

INDIVIDUAL RESPONSIBILITY FOR STRUCTURAL INJUSTICE

INDIVIDUAL RESPONSIBILITY FOR STRUCTURAL INJUSTICE:
THE CASE OF SEXUAL ASSAULT PERPETRATED BY MEN

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Lay Abstract

This paper examines the connection between individual men and the widespread phenomenon of sexual assault perpetrated by men against women. While it may seem obvious to the reader that there is a morally salient connection between individual perpetrators of sexual and the effects of their actions upon the women they harm, I argue that men who have never perpetrated sexual assault bear a number of important connections to the systematic sexual assault of women by men. Most importantly, I argue that insofar as sexual assault perpetrated by men against women constitutes a structural injustice, every man in Canada shares a special moral responsibility with other men. This responsibility gives men reason to participate in collective action to end male-perpetrated sexual assault.

Abstract

In this thesis, I take up sexual assault perpetrated by men against women in Canada as an example of structural injustice. I show that individual men who are not perpetrators of sexual assault share moral responsibility for this injustice with other men in both a backward- and forward-looking sense.

In the first chapter, I introduce an account of the moral psychology of individual men who take themselves neither to be perpetrators, prospective perpetrators, nor indirect supporters of sexual assault against women. Then, I introduce a novel and expansive account of sexual assault as the *sexual violation of bodily integrity*, which I distinguish from that found in Canadian law. I turn to recent literature on sexual assault from the social sciences to support my claim that male-perpetrated sexual assault against women is a *systematic* phenomenon in Canada. With these pieces, I argue that this phenomenon constitutes both a violent form of oppression perpetrated by men *as a group* against women *as a group*, and that this group-based oppression is a form of structural injustice faced by women in Canada for which individual men are responsible in virtue of their membership in the gender group “men.”

In the fourth chapter, I consider three possible objections to my initial proposal. In the final chapter, I respond providing a more specific account of the morally-salient connections individual men might bear to male-perpetrated sexual assault as perpetrators, indirect contributors, and beneficiaries of the gender-based sexual assault of women by men as well their special, forward-looking position to collectively act to end male-perpetrated sexual assault. Unlike other people living in Canada, men live at a special juncture of backward- and forward-looking responsibility that distinguishes their special moral responsibility for sexual assault.

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1. INTRODUCTION

Are there cases where an individual who morally opposes an action, has to the best of their understanding never taken that action, and has played no intentional part in contributing to the possibility of such an action taking place, is morally responsible for that action when it is carried out by someone else? The action I have in mind is sexual assault, a conception of which I will introduce in turn. I will consider whether individual men are responsible for sexual assault perpetrated by other men and I will argue that men do share moral responsibility for systematic male-perpetrated sexual assault against women, where sexual assault is a form of violent oppression and a structural form of injustice. In doing so, I will offer both a structural explanation of sexual assault in the Canadian context.

To flesh out this question, I begin by providing a picture of the type of person I have in mind when I ask whether such individuals could be morally responsible for the actions of others—I will call him “Jon.” Following my introductory discussion of Jon’s representative moral psychology, in the second chapter I raise a series of important methodological commitments that will help clarify the scope and consequences of my argument, including the conception of sexual assault operative here and how that conception should be distinguished from the legal concept of sexual assault in the Canadian context.

Following my methodological remarks, the third chapter introduces an account of systematic male-perpetrated sexual assault against women as violent oppression. I use that account to articulate a preliminary argument for men’s moral

responsibility for sexual assault as a structural injustice. Having introduced a preliminary view of my argument, I spend the fourth chapter introducing three kinds of objection to the argument I wish to make that are likely to arise just on the basis of the account of sexual assault and structural injustice that I introduce. I treat two of these objections and the assumptions that underly them, and then turn to an objection related to individualism about moral judgements for the remainder of the paper.

In the final chapter of this paper, I examine the thesis that men share responsibility for male-perpetrated sexual assault in greater detail, with an aim to responding to the individualist objection that closes the fourth chapter. I first consider Larry May and Robert Strikwerda's (1994) classic argument that men are collectively morally responsible in a distributive sense insofar as all men are some combination of perpetrators, possible perpetrators, bystanders, beneficiaries, or unwitting contributors to sexual assault in a rape-supportive society. Despite the useful analysis provided by May and Strikwerda, I ultimately argue that the structural character of male-perpetrated sexual assault is not adequately addressed through a backward looking, distributive model of responsibility. I argue Iris Marion Young's social connection model provides a more effective analysis of the responsibility of all people in such a society for male-perpetrated sexual assault and, in light of my consideration of May and Strikwerda's analysis, the special forward-looking responsibility shared by cisgender men for this phenomenon.

As I point out at the end of this paper, the analysis of the male-perpetrated sexual assault of women will be left wanting, as I do not provide an argument for how men's responsibility ought to be discharged. Rather, that action-guiding project is one to be taken up after further consideration of the legitimacy of the analysis provided below, especially in light of a more delicate consideration of the ways that different agents' interlocking social identities impact the effects and origins of male-perpetrated sexual assault and assault-supportive behaviour. Similar consideration must also be made with respect to different men's ability to join together with others against this structural injustice. I suggest that, as a minimum, men must develop a critical epistemic stance with respect to the norms of masculinity they encounter and embody.¹

I now make a few introductory comments in both narrative and theoretical terms. The story told at the beginning of section §1.1 may be troubling for its representation of some men's coarse discussion of sex. If this would trouble the reader, I suggest skipping to page 5.

1.1. A representative picture of well-meaning men

During my undergraduate degree, I was excited in my first few months to meet several upper-year men who shared my academic interests. Arriving for dinner one night with a few of these new acquaintances, one asked about my day. I

¹ Vis-à-vis a *standpoint* in the tradition of feminist standpoint theory. Cf. Alison Wylie, "Why Standpoint Matters," in *Science and Other Cultures: Issues in Philosophies of Science and Technology*, ed. Robert Figueroa and Sandra Harding (New York, NY: Routledge, 2003), 26–48. Cf. May, Larry. "A Progressive Male Standpoint." In *Men Doing Feminism*, edited by Tom Digby. Thinking Gender. New York, NY: Routledge, 1998.

recounted the content of the day's lecture, my difficulty with readings he was familiar with, and the tutorials that followed. I then raised that I spent time after class with a new acquaintance I was happy to be getting to know better. Another man cut in: "Did you fuck her?" Rolling my eyes, I carried on with the conversation. "Did you fuck her?" he cut in again. I responded indirectly, and he pressed again—"Did you fuck her?" Hearing me say directly, "no," he responded "Pussy!" to laughter from the other men at the table. The form of this experience was new to me, but the effect of this interaction was familiar.

Notice the language of this exchange. "Did you fuck her?" is not just a crass way of asking "Are the two of you in a sexual relationship?" It is more specific: did you sleep with her. That is: did the subject do something to the object, with the added force of "fuck." It is also notable that this interjection came without a prompt—there was no reference to a sexual relationship, nor a romantic one. Rather, discussing time spent with a peer who was a woman was enough to pique the question, and the fact that our time did not yield a story of sexual conquest for the dinner table was treated as a failure. The sexualized rebuke of "Pussy!" emphasizes the point: not only was this a failure, but it was a failure in my capacity as a man; not sleeping with this new peer was a feminine kind of failure. One who is good at being a man, so the rebuke tells us, seeks out and collects heterosexual sexual conquests. Unfortunately, this question was not out of the ordinary.

When out with friends on a busy night at the campus bar or downtown, similar questions have been routinely raised to myself and single men I have shared

company with: from “Who are you trying to go home with?” to the more forceful “Who are you going to fuck tonight?” These questions, much like my dinner experience above, would come from well-meaning friends, and not only straight men. They would ask, to their minds, because they wanted to offer support. It would be a form of success to see a peer sleep with someone they desired. It was also occasionally relevant to the sexual goals of other men at the bar: it might turn out that another peer was pursuing the same person.

In these cases, the possible sexual partner in question is treated openly as an object of conquest. The question, “Who are you trying to go home with?” is functionally equivalent to “What are you trying to take home?” The more forceful “Who are you going to fuck tonight?” presses the point out into the open: one should be seeking out sexual relationships, one should be seeking these out regularly (i.e. tonight, in this kind of context), and these actions are that which one does to someone else.

What of the agency of the person being discussed (the “her” and “who”)? The agency of the person being discussed, from the perspective of the question-poser and perhaps the person being asked, is either a support (this person desires a sexual relationship), an obstacle that might be overcome, or a constraint that one must recognize as such in order to promptly move on. If they seem disinterested, they may not be interested yet—hence the phenomenon of the “wingman” who seeks to puff up the reputation of their accomplice to help support the goal of sexual conquest.

If asked, I am sure that the man who pressed his question at dinner would deny taking a sexually objectifying stance with respect to women. Being posed such a question might bring him to think about his behaviour in this way and concede the point. So too would the men who encouraged each other's sexual interests the way they might with fantasy football leagues. I suggest that the man at dinner likely did not act in this way for pernicious, explicitly misogynistic reasons that were apparent to him. Rather, he acted within a milieu of acceptable social practice where his question was both normal (if crass) and based in a set of values shared by those around him. These behaviours fit and also reproduced dominant norms of male sexuality.²

Sally Haslanger has argued that gender norms are "clusters of characteristics and abilities that function as a standard by which individuals are judged to be "good" instances of their gender; they are the "virtues" appropriate to the gender."³ The gender norms for men, then, are at least the hegemonic norms of masculinity. A man's comportment to the norms which comprise masculinity in a given context will be more or less appropriate to the norms in question. Men can do masculinity (that

² I must stress that *describing* such norms and the heterosexist content of them does not constitute an *endorsement* of them. The heterosexist content of the discussion above and my description of such norms in what follows simply reflects what I take to be the dominant male sexual norms in Canada: those which identify "real" men with dominating, heterosexual sexual conquest to the exclusion of queer, trans, and submissive forms of sexual contact. The expression of these norms is also deeply racialized (consider the sexualized racist mythologies regarding black men, Indigenous women, and others), ableist (consider the hegemonic cultural identification of disability with asexuality), and otherwise intersectional in their construction.

³ Sally Anne Haslanger, *Resisting Reality: Social Construction and Social Critique* (New York: Oxford University Press, 2012). 42.

is, do gender⁴) poorly, with excellence, or somewhere between. Haslanger suggests a few examples of what it is “to be good at being a man”: “be strong, active, independent, rational, handsome, and so on.”⁵ These, I take it, track some of the expectations of men in contemporary Canadian culture, though the specific expectations of these norms (e.g. what physical features contribute to one being “handsome”) will be constituted by the sum force of other norms operative in local contexts. For instance, the beauty norms for middle-aged queer, wealthy, Brown men in Montreal may be somewhat different from those of straight, middle-class, White teenage boys in small-town Alberta, though men of both local contexts might experience the normative force of mezzo- or macro-masculinities.

In this paper I am not interested in norms of beauty or of rationality, but instead masculine sexual norms. Here are two sexual norms I take to be entrenched in the Canadian context and which seem to come up in my dinner story above: “men should be up for sex” and “men should be the active partner.” A man who is excellent at living up to these norms might be up for sex by seeking out as much sexual contact as possible (i.e. searching out many casual sex relationships), and active by being sexually dominant (that is, taking pleasure) rather than sexually submissive (consider, e.g., the homophobic use of graphic jokes about homoerotic submission by straight men). In this sense, such men conceive of individual women as tokens of the group “women,” as objects for their own sexual satisfaction (or that of their

⁴ Candace West and Don H. Zimmerman, “Accounting for Doing Gender,” *Gender & Society* 23, no. 1 (2009): 112–22.

⁵ Haslanger, *Resisting Reality*. 43.

friends).⁶ Insofar as men also have the social power to put into action their view of treating individual women in this way, they *objectify* rather than stereotype the women in question.⁷

These sexual norms, among others, contribute to the persistence of sexual relations between (at least) men and women that are “oppressive and constitute a system of male domination”: if men are meant to be both “up for it” and active, the corresponding feminine norms of sexual restraint and passivity prescribe heterosexual sexual relations where the social value of the interaction is partially indexed to male domination.⁸ That is: more normative sexual relations are those where men are more active and women are more passive. If it is the case that norms like “men should be up for sex” and “men should be the active partner”; “women should be passive” and “women should be sexually abstinent,” are operative in a context, the corresponding virtues will be those of good men as sexually promiscuous and good women as virginal. These norms are backed up by sanctions, like the dinner-table rebuke and corresponding laughter I mention above.⁹

As I have mentioned, one might be pressed about one’s sexual plans for an evening by a peer who is not a man. Straight women, for example, might take up the

⁶ Haslanger. 63.

⁷ Ibid., 60fn54

⁸ Ibid., 44-45

⁹ Ibid., 45. As Marilyn Frye (1983) points out, women face a double bind with respect to sexual relationships where “neither sexual activity nor sexual inactivity is all right” (*Politics of Reality*, 42). When mobilized with respect to sexual assault, this bind places women in a position wherein “if she has been heterosexually active she is subject to the presumption that she liked it (since her activity is presumed to show that she likes sex), and if she has not been heterosexually active, she is subject to the presumption that she liked it (since she is supposedly “repressed and frustrated” (*Politics of Reality*, 42).

kind of conversation I raise above between themselves. Given this is possible (and I take it, occurs), in what sense is the norm of promiscuous virility a specifically masculine norm? The connection in the case of masculine sexual norms is highlighted when one considers Haslanger's point that the *norms* associated with reaching an ideal (i.e. the norms associated with being a virile rather than sexually passive person) are not gendered in themselves, while the *roles* around which the norms are built are gendered.¹⁰ In the case of heterosexual men, achieving excellence with respect to sexual norms of activity and promiscuity is possible for anyone, but only socially ideal for men. Heterosexual women might comport to these norms, but will meet social sanctions for doing so that are not visited against men (e.g. slut shaming). Satisfying hegemonic sexual norms of masculinity, then, is appropriate to the social role of "man," insofar as compliance with these norms will "make for or significantly contribute to successful functioning in that role."¹¹ In this sense these norms are weakly gendered.¹²

I begin with this consideration of dominant male sexual norms and the ideals they support because this paper will consider men's shared responsibility for systematic sexual assault perpetrated by men against women. As I will show later on in this paper, the reason one ought to call this a structural rather than individual

¹⁰ Ibid., 52.

¹¹ Ibid., 55.

¹² Ibid., 55. Insofar as I pick-up on Haslanger's analysis, however, I must distinguish my claim that hegemonic sexual norms of masculinity are *weakly gendered* from her stronger claim that the sexual norms of hegemonic masculinity constitute *grounds* for one's *being a man* (that is, such norms are not *strongly gendered*) (55).

problem comes from the reproduction of this problem as an unintended consequence of many people's norm-following (i.e. normal) behaviours.

I begin from the assumption that men who are perpetrators of sexual assault, even on the strict and expansive account of sexual assault I introduce later on in this paper, are conceivably responsible for the effects of their actions on people who have been sexually assaulted—I do not intend to defend this assumption. Beyond perpetrators, however, what is the responsibility of men who simply live in a society where male-perpetrated sexual assault of women is systematically prevalent? What is the connection of such men, who may never have perpetrated sexual assault, never stood by when they might have acted to prevent one, and who morally object to sexual violence? Such men will be the primary subject of this paper, and I will now attempt to model what I take to be the moral psychology of such men.

Consider Jon, a cisgender Canadian man who will act as an anonymized representation of men I know, have met, and whose writing I have encountered. For my purposes, I assume that Jon will provide a recognizable example of well-meaning men the reader knows or is aware of, or even of the reader's own thinking. I take it that men with similar intuitions and beliefs to Jon comprise a sizeable part of the group who feminists would like to see take up the political responsibility for eliminating sexual violence—men—and so I take Jon-like men as my dialectical target in this paper. Being morally responsible, on my view, provides powerful reason for political action.

Jon holds the moral convictions that undeserved social inequalities are unjust

and that people deserve the same respect and treatment regardless of their social identity, including identities related to sex assigned at birth and gender. With respect to the second point, while Jon does not outwardly identify as a feminist, he is one in a rudimentary sense. Jon's convictions provide practical reasons for him such that acting contrary to them would be to act in error. Not only would Jon act in error but, so he believes, his action would be immoral in virtue of his convictions being about what is morally right.

Jon's understanding of what actions constitute a contravention of his moral convictions is non-exhaustive insofar as the range of possible actions Jon might take is too large for him to reasonably assess in advance. Rather, Jon's awareness of the immorality of his prospective actions arises from both (1) his consideration of a set of some actions that, to Jon, are explicitly morally forbidden (e.g. murder); and, (2) the use of his understanding of his moral convictions to evaluate prospective actions (e.g. evaluating whether to listen to music Jon believes is degrading to a group of people). In short, either Jon has a sense in advance that an action is morally objectionable, or Jon expects that he can figure out whether an action is so through conviction-informed consideration of the prospective action.

In addition to Jon's general moral convictions about group-based injustice, Jon also holds specific moral convictions about how to treat individual people he encounters. As with his views related to justice, Jon holds the moral conviction that a person's autonomy is to be respected regardless of their social identity, and has additional related convictions about non-violence. Jon is also conscientious: he aims

to do right in the world and not do wrong to other people. So far as Jon knows, he has been successful so far in not doing wrong to others in any significant way and has sought to make amends where he has unintentionally done wrong.

So described, I take it that Jon models what many people hope to achieve as a minimum with respect to putting their moral convictions into practice: he aims to live in accordance with the demands of his moral convictions and to intervene where he finds injustice. I do not attribute to Jon a will to make positive change in the world that might lead him to do become an advocate against injustice. Rather, Jon would think of such activities as supererogatory.

Jon, I suggest, is representative of at least some (though I think many) cisgender men in the North American context: Jon is conscientious and is morally opposed to sexual assault, but not involved in feminist political struggle. So far as Jon knows, he is neither a perpetrator of sexual assault nor is he disposed to be sexually violent in the future. However, Jon does not seek out ways to end gender-based oppression beyond attention to the morality of his own actions and the actions of those in close social and physical proximity to him. Jon finds domestic abuse morally abhorrent and, for example, would call the police if he encountered a case of domestic abuse. Despite this, Jon would probably not get involved in campaigns to end domestic abuse unless he felt social pressure from a friend or family member. Finally, Jon does not take up a critical epistemic stance with respect to his capacity for assessing his own actions and beliefs. In every sense, Jon is a thoughtful agent who lives in what he takes to be, as Cheshire Calhoun has called it, a “normal moral

context.”¹³ In Calhoun’s sense, “the rightness or wrongness of different courses of action is “transparent”” to Jon, or at least one might take it to be prior to applying a feminist philosopher’s lens.

What connection could Jon have to people who have done or are liable to do things that he is morally opposed to? It may be that some men do those things that Jon opposes (namely, commit acts of sexual assault), but, to his mind, Jon does not and will not: it is those other men who are blameworthy for individual incidents of sexual assault. I will argue that even if Jon is not a perpetrator, he at least shares forward-looking moral responsibility with other cisgender men for the social phenomenon of systematic, male-perpetrated sexual assault of women, inclusive of individual instances of male-perpetrated sexual assault when they occur.

I now raise a number methodological points that will help fill out exactly the social situation I will go on to argue constitutes a credible social threat situation for women in Canada.

¹³ Cheshire Calhoun, “Responsibility and Reproach,” *Ethics* 99, no. 2 (1989): 389–406.

2. METHODOLOGICAL REMARKS

This paper will argue that men as a social group share moral responsibility for systematic sexual assault perpetrated by men against women. While I address the prevalence of sexual assault in Canada, my argument will apply to any community where male-perpetrated sexual assault against women constitutes a systematic material force of oppression. Before making that argument, however, I will now make clear what this paper will not be about by clarifying the conceptions of “sexual assault,” “men,” and “women” that will be operative in what follows.

2.1. Preliminary account of sexual assault

This paper only aims to address sexual assault, not instances of non-sexual physical assault or non-physical assault (e.g. verbal assault). I will also take up the Statistics Canada practice of using the gendered bare plurals “women” and “men” to refer to persons aged 15 and older.¹⁴ As a function of this decision, I do not address sexual assault where the person who was sexually assaulted is an infant or child.

The conception of sexual assault I will use in this paper will reflect that which is used in the Statistics Canada *General Social Survey on Victimization* (GSS) and the more recent *Survey of Safety in Public and Private Spaces* (SSPPS), making it straightforward to discuss the empirical findings of those large data sets as support for my claim that male-perpetrated sexual assault is systematic in Canada. This conception of sexual assault describes a range of related incidents of *violence against*

¹⁴ Statistics Canada, “Age of person”
<https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&Id=25363>

women¹⁵ that include unwanted sexual touching (including grabbing, kissing, fondling, etc.); being subjected to a sexual activity to which one is unable to consent (including being drugged, intoxicated, manipulated, etc.); and physical coercion into a sexual activity (including being forced through threatening, holding, hurting, and similar actions). I follow Cecilia Benoit et. al (2015) insofar as I accept that sexual assault is one form of sexual violence, where the concept sexual violence describes “a continuum from obscene name-calling to rape and/or homicide.”¹⁶

The conception of sexual assault that I adopt here will also include incidents of rape on a common, politically liberal definition of the concept as non-consensual penetration. As Whisnant (2017) notes, there are competing feminist accounts of rape, all but the most expansive of which will fit under the account of sexual assault I provide.¹⁷ This conception of sexual assault includes but does not distinguish instances of non-consensual penetration (that is, a conception of rape) from unwanted sexual touching, sexual attack, coercion into a sexual activity, and being subjected to a sexual activity to which one is unable to consent.

One of the reasons I take up sexual assault rather than a conception of rape is a practical one. The criminal offence of “rape” was removed from the Criminal Code

¹⁵ In the *Declaration of the Elimination of Violence against Women*, the United Nations defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” United Nations, General Assembly. 1993. *Declaration on the Elimination of Violence against Women*. A/RES/48/104

¹⁶ Cecilia Benoit et al., “Issue Brief: Sexual Violence Against Women in Canada” (Ottawa, 2014). 4.

¹⁷ Rebecca Whisnant, “Feminist Perspectives on Rape,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2017 (Metaphysics Research Lab, Stanford University, 2017), <https://plato.stanford.edu/archives/fall2017/entries/feminism-rape/>.

of Canada in 1982 and replaced with sexual assault offences that addressed unwanted sexual touching.¹⁸ Perhaps as a result of this change, or in light of the same considerations that prompted the change, the study of self-reported incidents of sexual violence in Canada by Statistics Canada also tracks cases characterized by unwanted sexual touching rather than rape. As a result, the Canadian social scientific data on sexual assault includes incidents that fit competing conceptions of rape, regardless of whether those conceptions foreground physical force, a lack of consent, or some combination of both.¹⁹

By making an argument for men's shared moral responsibility for male-perpetrated sexual assault of women, I thus presume to simultaneously argue that men share moral responsibility for systematic male-perpetrated rape against women so far as the conception of rape in question falls under this account of sexual assault. By addressing sexual assault, I treat the prevalence of a range of gender-based violence that is specifically sexual and physical in nature to pick out a particularly troubling, wide-ranging, and durable social phenomenon of feminist concern.²⁰

2.1.1. Sexual assault as a matter of social fact

The conception of sexual assault I raise above will include incidents that fit the criminal offences of sexual assault described in the *Criminal Code of Canada*.

¹⁸ Lyne Casavant et al., "Legislative Summary of Bill C-51" (Library of Parliament, 2018).

¹⁹ Cf. Whisnant 8-17.

²⁰ Cf. Benoit et al. (2014), 4-6.

However, this paper will address sexual assault as a matter of social fact and not as a matter of law.²¹

As of 1982, the core legal definitions of sexual assault in Canada are addressed by §§271-273 of the *Criminal Code of Canada*. These definitions are as follows:

§271 - Sexual assault

“assault of a sexual nature that violates the sexual integrity of the victim.”

§272 - Sexual assault with a weapon, threats to a third party or causing bodily harm

“in committing a sexual assault, [the perpetrator] (a) carries, uses or threatens to use a weapon or an imitation of a weapon; (b) threatens to cause bodily harm to a person other than the complainant; (c) causes bodily harm to the complainant; [for example] (c.1) chokes, suffocates or strangles the complainant; or (d) is a party to the offence with any other person.”

§273 - Aggravated sexual assault

“in committing a sexual assault, [the perpetrator] wounds, maims, disfigures or endangers the life of the complainant”²²

²¹ The phrase “sexual assault” is especially apt and in wide currency in discussions of sexual violence. That the phrase is codified in the *Criminal Code* makes the following discussion somewhat confusing, though I think this would be made worse by the introduction of a new unusual term where there is already a very popular phrase for exactly the phenomenon in question.

