

Interrogating Injustice: Carceral Feminism, Brock Turner, and the Dilemmas of Seeking  
Accountability for Sexual Violence in Our Prison Nation

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*“When you say, ‘What would we do without prisons?’ what you are really saying is: ‘What would we do without civil death, exploitation, and state-sanctioned violence?’ That is an old question and the answer remains the same: Whatever it takes to build a society that does not continuously rearrange the trappings of annihilation and bondage while calling itself ‘free.’”*

*-Kelly Hayes and Mariame Kaba, 2018.*

*“Victims exist in a society that tells us our purpose is to be an inspiring story. But sometimes the best we can do is tell you we’re still here, and that should be enough. Denying darkness does not bring anyone closer to the light. When you hear a story about rape, all the graphic and unsettling details, resist the instinct to turn away; instead look closer, because beneath the gore and the police reports is a whole, beautiful person, looking for ways to be in the world again.”*

*-Chanel Miller, 2019.*

*“...the far shore  
which, as I looked,  
wrinkled suddenly  
into three egrets ---  
a shower  
of white fire!  
Even half-asleep they had  
such faith in the world  
that had made them ---  
tilting through the water,  
unruffled, sure,  
by the laws  
of their faith not logic,  
they opened their wings  
softly and stepped  
over every dark thing.”*

*-excerpt from “Egrets” by Mary Oliver*

## I. Preface

Sexual violence<sup>1</sup> generally and rape<sup>2</sup> specifically have motivated and shaped feminist activism for decades, in part because said violence is understood as a product of gender and racial subordination as well as an expression of male violence. This thesis approaches this violence as it is addressed through the criminal justice system and seeks to explore the complicated relationship between sexual violence and justice. I briefly review, as a necessary backdrop, how rape has historically been ignored in the criminal legal system as a serious crime and large-scale social problem and how this history is tied to anti-Black racism in the United States. At the same time that sexual violence as a social issue gained mainstream prominence, so did the influx of primarily poor, non-white men arrested for majority non-violent drug offenses into prisons across the nation. This era of tough-on-crime legislation dovetailed with the formal recognition of rape and sexual assault within policy, helping contribute to an uneasy marriage between the two. Understanding the relationship between the movement to end sexual violence and the expansion of the prison state is key to the foundations of this research. I am primarily interested in the tension between anti-sexual violence activism and the violence of the carceral

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<sup>1</sup> I will use sexual violence as an umbrella term for all forms of sexual harm, including rape, in this thesis. I will specify rape when necessary, especially when using statistics that collect data particular to rape, but generally do not differentiate.

<sup>2</sup> The definition of rape has historically fluctuated both in legal terms and social understandings (Friedman 2013), and temporarily remains tied to a heteropatriarchal understanding of what separates an act of rape from other forms of sexual violence. The legal definition of rape also varies across states penal codes, and with these varied definitions come differing criminal consequences. The FBI defines rape as “penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim” (FBI website). California passed a bill in 2016 expanding its legal definition of rape to include all forms of nonconsensual sexual assault when a judge is deciding the sentence; a change prompted directly by Turner’s sentence (Ulloa 2016).

state. The tension I identify pervades the majority of sexual assault criminal cases as well as social justice advocacy and activism.

Sexual harm presents a “specific challenge” (Ilea 2018) for an abolitionist framework, particularly because of the historical relationship between anti-rape activism and the carceral state. So long as there are no sound abolitionist arguments for responses to sexual harm, abolition will remain a “marginal theoretical axis” (Ilea 2018). Further, carceral solutions will be further entrenched as the only possible response to sexual harm. It is within this dilemma that I situate my research.

### **Carceral feminism and social justice tensions**

Carceral feminism, coined by Elizabeth Bernstein, refers to a view that promotes utilizing traditional criminal justice systems and the carceral state to enforce feminist goals, namely addressing sexual and gender violence through harsher punishment for these crimes (Bernstein 2012; Phillips and Chagnon 2018). Carceral feminism is not a branch of feminism the same way that radical, Marxist, or intersectional feminisms are recognized paradigms. Rather, carceral feminism is a particular discourse that has developed from liberal feminist dialogue and ways of engaging with institutions to enact social change (Phillips and Chagnon 2016). This is not a feminism championed by one specific group but a rhetoric put in practice by many feminists historically. Though sexual violence activism has had a long relationship with the criminal justice system, it is in recent years that a noticeable intertwining of the rise of the carceral state and feminist strategies has occurred (McGuire 2010; Bernstein 2012; Freedman 2013, 280). What is problematic with embedding carceral logics into feminist goals is how that approach

ignores the harm carceral logics perpetuate. Survivors<sup>3</sup> of sexual and gender-based violence do not monolithically want to engage with the carceral state and are not universally helped by said institutions. But carceral feminism remains blind to those complexities, nuances often driven by racial and class difference and subsequent experiences, and shuttles the majority of anti-violence activism to revolve around traditional criminal justice.

The tension of adjudication of sexual violence cases arises here. Turning towards prison and carceral power as the only solution to feminist goals is deeply troubling for those who understand the criminal legal system to be flawed at best and irreparably violent at worst. This tension demands investigation. Underpinning this entire thesis is the knowledge of sexual violence's pervasiveness behind the very same bars that purportedly enforce justice against assault. There is something fundamentally incongruent with demands for incarceration in sexual assault cases when incarceration and prisons exists in part because of reliance on the very same sexual assault acts to maintain order and control (Lamble 2011). Incorporating prison assault into anti-violence activism is crucial to the goal of ending sexual violence; but once this analysis has been done, it is difficult to comprehend a carceral system that can work for, rather than against, anti-violence feminism.

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<sup>3</sup> This thesis will toggle back and forth at times between identifying those who have experienced sexual assault as either a "victim" or a "survivor." This interchange of labels is not to portray Chanel Miller or any others in any particular light, but rather an expression of the complex discourse around these two terms in sexual assault cases. The criminal court system identifies Miller as "victim" in opposition to Turner as the "perpetrator." In other contexts, Miller herself identifies with survivorship. "Both terms have their place and serve different purposes. Although victim is a legal definition necessary within the criminal justice system, survivor can be used as a term of empowerment to convey that a person has started the healing process and may have gained a sense of peace in their life. Either term can be used based on the situation, and different entities within the criminal justice system will use terms that work for their role in the process" (SAKI). As this thesis is primarily analyzing the legal process, both terms will be utilized, but to the same ends.

### **Brock Turner case study**

In order to investigate these questions, I turn to *The People vs. Brock Turner*, an infamous sexual assault case from 2016 in which Turner, a Stanford University star swimmer, was found assaulting<sup>4</sup> an unconscious woman beside a dumpster at the back of the Kappa Alpha fraternity house. This woman, known as Emily Doe throughout the trial, revealed her identity as Chanel Miller in her 2019 memoir, *Know My Name*. The turn to the Brock Turner case as the primary empirical material in this project arose from an article titled “‘Six Months Is a Joke’: Carceral Feminism and Penal Populism in the Wake of the Stanford Sexual Assault Case” by Nickie D. Phillips and Nicholas Chagnon (2018). In this article, the authors highlight how the sentencing, not the trial outcome, was what ignited the controversy and brought the news to national prominence. The same tension that I identified earlier is present in this case’s outcome and subsequent media storm: how can we articulate feelings of injustice in how the sentence was delivered while not endorsing incarceration as just punishment?

This case represented a unique challenge, to reframe and reexamine the sentencing in detail to elucidate exactly what tensions and dilemmas are present when trying to form a coherent stance on adjudicating sexual violence. In many ways, this case is a “hard” one for prison abolitionists, and an “easy” one for anti-assault advocates. Thinking about both these juxtaposed sides, whether fairly dichotomized or not, lends a new lens for understanding both this sentencing and extrapolating to sexual assault cases at large. The perceived injustice in this

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<sup>4</sup> Brock Turner was and is often referenced to as the “Stanford Rapist” (any search engine query of this term will result in the Turner case), but within the language of the case, he is not referred to explicitly as a rapist, as he assaulted Miller via digital penetration, which under California law was at the time was not under the umbrella of rape. But it is important to note that Miller herself does not make the same distinction: “Legal definitions are important. So is mine. He filled a cavity in my body with his hands. I believe is he not absolved of the title simply because he ran out of time” (Miller 2019, viii).



sentencing was the relatively short period of incarceration given to Turner—six months—and Judge Aaron Persky’s justifications for said sentence. In a system that relates harshness to length, the sentence seemed particularly lenient given the facts of the case. For anti-violence activists, moving to outrage was not a difficult leap, and with that outrage came demands for a harsher punishment and outcries at the slap-on-the-wrist level of punishment that six months constituted. The Recall Judge Persky campaign and subsequent rhetoric reinforced this logic of measuring injustice against sentence length. But for prison abolitionists, or those against mass incarceration, the outcome presented a greater challenge for articulating what went wrong. To recompense Turner’s crimes against time spent in jail would not comport with a prison abolitionist ideology; and yet, there was little space to say that the sentence was unjust, but that he shouldn’t be sentenced to more prison time. I attempt to explore that uncomfortable chasm more deeply.

### ***Know My Name’s* impact on this work**

Though there are a few pieces of scholarly work that take on the case of Brock Turner (Kebodeaux 2017; Vitiello 2017; Phillips and Chagnon 2018; Mack and McCann 2019; Klein 2019; Jerca 2019; Sweeny 2020), all but one of these was published before Chanel Miller released her memoir. Part of my motivation behind this research is to discuss how victims frequently find themselves and the harms they have experienced displaced in the narrative of both the case and sentencing. I engage with standpoint theory<sup>5</sup> to turn to Miller’s own words to support my research into this case. She gives voice and body to her experiences that before were

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<sup>5</sup> Standpoint theory is a feminist epistemology and methodology that claims that certain socio-political positions occupied by women (and other groups lacking social and economic privilege) and the experiences of those individuals who occupy marginalized social positions are productive starting points for academic inquiry (Anderson 2020). In particular, standpoint theory is grounded in the claim that authority is rooted in the experiences and perspectives of marginalized individuals (Harding 2004).

limited to her victim impact statement. As she writes in the book's introduction, the court documents and news articles are all available online to view, but they do not provide a complete picture. And neither does her memoir give "the ultimate truth," (Miller 2019 vii), but "it is mine, told to the best of my ability. If you want it through my eyes and ears, to know what it felt like inside my chest, what it's like to hide in the bathroom during trial, this is what I provide" (Miller 2019, vii). I argue that Miller's subject position as a survivor of sexual violence is particularly marginalized within the criminal legal process, with her perspective continually being displaced and erased. This thesis attempts to repair some of those elisions. It is important to emphasize exactly what Miller identifies in the introduction to her memoir: that the truths held in court documents are no truer than the knowledge she herself carries, especially when recounting incidences of harm; to privilege the interpretations of court officials over Miller's own is to do a disservice to her experience as a survivor.

In the space of her memoir, she is able to contextualize the assault and her pain in the larger story of her life. As I address later in this thesis, part of Turner's defense strategy is to do exactly that same type of work, of fleshing out his personal history and future but in order to minimize the gravity of the assault. But Miller gets reduced to the one-dimensional Emily Doe, Victim, in the course of the trial proceedings and media coverage. Centering Miller's memoir—her own words—is essential to a project like this, one that seeks to reevaluate the details of this case.

Miller is acutely aware of how the individuals in the trial (the defense, the judge, Turner) are less important for their individuality but for their commonality (Miller 2019, viii). She reveals how she can both celebrate the victory of the guilty verdict while not finding closure or repair for "the hurt inside" herself (Miller 2019, viii). She brings insight into the timeline of the trial and sentencing itself, with a narrative of how her life progressed alongside it. By utilizing Miller's

truth in my research, I have a clearer picture of the case as well as the opportunity to turn to her actual, not inferred, requests and opinions on how Turner should have been sentenced.

### **Final thoughts**

This thesis intentionally moves away from any carceral feminist approaches to adjudicating sexual violence and instead turns towards a prison abolitionist framework for thinking through how different articulations of justice and injustice arise from the Turner sentencing. Establishing that prisons are sites of great violence and injustice is vital for framing the necessity of anti-violence and anti-prison work to work in tandem. Investigating the criminal legal system via the sentencing of a specific raced, classed, and gendered individual lends insight into the system's approach to sexual violence cases at large. By relying heavily on Miller's memoir to inform my research, this thesis presents one of the first accounts of the Turner case to feature the victim's experience as a crucially important piece of empirical information. Centering the survivor is a core tenet of alternative justice approaches to sexual assault cases, and a similar approach is appropriate in this work as well. Though this thesis primarily tackles the question of justice through an analysis of legal avenues, I ultimately argue for the necessity of reimagining justice for sexual violence beyond simply the criminal legal sphere.

## **II. Background**

This project seeks to demonstrate how prisons and policing are inadequate and irredeemably violent responses to sexual violence by cataloguing the numerous ways in which the criminal justice system has historically and continuously failed in providing an end to sexual and gender-based violence. The criminal justice system is arguably not seriously invested in ending sexual violence at all.

In this section, the prison-industrial complex refers to an “understanding of the punishment process that takes into account economic and political structures and ideologies” (Davis 2003, 85). This definition incorporates the many levels in which relationships between capitalist and government entities rely on one another to reinforce the construction and implementation of prisons and surveillance as part of a criminal justice system.

