SEXUAL ASSAULT AND DELIBERATIVE DEMOCRACY:
POTENTIAL FOR CHANGE

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A Thesis

Presented to

The Honors Tutorial College

Ohio University

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In Partial Fulfillment

of the Requirements for Graduation

from the Honors Tutorial College

with the degree of

Bachelor of Arts in Political Science

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by

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June 2011

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Introduction

In Alice Sebold's memoir, <u>Lucky,</u> she recounts her rape in detail. She begins the book with the encounter, describing how her perpetrator threatened her with a knife, laughed at her when she pleaded with him to release her, and in a relatively short period of time, completely changed her life. When Sebold returns to her dorm and is approached by a Black man in her college, she details how he hugged her close, crying both because her perpetrator had also been Black but also because he knew how that reinforced centuries of stereotyping. She writes of police officers who became invested in her case only when they discovered she had been a virgin prior to being raped, a jury who became interested in her as a victim when they were told that her attacker had been Black, and a stranger to her. Sebold explains that when she finally began to break the silence and speak about her rape publicly, people were surprised. She was white, after all, and from the suburbs – how could she have been raped? That is, of course, until they were told her rapist was Black.

Rape is a problem with which American democracy has never been able to cope. Throughout United States history, rape has been a taboo topic in politics, resulting in little dialogue and even fewer legislative actions. The United States Department of Justice estimates that 300,000 women are raped each year, meaning that in America's relatively short history as a nation, millions of women have been

raped.[1] The majority of these women probably never reported their attack; if they did, they faced law enforcement and prosecutors who believed women to be liars.

How can one begin to explain this conundrum? With sexual assault having long-since reached epidemic proportions in the population, conservative estimates placing the current rate of women being victimized at one in six, little has been done to address rape in the United States.[2] In order to pursue a solution to this problem, one that has seemingly plagued America since before the American Revolution, an in-depth analysis of it is required. This is precisely what will be presented in the following thesis.

Chapter One examines the current model of democracy employed in the United States, aggregative democracy. Through a historical analysis centering on the experiences of Black women in relationship to sexual violence, aggregative democracy is shown to be an inadequate method of democracy for dealing with issues of rape. Once established, other models of democracy are examined for their potential for effecting transformative change on the way American government treats sexual assault. One such model, deliberative democracy, is presented as a viable alternative model for its penchant for increased inclusion of members of minority groups in governing bodies. The theories of one prominent feminist deliberative democrat, Iris Marion Young, are examined for their content to determine the ways in which sexual violence would be addressed within a deliberative democratic model.

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[1] Patricia Tjaden and Nancy Thoennes. *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey*. Washington, D.C.: U.S. Department of Justice, 2006. iii. http://www.ncjrs.gov/pdffiles1/nij/210346.pdf
[22] *Ibid*.

Chapter Two examines the nuances of aggregative democracy through the work of one of Young's peers, Anne Phillips. Phillips embraces aggregative democracy, but laments the low rates at which women are represented within it. Instead of calling for a new model of democracy, Phillips looks to the implementation of gender quotas within legislatures in order to increase the presence of women in governments. She hopes that the increased inclusion of women through quotas will make addressing issues like sexual violence inevitable. Still, Young's theories of communication are utilized to show the ways in which aggregative democracy does not allow for the level or kind of communication necessary for governments to get an accurate picture of rape as a country-specific issue. Deliberative democracy is shown to be the most viable alternative model of democracy, specifically so that the United States can react to rape more effectively.

Chapter Three continues to look at the idea of governance, but from a different angle than the previous two. Instead of focusing on models of democracy best equipped to deal with rape as a political issue, Chapter Three examines the foundations from which different political theorists call for the increased inclusion of women in governance. This is important for understanding the models of democracy different political theorists propose; for example, Iris Marion Young and Anne Phillips have very different ideas about why gender matters in politics, and so have very different models of ideal political structures of women. Seven different theories are analyzed for their value in attempting to make rape a viable political issue: essentialism, social constructionism, intersectionality, feminist standpoint theory,

Black feminist thought, Young's group/series construction of identity, and feminist legal theory.

Continuing with ideas of identity, Chapter Four examines the ways in which gender, race, and class matter as facets of an individual, particularly when an individual is formally involved with the existing structure of governance in the United States. Women judges are examined for their propensity to find in favor of plaintiffs bringing sex discrimination cases, and female legislators are looked at for their likelihood at increasing attention paid to so-called "women's issues." African-American judges are scrutinized to determine the rates at which they will find in favor of victims of racial discrimination who bring their cases to court. Although class is not a variable with the same kind of outward characteristics as race and gender, it determined to still be a very important and formative part of an individual's identity, lending itself to politics and decisions in similar ways that race and gender do.

Finally, Chapter Five narrows in on the issue of rape in the United States, and Ohio specifically. Rape laws are looked to from ancient Babylonia to present day, in order to determine overarching themes through time. Ohio is presented as being part of a region (the Midwest) with a higher rate of rape than other regions of the United States, and so is looked at closely in order to determine why the rate is higher than other regions of the nation, despite the fact that all regions have the same legal foundations for rape law and policy. In an effort to solve this puzzle, Ohio's rape laws are compared with other rape laws from the Early American period to the present. Additionally, the Ohio General Assembly is examined in order to determine the rates

at which women have participated over time and also to try and track correlations between women present in the legislature and changes in rape law.

It is the aim of this thesis to take note of existing structures surrounding rape law in the United States in order to discover why these structures have been so impotent in both preventing and dealing with rape law. It is hoped that the ideas presented in the thesis show both the value of the presence of women in government and the importance of changing the existing model of government in order for female politicians to be effective. The path to ending sexual violence is long and arduous, but the following chapters present the unique and wonderful opportunity to, at the very least, begin.

Chapter One

> I did not overlook what happened on Marshall Street that night. *Everything* was wrong. It was wrong that I couldn't walk through a park at night. It was wrong that I was raped. It was wrong that my rapist assumed he was untouchable or that as a Syracuse coed I was most certainly treated better by the police. It was wrong that the niece of the officer was raped. It was wrong of him to call her ruined. It was wrong to put the lights on and strut that car down Marshall. It was wrong to hassle, and perhaps physically hurt, three innocent young black men on the street…There is no *but*…[1]

An excerpt from the memoir Lucky, the paragraph above expertly captures the

complicated state of sexual assault in the United States of America. Sexual violence occupies

uncertain space in American society, as an issue closed off from public discussion but portrayed

with morbid fascination in the media almost daily. Survivors of sexual assault face a world that

does not understand their experience: a society over-saturated with myths about what sexual

assault is, unsure where blame lies, and not certain whether or not it can be prevented. Survivors

also often find that there is a massive gap between their experience and what is accounted for in

current political and criminal policies. The situation is dire: one in four women will be a victim

of attempted or completed rape in her lifetime; women eighteen to thirty-two are four times as

likely as the general public to be assaulted, and only six percent of rapists will ever spend time in

prison.[2]

Despite the fact that someone in the United States is sexually assaulted every two

minutes,[3] sexual violence is a topic rarely broached in political discourse. When it is, it is awash

in rape mythology so pervasive it is almost impossible to have an honest conversation about it.

These myths are a part of the fabric of American life, and are things most, if not all, people are

intimately familiar with: women who dress provocatively are "asking for it", women who have

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[1] Alice Sebold, *Lucky: A Memoir* (New York: Scribner, 1999) 110.
[2] "Statistics," Accessed January 20, 2011, http://www.rainn.org/statistics.
[3] *Ibid*.

had sexual intercourse once will not say, "No," if presented with the option in the future; or that women will often "cry rape" in order to get wanted attention. Sexual assault is one of the most prevalent crimes in America today; why, then, having reached epidemic proportions, has there been a lack of effective policy on this issue?

In order to create effective policies, it may be necessary to alter the climate in which these policies are created. "Climate" refers generally to the political structure from which legislation is created and comes into being. Re-conceptualizing the democratic process is a necessary step toward making democracy better at reacting to and being proactive towards sexual violence in the United States. To this end, political theorist Iris Marion Young suggests a democratic model called deliberative democracy, a form of deep democracy that has the flexibility to react to constituent concerns by maintaining a practice of citizen participation and active listening at every level of government.

Before beginning a conversation about the benefits of deliberative democracy, it is first important to understand what deliberative democracy is. For that matter, it is important to understand the current democratic structure in place in the United States, in order to see the critical differences between it and the deliberative democratic model. Although many in the United States are familiar with the term "democracy," the term itself is rather ambiguous and meaningless. Despite being a self-described "democratic state," the United States is not democratic in traditional or conventional ways. Democracy, in the simplest terms, is a political system in which citizens (however they are defined) directly participate in the decisions a government makes. According to Iris Marion Young, "…democratic politics entails a rule of

law, promotion of civil and political liberties, [and] free and fair election of lawmakers."[4] Here, one finds a specific example of the breadth of the term democracy, as there are many possible understandings of what "rule of law", "civil and political liberties", and "free and fair elections" are. Even in the United States, these definitions have not been static; in the last century alone, these definitions have changed. For example, the United States has gone from excluding African Americans from citizenship to protecting their right to participate in elections.

"Democracy" is an acceptable, although not entirely accurate, way of understanding the organization of government in the United States. In the United States, citizens elect representatives who determine solutions to the issues government faces. These citizens are (sometimes) encouraged to contact their representatives on (certain) issues, but representatives are often left to make decisions without consulting their constituents. Young refers to democratic structures such as the one employed by the United States as aggregative democracies. In aggregative democracies, the preferences of citizens compete through political officeholders; that is, individuals elect representatives who they believe will best represent their interests. Representatives then act upon the perceived interests of the majority of the constituents who elected them. Through this system, the preferences of constituents are considered relatively static for a given area, which leaves little room for the assertion of actual differences in interests between groups within that area. For example, a Senator from the State of New York votes in ways that supposedly speak to the interests of those who elected her or him. This likely means that the Senator will vote along political party lines, leaving no way of legitimately considering an issue from the perspective, of, say, gender. American politics, in this way, can pretend to be neutral to the differences of marginalized groups.

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[4] Iris Marion Young, *Inclusion and Democracy* (New York: Oxford University Press, 2000), 5.

In addition to interest-blindness, aggregative democracies like the one in the United States have no tools for ranking preferences within political parties. The result of this is usually that the preferences of those holding power have political importance. That those holding power are usually members of the dominant group is no accident; it is the result of hundreds of years of discrimination against and the exclusion of marginalized groups on the basis of gender, race, class, sexuality, and other variables. For evidence of this, one need only consider the way the United States initially conceived of citizenship as belonging only to white male landowners. Over time, this idea of citizenship has evolved, however, white men of the upper class continue to dominate legislatures at every level of government.

In the 112th Congress, recently elected in November 2010, there are 535 total members, with 529 voting positions. The six non-voting positions are delegates in the House of Representatives from American Samoa, the Northern Marina Islands, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. These delegates are excluded in the following data about the gender and racial composition of the 112th Congress. The 112th House of Representatives has forty-nine white women, twenty-three women of color, and forty-five men of color. The 112th Senate has seventeen white women, no women of color, and one Asian-American man. White women make up 12.5 percent of total voting members of Congress, and women of color make up a mere 4.3 percent. Total, this means that only 16.8 percent of voting members in Congress are women. Given that over half of the United States' population is women, 16.8 percent is an abysmal number that does not even begin to broach equitable representation in regards to population rates. Men of color make up 8.7 percent of Congress, which when paired with the percentage of women of color means that people of color make up approximately twelve percent of the 112th Congress. Considering that, as of July 1, 2007, the

white population of the United States was sixty-six percent, racial minorities fare marginally

better than women as far as representation in Congress goes, but Congress is still nowhere near a

true reflection of the composition of the United States of America.[5]

In an aggregative democracy, it is difficult to make claims that a lack of women and a

lack of racial minority groups in politics matters. These models leave little to no room for the

expression of individual experience and subjectivity. For evidence, consider the way the model

operates: a group of citizens vote, and the outcome of their votes as a total sum dictates the

winner. The same can be said for preferences; to clarify, individual interests are not given room

in aggregative models of democracy, because the model depends on numbers to find legitimacy.

As previously mentioned, aggregative models of democracy leave little room for the

incorporation of individual experiences into the democratic process. Partially to blame is the way

aggregative democracy privileges the majority, quite literally listening only to the largest total

sum of voices. Considering this, it is impossible for the experiences of minority groups to

influence policies, no matter how antithetical these experiences are in relationship to the norms

established by dominant groups. In her book, Women Race and Class, author Angela Y. Davis

explores the ways in which the aggregative model of democracy specifically harms African

Americans in the United States.

Davis uses sexual violence as a way of looking at the intersection of sexism, racism, and

class privilege in the United States. She begins by explaining that under slavery, labor was not

gendered for men and women. In other words, African slaves performed the same labor

regardless of gender. Importantly, however, men and women were treated differently in regards

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[5] "Race, Gender, and the US Congress," Accessed January 25, 2011
http://www.justjackfruit.com/2009/01/28/race-and-the-us-congress/.

to punishment and tactics used to prevent rebellion. Davis explains, "women were not only whipped and mutilated, they were also *raped*."[6] This explains that while both men and women were physically harmed by slave owners, the experiences of female slaves was differentiated by the use of sexual violence. Although enacted against Black women, rape also had an effect on Black men; in fact, according to Davis, "[r]ape was a weapon of repression, whose covert goal was to extinguish slave women's will to resist. And in the process, demoralize their men."[7]

After the Civil War and the end of the formal institution of slavery in the United States, sexuality and sexual violence continued to be a mechanism of force utilized against the African American community. Black women remained prey to white male advances as they became domestic workers inside white homes. They were also victimized inside their own homes. According to Paula Giddings, the post-Civil War period in Memphis, Tennessee, was a violent one for African American women. Federal inquiries into white mob violence in Memphis following the end of the Civil War "revealed that many of them [Black women], living alone, were robbed, beaten, and raped."[8] Black men, meanwhile, were positioned as dangerous sexual beings, whose main targets were white women. It is important to note that the white women who were supposedly "in danger" were women of the middle and upper classes in American society; working class women, as well as non-white women generally, were considered hyper-sexual. This supposedly overt sexuality made it impossible for these women to be considered victims of sexual violence.

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[6] Angela Y. Davis, *Women, Race and Class* (New York: Random House, 1981), 23 (emphasis original).
[7] *Ibid.,* 24.
[8] Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York: Morrow, 1984), 25.

Between 1930 and 1967, there were 455 men executed for rape in the United States.[9] Incredibly, 405 of these men were Black.[10] It is impossible that this is an accurate reflection of rape in the United States during this time. Although Davis gives no information about whether or not the other men executed during this time were also white, according to information provided by Ida B. Wells at the beginning of the 20th century about lynchings, it is likely that if there were white men executed, they were members of the working class. In a study of lynchings between 1896 and 1900, Wells-Barnett found that although rape was a popular justification for lynchings, that was not the actual reason for the majority of lynchings that occurred.

Wells-Barnett acknowledges that, "ninety-nine percent [of white people in the United States] discuss the question upon the presumption that lynchings are the desperate effort of the Southern people to protect their women from black monsters."[11] In order to undermine that assertion, Wells-Barnett looks into the actual reported reasons given for lynchings carried out. In 1896, thirty-one of eighty-six lynchings were based on rape allegations; in 1897, the number changed to twenty-two of 123; in 1898, only sixteen 102; in 1899, eleven of ninety; and in 1900, only sixteen of 102 lynchings were performed on the basis of rape. The total number of lynchings based on rape allegations between 1896 and 1900, then, was ninety-six. The total number of lynchings performed in that five year span was 504, meaning that the percentage of lynchings based on rape was approximately nineteen percent. In addition to being nowhere near as prevalent as lynching supporters claimed it to be, this nineteen percent is likely an over-representation of rape, given that rape allegations against black men on behalf of white women were usually false.

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[9] Davis, 172.

[10] *Ibid.*

[11] Ida B. Wells, "Lynching and the Excuse for It," in *Feminist Theory: A Reader*, ed. Wendy K. Kolmar, et al. (Boston: McGraw-Hill Higher Education, 2009), 107.

According to Paula Giddings, Wells-Barnett also uncovered an uncomfortable truth about sexual relationships in the American South during the post-Civil War period. According to Giddings, "Wells uncovered a significant number of interracial liaisons. She dared to print, not only that such relationships existed, but that in many cases white women had actually taken the initiative."[12] Giddings suggests that if rejected, a white woman would lie about being sexually attacked in order to get back at the man who had jilted her. Although this seems to play into modern rape mythology, which claims that women will "cry rape" if their own sexual advances are denied, it is interesting to consider the ways in race complicates rape. If white women in the South wanted access to power, political or otherwise, inciting a lynching would certainly give them access to this power. In a political context built on a complex web of masculinity and white supremacy, it is possible that the most loyal thing a white woman in that period could do would be to make a false rape allegation. In this way, white women could simultaneously reinforce both masculinity as a mechanism for protecting white female virtue as well as white supremacy as a mechanism for dominating people of color.

The idea that false rape allegations could bring women power can perhaps best be highlighted by the actions taken by white women who wanted to protect their non-white sexual partners. Giddings reports several instances in which white women would deny their whiteness after giving birth to a child produced from an interracial relationship. A white woman who denied being white did so to protect her partner from the violence she knew would follow if it was discovered she was white. In this way, sexual relations became about whiteness; individuals had access to the power of whiteness through the manipulation of sexuality.

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[12] Giddings, 28.

Ida B. Wells-Barnett provides a useful chronicle of lynchings on the basis of the rape of white women in the late 1800s. In Elyria, Ohio, Mrs. J.C. Underwood told her husband and the police that she had been raped by William Offett, an African American man, while her husband was away on a business trip. Offett admitted to having a sexual relationship with Mrs. Underwood, but claimed it was consensual. Offett was sentenced to fifteen years in prison. At some point during his sentence, Mrs. Underwood confessed to her husband that she had, in fact, engaged in a consensual relationship with Offett, and had lied for three reasons: a neighbor had seen Offett leaving their home; she feared contraction of a venereal disease; and she did not want to appear to have had a consensual relationship with Offett if she had ended up pregnant. The fear of pregnancy appears perfectly rational when one considers that when Lillie Bailey (a white woman) gave birth to an African American child in Memphis, Tennessee, in the same time period of Mrs. Underwood's affair with William Offett, Bailey was regarded as a "depravity,"[13] to be both pitied and feared. It was depravity because Bailey admitted that the relationship had been consensual, and refused to give the name of the father for fear he would be lynched.

Wells-Barnett provides evidence of the power available to white women who claimed that they had been raped by Black men. In Texarkana, Arkansas, in 1892, Edward Coy was brutally skinned and burned alive for supposedly having raped a white woman. Although Coy had been engaging in a relationship with the white woman, and both parties, were, in fact, being adulterous, the rape allegation was completely false. According to Judge Albion W. Tourgee, a witness to the lynching who conducted an investigation shortly thereafter, the woman in question was "compelled by threats, if not by violence, to make the charge against him."[14] Whether coerced into claiming Coy had raped her or not, the white woman happily lit the match and held

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[13] Ida B. Wells, *On Lynchings* (New York: Arno Press and <u>The New York Times</u>, 1969), 61.
[14] *Ibid.*, 62.

it to Edward Coy's body in order to burn him alive while 15,000 people watched. Regardless of whether or not the allegation was forced from her lips, the woman gained power through the act of charging him with rape, a power that manifested the moment she brought the match to Coy's body.

Further evidence of the power available to white women through the false reporting of rape by African American men can be seen in the complete lack of power available to anyone in the United States trying to find justice for the sexual assaults and rapes perpetrated by white men. Again, Wells-Barnett provides succinct and horrible evidence.

> In Bowling Green, Virginia, Moses Christopher, a colored lad, was charged with assault, September 10. He was indicted, tried, convicted, and sentenced to death in one day. In the same state, at Danville, two weeks before – August 29, Thomas J. Penn, a white man, committed a criminal assault upon Lina Hanna, a twelve-year-old colored girl, but he has not been tried, certainly not killed either by the law or the mob.[15]

Wells-Barnett also offers interesting evidence in regards to the lynching of white men. According to her, "[d]uring the past 5 years, 147 white persons were lynched…not a single white victim of the mob was wealthy or had friends or influence to cause a miscarriage of justice."[16] This seems to be consistent with Davis' ideas about white men of the lower classes. She explains that rape can act as a leveling mechanism, through which men of lower classes, particularly white men of lower classes, feel as though they are being included in the privilege of the upper class. According to Davis, "when working class men accept the invitation to rape extended by the ideology of male supremacy, they are accepting a bribe – an illusory compensation for their

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[15] *Ibid.*, 69.
[16] Ida B. Wells, "Lynching and the Excuse for It,"108-109.

powerlessness."[17] This bribe works much more to the benefit of white men, seeing as Black men are already considered sexually deviant within United States society.

The consequences of the practice of treating Black men as sexual predators poised constantly toward white women is far-reaching; according to Davis, "…once it is accepted that Black men harbor irresistible and animal-like sexual urges, the entire race is invested with bestiality."[18] That is to say, Black women feel the impact as they are considered to have no boundaries to their sexual proclivity. The idea that Black women are naturally promiscuous has made it socially acceptable for sexual violence to be performed upon their bodies; their sexuality considered so powerful that it is impossible for them to withhold consent. Davis sees that this creates a tautological relationship between sexism and racism. For Davis, Black women are the intended targets of sexual violence, but due to the attachment of aggressive sexuality to specifically white masculinity, "white women in the United States have necessarily suffered the ricochet fire of these attacks."[19] In other words, the way sexual violence has been embedded in white masculinity may have been intended to harm Black women, but it has had horrific effects on the community of all women, generally.

