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Daniel Del Gobbo*

Lighting a Spark, Playing with Fire:
Feminism, Emotions, and the Legal
Imagination of Campus Sexual Violence

Feminist law and policymakers have been inspired by collectively generated experiences of emotion that help to shape what counts as justice and injustice in campus sexual violence cases. Focusing on events surrounding the Dalhousie University Faculty of Dentistry in 2014–2015, this article explains how emotional incitements in the case contributed to an infrastructure that supported formal and specifically carceral responses to campus sexual violence. Correspondingly, this article explains why alternative modes of legal and political formation that challenged the premises of the formal law, including restorative justice, were misread by some commentators as a form of “weak justice” and therefore outside the bounds of feminist action. The central claim of the article is not that particular emotional reactions are right or wrong, but that feminist law and policymakers should reflect on and assess their political force. Considering the ways that emotions are mobilized reveals the benefits and drawbacks of engaging with law in ways that feel emotionally gratifying and therefore politically necessary, but which can lead to harmful consequences that contradict feminist goals.

Les législateurs et les décideurs politiques féministes ont été collectivement inspirés par les expériences émotives qui contribuent à façonner ce qui compte comme justice et injustice dans les cas de violence sexuelle sur les campus universitaires. En se concentrant sur les événements entourant la faculté de médecine dentaire de l'Université Dalhousie en 2014–2015, nous expliquons dans cet article comment les incitations émotionnelles dans l'affaire ont contribué à une infrastructure qui a soutenu des réponses formelles et spécifiquement carcérales à la violence sexuelle sur le campus. Corrélativement, nous expliquons pourquoi les modes alternatifs de formation juridique et politique qui remettent en cause les prémisses du droit formel, y compris la justice réparatrice, ont été interprétés à tort par certains commentateurs comme une forme de « justice faible » et donc en dehors des limites de l'action féministe. L'affirmation au cœur de notre article n'est pas que des réactions émotionnelles particulières sont bonnes ou mauvaises, mais que les législateurs et les décideurs politiques féministes devraient réfléchir à leur force politique et l'évaluer. L'examen des façons dont les émotions sont mobilisées révèle les avantages et les inconvénients de s'engager dans le droit d'une manière qui semble émotionnellement gratifiante et donc politiquement nécessaire, mais qui peut conduire à des conséquences néfastes qui contredisent les objectifs féministes.

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Introduction

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Introduction

Campus sexual violence reform is conducted in an emotional minefield. In December 2014, a fourth-year male student in the Faculty of Dentistry at Dalhousie University in Halifax, Nova Scotia posted a question about his female classmates in an all-male, private Facebook group called the “Class of DDS [Dalhousie Dentistry Students] 2015 Gentlemen.”¹ The question took the form of an online poll asking “Who would you hate fuck?” and provided names to vote on.² Several members of the Facebook group voted in the poll before one member showed the post to a female classmate, who subsequently reported the group’s existence to the university with a view to stopping it.³ Shortly thereafter, screenshots of the “hate fuck” poll and other offensive posts were leaked to *CBC News* where the story exploded in the Canadian media and the full scope of the male students’ conduct came to light.⁴

Several posts in the Facebook group had an overtly sexist, misogynistic, or homophobic character. One member suggested that the word “penis” be redefined as “the tool used to wean and convert lesbians and virgins into productive members of society.”⁵ Another member commented in

1. See Constance Backhouse, Donald McRae & Nitya Iyer, “Report of the Task Force on Misogyny, Sexism, and Homophobia in Dalhousie University Faculty of Dentistry” (26 June 2015) at 7, online (pdf): *Dalhousie University* <cdn.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/DalhousieDentistry-TaskForceReport-June2015.pdf> [perma.cc/F8L9-EZF7] [Backhouse Report].

2. *Ibid* at 7.

3. *Ibid* at 7, 9.

4. *Ibid* at 11.