I will examine how sexual violence activism came to its relationship with prisons and how prison abolition activism and scholarship challenges assumptions about prisons as sources of safety and redress. Further, I will make the point that sexual violence itself is an integral part in the structure of prisons, making them both ineffective as solutions to sexual violence and implicating the state as a perpetrator of sexual violence. Therefore, abolition of the prison-industrial complex is the only path towards true justice for survivors and ending sexual violence. Finally, I will situate my own research within this context.

### **The racialization of sexual violence and harm**

A significant legacy of slavery in the United States is the controlling images of Black men as sexual threats, and this history has permeated sexual assault cases up to the present. The post-Civil war era saw an escalation of portrayals of Black men as a “constant, and monstrous” threat to all white women, regardless of class (Freedman 2013, 89). Denying the possibility of consensual interracial relationships redefined rape to exist almost exclusively in the eyes of the majority as any sexual encounter between a Black man and a white woman, regardless of consent (Freedman 2013, 94). This redefinition of rape justified the horrific lynching of Black men as defenses of white feminine purity (Freedman 2013, 91). Extra-judicial “justice” for real or invented sexual assaults by Black men was not the only area where white women’s chastity preempted evidence. Courts rarely required much proof to convict Black men of rape, especially

of assaulting white women. Conversely, the courts rarely convicted white men for assaults of Black women, in the rarer event that the cases were investigated and made it to a courtroom. Though the latter occurred frequently, the racialization of rape “drew a firm line” between Black men and “civilized white manliness,” that naturalized Black men as innate sexual predators in opposition to white men’s “self-control and respectability” (McGuire 2010; Freedman 2013, 94). Black women’s sexuality was similarly constructed against white women’s, with Black women understood by whites (and by extension, by the legal system) as always consenting and sexually promiscuous, and white women as chaste and vulnerable, in need of protection. These racist constructions that solidified who perpetrators of sexual violence were and who victims were persisted in the subsequent decades, finding footing in reiterations such as the “super-predator” myth of the 1990s (Bogert and Hancock 2020).<sup>6</sup>

### **A long relationship between incarceration and racism**

Black men have not only been constructed as inherently dangerous sexually but as criminal more broadly, and this racialization of crime is reflected in our current mass incarceration crisis that imprisons Black men at rates ten times that of white men (Nellis 2016). Though the prison-industrial complex over-incarcerates communities of color broadly, the system is “structured primarily on anti-Black racism. That is, prior to the Civil War, most people in prison were white” (Smith 2006, 67). Slavery was abolished with the passage of the Thirteenth Amendment, “except as a punishment for crime.” Former slave states passed new legislation revising the Slave Codes to “proscribe a range of behaviors [...] that were criminalized only when the person charged was black” (Davis 2003, 28). These two legal measures merged to “develop a criminal justice system that could legally restrict the possibilities of freedom” for

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<sup>6</sup> For more on this myth, see discussion starting on page 34.

Black people (Davis 2003, 29). This codified racism persists, meaning “‘criminals’ and ‘evildoers’ are, in the collective imagination, fantasized as people of color” (Davis 2003, 16). Reliance on incarceration as punishment both fuels the capitalist drives of the ever-expanding prison industrial complex and functions ideologically as “an abstract site into which undesirables are deposited” (Davis 2003, 16).

### **Anti-sexual violence movement turns to the carceral state**

Awareness of sexual violence as a “social problem” (Bumiller 2008, xii) emerged in the late 1960s and early 1970s around the mainstream second-wave feminist movement, which converged with “phenomenal growth in the crime control apparatus” (Bumiller 2008, xii). Before, rape as a social issue emerged only as a “subsidiary” concern to other political issues, but sexual violence now materialized as a problem in its own right (Freedman 2013, 271). The legacy of false accusation by or on behalf of white women against Black men presented a challenge to anti-rape activists, who recognized the importance of breaking apart assumptions about Black men as sexual threats but were dismayed at the trend of dismissing women’s charges against both Black and white men (Freedman 2013, 273).

The anti-sexual violence movement began as a loose collective, more oriented to social justice than social services (Richie 2012, 67). That is, the movement was focused more broadly on taking steps against the systemic roots of what makes women vulnerable to male violence rather than narrowly on providing services to women affected by male violence. Rooted in the same ideology of “the personal is political” that drove much of the second-wave feminist movement, anti-violence activists connected violence against women and children as a systemic issue related to patriarchy rather than as a personal, private issue. From these grassroots circles of sharing private stories of abuse in more public community formats, formal groups emerged to

address the issue, with rape crisis shelters opening across the country (Richie 2012). These early shelters were staffed primarily by volunteers, and remained independent from state intervention (Richie 2012; Bumiller 2008, 3; Freedman 2013, 278). As the anti-violence movement grew, so did the recognition that other structural issues like housing and employment discrimination, limited access to healthcare, and lack of political representation were linked to male violence and greater gender subordination (Richie 2012). In an effort to advocate for broad-based social change, some turned to the state, which had newly-conservative leadership, to work within the system which cleaved the anti-violence movement into two: liberal and radical anti-violence activists (Richie 2012). Both remained invested in providing services for survivors of abuse but along with an increasing demand for services, these formerly independent shelters were gradually replaced by more formal organizations that were more acceptable to traditional social service delivery systems (Richie 2021). Many shelters and centers applied for local, state and national grants to support themselves, which tied these providers financially to the demands of these state-run agencies (Freedman 2013, 279). As the “law-and-order climate of the Reagan era” in the 1980s and beyond reinvested in crime-control tactics and police power, these social service networks that supported mainly women and children, who are the main victims of sexualized violence, began to integrate their work into a carceral-aligned welfare state (Bumiller 2008, 5; Freedman 2013, 286). This anti-violence feminist movement became a partner in the growth of a criminalized society. The overwhelming need to provide safety and redress for harm meant most of the movement’s energy was channeled into keeping current services operational as the conservative majority slashed social welfare budgets across many programs (Bumiller 2008, 5). The retrenchment of the welfare state “went hand-in-hand with the increasing investment in the criminal justice system,” (Kim 2018). With such a focus on crime control, anti-

rape feminist activists saw an opportunity to bring gender-based violence into the forefront of public discourse. Gender based violence was narrowed to a strictly criminal issue that could be addressed through crime control polices, like the addition of domestic violence to the criminal code, greater criminal penalties for gender violence, and mandatory minimums. These policies were all demanded by the mainstream feminist anti-violence movement (Kim 2018). Though feminists and anti-sexual violence advocates are notably not monolithic, the overwhelming majority of support systems for victims of sexual violence were channeled through the carceral state (Richie 2012). The passage of the Violence Against Women Act in 1994, an amendment to the Omnibus Crime Control and Safe Streets Act, solidified this alliance between the carceral system and the anti-violence movement. Since the passage of this act, questions have been raised by community activists both about its ineffectiveness in curtailing rape and domestic violence, as well as its investment in policing, which mostly targets low income and non-white men (Freedman 2013, 288). Though the passage of this act did signify a federal-level recognition of violence against women as a social problem, the act did little to address the structural issues that the grassroots movement identified in connection with male violence and activated violent methods of enforcement that arguably enabled more harm.

### **Gaps in the mainstream anti-violence movement**

One of the most significant consequences of the mainstream anti-violence movement's alignment with police and prisons is the contribution to the further marginalization of minority groups, particularly Black women. Identifying police as protectors and empowering the criminal legal system to incarcerate abusers ignores the multiple ways in which both authorities typically cause more harm than help in communities of color. This white, middle-class centric approach to anti-violence advocacy also structures what services shelters and crisis centers provide to



survivors of abuse. This often means that the needs of women who sit at the intersection of multiple oppressed identities are not given adequate support for both addressing either the immediate physical abuse they've faced or for the other forms of subordination they experience (Crenshaw 1991). Many burdens that women of color often face are largely consequences of gender and class oppression, making their needs different than those anticipated toward which funding agencies allocate resources (Crenshaw 1991).

White middle-class centrism in providing services and redress for sexual violence and domestic abuse clearly manifests in the deployment of law enforcement agencies as the primary, if not exclusive, way to respond to this violence (Ritchie 2006, 150). Cases of police brutality typically depicted in mainstream media and activism are of police officers attacking and or murdering Black men, and those cases of violence against Black women and other women of color are often considered anomalies (Ritchie 2006, 139; Crenshaw 2016). In reality, Black women also face significantly high rates of violence by on-duty police officers, with sexual violence and harassment being foremost in gender-specific forms of police interactions with women of color (Ritchie 2006, 149; Crenshaw 2016). The enforcement of racialized gender boundaries and regulation of sexual conduct are “cornerstones” of police interactions with women of color and dictate who is deemed a “legitimate survivor of domestic violence and sexual assault,” and who is likely to be a perpetrator (Ritchie 2006, 151). Often, these assaults occur when women have called police to their homes after suffering physical abuse, and “rather than ‘serve and protect,’ officers brutalized them, either for daring to challenge or seek protection from violence, or simply because they are acting on stereotypes that framed women of color as violent and requiring submission by physical force regardless of context” (Ritchie 2006, 151). This is not an extreme example but rather an illustration of the widespread, “almost

routine” assaults of women of color by police (Ritchie 2017, 135). A 2015 investigation by the *Buffalo News* concluded that in the past decade, a law enforcement official was caught in a case of sexual abuse or misconduct at least every five days (Ritchie 2017, 135). Additionally, women of color fighting back in self-defense against their abuser are more likely to be arrested and charged when police arrive rather than protected (Ritchie 2006, 151). This introduces these survivors of abuse into the carceral system, which subjects them to further violence rather than supporting them.

The reality of police violence and sexual abuse leaves Black women and other women of color in the precarious situation of having little recourse for sexual violence; shelters are often unequipped to service many of these women, and reporting to the police often introduces a greater risk of continued violence (Richie 2012).

### **Prison is an inherently and irredeemably violent institution**

Prison abolition activists and scholars have long argued against prisons as an effective form of crime control and sought to upend its persistence in our collective conscience as a necessary institution. Prisons are inherently violent, not because prisoners are inherently more violent people, but because they “both require and foster violence as part of their punitive function” (Lamble 2011). Most of those held in prison are incarcerated for non-violent crimes, especially drug offenses and crimes of poverty (Lamble 2011). For the much smaller population behind bars who pose a “genuine” risk to themselves or other, prison typically only exacerbates those risks (Lamble 2011).

One type of this violence is sexual abuse either by other prisoners or by guards and prison authorities. 1 in 5 males and 1 in 4 females face sexual assault in U.S. prisons, with national averages outside of prisons calculated around 1 in 10 males and 1 in 6 females in the U.S.

(Lamble 2011; RAINN). Prisons “reinforce, perpetuate, and entrench” gender/sex hierarchies and create environments for sexual violence to flourish (Lamble 2011). The prison “produces the gender binary” in conjunction with its controlling function (Stanley and Spade 2012). Racism and misogyny work hand in hand to produce sexual abuse in women’s prisons in particular (Davis 2003). The fact that sexual violence is rampant in prisons is a “well-known subject of hilarity in the general culture” with television, films, and other media commonly using prison rape as a mundane punchline (Harris 2017). In male prisons particularly, “in accordance with heteropatriarchal norms, gay, bisexual, transgendered, and effeminate men experience dramatically elevated rates of sexual abuse. But straight-identified men are also vulnerable to violence” (Harris 2017). The prison lives in our collective consciousness as both an ever-present threat and safeguard, while its realities remain disconnected from our own and rendered invisible (Davis 2003). Prisons intentionally sequester a designated “criminal” population away from the rest of society not just physically, but emotionally as well. By defining incarcerated people as a sub-class of persons, normally impermissible violence like rape is allowed to flourish within prisons (Davis 2003) and can then even be considered just by the rest of society; or at the very least, excusable and easily dismissed.

### **Prison abolition movement does not adequately incorporate analysis of sexual violence**

Though prison abolitionists are certainly invested in ending sexual violence at large as well as state-inflicted violence, many anti-rape activists have legitimate concerns about the adequateness of how sexual violence analysis is incorporated into anti-prison work (INCITE! and Critical Resistance 2006, 223). Prison and police accountability activists have generally organized around and conceptualized men of color as the primary victims of state violence and failed to address the gender and racial violence women of color face, in much the same way that

mainstream anti-violence activists have ignored this intersection of oppression. This history of the anti-prison movement's "failure" to ally with the anti-violence movement "has sent the message that it is possible to liberate communities without guaranteeing the well-being and safety of women" (INCITE! and Critical Resistance 2006, 224). A standard approach of alternative justice advocates is a turn toward communities as sites and arbiters of justice and redress for harm (INCITE! and Critical Resistance 2006, 224). But feminist anti-violence activists are critical of the universalizing nature of these references to communities, cautioning against romanticizing or fetishizing community as inherently able to provide the appropriate safety and ability to address harm (INCITE! and Critical Resistance 2006, 225; Palacios 2016). Activists and theorists such as Mimi Kim and Mariame Kaba do tackle this gap in communication and collaboration, but there is certainly a dearth of critical analysis of these two camps working together (Kaba 2017; Kim 2018). Turning to the "well-rehearsed refrain" about the dangerous few in reference to serial rapists, limits the project of prison abolition and simultaneously banalizes other serious harms (Ilea 2018). Further, accepting the carceral state as appropriate for sexually violent individuals undermines the well-founded critiques of prison in the first place.