²² *Criminal Code* (R.S.C., 1985, c. C-46), §§271-273.

The account of sexual assault as sexual and unwanted physical contact which I introduce above appears to fit the criminal offence of sexual assault introduced in §271 insofar as “assault” captures physicality and a “violation” of “integrity” captures unwantedness. This said, the discussion to follow will treat incidents of sexual assault a matter of fact regardless of whether an incident is (1) conceived of as sexual assault by the person who was sexually assaulted or perpetrator(s), when they occur or later; (2) assessed as meeting the legal standard for sexual assault by legal officials (e.g. police officers); or (3) the occurrence of the actions that comprise an incident of sexual assault is known to the person who was sexually assaulted, regardless (per 1, above) of their conception of these actions as sexual assault either when they occur or afterward. These assumptions differentiate the notion of sexual assault I discuss here from the criminal offences I note above.

With respect to the first and third points, I mean that the social fact of an incident of sexual assault obtains regardless of whether some or all of those persons involved in the incident conceive of it as sexual assault (except, perhaps, with respect to perpetrators in the case of my third assumption). With respect to the second point, I mean that most legal facts (e.g. facts about the *Criminal Code of Canada*, the judgement of a trial judge, the categorization of the incident by a police officer in a charge, etc.) do not ground the social fact of a sexual assault occurring.²³

²³ I use the philosophical term of art “ground” throughout this paper to describe a non-causal metaphysical relation between one or a set of facts and another. For the purposes of this paper, when one fact grounds another fact it non-causally determines the other fact. As the literature on grounding is rich and rife with controversy about just what grounding is, I will say no more about this and

Where they do, the legal character of such facts is incidental to their role in grounding the social fact of sexual assault. I now introduce some provisional reasons the reader has for accepting these assumptions.²⁴

2.1.2. Assault as the violation of personal autonomy

With respect to my first point that, as a social fact, sexual assault occurs irrespective of the understanding of all or some of those involved (when an incident occurs or afterwards), notice that one's understanding of a past situation might change when one is provided with a fuller account of the incident in question.²⁵ One

forward the reader to Bliss and Trogon's (2014) *Stanford Encyclopedia of Philosophy* entry on the topic.

²⁴ The discussion which follows might seem unnecessary to readers who accept each of the above assumptions as intuitive. However, there are many possible readers for whom these assumptions will be surprising and perhaps controversial, even for a discussion of incidents that do not meet the legal standard of criminal liability. In addition to the dialectical importance of raising these points, it is also important to draw out the features of sexual assault as a social phenomenon that make it difficult to address through a system of criminal liability. As will become clear, incidents of sexual assault occur as a matter of fact well below the legal standard required for a viable charge of sexual assault to be laid under Canadian law.

²⁵ This point agrees with the contextual account of the "sexual" character of sexual assault adopted by the Supreme Court of Canada (SCC) in *R v. Chase* (1987), wherein the Court ruled that the "sexual" character of sexual assault did not arise in virtue of the assault involving genitalia or specific parts of the body.

In the case of Dalton Chase's assault of 15 year-old woman in New Brunswick, the Court of Appeal for New Brunswick ((1984), 13 C.C.C. (3d) 187, 40 C.R. (3d) 282, 55 N.B.R. (2d) 97, 144 A.P.R. 97,) replaced the charge of sexual assault with a regular assault charge "because there was no contact with the complainant's genitals" (*R v. Chase*). Referencing a previous ruling by Chief Justice James Laycraft of the Alberta Court of Appeals, Justice William McIntyre wrote:

"The test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one: "Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer" [citing reasoning in *R. v. B.T.*, 1985 ABCA 51 by Chief Justice James Laycraft]. The part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, and all other circumstances surrounding the conduct, including threats which may or may not be accompanied by force, will be relevant [...] The intent or purpose of the person committing the act, to the extent that this may appear from the evidence, may also be a factor in considering whether the conduct is sexual. If the motive of the accused is sexual gratification, to the extent that this may appear from the evidence, it may be a factor in determining

might learn after the incident in question that what seemed to be a normal encounter with a peer actually occurred in a sexual context that one was not aware of at the time—say, where a sexually assaulted person learns later on that what seemed to be an innocent social encounter was actually sexual for the perpetrator. Information like this can shed new light on a situation that was already sexual assault: the sexually assaulted person did not welcome the fully-fledged touch of the perpetrator at the time, given a fuller understanding of the sexual nature of that touch. Thus, in retrospect, what was previously thought to have been a case of welcome, harmless touch was in fact an incident of unwanted, sexual touch, which I argue constitutes a harm. While such cases may at first appear to be philosopher's problems, a more careful examination of what constitutes sexual assault will show that these instances are likely quite common. Men like the character of Jon, who I introduced at the beginning of this paper, and indeed otherwise exemplary men may well be unwitting perpetrators of sexual assault. In fact, people who have been sexually assaulted by such men may even be unaware of the full scope of their experience.

In order to account for such cases, in what follows I introduce an account of assault as the violation of personal autonomy and, on this basis, sexual assault as the sexual violation of bodily integrity.²⁶ This discussion is motivated by Diana Meyers'

whether the conduct is sexual. It must be emphasized, however, that the existence of such a motive is simply one of many factors to be considered, the importance of which will vary depending on the circumstances" (*R v. Chase*)

²⁶ To be distinguished from the legal account of section 271: "assault of a sexual nature that violates the sexual integrity of the victim."

(2014) dual-axis model of feminist autonomy analysis.²⁷ In her work, Meyers responds to conflicting feminist attempts to mobilize differing conceptions of autonomy when analyzing women's experiences of oppression.

When attempting to assess the effect of oppressive social constraints on a person's autonomy, the conception of autonomy one adopts will often lead to more or less permissive accounts of which experiences or actions are considered oppressive, e.g. in the case of differing accounts of sex work, sexual role-play, etc.. As a result, different feminist models of autonomy may characterize the same choice as autonomous or non-autonomous. As Meyers points out, some theorists take a value-saturated position that there are objectively good reasons for action, which provide conditions for the assessment of autonomous action.²⁸ These (ostensibly) objectively good reasons reflect feminist values and are thus prescriptive about which actions are good on the basis of which actions line up with contemporary anti-oppressive commitments (i.e. people who follow oppressive norms are not autonomous and vice-versa).

At least two problems arise for such views. First, mobilizing feminist values in the assessment of women's reasons will lead to the identification of "adaptive preferences as autonomy deficits," and will take actions made for counter-feminist reasons to be non-autonomous (value-saturated) or autonomy-deficient (value-

²⁷ Diana Meyers, "The Feminist Debate over Values in Autonomy Theory," in *Autonomy, Oppression, and Gender*, ed. Andrea Veltman and Mark Piper, Studies in Feminist Philosophy (New York: Oxford University Press, 2014).

²⁸ *Ibid.*, 129.

laden).²⁹ Second, the identification of “emancipated behaviour” (that is behaviour done for the value-aligned reasons) with greater autonomy will tend to place the burden of struggles against systemic oppression on the backs of individuals insofar as they must act for the right reasons rather than by their own lights, rather than highlighting collective experiences of non-autonomy under oppressive material and social conditions.³⁰

In short, some feminist attempts to analyze oppression on the basis of autonomy prioritize theoretical responsiveness to feminist norms over individual women’s lived experiences of self-determination by assessing the content of particular reasons or particular actions. Meyers’ argues that by assessing the content of women’s reasons or the kinds of actions women’s take, this approach ties the assessment of individual women’s autonomy to contemporary feminist norms and thereby makes the mistake of building in historically and culturally contingent feminist values (e.g. the values of contemporary wealthy Northern feminists in the academy). However, this need not be so. Meyers suggests that instead of mobilizing contemporary feminist values to evaluate particular forms of action (e.g. sex work) or particular reasons (e.g. desiring to fit into a patriarchal society) the insights of contemporary feminist analysis should be used to assess impediments to the capacities required for autonomous action and opportunities for autonomous behaviour.

²⁹ Meyers 132. Cf. Khader, Serene (2011), *Adaptive Preferences and Women’s Empowerment*.

³⁰ Meyers, 133.

In light of Meyers' critique, I will now clarify the account of sexual assault I have used thus far such that it is explicitly value-neutral with respect to women's directivity. I will introduce an account of sexual assault as a social fact that does not depend on the content of a sexually assaulted person's *reasons* for or against desiring a form of sexual touch, and which does not assess the *form* of sexual touch in itself. I do not claim, for instance, that certain kinds of touch are necessarily assaultive. Rather, my account will emphasize the conditions under which the touch occurs and the relevant agents' capacity to determine what happens, to borrow Thompson's phrasing (1971), "in and to" their body.³¹ In this respect, I do not mobilize feminist normativity to assess whether the person's reasons for action or the actions themselves are fitted to contemporary feminist intuitions.

Conceiving of sexual assault in this way also pre-empts the application of misogynist stereotypes in the consideration of which forms or instances of sexual contact constitute sexual assault. Rather, as I will illustrate below following Meyers' insight, I advance an account of sexual assault as a violation of a person's individual autonomy through the violation of the capacities and conditions which support autonomy (including the violation of one's sexual decision procedure).

2.1.3. Sexual assault as the sexual violation of bodily integrity

At the bottom of my account of sexual assault is a commitment to individual bodily integrity, which I will not provide a defense of here. My consideration of

³¹ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (1971).

sexual assault thus far has been specifically physical insofar as I have characterized it as unwanted sexual touch. In this case in particular, considering personal autonomy from the perspective of bodily integrity will mean assessing instances of sexual assault in terms of the autonomous determination of what happens in and to one's body. Given that the view of assault that I advance here leaves open the possibility of non-physical assault, I do not purport to provide an analysis of assault in general in terms of the violation of autonomy qua bodily integrity.

I now briefly analyze the concept of sexual assault I have introduced above through five cases. The first is as follows:

Case 1: Erika does not desire any sexual touch from Dominik, but has an open comportment to friendly physical contact with Dominik (e.g. through high-fives, occasional hugs, etc.). When Dominik initiates sexual physical contact with Erika, and Erika is not aware of this contact as sexual in nature, Erika cannot reasonably be said to desire this sexual contact even if she has an open comportment to physical contact with Dominik.

It may also be that Erika desires a particular kind of physical contact with Dominik that is non-sexual for Erika but is (unknown to Erika) sexual for Dominik, say if Dominik took sexual gratification from a hug.³² Where Erika and Dominik engage in a hug, and Erika is not aware of the sexual aspect of the contact, Erika does

³² I am indebted to Violetta Igneski for suggesting hugs as a useful example of this phenomenon.

not desire the sexual contact with Dominik even if she desires the specific form of physical contact. As a result, the hug is a form of sexual assault. In such a case Erika might be wholly unaware of the violation in question and may never come to understand what has occurred, despite being fully aware of the contact and having an open compartment to or even desiring the non-sexual form of the contact.

Interestingly, Case 1 sheds some light on the logical structure of assault at work in the background of the account of sexual assault I have considered thus far. The fact which makes Dominik's action a case of sexual assault, I argue, is the same fact which makes Dominik's action a case of assault in general—the fact of Dominik's undisclosed sexual interest. What constitutes Dominik's touch as a form of assault is that Erika does not welcome the fully-fledged action. Insofar as Erika is unaware of the sexual content of Dominik's action, her ability to reason about whether she would welcome Dominik's touch is impeded, and her autonomous determination of what happens to her body is violated.³³

That Erika does not already desire the fully-fledged form of touch that Dominik brings to bear on Erika's body demonstrates the breach of Erika's governance of her body—it breaches her bodily integrity. While there may not be overt bodily harm done in the case of a hug, Erika nevertheless suffers the harm of a violation of her personal autonomy with respect to her body. On this view, assault is

³³ What would make Dominik's action especially pernicious, for example, would be Dominik's attempt to *conceal* the sexual nature of his action or to conceal the action entirely from Erika.

the violation of personal autonomy, and this case is one of sexual physical assault independent of Erika's reasons for desiring or not desiring Dominik's touch.³⁴

Case 2: Consider the inverse of Case 1, where Dominik takes no sexual interest in the physical contact in question, but Erika does take the form of contact to be sexual in character. For instance, Erika might have an open compartment to physical contact with Dominik but also have a set of possible forms of physical contact that she does not wish to engage in outside of particular circumstances in virtue of her sense of those forms of contact as sexual, e.g. {E₁, E₂, E₃}, even if those forms of contact are not taken to be sexual by Dominik.³⁵ Because of this disjunction, when Dominik touches Erika in the form E₂ without meeting the relevant conditions for Erika to welcome this form of touch, Dominik assaults Erika and does so in a way where the ground of the violation is sexual. This follows from the sketch of sexual assault as a violation of personal autonomy above, and from the sexual aspect of the violation: at a basic level, Dominik violates Erika's bodily integrity by touching her in a way that she does not desire, and the touch is sexual in virtue of Erika's experience of the touch as such. In this case, Erika's reasons for conceiving of the touch as sexual do not play a role in determining the touch as a violation. Notably, Dominik's

³⁴ I grant that assault is possible without physical contact, though in this paper I only treat sexual assault as a form of physical assault.

³⁵ I use some formality here because the possible contexts that might apply are so wide-ranging. E.g. Erika might only wish to be touched in certain ways by sexual partners, and then only under particular conditions.

intentions play no role in the determination of the fact of sexual assault, though his action is voluntary.³⁶

Case 3: Maheen desires sexual touch from Gabriel, captured as a set of possible forms of touch $M=\{G_1 \dots G_{n-1}\}$. Gabriel touches Maheen, but the way that Gabriel touches Maheen falls outside of M . Unlike the case of Erika and Dominik above, it may be that Maheen would desire some (even all) of the forms of touch Gabriel has in mind, and that Maheen simply is not yet aware of these possibilities. Despite this, Maheen does not desire Gabriel's sexual touch outside of the forms captured by M . Maheen cannot reasonably be said to desire sexual contact with Gabriel where $G_n \notin M$, even if she desires many other forms of sexual contact with him. In this case, Maheen is not given the opportunity to welcome or reject Gabriel's touch, and so Gabriel violates Maheen's capacity to determine what happens to her body—that is, Maheen has such a capacity and Gabriel action circumvents it. Thus, when Gabriel touches Maheen, Gabriel sexually assaults Maheen. Gabriel's intention plays no part in the analysis of the violation of Maheen's bodily integrity.

Case 4: Irina has an open compartment to sexual contact with Ali, limited by Irina's capacity to imagine possible forms of sexual touch (the limit of $I=\{A_1 \dots A_{n-1}\}$). Ali touches Irina in a way that is outside of I (i.e. $A_n \notin I$), and so touches Irina in a way that she is not yet aware of as a possible form of sexual touch.³⁷ While it is possible

³⁶ G. E. M. Anscombe and Sidney Morgenbesser, "The Two Kinds of Error in Action:," *Journal of Philosophy* 60, no. 14 (1963): 393–401, <https://doi.org/10.2307/2022824>. 398.

³⁷ This differs from Case 1 insofar as Irina has an open compartment to sexual contact with Ali limited by her capacity to imagine forms of sexual contact. In Case 1, Erika's sexual imagination does not play

Irina could desire A_n , she does not desire A_n at the time Ali touches her just by way of her open comportment. In this respect, Irina's open comportment to sexual contact with Ali does not constitute an unlimited desire for all possible forms of sexual contact. As in the case of Erika and Dominik above, Irina might unknowingly receive touch from Ali that he conceives of as sexual. In such a case, despite Irina's open sexual comportment to Ali, Ali sexually assaults Irina insofar as he violates Irina's determination of what happens to her body. This will also be the case even when Ali does not grasp the extension of Irina's understanding of forms of sexual touch and so does not knowingly touch her in a way that intentionally violates her bodily integrity.

Case 5: This case draws inspiration from both Case 1 and Case 4. Jo has an open comportment to sexual contact with Imani, limited by Jo's capacity to imagine possible forms of sexual touch (the limit of $J = \{I_1 \dots I_{n-1}\}$). Consider the possibility that Imani touches Jo in a way that is outside of J (i.e. $I_n \notin J$), but also that Jo is unaware that the touch is sexual in character. This can happen where Jo has a relationship with Imani such that some forms of touch captured by J are only contextually sexual (i.e. they are context-dependent elements of J), rather than sexual in a brute sense (i.e. they are always elements of J). As a matter of context, it may be that Imani's touch can be either an element of J or J' . In this case, Jo takes Imani's touch to be an iteration in the J' form while Imani intends the J form—this might happen with an

a role in determining her comprehension of Dominik's action. In fact, Erika could be aware of the possibility that the action in question could be sexual and dismiss this on the basis of the non-sexual character of her relationship with Dominik being out in the open between them.

embrace, for example. That is, unlike Case 1, Jo can and perhaps sometimes does conceive of this kind of touch as sexual, but does not at the time in question (say with I_1 and I_1'). Jo has a context-sensitive comportment to the action in question, where one configuration is welcome (J') while another (J) is not. Insofar as Jo does not welcome the fully-fledged form of Imani's touch (the J form), Imani's action constitutes sexual assault.

It is important to recognize that an open comportment to sexual touch does not constitute an unlimited desire for sexual touch because one person's sexual imagination may not match another's. While the phenomenological experience of an open sexual comportment to a partner may be comparable between people (i.e. different people might express to each other that they are each "up for anything"), two partners may have different notions of all the possible forms of sexual touch captured by that open comportment, as is the case with Irina and Ali.³⁸

Following from my comments above, I now provide a general account of sexual assault as a violation of bodily integrity:

³⁸ One might make the case of Irina and Ali a limiting case in the following way. Consider Ali has a paraphilic sexual interest in non-consensual sexual touch (e.g. *frotteurism*). In this case, Ali takes sexual pleasure specifically from the unrecognized character of the contact between himself and Irina. Is it possible in this case for Irina to desire this kind of contact from Ali such that sexually gratifying Ali would not constitute sexual assault? Yes, at least because Ali and Irina could engage in consensual role play.

Sexual Assault:

1. An agent B *touches* an agent A in the form G_n in context C; **AND**

1.1. A does not perceive B's touch; **AND**

1.1.1. B conceives of G_n as sexual touch; OR,

1.1.2. A conceives of G_n as sexual touch, irrespective of how B conceives of G_n .

OR

2. An agent B *touches* an agent A in the form G_n in context C; **AND**

2.1. A does perceive B's touch; **AND**

2.1.1. A does not desire sexual touch from B; **AND**

2.1.1.1. A does not conceive of G_n as sexual touch, and B conceives of G_n as sexual touch; OR,

2.1.1.2. A conceives of G_n as sexual touch, irrespective of how B conceives of G_n .

OR

2.1.2. A does desire a limited set of possible forms of sexual touch from B captured by $F=\{G_1 \dots G_{n-1}\}$; ($\therefore G_n \notin F$);

OR

2.1.3. A does desire a limited set of possible forms of sexual touch from B captured by a context-sensitive set of touch $F=\{G_1 \dots G_{n-1}\}$ only in context D]; **AND**,

2.1.3.1. $G_n \notin F$ in D: Context D obtains, but B's touch is not an element of F; OR,

2.1.3.2. Not D: Context D does not obtain, B's touch is not an element of F.

In much the same way as the cases above, parties involved in an incident of sexual assault might lack hermeneutic resources that, when they are acquired, would cast the incident in a new light. That is, unlike the cases above, the sexual aspect of the contact may be out in the open between those involved and nevertheless be left unrecognized as an assault—though there may be overlap. For example, a person who was subjected to sexual assault might develop a more nuanced view of their own experience after attending a feminist consciousness raising event, speaking with peers, or by speaking to an expert. As Miranda Fricker (2007) points out, “hermeneutical resources can have a lacuna where the name of a distinctive social experience [151] should be,” and such lacunae create an “asymmetrical disadvantage” for those who are prevented from recognizing the wrongfulness of their experience.³⁹ People who are subjected to sexual assault may, for example, lack adequate understanding of what constitutes sexual assault to conceive of their experience as such and as a result be at a “hermeneutical disadvantage” relative to perpetrators.⁴⁰

Finally, as is raised in 1.1 of my general account of sexual assault above, the conception of sexual assault I employ here does not include a requirement that sexually assaulted persons be aware that the actions comprising an incident of sexual assault have taken place, whether, per my point regarding hermeneutical

³⁹ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford ; New York: Oxford University Press, 2007). 150-151.

⁴⁰ Ibid., 151. Perpetrators may also lack the hermeneutical resources required to comprehend the wrongfulness of their perpetration of sexual assault and yet share responsibility with other men for pursuing *hermeneutical justice* in sexual relations (ibid., 169).

injustice, they would conceive of those actions as constituting sexual assault. This seems clearly to be the case given incidents where a person is sexually assaulted when they are asleep or unconscious. Sexual assault occurs as a matter of fact regardless of whether the person who was sexually assaulted is conscious of the action(s) which comprise(s) that sexual assault. This said, it seems likely that a perpetrator of sexual assault needs to be (in some sense) minimally conscious of their actions (that is aware they are acting, not that their action constitutes sexual assault) in order to be culpable of sexual assault, but to what degree is not discussed here.

Through the preceding five cases and my discussion of hermeneutical injustice, I have further pressed what may have already appeared to be a very expansive definition of sexual assault. One might worry: is this account too expansive? Does the ontology of sexual assault I advance overgenerate cases that one might be wary of calling sexual assault, thereby diluting the power of the concept? There are two reasons to reject this worry about overgeneration.

The first reason against the overgeneration concern addresses the practical origin of the critique itself. One might worry, for example, that my account of sexual assault will call cases of accidental touch sexual assault and thereby generate an enormous number of purported moral harms. For instance, as in Case 2, Dominik's action might constitute sexual assault through no intention or understanding of his own. In fact, in light of my claim that analysis that sexual assault includes cases where "A does not perceive B's touch,[...] AND A conceives of G_n as sexual touch,"

irrespective of B's conception of the touch as sexual, sexual assault might occur where the assaulted person is unaware of the touch and the perpetrator has no conception of the touch as sexual.

In these cases, however, it is important to name that a violation has occurred, and my account of sexual assault helps explain the character of the violation.

Dominik, as in Case 2, may not be morally blameworthy (and certainly would not meet the mens rea requirement for legal culpability), but Dominik is nevertheless in a position of having violated Erika's bodily integrity. This is why, for example, if each party were to come to understand the full content of the incident in question, Erika would have reason to expect that Dominik attempt to make amends for the accidental violation. Having a fuller grasp of Erika's wishes with respect to her body, Dominik might let Erika know that he will be more conscientious of these in the future. The conception of this incident as unintended *sexual assault* helps make sense of the expectation that Dominik make some (if small) amends for the accident.

The second reason against the overgeneration concern arises from the feminist aims of my discussion. A key worry of feminist legal movements and legal scholars has been the undo the emphasis placed on women's explicit, forceful rejection of perpetrators' actions, both in the courts and in the social assessment of whether an assault has occurred. As Constance Backhouse (1983) notes, this emphasis is manifest in Western jurisprudence as early as the English Statute of Westminster of 1275 (1275), which introduced the following language to describe the crime of rape: "none shall ravish nor take away by force any maiden within age

(neither by her own consent, nor without) nor any wife or maiden of full age, nor any other woman against her will.”⁴¹ The assessment of an action being “against her will” is fraught, and has for centuries been troubled by stereotypes and culturally entrenched, misogynist folk psychology regarding women’s reasoning and motivations.⁴² This problem remains, as is shown in the phenomena of victim-blaming and in the reasoning of institutional actors like court judges.⁴³

Arising from misogynist stereotypes that women have a propensity to dissemble or change their minds after the fact with respect to sex comes the view that the charge of sexual touch being “against her will” be carefully tested against a high standard—for instance, against whether the sexually assaulted person continued to attempt to fight off the perpetrator in question. Having already set aside the role of a perpetrator’s intention, the account of sexual assault I develop

⁴¹ *Statute of Westminster* i, 3 Edw. i (1275), c. 13; in Backhouse (1983, 201).

⁴² Constance Backhouse, “4. Nineteenth-Century Canadian Rape Law 1800-92,” in *Essays in the History of Canadian Law*, ed. David H. Flaherty (Toronto: University of Toronto Press, 1983), <https://doi.org/10.3138/9781442662919-007>.

⁴³ Infamously, Federal Court Justice Robin Camp engaged in the following dialogue when questioning a sexual assault survivor on the stand:

[**Camp**] But when — when he was using — when he was trying to insert his penis, your bottom was down in the basin. Or am I wrong?

[**Survivor**] My — my vagina was not in the bowl of the basin when he was having intercourse with me.

[**Camp**] All right. Which then leads me to the question: Why not — why didn't you just sink your bottom down into the basin so he couldn't penetrate you?

