The Temporal Construction of Barriers: Legal Temporalities and Sexual Assault in the U.S. Legal System

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ABSTRACT

Over the past six decades, feminist activists, scholars and legislators have achieved many reforms in sexual assault (SA) law within the U.S. While these reforms expanded legal recognition for SA, many barriers remain for people who experience SA when entering the legal system. Although scholars have acknowledged these barriers, the role of time in the legal response to sexual violence remains underexplored. This thesis examines the relationship between legal temporalities and SA law with a focus on entering the legal system. Using the frameworks of Critical Legal Studies, Feminist Legal Theory and legal temporalities, I argue that time is not a neutral factor and is used to deny credibility or entry into the legal system for people who experienced SA. To convey this argument I provide an analysis of timely disclosure, the role of time in the ideal victim framework and fact construction. Ultimately, this thesis adds to the urgency of revisioning justice in another place than, and through other approaches provided by, the legal system.

Key words*:* law, sexual assault, legal temporalities, justice, Critical Legal Studies, Feminist Legal Theory

"For me, it is the difference between the question of asking what I can personally do versus what we can do."

– Mariame Kaba, 2021, p. 40

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Most importantly, I want to acknowledge everyone who has experienced sexual assault and has been failed by the legal system. You deserve more.

Note for the Reader

Given the subject matter of this thesis, it evidently includes discussion of sexual violence, sexual assault and rape as well as homophobia, racism, pedophelia and PTSD. Through discussing older laws and statutes, this thesis includes terminology that can be considered offensive. In addition, chapter III contains quotes narrating personal experiences with law enforcement that might be experienced as more graphic.

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Introduction

Nearly every minute someone in the U.S. is sexually assaulted. Every nine minutes a child, specifically, is sexually assaulted (RAINN-a, n.d.). An estimated 443,635 people above the age of twelve experience sexual violence each year within the U.S. 82% of underaged and 90% of adult individuals who experienced sexual assault[1] (SA) were assigned female at birth. One in six individuals who were assigned female at birth have experienced attempted or completed SA in their lifetime.

The U.S. criminal legal system has seen SA law reforms over the last 60 years, experiencing its first major wave from 1970 till 2000 (Kasparian, 2014). In mid-twentieth century, the American Law Institute endeavored to 'rationalize' their derived English common law, leading to the Model Penal Code (MPC), enforced in 1962. Then, they reformulated rape law which still only recognised, and made a distinction between, forcible and violent SA as the only criminal sexual offence. By 1987, every state had enacted some form of SA law reform. Feminists stated then and now that "the criminal system failed to address gendered crimes adequately, [and] exposing the extent to which such patriarchal beliefs pervaded the legal structure" (Gruber, 2007, p.748) and spearheaded the reforms (MacKinnon, 1989).

Over time, SA law reform has grown in its prosecutorial nature and started to include violent state intervention alongside the continuation of law reform (Gruber, 2007). Much of criminal law still reflects the MPC from 1962, but article 213, SA and related offences, underwent revisions starting in 2012. The reform led to the incorporation of a definition of consent including an active consent framework, which was missing in half of all jurisdictions as late as 2015, an applicable mens rea and a broader understanding of coercive behaviour and intoxication (Murphy, 2023). Among many more nuances, it also led to the inclusion of oral and anal penetration within the definition of rape and the removal of the disctinction between violent and forcible rape[2] (U.S. Department of Justice, 2017; Murphy, 2023).

Media coverage and research often laud the reforms and ability to effectively respond to SA. In 2009, they claimed that reported rapes hit a 20 year low and that rape prosecution has improved a great deal, which is spurious (Lonsway & Archambault, 2012). The 2008 Uniform Crime Report shows that the number of rapes was comparable with the 1970s, saying little to nothing on the legal system's ability to effectively respond and prevent. The belief that law reform remained true to the feminist cause – that aggressive persecution of perpetrators would remove the patriarchal attitudes infecting society as well as

[1] Sexual assault, abbreviated to SA, is an umbrella term that encompasses a spectrum of forms of sexual violence and acknowledges the nonconsensual nature of the violent act. Rape (according to U.S. law) is any form of penetration, no matter how slight, either vaginal, anal or oral with any body part and/or objects (U.S. Department of Justice, 2017). This is not exclusive to any gender of either a person who has experienced SA or a perpetrator. However, as rape is not allcompassing of experiences with sexual violence, I have chosen to use the terminology 'SA'. In addition, someone who experienced a different degree of SA and had/has entered the legal system would not be acknowledged in this text by exclusively using the term rape.

[2] Because all SA is violent and forced.

extinguish future violence – persists despite evidence that most people who experienced SA[3] never enter the legal system and its penal sanctions reach a small minority of perpetrators (Gruber, 2007). In 2009, 1 in 3 people-who-experienced-sexual-assault reported their experience to law enforcement (Reaves, 2013) and for every 1000 SAs only 50 reports led to arrests, where from 28 cases lead to convictions and only 25 perpetrators are sentenced to prison (RAINN-a, n.d.). The most frequently cited basis to avoid reporting one's SA experience is the lack of confidence in the legal system, in addition to other reasons (Morley, 2016). Beyond numbers, Mariame Kaba (2021) illustrates:

> "... most survivors still never access for lots of reasons – because they don't want to, because they have been traumatized in the past by the system … Because they don't want to be raked over the coals themselves. Because they try to solve problems in community. When people do access the system, *they are screwed over by it* [emphasis added], literally, in all different kinds of ways" (p. 41).

Reforms did not occur spontaneously and it is apparent that years of intensive organizing, lobbying and activism by feminist (legislators) went into actively trying to change the system (Gruber, 2007; Randall, 2010; Schneider, 2000). These critiques should not obscure their significance. What feminism achieved was complex: trying to insert a better understanding of SA into a legal system that is not neutral and visibly against people-who-experienced-sexual-assault (Randall, 2010). At the same time, acknowledging these successes does not require accepting the legal system as an effective or sufficient response to sexual violence. There is a profusion of barriers within SA law that remain to uphold the structures of sexual violence and it has not produced the transformative and restorative justice that is preventative (Kasparian, 2014).

Scholars have continued to identify barriers faced by people-who-experienced-sexual-assault and unveil the ways in which legal institutions are interwoven with the patriarchal values reformists are trying to remove. By combining multiple fields we proceed to find new ways in which legal institutions reproduce exclusion and constrain access to justice. Building on this body of work, I aim to contribute to

[3] I describe a 'people who experienced sexual assault' with this wording on purpose. Other terms that are frequently used are victim or survivor, or a hyphenated combination of the two. Although the term victim is most often used in legal cases (Lonsway & Archambault, 2022), I consciously choose not to use any of these terms, because not every person who experienced SA wants to be called a victim or sees themselves as such and not everybody is a survivor of their experience. In addition, I do not want to define someone based on their experience and acknowledge the individual outside of what they went through. That said, I had to make a decision regarding the word limit of this text. From now on I will use a version of this wording with dashes in between:
person-who-experienced-sexual-assault. After considering using an abbreviation of the term, this felt too contradictory to the arguments for using this term in the first place. Therefore, using this version still encapsulates the aim.

the growing recognition that people-who-experienced-sexual-assault deserve justice, which is often antithetical to what the criminal legal system provides[4]. Instead of proposing a singular alternative, this thesis seeks to add to the urgency of revisioning justice in another place than, and through other approaches provided by, the legal system. To do so, I aim to provide a starting intersection between the field of law critiques and legal temporalities with a focus on entry into the legal system.