## **Conclusion**

This brief detailing of the history of how sexual violence has operated within the criminal legal system is crucial to dissecting the gaps where anti-violence work and prison abolition activism fall short of one another. Gendered norms, hegemonic masculinity, and racism are the foundations of punishment in the criminal justice system and actively encourage sexual and gender-based violence against vulnerable communities in and out of prisons. In doing so, this creates even more violence within vulnerable communities and more sexual violence within

prison walls. The role of sexual violence as a tactic of “maintaining order and control within prisons” (Lamble 2011, 242) makes the lack of adequate protection from sexual violence in larger society even more sinister. And yet, anti-rape advocates on the whole have become invested in carceral punishment as a solution to sexual and gender-based violence.

Part of the persistence of carceral feminist frameworks is due to how sexual assault cases are not typically considered through a dual lens of prison abolition and sexual violence abolition. Both movements are grounded in the same core position of ending violence. However, they do not frequently align themselves with one another against the criminal justice system, a system that is not serving communities in seeking an end to sexual and gender-based violence. Recognizing this reality is essential to tackling the problem of sexual violence for both abolitionists and anti-rape activists.

### **III. *The People vs. Brock Turner: A Case Study of (in)Justice***

On the night of January 15, 2015, two Swedish graduate students biking across the Stanford University campus discovered a man assaulting an unconscious woman behind a dumpster outside of the Kappa Alpha fraternity house. After first thinking it was a “mutual interaction,” they realized that the woman was not moving and went to confront the man, now identified as Brock Turner. As they approached, Turner attempted to run away until one of the men tackled him to the ground while the other checked on the woman (Phillips 2015). According to the police report, the woman remained “completely unresponsive” when police arrived at the scene. Turner appeared to have “disheveled” pants and “what appeared to be a cylindrical bulge consistent with an erect penis underneath his pants” (Police Report 2015; Phillips and Chagnon 2018, 48). The victim’s dress was pulled up and exposed her genitals and buttocks, her underwear discovered “wadded up approximately six inches from her stomach” (Police Report 2015). Part of her breast

and bra were also exposed, and one witness stated having seen Turner pointing a phone down at her, though no photos were ever recovered. Turner was arrested and charged with five counts of rape and sexual assault. The victim was transported to the hospital and underwent a Sexual Assault Response Team (SART) examination, where they discovered many abrasions on the victim's body as well as dirt and pine needles inside her vagina.

The victim, now identified as Chanel Miller, was not a student at Stanford but had attended the party with her younger sister and friend. She was local to Palo Alto and had been living and working at home in the months leading up to the assault (Miller 2019). Turner was then a freshman at Stanford on the varsity swim team but voluntarily withdrew as a student after his arrest. Media coverage at the time of the assault fixated on Turner's supposed Olympic-bound swimming career (Phillips 2015).

At trial, Turner was convicted of three counts of sexual assault, which had been reduced from the original five after the prosecution dropped the rape-specific<sup>7</sup> charges. Though the details of the case are important for understanding the context of this case study, I will focus on the sentencing of Turner by Judge Persky, which is where the heart of the dilemma lies.

### **A Brief Sentencing Narrative**

On March 30, 2016, over one year after Brock Turner was arrested, a jury in Santa Clara County found him guilty on all three felony charges: assault with intent to commit rape (CA Penal Code section 220 (a)), sexual penetration of an intoxicated person (Penal Code section 289 (e)), and sexual penetration of an unconscious person (Penal Code section 289 (d)). His sentencing hearing was then set for June with Judge Aaron Persky presiding. The prosecution sought six years in prison, no probation, and lifetime sex offender registration. The defense

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<sup>7</sup> See Footnote 2 for explanation of definitions.

requested four months in county jail with probation. After reviewing the probation report, character references, both victim and defendant statements, and both sides' sentencing memorandums, Judge Persky sentenced Turner to six months in county jail with probation and lifetime registration as a sex offender.

Turner's relatively short sentence left many outraged but presented a dilemma for feminist prison abolitionists. The articulation of the sentence itself was outrageous in its framing of Turner as a victim himself. But the remedy of a short incarceration cannot simply be a longer period behind bars, if one recognizes the dysfunctionality and inadequacy of carceral solutions.

Under California Penal Code 220 (a), the minimum imprisonment in state prison for any person convicted of assault with intent to commit rape is 2 years. All three charges are listed under Penal Code section 290 (c) which requires Turner to register as a sex offender for life (Sentencing Memorandum 2016). Further, Turner would be ineligible for probation due to his conviction of assault with intent to commit rape under Penal Code Section 1203.065 (b). This section states that "Except in *unusual cases*<sup>8</sup> where *the interests of justice*<sup>9</sup> would best be served if the person is granted probation, probation shall not be granted to a person who is convicted of Section 220 for assault with intent to commit a specified sexual offense" (California Penal Code). Some of these factors included in Rule 4.413 of the 2016 California Rules of Court consider if the circumstances of the case are "*substantially less serious*<sup>10</sup> than the circumstances typically present in other cases," and the defendant's youth or lack of criminal record (Dauber 2016).

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<sup>8</sup> Emphasis is my own.

<sup>9</sup> v. sup.

<sup>10</sup> v. sup.

In the time between the trial and the sentencing hearing, probation officer Monica Lassetre compiled a probation report to recommend to the court how to sentence Turner. The main investigatory questions can be summarized as: Does this case comply with the “unusual circumstances” provision that would allow Turner to be eligible for probation? What would those mitigating circumstances be? What would an appropriate sentence length be in this case?

The probation officer drew from several different sources: the facts of the case, statements collected from Miller and Turner, District Attorney Alaleh Kianceri (head of the prosecution)’s testimony of the court procedure, and the results of a risk assessment of Turner. Her evaluation of the case determined that the sole mitigating circumstance was Turner’s lack of criminal history. The only aggravating circumstance potentially considered was Miller’s increased vulnerability from being heavily intoxicated, “but the victim being intoxicated and/or unconscious of the nature of the act is an element of the crime and therefore cannot be used as an aggravating circumstance” (Probation Report 2016). In determining an appropriate recommendation, Lassetre reported considering myriad factors, including the impact of the crime on the victim and the safety of the community. Miller stated during her conversation with Lassetre that “I don’t feel like I won anything. It was devastating.” The officer reported that Miller provided a “clear illustration of the hurt and devastation caused by the instant offenses and the ordeal of the trial,” and that she was impressed by Miller’s focus and concern on treatment “rather than incarceration” for Turner. Miller stated that “I want him to be punished, but as a human, I just want him to get better. I don’t want him to feel like his life is over and I don’t want him to rot away in jail.” Lassetre took this to mean that the victim did not wish for Turner to face imprisonment. She further concluded that this case “may be considered less serious due to the defendant’s level of intoxication,” despite not allowing that same factor of



intoxication to be “aggravating” in the case of the victim. General Objectives in Sentencing include punishing the defendant, encouraging him to lead a law-abiding life, and deterring him from future criminality (Probation Report 2016). Turner’s registration as a sex offender was a requirement of the convictions, but Officer Lassetre weighed this part of punishment, considering Turner’s youth, as a factor in determining his sentence to comply with her assessment of the sentencing objectives. She also considered that “his future prospects will likely be highly impacted as a result of his convictions, and he surrendered a hard-earned swimming scholarship.” Lassetre notably emphasized Miller’s statement about wanting Turner to receive treatment services as a factor in her determination (Probation Report 2016) Altogether, Lassetre concluded that the social consequences of these convictions and the SOR requirement would sufficiently punish the defendant, encourage a law-abiding life, and deter him from future criminality. Based on this information, the official probation report recommendation requested a moderate county jail sentence, formal probation, and sexual offender treatment.

Chanel Miller was dismayed at Lassetre’s conclusions and addressed her confusion and anger in her Victim Impact Statement, which opened the sentencing hearing. “My statements have been slimmed down to a distortion and taken out of context [...] I will not have the outcome minimized by a probation officer who attempted to evaluate my current state and my wishes in a fifteen-minute conversation [...] Brock had yet to issue a statement, and I had not read his remarks.” The probation officer made a point to report that Miller “did not want Brock to rot away in prison” as reason to recommend a lighter sentence, but Miller stressed that she “did not say he does not deserve to be behind bars” (Baker 2016). She also addressed the probation officer’s consideration of Turner’s scholarship loss and his intoxication, and adamantly refutes those as legitimate counters to a harsher sentence as “how fast he swims does not lessen the

impact of what happened to me,” and his intoxication didn’t change the “seriousness” of the case to her as the victim. Miller spoke to wanting Turner to take “full accountability for his actions,” but “all he has admitted to doing is ingesting alcohol” (Baker 2016). Beyond pushing back against Lassetre’s report, Miller used her powerful statement to address the emotional, mental, physical, and physiological tolls that the assault caused her, why Turner’s response was inadequate, and why his actions were inexcusable under any circumstance. The defense attempted to show that Turner didn’t know she was unconscious and therefore could not be guilty of rape; but as Miller said, “If your plan was to stop only when I was literally unresponsive, then you still do not understand” (Baker 2016). She pressed that Turner’s every action suggested ill intent. When she fell down, he did not help her up. “Note; if a girl [...] is too drunk to even walk and falls, do not mount her, hump her, take off her underwear, and insert your hand inside her vagina” (Baker 2016). The bluntness of Miller’s words underscored the violence of Turner’s action. She addressed Turner directly: “You should never have done this to me. Secondly, you should have never made me fight so long to tell you, you should have never done this to me” (Baker 2016)

After his father infamously read his own statement saying a harsher sentence would be a “steep price to pay for 20 minutes of action,” Turner himself delivered his statement at the sentencing hearing. He narrated his perspective of the assault as a night of peer pressure to drink and flirting with two girls (presumably Chanel and her younger sister). He assumed responsibility for “naively assuming” he could “be intimate” with Miller in public, and for drinking, but never for assaulting Miller. “I idiotically rationalized that since we had been making out where each of us fell to the ground, that it would be a good idea to take things a step further since we were just in the heat of the moment at that location,” he said of why he was

found on top of her outside by the dumpsters. He continuously shifted the narrative of blame off himself for assault and onto alcohol and “poor judgement” as the vehicle of how “things can go from fun to ruined in just one evening.” He lists his losses from this case and being found guilty of attempted rape, and again blames binge drinking and what he deems “sexual promiscuity” as what he and society should change from that night (Defendant Statement 2016).

Though both Miller and Turner had numerous character references and letters to Judge Persky submitted on their behalf, two letters are notable specifically to sentencing: Michele Landis Dauber’s letter (Miller’s side), and Leslie Rasmussen’s letter (Turner’s side). Dauber is both a Stanford law professor and close friend of Miller’s family, and later began and led the effort to recall Persky after this sentencing decision. Dauber is primarily concerned with pointing out the seriousness of this specific case for sentencing purposes and in having Turner’s sentencing be an example for the entire Stanford community of how to respond to sexual assault on a college campus. Dauber, like the probation report, addressed how the minimum sentencing requirement could only be challenged if the crime was “unusual,” after considering the facts of the case. Dauber holds that the “facts are not ‘substantially less serious’ than other cases. The opposite is true. The facts here are in some ways especially egregious when compared with many assaults on campus,” as the victim and Turner were strangers, and the assault happened in public, adding to the victim’s traumatization (Dauber Character Letter). Therefore, Dauber contends that allowing Turner the exception of probation or a short jail sentence would not reflect the seriousness of the crime. She also addressed Turner’s lack of criminal record and youth as characteristic of campus sexual assaults, and therefore not “unusual.” Stanford’s and other comparable universities’ study body and therefore offenders have usually “done well in school, and have participated in athletics and community service,” and she pointed out that many sexual

assaults on campuses involve heavy intoxication on the part of the victim or the offender and often both. That Turner was also intoxicated does not make this case's facts "unusual," Dauber contends, but rather commonplace. She noted that even if Persky determined the case to be "unusual," the court would still have to prove that "the interests of justice would be best served" by probation, and granting probation would be a discretionary action of the judge. Dauber also argued that the minimum ranges for Turner's crimes are two to three years, and that this is a relatively short sentence that would be effective in allowing rehabilitation but "will help him take responsibility for what he did and to avoid the consequences of reoffending."

Leslie Rasmussen's letter to Persky stands out as the one character reference that Persky specifically notes while announcing his sentencing decision. As a former high school classmate and friend of Turner's, Rasmussen characterized Turner as a caring friend who could never assault anybody: "If I had to choose one kid I graduated with to be in the position Brock is, it would have never been him. I could name off 5 others that I wouldn't be surprised about. Brock is such a sweetheart and a very smart kid. I never once caught him harassing anyone, verbally or physically. That would have been so out of his character" (Rasmussen Character Letter). Rasmussen, like Turner and his lawyer, placed all blame on alcohol and claimed that Turner did not "go out that night with rape on his mind," and that both Turner and Miller were too drunk and "not in complete control of his emotions," making Miller's assault "a huge misunderstanding." Rasmussen pointed to Miller's blackout as an indication that the assault was not serious or intentional. She continuously painted Turner as a victim of "political correctness" that is targeting him as a capital-r Rapist. Interestingly, both Rasmussen and Dauber seem to agree that college campus environments breed sexual assault and misconduct; but whereas Dauber uses this information to press Turner's culpability and need for a strong sentencing

outcome, Rasmussen writes that these “barely 20-something” men are “not rapists. These are idiot boys and girls having too much to drink,” and “things get out of hand.” Her admittance of the frequency of campus assault and familiarity of Turner’s case is used as reason to deflect blame for Miller’s assault off of his individual actions. She relies on stereotypes of who rapists are to insist that Turner and other college men are not rapists: “rape on campus isn’t always because people are rapists [...] This is completely different from a woman getting kidnapped and raped as she is walking to her car in a parking lot. That is a rapist. These are not rapists.” The dissonance between naming an act rape but refusing to call the assailant a rapist speaks to a typical hallmark of rape culture<sup>11</sup> that some people are Rapists and others are Not Rapists, even if they commit the same violent acts, and therefore the Not Rapists must be treated differently legally and socially to reflect their true character.

