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### The #MeToo Movement: An Invitation for Feminist Critique of Rape Crisis Framing

Jamie Abrams

jamieabrams@wcl.american.edu

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# THE #METOO MOVEMENT: AN INVITATION FOR FEMINIST CRITIQUE OF RAPE CRISIS FRAMING

Jamie R. Abrams \*

## INTRODUCTION

This article invites feminists to leverage the #MeToo Movement as a critical analytical tool to explore the longevity of the enduring rape crisis framing of victim services. Long before the #MeToo Movement, victim services in communities nationwide were framed around a crisis model. For nearly half a century, victims have visited rape crisis centers, called rape crisis hotlines, and mobilized rape crisis response teams to provide services and support. This enduring political and social framing around rape as a crisis is opaque,<sup>1</sup> has prompted a political backlash,<sup>2</sup> and risks distorting hard-fought feminist legal, social, and political battles.<sup>3</sup> It has yielded underreporting, underutilization, and recurring risks of budgetary cuts. Yet, this model and terminology have gone virtually unchanged for nearly half a century.

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\* Associate Professor of Law at the University of Louisville, Louis D. Brandeis School of Law. LL.M., 2011, Columbia University School of Law; J.D., 2002, American University, Washington College of Law; B.A., Indiana University–Bloomington. Thanks to Aleisha Cowles, Lindsey Dennis, Mikaela Feng, Abigail Lewis, and Jennifer Reynolds for their research support. Thanks to the University of Louisville Brandeis School of Law for a Faculty Development Grant supporting this project. Thanks for the thoughtful feedback and input provided at the Law, Culture, and Humanities Conference (Georgetown University Law Center, Spring 2018) and the Georgetown Legal Practice Scholarship Workshop (Fall 2017).

1. See *infra* Part II for a discussion on the opaqueness of the crisis framing.

2. See, e.g., LAURA KIPNIS, UNWANTED ADVANCES: SEXUAL PARANOIA COMES TO CAMPUS 6–7 (2017) (describing the Title IX sexual assault process as “an astonishing netherworld of accused professors and students, rigged investigations, closed-door hearings, and Title IX officers run amok”); Emily Yoffe, *The Uncomfortable Truth About Campus Rape Policy*, ATLANTIC (Sept. 6, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974> (“But we have arrived at the point at which schools investigate, adjudicate, and punish the kind of murky, ambiguous sexual encounters that trained law-enforcement officials are unable to sort out—and also at the point at which the definition of sexual misconduct on many campuses has expanded beyond reason.”).

3. See *infra* Part III (discussing possible distortions risked by a rape crisis framing).

After decades of a relatively stagnant and opaque framing of rape and sexual assault through the lens of crisis, the #MeToo Movement “unleashed one of the highest-velocity shifts in our culture since the 1960s” with social media as its “powerful accelerant.”<sup>4</sup> With the click of a “MeToo” hashtag, virtually overnight, a modern anti-sexual assault and -sexual harassment movement was born.<sup>5</sup> This article explores victim services framed around a rape crisis model and explores what the #MeToo Movement reveals to modern feminists about the limitations of this framing. It critiques the crisis framing of rape and sexual assault responses, particularly when applied to the lived experiences of campus sexual assault victims<sup>6</sup> and to marginalized communities.<sup>7</sup>

Part I tracks the history of the crisis framing arising from the anti-rape movement within the feminist movement. The crisis model has dominated responses to sexual assault since the 1970s and 1980s. Communities today continue to house rape crisis centers and staff 24-hour rape crisis hotlines.<sup>8</sup> The framing around crisis eventually permeated college sexual assault responses, with campuses likewise providing crisis counseling and crisis teams to assist students.<sup>9</sup> Part I critically acknowledges that many strong

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4. Edward Felsenthal, *The Choice*, TIME, <http://time.com/time-person-of-the-year-2017-silence-breakers-choice/> (last visited Mar. 28, 2018).

5. But see Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html> (describing how Tarana Burke had named a Me Too movement through her Just Be Inc. nonprofit ten years before Alyssa Milano used the hashtag that went viral in 2017).

6. Although literature suggests the term “survivor” is often a more appropriate word in working with the healing and rebuilding of sexual assault survivors’ lives because it reflects greater autonomy and agency, here the word “victim” seems more appropriate because it aligns with the underlying data, services, and historical framing. See generally Jennifer L. Dunn, “Victims” and “Survivors”: *Emerging Vocabularies of Motive for “Battered Women Who Stay,”* 75 SOC. INQUIRY 1 (2005) (describing the different ideal types that underlie the language of survivor versus victim). See *infra* Part III.B.2 (critiquing the inclusivity of this model).

7. See *infra* Part III.B.2 (critiquing the inclusivity of this model).

8. See WHITE HOUSE TASK FORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, BUILDING PARTNERSHIPS WITH LOCAL RAPE CRISIS CENTERS: DEVELOPING A MEMORANDUM OF UNDERSTANDING (2014) [hereinafter WHITE HOUSE TASK FORCE], <https://www.justice.gov/ovw/page/file/910381/download> (encouraging campuses to partner with the rape-crisis “community-based organizations that provide victim advocacy and support services to victims of sexual violence”).

9. See, e.g., Center for Sexual Misconduct Support Services, N.Y.U., <https://www.nyu.edu/life/safety-health-wellness/sexual-respect/sexual-misconduct-resources-and-support-for-students/center-for-sexual-misconduct-support-services.html> (last visited Mar. 28, 2018); Rape Crisis Center, BRANDEIS U., <http://www.brandeis.edu/rape-crisis-center/student-resources/index.html> (last visited Mar. 28, 2018); Rape Crisis Counseling at Madison College,

reasons supported crisis framing in its historic usage. The crisis model brought urgent and sustained public attention to the issue of rape and sexual assault followed by necessary early legal reforms.

Yet, despite these important historic gains, Part II explores the opaqueness of the modern framing of services around the language of crisis. It explores the linguistic roots of the word “crisis” and the range of modern interpretations of its usage. Does it refer to the need for swift political or legal action? To a systemic public health crisis? To urgent individual medical and legal needs?

Part III argues that the #MeToo Movement presents modern feminists with a powerful, productive, and timely opportunity to critique the existing crisis model of service provisions and support. It presents three critiques of the current framing around crisis. First, it reveals the risk of resurrecting legal relics. The crisis framing risks unintentionally limiting effective legal responses to sexual assault. It risks returning troublesome obstacles to statutes of limitations and evidentiary hurdles.

Second, it risks being perceived as exclusionary and limited, thus cabining its impact. Crisis language denotes urgency, decisiveness, judgment, action, and mobilization, all leading to closure. These descriptions can be problematic when mapped onto the lived experiences of certain communities. Particularly, campus sexual assault victims and marginalized communities generally may not universally connect to an opaque crisis framing.

Third, crisis framing risks distorting the scope of sexual assault. It limits the expansive range of harms that are associated with rape and sexual assault and the systemic longevity of the problem of rape and sexual assault in society. While the language of crisis seems to invoke an urgent call to action, which is to be applauded, this language risks blurring the long history of sexual assault and erasing a legacy of inaction in countless institutional, political, and social settings. It also suggests a beginning and an end to a victim's recovery journey. It suggests that closure is attainable when in reality, ongoing monitoring, responsiveness, and engagement are critically necessary.

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MADISON C. (July 29, 2016), <https://matters.madisoncollege.edu/articles/announcements/2016-07-29/8768/rape-crisis-counseling-at-madison-college>; *Sexual Assault Prevention*, OR. INST. TECH., <http://www.oit.edu/faculty-staff/campus-safety/safety-info/sexual-assault-prevention> (last visited Mar. 28, 2018) (describing how the community Rape Crisis Team and hotline is also available for consultation).

## I. THE HISTORY OF RAPE CRISIS SERVICES

While rape crisis centers have achieved many critical successes over the past forty-plus years,<sup>10</sup> “many hoped-for improvements have eluded them.”<sup>11</sup> In the forty years of their existence and through decades of law reforms and knowledge gathering, neither the crisis rhetorical framing nor the model of services provided has changed significantly.<sup>12</sup> This part explores the feminist roots of this framing and the core roles and goals of rape crisis centers.

### A. *Feminist Roots*

The feminist movement engaged in anti-rape advocacy beginning in the 1960s.<sup>13</sup> These early advocacy movements brought attention to the prevalence of sexual assault and the harms that it caused, particularly to women.<sup>14</sup> It shifted the paradigm of privatized violence to the public’s attention.<sup>15</sup>

Rape crisis centers were distinct products of this second-wave feminist movement in the 1960s and 1970s.<sup>16</sup> Consciousness raising was a signature strategy of this feminist time period, born out

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10. See MARY P. KOSS & MARY R. HARVEY, *THE RAPE VICTIM* 120 (2d ed. 1991) (“The emergence and proliferation of local rape crisis centers and their profound impact on virtually all aspects of the larger society’s response to rape constitute major accomplishments of a unique social movement.” (citations omitted)).

11. PATRICIA YANCEY MARTIN, *RAPE WORK* 3 (2005) (noting also that they have had some successes in that time); see ANDREW E. TASLITZ, *RAPE AND THE CULTURE OF THE COURTROOM* 153 (1999) (“Yet, the instrumental goals that the reformers sought to achieve by such equal treatment have eluded us.”).

12. See MARIA BEVACQUA, *RAPE ON THE PUBLIC AGENDA* 74 (2000) (explaining that the first center was founded in Washington, D.C., and still “closely resemble[s] those of similar groups now operating”); KOSS & HARVEY, *supra* note 10, at 153 (“Despite this diversity, the core activities of rape crisis centers remain largely the same as they were in the early 1970s . . .”). Some small rhetorical shifts have, however, occurred in the naming of rape crisis centers. See, e.g., SEXUAL ASSAULT RESOURCE CTR., <http://www.sarchv.org/> (last visited Mar. 28, 2018) (noting that the Sexual Assault Resource Center was previously known as the “Rape Crisis Center Brazos Valley,” but has since changed its name).

13. Julie Goldscheid, *Domestic and Sexual Violence as Sex Discrimination: Comparing American and International Approaches*, 28 T. JEFFERSON L. REV. 355, 358 (2006).

14. *Id.* (describing these efforts as “rape crisis and anti-domestic violence”).

15. *Id.* at 359.

16. DEBORAH M. CARROW, U.S. DEP’T OF JUSTICE, *RAPE: GUIDELINES FOR A COMMUNITY RESPONSE* 1 (1980) (describing rape crisis centers as the “offspring of the feminist movement”); see BEVACQUA, *supra* note 12, at 18–19 (discussing the timeline of second-wave feminism); see also Goldscheid, *supra* note 13, at 355–56 (summarizing the sexual assault reforms including “elimination of formal inequality; enhancement of criminal penalties; expansion of social services; and amendments to civil provisions”).

of women's grassroots experience sharing.<sup>17</sup> Through consciousness raising and iconic feminist literature, rape and sexual violence came to be understood as a means of male control over women and the product of a patriarchal society.<sup>18</sup> This consciousness-raising process led feminists to identify rape as a crisis that demanded a feminist response.<sup>19</sup> Feminist accounts of rape gave voice to the physical and emotional trauma of rape that had not been accounted for in the medical, mental health, and criminal justice systems.<sup>20</sup> These accounts moved the political framing of rape out of an exclusively private and individual context.<sup>21</sup>

Crisis centers were therefore "born of and nourished by feminist theory, ideology, and debate."<sup>22</sup> Rape crisis centers have been powerfully described as the "backbone" of the anti-rape movement.<sup>23</sup> Feminists developed rape crisis centers to engage with rape victims and to provide much needed services to them.<sup>24</sup> In this feminist methodology, the centers were initially structured around woman-centered, autonomous decision-making in which staff supported women in their choices.<sup>25</sup> They were staffed almost entirely by women.<sup>26</sup> Early centers were "collectivist, nonhierarchical, nonbureaucratic, and free of professional and technical elitism."<sup>27</sup>

17. RADICAL FEMINISM 280–81 (Anne Koedt et al. eds., 1973) (describing the formation and work of consciousness-raising groups contemporaneously).

18. See SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 396–97 (1975); KOSS & HARVEY, *supra* note 10, at 123 (explaining that this framing "provided a societal analysis of rape that galvanized the energies and imaginations of women seeking concrete avenues to social change").

19. See KOSS & HARVEY, *supra* note 10, at 123.

20. *Id.* (calling for new services for victims).

21. See Ellen Kaye Scott, *How to Stop the Rapists? A Question of Strategy in Two Rape Crisis Centers*, 40 SOC. PROBS. 343, 347 (1993).

22. KOSS & HARVEY, *supra* note 10, at 123.

23. BEVACQUA, *supra* note 12, at 73.

24. Scott, *supra* note 21, at 347 (noting that this included both a political movement and a mobilization to provide social services); see also RAPE CRISIS CENTER, WASHINGTON, D.C., *HOW TO START A RAPE CRISIS CENTER* 5 (1972) [hereinafter *HOW TO START A RAPE CRISIS CENTER*] (explaining that organizers previously held a conference to expand interest). It took a week to get the first center up and running. BEVACQUA, *supra* note 12, at 75 (noting that the first bylaws aimed "to provide necessary assistance to rape victims and victims of sexual attacks, and to provide the community with information on rape").

25. BEVACQUA, *supra* note 12, at 78 (explaining that early centers "espoused a philosophy of self-determination" and autonomy for the victim).

26. MARTIN, *supra* note 11, at 37.

27. *Id.* at 96–97 (emphasizing the "nurturing of members" and "helping women as a group"); see KOSS & HARVEY, *supra* note 10, at 123 ("The goal was to create feminist institutions in which women could work collectively to help one another, sharing power even as they secured it.").