[**Survivor**] I was drunk.

[**Camp**] And when your ankles were held together by your jeans, your skinny jeans, why couldn't you just keep your knees together?

[**Survivor**] (NO VERBAL RESPONSE)

[**Camp**] You're shaking your head.

[**Survivor**] I don't know.

R v Wagar (Agreed Statement of Facts) 2016, 119.

above removes the role of the actions of sexually assaulted persons in the assessment of the fact of sexual assault while leaving room, as I mention in the case of Erika and Dominik above, for assessment of the blameworthiness of the perpetrator in question.

Finally, on this view sexual assault occurs independent of the consequences of the assault for the sexually assaulted person in question. Rather, the ground of the assault itself is the violation of one's bodily integrity, which I take to be a fundamental form of harm and which also grounds the wrongfulness of sexual assault. Certainly there will many cases where corresponding harms (including psychological, physical, social, monetary, etc.) will compound the effect of the sexual assault upon those who are assaulted, but these additional harms do not provide the basis for the wrongfulness of sexual assault in itself.

2.1.4. Legal facts (usually) do not ground the social fact of sexual assault

The second assumption I raised was that the social fact of an incident of sexual assault does not depend on legal facts like those related to legal systems or the beliefs of legal actors. Ideally, institutional resources become available to people who are sexually assaulted when legal actors like police officers believe that a sexual assault has taken place and act as such, for instance by making an initial charge against a perpetrator.⁴⁴ However, that a sexual assault has taken place as a matter of fact does not depend upon the beliefs and actions of legal actors, nor legal facts

⁴⁴ As I will discuss later with respect to the problem of underreporting, access to institutional supports will depend on overcoming a series of epistemic hurdles to progress through institutional schemas like the legal system.

arising from their actions (e.g. facts about incident reports, rulings, etc). Instead, legal decisions often aim to track social facts: when a trial judge classifies an incident as “aggravated sexual assault” under §273 of the Criminal Code of Canada, presumably they are attempting to track the social facts comprising the incident in question with the codified conceptual apparatus of the Canadian legal system. That a sexual assault occurred as a matter of law does not determine whether a sexual assault occurred as a matter of fact.

One exception to this point arises in the following way. Legal facts are a type of institutional fact, and so one might wonder whether the facts comprising a sexual assault can metaphysically depend upon institutional facts in general. Yes, and for an important reason. As I have said, it seems unlikely that a legal fact can be sufficient to ground an instance of sexual assault as a matter of fact (additionally, that multiple legal facts can jointly do so). Instead, legal facts related to sexual assault are likely to arise in light of legal actors attempting to track the social facts that constitute sexual assault. Unlike a legal fact, however, it might be that an institutional fact (like a fact about the management hierarchy of a business) can bear upon whether an incident of sexual contact is sexual assault by determining whether the sexual contact is consensual—though here the answer will depend on the account of consent that one accepts. As a result, some institutional facts that ground the unwanted character of a sexual touch will be legal facts in the way I mention above, like where a legal fact determines that no sexual consent was granted.

One set of examples where at least one legal fact figures into determining the social fact of a sexual assault occurring will be where actors vested with power through a legal system abuse that power. This is the case, for example, where a police officer abuses their position to sexually coerce someone in their custody. What matters for determining the social fact of sexual assault is the use of social power to coerce sexual activity. In cases like this, I argue, the social power that is abused by the police officer is only incidentally legal with respect to grounding the unwanted (i.e. coercive) character of the incident. The wrongfulness of such cases is not a function of the specifically legal character of the involved facts but is instead a function of the institutionalized relationship of hierarchy, even where sexual assault might be shown to be particularly prevalent or perverse for those who abuse legal power.

In summary, I suggest that sexual assault occurs as a matter of fact regardless of (1) the beliefs of those involved about whether the relevant actions constitute an incident of sexual assault (either at the time or later on); (2) the understanding of sexually assaulted persons that the actions took place at all and (3) the assessment of institutional actors like police officers (e.g. charges), judges (e.g. judgements), and sexual assault counsellors (e.g. reports). In this respect, sexual assault can occur as a matter of fact where, as a minimum threshold, only the perpetrator is aware that the action took place and where that perpetrator does not conceive of the action as constituting sexual assault. This does not mean that the beliefs and intentions of perpetrators are irrelevant to establishing whether their actions constitute an

incident of sexual assault. As I mention above, a perpetrator's sexual interest in a form of touch might explain why the incident constitutes sexual assault.⁴⁵

My discussion of sexual assault as a social fact above notably departs from the legal requirements for establishing criminal liability in a case of sexual assault in Canada and helps clarify the wider scope of my account. In the Canadian context, criminal liability for sexual assault (as unwanted sexual touching) is established by the evaluation of three elements of *actus reus* and two elements of *mens rea*. *Actus reus* is established by the evaluation of "(i) touching, (ii) the sexual nature of the contact, and (iii) the absence of consent,"⁴⁶ while *mens rea* is established by the evaluation of (i) an intention to touch, and (ii) "knowing of, or being reckless of or willfully blind to, a lack of consent, either by words or actions, from the person being touched."⁴⁷ I use the term "sexual assault" in this paper to describe incidents that meet the lower threshold of unwanted sexual touching, where the "unwanted" (i.e. non-consensual, or "unwelcome"⁴⁸) character of the incident will be established by the self-reporting of the affected person.⁴⁹ The assumption I make above that sexual assault occurs as a matter of fact irrespective of the intentions or beliefs of those involved means that, from a legal perspective, I treat incidents of sexual assault that do not meet the *mens rea* requirements for establishing criminal liability in Canada.

⁴⁵ The sexual predation of former USA Gymnastics doctors Larry Nassar provides a salient example of this. Cf. Leydon-Hardy, "Predatory Grooming and Epistemic Infringement."

⁴⁶ *R. v. Ewanchuk*, Majority Reason: John Major J (paras 1–67)

⁴⁷ *Ibid.*

⁴⁸ Catharine A. MacKinnon, "Rape Redefined," *Harv. L. & Pol'y Rev.* 10 (2016): 431.

⁴⁹ The reader will notice that this is a higher bar that I established for *sexual assault* in general above, which obtains regardless of the awareness of the sexually assaulted person.

I have also said nothing about what constitutes *desire* for sexual touch, nor have I suggested an account of consent to sexual touch. Rather, I have introduced a framework for thinking about the wrong of sexual assault that can be mobilized to assess different possible cases of sexual assault in light of an account of consent or desire. I believe this is a virtue of the account, for the reasons advanced by Diana Meyers above.

This account of sexual assault as the sexual violation of bodily integrity provides a framework against which competing feminist notions of sexual assault can be assessed. The account says nothing, for instance, about how to assess desires formed under oppressive circumstances (i.e. adaptive sexual preferences), or how to assess desires expressed by people with disabilities that impact their ability to communicate (e.g. cases of sexual relationships involving people with Alzheimer's or dementia).⁵⁰ Nor does this account provide an analysis of desire in non-sexual terms, for instance desires which are economic (e.g. desire for sexual touch that is based in a desire for income).

This said, in the context of describing the pervasive and gendered experience of sexual assault experienced by women in Canada, I will partially fill in this second aspect of the view in the following way: for the purposes of this paper, I accept that the self-reporting of individual women about their experiences of sexual assault through social scientific instruments (like surveys and interviews) is sufficient to

⁵⁰ I am indebted to Elisabeth Gedge for raising this essential point.

show that sexual assault has occurred. In this respect, I rely on the effectiveness of these survey instruments and upon the feminist intuition that when assessing the accuracy of reports of sexual assault one ought to begin by believing the report in question. This coarse treatment is sufficient to get my discussion of sexual assault as a systematic phenomenon off the ground for the pragmatic aims of this paper.

2.2. “Men” and “women”

One might wonder which people are captured by the conceptions of “men” and “women” that will be used in this paper, as not all people are either men or women. Here, I provide initial comments about which people I pick out with these terms when reviewing statistical data. I will provide a more substantive treatment of this topic in my replies to possible objections to my view later in the fifth chapter of this paper.

My thesis that men share moral responsibility for male-perpetrated sexual assault perpetrated against women will not address the experiences of cis- or trans men who are sexually assaulted, nor do I aim to address the particular experiences of people who are trans, non-binary, two-spirit, or have other gender expression through my central argument regarding women’s experiences of sexual assault. For the purposes of this paper, I will frequently make use of the terms “woman” and “women” to describe the self-reported gender of those responding to relevant surveys. I accept that this set of people provides an adequate sample to show patterns of gender-based social phenomena like sexual assault, including the prevalence of sexual assault against cisgender women by cisgender men. With

respect to the extension of “man,” I am engaged in what Sally Haslanger has called an “analytical,” rather than “conceptual” or “descriptive” project insofar as I do not attempt to develop a new account of the concept, nor articulate how the concept is used at present.⁵¹ Rather, I am interested in establishing a useful account of the concept that will be used to distinguish a group of people that I argue bear a special moral responsibility for sexual assault perpetrated against women. For the purposes of the project at hand, that conception will be limited to cisgender men.

The Statistics Canada *General Social Survey on Victimization* (GSS) self-reported data and *Uniform Crime Reporting* (UCR) police incident-based data regarding sexual assault in Canada do not yet disaggregate cisgender women’s experiences from those of trans and non-binary respondents, though the GSS began to do so in 2019.⁵² The 2018 *Survey of Safety in Public and Private Spaces* (SSPPS), which I reference below, is the first Statistics Canada survey of its size to request information about participants’ “sex assigned at birth and the gender of respondents,” but the data on trans and “gender diverse” participants “are not publishable due to small sample size and concerns for respondent privacy and confidentiality.”⁵³ As a result, these data sets are not adequate for making empirically-founded claims about the state of gender-based violence beyond the cisgender population.

⁵¹ Haslanger, *Resisting Reality*.

⁵² Social and Aboriginal Statistics Division. “General Social Survey: An Overview, 2019” February 20, 2019. Data to be released Winter 2020/2021.

⁵³ Adam Cotter and Laura Savage, “Gender-Based Violence and Unwanted Sexual Behaviour in Canada, 2018: Initial Findings from the Survey of Safety in Public and Private Spaces,” 2019.

I also note that the *Uniform Crime Reporting* (UCR) Incident-Survey also uses the unhelpful coding “unknown,” “male,” “female,” and “company” for accused records, and “unknown,” “male,” and “female” for victim records. The *UCR User Manual* (2013) suggests that “transsexuals” be included in the “unknown” field, and that “for all accused records, the sex of the person can be established due to the need to process the people at the station” while “[f]or victim’s records, the sex the person will most be based solely on the observation of the attending police officer.”⁵⁴ In light of the great uncertainty introduced into the UCR data by its blunt treatment of gender variance (e.g. genders including those that fall under trans and non-binary categories) and sex variance (e.g. intersex), I only make use of this data to draw conclusions about sexual assaults perpetrated against cisgender women which are reported to the police.

As Bauer and Scheim (2015) point out, there is great diversity in both sex and gender in the trans community. This diversity includes people who wish to transition, are transitioning, or have already completed a transition to binary genders, as well as a range of people (“[a]bout 1 in 5”) who “do not identify as male or female, or even as primarily masculine or feminine” (e.g., those captured by the “gender diverse” category of the SSPPS, and trans people who do not wish to transition).⁵⁵ Especially with respect to people do not fit the binary of cisgender

⁵⁴ Canadian Centre for Justice Statistics Policing Services Program, “Uniform Crime Reporting Version 1.0,” Reporting Manual (Ottawa: Statistics Canada, n.d.). 247.

⁵⁵ Greta R. Bauer and Ayden I. Scheim, “Transgender People in Ontario, Canada,” *Transgender People in Ontario, Canada Statistics from the Trans PULSE Project to Inform Human Rights Policy* (Trans

expression, I hope the conceptual apparatus I develop to treat cisgender men's specific role in the prevalence of sexual assault against cisgender women will prove useful for treatment of the specific experiences of people who are not cisgender, though I will say more about this in a later chapter.

Having discussed the methodological assumptions that underly the discussion to follow, I now provide contextual remarks about the prevalence of male-perpetrated sexual assault of women in Canada.

PULSE, 2015). As Bauer and Scheim write: "These more gender-fluid people can identify as both male and female, neither male nor female, or as something else entirely (e.g. as another traditional gender recognized by Aboriginal or other cultural groups)" (2).

3. THE PREVALENCE OF SEXUAL ASSAULT IN CANADA

Thus far I have described sexual assault as unwanted sexual touching and in terms of individual incidents and individual people. Now, I turn to describing the prevalence of male-perpetrated sexual assault of women in Canada in order to provide an empirical basis for my claim that it is a *systematic* phenomenon that occurs not just between individual people, but between *gender groups* (men and women). I will use this discussion to support my argument in the following chapter that women's experience of sexual assault is also a structural injustice.

Initial findings from the 2018 Statistics Canada *Survey of Safety in Public and Private Spaces* (SSPPS)(2019) have recently been published.⁵⁶ These findings provide insight into the prevalence of gender-based violence in Canada by supplying more precise information related to the gendered division of unwanted sexual behaviours in public spaces, workplaces, and online settings than was previously available, as well as important new coverage of sexual assault and physical assault.⁵⁷

The SSPPS (2019) found that women were three times more likely than men to have been sexually assaulted in the preceding twelve months, at a rate of

⁵⁶ Cotter and Savage 2019.

⁵⁷ Self-reported surveys like the SSPPS are not infallible. As Johnson (2012) points out, "While far superior to police statistics for researching women's experiences of male violence, victimization surveys are not without important limitations. Surveys conducted by telephone effectively exclude marginalized populations living in shelters, unstable housing, or on the street; those without landlines; those who cannot respond in English or French; and cultural and linguistic minorities for whom telephone surveys are not a familiar medium for disclosing personal or sensitive experiences. The extent to which they can be used to explore intersections of violence and other forms of oppression based on race, ethnicity, sexual orientation, and disability is also limited" (616fn15).

approximately 3% of woman respondents.⁵⁸ About four times as many women than men experienced sexual assault at least once since age 15, at rates of 30% (equivalent to approximately 4.7 million women in Canada) and 8% (equivalent to approximately 1.2 million men in Canada) respectively.⁵⁹ Of the most serious sexual assaults reported by women in the preceding twelve month period, 95% of women reported that the perpetrator was a man. With respect to sexual assault, Conroy and Cotter (2014) have also found that “sexual assault offenders were most often men, acting alone and under the age of 35” and that “just over half of victims knew the person who sexually assaulted them.”⁶⁰ Finally, both men and women who were sexually assaulted in the previous twelve months experienced victim-blaming at a rate of 20%. Of those who experienced victim-blaming, women were victim-blamed *by the perpetrator of their assault* at a rate of 44% and *by their friends and family* at a rate of 43%.⁶¹

In addition to the SSPPS, the *General Social Survey on Victimization* (GSS)⁶² and the *Uniform Crime Reporting* survey (UCR)⁶³ provide the primary national databases for the study of gender-based violence. Like the SSPPS, the GSS is a self-reported survey which aims to provide “estimates of the numbers and

⁵⁸ Savage and Cotter, 17. The SSPPS also found that “The proportion of women who had experienced sexual assault since age 15 was far greater than the proportion of men in every province” (Cotter and Savage 15)

⁵⁹ Savage and Cotter, 15.

⁶⁰ Shana Conroy and Adam Cotter, “Self-Reported Sexual Assault in Canada, 2014,” 2014. 3.

⁶¹ Cotter and Savage, 22.

⁶² *General Social Survey*:

<https://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=4504>

⁶³ *UCR*: <https://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=3302>

characteristics of victims and criminal incidents”⁶⁴ while the UCR aggregates “police-reported crime statistics.”⁶⁵ Conroy and Cotter note that in the 2014 GSS, self-reported sexual assaults were distributed between the three types mentioned above as follows: “71% of sexual assault incidents were unwanted sexual touching, 20% were sexual attacks and 9% were sexual activity where the victim was unable to consent due to drugs, intoxication, manipulation or non-physical force.”⁶⁶ These figures line up with those of the 2004 GSS.⁶⁷ This said, estimations of the prevalence of sexual assault which draw on police data, like the UCR, are not helpful for establishing the prevalence of actual incidents of sexual assault because sexual violence in general is “significantly under-reported” in the Canadian legal system.⁶⁸

The SSPPS found that women respondents who were sexually assaulted in the preceding twelve months filed an incident report with police just 6.4% of the time, with men reporting incidents of sexual assault even less at just 2.3% of the time.⁶⁹ In 2014, the GSS asked respondents who chose not to report their experience

⁶⁴ GSS webpage above.

⁶⁵ UCR webpage above.

⁶⁶ Conroy and Cotter 5.

⁶⁷ Conroy and Cotter 21, endnote 6. As Johnson (2012) points out, as with the *Criminal Code*, “[a] man who commits forced penetration, formerly legally known as rape, can be charged and prosecuted under any of these sections, including 271 if it is determined that the attack did not involve a weapon, bodily harm, or multiple assailants” (618).

⁶⁸ Benoit et al. 2014, 4.

⁶⁹ Cotter and Savage 43. That is: from the perspective of the police, the prevalence of *possible* cases of sexual assault against women would look like just 6.4% of 3% for women (just below 0.2%), and 2.3% of 1% for men (slightly greater than 0.02%). This fits with the findings of Benoit et al. (2014):

“[...] there are marked differences between the GSS and the UCR in terms of measures and reporting processes, which makes any direct comparison between the two sources difficult (Perreault, 2013). As a case in point, in 2007, UCR data indicated a prevalence rate of 73 sexual assaults per 100,000 people in Canada [0.073%], while GSS data from 2004 (the

of sexual assault to the police about their reasoning. Women were more likely than men to reason that “no one was harmed during the incident,” and because “there was a lack of evidence.”⁷⁰

Benoit et al. (2014) point out that self-silencing arises from a number of other factors as well, including a concern amongst respondents that their experience was “not serious enough to report”; a “lack of clarity about what constitutes sexual violence” (i.e. what Fricker has called a “hermeneutic lacuna”); feelings of “fear, shame, and embarrassment of being judged, blamed, or not believed”; that a person experiences sexual violence as “routine” due to the frequency of their experience; and because a person does not trust or simply fears the police and/or the legal system (whether in itself or with respect to sexual assault in particular).⁷¹ In the latter case, women’s concerns are not unfounded. In her ruling on *Jane Doe v. Metropolitan Toronto Commissioners of Police* (1998), Justice Jean MacFarland criticized Toronto police “for blaming victims of sexual assault, for showing an unwillingness to help victims, for doubting the veracity of women’s claims, and for maintaining a cold and detached demeanor.”⁷²

Beyond the self-silencing of sexually assaulted people, cases of sexual assault demonstrate what Holly Johnson (2012) has called a “pyramid of attrition” through

closest available cycle) indicated a rate of 2058 sexual assaults per 100,000 [2.1%]” (12, emphasis added).

⁷⁰ Cotter and Savage 17

⁷¹ Benoit et al. 4-5

⁷² Benoit et al. 7

the legal system when they are reported: “the actual number of sexual assaults forms the base and the levels of the pyramid in decreasing width are formed by the number of assaults reported to police, the number recorded by police as “founded,” the number with a suspect being charged, and the number prosecuted, up to the peak, which contains a considerably reduced number of criminal convictions.”⁷³ In addition to attrition through the legal system, respondents to victimization surveys may not wish to “divulge such intimate and potentially stigmatizing experiences to a stranger in the context of an anonymous interview.”⁷⁴ As I note above, Canadian women “are more likely to experience sexual violence than men [...] across time and jurisdictions.”⁷⁵ Some women also experience higher risk of sexual assault and sexual violence in general due to their social position, including “their cultural and ethnic background, immigrant status, income and education level, age, sexual orientation, and physical, cognitive, and emotional abilities.”⁷⁶

⁷³ Holly Johnson, “Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault,” *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* 640 (2012): 305–41. 629. Johnson illustrates the pyramid of attrition using the 2004 GSS Survey results as follows: “At the base of the attrition pyramid (I) are an undetermined number of actual sexual assaults; the next level (II) are the 460,000 incidents of sexual assault reported in Statistics Canada’s 2004 victimization survey. The estimated number of “founded” cases (IV) involving women and girls twelve years of age and older was 13,200; since “unfounded” figures are no longer published, 15,200 is an estimate (III) derived from the total number recorded by police as founded on the basis [632 skipping 631] that 15 percent are declared unfounded.⁵⁷ Less than half of these (5,544) led to a suspect being charged (V). About half of suspects (2,848) were prosecuted (VI), and half of those cases prosecuted resulted in a conviction for sexual assault (VII).⁵⁸ As a result, just 25 percent of suspects initially charged with sexual assault were convicted of sexual assault, possibly at a reduced level. If attrition is calculated from the estimated 460,000 sexual assaults that occurred in one year and follows through to the 1,406 offenders convicted in criminal court (VII), the result is that 0.3 percent of perpetrators of sexual assault were held accountable and 99.7 percent were not” (Johnson 632).

⁷⁴ Johnson 630.

⁷⁵ Benoit et al. 5.

⁷⁶ Benoit et al. 6.

Indigenous women have faced especially high levels of sexual violence in conjunction with “historical trauma caused by the residential school system, patriarchal laws denying equal citizenship by gender, and systemic racism that continues to diminish the perspectives and experiences of Aboriginal women” in particular.⁷⁷ In 2014, for example, responses to the GSS showed that First Nations, Métis, and Inuit persons were more likely to have been sexually assaulted than other respondents at a rate of three to one, with 94% of those incidents being sexual assault against women.⁷⁸

The queer community in Canada also faces higher rates of sexual violence than the heterosexual community. For example, bisexual respondents to SSPPS experienced violence at a rate three times that of heterosexual respondents, with bisexual women facing rates of sexual assault in the preceding twelve months four times higher than heterosexual women.⁷⁹ Age also plays a significant factor: relative to the entire GSS 2014 data set, women aged 15 to 24 alone represented 47% of the reported incidents of sexual assault in the preceding twelve month period (a rate twelve times that of men in the same age bracket).⁸⁰

In addition to the prevalence of sexual assault, unwanted sexual behaviour in public places is also a widespread problem in Canada. The SSPPS found that one in three women experienced at least one incident of unwanted sexual behaviour in

⁷⁷ Benoit et al. 10.

⁷⁸ Conroy and Cotter 8.

⁷⁹ Savage and Cotter 19.

⁸⁰ Conroy and Cotter 8.

public spaces in the past 12 months (approximately 4.9 million women), while 13% of men had such experiences.⁸¹ Of the women who experienced unwanted sexual behaviour, a man was the most common perpetrator (88% of the time) of the most serious incident, most often a “male stranger acting alone” (75% of the total incidents)—this was also true of unwanted sexual behaviour experienced by men.⁸² Following the most serious incident of unwanted sexual behaviour, “52% of women [...] made at least one change to their routine or behaviour.”⁸³ Unwanted sexual behaviour includes unwanted sexual attention (including “comments, gestures, body language, whistles, or call”); unwanted physical contact (including “unsolicited touching or someone intentionally getting too close to them in a sexual manner”); and unwanted comments about sex or gender (including “not looking or acting like the person responsible believes a woman should”).⁸⁴ Women experienced these behaviours at rates of 25%, 17%, and 12% respectively in public spaces. Women’s particular experiences of these behaviours further illustrates my point that women have distinctly sexualized and gendered experience of their lives in Canada.

Despite the problem of under-reporting, the national research data sets that cover sexual assault in Canada not only demonstrate that sexual assault is disproportionately perpetrated by men against women, but also that male-

⁸¹ A public space is “anywhere the public is able to access with little or no restriction (e.g., coffee shops, the street, shopping malls, public transportation, bars and restaurants)” (Cotter and Savage 6).

⁸² Cotter and Savage 9.

⁸³ Cotter and Savage 10.

⁸⁴ Cotter and Savage 6-7. On the view advanced above, “unwanted physical contact” will qualify as sexual assault where the contact has a sexual aspect.

perpetrated sexual assault against women is widespread. Insofar as male-perpetrated sexual assault against women is both gendered and widespread, it is a *systematic* social phenomenon. I take up this analysis of systematicity from Ann Cudd (2014), who has argued that violence be identified as systematic where “the effects of the violence are part of a pattern of violence against members of [a] group.”⁸⁵ In this respect, the demonstrably gendered social pattern of sexual assault is systematic. In the next section, I turn to expanding this account in greater detail.