5. *Ibid* at 7.

response: “and by productive I’m assuming you mean it inspires them to become chefs, housekeepers, babysitters, etc.”⁶ Elsewhere, members of the group referred to one of their female professors as a “crazy bitch,” one of their male professors as looking “like a pornstar,” and another male professor as “under more heat for sexual harassment than anyone since [a previous professor] and gives a final with 69 questions. What a boss.”⁷ Another post included photographs of larger women wearing bathing suits, implying that the women should be ridiculed because of their size.⁸ Most troublingly, several of the men talked about committing sexual assault. One member posted a photograph of a woman wearing a bikini and wrote the caption “Bang until stress is relieved or unconscious (girl).”⁹ Other members commented on the photo, asking “Can you tell me what this chloroform smells like?” and “Does this mask smell like nitrous oxide to you?”¹⁰ Similarly, the posts included another photograph of a woman, reported to be a female student in the class, with the superimposed words, “Does this rag smell like chloroform to you?”¹¹

Most of the female students chose to proceed with their complaints through restorative justice instead of a more formal investigation process on campus.¹² The restorative justice facilitators conducted over 40 interviews and held individual and group sessions on such topics as misogyny and homophobia, bystander intervention, human rights, and the intersections of race, culture, gender, and other factors.¹³ Critical reflective practice was made a priority throughout, as the participants considered efforts to apply these learnings in social, educational, and clinical settings.¹⁴ Each of the male students spent approximately 150 hours in restorative justice.¹⁵ The process culminated in a Day of Learning event in April 2015, which provided an opportunity for the participants to share their collective learning and recommendations for the future.¹⁶ Afterward, the restorative

6. *Ibid.*

7. *Ibid* at 8.

8. *Ibid* at 7.

9. *Ibid.*

10. *Ibid.*

11. See “Dalhousie University probes misogynistic student ‘Gentlemen’s Club’” *CBC News* (15 December 2014), online: <www.cbc.ca/news/canada/nova-scotia/dalhousie-university-probes-misogynistic-student-gentlemen-s-club-1.2873918> [perma.cc/H2ZR-6K3G].

12. See Jennifer J Llewellyn, Jacob MacIsaac & Melissa MacKay, “Report from the Restorative Justice Process at the Dalhousie University Faculty of Dentistry” (May 2015) at 20-21, online (pdf): *Dalhousie University* <www.dal.ca/content/dam/dalhousie/pdf/cultureofrespect/RJ2015-Report.pdf> [perma.cc/ZG3U-ZJS5] [Llewellyn Report].

13. *Ibid* at 36-37.

14. *Ibid.*

15. *Ibid* at 36.

16. *Ibid* at 29-30.

justice facilitators prepared individual assessments for the male students who participated in the process.¹⁷ All of the men were found to have successfully remediated and met the required standard of professionalism in order to graduate.¹⁸

The restorative justice process was conducted under threat of being terminated.¹⁹ Feminist student activists rallied at the university to heighten public awareness and condemn the male students' conduct, holding signs that read such things as "Expel Misogyny," "We Want Names," "Expel Rape Culture," "Inspiring Minds, Enabling Rapists," and "No One Who Thinks Rape is Funny Should Ever Be Allowed Access to Sedatives."²⁰ An online petition that the university should punish the male students garnered over 50,000 signatures.²¹ Op-eds and think pieces were published nationwide that weighed the relative merits and drawbacks of the university's response.²² The Twitter hashtags #DalhousieHatesWomen and #DalHatesWomen garnered over 60,000 tweets.²³ The international hacktivist group Anonymous threatened to expose the male students' names as well as the names of university employees who failed to act on the complaints.²⁴ The Halifax Regional Police became involved in response to requests for a criminal investigation, pleading for the female students to come forward and make formal reports.²⁵

The Facebook group and restorative justice process in the Dalhousie Dentistry case are examples of what Sarah Banet-Weiser calls "feminist flashpoints," or emotional incendiary devices that both open up and constrain our thinking about law, gender, and equality.²⁶ Riffing on Banet-Weiser's concept, my central claim in this article is that collectively generated experiences of emotion help to shape what counts as justice and

17. *Ibid* at 30.