Some early rape crisis centers were organized with a consciousness to race and class as they grew out of the parallel civil rights movement and anti-war activity.<sup>28</sup> The anti-rape movement is best understood as a “social movement within a social movement.”<sup>29</sup> It paralleled the civil rights movement, but it was “never divorced from the wider context of feminism.”<sup>30</sup> Some early founders understood that distorted narratives about rape along race lines had been used as a tool of systemic racial oppression.<sup>31</sup> Early organizers understood that general racial disparities systemically problematized the criminal justice system’s handling of black offenders.<sup>32</sup> As a social movement, the anti-rape movement within feminism has been heavily criticized for its failure to “develop an analysis of rape that acknowledged the social conditions that foster sexual violence as well as the centrality of racism in determining those social conditions, [which] resulted in the initial reluctance of Black, Latina, and Native American women to involve themselves in the movement.”<sup>33</sup>

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28. Scott, *supra* note 21, at 347 (describing the formation of early rape crisis centers in Washington, D.C., and Santa Cruz, California, in 1972). Founders of these centers understood the historical connection between rape and racism. See HOW TO START A RAPE CRISIS CENTER, *supra* note 24, at 2 (providing a contemporaneous historical account of the founding of a rape crisis center and stating that “rape affects the lives of all women—regardless of race, class, or age—it is important to have a broad cross-section of backgrounds and experience included on the staff”).

29. BEVACQUA, *supra* note 12, at 27.

30. *Id.* (explaining that the anti-rape movement must therefore be analyzed in the context of feminism).

31. Scott, *supra* note 21, at 348. “The purity of white womanhood, enforced by social mores as compelling as the whip, was as critical a touchstone of white masculinity as the system of slaveholding itself.” BROWNMILLER, *supra* note 18, at 217.

32. Scott, *supra* note 21, at 348 (explaining that the early founders understood that the criminal justice system was embedded in racial bias and was not a “viable answer to sexual assault”). In 1974, one early founder said this about the criminal justice system:

[I]t convicts primarily poor and non-white men for a crime that we know is universally committed by men. . . . In the long run, whether or not to report should be viewed as a personal decision of the victim, not as a political solution or a responsibility to other women. As women, we cannot expect justice from a male-dominated and controlled system.

*Id.* (alterations in original) (quoting Jackie MacMillan & Freada Klein, F.A.A.R. Editorial, FEMINIST ALLIANCE AGAINST RAPE NEWSLETTER (Feminist Alliance Against Rape, Washington, D.C.), Sept./Oct. 1974, [www.faar-aegis.org/septoct\\_74/Editorial\\_septoct74.html](http://www.faar-aegis.org/septoct_74/Editorial_septoct74.html)). For example, Department of Justice statistics reveal that, from 1930 to 1964, 89% of those executed for rape in the United States were black men. BROWNMILLER, *supra* note 18, at 215.

33. BEVACQUA, *supra* note 12, at 39 (quoting ANGELA Y. DAVIS, WOMEN, CULTURE & POLITICS 45 (1990)).

Early rape crisis center strategies were somewhat, although inconsistently, informed by understandings of race in their respective communities. For example, a rape crisis center founded by white, feminist activists in Washington, D.C., a community that was at the time 70% African American, had to acknowledge its outsider status and work carefully to form effective alliances.<sup>34</sup> In contrast, a rape crisis center founded in Santa Cruz, California, a community that was then 90% white, engaged in much more combative and “confrontational” tactics, recognizing that it did not have the same complexities.<sup>35</sup>

Rape crisis centers nonetheless made remarkable progress in just a few years.<sup>36</sup> The earliest centers were formed in D.C., Philadelphia, Detroit, Chicago, Seattle, and Berkeley.<sup>37</sup> By 1974, rape crisis centers existed in forty-three states.<sup>38</sup> By 1975, there were 136 rape crisis centers or “stop-rape task forces” nationwide.<sup>39</sup> By 1976, there were 400 centers.<sup>40</sup> By 1980, many jurisdictions had hotlines for rape counseling advice and information; some even had counselors to support the victim through, among other things, a medical exam or an investigation.<sup>41</sup> That rate of growth continued into the 2000s. “Florida had twenty-five [rape crisis centers] in 1984, thirty-three in 1993, and fifty-three in 2003.”<sup>42</sup> Over time, the centers “dramatically multiplied in number” and came to engage in more local partnerships.<sup>43</sup>

## B. Core Goals and Roles

While rape crisis centers originated independently in diverse cities across the country, they were set up with remarkably similar

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34. Scott, *supra* note 21, at 352–53 (choosing to deploy more conventional, nondisruptive tactics).

35. *Id.* at 351–52 (explaining, for example, that the center published descriptions of perpetrators and distributed them within the community).

36. See Scott, *supra* note 21, at 347; see also BEVACQUA, *supra* note 12, at 112 (concluding that feminists achieved critical awareness of rape and moved it to the national policy agenda).

37. MARTIN, *supra* note 11, at 97.

38. BEVACQUA, *supra* note 12, at 79.

39. MARTIN, *supra* note 11, at 97.

40. BEVACQUA, *supra* note 12, at 102.

41. CARROW, *supra* note 16, at 3–4.

42. MARTIN, *supra* note 11, at 15.

43. *Id.*



goals and roles.<sup>44</sup> Rape crisis centers emerged to fill a specific political, social, and legal gap.<sup>45</sup> Before the 1970s, only police, hospitals, and prosecutors responded to rape.<sup>46</sup> This model excluded trained personnel working to meet the victim's needs.<sup>47</sup>

Rape crisis centers responded to the powerful realization that many existing practices resulted in continued trauma to rape victims.<sup>48</sup> Rape crisis centers used "an innovative approach," in which the victim directed her own course of action.<sup>49</sup> They uniquely focused on "a mission of helping victims, improving victims' treatment by others, and eliminating rape from society."<sup>50</sup>

The three "markers" of rape crisis centers' historic work included direct services to victims, outreach to help survivors, and education and trainings.<sup>51</sup> The work thus uniquely included a blend of social movement activism, therapeutic services, and legal reform efforts.<sup>52</sup> The centers worked to "improve women's status in society and to stop rape by changing the public's understanding of rape, eliminating inequalities that oppress women, and improving victims' treatment by mainstream organizations."<sup>53</sup>

Early on, this work required the centers to have both a great astuteness to interfacing with mainstream organizations and to adopt and advocate for wholesale new "philosophy and practices."<sup>54</sup> These intentions created a "tightrope of tension," by which some early centers "eschewed contact with police and prosecutors, claiming that they were masculinist and hierarchical with goals antithetical to women's well-being."<sup>55</sup> Early rape crisis centers put

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44. KOSS & HARVEY, *supra* note 10, at 120.

45. See, e.g., CARROW, *supra* note 16, at 5 (explaining that the DC Rape Crisis Center responded to a realization that no "ongoing project in the area" actively served rape victims).

46. *Id.* at 33.

47. See *id.*

48. MARTIN, *supra* note 11, at 3.

49. CARROW, *supra* note 166, at 33.

50. *Id.* at 29, 34 (noting that this is unlike mainstream organizations).

51. BEVACQUA, *supra* note 12, at 73; see KOSS & HARVEY, *supra* note 10, at 140 (summarizing the results of a survey of ninety rape crisis centers and concluding that all of the centers had community speakers bureaus and approximately 90% offered hospital/police accompaniment services, while approximately 80% had court accompaniment services and 78% had crisis hotlines).

52. See MARTIN, *supra* note 11, at 37–38 (noting that rape crisis centers are staffed by workers with degrees in health, social work, and law).

53. *Id.* at 98.

54. *Id.* at 37 (describing these as efforts to "occupy" and "indoctrinate").

55. *Id.* at 97.

pressure on groups to change, operating “underground” by sending volunteers with victims as “friends” without explicitly identifying the center.<sup>56</sup> Early partnerships were also in tension because of some rape crisis centers’ strategies of drawing negative public attention to mainstream practices and groups.<sup>57</sup> While the historic underpinnings of rape crisis centers involved some tension in actualizing feminist goals, as rape crisis centers became more entrenched and sustained, the struggle to retain a feminist identity became even more challenging.

### C. *Struggling for Feminist Identity*

Over time, rape crisis centers became more closely intertwined with the criminal justice system and the medical community. Rape crisis centers had to work with mainstream organizations to keep their doors open.<sup>58</sup> Crisis centers came to be part of a larger “community-wide response to rape,” which included rape crisis centers, but also the criminal justice system, the medical system, public education, and other victim services.<sup>59</sup> This raised concerns of “co-optation,” in that the centers wanted to “transform society and its institutions,” but to survive, they also needed funding, volunteers, and relationships with police and prosecutors.<sup>60</sup>

Patricia Martin explains that rape crisis centers have become “unobtrusive mobilizers inside society’s core institutions’ for three decades, aggressively inserting themselves into the community systems responsible for rape work.”<sup>61</sup> Consequently, modern rape crisis centers are not quite the “radical alternative” they were in the 1970s.<sup>62</sup> By the end of the 1970s, the more radical and political framing of rape crisis centers had transitioned into vital service provision centers that worked closely and cooperated with government institutions and law enforcement.<sup>63</sup>

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56. See HOW TO START A RAPE CRISIS CENTER, *supra* note 24, at 5–8 (explaining that early victims also perceived “little to gain” by working with the police anyway).

57. MARTIN, *supra* note 11, at 98.

58. See *id.* at 97 (fearing that “cooperation would coopt them and limit their ability to pursue feminist goals”).

59. CARROW, *supra* note 16, at 5–6.

60. BEVACQUA, *supra* note 12, at 74.

61. MARTIN, *supra* note 11, at 15.

62. CARROW, *supra* note 16, at 33–34.

63. BEVACQUA, *supra* note 12, at 102–03.

Today, rape crisis centers are critical partners with the community, but their focus remains on assisting victims and working to “improve the social and legal environment that the victim must face.”<sup>64</sup> Over time, the centers have somewhat shifted into periods of “abeyance” in which they are focused on “maintaining hard-won gains rather than undertaking new challenges to the established order.”<sup>65</sup> Rape crisis centers today work within a “system of inter-organizational linkages.”<sup>66</sup> The centers’ approaches are more “instructing, informing, and subtly encouraging mainstream staff to view rape as a pervasive crime,” which can “subvert” their ability to expose “unresponsive practices.”<sup>67</sup>

While rape crisis centers remain a central pillar of victim services, concerns also fester about their utilization. In one study, for example, only 21% of rape victims sought assistance from a rape crisis center, a number notably lower than the 39% who reported to police, the 43% who sought rape-related medical care, and the 39% who sought mental health services.<sup>68</sup> Relevant to campus sexual assault, victims were more likely to seek legal and medical intervention after stranger rapes than non-stranger rapes,<sup>69</sup> although campus sexual assaults more often involve the latter.

Thus, these organizations have struggled to maintain a core feminist identity and further retain an inclusive framework.

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64. CARROW, *supra* note 16, at 34 (“Such activities as hotlines, crisis counseling, and escort services are designed to ease the victim’s trauma and speed her emotional and physical recovery.”).

65. BEVACQUA, *supra* note 12, at 153.

66. MARTIN, *supra* note 11, at 143 (explaining that there are networks for processing victims, networks for processing protocols, networks for prevention, and networks for training).

67. *See id.* at 102 (contrasting that they fight against the view that rape is “more than sex gone awry”).

68. Rebecca Campbell et al., *Preventing the “Second Rape,”* 16 J. INTERPERSONAL VIOLENCE 1239, 1246 (2001).

69. *Id.*; see CHRISTOPHER KREBS ET AL., NAT’L INST. JUSTICE, THE HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAMPUS SEXUAL ASSAULT (HBCU-CSA) STUDY 3-7 (2010) [hereinafter KREBS ET AL., HBCU-CSA STUDY], <http://www.ncjrs.gov/pdffiles1/nij/grants/233614.pdf>.

### D. *Campus Carryover*

Since their inception, community-based rape crisis centers have worked with colleges and universities to conduct trainings and programs.<sup>70</sup> Over time, the services themselves became formally integrated, culminating in the Obama Administration's guidance on how to establish formal memoranda of understanding with local rape crisis centers.<sup>71</sup>

The campus carryover connected to an earlier movement to position date rape onto the legal reform agenda. The concept of "date rape" as a category did not arrive in public discourse until slightly later than the unmodified action calls against rape.<sup>72</sup> These modifying distinctions in types of rape led the feminist movement to fight harder to clarify that "a rape is a rape is a rape."<sup>73</sup> As Maria Bevacqua explains in her book, *Rape on the Public Agenda*, "[d]espite the feminist insistence on similarity among the varying types of rape, the notion of a continuum that includes husbands, boy-friends, and strangers did not translate well onto the public agenda in the first phase of popular awareness."<sup>74</sup> Public perception tended to trivialize acquaintance rape as more private, less serious, and less scary, despite emerging data that it was "more common" and "just as traumatic."<sup>75</sup> This pushback, in turn, "reinvigorated the anti-rape movement."<sup>76</sup>

By the 1980s, student anti-rape groups began to emerge in high frequency like their earlier community counterparts.<sup>77</sup> College campuses have, in turn, adopted a crisis framing model in response

70. See, e.g., HOW TO START A RAPE CRISIS CENTER, *supra* note 24, at 19 (explaining that, at least for one rape crisis center, all conferences to date had been held at colleges and universities).

71. See WHITE HOUSE TASK FORCE, *supra* note 8, at 1 ("Colleges and universities can strengthen sexual assault prevention and response programs by developing partnerships with local rape crisis centers."). The guidance suggests that these partnerships "should be used to supplement and assist a school's sexual assault prevention and response programs, not to replace them." *Id.* at 2.

72. See BEVACQUA, *supra* note 12, at 154. While the term "date rape" was used as early as 1974, it was in the 1980s that date rape really gained national attention. *Id.*

73. *Id.* (explaining that the media came to describe some rapes as "acquaintance rape," "date rape," and "spousal rape").

74. *Id.* at 154–55 (explaining that these categories were both "useful and problematic").

75. *Id.* at 155.

76. *Id.* at 156.