Time as a factor in our life is almost indescribable, although many scholars have taken on the task. Even though it is an elusive concept that plays a role in many fields, a large range of scholars have studied the dynamics between time and legal systems, in addition to anthropologists and sociologists who have looked into the effects of time and law on social groups and individuals (Chua, 2021). This complex intersection of time and lived human experience within the legal system is deemed a legal temporality (Derry, 2025). The critical view on legal temporalities so far has been able to provide a gateway into assessing oppression in law, such as racial injustices and heteronormativity (Chowdhury, 2020).

Despite intensive scholarship within both fields, little attention has been paid to how they intersect on the topic of SA. Therefore, this thesis aims to make a starting intersection, guided by the following research question: *how do temporalities in law create barriers to enter the legal system for people who experience sexual assault?*

0.1 Roadmap

The first section of Chapter 1, 'Critiques on Law', discusses Critical Legal Studies, which serves as the theoretical foundation for the broader critique developed throughout this thesis. The second section turns to Feminist Legal Theory which delves into the feminist theories within critical legal discourse, such as masculinities of law, the ideal victim framework and consent and harm.

The second chapter, 'Legal Temporalities', focuses on temporality and its relationship within the legal system. The chapter delves into an understanding of time as socially and politically constructed before turning to the connection between time and law. Topics such as adjudicative temporalities, temporal boundaries and fact construction are discussed to show how time plays a role within the legal system.

The final chapter, 'Time, Sexual Assault and Entry Into the Legal System', combines the two theoretical frameworks to develop an original analysis of how time is used to create barriers for people to enter the legal system. To demonstrate the arguments, I bring forth three points of analysis, namely, time

[4] People who experience SA do not seek justice in a uniform way as someone's conceptualization may lie close to their experience and personal subjectivity. Justice can also mean receiving compensation from either the offender or the state, it can be a need for community, a need for confronting the perpetrator, a need for public responsibility from the perpetrator and a plethora of different conceptions (Kasperian, 2014). And for some justice is the need for a conviction of the perpetrator, just not for all.

of report, ideal victim in nexus with time and evidence.

Chapter I: Critiques on Law

This chapter discusses theories that are critical of law. Providing a complete overview of the fields is not what I claim to do as they hold many nuances that I will not be able to capture, also in regard to the scope of this paper. However, I strive to provide a concise yet comprehensive overview of Critical Legal Studies (CLS), to build a foundation for the broader critique developed throughout this thesis, and Feminist Legal Theory (FLT), to delve into the feminist theories within critical legal discourse.

1.1 Critical Legal Studies

CLS is a movement that emerged from legal academics and practitioners that sought to challenge the law in cases and statutes, but also in classrooms, media consumption, journals, and people's perceptions and experiences with law in day-to-day life (Oetken, 1991). However, it is important to acknowledge that CLS is not limited to critiquing just the law, but forms part of a broader critique of liberalism. Through the words of critical legal scholar Alan Hunt (1986):

> "The liberalism against which critical theory directs its critical energies is the liberal theory which has generated the philosophy of legalism and the associated jurisprudence of legal positivism that has so decisively implanted itself in both the academic, the political and the popular discourse of contemporary capitalist democracies" (p.4).

CLS not only comments on legal outcomes, but also on the framework through which law is formed and therefore understood and justified. From a CLS perspective, central points of the liberal doctrine of the law are: first, the separation of law from other forms of social control; second, law being a form of rules that define the realm of their own application; third, the presentation of this set of rules as objective and a legitimate normative mechanism, while other forms of normativity are dismissed as subjective and partial; and finally, the belief that legal rules yield determinate and predictable outcomes in their use in the judicial process (Hunt, 1986).

Although many scholars use different terminology, their main arguments can be boiled down to three main points relevant to the following analysis. The first being that law is not neutral. The law is made through idealized conceptions of a moral good, an utmost moral stance that takes place either in political right, economic welfare, justice, the social realm or human happiness, where several ideologies of what is right compete (Belliotti, 1987). This creates a flux of relevant theories, ideologies and observations flowing in and out of the discourse meaning the law reflects a current state of reality, either

social, political, economical or historical (Oetken, 1991). However, with the law being a fluid process, making it unfeasible to encapsulate the current reality in how we now form our laws and legal system. Therefore, the translation of our social reality into legal form is not a neutral or comprehensive process, but one that takes selection (Hunt, 1986). Certain influences, values, and historical clout are incorporated into law, while others are excluded. According to CLS, law reflects not reality as such, but a particular construction of it[5].

The second critique is determinancy. CLS contends that there is no pure method of analysis which yields determinate answers to any legal question as no legal doctrine can generate determinate results in concrete cases, because it can be manipulated to justify an almost infinite number of possible rationales for various outcomes (Belliotti, 1987; Unger; 1983). According to Raymond Belliotti (1987) "legal doctrine is nothing more than a pretentious vocabulary and litany of manipulable techniques for categorizing, describing, and comparing; it is not a method for reaching substantive outcomes" (p.146). Legal ruling and its arguments fail to compel and justify definite answers in legal disputes, leaving room for manipulations and ambiguous outcomes, and the judicial decision-making within legal proceedings simply reflects the conclusions of many, opposing wills working at contradicting purposes in different historical periods (Oetken, 1991).

Third, being that in some way or another, the law is able to be reduced to politics. Otherwise called "political mystification" (Belliotti, 1987), CLS contends that the liberal ideology of law obscures and denies the value choices that are inherent to the application of law. This draws on the first point of neutrality. In practical results, this means fixing the fundamental terms of a social debate or conflict in a solid way (Gordon, 1987; Oetken, 1991; Tushnet, 1991). Therefore, the political status quo becomes objectively necessary and rationally uncontestable. On this Hunt (1986) comments:

> "Mediation between conflicting interests at best offers only a pragmatic response to social conflict which can achieve nothing other than a set of results which reflects the unequal distribution of power and resources whilst claiming to act in the name of a set of universal social values" (p.5).

1.1.1 Structuralists

This brings us to the two main approaches that can be distinguished in the CLS movement, the first being the structuralist approach. Structuralists draw heavily on the social theories of Marx and Weber, whose approach starts from the thesis that law and legal doctrine both reflect and reinforce social divisions and hierarchies inherent to a given mode of social organization, such as capitalism (Unger,

[5] I will shed some light on this construction in the upcoming sub-section (1.1.1).

1983). This builds on the tenet that law is political. From a structuralist perspective, legal rules and principles do not themselves determine the outcomes of legal disputes, rather, its outcomes are shaped by factors external to the legal ideology (Oetken, 1991). Then we are talking about social relations, institutional interests, and broader distributions of power (Kennedy, 1982).

However, legal ideology does play an important role in structuralist thought as it is the mechanism that forms consciousness of individuals and is specifically that which makes legal ideology play a role in the reproduction of human subordination to law (Hunt, 1986). Taking the third central point of CLS, legal ideology itself is a product of a dominant political culture and

> "...when one understands the moral, epistemological, and empirical assumptions embedded in any particular legal claim, one will see that those assumptions [law is political] operate in the particular setting in which the legal claim is made to advance the interests of some identifiable political grouping" (Tushnet, 1991, p. 1517).

