that was then, this is now. I'm no longer afraid...

A few weeks ago, we had California Congresswoman Jackie Speier on the show and she told us her story of being sexually assaulted when she was a young Congressional aide.



She described how a powerful man in the office where she worked ‘held her face, kissed her and stuck his tongue in her mouth.’

At that moment, I thought to myself, Al Franken did that exact same thing to me.

I had locked up those memories of helplessness and violation for a long time, but they all came rushing back to me and my hands clinched into fists like it was yesterday.

I’m still angry at what Al Franken did to me...

While debating whether or not to go public, I even thought to myself, so much worse has happened to so many others, maybe my story isn’t worth telling? But my story is worth telling.

Not just because 2017 is not 2006, or because I am much more secure in my career now than I was then, and not because I’m still angry.

I’m telling my story because there may be others.

I want to have the same effect on them that Congresswoman Jackie Speier had on me. I want them, and all the other victims of sexual assault, to be able to speak out immediately, and not keep their stories –and their anger– locked up inside for years, or decades.

I want the days of silence to be over forever. (Tweeden, 2017, para. 25-41).

This statement showed how one survivor felt telling their story openly and honestly could impact other survivors.

In Tweeden’s statement, we also see a common reason that survivors said kept them from coming forward, that they were afraid of the effects it would have on their lives and careers. Another common reason survivors remained silent was, as in the case of Tweeden, that they felt their violence was not as bad as others and wondered who would take them seriously. She also talked about the impact of #MeToo and the cultural changes that occurred since the incident

happened. Survivors, like Tweeden, talked about wanting to empower others to come forward, to tell someone their story, to encourage them to begin talking about it, and healing from it.

Another of Bill Cosby's victims echoed this sentiment in her statement after he was found guilty, writing:

This may be the end for Mr. Cosby but this victory is just the beginning for many of us, to fight for justice, to do the right thing and support every person who has ever been shamed and humiliated and blamed. May this verdict open the floodgates to those who have been hiding their shame for far too long and give them the courage to come forward.

You are NOT alone. We hear you and we believe. Thank you. (Baker-Kinney, 2018)

Justice for these survivors was not only about their healing but also about helping other survivors find their own voices and power.

Tweeden's statement about wanting to be that source of strength and to help others to speak up was indicative of previous research on the justice needs of survivors of sexual assault (Jülich, 2006; Daly 2017; McGlynn & Westmarland 2019). Research interviewing survivors of sexual assault has shown that victims view justice as being able to have a voice and tell their stories, preventing sexual violence, acknowledging their pain and suffering, healing, and accountability (Jülich, 2006; Daly 2017; McGlynn & Westmarland 2019). In an article about sexual violence in the medical field and how the #MeToo movement might make meaningful changes there, a nurse talked about her experience with sexual violence reportedly from a coworker at a Veterans Affairs Medical Center.

Katz said it was costly and emotionally taxing to press on with her legal case but hopes it helps other women see that seeking justice is worthwhile. 'I do think there are a lot of women who just suffer in silence.' (Annette Katz, as cited in Jewett, 2018, para. 29)

The data on #MeToo made it appear that victims viewed helping other survivors to be a part of

their justice needs. The need to support and empower, and/or protect others was consistent throughout survivors' statements. So much so, that it is the essential element of survivor justice.

Consistent with other research on the justice needs of survivors (McGlynn & Westmarland, 2019), prevention was identified as another key element of justice for survivors engaging in #MeToo. Like other survivors, Andrea Constand talked about one of her primary reasons for continuing to fight for justice and to keep testifying against Bill Cosby was to protect other potential victims. News reports regarding Constand's statements after the second trial, when he was found guilty, talked about the desire to protect others. In an article for NBC News, it was stated that Constand was willing to relive the assault in the second trial, "along with the criticism she took on as a result, left her feeling 'traumatized all over again.' But she said she knew she had to speak out in an effort to save possible future victims from Cosby, and with the hope of helping all sexual assault victims," (Fieldstadt & Reiss, 2018, para. 27). For survivors participating in #MeToo feeling like their own pain and suffering meant others could be helped or protected was important.

### **The Case for Survivor Justice**

Justice is a complex idea with a myriad of meanings. When it comes to sexual assault, prior research, and the current study showed that justice for survivors was no less complex. The #MeToo movement came at a time when the public was on edge after learning of copious high-profile sexual assault cases. After the 2016 presidential election, many people were upset that someone who had several allegations of sexual violence levied against him. When #MeToo became viral, survivors' statements in tweets and to the press indicated that there was little change in the criminal justice system's responses to victims. One example emblematic of the movement's inability to reform formal systems was that of the administrative aide for a Maryland Circuit

Court Judge. In an article about the case, the journalist wrote:

When she first considered filing her complaint, Williams said, people discouraged her and told her nothing consequential would come from her stepping forward.

Williams, who has since resigned from her position at the court, said she decided to speak out, determined to prove standing up would yield results and embolden others. Now, she said, she struggles with whether the risk was worth taking. ‘I was hoping I was making a difference for other people but I don’t think I did because of the outcome and that really hurts,’ Williams said. ‘Who would be inspired to go forth if they unfortunately experience the same thing?’ (Denise Williams, as cited in Bui, 2018, para. 29-31)

This was and is the reality for a remarkable number of survivors, nothing happens, even when the victim does everything right. However, their need for justice through finding meaning in their experiences, helping others, and preventing future violence, remained. This is the point where “survivor justice” could step in.

### ***Formal justice, will it lead to healing or more suffering?***

In the current study of media, articles and survivors’ stories often discussed the difficulties faced, pre-#MeToo, when reporting sexual violence, the way the victims felt revictimized by those in power, and their experiences with not being believed citing them as obstacles in their journey toward healing. For example, in an article written for Atlantic Online, Catharine MacKinnon wrote

The #MeToo movement is finally breaking this paralyzing logjam. Structural misogyny, with sexualized racism and class inequalities, is being challenged by women's voices. No longer liars, no longer worthless, today’s survivors are initiating consequences few could have gotten through any lawsuit-in part because the laws do not permit relief against individual perpetrators, more because the survivors are being believed and valued as the

law seldom has. (MacKinnon, 2019).

Unlike the stated goals of the original me too. and #MeToo, to reiterate are healing survivors through empathy and support, the media discourse and survivors suggested that getting “formal justice” or holding someone accountable would lead to healing. Making it seem that formal justice was the healing. Author Jennifer Weiner wrote in an opinion piece for The New York Times:

Watching the #MeToo movement gain traction, as women’s voices were finally heard and powerful men finally, finally experienced consequences, felt like a restoration, as if someone was coloring me in again. Here we are. Yes, we matter. We’re real, just like you.

Bill Cosby was found guilty. Harvey Weinstein is going to trial. Les Moonves lost his job as chief executive of CBS, even if a CBS board member, Arnold Kopelson, said, ‘I don’t care if 30 more women come forward and allege this kind of stuff.’ Things are getting better, I thought. We are on the right track. (Weiner, 2018, para. 12-13).

Weiner went on to say that the comebacks of some of the men<sup>10</sup> called out in the fervor of #MeToo signified that the path toward change was still a long and arduous trek. The message, however, in her article was that #MeToo was about holding men accountable. The title and subtitle of the article itself reflected a desire for vengeance—*The Patriarchy Will Always Have Its Revenge; I want to burn the frat house of America to the ground*, feeding into the belief that #MeToo was about retribution.

It was often argued that accountability through formal sanctions was essential for the #MeToo movement to be effective. One example, from an article by Mischa Haider for Slate, argued “We will not win this struggle for gender liberation until we focus more on perpetrators,

---

<sup>10</sup> The comebacks she referred to included: Matt Lauer, Louis C.K., and Jian Ghomeshi

men, and masculinity rather than on survivors, women, and femininity, and in many cases that means holding ‘our’ men accountable,” (Haider, 2019, para. 3). This quote was a direct contradiction of what #MeToo leaders claimed the movement to be.

While accountability was important for victims and society, the reality was that survivors rarely got this kind of justice even after the #MeToo movement changed some of the narratives. For so long survivors faced backlash from coming forward. Exceedingly, women never came forward and therefore never got justice. Data suggest that of the small portion of assaults reported (310 per 1000 assaults), only 50 are arrested, 28 reports end with a felony conviction, and 25 defendants are incarcerated in some fashion (*The Criminal Justice System: Statistics: RAINN*, n.d.). This lack of formal justice was reflected in the discourse and survivor statements in the current study. For example, discussing the allegations posted on Facebook about sexual violence in academia, Somak Ghoshal wrote:

Some of these women may have raised their voice, knocked on the doors of justice, held their silence for fear of jeopardising their careers or, worse still, simply abandoned their ambitions for another path... Whether the grievances of women in academies [sic], or other professional spheres, get due redress or not, one thing is abundantly clear: those who dare speak up against sexual harassment are usually made to bear the brunt of their ‘audacity,’ (Ghoshal, 2017, para. 12-13).

The reality was that survivors would experience more suffering by coming forward, pressing charges, or filing complaints with their companies, despite the rise of #MeToo.

***Anna’s Story:*** While there were numerous stories of victims’ negative experiences with the criminal justice system, one stood out as being particularly egregious and far too common. It was the story of a Brooklyn teenager who alleged that two New York City police officers assaulted her while she was handcuffed in their unmarked van (Annese, 2022; Darby, 2017; Lennard,

2019; Samaha, 2018).<sup>11</sup> While the officers admitted to having sex with Anna, while she was in custody, and their DNA were both found in the rape kit, they argued that the sex was consensual (Darby, 2017; Lennard, 2019; Samaha, 2018).

From the point that she was in the hospital getting that rape kit done, only a few hours after the incident, and throughout her entire experience with the system, Anna was met with intimidation, victim-blaming, slut-shaming, and disbelief. One commenter on her Facebook page:

[Q]uestioned whether there was enough evidence to dispute the officers' claim that the sex was consensual, Anna wrote back, 'Listen man it doesn't fucking matter they're on duty police officers it's a fucking violation these are the people we call for help not to get fucked.' (Samaha, 2018, para. 5).

The concerns about her credibility did not go away, even during the height of #MeToo.

Adding to the suffering she experienced from the criminal justice system response were the investigations into her behavior and personal life, investigations to discredit her. Anna, like countless other sexual violence victims, was unprepared for what the system calls justice. Referring to her experience being questioned during the grand jury hearing, Anna told (Samaha 2018, para. 32) "It's painful...I didn't know what to expect. I still really don't." The journalist went on to describe how her social media and activities were used to suggest that she was a liar.

To Anna, some of those sessions, especially with city attorneys, felt more like interrogations. She hadn't thought much about the court system before all this. She didn't know how much of her life was now open for questioning. She hadn't seen any need to clean up her social media accounts, and didn't know her old posts could be used as evidence that she was lying. She'd put up photos of herself in bikinis. She'd gone to a porn convention when she was 17. She'd posted on Facebook a link to a website about

---

<sup>11</sup> Only the BuzzFeed article written by Albert Samaha (2018) appeared in my sample of articles.

sex when she was 13. She has never hidden that she enjoys smoking weed. Sometimes she makes dirty jokes.

‘Who gives a fuck about what I post,’ she tweeted after learning that defense attorneys were citing photos, videos, and comments from her social media history in an effort to persuade the DA’s Office to drop the charges. (Samaha, 2018, para. 32-33).

This kind of characterization of a victim was fairly common, there are very few “ideal victims” or “truly innocent” victims; yet, prosecutors often use this rape myth in their charging decisions (Frohmann, 1991). In Anna’s case, they chose to drop the rape charges and eventually the two officers pleaded guilty to bribery. They both received five years of probation. To add one more indignity for Anna, the judge made comments that the light sentence was because he viewed Anna as equally culpable in the “bribery”<sup>12</sup> (Lennard, 2019).

Conflating formal justice with healing, particularly in an era where survivors are still suffering due to the criminal justice system and businesses seems counterintuitive. It also suggests that the thousands of survivors who never get any kind of formal justice will also never heal. It suggests that we need to consider justice differently, in a way that does not involve institutions, private or state.

***Abolition and Justice:*** Abolition, to put it simply, is about putting an end to the oppressive and ineffective criminal justice system. Like transformative justice, abolitionists argue that the problems of our system of justice are too entrenched to repair or reform and thus must be “dismantled” to create any meaningful change (Bell, 2021). In the last ten years, there has been increased attention on mass incarceration and the devastating impact the criminal justice system has had on marginalized people, causing advocates, scholars, politicians, and activists to argue for

---

<sup>12</sup> They called it bribery, but really it was more of a quid pro quo where the officers forced her to have sex against her will for them to drop the drug charges they had picked her up for.



reform. Abolitionists, however, claim that attempts to reform the system are superficial, and like a good deal of restorative justice programs, leave the system “intact,” (M. Bell, 2021; Kim, 2021).

To dismantle the system and build a new system, we have to address the root causes of crime and inequality and accept the fact that our system is, in fact, operating the way it was intended, as a mechanism for disenfranchisement (Bell, 2021). Capitalism, colonialism, and patriarchy require subordination, there has to be someone on the bottom for the elite to be on top. Our criminal justice system, or the carceral state, sets a legal foundation for creating a permanent group of poor and marginalized people—the people on the bottom. Reform efforts cannot and will not address these systemic issues; however, abolition and transformative justice do address them. According to Bell (2021) abolition seeks “to eliminate carceral institutions, the prison industrial complex, and the criminal punishment system as a whole, and to replace them with nonpunitive ways of addressing harm that empower, rather than disenfranchise, vulnerable populations and communities,” (p. 44). While abolition and transformative justice programs show promise for social change and community improvement, they are still largely focused on the people who harmed, rather than the survivors.

Survivor justice draws on transformative and abolitionist perspectives, recognizing that our adversarial justice system is incapable of providing for the needs of survivors and that it often makes them feel worse. Abolitionists claim that reforming the prison system will not lead to a better system. This would also be the case with reforming the justice system to provide more rights to victims, it would be rife with a myriad of collateral consequences. Reform efforts maintain current power structures, structural inequality and inequity, and the vestiges of white privilege and racism. Instead, we need to seek justice and restore the victim in spaces and with practices outside of the system.

## *Survivor Justice Explained*

Survivor justice is similar to the concept developed by Clare McGlynn and Nicole Westmarland, a concept they call “kaleidoscopic justice,” (McGlynn & Westmarland, 2018). Kaleidoscopic justice, they argue, could fill the “justice gap” for sexual violence, the justice gap being the vast difference between the number of assaults reported compared to what gets charged and adjudicated (Lonsway & Archambault, 2012; McGlynn & Westmarland, 2018). Kaleidoscopic justice came out of McGlynn and Westmarland’s (2018) study where they interviewed sexual assault survivors to uncover what their justice needs were. They found that justice for these survivors was more fluid and complex than what the adversarial criminal justice system could provide. This led them to develop kaleidoscopic justice, which includes:

- “Consequences,” such as formal and/or informal sanctions;
- “Recognition,” acknowledging the magnitude of the harm done and of the survivor;
- “Voice,” having agency in the justice process and in the story-telling;
- “Dignity,” treatment by friends, family, nurses, and the criminal justice system—going beyond procedural fairness;
- “Prevention,” through the individual transformation of the abuser and transformation of social norms and beliefs about sexual violence; and
- “Connectedness,” when the survivor feels “like life will go on and the survivor can feel complete despite what happened to them,” (McGlynn & Westmarland, 2018, pp. 186-94).

Kaleidoscopic justice draws largely on restorative justice concepts and practices as it attempts to conceptualize justice for survivors as being both individual justice and social justice. They also make the point that justice is different for each survivor, it is fluid and changes over time. The #MeToo data in this study seemed to support kaleidoscopic justice, survivors expressed very similar issues, concerns, and justice needs as the survivors in the McGlynn and Westmarland (2018) study. However, this research on #MeToo also showed that the justice gap

for sexual assault survivors goes beyond the large attrition rates of reported sexual violence incidents. The gap includes all of those women, men, non-binary, trans, and children who never reported the violence. Those folks still wanted and deserved a sense of justice. Survivor justice fills that void because it is about making the victim whole again, without ever having to confront their abuser.

Accountability was a major theme in the justice discourse and statements from survivors. However, accountability is complex and unlikely for many survivors. That is why survivor justice is more focused on what transformative justice advocates call “community accountability.” Holding the community accountable to make necessary changes that address the structural violence and inequality that creates conditions amenable to sexual violence. Community accountability could involve holding companies accountable when they fail to investigate cases or protect survivors or online campaigns to address patriarchal and abusive norms. However, much of the community accountability would involve providing resources to deal with mental health, helping the unhoused find a safe place to live, financial help for those in need, and/or efforts to curb binge drinking to the point of blacking out. Community accountability would likely have more deterrent effects than punishment, while also providing a way for survivors to help other survivors and prevent future acts of violence.

Restoring the victim through survivor justice can involve victim advocacy organizations; however, a lot of them either receive funding in the form of government grants or are run through the police department and prosecutors’ offices. This can limit their ability fully advocate for survivors, for example, Bush-era reforms to anti-human trafficking funds required that organizations receiving federal money adopt a strict policy against sex work. As many trafficking survivors were engaged in sex work and did not plan to leave the work, this made it difficult for organizations to get survivors in the door. Advocates also have to maintain

cooperative working relationships with law enforcement and court officials so that they can continue doing their work, for example being able to remain in the room to support rape survivors during their forensic exam.

Advocates do amazing work and are vital to communities, but their focus tends to be on immediate safety concerns, courtroom advocacy, support, and therapy. While the people working in these organizations are sometimes survivors as well, the focus is not on survivor-led programming. Too commonly, these organizations also lack the personnel and resources to do the kind of community education and outreach necessary to do the essential work in preventing violence through cultural transformation, especially in impoverished and rural communities. This means they are also unable to engage the community accountability. However, some organizations do have elements of survivor justice.

The organization me too. is one of those organizations that would fall under the survivor justice perspective. Their focus is largely on survivor-led programs for healing and education. They are completely outside of the criminal justice system, and most importantly they do not require any kind of work to be done with the abusers. They acknowledge that holding abusers accountable is important for survivors, but it is not an essential part of the healing process. For me too., healing and transformation are justice.

Another organization with survivor justice programs is the Metropolitan Organization to Counter Sexual Assault (MOCSA)<sup>13</sup> in Kansas City (they work on both the Missouri and Kansas sides). MOCSA offers numerous services including hospital, police, and courtroom advocacy, as well as a 24-hour crisis hotline and counseling. They offer services that could be used in survivor justice, in particular their robust education program. Project Aware provides education to

---

<sup>13</sup> I should note here that I volunteered with this organization for a few years while finishing my undergraduate degree.

elementary schools (on the Missouri side) working with students, parents, and educators on body safety and preventing sexual assault. They also have education programs for middle schools and high schools, programs for community education, and professional education for law enforcement, educators, social workers, and clergy. MOCSA offers SAFE (Sexual Assault Free Environment) Training for bars and restaurants, this training teaches staff how to recognize situations that might lead to harm and provides them with techniques on how to safely intervene and support survivors (SAFE Training: MOCSA Metropolitan Organization to Counter Sexual Assault, n.d.). These are examples of what could be a part of survivor justice, but MOCSA is also limited due to funding sources and needing to remain on the good side of law enforcement and courts.

Organizations like me too. and MOCSA are doing the messy and complex work of individual and cultural transformation, work that falls squarely under the survivor justice purview. However, survivor justice involves more than just these two organizations, survivors also need to feel engaged in the work, to feel like they are making some kind of meaning out of their suffering. Survivor justice provides opportunities for survivors to feel like they are morphing their pain into action that helps other survivors and/or protects people from becoming victims in the first place. One way that this could be achieved is through what abolitionists call community accountability, where the community, not law enforcement, does the work to prevent, intervene, respond to, and heal from violence (*Community Accountability Archives*, n.d.).

It is important to note here that a profuse amount of this work on transformative justice, community accountability, and anti-violence projects has been happening for years and have been led by BIPOC, in particular black women. Survivor justice is a new way of conceptualizing justice; however, the elements of survivor justice are not new. What is new with survivor justice

is the separation of the survivor and the abuser in the justice conversation, so survivor justice has very little to do with the individuals who caused the harm. Survivor justice is for the victims, survivors, the healed, the healers, and the ones still suffering.

### **Conclusion**

This study of survivors and media discourse in #MeToo reflects a larger debate in criminology and sociolegal studies, the debate over justice and rights for the accuser and the accused. While the data suggested that justice through accountability and sanctions was ideal for survivors and the public, giving support for deterrence and retributive justice, the reality was that too few survivors ever saw that kind of justice. Our adversarial system, which is rooted in inequality, racism, and patriarchy will never be able to address the justice needs of survivors.

The data also suggested that healing, helping others, and making meaning out of their suffering were essential for survivors in their push for justice. Restorative and transformative justice programs should be the ideal forms of justice. However, restorative justice in the United States is customarily accessed through the criminal justice system. While transformative justice programs are outside of the system, they also typically require accountability from the harm-doer, the abuser. Both restorative and transformative justice programs would miss a large portion of survivors who want and deserve a sense of justice, but who never name their abusers. This is why I recommend a new justice perspective, *survivor justice*.

### Chapter 3: What About Due Process?

A year after the #MeToo movement took off, it would face its most difficult challenge to date, the nomination of Justice Brett Kavanaugh. On June 27, 2018, Justice Kennedy announced that was retiring from the bench, thus allowing then-President Trump a pivotal nomination, one that would swing the court far to the right (Hirshman, 2019). On July 9, 2018, President Trump announced his nomination of Kavanaugh, a nomination that was praised by many in the legal field, especially for his mentorship of women (Stanley-Becker, 2018). Brett Kavanaugh began his career, after graduating from Yale Law School, clerking for different federal court judges (*Brett M. Kavanaugh*, n.d.). After completing his clerkship, he worked for Ken Starr on the Clinton/Lewinski hearings, represented George W. Bush when the 2000 election was contested in the courts and was appointed by Bush to the Court of Appeals for the DC circuit (*Brett M. Kavanaugh*, n.d.).

While Congress was preparing for the confirmation hearing, quite a lot was going on in the background. When the shortlist of potential nominations was released in June of 2018, a psychology professor at Stanford, Christine Blasey Ford, saw that Kavanaugh was the front-runner, and this concerned her. Ford allegedly was sexually assaulted at the age of 15 by 17-year-old Kavanaugh (Hirshman, 2019; Kantor & Twohey, 2019) and now that he was poised to become the newest Supreme Court justice, Ford felt that she needed to inform the people in charge so that they could nominate someone else (Kantor & Twohey, 2019). Before the summer of 2018, Ford had told only a few people she would not tell her husband about it until a 2012 marriage counseling session. She had also told a few friends about it but had not revealed his name to them until she saw it on the list of candidates. Ford decided that the right thing to do was to contact her local Representative, who did not return her call. She then left a message on the Washington Post tipline. A few days later, Kavanaugh was officially nominated and Ford

would hear from both her local House Representative Eshoo and Emma Brown from the Washington Post (Kantor & Twohey, 2019).

Ford was hesitant to come forward, she stated that she did not want her identity to be made public and she certainly did not want to testify at any hearing (Kantor & Twohey, 2019; #MeToo, n.d.-b). But she did listen to Rep. Eshoo and wrote a letter to Senator Diane Feinstein describing the assault she experienced.<sup>14</sup> The letter was hand-delivered to Feinstein, who quickly contacted Ford. From that point on, Ford would have very little control over how her story would unfold. Feinstein had recommended that Ford hire Debra Katz and Lisa Banks as her attorneys, largely because of their experience with sexual harassment cases, including Katz's time working on *Meritor Savings Bank v. Vinson*, which set the precedent that sexual harassment was a form of discrimination (Kantor & Twohey, 2019; *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 1986). Ford's attorneys had her take a lie detector test, administered by a former FBI agent and had her collect as much corroborating evidence as she could. She had little evidence, however, mostly relying on the corroborating testimony from her husband and friends that she had confided in, as well as notes from her therapy sessions (Kantor & Twohey, 2019).

While Feinstein had this letter and Ford was working with her attorneys, Ford still had not consented to make her allegations public. By August 30<sup>th</sup>, Ford had decided not to come forward and Feinstein said her team would “continue to honor the request for confidentiality and will not be taking further action unless we hear from you,” (Feinstein, as cited in Kantor & Twohey, 2019: 209). The existence of the letter had been leaked. The Intercept reported on it using vague terms but with enough clues to make it possible for others to figure out who wrote the letter. Ford decided, at that point, that if her identity was going to be made public, it would be on her terms, she told her story to Emma Brown of the Washington Post (Kantor & Twohey,

---

<sup>14</sup> I will discuss the letter fully in the second half of this chapter when the discussion turns to victims' due process.



2019; #MeToo, n.d.-b).

Once the allegations and Ford's identity were published by the Washington Post, the media, Kavanaugh supporters, Republicans and Democrats, and #MeToo movement supporters appeared to ignite. Kavanaugh denied the allegations, and his team of attorneys "combed through dusty yearbooks and public records in an attempt to gather information about the night of the Maryland house party at which Ford says a 17-year-old Kavanaugh assaulted her so aggressively that she feared for her life," (Cook, 2018). Kavanaugh's official statement denied the allegations, and stated he had never been at that party, his two friends who too were named in the allegations also denied any knowledge of the incident or the party in question (Hirshman, 2019; Kantor & Twohey, 2019; Yglesias, 2018).