Davis also points out that the fates of African American men and women are intimately related when it comes to sexuality. In order to fully understand the connection, Davis turns to fellow theorist Gerda Lerner, who points out that, "[t]he myth of the black rapist of white women is the twin of the bad black woman – both designed to apologize for and facilitate the continued exploitation of black men and women."[20] Davis' description of the twin positions of sexual

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[17] Davis, 200.
[18] *Ibid.*, 182.
[19] *Ibid.*, 177.
[20] *Ibid.*, 174.

violence and racism in the African American community is useful, because it provides an explanation for why the dominant understanding of rape and race relations is so different from the lived experiences of people of color.

Even armed with the knowledge that the reality of rape and race relations differs from what is presented as "normal" by dominant society, it may still be unclear how aggregative democracy plays a role in exacerbating the inconsistencies. According to critical race theorist Kimberle Williams Crenshaw, one of the immediate repercussions of an aggregative democratic model's approach to policies is that it creates uniform standards that cannot possibly adequately address the actual needs of women who are, in reality, very different from one another. According to Crenshaw:

> These uniform standards of support ignore the fact that different needs often demand different priorities in terms of resource allocation…these [uniform] standards hinder the ability of counselors to address the needs of nonwhite and poor women.[21]

In this way, Crenshaw is simply pointing out that uniform standards are inherently inadequate in a world without uniform experiences. Women are not a uniform group; sexual assault is not a uniform action. In the aggregative model, which looks only to the sum of an experience and listens only to those who can shout the loudest, the differences in an issue such as this cannot be factored into the solution, rendering solutions impotent before they can even be implemented.

Crenshaw presents an excellent example of a well-intentioned policy created and implemented within the aggregative democratic model in the United States. In order to see what happens when intervention strategies for violence against women ignore differences between

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[21] Kimberle Williams Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," in *The Public Nature of Private Violence*, ed. Martha Fineman, et al. (New York: Routledge, 1994), 98.

women, Crenshaw chose to examine the Battered Women and Marriage Fraud Amendments to the 1986 Immigration Act. The Immigration Act of 1986 determined that immigrants had to be married legally for two years before the immigrant could become a legal United States citizen through marriage to a citizen. This legislation put female immigrants who were victims of domestic violence in an impossible situation, one where reporting an abuser could result in an individual's deportation from the United States. In 1990, after a great deal of effort put forth by women's issue groups, a waiver for the two year requirement rule was introduced and passed. This waiver was intended to help immigrant women escape situations of domestic violence and still attain citizenship.

However, as Crenshaw illustrates, the solution was imperfect. Immigrant women remained vulnerable to domestic abuse for a variety of reasons. First, the waiver program required documentation of abuse, which was difficult for immigrant women due to their restricted access to services that could provide documentation. Secondly, immigrant women suffering from domestic abuse who did not understand English very well received information about legal policies directly from their abusers. Abusers had no reason to tell their victims that there was a legal way out of abuse that would still provide citizenship for them. Although well-intentioned, the 1990 Amendments to the 1986 Immigration Act did little to protect immigrant women from domestic abuse. In fact, according to Crenshaw, the Amendments instead unfortunately provide a perfect picture of "how patterns of subordination intersect in women's experience of domestic violence."[22]

Domestic violence is a very different issue than sexual assault, but looking at Crenshaw's analysis of the 1986 Immigration Act and the 1990 Amendments to it provide a useful look into

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[22] *Ibid.*, 97.

the inadequacies of aggregative democratic models. For another example of this, one can look to

Crenshaw once more. According to Crenshaw the crux of the issue stems from this idea, that

even "modest attempts to respond to certain problems can be ineffective when the intersectional

location of women of color is not considered in fashioning the remedy." For evidence of this

beyond the 1990 Amendments, one can look to the response Crenshaw received from the Los

Angeles Police Department (LAPD) when she asked for statistical information about domestic

violence in non-white communities. The LAPD refused her request, citing concern from leaders

within the communities in question who were concerned that the data would further the idea that

people of color are violent.

Crenshaw sees the value in withholding the statistics; as a person of color, she is

concerned about the stereotypes that surround different groups of people. At the same time,

however, she worries that withholding that kind of information will do more harm than good,

especially for the women the statistics concern. For Crenshaw, this is especially true when one

considers the ways in which campaigns against domestic violence are constructed. Public service

announcements designed to service white communities feature women of color as a way to

present the problem as one only fully prominent in non-white communities. Crenshaw feels that

this is further proof that, "the experience of violence by minority women is ignored, except to the

extent it garners white support for domestic violence programs in the white community."[23]

In an aggregative democracy, where citizen preferences are totaled and then acted upon,

it is highly problematic to pose domestic violence as an issue primarily for communities of color

– it is a disservice both to non-white women who experience domestic violence as well as to

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[23] Crenshaw, "Intersectionality and Identity Politics: Learning From Violence Against Women of Color." in *Feminist Theory: A Reader*, ed. Wendy K. Kolmar, et al. (Boston: McGraw-Hill Higher Education, 2009), 488.

white women victims. Domestic violence in this context serves not as a locus for political action, but rather additional content for the descriptive categories aggregative democracies rely on to know what their constituents "want." These categories replace the need for participation, because they allow representatives to feel knowledgeable about who their constituents are, and from there representatives feel they can reasonably predict what actions they should take on behalf of the constituency. These categories feed directly into social hierarchies in the United States, as they are filled with stereotypes instead of lived experience. Due to the nature in which these categories are constructed - that is, that they are constructed in a society that privileges whiteness and masculinity - the aggregative model of democracy is inherently unable to adequately address the needs of people living in the margins of society. According to Crenshaw, "when…politics fails us…it is…because the descriptive content of the[se] categories and the narratives on which they are based have privileged some experiences and excluded others."[24]

It is clear that an alternative to aggregative democracy is necessary. In contrast to aggregative democracy, deliberative democracy makes room for individual experiences to outweigh the sum of a voting bloc's supposed interests. Deliberative democracy refers to a political system that relies on citizen participation and input at every level of government. Attainment of this goal requires that different groups of people listen to one another in order to determine what decisions will be best for the group as a whole, not just for the privileged members of the group. This system of politics would render it impossible for a society to embrace myths such as the Black Male Rapist described previously by Angela Davis, because people in the United States would have closer associations with people who are different from them. Deliberative democracy would enable knowledge-sharing from different groups,

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[24] *Ibid.,* 489.

effectively re-teaching dominant groups about marginalized groups. If performed correctly, deliberative democracy allows people to shed their stereotypes and preconceptions in order to communicate with each other in a meaningful way.

One of the most important facets of deliberative democracy is its special definition of what it means to be rational. According to Young, this form of rationality occurs when, "participants arrive at a decision not by determining what preferences have the greatest numerical support, but by determining which proposals the collective agrees are supported by the best reasons."[25] This way of coming to a conclusion is completely different from traditional forms of rationalization, which require that individual people weigh their own interests to determine the best decision for themselves as independent actors. In contrast, deliberative democracy encourages people to come together, share their experiences, and abandon so-called "rational self-interest" for the betterment of the group. This flies in the face of traditional understandings of how political systems should operate, because it assumes an interconnectedness and interdependency between individual citizens which actually makes it irrational to act without consideration of people in a community.

People living in a deliberative democracy that operates on the form of rationality explained above also depend upon a different understanding of what it means to be reasonable. For Young, reason is a "…willingness to listen to others who want to explain to them why their ideas are incorrect or inappropriate."[26] A definition of reason like this reconfigures the reasonable person from a self-assured (white male) individual who uses his own seemingly innate knowledge to come to a well-reasoned decision about an issue, to an individual from any walk of life who must first be educated on her or his potential misunderstandings of a situation

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[25] Young, 23.
[26] *Ibid.*, 24.

before she or he can come to a reasonable decision. A reasonable person is one who is able to accept when she or he is wrong, based on the experience of another person. For this to be effective, different people must be able to trust each other, and members of the dominant group(s) must allow individuals to be known as experts of their own lives. For example, African Americans must be allowed to share their experiences with racism as viable knowledge, not self-interested or baseless rhetoric. They must be known as experts in racism simply because they have experienced it. This is not the way race relations currently operate in the United States of America.

Critical race theorist Derrick Bell sheds some light on what it is like for African Americans to try and talk about race within the current aggregative democratic structure in the United States. Bell describes what he calls "The Rules of Racial Standing," and he lays out five rules that structure conversations and cultural exchanges about race between white and non-white communities. In the first rule, Bell explains that when African Americans make statements on race, they are identified as illegitimate and self-serving. Due to this condition, any claims made about race are not given serious consideration. Bell explains that this rule even means that African Americans cannot speak positively about one another, because anything remotely related to race cannot be taken seriously from a person of color.

In his second rule of racial standing, Bell explains that African Americans make less convincing witnesses against instances of racism and racial tensions than white people do. According to Bell, this is due to the underlying assumption in American society that, "…blacks, unlike whites, cannot be objective on racial issues and will favor their own no matter what."[27] Typically, what results is that whenever issues of race come up in the public sphere, African Americans who speak on them are considered too emotionally invested to be useful sources of

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[27] Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992), 113.

"fact." In this structure, only white people can point out instances of racism, leaving people of color without any tools to call attention to the racialized experiences in their lives.

In conjunction with the first and second rule, Bell's third rule of racial standing claims that while African Americans are not considered good witnesses of racism, and cannot speak on issues of race without seeming self-serving, they can and are encouraged to criticize other Black people who upset white privilege. If one can accept that the United States is a structure that privileges whiteness, then it would make sense that any person of color who reinforces these ideals would enjoy privilege in this system. In fact, this is exactly what Bell articulates, explaining, "instantly, such statements [privileging whiteness] are granted 'enhanced standing'."[28]

The fourth rule of racial standing derives directly from the third. According to Bell, this rule refers to the situation that occurs when one member of the African American community is identified as going particularly against the grain of normative whiteness. When this happens, whites will, "actively recruit blacks willing to refute the statement or condemn the action."[29] Going along with the third rule, those who answer the call receive privileged status. Bell gives the example of Louis Farrakhan, a very controversial African American Muslim minister. Importantly, however, the critics who are given the most consideration as valid are those who are also African American, succinctly proving Bell's point. In participating in the degradation of Farrakhan, certain members of the Black community may experience moments of privilege, but in the long run, reinforce the first and second rules, which make it impossible for African Americans to speak with authority against whiteness and racism.

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[28] *Ibid.*, 114.
[29] *Ibid.*, 118.

The fifth, and final, rule of racial standing invokes an understanding of the first four rules. According to Bell, once an individual understands the first four rules, and continues to acknowledge their truth in everyday life and use, "…one gains the gift of prophecy about racism, its essence, its goals, even its remedies."[30] Bell acknowledges that this knowledge comes with frustration because, in his eyes, nothing can be done to change the rules. The important lesson is that people speak openly about the rules, and acknowledge them as true.

Although the rules of racial standing deal directly with race, it is interesting to consider the ways in which the reality might be similar for gender and class issues. In a deliberative democratic model, conversations of this nature would need to take place. This conversation requires a genuine transformation by the dominant group, one that would create a different kind of listening. It needs the kind of reasoning Young advocates for, one that begins with correcting the misunderstandings of the dominant group. As much as this form of reason requires trust, so does honest conversation between groups. Without this trust, deliberative democracy would be wholly ineffective.

Deliberative democracy does not only change what it means to be reasonable, or require deepened trust between groups of people in a society. It also redefines what justice means, and suggests new ways to pursue justice. Deliberative democrats like Iris Marion Young believe that justice is a specific concept, not as abstract and symbolic as it is understood to be in the American context. In the United States, justice is an ambiguous, umbrella term, roughly relating to general equality between groups of people. This equality can be political, social, economic, or even educational. According to Young, a better understanding of justice can be understood as the condition that allows unconstrained self-development and self-determination. Self-development is concerned with the ways in which resources are distributed, and also with the

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[30] *Ibid.,* 125.

structures of power and status that come with resource distribution. Young sees oppression as specifically affecting self-development, explaining that oppression is an "institutional constraint on self-development."[31]

On the other hand, self-determination refers directly to the ability of individuals to make decisions. While this seems slightly obvious, less so is the second part of self-determination: the space to determine the conditions under which a decision is made. This "space" requires an elimination of domination, which Young explains is an "institutional constraint on self-determination."[32] To understand the difference between self-determination and self-development, it is useful to understand the difference between domination and oppression. Oppression is often described in relationship to a birdcage, and although this metaphor verges upon cliché, it is useful. The birdcage is helpful because it illustrates the ways in which oppression refers to a system of interlocking barriers to freedom. If one cannot see the ways in which the barriers are related to form one larger blockade, it is impossible to know the true conditions of oppression. Self-development is impossible from within the birdcage, because one is not free to move outside of oppression.

Domination, on the other hand, "occurs when an individual or group coerces, controls, or intimidates others."[33] Although domination is a powerful measure, it is not the same thing as oppression, despite the fact that the two occur simultaneously at some times. One specific example provides the difference between oppression and domination by revealing the realities behind the concept of reverse racism:

> When the one white boy at an all-black school is taunted and even physically assaulted, these are acts of domination, not oppression. Some would call this reverse racism, but

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[31] Young, 31.
[32] *Ibid.*
[33] "Undermining Oppression." Accessed January 27, 2011.
http://www.crimethinc.com/texts/atoz/underminingoppression.php.

that expression is misleading: it suggests that the boy is experiencing the same thing the black students are by growing up in a white-dominated society, which is not the case. Oppression is not merely individual instances of domination, prejudice, or ignorance; it is the systematic privileging of one group over another. [34]

Domination, then, can be seen as a constraint on self-determination. If one cannot exist outside the violence of domination, then one cannot develop oneself. When domination and oppression happen at the same time, individuals are trapped, and completely without access to justice.

Young explains that the idea of justice in the American context is often reduced to mean that groups must shed their differences and come together to work toward issues as one body. This "shedding of group difference" acts in conjunction with attitudes toward assimilation that mandates marginalized groups relinquish their individuality in order to gain the privileges enjoyed by the dominant groups. For Young, the ideal of assimilation has no true relationship to justice. She sees assimilation as a dangerous route to justice for a variety of reasons. First, it removes the context necessary for the emergence of cultural-positive movements. Cultural-positive movements are those such as the Black Power Movement, which placed a positive emphasis on the racial differences African Americans have in contrast to different racial groups. These movements have an important place in a political quest for justice, because they uplift and unite groups of people who are traditionally marginalized from society, and who may not feel very valuable to society at large. These groups give self-esteem and self-confidence for minority groups who live outside of the declared preferred norm. In the case of the Black Power Movement, it gave a sense of pride to African Americans about their racial identity, which was traditionally used to oppress them.

Secondly, assimilation assumes that all differences between people are negative. Young argues that there are many positive differences between people of different races, genders, and

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[34] *Ibid.*

classes. In short, "[t]he assimilationist ideal involves denying either the reality or the desireability of social groups."[35] In denying the potential for positive difference, assimilationists position justice as a movement that counters the negative, instead of one that promotes the positive. Young sees this sort of ideology as counterintuitive to actual justice, which she defines as a societal context in which the "dominant culture is forced to recognize itself for the first time as specific: as Anglo, European, Christian, masculine, straight."[36] Without the ability to see itself as dominant, society remains blind to avenues toward meaningful justice. Young describes this blindness as one in which the experiences of non-dominant peoples in the world are discredited as potential sources of knowledge. In this state of blindness, privileged groups can ignore their own status as having privilege, all the while members of marginalized groups internalize their own oppression. Blindness makes the oppression and domination of non-dominant groups seem rational, and even deserved. In order for this blindness to be thwarted, a society must be just and allow the self-discovery of specificity and privilege by permitting all people to self-develop and self-determine outside of oppression and domination.

A just society requires more than simple recognition of privilege, however; it also requires spaces of honest communication between groups about their experiences inside and outside systems of privilege and oppression. Channels of communication between groups are necessary when different groups are coming together in a democratic system to advocate for needs. In order to have a democratic system that truly works to promote the wellbeing of all individuals, all individuals must be able to speak and be heard. This is not the case in the United States today. One can see the ways in which channels of communication are either dysfunctional

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[35] Young, 163.
[36] *Ibid.*, 166.

or not in existence between groups when one considers the overwhelming pervasiveness of rape mythology in American culture.

Rape myths are sentiments with which most people in the United States are familiar. Taken as truths about women and sexuality, rape myths attempt to explain sexual violence by pinning it on the victim. One of these myths is that of the role of so-called "provocative dress." This rape myth explains rape by painting women who dress "provocatively" as sexually promiscuous to the point where they would not deny any sexual advance made toward them. In addition, women who dress in this way are said to be inviting men to have sex with them, and mythology prevents men from being held accountable by painting male sexuality as uncontrollable when faced with an attractive woman. The idea that a woman's dress excuses sexual violence upon her person might seem inane, but this myth, and many others, has a strong influence on how American society perceives of and deals with sexual assault. Rape mythology is not remotely linked to the actual lived experiences of sexual assault survivors, yet it continues to dictate public policies and public perceptions of policies surrounding the issue. If a functional channel of communication existed between survivors and members of government, the influence of rape mythology on public policy would be obstructed by the true experiences of survivor, leading to transformative change on rape law and policy.

Chapter Two

> After those visits in the early summer, Tom and I saw each other at church. By that time I was no longer fixated on gaining Tom's attention or being seen with a handsome boy. I was scrutinizing his mother. She knew I knew about her, and she certainly knew about me, but we never spoke. A distance grew between me and Tom. It would have anyway, but the story of my rape had stormed into their lives uninvited. It had catalyzed a revelation inside their home. How that revelation affected them I do not know. But via her son, Mrs. McAllister gave me two things: my first awareness of another rape victim who lived in my world, and, by telling her sons, the proof that there was power to be had in sharing my story.[1]

Communication is not simple. It requires a certain degree of trust between people, which may or may not already exist prior to a conversation. Communication needs trust because it needs a mechanism for holding a listener accountable. It is one thing to speak and be passively listened to; it is quite another to speak and be heard, to have one's words incorporated into an action plan to redress grievances or praise progress that has occurred. Communication between groups requires that the dominant group(s) acknowledge its privilege(s) and act to compensate for them, by actively engaging with and taking seriously the experiences of members of marginalized groups. This kind of open and engaged communication style is a necessary prerequisite for a democratic structure that hopes to usefully incorporate the experiences of survivors of sexual assault into sexual assault policies. In order for women as representatives in political positions to have their experiences with sexual violence taken seriously as platforms for policy formation, communication between dominant groups and subordinate groups must be redesigned.

Communication also means taking into account the ways people are marginalized within existing systems of communication between groups. Iris Marion Young identifies two types of exclusion from communication, specifically in political processes: external and internal exclusion. External exclusion deals with exclusion in the traditional sense: physical exclusion

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[1] Alice Sebold, *Lucky: A Memoir* (New York: Scribner, 1999), 73.

from political processes, which is the type of exclusion against which many modern political rights movements fought against. (For example, the women's suffrage movement fought the external exclusion of women from voting.) Young identifies three ways external exclusion manifests itself. First, she explains the concept of backdoor brokering, in which members of a dominant group utilize pre-existing channels of communication and privilege to come to decisions and agreements with one another without consulting members of marginalized groups.

Second, external exclusion is enacted through the lack of access points for non-dominant groups to engage with dominant groups. One manifestation of this could be as simple as holding important meetings and not divulging the location of the meeting to people outside the dominant group, or holding meetings at times when members of a certain group of people cannot attend. One vivid example of this can be seen in the Young Women's Christian Association (YWCA) of the 1920s. During the 1920s, the YWCA established separate facilities for white and Black women. For a Black branch of the organization to be established, it had to be approved by local white women, which presented a significant problem as the YWCA tried to expand its membership in the South. In the South, as well as in the North, white women would block the creation of Black YWCA's. Whenever Black chapters were established, African American women would begin to assume leadership positions within the larger YWCA framework. Many of these women, including the first African American Secretary of the YWCA, were given no budget to work with and were not invited to meetings or conferences.

At the national YWCA conference of 1920, African American members proposed a resolution to allow Black chapters to organize on their own, without requiring white women's approval. According to Paula Giddings, "Not only were the efforts of Black women ignored at the meeting, but the official minutes sent to the National Board 'mysteriously' excluded any

record of their demands."[2] In ignoring the requests of African American women to the point of excluding their presence from the report, the YWCA denied African American members access points to be included in the formal organization, perfectly emulating Young's idea of external exclusion

The third, and final, way external exclusion occurs is through the domination of marginalized groups by powerful dominant groups. Acts of repressive violence against specific groups of people can intimidate them and prevent them from speaking out against their oppressor. For example, consider the act of lynching upon the Black community. Lynching served as a powerful mechanism of control, because it was an imminent threat upon those individuals who challenged white privilege in any way. These were acts of domination, immediately pressing upon the lives of people within the United States. Lynching functioned within the oppressive context of white supremacy, dominating individuals to prevent them from acting against the system.

More complicated than external exclusion, internal exclusion deals with ways marginalized groups are excluded from meaningful participation in political communication even after formal inclusion into a political system. Internal exclusion deals with the ways people interact with one another on a day-to-day basis. Iris Marion Young explains that communication between different groups of people is complicated, quite simply because different people have different ways of speaking and expressing themselves. This can be seen even in English-speaking populations in the United States.

On December 18, 1996, the Oakland School District of California passed a resolution supporting teaching in Ebonics. Ebonics is a particular dialect of American English used in

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[2] Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York: Morrow, 1984), 158.

