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## Neoliberalism Goes to School: Neoliberalism's Influence on Responses to Sexual Violence in Higher Education Institutions

Naomi Strait  
*Macalester College*, [nstrait@macalester.edu](mailto:nstrait@macalester.edu)

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# **Neoliberalism Goes to School: Neoliberalism's Influence on Responses to Sexual Violence in Higher Education Institutions**

**Naomi Strait**

**Abstract:** *This paper will begin by tracing the historical relationship between sexual violence and race, and then describe how neoliberalism compounded upon this history to create a carceral feminist response to sexual violence. After outlining the neoliberal trends present in national responses to sexual violence, I will narrow my focus to responses within higher education and attempt to demonstrate the parallels between them. I will focus on the commonalities of punitive responses and individualization, which result in a culture of compliance in higher education. I will conclude by describing alternatives to the current way higher education executes Title IX policy.*

**Keywords:** *Carceral Feminism, Neoliberalism, Prisons, Title IX, Sexual Violence, Higher Education, Compliance*

**Area of Study:** *American Studies*

## **Introduction:**

I started this project wanting to know why the responsibilities of Title IX have morphed primarily from preventing gender discrimination in sports to overseeing sexual violence in higher education. My initial questions included “What specific events and policies encouraged this evolution and why?” and “What are the capabilities and limits of Title IX when addressing sexual violence?” Noticing parallels between neoliberalism and the implementation of Title IX ultimately brought me to the question of how neoliberalism has influenced Title IX’s response to sexual violence in higher education.

This paper will first trace the historical relationship between sexual violence and race, and then describe how neoliberalism compounded upon this history to influence the modern response to sexual violence in the U.S. After outlining the neoliberal trends present in national

responses to sexual violence, I will narrow my focus to responses within higher education and attempt to demonstrate the parallels between them. I will focus on the fear that higher education institutions (HEIs) have of liability and thus their resulting culture of compliance and then describe the influence of neoliberalism on the response, prevention, and remedial duties of HEIs. I will conclude by describing alternatives to the current way higher education institutions execute Title IX policy.

### **Method:**

Since I wanted to understand the history of the forces shaping Title IX, the legitimacy and consistency that academic sources could offer was necessary. Thus, I mostly used academic sources, including articles and books, for this project but also utilized some online news articles. Inevitably, the way I interpreted the information I learned was informed by my positionality as a heterosexual, cisgender, middle-class woman of color, and as someone who is close to several survivors of sexual violence. My goal throughout this project was not to pretend that I can erase my biases and write purely objectively, but to acknowledge, be critical of, and explore how these subjectivities entered my work.

### **Sexual Violence and Race:**

Dating back to the 1800s, white middle class women's virginites were the property of their patriarchs — either their father or husband.<sup>1</sup> Thus, if someone raped a white middle class woman, the rape constituted a crime because a man's property was trespassed upon. This led to the exclusionary criminalization of white women's rape. White women's bodies have also been

constructed as more vulnerable than other women's bodies because they are seen as more pure. At the same time, this myth has coincided with the criminalizing of Black men and their subsequent lynching by white men.<sup>2</sup> On the other hand, Black women's status as property during enslavement served to make it impossible for rape against Black women to be understood as such. To justify the rape of Black women by white slaveowners, Black women have been constructed as hypersexual and less vulnerable to rape — not because they are protected from it, but because their perceived hypersexuality lowers the standard for what rape is.<sup>3</sup> Thus, white womanhood has been understood as “sexually frigid and chaste”<sup>4</sup> and Black womanhood as “animalistic and hypersexual,”<sup>5</sup> although both constructions still result in women being the sexual property of white men.

The status of white women's virginity as property of their husbands or fathers has also served to justify violence against Black men. After the passage of the 13th amendment, newly freed Black men posed an economic and political threat to white communities. Therefore, in order to suppress the power of Black communities, white women would falsely accuse Black men of rape, which would then necessitate the lynching of that Black man.<sup>6</sup> Race and property intersected, such that “White men used their ownership of the body of the white female as a terrain on which to lynch the Black male.”<sup>7</sup> These myths (white women's purity, Black men's sexual criminality, and Black women's hypersexuality) have all coincided, resulting in a system in which the identification of and accountability for sexual violence depends on each identity's relation to race and property, even today.