77. See *id.* at 164.

to campus sexual assault.<sup>78</sup> Campus services are still partnering with community rape crisis centers today.<sup>79</sup>

As crisis framings of rape and sexual assault services migrated to campus responses, the language became more opaque and risked essentializing sexual assault further. On the campus level, crisis

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78. See, e.g., *Counseling Center*, U. WASH., <https://www.washington.edu/counseling/resources/resources-for-concerned-others-family-friends-faculty-staff/additional-resources/sexual-assault/> (last visited Mar. 28, 2018) (directing students who have been sexually assaulted to a crisis hotline and a crisis clinic); *Crisis Counseling for Sexual Assault & Relationship Violence*, GEO. U., <https://studenthealth.georgetown.edu/crisis-counseling/sexual-assault-relationship-violence> (last visited Mar. 28, 2018) (providing information on crisis counseling for sexual assault and relationship violence); *On Campus Resources*, U. N. COLO., <http://www.unco.edu/assault-survivors-advocacy-program/for-survivors/on-campus-resources.aspx> (last visited Mar. 28, 2018) (directing students to a crisis hotline); *Relationship & Sexual Violence Prevention (RSVP) Center*, WASH. U. ST. LOUIS, <https://rsvpcenter.wustl.edu/get-help/community-resources/> (last visited Mar. 28, 2018) (providing crisis counseling); *Student Affairs at Illinois*, U. ILL. URBANA-CHAMPAIGN, <https://oiir.illinois.edu/womens-center/support-services/rape-and-sexual-assault> (last visited Mar. 28, 2018) (directing students to resources for crisis management, to a 24-hour crisis line, and to crisis centers).

79. See, e.g., *About Safe Harbor*, AUBURN U., <http://wp.auburn.edu/healthandwellness/safe-harbor/> (last visited Mar. 28, 2018) (directing students to a 24/7 crisis line and emergency crisis assistance); *Campus Assistance Program*, MIAMI U., <https://miamioh.edu/student-life/student-counseling-service/outreach/campus-assistance-program/index.html> (last visited Mar. 28, 2018) (linking students to a crisis center and crisis hotline); *Emergency Information*, SMU, <https://www.smu.edu/StudentAffairs/HealthCenter/%20Emergencies/SexualAssault> (last visited Mar. 28, 2018); *Gender + Equality Center*, U. OKLA., <http://www.ou.edu/gec/gender-based-violence-prevention/violence-against-women/resources.html> (last visited Mar. 28, 2018); *Rape and Sexual Assault*, PURDUE U., <http://www.purdue.edu/ehps/police/assistance/tip/rape.html> (last visited Mar. 28, 2018) (directing students to the Lafayette Crisis Center); *RESPECT*, U. ARK., <https://respect.uark.edu/personal-care-after-rape/> (last visited Mar. 28, 2018) (directing students to community rape crisis centers); *Sexual Assault*, GA. ST. U., <http://health.gsu.edu/womens-health/sexual-assault/> (last visited Mar. 28, 2018) (directing students to the community rape crisis centers); *Sexual Assault: Partners in Peace*, BOWIE ST. U., <https://www.bowiestate.edu/campus-life/henry-wise-wellness-center/partners-in-peace/> (last visited Mar. 28, 2018) (directing victims to a community rape crisis center also staffing a rape-crisis hotline); *Sexual Assault Response Team*, MONTCLAIR ST. U., <https://www.montclair.edu/university-health-center/sart/> (last visited Mar. 28, 2018); *Sexual Misconduct Prevention and Response*, DUKE U. STUDENT AFF., <https://studentaffairs.duke.edu/sexual-misconduct-prevention-and-response/do-you-need-help> (last visited Mar. 28, 2018) (directing students to a community crisis center); *Sexual Respect*, DARTMOUTH C., <http://www.dartmouth.edu/sexualrespect/resources/confidential-resources.html> (last visited Mar. 28, 2018) (directing victims to a 24-hour crisis hotline and to crisis services); *Support for Students Affected by Sexual Violence*, NE. U., <https://www.northeastern.edu/uhrs/report-incident/> (last visited Mar. 28, 2018) (directing students to the Boston Area Rape Crisis Center); see also *CRCC Partners with Cleveland State University, Baldwin Wallace University to Offer Counseling, Advocacy Services for Local College Students, Faculty, Staff Impacted by Sexual Assault*, CLEV. RAPE CRISIS CTR. (Dec. 10, 2015), <https://clevelandrapecrisis.org/cleveland-rape-crisis-adds-on-campus-sexual-assault-support/> [hereinafter CLEV. RAPE CRISIS CTR.] (describing a new partnership between Cleveland's Rape Crisis Center and Cleveland State University and Baldwin Wallace University). Crisis center president and CEO, Sondra Miller, notes that "[c]ollege students who experience sexual assault are often hesitant to reach out for help, and we are pleased that we can offer students additional choices to access the help they need." CLEV. RAPE CRISIS CTR., *supra*.

framing has also framed a “campus sexual assault crisis” depicting the frequency of campus assaults and the normalization of campus “rape culture.”<sup>80</sup> This systemic framing has dominated recent news stories and political calls to action<sup>81</sup> and has also sparked a backlash and countermovement.<sup>82</sup>

Recent legal reform efforts have renewed focus on campus sexual assault and the extent of enforcement mechanisms under Title IX.<sup>83</sup> In 2011, under the Obama Administration, the Department of Education Office for Civil Rights issued guidance to campuses addressing sexual assault (“2011 Dear Colleague Letter”).<sup>84</sup> It stated that “sexual violence, interferes with students’ right to receive an education free from discrimination” and directed colleges to “take immediate and effective steps to end . . . sexual violence.”<sup>85</sup> This alignment of campus rape and sexual assault with Title IX compliance ignited a flurry of campus reforms as well as a fury of

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80. See Mary Graw Leary, *Affirmatively Replacing Rape Culture with Consent Culture*, 49 TEX. TECH L. REV. 1, 24–25 (2016); see also PAULA LAVIGNE & MARK SCHLABACH, VIOLATED: EXPOSING RAPE AT BAYLOR UNIVERSITY AMID COLLEGE FOOTBALL'S SEXUAL CRISIS 1–4 (2017).

81. See, e.g., Janet Burns, *A Powerful App Is Helping Survivors Fight Sexual Assault on Campuses Everywhere*, FORBES (Dec. 5, 2016), <https://www.forbes.com/sites/janetwburns/2016/12/05/a-powerful-app-is-helping-survivors-fight-sexual-assault-on-campuses-everywhere/#586a9b8a3128>; Andrea Frazier, *Lawsuit Claims Baylor Football Players Allegedly Raped Women as a “Bonding Experience,”* ROMPER (May 17, 2017), <https://www.romper.com/p/lawsuit-claims-baylor-football-players-allegedly-raped-women-as-a-bonding-experience-58655>; Brittney McNamara, *Joe Biden Just Made a Huge Statement About the Campus Sexual Assault Crisis*, TEEN VOGUE (Jan. 6, 2017), <https://www.teenvogue.com/story/joe-biden-speaks-on-campus-sexual-assault-crisis>; Kirk Watson, *Survivors Deserve Help in Ending Sexual Assault*, DAILY TEXAN (Apr. 14, 2017), <http://www.dailytexanonline.com/2017/04/14/survivors-deserve-help-in-ending-sexual-assault>.

82. See, e.g., KIPNIS, *supra* note 2, at 8, 33–34, 164, 176 (arguing for greater transparency and honesty about sex and “rape culture” on college campuses by eliminating confidentiality in the campus adjudication process); Emily Donaldson, *Debate on Bill to Prevent Campus Sexual Assault Turns to Rights of the Accused*, COMMUNITY IMPACT NEWSPAPER (Mar. 27, 2017), <https://communityimpact.com/austin/at-the-capitol/2017/03/23/debate-bill-prevent-campus-sexual-assault-turns-rights-accused/>.

83. See Michelle J. Anderson, *Campus Sexual Assault Adjudication and Resistance to Reform*, 125 YALE L.J. 1940, 1945 (2016) [hereinafter Anderson, *Adjudication*] (explaining that Title IX’s application parallels the history of rape law reform).

84. RUSSLYNN ALI, U.S. DEPT OF EDUC., DEAR COLLEAGUE LETTER ON SEXUAL VIOLENCE 1 (2011) [hereinafter ALI, 2011 DEAR COLLEAGUE LETTER], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

85. *Id.* at 1–2.

backlash.<sup>86</sup> The Trump Administration has since rescinded this guidance,<sup>87</sup> but its impact still dominates.

The politicization of a campus sexual assault crisis has garnered unprecedented media attention in recent years, particularly in its relationship to campus Title IX proceedings and in contestation of the underlying data supporting the crisis statistically. For example, *The New York Times* alone has published more than 300 articles on college sexual assault between 2014 and 2016.<sup>88</sup> The very idea of a sexual assault crisis on college campuses has generated deep controversy and backlash. For example, Laura Kipnis controversially asserted that, “we seem to be breeding a generation of students, mostly female students, deploying Title IX to remedy sexual ambivalences or awkward sexual experiences, and to adjudicate relationship disputes post-breakup—and campus administrators are allowing it.”<sup>89</sup>

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86. See, e.g., Jeannie Suk Gersen, *Laura Kipnis's Endless Trial by Title IX*, NEW YORKER (Sept. 20, 2017), <http://www.newyorker.com/news/news-desk/laura-kipnis-endless-trial-by-title-ix> (highlighting the wave of new policies on sexual misconduct and the critique offered by Professor Laura Kipnis). Suk Gersen summarizes the complexity well when she states:

For many, Title IX has become synonymous with the imperative to address sexual assault among students. But Title IX can also be used to discourage disagreement, deter dissent, deflect scrutiny, or register disapproval of people whom colleagues find loathsome. The problem is not with Title IX itself, much less the generic capacity of *any* rule to be used as a pretext for unrelated ends.

*Id.*

87. See Press Release, U.S. Dep't of Educ., Department of Education Issues New Interim Guidance on Campus Sexual Misconduct, (Sept. 22, 2017), <https://www.ed.gov/news/press-releases/departments-education-issues-new-interim-guidance-campus-sexual-misconduct> (stating that schools must investigate sexual misconduct that is “severe, persistent or pervasive,” designate a Title IX Coordinator, and conduct fair and impartial investigations free of conflicts or bias).

88. Katherine K. Baker, *Campus Sexual Misconduct as Sexual Harassment: A Defense of the DOE*, 64 KAN. L. REV. 861, 861 n.1 (2016).

89. KIPNIS, *supra* note 2, at 17. Kipnis also asks, “how is it that the most reactionary versions of feminism are the ones enjoying the greatest success on campuses?” *Id.* at 20.

If this is what feminism on campus has come to, then seriously, let's just cash it in and start over, because this feminism is broken. It has exactly nothing to do with gender equality or emancipating women—a cynic might say it actually has more to do with extending the reach of campus bureaucracy into everyone's lives. It's a vast, unprecedented transfer of power into the hands of the institution.

*Id.* at 17.

This debate includes an external debate between feminists and others, as well as an internal debate within the feminist community.<sup>90</sup> For the purposes of this article, this background on the campus carryover serves as a tool to review how “crisis” creates its own political narrative, subject to many different interpretations. Campus sexual assault could be understood through a political narrative, a public health narrative, or an individual victim narrative, each connected to the “crisis” framing, as explored more in the next part.

## II. AN OPAQUE MODERN CRISIS

Framing victims’ services around a crisis model historically focused on raising public awareness of rape and ending its systemic use as a tool of oppression. Yet, can reformers and feminists call it a crisis today, when reform and justice have evaded us for so long?<sup>91</sup>

Exploring this crisis framing is about more than mere linguistic semantics. Rape law is infused with “dominant cultural narratives’ about sex and gender, and the extralegal structures, institutions, embodied subjects (police, prosecutors, jurors, judges, perpetrators, victims) and practices that sustain them.”<sup>92</sup> The way we define and frame rape is central to making visible the ways in which “cultural stories circulating within and without legal discourse describe and construct women’s bodies and the feminine.”<sup>93</sup> This part unpacks the language of “crisis” and reveals some of the

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90. See, e.g., Elizabeth Bartholet et al., *Fairness for All Students Under Title IX* (Aug. 21, 2017), <https://dash.harvard.edu/bitstream/handle/1/33789434/Fairness%20for%20All%20students.pdf?sequence=1> (explaining how the new Title IX procedures created new problems that can be unfair to the accused, unfair to the accuser and accused, and unfair to victims); Stephanie Ebbert, *Why Are Some Feminists Siding with Trump on Sexual Assault Policy*, BOS. GLOBE (Sept. 15, 2017), <https://www.bostonglobe.com/metro/2017/09/14/surprisingly-some-feminist-lawyers-side-with-trump-and-devos-campus-assault-policy/ArigBzO86tERWpDW17DbTI/story.html> (highlighting a group of feminist lawyers and scholars who critiqued the Obama-era sexual assault policies under Title IX).

91. Penny Pether, *What Is Due to Others: Speaking and Signifying Subject(s) of Rape Law*, 18 GRIFFITH L. REV. 237, 243 (2009) [hereinafter Pether, *What Is Due to Others*] (“Is change (and perhaps justice) possible?”).

92. *Id.* at 242 (quoting Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VAND. L. REV. 869, 947 (1996)).

93. Penelope Pether, *Critical Discourse Analysis, Rape Law and the Jury Instruction Simplification Project*, 24 S. ILL. U. L.J. 53, 60 (1999).



ways in which “crisis” might be interpreted and perceived in modern times.

### A. “Crisis” Defined

Merriam-Webster’s Dictionary defines the term “crisis” to mean a “turning point for better or worse in an acute disease or fever,” an “attack of pain, distress, or disordered function,” or “an emotionally significant event or radical change of status in a person’s life [e.g.,] a midlife *crisis*.”<sup>94</sup> Dictionary.com likewise defines a crisis as a “turning point” in a sequence of events, “a condition of instability or danger, as in social, economic, political, or international affairs, leading to a decisive change,” or “a dramatic emotional or circumstantial upheaval in a person’s life.”<sup>95</sup> The word “crisis” itself is of late Middle English origin, rooted in “kri,” meaning “to decide, separate, [or] judge.”<sup>96</sup>

Yet how do these accounts of rape and sexual assault as a crisis map onto the meaning of “crisis” within feminist framings? A “crisis” can be defined as a turning point; an episode of acute distress, instability, or upheaval; or a radical or decisive change.<sup>97</sup> The Cuban Missile Crisis, for example, was a turning point in a sequence of events, or a condition of instability leading to decisive change.<sup>98</sup> Modern politics has identified an “opioid crisis.”<sup>99</sup> The refugee crisis of families fleeing Syria can be defined as a condition of instability or danger, an upheaval, or a turning point.<sup>100</sup>

The word “crisis” notably is not used in other contexts. Advocates, lobbyists, non-profits, political leaders, and the media do not depict cancer, or other debilitating illnesses (e.g., Alzheimer’s), terrorism, or child abuse through a crisis lens. Nor do we generally

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94. *Crisis*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/crisis> (last visited Mar. 28, 2018) [hereinafter MERRIAM-WEBSTER].