Turning back to the point of neutrality, because 'advance the interests of some', 'particular construction' or the laws' infinite manipulability all serve the same game: that of law being in favor of the privileged (Gabel & Kennedy, 1984). Therefore, law will serve the ones who made it, grant access to yield it and to pick and choose from it. It works in favor for an intended few while reinforcing social divisions and hierarchies and, because legal ideology influences our subordination, law becomes a pacifier (Oetken, 1991; Kennedy, 1982).

1.1.2 Subjectivists

The second CLS approach are the subjectivists, who use linguistic theory and deconstructive techniques to show that the nature of language used in doctrinal argument is rendering law intermediate and biased, leaning more into the neutrality and determinance tenets (Oetken, 1991; Unger, 1983). They argue that legal materials lack accurate intellectual or scientific components and instead highlight the moral position individuals ought to take (Tushnet, 1991). However, those positions no longer require thought as the use of language in legal scholarship is abstract and formal, therefore creating a false sense of scientific neutrality (Oetken, 1991). Robert Gordon (1987) states: "...legal discourse paints an idealized fantasy of order" (p.198). This is where the two approaches overlap, as they both focus on how law is understood and experienced by many. True subjectivist Peter Gabel argues (1980):

> "Legal thought originates, of course, within the consciousness of the dominant class because it is in this class's interest to bring it into being, but it is accepted and interiorized by everyone…." (p.

26).

In addition, I refer to this quote by Karl Klare (1982), to acknowledge how we not only shape law, but how law also shapes us: “Legal discourse shapes our beliefs about the experience and capacities of human species, our conceptions of justice, freedom and fulfillment, and our visions of the future” (p. 1358).

1.1.3 Critical Legal Studies: Death & Resurrection

CLS rose in the 1970s and continued all through the 1980s, however, they suffered paralysis by analysis. CLS scholars were incapable of replacing the liberal ideology without showing that their own vision was not equally illegitimate. They wanted to decenter foundationalism and objectivism, doing so through different approaches that collided with one another (Belliotti, 1987; Gabel & Kennedy, 1984).

However, not much of what CLS fought against has changed. Now more than ever, the law is absorbed with domination and oppression (Moyn, 2024). CLS’s argument of politics as law, and vice versa, has so far only been more applicable. The capitalist society is partially a product of law, armed with the tools of private law and the possibility to see everything as capital while evading liability for oppression and harm (Pistor, 2025; Fraser, 2022). Nevertheless, it is also now that there is a new found action among scholars and students like myself. With more interdisciplinary movements coming forth from activism and academia, there is an interest in how the legal system reflects and shapes social and state power. To allow that to succeed, there is a need for a theoretical starting point which offers a valid space for CLS to be reconstructed and remembered.

1.2 Feminist Legal Theory

FLT emerged at a similar time to CLS, as a critical response to masculinities that are central to legal thought, practice and participation. FLT emerged partially out of the foundation laid by CLS, while simultaneously critiquing the gender limitations within their framework (Jovanović & Zdravković, 2024; Menkel-Meadow, 1988). FLT rejects legal formalism through the same standpoints of CLS and also questions the idea that judicial decisions are merely an application of rules to facts. Feminist legal theorists, however, argue that CLS fails to account for gender roles in the construction and practice of legal systems. Carrie Menkel-Meadow (1988) describes the difference between CLS and FLT as follows:

> “...the feminist critique starts from the experiential point of view of the oppressed, dominated, and devalued, while the critical legal studies critique begins -and, some would argue, remains- in a male-constructed, privileged place in which domination and oppression can be described and imagined but not fully experienced” (p.61).

They criticize CLS for not scrutinizing the patriarchy within their critiques of law. While CLS does recognise hierarchies and classism, FLT scholars addressed that gender was a secondary factor to them (MacKinnon, 1989). CLS was largely supported and constructed by white, cis-men, and although they provide a broad critical framework of law, this thesis needs a feminist lens[6] (Menkel-Meadow, 1988). As to avoid repetition on the overlapping points between CLS and FLT, the following sub-sections will focus on three tenets of FLT: masculinities in law, the ideal victim and harm and consent.

1.2.1 Masculinity in Law

First, I will discuss the argument of FLT which states legal systems are not neutral, nor detached from social hierarchies, but a system that operates to the advantage of men and the disadvantage of women (Hunter, 1986; Mouawad, 2024; Rifkin, 1980). FLT argues that legal standards, specifically those of credibility, rationality and legitimacy, are constructed based on masculine perspectives, which flows forth from the CLS critique that liberal understanding of law is not a neutral framework that objectively applies rules to facts (Lacey, 2024; Jovanović & Zdravković, 2024). Understanding that law is situated in politics, FLT argues that law cannot be separated from the patriarchal social system. They also recognise that gender becomes a social system that divides power, and therefore is also a political system (MacKinnon, 1989). Here, I want to clarify what is meant by masculinity. The argument that masculinity is embedded in law does not simply refer to the participation of men in legal systems, but more so the privileging of masculine epistemologies and understandings of the world. MacKinnon (1989) states: "the state is male jurisprudentially, meaning that it adopts the standpoint of male power on the relation between law and society" (p.163). That 'male power' is based but also shaped by the false dichotomy of gender circling within patriarchal social relations, where we see "what is tied to the 'female' is usually viewed as inferior to or subordinated to that which is labeled 'male'" (Menkel-Meadow, 1988, p. 71).

We can see this clearly in the practices of sexual violence. FLT scholars that focus on credibility and legitimacy primarily focus on criminal cases involving rape, SA or other gender related violence

[6] Because this thesis provides a critique on law, including a critique on liberal thought within law, I steer away from liberal feminism. Liberal feminism aims to achieve gender equality within the legal system, but has also received many critiques: they are predominantly centered around white, middle and upper class cis-women and mostly argue for a reformist approach to achieve gender equality (Baehr, 2002; Lacey, 2024). This thesis is a call for revisioning justice in another place than, and through other approaches provided by, the legal system. I will focus more on intersectional and radical feminism within the field. To give more body to this decision, I refer you to this quote from Cathrine MacKinnon (1989):

> "Radical feminism sees all women in each one. …The fact that an individual might be socially constructed is an outrage and an injury in liberalism; liberal feminism applies this critique to women. In radical theory, the fact of social construction of the individual is accepted and even embraced. Its content – what the person is made into or who she is allowed to be or prevented from being – is what is criticized" (p.40).

(Jovanović & Zdravković, 2024). Most do so to reveal the gendered assumptions within legal reasoning. It becomes apparent that laws stand by while people are subjected to such violence, while it has very little objection to withholding force with hetero, cis-males in circumstances of violence (Hunter, 2006). Meaning that certain areas of law, specifically those against violence, operate systematically to the advantage of men and to the disadvantage of women.