Initially, the lawmakers agreed to be respectful to Ford, to treat this survivor with empathy and humanity and make sure that the United States Senate in 2018 doesn't send the signal it sent to millions of women in 1991 who were scared to speak up, afraid to share their stories, and watched on television as someone very much like them was attacked and maligned. (Democratic Senator (Washington) Patty Murray, as cited in Stanley-Becker, 2018).

The 1991 case Murray referenced was the treatment of Anita Hill by the Senate Judiciary Committee during her testimony in the confirmation hearing for Justice Clarence Thomas. Hill had come forward alleging sexual harassment by Thomas in the early 1980s. She was questioned by an all-white, male committee, which left her feeling antagonized, and maligned. While her testimony led to important conversations about sexual assault, minimal progress had been made in Washington since the 1991 hearing. Hill, speaking on the allegations against Kavanaugh, said in a statement that "the government needs to find a fair and neutral way for complaints to be investigated. I have seen firsthand what happens when such a process is weaponized against an

accuser, and no one should have to endure that again,” (Hill, as cited in Stanley-Becker, 2018).

As the negotiations between Ford’s lawyers and the chair of the judiciary committee, Chuck Grassley, went on and Ford was debating whether she should testify, the public, media, and politicians spoke out. Ford’s attorneys requested that an FBI investigation be conducted, however, the FBI investigation was minimal (Kantor & Twohey, 2019). The message coming from Kavanaugh supporters shifted, as they began to question Ford’s account, and her motivations, and argue that the assault was not that bad. One Trump supporter was quoted on CNN saying, “tell me what boy hasn’t done this in high school,” (Yglesias, 2018).

A common refrain, however, centered around the amount of time between when the incident allegedly took place and when Ford came forward asserting that he should not have to pay now for the drunken mistakes of a teenager. Rod Dreher was quoted as saying:

I do not understand why the loudish drunken behavior of a 17-year-old high school boy has anything to tell us about the character of a 52-year-old judge. By God’s grace (literally), I am not the same person I was at 17. This is a terrible standard to establish in public life. (Dreher, as cited in Yglesias, 2018).

There was a lot of discussion of whether the allegations, even if true, were pertinent to Kavanaugh’s qualifications as a Supreme Court Justice. Echoing many of the points made about other #MeToo allegations, was the question of whether we should punish someone now for acts they did years ago.

In September 2018, while Washington was focused on the potential testimonies of Ford and Kavanaugh, supporters of Kavanaugh began tweeting and rallying in a show of solidarity. The #HimToo hashtag went from being about supporting male survivors to supporting men accused of assault (Ellis, 2018). The discourse in the news and social media began to shape largely around a fear that all men, regardless of innocence, could be accused of years-old assaults

and the world was no longer “safe” for men. This sentiment was exemplified by the statement Trump made on October 2<sup>nd</sup>, “[i]t’s a very scary time for young men in America when you can be guilty of something you may not be guilty of. This is a very difficult time... Women are doing great,” (Trump, as cited in North, 2018). The public debates on Twitter, Facebook, at The White House, and in the media became a microcosm of the larger #MeToo movement and it galvanized many people to come forward either to support Kavanaugh or share their fears for their husbands, sons, and brothers or to support Ford and share their own stories of sexual assault and harassment.<sup>15</sup>

This case posed many puzzling issues for law, politics, and the #MeToo movement. In the discourse and comments, many people argued that Kavanaugh was innocent and that Ford was a tool used by the Democrats to derail the nomination when nothing else was working, while some felt that Ford was part of this conspiracy (Crary, 2018). Questions of innocence, concerns about statutes of limitations, and the presence or lack of evidence supporting Ford’s story, really came down to fair and standard processes for the accused.

This chapter untangles what due process meant in the rhetoric of sexual violence in the #MeToo era. In discussing what due process means, I distinguish between procedural (criminal and civil) and administrative due process while also discussing how the media and detractors of the movement engaged in discourse that reflected a third kind of due process, one I call social due process. When the backlash and supporters of the accused appealed to social due process, they were using an important legal term to control the discourse, thus obscuring the important conversations coming out of #MeToo, such as understanding consent.

After covering these topics, I will discuss how the movement shifted the focus of justice to a process that was also fair for the victim. The Kavanaugh case, while a running thread

---

<sup>15</sup> There is more discussion of the support for Ford and stories shared in the second half of this chapter.

throughout the chapter, is not the only one discussed. To examine the processes that journalists went through when investigating allegations, this study draws largely on the case of Harvey Weinstein, the media mogul whose violence was the catalyst for the #MeToo movement. I will also discuss briefly the case of Bill Cosby, who was accused by several women of drugging and raping them, Cosby's case was an example of due process working for the accused and then for the accusers. He was tried twice, once before the #MeToo movement which resulted in a hung jury, and again during the height of the movement. The second trial saw Cosby convicted of drugging and raping Andrea Constand. All of these cases, the media discourse, and social media conversations illuminated how the law was often understood by everyday people.

### ***Legal Consciousness, Due Process, and #MeToo***

Before we can understand how due process was used in the discourse on #MeToo and sexual violence, it is important to explore legal consciousness and how people's beliefs and ideologies of law combined with the everyday machinations of the powerful, thus reifying the legal institutions and patriarchal norms of power. In their study of law in every day, Ewick and Silbey (1998) argue that law is made of a myriad of people, organizations, and viewpoints:

ranging from the Supreme Court to the local building inspector—each operating with different purposes and with vastly different material and symbolic resources. The law also includes institutionalized procedures that range from licensing practices and rational filing systems to forensic science and abstract rhetorical argumentation. So it is not surprising that law appears to us in varied and sometimes contradictory ways. (Ewick & Silbey, 1998, p. 17)

We see these contradictory ways the law of due process appeared in the discourse on the #MeToo movement, in particular in the case of Kavanaugh, where there were questions of fairness and due process with the confirmation.

Social media sites, like Twitter, Facebook, and Reddit, have also played a significant role in making spaces and creating opportunities to explore, or at least argue, points of law. Twitter, for example, provides opportunities for legal institutions and actors to reach out to everyday citizens and for everyday citizens to interact with the law in at least a virtual forum. When the allegations came out in 2017 about Weinstein’s assaults on numerous women<sup>16</sup> and the #MeToo movement took off, much of the public seemed primed for change and turned to their knowledge of the law to understand the movement, sanctions, and survivors’ allegations. Among victims and their supporters, the discussion of these stories focused on the inadequate responses by the legal system, fears of retaliation, and ineffective HR departments. Among the supporters of the accused and the backlash movement, the discussion focused on the idea that “women” were out to destroy “men” and on claims that due process was being denied to the accused.

Legal consciousness scholarship has looked at a vast array of social and legal issues, with the primary goal of looking at the law from the bottom up by examining how people in their everyday lives interact with or understand the law and legal institutions (Blackstone et al., 2009; Ewick & Silbey, 1998; L. E. White, 1990; Yngvesson, 1988). More importantly, legal consciousness studies tell scholars how legal institutions maintain their authority, and how power maintains the status quo through the average person’s perception of law (Ewick & Silbey, 2020; Young & Billings, 2020), perceptions that are often manipulated through media discourse. Ewick & Silbey contend that:

Legal consciousness is not a trait of social actors nor solely ideational; it is a type of collective social practice reflecting and forming social structures. Legal consciousness is a reciprocal process in which the meanings given by social actors (both individual and collective) to their world become patterned, stabilized and objectified. These meanings,

---

<sup>16</sup> As of June 2020, 100 women had come forward with allegations against Weinstein.

once institutionalized, become part of the material and discursive systems that limit and constrain future meaning making. By virtue of being institutionalized, these systems are resilient, but not invulnerable to critique and change. (2020: 175)

The #MeToo movement was a way of challenging the meanings and “discursive systems.”

Systems that have perpetuated sexual violence and rape culture, ignored the allegations when survivors did come forward with their stories and maintained power structures throughout all social institutions (churches, schools, workplaces, homes, courts, and state and federal agencies).

The particular goal of this research was to look at what Ewick and Silbey (2020) refer to as “domains of meaning,” and how media discourse of the #MeToo movement, comments from supporters, and the backlash used law, or at least legal terms, to push ideologies and structures of power. Though the data analyzed in this study came from media sources and were shaped by the author and the slant of their readers, I focused largely on their quoted statements. Modern media is often focused on getting ratings and increasing readership, therefore the articles they produce are likely to reflect the views of their audience. It is circular in that the discourse coming out of these sources informs readers and viewers, while the ratings and hits on websites from views let news outlets know how to frame that information in a way that appeals to their audience.

### ***Defining Due Process***

After the #MeToo movement went viral, supporters of the movement, people outraged by the movement, and those somewhere in the middle began raising questions over whether the movement, while doing important work, was also violating the due process rights of the accused. This tweet from conservative commentator Candace Owens (as cited in Crary, 2018) reflected how due process questions were raised: “I’m loving the hashtag #HimToo...It appears to be a movement built of men who have had their lives and families destroyed by false allegations and a lack of due process.”

In particular, these claims about due process showed that people critiquing the #MeToo movement believed that due process protects public opinion, employers, and the media. Due process soon became weaponized (Garber, 2020) to delegitimize the movement, with critics arguing that the movement, media (social, digital, print, etc.), and accusers were ruining the lives of powerful men. However, in the discourse featured in articles, tweets, and comments, there was little concern for what a fair process would be or what would make the movement fair.

Due process is an important right granted to all citizens through the U.S. constitution, essentially, they make up the Bill of Rights. In particular, the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution offer people protections from the government, (Chemerinsky, 2000; Rubin, 1984). While I am critical of the way that due process claims were used in the discourse, I do believe that our due process rights for accused persons are important. Far too many people are arrested, charged, and sentenced for crimes they did not commit. I also believe that due process rights are key to a humane and compassionate system. What I argue here is not that due process should not be a concern, it absolutely should; what I argue in this chapter is that due process claims were used in the discourse to control the narrative about the #MeToo movement and survivors. In that same vein, the discursive use of “due process,” with very little explanation or nuance, also served to obscure any conversations about what rights people have and how survivors could get justice while maintaining the rights of the accused. Which I argue should happen through a survivor or transformative justice approach that never involves the legal system.

When someone files a legal complaint that their due process rights were violated, three main legal criteria must be met. First, there has to be some kind of deprivation, as Chemerinsky notes, “[o]nly if there is a deprivation does the court need to go any further in its procedural due

process analysis,” (2000: 871). Second, it must be a deprivation of “life, liberty, or property” (Chemerinsky 2000: 871). Third, are the actual government procedures and whether they are inadequate to address the deprivation (Chemerinsky 2000). The key to procedural due process claims is whether the state or federal government met these requirements for a due process case because most #MeToo allegations went no further than to tell the story of the assault, many cases had long exceeded the statute of limitations, and the high-profile cases that did go to the court showed no evidence of improper procedures by law enforcement or the courts.

The main issue of concern when due process rights were brought up in response to the #MeToo movement and/or allegations of sexual assault was the fairness of the accused person’s loss of reputation, public respect/regard, and sometimes their job. For example, during the Kavanaugh confirmation hearings. It was frequently claimed that his due process rights were violated, despite the very obvious hearing and opportunity to present evidence and defend himself. President Donald Trump, in a Tweet on February 10, 2018, wrote:

Peoples [sic] lives are being shattered and destroyed by a mere allegation. Some are true and some are false. Some are old and some are new. There is no recovery for someone falsely accused – life and career are gone. Is there no such thing any longer as Due Process?

The concerns of due process when, as in the case of Justice Kavanaugh, the person accused of sexual assault, actually did receive a fair process, determined by adherence to proper legal proceedings, in the judiciary committee hearings suggested that the real concern was the loss of reputation and public opinion. In fact, in the Kavanaugh case investigations were called for; however, the FBI felt they had already finished their background check, after Ford’s allegations were published, the FBI did interview the 3 people Ford identified as being at the party but never interviewed Ford or Kavanaugh about what happened (Kantor & Twohey, 2019).



The confirmation hearing seemed geared in Kavanaugh's favor, as Grassley would not allow any other testimony, except from Ford and Kavanaugh. According to Hirshman (2019, p. 235), "(t)here was other evidence against Kavanaugh...But Grassley and the Republicans seemed determined to confine the evidence to the most conventional and unforgiving format for abused women: her word against his." To further send home the message that Ford's allegations were not going to make a difference, during the hearing Republicans on the committee spent most of their time making statements of outrage on behalf of Kavanaugh. Lindsey Graham stated during his turn at questioning Kavanaugh:

I cannot imagine what you and your family have gone through. Boy, you [Democrats] all want power. God, I hope you never get it. I hope the American people can see through this sham. That you knew about it and you held it. You had no intention of protecting Dr. Ford; none. She's as much of a victim as you are. God, I hate to say it because these have been my friends. But let me tell you, when it comes to this, you're looking for a fair process? You came to the wrong town at the wrong time, my friend. Do you consider this a job interview? (*Transcript of Graham's Remarks on Kavanaugh Nomination*, n.d.)

In this example, there was no discussion of what would be due process in a confirmation hearing. Very rarely did the due process claims made about the movement discuss what actual criminal due process rights were—the constitutional protections people have in the United States to fair and regulated procedures when there is a possibility that the government will take their life or liberty (Chemmerinsky, 1999; Chemmerinsky, 2000). Losing a job or public reputation typically does not fall under this purview.

It is important to recognize that there are different kinds of due process: procedural due process (criminal or civil), administrative due process, and substantive due process. Substantive due process is more the basis of procedural and administrative due process. According to

Chemerinsky (1999, p. 1501) substantive due process “asks the question of whether the government’s deprivation of a person’s life, liberty or property is justified by a sufficient purpose.” The government has to have a significant reason for taking away someone’s “life, liberty, or property.” An example from the #MeToo movement could be the trial of Bill Cosby, the government had to prove that a crime was committed and that it had sufficient reason to charge, convict, and sentence him. Cosby went through two criminal trials, the first ended in a hung jury and he was convicted in the second trial<sup>17</sup> (Giorgis, 2018; Fieldstadt & Reiss, 2018). In the cases like Cosby and Weinstein, where there were criminal trials, the government had significant reason to charge them with crimes. Therefore, their substantive due process protection was met.

Procedural due process, on the other hand, “asks whether the government has followed the proper procedures when it takes away life, liberty or property,” (Chemerinsky, 1999:1501). Using the Cosby example, it is clear that the procedures were followed by the government. He had a fair trial, with a jury of his peers, a right to legal counsel, and the chance to confront and question his accuser. Evidence against him was gathered through lawful procedures, and motions were filed denying the prosecutors from entering several things into evidence. The statute of limitations prevented charges for all but one of his crimes. While Cosby did have his freedoms taken from him when he was sentenced to 3-10 years, this deprivation was only applied after a fair trial, in fact, two fair trials. None of the data from the current study discussed any legitimate procedural due process concerns for cases, such as Cosby or Weinstein, where someone was arrested or tried.

The courts also recognize administrative due process as important to maintaining 14<sup>th</sup>

---

<sup>17</sup> Further proving that due process existed for Cosby, his conviction was later overturned by the appeals court (Savage, 2021).

amendment rights to liberty and property. Administrative due process ensures that the administrative state, government regulators, and bureaucratic agencies follow fair processes when enacting or enforcing the law. One well-known example of administrative due process was the case of Kentucky couples who were denied marriage licenses by the county clerk, Kim Davis (Williams, 2018). Refusing them the license violated their right to marriage, having recently been considered a right of liberty by the Supreme Court of the United States. Davis was a representative of the administrative state and therefore was required to follow a fair procedure, her own religious beliefs were not substantial reason to deny the couples their right to marry.

Under the #MeToo purview, violations of administrative due process could be government agencies, such as the Equal Employment Opportunity Commission (EEOC) filing charges against a company for sexual harassment complaints without investigating the claims or allowing the company time to resolve the complaint. None of the media articles discussed examples of government regulators violating administrative due process. However, some stories of survivors did talk about their complaints being ignored by government agencies. One government agency that was consistently cited for ignoring allegations was the Office of Compliance (OOC), similar to a Human Resources office but for congressional staff.

The options for congressional staff to report an allegation as serious as sexual harassment are decidedly insufficient, with Rep. Jackie Speier, D-Calif., who recently came out with her own story of being assaulted as a congressional staffer, describing the process as “constructed to protect the institution—and to impede the victim from getting justice.” (Gale, 2017)

This quote, from an article about how hard it was to report congressional staffers and lawmakers when they sexually abuse a coworker or employee, serves as an example of legal consciousness about sexual violence maintaining power structures. When even government institutions cannot

sufficiently address sexual harassment in their own offices, it is unlikely that other institutions will effectively address theirs.

### **Due Process for the Accused**

Harvey Weinstein's name now seems synonymous with sexual violence, but before October 2017 his sexual behaviors were just a well-known secret in Hollywood and among his employees at The Weinstein Company (Farrow, 2019; Kantor & Twohey, 2019). Bringing his violence to light, however, was met by considerable questions about fairness, defamation, witch hunts, and whether it was as bad as the articles and exposés suggested. The articles written by Ronan Farrow (2017) and Jodi Kantor & Megan Twohey (2017) set in motion a significant fall from grace that would have ripple effects worldwide.

For decades, Harvey Weinstein was allowed to run Hollywood<sup>18</sup> where he was accused of frequently committing violence towards the women on his staff, actresses, and models, violence that included numerous acts of groping, forcing women to watch him bathe, making women shower while he watched and masturbated, forcing them to give him massages in the nude, forced oral sex, and rape<sup>19</sup> (Farrow, 2017, 2019; Kantor & Twohey, 2017, 2019). It was reported that his habit was to schedule meetings with up-and-coming actresses or requested the assistance of one of his employees. The meetings would often be scheduled at the restaurant of the hotel he was staying in, he would then suggest, sometimes forcefully, that they meet in his room instead. It was alleged that he would frequently forgo the pretense of the hotel restaurant and insist the actress meet him in his room. Many women, actresses, production assistants, and writers, would recount that when they arrived at his room, he would be dressed only in a robe. The meeting would quickly turn to advances on the women or requests for massages, that then would turn into

---

<sup>18</sup> According to Harvey Weinstein's Internet Movie Database (IMDb) page, he produced 330 shows and films, through his companies: Miramax and The Weinstein Company (*Harvey Weinstein*, n.d.).

<sup>19</sup> He was eventually convicted of several acts in New York and California.

more requests (Farrow, 2017, 2019; Hirshman, 2019; Kantor & Twohey, 2017, 2019).

According to news accounts, the women went along because they were afraid, overpowered, threatened, or coerced, and often felt obliged to participate after he told them of other actresses who did these things, manipulating them into giving into his demands for sex. In Kantor and Twohey's book *She Said*, Gwyneth Paltrow, one of the actresses who came forward about Weinstein's alleged harassment, told the journalists that she "had learned that the producer had used her—her name, her Oscar, her success—as a means of manipulating other vulnerable women." Paltrow then stated, "[h]e was pointing to my career and saying, 'Don't you want what she has,'" (Paltrow, as cited in Kantor & Twohey, 2019).

During that time, Weinstein only faced legal consequences for his actions twice. One was a lawsuit that was settled out of court and led to a Non-Disclosure Agreement (NDA) and the other was reported to the NYPD (Farrow, 2019; Kantor & Twohey, 2019). In the second case, police officers pursued the allegations and even gathered evidence from a hidden recording device that showed unequivocally that Weinstein had harassed the woman (Farrow, 2017, 2019). Ronan Farrow's (2017) confidential police source in the Manhattan Special Victims Unit told him "[w]e had the evidence...It's a case that made me angrier than I thought possible, and I have been on the force a long time." The case was later dropped by the New York City prosecutor after a media blitz by the Weinstein team did its best to discredit the victim (Farrow, 2019). In Farrow's book *Catch and Kill*, about his experience investigating and trying to get the story of Weinstein's violence published, he stated that:

The NYPD was incensed by the decision [to drop the case]—so much so that the department's Special Victims Division launched an internal review of the last ten criminal complaints in Manhattan stemming from similar allegations of groping or forcible touching. 'They didn't have a quarter of the evidence we had,' still another law

enforcement source said of the cases. ‘There were no controlled meets, and only rarely controlled calls.’ Yet, that source said, ‘all of them resulted in arrests.’

Until the Farrow (2017) and Kantor & Twohey (2017) articles were published in October 2017, the justice process leaned heavily in favor of Weinstein.

The articles revealing Weinstein’s violence took several months to research and involved thorough processes. Farrow (2019) began researching the story nearly a year before it was released. He initially was working on the story for a short segment on NBC’s Today Show. Farrow and his producer began collecting statements, some on camera and some off, from women who had reportedly been harassed and assaulted by Weinstein. They crosschecked each story with potential witnesses, gathered evidence (including the recording from the NYPD police sting), and talked to many women who knew nothing of each other but had very similar stories to tell. As part of this journalistic process, Farrow and his producer had NBC attorneys sign off on the validity of the story. However, in the end, NBC decided not to air the story.<sup>20</sup> Farrow took it to the *New Yorker*, gathering more stories and evidence, *The New Yorker’s* attorneys signed off, and then gave Weinstein a chance to respond to the story, which he did. Kantor and Twohey (2019) stated a similar process in preparing their story for the *New York Times*.

While many allegations were disseminated to the public through similar journalistic processes, many others came out when heads of businesses, scholars, church leaders, etc. were either fired or resigned from their positions, typically after internal investigations by the companies and organizations for whom they worked. For example, Les Moonves, the former head of CBS, resigned after an investigation into several allegations that he harassed and assaulted women at CBS (Dessem, n.d.; Puente, n.d.).

---

<sup>20</sup> According to Farrow’s book *Catch and Kill*, the head of NBC News bowed to pressure from Weinstein’s team of lawyers, private detectives, and public relations experts.

Despite these procedures being followed, concerns about due process continued as intimated discursive expressions of what I call “social due process.” Social due process refers to the perceptions of fairness for social processes, meaning the perceptions demonstrated through critiques of #MeToo. They are the fair standards, the legal protections, people assume should be there, but are, in fact, non-existent. Social due process is a figment of the public imagination and the unconscious belief that law exists all around us, like a delicate vase covered in bubble wrap.

### ***Due Process and #MeToo***

After the dust from the initial tweets declaring “me too” began to settle in late 2017, a backlash to the movement started taking shape. Often the key argument from the backlash was that the movement violated the rights of those accused by essentially forgoing any kind of formal legal processes and instead finding the accused guilty through the media and public opinion. Further, backlash claimed that any consequences the accused faced, such as losing their jobs, were based not on any kind of fair process but in reaction to the fervor with which the #MeToo movement excoriated these men. Due process became a sort of rallying cry to revile the movement and to push back on attempts to challenge rape culture and violence. But what was clear from the study was that there were few discussions of what due process is. Much of the time the only thing said was something similar to this quote from an article about the Kavanaugh hearing:

The challenge now...is to figure out how to deal with unacceptable behavior so that ‘women aren’t hurt in the progress being made in the workplace,’ while at the same time ‘making sure that due process is being preserved. (Representative Debbie Dingell, as cited in Foran, 2018).

Another example was in an article about former Senator Al Franken and the allegations made about him groping a woman while on the USO tour, allegations that had photographs to back up

the claims, and an admission of guilt from Mr. Franken. Senator Dick Durbin was quoted as saying to CNN, “Al Franken...has also submitted his whole case to the Senate Ethics Committee. I think that was the right thing to do. Let’s have a hearing, an investigation. Let’s let this really reach whatever conclusion it is going to reach, but through a due process,” (Durbin, as cited in Hohmann, 2017). In this last quote, it was unclear what due process he was referring to, some kind of standard process for the Ethics Committee or a standard process for people to believe the allegations.

The two quotes cited above, about Kavanaugh and Franken, highlighted another interesting phenomenon, that they were said by politicians, who should have a good grasp of what due process means. Both Dingell and Durbin hold advanced degrees from Georgetown, Durbin’s being a law degree (*About Dick Durbin: U.S. Senator Dick Durbin of Illinois*, n.d.; *Meet Debbie: Congresswoman Debbie Dingell*, n.d.). Many of the people who brought up due process concerns in this study had law degrees. One law professor, Zephyr Teachout, was cited in an article on the pressure for Al Franken to resign saying: “[z]ero tolerance should go hand in hand with two other things: due process and proportionality,” (Teachout, as cited in Flanagan, 2018). This is true, it should be, however, Franken was not facing a criminal trial.