**Neoliberalism:**

During Reagan's presidency in the 1980s, neoliberalism moved from the margins of political thought to the center. Neoliberalism is an ideology that champions the free market, emphasizes individualism, advocates for the transfer of public services to private organizations, and supports the upward distribution of power.<sup>8</sup> During the 80s, the neoliberal slashing of government funded social services resulted in "... a generalized sense of insecurity that then led to more regulation of the poor and minorities"<sup>9</sup> and a "culture of control."<sup>10</sup> The resulting crime control of this era required the construction of criminality to be informed by an essential "otherness," which then allowed for the state to gain more power and surveillance.<sup>11</sup> By explaining criminality as inherent to deviant individuals, the state could justify its control over anyone designated as such. As with most extensions of state power, this exacerbated already existing racial discrimination against people of color and poor people, and they were criminalized the most. Neoliberalism became more than just an economic theory and morphed into an ideology defined by individualizing systemic problems, increasing administrative power, and encouraging punitive responses to social ills. The now popularized concept of neoliberalism then helped to lay the infrastructure for mass incarceration in the later decades.

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

then encouraged the formation of carceral feminism and professional purview of the problem of sexual violence.

### **Carceral Feminism:**

Neoliberalism's influence on mainstream feminism between the 1960s to the 80s is demonstrated through the rise of carceral feminism, which relies on the prison industrial complex and the state to achieve feminist goals. Neoliberalism individualizes systemic problems, which — in this case — then allows for individuals to be punished for their perceived failings instead of addressing the environments that cause people to enact violence on each other. The resulting phenomenon, carceral feminism, is influenced by neoliberalism because it "... locates social problems in deviant individuals rather than mainstream institutions... seeks social remedies through criminal justice interventions rather than through a redistributive welfare state... [and] advocates for the beneficence of the privileged rather than the empowerment of the oppressed."<sup>12</sup>

Carceral feminism began to be popularized during the 60s by a coalition of right wing Christian Republicans and left wing feminists who looked to "militarized humanitarianism"<sup>13</sup> as a solution to issues of sex work and sexual assault. These two groups were able to unite because of a focus on so-called "feminist family values," in which "... white, middle-class feminists... transitioned from analyzing violence within the family to combating threats posed to the family and its values,"<sup>14</sup> specifically sexual predators and commercial sex. While it seems like an unlikely alliance, "... what binds together... these constituencies... is a historically significant consensus around corporate capitalist ideals of freedom and carceral paradigms of justice."<sup>15</sup>

Faith in the free market and meritocracy, enhanced by neoliberal thought, laid the framework for the victim's movement, which then provided a basis for mass incarceration in the 90s.

After the rise in carceral feminism and the victim's movement, politicians began paying attention to the issue of sexual violence. This resulted in creating legislation that provided increased punitive measures for sex offenders and followed the neoliberal values of capitalism and individualism. For example, a number of high profile lawsuits prompted the creation of the Violence Against Women Act, which relies on incarceration and punishment to solve violence against women. In addition, many states have increased sentencing for sex offenders, through laws that require "... a mandatory minimum of twenty-five years to life for some sex crimes, [and] two-strikes laws that require life sentences for certain sexual crimes and make some sexual offenses eligible for the death penalty."<sup>16</sup> The increased legal sanctions encourage an even larger prison population, which further strengthens the power of the state and reinforces the notion that sexual violence is caused by individual, idiosyncratic behavior. In addition to serving longer and longer sentences, those convicted of sexual offenses "are subjected to the most intrusive forms of surveillance, such as sex offender registries, community notification, and indefinite detainment in psychiatric institutions after they have completed their prison sentences."<sup>17</sup>

### **Intersectionality:**

Incarceration may seem like a plausible solution for privileged groups such as middle-class white women, but for populations that have been harmed by the carceral apparatus (incarceration, police, and the criminal justice system) it's not a useful solution to the issue of sexual violence. Relying on the police to respond to violence can be impossible for some

communities. For example, Black women have been routinely sexually assaulted by the police they have called upon for help.<sup>18</sup> Undocumented immigrant women, when calling the police to intervene in domestic abuse, have instead been arrested and deported.<sup>19</sup> In addition, “Police are also among the most frequent perpetrators of sexual violence against homeless women, women of color, people in the sex trade, and queer/trans folks.”<sup>20</sup>