Here, I would also like to introduce critical race theory (CRT) and incorporate intersectional feminism, because it is CRT scholars and intersectional feminists who argue that violence and exclusion within legal systems cannot solely be understood through gender. CRT specifically "critiques how the social construction of race and institutionalized racism perpetuate a racial caste system that relegates people of color to the bottom tiers" (George, 2021, p. 2). CRT draws on the critiques of law formed by CLS scholars, and like FLT scholars, contests that race, like gender, is socially constructed (Wing & Pappalardo, 2023). In addition, within CRT it is recognised that multiple forms of oppression can occur and that marginalization is a spectrum; CRT does not argue that race is the sole reason for oppression in law (Gillborn, 2015). Kimberlé Crenshaw (1991), who coined the term intersectionality, urges both feminists and antiracist legal frameworks not to treat race and gender as separate categories. By separating them, we exclude the experiences that lay at their intersection. Consequently, intersectional feminism does not exclude other identities outside of race and gender, such as sexuality, queerness, transgender, class, individuals with a disability and more. Sexual violence has significant prevalence against those in the LGBTQAI+ community, who are at a higher risk of experiencing SA, as well as Indigenous individuals of all genders who are more likely to experience SA than non-Indigenous people (Byrnes, et al., 2023). By recognizing this spectrum of marginalization, I try to bring across that the legal system does not merely privilege masculinity; it specifically centers forms of white, hetero and cisgender masculinity that are positioned closest to patriarchal standards.

1.2.2 The Ideal Victim

Second, I will focus on the construction of the 'ideal victim'[7]. Although not a direct theory from FLT, but rather victimology, they similarly use the 'ideal victim' phenomenon as a tool of analysis to critique law. Ideal victim refers to the stereotypical notion that a person-who-experienced-sexual-assault has to behave most poignant to what the law and judicial workers see fit for victimhood to be eligible for credibility and legitimacy (Randall, 2010). At the centre of 'ideal' victimhood lies the normative image of who is considered believable and deserving of legal attention, protection and, most of all, recognition. An ideal victim is generally imagined as vulnerable, respectable, risk-averse and sexually 'modest', and

[7] For the sake of this concept you will find me using the term 'victim' in this sub-section and throughout the thesis when discussing this framework. This language is only used in the context of this framework, and is not deployed to refer to people who have experienced SA.

experiences that diverge from these rigid categories are dismissed and seen as illegible within legal contexts. Although this discussion predominantly revolves around the legal system, it is important to note that the stereotypical conception of an ideal victim also resides outside of the courtroom. As we have established, the legal system and society feed off of one another.

In addition, CRT scholars have long pointed out that this disproportionately affects marginalized individuals whose identity already falls outside of the dominant social norm (Crenshaw, 1991; Long, 2021). For instance, a legal case from a white person would receive more credibility than a BIPOC[8] or queer person, exponentially so in instances where a BIPOC person is the perpetrator (Kerstetter, 1990). Therefore, race, sexuality and socio-economic status de facto influence credibility within SA legal cases.

Outside of the social hierarchical structure there is a myriad of ways people-who-experienced-sexual-assault are discredited and found illegitimate. Melanie Randall (2010) writes in detail about how these tropes proliferate, and although I will not write in the same detail, I would like to provide an overview of her prominent points. Most generally, a person-who-experienced-sexual-assault is expected to show 'moral' behaviour, which constitutes a form of caution and risk-aversive behaviour that a person-who-experienced-sexual-assault should have shown prior to the assault (Ussery, 2022). For example, not walking alone at night, wearing modest clothing, ideally being a virgin (Ortner, 1978), or not having been assaulted in the past for that matter, and sobriety. Research shows that substance consumption in particular significantly affects credibility, including cases that involve drink spiking are not exempt from the assumptions that they did not sufficiently protect themselves (Schuller, 2000). This derives from the conception that there is a form of responsibility that lies with the person-who-experienced-sexual-assault, which is very much the neo-liberal feminist strategy to privatize responsibility for societal problems in general (Stringer, 2014).

One of the clearest examples of 'ideal' victimhood can be found in the legal expectation surrounding resistance, which demands people-who-experienced-sexual-assault to demonstrate vigorous physical resistance in order for their experiences to be legally recognised (Randall, 2010). This also disregards experiences where physical resistance may increase danger or become psychologically impossible. The absence of physical resistance can be interpreted as consent, despite this being an incredibly false depiction of the diverse reactions that occur when being assaulted. One frequently observed reaction is that of tonic immobility, also known as the 'freeze response', which causes loss of intentional motor control and speech in a traumatic event such as SA (Rubin & Bell, 2026). This is an involuntary psychological response, meaning the legal expectation of resistance or vocal refusal is incompatible with how the body psychologically responds to trauma.

[8] Stands for Black, Indigenous and people of color. An alternative acronym, more common in the UK, is BAME, which stands for Black, Asian, and Minority Ethnic

1.2.3 Consent and Harm

Lastly, I want to discuss consent and harm. During the first boom in feminist reforms, consent had not really entered into the conversation as we know of it today. Now, consent is an incredibly large aspect of discussing SA and the legal system, which is mostly due to activism and people-who-experienced-sexual-assault who have spoken up against the system rather than scholars per se (Gilmore, 2020). The first conception of consent in law was per the reformed MPC definition of rape, which included the need for force and violence and therefore legal cases were largely based on those evidentiary pieces (Byrnes, et al., 2023). In addition, it had to be proven that the individual-who-experienced-sexual-assault did not consent to the act. Currently, the U.S. does not have a single, unified federal law on consent, however, following is a general legal overview of principles within the definition of consent found across many states[9]: 1) a person voluntarily and willfully agrees, 2) has sufficient mental capacity to consent, 3) absence of coercion and fraud, and 4) is over the minimum age of consent (Legal Information Institute, n.d.).

However, consent remains a delicate topic. The contemporary definition of consent states generally adhere to, although inclusive of coercion and fraud, does not acknowledge the power relations within the act of having sex (outside of physical force) (Byrnes, et al., 2023; Morley, 2016). Most conceptualize power relations as, for example, a working relationship, but it also involves sexuality, age, race, experience, gender and a plethora of other dynamics. People can still have difficulties with saying 'no' when violence or threat is not involved. A study by Mary K. Righi et al. (2019) confirmed that, in this case, young women would be uncomfortable with saying no even when understanding the concept of consent. Consent in law requires some agency and autonomy that not all individuals-who-experienced-sexual-assault have nor does it really contest the ideal victim perspective.

As consent has taken a center spot in legal inquiry, it also raises questions about where to place harm within the legal understanding of SA. Feminist scholars have argued that the legal system prioritizes the criminal liability and evidence of non-consent, violence or force over the general harm caused to the individual and society by the SA (Gruber, 2007; MacKinnon, 1989;), even though harm is an incredibly significant part of sexual violence and impacts the individual-who-experienced-sexual-assault in and outside the legal system. Approximately 70% of individuals-who-experienced-sexual-assault experience moderate to severe distress, which is a larger percentage than any other violent crime such as for example armed robbery (Langton & Truman, 2014). In general, SA is associated with higher rates of posttraumatic

[9] More recent development in the theory of consent is the framework of affirmative consent, which was developed on college campuses in the 1990s. Affirmative consent demands verbal and positive consent for each part of the sexual activity and does not allow for an absence of agreement (Byrnes, et al., 2023). States, such as California, have incorporated these requirements in their legislation (Crowe & Ribeiro, 2024). Showing this, I aim to convey that organisational bodies also play a role in the developments surrounding SA law and can sometimes be more responsive to societal problems than the legal system.

stress disorder (PTSD)[10] (Dworkin, et al., 2023). Research shows that 94% of individuals who were assigned female at birth and who-experienced-sexual-assault experience symptoms of PTSD during the two weeks following the assault and 30% experience symptoms nine months after (RAINN-a, n.d.). Shame is also very common among people-who-experienced-sexual-assault as it often occurs that they blame themselves for the abuse they endured (Feiring & Taska, 2005; RAINN-b, n.d.). Shame can come from feeling betrayed, staying silent, having experienced tonic immobility during the assault or feeling like no one will believe you or understand you (Feiring & Taska, 2005; RAINN-b, n.d.; Ruben & Bell, 2026). These symptoms have a cyclical reaction to victim-blaming by either law enforcement or society, which can lead to a secondary victimization and may be experienced as a second assault causing similar harm (Ahrens, 2006).