The article continued to say that Teachout’s words were “a balm of Gilead for anyone hoping to strengthen the movement by adding reason and fairness to its core ideals— seemed not to register within the larger, ‘burn it down’ spirit animating the mob,” (Flanagan, 2018). It also claimed that reason and fairness were not ideals of the movement, demonstrating a significant problem with the movement that was overlooked in this discourse, the mismatch between what leaders said the movement was about and what the backlash claimed about the movement. There was little evidence provided to suggest that the #MeToo movement was promoting a “zero tolerance” perspective or that it was a “mob” ready to “burn it down.” It should also be noted



that Flanagan's citation of Teachout was missing considerable context. The quote in her New York Times Op-Ed<sup>21</sup> continued, stating:

As citizens, we need a way to make sense of accusations that does not depend only on what we read or see in the news or on social media. Due process means a fair, full investigation, with a chance for the accused to respond. And proportionality means that while all forms of inappropriate sexual behavior should be addressed, the response should be based on the nature of the transgressions. (Teachout, 2017)

In Teachout's article, she was making a case for Congress to do a thorough investigation and then determine whether Franken should resign. In Flanagan's essay for The Atlantic, there was no clarity about the meaning of due process and who should be applying it to the Franken case.

Often, due process statements began by expressing sympathy for the survivor but then hedged that support by mentioning due process and their worry that the movement or allegations would deny the accused their rights. Senator John Kennedy of Louisiana was quoted saying:

I didn't realize how prevalent it was until the MeToo movement started...I've talked to friends of mine who happen to be women and they say, what planet did you just parachute in from, this has been going on forever...I'm not saying I never saw anything, but I just had no idea, and I'm convinced it's real. And I understand the reluctance to speak up. And I think we've got to deal with it. But I don't think you deal with it by throwing out due process. (John Kennedy, as cited in Foran, 2018).

The disquietude over #MeToo due process highlighted in this quote demonstrated the need for a movement like #MeToo, to show the prevalence of sexual violence, and how it was easily dismissed through an avouchment of due process. Unfortunately, instead of discussing how to ensure sexual violence claims were investigated and social norms about sex were being

---

<sup>21</sup> It should be noted that Teachout's Op-Ed in the New York Times was not part of my sample.

transformed, the discourse on due process tended to shut it down.

Some articles did discuss due process, defining it, and the scope of due process rights for readers. In an Op-Ed responding to President Trump's Tweet questioning due process after allegations of domestic violence were made against Rob Porter, his former White House Staff Secretary, criminal defense attorney Caroline Polisi for CNN stated:

In this aftermath of #MeToo, it is critically important to make the distinction between courts of law and courts of public opinion. Trump's conflation of the two by way of a disingenuous appeal to "Due Process" is a commonly used, but ultimately dangerous argument, because it damages our collective understanding of the issues, both legal and otherwise...Due process, as set forth in the Fifth and 14<sup>th</sup> Amendments to the United States Constitution, affords citizens legal procedural safeguards against governmental deprivation of 'life, liberty, and property.' That's it. It applies to government action not the news media, or...to political races or social media. (Poli, 2018, para. 3-4).

Despite such attempts to explain due process to the public, the most common critique of the movement remained centered around due process for the accused and claiming it demonstrated the vengeful nature of angry women trying to take men down (a discursive trope discussed in chapter four).

### ***Conceptualizing a 3<sup>rd</sup> Due Process: Social Due Process***

The interpretations critics and supporters of the accused had of due process seemed to be a mix of substantive and administrative due process. These critics and supporters of the accused argued that the men losing their jobs, their political and social power, losing their families, or having comedy tours canceled were victims of some powerful entity that was trying to kick men to the side and take over the world. These critics of the movement expressed a legal consciousness of rights, an appeal to the justice system to protect the status quo that privileged

white, cis-gendered men. Those with male privilege have enjoyed a kind of “cultural capital” that has allowed them “to walk the tightrope more boldly because they assume there is a net beneath them” (Young & Billings, 2020, p. 53). For so long, men, especially white, wealthy, and middle-class men, have enjoyed the security that law would protect them, and will always be their safety net. Yet for critics of the #MeToo movement, it took that safety net away from men. Due process claims were a way of getting that cultural capital back, appealing to the law to continue protecting cis-gendered (white) men and to continue protecting institutions of patriarchy and power.

Overt misogyny was often reflected in the readers’ comments on articles about #MeToo and sexual assault. For example, readers commented on an article about the actor Matt Damon announcing that he would no longer comment on #MeToo and his work with Harvey Weinstein, one reader commented that “Damon is a liberal puke but your [sic] are correct about the feminist Hollywood lynch mob. Nothing he says will keep them happy. Only gay and de-nutted men are OK,” (Wontonx, as cited in Hudson, 2018). This was followed by a comment by reader “CarpeDiem” saying “The left-wing pinko’s are trying to normalize ending free speech and due process right now by publicly crucifying some of their own.” Comparing the women and supporters of the #MeToo movement to lynch mobs, literal mobs of people who tortured and killed Black men, women, and children during and after the Jim Crow era, demonstrated how critics equated violent murders with their loss of freedom to harass and abuse women.

This amalgamation of substantive and administrative due process appealed to what I refer to as social due process. Social due process is more of an ideal, and some people look at these allegations and whether their fear was realistic or not, they pictured this happening to them. They seemed to fear that if someone with the wealth and power of Harvey Weinstein could not escape the “wrath” of #MeToo then they had no hope if it happened to them. Therefore, they imagined

that the government had a duty to protect them from arbitrary allegations of sexual assault, which was true if the cases were reported to the police and a criminal investigation occurred, which was not the case here. They wanted to believe that the safety net that men have relied on for so long would protect them from social and public censure. Social due process was a way of applying their legal consciousness of a legitimate legal term to protect them from social forces challenging the hegemonic power of law and men. The #MeToo movement gave the impression that privilege was no longer there, and that the field of legal protections was becoming a bit more equal.

### ***The Process Matters***

Perceptions of fairness in the justice or legal system rely on the processes that are adhered to, whereas procedural justice scholarship argues that regardless of the outcome, it is the perceptions of fairness in the process that is important to determining satisfaction in disputes (Tyler, 2003; Epp et al., 2014). While there is research supporting these claims about the processes of justice, a substantial amount of this research focuses on law enforcement interactions with citizens, for example, Epp et al.'s (2014) study of citizen perceptions of interactions with Kansas City police officers during traffic and intelligence stops. In contrast, Jenness & Calavita's (2018) study of prisoner grievances found that in the high-stakes setting of the prison, where “the outcome of a prisoner’s grievance can sometimes literally mean life or death,” the prisoners’ satisfaction was deeply dependent on the outcomes. When their grievances were denied, they viewed the process as unfair. Jenness and Calavita (2018) claim that studies of procedural justice should be more “context-specific.” In the case of sexual violence, research on procedural fairness should include the perceptions of survivors as well as the perceptions of perpetrators, as both actors experience the legal system in disparate ways and, in this setting, are likely to perceive fairness based on the outcomes rather than on the process.

Arguing for a regulatory model of justice, or procedural justice, Tyler (2003) claims that it is vital for members of the public to believe in the fairness of criminal justice procedures and interactions with authority, otherwise, people will view the system as illegitimate. For survivors, multiple obstacles in the process of justice may hinder their perceptions of the system as legitimate, making it more likely that they will drop their cases or refuse to involve the justice system in the first place (Spohn & Tellis 2012). They lack what Young and Billings (2020: 50) refer to as “cultural capital” which they define as “an important structural factor” which involves “people’s negotiation of the tension between state-conferred legal rights, on one hand, and requests by state law enforcement authorities, on the other.” Everyone in the United States has the right to work and live without discrimination and harassment, however, this equality in rights does not play out in reality. The experiences people with lower cultural capital (women, minorities, LGBTQ, disabled persons) have with legal institutions led them to believe that the state would not protect them, yet they look towards state institutions to do just that.

This duality of law and the consciousness of survivors was demonstrated in several studies where survivors reported feeling that they were poorly treated by unfair criminal justice procedures and felt dissatisfaction with their case (Ahrens, 2006; Campbell et al., 2001). When survivors disclose their experiences to officials they are often met with disbelief and/or victim blaming, which can cause many to stop participating in the process, giving up on any notion of fairness for victims (Ahrens, 2006; Bumiller, 1987). Survivors often find themselves defending their actions to officials, to prove their innocence, and their lack of consent makes the legal process hostile and unjust for many survivors (Bumiller, 1987; Frohmann, 1991).

Conversely, the accused were likely to also feel dissatisfaction with the process of justice, in particular in situations where their cases are featured prominently in the press. In the case of #MeToo, the outcomes, including being fired, arrested, or informal sanctions through

shame, shaped the perceptions of fairness for a considerable portion of the discourse, survivors, and critics of #MeToo. In their study of the #MeToo backlash on Twitter, Nutbeam and Mereish (2021) that it was common to express that not only was #MeToo unfair for the accused but that accusers should be punished for damaging an accused person's reputation.

As was common when "due process" issues were claimed about the #MeToo movement, there was no discussion in the news interviews, articles, or statements of what it would look like for businesses and government agencies to investigate and determine the punishment in a fair way or what protections from public opinion might entail. This might suggest that Tyler (2003) was right, the process matters, but since the actual processes employers used were never illuminated, the real story may be that the processes were indeed fair but the assumption was otherwise because the media and readers were basing their perception of fairness on the outcome while blaming the process. When people engaging in the backlash movement saw a powerful man they admired lose his job, they often assumed the process behind the firing must have violated the man's rights. However, they did not know if that was true or provided any evidence that an injustice occurred. Therefore, it was the outcome that mattered when perceiving fairness for the perpetrators, in support of Jenness and Calavita's (2018) findings.

### **#MeToo and Due Process for Survivors**

When Christine Blasey-Ford came forward with her accusation of assault by Supreme Court Justice Kavanaugh, reactions were swift and varied. Responses to her allegations (both supportive and unsupportive) reflected what victims of sexual violence frequently experience and why they do not come forward or drop the charges. Her story, as well as others, told in the #MeToo movement, signified a lack of due process for victims, meaning criminal justice process standards and fair procedures. While there was a significant focus in the data on due process for the accused, there were also discussions of the legal process for victims and the unfair

experiences they had with the system. In this second part of the chapter, I turn to Professor Christine Blasey Ford's experiences, and the experiences of many others, that reflected what the academic literature has long said about the system's treatment of survivors, rape myths,<sup>22</sup> and "real rape."

In the summer of 2018, Ford sent a letter to Senator Feinstein describing the alleged assault she experienced in the 1980s, information she felt was important for the Senate to consider when confirming Judge Brett Kavanaugh (Kantor & Twohey, 2019). On July 30<sup>th</sup>, she wrote:

Dear Senator Feinstein:

I am writing with information relevant in evaluating the current nominee of the Supreme Court. As a constituent, I expect that you will maintain this as confidential until we have further opportunity to speak. Brett Kavanaugh physically and sexually assaulted me during High School [sic] in the early 1980's. He conducted these acts with the assistance of his close friend, Mark G. Judge. Both were 1-2 years older than me and students at a local private school. The assault occurred in a suburban Maryland area home at a gathering that included me and 4 others. Kavanaugh physically pushed me into a bedroom as I was headed for a bathroom up a short stairwell from the living room. They locked the door and played loud music, precluding any successful attempts to yell for help. Kavanaugh was on top of me while laughing with Judge, who periodically jumped onto Kavanaugh. They both laughed as Kavanaugh tried to disrobe me in their highly inebriated state. With Kavanaugh's hand over my mouth, I feared he may inadvertently kill me. From across the room, a very drunken Judge said mixed words to Kavanaugh [sic] ranging from "go for it" to "stop." At one point when Judge jumped onto the bed, the

---

<sup>22</sup> Typically based on stereotypes people, both citizens and criminal justice actors, believe how a "real" victim should act, look like, and the activities they participate in.

weight on me was substantial. The pile toppled, and the two scrapped with each other. After a few attempts to get away, I was able to take this opportune moment to get up and run across to a hallway bathroom. I locked the bathroom door behind me. Both loudly stumbled down the stairwell, at which point other persons at the house were talking with them. I exited the bathroom, ran outside of the house and went home.

I have not knowingly seen Kavanaugh since the assault. I did see Mark Judge once at the Potomac Village Safeway, where he was extremely uncomfortable seeing me.

I have received medical treatment regarding the assault. On July 6, I notified my local government representative to ask them how to proceed with sharing this information. It is upsetting to me to discuss sexual assault and its repercussions, yet I feel guilty and compelled as a citizen about the idea of not saying anything.

I am available to speak further should you wish to discuss. I am currently vacationing in the mid-Atlantic until August 7<sup>th</sup> and will be in California after August 10<sup>th</sup>.

In Confidence,

Christine Blasey (Kantor & Twohey, 2019, p. 199-200).

After the existence and contents of this letter were revealed to Congress and the public, politicians and everyday citizens began debating the credibility of her claims and whether they should disqualify Kavanaugh nearly 40 years later (Scott, 2018). These allegations would also spark many survivors to come forward with their own stories of sexual assault, many also deploying #whyIdidntreport on social media to show the public and political leaders that it was very common for victims to never come forward or to wait until they were much older (Hatch, 2018).

After much back and forth between Ford's attorneys and Senator Grassley, Ford finally did agree to testify before the committee. In Ford's opening statement, she said:



I am an independent person and I am no one's pawn. My motivation in coming forward was to be helpful and to provide facts about how Mr. Kavanaugh's actions have damaged my life, so that you could take into serious consideration as you make your decision about how to proceed. (Ford, as cited in Kantor & Twohey, 2019).

The Republican judiciary committee members had a prosecuting attorney from Arizona, Rachel Mitchell, question Ford on their behalf, as they were all men and didn't want the optics similar to what Anita Hill endured from an all-male committee 30 years prior (Kantor & Twohey, 2019; (J. Weiss, 2018). While viewing the hearing, writer Paul Waldman (2018) remarked:

The most powerful moment so far came when Ford was asked what most stays in her memory from the attack, and she said it was the laughter: Kavanaugh and his friend Mark Judge, laughing with each other as she was gripped by terror.

Ford's testimony affected people in many ways, Prosecutor Mitchell (Kantor & Twohey, 2019) said to Ford after her testimony "I'll be praying for your safety," an ominous comment but ultimately prophetic as Ford faced several threats to her and her family for months after (Kantor & Twohey, 2019).

In stark contrast to Ford's calm manner, Kavanaugh's testimony showed considerable outrage, often raising his voice while declaring his innocence. The following is the opening of his statement at the hearing:

I categorically and unequivocally deny the allegations against me by Dr. Ford. I never had any sexual or physical encounter of any kind with Dr. Ford. I never attended a gathering like the one Dr. Ford describes in her allegation. I've never sexually assaulted Dr. Ford or anyone...This whole two-week effort has been a calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election...My family and my name have been totally and permanently destroyed by

vicious and false additional accusations...If every American who drinks beer or every American who drank beer in high school is suddenly presumed guilty of sexual assault, we'll be in an ugly new place in this country. (Kavanaugh, as cited in Kantor & Twohey, 2019, p. 235-236).<sup>23</sup>

Kavanaugh's testimony, while doing little to sway Democrats on the committee, was impassioned enough to reaffirm Republicans' support for him, he was then confirmed to the court.

Kavanaugh's statement that Ford's allegations and testimony were nothing more than an "orchestrated political hit," was a common refrain found in the present study. Articles in this sample discussed political motivations, either by Ford herself or by Feinstein and other liberals who were using her as a tool for their anti-Trump agenda (Bacon & Simon, 2018). For example, one Kavanaugh supporter at a rally told journalists that "I'm concerned that the allegations against Brett Kavanaugh are not substantiated, and there seems to be a strong political motive," (as cited in Bacon & Simon, 2018). This statement echoes similar statements made on conservative news shows. Kellyanne Conway's statement about the fear many women were expressing for the men in their own lives, said: "that during the Kavanaugh confirmation fight, women in America saw a man suffering from 'political character assassination, and also we looked up at him and saw possibly our husbands, our sons, our cousins, our coworkers, our brothers," (Conway, as cited in North, 2018). The Kavanaugh case brought up so many fears for women and men that #HimToo<sup>24</sup> switched from being a way to show support for male survivors to be a show of support for men accused of assault (Ellis, 2018).

Another common response to Ford's testimony was disbelief, an insidious response consistent with prior research on sexual violence (Ahrens, 2006; Nutbeam & Mereish, 2022).

---

<sup>23</sup> The other "false allegations" were from a woman he went to college with who later said she couldn't be sure if it was Kavanaugh who exposed himself to her. The other was brought by a client of attorney Avannetti, who claimed she had been gang raped by Kavanaugh and friends, however, there was no evidence this ever took place.

<sup>24</sup> #HimToo is discussed further in chapter four.

Senator Orrin Hatch of Utah, after watching Ford's testimony, told reporters, "Clearly somebody's mixed up...I think she's mistaken, I think she's mistaken something that I don't know, and I don't know her," (Hatch, as cited in Krieg, 2018). One particularly public declaration of disbelief came from President Trump at a rally when he appeared to mock Ford's testimony, mimicking a woman's voice said: "I don't remember...How did you get home? I don't remember. How'd you get there? I don't remember. Where is the place? I don't remember. How many years ago was it? I don't know," (Trump, as cited in Foran, 2018). Memory issues, common with trauma, were given in the discourse and critiques as a rationale for disbelieving victims. Trauma affects memory in many ways, often leaving people with fragments of the event, or they remember the event out of order, still, others remember very little about it at all (Campbell, 2012; Cuevas et al., 2018; Kelly & Valentine, 2018; Venema, 2016). This is true of any traumatic event, but when it comes to sexual violence problems with memory are often used to discredit the survivor; which was true for victims' experiences before #MeToo and also levied against them in response to their #MeToo declarations.

One other theme from Kavanaugh supporters that often appeared in the data was this belief that the assault she described was not as bad as other kinds of assaults, that since she was not raped there was no reason to bring it up now. Especially after nearly 40 years. One journalist summed it up as an "unofficial argument" by Republicans:

Officially, the case for Kavanaugh is that he did not, in fact, ever trap Christine Blasey Ford in a room, put his hand on her mouth to stop her from screaming, and attempt to force himself on her, only to drunkenly fumble and allow her to stumble out of his grasp. The unofficial argument, offered by Rep. Kevin Cramer (R-ND) and others, is that at the end of the day, what Ford describes just isn't that bad. (Yglesias, 2018).

Putting some kind of hierarchy on traumatic events was a way to delegitimize someone's

suffering, to perpetuate silence around sexual violence (Bumiller, 1987).

While there were various reasons given to discredit Ford, Kavanaugh supporters made it clear that the #MeToo movement was to blame for Ford's allegations. Writer Christine Flowers stated, "I think she allowed herself to be used as a valuable tool in the unleashed fury of the #MeToo movement," (Flowers, as cited in Crary, 2018). However, the main goals of the movement were to help survivors heal, support one another, and challenge the injustices most survivors experienced after the assault (Milano, 2017). The discourse and beliefs about sexual violence reflected rape myths and misconceptions about sexual violence and survivors. Briefly, these rape myths are assumptions made about specific events, victims, and perpetrators that minimize the allegations and often put the blame for the violence on the victims (Edwards et al., 2011; Franiuk et al., 2008).

Rape myths include perceptions of "real rape" where people question the veracity of the story, often when the perpetrator is someone known to the victim (Frohmann, 1991). Other myths center around different characteristics of the survivor and their actions during and after the event, for example suspecting that because the victim did not fight back or try to run away, they must have consented to the assault. There are assumptions made about alcohol and drug use, suggesting that if the victim willingly got drunk or did drugs, then they were complicit in what happened. Victims are also accused of asking for it when they dress in provocative ways or go to dangerous places, such as going to a nightclub alone. Myths also help inform perceptions of the perpetrator, especially if that person is from a wealthy or middle-class white family or if he is a star athlete (Kosloski et al., 2018). These myths about rape and who a "real" victim was, were not only present in the data about Christine Blasey Ford, but also about numerous allegations during the #MeToo movement.

## *Victim Experiences with the Criminal Justice System*

For survivors engaged in the movement, their narratives were about experiences they had with past injustices and retaliation when they reported violence, both to police and to their employers. They often talked about accusations being ignored by HR departments and bosses, for example, one survivor stated that when she reported her supervisor, “human resources, they put me ‘on trial’ making it sound like I had fabricated the incidents to retaliate for me being fired,” (as cited in Bennett, 2018). In an article about sexual violence in the medical field, one nurse told her story of an alleged assault:

that a colleague had pressed his pelvis against her and flipped through her phone for ‘naked pictures.’ A supervisor to whom she reported the conduct, she charged, expressed exasperation, saying, ‘I can’t deal with this’ and “What do you want?” After her request to be transferred to another location was denied, the nurse, who said she suffered from severe anxiety as a result of the encounter, quit her job. (Jewett, 2018).

Survivors also talked about retaliation they faced when coming forward including losing their jobs and commissions or facing even more harassment at work. According to an article in the New York Post, one woman at a major headhunting firm reported her boss for sexual harassment and groping. Her boss received a five-day suspension while the firm’s H.R. investigated, however, the survivor “had lost her commissions in the process. She ultimately went to the New York City Commission on Human Rights, because ‘arbitration is required in her work contract,’” (as cited in Cain, 2017).

Other survivors talked about the treatment they received from the police and other criminal justice actors. Several survivors spoke about experiences with reporting to Title IX offices, college campus offices dedicated to investigating claims of discrimination and abuse. One of the gymnasts who first reported the abuse she suffered from USA gymnastics doctor

Larry Nasser stated “The reason that everyone who heard about Larry’s abuse didn’t believe it is because they did not listen...No one knew, according to your definition of ‘know,’ because no one handled the reports of abuse properly,” (Denhollander, as cited in Hobson, 2018). What was clear, was that the responses survivors of sexual violence experienced when coming forward were complex and often demoralizing, supporting previous research findings of victim experiences (Ahrens, 2006; Gash & Harding, 2018; Spohn, 2020; Spohn & Tellis, 2012)

Sexual violence survivors’ stories were told to the press and through social media to shed light on how the system treated survivors, insider knowledge that the movement highlighted for those who have not gone through the criminal process as a victim (Gash & Harding, 2018).

Making this claim, a group of women in California politics published a letter stating:

Why didn’t we speak up? Sometimes out of fear. Sometimes out of shame. Often these men hold our professional fates in their hands. They are bosses, gatekeepers, and contacts. Our relationships with them are crucial to our personal success. We don’t want to jeopardize our future, make waves, or be labeled “crazy,” “troublemaker,” or “asking for it.” Worse, we’re afraid when we speak up that no one will believe us, or we will be blacklisted.

These degrading acts over time cause us to shrink back in our personal and professional lives. While advocating for the causes and clients in which we believe, and working to advance our careers, we must concurrently balance these activities with worry, fear or shame.

We worry if the dress we wore sent the wrong message; if we are somehow at fault for our own harassment and abuse. We fear the ramifications of coming forward. Many of us

feel ashamed that we have failed to protect our friends from abuse. We have felt powerless to stop the cycle. (Iwu et al., as cited in *Women Speak out on Systemic Harassment in California Politics*, 2017).

The sentiments expressed by the women in this letter were common themes in the #MeToo tweets, news interviews with survivors, and op-eds written in support of the movement. Here the concern was on developing fair processes for survivors when they come forward to law enforcement or report to their Human Resources departments or bosses. Fair processes that advocates, activists, and scholars have recommended for nearly 40 years (Spohn, 2020).

Survivor narratives of sexual misconduct often reflected what the research shows, which is that survivors were more likely to be met with disbelief and questions of their credibility that were based on myths about sexual assault. Rape myths, based on stereotypes of the “real rape” victim, perceptions of locations where the events took place, and other extralegal factors often inform social knowledge about who can be considered a victim but they rarely fit the reality of sexual assault and harassment (Bumiller, 1987; Frohmann, 1991; Kosloski et al., 2018). Scholarship shows that while women are taught to fear the disturbed psychopath lurking in the bushes, it is the men they work with, live with, date, see at family events, or teachers that they should be worried about (Kosloski et al., 2018).

Stereotypes about “real rape” are often centered in white, middle-class norms about “innocence.” In her foundational study of prosecutorial decision-making, Lisa Frohman (1991) found that prosecutors based their decisions on whether to file charges of sexual assault on the victim and environmental characteristics rather than on the actual evidence or severity of the incident. Frohman identified several key extralegal factors, factors based on prosecutors’ perceptions of convictability and myths about what “real rape” is. Frohman refers to their decision-making as considering “downstream” concerns, looking at how these issues will be

perceived by juries and whether they believe the jury would convict or not. The factors that were identified included whether there were discrepancies in the victim's story, "typifications" or beliefs about the situation in which the incident occurred, the location where the incident occurred (i.e., if the victimization occurred in an area where a lot of drug sales are made, it was assumed the victim did not want to admit she was there to buy drugs), the relationship between the survivor and the perpetrator, how the survivor reacted during the incident (i.e., did they fight back or try to run), interactions the victim might have had with the accused after the rape occurred, the length of time between when the incident occurred and when the survivor reported it, the "victim's demeanor" when telling the story of what happened, and finally, assumed ulterior motives the victim might have for reporting (Frohman, 1991).