If a perpetrator of sexual violence is brought into the criminal justice process, a “successful” outcome is still not guaranteed for marginalized communities. The accounts of white cis female survivors are already contested, however racial and sexual minorities are even more undervalued. In addition, “... jurors continue to acquit or convict based on gendered and racialized rape myths that persist despite legal changes.”<sup>21</sup> The criminal justice process undermines survivors with marginalized identities and is also more likely to convict people of those same identities. Thus, few survivors are treated with credibility — even less so if they hold marginalized identities — and few perpetrators are put behind bars. The perpetrators who are convicted are most likely to be from communities of color, perpetuating the racism inherent in the criminal justice process and absolving white perpetrators of their violence. Finally, prisons are undeniably racist and encourage slave labor within them. Not only do prisons perpetuate an already racist society but they are incredibly toxic places. Incarcerating someone increases their likelihood of self harm, mental health issues, and exposes them to beatings and practices like solitary confinement. On top of that, people with identities that are already marginalized are more likely to face violence in prisons. For example, around half the perpetrators of sexual violence are staff and the primary victims in men’s prisons are LGBTQ.<sup>22</sup> Thus, even if a



perpetrator is put behind bars, those who have privileged identities will be treated better than their less-privileged counterparts.

### **Effectiveness:**

In addition to deteriorating people's humanity, prisons are also ineffective solutions to addressing the issue of sexual violence. Sexual violence in prisons is extremely prevalent. For example, more inmates were raped in prison than women over the age of 12 in 2008.<sup>23</sup> What happens when someone who is already inclined towards sexual violence is put in an environment in which toxic masculinity and misogyny are encouraged? What happens when that person is put in an environment in which sexual violence is routine and normalized? Misogyny and unequal power are the roots of sexual violence, yet "... the prison is the last place you go to learn to respect women."<sup>24</sup> This leads to questioning what type of person, after enduring years in a misogynistic environment in which rape culture is normalized, is reintroduced back into society. Even after a prison sentence, sex offenders are subjected to further surveillance and punishment. Traditional post-incarceration measures, such as the sex offender registry and civil commitment, may actually increase recidivism since they lead to "... social isolation, unemployment, residential instability, depression, harassment, and feelings of shame, fear, and hopelessness, all of which are factors associated with a greater risk for reoffending."<sup>25</sup>

### **Professionalization:**

Towards the end of the twentieth century, the criminal justice system was designated as the system to put perpetrators of sexual violence within. The professional and administrative

systems were where, under neoliberalism, survivors went. Changing the behavior of perpetrators, because they were framed as “other” alienable criminals, seemed impossible. Thus energy went towards “treating” survivors instead.<sup>26</sup> This included “retraining” survivors to protect themselves from future violence and to treat their psychological harm.<sup>27</sup> This resulted in professionals being trained to deal with survivors of sexual violence better, which was seen as a good thing since professionals had often belittled or blamed survivors for their trauma in the past.

However, the professionalization and medicalization of sexual violence distracts from an understanding of sexual violence as collective, politicized gender violence, and focuses on individual instances of violence “as a chronic yet treatable problem.”<sup>28</sup> This then shifts the focus to treating victims rather than perpetrators. Thus, “it has become nearly impossible to understand the causes and consequences of being a victim of violence in terms which do not fit squarely within the purview of medicine or criminal justice.”<sup>29</sup> By taking the politicized, collective framework of sexual violence out of the equation, sexual violence cannot be eradicated from our society.

### **Conclusion:**

As mainstream feminists in the 70s started looking towards the prison-industrial-complex (PIC) to solve the issue of sexual violence, they reinforced the conception that sexual violence is rooted in the idiosyncratic behavior of individuals rather than socialization of cultural norms. Thus, carceral feminists implied that individual people need to be held accountable for sexual violence, rather than the cultural influences that socialize these people into believing that sexual violence is normal, acceptable, or even the same thing as sex. This individualization of the

problem parallels neoliberalism's emphasis on the individual subject. Therefore, the carceral feminist response to sexual violence does not serve the greater feminist purpose of liberation for all. It follows the larger agenda of neoliberalism to redistribute power to the white upper classes by relying on the prison industrial complex, further enforcing the myths that these institutions are based on meritocracy rather than constructed to police and surveil communities of color and poor people. Thus, the neoliberalized responses to sexual violence (carceral feminism and professionalization) can be understood as another iteration of white feminism.