African American communities. Teachers wanted to teach in Ebonics in order to speak to their students in the dialect with which they were most familiar. Despite this, the public reaction to the resolution was overwhelmingly negative. Among the critics of the resolution were prominent Black leaders, such as the Reverend Jesse Jackson. Given Derrick Bell's "Rules of Racial Standing", this is not surprising; as an African American speaking out against a policy that destabilizes white identity by troubling what one considers "English", Jackson was given privileged status and taken as representative of the entire Black community. Unfortunately, this meant that, "Those best qualified to comment on the teaching merit of the ruling, specifically linguists, somehow never had equal access to the popular media forums that the opponents to the ruling had."[3]

There is no evidence that teaching in dialects devalues a particular student's education. According to Steven Pinker, a Harvard University Psychology professor, teaching in dialect can be just as valuable as teaching in supposedly "proper" English. In fact, he explains that, "using terms like 'bad grammar' or 'nonstandard' is both insulting and scientifically inaccurate."[4] Formal English is just as arbitrary as Ebonics, and therefore Ebonics holds the same merits and could be effectively utilized in teaching. In addition, as Young would argue, teaching in Ebonics means that teachers as authority figures are respectfully including African Americans who speak Ebonics in their own educations, allowing them the possibility of full expression by validating the dialect with which they are most familiar.

Internal exclusion means that dominant groups decide which words have meaning. For the Ebonics issue in Oakland, this meant that despite the need for Black children to learn in a dialect that made sense to them, the dominant (read: white) group ruled against the resolution,

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[3] Amardo Rodriguez and Devika Chawla, *Intercultural Communication* (Dubuque: Kendall Hunt Publishing Group, 2010), 78.
[4] *Ibid.*, 79.

deciding instead that the children in the Oakland School District be taught in "Standard English".

In politics, the situation looks different, but the same effect occurs. In political contexts, internal

exclusion means that dominant groups determine the terms of a conversation, excluding

individuals with different rhetorical styles and ways of speaking. Young identifies three areas of

internal exclusion as they exist in existing democratic political systems. Although the idea of

internal exclusion focuses on the ways in which formally included marginalized groups are

continually excluded from meaningful political participation, it is also interesting to consider the

ways in which internal exclusion keeps people from understanding each other well enough to

extend an invitation for formal inclusion.

The first way internal exclusion operates is through what Young calls greeting and public

acknowledgement. She defines greeting as, "…the communicative moment of taking the risk of

trusting in order to…sustain a discussion about issues that face us together."[5] Greetings

contribute to increased justice by requiring trust and respect between a speaker and a listener, no

matter who the individuals are. Just greetings acknowledge the people who are present at a

discussion, and who must be listened to – regardless of their membership in non-dominant

groups of society. Greetings are a form of public acknowledgement, in which speakers are

respected as individuals holding knowledge. In the context of this thesis, even, the idea of

greeting and public acknowledgement become incredibly important. If women can be introduced

to political discussions as speakers worthy of respect on issues of sexual violence, then they can

be greeted and acknowledged as people worth listening to, despite their position outside the

dominant ideology of masculinity.

Secondly, internal exclusion depends on a narrow understanding of rhetoric. A just

conception of rhetoric acknowledges that people speak in different ways. A just rhetorical

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[5] Iris Marion Young, *Inclusion and Democracy* (New York: Oxford University Press, 2000), 58.

relationship between groups does not allow a negative bias toward non-dominant ways of speaking. This is essential for marginalized groups who are hoping to participate in democratic politics, because, as Young points out, "[r]hetorical moves…help to get an issue on the agenda for deliberation."[6] If non-dominant groups are not considered to be relevant speakers with useful rhetorical skills, marginalized peoples might never be able to push issues that affect them into the light for democratic consideration or policy development. If a marginalized group cannot attain political attention turned toward their issues, any claim to inclusive politics or political equality is farcical at best.

Finally, internal exclusion relies on excluding narratives from non-dominant groups. As previously touched upon, different groups of people possess different understandings of the world. In order to utilize these knowledges to their full transformative potential, a just society must train itself to listen to narratives from all different kinds of people, seriously engaging with the details and differences that emerge. Young feels that narrative is essential for justice in a political system, explaining that narratives can act "…to foster understanding among members of a polity with very different experiences or assumptions about what is important."[7] Making room for different narratives means that groups of people can share experiences beyond traditional group boundaries. For example, narratives allow African Americans to share their experiences with racism. In a just political system, these narratives would be taken seriously as informing public policies. Currently, if one recalls Derrick Bell's "Rules of Racial Standing", these stories are taken as self-interested and not at all a legitimate form of knowledge.

Although deliberative democracy provides a new way of performing democracy with an emphasis on the inclusion of marginalized groups, it is in no way a perfect system. In fact, Iris

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[6] *Ibid.*, 66.
[7] *Ibid.*, 73.

Marion Young identifies four critiques of deliberative democracy. The first is that it privileges argument. This means that deliberative democracy is more compatible with argument as a way of sharing knowledge than mere general conversation. Although Young's conception of deliberative democracy works to counter the privileging of certain forms of speech, it can do little to help marginalized groups with different ways of arguing. If argument is how deliberative democracy operates, and arguing is a way of speaking that privileges the dominant group, there seems to be a paradox within a system that works hard to stymie traditional privilege.

The second problem with deliberative democracy is that it privileges unity. Quite simply, deliberative democracy relies on groups of people coming together to discuss the issues that face them. If a community or group cannot come together, then it loses the potential power of its voice. In a deliberative democratic model, groups are only as effective as their ability to voice joint concerns. In an attempt to end the tyranny of a dominant majority, deliberative democracy necessarily makes it difficult for individuals to make their voices heard. Deliberation requires collaboration, sometimes resulting in privileging unity.

The third problem with deliberative democracy is that it assumes face-to-face discussion. In Young's depiction of deliberative democracy, groups come together in a physical location, where they can be introduced to one another and share ideas. According to Young's rules for communication, in order for marginalized groups to be included in democratic conversation, they require formal introduction to a dominant group as speakers who are worthy of being heard. Without face-to-face interaction, it is difficult to have a proper introduction, or know how one's words are being taken in by another group. Even inside Ohio University's main campus, boasting approximately 20,000 students, it is physically impossible to guarantee face-to-face interaction between different groups.

The final problem with deliberative democracy is that it assumes a norm of order. This simply means that deliberative democracy assumes that people can come together in coherent ways in order to communicate. This dependency on pre-existing coherency presumes that people have ways of ordering themselves in order to come together, and requires that these ways of coming together are similar across group lines. Without the ability to come together into an order, communication becomes impossible, rendering a deliberative democratic model sort of useless.

In order to fully understand critiques of deliberative democracy, it is useful to look to a contemporary democratic theorist of Iris Marion Young's, Anne Phillips. Despite being a critic of liberal democracy, Phillips is skeptical about the value of deliberative democracy as an alternative. Instead, Phillips focuses her efforts on retraining liberal democracies so that they can operate effectively for the political advancement of women. For Phillips, the trouble in liberal democracies is that the representatives elected reflect the overarching systems of privilege that exist in a society utilizing liberal democratic principles to structure its government, such as in the United States. According to Phillips, the trouble is that these liberal democracies "…[ask] us to consider irrelevant the composition of our elected assemblies,"[8] despite the fact that "…if there were no substantial differences between men and women or black people and white, than those elected would undoubtedly be a more random sample from those who elect."[9]

Phillips believes that liberal democracies require higher rates of representation from women and racial minority groups in order to be truly democratic. She warns against the notion that higher rates of representation represent a solution in and of itself, explaining that, within the current system "…those elected will be particularly skewed to a certain kind of woman, who,

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[8] Anne Phillips, *Engendering Democracy* (University Park: The Pennsylvania State University Press, 1991), 61.
[9] *Ibid.*, 63.

like the generations of men who went before her, will be a well-educated professional, devoted

to politics full time."[10] Although not explicitly detailed by Phillips, one can conclude that this

means white, upper-class women would be elected to office if increased representation for

women were mandated without meaningful change to the societal context from which

representatives are elected.

Discovering why women do not participate in politics at higher rates is at the crux of

Phillips' argument for increased representation within the existing liberal democratic context.

According to Phillips, women do not take leadership positions in liberal democracies for several

reasons: they are socialized to see politics as occurring outside of themselves; they are

constrained as mothers and caretakers; they are hugely underrepresented in those professions,

such as the practice of law, that lead most directly to politics; women are discouraged from

participation by a media hostile to women already involved; they are physically excluded by the

men who are at the gates to political life. Phillips differs from Young here, focusing on physical

mechanisms of exclusion from politics as opposed to an internal exclusion turning on

communicative difference. Phillips sees the struggle for women's formal inclusion in politics as

ongoing, whereas Young presupposes that (white) women have already achieved formal

inclusion. Although writing in different eras – Phillips just before the start of the Third Wave of

feminism in the 1990s and Young well inside the Third Wave in the 2000s – these two theories

continue to speak to current feminist concerns.

Phillips also takes an interesting stance on the idea of the "personal as political". Young's

theory of deliberative democracy relies on the notion that personal experiences possess political

value, especially when these experiences contradict dominant social norms. Conversely,

although Phillips can see the value in this as an idea, she calls for a distinction between the

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[10]*Ibid.,* 90.

personal and the political, explaining, "if we treat the personal as thoroughly identical to the political, we run the twin risks of believing our lives can be made perfect…and of handing over to others the responsibility of making them so."[11] Phillips believes that democracy is a constant struggle in which an individual best advocates for herself or himself. Although a valid critique of the "personal as political" ideology, Phillips unfortunately seems to ignore the political value that might reside in the simple act of speaking and being heard. The risks she outlines are important, and must be acknowledged, but in a political system where women, especially non-white women and women of the lower classes, have difficulty finding a voice, there is value in being given a space to speak, even if that speech is focused on those things Phillips believes to be "personal" and outside the scope of politics. In writing off the "personal as political", Phillips also ignores the ways in which the personal informs and reshapes the political by providing a space for traditionally marginalized groups to speak about their experiences interacting in a system that ignores them and legislates upon them simultaneously.

The idea of the supposed split between private and public life, or the personal and the political, is very essential to liberal democratic politics, but political theorist Martha Acklesberg questions whether or not this split actually exists in any meaningful way. The split between the public and the private life "treat[s] politics as a specialized activity of concern only to a few;" the "few," of course, being men.[12] The public/private split means that women reside in the private sphere, without interaction with the public sphere. Heteronormative American families rely on the idea of this split: women remain in the private sphere, and men go into the public sphere, representing the concerns of their families.

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[11] *Ibid.*, 106.

[12] Martha A. Ackelsberg, *Resisting Citizenship: Feminist Essays on Politics, Community, and Democracy* (New York: Routledge, 2010), 27.

In reality, women transcend this supposed divide every day. Millions of American women must enter the public sphere every day in order to work. Women also become politically engaged through interactions in their so-called private lives: a group of mothers might come together to advocate for a better school system for their children, or run the local Parent-Teacher Association. In order for democratic theories to be responsive to and considerate of the ways in which women's lives are conducted in ways that transcend the supposed public/private split, democratic theories must do the following: treat people as being individuals at the center of complicated networks; acknowledge the ways in which different identities interact with one another in the life of one individual; and redefine politics as that which occurs when daily concerns motivate action.

For Ackelsberg, the public/private split loses any meaningful content when one considers the ways in which the language of dependency has shaped American politics. According to Ackelsberg, citizenship in the United States has always been connected, in some way, to the idea of economic independence. White, "self-supporting" men have always been the pinnacle of citizenship under this ideology, and policies such as welfare policies have always assumed that those who are not white men - who are economically successful - are in need of help. Ackelsberg explains, "…the economic dependency of women, first on men and then on the state, was built into the structure of welfare state programs…along with assumptions about the separation of [public and private] spheres."[13] One of these assumptions built into welfare policy is that women will stay at home, performing domestic labor, while men are in the so-called "public sphere," obtaining economic reward through wages. While welfare policies cast this scenario as one where women are dependent on men in order to survive economically, Ackelsberg proposes that the reality is one where men would be unable to work for wages if women did not perform

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[13]*Ibid.*, 62.

domestic labor. She also points out that if women did not perform domestic labor for free, economic viability would decrease, lowering the so-called "independence" of wage-earning, "self-supporting" white men. The public/private split, then, can be understood as a way of disguising real relationships of dependency: there would be no public without the private. Men need women; it is not necessarily true that women need men. The personal is where the political is created, and is what allows it to flourish.

Phillips might not disagree with Ackelsberg, but she would maintain that those facets of personal life should not be formative to politics. For Phillips, this would particularize politics in an extreme way, making it impossible to deal with larger issues. The particularization of politics is Phillips' biggest concern with Young's theory of deliberative democracy, which is Phillips' general opposition to a "politics of presence" through group representation. Politics of presence is Phillips' way of describing political ideologies that equate being present in a political context with increased and more meaningful political participation. Phillips sees value in increasing the representation of women in a political system, but she is wary of Young's idea of group representation. She explains that she sees it as "virtually impossible…to imagine all the women in a country, a constituency, even a neighborhood, getting together to work out 'their' concerns."[14] This echoes previous critiques of deliberative democracy as requiring face-to-face interaction. It also complicates the idea that any group of people with similar attributes, for example, African Americans, have enough in common to determine a fixed set of issues to discuss and try and reach an agreement.

Phillips helpfully outlines four major rebuttals of deliberative democracy, generally, in so far as it is tied to a "politics of presence". First, she rejects the popular idea that individual women or members of marginalized groups who are elected to positions in politics helpfully

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[14] Anne Phillips, *The Politics of Presence* (New York: Oxford University Press, 1995), 55.

serve as role models and inspirations for future generations. Phillips finds this notion completely undeserving of further consideration, doing little to explain herself rather than stating that she sees "it as an argument that has no particular purchase on politics *per se*."[15] It is rather discouraging that she dismisses the idea of role models with such small consideration, given the weight this argument has in popular political opinion today. Young does not immediately speak to the idea of role models, but it is not difficult to imagine her response to such a dismissal: the formal inclusion of one member of a group is just one step toward increased internal inclusion. The role model cannot, on her or his own, transform a political context for future generations. She can, however, make alliances with dominant groups that help end internal exclusions, breaking the barriers to meaningful political participation. Role models are not a perfect solution, but they are not so useless that they deserve the dismissal Phillips gives them.

Phillips rejects a "politics of presence" on a second ground; in so much as it might require corrective quotas to ensure, quotas are not enough to repair justice between the sexes. Quotas are mechanisms by which a specified number of members of a marginalized group, in this case, women, must be included in formal political systems. Phillips goes on to question the idea that "justice" between the sexes can be defined. Phillips explains that quotas do not go far enough to deal with the problem of a male-dominated society. Mostly, though, she simply does not find quotas satisfying in her quest for formal political equality. In her words, "…while men have no 'right' to monopolize political office, there is something rather unsatisfying in basing women's claim to political equality on an equal right to a satisfying job."[16] This simplistic approach to quotas ignores their transformative potential, and the ways in which it might be quite radical to assert a woman's equal right to jobs men traditionally occupy.

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[15] *Ibid.*, 63.
[16] *Ibid.*, 65.

Still, it is important to consider the ways in which the claim to political equality as centered around women being welcomed into jobs that men have traditionally occupied might not be as politically transformative as advocates would hope. According to political theorist Kathleen Jones, if women came into political power without redefining how authority operates within a given political context, women would continue to reinforce relationships based on the domination of subordinate groups. Jones explains that this is because authority cannot be de-historicized; authority is rooted in male dominance over women, white dominance over non-whites, and class dominance over the working poor, among other things. According to Jones, authority has its roots in depicting itself as requiring the absence of the subordinate in order to be legitimate. When women were absent, then rational authority could occur, because women are irrational and cannot possess legitimate authority. This explains why, in the United States today, "In order to be recognized as authorities, women rulers must either de-feminize themselves…or they must desexualize themselves,"[17] losing as many signifiers of their gender as possible in order to be taken seriously as a sovereign, authoritative figure.

Phillips' concerns about women taking over men's jobs is a valid one, as is Jones' concern about women possessing masculine authority. Still, it is interesting to consider the ways in which the practice of authority could be altered to include traditionally "feminine values," such as compassion and care. It would seem that changing authority might change the value available in women coming into political power, because it would change the context and use of that political power in important ways.

Nevertheless, Phillips is also concerned that there is no way to define "women's interests" narrowly enough to organize political action around them. She does not express this

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[17] Kathleen B. Jones, *Compassionate Authority: Democracy and the Representation of Women*. (New York: Routledge, 1993), 66.

concern from a context of being worried about diversity among women; rather, she is troubled by the thought that women might not be able to articulate their interests. This inability to articulate stems directly from their experience living in a system in which they are totally dominated and excluded from participation in public, political life. Even if they were expressed, Phillips feels that although "there are particular needs, interests, and concerns that arise from women's experience… [they] will be inadequately addressed in a politics that is dominated by men," and by a masculine way of "doing" politics.[18] Her concerns here are worth serious consideration, although it is possible that Young's ameliorative techniques for internal exclusion would provide a viable platform for the articulation of such experiences outside of the context of domination. Phillips does not engage with the ways in which non-white women or women of the lower class might have different kinds of domination to deal with, but this merely adds a new layer of complexity, and does not negate the substance of her argument.

Finally, Phillips wonders if women will improve the morality of politics. She finds this argument compelling, hoping that the introduction of women into politics would transform interest-based speech to needs-based speech. In a needs-based system, individual articulation would gain importance over group articulation. According to Phillips, "the substitution of needs talk for interests talk…may offer a more radical challenge to the practices of contemporary democracy."[19] Phillips offers this idea as a rebuttal to deliberative democracy, but it also seems compatible with Young's theories of inclusive communication. For Young, the end goal of communication is to highlight the individual experiences of people that fall outside dominant norms. Phillips bases her call for the introduction of women into government on the idea that women naturally tend toward needs-talk over interests-talk, an assertion reliant on the idea that

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[18] *Ibid.,* 66.
[19] *Ibid.,* 72-73.

sex and gender converge to create organic and reoccurring ways of acting in the world. Whether or not one agrees with this way of understanding women in society, it is interesting to consider the ways in which democracy would be forever changed if the ways of doing conversation between political actors changed from a basis in interest aggregation to concerning itself with individual needs.

The shift in political conversations from interest aggregation to a concern with individual needs, for Phillips, requires the special inclusion of women. In Phillips' opinion, this inclusion is because women possess the unique ability to be concerned with individual needs. The primary reason needs-based language is not utilized in current politics, then, is due to a lack of women in government, which Phillips wants to ameliorate through the utilization of quotas. Although this approach is worth consideration, it is also important to note the key differences between women. If quotas were implemented, they would have to account for these differences or they would risk reproducing the same harmful forms of privilege so toxic to democracy in its current form. Without accounting for, centering, and protecting difference, it is impossible to take advantage of the knowledge gained from understanding the differences between groups of people. This difference should be given room to be asserted by individuals on their own behalf, or else risk being transformed by someone else's perspective and power.

Chapter Three

> By the time I wrote the article for *The New York Times*, I was ready to talk. Some student read it. They were shocked. Then came *Oprah*. Many more saw me there, holding forth, their English teacher, on her own rape. For the next few weeks I ran into former students on the street. "Wow," they would confide, "I never thought you, I mean, you know." And I did know. Because I was white. Because I grew up in the suburbs. Because without a name attached to my story, it remains fiction, not fact.[1]

In order to argue for the increased inclusion of marginalized groups, one needs an understanding of why these groups must be able to speak for themselves. Why is it important, for example, that African American women be given room to tell of their experiences as separate and unique from the experiences of white women? Feminist and political theorists have been struggling with this question for decades, and have produced a number of theories worth considering. These theories vary widely, both in content and in their intended purposes. Some of the theories in this chapter present feminist reasons behind calling for the increased inclusion of women in government; some of the theories have also been used as reasons why women should not be included in political work. It is precisely this double-edged sword that makes the inclusion of women in government such an interesting topic to pursue; it so often becomes an argument about what women do or do not have to offer politics. For the purpose of this thesis, women should be included in government for a myriad of reasons, but specifically because they are armed with a knowledge about sexual violence that is otherwise conspicuously absent from governing bodies.

One of the most basic disagreements between feminists has to do with theories of femininity and womanhood. In order to have theories about why women's voices are distinctive, one must prove that there is something about women that makes them different from men in ways that are politically important. Two of the most popular theories in this vein are essentialism

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[1] Alice Sebold, *Lucky: A Memoir* (New York: Scribner, 1999), 235.

and social constructionism. These two theories create the backbone for a great deal of feminist theory and literature, and have often been sources cited for the increased inclusion of women in political systems.

Essentialism can be defined as "the belief that there is an immutable, eternal, and transhistorical essence of femaleness and maleness."[2] Essentialism relies on supposed natural differences between men and women that have roots in biology. Essentialists believe that men and women are distinguishable from one another on the basis of physical reproductive organs, which determine what femininity and masculinity look like. Femininity is linked to a woman's physical reproductive system, and so masculinity is linked to a man's reproductive organs. In this way, women and men are inherently different from one another. Essentialists see these natural differences between genders as looking the same in men and women across groups. That is to say, women will always perform femininity one way because it is a biological dictate. It is this idea, essentialists claim, which dictates why women should be included in political systems: women have different qualities and values to bring to politics than men.