95. *Crisis*, DICTIONARY.COM, <http://www.dictionary.com/browse/crisis> (last visited Mar. 28, 2018) [hereinafter DICTIONARY.COM].

96. *Id.*

97. See, e.g., MERRIAM-WEBSTER, *supra* note 94; DICTIONARY.COM, *supra* note 95.

98. See Paul Wingrove, *Cuban Missile Crisis: Nikita Khrushchev’s Cuban Gamble Misfired*, GUARDIAN (Oct. 22, 2012), <https://www.theguardian.com/commentisfree/2012/oct/22/cuban-missile-crisis-nikita-khrushchev>.

99. *Opioid Overdose Crisis*, NAT’L INST. ON DRUG ABUSE, <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Mar. 28, 2018).

100. See *Syrian Refugee Crisis: Facts, FAQs, and How to Help*, WORLD VISION, <https://www.worldvision.org/refugees-news-stories/syrian-refugee-crisis-facts> (last visited Mar. 28, 2018).

think about being the victim of other types of crimes, like arson or robbery, as a crisis. Rather, these comparative examples are considered more systemic and longstanding, perhaps with more permanence or enduring complexities than a crisis. Or, alternatively, these counter examples are thought of as more episodic and isolated than a crisis. This part explores the competing meanings and embedded limitations of “crisis.”

“Crisis” can also be traced back to the Greek word “kpsis,” which means “discrimination or decision.”<sup>101</sup> In its early usage, “crisis” referred to the Peloponnesian War and to a plague that hit Athens.<sup>102</sup> A crisis, in a political sense, today is likewise invoked in an attempt to create “a rupture in an existing discourse, a rupture that creates room for alternative discourses to enter.”<sup>103</sup>

Over time, Greek physicians, such as Hippocrates, came to use “crisis” scientifically to refer to periods of instability and disruption to the body, such as disease.<sup>104</sup> The Oxford English Dictionary’s primary definition for “crisis” is a medical one: “the point in the progress of a disease when an important development or change takes place which is decisive of recovery or death; the turning-point of a disease for better or worse; [or] . . . any marked or sudden variation occurring in the progress of a disease.”<sup>105</sup> By the seventeenth century, however, English, French, and Italian dictionaries all switched to a meaning of the word that is more figurative, “denoting ‘a vitally important or decisive stage in the progress of anything; a turning point; and . . . a state of affairs in which a decisive change for better or worse is imminent.’”<sup>106</sup>

With this linguistic context in mind, the question becomes what meaning does the modern feminist framing of the sexual assault crisis intend? Is it the medical/health underpinning of “crisis” or the political turning point, or a hybrid? Part II.B explores possible meanings.

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101. J.B. Shank, *Crisis: A Useful Category of Post-Social Scientific Historical Analysis?*, 113 AM. HIST. REV. 1090, 1090 (2008).

102. See *id.* at 1091.

103. Laura Henderson, *What It Means to Say “Crisis” in Politics and Law*, E-INT’L REL. (Mar. 5, 2014), <http://www.e-ir.info/2014/03/05/what-it-means-to-say-crisis-in-politics-and-law/>.

104. Shank, *supra* note 101, at 1091.

105. *Id.* (noting that French and Italian dictionaries reveal similar language).

106. *Id.* at 1091–92 (explaining that the term came to be understood in the context of spiritual or political crises).

## B. *Competing Definitions*

This part explores at least three ways in which crisis framing could be understood today. These include a systemic political meaning, a public health meaning, or an individual meaning.

First, the modern crisis framing might communicate a systemic political meaning. “Crisis” might communicate a “turning point” or a “decisive change” on a systemic political level, as compared to an individual level. This definition suggests that “crisis” refers, in some respects, to the political urgency to raise public awareness of rape.

This interpretation of crisis framing aligns well with the early goals of rape crisis centers. The DC Rape Crisis Center, for example, published a booklet titled *How to Start a Rape Crisis Center* in 1972, in which it explained that it was locally “emphasizing community education and rape prevention as priorities over individual crisis counseling.”<sup>107</sup> It emphasized its public work by speaking to groups, teaching rape prevention, and positioning rape on the public agenda.<sup>108</sup>

Indeed, the anti-rape movement did just that type of large-scale political advocacy. There was a historic push for massive reforms, the results of which are still felt today. Today, victims who report rape are treated better in their interactions with law enforcement, the medical community, and the criminal justice system.<sup>109</sup> The political and legal reform components of the movement were critically influential in state law reforms and dramatic policy overhauls.<sup>110</sup>

In that sense, the #MeToo Movement might be understood as a jolt to reinvigorate the systemic political meaning of rape and sexual assault on the public agenda. Some have specifically described the #MeToo Movement as making society aware of the problem of assault, abuse, and harassment,<sup>111</sup> but notably it is not *framed* as

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107. HOW TO START A RAPE CRISIS CENTER, *supra* note 24, at 1.

108. *Id.*

109. See MARTIN, *supra* note 11, at 14–15 (attributing these improvements to five innovations that have shaped the experience of rape victims, including “rape crisis centers (RCCs), Sexual Assault Nurse Examiner programs, Sexual Assault Response Teams, victim advocates, and legal/statutory reforms”); BEVACQUA, *supra* note 12, at 78, 102 (noting that, by 1980, “some type of pro-victim reform” had been considered in all fifty states).

110. MARTIN, *supra* note 11, at 100–01.

111. See, e.g., Abby Ohlheiser, *#MeToo Made the Scale of Sexual Abuse Go Viral. But Is It Asking Too Much of Survivors?*, WASH. POST (Oct. 16, 2017), <https://www.washingtonpost.com/news/the-intersect/wp/2017/10/16/metoo-made-the-scale-of-sexual-abuse-go-viral->

a crisis. Although, interestingly, #MeToo seems to be quite a political turning point and a decisive moment of upheaval.

Second, the crisis framing might communicate a public health meaning. Two decades of research have revealed that rape is a major public health problem.<sup>112</sup> There is an emerging, strong directional pull toward public health law approaches to rape and sexual assault, which focus on prevention and promoting positive behaviors and relationships.<sup>113</sup> This crisis framing pushes the state to understand “how laws and policies should address the complex cultural and social causes of rape and other sexual aggression.”<sup>114</sup>

Third, the crisis framing might communicate an individual meaning. This framing highlights decisive action for individual victims at the time of the assault. There is historical support for this framing as well. Some rape crisis websites and advertising materials distinctly frame the language of crisis around “crisis intervention,” advertising 24-hour care and immediate response services.<sup>115</sup> If we instead think about crisis framing on an individual level, we might also think about it as a decisive turning point in the lives of each individual victim of rape. We might conclude that rape triggers a crisis in which women must assess their legal, medical, housing, and safety options.

Rape and sexual assault do create crisis situations in terms of health consequences for victims, such as sexually transmitted infections, depression, anxiety, eating disorders, Post-Traumatic

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but-is-it-asking-too-much-of-survivors/?utm\_term=.fbc27f2fb754.

112. *Violence Against Women*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs239/en/> (last visited Mar. 28, 2018); see, e.g., Lynn Hecht Schafran, *Topics for Our Times: Rape Is a Major Public Health Issue*, 86 AM. J. PUB. HEALTH 15 (1996); *Facts and Figures: Ending Violence Against Women*, U.N. WOMEN, <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes> (last visited Mar. 28, 2018) (showing statistics on the health impact of sexual violence against women, based on studies conducted in 2013, 2014, 2015, 2016, and 2017).

113. Margo Kaplan, *Rape Beyond Crime*, 66 DUKE L.J. 1045, 1045 (2017) (noting that most importantly, “public health law relies on evidence-based interventions and the expertise of public health authorities to ensure that laws and policies are effective”). Criminal law is limited because it only focuses on “what sex should *not* be” and ignores the positive models that present the “full spectrum of sexual attitudes and behaviors.” *Id.* at 1049.

114. *Id.* at 1051.

115. See, e.g., *Who We Are*, RAPE CRISIS CTR., <http://rapecrisis.com/who-we-are/> (last visited Mar. 28, 2018) (noting San Antonio’s services and offering “24-hour crisis intervention” support as well as counseling, education, and events). The site emphasizes that it sends out advocates “around the clock,” dispatching them when the victim is en route to the hospital. *Hospital Advocacy*, RAPE CRISIS CTR., <http://rapecrisis.com/crisis-intervention/> (last visited Mar. 28, 2018).

Stress Disorder (“PTSD”), and suicidal ideations.<sup>116</sup> Any of these health consequences could be life threatening or life altering. In that sense, the language of “crisis” communicates an urgency and imperative that is important and helpful. The following parts critique these varied meanings of “crisis.”

### III. A MODERN CRITIQUE OF THE LONGSTANDING CRISIS FRAMING

The #MeToo Movement revealed the painful truth that women and men have remained silent about rape, sexual assault, and sexual harassment for decades. This is not a surprise to the feminist movement, but the question is how can the feminist movement adapt to this modern context to make existing services and models more effective? #MeToo revealed that, under the right political, social, legal, and rhetorical circumstances, some women sharing their experiences can push the dialogue forward and promote change. But which voices sparked the movement and what does that tell us about its inclusivity? This movement presents a critical opportunity for the feminist community to rigorously assess the existing crisis framing of victim services. This part presents three initial critiques.

#### A. *The Risks of Resurrecting Troublesome Legal Relics*

The crisis framing surrounding rape and sexual assault risks perpetuating troublesome relics in both the timing of rape complaints and the range of conduct that qualifies as legally actionable. This part considers each in turn.

##### 1. Implicitly Compelling Urgency

Historic laws criminalizing rape included a requirement to corroborate the victim’s testimony, proof of resistance, prompt complaint filings, and probing into the victim’s sexual history.<sup>117</sup> As

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116. Lisa Fedina et al., *Campus Sexual Assault: A Systematic Review of Prevalence Research from 2000 to 2015*, 19 TRAUMA, VIOLENCE, & ABUSE 76, 76 (2016).

117. See Anderson, *Adjudication*, *supra* note 83, at 1943, 1945, 1951 (explaining that these reforms included “a progressive strand” focused on the definition of rape and procedural obstacles to bringing claims, and also a “conservative, punitive strand of reform” focused on stronger punishments and consequences); see also Ellen M. Bublick, *Citizen No-Duty Rules: Rape Victims and Comparative Fault*, 99 COLUM. L. REV. 1413, 1414 (1999) (concluding that “neither scholars nor victims’ advocates should assume that biases against rape victims will fall away in the civil courts”).

explained in Part II, the rhetoric of crisis can communicate urgency and imminence. This risks distorting and undermining the hard-fought battle for statute of limitations legal reforms, among others.

Historically, rape laws required that petitioners file a prompt complaint.<sup>118</sup> These requirements were distinct to rape and did not apply to other felonies.<sup>119</sup> Under the 1962 Model Penal Code, for example, victims had only three months from the event to report the crime.<sup>120</sup> Hawaii had a statute of limitations of one month<sup>121</sup> and New Hampshire of six months.<sup>122</sup> The rationale was that any longer period of time would compromise the victim's objectives and raise questionable motives, such as reporting in response to a revealed pregnancy.

This requirement, of course, did not align with victims' experiences. Reformers, consequently, won notable legal victories removing these requirements.<sup>123</sup> These law reforms rejected social assumptions that sexual assault victims "raise a hue and cry" and that "the natural time to disclose a sexual assault is as soon as possible after it has happened."<sup>124</sup>

Crisis framing risks resurrecting the urgency to report that might exceed the law and undermine these legal reforms. Some states have recently expanded their statutes of limitations for rape and sexual assault. For example, New York allows a first-degree

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118. Richard Klein, *An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness*, 41 AKRON L. REV. 981, 1020 (2008).

119. Anderson, *Adjudication*, *supra* note 83, at 1946 (explaining that if a victim did not promptly file, they could not pursue a criminal claim). This was described by a thirteenth-century English scholar as a "hue and cry" requirement. *Id.*

120. Klein, *supra* note 118, at 1021.

121. HAW. REV. STAT. § 707-740 (1976) (repealed 1981).

122. N.H. REV. STAT. ANN. § 632:5 (1974) (repealed 1975).

123. Anderson, *Adjudication*, *supra* note 83, at 1949 (explaining that most victims never even report the attack at all); Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. REV. 945, 964 (2004).

124. Elaine Craig, *The Ethical Obligations of Defence Counsel in Sexual Assault Cases*, 51 OSGOODE HALL L.J. 427, 433-34 (2014) (explaining that "[i]t is an error of law to draw an adverse inference as to a complainant's credibility solely on the basis that disclosure of the incident was delayed").

rape prosecution to be brought at any time,<sup>125</sup> as do Alaska,<sup>126</sup> Hawaii,<sup>127</sup> South Dakota,<sup>128</sup> and Mississippi.<sup>129</sup> Nevada has a twenty-year statute of limitations and even longer if a report is filed within the statute of limitations.<sup>130</sup> Massachusetts allows a claim to be brought within fifteen years.<sup>131</sup> Pennsylvania has a twelve-year statute of limitations.<sup>132</sup> New Hampshire has a six-year statute of limitations.<sup>133</sup> Texas does not require any corroborating testimony for a sexual offense that was reported to any person other than the defendant within one year, but does require corroborating testimony if no one else was informed of the rape.<sup>134</sup>

Even with these reforms, underlying bias still festers. Mock jurors are still “less likely to believe a victim when she delays reporting for a few days.”<sup>135</sup> Jury bias still exists against delayed reporting. For example, consider the following:

[A]t the foundation of our contemporary fresh complaint doctrine lie three concerns about potential juror bias: that jurors may still believe that a rape victim will promptly disclose a sexual assault to someone; that jurors may draw adverse inferences from the absence of evidence suggesting such a prompt complaint; and that jurors continue to be skeptical of allegations of rape. We have therefore permitted fresh complaint testimony for the limited purpose of corroborating

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125. N.Y. CRIM. PROC. LAW § 30.10(2)(a) (McKinney Supp. 2017).