The general trends of neoliberalism's response to sexual violence include individualizing the problem of sexual violence, shifting the responsibility and site of intervention for sexual violence onto potential victims, professionalizing and bureaucratizing the problem, and relying on a punitive response. These national trends are all visible within Title IX responses to sexual violence within higher education as well.

### **History of Title IX:**

In 1972, Title IX of the Education Amendments was passed.<sup>30</sup> Under this amendment, sexual violence was designated as a form of gender discrimination. In 1999 the Supreme Court ruled that student-on-student sexual violence could trigger the infliction of Title IX sanctions on educational institutions and thus established institutional liability for individual behavior.

In 2011, in light of highly publicized instances of universities covering up cases of sexual assault, Joe Biden and the Office of Civil Rights' Department of Education sent out the "Dear Colleague" letter to HEIs. This letter threatened to pull federal funding from schools that didn't comply with Title IX law. It also established institutions' responsibility in preventing,

responding to, and remedying the effects of sexual violence. After the “Dear Colleague” letter, the Campus Sexual Violence Elimination Act (SaVE Act) was instituted in 2013. The SaVE Act codified the expectations outlined in the Dear Colleague letter into official law.<sup>31</sup> This act included requiring HEIs to provide education on students’ rights, bystander interventions, and procedural rights for the respondent and survivor.<sup>32</sup> HEIs, under the “Dear Colleague” letter and SaVE Act, have three responsibilities regarding sexual violence: response, “the duty to respond effectively to individual acts of violence,” prevention, “the duty to prevent future violence,” and remedial, “the duty to remedy the effects of such violence on victims and the broader student community.”<sup>33</sup>

#### **Title IX After 2011:**

In response to the Dear Colleague letter, colleges formed official Title IX offices and appointed coordinators for the primary purpose of preventing and educating students on sexual violence. These administrators “... give advice on the options, whether it’s filing a formal complaint, pursuing some sort of informal resolution, or going to the police... They make sure people who are sexually assaulted can get back on track, academically and otherwise. And they make sure offenders are punished.”<sup>34</sup> Unfortunately, most of these coordinators over the past decade have been poorly prepared and lack institutional support and resources to do their job effectively. Most Title IX coordinators have other responsibilities in addition to addressing sexual violence: in 2018 only 21% of Title IX coordinators were full-time.<sup>35</sup> In addition, the turnover of Title IX coordinators is extremely high. In 2018, 20% of Title IX coordinators had been at their schools less than a year, 64% less than three years, and 87% less than five years.<sup>36</sup>

The high turnover and general lack of experience of Title IX coordinators combined with the high demand for federal compliance and fear of litigation has resulted in a culture of compliance rather than prevention.<sup>37</sup> This encourages policies that are focused on protecting the school from harm rather than restoring safety and trust in the community.

A high turnover rate and the subsequent difficulty locating nodes of power also makes it more difficult for students to understand the Title IX process and hold their administrators accountable for doing a sufficient job. This allows universities to continue to be compliant with Title IX but ineffective — securing their legal safety and minimizing their responsibility to eradicating sexual violence on their campuses. This, along with confusing expectations about what a Title IX coordinator and office does — is it advocacy? Is it fact finding? — often leads to survivors feeling that the institution doesn't take their cases seriously.<sup>38</sup>

The role and practical application of Title IX directors exemplifies the way that HEIs have turned a piece of legislation that's supposed to address systemic issues into a neoliberalized practice in which individuals are punished without looking at the systemic roots of the problem. HEIs are actively avoiding being held accountable for creating or being passive in the face of environments that allow sexual violence to occur, and instead only punish the individuals that are products of these environments. This demonstrates the emphasis on liability and compliance rather than addressing the roots of the issue.