[10] Jillian M. Purdue & Fredrick E. Vars (2023) discuss what the symptoms related to PTSD are and include:

> "Symptoms of intrusive memories include flashbacks, nightmares about the traumatic event, and severe emotional distress due to something that reminds a victim of the trauma. Symptoms of avoidance include trying to avoid thinking or discussing the event and trying to avoid places or people that remind the survivor of the traumatic event. Symptoms of negative changes in thinking and mood include depression, memory problems (including not remembering aspects of the traumatic event-called dissociative amnesia), lack of interest, emotional numbness, and hopelessness. Symptoms of changes in physical and emotional reactions include being easily frightened, always being on guard, self-destructive behavior (e.g., over-consumption of drugs or alcohol), and experiencing issues with sleeping or concentrating, irritability, and feeling overwhelming shame" (p. 137-138).

Chapter II: Legal Temporalities

In this chapter I will introduce temporality and legal temporality. Providing a complete overview is not my aim, due to the many nuances and digressions within the field. Instead, what I seek to do is sketch an introductory overview of the main tenets, especially those relevant to this thesis. I will start with an understanding of time, then discuss narratives, before delving into the connection between law and time where I will discuss temporal boundaries and fact construction.

2.1 An Understanding of Time

Important to understand for this thesis is that although time is constructed by many natural things, like the diurnal cycle and the seasons, at the end of the day time is a human construct (Khan, 2009), probably the one that has been reified the most. It dedicates itself to many, if not all, aspects of our life. According to anthropologist Carol Greenhouse (1989) "...many concepts of time may be immanent in any single social system, and even in any single situation" (p.1633).

I would first like to go into an understanding of time, as it is heavily influenced by culture, relativity and societal structures (Greenhouse, 1989). I must clarify that this section delves into the mondial Western[11] understanding of time, which differs from other temporal understandings around the world[12]. Many of which have been eroded by European colonialism when European powers divided the world into twenty-four hour zones and the Greenwich Mean Time (GMT) was introduced (Chua, 2021; Hom, 2010). Prior to this, more temporal understandings existed through natural forces or were inspired by deities, since replaced by the hegemony of Enlightenment rationality (Mawani, 2014; Grabham, 2016). Modern day institutionalized timing standards still follow GMT, materialized through clocks, watches and calendars, which I will regard as the heterotemporality for this thesis (Hutchings, 2007). Heterotemporality can be defined as the "time-based needs of the diversity of human life", simply the alignment through a consistent model of the passage of time (Rylan, 2020).

Our heterotemporality and description of time, is simply 'time', even though this is merely symbolic to the process of timing. According to Andrew Hom (2018) timing is "the practical efforts by which social agents establish meaningful relationships between processes of change so that they unfold in ways conducive to orientation, direction, and control" (p. 70). This can be an abstruse concept so I will

[11] I use the term 'mondial Western' to refer to the Western region by geographical means to stray away from categorizing regions based on principles like development. To see more I refer you to the Dutch book *'Je mag ook niks meer zeggen: een nieuwe taal van een nieuwe tijd*' by Mounir Samuel (2023)

[12] Therefore, I use 'an' understanding of time. Although this might read grammatically awkward, this is to not exclude other understandings of time.

provide a simple example: imagine we are planning to meet for coffee together and we agree on a specific time. We are social agents actively engaging in timing by coordinating our actions in relation to one another. The collaborative scheduling of time is the practical effort from us to create change: us moving from wherever we are to the cafe. Throughout this process we are creating the meaningful relationship between us and time that provides us with orientation, direction and control.

Although the process of timing lays beneath every acquaintance we have with time, many go about it passively. This approach leads to a dominant understanding of time as something linear, something we do not ascribe meaning to ourselves. Therefore, time is treated as a linear, natural dimension rather than something to understand the world. This leads to the perception of time as a rational variable, where time itself is seen as a problem requiring a solution, a non-renewable resource that is naturally antagonistic to efficiency and life itself (Cohen, 2018). Although this thesis does not argue with an understanding of time per se, it is of relevance to comprehend that temporal assumptions are not neutral (Solomon, 2014). Although not solely, how we view time does decide the boundaries of a moment, who gets to participate in that moment and the narrative that is built from that moment (Freeman, 2019; Hom, 2018; McIntosh, 2015; Teles Fazendeiro, 2019).

Building further on the boundaries of a moment, I want to include the critique of theoretical works that encapsulate the nature and meaning of time. Feminist works on time suggests that cis-men, compared to individuals anywhere else on the gender spectrum, experience and understand time in very different ways[13] and that current time-use studies center male experiences within time (Bryson, 2008). The patriarchal inequalities between genders bleeds through into many spheres of life, which in relation to temporality leads to observable differences that generally favour men, as they have more control over their time and whose use of time is valued and rewarded to a greater extent. To quote Margeret O'Brien (1989): "One cannot think intelligently about time within patriarchal history, with man-centred epistemologies" (p.14). Therefore, I would like to also introduce you to an understanding of time by Lynette J. Chua (2021), which emphasises feminist temporalities:

> "Social time continuously emerges from our relationships—among us as humans;
> between us and nature, such as the biological workings of our bodies,
> microorganisms, plants, animals, and other living beings; between us and human-made technologies and nonliving things; and between us and the supernatural, gods and ghosts, heaven and hell, and other other-worldly planes and beings—as we give meaning and respond to ongoing changes to those relationships. Social time also emerges from its objective manifestations, such as

[13] This is not an essentialist claim and I do not mean to imply an innate difference between genders. I refer to the enforced patriarchically constructed differences.

clocks, calendars, laws, folklore, buildings, and art created and preserved by us, our forebears, and our offspring" (p. 272).

There is some overlap between Chua's (2021) and Hom's (2018) definition. Chua introduces social time, which goes more in depth into how we, as social agents, partake in the process of timing. It is us 'responding to ongoing changes' or creating changes ourselves, that is how we situate ourselves in time, which the contemporary understanding of time is quite unaware of.