3.1. Structural injustice and oppression

In the previous section, I showed that sexual assault is both typically perpetrated by men against women and widespread in Canada. In this respect, male-perpetrated sexual assault against women is systematic (it affects women as a group). In this section I will show that the systematic character of male-perpetrated sexual assault against women makes it a matter of both oppression and structural injustice, rather than simply being a common form of individual wrongdoing. First, I will argue that sexual assault (as a type of violence) is a force of oppression insofar as it is a material force of violence in the lives of women and because the real prevalence of sexual assault causes the psychological oppression of women as a group through the existence of a group-based *credible social threat situation*. Sexual assault functions in this way when the prevalence of male-perpetrated sexual assault against women is at least tacitly recognized by women as credible social

⁸⁵ Ann E. Cudd, *Analyzing Oppression*, Studies in Feminist Philosophy (New York: Oxford University Press, 2006). 89-90.

threat and this threat acts to constrain the reasonable life options available to women.⁸⁶ Having established that systematic male-perpetrated sexual assault against women is a matter of objective, material oppression, I then turn to discuss how this oppression is what Iris Marion Young has called a “structural injustice” faced by women in Canada.

3.1.1. Systematic sexual assault as a group-based harm

In their paper, “Harming Women as a Group” (1985), Marilyn Friedman and Larry May provide an individualist picture of the group-based harms experienced by women in virtue of their gender. These occur, at least, in virtue of individual women being members of the social group “women” and insofar as the “combined effects” of the experiences of individual women are “pervasively distributed throughout the group.”⁸⁷ This account of what it is to harm women as a group should be distinguished, for Friedman and May and for the project at hand, from harms to women as a collective entity.⁸⁸ On this brief account Friedman and Strikwerda already face a number of philosophically rich questions.

First, there is the question of what it is for one to be harmed in *virtue of being a woman*. This claim can be read in at least two ways, constitutively and causally.⁸⁹ On the constitutive account, one might be harmed in virtue of being a woman insofar

⁸⁶ Ibid., 88

⁸⁷ Marilyn A. Friedman and Larry May, “Harming Women as a Group,” *Social Theory and Practice* 11, no. 2 (1985): 207–34, <https://doi.org/10.5840/soctheorpract19851127>. 207.

⁸⁸ Ibid., 207

⁸⁹ For a third answer to this question, see Jenkins, Katherine. 2020. “Ontic Injustice.” *Journal of the American Philosophical Association* 6 (2): 188–205.

as a person's womanhood explains what it is for one to be harmed. For example, it might be that the same experience can be had by people of other genders without that experience being a harm, and that one is harmed in virtue of being a woman insofar that experience is harmful insofar as one is a woman. The harm of misgendering is a salient example of this phenomenon.⁹⁰ This constitutive claim is not the one I will make. Instead, I wish to make the causal claim: women's experience of male-perpetrated sexual assault is a group-based harm insofar as the causal explanation for the systematicity of the phenomenon is the sexually assaulted persons' *being women*. Certainly other people experience sexual assault, but in the case I am examining the claim that the pattern and prevalence of sexual assault perpetrated by men against women is group-based insofar as it is *causally* based in the relationship between men as a group and women as a group.

The second question, which Friedman and May are sensitive to, is just what kind of groups "men" and "women" comprise. Regardless of the account of who counts as a woman or a man one accepts, the putative members of such groups are a vastly diverse, geographically distributed set of people who are largely anonymous to each other. Is it feasible to call these members a "group" at all, or are these simply people picked out by gender kinds?⁹¹ To begin asking this question, I will briefly

⁹⁰ Stephanie Julia Kapusta, "Misgendering and Its Moral Contestability," *Hypatia* 31, no. 3 (2016): 502–19. I am indebted to Heather Stewart for raising this important point.

⁹¹ While I do not treat the realism/nominalism debate about gender as a social kind in this paper, cutting-edge work on gender being done by Åsta (2018), Robin Dembroff (2020, 2020), Katherine Jenkins (2016, 2018), Sally Haslanger (2012), Jennifer Saul (2006), and others, are all salient to an expanded treatment of my project here.

explore Friedman and May's answer with respect to women. Though the discussions overlap, I distinguish my treatment of gender groups from consideration of the properties relevant to one's qualifying as a member of such a group, which I take to be a discussion of gender kinds. While differing notions of which people are picked out by the gender kinds "men" and "women" bear on which people should be conceived of as members of the gender groups men and women I take it that my discussion of the social ontology of gender *groups* can proceed without adopting a specific treatment of gender *kinds*. Rather, I will proceed with the provisional account of gendered difference with respect to sexual assault I provide above (i.e. the patterned difference in experiences of sexual assault which follows the self-reported gender of respondents to Statistics Canada surveys and other research).

Friedman and May point out that, as a set of people, the entity "women" lacks several features that might qualify it as an aggregate—their points apply equally well for "men" as a social group. The social group women, for example, is not "exhaustively specified in terms of the identities of its members or constituents."⁹² Unlike an aggregate, which might be comprised of a random collection of people, gender groups are constituted in light of the properties of the members themselves.⁹³ Members of these groups are members because they have the relevant

⁹² Friedman and May, 208

⁹³ In this respect, gender groups are not like the "random collection of individuals" examined by Held (1970). As I note below, members of gender groups are related to one another to a significant network of interlocking relations that are based (whether causally or constitutively) upon the trait which also constitutes their membership in the group itself, their gender.

social property (being a woman, being a man, being non-binary).⁹⁴ Unlike a collective of friends, for example $F=\{\text{Mark, Amal, Robin}\}$, the identity of a gender group is also not specified in terms of specific members. Unlike a random assortment of people, however, members of gender groups like the group “women” do bear important social relationships to one another.⁹⁵ In the case of this paper, I am specifically interested in women’s shared experiences of sexual assault, but the social significance of gender as a social property means that many group members also share overlapping, intersectional experiences. Rather than conceiving of women as an aggregate, Friedman and May suggest that women comprise what they call an *amalgam* for the following reasons which distinguish the group from bare aggregates.

What I have been calling “gender groups,” like “women,” are not extensional. Changes in the members of the group do not constitute the creation or dissolution of the group.⁹⁶ As I have said, gender groups are defined in terms of a “group-defining property, or properties”—in this case, I only claim that the relevant property is that of *being a woman*, leaving aside the conditions under which this property is applied.⁹⁷ The same can be said of “men” and *being a man*, though as I have said

⁹⁴ The case of whether non-binary people constitute a social group in the same way that cisgender groups do is an interesting question I will not explore here. For consideration of how non-binary as a *critical gender kind* might be differentiated from the gender kinds *woman* and *man*, see Dembroff (2020).

⁹⁵ Friedman and May, 209

⁹⁶ *Ibid.*, 210

⁹⁷ Friedman and May take a biological view that “[e]xhaustive identification of the group, women, requires reference to the biological group-defining properties which distinguish that group; reference to the identities of individual women is insufficient by itself for the task” (209). In an endnote, they

above the group of interest shall be the group constituted by all people who have the social property *being a cisgender man*.⁹⁸

The members of “women,” as a gender group, also bear deep and significant relationships to one another such that what affects one member of the group will be causally transmitted (socially, economically, symbolically) to and through other members of the group.⁹⁹ Women not only bear deep and specific social bonds to one another, but also noteworthy economic and political bonds through their engagement in gendered labour (including care work) and with respect to their gendered political concerns. When an individual member of the group is harmed, that harm is transmitted through these relationships such that other women face a secondary burden by the conduit of their “material interdependencies.”¹⁰⁰ Consider, for example, the role of elderly women and women of colour in the care economy that continues to support white women’s participation in the labour force of capitalist economies like Canada. Despite the often racialized and age-based relationships of power between these women, social pressures to either end of this aspect of the care economy will be felt throughout. The same kind of deep, social

write: “biologically defined sexual differences are specified in terms of chromosomes, gonads, internal genitalia, external genitalia, hormones, and secondary sex characteristics” (232). As I have mentioned above, I do not accept this account of gender, nor do one need to in order to make sense of cis men’s group-based oppression of women. For the purposes of my argument, drawing the boundaries of the gender group women along the lines of self-reporting is sufficient, and this practical consideration will provide a more inclusive account of the group-based phenomenon in question (with respect to the sexual norms of hegemonic masculinity) than would a biological account.

⁹⁸ I will defend this point in greater detail in Chapter 5 of this paper.

⁹⁹ Friedman and May 211

¹⁰⁰ Ibid., 217

connections exist between cisgender men, especially in communities that have traditionally privileged cisgender men's economic and political participation. In the case of men, self-perpetuating relationships of support and privilege operate in much the same way as those I raise with respect to women: consider the immediate and long-term benefits accrued to men who participate in institutionalized male-bonding through groups like fraternities, for example.

As groups, women and men are also not quite like a corporation, state, or other similar instances of what might be called group-agents—and a group need not be a group agent in order for members to be harmed in virtue of their group membership.¹⁰¹ While there are significant “interrelationships” between women these relationships are not, for example, explicitly outlined in a constitutional document as would be the case in a state or corporation.¹⁰² Nor do gender groups have a formal procedural apparatus for allocating power relationships between members, though such distributions occur informally. In this sense, gender groups are not formalized.¹⁰³

There are, however, informal processes by which group members are distinguished from each other and from non-group members over and above the basic presence of the relevant gender property. Friedman and May suggest that at least one of these processes is the “social process of sex-role differentiation” which

¹⁰¹ Ibid., 213-214

¹⁰² Ibid., 212

¹⁰³ Ibid., 213

mobilizes “distinctive standards.”¹⁰⁴ The “social process” of differentiating people on the basis of sex and the associated “standards of conduct” that go along with sex roles are a specific kind of standard of conduct associated with group members, both between group members and by people outside of the group who attribute group-membership to purported members (whether accurately or not). As I have shown, dominant sexual norms provide one set of these standards.

The gender groups of women and cisgender men also do not, at least at present, appear to have a “shared feeling of peoplehood” in the way one might have in, e.g., a community of people who share an ethnicity.¹⁰⁵ Though feminists are working to change this, and some women likely do share a feeling of belonging to the gender group “women,” “it is an attitude which the group of women in its entirety cannot yet be said to share,” according to Friedman and May.¹⁰⁶ Women, and I suggest cisgender men as well, instead identify themselves by other features. Despite this, many women share a conscious understanding of particular harms that individual women experience as being tied to her being a woman. Through this “mutual identification” with others, women other than she who directly experiences sexual assault experience a “kind of vicarious harm to all other women who share the consciousness of themselves as members of the group.”¹⁰⁷

¹⁰⁴ Ibid., 213

¹⁰⁵ Ibid., 214-216

¹⁰⁶ Ibid., 215

¹⁰⁷ Ibid., 217

In light of my consideration of Friedman and May's analysis of "women" as group that can be harmed, I have suggested that both women and men comprise gender groups wherein members have rich social and economic connections to one another (including relations of power and dominance), without the decision-making structure or other agentic characteristics which characterize classical examples of group agents like states and institutions. Group-members might participate in group-based political activity (e.g. feminist political organizing), but need not do so to constitute a group. In the case of systematic male-perpetrated sexual assault of women, group-based harms are distributed through the interlocking relationships of group members and inform the backdrop of norms that characterize what it is to be an ideal member of the group itself.

3.1.2. Systematic sexual assault as a credible social threat situation

Given the discussion above of what it means for a harm to be group-based, I now turn to providing an analysis of male-perpetrated sexual assault as an oppressive group-based harm. Ann Cudd's work on oppression contributes a finer-grained account of the interaction between structural phenomena and individual behaviour, and Cudd's treatment of what she calls the "material forces of oppression" (including violence) are salient for the present discussion.¹⁰⁸ On Cudd's view, the concept oppression "names a harm through which groups of persons are systematically and unfairly or unjustly constrained, burdened, reduced" by material

¹⁰⁸ Like Cudd, I use the term oppression as what Sally Haslanger has called a "normative concept" insofar as the concept is defined by social theory rather than day-to-day use (a manifest or operative concept) (Cudd 4).

or psychological forces. As a material force of oppression, systematic male-perpetrated sexual assault against women has the effect of simultaneously constraining women's life options while expanding the options available to men. In this case I will be particularly interested in the objective material force of sexual violence.¹⁰⁹

I am interested in systematic sexual assault as what Cudd has called "objective" oppression, as I raised in my discussion above of the social fact of sexual assault.¹¹⁰ While an experience of sexual assault will often visit significant personal and psychological effects upon people who are sexually assaulted, I discuss sexual assault as a form of oppression irrespective of the conception of those affected of their experience as either sexual assault or a form of oppression.¹¹¹ One certainly can experience subjective oppression following from an experience of objective oppression insofar as one can have the personal feeling that injustice has been done, I do not take up this experience here in detail. Rather, I take that subjective experience of oppression to be an ancillary, psychologically oppressive force that furthers the harm of sexual assault in individual instances and systematically. Recall that on my account of sexual assault above, sexual assault is the sexual violation of bodily integrity. In this respect, sexual assault also constitutes a form of "material"

¹⁰⁹ Cudd 23

¹¹⁰ Ibid.

¹¹¹ Ibid.

oppression on Cudd's account insofar as sexual assaulted persons' physical bodies are central to the harm done and the wrongfulness of the harm.¹¹²

Following from this characterization of sexual assault as an objective and systematic material force of oppression, women in Canada additionally live under what Cudd has called a *credible social threat situation*. A social threat situation, on Cudd's account, obtains where there "is a common belief that members of group A frequently threaten violence or perpetrate violence on members of group B. In such a case that members of A pose a threat to members of B."¹¹³ In this case, male-perpetrated sexual assault against women is both well-documented and well known among women, who work together to protect each other from this threat. This frequency underwrites the reasonable belief that men pose a threat to women, which Cudd in fact notes to illustrate her point about the general case: "Although individual women may threaten individual men, between women and men as groups, it goes only one way. Men (as a group) pose a threat to women (as a group)."¹¹⁴ The social threat situation posed by male-perpetrated sexual assault in Canada constrains women's autonomy relative to men's, as women are forced to plan their day-to-day activities and longer term goals around the threat of sexual assault.

Finally, sexual assault poses a credible threat, as women have both "good objective reason" to believe that men will realize the threat if the circumstances are

¹¹² Ibid., 24

¹¹³ Ibid., 91

¹¹⁴ Ibid.

right, and because women believe that this will occur.¹¹⁵ Women *do* have good objective reason to believe they are in a social threat situation given the statistical prevalence of male-perpetrated sexual assault against women. The truth of the latter point is demonstrated, as I have just mentioned, by the manifold ways that women strategize about how to avoid sexual assault.

Though there are likely men who are not perpetrators of sexual assault, all men are beneficiaries of “the systematic subordination of women,” as men cannot step outside of the system of social and economic privileges they accrue just in virtue of their social position as men.¹¹⁶ In much the same way, women cannot step outside of the credible social threat of sexual assault.¹¹⁷ In this respect, while some women experience sexual assault at higher rates and in more extreme forms than other women in virtue of their social position, women as a group are systematically harmed by the social threat of sexual assault even if that threat never materializes.¹¹⁸

Even where individual women successfully avoid sexual assault, the credible social threat of sexual assault affects the decision-making and scheme of viable possibilities available to all women. The systematic harm of the prevalence of sexual assault, both directly in incidents of sexual assault and indirectly through a credible social threat, constitutes it as a form of oppression.¹¹⁹ As Cudd points out, the harm

¹¹⁵ Ibid.

¹¹⁶ Ibid., 95. I will say more about this in my final chapter.

¹¹⁷ Ibid.

¹¹⁸ Ibid., 96.

¹¹⁹ Ibid., 116.

of systematic violence (including sexual assault) and social threat situations can also “cause terror and trauma not only in the immediate victims and their families but also in the other members of the social group, who quite rationally take themselves to be equally at risk for victimization. By traumatizing and paralyzing its victims, the effective, credible threat of violence can effectively cause oppressed groups to harm themselves.”¹²⁰ In this respect, sexual assault is not just a material force of oppression for women, but also both a direct and indirect psychological force of oppression.¹²¹

Along with Cudd, I posit social constraints in order to explain how the credible social threat situation bears on the activities of individual agents through both the suggestion of and realization of “penalties and rewards.”¹²² Cudd illustrates this point with a discussion relevant to sexual assault:

“If it is a social fact that in a certain area of town women are likely to be harassed or assaulted, then individual women will be motivated to avoid it. That does not mean that all women will avoid going there (indeed, some feisty women might even take it as an inviting challenge to do so), but just that for any woman there will be a cost to going there that she ought

¹²⁰ Ibid.

¹²¹ Ibid., ch. 6.

¹²² Ibid., 42. Per Cudd, a constraint is a fact “that one does or ought to rationally consider in deciding how to act or how plan one’s life,” or a fact that “shape[s] beliefs and attributes about other persons” (42). A constraint, like “legal rights, obligations and burdens, stereotypical expectations, wealth, income, social status, conventions, norms, and practices,” (ibid.) is social where it “come[s] about as a result of social actions” (ibid). Here, I am especially interested in social constraints that arise as “unintended consequences of other intentional actions,” like stereotypes (ibid.).

(rationally) consider in making a decision about where to go and by what route. Social constraints help to explain individual actions by revealing the incentives that individuals have by virtue of their membership in nonvoluntary social groups”¹²³

On this view of social constraints, the oppressive force of systematic, gendered sexual assault is such that even Canadian women who have not been sexually assaulted face a range of group-based social constraints in virtue of their membership in a gender group (what Cudd calls a “nonvoluntary social group”) rather than their individual characteristics.

With this account of systematic sexual assault as an objective material oppression faced by women in Canada, I can now expand my treatment of the systematic character of this phenomenon by describing it as a persistent *structural* phenomenon.

3.1.3. Systematic sexual assault as a structural injustice

Thus far, I have shown that widespread male-perpetrated sexual assault against women constitutes an objective material force of women’s oppression, and that this force additionally psychologically and socially oppresses women through the creation of what Ann Cudd has called a credible social threat situation. In doing so, I have addressed sexual assault as a matter of social fact irrespective of perpetrators’ intentions. With this account in mind, I turn to Iris Marion Young’s

¹²³ Ibid., 42.

notion of *structural injustice* to help explain how such a situation might continue to exist in a society that otherwise purports to value the lives of women.

Iris Marion Young (1990) has argued that oppression is structurally instantiated where oppressive social forces are “embedded in unquestioned norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules” rather than from the intentional construction of a social context that is oppressive (though the latter case also occurs)—recall, for example, the behaviour of the man at dinner who forcefully asks “Did you fuck her?”¹²⁴ Group-based oppression, like the gender-based oppression of women, is “enacted [...] in informal, often unnoticed and unreflective speech, bodily reactions to others, conventional practices of everyday interaction and evaluation, aesthetic judgments, and the jokes, images, and stereotypes pervading the mass media.”¹²⁵ Insofar as the group-based oppression of sexual assault exists and is systemically tied to gender, it constitutes an injustice insofar as people are constrained (as I have said, socially constrained) in “their ability to develop and exercise their capacities and express their needs, thoughts, and feelings” in virtue of their unchosen gender identity.¹²⁶ Thus structural injustice, as I take it up from Young, is distinguished from injustice that occurs between individual people and

¹²⁴ Iris Marion Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990). 41.

¹²⁵ *Ibid.*, 148.

¹²⁶ *Ibid.*, 40

from injustice that is the result of identifiable institutional actions.¹²⁷ Insofar as gender-based oppression exists as a function of structural social forces, it is a matter of structural injustice. Before moving on, let me briefly explain in a preliminary way the sense in which I am using the term “structural.”

Social structures create what Jeffrey Reiman has called “channels” of possible action by enabling some possibilities and constraining others.¹²⁸ Institutional rules, like the codified rules of a legal system, and social rules, like sexual norms of behaviour that are tacitly accepted, operate as constraints on possible action. Such rules can also apply differently to agents of different social positions.¹²⁹ Social rules that exist informally can nevertheless feel “objectified” and “thing-like” as they affect the life options that are or appear to be available to an agent.¹³⁰ On the view I take up here from Young, such rules are just if they distribute options and opportunities equitably, but are a matter of injustice where possibilities are unfairly constrained for some agents or unfairly expanded for others.¹³¹ Insofar as social constraints and burdens are systematically arranged on the basis of agents’ social positions, they are a matter of structural injustice. As I have described the gendered distribution of

¹²⁷ Iris Marion Young, *Responsibility for Justice*, First issued as an Oxford University Press paperback, Oxford Political Philosophy (New York, NY: Oxford University Press, 2013). 45.

¹²⁸ *Ibid.*, 52

¹²⁹ *Ibid.*, 56

¹³⁰ *Ibid.*

¹³¹ This sketch of “justice” clearly depends on an unspecified account of “equitable” that I do not provide in this paper. For the purposes of this argument I do not need a thoroughly worked out theory of justice, though providing one would likely furnish a more rigorous account of the injustice of male-perpetrated sexual assault than there is space for here.

benefits and burdens arising from systematic male-perpetrated sexual assault, it is a matter of injustice.

As I note above, what makes a matter of injustice structural is that the injustice affects agents on the basis of their unchosen group membership (it is oppressive) and because it persists as an unintended consequence of people living within broadly accepted social norms, like the hegemonic norms masculinity within Canada. Male-perpetrated sexual assault is structural insofar as, I argue, the phenomenon persists not by the intention of a cabal of misogynistic men but through the reproduction of sexual assault-supportive background conditions of “unconscious assumptions and reactions of well-meaning people in ordinary interactions, media and cultural stereotypes, and structural features of bureaucratic hierarchies and market mechanisms—in short the normal processes of everyday life”—specifically, through the reproduction of sexual assault-supportive sexual norms.¹³² In this respect, as Young points out, structural forces of oppression like sexual assault cannot be remedied by simply passing a new law or installing a new political leader, as they are not primarily the result of the intended actions of individuals.¹³³ The material force of sexual assault may be carried out, in part, by individuals against individuals, but the conditions that contribute to the force becoming widespread and durable were not set up nor are they changeable through the actions of a few individual people alone.

¹³² Young 1990, 41

¹³³ Ibid.

Even where some of the actions that socially reproduce an oppressive social context are wrongful, as is the case of individual instances of sexual assault, such “people are usually simply doing their jobs or living their lives, and do not understand themselves as agents of oppression.”¹³⁴ As I have described sexual assault above, men may not intend their action to be harmful, let alone conceive of themselves as contributing to the reproduction of gender-based oppression. Certainly there are cases, perhaps many, where perpetrators intend to harm those they assault. Even in these cases, however, it seems unlikely that the reasoning supporting this intention will be that one wishes to support the social reproduction of the oppression of women.

In light of my analysis of empirical data on sexual violence introduced above using the frameworks established by Ann Cudd (2006) and Iris Marion Young (2011), I now take it that male-perpetrated sexual assault against women in Canada constitutes a form structural injustice. I have also shown this injustice is a group-based harm that oppresses individual women in virtue of their gender, and privileges men in virtue of their gender.

3.1.4. Possible objection: violence

Cudd (2006) defines violence as “the intentional, forceful infliction of physical harm or abuse on one or more persons or their material or animal possessions,” later writing that “for an event to count as violence it must involve

¹³⁴ Ibid., 42

intentional physical force.”¹³⁵ On one reading, I depart from Cudd’s definition insofar as (1) I accept a definition of sexual assault inclusive of incidents that lack physical force and lack intention, and (2) I claim that sexual assault is a form of violence. On another reading, however, one might read Cudd’s “intentional” as capturing the intention of touching, and “abuse” might capture the basic violation of bodily integrity under the account of sexual assault I introduce above. For the purposes of this argument, I do not need to take up Cudd’s view of violence to understand and adopt her account of the relationship between systematic harm and oppression. In Cudd’s discussion of the systematic nature of sexual violence, she writes that: “To say that some violence is systematic, or is part of a pattern of harms disproportionately affecting a particular social group, is not to say that the pattern itself is intentional on any person’s part, though it may be.”¹³⁶ This second account of violence, specifically systematic violence, is the aspect of Cudd’s view that I make use of in this paper: the pattern of violence (that is, the gendered pattern of sexual assault), can occur without any intentional coordination between some or all of the perpetrators involved (though there may be). While I treat a wider set of phenomena at the level of individuals, inclusive of the set that Cudd discusses, Cudd and I are nevertheless interested in the same kind of social phenomena at the level of group-based harm. As Cudd writes, “It is important to consider the effect and not

¹³⁵ Cudd 87, 90.