In the early 20th century, essentialist feminists "believed that women should…be involved in the formation of public and social policy because their moral natures were inherently different from and superior to those of men."[3] In fact, this was one of the most common reasons given for why women deserved the right to vote. When the National Organization for Women (NOW) was founded in 1966, essentialist arguments did not look so different from those in the late 1800s and early 1900s. NOW was founded by Betty Freidan, whose notorious book, The Feminine Mystique laid the groundwork for a lot of the feminist organizing and activism that

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[2] Wendy K. Kolmar and Frances Bartkowski, "Lexicon of the Debates." in *Feminist Theory: A Reader,* ed. Wendy K. Kolmar, et al. (Boston: McGraw-Hill Higher Education, 2009), 40.
[3] *Ibid.*, 40.

took place in the 1960s, 1970s, and 1980s. Friedan's outlook as a feminist was centered on her own experience as a white, middle class, suburban housewife. She focused entirely on the oppression faced by women like her inside of their homes, completely ignoring women of the working class, as well as non-white women and homosexual women. Continuing in this pattern, NOW also ignored these groups, as evidenced in its "Statement of Purpose," which explained that it did "not accept the traditional assumption that a woman has to choose between marriage and motherhood, on the one hand, and a serious participation in industry or the professions on the other."[4] NOW failed to mention that it did, however, accept the traditional assumption that women should conform to whiteness, aspire toward middle class status, and be heterosexual.

NOW also assumed that children were the barrier that excluded women from participation in politics. While this is undoubtedly part of what Iris Marion Young referred to when she discussed external exclusion, this sentiment skews and ignores the realities of non-white, working class, and homosexual women. Friedan and her fellow NOW organizers were unable to account for these differences due to their essentialist lens, a lens that shapes women as relatively the same across different categories; specifically, women are shaped by their ability to produce children. Motherhood, then, became a large part of the politics of NOW, excluding those women who did not identify with traditional femininity, and especially those who did not have children, as well as those who did not have the option to stay home with their children. By treating all women as though they were, at some level, the same, organizations like NOW based their political efforts on an essentialist view of the world that omitted some women completely.

In contrast with essentialism, social constructionist feminists believe that, instead of being born as men who are masculine and women who are feminine, men and women learn and

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[4] National Organization for Women, "A Statement of Purpose," in *Feminist Theory: A Reader*, 176.

then perform masculinity and femininity. Masculinity and femininity are said to be produced by social norms and policed by a system of reward and punishment. Social construction can be defined as a "complex system of cultural, social, psychical, and historical differences,"[5] which combine in different ways to create individual people. Men and women are differentiated from one another based on social interpretations of differences between sex and gender. Gender, according to social constructionists, is not the static entity essentialists believe it to be. Instead, while it is assigned to individuals based on their biological sex, gender can be performed by any member of any sex.

Perhaps the most famous well-known constructionist is feminist theorist Judith Butler. Butler believes that the body is the physical space upon which gender is performed. Although specific genders are assigned to bodies based on their physical attributes, no one individual performs gender the same way another individual does. According to Butler, the primary function of gender is to control those individuals who do not easily fit into social roles. Those people who do not fulfill social expectations of gender are, for Butler, living at "the margins" of society. Margins are dangerous to dominant groups, as they represent a break from norms that were put into place to control groups of people. For example, the gender "female" was established as the negative opposite of the gender "male" in order to control that group known as "woman" and prevent it from gaining access to power. In this way, women are the dangerous margins of heteronormative society who might be uncontrollable if not for gender.

According to Butler, the "disciplinary production of gender effects a false stabilization of gender in the interests of the heterosexual construction and regulation of sexuality within the

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[5] Kolmar and Frances Bartkowski, 40.

reproductive domain."[6] Gender, therefore, functions as a mechanism for control by providing

rewards for those who perform it well and punishments for those who do not. Another purpose of

gender is to maintain heterosexual reproduction, which it does by marking woman/female as

responsible for following social norms and for setting examples for children who will also follow

traditional gender roles. In this way, the dominant group, in this case, heterosexual men, attempts

to normalize gender, hiding from itself that which reveals it to be an invention.

Before any further exploration of Butler takes place, it is useful to look at the ways in

which sexuality functions as a part of gender in order to reward and punish individuals to

promote and protect heterosexuality. Feminist theorist Catherine MacKinnon, also a social

constructionist, offers a theory of sexuality and gender that claims that all heterosexual sex,

situated as it is within a culture that inherently privileges masculinity. According to MacKinnon,

> Sexuality…is not a discrete sphere of interaction…in which preexisting social divisions
> may or may not be played out. It is a pervasive dimension throughout the whole of social
> life, a dimension along which gender pervasively occurs and through which gender is
> socially constituted; in this culture, it is dimension along which other social divisions,
> like race and class, partly play themselves out.[7]

Sexuality, then is the place where oppression is physically practiced, and insofar as gender is a

function by which women are oppressed, sexuality is yet another way for men to control women

by controlling what gender looks like. For MacKinnon, women are entirely defined by their

sexuality, which relies on male preference in order to have meaning. Without male privilege and

preference, women's sexuality would not exist as it currently does, and in fact women

themselves would not exist as they currently do. MacKinnon wonders if "perhaps gender must be

maintained…so that men will be able to get erections; or [in other words] part of the male

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[6] Judith Butler, "Gender Trouble and the Subversion of Identity," in *Feminist Theory: A Reader*, 438.
[7] Catherine MacKinnon, "Sexuality," in *Feminist Theory: A Reader*, ed. Wendy K. Kolmar, 477.

interest in keeping women down lies in the fact that it gets men up."[8] For MacKinnon, the practice of sex, heterosexual or no, relies on notions of gender that privilege men and position the domination of women/people who are feminine as sexually appealing. Under this system, sex itself is a way of rewarding and punishing gendered behavior, to make sure that men and women perform according to the norms prescribed for them.

Following from MacKinnon, Butler finds that there are parts of male and female sexuality that highlight the ways in which gender functions to privilege men and their sexual satisfaction. Those who choose to adopt sexual practices and gendered techniques that go against these norms do not necessarily escape the culture of sexualized masculinity, but they might subvert it in important ways. Butler proposes that the practice of drag reveals the fiction of gender. For Butler, the best evidence that gender is a learned performance, not the result of biology, is the mere fact that drag exists. Drag is a practice by which a member of one biological sex adopts gendered attributes opposite of her or his gender. For example, a person who can be identified as biologically female would adopt masculinity and try to look enough like a man so as to "pass" for one. One of the most well-known forms of drag is that of the "Drag Queen", in which an individual who is identified as "male" via social norms dresses as female and performs femininity. These performances are often exaggerated, contesting the ideas that gender, and specifically, femininity, are somehow natural. According to Butler, "the performance of drag plays upon the distinction between the anatomy of the performer and the gender that is being performed,"[9] providing a moment of clarity about the role gender really plays in society. Butler explains that drag provides the proof that gender is a performance that can be learned. This, then,

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[8] *Ibid.*, 483.
[9] Butler, 439.

proves that gender is an identity in and of itself, separable from specific bodies and therefore not naturally occurring within those bodies.

Although Butler provides insight into the ways in which gender might be better understood as performance, rather than as a naturally occurring biological function, she does not explain how punishment and reward function to enforce gendered norms. Without this function, it is impossible to understand how gender could carry enough weight to be influential in a political system. Feminist theorist Susan Bordo provides information to fill in the gaps. Bordo defines the body as the space where culture is ascribed and performed, explaining, "the body – what we eat, how we dress, the daily rituals through which we attend to the body – is a medium of culture."[10] Gender is also inextricably woven to one's body, as the way one experiences and expresses culture has everything to do with the supposed gender of that individual's body. Gender, then, is all-encompassing, touching every part of an individual's life.

Bordo looks to disorders of femininity for proof both that gender is a performance and that it operates on a system of reward and punishment. According to Bordo, anorexia nervosa, an eating disorder in which an individual starves herself in order to lose weight, is a disorder of femininity, which borders closely with supposedly "normal" feminine practice. Although femininity as a cultural practice with a set of guidelines has produced other disorders in time, anorexia nervosa is both more intense and more terrifying due to changing cultural mediums. According to Bordo, "with the advent of movies and television, the rules for femininity have come to be culturally transmitted more and more through standardized visual images."[11] Popular culture is more a part of everyday life than ever before, and women are surrounded daily with

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[10] Susan Bordo, "The Body and the Reproduction of Femininity," in *Feminist Theory: A Reader,* 459.
[11] *Ibid.*, 461.

manufactured images that direct what femininity should resemble. Bordo sees anorexia nervosa as an almost natural occurrence in modern times. In fact, anorexia nervosa can be seen as the perfect performance of femininity, in so far as modern femininity has been constructed so that "women learn to feed others, not the self,"[12] and also so that "any desires for self-nurturance and self-feeding,"[13] can be seen as "greedy and excessive."[14] Considering this conceptualization, anorexic women seem both pious and charitable, not eating so that others can eat, and putting others before the self.

Although Bordo does not point this out, anorexia is one of the most pervasive and deadly disorders in the United States. An estimated one woman of every two hundred has anorexia[15]. In addition, "the mortality rate associated with anorexia nervosa is twelve times higher than the death rate of ALL causes of death for females 15-24 years old."[16] In fact, twenty percent of people who suffer from anorexia nervosa die from it.[17] An estimated ten percent of people who suffer from anorexia are men.[18] Although it is important to remember that men are affected by anorexia nervosa, it is worth noting that ninety percent of those suffering are women. This seems to correlate with Bordo's idea of anorexia nervosa as an attempt to perfect a femininity that makes self-nurturance and feeding a selfish act. In short, it is entirely plausible that, in Bordo's own words, "anorexia begins *in*, emerges out of, what is, in our time, conventional feminine practice."[19]

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[12] *Ibid.*, 462.
[13] *Ibid.*
[14] *Ibid.*
[15] "Eating Disorder Statistics," Last Modified 2006, http://www.state.sc.us/dmh/anorexia/statistics.htm
[16] *Ibid.* emphasis original
[17] *Ibid.*
[18] *Ibid.*
[19] Bordo, 462.

Bordo and Butler provide compelling arguments for seeing gender as a product of social construction as opposed to natural consequence from biology. Despite this, social constructionism does not provide enough theoretical footing to understand how gender might be different across the lines of race and class. Taking a closer look at disordered eating and issues of body image perfectly illuminates realities of women's lives that social constructionism and essentialism do not consider. Common understandings of eating disorders rely on an "image of anorexia and bulimia as transitory, self-inflicted obsessions developed by young women lost in their own worlds of fashion and calorie counting."[20] This conception of eating disorders, paired with understandings of femininity or masculinity as either natural and inherent or as constructed by social norms is not enough to explain how it is that women from all different races, classes, and sexual orientations are afflicted by disordered eating. Social constructionism and essentialism are also at a loss to explain why disordered eating looks different for different women, and why these differences cannot be attributed to group differences.

In her study of eighteen women, Becky Thompson found that the class standing, racial identity, and sexual orientation of the women was not enough to explain their eating disorder and body image issues. In fact, the most common variable among the women was having been sexually abused as a child. The women Thompson interviewed ranged from ages nineteen to forty-six. Five were African American, five were Latina, and eight were white. All eight white women and four of the African Americans and Latinas identified as lesbians.[21] Class differences figured moderately, with some women in the upper middle class and others in the working class.

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[20] Becky W. Thompson, *A Hunger So Wide and So Deep: A Multiracial View of Women's Eating Problems* (Minneapolis: University of Minnesota Press, 1994), 3.

[21] *Ibid.*, 21.

Additionally, two-thirds of the women were sexually abused as children.[22] Among these very different women, "the average weight fluctuation…was seventy-four pounds."[23]

The reasons these women turned to food were varied, although all in some way hoped that they could escape their other problems through the control of food. According to Thompson, "although bingeing was the most common way these women numbed emotions, paradoxically, dieting served a similar function, helping them avoid painful feelings by giving them a goal – not eating – to focus on."[24] Bingeing and dieting were not performed in the same way for women of the same racial, class, or sexuality group, but these two practices were all a part of the lives of the women in the study. Without social constructionism or essentialism, it is difficult to understand how similar pressures in the lives of people who can be identified as women might produce such different results. It is interesting to note that although eating disorders always look different in different women, all of the women still turned to food in times of distress, indicating that food has a shared importance for women, despite their differences. This further illustrates the ways in which eating disorders show gender performance; not all women perform gender in the same way. Much like eating disorders, gender performance is complicated by race, class, sexuality, and experience.

Thompson explains that disordered eating can be understood as what happens "when classism, racism, and sexual abuse [collide]," in women's lives. This collision easily turns women against their bodies as bodies "become the target of…anger,"[25] as they are seen to be "the reason for…unhappiness."[26] Anger in the form of body hatred turns to disordered eating

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[22] *Ibid.*, 48.
[23] *Ibid.*, 20.
[24] *Ibid.*, 97.
[25] *Ibid.*, 52.
[26] *Ibid.*

within the collisions of women's identities in the larger social structure of the United States. It manifests differently in different women because women have diverse interactions with the structures of the United States depending on how their identity is particularly situated. Although this might initially seem too particular and complex to be a useful theory of identity, a form of this thought process, called intersectionality, has been put to use in feminist and political theories in order to apply to and work for those individuals whose lives and experiences cannot be adequately explained by social constructionist or essentialist theories.

Intersectionality provides a way of understanding women by acknowledging their differences. It understands that not all women are the same, and also that not all women would consider their gender their most defining characteristic. Critical race theorist Kimberle Williams Crenshaw explains intersectionality as it functions in the lives of poor women of color, as she finds the positions of these women among the most often ignored in traditional theory making and political practice. She highlights intersectionality as a practice that activists should be paying more attention to, because "although racism and sexism readily intersect in the lives of real people, they seldom do in feminist and antiracist practices."[27] The intersections of identity seldom meet in contemporary political practice, which means that policies crafted by governing bodies are inherently ill-prepared to deal with difference.

Crenshaw identifies structural intersectionality as a system of multiple-layered burdens that are products of the ways different hierarchies interact in people's lives. These hierarchies range from norms of sexuality that privilege heterosexuality, to race relations that privilege whiteness, to social understandings of class that privilege wealth. Gender, ability, age, physical

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[27] Kimberle Williams Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," in *The Public Nature of Private Violence*, 94.

location, and many other variables combine to produce the structure of burdens that make up the

lives of individuals living in the United States. Without first understanding that different

burdens affect different lives in particular ways, it is impossible to understand why it is that

"people of color often must weigh their interests in avoiding issues that might reinforce distorted

public perceptions of their communities against the need to acknowledge and address

intracommunity problems."[28]

For further clarification of this, Crenshaw explores lesbian violence against women.

Violence in the lesbian community is rarely discussed in the public sphere, and may at first

appear impossible. Domestic violence is often conceived of as having a male perpetrator, and

taking place in a heteronormative setting. Although this is often the case, it is important to

remember that it is not exclusively the case. Troublingly, domestic violence is also painted as a

problem primarily within communities of color, despite its prevalence in the white community.

Nevertheless, violence does occur within lesbian relationships. According to Crenshaw,

> Lesbian violence is often shrouded in secrecy for similar reasons that have suppressed the
> exposure of heterosexual violence in communities of color – fear of embarrassing other
> members of the community, which is already stereotyped as deviant, and fear of being
> ostracized from the community.[29]

Without intersectionality, activists and policymakers are limited by one dimensional conceptions

of issues that shape individuals, which may have been arrived at through essentialist or social

constructionist theories. Although Crenshaw sees little use in essentialism, she finds that social

constructionism can be useful in cooperation with intersectionality, explaining, "…to say that a

category such as race or gender is socially constructed is not to say that that category has no

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[28] *Ibid.*, 102.
[29] Kimberle Williams Crenshaw, "Intersectionality and Identity Politics: Learning From Violence Against Women of Color," in *Feminist Theory: A Reader*, ed. Wendy K. Kolmar, 482.

significance in our world."[30] Instead of rejecting social constructionism, Crenshaw sees the theory as useful as long as it can be combined in different ways so as to illuminate the intersections of actual identity.

Following from intersectionality but distinctive from it, feminist standpoint theory is also used by feminists to justify increased involvement in political systems. Feminist standpoint theory is an attempt to explain why women experience domination in a system that presents itself as neutral. For example, it seeks to discover why, women in the United States are sexually assaulted at incredibly high rates, while only six percent of rapists will ever spend a day in jail when, in the eyes of the law, men and women enjoy equal rights and protection under the law. [31] Feminist standpoint theorists see themselves as filling a necessary gap between theory and reality, "because the ruling class has an interest in concealing the way in which it dominates and exploits the rest of the population," making the realities of dominated groups difficult to see unless standpoints are considered and taken seriously in policy making. [32]

Feminist standpoint theory differentiates itself from intersectionality by locating itself in the particular differences that make up individuals. Feminist standpoint theorists see themselves as necessary "because different groups are oppressed in different ways," so that these different groups develop "distinctive insights about systems of social relations…in which their oppression is a feature."[33] Standpoint theory is a way for these differing insights to come together and create a base for feminist theory generally, bringing different experiences from obscurity to usefulness. It also helps to bring to the foreground those viewpoints that have been traditionally

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[30] Crenshaw, "Mapping the Margins," 112.

[31] "Statistics," Accessed January 20, 2011. http://www.rainn.org/statistics.

[32] Alison M. Jagger, Feminist Politics and Epistemology: The Standpoint of Women." in *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, 56.

[33] Sandra Harding, "Origins," in *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, ed. Sandra Harding (New York: Routledge, 2004), 9.

marginalized. By leaving room for individual standpoints, feminist standpoint theorists actually

create space for the margins to become the center of conversation and theorizing on policy

formation.

Black feminist theorist bell hooks calls the function of standpoint theory to bring the

margins to the center "radical openness." For hooks, the margins are a place where some people

in the United States society grow up and live the majority of their lives. She explains that the

margin is a sort of "home" for non-dominant groups, so long as home can be understood as "that

place which enables and promotes varied and ever changing perspectives, a place where one

discovers new ways of seeing reality… [and] difference."[34] When physical boundaries are

removed, home can be understood as something that changes as an individual moves through

time and social relations, adapting to new experiences and understandings of the world. hooks

also looks to the home as a place where one can always find her true self, because it is where she

has always lived, so that she can both resist dominant culture and improve self-awareness. In this

sense, home and the margins are one, especially for people in subordinated groups. For people

living in the margins, the margins are "…that space of refusal, where one can say no to the

colonizer, no to the oppressor."[35]

Home is not always a happy place. hooks acknowledges that the margins as a home will

be, at times, a space where one must despair at the lack of formal inclusion in society, at one's

treatment by dominant groups, at the lack of social progress one has experienced in life. For

hooks, this despair is at once healthy and risky. It is a risk because despair can be paralyzing,

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[34] bell hooks, "Choosing the Margin as a Space of Radical Openness," in *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, 155.
[35] *Ibid.*, 157.

stunting the creativity and imagination necessary for resisting oppression.[36] Still, hooks explains,

the despair that is longing for freedom from oppression as though it is something lost that once

was known is the despair an individual experiences when she "truly resists colonization."[37] The

margins are a space where this reality can be seen with clarity: human life is full of happiness

and sadness, triumph and failure. When hooks describes the margins as a home space where lives

can occur safely and honestly, she is describing a special standpoint. This standpoint is one of

life from the margins, which cannot be understood as having politically transformative potential

until it is centered and fully examined.

One branch of feminist standpoint theory is Black feminist thought, which flows well

from hooks' depiction of the margins as a space of radical openness. Black feminist thought is

unique in that it "consists of ideas produced by Black women that clarify a standpoint of and for

Black women."[38] Patricia Hill Collins believes that Black feminist thought as a part of standpoint

theory is important because it works within the real conditions of Black women's lives. For

Collins, a theory that attempts to separate the content of people's lives from the formative

conditions that construct those lives is naïve at best and dangerous at worst. Black feminist

thought as an iteration of standpoint theory works perfectly for Collins, because it allows the

simultaneous articulation of commonalities and differences among Black women themselves, as

well as other groups of women.

Collins explains that Black feminist thought has three important themes that make it a

useful tool for Black women trying to locate themselves and their communities, in order to strive

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[36] *Ibid.*, 157-158.
[37] *Ibid.*
[38] Patricia Hill Collins, "Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought," in *The Feminist Standpoint Theory Reader: Intellectual and Political Controversies*, 105.

for better policies and become more effective political agents. First, it provides a space for Black

women to define themselves and their values. Collins believes this to be important because "the

act of insisting on Black female self-definition validates Black women's power as human

subjects,"[39] reminding them of their capacity to be powerful activists and change agents.

Secondly, Black feminist thought helps Black women have a clearer view of the world, because

it acknowledges the interlocking nature of oppression in women's lives. Black feminist thought

articulates the important differences between Black women and white women, as well as Black

women and Black men, both in descriptive life experiences and in paths available for

mobilization and activism. Finally, Black feminist thought emphasizes the importance of African

American women's culture. Collins explains that this functions as a sort of sisterhood through

motherhood, allowing for creative expression and collaboration by showing Black women the

strength they have both as individuals and as a group. Strength can be built through the

acknowledgement and celebration of African American women's achievements and successes

throughout history.

Collins goes on to say that Black feminist thought is necessary for cultivating Black

female activists, explaining that "by returning subjectivity to Black women, Black feminists

return activism as well."[40] Black feminist thought enables the return of subjectivity by

acknowledging and validating the particular ways Black women are socialized in United States

society. Without an understanding of differential standpoints, it would be difficult to see the

ways in which different groups of people go through different socializations, and how individual

viewpoints are shaped by these socializations. Collins refers to the special socialization of Black

women as learning to be outsiders within a white world. Black women are not accepted into

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[39] *Ibid.,* 107.
[40] *Ibid.,* 115.

white society, but in their roles as domestic workers and working class people generally, they are often physically located within it. Similarly, they are able to share a racial bond with African American men, but lack access to the privileges of masculinity. According to Collins, "…a variety of individuals can learn from Black women's experiences as outsiders within,"[41] making locating and defining the standpoint of Black women a valuable effort.