126. ALASKA STAT. § 12.10.010(a)(4) (2016).

127. HAW. REV. STAT. § 701-108(1) (2014) (applying no statute of limitations for sexual assaults in the first and second degrees).

128. S.D. CODIFIED LAWS § 22-22-1 (Supp. 2017).

129. MISS. CODE ANN. § 99-1-5 (Supp. 2017).

130. NEV. REV. STAT. §§ 171.083(1), 171.085(2) (2015) (applying no statute of limitations if a written report is filed within the statute of limitations and twenty years otherwise).

131. MASS. GEN. LAWS ch. 277, § 63 (2015); *id.* ch. 265, § 22 (stating that an indictment for rape must be filed within fifteen years).

132. 42 PA. CONS. STAT. § 5552(b.1) (2015) (stating that prosecution must begin twelve years after crime was committed).

133. N.H. REV. STAT. ANN. § 625:8(I)(b) (2016); *id.* § 632-A:3 (Supp. 2017).

134. TEX. CODE CRIM. PROC. ANN. art. 38.07 (West Supp. 2017) (“A [sexual offense] conviction . . . is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.”). Some defenses exist for minors, elderly victims, or those affected by mental illness or disability. *Id.* § 38.07(b); *see also* Friedel v. State, 832 S.W.2d 420, 421 (Tex. Ct. App. 1992) (“[A] conviction for aggravated sexual assault requires independent corroboration if the victim was fourteen years of age or older and if the victim did not inform another person within six months of the event.”); Tamara Rice Lave, *The Prosecutor’s Duty to “Imperfect” Rape Victims*, 49 TEX. TECH L. REV. 219, 230 (2016) (discussing how “convictability” affects the prosecution of rape cases).

135. Lave, *supra* note 134, at 233.

the victim's testimony, but the testimony is "corroborative only if it shows that the victim seasonably complained of the attack."<sup>136</sup>

Prompt reporting is also more likely to result in prosecutors filing aggravated rape charges.<sup>137</sup>

These types of stereotypes and biases are reinforced in media portrayals of sexual assault and in defense strategies.<sup>138</sup> For example, Emma Sulkowicz, a Columbia University student, was repeatedly publicly criticized for not calling the police promptly after her sexual assault.<sup>139</sup> A simple text to an assailant that the victim was "fine" can thwart a victim's entire case, as well as the failure to call 911 immediately after the rape, arguably because the victim has undermined the crisis narrative.<sup>140</sup>

Likewise, students who appear "calm" or are uncertain about whether what happened to them was a rape may also thwart their case.<sup>141</sup> In one shocking Canadian case, for example, the defense challenged the victim's credibility for not immediately reporting to a person, who she saw in the elevator minutes after the attack, the fact that she had been gang raped by four men over a period of hours.<sup>142</sup> In the court's view, she did not act as if she was in an urgent crisis.<sup>143</sup>

The #MeToo Movement powerfully revealed the harsh reality that many women are not able to reveal their victimization for decades or years for myriad of reasons. A crisis framing method, if

136. *Commonwealth v. King*, 834 N.E.2d 1175, 1188–89 (Mass. 2005) (quoting *Commonwealth v. Licata*, 591 N.E.2d 672, 675 (Mass. 1992)).

137. Lave, *supra* note 134, at 233.

138. See, e.g., ANDREW E. TASLITZ, RAPE AND THE CULTURE OF THE COURTROOM 13, 15–17 (1999) (explaining that "cultural narratives about gender and sexual violence shape trial outcomes" because juries need "structural coherence; material coherence, which involves comparing and contrasting with more familiar stories in a search for problems, counterarguments, and missed issues, and characterological coherence"). Successful litigation requires "analogizing to general cultural themes." *Id.* at 58; see Meagen M. Hildebrand & Cynthia J. Najdowski, *The Potential Impact of Rape Culture on Juror Decision Making: Implications for Wrongful Acquittals in Sexual Assault Trials*, 78 ALB. L. REV. 1059, 1066–71 (2014).

139. Michelle Goldberg, *Why the Campus Rape Crisis Confounds Colleges*, NATION (June 5, 2014), <https://www.thenation.com/article/why-campus-rape-crisis-confounds-colleges/> (explaining that criticism followed a *New York Times* story about the sexual assault).

140. Kelly Alison Behre, *Ensuring Choice and Voice for Campus Sexual Assault Victims: A Call for Victims' Attorneys*, 65 DRAKE L. REV. 293, 307–09 (2017).

141. *Id.* at 309–10.

142. Craig, *supra* note 124, at 429 (citing *R. v. A.A.*, 2004 CanLII 101, para. 18 (Can. Ont. Ct. J.)).

143. *R. v. A.A.*, 2004 CanLII 101, para. 39.



understood through the lens of urgency, decisiveness, or quick action, risks implicitly resurrecting these outdated legal views that feminists have fought for decades.

## 2. The Rigidity of “Rape Crisis” Framing

Early conceptualizations of what rape was and how victims should respond to it were also very narrow.<sup>144</sup> Framing rape or sexual assault as a crisis risks narrowly defining the services provided and resurrecting troublesome relics about “typical” victim responses. If crisis is understood in the individual sense as creating an urgent need for action for the victim, as explored in Part II, it risks feeding into the exact stereotypes that law reforms have fought against. It suggests that victims should accordingly act as if they are in crisis.

For decades, victims have struggled to prevail if they do not look, act, or dress as a “real” victim would.<sup>145</sup> Even early on, rape crisis centers understood that few women who called the hotline were “hysterical immediately after the rape.”<sup>146</sup> Rather, the feminist movement has fought for decades to educate others that victims experience a range of conduct, suffer a range of harms, and respond in divergent ways depending on their “psychological makeup and vulnerability and as a function of the nature of the support they receive.”<sup>147</sup> Sexual assault victims can also be impacted by trauma, which effects how the memory stores and recalls events, leading to

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144. Leary, *supra* note 80, at 11 (concluding that “[t]his framework, which inhibited the obtainment of convictions, has been outdated for some time, and sexual assault law has evolved”).

145. Lave, *supra* note 134, at 230–31 (noting that the myths include the “belief that victims invite sexual assault by the way that they dress, their consumption of alcohol, their sexual history or their association with males with whom they are not in a relationship; the belief that many women make false allegations of rape; the belief that genuine assault would be reported to authorities immediately; and the belief that victims would fight back—and therefore sustain injury or damage to clothing—during an assault”).

146. HOW TO START A RAPE CRISIS CENTER, *supra* note 24, at 8 (explaining that “rarely, if ever, does a phone conversation start with ‘I was raped’”).

147. Donna Coker, *Crime Logic, Campus Sexual Assault, and Restorative Justice*, 49 TEX. TECH L. REV. 147, 177 (2016); see Craig, *supra* note 124, at 431–32.

delays in disclosure.<sup>148</sup> Some victims might wait weeks, months, or even years before talking about what happened.<sup>149</sup>

Victims may be particularly distanced by paradigmatic cases or rhetorical framings that narrowly depict the victim as universally “fearful of her assaulter and suffer[ing] significant lasting trauma.”<sup>150</sup> The framing of crisis reinforces this narrow view of rape responses. It risks reinforcing the narrow space in which victims must be quick to act and crisis-oriented, but not too emotional or hysterical.<sup>151</sup>

Even the 2011 Dear Colleague Letter reinforces this alignment of sexual assault and urgent reporting.<sup>152</sup> It required schools to promptly offer interim protections to victims (such as class schedule or housing changes).<sup>153</sup> This reflects the narrow paradigm of the “fearful traumatized victim,” a response that is accurate for some victims, but not all.<sup>154</sup> To the extent crisis framing denotes a beginning and ending of an acute crisis and a normalized response, that framing may not align with the experience of many victims.

### B. *The Risks of “Crisis” as an Exclusionary and Unduly Limited Framing*

Victims need to connect to the framing and discourse of “rape crisis” if that is how the services are packaged and marketed. The current framing risks disconnects in the campus context.<sup>155</sup> Race,

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148. NAT'L SEXUAL VIOLENCE RES. CTR., STATISTICS ABOUT SEXUAL VIOLENCE 1 (2015), [https://www.nsvrc.org/sites/default/files/2015-01/publications\\_nsvrc\\_factsheet\\_media-pack\\_et\\_statistics-about-sexual-violence\\_0.pdf](https://www.nsvrc.org/sites/default/files/2015-01/publications_nsvrc_factsheet_media-pack_et_statistics-about-sexual-violence_0.pdf); Kristin W. Samuelson, *Post-Traumatic Stress Disorder and Declarative Memory Functioning: A Review*, 13 DIALOGUES CLINICAL NEUROSCIENCE 346, 346 (2011). *But see* Emily Yoffe, *The Bad Science Behind Campus Response to Sexual Assault*, ATLANTIC (Sept. 8, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/> (reporting that misinformation about trauma “may bias campus adjudications”).

149. NAT'L SEXUAL VIOLENCE RES. CTR., THE IMPACT OF SEXUAL VIOLENCE FACT SHEET (2010), [https://www.nsvrc.org/sites/default/files/2012-03/Publications\\_NSVRC\\_Factsheet\\_Impact-of-sexual-violence\\_0.pdf](https://www.nsvrc.org/sites/default/files/2012-03/Publications_NSVRC_Factsheet_Impact-of-sexual-violence_0.pdf).

150. Coker, *supra* note 147, at 177.

151. *See* Lave, *supra* note 134, at 233.

152. *See* ALI, 2011 DEAR COLLEAGUE LETTER, *supra* note 84, at 15; *cf.* Lave, *supra* note 134, at 233 (discussing juries' negative responses to delayed reporting).

153. ALI, 2011 DEAR COLLEAGUE LETTER, *supra* note 84, at 15; *see* Coker, *supra* note 147, at 177.

154. Coker, *supra* note 147, at 177.

155. *See id.* at 177–78 (discussing how the current framing of sexual violence focuses on “rape committed against an incapacitated victim” when there are, in fact, ranges of experiences and prohibited conduct).

class, and gender disparities may also exacerbate the likelihood of certain communities not connecting to the crisis framing.

## 1. Campus Disconnects

Campus sexual assault victims may not connect with a rape crisis or sexual assault crisis framing in their lived experiences. While some rape crisis centers have since renamed and rebranded their work accordingly,<sup>156</sup> the general crisis terminology and framing dominates on campuses and in communities. The modern crisis framing might not be one to which college student victims inclusively or fully connect.

Sexual assault victims respond differently to the experience in a variety of contexts and institutions.<sup>157</sup> Responses fall on a broad spectrum including “denial, shame, substance abuse, anger, and forgiveness.”<sup>158</sup> Victim responses each sit in a unique individual and cultural context.<sup>159</sup> Campus experiences also can differ in the “what,” “who,” and “how.” These differences in the type and frequency of sexual assault have “substantial implications for victim services, including the provision of appropriate treatment and legal services.”<sup>160</sup>

Campus experiences generally vary in *what* conduct occurs. A systemic review of sexual assault prevalence rates on college campuses surveyed from 2000 to 2015, for example, concluded that “unwanted sexual contact,” such as kissing, touching, and fondling, is the most common type of sexual assault on campus, with “incapacitated rape” as the second most common, and “forcible rape” as the least common.<sup>161</sup> One 2012 survey of college students concluded, “25.4% of women had experienced unwanted sexual contact

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156. See, e.g., *Marion Rape Crisis Center Changes Name*, OCALA STARBANNER (Apr. 7, 2005, 12:14 AM), <http://www.ocala.com/news/20050407/marion-rape-crisis-center-changes-name> (reporting that the Marion County Rape Crisis/Domestic Violence Center changed its name to The Domestic Violence/Sexual Assault Center); *Renaming and New Identity Unveiled for HOPE Works*, INTERROBANG DESIGN COLLABORATIVE INC. (Nov. 30, 2011), <https://www.interrobangdesign.com/all-news/2014/9/26/renaming-and-new-identity-unveiled-for-hope-works> (explaining how the Women’s Rape Crisis Center is now HOPE Works).

157. See, e.g., WOMEN OF COLOR NETWORK, *FACTS & STATS: SEXUAL VIOLENCE IN COMMUNITIES OF COLOR 1* (2006), <https://www.communitysolutionsva.org/files/FactsAndStats-svandWOC.pdf>.

158. *Id.*

159. See *id.*

160. Fedina et al., *supra* note 116, at 90.

161. *Id.* at 86, 90.

through the use of arguments or pressure.”<sup>162</sup> This suggests that a framing around “*rape crisis*” or “*sexual assault crisis*” on college campuses might be unduly exclusionary.

Campus experiences also vary in terms of *who* perpetrates the offense. While data differ on exact sexual assault rates on campus, they align in explaining that—for many—the experience of campus sexual assault is substantively different than rape in the broader community. Campus rape or sexual assault is more likely to have been perpetrated by an acquaintance. “[Fifty-three percent] of [campus] rape incidents and 41.1% of sexual battery incidents were perpetrated by an acquaintance, friend of a friend, or someone that the victim had just met.”<sup>163</sup> It is much less likely that a stranger will perpetrate sexual crimes against women on campus; strangers committed 34% of reported sexual battery incidents and 9% of rapes.<sup>164</sup> Current or past partners or spouses committed 23% of rapes and 7.2% of sexual batteries.<sup>165</sup> Current or past friends or roommates committed 16% of rapes and 12% of sexual batteries.<sup>166</sup>

Drugs and alcohol are also more likely to have played a role in the campus context. In 59% of reported rape incidents and 58% of sexual battery incidents, the victim believed the offender was under the influence of alcohol or drugs.<sup>167</sup>

These differences in the “what,” the “who,” and the “how,” in turn, affect whether victims access services or seek help. Whether these differences align with the crisis framing is critical to explore. Importantly, formal reporting rates are notoriously low in campus sexual assaults.<sup>168</sup> Only “4.3% of sexual battery incidents and 12.5% of rape incidents were [formally] reported . . . to any [authority or] official.”<sup>169</sup> The United States Department of Justice’s Bureau of Justice Statistics reports 12% of student sexual assault victims did not report the crime because they thought that it was “not

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162. *Id.* at 88.