In a more recent study, Spohn and Tellis (2019) found that police and prosecutors in Los Angeles County based their decision-making for rape and attempted rape cases on legal and extralegal factors. The extralegal factors were similar to the typifications and convictability concerns identified in Frohman's 1991 study. This suggests that while many things have changed in the last 30 years, the criminal justice system's responses to victims have not. The present study found the same typifications and myths were present in the media discourse and backlash, also consistent with other research on #MeToo (Nutbeam & Mereish, 2022). The use of rape myths, shutting down investigations, and the retraumatization of victims during the criminal justice process was often unfair, as indicated in the stories from survivors, indicating that the process was not fair for victims.

In the case of Christine Blasey Ford, the stereotypes identified by Frohman (1991) and Spohn and Tellis (2012; 2019) appeared in the discourse and backlash. One of the main questions brought up by people to discredit Ford was the nearly four-decade lapse between the assault and her coming forward. In a segment on his popular Fox News show, Tucker Carlson



said “She’s claiming that this man sexually assaulted her and altered the course of her life...She didn’t tell anybody his name for 36 years, during which time he got married, he interacted with many others in our population,” (Carlson, as cited in Wang, 2018). Carlson went on to suggest that by not reporting the alleged incident, Ford could have put others in danger:

No, no, no, no, no, no, hold on, I’m not asking her about her reasons...I’m asking about the rest of us — the other 320 million people who live here. If he’s actually a sex criminal, we have a right to know that, and she has an obligation to tell us. And I know it’s hard. But why don’t we have a right to know? If there’s a rapist on the loose, if you don’t tell anybody, if Bernie Madoff rips you off and you don’t tell his other investors, you’re part of the problem, are you not? What am I missing? (Carlson, as cited in Wang, 2018).

The conservative television show host eluded that since she did not report sooner, Kavanaugh must not have been a dangerous person.

Negative experiences with the criminal justice system are exacerbated by how survivors are treated by their communities, peers, and family members. This poor treatment is especially hard when one considers that the majority of assaults are committed by persons known to the survivor—their classmates, friends, family members, or bosses. An example of this from the current data set occurred on an episode of the *WTF* podcast by Marc Maron, actress Sharon Stone was asked about the allegations of harassment made against James Franco. Her response reflected what was often said, not shock over what the person was accused of doing but rather outrage that he was accused in the first place.

I’m appalled by this thing about him that is happening. Now all of a sudden he’s a bad guy? I worked with him, I know him...He’s the loveliest, kindest, sweetest, elegant, nicest man. He’s a kind friend, lovely professional. I’m absolutely appalled by this.

You go out with them, they bring you home for a goodnight kiss and they grab your hand and put it on their penis. A 50-year-old man...I don't think they're trying to sexually harass me, I think they're just incredibly stupid and awkward. Like, really? That's your move? Please don't ever call me again, because you're too stupid to date. I don't think I should ruin your whole life over that, but I just think you're incredibly stupid...

I don't feel like these trials without due process are entirely appropriate...I feel that it's appropriate that people have to take responsibility for their actions, but I do feel that some due process is in order. There's a range of activities. And you can't charge somebody with a felony over a misdemeanor. (Kew, 2018, para. 2-4).

Her outrage comes after Franco was accused by five different women of inappropriate behavior, some of which occurred on Twitter where he was allegedly caught messaging sexually explicit things to underage girls. Stone's statements demonstrated the legal consciousness of a social due process, where the public allegations were compared to an unfair "trial," expecting some kind of legal protection from public scorn.

Research has found that victims are often accused of lying, of having ulterior motives, and are pressured to drop the charges. The following example from the data demonstrated that survivors' legal consciousness about sexual violence and justice was based on prior experiences with sexual assault reporting, either by experiencing it themselves or witnessing loved ones go through the criminal system.

Until the #MeToo, perpetrators could reasonably count on their denials being credited and their accusers being devalued to shield their actions. Many survivors realistically judged reporting to be pointless or worse, predictably producing retaliation. Complaints were routinely passed off with some version of 'She isn't credible' or 'It was trivial.' A social burden of proof effectively presumed that if anything sexual happened, the woman

involved desired it and probably telegraphed wanting it. She was legally and socially required to prove the contrary. (MacKinnon, 2019).

Dropping the charges then serves to prove the community right that the survivor must have lied to begin with, when in reality, they may be exhausted, frightened, and want to move on with their lives. They may give up on the idea that they will ever be believed, that they will ever get justice for what happened to them, and drop the charges as an act of self-preservation. Legal consciousness of sexual violence and the law has long preserved power dynamics, the #MeToo movement resisted legal and social institutions by forcing people and the law to take notice.

Many of the media stories that talked about survivor experiences demonstrated the inability of the legal system and workplaces to properly react to sexual violence or to protect the women and men who came forward. They talked about how the lack of appropriate responses led survivors to not come forward. An article about the #MeToo movement inspiring people to act for change in Hollywood stated that for a long time,

[W]omen didn't report abuses out of fear that they—not the perpetrator—would be punished... 'The HR departments are not truly there for employees—they are there to serve the interests of management and cover up for their revenue generators—their star performers,' (Debra Katz, as cited in James, 2017)

Powerlessness was a common feeling expressed in survivors' stories of being ignored by HR and/or bosses, (Kew, 2018).

While many articles talked about the inappropriate responses by HR departments, management, executives, courts, and law enforcement others discussed how the #MeToo movement was forcing changes so that clear and fair processes would be implemented and followed, suggesting that there was hope that the movement was leading to positive changes to a system long viewed as illegitimate to survivors. The #MeToo movement was changing the rights

consciousness for survivors, while simultaneously the legal consciousness expressed through the backlash and critics of the movement implied that victims were likely going to face the same obstacles if they turned to the legal system for justice. #MeToo created hope for survivors, but also demonstrated the need for an alternative to justice for survivors—survivor justice.

### **Conclusion**

Our due process laws are rooted in the notion that all citizens deserve a certain level of freedom from the government, giving the average person in the United States a system of checks and balances to prevent government oppression. In the case of the #MeToo movement, due process was weaponized to silence survivors, maintain the status quo of power, and delegitimize the movement. Given that so many survivors reported dissatisfaction and hostility with government actors, documented in #MeToo posts, media, and scholarship, and that little was done with their cases, it seems like the real concern should be on some kind of due process for victims. Due process for victims would mean a set of standards that the criminal justice system must follow and remediation for survivors when due process is denied to them. There are implications of this due process debate, for not just the criminal justice system, but for legal scholars to continue exploring how laypersons understand due process, especially examining social due process and sexual assault claims.

Ensuring a fair legal process for victims is unlikely, as with reforms to the criminal punishment system, reforms centered around victims have in the past been unsuccessful. Most states have signed a Victim's Bill of Rights, but it is hardly enforceable when violated. Restorative justice, a victim-centered approach meant to be an alternative to the criminal legal system, has not had the promised impact for most victims. Supposed restorative justice programs are often run in congress with the criminal legal system. Other programs claim to be restorative justice but are run by the state and follow carceral logic. Survivor justice, however,

would offer a fair process for survivors. It would also maintain the due process rights for anyone accused of sexual violence.

In the end, Ford's allegations did little to stymie the appointment of Brett Kavanaugh to the Supreme Court. The allegations and ensuing hearing brought up vicarious trauma and revictimization for survivors following the case. The treatment of Ford by the media, by politicians, men's rights advocates, and the #HimToo countermovement was reminiscent of their own experiences. However, her coming forward did a lot for victims who felt buoyed by her story and courage, who came forward with their own stories, and who found support. It forced people to continue this conversation on sexual violence and forced people to consider the reasons why people did not report or waited so long to report what happened to them. Ford's testimony showed that survivors can live strong and amazing lives but still be haunted by events from long ago.

## Chapter 4: Wild Justice

The internet has made it possible to tell many stories, some inspiring and some terrifying. In the #MeToo movement, survivor stories were often descriptions of terror and violence. Then there was the story of “Grace.” In January 2018, she told her story to a journalist who posted it on [www.babe.net](http://www.babe.net) and it quickly went viral (Way, 2018). It was a story about a date with Aziz Ansari, a comedian and actor who was known for his progressive and feminist views and stories of modern dating (Ansari et al., 2015). In the story, she said that while in Ansari’s apartment, he allegedly pressured her to have sex after she repeatedly told him no (Way, 2018). The story she told was graphic, detailing how uncomfortable she was in the moment and the numerous times she claimed to have stopped the encounter, requests that he obliged. Her story drew questions about whether this was just “a bad date” or a coerced sexual encounter (Hindes & Fileborn, 2020).

As in the case of Grace, the backlash to the #MeToo movement came swiftly after the hashtag took off in 2017. The story Grace told, the way it was told on the website [Babe.net](http://Babe.net), and the controversy reflected the larger critiques and debates about #MeToo that played out in the data for this study. The critiques of Grace’s story included that it went too far, that the incident described by Grace did not amount to sexual assault, it happened all the time, that it was not a big deal, and controversy about giving consent, in particular what non-verbal consent or non-consent look like.

In the larger debate about #MeToo, there were questions about coercion versus awkward flirting or messy hook-ups versus violence. Critics also questioned the clarity of affirmative consent laws and whether some acts labeled by people engaged with the movement as violence were instead just sloppy and awkward encounters. Finally, the media and critics also questioned whether counting this incident as a #MeToo moment was suggestive of a moral, sex panic; that if

left unchecked, the #MeToo movement would ruin sex for everyone. The goal of this chapter is to explore these key critiques about the movement and what they mean for survivors, cultural transformation, and justice.

Critics of #MeToo expressed concerns that the movement was just a power grab to take down powerful men and ruin the lives of innocent men. Critics pointed to this discourse, especially when someone famous, rich, or powerful was accused of what might be considered a minor offense. Feminist and men's rights critics of #MeToo, as well as some survivors, spoke about this moral flattening of sexual violence, or the false equivalency in the moral outrage over both minor and major offenses. In one particularly angry response to Grace's accusations against Ansari, Headline News Network (HLN) reporter, Ashleigh Banfield spoke out against the accuser, saying:

You had a bad date. Your date got overly amorous. After protesting his moves, you did not get up and leave right away, you continued to engage in the sexual encounter. By your own clear description, this was not a rape, nor was it a sexual assault — by your description...

Your sexual encounter was unpleasant... It did not send you to the police. It did not affect your workplace or your ability to get a job, so I have to ask you: What exactly was your beef? That you had a bad date with Aziz Ansari? Is that what victimized you to the point of seeking a public conviction and a career-ending sentence against him? (Sager, 2018, para. 7-8).

Similar to the previous discussion of due process, comparing consequences to his career as a sentence alluded to the #MeToo movement being a judge and jury, ready to convict and sentence. It was suggestive of the critique that #MeToo was promoting punitive logic through informal sanctions for the accused. The case was often used to exemplify the punitive overreaction

of “feminists” to discredit other #MeToo stories and to delegitimize the movement.

One of the major critiques of the movement was that it went too far, that in the quest to punish and hold men accountable, feminists and the #MeToo movement ruined the lives of countless men, made men afraid to flirt, ask a woman out, or show them any kind of attention, the movement ruined sex, broadened the definition of consent to include all sexual encounters, and removed any distinctions between levels of violence. In response to two articles written by feminists critiquing the movement, Christina Cauterucci<sup>25</sup> replied:

Merkin draws liberally from a genre of #MeToo criticism advanced by the New Yorker’s Masha Gessen, in addition to plenty of conservative columnists, in recent months. The school of thought holds that, in our eagerness to bring the worst of the wrongdoers to long-overdue justice, women are ruining the lives of innocent men, punishing good people for being bad flirts, and threatening to make consensual sex a rare, robotic experience. (Cauterucci, 2018, para. 1).

Drawing from scholarship on moral panics, empathy, and legal consciousness, this chapter examines the major critiques, identified in the data and reflected in the previous quote, about the #MeToo movement to have a stronger understanding of how the discourse framed #MeToo. It is important to examine these critiques to better understand how people, including survivors, conceptualized consent and sexual violence, and how the media discourse helped to frame those conceptualizations.

---

<sup>25</sup> Two articles in my sample were written as responses to two other articles not in my sample. I decided to also analyze the two not in my sample, for both context and comparison. The two articles in the sample were Cauterucci (2018) and a Letters to the Editor page titled *Has #MeToo Gone Too Far?* The two articles not in my sample were Merkin (2018) and Gessen (2017), both were Op-Eds written for the New York Times. The four articles reflected all of the main critiques derived from the full sample and are written from the perspectives of critiquing the movement or critiquing the critics.



This chapter is split into two main parts. The first part of the chapter draws on himpathy and moral panic scholarship to explore the data on the critiques that the movement went too far and that it was a witch hunt and moral/sex panic. Himpathy is a theory developed by Kate Manne to encapsulate the sympathy and empathy that men, usually elite, white men, receive when accused of horrible acts of violence (Manne, 2017). Put simply, moral panic occurs when there is an overreaction by the public to certain events, crimes, or fear of relatively benign groups, for example, the satanic panic of the 1980s (Cohen, 2011/1972). Usually, moral panics are fueled by a single incident and the media coverage of the event. As for the #MeToo movement, I refer to these critiques as maintaining boundaries of power and argue that the moral/sex panic rhetoric was a mechanism of power. The second part applies legal consciousness and feminist scholarship to understand the critiques that were trying to make sense of the movement and the boundaries of sexual violence, carceral feminism, and consent.

### **Holding on to Boundaries of Power**

By and large, the articles in this sample were focused on, or mentioned, men who allegedly committed some act of sexual harassment or assault, usually against white women. Putting so much attention on these cases where someone was named and sanctioned suggested to the readers and the public that all the #MeToo movement was about was taking down powerful men, by women. The heteronormative fixation on men-on-women violence was problematic considering men were also violent towards other men and trans persons. The discourse focused on the consequences some men faced obscured the goals of the movement, goals like demonstrating the commonality of sexual violence, supporting survivors, and transforming rape culture. The public discourse about #MeToo became so focused on the sensational and controversial that it made it harder to get the real message to the public and to start any kind of

collective healing and transformation. Obscuring the real goals of the movement allowed for the existence of the same gendered, racial, and heterosexual power structures to remain. When people were caught up in the contentious discourse of the movement, the fear that every man would be punished and have their lives ruined, they did not see the other parts that were less contentious—the fear and suffering sexual violence causes victims, let alone the prevalence of it.

### **Himpathy, Fear, and #HimToo**

The backlash and fear of the movement began early on; however, it was not until the Kavanaugh hearing that the hashtag countermovement took off, #HimToo. The hashtag has had many meanings, but at the beginning of the #MeToo movement, #HimToo became a way to show support for male survivors. In 2018, men’s rights groups began using it to show support for the men they felt were being wrongfully accused of sexual violence (Hoffman, 2018; Joyce, 2018; O’Neil, 2018). In one article discussing #HimToo, it was described as becoming “something of a reactionary response to the #MeToo movement, propagated by those who maintain that false accusations of rape against men are exceptionally common and a threat to men everywhere,” (O’Neil, 2018, para. 5). #HimToo became a rallying cry for men and women concerned that #MeToo was going to harm them or their loved ones. It was an expression of what philosopher Kate Manne (2018) calls “himpathy.”

Himpathy, as demonstrated through #HimToo and other expressions of support for men accused of sexual violence:

[I]s the excessive sympathy sometimes shown toward male perpetrators of sexual violence. It is frequently extended in contemporary America to men who are white, nondisabled, and otherwise privileged ‘golden boys’ such as [Brock] Turner, the recipient of a Stanford swimming scholarship. There is a subsequent reluctance to believe the

women who testify against these men, or even to punish the golden boys whose guilt has been firmly established...(Manne, 2017, p. 197).

Several articles in this study discussed Manne's concept of himpathy as displays of a misogynistic, patriarchal social structure.

The outsized sympathy for accused men is related to what Miranda Fricker calls "testimonial injustice," which tends to occur when members of a marginalized group make legal and injurious claims about someone with power and authority, especially when that someone is white and male (Fricker, 2007; Manne, 2017). It can also happen when someone with more social capital or power makes claims about a marginalized person, the tendency is to discount the stories of marginalized persons, regardless of the evidence. One devastating example of this led to the Tulsa Massacre of 1921 when a young black man was accused of sexually assaulting a white woman. Despite his denial, a group of white citizens went into the black area of town, referred to as Black Wall Street, and slaughtered every Black human being they could (Fenwick, 2020).

Testimonial injustice has long plagued survivors of sexual violence; women, who are most likely to be assaulted, often experience credibility bias. They are viewed as incompetent or not as likely to perceive things correctly as would a man. There is also the bias that women are less trustworthy, and this is doubly so for women of color (Fricker, 2007; Manne, 2017). The stories that survivors told in #MeToo often mentioned their experiences with testimonial injustice, of not being believed, and the sympathy their abusers received upon coming forward. Kate Manne said in an interview that #MeToo was a "corrective to himpathy," which she defined "as a pathological tendency to disproportionately or excessively sympathize with the male point of view," (Manne, as cited in Illing, 2018, para. 25).

A year after #MeToo began as a hashtag social movement, the backlash to the movement became even more boisterous, using the hashtag #HimToo to show support for Kavanaugh and other men they felt were being wronged. The rise of #HimToo and men's rights groups and allies becoming more vocal would make it seem like #MeToo was less of a corrective to himpathy, rather #MeToo was poised to be another victim of misogyny.

Men's rights groups on social media sites like Reddit and Twitter began using #HimToo to counter claims made by survivors and "feminists" who they believed were making up lies to subordinate men.

Members of the anti-feminist subreddit Men Going Their Own Way started using the hashtag this summer...it cropped up in posts like this one, referencing an Associated Press story about a former police officer freed from prison after the woman who accused him of rape admitted she lied in her testimony. (Incidentally, the woman maintains that the officer really did rape her when she was 13 years old; her "lie," she says, was telling the court she had never been sexually active before, when in fact her stepfather had sexually assaulted her.) (North, 2018, para. 10).<sup>57</sup>

Men's rights and allies also used #HimToo to pushback against the #MeToo movement, arguing that it and other related hashtags unfairly lumped all men into a category of misogynists, often lambasting women for pointing out toxic masculinity, the common vernacular for what scholars call hegemonic masculinity (Connell & Messerschmidt, 2005; Harrington, 2021). Emily Yoffe wrote for The Atlantic, "But the left, like the right, is prone to indulging in rhetoric that hurts its cause, such as labeling men as avatars of 'toxic masculinity' and default predators," (Yoffe,

---

<sup>57</sup> A subreddit is a community of Reddit users who join the group to post about specific topics, in this case about men's rights.

2018, para. 13).

The himpathy on display during the Kavanaugh hearings in the fall of 2018 suggested that men should be afraid of false allegations and that they needed to protect themselves from women. In a tweet on September 17, 2018, Laura Loomer said:

If you have a son, make sure you buy him a note pad, a body camera, & a recording device. Get him a battery pack too so he can always protect himself with video evidence of every single encounter he has with a woman.

Men aren't safe in America anymore.

There is a war on men. (@LauraLoomer, 2018).

Another conservative writer, wrote about her sympathy for Justice Kavanaugh in an article for the Philadelphia Inquirer (Christine Flowers, as cited in Crary, 2018, para. 4). She stated, “Through those real tears, the rage came through like a laser and a sword...And for a moment, I felt as if, finally, one man had found the courage to say my life matters.” This statement that a man who grew up in a wealthy family, went to a private school, attended Yale, clerked for a Supreme Court justice, and was now about to take a seat as a Supreme Court justice himself was finally able to say “my life matters” was a product of himpathy, of misogyny, and patriarchy. It is also reminiscent of the backlash over the #BlackLivesMatter (#BLM) movement, which saw first the iteration of #AllLivesMatter, and then the more insidious #BlueLivesMatter. The belief that this powerful, elite man was so maligned that his life did not matter is yet another example of testimonial injustice (Fricker, 2007; Manne, 2017).

In the discourse and survivors' stories of disclosure, it was common for survivors to be met with victim-blaming questions when they disclosed to the police, families, and friends. Victims were often told that they should have said no or made their position clearer, that “they

should have run,” or people declared “I would have fought back.” Although #MeToo was calling attention to this problem, the data demonstrated that there was still a long way to go. Nearly two years after the movement began, actress and comedian Rosanne Barr went on The Candace Owens Show and said:

If you don’t run out of the room and go, ‘Excuse me, you don’t do that to me,’ and leave, but you stayed around because you’re like, ‘Well, I thought maybe he was going to give me a writing job,’ well, you aren’t nothing but a ho. (Rosanne Barr, as cited in #MeToo, n.d.)

Victim blaming in #MeToo, especially for Hollywood cases, tended to include suggestions of ulterior motives for coming forward. In the comments section of an opinion piece calling out survivors for not reporting their assaults, a Breitbart reader declared the following:

#### THE HOLLYWOOD ACTRESS GUIDE TO THE HARVEY WEINSTEIN SCANDAL

- \*take note of the angry blackballed actress’s initial complaint
- \*note response
- \*raise wetted finger in air to test societal impact
- \*note the attention and news coverage that complainants are getting
- \*make final assessment as to likelihood of Weinstein’s ability to overcome and retaliate
- \*If safe to come out...craft story with PR staff for maximum exposure
- \*join “me too..me too” group
- \*be ready to explain how others are whores...and you aren’t.
- \*collect million dollar paychecks for years
- \*accuse Donald Trump of misogyny
- \*wear a hat that resembles female reproductive organs

\*mock Christians and normal Americans. (SpfldJimbo1, as cited in Nolte, 2017).

Questioning the motives of victims came up a lot in the data and has long been problematic for survivors (Frohmann, 1991).

One group who often expressed signs of himpathy were conservative moms. They spoke to reporters and posted on social media their fears that their sons and husbands would be caught up in a #MeToo false allegation, one mom, from a wealthy suburb of Kansas City, asserted:

[T]he idea that one of them could see his life turned upside-down by an unsubstantiated decades-old charge is disconcerting. ‘That’s not just the view of a mother with boys. I think that’s just an American view,’ said White, 67, of Leawood, Kansas. ‘Everybody has someone to feel that way about, whether it’s your husband, your brother, your father.’ (Priscilla White, as cited in Crary, 2018, para. 20-21).

The fear was not over whether she knew anyone who could or would have some questionable past behaviors, but that some woman might expose them.

This fear and himpathy for hypothetical false allegations led another mother to post on Twitter about her son and what she felt were his fears of dating in the #MeToo era. She tweeted the following, along with a picture of her son in his Navy uniform.

This is MY son. He graduated #1 in boot camp. He was awarded the USO award. He was #1 in A school.<sup>58</sup> He is a gentleman who respects women. He won’t go on solo dates due to the current climate of false sexual accusations by radical feminists with an axe to grind. I VOTE. #HimToo. (BlueStarNavyMom3, as cited in North, 2018).

Again, this mom’s concern was about “feminists” who would ruin her son. The tweet went viral

---

<sup>58</sup> “A school” is advanced, technical training that Navy members can do after boot camp.

shortly after posting it and appeared like it would be a well-known symbol for #HimToo and the backlash against #MeToo. Poised to be the poster boy of the #HimToo countermovement, the aforementioned son responded with a tweet of his own, stating:

That was my Mom. [sic] Sometimes the people we love do things that hurt us without realizing it. Let's turn this around. I respect and #BelieveWomen. I never have and never will support #HimToo. I'm a proud Navy vet, Cat Dad and Ally. Also, Twitter, your meme game is on point. (Pieter Hanson, as cited in North, 2018).

The original tweet by @BlueStarNavyMom3 spawned several memes mocking the tweet and the #HimToo countermovement. When Pieter Hanson came forward announcing his mom had made that up and he was in fact a supporter of #MeToo, #HimToo nearly disappeared from the public discourse. While it continued to be used by some men's rights groups, it did not garner the same attention that it did before the "Navy mom" saga. The backlash and attempts to maintain boundaries of power did not dissipate with the mocking of "Navy mom."

### **Witch-hunt/Ruining Lives**

A frequent critique from the backlash was the belief that #MeToo had run amok, that it had become a "witch hunt." In response to the calls for Senator Al Franken to resign after a photo surfaced of him grabbing a sleeping woman's breasts, in what he claimed was meant to be a funny joke, there was considerable discussion on whether his harassment warranted sanctions. Responding to a New York Times article calling for Franken to step down, one reader wrote

Destroying a good man's career over a childish photo and a sloppy kiss? Ms. Goldberg's call for Al Franken's resignation from the Senate is outrageous on many fronts, not the least of which is that it smacks of a witch hunt that has proved a point and now gone too far. Shaming men who have harassed women is a worthy outcome, but creating a



backlash in the form of false equivalency (Al Franken is no Roy Moore)<sup>59</sup> is bordering on the ridiculous. (Thomas, 2017).

It was unclear why she felt this did not rise to the level of harassment or how the allegations and photographic evidence created a backlash. One of the key points of #MeToo was to challenge and transform sexual violence culture, including patriarchal norms that permitted this kind of unwanted behavior.

In an opinion piece for The New York Times, Daphne Merkin discussed that #MeToo had gone too far and become a spectacle for entertainment and a modern-day witch hunt.

The women I know—of all ages—have responded by and large with a mixture of slightly horrified excitement (bordering on titillation) as to who will be the next man accused and overt disbelief.

Publicly, they say the right things, expressing approval and joining in the chorus of voices that applaud the takedown of maleficent characters who prey on vulnerable women in the workplace.