Black feminist thought and standpoint theory generally are especially beneficial for those individuals whose experiences have been marginalized and ignored in traditional feminism. This includes, and perhaps has the most benefit for, lesbian women of color. According to theorist Rhonda M. Williams, homosexual women of color are difficult for essentialist, social constructionist, and intersectional theories and politics to address for two primary reasons. First, Williams finds that Blackness and heteronormativity are bound together tightly. She attributes this to the ways in which Black sexuality is demonized even when it is heterosexual, explaining, "Black heterosexuality is constructed as unnatural…beyond God's law and nature's logic.…the redemption of African American families requires the harnessing and disciplining of Black sexual behavior."[42] The discipline of sexuality within the African American community manifests as the rejection of homosexuality generally, but especially the rejection of those community members who are homosexual.

Williams explains that the second reason homosexual women of color struggle for acceptance becomes an issue when, for example, lesbian women of color choose to engage in relationships with white women. Given the history of violence from the white community toward

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[41] *Ibid.*, 121.

[42] Rhonda M. Williams, "Living At the Crossroads: Explorations in Race, Nationality, Sexuality, and Gender," in *The House That Race Built: Black Americans, U.S. Terrain*, ed Wahneema Lubiano (New York: Pantheon Books, 1997), 144.

the Black community on issues of interracial sexual relations, it is not surprising that, for many African Americans, sexual relationships with white people are often considered acts of racial treason. Williams explains that among her Black female friends, their primary issue with her sexuality is not that she is a lesbian; rather, it is that her partner is a white woman. Williams explains that heterosexual black women see her relationship with a white woman "as a rejection of Black women – a rejection of myself, a rejection of them."[43] Considering the complexity of interracial heterosexual relationships, and the history of violence imposed against Black men who were seen engaging in sexual acts with white women, it is not surprising that African Americans would be suspicion of Williams' white partner. This very suspicion, however, is born in and normalized within the structure of heteronormativity, and cannot acknowledge the ways in which interracial homosexual relationships work to challenge norms and stereotypes held about both African American and white people in the United States, as well as about women generally.

Without standpoint theory, and Black feminist thought specifically, it would be difficult to center an experience such as Williams' in order to examine it for its full meaning and transformative potential. Standpoint theory makes it possible to acknowledge Williams' standpoint, and also to take seriously what she has to say about Blackness in America without it having negative implications on the community as a whole. For example, Williams criticizes cultural nationalists within the African American community for setting up arbitrary, yet rigid boundaries around Blackness. These boundaries include a vision of Africa that is particularized and selective, essentialist descriptions of what it means to be male and female, and sees Black homosexuality as a direct consequence of white supremacy. Without standpoint theory, Williams might appear to be criticizing the African American community as a whole, pointing out flaws

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[43] *Ibid.*, 150.

instead of working toward equality for people of varying sexualities. With standpoint theory, and in particular, Black feminist thought, Williams can be seen as an individual making a critique, which is not intended to cast a negative light on the entire Black community.

Although standpoint theory takes an important step toward separating individuals from the groups that they are a part of, it still relies on group membership for legitimacy. Black feminist thought relies on the idea that there is something specific about being socialized as a Black woman that is worth gleaning knowledge from and examining. In this way, group membership is viewed as a sort of reason for why an individual might view the world the way she does. It can also be seen as a catalyst for actions an individual might take in terms of activism on behalf of her community. Although the acknowledgement of different views on the world is important, it is also important to note that not all individuals who belong to a group feel a strong connection with it. For example, although there is undoubtedly a clear group of people in the United States who are women, it is not true that all women find their gender an important part of their lives. It is also not true that all women, on account of their gender, identify sexualized oppression as an important factor in their lives. To further complicate matters, women of color might more strongly identify with their racial group than their gender group. For an example of this complication, one need only look to women who are activists and who do not claim feminism. These women's worldviews have undoubtedly been affected by their experiences as a subordinate gender, but they do not feel gender has been an impetus in their political lives.

None of the theories discussed so far can adequately address the ways in which group membership does and does not affect political involvement. Political theorist Iris Marion Young sees this dilemma as the real problem of essentialist theories, although it also comes up in social

construction theories, theories of intersectionality, and standpoint theories. Essentialist theories of identity equate difference with identity, meaning that differences combine to create identities for individuals whose actions and feelings can then be reliably predicted. Young disagrees with this notion, explaining that "people differently positioned in social structures have differing experiences and understandings of social relationships and the operations of the society because of their structural situation."[44] She goes on to explain that there must be an important distinction drawn in theories of identity and politics between essentializing differences and respecting and understanding differences.

Young believes that "group differences should be conceived as relational rather than defined by substantive categories and attributes."[45] In this way, difference is not a mechanism by which individual actions can be predicted; but rather, a set of distinctions between people that must be first acknowledged, and then respected, in order for any political system to be functional for all of its members. In an attempt to further explain the importance of difference, Young draws a distinction between groups and series of people. Following the logic of philosopher Jean-Paul Sartre, Young explains that groups are those individuals who come together and recognize themselves as organized and capable of impact. Groups have a purpose, and recognize themselves as having the potential to act. In contrast, a series is "a social collective whose members are unified passively."[46] A series can be better explained as that which occurs when people react to common experiences with structures.

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[44] Iris Marion Young, *Inclusion and Democracy* (New York: Oxford University Press, 2000), 98.

[45] Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 171.

[46] Iris Marion Young, *Intersecting Voices: Dilemmas of Gender, Political Philosophy, and Policy* (Princeton: Princeton University Press, 1997), 23.

Young is quick to point out that series membership is not so loosely related to identity that it has no impact on personhood. She explains that series membership "delimits and constrains an individual's possible actions,"[47] but points out that it "does not define the person's identity in the sense of forming his or her individual purposes, projects, and sense of self in relation to others."[48] Young provides class as an example of serial membership, because it has a clear impact on an individual's life opportunities, but is not necessarily an impetus for organized and collective action. Gender can also be a serial membership, as it can be understood as a structure with which people interact and by which people are shaped. According to Young, "the female body…is a rule-bound body, a body with understood meanings and possibilities."[49] In this way, gender matters not for the biological processes it describes, but for the social rules that govern the categories of gender. Women are not just defined by gender rules; they also experience the serial memberships of sexuality, race, and class, among others. While social constructionism views identity as created by gender norms, serial membership sees identity as influenced and structured in response to any and all structures the female body interacts with in the United States.

Serial memberships can become meaningful to identity without becoming group memberships. In Young's own experience, she explains her reaction to serial membership while reading the newspaper:

> In the newspaper, I read about a woman who was raped, and I empathize with her because I recognize that in my serialized existence, I am rapeable, the potential object of male appropriation.[50]

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[47] *Ibid.*, 26.
[48] *Ibid.*, 23.
[49] *Ibid.*, 28.
[50] *Ibid.*, 30.

Through an understanding of serial membership, Young's reaction to the story in the newspaper makes perfect sense. Serial memberships allow insight into shared relationships to power structures without reducing identity to be similarly composed across gender/racial/class groups simply because all of these individuals encounter the same structures. Young explains that "NO individual woman's identity…will escape the markings of gender, but how gender marks her life is her own."[51]

With the large number of identity theories presented, it is easy to get bogged down with the details and intricacies of individual personhood, making it difficult, if not impossible, to formulate a viable argument for the increased inclusion of women in democratic processes. The model of democracy currently being used acts as a limiting force on the kind of theory or theories that can be used to properly understand the role of women. In an aggregative democracy, for example, the increased inclusion of women depends on essentialist notions of femininity, for as Phillips articulates, women bring a necessary morality and different subject-focus than do men. In a deliberative democracy, it is possible to embrace more varied forms of identity theory. Women need not be placed into essentialist categories as long as they can articulate their own differences, and listened to and respected. This leaves room for a number of identity theories to be utilized effectively to call for the increased inclusion of women.

As has been discussed, however, the United States remains an aggregative democracy. It is therefore useful to examine the ways in which women and people of color have been found to have unique opinions on different political issues, opinions often found to be directly correlated to race and gender under an essentialist construction of aggregative government. In the chapter that follows, arguments will be made to establish that female judges find in favor of plaintiffs

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[51] *Ibid.,* 33.

bringing sex discrimination cases more often than men; similarly, that African American judges are more likely to rule in favor of people bringing forward racial discrimination cases. These assertions seem, within the context of an aggregative democracy, to be based in essentialism. It may prove necessary to move to a new democratic context, such as deliberative democracy, before these theories of identity can be explored for their full potential in relationship to how and why minority groups as members of a political system make the decisions they do. Armed with an understanding of how race, gender, and class already operate in the United States, it is possible then to identify paths to more effective policies about rape in this country

Chapter Four

> …in the 'before' photos taken by Ken Childs, I am at first posing, then giggling, then laughing openly…I smile, smile, smile. In the 'after' photos the police took, I stand shocked. The word *shock*, in this context, is meant to mean I was no longer there…the cosmetics of rape are central to proving any case. So far, in appearance, I was two for two: I wore loose, unenticing clothes; I had clearly been beaten. Add this to my virginity, and you will begin to understand much of what matters inside the courtroom.[1]

With the recent nominations and subsequent confirmations of Sonia Sotomayor and Elena Kagan to the Supreme Court, there has been a lot of discussion about whether or not race and gender affect a judge's decision in any given situation. Similar questions and discussions arose when Justice Thurgood Marshall became the first African American appointed to the Supreme Court in 1967. One commonly held belief is that the presence of a member of a minority group changes the preexisting attitudes and notions of others on the court about that minority. For example, in an article in *The New York Times*, Justice Marshall is quoted as saying, "What do they know about Negroes? You can't name one member of this court who knows anything about Negroes before he [Marshall] came to this court."[2] The article continues, pointing out that the longer Justice Marshall remained on the Court, the more the other justices, even the most conservative members, "acknowledged that his very presence exerted a gravitational pull more powerful than his single vote."[3]

Gender on the Court has been regarded similarly. Justice Ruth Bader Ginsburg pointed out, "As often as Justice O'Connor and I have disagreed, because she is truly a Republican from

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[1] Alice Sebold, *Lucky: A Memoir* (New York: Scribner, 1999), 23.

[2] Liptak, Adam. "The Waves Minority Judges Always Make." *The New York Times,* 31 May 2009.

[3] *Ibid.*

Arizona, we were often together in all the gender discrimination cases,"[4] Indicating that there is something about being a judge and making decisions that involves more than just rational analysis; there is a quality to being a woman, or being African American that adds something extra to a discussion when judges consider gender or race-specific cases. This could be due to differing perspectives, a result of a lifetime of experiences wherein female judges and judges of color have interacted differently with the systems and institutions than white or male judges. Although some judges and judicial scholars would argue that it is not proper form for a member of the judiciary to allow her or his identity to affect decision making, Justice Souter argued in 1998 that, "Judges are supposed to influence each other, and they do…one may see something the others did not see, and then they all take another look."[5]

Considering how likely it is that judges on a court influence each other's decisions, it is worthwhile to consider the effect gender, race, and class might have on judicial decisions, especially when cases are directly related to issues or gender or race. The most common types of cases where gender be examined are sex-discrimination and sexual harassment cases, while the most-examined cases where race is a factor are racial discrimination cases. Unfortunately, class is not as outwardly-identifiable a variable, and so cannot be examined in the ways that gender and race can be. It is also worth noting that there are substantial obstacles in place between members of the lower classes in American society and elected and appointed office. The education required to be considered for a judgeship is expensive, and often simply unavailable to members of the working class and the working poor. Campaigns for elected office are also high in cost, requiring (at minimum) thousands of dollars in advertising and salaries in order to win an election.

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[4] *Ibid.*
[5] *Ibid.*

In addition, although the following studies shed light on the ways in which gender and race affect judicial decision making, they do not explain the ways in which gender and race interact in the decision-making processes of judges who are women of color. Some of the studies presented also attempt to explain how increased numbers of women and people of color in positions of political power within representative government would draw increased attention to issues specific to people of color and women. Although compelling, these studies also render women of color invisible, reinforcing the structural problems that helped create the representational dilemma of the present day. These studies are a starting point for understanding the ways in which members of minority groups have differing opinions on identity-specific issues than do members of the dominant group. It is in no way wholly complete or conclusive. The lack of data available should be taken as further evidence that marginalized groups need to be included in the political process at much higher rates, if only so that politics as a whole can begin to acknowledge that these groups, and their specific political issues, exist.

With this in mind, the first of the studies is an attempt to determine whether or not the gender of a judge on a court has an impact on the rulings of said judge. Jennifer Peresie examined 556 cases between 1999 and 2001 involving sexual harassment and sex discrimination claims under Title VII of the Civil Rights Act of 1964. She found that although, "plaintiffs lost in the vast majority of cases, they were twice as likely to prevail when a female judge was on the bench."[6] This finding represented a departure from previous studies, which had produced inconclusive answers to the question of how much female judges matter. Peresie explains the inconsistencies, saying that previously, sample sizes were simply too small. She also points out that female judges were, until recently, novelties and rarities on courts, increasing the probability

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[6] Peresie, Jennifer. "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts." *Yale Law Journal* 114 (2004):1761.

that female judges would have conformed to the views of male judges in order to maintain their position on the court. Peresie states that previous studies also failed to focus on cases in which gender might have the largest impact, often looking at such a broad array of cases that the effect of gender was negated. Previous studies also failed to consider that the opinions of female judges might have been muted by male judges if the precedent set by women would have interfered with the opinions of male judges. Peresie's study differed from previous studies by controlling intensely for outside variables and focusing narrowly on cases involving gender.[7] These precautions allowed her to directly measure the degree of import the gender of a judge has on cases directly involving gender; specifically, the impact being female had on the outcome of sex discrimination and sexual harassment cases.

Peresie examined three-member judging panels on sex discrimination and sexual harassment claims under Title VII of the Civil Rights Act of 1964. She found that seventy-five percent of plaintiffs lost, and of this number thirty-eight percent of the cases lost had a female judge presiding. On the other hand, sixty-two percent of the cases won were won under panels with female judges. The dissent rate between judges on panels with both female and male judges was low, indicating that male judges are more willing to agree with their female colleagues than to disagree with them on cases involving sex discrimination and sexual harassment claims. This might be because male judges view their female colleagues as pseudo-experts on issues of gender, a concept Peresie identifies as "deference."

Peresie specifically controlled for the following factors: ideology, race, prior employment, age, and federal appellate experience. After controlling for those factors, she found that being female increased the chance that the opinion would be in favor of the plaintiff by

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[7] *Ibid.,* 1763-1764.

eighty-six percent in sexual harassment cases and sixty-five percent in sex discrimination cases.[8] She also found that the presence of a woman on a panel increased the chance that a panel would find in favor of the plaintiff.   In sexual harassment cases, the likelihood doubled, while in sex discrimination cases, the probability tripled.[9] The study also suggests that political party does not change the effect of gender in these cases. Republican-appointed female judges and Democrat-appointed male judges found in favor of the plaintiff in the cases at nearly identical rates – twenty-nine percent of the conservative women, and thirty percent of the liberal men.

Peresie then examined why gender is an important factor on a panel of judges, and why it matters even more in cases directly involving gender. She found four possibilities: deliberation, deference, logrolling, and moderation.[10] Deliberation refers to the idea that female judges influence their male colleagues through discussion, by introducing ideas to the discourse that would not have come up if women were not present on the panel. Additionally, Peresie found that adding only one woman to the panel had the full effect that women on a court have in the study; that is, it only takes one woman to change the conversation. The content of the conversation is significant, however, and relates directly to the idea of deference. As mentioned, deference refers to the practice of male judges regarding female judges as having some valuable expertise in cases involving gender. This does not necessarily mean that female judges actually possess better knowledge than male judges regarding sex discrimination or sexual harassment cases, only that male judges view them as possessing such knowledge. Peresie also found that the longer a male judge had been exposed to a female judge, the more often he would side with

[8] *Ibid.,*1776.
[9] *Ibid.,* 1778.
[10] *Ibid.,* 1779.

female judges on a panel, indicating that, "male judges were persuaded by the arguments of female judges and that this impact carried over to future cases."[11]

Although deliberation and deference are compelling explanations for the apparent impact of women judges on sex discrimination and sexual harassment cases, Peresie considers two other factors to ensure that she considers every possibility. For this reason, Peresie turns to the concept of logrolling for an explanation. Logrolling is the process of bargaining for votes, which is not technically permissible in the courts, but might still occur. Logrolling as it relates to sex discrimination and sexual harassment cases means that male judges cast their votes in line with the votes of female judges in hopes that a female judge might support their vote in a later case. There was not much research about logrolling available at the time of publication, however, so the theory of logrolling was inconclusive.

Logrolling does not seem to be a theory capable of explaining why gender matters in the way that deliberation and deference can. Peresie indicates that it should not be taken as a serious explanation for the impact of gender; rather, logrolling can be considered a supplemental reason for why male and female judges might agree on issues generally. This leads to Peresie's last possible explanation, moderation, which she explains as, "the presence of female judges may cause male judges to moderate their anti-plaintiff preferences."[12] Peresie believes male judges might actually be less sympathetic to sex discrimination and sexual harassment claims, but in the presence of female judges, prefer not to let this be known. When women were not present as judges in courtrooms, this was hardly an issue, making moderation a likely reason for why gender matters when women are added, although it seems at odds with the concepts of

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[11] *Ibid.,* 1794.
[12] *Ibid.,* 1786.

deliberation and deference. It also provides compelling motivation for increasing the number of women in positions of political power generally – adding women to the political system means that men must choose their stances on issues of gender more carefully.

Women, despite making up approximately fifty-one percent of the United States population, have historically been underrepresented on legislative bodies. An Ohio-specific analysis of this representational problem will be presented in the next chapter, but an analysis of the United States generally is useful here. As of July 30, 2009, there were 1,788 total women serving in state legislatures, a composite 24.2 percent of all state bodies. Colorado, New Hampshire, and Vermont have notably higher percentages of women serving in their legislatures, all above thirty-seven percent.[13] The national Congress favors worse than state governments in terms of percentages of representation. In the 112th Congress[14], there are forty-nine white women in the House of Representatives and seventeen white women in the Senate. At the same time, there are only twenty-three women of color serving in the House of Representatives and none in the Senate. This brings the total number of women serving in Congress to a mere eighty-nine of 535 total positions, which means that women make up approximately sixteen percent of Congress.

People of color, regardless of gender have even less representation in Congress. As previously stated, there are twenty-three women of color in Congress, all of whom serve in the House of Representatives. There are forty-five men of color in the House of Representatives, and only one serving in the United States Senate in the 112th Congress, bringing the total number of people of color serving in Congress to sixty-nine, a mere twelve percent of total representatives.

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[13] Katie Ziegler. "Women in State Legislatures: 2009." *Women's Legislative Network of NCSL*. National Conference of State Legislatures, 30 July 2009, accessed 18 Nov. 2009. <http://www.ncsl.org/.aspx?tabid=15398>.
[14] Currently serving as of Spring 2011

Given the information available about white women, women of color, and men of color, the total percentage of minority representation in Congress amounts to twenty-five percent.

Does it matter that percentages of women and people of color serving in the legislature are low? Specifically, do women need women in legislatures in order to be adequately represented? According to Sue Thomas, the answer is yes. In her work, as presented in the anthology, *Gendering American Politics: Perspectives from the Literature*, Thomas presents five potential results from the inclusion of more women in state and national legislative bodies. First, she is certain that higher levels of women in legislative roles will mean women will have higher levels of policy priority over men in certain situations. Related, and secondarily, however, she does not believe that the addition of women will change support for all issues; certain issues are not as easily related to gender. According to Thomas, issues easily related to gender include those dealing directly with children and the family, as well as sex discrimination, sexual harassment, and right to work issues. Thirdly, Thomas suggests that more women will mean more introduction and passage of legislation concerning women, children, and the family. Fourth, she believes that more women will have an impact on the ethic of the chamber, and change the kinds of topics addressed. Finally, she predicts that the highest passage rate of bills concerning women, children, and the family will occur in states with the highest percentages of female representatives.[15] According to Thomas, then, women's issues do not become important until women are present. Considering that most victims of sexual assault are women, and that rape has long been deemed a "women's problem", it seems clear that sexual assault would qualify as the kind of women's issue that Thomas feels cannot be made important until women are present in legislatures.

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[15] Sue Thomas, "Impact of Women on State Legislative Policies." In *Gender American Politics: Perspectives from the Literature*, ed. by Karen O'Connor, Sarah E. Brewer, and Michael Philip Fisher, pgs 227-235. New York: Pearson/Longman, 2006.

Recent studies seem to back up Thomas' hypothesis, although there is some uncertainty about whether it is the gender of representatives or the geographical district area from which representatives are elected that makes an impact on policy. Proponents of the theory claiming that geography is the better predictive variable for how a legislator will act in office than gender claim that districts who elect women are more likely to have liberal dispositions in the first place, and would tend to support more progressive policies concerning women, children, and the family. Geography-based understandings of the evolution of progressive policy place the emphasis on accountability of representatives to the residents of a community, instead of on a personal political agenda informed by the particulars of individual identity. Though compelling, it is important to note that recent studies have found that even conservative women tend to support women's issues at higher percentages than their male counterparts, often scoring alongside Democrat men. These findings indicate that gender is likely a more important variable than geography when it comes to progressive politics and identity-specific issues.