163. CHRISTOPHER KREBS ET AL., U.S. DEPT OF JUSTICE, CAMPUS CLIMATE SURVEY VALIDATION STUDY FINAL TECHNICAL REPORT 102 (2016) [hereinafter KREBS ET AL., CAMPUS CLIMATE SURVEY], <http://www.bjs.gov/content/pub/pdf/ccsvsftr.pdf>.

164. *Id.* at 103.

165. *Id.*

166. *Id.*

167. *Id.* at 105.

168. *Id.* at 107, 111.

169. *Id.* at 107.

important enough” compared to just 5% of nonstudents providing this reason.<sup>170</sup>

Of concern, many campus sexual assault victims surveyed indeed report that they do not believe that what happened to them is serious enough to seek intervention. The most common reasons for not reporting, given by victims in the Bureau of Justice Statistics’s Campus Climate Survey Validation Study, were “that the victim did not need assistance, did not think the incident was serious enough to report, or did not want any action taken.”<sup>171</sup> This stands in tension with the crisis framing. The next most common reasons for non-reporting were that “other people might think that what happened was at least partly [the victim’s] fault or that he/she might get in trouble for some reason” and that the victim feared some sort of retaliation by the perpetrator.<sup>172</sup> Others do not report because they are “embarrassed, ashamed” or worried that it would “be too emotionally difficult.”<sup>173</sup> Another report revealed that 26% of student victims and 23% of nonstudent victims did not report the crime because they thought that it was “personal.”<sup>174</sup>

Each of these reasons for not reporting might be exacerbated by crisis framing. If victims already think that the harms committed against them are not serious enough or they are embarrassed or ashamed by them, the framing of the assault as a decisive moment or turning point might be exactly the wrong approach. Interviews with campus sexual assault victims confirm these worries. One victim explained that “[b]ecause she knew him and had been very drunk both times, it took a while for her to identify what had happened as an assault. I really believed rape happened in the dark,

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170. SOHI SINOZICH & LYNN LANGTON, U.S. DEP’T OF JUSTICE, RAPE AND SEXUAL ASSAULT VICTIMIZATION AMONG COLLEGE-AGE FEMALES, 1995–2013, at 1 (2014), <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

171. KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 111.

172. *Id.* at 111. Additionally, the survey notes that “not knowing how to contact particular organizations” was not a major reason for nonreporting. Survey administrators also suggested that in the future they would split apart the combination answers to better understand the precise reasons. *Id.* at 113.

173. DAVID CANTOR ET AL., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT, at XXI (2017), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>.

174. SINOZICH & LANGTON, *supra* note 170, at 1.

by people you barely or don't know, and weapons or group force were always involved.”<sup>175</sup>

These accounts suggest that college campuses should be targeting unwanted sexual contact and coercion differently than the rape crisis framing suggests.<sup>176</sup> It suggests “prevention, intervention, and victim services efforts should start with a detailed understanding of the specific needs of a campus population.”<sup>177</sup> Carryover of the crisis framing to the campus context requires careful consideration of the benefits and risks. Campus responses “should focus on the unique dynamics and needs of particular campuses and universities, including diverse student body populations.”<sup>178</sup>

## 2. Compromising Inclusive Responses

The language of “crisis” also risks essentializing rape victims and scripting responses that do not align with some victims’ experiences.<sup>179</sup> Crisis framing might uniquely burden women of color, lower-income women, and other groups for whom equal access to medical care and criminal justice responses are already strained and worrisome. It might also create barriers for lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) victims and male victims.

Crisis framing risks defining sexual assault narrowly and rigidly in ways that entrench the exact stereotypes that the movement has challenged. In creating or reinforcing this essentialized victim, the movement reinforces a legacy of inaction and invisibility of the role of race in rape and sexual assault.<sup>180</sup> As a threshold matter, one

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175. Goldberg, *supra* note 139. Victims are more likely to report to someone in the university community than to law enforcement. *See id.*

176. Fedina et al., *supra* note 116, at 88.

177. *Id.* at 90.

178. *Id.*

179. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (critiquing the notion in feminist writing that there is a “unitary, ‘essential’ women’s experience [that] can be isolated and described independently of race, class, sexual orientation, and other realities of experience”).

180. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) [hereinafter Crenshaw, *Demarginalizing the Intersection of Race and Sex*] (explaining how a single axis framework of race or gender marginalizes black women because both feminist and antiracist discourse “are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender”); Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42, 49 (1988) (explaining that the “relative significance of race, sex, or class in determining the conditions of black women’s lives is neither fixed nor

cannot talk about rape without also considering race. The “historical connection between rape and . . . race . . . has been a decisive element in the framing of the rape issue . . . .”<sup>181</sup>

Distorted and inaccurate narratives surrounding the prevalence of rapes of black men raping white women were particularly used as a tool of racial oppression.<sup>182</sup> As the grandmother of Fannie Lou Hamer said, a “black woman’s body was never hers alone.”<sup>183</sup> Discriminatory stereotypes constructed African American men as rapists and African American women as sexually available,<sup>184</sup> while the reality much more accurately involved the legal erasure of a systemic history of white men raping black women slaves.<sup>185</sup> Sexual relations between black men and white women were taboo and even life threatening, while “[w]hite men considered free and uninhibited access to black women as their prerogative.”<sup>186</sup>

It is imperative to understand rape in its intersectional context because of the deep history here.<sup>187</sup> Intersectionality gives voice to the experiences of black women who were rendered invisible in

absolute but, rather, is dependent on the sociohistorical context and the social phenomenon under consideration”); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN’S L.J. 115, 116, 150 (1989) (explaining that feminist scholarship needs to “confront the differences in power that presently exist between women of color and white women” because “the absence of analysis of the experience of Black women in most white feminist writing . . . reveals some of the assumptions underlying the work of white feminist theorists which function to exclude black women and their interests from the purview of feminism”); Margaret A. Simons, *Racism and Feminism: A Schism in the Sisterhood*, 5 FEMINIST STUD. 384, 388 (1979) (describing the “relative lack of attention given to racism and the oppression of minority women” in feminist theory). While black women were included in the “sisterhood” of feminist consciousness raising, “invisibility and marginality characterize much of [black women’s] relationship to the women’s movement.” *King, supra*, at 57.

181. BEVACQUA, *supra* note 12, at 11.

182. Scott, *supra* note 21, at 348; see, e.g., DANIELLE L. MCGUIRE, AT THE DARK END OF THE STREET 156 (2010) (stating that twenty of freedom fighter Fannie Lou Hamer’s grandmother’s twenty-three children were the product of rape, mostly by white men who traded her for livestock).

183. MCGUIRE, *supra* note 182, at 156.

184. BEVACQUA, *supra* note 12, at 11.

185. See *id.* at 18.

186. *Id.* at 24 (quoting JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW 149 (1985)).

187. See generally DIANE MILLER SOMMERVILLE, RAPE & RACE IN THE NINETEENTH-CENTURY SOUTH (2004) (examining the development of the feminist anti-rape movement in a variety of contexts). Intersectionality reflects a “lived reality.” Kimberlé Crenshaw, Opinion, *Why Intersectionality Can’t Wait*, WASH. POST (Sept. 24, 2015), [https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait/?utm\\_term=.36016f2dd270](https://www.washingtonpost.com/news/in-theory/wp/2015/09/24/why-intersectionality-cant-wait/?utm_term=.36016f2dd270) [hereinafter Crenshaw, *Intersectionality*] (“Intersectionality alone cannot bring invisible bodies into view.”). It is “an analytic sensibility, a way of thinking about identity and its relationship to power.” *Id.*

groups that claim them as members yet fail to represent them adequately in their public agendas, such as the civil rights movement and the women's movement.<sup>188</sup> It is an analytic tool to identify the "vulnerabilities that reflect the intersections of racism, sexism, class oppression, transphobia, able-ism," etc.<sup>189</sup> In this sense, crisis framing risks perpetuating a fiction of a beginning and an end to sexual assault, when in reality its historic context is critical. It perpetuates a fiction that women experience sexual assault divorced from intersectionality and history. It pretends that sexual assault is new and must be stopped, when in reality its victims are far more complex than just their gender, and for some communities it maps onto legacies of existing traumas.

The inconsistent application of intersectional approaches is a longstanding critique of the feminist movement. Anti-rape efforts emerged on the political agenda through feminist consciousness raising.<sup>190</sup> "This politicization in turn has transformed the way we understand violence against women."<sup>191</sup> Professor Kimberlé Crenshaw powerfully summarizes the context:

The singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror. When Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection.<sup>192</sup>

Feminist responses to sexual assault have been heavily criticized for ignoring the historical accounts of black women's systemic experiences with rape.<sup>193</sup> In an article about black feminist ideol-

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188. Crenshaw, *Intersectionality*, *supra* note 187. Since its original formulation, intersectionality has broadly raised awareness of critical constituencies, such as persons of color within the LGBTQ equality movement, girls of color in the school-to-prison pipeline activism, women in the movement for immigrant justice, and trans women within feminism. *Id.*

189. *Id.* ("Intersectionality has given many advocates a way to frame their circumstances and to fight for their visibility and inclusion."). Intersectional approaches are a critical starting point to raise awareness of "the less-visible members of political constituencies [who] must continue to wait for leaders, decisions-makers and others to see their struggles." *Id.*

190. BEVACQUA, *supra* note 12, at 27, 30.

191. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991) [hereinafter Crenshaw, *Mapping the Margins*] (explaining that identity politics "frequently conflates or ignores intragroup differences").

192. Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 180, at 158–59.

193. See BEVACQUA, *supra* note 12, at 12.



ogy, for example, Deborah King concludes, “[f]eminism has excluded and devalued black women, our experiences, and our interpretation of our own realities at the conceptual and ideological level,” which distinctly leads to the “physical exclusion or nonparticipation of black women.”<sup>194</sup> This is particularly problematic because race and class heavily shape violence against women.<sup>195</sup>

A woman may process the assault in the context of her own experience, but also as it relates to her family, her community, her views of law enforcement, and her cultural values and norms.<sup>196</sup> Women of color, for example, may have more reluctance in engaging the criminal justice system given its history of disparate treatment, particularly if the perpetrator is also a person of color.<sup>197</sup> This point may also apply to immigrant victims of domestic violence. For example, rape crisis centers in several metropolitan areas, such as Los Angeles, Houston, and Denver, have documented considerable declines in the number of Latinos reporting rapes due to fears of government detention.<sup>198</sup>

Women of color may also “bear a . . . heavier burden of sexual violence.”<sup>199</sup> Women of color, for example, might be more burdened by poverty and child care as women, but hardships are further compounded by a greater likelihood of racial discrimination in employment and housing.<sup>200</sup>

Understanding the historical, theoretical, or analytical significance of race to rape, however, is not enough if it does not translate into practices and reforms that actualize an intersectional response. If law reforms and public discourses are not set to respond to persons of color, then women of color are “marginalized within both.”<sup>201</sup>

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194. King, *supra* note 180, at 58.

195. Crenshaw, *Mapping the Margins*, *supra* note 191, at 1242; *see also* King, *supra* note 180, at 63–69 (explaining how class politics map onto gender and race).

196. *See* WOMEN OF COLOR NETWORK, *supra* note 157, at 1.

197. *Id.*

198. Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation.*, N.Y. TIMES (Apr. 30, 2017), <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html> (noting a 40% decline in Latino rape reporting in Houston since last year due to the fears of deportation).

199. MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 83 (2010), [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf).

200. Crenshaw, *Mapping the Margins*, *supra* note 191, at 1245–46.

201. *Id.* at 1243–44.

That is why it is so worrisome that this inclusivity critique emerged immediately in response to the #MeToo Movement as well. After Alyssa Milano tweeted the “MeToo” hashtag, critiques immediately emerged that “[w]hite women have not been as supportive as they could have been of women of color when they experience targeted abuse and harassment.”<sup>202</sup>

The marginalization of women of color requires analysis of the inclusivity of the crisis framing of victim services. For example, Patricia Martin’s *Rape Work* revealed, “nearly all rape workers in Florida were white” and “women of color received less appropriate treatment” in medical care after a rape.<sup>203</sup> Most insightful, of the women who accessed rape crisis center services, a *staggering* 91% were white.<sup>204</sup> Under-reporting is a concern particularly for women of color.<sup>205</sup> Reporting rates are substantially lower by race, with 44.3% of white victims reporting their experience to the police, compared to just 17.1% of black victims.<sup>206</sup> A study of sexual assault at Historically Black Colleges and Universities likewise revealed low reporting rates to crisis centers and law enforcement.<sup>207</sup>

“[W]omen of color ‘overwhelmingly’ believe that rape crisis centers are a *white woman’s place*—staffed by and for white victims.”<sup>208</sup> They worry that the center staff does not “understand

202. Garcia, *supra* note 5 (quoting April Reign, a digital media strategist).

203. MARTIN, *supra* note 11, at 8.

204. Campbell et al., *supra* note 68, at 1249.

205. See KREBS ET AL., HBCU-CSA STUDY, *supra* note 69, at 3-7; see also Medina, *supra* note 198 (noting a sharp downturn among Latinos in reporting sexual assault and domestic violence throughout the United States). At least one victim of domestic violence was detained by Immigration and Customs Enforcement (“ICE”) when she sought a protective order, chilling reporting by immigrants throughout the country. Medina, *supra* note 198. “They assume that if they call a government entity it’s all connected, that they will be reported to ICE and sent away.” *Id.* For an exploratory study of victimization by race examining who sought out services and support, see Judy L. Postmus, *Women from Different Ethnic Groups and Their Experiences with Victimization and Seeking Help*, 21 VIOLENCE AGAINST WOMEN 376 (2015).