In private it's a different story. 'Grow up, this is real life,' I hear these same feminist friends say. 'What ever happened to flirting?' and 'What about the *women* who are the predators?' Some women, including random people I talk to in supermarket lines, have gone so far as to call it an outright witch hunt. (Merkin, 2018).

In response to Merkin's op-ed, retired judge Stella Schindler wrote,

I am one of those women on the 'supermarket lines' sick of this Salem witch hunt.

Having worked in the so-called man's world for my entire career, I, too, experienced

---

<sup>59</sup> Roy Moore was a former judge in Alabama who, during his 2018 run for Senator, was accused of molesting and having inappropriate relationships with teenage girls (McCrummen et al., 2017).

various degrees of inappropriate behavior. I just made sure that the best man for the job was a woman: this woman. (Schindler, 2018).

The witch hunt, while historically used to marginalize and kill women (Federici, 2004), was used in this case to accuse survivors, journalists, and allies of unfairly ruining the lives of men who, in their view, did not do anything wrong. This rhetoric of the witch hunt seemed to be based on the fear that any man could be accused of violence. Rather than forcing a large-scale reconsideration of patriarchal norms and hegemonic masculinity, this backlash did what often happens to survivors, blamed the victims, gaslighted their experiences, and made them look at the problem.

Some critics couched their critique that the movement was an out-of-control witch hunt with statements that they did support survivors of sexual assault but felt that if the victim did not make accusations and reports soon after the violence occurred, then they should not be speaking up so long after. In an article about the backlash during and after the Kavanaugh hearings, a journalist for the Associated Press quoted a Boston-based conservative columnist, Jennifer Braceras as saying:

‘I feel strongly that the movement should be about prevention and about protecting people from harassment and assault...It should not be focused on taking the scalps of powerful people for public relations purposes.’

‘I’m not saying people shouldn’t speak out...But we need to encourage people to come forward in real time...To speak out as soon as possible, not when politics are involved.’

(Braceras, as cited in Crary, 2018, para. 25-26).

The argument that survivors needed to report the violence when it happened to be valid did not consider the myriad of reasons victims did not speak up sooner, an aspect of sexual violence to which #MeToo supporters were trying to draw attention.

## Sex Panic

While many related #MeToo to a modern-day witch hunt, others expressed concern that feminists were coming after their “gonads,” (Stuart Parramore, 2018). Several articles discussed people who were concerned that the men in their lives could be accused in a #MeToo scandal, afraid that any kind of flirting or sex would now be criminalized. Feminists, scholars, and others made claims that #MeToo was a moral or sex panic.

Moral panics are problematic and often lead to policies that cause more harm than good, for example, the three-strikes laws that first passed in California after public outrage over a case where a young girl, Polly Klaas, was kidnapped and murdered by a man who was recently released from prison (Feller et al., 2022). In his influential study on moral panics, Stanley Cohen (2011/1972) identified five elements of a “successful moral panic.” First, there is a “suitable enemy,” someone or a group, who would be an easy target. Second, a “suitable victim,” someone or a group whom the public can identify with, and whom they will care about. Third, “consensus” is that the enemy is engaged in behavior or holds beliefs that are perceived to be or have the potential to take hold of society and make it worse. Fourth, is “disproportionality” to the response to the enemy and the behavior, to the moral concern, that the harm or potential harm is exaggerated or overblown. Fifth is “volitivity,” the panic must occur quickly and dissipate “suddenly.”

A type of moral panic, sex panics have happened several times throughout history, the most insidious being the panic over gay sex at the height of the AIDS epidemic (Holland et al., 1990). When the criminalization of copulation between same-sex partners, along with the stigma of having a disease that the public and discourse portrayed as only affecting gay men prevented men from seeking the medical services that they needed (Dowsett, 2009). Making the AIDS

epidemic about gay sex allowed those in power to ignore the needs of AIDS patients and research, and kept the public from demanding better for the men and women dying excruciating deaths (Cohen, 2011/1972). The sex panic argument levied at #MeToo could have similar impacts, making it seem like #MeToo was just another purity movement to delegitimize the movement and justify inaction. One particularly concerned reader commented on an article on #MeToo that the movement “#metoo, is a modern-day social purity movement. It’s literally every suspicion I’ve ever had about feminism confirmed,” (comment section of Haider, 2019).

As in the case of the AIDS epidemic, scholars argue that sex panics are moral panics that effectively “other” marginalized people (Cohen, 2011/1972). They use sex to excuse “the neglect of substantive social problems related to income inequality, race, and sexism,” (Shepard, 2007: 157). The moral/sex panic over the “welfare queen” in the 1990s led to significant policy changes to the social welfare system in the United States, making it harder for minority and poor women to access assistance for their families. Conservative politicians and activists would often use the rhetoric that women, specifically Black women, were producing more kids so that they could get more welfare assistance and would not have to work. Politicians pushing for reform even suggested requiring sterilization or IUDs for welfare recipients (Pierson-Balik, 2003).

Sex panic scholars do look at panics over sexual assault, but are typically focused on the consequences of sex offender registries and other carceral policies that they argue are not only ineffective but are also unconstitutional (Halperin & Hoppe, 2017). Sex offender registries were passed and consequently expanded over the last 30 years in reaction to several high-profile child sex abuse cases (Halperin & Hoppe, 2017).

The sex panic critique of #MeToo had several elements to it, one element, reflected in the following quote, was the fear that people were becoming too extreme in their attempts to counter

sexual violence. That the definition of sexual violence was now too broad.

These are scary times, for women as well as men. There is an inquisitorial whiff in the air, and my particular fear is that in true American fashion, all subtlety and reflection is being lost. Next we'll be torching people for the content of their fantasies. (Merkin, 2018).

The conflating of “real rape” with bad sex, was shared by Merkin (2018) and Gessen (2017) in their Op-Eds.

Over the last three decades, as American Society has apparently accepted more open expression of different kinds of sexuality, it has also invented new ways and reasons to police sex. David Halperin, a historian and gender theorists at the University of Michigan, has called this ‘the war on sex.’ (Gessen, 2017, para. 5).

Gessen went on to write:

The problem is not just that this reduces the amount of sex people are likely to be having, it also serves to blur the boundaries between rape, nonviolent sexual coercion, and bad, fumbling, drunken sex. The effect is both to criminalize bad sex and trivialize rape. (Gessen, 2017, para. 7).

Gessen cites Halperin’s work on sex panics to back up their claims, however, Halperin’s argument is much more nuanced. To quote David Halperin:

To denounce the war on sex is not to call for the decriminalization or liberation of all sexual practices. It is certainly not to condone sexual violence; the sexual exploitation and victimization of women, children, the poor, and the vulnerable; or to express indifference to the reality and gravity of various kinds of sexual harm...It is to suggest, rather, that moral disapproval should not be translated automatically into prohibition or

repression, much less criminalization. Personal feelings about good and bad sex, even considered views about right and wrong sex, should acquire the force of law or social policy only after much careful, critical, collective reflection. (Halperin, 2017).

The moral panic rhetoric that this was happening in #MeToo failed to provide evidence. Rather, the rhetoric itself fits Cohen's elements of a moral panic. The rhetoric focused on a few, sensational, but rare cases. It pointed to the history of sex panics and repressive policies that contributed to mass incarceration. The rhetoric blew the movement's more punitive aspects out of proportion, especially its potential impact on sex relationships and criminal justice policy.

The people concerned over #MeToo being a sex panic claimed that something had to be done about the movement otherwise more draconian measures would take place to end sexual violence. Finally, sex panic rhetoric made survivors, a vulnerable population, easy to target, out to be the enemy. The rhetorical panic also served the needs of patriarchal power structures by dismissing the very real experiences of sexual violence and the suffering of survivors.

Related to the sex panic, men's rights activists, #HimToo supporters, and some feminists expressed trepidation that #MeToo would ruin sex. In their comments, Op-Eds, and tweets, they wrote that #MeToo was turning all things related to flirting and sex into harassment and violence. In January 2018, several French women published a letter in the French newspaper *Le Monde* offering what would become a relatively common critique, that #MeToo and the French equivalent, #Balancetonporc (which translates to Call Out Your Pig), were overreacting and ruining flirtation and sex. In the letter they wrote:

Rape is a crime, but trying to seduce someone, even persistently or cack-handedly, is not—nor is being gentlemanly a macho attack...Men have been punished summarily,

forced out of their jobs when all they did was touch someone's knee or try to steal a kiss.  
(*100 French Women Say Men Unfairly "Punished" by New "Puritanism,"* 2018)

Merkin (2018) also argued that sex had always been awkward and messy, but that did not mean that it was rape.

And what exactly are men being accused of? What is the difference between harassment and assault and 'inappropriate conduct'? [sic] There is a disturbing lack of clarity about the terms being thrown around and a lack of distinction regarding what the spectrum of objectionable behavior really is. Shouldn't sexual harassment, for instance, imply a degree of hostility? Is kissing someone in affection, however inappropriately, or showing someone a photo of a nude male torso necessarily predatory behavior?

I think this confusion reflects a deeper ambivalence about how we want and expect people to behave. (Merkin, 2018).

Often arguments, such as Merkin's, talked about hypothetical incidents that were extreme, seeming to do exactly what they said they were concerned with, trivializing sexual violence and giving into stereotypes about "real rape."

In a Letter to the Editor, one reader pointed out a fallacy in Merkin's argument that #MeToo would ruin office flirting. She wrote:

During my career, I have lost both minimum-wage jobs as a youth and six-figure contracts as a public relations professional simply because I refused to have sex with my boss or client. While some of these men touched me inappropriately while propositioning me, most did not, but the result was the same: I lost valuable income.

There was no flirting going on; these were married men who were exerting their power to have sex with me, and when I declined, I lost my job. (Bohrer, 2018).

This letter in response to Merkin’s article spoke of the reality of office sexual harassment, the men she wrote about likely thought they were just flirting but the results of their “bad flirting” were a kind of structural violence that lies at the heart of misogyny.

Ultimately, the problem with #MeToo was it had all the vestiges of a moral panic, on the surface, which obfuscated the very real problem of sexual violence. While the movement’s “targets” were typically elite, white men—hard targets—the other elements of a moral panic appeared to exist. There were many suitable victims, a consensus that sexual violence and harassment are wrong, and it seemed to come out of nowhere, taking over the media, and according to the backlash had blown the problem out of proportion. There was a history of past sex panics that critics could turn to as evidence that the #MeToo “sex panic” had to be addressed or it would lead to deleterious consequences. Yet, sexual violence is a significant problem, research shows that it is far too common and that very little is done to stop it or to protect victims. When or if #MeToo dissipates, sexual violence will still be there because it has always been there. It is like an image on a screen that burns into a monitor, you can turn off the screen and shut down the computer, but the image remains. It just is not as vivid as it was when the screen was lit up.

### **Making Sense of Boundaries**

The #MeToo movement grew quickly and while there were leaders, neither the leadership nor the participants could control the public discourse and the messaging about sexual violence that was posted online or projected through media. While leaders were focused on healing and cultural transformation, others engaged in the movement were focused on trying to make sense of the boundaries around sex. #MeToo was changing the cultural and discursive dialogue about sexual assault, but this also brought a lot of confusion. Feminists made two salient critiques 1) that the



movement had the potential for sinking into carceral feminism, reminiscent of the anti-violence movement of radical feminists in the 1980s and 90s. And 2), feminists also highlighted the problems inherent with the affirmative consent laws,<sup>60</sup> nonverbal consent, and coercive sex.

### **Carceral Feminism**

Many feminists writing about the movement voiced concerns that #MeToo would become a repeat of the anti-domestic violence movement in the 80s and 90s. The push for harsher sentences was often led by feminists wanting to eradicate domestic violence. Feminists critiquing #MeToo feared that it would reignite carceral feminist policies, thus erasing any progress made toward ending mass incarceration. Carceral feminism refers to the group of radical feminists and victims' rights activists who fought for increased arrests and criminal punishment to end violence against women (Gruber, 2020; Law, 2014). Critics of #MeToo argued that, as with domestic violence in the 1980s, #MeToo was teaming up with conservative ideals around punishment rather than the more progressive stance on alternatives to incarceration.

In the final three decades of the 20<sup>th</sup> century, there was a push from feminist groups, in particular radical feminists, to prevent domestic violence by increasing the punishments for abusers (Armstrong et al., 2018; Bumiller, 2008). Women's rights activists teamed up with victim's rights advocates and conservative lawmakers to push for harsher sentencing, limiting judicial discretion, and increasing police arrests. This turn towards carceral feminism had several devastating consequences, including contributing to mass incarceration, prioritizing ideal victims (white, innocent, pretty, female), increased arrests of Black and Brown men and women, failing to address the crimes of wealthy and middle-class white men (Bumiller, 2008; Dixon,

---

<sup>60</sup> Laws that put the onus on defendants to prove consent rather than victims having to prove they did not consent.

2020; Goodmark, 2018; Gruber, 2020; Law, 2014).

One key consequence of the reliance on the carceral state to address sexual violence was that it could make it more dangerous for women to report their abusive partners, particularly for black and brown women (Goodmark, 2018; Gruber, 2020; Richie, 2000). One example of a reactionary policy was mandatory arrest for domestic violence calls, a product of a 1984 research project by Lawrence Sherman and Richard Berk in Minneapolis, Minnesota. They found that mandating arrest when police officers were called on a domestic violence call could prevent future violence (Gruber, 2020). However, many have argued that the widespread implementation of mandatory arrest laws has led many abusers to increase their violence, including Lawrence Sherman after conducting several follow-up studies. Mandatory arrest laws removed that agency from victims and often further enraged the abuser, who would eventually get out of jail, increasing the likelihood that they would beat their partner more severely (Gruber, 2020; Sherman et al., 1992). Mandatory arrest laws often resulted in dual arrests, when officers were unable to determine who the primary aggressor was or they believed that both parties were violent so they would arrest both. Arresting victims of domestic violence was hardly the goal of the feminist anti-violence movement.

There is a significant link between domestic violence and sexual assault, as a large portion of assaults is committed by family members or current and former partners. Harsh domestic violence, coupled with the common traumatizing effects of turning to law enforcement, effectively silenced survivors, especially black and brown women, queer survivors, and immigrants. These survivors had added fears of the criminal justice system due to the systemic racism and homophobia common in the prison system. When the victim's abuser was a loved one marginalized people would be even less likely to report the violence because they would not

want the person they cared about to be caught up in the inherently violent system.

As for addressing sexual violence, carceral feminism also had unintended consequences beyond adding to mass incarceration. First, carceral feminists' emphasis on the notion that sexual and domestic violence affects all women equally through their rhetoric of the "every woman," actually only promoted white middle-class women's experiences as the norm and reaffirmed rape victim stereotypes. Thus, Black and Brown victims, poor victims, LGBTQ victims, neurodivergent victims, sex workers, and drug-addicted victims were rendered all but invisible to the criminal justice system and the victim services offered by the state (Richie, 2000). The #MeToo movement appeared to feminist critics to be following in the footsteps of carceral feminist antiviolence initiatives.

Masha Gessen, in her Op-Ed for the *New Yorker* (2017), wrote about their concerns that the movement would only reaffirm the carceral state. They discussed the problems of moral panics and the "war on sex," in particular the negative impacts of sex offender registries and Title IX. Citing another journalist, she argued that the sex offender registry was unconstitutional, stating "[t]hese men...are confined because of what they might do someday, exactly the kind of preventive detention that seems like an obvious constitutional problem," (Laura Masnerus, as cited in Gessen, 2017). Gessen cautions readers that while they too posted #MeToo, it was becoming more akin to a moral panic, in this case, a sex panic. They define a moral panic as "always a reaction to something that has been there all along but has evaded attention—until a particular crime captures the public imagination," (Gessen, 2017).

Critiques of the movement focused discussions, as did Merkin (2018) and Gessen (2017), on the propensity of carceral feminists to "police sex." Commenting on another article, one reader stated: "This isn't progressive feminism. It's radical, carceral feminism. I'm not going to

tolerate a movement that wants to label all sex as rape after the fact, or set a ridiculously high bar for sexual consent,” (Jack Thompson, commenting on Haider, 2019).

## **Consent**

When I first started teaching college courses in 2014, I discussed consent with my Introduction to Criminal Justice classes. We were talking about the relatively new affirmative consent laws; affirmative consent puts the onus for proving that consent was given to the defendant in criminal cases, whereas previously it was the responsibility of the victim to prove that consent was not given. The students in my class were confused, many were inexperienced already and did not know how to tell if someone was consenting, especially if the consent was nonverbal. The conversation was awkward, one male student was particularly curious about how to tell what nonverbal consent was, all I could say was that you can just tell if your partner is actively participating. However, what I missed in that discussion was that actively participating can be up to interpretation. If the partner is participating, but they are subordinate, could they feel pressured into participating? Enjoyment and arousal are also not adequate signs and cannot be used to prove consent.

Recognizing consent, particularly nonverbal consent was an important conversation in #MeToo, though critics still expressed trepidation that people would give up on sex out of confusion over how to tell if their partners were willing or not. In response to the question “How do you communicate consent to partners?” a 47-year-old reader wrote that:

As a straight man I'm usually in the role of initiator — trying to get consent, not give it. It feels awkward to ask directly. I try to read body language — I'm not going to even kiss her if I don't get some kind of positive vibe. From there I'm usually pushing a little further, step by step, seeing how she reacts, backing off a bit if she seems uncomfortable.

(Obaro, 2018, para.).

For those critiquing the movement, it was argued that affirmative consent, or Yes Means Yes law, was too ambiguous a legal standard; while others lamented the impact on sex and dating. Defenders of #MeToo talked about the much-needed conversations on consent and power, and also that #MeToo made it safer for people to say “no” or “I’m not interested.” Merkin seemed particularly concerned with how #MeToo and affirmative consent would ruin sex, stating that it was a repressive movement and harkened back to Victorian-Era virtuousness.

Expressing sexual interest is inherently messy and, frankly, nonconsensual — one person, typically the man, bites the bullet by expressing interest in the other, typically the woman— whether it happens at work or at a bar. Some are now suggesting that come-ons need to be constricted to a repressive degree. Asking for oral consent before proceeding with a sexual advance seems both innately clumsy and retrograde, like going back to the childhood game of ‘Mother, May I?’ We are witnessing the re-moralization of sex, not via the Judeo-Christian ethos but via a legalistic, corporate consensus. (Merkin, 2018).

That Merkin said it was sometimes “nonconsensual” to express “sexual interest” demonstrated why one of the major goals of #MeToo, is to inform and transform social interactions so that nonconsensual sexual interest does not persist after someone says no. This argument by Merkin seems similar to the rape culture phrase “no means yes.” The story told by Grace about Aziz Ansari was another example of this kind of rape culture, where she claimed he continued to pressure her for sex after she told him she did not want to feel forced (Way, 2018).

In response to Merkin’s argument that affirmative consent laws would turn sexual encounters into puritanical and unsatisfying encounters, Cauterucci argued that:

The other straw man<sup>61</sup> has to do with affirmative consent, to which Merkin refers as “stripping sex of eros.” The problem is that what Merkin and her feminist friends think of as “eros”—presumably, the kind of sex where nobody talks about what they want and just sort of fumbles around based on guesswork, hoping it’s all consensual—isn’t working for a lot of people. Many of us would rather our sex be 100 percent consensual, even if it means having to say, “I really want to kiss you,” or ask, “How do you want me to touch you?” There is, in fact, a sexy way to do this. And even if there weren’t, the tradeoff should be a no-brainer. Is a little bit more chatter that makes some people feel awkward not worth the effort as a culture, if it prevents some instances of coercion, rape, and assault? As my own anonymous (and, incidentally, feminist) friend said today of the benefits of communication in the bedroom, ‘The ‘sex panic’ crowd is so obviously just bad at sex. It bums me out. (Cauterucci, 2018).

Neither this response by Cauterucci, nor Merkin and Gessen’s opinion pieces got down to the nitty-gritty discussion of what consent would be. They failed to answer the questions about how to tell if someone consented to sex or not.

For most people concerns about consent were out of confusion. In the summer of 2018, BuzzFeed News (Obaro, 2018), surveyed their readers to see how they viewed consent. They reported the readers' anonymous responses, and, while BuzzFeed News tends to have a younger following and leans towards the left of the political spectrum, the responses varied, though it was clear that #MeToo was making people consider consent and reflect on their sexual encounters. Some readers wrote about their confusion and that they would not have sex until they had a better

---

<sup>61</sup> The first straw man she discussed was that one had to suspend consent to show sexual interest in someone.

understanding. Responding to the question “What does consent mean to you, in the context of sex?” one 33-year-old reader wrote:

I’m still figuring this out, tbh [to be honest]. Although I’m familiar with enthusiastic consent as a concept, my upbringing really glorified ‘being taken’ as the ultimate turn on. So consent isn’t innately sexy to me yet. I’m abstaining until I figure this out. (Obaro, 2018, para. 5).

Statements like this gave merit to the argument that affirmative consent would put a damper on sex. However, other readers indicated that affirmative consent was not a problem. A fifteen-year-old reader responded to the same question, stating:

Both parties [involved] with it are okay with it. It has to be a ‘Yes, I’m willing...’ not an ‘I don’t know...’ or a ‘No.’ If someone’s unsure about it, just don’t do it altogether, and you shouldn’t force what you want upon them. Even if they agree to one thing, that doesn’t mean they agreed to everything else. Having agreed to one thing (e.g., kissing) does not permit you to assume they’ll be okay with other things (e.g., oral). (Obaro, 2018, para. 9).

Critics in the discourse voiced considerable concerns, including that there seemed to be few boundaries made, that #MeToo was not clear on what consent means, and that fears over consent would lead to less sex and flirting, including in the workplace. In her article, Merkin (2018) claimed that initiating sex and expressions of interest were “inherently messy.”

One reader responded:

Ms. Merkin contends that ‘expressing sexual interest is inherently messy’ and could lead to confusion in the workplace. In my experience, there is no such confusion. These men know exactly what’s going on, and they wield their power to get their way.

And unless women are willing to challenge these assaults and fight back, we will continue to be victimized. (Bohrer, 2018).

This letter implied that #MeToo was a challenge to the power men wielded.

The chief concern critics expressed was that men would be accused and have their lives destroyed because of miscommunication and not understanding where the boundaries lie. For example, one of the readers BuzzFeed News surveyed wrote “People can’t flirt anymore without ‘consent’ which is bullshit. Men get in trouble for doing a natural thing that wasn’t a problem until people started getting their feelings hurt,” (Obaro, 2018, para. 48) However, Merkin made a unique argument that assumed all women were like her friends and able to “shrug off” unwanted come-ons and that women who did not have some control over the situation.

What happened to women’s agency? That’s what I find myself wondering as I hear story after story of adult women who helplessly acquiesce to sexual demands. I find it especially curious given that a majority of women I know have been in situations in which men have come on to them—at work or otherwise. They have routinely said, ‘I’m not interested’ or ‘Get your hands off me right now.’ And they’ve taken the risk that comes with it. (Merkin, 2018, para. 10).

Here Merkin was calling it “women’s agency” but it sounded more like victim-blaming, a common response that critics of #MeToo made. In a Letter to the Editor on Merkin’s Op-Ed, a retired psychotherapist wrote:

Sexual harassment does not require a degree of hostility, but rather a belief that it’s harmless, engendered by the age-old concept that boys will be boys, regardless of their age. This belief can evolve into something hostile and rancid, resulting in truly heinous behaviors, but for many boys and men it provides the rationale that it’s O.K. to act on



normal desires without consideration of what their female counterparts want. (Allen, 2018).

In an unrelated article, journalist Emma Gray (2017) discussed the role of male entitlement in this confusion over consent. Citing Kristen Houser of the National Sexual Violence Resource Center (NSVRC), Gray wrote:

Boys and men are taught that they deserve to take up space, and to receive attention and recognition and affirmation, especially from the women and girls around them... 'Male entitlement is the backbone of our culture ... It is what allows people to not think about' ...their behavior. (Houser, as cited in Gray, 2017).

For those defending #MeToo the issue of consent seemed clear; for those critiquing the movement, consent was murky and dangerous.

However, some people came down somewhere in the middle, arguing that affirmative consent was a good thing, but the way the law was written and the discourse about it was vague. They also felt the boundaries on behavior #MeToo was trying to set needed to be clearer. This critique reflected the original goals of #MeToo and transformation, to create space for the tough conversations, goals that the media discourse around consent and justice obscured. One reader, commenting on Merkin's Op-Ed, stated:

For too long, probably forever, women have endured horrific abuse at work. Yet, until the recent flood of public accusations, no one suspected the extent of the problem. I would argue that women needed these last months to gather courage and speak out. And society needed time to absorb all the suffering and injustice and to express its outrage.

Now, however, the time has come, as Daphne Merkin suggests, to question our reflexive responses. What constitutes abuse, and are there degrees of it? Should we take historical

context into account when determining its severity? What punishments are appropriate for different degrees of abuse? Is redemption possible?

And we need to redefine roles and rules at work, in relationships, and beyond. Only then can we establish boundaries that are safe, respectful and comfortable for both sexes.

(Migdal, 2018).