¹³⁶ Ibid., 89.

the intention here because what matters in considering how violence constructs oppression is how it constrains social groups.”¹³⁷

Rather than taking up Cudd’s view unmodified, Young’s wider account of violence is more appealing given the account of assault above in terms of violations of personal autonomy above. On Young’s view, violence includes not just physical attacks, but also “incidents of harrassment [sic], intimidation, or ridicule simply for the purpose of degrading, humiliating, or stigmatizing group members.”¹³⁸ As Young notes, violence, though harmful and typically wrongful, is not oppressive in itself. What makes violence a material force of oppression is the “social context” in which that violence takes place, and which may contribute to possibility and normalcy of violence.¹³⁹ The “systemic character” of violence makes it a matter of structural injustice rather than a case of individual wrongdoing.¹⁴⁰

Violence is systemic, rather than individual, where it “is directed at members of a group” just in virtue of those persons’ membership in the group. As with Cudd, Young raises sexual violence to illustrate this point:

“Any woman, for example, has a reason to fear rape. [...] The oppression of violence consists not only in direct victimization, but in the daily knowledge shared by all members of oppressed groups that they are liable to violation, solely on account of their group identity. Just living under such a threat of

¹³⁷ Ibid.

¹³⁸ Young 1990, 61.

¹³⁹ Ibid., 62.

¹⁴⁰ Ibid.

attack on oneself or family or friends deprives the oppressed of freedom and dignity, and needlessly expends their energy.”¹⁴¹

Here, I suggest that Young is describing exactly the kind of situation that Cudd calls a credible social threat situation. In this respect, despite the differing accounts of violence found in each view, it is reasonable to speak of systematic phenomena like sexual assault perpetrated by men against women using concepts borrowed from each thinker.

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Alongside Ann Cudd and Iris Marion Young, I have argued that male-perpetrated sexual assault is an objective material force of oppression and a form of structural injustice. However, it is not obvious how to connect the preceding structural account of sexual assault with the actions of individual men. That is, it is hopefully now clear that women suffer a group-based injustice, but it is not yet clear who or what is morally responsible for that injustice. This is made more difficult by my emphasis that the injustice of sexual assault is a structural phenomenon, and that it is both carried out between groups (men against women) and persists as an unintended consequence of the day-to-day behaviours of people who are geographically distributed and unknown to each other.

As I have said, the sexual assault-supportive behaviours and beliefs that form the background conditions in question are unjust insofar as they contribute to the

¹⁴¹ Ibid.

persistence of the gender-based oppression of women. In the case of sexual assault, I shall argue that men share forward-looking moral responsibility for this injustice and that this responsibility provides reason for changing the behaviours and beliefs that form the conditions under which sexual assault is both normalized and perpetrated. All men, regardless of their status as perpetrators of sexual violence, beliefs, or intentions, are responsible for the injustice of male-perpetrated sexual assault both in individual instances and as a social phenomenon.

Before moving on, being blameworthy for an action should be distinguished from being responsible for an action. Blame typically corresponds to an agent's completed, intentional action. Where an agent is blameworthy, they are typically "liable to punishment." A perpetrator of sexual assault who intentionally violates another person's bodily integrity appears to be a clear example of morally blameworthiness: their action is past, and the wrong was intended. Blame would not be attributed to someone for one of the possible actions they might take if that action has not yet been taken, nor if the action is never taken (though an agent might be blameworthy for actions they do not take in some circumstances). As I am interested here in the unintended consequences of men's actions, blame is not the right concept.¹⁴²

Responsibility is a more effective concept for articulating the moral charge I wish to make against men as a group, and against individual men as members of that

¹⁴² In this sense, I depart from Tracy Isaac's (2011) view that "[m]oral responsibility is the blameworthiness and praiseworthiness of moral agents" (12). I am indebted to Violetta Igheski for raising this point.

group, as I have argued that men need not be perpetrators of sexual assault to contribute to the persistence of systemic sexual assault as a material force of oppression against women. On the conception advocated by Young that I will introduce in turn, responsibility for structural injustice is forward-looking, intention-independent, and social. An agent may be held responsible for consequences they did not intend, but not be liable for punishment. Rather, an agent who is held morally responsible is expected to engage in forward-looking moral improvement through reflective consideration of how their behaviour led to the consequences in question and how they can make intentional change to their behaviours, beliefs, and attitudes to avoid creating harm in the future.¹⁴³ Additionally, responsibility is tied to an agent's "active or passive support" for social phenomena from social practices to government actions.¹⁴⁴

The injustice of gendered-based oppression experienced by women is a function of their social position relative men in multiple ways, one of which is that women are placed in a position of vulnerability to violence in the form of sexual assault just in virtue of their being women. While some women may not experience sexual assault in their lifetime, all women are vulnerable in the way described in virtue of their being women. While some men will be blameworthy for sexual assault, all men are responsible for sustaining the conditions under which systematic sexual assault persists. Men living in a community where male-

¹⁴³ Young 1990, 151.

¹⁴⁴ Young 2011, 91.

perpetrated sexual assault is a credible social threat situation for women share moral responsibility for that threat regardless of whether they are perpetrators of sexual assault. While some men are morally blameworthy qua perpetrators of sexual assault, all men are morally responsible for the oppressive material force of oppression insofar as the force is systematically instantiated between men as a group and women as a group. However, this account of responsibility is backward-looking insofar as it attributed responsibility just on the basis of one's individual contributions to a state of injustice. As will become clear in the discussion of Young's Social Connection Model (SCM) to follow, this account of men's responsibility of injustice is insufficient on its own.

The reality of systematic sexual assault is also not attributable to any one social policy or action by a political institution. Unlike, for example, the state-sponsored violence and cultural imperialism perpetrated by the Canadian government against First Nations, Inuit, and Métis persons, the injustice of systematic sexual assault cannot easily be attributed to a particular policy—though some policies and political movements certainly contribute. Instead, as Young points out, “[t]he sources of the generalized circumstance of being vulnerable” to forces of oppression like systemic sexual assault “are multiple, large scale, and relatively long term [48] policies, both public and private, and the actions of thousands of

individuals acting according to normal rules and accepted practices contribute to producing these circumstances.”¹⁴⁵

¹⁴⁵ Ibid., 47

4. PRELIMINARY OBJECTIONS

I have argued in a preliminary way that men as a group are morally responsible for systematic male-perpetrated sexual assault insofar as women are harmed as a group by this phenomenon. I will now turn to a three preliminary objections that are likely to arise in light of my discussion of group-based harm. I will spend the final chapter clarifying my argument in light of the objections I raise below.

I take it that my argument that men share moral responsibility for sexual assault perpetrated by men against women can be read, in part, as providing a strong reason in support of the claim that moral improvement of men as a group and individual men as group members is needed. This said, I take it that calls for the moral improvement of men as a group are already quite common between people who are not men. In response to these calls, it is also common to encounter individual men who object that (1) the charges against men as a group are unfounded (the post-feminist objection); (2) the moral ideal in question is not worth meeting (the chauvinist objection); or (3) that even if these charges might apply to a few men, most men (or at least the men objecting) are not in need of moral improvement (the #NotAllMen objection). Below, I treat the first two objections before turning to a discussion of the third in greater detail.

4.1. Post-feminist objection

I will call the first objection the post-feminist objection. I call this a “post-feminist” objection as it fits with work done by writers like Christina Hoff Sommers,

who suggests that the legitimate goals of feminist political organizing have already been met.¹⁴⁶ For example, in Sommers' article "The War Against Boys" (2000) she writes:

"In the view that has prevailed in American education over the past decade, boys are resented, both as the unfairly privileged sex and as obstacles on the path to gender justice for girls. [...] The research commonly cited to support claims of male privilege and male sinfulness is riddled with errors. Almost none of it has been published in peer-reviewed professional journals. Some of the data turn out to be mysteriously missing. A review of the facts shows boys, not girls, on the weak side of an education gender gap"¹⁴⁷

In her article, Sommers aims to debunk feminist worries about boys' privilege by showing that such concerns rest on a misrepresentation of the state of gendered difference in academic achievement. Later in the article, for example, Sommers draws on academic achievement data to argue that girls often achieve greater academic success than boys, and that where boys do achieve greater success than girl on tests like the SAT, these differences are (ostensibly) unrelated to gender-based oppression.¹⁴⁸ I call Sommers' objection "post-feminist" because she

¹⁴⁶ cf. Sommers' *Factual Feminist* series on the YouTube channel for the American Enterprise Institute (AEI); *The War Against Boys: How Misguided Policies are Harming Our Young Men* (2000); *Who Stole Feminism?* (1994).

¹⁴⁷ Sommers, Christina. "The War Against Boys." *The Atlantic*. May 2000.

<https://www.theatlantic.com/magazine/archive/2000/05/the-war-against-boys/304659/>

¹⁴⁸ Some readers will wonder: is Sommers' simply anti-feminist? On some views, yes. Responding to criticisms from Sommers' criticisms in both *Public Affairs Quarterly* (Sommers, Christina Hoff. "Should the Academy Support Academic Feminism?" *Public Affairs Quarterly*, 2:3 (July 1988), pp. 97–120) and the *Chronicle of Higher Education* (Sommers, Christina Hoff "Feminist Philosophers Are

uses claims like these to argue that the aims of Western feminist movements have largely been accomplished.¹⁴⁹

As with Sommers-like worries about feminist overreach, the post-feminist objection addresses whether there is moral gap for men to cross at all, as such objectors claim that men already meet the moral ideal in question. For example, one could claim that men behave in an entitled way with respect to sex acts and that men ought not to behave this way.¹⁵⁰ A post-feminist objector might reject the claim that men do behave in an entitled way with respect to sex which entails, at least with respect to this particular charge, and subsequently reject the conclusion that there is moral gap between men's behaviour (non-entitled) and the moral ideal for their behaviour (non-entitled). As with Sommers, a post-feminist objector might question the evidence used to support claims about how men behave.

Despite often raising troubling arguments against feminist policy positions, Sommers identifies as a feminist who is simply committed to what she takes to be the correct expression of feminist values.¹⁵¹ Unlike Sommers, however, outwardly

Oddly Unsympathetic to the Women They Claim to Represent," *The Chronicle of Higher Education* (11 October 1989), Allison Jaggar has suggested as much (Jaggar, Alison M. (2006). "Whose Politics? Who's Correct?" In Burns, Lynda (ed.). *Feminist Alliances*. Amsterdam: Rodopi. p. 20).

For my purposes here, I take up Sommers' argument to show the style of objection that might be made by a person who accepts broadly feminist values, but objects to claims being advanced by feminist thinkers. While contrast between contemporary feminist political positions and those held by Sommers' is stark, her objections are framed within a broadly (again, ostensibly) feminist project.¹⁴⁹ Christina Hoff Sommers, "How to Get More Women (and Men) to Call Themselves Feminists," *The Atlantic*, June 25, 2013, <https://www.theatlantic.com/sexes/archive/2013/06/how-to-get-more-women-and-men-to-call-themselves-feminists/277179/>.

¹⁵⁰ Cf. Kate Manne's *Entitled* (2020), especially ch. 2.

¹⁵¹ Mourouzis, Jack F.. "An Interview with Christina Hoff Sommers." *The Dartmouth Review*. February 27, 2017. . In this respect, Sommers' heterodox feminism is the kind of view that certain feminist conceptions of autonomy might call heteronomous per my discussion of Meyers (2014) above.

anti-feminist objectors can raise the post-feminist objection for their own ends. For example, the National Coalition for Men (NCFM), a “men’s rights” organization based in the United States, advocates that the combination of “a non-existent rape epidemic on college campuses [sic] and rape hysteria” have fueled false accusations of rape against men across the United States.¹⁵² As with Sommers’ approach, NCFM objects to feminist activists who, they argue, “downplay the statistical reality [sic] of false accusations” at the expense of men accused of sexual assault.¹⁵³ A men’s rights group like NCFM can make the post-feminist objection (that men already meet the moral ideal of credibility) while using this objection for anti-feminist aims (to argue that feminists are engaged in misandrist politics from which men need to be defended).

4.2. Chauvinist objection

The second objection addresses whether the proposed ideal is one worth achieving, regardless of whether men already meet the ideal in question. I will call the second objection the chauvinist objection, as such objections defend the superiority of characteristic features of men (that is, of hegemonic and presumably white, able-bodied, cisgender, heterosexual masculinity) over alternatives. For example, one might claim that men are often aggressive and domineering in social settings and argue that they ought not to act this way. A chauvinist objector to this

¹⁵² NCFM. “False Accusations of Rape.” January 11, 2009.
<https://ncfm.org/2009/01/news/issues/false-accusations/>

¹⁵³ Ibid., <https://ncfm.org/2009/01/news/issues/false-accusations/>. For a helpful discussion of the falsity of this claim with careful attention to the Canadian context, see Doolittle (2019) ch. 8.

criticism might reject the view that being aggressive or domineering in social settings is a bad thing—indeed, some parents choose to socialize their children to model “traditional masculine” ideals like these.¹⁵⁴ This objector might also suggest that being socially aggressive is a trait that should be cultivated rather than repressed, regardless of gender. In this respect, the objector flips the call for moral improvement: they suggest that the problematic behaviour is in fact the ideal behaviour that men ought to strive to meet. The chauvinist objection may be a familiar one, as this objection (unlike the post-feminist objection) makes explicit a commitment to defending the features of one or another masculine example—in all likelihood the hegemonic masculinity in a local or regional context.

In their reformulation of Connell’s classic account of *hegemonic masculinity*,¹⁵⁵ sociologists Raewyn Connell and James Messerschmidt show that there are often many masculinities operative in global, regional, and local contexts, and that both hegemonic and non-hegemonic masculinities can overlap in their key characteristics.¹⁵⁶ While local masculinities exist in the narrow contexts of “face-to-face interaction of families, organizations, and immediate communities,” masculinities that are regionally hegemonic at the level of a culture or state can

¹⁵⁴ Cf. Mark Piper, “Raising Daughters: Autonomy, Feminism, and Gender Socialization.” in *Autonomy, Oppression, and Gender*, ed. Andrea Veltman and Mark Piper, Studies in Feminist Philosophy (Oxford ; New York: Oxford University Press, 2014).

¹⁵⁵ R.W. Connell, *Gender and Power: Society, the Person, and Sexual Politics* (Stanford University Press, 1987).

¹⁵⁶ R. W. Connell and James W. Messerschmidt, “Hegemonic Masculinity: Rethinking the Concept,” *Gender & Society* 19, no. 6 (December 2005): 829–59, <https://doi.org/10.1177/0891243205278639>. 847.

provide “a cultural framework that may be materialized in daily practices and interactions” by masculinities of local contexts.¹⁵⁷ In this respect, the social practices characteristic of geographically-specific local masculinities can overlap with other local masculinities while also being conceptually furnished by regional and global (i.e. transnational) masculinities. In instances of the chauvinist objection, the objection constitutes a defense, at minimum, of a local masculinity. Given the cultural framework provided by hegemonic regional masculinities, the defense of a local masculinity likely also defends a feature of regional masculinity (i.e. a masculinity that is hegemonic in a geographic region like Canada or a culture like Canadian amateur hockey rather than, say, a family or student cohort).

As with the post-feminist objection, the chauvinist objection can be levelled by opponents of feminist political movements. Mike Cernovich, a writer associated with the “manosphere” network of hate groups,¹⁵⁸ has argued that a “real man is a violent one, and masculinity is nothing if not restrained aggression.”¹⁵⁹ On Cernovich’s view, men ought to strive to “establish dominance” in sexual and romantic relationships, as heterosexual women wish to partner with “dominant, strong, violent men” who model “alpha male” masculinity.¹⁶⁰

¹⁵⁷ Ibid., 849-850.

¹⁵⁸ Southern Poverty Law Center. “Male Supremacy.” <https://www.splcenter.org/fighting-hate/extremist-files/ideology/male-supremacy>

¹⁵⁹ Cernovich, Mike. “How to Become More Dominant in the Bedroom.” *Danger and Play*. February 11, 2014. <https://archive.is/wEXVH#selection-391.99-391.108>

¹⁶⁰ Ibid.

Cernovich's position models the spirit of chauvinist objectors to feminist critiques of contemporary masculine sexual norms: rather than fostering equitable relationships of care between romantic partners, men ought to develop a domineering, "alpha male," masculinity. Male chauvinist defenders of hegemonic masculinities like Cernovich are also both inherently and often outwardly anti-feminist: inherently insofar as male chauvinism is the belief in men's superiority to people of other genders; outwardly insofar as anti-feminism is a core tenet of the manosphere itself.¹⁶¹

The post-feminist and chauvinist objections are important as they represent the kind of reasoning used in a growing male supremacist and anti-feminist discourse. As politically conservative and crypto-fascist social movements demonstrate at least some of the features of group agents (they are often goal-oriented, sometimes hierarchically organized, and may even have their own organization structure and bylaws) such organizations can be discussed in some detail using the existing philosophical apparatus for analysis of collective responsibility and group agency. In this paper, however, I will focus on what I take to be a set of men that are somewhat trickier to understand, as the group in question does not constitute a group agent on even a very loose conception. I now leave aside the post-feminist and chauvinist objections to focus on the objection that will

¹⁶¹ "About." *Return of Kings*. n.d.. <https://www.returnofkings.com/about>

provide the motivation for the remainder of this paper, what I will call the #NotAllMen objection.

4.3. #NotAllMen objection.

The third objection differs from post-feminist and chauvinist objections, as it does not address a moral improvement gap itself (neither a moral ideal nor the proximity of men's behaviour to that ideal), but instead addresses whether men are *all* in need of moral improvement. An objector of this kind might accept the ideal in question but claim that only some men fail to meet it. Below, I unpack this third objection, which I call the #NotAllMen objection.

In the case of systematic sexual assault committed against women by men which I mention above, a feminist advocate might point out that men (as the group who are commonly the perpetrators of sexual assault) need to morally improve as a group (i.e. that men should stop sexually assaulting women, rather than women learning how to avoid sexual assault). Individual men will occasionally object to this assertion, arguing that those who criticize men as a group unjustifiably lump men who do not commit sexual assault (i.e., ostensibly, men who are not responsible for sexual assault) together with men who do commit sexual assault (i.e., ostensibly, men who are responsible for sexual assault). Unlike chauvinist objectors, #NotAllMen objectors may accept the moral ideal in question (that is, in this case, they accept the wrongfulness of sexual assault), but might also say something akin to "It isn't men that should stop raping, but rapists." This objection differs from the post-feminist objector's likely position, as the post-feminist objection might be

something like “sexual assault isn’t a problem [around here].”¹⁶² #NotAllMen objectors might go on to argue that suggesting men as a group are responsible for sexual assaults committed by individual men constitutes misandry (or at least contributes to a culture of misandry), and that such claims are morally objectionable in their own right.

The #NotAllMen objection has recently been a matter of feminist discussion all its own,¹⁶³ as the objection commonly derails feminist social critique both in-person and in online spaces like Facebook, Twitter, and blog comment sections by replacing the original object of conversation (e.g. women’s experience of oppression) with the experiences and worries of individual men. In a conversational context that, for instance, emphasizes the structural instantiation of misogyny, a #NotAllMen objector might attempt to refocus the conversation on themselves or others as individual counterexamples to claims about men in general.

Beginning in 2014, this kind of objection rose to prominence as feminists lampooned it with memes, especially following the popularity of Matt Lubchansky’s comic “Save Me.” (April 10, 2014),¹⁶⁴ which comedically depicts a man in a red polo

¹⁶² For example, Lauren Southern (former reporter for the far-right *Rebel News Network* media company) infamously appeared holding a sign that read “There is no rape culture in the West” at a 2015 slut walk in Vancouver, British Columbia (see: “Lauren Southern clashes with feminists at SlutWalk” <https://youtu.be/7Qv-swaYWL0>). Making the racist and xenophobic implication of her sign explicit, Southern expressed in the same recording that “Rapists go to prison here. Rapists are actually hated here. Rapists are fired from their jobs. Men who make rape jokes are fired from their jobs. Go to Africa and you’ll see a real rape culture!” (ibid.).

¹⁶³ cf. “Not All Men explained” <https://feministphilosophers.wordpress.com/2014/05/23/not-all-men-explained/>

¹⁶⁴ Lubchansky, Matt. “Save Me.” *Please Listen to Me*. April 10, 2014. <http://listen-tome.com/save-me/>

shirt named “Not-All-Man” responding to an incident of “reverse sexism” by (what the character deems) a “misandrist.” In the last panels of the comic, a pink-haired character begins to say “I’m just sick of how men-” only to be interrupted by Not-All-Man bursting through a shop window yelling “May I play devil’s advocate?” Presumably, Not-All-Man will go on to defend men as a group from the complaint of the pink-haired character by showing that it is unreasonable to extrapolate from a few experiences with men to claims about men in general.¹⁶⁵

It is essential to recognize #NotAllMen objections for what they are: derailing moves, whether advanced intentionally by anti-feminist trolls or unintentionally by men worried to show that they are not ‘misogynists.’ However, I would like consider (1) just what thinking underwrites #NotAllMen objections in order (2) to provide a practically motivating response to this kind of objection. With respect to my first aim, I begin by unpacking what I think the most demanding version of the assumptions underlying non-trolling #NotAllMen objections might be in order to address the broadest possible set of men. I then describe what I take to be moral sensibilities of men who are likely to make the #NotAllMen objection not as a

¹⁶⁵ Not long after the publication of Lubchansky’s comic (May 23, 2014), a 22-year old man expressing outwardly misogynistic motives killed six people and injured fourteen in Isla Vista, California before ending his own life (cf. Manne 2018, ch. 1). Perhaps because of the combination of the rise of popular discourse about the #NotAllMen hashtag and the Isla Vista murders, “NotAllMen” as a topic reached a search interest peak on Google during May 2014 along with a spike in search interest for “misandry” (which peaked later in November 2014). #NotAllMen, the objector would raise, are like misogynist spree killer; such killers hate women, the vast majority of men do not. Cf. Kate Manne’s (2018) account of the *naïve conception* of misogyny, characterized by the view that “misogyny is primarily a property of individual agents (typically, although not necessarily, men) who are prone to feel hatred, hostility, or other similar emotions toward any and every woman, or at least women generally, simply because they are women” (32).

trolling tactic, but instead as what they take to be a meaningful engagement with the feminist discussion they encounter. As with taking the most demanding, non-trolling version of the assumptions made, I hope that by addressing my argument to a recognizable and presumably common representation of men in my life and the life of the reader, this paper will also contribute tools for interrogation of men's own beliefs and assumptions about the relationship between structural injustice like gendered oppression and their own individual actions.

To make more clear what the response is from men who make the #NotAllMen objection, I now introduce three assumptions that I take to be built into claims that not all men are responsible for acts of sexual violence perpetrated by other men: an epistemic assumption, a psychological assumption, and an individualist assumption. I take for granted that one who makes these assumptions also makes them about other people. The epistemic assumption, for example, would include assuming that other people have the same first-personal access to their own motivations and intentions. Each of the following assumptions will provide a target for my argument that men share moral responsibility for the prevalence of sexual assault committed by men against adult, cisgender women.

4.3.1. Epistemic assumption

First is the epistemic assumption that (1) if one were to be sexually violent,¹⁶⁶ one would recognize that this was the case; and (2) that if one were disposed to be

¹⁶⁶ Recall that I use "sexual violence" following Cecilia Benoit et. al (2014, 4): "a continuum from obscene name-calling to rape and/or homicide."

sexually violent, one would recognize that one had this disposition. On the epistemic assumption, perpetrators of sexual violence do so intentionally, perhaps because of misogynistic beliefs in Kate Manne's sense of "naïve misogyny."¹⁶⁷ In addition to perpetrators and those who are disposed to become perpetrators of sexual violence, there are also cases of attempted action (that is, attempted sexual assault). I take it that this assumption does not distinguish between those who have committed, attempted, or are disposed to attempt sexual assault, insofar as the assumption is addressed to first personal awareness of one's intentions and motivations. On such an assumption, each of these agents has or had the same end in mind and it is a matter of circumstantial moral luck that they have or have not become perpetrators.¹⁶⁸

One might ask: what if a person holds only part of the epistemic assumption? Briefly, this could go one of two ways. First, one might assume (1) but not (2), that is: hedge on whether a person can know that they are disposed to be sexually violent, but assume that one would know if one were to commit such an act. I call this version of the assumption skepticism about access to intention. Second, and here I only introduce the more plausible version of this view, one might assume (2) but not (1): that one would know if they were disposed to be sexually violent, even if

¹⁶⁷ Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press, 2017).

¹⁶⁸ B. A. O. Williams and T. Nagel, "Moral Luck," *Proceedings of the Aristotelian Society, Supplementary Volumes* 50 (1976): 115–51, <http://www.jstor.org/stable/4106826>. 140. For the time being, I leave aside cases of *accidental* wrongdoing and cases of *actual change* where perpetrators/attempted perpetrators/possible perpetrators experience psychological change so that they are no longer disposed to be sexually violent.

one cannot always be sure whether their actions were wrongful (in virtue of being harmful to their sexual partner). I call this version of the assumption skepticism about understanding of outcomes. On the second view, one would be willing to admit that one is not entirely aware of the outcomes of their actions involving other people (not least because one has imperfect access to others' minds). Both of these weaker views about first-personal understanding of one's actions and one's psychological dispositions demonstrate a greater degree of epistemic humility than the original epistemic assumption I introduce above.