18. *Ibid*.

19. *Ibid* at 27.

20. Backhouse Report, *supra* note 1 at 11.

21. See Meghan B, "Expel Students Who Were Members and/or Participated in the Facebook Group Called 'Class of DDS 2015 Gentlemen'" *Change.org*, online: <www.change.org/p/dalhousie-university-president-dr-richard-florizone-expel-the-students-who-were-members-and-or-participated-in-the-facebook-group-called-class-of-dds-2015-gentlemen> [perma.cc/D56L-ZS3S].

22. Media coverage of the case was extensive, totalling approximately 3,500 local and national news stories. See Jennifer J Llewellyn, "Responding Restoratively to Student Misconduct and Professional Regulation: The Case of Dalhousie Dentistry" in Gale Burford, John Braithwaite & Valerie Braithwaite, eds, *Restorative and Responsive Human Services* (New York: Routledge, 2019) at 133.

23. See Backhouse Report, *supra* note 1 at 11.

24. *Ibid* at 12.

25. *Ibid*.

26. Sarah Banet-Weiser, "Popular Feminism: Feminist Flashpoints" *LA Review of Books* (5 October 2018), online: <lareviewofbooks.org/article/popular-feminism-feminist-flashpoints/#/> [perma.cc/X9N7-JUEX].

injustice in campus sexual violence cases. Emotions provide one of the rhetorical and epistemological bases on which the crisis of access to justice for complainants has been observed. However, the role of emotions in this context is fraught. Considering the ways that emotions are mobilized reveals the benefits and drawbacks of engaging with the legal system in ways that feel emotionally gratifying and therefore legally and politically necessary to address campus sexual violence, but which lead to harmful consequences that contradict the mission of substantive equality. Feeling justice and doing justice are not necessarily the same thing.

I elaborate my argument as follows. In Part I, I canvas the relationship between law, emotions, and justice in light of the privileging of reason over emotion in liberal legal theory. Contemporary psychological and philosophical accounts teach us that emotions are essential to the proper functioning of rationality and therefore lead to moral actions. As such, emotions are implicated in the legal interpretation and decision-making abilities in which law and policymakers routinely engage. After laying this groundwork, I explain that the privileging of reason over emotion is both raced and gendered. Emotions have been trivialized, repressed, and excluded from the law as a means of policing cultural norms about the “respectable” expression of men and women’s emotions, and racialized women’s emotions especially. Critical analysis of law and the emotions requires a recognition of the fact that our society is constituted by what Arlie Hochschild calls “feeling rules”—rules about what feeling is or is not rightly owed in a given social setting—which impress upon women and other historically marginalized groups differently.²⁷

In Part II, I reflect on my emotional reactions to the Dalhousie Dentistry case as a feminist student activist in the 2014–2015 year—what I remember thinking and feeling about the events at the time. Cognizant of the limits of my social location in the feminist movement, I can attest that emotions play an important role in raising the public’s awareness, building solidarity among complainants and allies, and inspiring feminist law and policymakers to take moral action on campus sexual violence. After establishing this, I consider the links between emotions and carcerality as one possible form of moral action in this context. Returning to the Dalhousie Dentistry case, I explain that emotions can be leveraged in support of formal, adversarial, and carceral state responses to campus sexual violence by rationalizing them as legitimate. Correspondingly, I explain that emotions can be leveraged against legal theories and

27. Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling*, 20th century ed (Berkeley, CA: University of California Press, 2003) at 18.

methodologies that challenge the carceral state, including restorative justice, by rationalizing them as a form of “weak justice” and insufficiently “tough on crime.”