Both the prosecution and defense delivered their sentencing memorandums to Judge Persky before the sentencing hearing with their recommendations for sentencing. Deputy District Attorney Alaleh Kianceri disagreed with the probation officer’s finding of “unusual” circumstances, saying that “four to six months appears to be based on a one-sided consideration of solely the Defendant’s interests.” She recommended Turner be sentenced to the “midterm of Count Two, which is six years in prison, with the midterm of the remaining counts to be run concurrently to Count Two,” as this sentence “is more reflective of the seriousness of the case,” and in line with similar assault cases in the county (Prosecution Sentencing Memorandum). The defense, led by Turner’s lawyer Michael Armstrong, concurred with the probation report’s sentencing recommendation of a four-month county jail sentence with probation. Armstrong

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<sup>11</sup> “Generally, [rape culture] refers to the ways that sex roles and gendered oppression contribute to the perpetuation of rape myths, victim-blaming, and permissive attitudes toward sexual violence” (Phillips and Chagnon 2018).

additionally placed blame on Miller and her legal team for the emotional injury of the trial and media coverage, for the explicit photos shown, and for “most of the offensive questions.” Even in the memorandum, Turner’s team continued to shift culpability off of Turner.

After reviewing the facts of the case, the probation officer’s report, both sides’ sentencing memorandums, character references, and listening to both Miller and Turner’s statements, Judge Persky delivered his final sentencing decision to the courtroom. He began with quoting Miller’s “eloquent statement” to conclude that “the damage is done,” and that he will sentence Turner to probation, six months in county jail, and lifetime registration as a sex offender. Persky said he understood the devastation that the assault, the criminal process, and the media attention has had on Miller and her family, that it had “poisoned” their lives. The first consideration he made was if incarceration in state prison without probation was the “antidote to that poison,” determining it was not. Because alcohol “was present” it is “more morally culpable for someone with no alcohol in their system” to commit that same assault, in Persky’s mind. However, this is not the main factor that Persky hinges his decision on. He relies on Rule 4.413(c)(2)(C), which states that if “the defendant is youthful or aged, and has no significant record of prior criminal offenses,” then this may limit Turner’s culpability and be an “unusual” circumstance. He further investigated how applicable each factor of 4.413(b) would be for Turner’s case, including a pattern of criminal conduct, willingness and ability to comply with terms of probation, likely effect of imprisonment on defendant, and the adverse collateral consequences for the defendant following a felony conviction. Persky cites the numerous character letters from friends and family of Turner as evidence of his past “good behavior,” and proof that there will be “a huge collateral consequence for Mr. Turner based on the conviction.” Persky spent the most time

discussing factors seven and eight under Section (b), and in doing so reveals the significance of his entire framing of this sentence.

Number seven of Section b asks if the defendant is remorseful. Persky said that this is “one of the most conflicted and difficult issues in this case.” Persky personally found Turner to be genuinely remorseful for “all the pain he has caused,” but Miller does not see this as remorse because he has not taken responsibility for the assault itself. Persky characterized this split as a “bridge that will [never] be crossed.” He agreed with Turner’s lawyers’ claim that Turner, being intoxicated, saw the assault differently, and “takes him at his word that that’s his version of the events,” and said he doesn’t think Turner has to acquiesce to the guilty verdict in order to be sufficiently remorseful. He implied that the jury may not have made the best decision and undermined Miller’s statement about what restitution she wanted from the trial. This is particularly egregious in such a sexual assault case where the survivor’s wishes and words are rarely the center of the case. Using Turner’s expressions of remorse as a significant factor in providing leniency when Miller specifically found his regret disingenuous and misplaced, Persky let go of any claim on prioritizing Miller’s wants and needs in his sentencing decision.

Factor number eight asks the likelihood that if not imprisoned, the defendant will be a danger to others. Persky based his assessment that no, Turner is not a danger, specifically on the character letter by Leslie Rasmussen. He cited the quote that out of all the “kids” she graduated with, Brock would not be the one to assault someone, because she “could name off five others that I wouldn’t be surprised about.” Persky agreed that this “rings true.” By selecting this particular passage and letter—the only one he directly cited in his decision—he asserted both that Turner’s behavior was an anomaly on an individual basis, and that there DO exist “kids” who have the capacity to rape—but Turner cannot be one of those individuals. Further, after

leaving Turner's lack of acceptance of his crime as "a bridge that will never be crossed," the fact that Turner never confessed to sexual assault (only excessive drinking), it is unclear that Turner would not ever commit the same actions in the future. Persky's refusal to conceptualize Turner as dangerous illuminates how he instead is being framed as someone worthy of protection from carceral punishment and violence. This almost-admission by Persky of the damage of incarceration begs the question: why will Turner be more harmed than another defendant? The apparent answer lies in the same logic that does not accept Turner as dangerous. As a privileged cisgender white man, Turner does not fit the expected norm of who "belongs" in prison, of who can handle the collateral damage of incarceration.

The sentencing process and decision for Brock Turner created two competing dialogues that interpret the facts of the case and Turner's record and social position, that result in conflicting assessments of what constitutes an appropriate punishment for his crime. This case highlights a dilemma from a feminist prison abolitionist standpoint over what constitutes justice and how to execute justice within the current criminal justice system. Persky spent a prolonged time justifying how unusual Turner is as a defendant based on his youth and character references to prove that the collateral damage of a higher incarceration time was too great to inflict upon him. Acknowledging that incarceration is harmful to those in prison aligns with anti-prison ideals. But Persky did not predicate his claim on abolitionist views; he only indicated that incarceration was inappropriate and harmful for Turner, implying throughout his decision that the same may not be said for all sexual assault defendants. The light sentence that Turner received is a symbolic articulation of injustice in this case, representative of Persky's unacceptable framing of Turner as a sympathetic character; but the puzzle for feminist prison abolitionists is that simply demanding



a longer period of incarceration to indicate the seriousness of his crime does not meet anti-violence ideals.

In what follows, I analyze what Brock Turner's sentencing tells us from a feminist anti-rape, prison-abolitionist perspective. Namely, I isolate three analytics that help us understand why Turner's sentence is a scandal, not only for carceral feminisms, but for anti-rape prison abolitionism: the production of "dangerous individuals" through incarceration whose opposite is the "innocence of whiteness"; the catch-22s for victims seeking accountability; and the problem of justice. After doing this critical analysis of the sentencing, I conclude that Turner's case is emblematic of the impossibility of justice within the carceral legal system, and that any attempt to find accountability for sexual harm will be inadequate. Due to the inherently violent nature of prisons and the circumscription of carceral logics within the criminal justice system, there can be no chance for reform within these institutions that can appropriately redress sexual harm.

#### **IV. Innocence of Whiteness & the Production of Delinquents and Dangerous**

##### **Individuals**

The treatment of Brock Turner in the law and the rhetoric of his sentencing illustrates two concepts that I have identified as key to understanding the importance of Turner's subject position in this case. Judge Persky, Turner's defense team, and Brock himself all deploy language that constructs him as distinct from criminality and therefore ineligible for carceral punishment. This constructive work is best understood by examining how prisons and punishment produce "dangerous individuals" as explicated by Michel Foucault and how these constructions are created in opposition to an ideology of "whiteness as innocence" (Simson 2018).

Foucault argues that around the nineteenth century, a shift occurred from centering the act of a crime to focus on the personality of the criminal, marking the development of the concept of “dangerous individuals” (Foucault 1978; Ilea 2018). This change means that to assess the criminal risk of an individual is to shape that person into a criminal being rather than isolating their specific transgression (Ilea 2018). Within this framework, one “can render an individual responsible under law without having to determine whether he was acting freely and therefore whether there was fault, but rather by linking the act committed to the risk of criminality which his very personality constitutes. He is responsible since by his very existence he is a creator of risk” (Foucault 1978, 16). I argue that construction of “born criminals” mirrors the super-predator myth exactly, and understanding the formulation of this myth and its context elucidates the racialized dynamics of Turner’s sentencing.

### **Super-Predators and Racialized Youth**

The myth of the “super-predator,” a term coined in 1996 by academic John J. DiIuniolo Jr. for a magazine story, spread a national panic around a supposed rise in juvenile murderers who killed with glee (Bogert and Hancock 2020). DiIunilio made his claim after extrapolating from a study of chronic juvenile offenders, blaming them for “moral poverty,” and predicted there would be 30,000 more young “murderers, rapists, and muggers” by 2000 (Bogert and Hancock 2020). This was, predictably, completely false (Bogert and Hancock 2020). But “super predator” became a frighteningly easy shorthand for dismissing empathy towards young men and boys of color (Bogert and Hancock 2020). The supposed super predators were almost always contrived as non-white males. This moral panic was informed by racist constructions of rapists and murderers and further fueled those associations both socially and legally. The 1994 Crime Bill is

a prime example of the tough-on-crime responses that characterized the era that the super-predator myth was born into (Bogert and Hancock 2020).

Though “super-predator” has fallen out of mainstream legal discourses, its legacy remains in these strong carceral policies and in popular imaginations of juvenile criminality. A key part of the super-predator myth is age; the super-predators are juveniles. Their supposed propensity for violence is made all the more sinister by their youth and insidiously cleaves the capacity for innocence from Black and brown boys. Turner, at 19 years old at his time of arrest, falls into the category of a youthful criminal. Further, he is at the time of sentencing a convicted sexual assaulter. So why is Turner, whose entire case for leniency is built upon his youthfulness, afforded the defense of innocence? The answer lies in his race and his class status.

“Whiteness as Innocence” ideology, as David Simson coins it in terms of anti-discrimination policy, is “a system of legal reasoning by which the formal principle of equality is filled with the substantive principle of white racial dominance via invocations of white innocence” (Simson 2018). In this process, innocence displays a “malleable meaning” and becomes “presumptively attached” to the law’s understanding of whiteness itself. Simson identifies two forms of White Innocence: the first, absence of specific guilt; and the second, not having benefitted from historical racial inequality but rather having earned one’s place through separate merit, and being able to claim broader “moral purity” innocence (Simson 2018). Though Simson’s argument is focused on white innocence operating within anti-discrimination law, the same ideology is operating in similar ways in Turner’s sentencing. Turner benefits from both types of White Innocence that Simson identifies, from his defense team’s strategy, to his character witnesses cited during sentencing, and to Persky’s reasoning in his sentencing decision.

**“Brock Turner is Not a Rapist”<sup>12</sup>**

Leslie Rasmussen’s letter to Persky echoes the incredible Jenga of language that is occurring in order to make Turner and his illegality distinct from other criminals. The manufacturing of this difference is situated in his whiteness. In many ways, Turner’s actions are paradigmatic of the myth of rape as a stranger who attacks in public. And yet, Rasmussen (and Turner’s defense team) insists on articulating a difference between that myth and Turner’s assault of Miller, putting in a lot of imaginative work to reframe the events of the assault so that Turner cannot be framed as this dangerous stranger. Miller’s assault was not “a woman getting kidnapped and raped as she is walking to her car in a parking lot. That is a rapist. These are not rapists (Rasmussen Letter 2016). And yet, why is this different? Empirically, the facts show that Miller was attacked in the dark in public by a stranger who did not even know her name. But both by Rasmussen’s standards and the court’s,<sup>13</sup> there was a difference, and the making of that difference lies in Turner’s race.

Turner’s father’s character statement at Brock’s sentencing is a prime example of trying to characterize his criminal act as one of innocence. Dan Turner called the assault on Miller “20 minutes of action” out of his “20 plus years of life” (Dan Turner Letter 2016), after paragraphs extolling Brock’s academic and athletic achievements. This rhetoric minimizes the crime directly because of Turner’s trajectory of personal success. It re-inscribes his white male privilege to a future and simultaneously denies Miller’s right to restitution. It goes so far as to deny that a crime occurred at all.

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<sup>12</sup> Sweeny 2020.

<sup>13</sup> This is evidenced by the “substantially less serious” designation.

The reference to “action” rather than “assault” speaks to this notion of sexual naïveté that Turner and his defense attempt to play up by discussing the “sexual promiscuity” of university life in relation to this assault. Turner and his father both describe him as a victim of party culture and peer pressure, a young freshman who was unknowledgeable of the meaning of his actions. Consistently, the defense places the violence squarely in relationship with non-violent sexuality.