One such study focused on the attitudes of legislators toward welfare policy, "because more general ideological orientations and policy priorities may mask small but significant differences in men's and women's policy positions."[16] As suggested above, conservative women tended to be more liberal than conservative men on welfare policy issues. In this study, Sarah Poggione also tested for variables outside of gender, to see if there was a variable with as strong an effect as gender on legislator's liberal attitudes toward welfare policy. She tested for age, district income, district education, district unemployment, political ideology, marital status, race (specifically black legislators), religion (Catholic, Jewish, non-traditional Christian and no

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[16] Sarah Poggione, "Exploring Gender Differences in State Legislators' Policy Preferences." *Political Research Quarterly* 57 (2004): 305.

religious preference), and years in legislature.[17] Poggione found that gender and party were the strongest predictors of a legislator's stance on welfare policy, with gender having a strong but lesser effect than political party. She also found that the average female Democrat was more liberal than her male or conservative counterparts, and that Republican women were only slightly less liberal on welfare policies than Democrat women. Democrat men score marginally lower than women as far as general liberal attitudes go, but there is a significant difference between Republican women and Republican men. In conclusion, despite the strong positive relationship between liberalism on welfare policies and political party, being a woman makes a significant difference that cannot be accounted for in any other way.

Michele Swers' findings are in agreement with Sarah Poggione's. Swers also set out to determine whether gender or geography was most important variable when voting and proposing policies. She found that the gender of legislators had the most impact on health and reproductive issues as well as general women's issues. Swers discovered that gender is somewhat secondary to political ideology, but "moderately conservative Republican women are far more likely to vote in favor of the women's issue bills than are moderately conservative Republican men."[18] She also found this statement to be true when comparing highly conservative Republican men and women. Specifically, she found that being a woman increased the likelihood that a representative would vote in favor of a woman's issue by eight percent, going up to eleven percent if the issue was reproductive. Being a Republican woman, rather than a Republican man, meanwhile, increased the chance that a bill would be favored by twenty-three percent if it were a women's issue bill and twenty-nine percent if it were a reproductive issue bill. Clearly, at some

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[17] *Ibid.*, 309.
[18] Michele L. Swers "Are Women More Likely to Vote for Women's Issue Bills than Their Male Colleagues?" *Gendering American Politics: Perspectives from the Literature*, 255.

level, being a woman means more than being a member of either political party; that is, some issues transcend geographical explanations.

There are several possible explanations for why the presence of women might matter. One such reason might be that women communicate differently, so that their absence from discussions might lead to entirely different solutions to issues. From this essentialist perspective, it follows that without the presence of women, laws involving sex discrimination, access to reproductive healthcare, access to education, and family issues might not be as progressive as they are today. According to Cindy Simon Rosenthal, women and men have different styles of achieving a solution. Women, according to Rosenthal, are more likely to pursue a collaborative method of problem solving, while men focus on trading and bargaining strategies. In her research, Rosenthal interviewed committee heads from state legislatures nationwide. One Ohio chair explained, "Women want to make everyone a winner,"[19] while a woman from Wisconsin clarified, "We're [women] willing to share more of the decision making, more of the power."[20] Men, by comparison, are less interested in finding a middle ground than in persuading their colleagues of the correctness of their individual position.

It would seem, then, that gender matters, if for no other reason than that including more types of people reshapes the conversation in a more inclusive way. Ending the discussion here, however, would be a mistake. For one, the reasoning above relies on essentialist categories of personhood, which were found in Chapter Three to be not only incomplete but also detrimentally inflexible. Gender, as it stands, is only one aspect of an individual, and it cannot be relied upon to be the most important or the most determinate predictor of behavior in a given situation. Instead, theories of intersectionality and Black feminist thought provide better justifications, as

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[19]Cindy Simon Rosenthal. "Gender Styles in State Legislative Committees: Raising Their Voices in Resolving Conflict". *Gendering American Politics: Perspectives from the Literature*, 248.
[20] *Ibid.*

they can predict and explain why women might respond differently than men on issues of welfare, reproduction, children, and the family, but they might respond similarly to men if they share a class or racial background. Perhaps the best argument for the increased inclusion of marginalized groups, however, resides in the theories of group and serial membership. Using this theory, one can understand how multiple series memberships do and do not lend themselves to politically active group membership. Group and series memberships shed light on how, for example, homosexual women of color determine their allegiances on identity-specific issues.

According to the studies examined, if sexual assault policy can be categorized as a reproductive issue, then it can be that women will respond differently than men when trying to come up with and enforce sexual assault policies. Given the low rates of female representation on governing bodies, it would not be surprising to find that policies involving sexual assault have had little opportunity to be affected by women's voices, making the policies impotent from the beginning, unable to be effective because they were not even partially shaped by those most often affected by the issue.

Although a large discussion on the importance of including women in the discussions and decision making processes surrounding sexual assault has taken place, the importance of including racial minorities has only briefly mentioned in this chapter. To explain why racial diversity in decision making about sexual assault matters, one might examine studies that look to account for the weight of the non-white voice in non-white issues. Similar to the above analysis of the way gender matters, studies have been conducted in an attempt to examine the way in which race affects judicial decision making. In one such study, "The Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases," authors Pat Chew and Robert Kelley take a careful look at the way race changes the way federal judges decide racial

harassment cases. In their analysis, Chew and Kelley explain that while racial minorities make

up roughly thirty percent of the population, minority judges make up only ten percent of judges

as a whole.[21] These findings are significant for reasons similar to those regarding the

underrepresentation of women; if women as a whole can be shown to have differing opinions

than men on certain issues, and women are absent, than an entire opinion set is being left out of

discourse where it might have a large impact. By the same token, if racial minorities can be

shown to have differing opinions than whites on certain issues, and yet are continually excluded

from policy formation on these issues, then these policies are misinformed at best.

In one case cited by Chew and Kelley, researcher Nancy Crowe looked at race and sex

discrimination cases over a fifteen year period. Crowe's inquiry yielded interesting information

on the ways in which race and gender play out in the public sphere. Specifically, Crowe found

that women are more likely than men to hold for plaintiffs in sex discrimination cases, but

simply being female is not an indicator of a positive judgment in race discrimination cases.[22] On

the other hand

> African American judges held for plaintiffs nearly twice as often in sex discrimination
> cases and over twice as often in race discrimination cases, as compared to White
> judges… the race of the judge may be relevant in cases that deal with race discrimination
> but also in cases that deal with discrimination more broadly. Perhaps African American
> judges are empathic to discriminatory experiences of all kinds.[23]

Although this is a broad statement to make about a population group as a whole, and

cannot possibly be true of all Black Americans, it is an interesting finding to consider. If one

takes this line of thought seriously, the presence of African Americans on courts and legislative

bodies deciding issues of sexual assault makes a huge difference, especially if African

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[21] Pat K. Chew and Robert E. Kelley. "Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases." *Washington University Law Review.* (86) 2009: 1125.
[22] *Ibid*, 1131.
[23] *Ibit*, 1134.

Americans come to see sexual assault as a result of sex discrimination or general disadvantage. While not founded in empirical data, taking this kind of idea seriously could have incredible implications for the way rape law is created, defended, and decided in the long term.

Pat Chew and Robert Kelley eventually determined that the race of a judge mattered a great deal in how she or he would decide a racial harassment case. Their study specifically looked at forty percent of all racial harassment cases, randomly chosen from those cases reported from six federal circuit courts between 1981 and 2003. The analysis yielded 256 different judges and 428 different judge/case pairings[24] . In all, they found that twenty-two percent of racial harassment cases are found in favor for the person bringing the suit, or approximately 1:5 cases.[25] Compared to the twenty-two percent average, African American judges found in favor of the plaintiff 45.8 percent of the time,[26] a very significant difference, which indicates that a plaintiff before an African American judge has a much higher likelihood of winning her or his case than one before any white judge. Interestingly, when looking to see how women and men reacted to racial harassment cases, the study did not find any significant statistical differences. On average, female judges found in favor of the plaintiff 25.6 percent of the time, while men found in favor 21.3 percent of the time[27] – neither number far enough away from the general twenty-two percent success rate to warrant further investigation. This study indicates that it is just as important to improve racial diversity as it is gendered diversity in all levels of government. Not including racial minorities in decisions about sexual assault policies could have disastrous consequences, especially when one recalls that incidences of sexual assault are

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[24] *Ibid.,* 1138.
[25] *Ibid*., 1141.
[26] *Ibid*.
[27] *Ibid*., 1144.

typically much higher in non-white communities than in white communities.[28] Including non-white voices on the issue of sexual assault is essential for truly comprehensive policy.

With gender and race relatively accounted for, all that remains is to determine the impact of class on members of the judiciary or legislative bodies. Unfortunately, as previously noted, class is not the same kind of variable as race or gender, and so it has not been studied in the same way. There are no available studies about the impact of class on people making decisions about issues of class. Eliminating class as a variable of studying, however, would be a huge mistake. According to psychologist Helen Joy Policar, "although class is not as overtly identifiable as race or gender identification, a social class constitutes an integral part of personal identity."[29] Part of this personal identity is tied up in the co-called "American Dream." The "American Dream" refers to an ideology about class that makes the argument that all people are capable of attaining economic success, if only they are willing to put forth enough work. Economic success, in this model, is equated with personal happiness. The "American Dream" "is deeply embedded in the American consciousness and adherence to it crosses racial, class, socioeconomic, and political lines."[30]

In order to understand the ideology of the "American Dream", one must first gain a deeper understanding of capitalism as a political and social structure. According to political economists Karl Marx and Friedrich Engels, capitalism can best be understood as the most recent name for a centuries old class conflict, the aim of which is to keep one class in power through the suppression of another class or classes. According to proponents of capitalism, the economic market is an excellent mechanism for tracking human progress as an equalizing agent. The

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[28] Recalling earlier statistics: 17.7% of white women are assaulted, 18.8% of black women, 6.8% of Asian Pacific Islander women, 34.1% of American Indian/native Alaskan women, and 24.4% of women of mixed race.

[29] Helen Joy Policar. "The Shadow of the American Dream: The Clash of Class Ascension and Shame." *ReVision.* 31-1 (2010): 20.

[30] *Ibid.*, 28.

capitalist market is said to be open to anyone, and so anyone can find success. Marx and Engels

vehemently disagree. According to them, "the history of existing society is the history of class

struggles."[31] Marx and Engels found out that no matter what segment of time in history one

looks to, the whole of society can be broken down into the bourgeois and proletariat classes. The

bourgeois are those in the middle and upper classes, and the proletariat are the working classes.

Marx and Engels believed that the bourgeois retain their economic success by having

reduced every single human interaction into a system of wage relations. Specifically, according

to Engels, "in most of the historical states, the rights of citizens are…apportioned according to

their wealth, thus directly expressing the fact that the state is an organization for the [dominant]

class for its protection against the [subordinate] class."[32] Engels points out that the ancient

Romans and Greeks divided their society along property ownership lines, while individual power

in a feudal system depended on the amount of land a single person possessed. Engels sees this

system of property as necessary capital for citizenship as being reproduced in many democratic

countries, given the property qualifications of citizenship and voting rights. In these countries,

the proletariat/subordinate class can be lulled into a false belief that the capitalist system is

working for them, not exploiting them, by being given the opportunity to vote.

Engels' concerns about false consciousness concerning the working class and capitalism

are very similar to Donna Langston's concerns about the working class becoming complacent

under a belief in the "American Dream". A more modern theorist, Langston makes the argument

that the "American Dream" is one of the most effective mechanisms through which the working

class is kept in a subordinate position in American society. First, it cements the working class

into a subordinate position by giving its members false hope in their ability to ascend through

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[31] Karl Marx and Friedrich Engels, *The Communist Manifesto*. (New York: Penguin Books, 2002), 219.

[32] Engels, Friedrich. "The Origin of the Family, Private Property, and the State." In *Basic Writings on Politics and Philosophy: Karl Marx and Friedrich Engels*, edited by Lewis S. Feuer (Garden City: Anchor Books, 1959), 393.

classed ranks. Second, the ideology of the "American Dream" uses those few individuals who

miraculously move up the ladder of class as tokens to perpetuate itself as a truth, not a myth.[33]

Finally, the "American Dream" functions by reinforcing "middle- and upper-class beliefs in their

own superiority."[34]

The "American Dream" is important to understand because it helps explain why class is

an important factor of political analysis. Although Americans often buy into the "American

Dream" and allow themselves to believe that class status can easily be changed, class does not

actually function that way. Because classes are actually permanent, they understandably come

with different cultures. Langston points out:

> As a result of the class you are born into and raised in, class is your understanding of the
> world and where you fit in; it's composed of ideas, behavior, attitudes, values, and
> language; class is how you think, feel, act, look, dress, talk, move, walk…[35]

Although not often understood like race and gender are, it is clear that class is a variable that has

political importance all on its own. Langston also points out that class, just like race and gender,

is a variable that further complicates the lives of people already marginalized. Langston explains,

"sometimes…gender and class reinforce each other [in]… compounded, simultaneous

oppressions."[36] Although she is speaking from her own experiences as a white, working class

woman, it is easy to apply this concept to other women and see the ways in which women

experience oppression on multiple levels, not restricted to one facet of their identity.

Unfortunately, the American legal system seems to be lacking an understanding of the

intersectional relationships of identities in individuals, tending instead to apply laws to the

monolithic categories of "women," or "African-Americans." Rape laws are not exempt from this

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[33] Langston, Donna. "Tired of Playing Monopoly*?"* in *Changing Our Power: An Introduction
to Women's Studies*, edited by Jo Whitehouse Cochran, Donna Langston, and Carolyn Woodward (Dubuque:
Kendall-Hunt, 1988), 397.
[34] *Ibid.*, 378.
[35] *Ibid.*, 398.
[36] *Ibid.*, 401.

trend; in fact, rape laws from ancient societies to the present day rely on such categories in order to function. Who these laws are functioning for, however, remains a mystery, as it is evident that women are not as simple as codified law wishes they were, and so remain largely underserved by rape law and policy.

Chapter Five

> In the tunnel where I was raped, a tunnel that was once an underground entry to an amphitheater, a place where actors burst forth from underneath the seats of a crowd. A girl had been murdered and dismembered. I was told this story by the policy. In comparison, they said, I was lucky...But at the time, I felt I had more in common with the dead girl…the dead girl and I had been in the same low place. We had lain among the dead leaves and broken beer bottles.[1]

Sexual violence has long saturated the state of Ohio. In 2003, a report delivered to the Governor stated that one in seven women above the age of fourteen living in the state had been the victim of forcible rape. At the time, the total number of female survivors of forcible rape was 635,000. The report did not include information on victims of attempted rape, drug or alcohol facilitated rape, incapacitated rape, or statutory rape. It also did not include statistics about girls under the age of fourteen, or boys and men at all.[2] Considering the dearth of information presented in the report, a safe assumption would conclude that the number of survivors living in the state of Ohio in 2003 was much higher than 635,000.

Since 2003, there have been no additional reports released about the rate of sexual assault in the state of Ohio. In the eight years that have passed, men and women have continued to be raped and assaulted. The people who are victimized by sexual assault in the state of Ohio are both white and non-white, low income and wealthy, male and female; however, some groups are victimized at higher rates than others. Although there is no new data, it is interesting to consider that eight years ago, "…women with extremely low household incomes of less than $5,000 a year had the highest risk of rape and women with incomes of $50,000 or more had the lowest risk."[3] Additionally, multi-racial, non-Hispanic women faced the highest risk of being raped,

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[1] Alice Sebold, *Lucky: A Memoir* (New York: Scribner, 1999), 3.

[2] Kenneth J. Ruggiero and Dean G. Kilpatrick, *One In Seven: Rape in Ohio: A Report to the State* (Charleston, SC: National Violence Against Women Prevention Research Center, 2003) 7.

[3] *Ibid.*

followed closely by American Indians and African Americans.[4] In the state of Ohio, as in the rest

of the United States, women are victimized at much higher rates than men; in the same year the

report in Ohio was released, nine out of ten rape victims in the United States were women.[5]

Clearly, rape in Ohio is a problem for the entire population, but it seems that low-income women

of color are most at risk of being victimized by sexual violence.

Ohio provides an interesting site to study rape law and victimization, because women

living in the state, and in the Midwest generally, run a higher risk of being raped than do women

residing in other regions of the United States. The United States Census Bureau has ranked the

region containing Ohio, Illinois, Indiana, Wisconsin, and Michigan as the third most rape-prone

area in the country, with the "lifetime prevalence of rape [at] 14.3%."[6] By comparison, New

England women face a lifetime prevalence risk of ten percent.[7] The four percent difference

between the two regions is significant, and worth investigating.

Ohio became a state in 1803, shortly after the United States became a nation. Before

statehood, it was a well-populated area of the Northwest Territory, employing similar laws as the

original colonies in the Eastern United States. The current differences in risk of rape between

New England and Ohio are striking when one considers that their rape laws were virtually

identical in the nineteenth century. Many rape laws throughout history have been remarkably

similar, even in the time before the United States. In her groundbreaking book, Against Our

Will, Susan Brownmiller analyzes rape laws from ancient societies and shows them to have

important similarities to one another. These laws also have similarities to laws in the present day,

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[4] *Ibid.*

[5] Rape, Incest, and Abuse National Network. "Statistics." http://www.rainn.org/statistics.

[6] Ruggiero, *et al.*, 7.

[7] *Ibid.*

which will become apparent through careful analysis of how rape laws evolved in the world, in the United States generally, and in Ohio specifically.

Brownmiller begins her analysis in Babylonia, with the Code of Hammurabi. The Code of Hammurabi is often lauded for being one of the first sets of codified laws in the world. Indeed, the Code had intensely detailed instructions for social interactions, market transactions, and criminal procedure. The crime of rape was no exception. In ancient Babylonia, men who raped betrothed virgins were killed. This law specifically placed value on the woman's virginity as well as her social class; in order to be protected under the law, a woman had to have social connections enough to place her into a betrothed relationship with another man. By comparison, married women who were raped supposedly shared the blame with their attacker, and both were "bound and thrown into the river."[8] Married women were blamed regardless of social class, probably due to their lack of virginity. From this, one can assume that there was economic value placed upon virginity in Babylonian times; once women were no longer virgins, they depreciated in value and lost the protection of the law. Moreover, this law also indicates that women who were no longer virgins were unable to withhold consent from any man; that is, once she had engaged in sexual contact, a woman was presumed to be willing to engage in sexual activity with any man who offered her the opportunity.

The idea of the sensuous, untrustworthy married woman also appeared in the laws of ancient Hebrew culture. For the Hebrews, "a married woman… who was victimized by rape was considered culpable, adulterous, and irrevocably defiled. She was stoned to death along with her attacker at the gates of the city."[9] Ancient Hebrew culture also placed monetary value on the virginity of a woman, although it is safe to assume that this was only true for women who

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[8] Brownmiller, Susan. *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), 19.
[9] *Ibid.*

belonged to higher social classes. For Hebrews, however, the issue of virginity was more complex than it was in Babylonia. Hebrew laws required evidence of resistance in order for sexual contact between a man and a virgin to be called rape. For example, if a rape took place within the city walls and a woman (who was previously a virgin) came forward to report the crime, both she and her attacker were killed, for it was presumed that if the sexual advances had truly been unwanted, the woman would have cried out loud enough for a neighbor to hear and intervene. Conversely, if a virgin were raped outside the city walls, she was not considered culpable for the attack. However, instead of facing criminal charges, the man who committed the act was forced to pay the girls' father fifty silver pieces, and the two were made to marry. [10]

In ancient Assyrian culture, "the father of a raped virgin was permitted to seize the wife of the rapist and violate her in turn."[11] Although this law seems to be applicable regardless of the class of the victim, it still relies on a system of women as male property and treats rape as an act that devalues that property, instead of a violent and reprehensible act against a person. This can be seen in English laws before the Norman Conquest of 1066, wherein "justice [for rape] pertained exclusively to the man who raped a highborn, propertied virgin who lived under the protection of a powerful lord."[12] For men who dared rape a woman of such economic value, the punishments were harsh: prior to 1066, the penalty was death and dismemberment; after William the Conqueror, the penalty was reduced to castration and eye removal. Still, men who raped women without social standing or connection to a powerful lord faced absolutely no consequence.

In her article, "The Traffic in Women: Notes on the 'Political Economy' of Sex," Gayle Rubin attempts to uncover why women, social standing, and sexual relationships are so closely

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[10] *Ibid.*

[11] *Ibid.*, 20.

[12] *Ibid.*, 24.

connected. For Rubin, much of it comes back to capitalism, which "is a set of social

relations…in which the production takes the form of turning money, things, and people into

capital."[13] In a capitalist system, the reproduction of the labor force is essential for continuation,

and so heterosexual reproduction is of utmost importance and faces fierce regulation. Rubin

explains that, in this light, sex is a social product, not a natural occurrence; that is, with such

value to the capitalist structure, sex is constructed in order to promote and preserve capitalism. It

may occur naturally in other forms, but in a capitalist structure, it is constructed to occur only

within small, heteronormative units. In part, this functions to impose and reinforce a supposedly

natural gendered division of labor. Rubin explains that this division of labor exists in order to

ingrain "a taboo against the sameness of men and women, a taboo dividing the sexes into two

mutually exclusive categories, a taboo which exacerbates the biological differences between the

sexes and thereby *creates* gender."[14] It is worth noting that Rubin's theory of the traffic in

women is an example of social constructionist theory, by which gender and sexuality are not

naturally occurring but shaped and informed by social rules and structures.