206. KREBS ET AL., HBCU-CSA STUDY, *supra* note 69, at 3-7.

207. *Id.* at ES-5, 4-24. Of people who reported to a crisis or health care center, the most common reporting was to a doctor’s office or crisis center/victim services program not associated with the university. *Id.* at 4-24. More than one-quarter of victims who did report to a rape crisis or health care center expressed regret in reporting but expressed a higher satisfaction level reporting to off-campus centers. *Id.* Victims reported that they did not report because of reasons including “not wanting to talk about it, not needing assistance, having perceptions that it was not serious enough to report, not wanting anyone to know about it, and feeling embarrassment.” *Id.* at 4-24 to 4-25.

208. MARTIN, *supra* note 11, at 115.

their needs,” will not follow their preferences with regard to prosecution, and worry generally about the impact on their communities of color.<sup>209</sup> Sustaining and actualizing an approach to rape advocacy that is inclusive for women of color has proven challenging to rape crisis centers, which are today accused of “unresponsiveness to women of color.”<sup>210</sup> Rape crisis centers are particularly incentivized for certain actions, such as accompanying victims in court.<sup>211</sup> Yet, women of color are less likely to pursue their cases in the criminal justice system.<sup>212</sup>

The crisis framing risks obscuring and diminishing political understandings of the role of race in rape. The focus on college campuses might likewise perpetuate a larger legal critique of the women’s movement’s focus on white privileged women.<sup>213</sup> Latinos and blacks are not as likely to complete high school and attend college.<sup>214</sup> In general, both low-income communities and communities of color are underrepresented in colleges and universities.<sup>215</sup> This emphasis might foreground the rapes of privileged white women and downplay rapes and sexual assaults of people of color.

This concern is even more credible when acknowledging the fact that very little is even known about the role of race in campus sexual assault and rape.<sup>216</sup> The data and dialogue surrounding campus sexual assault are notably missing the intersectional lens of race.<sup>217</sup> This is in large part *because* of the small number of racial

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209. *Id.*

210. *Id.*; see Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 180, at 154 (“The value of feminist theory to Black women is diminished because it evolves from a white racial context that is seldom acknowledged. Not only are women of color in fact overlooked, but their exclusion is reinforced when *white* women speak for and as *women*.”).

211. Crenshaw, *Mapping the Margins*, *supra* note 191, at 1251.

212. *Id.* Additionally, “counselors who provide rape crisis services to women of color report that a significant proportion of the resources allocated to them must be spent handling problems other than rape itself. Meeting these needs often places these counselors at odds with their funding agencies, which allocate funds according to standards of need that are largely white and middle-class.” *Id.* at 1250.

213. See Anderson, *Adjudication*, *supra* note 83, at 2003.

214. *Id.*

215. *Id.*

216. See generally Emily Yoffe, *The Question of Race in Campus Sexual-Assault Cases*, ATLANTIC (Sept. 11, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-question-of-race-in-campus-sexual-assault-cases/539361/> (exploring whether men of color are “uniquely defenseless when charge[d]” and documenting how little we know about “whether systematic racial bias is at work in campus-sexual-assault complaints and adjudication, or if it is, how strongly”).

217. KREBS ET AL., HBCU-CSA STUDY, *supra* note 69, at 3-2.

and ethnic minorities on college campuses.<sup>218</sup> Prior studies considering incidences of rape by race or ethnicity found that the rates were highest among Native American women, while “white women had higher rates than African American, Hispanic, and Asian women.”<sup>219</sup> One study of sexual assault prevalence rates from 2000 to 2015 concluded that “[n]early all studies [in this time period] sampled predominately White, heterosexual, female students.”<sup>220</sup> Research on the experiences of victimization among minority college students is almost entirely missing.<sup>221</sup> Where the research does exist, it reveals higher victimization rates for women of color, women with disabilities, and gay, lesbian, and bisexual students.<sup>222</sup>

From mainstream framings of the campus sexual assault crisis emerge essentialized images of a “paradigm victim of campus sexual assault” who is white, heterosexual, and the victim of a non-consensual penetrative rape while intoxicated.<sup>223</sup> This “paradigm obscures a more complicated reality and makes it difficult to address the risks of assault for nonheterosexual students, women of color, and heterosexual men.”<sup>224</sup> This concern is reinforced by accounts of students of color and lesbian, gay, bisexual, and transgender (“LGBT”) students expressing concern that “their per-

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218. *Id.*

219. *Id.* The rates of sexual assault, however, vary too with the type of rape being analyzed. Incapacitated rape, for example, is more common for white women. *Id.*; see, e.g., Mary P. Koss et al., *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students*, 55 J. CONSULTING & CLINICAL PSYCHOL. 162, 166 (1987); Mohler-Kuo et al., *Correlates of Rape While Intoxicated in a National Sample of College Women*, 65 J. STUD. ON ALCOHOL 37, 41 (2004).

220. Fedina et al., *supra* note 116, at 90.

221. *Id.*

222. *Id.* Note that there is less research focused on the experiences of transgender students. See *id.* Sexual assault rates at Historically Black Colleges and Universities (“HBCUs”) offer another unique perspective, particularly given that 20% of baccalaureate degrees awarded to African American students are to students at HBCUs. KREBS ET AL., HBCU-CSA STUDY, *supra* note 69, at 1-1. In a survey of 4000 female undergraduates at HBCUs, 94% of which are black and 89% of which are attracted to men, 14% of HBCU women undergraduate students reported experiencing attempted or completed sexual assault after entering college. *Id.* at 1-2, 3-11, 4-4. The survey showed 3.8% of women reported experiencing physically forced rape. *Id.* at 4-2. The rates of forced sexual assault were two times higher for Hispanic women than non-Hispanic women. *Id.* at 4-12. Rates were also higher for women who reported being attracted to both women and men compared to women only attracted to men. *Id.*

223. Coker, *supra* note 147, at 162.

224. *Id.*

spectives and experiences are largely absent from campus discussions of sexual assault.”<sup>225</sup>

Similar class critiques exist as well. The language of “crisis” on an individual level might further denote a degree of class and race privilege in its framing. In general, privileged actors are more likely to mobilize legal interventions than the disadvantaged.<sup>226</sup> If “crisis” means a turning point or decisive moment of judgment, just how decisive and dispositive a rape might be for an individual victim might need to be understood in context. Indeed, some radical feminist accounts of rape would suggest that “rather than being an exceptional and anomalous experience, for many women, rapes are not especially distinctive from the circumstances and phenomenology of ‘ordinary’ heterosexual experience.”<sup>227</sup>

Crisis framing seems most likely to apply to a victim who already occupied a degree of security in housing, health care, economics, and relationships. If, however, life *before* the rape was already complicated by joblessness, housing insecurity, lack of medical care, immobility, stigma, etc., the rape itself might need to be understood in the context of ongoing crises and marginalizations. In that sense, responses need to be systemic, not just addressing the sexual violence, but also “co-located, multi-disciplinary service centers that include mental health, legal, economic, housing and other related services for survivors.”<sup>228</sup>

The crisis framing might also compromise male reporting. Male sexual assault victims are “highly unlikely to report their victimization or to seek help.”<sup>229</sup> The reasons for nonreporting include “fears of not being believed or that they will have their sexuality

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225. *Id.* at 165. “In part, these concerns echo those of scholars who have criticized the dominant feminist framing of rape and gender violence as heteronormative and white.” *Id.*

226. Celena Reynolds, *The Mobilization of Title IX in Colleges and Universities*, 1994–2014, at 10 (Oct. 8, 2016) (unpublished manuscript), <https://ssrn.com/abstract=2767797>. Reynolds describes this as a “legal consciousness.” *Id.* Privileged actors will be likely to have “greater knowledge of law and willingness to mobilize [it].” Michael McGann, *Litigation and Legal Mobilization*, in *THE OXFORD HANDBOOK OF LAW AND POLITICS* 530 (Keith E. Whittington et al. eds., 2008). These access disparities are both a “product of productive and social inequalities.” *Id.*

227. See Scott Anderson, *Conceptualizing Rape as Coerced Sex*, at 24 (Sept. 2015) (unpublished manuscript) (citing CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 112 (1989)), <https://ssrn.com/abstract=2694259>.

228. BLACK ET AL., *supra* note 199, at 91.

229. Allison C. Aovsed et al., *Sexual Revictimization and Adjustment in College Men*, 12 *PSYCHOL. MEN & MASCULINITY* 285, 293 (2011).

questioned, as well as a sense of stigma and shame.”<sup>230</sup> With that context in mind, the crisis framing might further distance men from the services. There are worrisome stereotypes and misconceptions that men are perpetrators of sexual violence and “not seriously affected by sexual victimization.”<sup>231</sup> Some clinical research suggests that male victims are more likely to “present with vague complaints” and symptoms rather than a direct account of abuse.<sup>232</sup> Rather than a crisis framing, approaches grounded in “reducing stigma and increasing awareness” of male sexual assault are more gender inclusive.<sup>233</sup>

This part only began to examine the communities that may be marginalized by the crisis framing of victim services and the ways in which this might occur. The #MeToo Movement presents a critical opportunity to continue and deepen this dialogue.

### C. *The Risk of Distorting the Scope of Rape and Sexual Assault*

Crisis framing also risks distorting the scope of rape and sexual assault in at least two ways. It risks distorting the temporal scope of sexual assault and its sustained longevity in society. It also risks distorting the vast range of systemic long-term harms associated with rape and sexual assault.

#### 1. Obscuring the Sustained Longevity of Rape and Sexual Assault

Crisis framing might limit the scope for framing sexual assault both historically and prospectively. It can obscure and distort the historic and sustained role of rape in societies. This, in turn, can limit our law reform visions for the future.

If sexual assault is framed as a temporal political crisis denoting urgency and decisiveness, this risks obscuring the ways in which rape has been a systemic tool of oppression since the beginning of time, across civilizations, cultures, and contexts.<sup>234</sup> On a community or global level, the language of “crisis” does not accurately envelop the historical extent of rape and its likely persistence into the

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230. *Id.* at 293.

231. *Id.* at 292.

232. *Id.* at 293.

233. *See id.*

234. *See generally* BROWNMILLER, *supra* note 18 (providing a historic context of the use of rape as a tool of oppression).

future.<sup>235</sup> This particularly includes the role of rape and sexual assault as a tool of racial oppression, as discussed above.

A crisis framing can also limit modern political understandings of the enduring prevalence of rape. Indeed, statistics confirm its systemic nature today. A staggering nearly one in five women (18%) and one in seventy-one (1.4%) men have been raped in their lifetime.<sup>236</sup> Eight out of ten sexual assaults will be perpetrated by someone the victim knew.<sup>237</sup> Rape and sexual assault remain the most under-reported crimes.<sup>238</sup>

While campus survey results vary somewhat, general trends regarding campus sexual assault can be identified.<sup>239</sup> The White House Task Force to Protect Students from Sexual Assault, for example, was established in January 2014 with the goal of devising and implementing a climate survey to assess campus climate and rape and sexual assault frequency on campus.<sup>240</sup> For women stu-

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235. *See id.* at 11–15.

236. *See* BLACK ET AL., *supra* note 199, at 1 (surveying 16,057 adults). The National Intimate Partner and Sexual Violence Survey measured five types of sexual violence, including rape, forced penetration, sexual coercion, and unwanted sexual contact. *See id.* at 17. Yet, despite these oft-repeated statistics about the rate of sexual assault in the general population, much less is known about how sexual violence impacts specific populations. The one-in-five statistic seems to accurately reflect rates for black and white, non-Hispanic women. *Id.* at 2–3. Of the women surveyed in the National Intimate Partner and Sexual Violence Survey, higher rates of rape were reported: one in three for multiracial non-Hispanic women, one in four for American Indian Women, and one in three for Alaskan Native Women. *Id.* at 3.

237. NAT'L SEXUAL VIOLENCE RES. CTR., INFO & STATS FOR JOURNALISTS: STATISTICS ABOUT SEXUAL VIOLENCE 1 (2015), [http://www.nsvrc.org/sites/default/files/2015-01/publications\\_nsvrc\\_factsheet\\_media\\_packet\\_statistics-about-sexual-violence\\_0.pdf](http://www.nsvrc.org/sites/default/files/2015-01/publications_nsvrc_factsheet_media_packet_statistics-about-sexual-violence_0.pdf). Additionally, 8% of sexual assaults happen at work. *Id.*

238. *Id.* (citing that 63% of sexual assaults go unreported to the police).

239. For example, these prevalence rates will notably differ from the Clery Act Reporting requirements, under which universities are required to disclose information about crimes on or near campus. 20 U.S.C. § 1092(f) (2012 & Supp. IV 2013–2017); KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 109. Using the Campus Climate Survey Validation Study as a metric, researchers would expect that 3% of all completed rapes would be captured by the Clery Act, which would only focus on acts that were committed on or near campus and were reported to school authorities. KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 110. These numbers aligned somewhat consistently with forty rapes reported under the Clery Act during the relevant time-period aligning with sixty rape incidents disclosed through self-reporting on the Campus Climate Survey Validation Study. *Id.*

240. KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 1 (studying the “(1) general climate of the school, (2) perceptions of leadership, policies, and reporting, (3) the prevalence of sexual violence, (4) the context around the incidents of sexual violence, (5) bystander confidence and readiness to help, (6) perceptions of sexual assault, (7) rape myth acceptance, and (8) the prevalence of interpersonal violence”). This self-reported data sheds light on the extent of underreporting of rape and sexual assault, a particular issue on cam-

dents, the results revealed an average “completed sexual assault”<sup>241</sup> prevalence rate of 10.3% during the 2014–2015 school year,<sup>242</sup> a “completed sexual battery”<sup>243</sup> prevalence rate of 5.6%,<sup>244</sup> and a “completed rape”<sup>245</sup> prevalence rate of 4.1%.<sup>246</sup> This amounts to 176 incidents of sexual assault per 1000 undergraduate female students, 96 incidents of sexual battery per 1000 undergraduate female students, and 54 incidents of rape per 1000 undergraduate female students.<sup>247</sup> When surveyed across the women’s entire time in college and entire lifetime (not just the preceding academic year), the prevalence rates rose to 21% for completed sexual assaults during college and 34% for completed sexual assaults during the respondents’ lifetimes.<sup>248</sup> The prevalence rates were higher for younger women (ages eighteen to twenty-two) than for older women (ages twenty-three and up).<sup>249</sup> The prevalence rates for sexual assault for white and non-white students were statistically similar at most schools.<sup>250</sup> The prevalence rates for sexual assault were “significantly higher for nonheterosexual than heterosexual female students” at all of the schools.<sup>251</sup>

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puses. *Id.* Importantly, it included data about incapacitated rape whereas some earlier studies, such as the National College Women Sexual Victimization Survey, only examined forcible rape. *Id.*; see Fedina et al., *supra* note 116, at 77. More than 23,000 undergraduate students, 15,000 of which were women and 8000 of which were men, reflecting a 54% response rate for women and 40% for men, participated in this survey at nine schools. See KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at ES-5.