While men have good reason to adopt a stance of epistemic humility with respect to both aspects of the epistemic assumption, the fully-fledged epistemic assumption is also a useful dialectical target, as I wish to convince those who do make this assumption why it should be abandoned. I expect to convince those who take the weaker forms of the assumption along the way as I will aim to show that both aspects of the epistemic assumption are untenable. That is, I will argue that men should hedge on whether they can know that they are disposed to be sexually violent and that men should accept that they cannot be entirely aware of the outcomes of their actions involving other people.

Notice that both the fully fledged epistemic assumption and the partial epistemic assumptions (skepticism about access to intention and skepticism about understanding of outcomes) depart from the conception of sexual assault that I introduce above. On the working conception that I suggest is most helpful for thinking about the structural injustice of pervasive male-perpetrated sexual assault,

the social fact of an incident of sexual assault does not depend upon perpetrators recognizing their actions as constituting sexual assault, nor, as a related point, that perpetrators be aware of their having dispositions that would lead them to be sexually violent in the future. As a matter of conceptual distinction, there are multiple configurations of sexual assault that not only occur without a perpetrator intending to sexually violate a person's bodily integrity, but even without their conceiving of the touch involved as sexual touch.¹⁶⁹

Despite my comments above, the epistemic assumption lines up with what I take to be a common folk conception of blameworthiness for wrongdoing: an individual is blameworthy for a harmful action where they knowingly harm another person; and an individual is similarly culpable in cases of negligent harm. So far as I have described sexual assault above, an incident of touch can constitute a case of sexual assault without a perpetrator having the relevant disposition (that is, without the perpetrator intending to wrong the person in question) and even without the perpetrator being aware that their action constitutes sexual assault. In this respect, men can be perpetrators of sexual assault not only without intending to be, but without knowing they are. In this respect, even one with perfect first-personal access to one's intentional states can be an unwitting perpetrator of sexual assault. As I will argue, men share moral responsibility for incidents ranging from those that

¹⁶⁹ As I have pointed out, this view departs from the Canadian *mens rea* requirement that perpetrators are criminally liable where they "knowing of, or being reckless of or willfully blind to, a lack of consent" (*R v. Ewanchuk*, cf. *R v. P.A.*).

fall below the thresholds for criminal liability and for moral blameworthiness, all the way through incidents of sexual assault that meet one or both of these thresholds.

I have also argued, and will argue in greater detail below, that male-perpetrated sexual assault is a structural phenomenon that persists as an unintended consequence of the norm-following behaviours of regular people. In this sense, even men who take themselves to have a raised consciousness with respect to violence against women are likely contributors to the structural conditions that support sexual assault.

4.3.2. Psychological assumption

The second assumption I suggest underlies worries about attributing shared responsibility to men for the prevalence of male-perpetrated sexual assault against women is the psychological assumption that being disposed to sexual violence is a psychological aberration from men's normal psychology. That is, the assumption that it is not men generally who are disposed to be sexually violent, just a (on this view, small) subset of men who are morally deficient by way of being psychologically abnormal when compared to men in general. In this respect, the psychological explanations for men who perpetrate or are disposed to perpetrate sexual assault are, in Keith Burgess-Jackson's word, "either pathology (the act of a disturbed or diseased man) or deviance (the act of a bad man)."¹⁷⁰

¹⁷⁰ Keith Burgess-Jackson and Keith Burgess-Jackson, *A Most Detestable Crime: New Philosophical Essays on Rape* (Oxford, New York: Oxford University Press, 1999). 15.

On the psychological assumption, sexual violence is causally connected to a psychological property that is not shared by all men. Presumably, when speaking about a need for moral improvement, those who are perpetrators and/or are disposed to become perpetrators of sexual violence form at least two psychological kinds that should be distinguished from non-perpetrating, non-disposed men: a pathological kind and a deviant kind. If sexual violence arises in men with abnormal psychology (i.e. members of the pathological and/or deviant kinds) and not in men with (ostensibly) normal psychology, no improvement is required for men who do not share the relevant psychological property. In this respect, the moral improvement project with respect to sexual violence is a psychological improvement project for people with abnormal psychology.

First, as with the epistemic assumption above, the psychological assumption presumes that attributing moral responsibility requires an intentional causal connection between a perpetrator and the harmful action of sexual assault. As with the epistemic assumption above, however, my analysis of sexual assault in terms of bodily integrity shows that sexual assault can occur regardless of the intentions or comprehension of the incident as such by those involved. This means that even if many sexual assaults are committed by perpetrators with especially worrisome dispositions there will nevertheless be instances where perpetrators fit neither a pathological nor deviant psychological kind, contra “real rape” myths. Such perpetrators may not be legally or morally culpable in the same way that perpetrators who intentionally seek to be sexually violent are, but they nevertheless

make a contribution to the prevalence of sexual assault against women. As I am interested in addressing sexual assault as form of violent, gender-based oppression, it is essential that the harm of sexual assault experienced by women be captured by the concept regardless of the origin of that harm.

Finally, the psychological assumption presumes that perpetrators or contributors to sexual assault have an abnormal moral psychology. As I hope to have shown in the introduction to this paper, however, hegemonic sexual norms for men in Canada are such that sexual assault supportive-dispositions are the normal moral psychology for cisgender men. Combined with the strict analysis of sexual assault provided above, no abnormal moral psychology is required to be a perpetrator of sexual assault—in fact, sexual encounters taken to be normal by the lights of norm-following men may well be unrecognized instances of sexual assault.

4.3.3. Individualist assumption

The third assumption I attribute to #NotAllMen objectors is the higher order individualist assumption that men's sharing a social property (*being a man*) is not sufficient to establish the moral responsibility of men in general for sexual assault perpetrated by individuals with the same property. The individualist assumption could be expressed in at least two ways.

The first is that the property *being a man* does not explain how men who are not perpetrators and not disposed to become perpetrators form a morally responsible collective with those who are perpetrators of sexual assault. On this first form of the assumption, the relevant group with respect to moral improvement is

the set of men who are perpetrators of sexual assault: they are blameworthy for their wrongful actions and ought to become morally better people (that is, people who do not perpetrate sexual assault and people who contribute to repairing the harm they have done), though their actions are not causally or constitutively connected to their being a man.

The second form of this assumption is that sharing the property “being a man” is not sufficient to speak about those who are not perpetrators of sexual violence and those who are perpetrators as constituting as morally responsible group, even if all or some of non-perpetrators are disposed to become perpetrators of sexual violence under the right circumstances. On this view, even in cases of widespread social phenomena causally traceable to a property shared by members of a collective, individual members of that collective (in this case, men) are not responsible for wrongful actions they have not completed, even if they might perform those actions in the future.¹⁷¹

In response to this assumption, I will argue in the next chapter that the property “being a cisgender man” is that which designates one as a member of the gender group “cisgender men.” By virtue of their membership in this gender group, men share moral responsibility for male-perpetrated sexual assault against women, and that a man need not be a perpetrator of sexual assault to share moral responsibility for sexual assault in such communities.

¹⁷¹ Whether perpetrators who are no longer disposed to be sexually violent (that is, perpetrators who have individually improved) ought be described as forming a collective with those who are perpetrators of sexual violence and disposed to do so again is not a matter I will treat here.

Having clarified some of the assumptions I take to be operative in the #NotAllMen objection, the objection looks like this: a call for men as a group to stop sexual assaulting women as a group seems to tell individual men who are not perpetrators and not disposed to become perpetrators to stop doing something that (1) they have never done and (2) they find morally abhorrent. Given the epistemic and psychological assumptions, there is no moral gap to be overcome for the non-perpetrating men in question. In addition, it seems that (3) non-perpetrating, non-disposed men ought to shoulder the responsibility for the wrongful actions of morally (qua psychologically) deficient men just in virtue of their sharing an unchosen feature with those perpetrators. By this view, it might sound like the #NotAllMen objection responds to a case of gender-based discrimination: non-perpetrators are characterized as akin to perpetrators of sexual violence due to their shared gender and face social stigma due to this characterization.

I take it that Jon, the working example of conscientious men I raised earlier, is liable to raise the #NotAllMen objection. Jon, not unlike those who advance the #NotAllMen objection, makes at least the epistemic and psychological assumptions. Namely, Jon assumes that he would be aware of any actions he might take that would conflict with his moral convictions (epistemic assumption), and in virtue of this moral awareness he expects that he would know if he had taken such actions. In light of this belief, he also believes he has not taken such actions. Jon, so far as he knows, has not acted immorally with respect to sexual wrongs like sexual assault,

nor does he believe he will do so in the future. In fact, because of his moral convictions, Jon has some reason to think he will not take those actions in the future.

Jon also assumes, by extrapolating from the epistemic assumption, that perpetrators of gendered wrongs would know that their prospective actions are wrong, such that these persons (1) intend to do wrong when they do (i.e. their intention is malicious), (2) do so because they lack the kind of moral convictions that reasonable people have (i.e. the origin of their action is corrupt moral psychology), or (3) both. In this respect, when a feminist advocate says something like “men need to learn not to rape,” Jon’s epistemic and psychological assumptions lead him to be confused: “how could someone need to learn how not to be sexually violent?”; “Is it not obvious that for the vast majority of the population, including men, sexual violence is abhorrent?”; “Surely, if one needs to learn how not to have vile intentions and not act on such intentions, then this person is an outlier against the normal state of moral psychology.” If the heart of the matter is a corrupt moral psychology, so Jon might think, it is not men in general that need to learn how to be morally upstanding (that is, need to learn not to rape) but it is prospective and actual perpetrators of sexual violence that need to learn this lesson, regardless of whether such persons are men.

Being a man, it might seem to Jon, is an accidental feature of perpetrators of sexual violence that bears no necessary connection to their disposition or action—here Jon makes the individualist assumption. Surely, Jon might think, the salient feature for allocating the responsibility for the elimination of sexual violence is the

feature “being disposed to commit sexual violence,” and (given the epistemic assumption) being disposed in this way would be clear to those who have it. Hence the objection that “not all men X”—men are not the problem, to Jon’s mind, but rather corrupt and individual people, even if most of those people are men.

While the #NotAllMen objection claims to point out a hasty generalization made by feminist advocates, the objection misunderstands the origin and purpose of speaking about the social connection between men as a group and the prevalence of male-perpetrated sexual assault against women. While individual men may be quick to object that they are not individually blameworthy for the actions of geographically distant men they have never met, it is not blameworthiness that is at stake. I will not argue that men are blameworthy or liable for sexual assault committed by men, but instead that men share moral responsibility in a forward-looking sense for the systematic phenomenon of sexual assault perpetrated by men against women. In this sense, that men are morally responsible for male-perpetrated sexual violence does not imply that all men are already perpetrators of sexual violence but instead that men have a special responsibility for the prevalence of sexual violence perpetrated by men (both others and themselves).

A number of questions arise about the connection between individual men and the social phenomenon of pervasive, male-perpetrated sexual violence. There are epistemic questions: does one always know that one has or has not been sexually violent? To this question I have answered no. There are social psychological questions: is sexual violence really an indication of abnormal moral psychology? To

this question I have also answered no. There are also questions about the ontology and intentionality of men as collective: can people who are anonymous to each other and geographically distributed constitute a group or a collective; if so, can such a group be morally responsible for the actions of its group members? To this final question I answer yes, and I will argue in favour of this view over the remainder of this paper.

5. REPLY TO INDIVIDUALIST OBJECTION

Thus far, I have argued that the prevalence and social patterning of sexual assault perpetrated by men against women constitute what Ann Cudd has called a credible social threat situation for women in Canada. Both the credible social threat of sexual assault and the actual experiences of women who are sexually assaulted are what Cudd has called “objective material force[s]” of oppression against women.¹⁷² The consequence of these forces is that women as a group face unequal and unjust burdens compared to men, and men accrue unjust benefits on the basis of women’s sexual oppression.

Though many women are sexually assaulted by men over the course of their lives, even women who are not sexually assaulted live in a credible social threat situation wherein they have good reason to change their behaviour and plans to reduce the possibility of being subjected to sexual violence. In this respect, all women’s life options are constrained in some way by the prevalence of sexual assault perpetrated by men against women, and this shaping of options is a burden faced by all women in Canada. Thus, in addition to the significant burden of actual individual sexual assaults over the lives of sexual assault survivors, and the distributed negative effect that these individual incidents have in a survivor’s community, there is an additional social burden women bear in virtue of the credible threat of sexual assault by men just because they are women. The socially

¹⁷² Cudd 24.

distributed effect of this burden constrains women as a group relative to men as a group in social, political, and economic avenues.

Now, I aim to account for the kind of social group that men are and to set out some of the ways that individual men relate to men as a social group to articulate how individual men are connected to systematic sexual assault. I have argued in a preliminary way that men as a group share moral responsibility for sexual assault perpetrated by men against women. This conclusion has been distinguished from two more common claims. First, that moral responsibility for sexual assault rests only with the individual perpetrators of sexual assault. Second, that moral responsibility for sexual assault rests both with perpetrators and with institutions or institutional figures that are in positions to change social policies and laws.

I do not dispute that individual perpetrators of sexual assault are morally connected to the wrongful harm they inflict. It seems likely that perpetrators are most often blameworthy, either by way of intent or negligence. However, I do not take up these cases in particular here. Instead, as I have said previously, I am interested in sexual assault perpetrated by men against women as a structural phenomenon. Additionally, I do not dispute that institutions have an important role to play in the elimination of sexual assault. Institutions, including legal institutions, play an important role in the perverse entrenchment of sexual assault as both legally and socially permitted. As Constance Backhouse (1983, 1991, 2008) has shown, Canadian law related to sexual assault (predominantly, rape law) has created great

impediments for women's access to justice.¹⁷³ Notably, Backhouse (2012) has also demonstrated the extent to which these same failed legal interventions have compounded the problem of racial and other disparities in access to justice and incarceration.¹⁷⁴ As with the individual blameworthiness of perpetrators, I do not take up these cases in particular here. Instead, I aim to distinguish the shared moral responsibility of men from the responsibility and blameworthiness of institutions, institutional actors, and individual perpetrators.

5.1. Which men?

In the context of identifying the shared moral responsibility of men for sexual assault perpetrated against women, I have brushed up against the question of who ought to be counted as a "man" in my analysis. As a result, I would now like to begin making the case for why my account of men's shared responsibility for sexual assault includes neither trans men nor trans women, nor a number of other people who may self-identify as men. This is not because, as some anti-trans writers might argue, I think that the gender kinds "woman" and "man" ought to exclude trans people. Rather, I think that cisgender men have a special relationship to the phenomenon of systematic sexual assault that is not shared by other men, women, or non-binary

¹⁷³ Backhouse, Constance. "4. Nineteenth-Century Canadian Rape Law 1800-92." In *Essays in the History of Canadian Law*, edited by David H. Flaherty. Toronto: University of Toronto Press, 1983. <https://doi.org/10.3138/9781442662919-007>; Backhouse, Constance. "A Feminist Remedy for Sexual Assault." In *Sexual Assault in Canada: Law, Legal Practice and Women's Activism*, edited by Elizabeth Sheehy. Ottawa: University of Ottawa Press, 2012; Backhouse, Constance. *Carnal Crimes: Sexual Assault Law in Canada, 1900-1975*. Irwin Law, 2009; Backhouse, Constance. *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada*. Osgoode Society, 1991.

¹⁷⁴ Backhouse, "A Feminist Remedy for Sexual Assault."

people. Despite this, there are noteworthy ways that the claims of anti-trans writers might brush up against my account of cisgender men's shared moral responsibility that ought to be rehearsed and dismissed, lest one come away from my discussion thinking that trans men and women are functionally indistinguishable from cisgender men when it comes to sexual assault perpetrated against women.

Given the long-standing use of rhetoric related to sexual violence against trans women, I will begin my discussion of who counts as a "man" for the present project by discussing two related hypotheses that I will reject in turn. By getting ahead of these views, I will also make considerable progress towards rejecting some common folk notions about men's relation to sexual assault.

5.1.1. Two desiderata, two rejected hypotheses

I wish to construct an account of men's shared responsibility for sexual assault in terms that respect the particular experiences of trans, non-binary, Two-Spirit, and other persons whose are not cisgender. In this respect, my account of men's shared responsibility for the systematic sexual assault of women must meet two desiderata. First, my account should not provide direct or indirect support for the claim that trans women are not women, nor that trans men are not men. Second, my account should accommodate the particular experiences of trans people as trans. That is, it should be able to accommodate the intersectional analysis that transmisogyny is not reducible to misogyny, and that cis-sexism is not reducible to sexism.

In my previous chapter, I introduced a provisional account of “men” as a social group when I took up the self-reported gender of respondents to two major national surveys that collect data on sexual violence, the Statistics Canada *General Social Survey on Victimization* (GSS) and the *Survey of Safety in Public and Private Spaces* (SSPPS). I prioritized use of these surveys because they are the leading major data sets on sexual assault available for Canada, and as such they provide an empirical basis for my supporting claims that sexual assault perpetrated by men against women is a systematic phenomenon and that women face a credible social threat situation with respect to sexual assault perpetrated by cismen against cis women. As I noted, the GSS did not collect detailed gender information that would help disaggregate the experiences of cisgender respondents from trans and non-binary respondents. The SSPPS is in fact the first Statistics Canada survey of its size to request information about “sex assigned at birth and the gender of respondents.”¹⁷⁵ Unfortunately, the data on trans, non-binary, Two-Spirit, and people of other genders “are not publishable due to small sample size.”¹⁷⁶ Neither the GSS nor the SSPPS provide information regarding intersex persons in Canada, though Statistics Canada has added the option to self-identify as intersex under its “sex of person” variable for future surveys as of January 25, 2018.¹⁷⁷

¹⁷⁵ Cotter and Savage 5

¹⁷⁶ Cotter and Savage 5

¹⁷⁷ “Sex of person.” Statistics Canada.

<https://www23.statcan.gc.ca/imdb/p3Var.pl?Function=DEC&Id=24101>.

cf. Lachance, Marc, Kaveri Mechanda, and Alice Born. “Gender – Developing a Statistical Standard.” Statistics Canada, 2017. Privy Council Office. “The Collection, Use and Display of Sex and Gender

My provisional account raises a methodological issue for my claim that all men share moral responsibility for the systematic sexual assault of women. I was previously willing to identify the provisional account of “men” qua cisgender men with the systematic phenomenon illustrated by the GSS and the SSPPS, as the data demonstrate that sexual assault by perpetrators who are presumed to be cisgender men is both prevalent and socially patterned. As I raised the topic, self-identified women experience sexual assault and other forms of sexual violence at rates which far outstrip those experienced by self-identified men and, in keeping with intersectional analysis of the issue, these disparities are demonstrably more prevalent for respondents who are additionally racialized, disabled, or otherwise marginalized relative to other women.¹⁷⁸ Below, I will argue that it is reasonable to make my shared responsibility claim about cisgender men in particular despite (1) the empirical research I am drawing on failing to disaggregate the sexual assault experiences of cisgender women from those of respondents who are trans or other genders, and (2) the identity of perpetrators being reported by survivors rather than through self-identification. This argument will provide good reason against

Information at the Federal Level: Findings from Six Engagement Sessions with Transgender, Non-Binary and Two-Spirit Communities,” 2018. <https://www.canada.ca/en/privycouncil/corporate/clerk/publications/sex-gender-information-federal-level.html>. Treasury Board of Canada Secretariat. “Modernizing the Government of Canada’s Sex and Gender Information Practices: Summary Report,” n.d. <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/summary-modernizing-info-sex-gender.html>.

¹⁷⁸ Cotter and Savage 37

conceiving of men's relation to sexual assault as either biologically determined or determined as a matter of "male socialization."

5.1.2. Distinguishing cisgender women from other women

As Waite and Denier (2019) point out, a number of factors (including especially the size of the community) impede the effective estimation of how many trans people, non-binary people, Two-Spirit people, and people of other gender identities are found in the Canadian population.¹⁷⁹ Even where sensitive data collection methodology is adopted (as in the case of the SSPPS), the small size of these communities impedes researchers' ability to collect a sample size that would allow for extrapolation to claims about the national population, let alone samples that include enough respondents with identities that intersect in ways that make them especially vulnerable to sexual violence (e.g. black women who are trans).

It is a live possibility, given the research methodology of the GSS until 2019, that some respondents who self-identify as women are also trans, Two-Spirit, or a similar gender whereby one might self-identify as a woman without being cisgender. Despite this possibility, I take from the existing research on these populations and corresponding population estimates that non-cis respondents do not obscure the use of the GSS and SSPPS findings to provide an empirical ground for my systematicity claim about cisgender women's experience. Regarding the SSPPS, Cotter and Savage (2019) note that the vast majority of respondents self-reported

¹⁷⁹ Sean Waite and Nicole Denier, "A Research Note on Canada's LGBT Data Landscape: Where We Are and What the Future Holds," *Canadian Review of Sociology/Revue Canadienne de Sociologie* 56, no. 1 (2019): 93-117.

that they were cisgender while only 0.24% “provided responses indicating that they were transgender (i.e., their sex assigned at birth is not the same as their gender) or gender diverse (i.e., neither male nor female).”¹⁸⁰ My claim that women face a credible social threat situation with respect to systematic sexual assault in Canada is not weakened by the relatively small number of respondents in the data used to support my account who are not cisgender women.

While the experiences of sexual assault by trans, Two-Spirit, and other women (as well as non-binary people) are not effectively captured by the GSS and SSPPS, the testimony of these women provides good reason to think these populations also experience systematic sexual assault that constitutes a credible social threat situation. Recent work by the Trans PULSE Canada project bears this out in the Canadian context.

The Trans PULSE project, a community-based survey of trans and non-binary people, has recently expanded from a provincial to a national level. The initial findings of the Trans PULSE Canada 2019 survey (n=2873 for the national data; aged 14 and older) shed considerable light on the experiences of trans, non-binary, Two-Spirit, and other persons not captured effectively by the GSS and the SSPPS in Canada. Of those surveyed, approximately 24% self-identified as women/girls, 25%

¹⁸⁰ Cotter and Savage 5.

as men/boys, 48% as non-binary, and 2% as an “Indigenous or cultural gender” including Two-Spirit.¹⁸¹

As with my characterization of sexual assault above, the Trans PULSE Canada survey characterized sexual assault in the following way: “Sexual assault (e.g. unwanted sexual touching or sexual activity).”¹⁸² The Trans PULSE Canada survey found that 26% of respondents experienced sexual assault of some kind in the previous five years.¹⁸³ This figure is noteworthy in its own right, but is also illustrative of the differences and similarities between the experiences of sexual assault by cisgender persons and trans, non-binary, Two-Spirit, and other persons in Canada.

While 26% of Trans PULSE Canada respondents experienced at least one sexual assault in the preceding five years, that figure approaches the lifetime prevalence of experiencing at least one sexual assault for self-identified women in Canada in the SSPPS, which is 30%.¹⁸⁴ In fact, in the United States the 2015 *U.S. Transgender Survey Report* by the National Center for Transgender Equality (USTS) found that 10% of respondents were sexually assaulted in the preceding twelve months while 47% were sexually assaulted at least once in their lifetime.¹⁸⁵ While

¹⁸¹ Table 2: “Health and Well-being among trans and non-binary people in Canada, by province/territory.” 2020. “Health and Health Care Access for Trans & Non-Binary People in Canada.” *Trans PULSE Canada Report*. 7.

¹⁸² Trans PULSE Canada Survey 2019 Survey (English), 97.

¹⁸³ *Trans PULSE Canada Report* 7. See also: Bauer, Greta R., Jake Pyne, Matt Caron Francino, and Rebecca Hammond. “Suicidality among Trans People in Ontario: Implications for Social Work and Social Justice.” *Service Social* 59, no. 1 (July 29, 2013): 35–62. <https://doi.org/10.7202/1017478ar>.

¹⁸⁴ Cotter and Savage 36.

¹⁸⁵ S.E. James et al., “The Report of the 2015 U.S. Transgender Survey” (Washington, D.C.: National Center for Transgender Equality, 2016).

this data is drawn from the United States rather than Canada, these figures provide a rough illustration of the higher risk of sexual assault faced by trans, non-binary, Two-Spirit, and other persons who are not cisgender: more than 3 times the likelihood of being sexually assaulted in the previous year (10% on the USTS compared to 2.9% of self-identified women on the SSPPS), and more than 1.5 times the likelihood of being sexually assaulted at least once in their lifetimes (47% on the USTC compared to 30% of self-identified women on the SSPPS).