In addition to being socially constructed in order to best promote and protect capitalism,

gendered units are created through the exchange of women. In the capitalist structure, women are

exchanged as gifts between men in order to create useful kinship networks. Rubin defines

kinship "as an imposition of cultural organization upon the facts of biological procreation."[15] It is

important to note, however, that the power derived from a kinship network belongs entirely to

those constructing it; the power from social relationships under this system resides entirely in the

exchange partners of the good. In this instance, the exchange partners are men, and the good is

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[13] Rubin, Gayle. "The Traffic in Women: Notes on the 'Political Economy' of Sex." In *Feminist Theory: A Reader*, ed. by Wendy K. Kolmar and Frances Bartkowski, (Boston: McGraw-Hill Higher Education, 2009), 231.
[14] *Ibid.*, 235 (emphasis original).
[15] *Ibid*., 232.

women. Women cannot exchange themselves in order to improve social standings, and so are trafficked in marriage and sex in ways that cement and reinforce their oppression. Rubin explains that the traffic of women is distinct from the traffic of men:

> Men are of course also trafficked – but as slaves, hustlers, athletic stars, serfs, or some other catastrophic social status, rather than as men. Women are transacted as slaves, serfs, and prostitutes, but also simply as women.[16]

Through the traffic in women, women are given value as economic units, not as people. As seen in the examples of Babylonia and Hebrew culture, the value of the woman depends on a number of factors, not the least of which being her family's social standing and existing kinship network and her virginity. Marriage can be seen as determining the property rights to a woman's personhood; ancient rape laws can be read as regulating damage to that property. According to Rubin, the exchange of women is the exchange of heterosexual sexual access.[17] The property being traded is a woman's physical body. Understanding how women functioned as property makes it easy to see why ancient cultures would kill married women who were raped alongside their perpetrators; the property had been ruined, and had long lost its economic value, becoming disposable in the harshest sense.

Through their work, Rubin and Brownmiller set the stage for an analysis of early American rape laws. They do this by establishing several basic understandings of a society's relationship to rape. First, women's bodies can be understood as belonging to men, not to themselves. Consent and sexual access can be traded among men, but cannot reliably be given by women to men and especially not by women to other women. Second, social class plays an important role in determining whether or not a person can be raped, or if a rapist is going to be charged with a crime. Third, given that married women were not considered capable of

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[16] *Ibid.*, 234.
[17] *Ibid.*, 235.

withholding consent from any man seeking sexual access, it may also be true that any woman with a previous sexual history might not be able to withhold consent. In other words, evidence of past sexual activity with any man can act as a foregone consent to sexual activity with another man.

Rape in early America is not an issue often discussed in basic history courses on the birth of the nation. According to historian Sharon Block, "rape in early America was both pervasive and invisible."[18] In addition, in early America, "the identities and relationships of the participants, not the quality of a sexual interaction…most easily defined rape."[19] Specifically, the racial and class standings of both the victim and the perpetrator played important roles in determining what counted as rape in the early United States. White men with higher social ranking could more easily perpetrate rape without consequence than lower class white men; this dichotomy is even greater when one compares the ways in which white men had a much easier time committing rape and facing little punishment as compared to Black men of any social class.

Still, the biggest trouble with rape in early America was determining when it had actually happened. This can be attributed to a centuries-old belief in degrees of acceptable coercion in sexual relationships between men and women. In normal courtship proceedings of the 18th and 19th centuries, men were expected to have to convince women to engage in sexual contact with them, even if, and perhaps especially if, the woman in question desired the sexual relationship. Women were expected to resist men in order to prove their chastity and virtue. Women who successfully evaded male sexual advances were considered worth marrying; women who did not were painted as detrimental to social networks and so unmarriageable. With these extenuating

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[18] Sharon Block, *Rape and Sexual Power in Early America*, (Chapel Hill: University of North Carolina Press: 2006), 1.
[19] *Ibid.*, 3.

circumstances, it is easy to see how "early Americans often saw the violence of forced sex as an unfortunate result of sexual desire rather than the original intent of a sexual act."[20]

Women of lower classes faced even worse situations for sexual relationships, as it was largely assumed that they could be persuaded into engaging in sexual activity with men in exchange for money or goods. In one 18th century case, Margaret Pearls sued Issac Willows for raping her after she refused his offer of eighty-one pounds for sex. Similarly, in a New Jersey case from 1787, a woman was promised money, ribbons, and clothing in exchange for sex; upon her continued refusal, she was raped. Payment for sex extended beyond sexual contact between strangers, due to the language of marital coverture. Coverture laws stated that a man and a woman, once united through marital contract, became one entity before the eyes of the law. In this way, a crime committed against a wife was also a crime committed against a husband. Under this logic, in 1759, a North Carolina judge ordered Dr. Robert Lennox to pay John Campbell five thousand pounds for having raped his wife and so depriving Campbell of her company.[21]

Early American thought classified rape alongside other general forms of sexual misconduct, placing the blame for all on men's inability to contain their sexuality. This construction of sexuality made rape the natural result of men who could not control their sexual impulse. According to Block, the general belief system in early America meant that "just as all men could be sinners, all men might let go of the leash of their passions with unfortunately disastrous results [rape]."[22] At the same time, women were constructed as both sexual temptresses and regulators of proper sexuality. Women had to always be resisting in order to uphold and promote the sexual order of the time, but could not be reliably considered to be resisting wholeheartedly due to their supposedly inherently lustful nature. Block explains that

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[20] *Ibid.*, 17.
[21] *Ibid.*, 30.
[22] *Ibid.*, 36.

this "had a powerful result: women could not be trusted to judge or represent their own consent," meaning that men became the judgers of female consent, an endlessly problematic concept when men were the ones raping women in the first place.[23] In popular 18th century literature, women were portrayed as initially resisting sexual contact, but afterwards admitting they had enjoyed and actually wanted the experience. This ideology was often successfully used in court to prove that women were claiming rape out of regret for sexual contact, not for actual emotional distress at having been violated. For example, under 18th century belief systems, two men attempted to place the blame for their incestuous sexual molestations on the victims. In 1734, Emmanual Lewis attempted to defend his charge of having raped his mistress' five-year-old daughter by claiming that she had desired the contact. Similarly, in 1806 Ephraim Wheeler "denied raping his daughter and admitted only to incest with her," claiming that the contact between them, although immoral, had been consensual.[24] With such blurred lines between consensual sex and rape, women were continually considered to be untrustworthy in regards to their own sexual desires, as a woman might seem to resist sexual contact, but actually be desirous of it.

Author Peggy Sanday offers another look at rape in early America. According to Sanday, colonial New England could be considered almost rape free. She explains this by looking to the ways in which colonists in New England actually encouraged sexual passion and enjoyment, but only within the marital relation. Due to the strength of marriages, women who did report rape were easily believed, as they were thought to have no reason to lie. Their expressions of sexual passion were largely acceptable inside the marriage, and it was believed that women would not desire sex outside of marriage.[25] Once the United States began to move toward the 19th century, however, the cult of true womanhood reigned. The cult of true womanhood was an ideology that

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[23] *Ibid*., 40.

[24] *Ibid*., 43.

[25] Peggy Reeves Sanday, *A Woman Scorned: Acquaintance Rape on Trial* (New York: Doubleday: 1996), 19.

painted women as naturally morally superior to men, and placed responsibility for upholding the good of society solely in the hands of women. Due to this, impure women [read: women who were not virgins] were considered dangerous to society, and women bringing rape charges began to be scrutinized more heavily.[26]

Feminist theorists Patricia Donat and John D'Emilio had similar findings in their investigation of rape in early America. According to Donat and D'Emilio, "colonial society held the entire community responsible for upholding morality, and sexual crimes were punished severely."[27] Donat and D'Emilio pointed out that familial relationships and the extension of kinship ties through the trade of women in marriage relied heavily on the purity of women and their continued monogamy in marriage. Women were largely believed to be invested enough in this system to be honestly resistant to sexual advances outside of marriage. Despite this, the authors point out, "during the colonial period, the rape cases most likely to come to court were those in which the perpetrator was from a lower social class than the victim or in which the victim was a married woman who physically resisted."[28] The importance of social standing and a show of resistance are consistent with earlier evidence. Additionally, Donat and D'Emilio also found that the transition from the 18th century to the 19th century brought with it a view that "women were…pure and virtuous by nature and disinterested in sex."[29] As previously discussed, this was a double-edged sword for women rape victims, it simultaneously made them unlikely to consent to sex outside of marriage and deserving of intense scrutiny to determine their moral character and previous sexual history.

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[26] *Ibid.*, 20.
[27] Donat, Patricia L.N. and John D'Emilio, "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change." *Journal of Social Issues*. 48:1 (1992):9.
[28] *Ibid.*, 10.
[29] *Ibid.*, 11.

Although the class and purity of women mattered a great deal in early American rape cases, race was another incredibly important factor. Race was a factor that greatly affected both victims and perpetrators. According to Sharon Block, white men were increasingly understood as seducers whom women would have a great deal of trouble meaningfully resisting. By the same token, white women were more believable than Black women as individuals capable of resisting; that is, white women were considered more moral than Black women, and so less interested in sex. Black women were painted as forever interested in sexual contact, regardless of the race of the man. Although not addressed in early America, "the rape of Black women by white men during slavery was commonplace."[30] In fact, according to Jennifer Wriggins, the rape of Black women was not even a crime, especially under slavery where Black women were regarded solely as property. As Wriggins points out, "neither white nor Black men were expected to show sexual restraint with Black women," making it impossible for Black women to be considered victims of rape, no matter who committed it.[31] Meanwhile, the supposed virtue of white women also complicated the lives of Black men a great deal, as Sanday explains:

> Because early Americans had a vested interest in concluding that white women (practically the only legitimate victims in prosecuted rapes) would not voluntarily have sexual relations with black men, black men were the most believable rapists of white women.[32]

Of the 174 men executed for rape between 1700 and 1920, 142, or eighty percent of them, were Black or of African descent. Of these 174 cases, white women made up ninety-five percent of the victims.[33] This is the direct result of a legal system that viewed white women as the only legitimate victims of rape (ignoring women of color completely), and as a result punished Black men at incredibly higher rates than white men for the crime of rape. When white men were

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[30] Wriggins, Jennifer, "Rape, Racism, and the Law." *Harvard Women's Law Journal*. 6:10 (1983): 115.
[31] *Ibid.*, 119.
[32] Block, 167.
[33] *Ibid.*, 166.

charged in court, they "were repeatedly charged with lesser criminal sexual offenses that did not require proof or force for conviction, even though the incident might have warranted an attempted rape charge."[34] In addition, punishments for sexual assaults that were prosecuted were much harsher for Black men than for white men. Around two-thirds of prosecutions resulted in death sentences for Black men, a much higher rate than for white men.[35]

Newspaper coverage of rape in the 18th and 19th century was similarly biased. According to Block, "the invisibility of whiteness allowed white sexual attackers to be seen as individuals in categories other than race."[36] When white-on-white sexual crimes occurred, no racial identifiers were used in the news coverage of the event. In place of race, newspapers inserted an incredible amount of detail about the attack, in order to make it extraordinary to readers. Recall that white men were considered expert seducers who could easily convince women to engage in sexual activity with them; for white-on-white sexual contact to be considered forceful to the point of rape, true resistance must have been shown. In contrast, the newspapers of the time focused not on the crime when it was reported that Black men raped white women, but on the punishment. Block points out that "the stark image of burning or mutilated black bodies separated them from individual white offenders, marking African Americans in general as a danger to colonial society and preempting any public discussion of black and white sexual acts."[37] This construction of Black men as sexually dangerous partnered directly with the image of Black women as sexually promiscuous, as pointed out by Paula Giddings and Angela Davis in Chapter Two. In addition, the construction of acceptable sexuality along racial, class, and morality lines shaped American (white) citizenship forever.

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[34] *Ibid.*, 174.
[35] *Ibid.*, 193.
[36] *Ibid.*, 201.
[37] *Ibid.*, 203.

Things were hardly different in early Ohio than they were in early America. The first rape law was enacted in the state of Ohio in 1805, two years after it was made a state.[38] As in the nation, in the early years of Ohio's rape statutes rape laws did not require strict scrutiny of the woman bringing the charge; as noted by Peggy Sanday and Patricia Donat, this changed later in the nineteenth century as the cult of true womanhood took hold of American society and required the moral purity of women in order to function. In mid-19th century Ohio, rape laws changed frequently and in a large variety of ways. In 1824, rape law changed so that rape was no longer an offense punishable by death. In addition, as the United States as a whole moved from a common law system to a system of codified laws and statutes, specific common law understandings were overturned in Ohio and requirements for rape changed accordingly. In *Joseph Williams v. State*, a common law understanding that young men could not produce semen, and therefore could not rape women, was overturned. In deciding the case, Judge Reed found that, "to constitute carnal knowledge, there must be both penetration and emission; both of these are necessary elements in the crime of rape."[39] Although the overturning of the law claiming young boys were incapable of rape was important, in doing so Judge Reed set in place a precedent that would turn out to be difficult to change: in order for rape to occur, penetration and emission were necessary elements.

In the late-1800s, beliefs in women began to change in accordance with the cult of true womanhood. Due to the high moral expectations placed upon women, it was believed that women would lie about unwanted sexual contact in order to maintain moral superiority when they later regretted sexual contact that had actually been consensual. Paranoia about false reports of rape began to rise, shaping both changes in laws and how judges presided over rape cases.

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[38] Morrison, David. "The Image of Women in Ohio Rape Law During the Nineteenth Century." Masters Thesis, University of Cincinnati, 3 June 1993, 21.
[39] *Ibid*., 30.

Between 1875 and 1896, "the state legislature amended Ohio rape law, each time in ways wholly consistent with the antebellum presumption of a woman's moral purity."[40] In 1874, Judge Reed's statute was changed ever so slightly, so that penetration remained a factor required to show that rape had occurred, but emission was no longer necessary. In 1875, the punishment for statutory rape was instated as beginning at twenty years imprisonment and ending at life imprisonment. In 1874, "all non-statutory, non-incestuous rapists earned prison terms between three and twenty years."[41] Finally, in 1896, the age of consent was raised to 16, a law that is still valid today.

In addition to legislative changes, important changes in judicial interpretation and precedent occurred in the state of Ohio. In 1869's *Pratt v. State of Ohio*, chastity was made to be an incredibly important factor in any determination of a rape case. In fact, it was established as a mitigating circumstance so strong and important that it could lead to an acquittal. Specifically, the judge in the case found that "any evidence tending to show that the woman, prior to her testimony in court, had a poor reputation for honesty would cast doubt upon her testimony."[42] In 1872 in *Orlando Burt v. State of Ohio*, corroboration of rape became an essential part of the prosecution of the crime. *Burt* mandated that another person testify to the fact that a sexual assault occurred; it also required that reports of rape made to the police be "timely." This case was one way of defending the accused against false report. Finally, in 1873, *McFarland v. State of Ohio* made permanent an attitude toward women that treated them as predisposed toward false reporting, with the judge in the case explaining, "it seems to have been believed that the report was an act of vengeance… in fact, she had not been raped but despaired of being caught having consensual, if improper sex."[43]

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[40] *Ibid.*, 39.
[41] *Ibid.*, 40.
[42] *Ibid.*, 48.
[43] *Ibid.*, 52.

At the turn of the century, Ohio and the United States were in turmoil. The Civil War having ended a mere thirty-five years before, women agitating for the right to vote, and Jim Crow law instated over much of the nation made for complicated politics. In the early 1900s, a feminist movement emerged that is now referred to as the First Wave of feminism. It is widely known for having successfully agitated for the right to vote through the passage of the Nineteenth Amendment in 1920. Lesser known are the ways in which it privileged women of higher social classes and whiteness, making some strides forward while remaining hopelessly entrenched in ideas of morality and racial privilege.

According to Estelle Freedman, feminism in the United States erupted around 1848, alongside much of Europe. This was in large part due to the Industrial Revolution, which placed women laborers outside of the home. On the one hand, new systems of labor widened the wage gap between men and women, and "women became more economically dependent on men, enjoying less leverage within marriage and fewer opportunities outside it."[44] On the other hand, this new space for women outside of the home provided women with the opportunity to examine, critique, and protest conventional notions of femininity and motherhood, leading to broader notions of citizenship. One of the primary ideas that emerged from this radical space was the idea that women should be educated alongside men. This was one of the foundational keys to the feminist movement. Education could "provide… an initial wedge into the public sphere, from which [women] launched movements for equal legal and political rights."[45] From the very beginning, however, this vision of feminism and female advancement was steeped in privilege. It was believed that women who deserved education were those who were white and from the middle class. In the era before the Civil War it was illegal to teach slaves to read, making it a

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[44] Freedman, Estelle B, *No Turning Back: The History of Feminism and the Future of Women* (New York: Ballantine Books, 2002), 46.
[45] *Ibid.*, 47.

foregone conclusion that when feminists spoke of the education of women, they did not mean to refer to Black women at all.

This is especially interesting when one considers that another impetus of the early feminist movement was the abolitionist movement. As the anti-slavery rhetoric and action picked up in the mid-1800s in the time leading up to and during the Civil War, women were among those most involved. White women often partnered with Black men in order to make the most of their activism. Still, "opposition to slavery did not necessarily translate into a belief in racial equality," and so the women's abolitionist movement remained largely segregated.[46] This racially divided women's movement continued to prevail when the Civil War ended and slavery was abolished. White women began working on issues of suffrage, while Black women focused on "uplift[ing] former slaves through education and temperance."[47]

White feminists did not want to talk about much else outside of suffrage. When they did speak of issues outside of suffrage and political equality, it was in order to either garner more support for their issue in the general public or to provide more evidence of their own oppression. When it came to sexual abuse, things were no different. Although 19th and early 20th century feminists acknowledged marriage as a form of sexual slavery, there was no discussion of wife rape or sexual abuse within marriage or the family. Only once during the entire push for suffrage did the issue of rape come up at all. In 1868, when Elizabeth Cady Stanton and Susan B. Anthony were working with the Working Women's Association to garner support for the women's right to vote, a woman named Hester Vaughan was raped. An English immigrant, Hester Vaughan worked as a domestic servant in Philadelphia. While working and living in the home where she was employed, her employer "seduced and then fired her, leaving her

[46] *Ibid.*, 77.
[47] *Ibid.*, 80.

impoverished."[48] Later, she was found in a rented room with a dead infant, whom she had given birth to and then killed. She was convicted of infanticide, found guilty, and sentenced to death. Perhaps seeing this as an opportunity to garner support from other working class women who could empathize with Hester Vaughan, Anthony and Stanton lobbied the Pennsylvania governor for a pardon, claiming that it was unfair to kill her while her white rapist walked free. Eventually, the governor issued a full pardon, and Anthony and Stanton never brought up the issue of sexual violence again.

After the right to vote was passed in 1920, white feminism continued to agitate the federal government for equal political and legal rights. In the post-suffrage era, white feminists proposed the doomed Equal Rights Amendment, which amended the Constitution to explicitly comment on the equality of women. Estelle Freedman points out, however, that the feminist movement's "single focus on sex," was limiting because it meant that "they refused to discuss racial injustice."[49] This was to their detriment, as it prevented useful alliances with Black women.

In sharp contrast to the white feminist movement's silence on issues of rape, the Black women's club movement spoke out loudly against it. According to Freedman, "organized Black womanhood insisted that women of their race were as chaste as white women and equally offended by unwanted sexual advances."[50] Among Black women, rape was an unfortunately common topic of conversation, as it was something they all had to fear both from white and Black men. As explained earlier, the rape of Black women was hardly even criminal, even in the post-slavery era. Despite the passage of the Nineteenth Amendment, Black women and men

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[48] Maria Bevacqu, *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault* (Boston: Northeastern University Press, 2000), 18.
[49] Freedman, 82.
[50] *Ibid.,* 81.

remained largely disenfranchised in southern states, making it impossible for them participate in American political processes in traditional ways. Instead, Black women organized themselves into the Black women's club movement, which focused on proving the morality of Black women and protecting Black women and men from rape. The rape of Black women was a common theme in the club movement, but it required guarded language in order to be talked about in the public sphere. One prominent member of the Black women's club movement, Fannie Barrier Williams, was quoted in 1893 as having "stated clearly that black women's 'morals' were in constant need of protection," referring directly to the constant threat of rape against Black women as important enough to garner community activism.[51]

In addition to the threat of rape against their own persons, Black women organized around the issue of lynching. As outlined in Chapter One, the anti-lynching movement was one in which Black women, eventually joined by white women in the late 1930s, worked to make lynching illegal. Lynching was a violent death at the hands of a mob, most often employed by white men against Black men. Lynchings were often justified as being the punishment for Black men who raped white women. As Black women loved and lived with Black men, they did not want to see them killed for crimes they did not commit. Additionally, Black women saw their own depictions as sexually promiscuous as inextricably linked to portrayals of Black men as animalistic and unable to control their sexuality. Where white feminism shied away from issues of rape, Black feminists addressed it from the very beginning. Perhaps this is because Black women faced a greater threat of sexual violence with barely any opportunity for legal redress.

In addition to the differences of the white and Black feminist movements, the lack of attention paid to rape by mainstream feminism can also be attributed to the psychological theories of sexuality that dominated the era. In the early 20th century, psychologists such as

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[51] Bevacqua, 22.

Sigmund Freud became hugely popular for their theories of sexual function and gender. Although this psychology returned a sex drive to women that went missing under the cult of true womanhood, it assigned men and women to two opposite sides of sexual function. Men had active sex drives while women had passive sex drives. According to Peggy Sanday, "this new version of the true woman still had to say no when she meant yes, not because of moral superiority but in obedience to her alleged biological desire to be dominated."[52] Freud made scientific an ideology that Americans had long since adopted into its consciousness; women say no and mean yes, and are lustful creatures predisposed to wanting sexual contact. It also constructs male sexuality as being necessarily forceful in order to be performed correctly, not only for his pleasure, but for hers. Sanday explains, "today's blame-the-victim attitude derives from the twin notions that women are sexually stimulated by force and that male sexual aggression is primarily biological."[53]

In addition to painting women as possessing passive sexual tendencies, those men who could actually be understood as rapists also had a makeover courtesy of 20th century psychology. Psychologists like Freud removed the blame from the rapist for his crime, "since he was considered unable to control his pathological impulses."[54] As the rapist was labeled mentally deficient instead of criminal, racism in the United States continued to play its part, ensuring that the laws passed under the new psychological understandings of the day "often resulted in white men being labeled as mentally ill and being sent to state hospitals and Black men being found guilty of a crime and being sent to jail."[55] For their part, feminists of the day – white and Black alike – largely accepted the psychological theories of the day, making it difficult to speak out

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[52] Peggy Reeves Sanday, *A Woman Scorned: Acquaintance Rape on Trial* (New York: Doubleday, 1996), 21.
[53] *Ibid*., 22.
[54] Donat, et al., 11.
[55] *Ibid*., 12.

against rape because it was nearly impossible for rape to occur under these Freudian circumstances.