The narrative that Turner and his defense team attempt to paint is a picture not of violence, but of bumbling sexual naïveté gone awry. Turner is discursively turned into a hapless youth whose only crime was miscommunication. The fact that this act of violence against Miller was sexual violence allows Turner’s team to willfully “interpret certain behavior as primarily erotic in nature” (Franke 2002).<sup>14</sup> Because his acts of violence were cloaked in sexual associations, he is able to attempt to abdicate responsibility for the assault. If he was on trial for physically assaulting Miller through non-sexual means, this defense of naïveté would not hold the same weight. The sexual nature of his crime means he can articulate his excuses through a romanticized lens that hides violence under college hook-up culture.

This narrative of naïveté that Turner spins, successfully, is congruent with Simson’s Type 1 “Whiteness as Innocence” definition and helps to explain how he is not being typified as a super predator type despite the realities of his actions. Understanding how whiteness is working in Turner’s favor in this sentencing decision also clarifies the aggravating effect this has on the production of delinquency that is fueled by anti-Black racism.

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<sup>14</sup> Though this thesis is not attempting to make claims as to how sexual crimes should be viewed compared to other violent crimes, Franke’s work provides a lens for seeing how easily the turn to innocence is made in order to make claims about Turner’s intent.

**“Goodbye to the Olympics”<sup>15</sup>**

The dangerous individuals, as evidenced by the super-predator myth, who are specifically coded as non-white men, do not actually have to have committed any crimes or been convicted of them to be dangerous; and it appears that Turner, despite having been convicted of rape, cannot occupy the position of dangerous individual. Persky’s sentencing decision also contains iterations of Simson’s Type 2 Whiteness as Innocence, with references to Brock’s elite class status and his presumptive future success as a star athlete, and even as a doctor.<sup>16</sup> By rhetorically connecting Turner’s identity and accomplishments to his innocence reinforces the boundaries of who is inherently a creator of risk and whose transgressions are forgivable anomalies. Persky predicated a significant amount of his sentencing decision on Turner’s youth and lack of prior criminal offenses, and the “huge collateral consequence” of incarceration for Turner, specifically. Though the super-predator myth may be out of circulation explicitly, its legacy lingers under the surface of the baked in assumptions about who should and should not be considered a risk.

Turner’s whiteness begets misunderstanding rather than intentional criminality—He cannot be individually culpable (Type 1) nor systemically culpable. He has the capacity of a bright future that he has earned (Type 2), whereas the dangerous individuals are not afforded that same potential. Persky’s admittance of the negative consequences of prison is a further verbalization of who prisons are intended to be for. Foucault offers several important frameworks for examining both the goals of prisons and the consequences prisons have for individuals. He argues that

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<sup>15</sup> Turner’s sister wrote in her letter to Persky, “Goodbye to NCAA championships. Goodbye to the Olympics. Goodbye to becoming an orthopedic surgeon. Goodbye to life as he knew it” (Bever 2016).

<sup>16</sup> V. sup.

prisons exert a double functioning; they are both a form of legal detention, covering the deprivation of liberty, and they engage in the transformation of individuals—attempting a corrective task. However, through this functioning, the prison necessarily produces so-called “delinquents.” The isolation and violence imposed on prisoners, feeling of injustice, corruption, and penal labor exploitation all contribute to “necessarily condemning” inmates to recidivism (Foucault 1975, 266).

The project of the law, penal system, and prisons has “failed” if this is the result; but maybe this failure is in fact serving a particular purpose. The production of delinquency is not an unfortunate by-product of prison, Foucault argues, but rather deployed intentionally. When the penal institution releases an inmate post-sentence, the prison “continues to follow them by a whole series of ‘brandings,’ and *de jure* surveillance,<sup>17</sup> creating a “delinquent” from someone who has served their assigned punishment. The continuation of the penal institution and creation of delinquency makes a compelling argument that “prison, and no doubt punishment in general” is meant not to end offenses, but to “distinguish them, to distribute them, to use them.” Foucault argues that penalty then organizes illegalities to give “free rein to some,” and “put pressure on others” (Foucault 1995, 272). This lends the carceral state control over who is deemed policeable and incarcerable, and in turn validates the existence of the police and prison powers as necessary protectors in the face of supposedly-delinquent populations. Angela Davis offers a similar analysis of prison, as the “black hole into which the detritus of contemporary capitalism is deposited” (Davis 2003, 16).

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<sup>17</sup> Foucault cites the police record, we can also think to SORs another form of this surveillance. I discuss the tension between Turner’s white innocence and the SOR assignment on page 64.

Turner's whiteness is antithetical to delinquency and dangerousness in the eyes of the law. The construction of whiteness<sup>18</sup> as the presumption of innocence is "fundamentally based [...] on the establishment of White supremacy and patriarchy" (Mack and McCann 2019). Though the law purports to be equipped to comprehend the violence of sexual assault, the courts ultimately refuse to "deploy in defense of women" the "punishing power of the state" to continue to protect white masculinity, and center white men as "quintessential social subjects" (Mack and McCann 2019, 376-77). Whiteness acts as the repository of Turner's qualifications that deem

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<sup>18</sup> I do not incorporate an analysis of Miller's race in the body of this section because of the unique nature of how her identity is presented in the courts, and how it is obscured. Miller identifies as Chinese American, but was identified by court officials as White in case documentation. Subsequent media and academic discourses continued to conceptualize her as a white woman, until the release of her memoir *Know My Name* in 2019. This legal and social erasure of her Asianness obscures the reality of sexual violence targeted at Asian women historically and contemporaneously. This occluding whiteness limits the complexity of understanding Miller's specific experience of victimhood. Racial categories continue to structure our capacity for empathy for survivors of sexual violence. A U.S. Bureau of Justice study on victimization and race that took place over the course of five years found that "thirty-five percent of Asian victims of violence reported the race of their offenders to be White [...] the greatest proportion of perpetrators on Asians were non-Asians, which is not the case for White and Black victims" (Woan 2008, 297). There can be no doubt that the implications of a white man assaulting an Asian woman versus a white man assaulting a white woman would be profoundly different. This is not to say the violence would be any less severe, simply that the incorporation of an analysis of race that included the victim would have altered how this case was understood in contemporary media and academia.

Miller herself notes in her memoir that the anonymity of Emily Doe and her victim impact statement "created a room" for other survivors to inhabit and revisit their own pasts; but if she "had come out with my identity the room would have collapsed, its roof weighted by distractions; my history, my ethnicity, family." (Miller 2019, 252). The consequence of her identity being obscured was the presumption of whiteness by the courts. Post-sentencing, the campaign to recall Persky "predicated its demands on affective investment in the experiences of a universal victim—and universal victims are always already White" (Mack and McCann 2019, 386). This calls into question the extent of the empathy Miller might have been afforded had she been identified as Asian American throughout the trial. Though her non-descript identity allowed for others to inhabit the space her statement created, she was also assumed whiteness-by-default which eliminated the opportunity to understand her experience more precisely.



him unincarcerable, these qualifications being his elite class status, his brilliant future career both athletically and academically, and his supposed naiveté.

It is important to state clearly that the answer is not to simply include Turner and his peers within the construction of dangerous individuals. It remains true that rich white men can commit assault, and so can poor Black men; but simply expanding carceral consequences and preconceptions to enfold Brock Turners does not eliminate sexual harm and does nothing to combat the racist backbone of the penal system.

## **V. The Catch-22 for Victims**

The inability of the criminal legal system to deliver on expectations of justice and accountability for sexual assault cases is well-documented, and yet the criminal legal system remains the primary, if not only, option for survivors. Those who fear engaging with their perpetrators in a court room, do not want to entangle themselves with the legal system or cannot,<sup>19</sup> have a lack of resources to take a criminal case to trial, or do not feel safe even calling law enforcement in the first place, are all left with little to no recourse for seeking accountability and justice. Even those who do seek redress in the criminal justice system leave feeling “disempowered and alienated” (INCITE! and Critical Resistance 2006, 224).

### **The Bind**

These barriers form the foundation of the bind that I am identifying as the Catch-22 for Victims. Miller finds herself in the center of this irresolvable dilemma during Turner’s sentencing, caught between the tension of trying to articulate what form of accountability she

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<sup>19</sup> Immigration status intersects importantly with inability to report assaults; there are many documented cases of undocumented women reporting assaults only to be deported (Richie 2012).

seeks from Turner, while facing an unsatisfactory and incomplete answer: incarceration. The recall of Judge Persky highlighted this dilemma and formed two oppositional camps; those in favor of harsher punishment and those wary of mass incarceration. Phillips and Chagnon argue in their analysis of reactions to the Stanford case that this zero-sum dichotomy is a false understanding of the more complex dynamics and motivations behind both sides of the discourse (2018). I argue further than one perspective that was glossed over in this case was Miller's. At the time, the only record of her wishes that were available was her victim impact statement, published anonymously on BuzzFeed after the sentencing. However, with the reveal of her identity and release of her memoir, it is critical to incorporate her position on what accountability and punishment looks like in all its complexity.

### **The Path to Trial**

Before discussing this bind in more detail, it is necessary to first outline the path to the courtroom in cases of sexual assault. It would be inaccurate and disingenuous to claim that all victims find themselves in this bind over sentencing, when the majority of survivors or their assailants will never see a courtroom. The estimates on reporting rates are variable, as it is difficult to measure unreported incidents, but recent data from the Justice Department's annual National Crime Victimization Survey estimates 3 out of every 4 sexual assaults go unreported to law enforcement (RAINN).<sup>20</sup> Of those assaults that are reported, few lead to an arrest, and fewer still to a conviction (RAINN). The reasons that survivors do not come forward range from fear of retaliation and secondary victimization,<sup>21</sup> to distrust in police and the legal

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<sup>20</sup> The NCVS only includes respondents over the age of 12 years old, due to the interview method of data collection. Consequently, assaults of those under 12 years old are elided from this data.

<sup>21</sup> Secondary victimization is typically defined as the trauma a victim goes through when pursuing a criminal case against their assailant, as the process of re-describing details of the

system, and to not believing the assault was worth reporting, among other, more individual reasons (RAINN). The likelihood of a perpetrator being imprisoned for sexual assault is so low, at approximately 0.46% (RAINN), that many victims choose to avoid the process all together. In criminal legal cases, the burden of proof is on the prosecution to establish the defendant's guilt beyond a reasonable doubt to obtain a conviction. This standard of proof can be particularly difficult to obtain in sexual violence cases. Assaults often occur without eyewitnesses or recoverable physical evidence. Considering that the majority of assaults are perpetrated by individuals known to the victim (RAINN), proving that the assault was non-consensual can be even more difficult in a trial setting. Rape kit collection methods are extremely useful in proving that sexual and violent contact occurred but have limitations in that regard. Many survivors know of these barriers to receiving a guilty verdict and are wary of entering the terrain of a trial.

### **Secondary Victimization**

For those that pursue a criminal case, like Miller did, the adversarial system is primed to retraumatize the survivor through the trial process and for accountability to lose its potency. Entering a "not guilty" plea as the accused fundamentally undermines their ability to be accountable if that accountability requires an acknowledgement of harm. This pits the perpetrator against the victim once again, but this time under the gaze of the jury, the judge, and the media. Miller, in her victim impact statement, addresses this underlying tension directly to Turner: "You should have never done this to me. Secondly, you should have never made me fight so long to tell you, you should have never done this to me" (Baker 2016). She is identifying this foundational dilemma inherent in criminal proceedings for sexual assault. A defendant has no

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assault, hearing testimony from either their assailant or others, and general participation in the legal system can invoke the same or similar traumatic feelings that the survivor first felt during the assault (National Crime Law Institute 2013).

incentive to plead guilty in a system that they know will sentence them to prison time if they believe they have a chance to receive a not guilty verdict or can argue for a lighter sentence during a trial.<sup>22</sup> But as in this case, by pleading not guilty, Turner asserted his unwillingness to be held accountable in the ways that Miller had requested.

Her words, “you should never have made me fight so long” also identify another factor that minimizes the harm reduction that trials purportedly attempt to provide. Even when juries return a guilty verdict, the lengthy, invasive, and intense process of the trial itself can undermine that “win.” Instead of focusing on healing, Miller was taking time to recall the night of her assault “in excruciating detail” (Baker 2016) to prepare for cross-examination by Turner’s attorney. While retelling her narrative of the night of the assault to the DA, Miller was repeatedly cut-off by the defense for hearsay; Miller recalls the interjections as “the defense’s palm wrapped firmly across the top of my head, holding me underwater, saying, *Don’t you come up*” (Miller 2019). Though a common tactic and important legal tool, the attorney’s objections carry additional weight in a rape trial where the victim’s veracity is often under additional scrutiny. In Miller’s case, she had no personal recollection of the assault, and therefore much of her testimony was vulnerable to striking or questioning.

Graphic photos of Miller’s exposed body<sup>23</sup> from the night of the assault were projected for everyone in the courtroom, including her family and partner, to see, and then the day’s

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<sup>22</sup> It is important to note that the opposite can also be true, where defendants are persuaded to take a plea deal where they might otherwise plead not guilty. Because of the expense associated with criminal processes, it is typically poorer defendants who are pressured to take deals over going to trial.