If my argument regarding cisgender women's oppression by systematic sexual assault holds then trans, non-binary, Two-Spirit, and other gender variant persons clearly face an environment of systematic sexual assault, unlike cisgender men. In this respect, all self-identified women face sexual assault as a form of direct material oppression, while only some self-identified men (men who are trans, non-binary, Two-Spirit, or otherwise gender variant) do. Such men face systematic sexual assault not because they are men, but because they are *trans* men.¹⁸⁶ At a minimum, even if cisgender men are the systematic perpetrators of sexual assault against trans, non-binary, Two-Spirit, and other gender variant persons, cisgender men as a group will be in a privileged social position relative to these populations insofar as cisgender men do not face systematic sexual assault.

¹⁸⁶ This is not to say that the experience of sexual assault by such men is *reducible* to their identity as men, nor that sexual assault perpetrated against trans men is always a function of transphobia. As Bettcher (2014) points out: "the view that transphobia can be separated from other enactments of power (such as sexism, classism, racism) is a nonstarter. This means that not all acts of violence against trans people need be transphobic in nature. A trans woman might be targeted not because of her trans status but because she is simply viewed as a sex worker (Namaste 2005)."

Unlike the data available through the GSS and the SSPPS at this time, however, the Trans PULSE Canada data do not report on the perceived gender of perpetrators of sexual assault. This means that there is not (yet) the same empirical ground to make the credible social threat claim about cisgender men's role in the systematic sexual assault of trans, non-binary, Two-Spirit, and other non-cis persons. Despite this, the 2015 USTS data show that trans men also face extreme rates of sexual assault even when compared to the rest of the trans community (51% prevalence of lifetime sexual assault among transgender men, with rates as high as 71% for racialized trans men). Such men thus also face what I have called systematic sexual assault. As with my previous claim, however, I do not find sufficient information to link this situation to cisgender men such that it might be called a credible social threat situation. In each case, however, I admit that I expect future research in this area to show that cisgender men are disproportionate perpetrators of sexual violence against these populations.

5.1.3. Distinguishing cisgender men from other men and women

Having dealt with the question of the inclusion of non-cis self-identified women in the data used to make my claims about the experience of women, I now briefly comment on a parallel question: the inclusion of self-identified men who are not cisgender in the data on the perceived gender of perpetrators of sexual assault. I do not deny the possibility that men who are not cisgender (e.g. trans and Two-Spirit men) may be perpetrators of sexual assault. Insofar as such men comprise a small portion of the population, however, I take for granted here that the self-

reporting of respondents to the SSPPS is broadly reliable when it comes to showing the disproportionate role of cis men as perpetrators of sexual assault against cis women.

In this project, I am concerned with gender, specifically the gender-based violence of sexual assault perpetrated by cis men against cis women. However, as I have shown in the foregoing discussion, my treatment of cisgender men must be carefully distinguished from self-identified men who are not cisgender. In addition to distinguishing certain genders from one in particular (cis men), there is a relevant discussion to be had regarding the role of the sexed body (i.e. the body sexed as male) in the constitution of cisgender men's relation to the systematic sexual assault of cisgender women.¹⁸⁷

Though I have characterized sexual assault as a form of physical contact between perpetrators and people who are sexually assaulted, I will not take up a conception of gender that is in any sense biological or physiological. That is, I do not make use of a conception of gender that is tied to the primary or secondary sexual characteristics of perpetrators or of people who are sexually assaulted. While there certainly will be physiological factors which support some men's ability to perpetrate sexual assault, like where men use or threaten to use physical force during sexual assault, the conception of sexual assault that I have introduced is inclusive of incidents where no such force is used or explicit threat of force made.

¹⁸⁷ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, Routledge Classics (New York: Routledge, 2006). 11.

This is important for my consideration of sexual assault, as it avoids taking up a stereotypical notion of sexual assault as reducible to physically forced sexual touching. While there are instances where this occurs, the use or explicit threat of physical force implies a wrongful intent that would, presumably, reduce the scope of my argument to consideration of men who intentionally do wrong. Such cases are included in the scope of my conception of sexual assault, but I also include incidents that I take to be wide-ranging and unfortunately common: incidents that qualify as sexual assault that do not include threat or use of physical force, like where a perpetrator uses social power (like their position in a corporate structure, or their role in a hiring committee) to coerce a person to go along with sexual touching.

Notably, there will be instances where my arguments regarding cisgender men's shared moral responsibility for sexual assault apply partially to trans, Two-Spirit, and non-binary people who (1) have previously lived as a cisgender man, (2) pass as a cisgender man, and/or (3) currently live as a man. Such instances should not be taken to support the views of anti-trans writers like Janice Raymond (1979), Sheila Jeffries (1997, 2014), and more recently Kathleen Stock (2018a), Lawford-Smith and Vicendese (2018), and others who argue that the category "woman" should be restricted to those whose bodies were sexed¹⁸⁸ as women at birth on the basis of what I will call the biological hypothesis and the socialization hypothesis.¹⁸⁹

¹⁸⁸ I use "sexed" in Fausto-Sterling's (2000) sense.

¹⁸⁹ Allen, Sophie, Elizabeth Finneron-Burns, Jane Clare Jones, Holly Lawford-Smith, Mary Leng, Rebecca Reilly-Cooper, and R.J. Simpson, 2018, "On an Alleged Case of Propaganda: Reply to Rachel McKinnon," Draft, available at <https://philarchive.org/archive/ALLOAA-3>; Jeffries, Sheila. *Gender*

5.1.3.1. The biological hypothesis

The first kind of view that underwrites anti-trans rhetoric around sexual violence claims to provide evolutionary (e.g. Thornhill & Thornhill (1983); Thornhill (1999); Thornhill & Palmer (2000)) explanations for men's violence against women. These biologically reductive explanations are then mobilized to argue that for the purposes of protecting cisgender women from sexual violence people whose bodies are sexed male at birth ought to be treated as men rather than their expressed gender. The consequence of such a view is a politics that treats trans women as men. As Stephanie Kapusta (2016) points out, the use of gender concepts in ways that misgender trans people is morally contestable regardless of the goals of the analysis.¹⁹⁰ Though I will argue that there is good reason to reject the biological hypothesis on scientific grounds, I note that the practice of mobilizing the biological hypothesis is often inherently morally contestable given Kapusta's analysis.

In Thornhill & Thornhill's (1992) words, the biological hypothesis is that "sexual coercion by men reflects a sex-specific, species-typical psychological adaptation to rape."¹⁹¹ On such views, human evolution has led to people born with the primary sexual characteristics associated with being man either having (1) an

Hurts: A Feminist Analysis of the Politics of Transgenderism. Routledge, 2014. Jeffreys, Sheila. "Transgender Activism." *Journal of Lesbian Studies* 1, no. 3-4 (July 16, 1997): 55-74. https://doi.org/10.1300/J155v01n03_03. Lawford-Smith, Holly, and Emily Vicendese. "Penises Don't Kill People, People with Penises Do." *Feminist Current* (blog), August 16, 2018. <https://www.feministcurrent.com/2018/08/16/penises-dont-kill-people-people-penises/>. Raymond, Janice G. "The Transsexual Empire the Making of the She-Male," 1979. Stock, Kathleen. "Why Self-Identification Should Not Legally Make You a Woman." *The Conversation*, 2018.

¹⁹⁰ Kapusta 2016

¹⁹¹ Thornhill, Randy, and Nancy Wilmsen Thornhill. 1992. "The evolutionary psychology of men's coercive sexuality." *Behavioral and Brain Sciences* 15: 363.

overlap of a number of psychological traits that function as a drive to sexual violence, or (2) a specific adaption in the form of a psychological drive to sexual violence (especially rape).¹⁹² More recently, Thornhill & Palmer (2000) have explained these possibilities in the following way:

“(1) that rape is an incidental effect (a by-product) of men’s adaptation for pursuit of casual sex with multiple partners and (2) that rape is an adaptation in and of itself. According to the first hypothesis, rape was indirectly sexually selected. According to the second, rape was directly selected because rape itself promoted success in competition for mates”¹⁹³

Recall that on the psychological assumption, which I introduced and dismissed in the previous chapter, being disposed to sexual violence is a psychological aberration from men’s normal psychology. On the view of Thornhill and others, being disposed to sexual violence is to have a normal psychological disposition for male humans.

On its face, the biological hypothesis looks like a problem for my attempt to distinguish cisgender men from trans, Two-Spirit, non-binary, and other people born with the relevant biological sexual characteristics to be categorized as sexually male. On the biological hypothesis, such people are no less disposed to being sexually violent than are people with the same biological traits living as cisgender men.

¹⁹² Ibid.

¹⁹³ Thornhill, Randy and Craig T. Palmer. 2000. *A natural history of rape: biological bases of sexual coercion*. Cambridge: MIT Press. 191. Thornhill and Palmer claim to take up Susan Estrich’s (*Real Rape*, 1987) view by adopting a conception of rape as “copulation resisted to the best of the victim’s ability unless such resistance would probably result in death or serious injury to the victim or in death or injury to individuals the victim commonly protects” (1), though they admit that this account of rape can also include oral and anal penetration on their view (1).

However, this is neither the case nor does it bear on my treatment of group-wise moral responsibility.

There are two ways to respond to the biological hypothesis. First, is to recognize that the biological hypothesis about the development of rape-supportive (sexually coercive) behaviours is, as a matter of evolutionary biology, a controversial one.¹⁹⁴ In their review for *Nature*, Jerry Coyne and Andrew Berry (2000) note that, in the clearest articulation of the biological hypothesis by Thornhill & Palmer in *A natural history of rape* (2000), the evidence provided in favour of the hypothesis “either fails to support [the view], is presented in a misleading and/or biased way, or equally supports alternative explanations” and that the “evidence that rape is a specific adaptation is weak at best.”¹⁹⁵ Despite the existence of the hypothesis, that is, there is little scientific reason to accept it. In addition, as May and Strikwerda (1994) note, there may be more complex explanations for men’s behaviour that still take up the possibility of evolutionary developments in male psychology. The most famous of these views is that advanced by Lionel Tiger in *Men in Groups* (2017 [1969]).

In his work, Tiger has argued that there may be an evolutionary explanation for sexual differences in aggression, but that “this aggressive response need not lead

¹⁹⁴ For an anthology of essays which reject the biological hypothesis, see: 2003. *Evolution, gender, and rape*. Edited by Cheryl Brown Travis. Cambridge: MIT Press.

¹⁹⁵ Coyne, Jerry A., and Andrew Berry. “Rape as an Adaptation.” *Nature* 404, no. 6774 (March 2000): 121–22. <https://doi.org/10.1038/35004636>. See also: Lloyd, Elisabeth A., “Science Gone Astray: Evolution and Rape,” *Michigan Law Review* 99, 6: 1536-1559.

to violence, or the threat of violence, of the sort epitomized by rape.”¹⁹⁶ In this sense Tiger has argued for hybrid view: that an account of male socialization (“of men by men in their bonding-groups”) is an essential component of any evolutionary explanation of sexual violence.¹⁹⁷ While an influential view, Raewyn Connell (2005) has argued that even Tiger’s view maintains an untenable form of biological determinism, noting that “[t]here is no evidence at all of strong [biological] determination in [Tiger’s] sense” and that “[t]here is little evidence even of weak biological determination of group differences” at the individual level.¹⁹⁸

I have taken the space above to introduce and reject two kinds of sociobiological explanations for the origins of sexual violence perpetrated against women, that of Randy Thornhill et al. and that found in the work of Lionel Tiger. Such views might be mobilized to claim that people who are born with primary sexual characteristics typically associated with males but who do not live as cisgender men (e.g. trans women) might nevertheless be similarly disposed to sexual violence for the same biological reasons that cisgender men are. Such views remain with us in the form of folk psychological notions of sexual difference, and in anti-trans political writings.

5.1.3.2. Socialization hypothesis

¹⁹⁶ Larry May and Robert Strikwerda, “Men in Groups: Collective Responsibility for Rape,” *Hypatia* 9, no. 2 (1994): 134–51. 141.

¹⁹⁷ *Ibid.* 142

¹⁹⁸ Connell 2005, 47

I now turn to what I will call the socialization thesis. On this view, what matters for explaining the prevalence of sexual assault perpetrated by men against women is the socialization of men and boys into patriarchal cultural practices. On this view, anti-trans writers have suggested that people who are socialized as boys and men should not be distinguished from one another when it comes to discussions of violence against women. I will take up a particular set of claims advanced by Kathleen Stock (2018) that bear directly on my consideration of men's moral responsibility for sexual assault.¹⁹⁹

In an article for *The Economist*, Stock writes:

The category “female” is [...] important for understanding the particular challenges its members face, as such. These include a heightened vulnerability to rape, sexual assault, voyeurism and exhibitionism; to sexual harassment; to domestic violence; to certain cancers; to anorexia and self-harm; and so on. If self-declared trans women are included in statistics, understanding will be hampered.²⁰⁰

I have already argued that due the population size of the trans community such concerns are unfounded and so do not take this point further. Stock goes on:

A male's self-identification into the category of “female” or “women” doesn't automatically bring on susceptibility to these harms; nor does a female's

¹⁹⁹ Kathleen Stock, “Changing the Concept of ‘Woman’ Will Cause Unintended Harms,” *The Economist*, 2018.

²⁰⁰ Stock, “Changing the Concept of ‘Woman’ Will Cause Unintended Harms.”

self-identification out of those categories lessen it. In a sexist world which often disadvantages females, as such, we need good data²⁰¹

On this point, Stock could mean that self-identification on its face is not connected to the higher prevalence of experiencing sexualized and gender-based violence. This is, at the most rudimentary level, true: as a cisgender man, I might insincerely self-identify as a woman and face no subsequent consequences. But I do not believe this is the claim Stock is making, because this is not a realistic notion of how genuine self-identification takes place.

Rather, Stock seems to be making the claim that trans people's self-identification does not connect up with such people's experiences of gender-based violence. As I have argued above (with "good data") this claim is decisively false: such people face rates of gender-based violence, especially sexual assault, that meet or exceed those faced by cisgender women. In the case of women who have previously lived as men, their self-identification as women appears to multiply their likelihood of experiencing sexual assault in their lifetime more than four times, from 8% for men (SSPPS) to 37% for trans women (USTS).²⁰² Trans women do face a specific form of sexism, transmisogyny, that is characterized by conceptions of trans people as "deceivers,"²⁰³ but to the claim that people whose gender expression

²⁰¹ Stock, "Changing the Concept of 'Woman' Will Cause Unintended Harms."

²⁰² USTS 203

²⁰³ Talia Mae Bettcher, "Evil Deceivers and Make-Believers: On Transphobic Violence and the Politics of Illusion," 2007, 24.

differs from their sex assignment do not “bring on susceptibility to” the harms Stock notes is false.

Finally, Stock writes:

“The problem here is male violence. The category of self-declared trans women includes many with post-pubescent male strength, no surgical alteration of genitalia, and a sexual orientation towards females. [...] Note that this is emphatically not a worry that self-declared trans women are particularly dangerous or more prone to sexual violence. It’s rather that we have no evidence that self-declared trans women deviate from male statistical norms in relevant ways” (Stock 2018)

The claim in this excerpt is that because there is “no evidence” that people with the primary sexual characteristics associated with males “deviate from statistical norms,” such people should be treated as statistically normal—that is, of a kind with men insofar as they are likely to perpetrate sexual violence against women. This is the claim I wish to call the socialization hypothesis, one which must carefully disentangled from the position I have advanced regarding sexual assault as a structural phenomenon and my comments regarding male sexual norms.

Stock’s first point seems to be that being strong, having a penis, or being sexually attracted to women are causally connected to the prevalence of sexual violence perpetrated against women. Stock’s emphasis on “post-pubescent physical strength” seems to be a dog whistle for the real rape myth that a stranger will use or threaten the use of force against an “unsuspecting victim in an outdoor location” and

that the victim will actively resist the perpetrator.²⁰⁴ This kind of strength only matters if one presumes that sexual assault will involve over-powering a resistant victim, or threatening such. It is not clear how genitalia factor into Stock's view other than to exclude from consideration many people assigned female at birth who have the "post-pubescent physical strength" Stock has in mind.

To Stock's central point, which is an echo of Janice Raymond's (1979), I would like to briefly argue against the view that "male socialization" is a determining factor of violence against women such that all people who are sexed as male at birth ought to be treated as men for feminist political purposes.²⁰⁵

Lori Watson (2016) provides a concise account of this view as it was famously articulated by Janice Raymond (1979). The position is roughly that insofar as women who were raised as men were socialized as men, they are psychologically

²⁰⁴ Jennifer Temkin and Barbara Krahe, "Stereotypes, Myths and Heuristics in the Perception of Sexual Assault" in *Sexual Assault and the Justice Gap: A Question of Attitude* (Oxford: Hart Publishing, 2008).

²⁰⁵ Cf. Lawford-Smith, Holly, and Sophie-Grace Chappell. "Transgender Identities: A Conversation between Two Philosophers." *Aeon* (blog), n.d. <https://aeon.co/essays/transgender-identities-a-conversation-between-two-philosophers>.

Lawford-Smith advances roughly the same argument as one finds in Stock (2018) and Raymond (1979), but in conversation with Chappell is willing to concede the point that the threat of sexual violence perpetrated by trans people against cis women might be defeated once self-ID laws have been in place for some time:

"Sophie-Grace: [...] we have a test-case for self-ID since 2015 right next door, in Ireland. I don't see that self-ID has caused any problems at all there so far as I know there has been no resulting upsurge in violence against women at all [...]

Holly: I think that's a good point. There are actually several countries where self-ID is legal, Denmark and Malta included. It's fairly new in some of them. The worry about male violence might in time be alleviated by how things go in these countries."

Chappell's point aligns with the finding of Hasenbush, Flores, and Herman (2019) "that fears of increased safety and privacy violations as a result of nondiscrimination laws are not empirically grounded." (Hasenbush, Amira, Andrew R. Flores, and Jody L. Herman. "Gender Identity Nondiscrimination Laws in Public Accommodations: a Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms." *Sexuality Research and Social Policy* 16:70–83. 80.)

disposed to perpetrate sexual violence against women, hence the gendered difference in experiences of sexual violence.²⁰⁶ Raymond writes:

We know that we are women who are born with female chromosomes and anatomy, and that whether or not we were socialized to be so-called normal women, patriarchy has treated and will treat us like women. Transsexuals have not had this same history. No man can have the history of being born and located in this culture as a woman. He can have the history of wishing to be a woman and of acting like a woman, but this gender experience is that of a transsexual, not of a woman²⁰⁷

For the purposes of the present discussion of sexual assault perpetrated by men, I have already shown that there is no necessary connection between the biological features which characterize male sex-assignment and a special propensity for sexual assault. Instead, as I have said, there is significant research to show that trans people are at a high likelihood of experiencing physical and sexual violence that is akin, if often more extreme, than that faced by cis women. On these grounds, I reject the initial connection that Raymond (and Stock) make between biological features and sexual assault.

The second, more significant point, is that the social meaning of biological and physiological features has the effect that people born with such features end up

²⁰⁶ Lori Watson, "The Woman Question," *TSQ: Transgender Studies Quarterly* 3, no. 1-2 (2016): 246-53.

²⁰⁷ Janice G. Raymond, "Sappho by Surgery," in *The Transgender Studies Reader*, ed. Susan Stryker and Stephen Whittle (Routledge, 2013), 131-43.

being socialized (that is, being “located in this culture,” as Raymond writes) as boys and men. In this respect, one might say, biological and physiological features might not determine one’s propensity for sexual assault as such but such features lead, in this world, to one’s being socially positioned as man in a way relevant to developing the psychological dispositions that lead men to sexually assault women. On Raymond’s view, even people who “have the history of wishing to be a woman and of acting like a woman” do not have, as she might say, a personal history of being and acting like a woman in a social setting where women are oppressed as women that would distinguish them from cisgender men.

Watson raises two responses to this line of reasoning, both of which are effective. First, she notes that it has long been accepted that there is no specific experience of womanhood that could do the work Raymond hopes it could, especially in light of intersectional analysis of women’s specific experiences of gender.²⁰⁸ As Watson writes, “we do find commonality [amongst women], for example, as subordinated on the basis of sex, as subject to sexual harassment, sexual violence, and gender-based violence because of one’s sex. However, women’s vulnerability to such subordination is not identical; it varies along with other inequalities.”²⁰⁹ As with other women, trans women stand in an oppressed relation to male power and this oppression occurs on the basis of sex (that is, on the basis of trans persons’ gender not aligning with their medically designated sex).²¹⁰ Even for

²⁰⁸ Watson 249.

²⁰⁹ Ibid.

²¹⁰ Ibid.

the purposes of discussing the persistence of sexual assault perpetrated by men against women, trans women's experiences of gender do not align them with cisgender men in a way that might, as a matter of sheer social position, suggest they share with cis men a propensity for gender-based violence.

Second is Watson's response to the socialization claim, which might apply either to people who have previously lived as men, or people who now live as men. On the socialization claim, people who have lived as boys and men have the psychological traits characteristic of being a man such that they will have a propensity to commit sexual assault.²¹¹ I agree with Watson that it seems likely that "trans women's experiences of socialization to social masculinity was an uncomfortable and unhappy experience—an experience they reject and rejected," and in virtue of this trans women's pre-transition experience as men ought to be distinguished from that of cis men.²¹² It seems likely that, prior to transitioning, trans women "experience[d] male privilege like the rest of us [women] do, as an exertion of power over us."²¹³ Dietert and Dentice's (2013) research on the youth experiences of people who later came out as gender variant show that such people's experiences of gender norms were those of rejection and conflict rather than coalescences.²¹⁴

²¹¹ Ibid., 250-251.

²¹² Ibid., 251.

²¹³ Ibid.

²¹⁴ Michelle Dietert and Dianne Dentice, "Growing Up Trans: Socialization and the Gender Binary," *Journal of GLBT Family Studies* 9, no. 1 (January 2013): 24-42, <https://doi.org/10.1080/1550428X.2013.746053>.

I will now take for granted that my discussion of men's shared moral responsibility for the systematic sexual assault of women addresses specifically those who are cisgender men. As I have said, it seems likely that cisgender men are also primarily responsible for the extreme rates of sexual violence faced by trans, Two-Spirit, non-binary, and other persons, but I take it that my argument regarding cisgender women's experiences here can be made on similar grounds for such cases (though with care to the specificity of these populations' experiences as they differ from those of cis-women).

5.2. Men's collective contributions to sexual assault as a structural injustice

In their 1994 paper, "Men in Groups: Collective Responsibility for Rape," Larry May and Robert Strikwerda advance a compelling causal account of men's collective responsibility for just one form of sexual assault, rape. Briefly, they argue that men are collectively responsible for the prevalence of male-perpetrated rape committed against women because of the role of rape-supportive "male bonding and socialization" in the creation of a world where such rape is common and gendered.²¹⁵ In making their argument, they suggest that the collective responsibility of men as a gender group is akin to collective responsibility of citizens whose government officials commit crimes against humanity.²¹⁶

May and Strikwerda's paper is thoroughly an argument for the causal connection between the individual men who comprise the gender group "men" and

²¹⁵ May and Strikwerda 1994, 135.

²¹⁶ Ibid., 135.

the systematic phenomenon of rape perpetrated by men against women. The collective context in which individual cases of rape occur, they argue, is one in which all men participate in the sustaining of a patriarchal culture wherein male-perpetrated rape of women is normalized.²¹⁷ On this view, “men receive strong encouragement to rape from the way they are socialized as men, that is, in the way they come to see themselves as instantiations of what it means to be a man.”²¹⁸ It is not sufficient on these terms simply to consider the individual psychology of rape perpetrators, as their attitudes towards women cannot be explained without reference to complex social milieu in which they were developed. Insofar as men partake in behaviours that contribute to conditions under which rape-supportive beliefs and attitudes are formed, they partake in the causal history of rape perpetrated by men. One can make an analogous claim about sexual assault in general: perpetrators need not have been “a demon or sadist, but, in some sense, could have been many men.”²¹⁹

Briefly, one might object that this causal role in the production of a rape-supportive environment is not just traceable to actions of men. On such a view, for instance, people raised as men may have contributed a larger share in the causal history of the reproduction of a rape-supportive society than cisgender women, but this claim does not support that view that such people are disposed to perpetrate sexual assault. Other people, including women, may also have made contributions.

²¹⁷ Ibid., 136.

²¹⁸ Ibid., 137.

²¹⁹ Ibid., 138.