In Part III, I provide my key takeaways from this analysis, one of which is important to establish at the outset because it informs the political values that I try to foreground throughout. One of the central preoccupations of law-and-emotions scholarship has been whether the legal system should privilege the experience of certain emotions over others.²⁸ Much of this work is innovative and worth exploring elsewhere, but I am not endorsing a hierarchy of emotions per se in this article. Given the exclusionary practices that I mentioned above, it is patronizing, oppressive, and silencing to tell anyone to feel less or feel differently about the immorality of campus sexual violence. Rather, I am making the more nuanced claim in this article that feminist law and policymakers should critically reflect on the force of our emotions from a substantive equality perspective and conduct ourselves accordingly. As Alison Jaggar puts it, “[c]ritical reflection on emotion is not a self-indulgent substitute for political analysis and political action. It is itself a kind of political theory and political practice, indispensable for an adequate social theory and social transformation.”²⁹

I. *Law, emotions, and affective justice*

Legal reasoning is shot through with emotional influence. Far from being a trite claim, the law-and-emotions field is premised on challenging the historical opposition of reason and emotion in liberal legal theory.³⁰ Conventional wisdom holds that emotions are counterproductive to the “rational” and “objective” process of legal interpretation and decision-making.³¹ Terry Maroney explains that “[a] core presumption underlying

28. See Kathryn Abrams, “Seeking Emotional Ends with Legal Means” (2015) 103 Cal L Rev 1657 at 1667-1668. For examples of this kind of approach, see Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Boston, MA: Beacon Press, 1998) at 52-90; Kathryn Abrams & Hila Karen, “Law in the Cultivation of Hope” (2007) 95:2 Cal L Rev 319; Maksymilian Del Mar, “Imagining by Feeling: A Case for Compassion in Legal Reasoning” (2017) 13:2 Intl JL in Context 143.

29. Alison M Jaggar, “Love and Knowledge: Emotion in Feminist Epistemology” (1989) 32:2 Inquiry 151 at 171.

30. The proposition that emotion is antithetical to legal knowledge has ancient origins. See Jaggar, *ibid* at 151. Further support for the proposition may be found in the work of Thomas Hobbes, David Hume, and Immanuel Kant. See Terry Maroney, “Judges and their Emotions” (2013) 64:1 N Ir Leg Q 11 at 12; Carlton J Patrick, “A New Synthesis for Law and Emotions: Insights from the Behavioral Sciences” (2015) 47:4 Ariz St LJ 1239 at 1266; Robert C Solomon, “Justice v. Vengeance: On Law and the Satisfaction of Emotion” in Susan A Bandes, ed, *The Passions of Law* (New York: New York University Press, 1999) at 128.

31. For a classic statement of the risks of introducing passion into the legal reasoning process, see

modern legality is that reason and emotion are different beasts entirely: they belong to separate spheres of human existence; the sphere of law admits only of reason; and vigilant policing is required to keep emotion from creeping in where it does not belong.”³² On the traditional view, emotions are conceived as individual bursts of positive or negative feeling—happiness, sadness, fear, anger, disgust, surprise, etc.—which are accompanied by an instinctive, often irrational response to a given stimulus.³³ Given their subjective and uncontrolled nature, emotions are said to run contrary to the cool-headed, intellectual, and objectivist methodology of law that is supposed to be free from such influence.

Maroney’s invocation of “separate spheres” ideology in the above quote is likely intentional because the privileging of reason over emotion is explicitly gendered. Reason and emotion have been socially scripted as the “natural” and “necessary” provinces of men and women respectively, which has implications for the way that gender is constituted by the elevation of so-called “male” traits over “female” traits in law and life.³⁴ Emotions have been trivialized, repressed, and excluded from law as a means of policing the gender binary and relegating women to the private sphere. The law functions, therefore, as a tool of affective governance, regulating and disciplining men and women through the classification of their emotional responses as “properly” befitting their gender and sexuality. This is a transhistorical phenomenon. Legal and professional discourses contribute to a climate in which gender expectations about the “socially acceptable” expression of emotions continue to proliferate today. Recognizing that emotions have rational structures is a prelude to understanding that gender performances are fluid and the hierarchical organization of male traits over female traits—reason over emotion—is a social construction that finds no basis in fact.