### **Liability:**

Title IX is civil law as opposed to criminal law, so it has potential to hold institutions accountable for allowing sexual violence to happen instead of simply persecuting individuals,

although this does not happen in practice. In 1999 the Supreme Court ruled that institutions would be liable under Title IX for student on student sexual harassment or assault.<sup>39</sup> This means that HEIs are liable for students' behavior regarding sexual violence "... not because the student perpetrator was acting as an agent of the university, but rather because the university failed to prevent and/or respond adequately to such violence."<sup>40</sup> Since there is the incentive of federal withdrawal of money, institutions are afraid of not being compliant with Title IX — if an institution is non-compliant, it's vulnerable to fines and litigation by either an individual student or the Office for Civil Rights. This fear of liability can prompt two responses from universities. The first is "to avoid knowledge about instances of sexual violence,"<sup>41</sup> which was common during the early stages of Title IX. Prior to 2011, colleges "... discouraged reporting, made reporting difficult, delayed adjudication when high profile athletes [were] involved, and worked to cover up allegations of sexual assault."<sup>42</sup> The second response is "to encourage broad mandatory reporting and to react swiftly and punitively to reported acts so that it does not face liability for failure to protect the complainants"<sup>43</sup> which is the more common response now.

### **Compliance:**

Fear of liability, which also fuels the Title IX director's role, leads to a neoliberal "culture of compliance"<sup>44</sup> in which HEIs prioritize following Title IX policy in its most militarized form. HEIs punish individuals rather than creating systemic change so that environments which encourage sexual violence no longer exist. So the priority becomes protecting the institution rather than survivor advocacy or addressing the roots of sexual violence. For example, many HEIs have instituted mandatory reporting — often designating all

adult staff and faculty as mandatory reporters, as well as some student employees — as a way to stay compliant with Title IX law. Since the “Dear Colleague” letter and the establishment of mandatory reporting, there has been an increase in complaints filed.<sup>45</sup> However, by forcing staff and faculty to report whatever they know, these “... campus policies that mandate reporting irrespective of the victim's desire perpetuate a campus environment of silence and isolation and limit victims' options for confiding in trusted sources.”<sup>46</sup> Thus, survivors’ comfort and needs are decentered and prioritized behind the institution’s fear of liability.

HEIs will often bring in risk management consultants or will place Title IX directors in risk management offices in order to navigate this landscape of liability and compliance.<sup>47</sup> Since HEIs are more likely to be held liable for failing to punish perpetrators severely enough, they’re recommended to deliver harsher and swifter punishment.<sup>48</sup> This in turn fuels the neoliberal punitive turn in Title IX policy and enforces the individualization of sexual violence. However this fear is almost unwarranted, as no university has experienced withdrawal of funds from the federal government over Title IX — HEIs have only lost money through individual lawsuits.<sup>49</sup>

### **Response Duty:**

By focusing on “a desire to demonstrate zero tolerance for sexual violence through punitive responses and to hedge risk by overcompensating with harsh sanctions,”<sup>50</sup> colleges tend to lean toward more punitive measures, mimicking the criminal justice system even though Title IX is civil, not criminal, law. This shift towards punitive responses can be seen through the emphasis on the university’s response duty.<sup>51</sup> Calls for harsher punishment for respondents, such as setting mandatory minimums or requiring universities to report rapes to the police, have

increased.<sup>52</sup> Thus, “the carceral feminist mindset — that a punitive response is the way to respond to, prevent, and remedy sexual assault — drives much of the current Title IX policy and procedure.”<sup>53</sup> Emphasizing the duty to respond is beneficial to HEIs because it minimizes what is expected of them, decreasing their liability. However, this distracts from the roots of sexual violence and absolves the college of any part that it may have had in creating an environment in which sexual assault can occur. While criminalizing Title IX “... may validate the voices and experiences of those who have, until recently, felt silenced or ignored,”<sup>54</sup> it does not solve the problem of sexual violence.

Not only does this manifestation of carceral feminism in Title IX reinforce the notion that relying on the state is a universal solution, it reinforces the notion that sexual violence is an individual, indiosyncratic problem. By doing this, punitive measures coming from Title IX mask the fact that sexual violence’s roots come from systemic, cultural attitudes that have been encouraged and socialized. It posits the responsibility on the individual and hides the influence of a larger patriarchal regime that allows and encourages sexual violence.