This Letter to the Editor seemed to reflect the original goal of #MeToo and transformative justice, to be a catalyst for change and a more equitable future.

### **Conclusion**

The discourse over whether the movement was ruining men's lives, an out-of-control sex panic, or redefining consent to be so broad that all sex and displays of sexual interest could be labeled illegal sex were important sights for examining the reification of power dynamics through media and discourse. The discourse pitted people on different sides of an issue, people that could have shared a common concern and desire to alleviate suffering and end sexual violence. This divisiveness did not allow for meaningful conversations, as the people who needed to learn and change could pass it off as a "witch hunt." It also made it seem like sexual violence was too complex and divisive to solve, thus maintaining power structures, and keeping justice and healing out of reach for so many. The following quote from an article about Aziz Ansari and Grace summed up this dilemma.

It would be easy to look at the Aziz Ansari story and dismiss it as the #MeToo movement run amok...The story *is* messier than most that we've heard since The Reckoning began in October...But if the #Metoo movement is going to amount to sustained culture change—rather than simply a weeding out of the worst actors in a broken system—we need to renegotiate the sexual narratives we've long accepted. And that involves having

complicated conversations about sex that is violating but not criminal. The sexual encounter Grace described falls into what I see as a gray area of violating, noncriminal sex...This is the kind of sex that is not only *worth* talking about, but *necessary* to talk about...And when nearly every woman I've spoken to about the Aziz Ansari story follows up our conversation with a similar story of her own, it's worth thinking about why that is. (Gray, 2018)

#MeToo was and is an important movement and did a lot of good for survivors; however, whether it was effective at cultural change remains unknown.

## **Chapter 5: Conclusion**

When the stories of Harvey Weinstein's violent acts were first made public (Farrow, 2017; Kantor & Twohey, 2017) in the fall of 2017 my first reaction, like so many others, was anger for the pain he caused those women. However, that anger only grew as statements of disbelief were posted on social media and in news articles. As more stories were told and more powerful people were accused, calls for justice became louder. I set out with this study to explore these calls for justice and the media discourse on #MeToo and sexual violence, to understand how the movement challenged and perhaps transformed narratives. Ultimately this project became about the justice needs of survivors and the public vs. the reality of survivors' experiences when they disclosed.

There was also considerable tension, over what the goals of #MeToo were, between the leaders of the movement, who set out to support survivors on their journeys to healing, and those who wanted the movement to be about consequences, public shaming, and prevention through punishment. Leaders of the movement also wanted to prevent sexual violence through community healing and transformation. It was these tensions, goals, and the backlash that was the focus of this research project.

### **Summary of the Research**

In the second chapter, I examined the calls for justice and the contradictory tensions between punitive justice and transformative justice. Ultimately, the study found that while accountability was important for survivors participating in #MeToo and reflected in the public discourse, for the vast majority of survivors, especially those who never reported their assaults, this kind of formal justice was inaccessible. Survivors also communicated that a major component of justice for them was to support other survivors, prevent new assaults, and actively

work towards changing social norms, or rape culture. Drawing on abolitionist and transformative justice perspectives, I argued that what is needed is a new victim-centered justice that is outside of the legal system, justice that focuses on survivors' needs to heal, support, and especially make meaning out of their suffering. I called this perspective *Survivor Justice*.

In the third chapter, I explored another justice perspective that dominated much of the critiques about #MeToo, procedural justice. In the backlash and public discourse on #MeToo, there were considerable concerns about the due process rights of those accused, however little discussion of the meaning of due process. I divided this chapter into two parts, the first focused on the critique of potential due process violations where it was implied that the men were accused and sanctioned with little investigation or proof. While adherence to due process was part of the media discourse, there were still questions of due process violations. The way that due process was used in the discourse and backlash about #MeToo effectively shut down important conversations about sexual assault, survivors' experiences with the criminal justice system, and how to address sexual violence while maintaining due process rights guaranteed in the constitution.

The second part of the third chapter focused on fair procedures for victims. It examined the survivors' stories about how they were treated by law enforcement, employers, and HR departments when they reported violence. Their experiences were similar to the experiences exposed in prior research, where the victims were met with hostility, myths about "real rape," ideal victim typology, lack of agency in the legal process, and ultimately cases that went nowhere. These were important experiences illuminated by the #MeToo movement, demonstrating the desire for victims' due process. However, a fair process for victims is typically viewed as an anathema to fair processes for the accused. I argue that this is another

reason why we need *survivor justice*.

In the fourth chapter, I turned towards the other major critiques of the movement, as well as the backlash countermovement, #HimToo. The critiques included: the movement was going too far, ruining innocent men, ruining sex and flirting, that it was making consent too confusing, and would lead to harsher punishments and worsen mass incarceration. While these critiques were expressed through hypothetical situations that were sometimes farcical, the critiques about carceral feminism and consent did have merit. The data showed that there were many #MeToo supporters pushing for punishment to stop sexual violence, suggesting that some people engaging with the movement were adopting carceral logic. However, in reality, the movement was unlikely to make significant changes to law enforcement and the criminal justice system. This means that the movement needs more leadership to focus on their stated goals of healing, support, and transformation, efforts that would be more effective at reducing sexual violence than incarceration. The confusion expressed over consent was problematic, especially with affirmative consent laws. Thus, a need to increase efforts to educate people of all ages, but especially young people, on what consent is, how to communicate it (in realistic ways), and how to ask for it.

***Strengths and Limitations:***

Studying the media discourse and representations of sexual violence and #MeToo allowed for a clearer understanding of the movement, and public discourse, and gave access to many survivor narratives. Importantly, it provided knowledge about justice, survivors' needs, and public needs. Much of our collective knowledge is filtered through media sources, this is especially so with the prominence of social media sites and the proliferation of politically partisan media, like Breitbart, MSNBC, The Daily Caller, etc. Scholars must turn to these

methods of knowledge production to better understand not just the discourse, but also the views of readers and the stories of everyday people.

Despite these strengths, there were some limitations. Qualitative research can tell us a lot about social structures and phenomena; however, it tends to be subjective and may not be generalizable. That is the case with this study, which is focused on realities and stories filtered through the media, the survivor stories and the perpetrators highlighted in the media were typically famous, upper-middle-class or wealthy, and predominately white. It can tell us a lot about the public discourse and the survivor stories highlighted in the media, but a more comprehensive qualitative study with interviews of survivors from different backgrounds would be enlightening. The project on media discourse is a starting place for understanding survivor justice and social due process.

Another limitation of the movement was the reliance on media stories as my main source of data. Thus, the information garnered here was filtered through the biases of journalists and the organizations that published their work. Biases likely played into the stories told in the articles and the way quotes were edited to reflect certain points of view. Using media data provided important data on the discourse about the movement, which informed much of the public debate about #MeToo and the tensions between public understanding of the movement versus what movement leaders intended. I tried to mitigate some of the biases in analyzing the statements and quotes featured in the articles, often searching for their original statements to ensure accuracy. However, there is a chance that I misinterpreted the words of someone engaging in the movement. That many of the same themes found in this study were also found in other research on #MeToo lends support for my analysis.

*A note on positionality:* I am a survivor/victim of childhood sexual assault, I have also been

propositioned, harassed, and groped far too many times to count. This could have made objectivity difficult, which is why I chose to use prior research to start the data gathering and coding and then used inductive coding to draw out themes that were discussed in the data. There were things said in this data set that were difficult to read and analyze, which would likely be the case for anyone doing a study on sexual violence. My history of abuse and lack of legal justice kept me open to all the different meanings of justice, instead of being wedded to the notion that survivors want punitive justice. I knew firsthand that there was more to this for survivors. My prior victimization and the responses by the people my family turned to were often mirrored in survivors' stories, media discourse, and backlash. My experiences as a survivor and as a scholar committed to a humane and compassionate justice system, helped me to see the bigger picture. The ideas for survivor justice, social due process, and rhetorical moral panic came out of the data.

### ***Implications***

There are several significant implications for both scholarship and advocacy programs. First, more research needs to be done on the justice needs of survivors, particularly for those survivors who cannot or will not access the legal justice system. This research should involve interviews with survivors who fall into that dark figure of crime, the victims who are often overlooked in justice scholarship. Second, in-depth qualitative research should be done on transformative justice programs and victim satisfaction, along with program evaluations. This will help us identify which programs are most effective at helping survivors to heal, transform, and feel like justice has been restored in some way.

#MeToo has also shown us that there is an increased need for community programs that educate people about consent and empowerment. Considerably more research needs to be



conducted on affirmative consent. Interviews with college students, focus groups with adults, and comparing across regions in the United States would tell us a lot about how people understand and communicate consent. This would help us develop education and community programs that would better inform people. Approachable dissemination of the research findings is essential to the work.

Important implications for #MeToo as a social movement, are that there needs to be more leadership and consensus over what the movement is about. There needs to be focused conversations on consent, healthy and good sex, how to have consensual and fun hook-ups, and bystander awareness. This is especially important in schools, and it should be younger people (not teachers or parents) having these conversations with high school kids so that they feel more comfortable and can relate more to the consent educators.

Finally, the critiques about witch hunts and ruining innocent men's lives have not been borne out in reality. This tells me that comprehensive education programs and more survivor justice are needed. Start teaching about sexual violence, body empowerment, and signs of abuse at a younger age. Include parents and community members in the elementary school education programs. Survivor panels at these events could be helpful, especially with young and older adults. There are a lot of survivors who want to tell their stories, as made clear by #MeToo, and they want to tell their stories in a way that leads to positive changes. The survivors would need to be well-trained and far into their healing, but if we create safe spaces for this, people will learn from each other.

The main implication for policy, besides dismantling our current justice system and rebuilding an equitable and non-punitive justice system, is to fund survivor justice organizations. We then need to develop and assess survivor-led programming. Some examples of programming

include horse therapy, developing dog training programs for shelter dogs and survivors of sexual violence and domestic abuse, and other therapeutic programs that involve reconnecting with their bodies, like group yoga and dance for survivors. Programs should be survivor-led and provide spaces for community education, outreach, and empowerment, as well as survivor storytelling for those who want it. One place to start could be in high schools and universities, developing spaces where survivors can gather to feel safe and supported by each other. Campus victim advocacy organizations are a good place to start, but the groups need to be protected from Title IX and Clery Act policies that require reporting and investigating known incidents. Survivor justice programs must be free from the state and administrative apparatuses, otherwise, we will still lose those victims who do not want to make official reports.

### **Broad Implications**

The media and discourse about #MeToo and sexual violence brought to light the messiness and reality of justice for survivors. This is part of the reason there was so much controversy about it. We live in an age where crime is constantly being reported on, and violence and law enforcement are a big part of Primetime television. News magazines, newspapers, television shows like Dateline and a myriad of documentaries on streaming services focus on crime, especially violent crime. The stories about justice tend to only show two kinds of stories: miscarriages of justice when the accused was innocent or when the victim is vindicated through the legal process. What the #MeToo movement showed the public, however, was that justice is rarely this neatly organized when it comes to sexual violence. Survivors who never get any sort of justice still want to feel some kind of relief from the pain and suffering. #MeToo also made people confront the idea that most perpetrators of sexual violence look and act normal, that rather than being some desperate man trying to demonstrate power on a more powerless,

unsuspecting woman, the norm of rape and sexual harassment is that men of all social, political, and economic status can be violent. Sexual violence is often an expression of entitlement and privilege and not a symptom of psychosis. This reality has proven difficult for many people to accept and reflect on.

### **Future Research**

There are several implications for further research. One important critique of the movement that did not get explored in this dissertation, was the missing perspectives of diverse survivors. There was some data about this critique and concerns that draw on theories of intersectionality to show that survivors experiencing multiple forms of marginalization were much more likely to be victimized. A paper expanding on this critique, examining the media discourse and survivor stories would help to understand this failing of the broader movement.

Similar to intersectionality, there were significant data on hierarchies of violence and suffering, where many people felt the movement was making all forms of sexual assault and harassment to be as bad as violent rape. There were concerns that this could hurt the progress made by #MeToo and there were also survivors of rape who expressed anger that survivors of lesser crimes were participating and claiming to be suffering. Exploring these hierarchies through media stories and Twitter conversations could provide more information about perceptions of violence.

Projects expanding on legal consciousness of due process and social due process. This would produce information important for sociolegal scholarship on the understanding of rights and privilege. Connected to this is the legal consciousness around affirmative consent, a project could be done on multiple college campuses, interviewing students about how they perceive consent, communicate consent, and what their understanding of non-verbal consent is. This

could provide essential knowledge for policy, universities, and comprehensive sex education programs.

The articles, comments, and tweets analyzed in this project also suggested that there is more to understand about shame. A study juxtaposing how shame is used as part of the survivor stories, as public shaming of those accused, and how men's rights advocates used shame to delegitimize survivors' stories.

Finally, it is imperative to expand on the concept of survivor justice, particularly through qualitative interviews to fully understand their justice needs. The sample of survivors would need to be drawn from multiple regions of the country. A similar project (McGlynn & Westmarland, 2018) was conducted but was with a small sample of survivors in a northern England region. The survivors in that study had also all reported their violence to law enforcement. Interviewing survivors who never reported or whose cases were dropped would provide important knowledge of justice as a concept, as well as concrete ways that we can address their needs.

Ultimately #MeToo was not meant to, nor was it an appropriate space, for significant social change; rather, it was a starting place for survivors to find each other. The real work for change must happen on the ground. Survivor justice, education, advocacy, and organizations like me too., that Tarana Burke started in 2006, are where that work should take place. Women of color have been leading the charge, it is time to support and expand on the work.

## References

- About Dick Durbin | U.S. Senator Dick Durbin of Illinois.* (n.d.). Retrieved June 19, 2022, from <https://www.durbin.senate.gov/about-dick-durbin>
- Ahrens, C. E. (2006). Being Silenced: The impact of negative social reactions on the disclosure of rape. *American Journal of Community Psychology, 38*(3–4), 31-34. <https://doi.org/10.1007/s10464-006-9069-9>
- Alabi, O. A. (2019). Sexual violence laws redefined in the me too era: Affirmative consent & statutes of limitations. *Widener Law Review, 25*(1), 69-90.
- Alaggia, R., & Wang, S. (2020). “I never told anyone until the #metoo movement”: What can we learn from sexual abuse and sexual assault disclosures made through social media? *Child Abuse & Neglect, 103*, 104312. <https://doi.org/10.1016/j.chiabu.2019.104312>
- Alexander, C. (2020). Sorry (Not Sorry): Decoding #MeToo Defenses. *Texas Law Review, 99*(2), 341–388. <https://doi.org/10.2139/ssrn.3550207>
- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness.* The New Press.
- Almukhtar, S., Gold, M., & Buchanan, L. (2018, February 8). After Weinstein: 71 men accused of sexual misconduct and their fall from power. *The New York Times.* <https://www.nytimes.com/interactive/2017/11/10/us/men-accused-sexual-misconduct-weinstein.html>, <https://www.nytimes.com/interactive/2017/11/10/us/men-accused-sexual-misconduct-weinstein.html>
- Altheide, D. L., & Schneider, C. J. (2013). *Qualitative media analysis* (2nd ed.). Sage Publications.

- Annese, J. (2022, September 10). *NYC to pay \$125K to woman who accused two NYPD cops of rape*. NY Daily News. <https://www.nydailynews.com/new-york/nyc-crime/ny-nyc-pay-settlement-woman-accused-brooklyn-cops-rape-20220910 ddlt7yn42jdevkti4imlhdpsq-story.html>
- Armstrong, E. A., Gleckman-Krut, M., & Johnson, L. (2018). Silence, power, and inequality: An intersectional approach to sexual violence. *Annual Review of Sociology*, *44*(1), 99–122. <https://doi.org/10.1146/annurev-soc-073117-041410>
- Banet-Weiser, S., & Miltner, K. M. (2016). #MasculinitySoFragile: Culture, structure, and networked misogyny. *Feminist Media Studies*, *16*(1), 171–174. <https://doi.org/10.1080/14680777.2016.1120490>
- Bell, M. (2021). Abolition: A new paradigm for reform. *Law & Social Inquiry*, *46*(1), 32–68.
- Bell, W. K. (Director). (2022, January 30). *We need to talk about Cosby* (No. 1–4). Showtime.
- Benford, R. D., & Snow, D. A. (2000). Framing processes and social movements: An overview and assessment. *Annual Review of Sociology*, *26*, 611–639.
- Bennett, W. L., & Segerberg, A. (2012). The logic of connective action. *Information, Communication & Society*, *15*(5), 739–768. <https://doi.org/10.1080/1369118X.2012.670661>
- Bimber, B., Flanagin, A. J., & Stohl, C. (2005). Reconceptualizing collective action in the contemporary media environment. *Communication Theory*, *15*(4), 365–388. <https://doi.org/10.1111/j.1468-2885.2005.tb00340.x>
- Blackstone, A., Uggen, C., & McLaughlin, H. (2009). Legal consciousness and responses to sexual harassment. *Law & Society Review*, *43*(3), 631–668. <https://doi.org/10.1111/j.1540-5893.2009.00384.x>

- Braithwaite, J. (1999). Restorative justice: Assessing optimistic and pessimistic accounts. *Crime and Justice*, 25, 1–127. <https://doi.org/10.1086/449287>
- Brett M. Kavanaugh. (n.d.). Oyez. Retrieved June 13, 2022, from [https://www.oyez.org/justices/brett\\_m\\_kavanaugh](https://www.oyez.org/justices/brett_m_kavanaugh)
- Bumiller, K. (1987). Rape as a legal symbol: An essay on sexual violence and racism. *University of Miami Law Review*, 42, 19.
- Bumiller, K. (2008). *In an abusive state: How neoliberalism appropriated the feminist movement against sexual violence*. Duke University Press.
- Burke, T. (n.d.). *The “me too.” movement*. Justbeinc. Retrieved May 12, 2018, from <https://justbeinc.wixsite.com/justbeinc/the-me-too-movement-cmml>
- Burke, T. (2021). *Unbound: My story of liberation and the birth of the me too movement*. Flat Iron Books.
- Campbell, R. (2012). *Neurobiology of sexual assault: Implications for first responders in law enforcement, prosecution, and victim advocacy*. Office of Justice Programs-National Institute of Justice. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/neurobiology-sexual-assault-implications-first-responders-law>
- Campbell, R., Wasco, S. M., Ahrens, C. E., Sefl, T., & Barnes, H. E. (2001). Preventing the “second rape”: Rape survivors’ experiences with community service providers. *Journal of Interpersonal Violence*, 16(12), 1239–1259 <https://doi.org/1177/088626001016012002>
- Carbone-Lopez, K., Slocum, L. A., & Kruttschnitt, C. (2016). “Police wouldn’t give you no help”: Female offenders on reporting sexual assault to police. *Violence Against Women*, 22(3), 366–396. <https://doi.org/10.1177/1077801215602345>

- Carlsmith, K. M., & Darley, J. M. (2008). Psychological aspects of retributive justice. *Advances in Experimental Social Psychology*, 40, 193–236. [https://doi.org/10.1016/S0065-2601\(07\)00004-4](https://doi.org/10.1016/S0065-2601(07)00004-4)
- Carlson, J. (2015). Mourning Mayberry: Guns, masculinity, and socioeconomic decline. *Gender & Society*, 29(3), 386–409. <https://doi.org/10.1177/0891243214554799>
- Chandra, G., & Erlingsdóttir, I. (Eds.). (2021). *The Routledge handbook of the politics of the metoo movement*. Routledge.
- Chasteen, A. L. (2001). Constructing rape: Feminism, shange, and women’s everyday understandings of sexual assault. *Sociological Spectrum*, 21(2), 101–139. <https://doi.org/10.1080/02732170121403>
- Chemerinsky, E. (1999). Substantive due process. *Touro Law Review*, 15(4), 1501-1534.
- Chemerinsky, E. (2000). Procedural due process claims. *Touro law review*, 16(3), 871-894.
- Clark, J. N. (2008). The three Rs: Retributive justice, restorative justice, and reconciliation. *Contemporary Justice Review*, 11(4), 331–350. <https://doi.org/10.1080/10282580802482603>
- Cohen, S. (1972). *Folk devils and moral panics* (3rd ed.). Routledge.
- Community accountability archives*. (n.d.). Transform Harm. Retrieved November 16, 2022, from <https://transformharm.org/category/community-accountability/>
- Connell, R. W., & Messerschmidt, J. W. (2005). Hegemonic masculinity: Rethinking the concept. *Gender & Society*, 19(6), 829–859. <https://doi.org/10.1177/0891243205278639>
- Corbett, H. (2022, October 27). #MeToo five years later: How the movement started and what needs to change. *Forbes*. <https://www.forbes.com/sites/hollycorbett/2022/10/27/metoo-five-years-later-how-the-movement-started-and-what-needs-to-change/>



- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford Law Review*, 43(6), 1241–1299.  
<https://doi.org/10.2307/1229039>
- Crenshaw, K. (2021, October 1). Opinion: How R. Kelly got away with it. *The New York Times*. <https://www.nytimes.com/2021/10/01/opinion/r-kelly-conviction.html>
- Cuevas, K. M., Balbo, J., Duval, K., & Beverly, E. A. (2018). Neurobiology of sexual assault and osteopathic considerations for trauma-informed care and practice. *Journal of Osteopathic Medicine*, 118(2), e2–e10. <https://doi.org/10.7556/jaoa.2018.018>
- Currie, E. (1997). Market, crime and community: Toward a mid-range theory of post-industrial violence. *Theoretical Criminology*, 1(2), 147–172.
- Currie, E. (2016). *The roots of danger: Violent crime in global perspective*. Oxford University Press.
- Daly, K. (2002). Restorative justice: The real story. *Punishment & Society*, 4(1), 55–79.  
<https://doi.org/10.1177/14624740222228464>
- Daly, K. (2017). Sexual Violence and Victims' Justice Interests. In E. Zinsstag & M. Keenan (Eds.), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions* (pp. 108–139). Routledge. <https://doi.org/10.4324/9781315630595>
- Darby, A. (2017, November 26). Nine cops bullied teen accusing two NYC officers of cuffing, raping her, lawyer says. *The Kansas City Star*. <https://www.kansascity.com/news/nation-world/article186577148.html>

Darley, J. M., & Pittman, T. S. (2003). The Psychology of compensatory and retributive justice.

*Personality and Social Psychology Review*, 7(4), 324–336.

[https://doi.org/10.1207/S15327957PSPR0704\\_05](https://doi.org/10.1207/S15327957PSPR0704_05)

Dixon, E. (2020). Building community safety: Practical steps toward liberatory transformation.

In E. Dixon & L. L. Piepzna-Samarasinha, (Eds.), *Beyond survival: Strategies and stories from the transformative justice movement* (pp.15-25). AK Press.

Dowsett, G. W. (2009). The “gay plague” revisited: AIDS and its enduring moral panic. In G.

Herdt (Ed.), *Moral Panics, Sex Panics: Fear and the Fight Over Sexual Rights* (pp. 130–156). NYU Press.

Edwards, K. M., Turchik, J. A., Dardis, C. M., Reynolds, N., & Gidycz, C. A. (2011). Rape

myths: History, individual and institutional-level presence, and implications for change. *Sex Roles*, 65(11), 761–773. <https://doi.org/10.1007/s11199-011-9943-2>

Eisenstein, Z. (1977). Constructing a theory of capitalist patriarchy and socialist feminism.

*Insurgent Sociologist*, 7(3), 3–17. <https://doi.org/10.1177/089692057700700301>

Ellis, E. G. (2018). How #himtoo became the tagline of the men’s rights movement. *Wired*.

<https://www.wired.com/story/brett-kavanaugh-hearings-himtoo-metoo-christine-blasey-ford/>

Epp, C. R., Maynard-Moody, S., & Haider-Markel, D. P. (2014). *Pulled over: How police stops*

*define race and citizenship*. University of Chicago Press.

Ewick, P., & Silbey, S. (2020). Sociology of legal consciousness and hegemony. In J. Přibáň

(Ed), *Research Handbook on the Sociology of Law* (pp. 163–176). Edward Elgar Publishing.

Ewick, P., & Silbey, S. S. (1995). Subversive stories and hegemonic tales: Toward a sociology

of narrative. *Law & Society Review*, 29(2), 197. <https://doi.org/10.2307/3054010>

Ewick, P., & Silbey, S. S. (1998). *The common place of law: Stories from everyday life*.

University of Chicago Press.

Farrow, R. (2017, October 10). From aggressive overtures to sexual assault: Harvey

Weinstein's accusers tell their stories. *The New Yorker*.

<https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>

Farrow, R. (2019). *Catch and kill*. Little, Brown and Company.

Federici, S. (2004). *Caliban and the witch: Women, the body and primitive accumulation*.

Autonomedia.

Feller, M., Nichol, J., & Nichol, A. (2022, February 25). Their sister's murder was used to justify tough on crime laws: Now they want to build her a different legacy. *ELLE*.

<https://www.elle.com/culture/career-politics/a39125833/polly-klaas-sisters-a-new-legacy-podcast-criminal-justice-reform/>

Felstiner, W. L. F., Abel, R. L., & Sarat, A. (1980). The emergence and transformation of disputes: Naming, blaming, claiming .... *Law & Society Review*, 15(3-4), 631-654.