<sup>23</sup> Miller recalls seeing these images for the first time in the court room, and the later realization that some of the more graphic images of her genitals entered into evidence had been projected right before she had unwittingly entered the room to give testimony; this realization left her feeling “humiliated” (Miller 2019).

proceedings would be recorded and published via various media outlets. When Turner himself testified, Miller “learned what it meant to be revictimized” (Baker 2016).<sup>24</sup> Turner’s account of the assault asserted over and over that Miller had consented, that he had no idea how drunk she was, how he didn’t do anything wrong other than drink too much himself. To be so explicitly undermined in front of her made Miller vulnerable again to Turner’s now verbal attack of her veracity (Baker 2016). Hers was not an uncommon experience. Many victims of sexual violence experience this secondary victimization through contact with law enforcement, defense attorneys, prosecutors, judges, and other legal personnel that is associated with increased posttraumatic stress symptoms and other mental and physical distress (Victim Law Bulletin 2013). Miller recalls in her memoir that since the trial, she worries she “will forever be stuck on the stand [...] always asking permission, anticipating having to present myself to an invisible jury, answering questions before a defense” (Miller 2019, 270); from picking out clothing, to how much she drinks at a party, to where she travels at night. No matter the outcome of the trial, her self-scrutiny as imagined through the eyes of a watchful public and a distrustful courtroom remain part of the trauma of her assault.

### **Verdict versus Sentence**

In the Turner case, the jury found him guilty on all three charges brought forward by the prosecution, a somewhat rare outcome in sexual assault trials. Though Miller was relieved at this outcome, her hopes that “finally [Turner] will own up to what he did, truly apologize, we will both get better” were quickly dashed.<sup>25</sup> Turner’s statement at sentencing underlined his

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<sup>24</sup> She is referring to what I defined earlier as secondary victimization; revictimization is often used to refer to survivors who experience an assault or abuse again after the first incident; however, her use of the term here is also appropriate.

<sup>25</sup> In July 2018, Turner and his defense team attempted to appeal his guilty verdict, claiming Turner only intended to have “outrcourse,” to which one of the presiding justices replied, “I

commitment to displacing blame off himself and onto college party culture and alcohol consumption. Though Miller received the verdict she had fought for, the sentencing proved less satisfactory. The way that carceral logics limit possibilities for defining accountability outside of the terms of incarceration enters the picture here. In a schema where justice is often equated with vengeance and punishment with accountability (Palacios 2016), the sentencing of the perpetrator is where these limitations are tested. Miller's statements to the probation officer make it clear that she wanted Turner to face punishment, while also receiving "treatment" (Miller 2019; Probation Report 2016). She was explicitly motivated in part with her past experience as a female student at the University of California, Santa Barbara in 2014 when Elliot Rodger killed six people and injured 14 others before committing suicide. A housemate of a friend of Miller's was one of the women shot (Miller 2019). Rodger's video manifesto cited his motive as a hatred for women, and these murders would be retribution for his inability to get a girlfriend or otherwise sexually access women. Miller wanted to make sure Turner didn't punish more women as a result of the outcome of this trial (Miller 2019). Her past experience informed how she articulated what Turner's sentencing would mean to her in terms of accountability. This is a crucial piece for understanding what is informing Miller's confliction over incarcerating Turner. Her position is decidedly one of harm reduction as her fears are located in Turner's capacity to offend again or to express anger at his sentence in a different, still violent, manner.

Miller's desires for how Turner should have been sentenced come into an unfortunate conflict within the framework of the criminal legal system. She does not seem to be motivated by vengeance but rather a request for education and repair. Her version of accountability is based on

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absolutely don't understand what you are talking about." The guilty verdict was affirmed in August 2018 (Miller 2019) (Kaplan 2018).

Turner's admittance of guilt, not on the level of punishment he received. However, she is unable to give an account of these wants that also incorporates a desire for some form of punishment. She is left having without receiving accountability and no opportunity to get it in the future.

### **The Recall: Carceral feminism versus Carceral Reform**

After Turner's sentence of 6-months of jail time with probation,<sup>26</sup> there was a national and international outcry against this seemingly-lenient punishment. Miller's victim impact statement had been published on BuzzFeed (still anonymously as Emily Doe) and just one week after its publication, the post had over 15 million views (Miller 2019). Michelle Dauber<sup>27</sup> began a recall campaign to remove Judge Persky from the bench. Judicial recalls are rare and are rarely successful. No judge had been recalled in California since 1932. The petition needed 58,634 signatures in Santa Clara County to get on the ballot, and then needed to win by at least 50 percent of the vote to recall him (Miller 2019). Immediately, the campaign received backlash from other lawyers, including many of Dauber's colleagues, raising concerns over the impact on judicial independence and encouraging longer sentences in future cases. On the recall campaign's website, part of its mission statement reads, "Aaron Persky gave too lenient a sentence to Brock Turner, a former Stanford Swimmer convicted of sexual assault [...] Persky is unfit to sit on the bench, and as long as he is a judge, predators in Santa Clara County will know

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<sup>26</sup> Turner would only serve three months under California prison guidelines for good behavior credit.

<sup>27</sup> Dauber did not realize Miller was the victim in the case until after the trial concluded.

they have an ally on the bench” (Phillips and Chagnon 2018). There is a clear link being made between time in prison and appropriateness of punishment. In this way, the anti-rape culture narrative intersected with a penal populist<sup>28</sup> sentiment. Penal populism and carceral feminism are closely related; though originally defined in response to political campaign strategies, penal populism can be applied more broadly to describe a specific rhetoric similar to that of carceral feminism (Pratt 2006, 12; Philips and Chagnon 2018). The media coverage of both the trial and the recall campaign fueled the narrative that encouraged this carceral bent. The broad view of the public discourse places the recall campaign as squarely pro-incarceration and therefore antithetical to those concerned about the recall’s implications for future adjudication. However, Dauber herself spoke out against California’s passage of a new mandatory minimum that was directly motivated by the Turner case,<sup>29</sup> as well as expressed concern over Turner’s lifetime sex offender registry requirement (Phillips and Chagnon 2018), saying “No one should be defined for the rest of their life by their worst moment” (Kaplan 2016). She also stressed in interviews with press that the recall was not a threat to judicial discretion, despite significant assertions of from public defenders and other legal professionals. Sajid Khan was one of these professionals. A public defender, Khan argued that this recall was another manifestation of our culture of mass incarceration that has both made lengthy incarceration seem like the sole solution to crime and ignored the impact of sex offender registration (Phillips and Chagnon 2018). Khan created an opposing petition in support of Persky remaining on the bench for fear that a recall would cause

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<sup>28</sup> Penal populism constitutes “wide-spread indignation at elites and the belief that the justice system values the rights of the accused and prisoners over those of “the public.” Moreover, punishment, often severe, is seen as the answer to criminalized social problems, justified by the framing of offenders as irredeemable, monstrous, or animalistic” (Phillips and Chagnon 2018).

<sup>29</sup> This new bill now set a mandatory minimum sentence for assaults of unconscious or intoxicated persons.



future judges to limit their discretionary power in sentencing. The main concern was that by recalling a judge for not enacting a lengthier sentence, a precedent would be set for future cases that the only response to sexual harm is a harsh sentence; with known biases against non-white and poor perpetrators, this would mostly impact minority defendants—not Brock Turner types.

Though Miller herself was not personally involved in the recall debate, the conflict reveals two significant findings for understanding the bind that she found herself in. First, the zero-sum formation of justice that is articulated with justice for victims on one end and anti-mass incarceration on the other. This dichotomy makes it seem that if one side wins out, the other must lose. Second, and related, is how the inability to articulate requests for justice in the face of a poorly-rendered sentence, without invoking carceral punishment, impoverishes social imagination of justice. That is to say, the bind that Miller finds herself in when attempting to communicate her wishes to Officer Lastrette is the same one that the Persky recall campaign faces. Though the recall campaign wrote on its website that “justice is not a zero-sum game,” (Phillips and Chagnon 2018) the carceral logics that haunt this sentencing push against that hopeful claim. And despite having legitimate concerns about mass incarceration, the anti-recall side still cannot adequately respond to the reality that Persky’s rationale for sentencing Turner was steeped in racial bias. Dauber can claim that the campaign is not trying to engage in a culture of mass incarceration, but that does not exempt the recall from effectively doing so. The muddled nature of these discourses is no surprise when the legal system’s imaginative powers are tied down by a reliance on prisons to recompense harm. Phillips and Chagnon argue that this simplistic polarity between the recall narrative and counternarrative “obfuscated the ways that in seeking justice, both interests may intersect” (2018). I agree with this analysis, but posit that this obfuscation was and will always be inevitable when engaging with the criminal legal system that

remains dependent on incarceration. There are limitations presented by the carceral logics that cannot be overcome without adopting a different framework for imaging and defining justice and accountability altogether.

### **Whose Accountability?**

Miller's story recounts a survivor trying to define what accountability and responsibility would look like to her, but with a vocabulary constrained by the judgements of the carceral system. The Catch-22 exists within these bounds. Miller is able to recognize the ineffectiveness of lengthy incarceration as well as the need for Turner to learn from his crime. She is also grappling with the knowledge that seriousness of crime is measured against time behind bars, and particularly when Turner's low sentence was predicated on defining her assault as "substantially less serious," her anger at the sentence length is also appropriate. Her main wish was for Turner to "get it" in a way that was acceptable to her, and something he consistently refused to provide. All of these constituent pieces of Miller's wants are significant to place in concomitance with the recall campaign. The fact that Miller did not receive accountability on the terms she requested is an irredeemable, but inevitable, consequence of the criminal justice system. Carceral punishment only demands accountability to the state rather than to the people affected by the original harm (Lamble 2011, 245).

## **VI. Exploring meanings of justice in the Turner Case**

### **Interests of Justice**

When the California Penal Code charges the court with acting in the "interests of justice," (California Penal Code, pg. 23 of thesis) the state is entrusting enormous discretionary power to the Judge Persky to interpret what the interests of justice in Turner's case would be. This unspecified phrase leaves the open the question: whose justice? Or rather, in the interests of

justice for whom? This can be broken down into three main subjects: the community, the victim, and the perpetrator. Each of these subjects has specific motivations and conflicting understandings of what justice means for their positions. Because of this, any coherent definition of justice is lost and fractured under this scrutiny, leaving a bleak conclusion for the state of justice in sexual violence cases.

### **Community Justice**

There are multiple ways of thinking about community justice that include addressing a perpetrator's probability of re-offense, assessing solutions to prevent the original harm from occurring again, and involving the multiple parties involved in the offense to work together to redress harm. I will begin by focusing on the probability of re-offense. Turner's risk assessment centered on this question of recidivism, and his defense team's main arguments against incarceration were based on a claim that he was unlikely to re-offend.

The probation officer in this case administered a risk assessment test to Turner, and Persky's sentencing revolved around analyzing Turner's (lack of) criminal history and the character references that characterize Turner as a non-threat and unlikely to reoffend and harm the community. Turner was scored on the Static-99R, an actuarial risk assessment tool implemented in 2007 by California to measure the risk for sexual offense recidivism (Probation report 2016; SARATSO.org). Turner received a score of 3, placing him in the Low-Moderate Risk category for being charged or convicted with another sexual offense after release from incarceration (Probation report 2016). The basis for these predictions are a 10-item scoring system<sup>30</sup> that takes into account different factors that might influence someone's potential to

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<sup>30</sup> The 10 items are as follows: Age at Release from Index Sex Offense; Ever Lived with an Intimate Partner—2 years; Index Non-Sexual Violence—Any Convictions; Prior Non-Sexual Violence—Any Convictions; Prior Sex Offenses; Prior Sentencing Dates; Any Convictions for

recidivate (Static-99R Coding Rules 2016). The probation report notes that this assessment provides “objective and empirically validated evaluations” of an offender’s risk. But in reality, the objective nature of these actuarial methods is an inaccurate claim and prediction is a problematic framework for guiding sentencing.

Actuarial methods are widely implemented contemporarily in the criminal legal system as not just helpful but necessary tools for determining sentencing (Harcourt 2007). These risk assessments are used as predictive measures that link the possibility of future criminality with the harshness of punishment, based upon an assumption of its correlation with deterrence.<sup>31</sup> But this use of predictive methods is not a natural turn, though it has become normalized as the only appropriate application (Harcourt 2007, 32). These actuarial assessments have “begun to distort our carceral imagination, to mold our notions of justice, almost subconsciously or subliminally” (Harcourt 2007, 32). The danger of this altering of our notions of justice is when the amount of punishment that is given is determined largely on the predicted likelihood of re-offense, it breaks the link between just punishment and the heinousness of the offense (Harcourt 2007, 32). This is not to endorse wholesale that just punishment should be linked to heinousness of offense, but rather, to focus on futurity and presumed “future dangerousness” threatens the relationship between the extant offense and the redress of said offense (Harcourt 2007). Inversely, an actuarial finding that predicts low future dangerousness can also be considered a mitigating factor in sentencing. Prior criminal offending is one of the key axes of sentencing because it serves as a proxy for likelihood of future offending. This becomes problematic when considering

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Non-Contact Sex Offenses; Any Unrelated Victims; Any Stranger Victims; Any Male Victims (Static-99R Coding Rules 2016).

<sup>31</sup> This assumption is as follows: if a first-time offender is sentenced to a shorter incarceration, they will be more likely to recidivate; second-time offenders will have knowledge of a longer incarceration, and therefore if acting rationally, will be less likely to recidivate (Harcourt 2007).

sexual assaults on college campuses, where assault cases almost always involve a youthful offender committing their first criminal offense (Dauber 2016).