### **Prevention Duty:**

The history of women’s constructed vulnerability and corresponding violence prevention efforts influences the way prevention is manifested on campuses today. In the 1980s and 1990s, the “paternalistic myth of women’s vulnerability evolved into the neoliberal ‘risk management.’”<sup>55</sup> This shift changed the rhetoric around violence from danger to risk, which individualizes a number of problems so that they simply become “accidents” that happen to people.<sup>56</sup> Thus, as is true with the professionalization of sexual violence, the site of intervention



moves away from the perpetrator's actions and behavior to potential victims. This results in sexual violence prevention efforts being based on teaching potential victims to avoid assault rather than teaching potential perpetrators not to be violent. The act of sexual violence is separated from the person enacting it, and thus sexual violence "... is constructed as the self-perpetuating subject of its own actions."<sup>57</sup> This "... empties rape of actions and agents so it becomes phenomenal"<sup>58</sup> and so the responsibility to stop sexual violence is put on the potential victim. Women's bodies, primarily, become spaces of danger, and thus the "risk factors" included in being raped include simply having a woman's body.<sup>59</sup> Not only does this encourage victim blaming, but it absolves our larger society of the responsibility of securing people's "... freedom to live, move, and socialize unharmed."<sup>60</sup>

Similarly, these individualizing influences are paralleled in the way that sexual violence prevention or education is discussed in higher education. HEIs are required to have educational programs about sexual violence for incoming and returning students.<sup>61</sup> The SaVE Act "requires that schools warn students that sexual assault is prohibited, define relevant terms (such as consent), and delineate the consequences of violating these prohibitions."<sup>62</sup> In addition, it has requirements on how to educate potential victims and bystanders, however "universities need not offer educational programs that seek affirmatively to change the attitudes or actions of potential perpetrators."<sup>63</sup> Thus, the responsibility for preventing sexual violence is again posited onto potential survivors and bystanders rather than potential perpetrators. Not only that, but failing to address the systemic roots of sexual violence allows for these acts of violence to continue to occur. This was demonstrated by one study, in which no traditional once-a-year modules or workshops on sexual violence "... demonstrated lasting effects on risk factors or behavior."<sup>64</sup>

Through refusing to address potential perpetrators in prevention programming, universities show a “presumption that has motivated much criminal justice policy and procedure about sex offenders: that they are deviants who are essentially beyond rehabilitation, and that behavioral interventions are a waste of time and resources.”<sup>65</sup> This assumption then allows for a more intense criminalization of perpetrators, and even closer alignment to the criminal justice system. In addition, by individualizing sexual violence rather than making connections to patriarchy, “the figure of the rapist is rendered more monstrous, thereby creating absolute distance between him and the everyday man, between rape and other misogynist and heterosexist practices.”<sup>66</sup> This also “naturalizes rape in a manner that denies men's ability to stop raping women.”<sup>67</sup> This distances the act of sexual violence from other manifestations of patriarchy, separating the symptom from the root and preventing connections from being drawn between gender violence and greater power imbalances.

Addressing potential perpetrators in sexual violence education programs would imply that sexual violence is not inherent to people's natures, but is a learned behavior based on cultural norms and attitudes. If HEIs were to address sexual violence as such, their response to sexual violence would have to include changing the attitudes of their students rather than simply adjudicating and eliminating individuals who have caused harm. However, if perpetrators can't be changed, the only thing to do about them is to identify and remove them from campus.<sup>68</sup> Thus, universities often turn to incapacitation as a solution. Unfortunately, sexual violence is “... not an issue of an individual person whose removal would remove the problem. Indeed the assumption that to remove a person is to remove a problem is often how the problem remains”<sup>69</sup>

**Remedial Duty:**

For the survivor of sexual violence, the “Dear Colleague” letter encourages schools to help them “change living situations, granting requests for academic accommodation, instituting a no contact order against the alleged perpetrator, and assisting her in accessing medical, mental health, and other supportive services.”<sup>70</sup> The solutions to helping the survivor again become individualized and professionalized. For the community, after an instance of sexual violence, the Letter recommends “offering mental health and counseling services to all students affected by sexual violence, properly training employees and notifying students about how to identify and respond to sexual violence, and periodically assessing the efficacy of the university’s response to sexual violence.”<sup>71</sup> Individualism is again presented as the solution to sexual violence. No community discussions, community healing, or systemic analysis is encouraged. By reminding individuals of their responsibilities or the resources available to them, and failing to critique the current systems used to respond to sexual violence, sexual violence is implied to be idiosyncratic and rare. This serves to distract from the fact that sexual violence is a common occurrence on college campuses and does nothing to prevent further violence.