Fenwick, B. (2020, July 13). The massacre that destroyed Tulsa's 'Black Wall Street.' *The New*

*York Times*. <https://www.nytimes.com/2020/07/13/us/tulsa-massacre-graves-excavation.html>

Fileborn, B., & Loney-Howes, R. (Eds.). (2019). *#MeToo and the politics of social change*.

Springer International Publishing. <https://doi.org/10.1007/978-3-030-15213-0>

Flanagan, C. (2018, January 29). *The conversation #metoo needs to have*. The Atlantic.

<https://www.theatlantic.com/politics/archive/2018/01/the-right-conversation-for-metoo/551732/>

- Francescani, C., & Fisher, L. (2021, June 30). *Bill Cosby: Timeline of his fall from “America’s Dad” to his release from prison*. ABC News. <https://abcnews.go.com/Entertainment/bill-cosby-trial-complete-timeline-happened-2004/story?id=47799458>
- Franiuk, R., Seefeldt, J. L., & Vandello, J. A. (2008). Prevalence of rape myths in headlines and their effects on attitudes toward rape. *Sex Roles*, 58(11), 790–801. <https://doi.org/10.1007/s11199-007-9372-4>
- Freelon, D., McIlwain, C., & Clark, M. (2018). Quantifying the power and consequences of social media protest. *New Media & Society*, 20(3), 990–1011. <https://doi.org/10.1177/1461444816676646>
- Fricker, M. (2007). *Epistemic injustice: Power and the ethics of knowing*. Oxford University Press.
- Frohmann, L. (1991). Discrediting victims’ allegations of sexual assault: Prosecutorial accounts of case rejections. *Social Problems*, 38, 213–226.
- Garber, M. (2020, February 8). *The Weinstein trial and the lies of due process*. The Atlantic. <https://www.theatlantic.com/culture/archive/2020/02/the-weinstein-trial-and-the-ugly-realities-of-due-process/606262/>
- Gash, A., & Harding, R. (2018). #MeToo? Legal discourse and everyday responses to sexual violence. *Laws*, 7(2), 21. <https://doi.org/10.3390/laws7020021>
- Get to know us- History & inception*. (n.d.). Me Too. Movement. Retrieved January 27, 2023, from <https://metoomvmt.org/get-to-know-us/history-inception/>
- Get to know us-Our vision & theory of change*. (n.d.). Me Too. Movement. Retrieved August 8, 2022, from <https://metoomvmt.org/get-to-know-us/vision-theory-of-change/>

- Goodmark, L. (2018). *Decriminalizing domestic violence: A balanced policy approach to intimate partner violence*. University of California Press.
- Goodmark, L. (2023). *Imperfect victims: Criminalized survivors and the promise of abolition feminism*. University of California Press.
- Gruber, A. (2020). *The feminist war on crime: The unexpected role of women's liberation in mass incarceration*. University of California Press.
- Halperin, D. M. (2017). Introduction: The war on sex. In D. M. Halperin & T. Hoppe (Eds.), *The war on sex* (pp. 1–61). Duke University Press.
- Halperin, D. M., & Hoppe, T. (Eds.). (2017). *The war on sex*. Duke University Press.
- Harrington, C. (2021). What is “toxic masculinity” and why does it matter? *Men and Masculinities*, 24(2), 345–352. <https://doi.org/10.1177/1097184X20943254>
- Harvey Weinstein*. (n.d.). IMDb. Retrieved June 13, 2022, from <http://www.imdb.com/name/nm0005544/>
- Healing in action*. (n.d.). Me Too. Movement. Retrieved August 12, 2022, from <https://metoomvmt.org/take-action/>
- Hess, A., & Flores, C. (2018). Simply more than swiping left: A critical analysis of toxic masculine performances on Tinder Nightmares. *New Media & Society*, 20(3), 1085–1102. <https://doi.org/10.1177/1461444816681540>
- Hindes, S., & Fileborn, B. (2020). “Girl power gone wrong”: #MeToo, Aziz Ansari, and media reporting of (grey area) sexual violence. *Feminist Media Studies*, 20(5), 639–656. <https://doi.org/10.1080/14680777.2019.1606843>

- Hine, D. C. (1989). Rape and the inner lives of black women in the middle west. *Signs: Journal of Women in Culture and Society*, 14(4), 912–920. <https://doi.org/10.1086/494552>
- Hirshman, L. (2019). *Reckoning: The Epic battle against sexual abuse and harassment*. Mariner Books.
- Holland, J., Ramazanoglu, C., & Scott, S. (1990). Aids: From panic stations to power relations: Sociological perspectives and problems. *Sociology*, 24(3), 499–518.
- Hudson, B. (1998). Restorative justice: The challenge of sexual and racial violence. *Journal of Law and Society*, 25(2), 237-256.
- Ilea, A. (2018). What about ‘the sex offenders’? Addressing sexual harm from an abolitionist perspective. *Critical Criminology*, 26(3), 357–372. <https://doi.org/10.1007/s10612-018-9406-y>
- Jeness, V., & Calavita, K. (2018). “It depends on the outcome”: Prisoners, grievances, and perceptions of justice. *Law & Society Review*, 52(1), 41–72. <https://doi.org/10.1111/lasr.12312>
- Jurik, N. (1999). Socialist feminism, criminology and social justice. In B. Arrigo (Ed.), *Social justice/criminal Justice: The maturation of critical theory in law, crime, and deviance* (pp. 31–50). Wadsworth.
- Just Be Inc.: About us*. (n.d.). Justbeinc. Retrieved January 27, 2023, from <https://justbeinc.wixsite.com/justbeinc/purpose-mission-and-vision>
- Kaba, M. (2021). *We do this ‘til we free us: Abolitionist organizing and transforming justice*. Haymarket Books.

- Kaba, M., & Herzing, R. (2021). Transforming punishment: What is accountability without punishment? In M. Kaba (Ed.) *We do this 'til we free us: Abolitionist organizing and transforming justice* (pp. 132-138). Haymarket Books.
- Kahn, A. S., Jackson, J., Kully, C., Badger, K., & Halvorsen, J. (2003). Calling it rape: Differences in experiences of women who do or do not label their sexual assault as rape. *Psychology of Women Quarterly*, 27(3), 233–242. <https://doi.org/10.1111/1471-6402.00103>
- Kantor, J., & Twohey, M. (2017, October 5). Harvey Weinstein paid off sexual harassment accusers for decades. *The New York Times*. <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>
- Kantor, J., & Twohey, M. (2019). *She said: Breaking the sexual harassment story that helped ignite a movement*. Penguin Random House.
- Kasparian, A. (2014). Justice beyond bars: Exploring the restorative justice alternative for victims of rape and sexual assault. *Suffolk Transnational Law Review*, 37(2), 377–410.
- Kaufman, M. (1987). The construction of masculinity and the triad of men's violence. In M. Kaufman (Ed.), *Beyond patriarchy: Essays by men of pleasure, power, and change* (pp. 1–19). Oxford University Press.
- Kelly, D., & Valentine, J. (2018). The science of neurobiology of sexual assault trauma and the Utah legal system. *Utah Journal of Criminal Law*, 3, 70–86.
- Kim, M. E. (2018). From carceral feminism to transformative justice: Women-of-color feminism and alternatives to incarceration. *Journal of Ethnic & Cultural Diversity in Social Work*, 27(3), 219–233. <https://doi.org/10.1080/15313204.2018.1474827>

- Kim, M. E. (2021). Transformative justice and restorative justice: Gender-based violence and alternative visions of justice in the United States. *International Review of Victimology*, 27(2), 162–172. <https://doi.org/10.1177/0269758020970414>
- Kimmel, M. (2007). Contextualizing men’s violence: The personal meets the political. In L. L. O’Toole, J. R. Schiffman, & M. L. K. Edwards (Eds.), *Contextualizing men’s violence* (pp. 99–110). New York University Press.
- Kimmel, M. (2017). *Angry white men: American masculinity at the end of era*. Nation Books.
- Kimmel, M. S., & Mahler, M. (2003). Adolescent masculinity, homophobia, and violence: Random school shootings, 1982-2001. *American Behavioral Scientist*, 46(10), 1439–1458. <https://doi.org/10.1177/0002764203046010010>
- Kosloski, A. E., Diamond-Welch, B. K., & Mann, O. (2018). The presence of rape myths in the virtual world: A qualitative textual analysis of the Steubenville sexual assault case. *Violence and Gender*, 5(3), 166–173. <https://doi.org/10.1089/vio.2017.0067>
- Kubrin, C. E., Stucky, T. D., & Krohn, M. D. (2009). *Researching theories of crime and deviance*. Oxford University Press.
- Law, V. (2014). *Against carceral feminism: Relying on state violence to curb domestic violence only ends up harming the most marginalized women*. Jacobin.
- Levy, A. (2013, July 29). Trial by Twitter. *The New Yorker*.  
<https://www.newyorker.com/magazine/2013/08/05/trial-by-twitter>
- Lonsway, K. A., & Archambault, J. (2012). The “justice gap” for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18(2), 145–168.  
<https://doi.org/10.1177/1077801212440017>
- Lorber, J. (2011). *Gender inequality: Feminist theories and politics*. Oxford University Press.



- Maier, S. L. (2008). "I have heard horrible stories . . .": Rape victim advocates' perceptions of the revictimization of rape victims by the police and medical system. *Violence Against Women, 14*(7), 786–808. <https://doi.org/10.1177/1077801208320245>
- Manne, K. (2017). *Down girl: The logic of misogyny*. Oxford University Press.
- Markel, D., & Flanders, C. (2010). Bentham on stilts: The bare relevance of subjectivity to retributive justice. *California Law Review, 98*(3), 907–988.
- Master of none*. (2015, 2021). Netflix. <https://www.imdb.com/title/tt4635276/>
- McGlynn, C., & Westmarland, N. (2018). Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice. *Social & Legal Studies, 28*(2), 179–201. <https://doi.org/10.1177/0964663918761200>
- McLaughlin, H., Uggen, C., & Blackstone, A. (2012). Sexual harassment, workplace authority, and the paradox of power. *American Sociological Review, 77*(4), 625–647. <https://doi.org/10.1177/0003122412451728>
- Me too rising*. (n.d.). Retrieved January 27, 2023, from <https://metoorising.withgoogle.com>
- Meet Debbie: Congresswoman Debbie Dingell*. (n.d.). Retrieved June 19, 2022, from <https://debbiedingell.house.gov/about/>
- Meloy, M. L., & Miller, S. L. (2010). *The victimization of women: Law, policies, and politics*. Oxford University Press.
- Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), No. 84-1979 (U.S. Supreme Court June 19, 1986). <https://supreme.justia.com/cases/federal/us/477/57/>
- Messerschmidt, J. W. (2000). Becoming "real men": Adolescent masculinity challenges and sexual violence. *Men and Masculinities, 2*(3), 286–307. <https://doi.org/10.1177/1097184X00002003003>

- Messerschmidt, J. W. (2009). "Doing gender": The impact and future of a salient sociological concept. *Gender & Society*, 23(1), 85–88. <https://doi.org/10.1177/0891243208326253>
- Mitchell, W. C. (1918). Bentham's felicific calculus. *Political Science Quarterly*, 33(2), 161–183. <https://doi.org/10.2307/2141580>
- Morris, A. (2002). Critiquing the critics: A brief response to critics of restorative justice. *British Journal of Criminology*, 42(3), 596–615. <https://doi.org/10.1093/bjc/42.3.596>
- Nagin, D. S. (2013a). Deterrence in the Twenty-First Century. *Crime and Justice*, 42, 199–263. <https://doi.org/10.1086/670398>
- Nagin, D. S. (2013b). Deterrence: A review of the evidence by a criminologist for economists. *Annual Review of Economics*, 5(1), 83–105. <https://doi.org/10.1146/annurev-economics-072412-131310>
- Nutbeam, M., & Mereish, E. H. (2022). Negative attitudes and beliefs toward the #metoo movement on Twitter. *Journal of Interpersonal Violence*, 37(15–16), NP13018–NP13044. <https://doi.org/10.1177/08862605211001470>
- Orchowski, L. M., & Gidycz, C. A. (2015). Psychological consequences associated with positive and negative responses to disclosure of sexual assault among college women: A prospective study. *Violence Against Women*, 21(7), 803–823. <https://doi.org/10.1177/1077801215584068>
- Our work*. (n.d.). Me Too. Movement. Retrieved January 27, 2023, from <https://metoomvmt.org/the-work/>
- Peleg-Koriat, I., & Klar-Chalamish, C. (2020). The #metoo movement and restorative justice: Exploring the views of the public. *Contemporary Justice Review*, 23(3), 239–260. <https://doi.org/10.1080/10282580.2020.1783257>

- Peterson, Z. D., & Muehlenhard, C. L. (2004). Was it rape? The function of women's rape myth acceptance and definitions of sex in labeling their own experiences. *Sex Roles, 51*(3/4), 129–144. <https://doi.org/10.1023/B:SERS.0000037758.95376.00>
- Pierson-Balik, D. A. (2003). Race, class, and gender in punitive welfare reform: Social eugenics and welfare policy. *Race, Gender & Class, 10*(1), 11–30.
- Pipyrou, S. (2018). #MeToo is little more than mob rule vs #metoo is a legitimate form of social justice. *HAU: Journal of Ethnographic Theory, 8*(3), 415–419. <https://doi.org/10.1086/701007>
- Piquero, A., Paternoster, R., Pogarsky, G., & Loughran, T. (2011). Elaborating the individual difference component in deterrence theory. *Annual Review of Law and Social Science, 7*, 335-360. <https://doi.org/10.1146/annurev-lawsocsci-102510-105404>
- Powell, A. (2015). Seeking rape justice: Formal and informal responses to sexual violence through technosocial counter-publics. *Theoretical Criminology, 19*(4), 571–588. <https://doi.org/10.1177/1362480615576271>
- Relyea, M., & Ullman, S. E. (2015). Unsupported or turned against: Understanding how two types of negative social reactions to sexual assault relate to post assault outcomes. *Psychology of Women Quarterly, 39*(1), 37–52. <https://doi.org/10.1177/0361684313512610>
- Renzetti, C. (2013). *Feminist criminology*. Routledge.
- Richie, B. E. (2000). A black feminist reflection on the antiviolence movement. *Signs: Journal of Women in Culture and Society, 25*(4), 1133–1137. <https://doi.org/10.1086/495533>
- Richie, B. E. (2012). *Arrested justice: Black women, violence, and America's prison nation*. New York University Press.

- Rodino-Colocino, M. (2018). Me too, #metoo: Countering cruelty with empathy. *Communication and Critical/Cultural Studies*, 15(1), 96–100.  
<https://doi.org/10.1080/14791420.2018.1435083>
- Rubin, E. L. (1984). Due process and the administrative state. *California Law Review*, 72, 1044–1179.
- S, E. (2020, December 30). How is transformative justice different from restorative justice? *Novel hand: Activism, meet impact*. <https://novelhand.com/restorative-and-transformative-justice/>
- SAFE training*. (n.d.). Metropolitan Organization to Counter Sexual Assault.  
Retrieved August 13, 2022, from <https://www.mocsa.org/services/safe-training>
- Saldaña, J. (2021). *The coding manual for qualitative researchers* (4th ed.). Sage Publications.
- Savage, C. (2021, July 1). Bill Cosby’s release from prison, explained. *The New York Times*.  
<https://www.nytimes.com/2021/07/01/arts/television/bill-cosby-conviction-overtured-why.html>
- Shepard, B. (2007). Sex panic and the welfare state. *Journal of Sociology and Social Welfare*, 34(1), 155–172.
- Sherman, L. W., Schmidt, J. D., & Rogan, D. P. (1992). *Policing domestic violence: Experiments and dilemmas*. Free Press.
- Spalek, B. (2006). *Crime victims: Theory, policy and practice* (1st ed.). Palgrave Macmillan.
- Spohn, C. (2016). Untested sexual assault kits: A national dilemma. *Criminology and Public Policy*, 15(2), 551–554.

- Spohn, C. (2020). Sexual assault case processing: The more things change, the more they stay the same. *International Journal for Crime, Justice and Social Democracy*, 9(1), 86-94.  
<https://doi.org/10.5204/ijcjsd.v9i1.1454>
- Spohn, C., & Tellis, K. (2012). The criminal justice system's response to sexual violence. *Violence Against Women*, 18(2), 169–192. <https://doi.org/10.1177/1077801212440020>
- Spohn, C., & Tellis, K. (2019). Sexual assault case outcomes: Disentangling the overlapping decisions of police and prosecutors. *Justice Quarterly*, 36(3), 383–411.  
<https://doi.org/10.1080/07418825.2018.1429645>
- Stack, L. (2016, June 8). In Stanford rape case, Brock Turner blamed drinking and promiscuity. *The New York Times*. <https://www.nytimes.com/2016/06/09/us/brock-turner-blamed-drinking-and-promiscuity-in-sexual-assault-at-stanford.html>
- Strang, H., & Sherman, L. W. (2003). Repairing the harm: Victims and restorative justice. *Utah Law Review*, 15, 15–42.
- Tait, A. A. (2015). The Return of coverture commentaries. *Michigan Law Review First Impressions*, 114, 99–110.
- Tamer, C. (2022). The watercooler is safer than the schoolyard: Lower courts dismissal of peer sexual harassment under Title IX is especially failing our students in the “#metoo” world. *St. John's Law Review*, 95(3), 793–867.
- The criminal justice system: Statistics* (n.d.). RAINN. Retrieved October 19, 2022,  
from <https://www.rainn.org/statistics/criminal-justice-system>
- Tippett, E. C. (2018). The legal implications of the metoo movement. *Minnesota Law Review*, 103(1), 229–302.

- Tufekci, Z. (2017). *Twitter and tear gas: The power and fragility of networked protest*. Yale University Press.
- Tufekci, Z. (2018). How social media took us from Tahrir Square to Donald Trump. *MIT Technology Review*, 14, 18.
- Tyler, T. R. (2003). Procedural justice, legitimacy, and the effective rule of law. *Crime and Justice*, 30, 283–357.
- Venema, R. M. (2016). Police officer schema of sexual assault reports: Real rape, ambiguous cases, and false reports. *Journal of Interpersonal Violence*, 31(5), 872–899. <https://doi.org/10.1177/0886260514556765>
- Weisbrott, S. (2020). The impact of the #metoo movement on defamation claims against survivors. *CUNY Law Review*, 23(2), 332–363.
- Weiss, K. G. (2010). Male sexual victimization: Examining men’s experiences of rape and sexual assault. *Men and Masculinities*, 12(3), 275–298. <https://doi.org/10.1177/1097184X08322632>
- Wenzel, M., & Okimoto, T. G. (2016). Retributive justice. In C. Sabbagh & M. Schmitt (Eds.), *Handbook of social justice theory and research* (pp. 237–256). Springer.
- Wenzel, M., Okimoto, T. G., Feather, N. T., & Platow, M. J. (2008). Retributive and restorative justice. *Law and Human Behavior*, 32(5), 375–389. <https://doi.org/10.1007/s10979-007-9116-6>
- West, C., & Zimmerman, D. H. (1987). Doing gender. *Gender & Society*, 1(2), 125–151. <https://doi.org/10.1177/0891243287001002002>
- Wexler, L. (2019). #MeToo and law talk. *University of Chicago Legal Forum*, 343, 1-20.

- Wexler, L., & Robbennolt, J. K. (2018). #MeToo and restorative justice: Realizing restoration for victims and offenders. *Dispute Resolution Magazine*, 25(2), 16–20.
- Wexler, L., Robbennolt, J. K., & Murphy, C. (I). (2019). #MeToo, Time’s Up, and theories of justice. *University of Illinois Law Review*, 2019(1), 45–110.
- White, L. E. (1990). Subordination, rhetorical survival skills, and Sunday shoes: Notes on the hearing of Mrs. G. *Buffalo Law Review*, 38(1), 1–58.
- White, R. H. (2018). Title VII and the #metoo movement essays. *Emory Law Journal Online*, 68, 1014–1034.
- Williams, P. (2020, October 5). *Supreme Court rejects appeal from county clerk who wouldn’t issue marriage licenses to same-sex couples*. NBC News.  
<https://www.nbcnews.com/politics/supreme-court/supreme-court-rejects-appeal-county-clerk-who-wouldn-t-issue-n1242124>
- Yngvesson, B. (1988). Making law at the doorway: The clerk, the court, and the construction of community in a New England town. *Law & Society Review*, 22(3), 409–448.  
<https://doi.org/10.2307/3053624>
- Young, K. M., & Billings, K. R. (2020). Legal consciousness and cultural capital. *Law & Society Review*, 54(1), 33–65. <https://doi.org/10.1111/lasr.12455>
- Zaher, C. (2002). When a woman’s marital status determined her legal status: A research guide on the Common Law Doctrine of coverture. *Law Library Journal*, 94(3), 459–486.
- Zehr, H. (2002). *The little book of restorative justice: Revised and updated* (1st ed.). Good Books.

Zehr, H., & Mika, H. (2004). Fundamental concepts of restorative justice. In T. Gavrielides  
*Restorative Justice*, (pp. 47-55). Routledge.



## Bibliography of Data

*100 French women say men unfairly “punished” by new “puritanism.”* (2018, January 10). CBS

News. <https://www.cbsnews.com/news/catherine-deneuve-french-stars-sexual-misconduct-allegations-open-letter-metoo-movement/>

Allen, J. (2018, January 13). Opinion: Has #metoo gone too far? *The New York Times*.

<https://www.nytimes.com/2018/01/13/opinion/sunday/metoo-sexual-harassment.html>

Andone, D. (2018, April 26). *“I’m stunned:” Cosby’s accusers react to the comedian’s guilty*

*verdict.* CNN. <https://www.cnn.com/2018/04/26/us/cosby-accusers-react/index.html>

Appell, L. D. (2018, June 6). *Bill Clinton thinks he’s the victim... in the age of #MeToo: Will*

*he ever grow up?* Fox News. <https://www.foxnews.com/opinion/bill-clinton-thinks-hes-the-victim-in-the-age-of-metoo-will-he-ever-grow-up>

Badner, L. (2017, November 17). Opinion: Al Franken and a ‘learning moment.’ *The New York*

*Times.* <https://www.nytimes.com/2017/11/17/opinion/al-franken-harassment.html>

Bennett, A. (2018, March 15). *Terry Crews is not going down without a fight.* BuzzFeed

News. <https://www.buzzfeednews.com/article/alannabennett/terry-crews-and-hollywood>

Bey, J. (2017, October 17). *Creator of original “me too” campaign speaks out.* CBS News.

<https://www.cbsnews.com/news/tarana-burke-me-too-creator-activist-speaks-out/>

Bohrer, M.A. (2018, January 13). Opinion: Has #metoo gone too far? *The New York Times*.