The figure of the rational, emotionally detached lawyer is a myth. Emotions are not merely bursts of individual feeling, but complex social

Owen M Fiss, “Reason in All Its Splendor” (1990) 56:3 Brook L Rev 789.

32. Terry A Maroney, “Law and Emotion: A Proposed Taxonomy of an Emerging Field” (2006) 30:2 L Human Behavior 119 at 120.

33. See Hila Keren, “Valuing Emotions” (2018) 53:5 Wake Forest L Rev 829 at 854; Emily Kidd White, “Till Human Voices Wake Us” (2014) 3:3 JL Religion & State 201 at 205, n 13; Del Mar, *supra* note 28 at 146.

34. See Jaggar, *supra* note 29 at 151, 164; Robin West, “Love, Rage and Legal Theory” (1989) 1:1 Yale JL & Feminism 101 at 101, 109; Sara Ahmed, *The Cultural Politics of Emotion* (New York: Routledge, 2004) at 170 [Ahmed, *Cultural Politics*]; Kathryn Abrams, “Legal Feminism and the Emotions: Three Moments in an Evolving Relationship” (2005) 28:2 Harv JL & Gender 325 at 327; Kathryn Abrams & Hila Keren, “Who’s Afraid of Law and the Emotions?” (2010) 94:6 Minn L Rev 1997 at 2029, 2031. For a critique of separate spheres ideology in the ADR context, see Daniel Del Gobbo, “The Feminist Negotiator’s Dilemma” (2018) 33:1 Ohio St J Disp Resol 1 at 35-36.

processes with internal and external elements that lend themselves to legal reasoning.³⁵ There is a pro-emotion consensus among contemporary psychologists, philosophers, and affective scientists that emotions are necessary to the proper functioning of theoretical and practical rationality and therefore lead to responsive action.³⁶ The first part of this claim is that emotions reveal reasons.³⁷ Emotions reveal something about what a person is observing, thinking, and reasoning about their environment—what is known in the psychology field as a “cognitive appraisal.”³⁸ The second part of this claim is that emotions motivate action in the service of reasons.³⁹ The progression from emotions to action is highly contingent, but research shows that emotions can focus a person’s attention on the environment, prompt them to evaluate or “appraise” its relevance or quality in their lives, and then enable them to respond in a manner that furthers their rational objectives.⁴⁰ As such, emotions are implicated in cognitive ability and the rational, evaluative assessments in which lawyers, judges, and other legal actors engage.⁴¹

Consider the emotion of anger to illustrate these concepts. The conventional view is that anger and its related state, vengeance, are socially disruptive, uncontrolled, and by its nature opposed to law and their rational constraints.⁴² The popular concepts of the “blind fury,”

35. See Keren, *supra* note 33 at 854; Kidd White, *supra* note 33 at 205, n 13; Emily Kidd White, “On Emotions and the Politics of Attention in Judicial Reasoning” in Amalia Amaya & Maksymilian Del Mar, eds, *Virtue, Emotion and Imagination in Law and Legal Reasoning* (London: Hart Publishing, 2020) at 114.