2.1.1 Narratives

What we do not recognise or are aware of is the chronotope. Quite literary, the chronotope is 'time-space' and a tool of literary critique to infuse time and space into storytelling (Gordon-Bouvier, 2019). When talking about understanding time, we need to understand that we are always situated within the chronotope, which is also what transfers our norms and ideologies, and provides meaning. This is also where our narratives are constructed, as said by Mikhail Bakhtin (1981) who coined the term chronotype: "...[chronotypes are] organising centres for the fundamental narrative events" (p. 250). Narratives, according to Margaret Somers (1994), "are constellations of relationships (connected parts) embedded in time and space, constituted by causal emplotment" (p. 616). Time is an important part of shaping narratives, because one can only narrate a time-thing, also an event (Teles Fazendeiro, 2019). Important to bear in mind is the fact that narrating is open to all, because "narratives are constructed, not discovered" (McIntosh, 2015, p. 21). Most people can plot a sequence of events, but that will differ per person, one reason being that their temporal prejudices differ. What is meant by this, is that a narrative is prejudiced towards a certain view of continuity and change that shapes the way in which events are understood (Teles Fazendeiro, 2019). This means that there can be an understanding of events, a narrative, that reproduces one's own prejudices and expected continuity of following events, meaning narratives are very much a subjective construct within time.

2.2 Legal Temporalities

"Temporality is an integral part of law" according to Liaquat Khan (2009, p.56) and many other scholars. Time has taken a back seat to relevant political processes, even though the temporal side of sovereignty was seen as an inevitability by natural law philosophy, which largely shaped contemporary law (Cohen, 2018). Hobbes argued that a controllable future is one of the pivotal preconditions for secular power to be trusted by the people. Law is what provides this sense of control, because it permits people to live in the present (Brunner, 2007). By carving out a boundary into eternal time, humankind feels like they can circumvent living in a state of uncertainty. I would argue that this is possible because we

understand time as linear. If we would understand time through a meaning-making approach one cannot expect certainty. Law without the stability of heterotemporality would lose that purpose. Therefore, time ensures the systemic stability of law, a stability for the future, because it's the primary source providing secure rules that do not change over time. Even Marxist thought has given a certain priority to time in the analysis of capitalism (Castree, 2009). Historians have identified a shift in mondial Western societies towards a time centered around the capitalist workplace, where time is now "owned, measured, saved, spent or washed" (Bryson, 2016, p. 108).

The necessity of the current heterotemporality as natural and linear does reveal something about the power that time holds within law. Benda-Beckmann (2014) states: "temporalities are not just aesthetic qualities of law, they also have important implications for social practices" (p.1). What time in law does is institutionalize the relationship between social agents and time. Returning to the earlier example of meeting for coffee, the process of timing emerged through a coordination between us as social agents. Within law, this relationship changes. Consider statutes of limitations, filing periods or visa expiration dates. Here, the orientation, direction and control that social agents negotiated themselves are now regulated by social institutions (Cohen, 2018; Greenhouse, 1989). The control within this lies in the fact that many fundamental rights and statuses are contingent on meeting these 'temporal boundaries' and ignoring these is the privilege of being on the fortunate side of such boundaries (Cohen, 2018). Therefore, time can be a factor that decides greater or lesser degrees of inclusion in law, decides who is recognised by the law, when they are recognised and under what conditions they may act (Cohen; 2018; Greenhouse, 1996).

To be able to grasp time as a variable in law, we need to look back at the critique on law provided in the previous chapter. Without that critique, we see law as a natural system of rules that are objectively applicable to facts, free from any political influence (Chua, 2021). Due to CLS and FLT scholars who have challenged the determinacy and neutrality of law by arguing that judicial decisions reside in politics, interpretation and social hierarchies, it is possible to question the assumed neutrality of time within law (Chowdhury, 2020). If legal rules, and therefore the legal process, are perceived as objective, there is no room to recognise the subjective temporal structures within them.

2.2.1 Temporal Boundaries

Firstly, I will outline what a temporal boundary is in the context of this thesis, as this term can be interpreted broadly. To put it simply, a temporal boundary holds a boundary-keeping function using time as its means to an end. Elizabeth Cohen (2018), who developed the concept, contends that time and territory are both inherent to the establishment of political boundaries; that a temporal boundary can divide people and political power as efficiently as a stateline or a warder. Temporal boundaries are

relatively invisible as a result of mutual recognition by both people and institutions, which simultaneously strengthens the argument that time has political importance. Time itself is not the cause nor creator of temporal boundaries. Time, in the definition of Cohen (2018), is "a tool in the arsenal of a state" (p.32) which she then calls out as "a political variable that can be manipulated to achieve greater or lesser degrees of inclusion in the population" (p.30).

2.2.1 Fact Construction

Secondly, to contextualise how time can be a manipulative variable in law, I will discuss fact construction within legal processes. Here, I refer to fact construction in the process of adjudication, including building a legal case, gathering evidence and the rest of the litigation. Frank Jerome (Chowdhury, 2020), as a law-worker himself, made the following formula, deduced from an analysis of court operations. Here R stands for the legal rule, F for the facts and D for the eventual decision:

$$R \times F = D$$

We know R, if with certainty we know F, then D is determinant. However, when there is a doubt in either, D is inconclusive and cannot be determinant. It is important to recognise that the process of adjudication is not as straightforward as judges finding facts and applying a one-size-fits all rule set. To reference Frank Jerome (in Chowdhury, 2020):

> "Since actual facts of a case do not walk into court, but happened outside the court-room, and always in the past, the task of the trial court is to reconstruct the past from what are at best second-hand reports of the facts. Thus the trial court acts as a historian, its job being much the same as a historian's" (p. 10).

What we have learned from the purpose of law so far is its future-oriented legality, but adjudication is solely retroactive. F is a project of retrieval that involves reconstructing multiple pasts, through different narratives, temporal memories, institutional pressures that take place when providing testament and biases (Crowe & Lee, 2015; Stengel, 1950; Teles Fazendeiro, 2019). Police, judges and case workers construct the facts of a case themselves through asking questions of what happened within a framework that is temporal and political. To a certain extent that means some temporalities have also been partially defined through law itself (Grabham, 2016). Therefore, Jerome (in Stengel, 1950) and Chowdhury (2020) argue that F is always defective through adjudicative temporalities, which refer to different types of juridically produced pasts and futures, built from the process just displayed

(Chowdhury, 2020). And the fact that these adjudicative temporalities are undertheorized allows for the mystification whereunder judges "...do politics through other means, [which is] especially important given the legal interpretation takes place in a field of pain and death" (Chowdhury, 2020, p.13).

Chapter III: Time, Sexual Assault and Entry Into the

In this chapter, I draw on the theoretical frameworks of (feminist) critical law and legal temporality to develop an analysis of how time is used to create barriers for people-who-experienced-sexual-assault to enter the legal system. This chapter does not seek to provide an extensive account of the relationship between law, time and sexual assault, rather, it follows an initial exploration. To demonstrate the arguments, I bring forth three points of analysis, namely, time of report, ideal victim in nexus with time and evidence.

3.1 Time of report

One of the clearest barriers to enter the legal system within SA law and the nexus of time is the statute of limitations (SoL), which is decisive if entry to the legal system is even an option. A SoL is a bar to litigation that sets a time limit for when a lawsuit can be filed or a criminal charge can be prosecuted (Purdue & Vars, 2023). U.S. states differ in their applications of law, therefore, some states, such as Idaho, had a SoL of rape lower than one year as of 2017, while other states have removed their statutes of limitations for SA entirely as of 2004. SoLs are being challenged more frequently by FLT scholars, especially following the #MeToo movement which gained significant traction in 2017 (Olabisi Adurasola, 2019; Gilmore, 2020). This led to more states removing their statutes of limitations or extending them under certain circumstances, such as undeveloped DNA evidence (Purdue & Vars, 2023).