241. The study defined “sexual assault” as “any unwanted and nonconsensual sexual contact that involved either sexual battery or rape.” KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 5.

242. *Id.* at 69 (discussing a range from 4.2% to 20% at individual schools surveyed).

243. The study defined “sexual battery” as “any unwanted and nonconsensual sexual contact that involved forced touching of a sexual nature, not involving penetration.” *Id.* at 5.

244. *Id.* at 69 (noting a range from 1.7% to 13.2% at individual schools surveyed).

245. The study defined “rape” as “any unwanted and nonconsensual sexual contact that involved a penetrative act, including oral sex, anal sex, sexual intercourse, or sexual penetration with a finger or object.” *Id.* at 5.

246. *Id.* at 69 (noting that rates ranged from 2.2% to 7.9% at individual schools surveyed). These results align with a systemic review of “completed rape” prevalence data from studies from 2000 to 2015, which revealed a range from 0.5% to 8.4% of college women. Fedina et al., *supra* note 116, at 86.

247. See KREBS ET AL., CAMPUS CLIMATE SURVEY, *supra* note 163, at 87.

248. *Id.* at 73.

249. *Id.* at 76.

250. *Id.* at 77 (noting, however, that the prevalence rates were higher for white students at two of the schools).

251. *Id.* at 78.



For men, the prevalence rates were 3.1% for completed sexual assaults, 1.7% for completed sexual batteries, and 0.8% for completed rapes.<sup>252</sup> This equates to 53 incidents of sexual assault per 1000 undergraduate males, 23.1 incidents of sexual battery per 1000 undergraduate males, and 10.1 incidents of rape per 1000 undergraduate males.<sup>253</sup> Male responses revealed a 7% completed sexual assault rate when examined since the male respondents started college and an 11.2% rate when surveyed across their lifetimes.<sup>254</sup>

Crisis framing might distortedly suggest that the political importance of rape reforms and responses was merely temporary. It might suggest that there will be an end to work on behalf of rape victims, which may be an unrealistic goal. As Professor Penny Pether queried nearly twenty years ago in an international context, is justice possible in the context of rape?<sup>255</sup>

[A]ll the speech and the writing, the scholarship and the legislation and the training programs and manuals and the textual artefacts of law reform have changed nothing, except perhaps that a larger number of women in many cultures are reporting rapes, only to experience the various instantiations of the embodied institutional and discursive 'second rape' that is one of the predictors of attrition [of rape cases].<sup>256</sup>

Finally, crisis framing might also unduly narrow our legal reform response visions to one institution or one issue, ignoring the larger systemic connections. As Michelle Anderson concludes, "[w]e must focus on those who are disadvantaged by poverty, race, immigration status, sexual identity, and involvement in the criminal justice system."<sup>257</sup> Holistic consideration of sexual assault across multiple institutions, such as "colleges and universities, prisons, hospitals, [and] corporations," is more important than ever to see how we can "prevent and redress sexual abuse" within institutions and society.<sup>258</sup> Despite the emphasis on the campus crisis, nearly half of all rapes happen before victims get to college.<sup>259</sup> Further,

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252. *Id.* at 71.

253. *Id.* at 88.

254. *Id.* at 74.

255. Pether, *What Is Due to Others*, *supra* note 91, at 243.

256. *Id.*

257. Anderson, *Adjudication*, *supra* note 83, at 2003 (concluding that to expand assistance to the disadvantaged, "[w]e need definitions of and procedures for adjudicating sexual assault that help not only university students, but also homeless teens and prisoners").

258. *Id.* at 2004.

259. Kaplan, *supra* note 113, at 1095-97.

victims in other institutions can be far less empowered than on college campuses.<sup>260</sup> These broader lenses reveal that a longer-term preventative and responsive approach is needed across a range of institutions.<sup>261</sup>

This part explored how the definition of rape and sexual assault might be distorted in systemic scope across time and communities. The next part explores how, on an individual level, crisis framing might distort understandings of the range and longevity of harms associated with rape and sexual assault.

## 2. Narrowing the Harms Associated with Rape and Sexual Assault

If we understand crisis on an individual level, this application also distorts the scope of rape and sexual assault. It reinforces a model of political responses that are limited to those which immediately follow the sexual assault, such as STD prevention, pregnancy prevention, and immediate medical treatment. Its durational frame surrounding urgency ignores the more sustained and systemic role that sexual assault also inflicts on an individual level.

Crisis language might be outdated medically and might risk factually distorting sexual assault. The language is not fully inclusive of the full range of harms that victims experience, which can limit legal reform responses. In the general population, only 5% of rape and sexual assault cases involve a “major injury,” such as “severe lacerations, fractures, or internal injuries,”<sup>262</sup> although 40% of victims do suffer some kind of injury.<sup>263</sup> And rape causes serious long-term consequences on an individual level to both the physical and mental health of the victims.<sup>264</sup> These sustained injuries might not, however, align with a crisis framing.

While historically the word “crisis” may have been used to describe rape, the term “rape trauma syndrome” came to replace this

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260. See, e.g., Josephine Yurcaba, *For Survivors of Prison Rape, Saying ‘Me Too’ Isn’t an Option*, REWIRE NEWS (Jan. 8, 2018), <https://rewire.news/article/2018/01/08/survivors-prison-rape-saying-isnt-option/> (noting how the “whitewashing of the public conversation of sexual abuse becomes even more clear in prisons and jails, where the most marginalized demographics overlap”).

261. See *id.* (discussing the need for “substantial, consistent, and long-term” prevention efforts in public education).

262. Anderson, *Adjudication*, *supra* note 83, at 1953.

263. *Id.*

264. BLACK ET AL., *supra* note 199, at 7.

more generic term.<sup>265</sup> Rape trauma helped to explain the effects of rape. Related to PTSD, a disorder recognized by the American Psychiatric Association, it explained how the victim might behave and might display “a pattern of symptoms that develop after exposure to a certain uniquely stressful situation that is outside the common range of life’s experiences.”<sup>266</sup> Over time, rape trauma syndrome too faded from use, replaced by the more comprehensive description of rape as triggering PTSD.<sup>267</sup> PTSD can cause “sleep disturbance, depression, persistent re-visualization of the rape event, obsessive washing, fear of going out,” etc.<sup>268</sup> Crisis denotes a decisive beginning and end, while PTSD is more accurately understood as enduring, physiological, and sustained.

The injuries of rape are not only psychological, but can also affect bodily systems, such as the nervous system, cardiovascular system, gastrointestinal system, reproductive functions, musculoskeletal structures, immune system, and endocrine system.<sup>269</sup> Symptoms/injuries can continue throughout the victim’s life in a way that the crisis framing ignores. Interviews with campus sexual assault victims confirm this critique. For many, the trauma does not end with the attack. It continues throughout the months or years of sharing a campus or classroom with the attacker, throughout a lifetime of relationships, and throughout a lifetime of perceptions of safety and autonomy.<sup>270</sup>

Thus, effective political responses and legal interventions need to extend beyond the emergency care following sexual assault. This is especially important for young, college-aged victims. More than three-quarters of female rape victims reported that the act occurred before their twenty-fifth birthday.<sup>271</sup> The young age of these

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265. IRINA ANDERSON & KATHY DOHERTY, ACCOUNTING FOR RAPE 10 (2008); see, e.g., Susan Stefan, *The Protection Racket: Rape Trauma Syndrome, Psychiatric Labeling, and Law*, 88 NW. U. L. REV. 1271, 1298, 1303 (1994) (critiquing rape trauma syndrome’s “[r]emov[al] [of] [w]omen’s [p]ain and [a]nger from [t]heir [s]ocial and [p]olitical [c]ontext” and its construction of rape as an “[a]bberation and [f]ear of [r]ape as [a]berrational”).

266. See Klein, *supra* note 118, at 1017–18.

267. See ANDERSON & DOHERTY, *supra* note 265, at 11 (noting that studies show the reported rate of PTSD following rape is 57% to 80%).

268. *Id.* (noting that these symptoms compound the initial trauma).

269. BLACK ET AL., *supra* note 199, at 7.

270. See ANDERSON & DOHERTY, *supra* note 265, at 11; Goldberg, *supra* note 139.

271. See BLACK ET AL., *supra* note 199, at 25.

victims yields a lifetime of effects. For women who were raped before the age of eighteen, one-third experienced another rape as an adult.<sup>272</sup>

Perhaps successful interventions should begin even *before* the sexual assault occurs. Research shows that victims of sexual assault prior to college were significantly associated with being a victim of forced sexual assault while in college.<sup>273</sup> Men and women are both more likely to be re-victimized after they have already experienced a sexual assault. These points suggest that colleges should engage in preventative interventions, counseling services, and support systems.<sup>274</sup>

#### IV. RAPE IN CONTEXT, OVER RAPE IN CRISIS

It is time to think about responses to rape and sexual assault in new ways. Lasting community change requires a type of thinking that leverages the competencies and successes of what is working but also strategically plans for and responds to challenges and obstacles.<sup>275</sup> It is time to consider the “strategic development of new resources—for the timely creation of new settings, the performance of new roles by community members, and the cultivation of new knowledge, beliefs, and values by the larger community.”<sup>276</sup>

The recent #MeToo campaign critically reveals some of the limitations of existing approaches. In many ways, the #MeToo Movement leveraged core feminist methods of taking women seriously and trusting in our experiences—a modern social media-infused version of consciousness raising.<sup>277</sup>

The #MeToo Movement has its own risks, however, that the quest for alignment and similarity in experiences ignores other narratives or essentializes victims. It asks a lot of victims coming

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272. *Id.* at 26.

273. KREBS ET AL., HBCU-CSA STUDY, *supra* note 69, at 3-4.

274. See Aosved et al., *supra* note 229, at 285–86 (noting that both male and female victims of child sexual assault were more likely to be victims of sexual assault as adults).

275. See KOSS & HARVEY, *supra* note 10, at 102 (noting that positive community change requires good use of resources and that “[r]arely is sudden or dramatic change accomplished”).

276. *Id.*

277. See Harris, *supra* note 179, at 587 (discussing how second wave feminism relied on multiple consciousness and taking women seriously); see also Lisa Respers France, #MeToo: Social Media Flooded with Personal Stories of Assault, CNN (Oct. 16, 2017), <https://www.cnn.com/2017/10/15/entertainment/me-too-twitter-alyssa-milano/index.html> (discussing how the #MeToo Movement relies on personal experiences from real women).

forward to increase awareness, but it might not offer promise for change.<sup>278</sup>

In the campus context, this analysis suggests the need to consider responses that more effectively meet the diverse needs of campus communities.<sup>279</sup> It suggests the need for more depth and candor in addressing rape and sexual assault than “crisis” conveys; for example, many campuses distort the response by focusing their efforts on external threats that take place outside the dorms, failing to inform students that the majority of on-campus rapes are in the dorm rooms.<sup>280</sup> Thus, while campuses have a lot of control over dorm rooms, they reinforce stranger rape myths and narratives that reinforce “societal misunderstandings and misconceptions” that shift the emphasis away from campuses and classmates.<sup>281</sup>

New approaches are needed. This includes stronger understandings of the social norms that underlie rape and sexual assault on college campuses. How young people navigate the gender norms of new sexual encounters is critical to deconstructing troublesome rape culture on college campuses.<sup>282</sup> These social norms shape jurors as well. Challenging and understanding social norms pushes us to “move upstream to address social determinants of rape . . . . Social determinants are ‘social institutions’ (including ‘economic systems and political structures’), surroundings (such as ‘neighborhoods [and] workplaces’), and ‘social relationships’ (such as hierarchies and ‘differential treatment of social groups’).”<sup>283</sup> These broader approaches suggest that poverty, social inequality, and other systemic issues should also be a part of rape and sexual assault responses.<sup>284</sup>

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278. See, e.g., Ohlheiser, *supra* note 111.

279. See JENNY DILLS ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, SEXUAL VIOLENCE ON CAMPUS: STRATEGIES FOR PREVENTION 11 (2016) (“There is no one size fits all primary prevention programming.”).

280. Andrea A. Curcio, *Institutional Failure, Campus Sexual Assault and Danger in the Dorms: Regulatory Limits and the Promise of Tort Law*, 78 MONT. L. REV. 31, 41 (2017) (arguing that institutions leave students dangerously unaware that they need to take precautions in campus dorm rooms).

281. *Id.* at 45–46, 66.

282. See Kaplan, *supra* note 113, at 1063–64, 1067 (explaining that dominant social norms position men as seeking sex and women as the gatekeepers). These dominant norms keep partners from reading cues accurately. See *id.* at 1066. While these norms are dominant, they are not accurate or healthy. See *id.* at 1067, 1073.

283. *Id.* at 1088.

284. See *id.* at 1089.

This article advocates for a candid reflection on the enduring crisis framing, ultimately suggesting that it may reinforce the exact stigmas and stereotypes that it fights. The #MeToo Movement presents feminists with an invitation to restrategize and reassess rape and sexual assault victim services.

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