36. See Christine Tappolet, “Emotion, Motivation, and Action: The Case of Fear” in Peter Goldie, ed, *The Oxford Handbook of Philosophy of Emotion* (Oxford: Oxford University Press, 2009) at 326, citing Karen Jones, “Quick and Smart? Modularity and the Pro-Emotion Consensus” in Luc Faucher & Christine Tappolet, eds, *The Modularity of Emotions* (Calgary: University of Calgary Press, 2008). The literature on the relationship between emotion and rationality is immense. For classic works, see Ronald De Sousa, *The Rationality of Emotion* (Cambridge, MA: MIT Press, 1987); Robert C Solomon, *The Passions: Emotions and the Meaning of Life*, 2nd ed (Indianapolis: Hackett, 1993); Anthony Damasio, *Descartes’ Error: Emotion, Reason, and the Human Brain* (New York: Gossett/Putnam, 1994); Robert C Solomon, *Not Passion’s Slave: Emotions and Choice* (Oxford: Oxford University Press, 2003); John Deigh, *Emotions, Values, and the Law* (Oxford: Oxford University Press, 2008); Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions*, 8th ed (Cambridge, UK: Cambridge University Press, 2008); Michael S Brady, *Epistemic Insight: The Epistemic Role of Emotional Experience* (Oxford: Oxford University Press, 2013).

37. See Maroney, *supra* note 30 at 14.

38. *Ibid.* See also Jaggard, *supra* note 29 at 159; Keren, *supra* note 33 at 855.

39. See Maroney, *supra* note 30 at 14.

40. *Ibid.* For more on the role of emotion in focusing attention, see Keren, *supra* note 33 at 854; Brady, *supra* note 36.

41. See Abrams & Keren, *supra* note 34 at 2004. For a compelling illustration, see Dawn Moore & Rashmee Singh, “Seeing Crime, Feeling Crime: Visual Evidence, Emotions, and the Prosecution of Domestic Violence” (2018) 22:1 *Theoretical Criminology* 116 at 122.

42. Solomon, *supra* note 30 at 129. For more on the notion that anger is counterproductive to legal reasoning, see Terry A Maroney, “Angry Judges” (2012) 65:5 *Vand L Rev* 1205 at 1209, 1219-1220;

“angry mob,” and being “mad with rage” help to create this mistaken impression.⁴³ In fact, feelings of anger reveal that a cognitive appraisal of the object of the emotion has taken place—typically, a judgment that a person or group has been wronged or suffered damage in some way.⁴⁴ The emotion is frequently linked to themes of frustration, goal blockage, feeling betrayed, insults, and unfair treatment.⁴⁵ Accordingly, the emotion is based on a principled or consequentialist assessment of the material conditions in which a person or group find themselves, in the person’s mind, without rational justification. Martha Nussbaum outlines the operation: “In order to have anger, I must have [a] complex set of beliefs: that some damage has occurred to me or to something or someone close to me; that the damage is not trivial but significant; that it was done by someone; probably, that it was done willingly.”⁴⁶

In the psychology field, emotions are said to have a “moral” character when they are inspired by the interests or welfare of other people or society as a whole.⁴⁷ Correspondingly, Roger Giner-Sorolla explains that moral anger is a type of anger that emerges from perceived injustice, responding to “rules of blame and fairness, taking into account the legitimacy of claims, intentionality of action, whether or not someone is harmed, and generally working with the concept of rights.”⁴⁸ Feeling angry is a means of recognizing a moral violation, regardless of whether the emotion is productive in the strategic or prudential sense.⁴⁹ As such, moral anger has implications for legal reasoning because it is based on

Janine Young Kim, “Racial Emotions and the Feeling of Equality” (2016) 87:2 U Colo L Rev 437 at 459; Amia Srinivasan, “The Aptness of Anger” (2017) 26:2 J Political Philosophy 123 at 125-127; Keelah EG Williams & Art Hinshaw, “Outbursts: An Evolutionary Approach to Emotions in the Mediation Context” (2018) 34:2 Negotiation J 165 at 171-172.

43. See Gary Peller, “Reason and the Mob: The Politics of Representation” (1987) 2:3 Tikkun 28 at 31.

44. See Keren, *supra* note 33 at 855-856; Maroney, *supra* note 42 at 1209, 1218-1219, 1262; Williams & Hinshaw, *supra* note 42 at 173-174.