May and Strikwerda take note of this point, raising that their account seems to implicate women and other people in the causal history of individual incidents of rape. As they point out, this can be true without divesting the strength of men's specific connection to the reproduction of a rape-supportive environment.²²⁰ Women, for example, may be partially implicated in the story of collective responsibility for rape that I wish to tell without women having the special, powerful causal connection that comes along with men's role in socialization of other men and boys.²²¹ Trans women who were raised as boys and men, for example, may be partially responsible on this picture, but not responsible to the same degree that cis men will be in virtue of their continued participation in male-bonding activities that May and Strikwerda take to be a particularly important location for the reproduction of rape-supportive ideology.²²² In this respect, however, the collective responsibility of men for rape is only different from that of others as a matter of degree.

Following from the account of the reproduction of a rape-supportive culture, May and Strikwerda conclude that individual men in a rape-supportive society bear some if not all of the following five connections to individual instances of male perpetrated rape:

1. As perpetrators.

²²⁰ Ibid., 142

²²¹ Ibid.

²²² Ibid.

2. As prospective perpetrators who would do so given the opportunity²²³
3. As contributors to the creation or persistence of a rape-supportive social milieu (i.e. a rape culture).
4. As bystanders who failed to act when they were able to prevent a rape from occurring.
5. As beneficiaries of the distributed effects of women's domination through male-perpetrated rape.²²⁴

As May and Strikwerda point out, it seems highly “unlikely that many, if any, men in our society fail to fit into one or another of these categories,” especially the third and fifth. For example, as May and Strikwerda later point out, a man might be explicitly anti-rape while nevertheless contributing in his other actions and words to a rape-supportive society.²²⁵

With respect to the fifth point, May and Strikwerda raise the innumerable ways in which men, insofar as they both do not face the credible social threat of rape and because they are less likely to be living in the aftermath of rape themselves, accrue advantage over others who do live with these burdens just insofar as they are able to live with fewer social constraints. For example, cisgender male students have more open access to academic resources insofar as they can freely travel in darkness without the credible social threat of sexual assault.²²⁶ Benefits of this kind accrue and compound to any cisgender man regardless of their participation in the creation of a rape-supportive society. Regardless of whether an individual man is a

²²³ I have mentioned this point previously, but this claim will not be examined in detail here. The remaining four connections are sufficient for the point May and Strikwerda wish to make even if one is dubious about this part of their view.

²²⁴ May and Strikwerda, 146.

²²⁵ Larry May and Robert Strikwerda, “Reply to Victoria Davion’s Comments on May and Strikwerda,” *Hypatia* 10, no. 2 (1995): 157–58.

²²⁶ May and Strikwerda 1995, 148.

perpetrator of sexual assault, all men benefit from the systematic sexual assault of women as both a long-term injustice and an injustice of the recent past. Social, economic, and political benefits accrued to men in virtue of women's experience of both actual instances of sexual assault and the credible social threat of sexual assault, and these benefits improve the social, economic, and political positions of men relative to women and at women's expense. On this view, no cisgender man living in Canada is without a morally salient, causally instantiated connection to the systematic phenomenon of male-perpetrated sexual assault against women.

An additional and perverse benefit that accrues to all men in virtue of the systematic sexual assault of women, unrecognized by May and Strikwerda, is what Kate Manne has called "himpathy": that in a political society where sexual assault is systematically perpetrated by men against women and men are the dominant gender group, men's likelihood of being held socially responsible (let alone legally responsible, as I raise above) is significantly diminished.²²⁷ In particular, the prevalence of corresponding rape-supportive beliefs like beliefs in "real rape" myths mean that even where individual perpetrators are held responsible for their actions, these consequences are unlikely to be significant or fitting.

A corollary of May and Strikwerda's beneficiary claim is that it is in men's economic and political interest, in a rudimentary sense, to see the oppression of women continue through the continuation of systematic sexual assault.²²⁸ No other

²²⁷ Manne, Kate. 2018. "Exonerating Men" in *Down Girl*. Oxford: Oxford University Press. 196-205.

²²⁸ May and Strikwerda 1994, 145.

group has such a vested interest in the continuation of gender-based violence. That which is in the best interest of women—the elimination of sexual assault—is, at least on these terms, from this perspective in the interest of men as a group. Certainly many arguments can be made in support of the moral, economic, political, and social value of the elimination violence against women—I endorse such arguments, and they often demonstrate what is in the best interest of men as well. My claim is simply that men as a social group occupy a special position of interest that is not like that of other social groups when it comes to the oppression of women through sexual assault perpetrated by men.

5.3. Young's Social Connection Model (SCM)

Given I have named male-perpetrated sexual assault against women as a form of structural injustice faced by women in Canada, I now introduce an analysis of responsibility for this injustice using Iris Marion Young's (2011) influential Social Connection Model (SCM).

Young developed the SCM in a draft posthumously published in *Responsibility for Justice* (2011). Given Young's (1990) view of structural injustice as I introduce it above, the books asks: "how shall agents, both individual and organization, think about our responsibility in relation to structural injustice?"²²⁹ I hope to have established that there is no specific person or organization who is responsible for the systematic sexual assault of women by cisgender men, though there are often

²²⁹ Young 2011, 95.

blameworthy individual men in particular cases. Rather, I have argued that this systematic phenomenon is such that its causes and effects are so widely distributed and perpetuated that it is not directly traceable to particular moral agents. As with Young's general view, I have claimed that male-perpetrated sexual assault as a systematic phenomenon is the kind of injustice that is "is produced and reproduced by thousands or millions of persons usually acting within institutional rules and according to practices that most people regard as morally acceptable."²³⁰ Insofar as I have provided such an explanation of the origins and effects of sexual assault in Canada in non-individualist terms, I now to turn to developing a notion of responsibility that is sensitive to this account.

Young proposes an answer to this quandary that is somewhat simple. On her SCM, "all those who contribute by their actions to structural processes with some unjust outcomes share responsibility for the injustice."²³¹ This conclusion is not obviously distinguishable from that advanced by Larry May and Robert Strikwerda above, save for Young's language of "sharing" responsibility. To draw out the value of Young's contribution, and how it differs from that of views like May and Strikwerda's, I will now unpack two features that distinguish her view.

The central distinctions between Young's view and that of May and Strikwerda are Young's conception of responsibility as forward-looking rather than retrospective, and her view of forward-looking responsibility as shared rather than

²³⁰ Ibid., 95.

²³¹ Ibid., 96.

collective. Recall that on May and Strikwerda's account, men's collective responsibility for injustice hung on the retrospective causal connection between individual men and the collectively created social phenomenon of rape. This retrospective account fits what Young calls the "liability model" of responsibility.

On Young's view, accounts of responsibility for injustice that take up a liability model of responsibility are analogous to the attribution of legal liability insofar as they "seek to identify liable parties for the purposes of sanctioning, punishing, or exacting compensation or redress."²³² In this respect, arguments that support that attribution of responsibility must tell a causal story of the connection between those they attribute responsibility and the effects for which they seek redress. Responsibility, on this model, may differ from blame only as a matter of degree—blameworthiness might be a function of one's first- or second-degree causal connection to the harm in question, for example. The role of a culpable actors' intentions might also play a role in distinguishing a backward-looking view of responsibility from blameworthiness, but this need not be the case. The strict account of sexual assault I introduce above can be fitted to such a view, the assessment of which would be akin to a case of strict liability under the law.

Though the liability model can be mobilized effectively in some areas, Young argues that such a model is too blunt an instrument for identifying and attributing responsibility in cases of structural injustice. In cases of structural injustice, like that

²³² Ibid., 98.

of pervasive sexual assault, mobilizing a liability model of responsibility would be too demanding to be accomplished effectively.²³³ Consider, for example, the demand of empirically assessing the claims of May and Strikwerda about all men and their behaviours in a rape-supportive society. In the sense of structural injustice that I pick up from Young, in fact, it may be impossible to assess the effects of unrecognized behaviours on the attitudes and actions of people in a political society. The nature of structural injustices is such that no one (or least very few people) goes about their day metacognitively assessing their contributions to a rape-supportive society, nor would they be in a position to do so exhaustively.

Young's alternative to liability accounts of responsibility maintains a concern for the causal connection of individual people to structural injustice. As with May and Strikwerda, Young argues that all those who contribute to the creation and reproduction of structural injustice through their participation in social practices and "institutional processes" are responsible for that injustice. Such people might be, as with the character of Jon who I introduced at the outset of this paper, "minding their own business and acting within accepted norms and rules" and yet be causally connected to "unjust outcomes, which they may regret, without being specifically at fault."²³⁴ In such cases, on Young's view, the causal connection between an agent's actions and unjust outcomes is sufficient ground for attributing responsibility.

²³³ Ibid., 100.

²³⁴ Ibid., 106.

Unlike May and Strikwerda's retrospective account, however, Young argues that a forward-looking conception of responsibility is preferable for analysis of responsibility for structural injustice. Because of (1) the practical impossibility of tracing the causal connection between structural injustices and the habitual and unintended behaviours of individuals, and (2) the corresponding difficulty of tracing the impact of such actors contributions to unjust outcomes, Young argues that a pragmatic approach be taken up which identifies the prospective role one might play in the elimination of the injustice in question.²³⁵ In this respect, while the SCM takes seriously the retrospective causal connection between individuals and structural phenomena, it attributes responsibility on the basis of individuals' (and institutional entities') capacities to disrupt the ongoing reproduction of such injustice.

Though the notion of forward-looking responsibility is appealing, it is closely tied to a trickier, second aspect of Young's view which distinguishes the SCM from May and Strikwerda's collective account. On Young's view, participants in the reproduction of structural injustice share forward-looking responsibility for the injustice in question. The distributive view advanced by May and Strikwerda, wherein one is responsible just insofar as one has contributed to the systematic phenomenon of rape indexed to the effect of that contribution involves an analysis that is too blunt on its face to demonstrate the responsibility for structural injustice

²³⁵ Ibid., 106.

because it is “not [practically] possible for any of us to identify just what in our own actions results in which aspects of the injustice that particular individuals suffer.”²³⁶ For the same reason, it is not clear what specifically follows from the attribution of collective backward looking responsibility for structural injustice. The attribution of collective responsibility might be mobilized to suggest men have a collective duty to amend the harms they have brought about through their individual actions, but the structural nature of the problem in question frustrates the possibility of clearly articulating the specific harms of their actions and the possible amends they might strive to make. Instead, Young argues that the deep and interwoven causal structure of the reproduction of structural injustice is better suited to a shared notion of responsibility. Insofar as individual person’s contributions cannot be distinguished, contributors share in the responsibility for injustice itself.

Finally, it is a feature of shared responsibility for structural injustice that the responsibility “can be discharged only by joining with others in collective action.”²³⁷ This connection follows from the structural character of structural injustices. Insofar as structural injustice is reproduced through the interlocking and socially normal actions of people going about their lives, the injustice itself cannot be eliminated through intentional individual action. Rather, insofar as Young’s notion of shared responsibility consists in forward-looking responsibility for eliminating the injustice, widespread and collective action is required from a vast number of agents.

²³⁶ Ibid., 109.

²³⁷ Ibid., 111.

Because changing structural phenomena is not possible without collective action, discharging responsibility for structural injustice requires collective action. Because collectivity is a condition for discharging one's responsibility, on this view, then, the attribution of responsibility must be expressed in terms of the shared (rather than collective, individually distributed) responsibility.²³⁸

On both views, that of Young and that of May and Strikwerda, one's causal role in the reproduction of structural injustice grounds one's responsibility for that injustice. On May and Strikwerda's view with respect to male-perpetrated rape in a rape-supportive society, this responsibility will be attributed to men who are perpetrators, prospective perpetrators, bystanders, contributors to a rape-supportive society, or beneficiaries of such a society. On Young's more expansive account, any member of such a society shares responsibility for the perpetuation of structural injustice (on injustice being that of systematic male-perpetrated sexual assault). The scope of May and Strikwerda's view appears to be quite large in part because of their identification of the morally salient connection between those who indirectly contribute to rape and also beneficiaries. Compared to the group comprised of perpetrators or of prospective perpetrators, for example, one might expect (or at least hope) that the set of people who are beneficiaries of structural injustice is larger. The same might be said of the set of men who have been bystanders to rape when compared to the two larger sets. The beneficiary claim is

²³⁸ Ibid., 111.

not sufficient to explain men's special moral responsibility, but does provide an expansive basis upon which that view can be defended.

Unlike May and Strikwerda's account, however, Young's attributes at least a basic form of responsibility for structural injustice to a wider set of people. While May and Strikwerda admit that their contributor claim will apply to a wide range of people who are not just men, the causal story Young's tells in her account of the structural character of structural injustice means that every person in the relevant political society shares Youngian responsibility for structural injustices where they occur. Ultimately, Youngian responsibility will be indexed to the relative power of an individual to contribute to the elimination of structural injustice, but I wish to pause briefly to treat a worry about adopting Young's SCM wholesale.

Recall that, for the purposes of understanding individual men's connection to another as men for the present analysis of systematic male-perpetrated sexual assault, I have described individual men's position relative other men as being one of membership in a gender group. In a passage following her introduction of the SCM, Young notes that she finds ascribing responsibility for injustice to individuals in groups like nations or corporation on the basis of group membership troubling. Describing citizens' responsibility for the actions of their nation, Young writes:

"A nation, or a nation-state society, exists because those who consider themselves its members, or are considered to be so by others, act in specific ways to name and identify one another, recognize symbols of the nation, enact certain rituals associated with it, and produce and reproduce political

and social connections with one another. Individual agents can be more or less involved in these activities, and some can resist or protest them, or otherwise distance themselves from them. If members of a nation or political community share responsibility for the actions of a nation or state, then, it is by virtue of such active relationships, and not simply by virtue of membership”²³⁹

As with her account of responsibility for structural injustice, Young argues that what grounds one’s responsibility for injustice perpetrated by a group (in this case, a nation) is not the fact that one is a member of a group, but that one lives within a set of social relations that also ground one’s being a group member. In this respect, group membership corresponds to but is not constitutive of one’s being responsible for wrongful harms perpetrated by one’s group. In the case of structural injustice, one need not be a committed nationalist to be responsible for the actions of their state.

At first blush, Young’s comment seems to trouble my account of male-perpetrated sexual assault against women as a group-based phenomenon that is perpetuated by members of one group (cisgender men) against another. On a Youngian picture everyone, regardless of gender, shares responsibility for the injustice of male-perpetrated sexual assault of women. This is an acceptable

²³⁹ Ibid., 137.

conclusion on my view, and one which does not conflict with my argument that men share a special responsibility.

Recall that on May and Strikwerda's account of responsibility for male-perpetrated rape, more than just men are implicated. While it may be less likely that many individual women benefit from the male-perpetrated rape of women, many people who are not men contribute to creating a world wherein rape occurs. Discussing May and Strikwerda's admission, I raised individual men will make, at a minimum, many more and overlapping contributions to the persistence of male-perpetrated sexual assault of women than other people will. Individual men are also in such a position that, regardless of their direct or indirect contributions to this state of affairs, they are beneficiaries of an expansive set of benefits accrued in virtue of the burdens experienced by women. When added to the further benefits of enablement that have accrued to men just in virtue of their living in a society that is rape-supportive (like himpathy), the connection between men as a gender group and sexual assault against women is stronger than it will be for any other gender group. In this respect, just from a backward-looking perspective, men have a particularly intensive relationship to the reproduction of sexual assault as a structural injustice.

Beyond the retrospective consideration of the benefits and contributions of men to this injustice, Young's account invites forward-looking consideration of the responsibility of those living in Canada. It is true that on Young's analysis everyone in Canada shares responsibility for male-perpetrated sexual assault of women, but

this responsibility in individual cases is indexed to individuals' forward-looking capacity to change the conditions under which the structural injustice in question persists. Consideration of the power of individual men to intervene in the persistence of male-perpetrated sexual assault against women will show that, in addition to their special responsibility on a backward-looking model like that of May and Strikwerda, men have an especially strong form of responsibility for on Young's forward-looking SCM account.

Though I have called male-perpetrated sexual assault of women in Canada a structural phenomenon insofar as it persists largely due to the social normal behaviours and unintended consequences of people living in Canada, I have also drawn out just a few of several significant ways that cisgender men make a significant contribution to the persistence of this problem. Insofar as individual men play a key role in the perpetuation of this structural phenomenon then, men have special access to performing structurally transformative actions that are not available to other people in the same moral community. The simplest of these is that which Andrea Dworkin recognized in her "I Want a Twenty-Four-Hour Truce During Which There is No Rape" (1983): because sexual assault perpetrated by men against women is, so described, a rigidly gendered phenomenon, if men collectively refrain from sexually assaulting women, the injustice ceases.²⁴⁰ This claim is in a brute sense true but, as I hope to have shown over the preceding paper, insufficient.

²⁴⁰ Andrea Dworkin, "I Want a Twenty-Four-Hour Truce During Which There Is No Rape.," in *Last Days at Hot Slit* (Cambridge, Mass: MIT Press, 2019), 199–210.

Individual men are perpetrators of sexual assault, but they do so under structural conditions that shape the choices available to them, the conditions under which they reason about their choices, and the moral psychology used to assess those choices. Beyond this, what makes male-perpetrated sexual assault a structural phenomenon is precisely what gives Dworkin's speech its rhetorical strength: what is required to eliminate structural injustice, which Young has noticed and built into her account of responsibility, is forward-looking collective action.

Robin Zheng (2019) has argued convincingly that Young should be read as "providing a conception of responsibility as accountability— a form of individual moral responsibility that bridges ethics and politics, the individual and the collective, and structure and agency."²⁴¹ On this reading of Young, individuals are the "primary bearers of responsibility," and such individuals must engage in "collective organization with other individuals" to discharge their responsibility.²⁴² In the few pages remaining, I will not provide an account of what would be required for men to discharge their responsibility for the structural injustice of sexual assault. Rather, I note that men need not strike out on their own to do so.

I have argued that individual men have a special moral responsibility for sexual assault perpetrated by men against women, regardless of their role as perpetrators, bystanders, beneficiaries, or as unwitting contributors to the reproduction of sexual assault-supportive conditions. However, understanding this

²⁴¹ Robin Zheng, "What Kind of Responsibility Do We Have for Fighting Injustice? A Moral-Theoretic Perspective on the Social Connections Model," *Critical Horizons* 20, no. 2 (2019): 109–26.

²⁴² *Ibid.*, 113.

responsibility as providing reason for collective action need not exclusively mean that men must band together as men to collectively dismantle sexual oppression. Nor does this account dictate how the “moral division of labour,” as Robin Zheng puts it, should be carved up.²⁴³ The question of how to distribute the labour of discharging responsibility for structural injustice is further complicated by the fact of all members of the same community being in some sense responsible for the injustice in question. While men bear special responsibility for this injustice, it is not yet clear how that responsibility ought to fit against a backdrop that is populated by both blameworthy and differently responsible people, especially when that backdrop constitutes what Cheshire Calhoun has called an “abnormal moral context” where ignorance of the injustice at hand is common.²⁴⁴ Exactly this point is raised by Tracy Isaacs, who has argued that “we exist in an abnormal moral context with respect to feminist critique.”²⁴⁵

I close this paper by suggesting that Tracy Isaacs’ insight shows a way forward from the extended discussion of men’s shared responsibility for male-perpetrated sexual assault that comprises this paper. On Isaac’s view, moral experts including feminist ethicists, but also “at least some members of the general population, particularly but not exclusively some members of disadvantaged groups who are suffering the burdens of wrongful social practice,” have an expertise that is

²⁴³ Ibid.,115

²⁴⁴ Calhoun 1989.

²⁴⁵ Tracy Lynn Isaacs, *Moral Responsibility in Collective Contexts* (Oxford ; New York: Oxford University Press, 2011). 167.

relevant to accelerating the shift from the abnormal moral context of the structurally unjust present to a future where sexual violence is eliminated.²⁴⁶ In order to make such a shift, agents who are “already morally attentive,” like the character of Jon and other “reasonably reflective people,” must be made to focus their attention such that they recognize the pernicious state of affairs they live within.²⁴⁷ It is essential that such people, of which there are many, come to recognize their position within an abnormal moral context wherein sexual assault is structurally instantiated in their day-to-day actions rather than simply conceiving of sexual assault through the lens of individualist “real rape” myths. By doing so, men especially will be in a better position to comprehend their special moral responsibility for the state of gender-based violence, and be better placed to discharge this responsibility along with other members of their moral community.

²⁴⁶ Ibid., 170

²⁴⁷ Ibid., 173

6. CONCLUSION

Anita Superson suggests that: “On the one hand, holding all men responsible for women’s oppression in virtue of men’s (perhaps unwilling) participation in the system seems to be too strong a view, but on the other hand, freeing from responsibility all men on the grounds [31] that they do not harbor ill intentions or cause direct harm to women seems to be too weak, since it seems that someone is responsible for maintaining any system of oppression.”²⁴⁸ I have argued that, at least in Canada and with respect to male-perpetrated sexual assault, all cisgender men are responsible for women’s oppression. My argument is by necessity coarse-grained in its glancing consideration of men’s different identities and the impact these differences have upon their relationship to the sexual assault of women, but I suggest that a finer-grained intersectional analysis would only yield a more specific articulation of different men’s responsibility.

After introducing the problem of articulating men’s special moral connection to the structural injustice of male-perpetrated sexual assault in the first chapter, I advanced my argument over the course of the four remaining chapters.

In the second chapter, I raised a number of methodological points that helped clarify the scope of this paper. A key piece of that chapter was my introduction of the view that sexual assault is the sexual violation of bodily integrity, which I examined in some detail. I also provided a preliminary picture of why I chose to limit

²⁴⁸ Anita Superson, “Feminist Moral Psychology,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Metaphysics Research Lab, Stanford University, 2020), <https://plato.stanford.edu/archives/sum2020/entries/feminism-moralpsych/>. 30-31.

consideration of men's shared responsibility for sexual assault to cisgender men in particular. I later fleshed out this picture in my fifth chapter when responding to the individualist objection introduced in the fourth chapter.

In the third chapter, I examined the social phenomenon of male-perpetrated sexual assault in Canada in detail. I showed not only that sexual assault of this kind is systematic in virtue of being both prevalent and gender-based, but also used Ann Cudd's framework to show why it is both a psychological and material force of oppression in the lives of Canadian women and others. Using this analysis, I then showed that sexual assault is a form of structural injustice that is reproduced in part through men's actions in relation to pernicious sexual norms.

After introducing my preliminary treatment of sexual assault as a structural injustice, I introduced a series of three significant objections to the position that might be raised by both feminist and non-feminist respondents, primarily as responses to the implication that men have a moral improvement gap to overcome. I considered and rejected forms of the post-feminist and chauvinist objections before turning to consider the #NotAllMen objection in greater detail. I introduced a series of assumptions that are likely to underly #NotAllMen objections: the epistemic, psychological, and individualist assumptions. I showed that, while the epistemic and psychological assumptions were quick to be dismissed, the individualist assumption required more careful analysis of the connections between men.

In the final chapter, I replied to the individualist assumption at length through consideration of both the relevant members "men" as a gender group

(cisgender men) and through consideration of both the backward-looking and forward-looking connections between individual men as members of this group. The backward-looking account of May and Strikwerda provided useful insight into men's causal roles in the reproduction of a sexual assault-supportive society, but I argued that this view did not provide an adequate reply to the individualist aspect of the #NotAllMen objection. With this in mind, I turned to Iris Marion Young's Social Connection Model (SCM) of shared, forward-looking responsibility to account for the irreducibly shared responsibility of cisgender men for male-perpetrated sexual assault. Insofar as men are located at the intersection of strong backward-looking responsibility for the reproduction of sexual assault as a structural phenomenon (demonstrated in large part by May and Strikwerda's account) and strong forward-looking responsibility for the elimination of this injustice in the future by virtue of their power to effect change (demonstrated by Young's account), men have a special responsibility for the structural injustice of male-perpetrated sexual assault. Insofar as this responsibility cannot be discharged without engaging in collective action, men's special responsibility is also shared rather than distributed individually.

Finally, I concluded that men's capacity to contribute to the elimination of male-perpetrated sexual assault hangs in part on their development of an epistemically humble stance with respect to the effect and origin of their behaviours. I noted that Tracy Isaacs' analysis of feminist consciousness-raising was particularly helpful for thinking about the first steps required for men faced with discharging their responsibility for structural injustice.

Looking ahead, much more needs to be said about what kind of collective action might reasonably be taken by those who are responsible for structural injustice. While I have argued that individual men share with other men a responsibility for the structural injustice of sexual assault, what this responsibility means for political action must be explored in greater detail. Though this is a daunting task, not least because of the complex epistemological, ontological, and strategic questions which arise from the preceding discussion of the nature of structural injustice, we now have more reason to confront this task together.

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