**Conclusion:**

Addressing the issue of sexual violence through a neoliberal lense in higher education has created a state of response and management on behalf of the school, rather than an interrogation of sexual violence’s factors, how to care for those affected by it, or how to change those who have perpetrated. Simply suspending a student for sexual violence does not ensure that their behavior will change, that when they eventually return they will be less likely to offend, that

while they are gone they won't offend, and it doesn't ensure that the environment and systems that allowed for the violence to occur in the first place are eradicated. Thus, the current Title IX system does little to prevent future instances of sexual violence, covering only its most minimal duties.

### **Moving Away from a Neoliberal Title IX:**

Title IX, because it is supposed to hold institutions accountable for allowing sexual violence, has the potential to result in systemic change rather than punitive individual measures. A systemic lens would de-individualize the representation of sexual violence, locating the roots of the problem within patriarchy and power. Collins presents one recommendation for reforming Title IX, writing that a more systemic implementation of Title IX could include investigations that move beyond just the individuals involved to an investigation of the institution's passivity with regards to environments encouraging sexual violence. This type of investigation could ask questions such as: "... whether the university has a stake in covering up incidents of sexual violence because the accused is a member of a profitable sports team or whether the university dissuades students from speaking out about sexual violence."<sup>72</sup> In addition, universities should question what efforts they are making to address the roots of the problems of sexual violence, such as misogyny and power. Thus, another question could be: Does the university actively educate its students on patriarchy and actively take a stance against it? In its education on sexual violence, does the university connect individual instances of sexual violence to larger systems of power, such as racism, colonialism, classism, and patriarchy? How does the university educate potential perpetrators on sexual violence? How does the university change the attitudes and

cultures of those inclined to be sexually violent? Not only would efforts like these point to the roots of the problem of sexual violence, but they would move us away from locating the responsibility of avoiding sexual violence on potential victims. This would also shift the discourse from the survivor being represented as an innocent, white, cis woman and move us away from stereotypical and racist constructions of criminality. By moving away from stereotypical representations of sexual violence, our understandings of sexual violence, why it happens, and who it happens to, would be expanded to be much more intersectional.

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

### **Restorative Justice:**

The term restorative justice umbrellas a set of practices, usually a meeting, that involve all individuals affected by an instance of violence. Restorative justice avoids punitive measures and instead focuses on restoring trust within communities after harm has been done. Prior to a restorative justice meeting, the perpetrator must accept responsibility for their actions. The survivor and their needs are centered throughout the meeting, making the process significantly more survivor-centered than the criminal justice system. Oftentimes the meeting or meetings will conclude with community expectations for the perpetrator regarding how the community will support the perpetrator in not offending again, and ways to hold them accountable. Restorative

justice can be attractive to students who want to have some kind of resolution with the offender, but don't want to see them be expelled or suspended. Similar to larger trends in the effectiveness of restorative justice, one study found that in higher education, "... high levels of satisfaction among harmed parties and consistent improvement in student offender learning and development compared with traditional approaches."<sup>73</sup> In addition, restorative justice often produces lower recidivism rates for the offender. HEIs like the College of New Jersey, Skidmore, and the University of Arizona are all implementing various restorative justice methods. However, given our neoliberal society, many schools are afraid that restorative justice methods won't comply with federal law, funneling them toward using punitive measures instead.

*Naomi Strait (she/her/hers) is a senior at Macalester College majoring in American Studies with a minor in Women, Gender, and Sexuality Studies. In the future she hopes to work with incarcerated or formerly incarcerated populations, specifically focusing on using restorative justice to resolve conflict and build trust within and across communities. Naomi is passionate about prison abolition and eradicating sexual violence, and the tension between the mainstream movements for both of these is what led her to research carceral feminism for this project. She thanks everyone who helped her throughout her educational career, which made this project possible.*

### Notes

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3. *Ibid.*, 5.
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