The problems with utilizing actuarial methods for articulating a just sentence for Turner does not prove that he will inherently re-offend, but rather reveals the misguided notion that any of the evaluate tools that the judge used to asses Turner's risk could be truly objective. Knowing that this analysis of Turner's re-offense capability is not predicated on anything other than an individual judge's application of a biased model, saying that the interests of justice of the community were performed is no longer intelligible.

While re-offense is the mainstay of community justice in the criminal justice system, it is undeniably too narrow to speak of community justice as accountability, redress for harm, and repair. In turning to these questions, new institutions and community members emerge as alternative sites for articulating the demands of community justice. Unfortunately, these other actors abdicated their role in reformulating justice, replicating an over-reliance on a deeply flawed criminal justice system.

## **Stanford and the Role of a University**

### **Obligations**

Seeking community justice can also turn to institutions outside the criminal justice system. Arguably, the law and courts have no obligation to provide for the needs of the community beyond enforcing codified law; that enforcement is how they articulate their determinations of social benefit. Though history and research have proven laws and courts to be politically motivated and biased in many cases, the necessary fiction that pervades is that they stand as

neutral arbiters, standing separate from society in order to stand in judgement.<sup>32</sup> The “impartial” nature of the law is essential to its legitimate functioning, and therefore has no affirmative obligation to either party involved in a case (Wohl 2017).

Colleges and universities have very different core purposes than the legal system, and so even when colleges operate as adjudicators of justice, they remain tied to their obligations as institutions of learning. Though their actual impact may be debated as good or bad, the sustaining fiction of universities is that they exist as a public good. The history of many “town and gown” relationships between colleges and the localities that exists within is often a dynamic and fraught one. However, universities are constantly striving to bridge the gaps between the locals and their students, and emphasize their mutual need for one another.<sup>33</sup> Miller is a member of this larger community having grown up in Palo Alto, with Stanford as her “backyard, my community” (Miller 2019, 3). Stanford’s extension of its community should extend to her.

Within the geographical spaces where they exist, universities are a separate but embedded part of that community, with their own internal society. Colleges as both residential and educational spaces take on obligations to maintaining the wellbeing of their students (Lee 2011).

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<sup>32</sup> Locke’s *Second Treatise on Government* both establishes this necessity for impartiality; “In the state of nature there wants a known and indifferent judge [...] with men being partial to themselves, passion and revenge is very apt to carry them too far [...] as well as negligence, and unconcernedness, to make them too remiss in other men’s” (Locke 1690 [1980]); while simultaneously creating this fiction, as I term it, that “for how could such irrationally partisan men suddenly invent an indifferent judge from amongst their midst?” (Kang 2004).

<sup>33</sup> Stanford’s Office of Community Engagement (OCE) states its mission is to “create a more purposeful and organized engagement between Stanford and the external communities with which the university interacts” (Stanford Office of External Affairs). Other universities have similar statements as well; William and Mary’s OCE exists to “connect William & Mary and community to support students’ development as active and educated citizens and to promote positive, community-driven social change” (William and Mary Office of Community Engagement); University of Michigan’s Ginsberg Center works to “cultivate and steward equitable partnerships between communities and the University of Michigan” (Ginsberg Center).

Modern American universities form their relationships with students through a facilitator model<sup>34</sup> (Lee 2011) that provides structure and promotes student independence. When incidents of harm occur, such as injury incurred while drinking, school officials will take reactive and proactive steps to address these incidents like increased alcohol education programs (Lee 2011). Though not legally mandated, these steps reaffirm the commitment of universities to being facilitators of student health. Stanford, like many similar colleges,<sup>35</sup> outlines on its Student Affairs web page these specific commitments such as “equity and inclusion, community and belonging, mental health and well-being,” (Stanford Student Affairs) among several other points.

When a university is involved in a criminal case, the university has an affirmative obligation to its students who have been harmed, or been the perpetrator of harm, or both. Though Chanel Miller was not a Stanford student, the university still had an obligation to Turner and to the rest of its campus to address the harm that he inflicted. In this specific case, the opportunity to act was even more present *because* Miller was not a student, and therefore the school did not have a particular obligation to both parties. The dictates from the federal government for what colleges are obliged to do with sexual violence have shifted with administration changes, but the core of their mandate remains the same.

The 2011 “Dear Colleague” letter under the Obama administration vastly expanded the responsibilities of colleges for addressing sexual violence (Russlynn 2011). Part of this explication included using a preponderance of evidence standard for assault cases, allow victims to appeal not-guilty findings, to accelerate their adjudications, and discouraged the cross-

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<sup>34</sup> The facilitator model has arisen in a post-in loco parentis era with universities no longer taking full parental control of students but remain engaged with ensuring student wellness (Lee 2011).

<sup>35</sup> William and Mary has a similar list of statements, such as “the division of student affairs will promote the well-being of the students we serve” (William and Mary student affairs web page 2015).

examination of victims (Russlynn 2011). Four years later under the Trump administration, Secretary of Education Betsy DeVos shrank the circumstances under which colleges must respond to sexual harm and focused on expanding assailant rights, such as limiting investigations to on-campus assaults, narrowing the definitions of sexual misconduct, and requiring cross-examinations (Grayer 2020). Though both dictates have tangible, and differing, impacts on survivors and their ability to report assaults, the underlying notions remained the same: that colleges have an obligation to take responsibility for their students and for sexual violence.

However, under Title IX policies, responsibility is articulated through a focus of policy violation rather than on the individual survivors. The motivation is not to come to a resolution over the harm done; but rather, to investigate and potentially punish a violation of university policy against such harms. The distinction is not simply a semantic one. By focusing on policy and rule-violation, colleges are centering themselves over the survivors and students (Conversation with Liz Cascone, March 2021) and are incentivized to stand by their policies and individualize the assault. That is, colleges are incentivized to treat the assault as an isolated incident of policy violation by one individual student who needs to be punished, rather than a more holistic look at what harm was done, how to repair that specific harm, and how to repair the damaged sense of trust and safety of the entire school community.

### **Stanford's Response**

In the case of Brock Turner, Stanford opened a Title IX investigation into the assault, but closed it once Turner was criminally charged due to the institution's non-interference policy. The existence of this policy reveals how limiting the centrality of criminal legal proceedings can be. Though the school reportedly made changes to its Title IX procedures intended to encourage survivors to report to that process and be assured of "strong disciplinary outcomes" (Stanford



University News 2016), the university recused itself from specifically investigating the Turner assault themselves. This seemingly positive change still only remains within the confines of punishment/discipline for policy violation. The acknowledgement of harm is still fragmented, and minimal, as evidenced by the fraught process of installing the memorial plaque.<sup>36</sup>

When Stanford as an institution reflected on its role in the Turner case, the issue of justice was seen as already accomplished. The official university statement from Stanford on the Turner case begins as follows: “Stanford University did everything within its power to assure that justice was served in this case, including an immediate police investigation and referral to the Santa Clara County District Attorney’s Office for a successful prosecution” (Stanford Press Release, 2015). By immediately pointing to extra-university police and prosecutorial forces, Stanford makes it very clear both how coupled the term “justice” is with the carceral system, and how its own efforts to reckon with the assault would be limited. If justice were served via “successful prosecution,” why would there be more work to be done on campus? The university’s reputation was negatively affected by its association with Turner and a high-profile campus assault case, and instead of disavowing Turner’s behavior and fully supporting Miller, the administration made lukewarm efforts to address the assault even after bringing Miller into their community.

Stanford University looms as the largest missing community member that could have a stake in what justice is but recuses itself from engaging in any productive justice-seeking discourse, in the name of self-interest. Turner voluntarily resigned as a student and was additionally banned from stepping foot on Stanford grounds in the future. Stanford’s investment in aiding community justice should not be located in concerns over Turner specifically (as he is no longer their student), but instead should be working hold the school accountable to a degree for the offense.

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<sup>36</sup> See discussion starting on page 59.

Along with that, the university must address the probability that someone on campus will cause similar harm in the future.

Miller herself expresses deep disappointment and betrayal by the university in their reaction to the assault, and evaluating her disappointment in the context of identifying justice is a potentially useful exercise in understanding how a community justice could have formed, but was unadvisable in an adversarial justice context. After she was transported to the hospital, a university dean gave her his card, and a few times Miller attended art therapy sessions for survivors at Stanford. After the trial, Stanford offered to pay her \$150,000 to cover therapy for her and her sister for a few years (Miller 2019, 300). Miller met with administrators in September 2016 to present her requests<sup>37</sup> for how Stanford should change its handling on sexual assaults, based on her poor experience with the university. Six months later, they responded to update Miller, saying they were implementing some of her requests, and that information about her assault “should have come from my DA’s office, it had never been their responsibility” (Miller 2019, 304-5). Because Miller was not a student, the school had no specific mandate to support her; but as a member of their greater community, the university failed her in all the ways she expected their support. As demonstrated earlier, Stanford officially states its interest in working as a community partner within Palo Alto, and Miller’s own admission of the school as “the world I grew up in” (Miller 2019, 312). Stanford has an opportunity to extend support to a community member who had been harmed in their space, but instead refused to accept any real responsibility for the assault.

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<sup>37</sup> Her requests were: there should be a case manager for assigned to each victim; review policies around contacting victims after rape; training for the Department of Public Safety so they could better inform victims of court processes and options; adding lighting to the dark area behind the fraternity; video surveillance in outdoor and high-risk areas; and assessing cultures of sexual violence within athletic programs and fraternities (Miller 2019, 300).

Even in its symbolic moves, the college failed in providing any sense of community justice. When Stanford replaced the dumpster behind the Kappa Alpha house with a scenic marker and a plaque, the university rejected the two quotes that Miller requested be engraved, and instead suggested the out-of-context phrase “I’m okay, everything’s okay,” from her victim impact statement (Douglas 2018). As Miller writes in her memoir, “there is a world in which this is funny, the irony and absurdity too clear” (Miller 2019, 309). These are the words Miller spoke to her younger sister while at the hospital, in the moment where she “was least okay” (Miller 2019, 309). After Miller staunchly rejected this phrase, the administrator facilitating the process suggested a later quote from her statement: “On nights when you feel alone, I am with you” (Miller 2019, 310). Miller again felt betrayed by the university who had not provided support for her when she needed it; she “wanted to offer students a sentiment of solidarity, but could not give Stanford words of hope when they had not provided me any reason to feel any” (Miller 2019, 310). When Miller again offered a different selection,<sup>38</sup> Stanford rejected her once more, saying it could be triggering and they wanted something more affirming and uplifting. After this rejection, Miller withdrew from the project entirely.

The entire process of discussing the plaque emphasizes where Stanford’s priorities were placed. They were not truly invested in holding themselves accountable in any way for the violence that occurred on their campus, and further undermined the victim’s own attempts to express her hurt and have that pain heard. The move to memorialization shows us another idea about community justice, but offered a stagnant vision of justice as already complete. The plaque in many ways encapsulated the healing process in one neat quiet object and space, and does not

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<sup>38</sup> Miller’s suggestion the second time was, “You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence, my own voice, until today” (Miller 2019, 310).

act beyond that. By inviting Miller to give input on the construction, Stanford invited her into their community as a partner. But once she was involved, Stanford's inability to listen to her requests calls into question their investment in the project altogether.

### **Victim's Justice**

Chanel Miller expressed throughout the trial both a wish for Turner to face repercussions and punishment for his crime, but with a recognition that a long prison sentence itself would not be the source of justice. When probation officer Monica Lastrette called her, she was surprised that her opinion was requested, and "assumed there were minimum sentences for each felony," making this call "her nice way of letting me contribute my two cents and I expected my words to literally be worth pennies, wishful coins thrown into a fountain" (Miller 2019, 217). She told Lastrette she was working on her written victim impact statement and that she would be "more comfortable" (Miller 2019, 217) emailing it. But the officer asserted that this oral statement was fine, and began asking Miller questions. The following excerpt from Miller's memoir identifies how she was quickly confused and left uneasy by the officer's comments on her request:

I responded by telling her I was hurt, and what hurt me most was watching my family suffer [...] I told her I survived a school shooting carried out by a man who never got the help he needed.<sup>39</sup> I didn't want Brock to slip off the rails and punish more women, needed to be sure he was in therapy, taking classes in jail. *So you want no more than a year*, she said. I was confused, I had never said that. She explained that I had said "jail," and county jail has a one-year maximum. Prison has no maximum. *Oh*, I said. *Well, do they offer classes in prison?* I wondered why no one had explained this to me. (Miller 2019, 217)

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<sup>39</sup> This is a reference to the shooting mentioned earlier on page 45 at her university's campus.

Miller continued on, emphasizing that “most importantly,” she wanted Turner to “own up.”

I asked if she had spoken to him and she said no, but she would be meeting with him the following week. I said it was hard for me to fully answer her without hearing what he had to say. *You want him to get it*, she said. She said she understood. The conversation had been brief. [...] *You did great*, she said.” (Miller 2019, 217-18)

The probation report was released before the sentencing hearing, and in it Lastrette had concluded that Turner had been adequately punished by the loss of his swimming scholarship and the media attention and was could be offered probation and a minimal county jail sentence, along with lifetime sex offender registration requirements. Miller was shocked at this interpretation of her requests, and by the fact that Lastrette seemed to think she had accurately incorporated “the victim’s wishes to as to the potential outcome” (Probation Report 2016).