SoL is, de facto, a temporal boundary, which is one of the more evident examples of legal temporalities within the case of sexual assault. As per the rationale of the state, it is produced as a safeguard to protect perpetrators from having to defend themselves when "the basic facts may have become obscured by the passage of time" (Purdue & Vars, 2023, p.129), meaning SoLs produce legal recognition as conditional under a state imposed chronology. What we observe is the relationship of the social agent, the individuals-who-experienced-sexual-assault, becomes contingent on the control and direction of institutionalized 'timing' (Cohen, 2018; Greenhouse, 1989; Hom, 2018). The process of timing, that of meaning-making, is appropriated by the state, which applies time as a variable of inclusion, in this case for the perpetrator, and exclusion, in this case to access to law enforcement. From a CLS and FLT perspective, this cannot be rendered politically neutral (Hunt, 1991; MacKinnon, 1989; Oetken, 1991). Although SoL is presented as an objective, 'protective' measure, it reflects priorities that are embedded into law, which becomes more apparent when comparing SoLs across different offenses. Some offenses, such as murder or federal student loans, may receive legal recognition with any passed amount of time, while SA remains under state direction and control (Kodan, 2017; Olabisi Adurasola, 2019). By

no means do I seek to make a normative claim regarding the relative severity between differing offenses, nevertheless, I argue the selective application of temporal boundaries is telling on the prioritization of legal recognition for SA.

Furthermore, the SoL for SA unveils the lack of conception of SA within law, especially that of harm. Symptoms of avoidance may lead to not disclosing the event alongside deep shame and self blame most individuals-who-experienced-sexual-assault experience, in addition to possibly having had a violent or abusive encounter with the legal system prior (Feiring & Taska, 2005; Kaba, 2021; Purdue & Vars, 2023). The following quotes by individuals-who-experienced-sexual-assault show the impact of harm on disclosure in the context of which statutes of limitations operate: "being a drug, intravenous drug user, then you're like, that's your fault. That's – what you coming here [law enforcement] for? I mean, you keep using and you keep going on the streets, that's going to happen", which led them to not disclose for three years (Ahrens, 2006, p. 267). Another individual shares: "it's just that it didn't do any good [disclosing], it just made me angry", which led them to not disclose for nineteen years (Ahrens, 2006, p. 267).

Courtney Curtis, from the Indiana Prosecuting Attorneys Council, states that it says: "nothing about the offender, nothing about the strength of the case – merely just what the victim was unable to do. That is unfair." (Chronicle, 2014, para. 23). Removing the ability to persecute does not remove the pain or the SA itself, nor the culpability of the perpetrator.

3.2 Ideal Victim in Nexus with Time

When individuals-who-experienced-sexual-assault do have access to the legal system, most often the first point of contact is the police (Morley, 2016). Although they have no official prosecutorial agency, they are in charge of the investigation, gathering of evidence and they advise or decide on whether or not to press charges. Research shows that between 12% and 45% of cases reported to law enforcement will result in arrest, showcasing the police's influence on the initial pursuit of perpetrators (Morbato, et al., 2017).

Kathrine Hohl and Elizabeth Stanko (2022) write: "whilst there is evidence of some improvements in how victim-survivors are treated [by law enforcement], their interface with the legal process remains gruelling" (p. 222). Christine Morley (2016) further states: "many victims/survivors find it horrendous to try and cope not only with the ramifications of the sexual assault itself, but also with the difficulties presented by engaging with the legal process" (p.30). This is partly due to the barriers they face through the ideal victim framework. Although the theoretical framework of ideal victim and its impacts on credibility and recognition from the legal system have been discussed, in practice it expresses itself in gruesome experiences for people-who-experienced-sexual-assault. I would like share two quotes by people-who-experienced-sexual-assault who experienced victim-blaming by law enforcement:

> “So what were you doing in a known drug area at 5 o’clock in the morning? I said I don’t know. I was just walking. And they [police] were like hmmm, you were just walking? And I said yeah, and they said, "What did you think was going to happen?” (In Murphy-Oikonen, et al., 2022, police insensitivity section, para. 6).

> “I feel they [police] have a pre-existing opinion of me, so they are not going to help me, they don’t care what happens to me because to them I am just a junky. … They just know ok drug user affiliated with this person, and so they don’t treat me like they would a person who was not a drug addict, I guess” (In Murphy-Oikonen, et al., 2022, police insensitivity section, para. 4).

The violence enacted by law enforcement within these quotes must be understood as structural rather than as isolated incidents. Both quotes refer to an expectation of agency and risk-averse behavior (Randall, 2010). In addition, we can observe the ideal victim framework within temporality. Turning back to the time of report, the predominant role of time in the ideal victim framework has mostly been acknowledging the adverse inferences to the individual-who-experienced-sexual-assaults’ credibility driven by the assumption that a ‘real’ victim promptly discloses their story to law enforcement (Craig, 2011). And in the case that a person-who-experienced-sexual-assault is deemed credible after delayed reporting, it remains a point of suspicion. This assumption is in tension with the non-linear temporalities of harm discussed in the previous section, which contributes to the delayed disclosure rather than immediate reporting.

From the perspective of legal temporality, the expectations that constitute the ideal victim reveals that credibility is not assessed independently of time. Therefore, I contend that time proves itself to be an axis on which people-who-experienced-sexual-assault within the legal system can be posed as discreditable. In the case of delayed report, time is quantified and expressed as linear: the greater amount of time passed, the more suspicion is imposed on the individual-who-experienced-sexual-assault. Delay, the certain amount of time passed, equates to discredibility. Time, therefore, becomes evidence in itself. The expectation of a prompt report, I argue, lies closely with the linear perception of an ideal victim in general. The individual-who-experienced-sexual-assault is expected to behave and perceive their assault in a particular manner (Randall, 2010), according to an expected chronology. The ideal victim is expected to perform rationally in a system governed by rational temporal boundaries, however, as established in the theoretical framework, the rationality standard is not neutral. As CLS and FLT contend, the law is not neutral nor is the legal system free from patriarchal values that seep in through society (Hunt, 1986; Lacey, 2024; Jovanović & Zdravković, 2024). It is embedded with masculine epistemologies that

prioritize the privileged, which has never included individuals-who-experienced-sexual-assault (MacKinnon, 1989).

The masculine rationality standard is particularly inadequate, because SA produces an antithesis experience towards linearity and rationality. The harm caused by SA renders the person-who-experienced-sexual-assault in a state of non-linearity. Applying a linear temporal assumption on a non-linear experience, will always deem a person-who-experienced-sexual-assault discredible. There is no alignment between the two understandings of time, of meaning-making, but still the individual-who-experienced-sexual-assault is expected to fit into the chronological expectations of law enforcement. Therefore, time is not merely an axis, but used as a variable that is manipulated either way the individual-who-experienced-sexual-assault is posed.