<https://www.nytimes.com/2018/01/13/opinion/sunday/metoo-sexual-harassment.html>

- Bui, L. (2018, April 17). Retirement of Md. Judge in effect closes out judicial misconduct investigation. *Washington Post*. [https://www.washingtonpost.com/local/public-safety/retirement-of-md-judge-in-effect-closes-out-judicial-misconduct-investigation/2018/04/15/2183297c-39d3-11e8-8fd2-49fe3c675a89\\_story.html](https://www.washingtonpost.com/local/public-safety/retirement-of-md-judge-in-effect-closes-out-judicial-misconduct-investigation/2018/04/15/2183297c-39d3-11e8-8fd2-49fe3c675a89_story.html)
- Cain, Á. (2017, October 26). *A top New York City headhunting exec was fired after allegedly groping a colleague, texting lewd drawings and messages, and doing cocaine at work.* Business Insider. <https://www.businessinsider.com/wegman-partners-sexual-harassment-2017-10>
- Cauterucci, C. (2018, January 5). *For God's sake, New York Times, #metoo Is not going to end flirting and fun sex.* Slate. <https://slate.com/human-interest/2018/01/the-new-york-times-joins-the-chorus-of-voices-arguing-that-metoo-will-end-flirting-and-fun-sex.html>
- Chotiner, I. (2017, December 11). *Punishment is not enough.* Slate. <https://slate.com/news-and-politics/2017/12/the-limitations-of-punishment-in-the-metoo-moment.html>
- Cook, N. (2018, September 19). "We're very confident:" Trump, GOP growing more bullish about Kavanaugh's survival. *POLITICO*. <https://www.politico.com/story/2018/09/19/trump-bullish-about-kavanaugh-survival-829990>
- Crary, D. (2018, September 28). *After Kavanaugh-Ford hearing, does metoo face a backlash?* Yahoo. <https://www.yahoo.com/news/kavanaugh-ford-hearing-does-metoo-face-backlash-213432774.html>
- Crooks, R. (2018, February 23). *Opinion: Trump silenced me. I'm breaking that silence by running for office.* NBC News. <https://www.nbcnews.com/think/opinion/donald-trump-s-actions-silenced-me-i-m-breaking-silence-ncna850401>

- Dessem, M. (2018, September 9). *More women accuse Les Moonves of sexual misconduct: Moonves expected to step down at CBS*. Slate. <https://slate.com/culture/2018/09/les-moonves-expected-to-step-down-at-cbs-after-new-sexual-misconduct-allegations.html>
- Edsall, T. B. (2017, December 14). Opinion: The Politics of #HimToo. *The New York Times*. <https://www.nytimes.com/2017/12/14/opinion/democratic-party-sexual-misconduct.html>
- Fieldstadt, E., & Reiss, A. (2018, September 25). *Bill Cosby sentenced to 3 to 10 years in prison for Andrea Constand sexual assault*. NBC News. <https://www.nbcnews.com/news/us-news/bill-cosby-learn-fate-andrea-constand-sexual-assault-conviction-n912826>
- Foran, C. (2018, October 20). *After outpouring of personal stories, Congress still grappling with Kavanaugh confirmation fallout*. CNN Politics. <https://www.cnn.com/2018/10/20/politics/metoo-congress-women-harassment-assault/index.html>
- Frej, W., & Russo, C. H. (2017, October 14). *Harvey Weinstein kicked out of Motion Picture Academy*. HuffPost. [https://www.huffpost.com/entry/academy-kicks-out-harvey-weinstein\\_n\\_59df328ce4b0fdad73b220ea](https://www.huffpost.com/entry/academy-kicks-out-harvey-weinstein_n_59df328ce4b0fdad73b220ea)
- Gessen, M. (2017, November 14). When does a watershed become a sex panic? *The New Yorker*. <https://www.newyorker.com/news/our-columnists/when-does-a-watershed-become-a-sex-panic>
- Ghoshal, S. (2017, October 25). *The Facebook campaign to name alleged sex offenders does a disservice to feminism*. HuffPost. [https://www.huffingtonpost.in/2017/10/25/the-facebook-campaign-to-name-alleged-sex-offenders-does-a-disservice-to-feminism\\_a\\_23254861/](https://www.huffingtonpost.in/2017/10/25/the-facebook-campaign-to-name-alleged-sex-offenders-does-a-disservice-to-feminism_a_23254861/)

- Gilbert, S. (2017, October 16). *The movement of #metoo*. The Atlantic.  
<https://www.theatlantic.com/entertainment/archive/2017/10/the-movement-of-metoo/542979/>
- Giorgis, H. (2018, September 26). *Andrea Constand and the burden of being the only witness*. The Atlantic. <https://www.theatlantic.com/entertainment/archive/2018/09/andrea-constand-bill-cosby-burden-being-only-witness/571093/>
- Gray, E. (2017, November 22). *When men “misremember” violating women*. HuffPost.  
[https://www.huffpost.com/entry/when-men-misremember-violating-women\\_n\\_5a15926fe4b025f8e932d903](https://www.huffpost.com/entry/when-men-misremember-violating-women_n_5a15926fe4b025f8e932d903)
- Gray, E. (2018, January 16). *On Aziz Ansari and sex that feels violating even when it’s not criminal*. HuffPost UK. [https://www.huffpost.com/entry/aziz-ansari-sex-violating-but-not-criminal\\_n\\_5a5e445de4b0106b7f65b346](https://www.huffpost.com/entry/aziz-ansari-sex-violating-but-not-criminal_n_5a5e445de4b0106b7f65b346)
- Haider, M. (2019, January 23). *The next step in #metoo is for men to reckon with their male fragility*. Slate. <https://slate.com/news-and-politics/2019/01/men-male-fragility-metoo-progress.html>
- Harris, A. (2018, October 15). *She founded me too. Now she wants to move past the trauma*. *The New York Times*. <https://www.nytimes.com/2018/10/15/arts/tarana-burke-metoo-anniversary.html>
- Hatch, J. (2018, September 24). *Opinion: You can participate in me too without sharing your own trauma*. HuffPost. [https://www.huffpost.com/entry/opinion-sexual-violence-t\\_n\\_5ba547c9e4b0181540dcdba7](https://www.huffpost.com/entry/opinion-sexual-violence-t_n_5ba547c9e4b0181540dcdba7)

Hobson, W. (2018, January 24). Larry Nassar, former USA Gymnastics doctor, sentenced to 40-175 years for sex crimes. *Washington Post*. [https://www.washingtonpost.com](https://www.washingtonpost.com/sports/olympics/larry-nassar-former-usa-gymnastics-doctor-due-to-be-sentenced-for-sex-crimes/2018/01/24/9acc22f8-0115-11e8-8acf-ad2991367d9d_story.html)

[/sports/olympics/larry-nassar-former-usa-gymnastics-doctor-due-to-be-sentenced-for-sex-crimes/2018/01/24/9acc22f8-0115-11e8-8acf-ad2991367d9d\\_story.html](https://www.washingtonpost.com/sports/olympics/larry-nassar-former-usa-gymnastics-doctor-due-to-be-sentenced-for-sex-crimes/2018/01/24/9acc22f8-0115-11e8-8acf-ad2991367d9d_story.html)

Hoffman, A. (2018, October 9). “*That doesn’t represent me.*” *The man whose mom made him the face of a viral #himtoo meme wants no part of it.* *Time*. <https://time.com/5419296/pieter-hanson-that-was-my-mom/>

Hohmann, J. (2017, December 7). The daily 202: Push for Al Franken’s resignation shows importance of women in Congress. *The Washington Post*. <https://www.washingtonpost.com/news/powerpost/paloma/daily-202/2017/12/07/daily-202-push-for-al-franken-s-resignation-shows-importance-of-women-in-congress/5a284d2430fb0469e883fa65/>

Illing, S. (2018, September 27). *Brett Kavanaugh and the problem of “himpathy.”* *Vox*. <https://www.vox.com/2018/9/27/17887210/brett-kavanaugh-christine-blasey-ford-hearing-kate-manne>

James, M. (2017, December 5). After Hollywood sexual harassment scandals, they were spurred to action. Now there’s a help line to report abuse and get legal support. *Los Angeles Times*. <https://www.latimes.com/business/hollywood/la-fi-ct-women-film-harassment-hotline-20171202-story.html>

Jeffries Warfield, Z. (2018, January 4). *Me too creator Tarana Burke reminds us this is about black and brown survivors*. YES! Magazine.

<https://www.yesmagazine.org/democracy/2018/01/04/me-too-creator-tarana-burke-reminds-us-this-is-about-black-and-brown-survivors>

Jewett, C. (2018, March 18). Women in medicine shout #metoo about sexual harassment at work. The *Washington Post*. [https://www.washingtonpost.com/national/health-science/women-in-medicine-shout-metoo-about-sexual-harassment-at-work/2018/03/16/81673f82-0c37-11e8-8b0d891602206fb7\\_story.html](https://www.washingtonpost.com/national/health-science/women-in-medicine-shout-metoo-about-sexual-harassment-at-work/2018/03/16/81673f82-0c37-11e8-8b0d891602206fb7_story.html)

Joyce, K. (2018, October 9). *Navy vet says he's a #metoo ally after mom's tweet about #himtoo victim goes viral*. Fox News. <https://www.foxnews.com/us/navy-vet-says-hes-a-metoo-ally-after-moms-tweet-about-himtoo-victim-goes-viral>

Kew, B. (2018, March 14). *Sharon Stone: #MeToo movement ruining lives by misreading "stupid and awkward" sexual advances*. Breitbart. <https://www.breitbart.com/entertainment/2018/03/14/sharon-stone-metoo-movement-ruining-lives-misreading-stupid-awkward-sexual-advances/>

Krieg, G. (2018, September 26). *Anita Hill all over again? Here's why Republicans fear a repeat*. *CNN Politics*. <https://www.cnn.com/2018/09/26/politics/anita-hill-transcript-language-christine-blasey-ford/index.html>

Langone, A. (2018, March 22). What is the Time's Up movement and the #metoo Movement? *Time Magazine*. Time. <https://time.com/5189945/whats-the-difference-between-the-metoo-and-times-up-movements/>

- Leight, E. (2021, September 29). He helped acquit R. Kelly in 2008. Now he's "happy that justice was served." *Rolling Stone*. <https://www.rollingstone.com/music/music-features/r-kelly-2008-jury-foreman-1234336/>
- Lennard, N. (2019, August 30). *In secretive hearing, NYPD cops who waped Brooklyn teen get no jail time*. *The Intercept*. <https://theintercept.com/2019/08/30/nypd-anna-chambers-rape-probation/>
- Levin, S. (2018, January 19). "Time is up for Woody Allen": Are Dylan Farrow's allegations finally sticking? *The Guardian*. <https://www.theguardian.com/film/2018/jan/19/woody-allen-dylan-farrow-allegations>
- MacKinnon, C. A. (2019, March 24). *Where #MeToo came from, and where it's going*. *The Atlantic*. <https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313/>
- McCrummen, S., Reinhard, B., & Crites, A. (2017, November 9). Woman says Roy Moore initiated sexual encounter when she was 14, he was 32. *The Washington Post*. [https://www.washingtonpost.com/investigations/woman-says-roy-moore-initiated-sexual-encounter-when-she-was-14-he-was-32/2017/11/09/1f495878-c293-11e7-afe9-4f60b5a6c4a0\\_story.html](https://www.washingtonpost.com/investigations/woman-says-roy-moore-initiated-sexual-encounter-when-she-was-14-he-was-32/2017/11/09/1f495878-c293-11e7-afe9-4f60b5a6c4a0_story.html)
- Merkin, D. (2018, January 5). Opinion: Publicly, we say #MeToo. Privately, we have misgivings. *The New York Times*. <https://www.nytimes.com/2018/01/05/opinion/golden-globes-metoo.html>
- #MeToo: A timeline of events*. (n.d.). *Chicago Tribune*. Retrieved November 30, 2022, from <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmstory.html>

Migdal, E. (2018, January 13). Opinion: Has #MeToo gone too far? *The New York Times*.  
<https://www.nytimes.com/2018/01/13/opinion/sunday/metoo-sexual-harassment.html>

Milano, A. (2017, October 18). *Alyssa Milano: How we can help women come forward*.  
Time. <https://time.com/4987331/alyssa-milano-me-too-sexual-assault/>

Nemzoff, R., & Offner, E. (2017, December 20). *The Weinstein effect: Avalanche of allegations usher in a new era*. HuffPost. [https://www.huffpost.com/entry/the-weinstein-effect-avalanche-of-allegations-usher\\_b\\_5a3ad40ee4b06cd2bd03d790](https://www.huffpost.com/entry/the-weinstein-effect-avalanche-of-allegations-usher_b_5a3ad40ee4b06cd2bd03d790)

Nolte, J. (2017, October 17). *#MeToo: Hollywood remains Harveywood until names are named*. Breitbart. <https://www.breitbart.com/entertainment/2017/10/17/nolte-metoo-hollywood-remains-harveywood-names-named/>

North, A. (2018a, October 9). *The #MeToo movement and its evolution, explained*. Vox.  
<https://www.vox.com/identities/2018/10/9/17933746/me-too-movement-metoo-brett-kavanaugh-weinstein>

North, A. (2018b, October 10). *#HimToo, the online movement spreading myths about false rape allegations, explained*. Vox. <https://www.vox.com/policy-and-politics/2018/10/10/17957126/himtoo-movement-pieter-hanson-tweet-me-too>

Obaro, T. (2018, July 29). *Here's how our readers are thinking about sex and consent*. BuzzFeed News. <https://www.buzzfeednews.com/article/tomiobaro/how-do-we-have-sex-in-2018>



- O’Neil, L. (2018, October 9). #HimToo: How an attempt to criticize #MeToo went delightfully wrong. *The Guardian*. <https://www.theguardian.com/technology/2018/oct/09/himtoo-metoo-tweet-pieter-hanson-mothers-attack-on-feminism-movement-goes-wrong>
- Polisi, C. (2018, February 14). *Trump’s take on Porter isn’t just clueless—It’s dangerous*. CNN. <https://www.cnn.com/2018/02/12/opinions/trump-due-process-rob-porter-polisi-opinion/index.html>
- Puente, M. (2018, December 17). *CBS: Ex-CEO Les Moonves will be denied \$120 million severance package*. USA TODAY. <https://www.usatoday.com/story/life/2018/12/17/cbs-announces-les-moonves-denied-120-m-exit-package/2342128002/>
- Redden, M. (2018, January 11). Bill Cosby: “Please don’t put me on #MeToo.” *The Guardian*. <https://www.theguardian.com/world/2018/jan/11/bill-cosby-metoo-philadelphia>
- Sager, J. (2018, January 16). HLN host slams Aziz Ansari’s sexual misconduct accuser. *The New York Post*. <https://pagesix.com/2018/01/16/hln-host-slams-aziz-ansaris-sexual-misconduct-accuser/>
- Samaha, A. (2018, February 2). *An 18-year-old said she was raped while in police custody. the officers say she consented*. BuzzFeed News. <https://www.buzzfeednews.com/article/albertsamaha/this-teenager-accused-two-on-duty-cops-of-rape-she-had-no>
- Santiago, C., & Criss, D. (2017, October 17). *An activist, a little girl and the heartbreaking origin of “Me too.”* CNN. <https://www.cnn.com/2017/10/17/us/me-too-tarana-burke-origin-trnd/index.html>

Scott, E. (2018, October 2). Amid allegations against Kavanaugh, worry about the future of boys and men. *The Washington Post*. <https://www.washingtonpost.com/politics>

[/2018/10/02/amid-allegations-against-kavanaugh-worry-about-future-boys-men/](https://www.washingtonpost.com/politics/2018/10/02/amid-allegations-against-kavanaugh-worry-about-future-boys-men/)

Schindler, S. (2018, January 13). Opinion: Has #MeToo gone too far? *The New York Times*.

<https://www.nytimes.com/2018/01/13/opinion/sunday/metoo-sexual-harassment.html>

*Sexual harassment at work is a global problem. Now, the world is finally talking about it.* (2017,

October 23). USA TODAY. <https://www.usatoday.com/story/news/>

[world/2017/10/23/sexual-harassment-work-global-problem-now-world-finally-talking-it/789723001/](https://www.usatoday.com/story/news/world/2017/10/23/sexual-harassment-work-global-problem-now-world-finally-talking-it/789723001/)

Simon, C., & Bacon, J. (2018, September 28). *59 arrested near Supreme Court as thousands*

*nationwide rally against Kavanaugh nomination.* USA TODAY.

<https://www.usatoday.com/story/news/politics/2018/09/27/brett-kavanaugh-protest-crucial-senate-hearing/1440738002/>

Springer, F. (2017, November 30). *30 Rock 'shell shocked' over Matt Lauer's firing.* Daily

Caller. <https://dailycaller.com/2017/11/30/30-rock-shell-shocked-over-matt-lauers-firing/>

Stanley-Becker, I. (2018, September 17). Anita Hill's claims echo in allegation against

Kavanaugh. Three decades later, will anything be different? *The Washington Post*.

<https://www.washingtonpost.com/news/morning-mix/wp/2018/09/17/anita-hills-claims-echo-in-allegations-against-kavanaugh-27-years-later-will-anything-be-different/>

Stewart, B., & Dillon, N. (2018). Bill Cosby's lawyer calls sex assault accuser a "con artist" who was "madly in love" with comedian's money. *New York Daily News*.

Stuart Parramore, L. (2018, October 8). *After Brett Kavanaugh, should American men be afraid?* NBC News. <https://www.nbcnews.com/think/opinion/after-brett-kavanaugh-confirmation-battle-should-american-men-be-afraid-ncna917406>

Teachout, Z. (2017, December 12). Opinion: I'm not convinced Franken should quit. *The New York Times*. <https://www.nytimes.com/2017/12/11/opinion/franken-resignation-harassment-democrats.html>

Thomas, I., (2017, November 17). Opinion: Al Franken and a 'learning moment.' *The New York Times*. <https://www.nytimes.com/2017/11/17/opinion/al-franken-harassment.html>

*Transcript of Graham's remarks on Kavanaugh nomination*. (n.d.). United States Senator

Lindsey Graham. Retrieved June 13, 2022, from

<https://www.lgraham.senate.gov/public/index.cfm/2018/9/transcript-of-graham-s-remarks-on-kavanaugh-nomination>

Tweeden, L. (2017, November 16). *Senator Al Franken kissed and groped me without my consent, and there's nothing funny about it*. KABC-AM.

<https://www.kabc.com/2017/11/16/leeann-tweeden-on-senator-al-franken/>

Waldman, P. (2018, September 27). Opinion: Americans are not going to forget this day.

Especially women. *The Washington Post*. <https://www.washingtonpost.com/blogs/plum-line/wp/2018/09/27/americans-are-not-going-to-forget-this-day-especially-women/>

Wang, A. B. (2018, September 26). 'You're part of the problem,' Tucker Carlson says of sexual assault victims who don't speak up. *Washington Post*.

<https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/09/26/youre-part-of-the-problem-tucker-carlson-says-of-sexual-assault-victims-who-dont-speak-up/>

- Warenik, B. (2019, January 2). *Opinion: DeVos' Title IX changes will make life even harder for sexually abused boys*. HuffPost. [https://www.huffpost.com/entry/opinion-devos-title-ix-sexual-assault-boys\\_n\\_5c2d0ac1e4b0407e9087807e](https://www.huffpost.com/entry/opinion-devos-title-ix-sexual-assault-boys_n_5c2d0ac1e4b0407e9087807e)
- Way, K. (2018, January 13). *I went on a date with Aziz Ansari. It turned into the worst night of my life*. Babe. <https://babe.net/2018/01/13/aziz-ansari-28355>
- Weiner, J. (2018, September 22). *Opinion: The patriarchy will always have its revenge*. *The New York Times*. <https://www.nytimes.com/2018/09/22/opinion/sunday/brett-kavanaugh-anger-women-metoo.html>
- Weiss, J. (2018, September 27). *Christine Blasey Ford and the power of vulnerability*. POLITICO. <https://politi.co/2zAcXtk>
- Women speak out on systemic harassment in California politics*. (2017, October 17). CBS News. <https://www.cbsnews.com/news/california-politics-women-speak-out-on-systemic-harassment/>
- Yglesias, M. (2018, September 24). *Brett Kavanaugh allegations: Bill Shine shows Republicans don't care*. Vox. <https://www.vox.com/2018/9/24/17894448/brett-kavanaugh-bill-shine-donald-trump>
- Yoffe, E. (2018, October 13). *Does anyone still take both sexual assault and due process seriously?* The Atlantic. <https://www.theatlantic.com/ideas/archive/2018/10/sexual-assault-has-become-partisan-issue/572893/>

Appendix A: Code Book

<b>Codes</b>	<b>Code descriptions</b>
Backlash Chapter	Any codes related to critiques of the movement
Backlash Chapter > GREEN	Use when doing inVivo coding
Backlash Chapter > Ansari	When Aziz Ansari in mentioned
Backlash Chapter > Title IX	use when quote discusses Title IX protections and campus responses
Backlash Chapter > punish	When the terms punish and consequences are used
Backlash Chapter > downfall	When the term downfall is used
Backlash Chapter > downfall > Carceral fem	When article specifically states carceral feminism
Backlash Chapter > downfall > consent	When consent is mentioned
Backlash Chapter > downfall > sex panic	When sex panic is specifically used
Backlash Chapter > downfall > witch hunt	when metoo is referred to as a witch hunt of man hunt
Backlash Chapter > downfall > destroy	when article talks about allegations destroying accused's life
Backlash Chapter > downfall > unfair/amok	use when article talks about MeToo going too far and running amok on men, being unfair
Backlash Chapter > HimToo	Use when the HimToo or men's rights are discussed
Backlash Chapter > HimToo > Himpathy	
Backlash Chapter > HimToo > false allegations	when quotes discuss false allegations
Backlash Chapter > HimToo > Origin	When quotes discuss that it began as a way for male victims of SA to find support
Backlash Chapter > HimToo > Men's Rights	use when articles or comments discuss fairness for men, specific men's rights groups, and rallies
Backlash Chapter > HimToo > Men's Rights > safety for men	use code when quote talks about men being in danger of false allegations

<b>Codes</b>	<b>Code descriptions</b>
Backlash Chapter > HimToo > Men's Rights > Navy Mom	use for quotes about the navy mom and vet who went viral when she incorrectly claimed he couldn't go on solo dates
Intro Chapter	For anything related to culture and sexual violence
Intro Chapter > Story telling	use when quote talks about sharing stories of harassment and assault
Intro Chapter > Policy/Rule Change	Code when it talks about changing the culture through policies or rule changes (state and private organizations)
Intro Chapter > misogyny	When anything mentions misogyny
Intro Chapter > toxic masculinity	When masculinity is mentioned
Intro Chapter > Reckoning	When they use the term reckoning or a form of it
Intro Chapter > Culture	When culture is discussed related to sexual violence
Intro Chapter > Culture > rape culture	When rape culture was mentioned
Intro Chapter > Male survivors	use when quote discusses male survivors of SA
Intro Chapter > YELLOW	use for culture chapter codes, when I can't figure out how to code it
Tarana B	When Tarana Burke was mentioned
Deep Dives	Use when quote discusses the cases for the deep dive
Deep Dives > Cosby	Code any article that discusses Cosby
Justice	Quotes about justice
Justice > shame	Use when shame is said—any context
Justice > Lose Job	Use when terms fired, resign, suspended, job loss, etc.
Justice > Lose Job > no action	when article talks about no action being taking against accused
Justice > Victim experiences	victim experiences with justice, healing, trials, etc.
Justice > Victim experiences > Hierarchies of Violence	When value is placed on specific acts of violence or victims
Justice > Victim experiences > Relief	whenever an article discusses the relief, joy, positive feelings about getting justice

<b>Codes</b>	<b>Code descriptions</b>
Justice > Victim experiences > Empowering	when they talk about feeling empowered by the movement, by testifying, telling their story, etc.
Justice > Victim experiences > Exp w/ Justice System	when article talks about victim's experiences with justice system specifically
Justice > Victim experiences > Victim Impact Statements	code when impact statements are discussed
Justice > Victim experiences > ulterior motives	use when the victim is accused of having ulterior motive for coming forward
Justice > Healing	Use when healing is talked about
Justice > Healing > Transform	Use when terms transform or restore are mentioned
Justice > Healing > Transform > social norms	use when it talks about social norms around sexual violence and men are changing or being challenged
Justice > Healing > Transform > Reporting+	use when it discusses the increased reporting and charges of sexual assault
Justice > Healing > Goal of #MeToo	use when quote discusses the healing goal of MeToo
Justice > accountable	When accountable is mentioned
Justice > accountable > Org statements	when it's a statement from the organization the accused works for
Justice > accountable > Accused Statements	use when quote is a from an accused persons statment in response to allegations
Justice > Verdict	When a verdict or adjudication occurs
Justice > BLUE	use for inductive coding key terms
police	When law enforcement are discussed
Due Process	Codes related to due process, fair processes, investigations, criminal justice system procedures
Due Process > Victim's Rights	Use code when quote discusses fairness, due process, or rights for victims
Due Process > Investigation	Use when quote talks about investigating allegations, investigations can be through the CJS, work/HR, media, etc.

<b>Codes</b>	<b>Code descriptions</b>
Due Process > No Explanation	Use when quote makes a due process claim without further explanation of due process or the specific process for the allegation that's referred to
Due Process > Success	Use when quote talks about due process working the way it should
Due Process > Misuse of Term	Use when due process is misused in a quote Subcodes: Lay People and Legal officials
Due Process > Misuse of Term > lay people	use when a lay person misues due process
Due Process > Misuse of Term > legal officials	use when politicians and attorneys misuse due process
Due Process > Definition	Use code when quote is defining due process Use inductive coding for subcodes
Due Process > Failure	Use when the quote discusses a failure of due process, for example if someone is found guilty or perceived to be guilty without any investigation, trial, etc. Subcodes: accused and victims
Due Process > Failure > accused	Use when quote talks about failure of due process for the accused
Due Process > Failure > victims	Use code when quote talks about failure of due process for the victims
Kavanaugh	Only including the articles that are focused on Kavanaugh accusations, Christine Blasey-Ford, and the hearing documents from MeToo and HimToo articles (except backlash chapter articles)  Use when Kavanaugh's name is mentioned
Kavanaugh > Political motivations	use when quote claims or alludes to the kavanaugh case being politically motivated
Kavanaugh > allegations	use when discussing the specific allegations by Ford and other Kavanaugh victims
Kavanaugh > Sympathy	When quote expresses some kind of sympathy or feels sorry subcode: sympathy for Blasey Ford



<b>Codes</b>	<b>Code descriptions</b>
Kavanaugh > Sympathy > impact on kavanaugh	use when quote discusses threats kavanaugh and his family received
Kavanaugh > Sympathy > Blasey-Ford Sym	use when sympathy towards ford is expressed
Kavanaugh > RED	the are quotes I'm not sure how to code
Kavanaugh > Confirmation	use when quote discusses the confirmation hearing
Kavanaugh > Trump	use when a Kavanaugh article talks about Trump or the white house
Kavanaugh > Christine Blasey-Ford	use when a kavanaugh article talks about Christine Blasey-Ford or the accuser
Kavanaugh > Christine Blasey-Ford > impact victims	use when quote discusses how here coming forward impacted others
Kavanaugh > Christine Blasey-Ford > impact on Ford	use when quote discusses the impact making these allegations has had on Ford