Lastrette wrote that “while [Miller] was understandably traumatized by the experience, her focus and concern was treatment, rather than incarceration” (Probation Report 2016). Importantly, Miller did not say she did not want Turner to be incarcerated. Though the officer concluded from her own conversation with the defendant that he expressed “genuine” (Probation Report 2016) empathy and remorse, Miller herself never heard anything on that front from Turner.

Herein again lies the catch-22 for survivors in the criminal legal system: to define justice via length and harshness of prison time is to wish for vengeance, and a victim must wholly accept prison time as the measurement of just punishment, as well as accept all the violence that incarceration can hold; but to express wishes for treatment and acknowledge the ineffectiveness of incarceration is to find little to no recourse or means of punishment that still reflects the harm done. Miller finds herself in this bind, and unable to correct the record in any significant way. Her victim impact statement, read on the day of the sentencing, allows her to speak for herself,

but its impact on Judge Persky's evaluation of the probation report is minimal. Her demands and her version of accountability are illegible given the terrain of punishment in a carceral system. If prison is how we show a crime is serious,<sup>40</sup> then the alternatives appear weak, and this carceral logic circumscribes the meaning of justice. There is no way for Miller to define justice for herself in a way that is legible to the courts.

### **Perpetrator's Justice**

Brock Turner, as the perpetrator, has his own determination of what justice for his crime would be. Firstly, he pled not guilty, establishing that at least legally, he does not believe he committed a crime—or rather, that the punishments for the crimes he was charged with would be unacceptable to him. Throughout the trial, his defense team and the character witness statements in his name asserted his youth, naiveté, and lack of criminal history. If we accept that the logic of his justice is that he is 1) young and 2) deserves a second chance based on his youth and character references and that 3) these both preclude incarceration, then his sentence to the sex offender registry (SOR) runs directly contrary to this view of justice. While Persky's sentencing largely accords with Turner's sense of justice as proportional to a naïve, youthful indiscretion, the mandatory, non-discretionary part of the sentence (sex offender registration) belies the victory of this sense of justice as excuse. The focus in this sentencing and subsequent controversy is over his jail time, but little attention is given to the lifetime registration as a sex

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<sup>40</sup> The designation of “seriousness” carries additional weight here as both a legal term and a more personal one.

offender.<sup>41</sup> You can currently look Turner up—he’s living in Ohio now.<sup>42</sup> SORs are part of the carceral system and an extension of imprisonment through the surveillance state. SORs are arguably longer lasting than all but life imprisonment, especially for someone like Turner whose prison sentence was very short. SORs involve a lifetime of being publicly monitored by the state and federal government as well as individual citizens.<sup>43</sup> Though variable from state to state, SOR requirements typically involve residential restrictions that limit where sex offenders may live based on distance from schools or places where children congregate (Meiners 2009), regardless of whether or not the sexual offense harmed a child. Sex offenders are required to check in with local law enforcement and ensure the information in the registry is up to date (Agan 2011), and are often barred from living in certain neighborhoods or residences because of their registration status (Human Rights Watch 2007).

SORs function based on a “host of almost unimpeachable assumptions” (Fischel 2016). These assumptions include: sex offenders will recidivate if unchecked; sex offenders will offend close to where they live; and the regulatory methods to check the offenders will make the community in question safer from sexual harm. None of these assumptions are empirically true. These find sexual harm as “locatable in bad persons, fixable by criminal law and police power” (Fischel 2016), obscuring the realities of how sexual harm happens. A Tier III registration defines an individual as a sex offender for life, inscribing them with their original offense(s) their

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<sup>41</sup> Turner is a Tier III sex offender in the three-tiered system. Tiers I and II are less than lifetime registrations, and have more limitations on what information is public and where it is posted. These are also tied to the crime itself and its severity. But as Fischel says, “must the gravity of sexual injury be indexed and recompensed by the severity of SORN requirements?” (Fischel 2016, 5).

<sup>42</sup> eSORN Ohio database, as of April 23, 2021.

<sup>43</sup> The Ohio registry lists his home and work addresses, the make and model of his car and license plate, and you can register to track him or share this information with a friend.

entire life. By legally and linguistically cordoning off a population of people as predators, it also reinforces the conception that there are bad, dangerous people who can and will commit sex crimes,<sup>44</sup> and that there are non-sex offenders who are good, non-dangerous people. SORs and neighborhood notification systems assert that sexual harm can be found in a specific person and location and distracts from the statistical reality that sexual harm is most likely to come from a relative, partner, or friend—as in, someone within your accepted community<sup>45</sup> and not part of the ostracized group. This is the same logic behind incarceration just beyond the physical bounds of a prison. The logic is that if you can identify and contain dangerous individuals, then the rest of the community will be safer. This is not only untrue, but actively harmful, both to those on the registry and to the community at large (Meiners 2009). Thus, while we could read the 6-month county jail sentence from Persky as a form of perpetrator justice, the mandatory sex offender registration contravenes the justice for Turner by virtue of his white naïveté and unlikely status as a re-offender.

Despite many studies showing the ineffectiveness of SORs at either reducing sexual crimes and/or recidivism, the myth of SORs' necessity persist, and this form of state-surveillance is rarely tackled by prison abolitionists. Dismantling the assumptions and fear-mongering that keep SOR requirements expanding (Meiners 2009) should be a necessary piece of abolitionist activism. Not only would this framework be important to reformulating how sexual harm is redressed, but would also destabilize the formulation of new registries for other forms of crimes that threaten abolitionist principles as well (Agan 2011). The reticence to tackle this particular

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<sup>44</sup> Sex offenders are no more likely to recidivate than other types of offenders, a fact that is often falsified as the opposite, and are actually arrested at lower rates than others (Aguado 2008).

<sup>45</sup> 80 percent of reported rapes are perpetrated by someone known to the victim (RAINN), with 93 percent of all cases reported, 93 percent of juvenile victims knew the perpetrator (RAINN).



formulation of the carceral state seems to suggest that even penal abolitionists view the sex offender as the “ultimate disposable ‘other’” (Ilea 2018), a suggestion that would dangerously destabilize the abolitionist project as well as continue to alienate survivors from prison abolition activism and theorizing. Instead, incorporating analysis of SORs and sex offenders is crucial to prison abolition on the whole.

The tacit assignment of sex offender status to Turner potentially calls into question my theory of his white innocence. SORs exemplify concepts of inherent criminality and are prime examples of delinquents being differentiated and pursued by their criminal histories; something that I argue is typically reserved for non-white offenders whose race do not afford them automatic innocence in the eyes of the law. SORs (re)construct dangerous individuals in much the same way as prisons. One reason for this disruption in the logic of his innocence may simply be that SORs are not generally understood as carrying the same stigma and violence as incarceration. In many ways, the unimpeachability of the SOR speaks to its widespread acceptance and naturalization when it comes to prosecuting sexual violence, so intrinsic to the criminal justice system that even Turner’s innocence could not surmount the designation. However, no matter which reason is most accurate to this particular case, the conclusions remain the same. If the rationale behind Turner’s light sentencing for prison time is contrary to the arguments that necessitate the SOR, then even though he received the low incarceration time, his sentence remains unjust on his own terms. Within the bounds of how sexual offenders are comprehended in the courts, we find an impossibility of justice from the perpetrator’s perspective as well.

**What is the theory of justice that emerges from this sentencing?**

After examining justice within the frameworks of community, the victim, and the perpetrator, no coherent theory emerges. That is to say, not only does no one party's view of accountability and justice come to fruition, but it is clear that there is no coherent sense of justice among the invested. This says something profoundly troubling about the criminal justice system as a whole, down to the core of whose justice should matter and comes to matter. If the interest of justice should guide the implementation of justice, then the criminal justice system is unequipped to serve justice. The system is designed neither to recognize Miller's requests for justice as intelligible, nor can it provide a system of justice for Turner or a larger community. Justice for survivors, absent of the other functions of the law, still will not help survivors individually, and would contribute to broader forms of injustice; for example, instituting evermore punitive measures for sexual offenses like mandatory minimums<sup>46</sup> or expanding the surveillance power of sex offender registries. These do not directly benefit survivors, but they do directly harm already marginalized communities. Carceral logics force us into this precarious position where no sound, clear, or acceptable theory of justice emerges. In order to rearticulate the means by which to address sexual harm, the carceral system must be abolished. Prison abolition must be a prerequisite for designing a system that can actively contest constructions of dangerous individuals and white innocence, while providing acceptable accountability for survivors. As long as prisons remain a legitimate response to harm, any theory of justice for sexual violence will be unfeasible. This investigation into justice reveals how justice is never, and can never be, a single axis. We cannot isolate one "interest of justice" from the other; all are implicated in how we posit the virtue of justice.

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<sup>46</sup> Mandatory minimum law was instated in CA in direct response to the sentencing of Brock Turner (Ulloa 2016).

## VII. Afterword

In this thesis, I have attempted to discuss the dangerous implications of continuing to adjudicate sexual violence through a carceral system using the case of Brock Turner's controversial sentencing to illustrate the complexities of this argument. Maintaining the stance that prisons and carceral solutions keep people safer from sexual violence is both false and harmful, but within this system there is an impossibility of justice without accepting these violent institutions as necessary. I have demonstrated how the contradictions between protesting Turner's sentence as too lenient while acknowledging the damage of incarceration is not unique to Brock Turner's case but is rather emblematic of the systemic racism and classism that permeates the criminal justice system. Further, the lack of adequate redress for harm for Miller, no matter the sentencing outcome of the case, illustrates how inadequate the criminal legal system is for responding to sexual violence. Again, this gap is not reformable but is part and parcel of a system that understands incarceration as analogous to accountability, regardless of the victim's wishes.

I argue that the current punishment system is indefensible and abolition is necessary. Abolition is not a panacea for every systemic problem that is magnified by the carceral state, but such a framework is incredibly helpful for articulating different models of justice. Though a thorough exploration of alternative justice methods and theories is outside the scope of this project, I will briefly discuss transformative justice and related approaches specific to sexual violence incidents. Transformative justice relies on community-based support and healing practices and begins with the perpetrator recognizing and accepting that they caused harm to another member of that community (Kim 2018). Though important to not rely on romanticized imaginations of community (INCITE! and Critical Resistance 2006, 225), there are multiple

models currently at work that rely on collective accountability. Importantly, transformative justice relies upon the leadership and interests of marginalized communities and does not typically operate within the criminal justice system whatsoever (though restorative justice, especially for juvenile offenders, is practiced under the surveillance of some police departments and detention centers) (Kim 2018). The ultimate goal of creating systems for accountability led by individual communities is to use relationships that are invested in all parties involved and can create conditions that could prevent future harm, including that perpetrated by the state (Kim 2018). Alongside adopting and investing in alternative justice models, there is also potential in adopting “non-reformist reforms” (Kaba 2017) i.e. reforms that do not make it harder to dismantle systems that should be abolished but can reduce harm in the meantime.

Specifically relevant to this thesis, exploring the possibility for transformative justice in a college community setting could be particularly fruitful. College campus Title IX procedures in sexual assault cases are complicated and flawed, but college presents a unique space for exploring new articulations of justice. Transformative justice practices are already in use in many college settings for honor and conduct violations, but rarely if ever are implemented for sexual assault cases (Conversation with Liz Cascone, March 2021). College is a space for education, and the fundamentals of a restorative practice are grounded in healing through learning and acknowledgement. The primary focus is on the one harmed and centers how they define accountability. The drawbacks of introducing restorative justice options include its much longer timeline and initial and continued investments in specifically trained facilitators. Not all survivors or perpetrators will want to engage in this process. But it is worthwhile to note that this is realistically implementable in a college setting and is in fact in early development at the

College of William & Mary (Conversation with Liz Cascone, March 2021; Conversation with Miranda Shorts, March 2021).

And finally, I want to address a specific reason why the urgency of this project cannot be overstated. Throughout the Turner case, one of the main things that was being debated in sentencing was the seriousness of the crime. “Seriousness” in this instance exists as a purely relational measure, attempting to use factors external to Turner’s actions to translate the crime into one of a certain heinousness, or not. But what this paradigm of “seriousness” loses is the specific incident of the harm. As Miller wrote in her impact statement, “It felt serious to me” (Baker 2016). The fact that her opinion on the assault’s seriousness was not a requisite factor is unacceptable. There was so much that was serious about this specific crime, and it is disingenuous to relate sexual assaults to one another as a means of measuring punishment. Though it might seem on the face that being groped is substantially less serious than being raped, or that child sexual abuse is more serious than between adults; but why, and should it be the job of the courts to make those determinations across the board for all survivors? And when given less seemingly-polar examples than groping and rape, what is the good of trying to articulate that gray area via prison time and sex offender tiers? Does that change anything about the impact on the survivor? If not, and I strongly argue that it does not, then who is this process for? If it is for the state, or for the university, then we have to ask a few other questions. If the state is proven time and time again to participate in the same exact forms of violence in the form of on-duty police sexually assaulting citizens or sexual violence that occurs within prisons, then can the state claim that it is actually invested in punishing sexual harm? The impact of sexual harm and its collateral consequences cannot be indexed and approximated by standardized sentencing

guidelines, and legal mandates will always be inadequate. This is an unacceptable standard to end at. We must demand better.

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