3.3 Evidence

When entering the legal system, and often simultaneously to the victim-blaming comments, law enforcement begins collecting evidence. The type of evidence available varies between cases and may include documentary, forensic and physical evidence (California Department of Justice, 2011). However, because SA often occurs in isolated circumstances, it may predominantly rely on testimonial evidence provided by the individual-who-experienced-sexual-assault and assessed through whether there was consent involved (Gruber, 2007). While the collection of evidence seems to be quite objective, they are ultimately assessed through a reconstruction enacted law enforcement (Morley, 2016). Therefore, whether investigative steps, or even the consideration of other tangible evidence, are undertaken may depend on the initial assessment of the case. To narrate this process, I refer to the following quotes of individuals-who-experienced-sexual-assault:

> "The [police officer] kind of looked at me like, are you f****n serious? He said, well they can't do much more of an investigation. And I said well, what about the cameras that were outside the bar? He said they were inconclusive because they were too grainy, and it was at night. I said, well, did you see me in the video? He said, yeah, it looked like you were compliant, and you went willingly into the vehicle" (Murphy-Oikonen, et al., 2022, police process section, para. 6).

> *"*She described being interrogated for hours, forced to repeat her story of sexual assault every time a new officer entered the room. She said officers asked her to return to the crime scene for evidence, to call her rapist and record his confession, and to submit to a polygraph test. The investigation uncovered a video her assailant had recorded of the attack, but officers were skeptical she was unconscious" (Chronicle, 2014, para. 28).

> “The policemen told her [daughter] that because it happened a week ago, there wasn't enough evidence. I [mother] told them ‘well how do these white girls come on TV and say that when they was five years old and here they are fifty-four now and their father raped them, y’all sendin’ their father to jail?’ Well[,] she said the policeman’s told her that’s cause it [rape] was consensual. And I told them ‘how could a thirteen-year-old give consent to have sex with a thirty-eight-year-old?” (Lorenz, et al., Experiences with Reporting to the Police, para. 9).

From a legal temporalities perspective, we can observe the relevance of adjudicative temporalities in this process. What is occurring is a reconstruction of past events through the collection and evaluation of narratives (Chowdhury, 2020; Stengel, 1950). On a testimonial basis, this purely relies on the individual-who-experienced-sexual-assault to recount their experience. However, with the prevalence of dissociative amnesia and shame among individuals-who-experienced-sexual-assault, their account is often not as chronologically coherent as law enforcement upholds its standards to (Feiring & Taska, 2005; Purdue & Vars, 2023). Reflective of their standards, I would like to assess the temporal narrative of the law workers themselves, because inherent to a narrative lies a prejudice towards a view of continuity (Talez Fazendeiro, 2019). Narratives are in alignment with the linear assumption of time, relying on an assumption of causality (McIntosh,2015; Talez Fazendeiro, 2019). As established, this particular assumption of continuity bases itself on the perception of an ideal victim and an understanding of what an assault looks like for it to be non-consensual. Morley (2016) argues that “in practice it seems that police often reinterpret and translate victims/survivors’ stories into ‘legal relevancies’” (p. 11). As Chowdhury (2020) argues, the undertheorization and non-neutrality of law allows for the mystification of this process, allowing law enforcement to enforce their sense of continuity on the facts they are establishing. Again, time proves to be an axis on which people-who-experienced-sexual-assault within the legal system can be posed as discreditable, and in the case of fact construction particularly, I argue, time to become an entryway for patriarchal values of individuals within law enforcement to seep into the legal system.

Conclusion

We need to wake up and look critically at the legal system that keeps failing us. We have grown accustomed to a legal system that does not serve individuals-who-experienced-sexual-assault, within which they experience so many barriers to enter the legal system. We need to take a step back and ask ourselves why.

Through CLS, I have established that law is not a neutral body, it favours the privileged. Law is a mere construction of opposing theories, ideologies and observations which, by selection, constructs our body of 'justice'. It is through the abstract and formal texts that those profiting from the law are able to manipulate its use and maintain its exclusivity, making space for those who govern the law to impose their patriarchal values. We must acknowledge that law can always be reduced to politics. While law is objectively a rigid framework that is distanced from our economic, social and political reality, it allows the hierarchical power dynamics in society to surface and actively protects them.

FLT addresses CLS's failure to account for gender roles and states that legal systems operate to the advantage of men and disadvantage of women. The amount of sexual violence that occurs in U.S. society is absolutely appalling and the law remains built on male epistemologies that do not account for, nor protect against, the violence that anybody outside of the white, cis-gendered male identity experiences. CRT and intersectional feminism remind us that outside of this identity, a further spectrum of marginalisation takes place among those who experience sexual violence. We need to start recognising their intersection to understand how layered oppression within sexual violence is. As much as CLS shows us that law favours the privileged, legal temporalities show us that time can be used for a similar purpose.

Because the heterotemporality that is imposed on us is linear and neutral, we have lost our agency within legal systems, which allows time to become a manipulative tool that decides who is included or excluded. Its role within law is similar, it allows law to have the certainty of our future. However, this certainty does not apply to people who experience SA, because time in law will never privilege them.

In the analysis I zoomed in on what the roles of time and law are when entering the system as an individual-who-experienced-sexual-assault. SoLs are a de facto countdown boundary that show how the institutionalised relationship with time impacts individuals-who-experienced-sexual-assault, which I argued is especially the case in comparison to other crimes. SoLs do not remove the assault nor the harm caused by the perpetrator. Furthermore, I argue that time proves itself an axis on which credibility for the individual-who-experienced-sexual-assault is posed, no matter how they act.

We need to let go of the male epistemologies that have unattainable expectations of people who experience sexual violence, who think they have to dress modestly, be sober or a virgin. SA is always

violent and it is always forced. It is normal to freeze when you are being assaulted. When will we stop blaming the victim as if they had agency in their experience?

If law is so fundamentally skewed towards perpetrators, allows for law enforcement to impose their idealised victim with no regards for the harm that SA causes, and uses time, which is so inherent to us, as a manipulative variable against individuals-who-experienced-sexual-assault, we need to ask ourselves why we are still trying to change a system that is inherently against us? A system built by oppressors will inherently be oppressive; every nook and cranny in the legal system calls us to revolt. We need to start building community, we need to start building places where individuals-who-experienced-sexual-assault are safe and know that their experiences were in no way their fault. I would like to remind you of the quote by Mariame Kaba (2021): it is not what I can do, it is what we can do. *We* need to keep revisioning justice in another place than, and through other approaches provided by, the legal system.

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Appendix I: Positionality Statement

I have developed this positionality statement by reflecting on my positionality throughout writing this thesis and would like to disclose my thoughts.

I am a white, cis-gender woman and grew up in a relatively safe middle-class town in the Netherlands. In many ways that makes me a very privileged person, which I acknowledge. However, as I identify as a women, I grew up and am still surrounded with the risk of gender-based violence, sexual assault and rape. The older I got, the more I now see the systemic nature of sexual assault, and the embeddedness of patriarchal structures, within (Dutch) society, but also within the law and the response of the legal system. My motivation, therefore, lies in wanting to change how the legal system deals with sexual assault legal cases at the basis of law.

Academically, I touch upon theories from intersectional feminism and Critical Race Theory. In doing so, I remain aware that many of the experiences of structural violence within these frameworks are not ones that I can relate to or have experiences with myself. I therefore aim to approach them without a claim of lived experience, but as imperative critiques on the legal system that broadens an understanding of the law and violence.