The feminist movement took hold in Ohio around the same time and in similar ways to the rest of the United States. In 1922, two years after the passage of the Nineteenth Amendment, six women were elected to the Ohio General Assembly at the same time. It is useful to see what committees they were assigned to, both for determining the feminist interests of the day in Ohio and also in gauging what issues a male-dominated legislative body deemed politically neutral enough for women to work on.

Of the six women, four were elected to serve in the Ohio House of Representatives. Nettie McKenzie Clap served from 1922-1930 in the House of Representatives. During her tenure, she served on the Minimum Wage Commission; chaired the Universities and Colleges Committee; chaired the Library Committee; and was a member of the Committee on Benevolent and Penal Institutions, the Cities Committee, and the Health Committee.[56] She did not serve on any committee dealing with sexual violence, or for that matter, women's equality at all. One of her colleagues, Lulu Thomas Gleason, had a much shorter term. She served from 1922-1924 in the House, chairing the Temperance Committee, and serving on both the Schools and Benevolant and Penal Institutions Committee.[57] Temperance was also considered a feminist issue of the era, although by 1922 the Temperance Amendment to the Constitution (number eighteen) had been around for three years. Still, Gleason hardly served on a politically radical committee in her time in the legislature. Meanwhile, Adelaide Sterling Ott served in the House of Representatives from 1922-1928. While in office, she served on eight House Committees: Benevolent and Penal Institutions, Soldiers and Sailors Orphans' Homes, Schools, State and Economic Betterment,

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[56] The Ohio Ladies Gallery: Honoring the Women Who Have Served in the Ohio Legislature. "The First Six." Accessed March 8, 2011. http://ohioladiesgallery.org/TheFirstSix.aspx
[57] *Ibid.*

Temperance, Finance, Utilities, and Fish and Game.[58] Like her fellow women, Ott did not serve

on any committees directly related to the advancement of women. Finally, May Martin Van Wye

served in the House from 1922-1928, before serving a term in the Senate from 1928-1930.

Despite her relatively lengthy term of service, Van Wye never served on a Legislative

Committee.[59] From this, it is evident that the Ohio House of Representatives was not dealing

with sexual violence as a result of women in office after the first wave of feminism.

In the Senate, Maude Comstock Watt served from 1922-1930. While in office, she

chaired three Senate Committees: Benevolent Institutions, Prisons and Prison Reforms, and

Library. She also served as a general member on the Public Health Committee, the Commercial

Corporations Committee, and the Soldiers and Sailors Orphans' Homes Committee.[60] Again, as

with her compatriots in the House, she did not serve on any explicitly feminist committees.

Finally, Nettie Bromley Loughead served in the Senate from 1922-1928. She sponsored the first

bill to be sponsored by a woman in the Senate, and it dealt with rules for special elections. In

addition, she chaired the Committee on Soldiers and Sailors Orphans' Homes, and served on the

following five Committees as a general body member: Benevolent Institutions, Public Health,

Labor, Prisons and Prison Reform, and Enrollment, Initiative, and Referendum. Neither woman

served on Committees dealing with feminist issues or issues of sexual violence at all.

All of the women among the first six to be elected to the Ohio General Assembly were

voted out of office by 1930.[61] In their eight years in office, these women served on important

committees, but none of them served on committees dealing with specifically women's issues,

outside of those issues designated "feminine." Among these "feminine" committees are those

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[58] *Ibid.*

[59] *Ibid.*

[60] *Ibid.*

[61] *Ibid.*

dealing with the family, which is why so many of the women served on committees dealing with education, children, and public health. Although important issues, they do not at all address the daily lives of women as they relate to violence. Also important to note is that all six of the women were white, and probably belonging to the middle class. The assumption about class status can be made when one considers the time and capital required to run a campaign for election. Working class women's families depended on their wages in order to survive; they could not afford months of unpaid campaigning and certainly not the expenses of advertising and travel. That they were white is important to understanding the lack of discussion on sexual violence; as was described, sexual violence as an issue was avoided by white feminists and embraced by Black feminists. Perhaps if Black women from the Black women's club movement had been elected to the Ohio General Assembly, the issue of rape would have come up, either through discussions of Black female morality or lynching. Unfortunately, Black women would not be elected to serve in the Ohio Legislature until the end of the 20th Century, so there is no way of knowing if this would have actually been the case.

In the period between 1930 and the 1960s, few women served in the Ohio General Assembly. Those who did were usually appointed to fill a seat if their husband had died. Feminism itself went into decline, although some women continued to be active around the areas of anti-lynching and civil rights. At the onset of the 1960s, however, feminism reemerged as the Second Wave. The 1960s and the Second Wave became the birthplace of the anti-rape movement within feminism, "as women began to meet in consciousness-raising groups and organize to act on other issues, a communication network developed which would later become important to the evolution of the anti-rape movement."[62]

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[62] Vicki McNickle Rose, "Rape as a Social Problem: A Byproduct of the Feminist Movement." *Social Problems*. 25:1 (1977): 76.

Radical feminists began organizing around an anti-capitalist ideology aligned with Marx and Engels as described in Chapter Four. Radical feminists used Marxist thought to critique the structure of the heteronormative family as well as the gendered division of labor, decrying the unfairness of a system that relied quietly upon feminine work within the home, so preventing women from entering the public sphere. Radical feminists were also concerned about all constructions of femininity as being part of the oppressive structure keeping women from advancing in society and achieving equality. Women associated with radical feminism believed that an essential part of women's liberation lay within women speaking to each other about topics previously deemed too "private" to mention in conversation. In discussing topics such as marriage, sexuality, education, discrimination, and motherhood, women came to realize that their personal experiences were less unique, and more a part of an overwhelmingly oppressive social structure designed to keep women in the home and upholding capitalism. Through these consciousness-raising groups, issues of sexuality and violence first became incorporated into feminism. That is, rape emerged as a feminist issue for radical feminists as more and more women began to speak about their experiences with sexual victimization. As the now-familiar patterns of rape in America began to be recognized, radical feminists began to agitate and protest around the issue, breaking a previously-held silence.

Radical feminism faced one major problem, however, as it began organizing around issues of sexual violence. As Bevacqua points out, "radical feminism was localized, with pockets of organizers…around the country."[63] Due to its informal structure, radical feminism was limited in its ability to organize on a national level. Luckily, by the 1970s, another sect of feminism that emerged in the 1960s had gained enough power and notoriety to more successfully take on issues of rape and sexual violence in women's lives. Commonly known as liberal feminism, this group

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[63] *Ibid.*, 31.

was more in the tradition of the First Wave, believing that changing the laws in a system to explicitly provide for women's equality would be enough to make women equal. In contrast, radical feminists focused outside of the standard political sphere to try and break down mechanisms of social control that kept women in subordinate positions through the enforcement of prescribed gender roles.

Liberal feminism in the 1960s has its roots in Betty Friedan's book The Feminine Mystique, which determined that the "problem that had no name" was women's discontent with their role as mothers, wives, and homemakers. Friedan did little to critique the structure that keeps women in their homes; rather, she was interested in critiquing industrial advances that had made the lives of women homemakers incredibly meaningless and monotonous. Friedan also focused entirely on middle class white women, who had the economic ability to stay home from work. As Friedan's work gained national attention and more and more women began organizing themselves around her issues, Friedan and some of her contemporaries founded the National Organization for Women (NOW), whose Statement of Purpose was analyzed in Chapter Three as an example of essentialist feminist analysis. NOW believed that essential characteristics about women would benefit governments once women were included; in contrast, radical feminists were more social constructionists who believed that women, in their current gender roles, would always be oppressed on the basis of their subordinate gender roles. Despite their essentialist beliefs, NOW finally got involved on the issue of rape in 1971, although "no NOW resources were dedicated to rape until 19 February 1973."[64]

Both the liberal and radical feminists were dominated by privileged white women; Bevacqua points out that "activists and writers in the women's movement overlooked the ways in which gender, race, class, and sexuality mediate one another in a superstructure that is at once

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[64] *Ibid.*, 35.

sexist, racist, classist, and heterosexist."[65] Due to the inattention given to the issues of class and race, women of color were hesitant to join in with the mainstream white women's movement. Women of color were also often purposefully excluded from white feminism throughout United States history, and the Second Wave was no different. Although the involvement of women of color as activists on the issue of rape has been categorized as "slow" by white women feminists, a knowledge of the history of anti-lynching activism and the Black women's club movement reveals that this cannot possibly be true. In fact, black feminism has always been centered on issues of sexual violence. Black women's hesitation about participating in white feminist activism around the issue "had more to do with the framing of the rape issue by white feminists than with apathy on the part of women of color."[66] In addition, Black women feared that predominantly white women's groups would not adequately address the issues of Black women, if they addressed them at all. Black women were also nervous that rape activism on the part of white women would utilize the existing stereotypes of the pathological Black male rapist, to the disadvantage of all people in communities of color.

When white women and women of color finally came together, the result was the first rape crisis center in the United States, founded in Washington, D.C. in 1972. Through this crisis center, and crisis centers like it that sprung up around the country in the 1970s, 1980s, and 1990s, "sexual assault was redefined from the victim's perspective."[67] This included the idea of female sexual choice, which had effectively been killed off by Freudian thinking that placed women in passive positions of sexuality while simultaneously casting women as constantly desiring sex. As attitudes toward women and sex began to change, many legislatures reexamined

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[65] *Ibid.*, 38.
[66] *Ibid.*, 39.
[67] Donat, 14.

their existing sexual assault laws and began to make changes. The state of Ohio was no exception.

In 1972 House Bill 511 called for a reorganization of the code, creating a section of the Ohio Revised Code (ORC) specifically for sexual assault for the first time in Ohio history. House Bill 511 also created a much more organized criminal code generally; however, for the purposes of this analysis, these broader changes will not be discussed. It is interesting to keep in mind that rape law in Ohio has not changed since this initial revision created Title 2907 of the ORC dealing with Crimes and Procedures.

2907.01 of the ORC defines rape as a result of penetration, but clarifies that "penetration, however slight, is sufficient to complete vaginal or anal intercourse."[68] 2907.02 gives Ohio's marital rape exemption, explaining that "no person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender."[69] Unfortunately, this means that rape within a marriage does not exist before the eyes of the state, and so cannot be prosecuted. In a seemingly counterintuitive fashion, the ORC goes on to say that "it is not a defense to a charge [of rape]…that the offender and the victim were married or were cohabitating at the time…of the offense."[70]

The ORC also explains that rape is that which occurs when an offender purposefully impairs the judgment of a victim, whenever a victim is under the age of thirteen, or in the presence of force or the threat of force. Importantly, the ORC does not technically require proof of resistance to prove rape, which had been the case following *Orlando Burt v. State of Ohio* in the 1870s. Section D of 2907.02 is Ohio's version of a rape shield law, which prevents the defense team for an accused rapist from using evidence of past sexual history against the alleged

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[68] ORC 2907.01
[69] ORC 2907.02 A2
[70] ORC 2907.02 G

rape victim, overturning that which had been considered good law for nearly one hundred years. Ohio's rape shield law carries with it an important exception, however, clarifying that sexual activity is inadmissible in court "*unless* it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the victim."[71] This means that Ohio's rape shield law technically only "shields" from evidence that sexual activity the defense cannot find a way to link to the crime in question.

Section 2907.10 of the Ohio Revised Code states that police investigators of a reported rape "shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of the alleged sex offense."[72] This does not rule out the utilization of polygraph examinations later down the road, by the defense or otherwise, to determine if the accuser is being honest, linking directly to the extreme distrust of women rape victims laid out in precedent in *Pratt v. State of Ohio, Orlando Burt v. State of Ohio,* and *McFarland v. State of Ohio*.

House Bill 511 was not the only important change to come to Ohio rape law in the 1970s. In 1973, a Legislative Services Commission was put together to examine changes that needed to be made to the ORC. Four distinct changes were made. First, the ORC was revised to acknowledge anal intercourse, cunnilingus, and fellatio were sexual acts that could be performed violently against a person. Prior to this change, only forced vaginal intercourse counted as rape in the state of Ohio. Secondly, the Legislative Services Commission removed gendered assumptions about perpetrators and victims of sex crimes, "for the reason that homosexual and lesbian assaults can be just as dangerous to victims as heterosexual assaults."[73] This meant that accusers were no longer assumed female and the accused no longer presumed male. Thirdly,

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[71] ORC 2907.02 D (emphasis added)
[72] ORC 2907.10 A1
[73] ORC 2907.02 Legislative Services Commission 893

sexual contact with a prepubescent child was determined to always be rape, no matter the circumstances. Finally, the Legislative Services Commission defined consent as it pertains to sexual assault. The Commission made a distinction between forced drugging and the situation that occurs "when the alcohol or drugs are voluntarily taken in the absence of force or deception, [where] the consent of the 'victim' can fairly be inferred."[74]

This distinction about consent impairment is interesting and also incredibly important. In creating this distinction, the Legislative Services Commission made a decision that continues to affect rape victims in the state of Ohio. It states that people who voluntarily consume alcohol or use drugs retain the ability to consent to sexual activity, despite the fact that the State of Ohio would consider them incapable of giving consent if the alcohol or drugs had been forced into the victim's body. The state of mind, which would seem to be the most important part of determining consent, has little actual meaning in Ohio rape law. The focus, instead, is on force or threat of force. This distinction between voluntary and involuntary consumption seems to operate as a mechanism to control what counts as rape and was does not, a fascinating distinction considering Ohio's history of distrust of the victim. In distinguishing consent in this way, Ohio law continues to engage in victim blaming and to assume that women are likely to claim rape upon regret of consensual sexual contact.

In the time surrounding the changes to Ohio's rape laws in the early 1970s, a small group of women served in the Ohio General Assembly. During 1972, five women were serving terms in the House of Representatives and two women were serving in the Senate. Of the five in the House, two were in their final year, two were in their first year, and one was in the middle of her term. Although technically present, it is unlikely that the women beginning their terms had much influence over HB 511 or the decision of the Legislative Services Commission, leaving three

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[74] *Ibid.*

women with potential influence in the House. Due to the fact that the changes occurred entirely within the House, it is unlikely that the two women in the Senate had much involvement with the changes. Additionally, the first African American woman to serve in the House did not begin her term until 1974, while the Senate did not see a Black woman in its membership until 1994. All three women to be examined were white and likely from the middle or upper class of American society.

Doris Jones served as a Representative from 1969 to 1972. While a House member, she served on the Commerce and Labor Committee, as well as on the Health, Education, and Welfare Committee.[75] Her colleague, Gertrude E. Polchar had absolutely no committee involvement, but was noted as having worked hard on equal rights for women at work during her term from 1968 to 1972.[76] Finally, Ethel Swanbeck served from 1954 to 1976. As a member of the House, she did not chair a single committee, but was a member of the following committees: Finance, Education, Finance and Appropriations, Health, Education and Welfare, Rules, and Insurance.[77]

None of these women served on the Legislative Services Commission that created the rape laws changes to Ohio rape law in the 1970s. With the exception of Gertrude Polchar, they did not seem to be involved in women's activism. It should also be pointed out that it may not be coincidental that Polchar, as the only woman who explicitly worked on women's issues, was not asked to serve on a House Committee, despite serving a longer term than Jones. Committees are among the most influential and important parts of a legislative body in the United States; it is from within committees that legislation is drafted and proposed to the larger body. Without an appointment to a committee, it is possible that a representative might find herself unable to enact

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[75] The Ohio Ladies Gallery: Honoring the Women Who Have Served in the Ohio Legislature. "Legislator Directory." Accessed March 8, 2011. http://ohioladiesgallery.org/LegislatorDirectory.aspx.
[76] *Ibid*.
[77] *Ibid*.

legislative changes. If men are in charge of committee appointments, as they were in the 1960s and 1970s, women can be prevented from gaining influential seats on committees, eliminating the possibility for feminist ideology to permeate law and policy, including those laws and policies dealing with sexual violence.

Three women in the Ohio House of Representatives also physically limited the ability of the women who served to participate broadly as women in the legislature; with such small numbers, it was impossible for Polchar, Jones, and Swanbeck to speak experientially and expect that they be listened to and taken seriously. With only three of them, the women hardly represented a powerful voting bloc that needed to be carefully courted, considered, and respected before political action would be taken. Instead, these three women could be easily left off of committees and commissions without fear; there simply were not enough women present for there to be an outcry or a backlash that would be damaging to the dominant structure already in place.

As has been previously noted, there has not been a change to Ohio rape law since the 1970s. There have been more women serving in the House and the Senate, including the first women of color, in the time period following the changes made to the Ohio Revised Code in 1973. Considering the evidence presented about the potential for influence that women and people of color possess when they are formally incorporated into the political system, the question that remains is why? How is this stagnancy, despite an upswing in the representation of marginalized groups, possible?

Conclusion

The backlash against the women's movement reached a high point in the 1980s. By 2000, it had gained even greater momentum. Feminists had been stereotyped and scapegoated, and vilified as man-hating, hairy, anti-family misfits for so long that young women, with good reason, wanted to distance themselves from the "F" word.[1]

After the progress of the 1970s, feminism yet again receded, much as it had following the abolitionist and suffrage movements of the late nineteenth and early twentieth centuries. As Rosen points out, women distanced themselves from feminism, fearing association with a word that had become dirty and undesirable. Feminism was no longer a point from which women could rally together for a common cause; it was a terrifying ideology that promised to be the ruination of women who chose to identify with it.

In Ohio, women continued to serve in the legislature, although somewhat sporadically and with few, if any, associations with feminism. In the 1980s, a total of twenty-four white women served, joined only by one Black woman. The 1990s saw an upturn, welcoming thirty-five white women and seven women of color. In the time between 2000 and 2011, fifty-two white women and seventeen women of color have served in the Ohio General Assembly. These numbers slightly inflate the actual number of women serving, as they account for women who happened to serve over multiple decades. Of the women accounted for, ten white women served only in the 1980s, while no women of color served a term confined to that decade. In the 1990s, eleven white women were elected, while only one woman of color served. In the 2000s, thirty-six white women began careers in the legislature, joined by twelve women of color. Eight white woman and one Black women served terms that spanned both the 1980s and the 1990s; ten white women and five women of color served in the 1990s and in the time since 2000; and six white

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[1] Ruth Rosen, The World Split Open: How the Modern Women's Movement Changed America (New York, The Penguin Group: 2000), 347.

women served terms from the 1980s to the 2000s. The total number of women who have served in the Ohio General Assembly from the 1980s to today totals eighty-one white women and nineteen women of color.

Women are clearly being represented at higher rates in Ohio than they ever have been, but these rates are not proportional to the population. Interestingly, African Americans are currently over-represented in the Ohio General Assembly, although it remains to be seen what, if any, impact this will have. Regardless of higher rates of representation, rape law has not changed since the Ohio Revised Code was overhauled in the 1970s. Considering the theories and evidence provided in this thesis, the question that remains is why.

Trying to answer that question leads directly back to the beginning, and Iris Marion Young's theories of communication, inclusion, and democracy. Although the rates of women in the Ohio legislature are nowhere near the rates they would reach under an Anne Phillips-style quota system, it is interesting to note that the current over-representation of African Americans has yet to yield anything of note. This should come as no surprise to those who have considered seriously Young's ideas about inclusion in a democracy. True inclusion, according to Young, requires that communication from marginalized groups be taken seriously by members of the dominant group. To achieve this, the unequal balance of power between the groups must be eliminated. In an aggregative democracy, this unequal balance of power is the norm; it is what is required for the model to function. In a deliberative democracy, on the other hand, there is more room for discussion and leveling of power structure. The very nature of deliberative democratic models requires deliberation; an exchange of ideas between individuals who may or may not find themselves in agreement. True deliberation requires equality; ideas exchanged in any other way

would be tainted by power in ways that make them unreliable for reaching adequate and meaningful solutions.

Perhaps Ohio's rape laws remain stagnant because, despite their formal inclusion in the political system, women are prevented from speaking about the issues they face. With the demonization of feminism, women who speak on women's issues are often considered self-interested, following along similar lines as those outlined by Derrick Bell's "Rules of Racial Standing." Without room to openly explain their experiences, women politicians are unable to begin realistic dialogue about sexual violence, removing the true potential from legislation before it is even passed from the legislature. If one considers that one hundred women have served in the Ohio General Assembly since 1980, and that current statistics place victimization rates at one in four women, it is probable that twenty-five of the women who served or are serving were victims of attempted or completed rape.[2] Twenty-five women with silenced voices, unable to serve their constituency because they are unable to speak.

For rape laws to work for rape victims, rape victims must be given room to speak about their experiences and to inform public policy. It would seem that this is impossible in the current aggregative model of democracy in the United States, where power structures and a long and painful history will forever remember women as false-accusers, Black women as un-rapeable, white men as innocent, and Black men as perpetually perpetrating. Without a complete reconsideration of democracy so that the experiences of the marginalized can be centered and not essentialized, considered and not brushed off, rape will continue to plague the lives of women (and men) with laughable consequence. Although it will take more than a new way of "doing" democracy to eradicate sexual violence, creating a platform from which women can be

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[2] Rape, Abuse, and Incest National Network, "Statistics."

considered experts on the wars being raged upon their bodies is a radically simple and

undeniably compelling place to begin.

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