45. See Jonathan Haidt, “The Moral Emotions” in Richard J Davidson, Klaus R Scherer & H Hill Goldsmith, eds, *Handbook of Affective Sciences* (Oxford: Oxford University Press, 2003) at 856; Williams & Hinshaw, *supra* note 42 at 172.

46. Nussbaum, *supra* note 36 at 28-29.

47. See Haidt, *supra* note 45 at 853. For psychological research on the moral emotions, see Jesse Prinz, “The Emotional Basis of Moral Judgments” (2006) 9:1 Philosophical Explorations 29; June Price Tangney, Jeff Stuewig & Debra J Mashek, “Moral Emotions and Moral Behavior” (2007) 58:1 Annual Rev Psychology 345; Roger Giner-Sorolla, *Judging Passions: Moral Emotions in Persons and Groups* (London: Psychology Press, 2012); Melanie Killen & Judith G Smetana, eds, *Handbook of Moral Development*, 2nd ed (London: Psychology Press, 2014).

48. Giner-Sorolla, *ibid* at 93. See also Maroney, *supra* note 42 at 1262; Sarah Buhler, “Troubling Feelings: Moral Anger and Clinical Legal Education” (2014) 37:1 Dalhousie LJ 397 at 399-400.

49. See Srinivasan, *supra* note 42 at 128-129. For complementary takes on this recognition function, see Jaggar, *supra* note 29 at 167; Martha C Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford: Oxford University Press, 2016) at 211.

principles of fairness, equality, and other justice norms that are central to legal interpretation and decision-making. Robert Solomon concludes: “[T]o pack all of the reasonable solutions and their mode of deliberation into one set of categories (‘reason, justice’) and only the most unreasonable, vindictive, and ill-considered emotional responses into another (‘emotion, vengeance’) is to render reason insensitive and emotions devoid of sense.”⁵⁰

Anger is an overtly political emotion as well as a legal one, capable of inspiring social progress and change in the service of justice norms. Audre Lorde suggests that anger must first be expressed—and ideally, permitted and encouraged by law to be expressed—in order for it to be most effective.⁵¹ As Lorde puts it, “anger has eaten clefts into my living only when it remained unspoken, useless to anyone.”⁵² Expressing anger can have therapeutic benefits to the person feeling it, particularly when the expression helps to identify and call out something like racism, sexism, or homophobia that was previously left unaddressed.⁵³ Anger is a powerful social motivator on both the individual and collective levels, capable of improving perception, focusing attention, and spurring persistence toward political goals if progress toward them is not forthcoming.⁵⁴ Indeed, it might be said that feeling angry is a precondition to membership in feminism and most other, if not all identity-based social movements that fight for change.⁵⁵

50. Solomon, *supra* note 30 at 129.

51. Audre Lorde, “The Uses of Anger” (1981) 9:3 *Women’s Studies Q* 7 at 9.

52. *Ibid.* See also Thomas R West, *Signs of Struggle: The Rhetorical Politics of Cultural Difference* (Albany, NY: State University of New York Press, 2002) at 80.

53. See Maroney, *supra* note 42 at 1262-1263: Anger is considered to be communicative and “other-directed” in nature, unlike the more self-protective emotions of contempt and disgust, because it is frequently intended to bring people together, inspire feelings of guilt, reparation, or appeasement, and ultimately lead to a change in someone else’s ways. See also Giner-Sorolla, *supra* note 47 at 98; Williams & Hinshaw, *supra* note 42 at 174. For a taxonomy of the “other-directed” emotions, see Del Mar, *supra* note 28 at 145-146.

54. Research on the role of anger in motivation is extensive. See Maroney, *supra* note 42 at 1263; Kim, *supra* note 42 at 483; Srinivasan, *supra* note 42 at 126; Buhler, *supra* note 48 at 399-400, 413; Giner-Sorolla, *supra* note 47 at 97.

55. See Kim, *supra* note 42 at 491, citing Arlie Hochschild, “The Sociology of Feeling and Emotion: Selected Possibilities” in Marcia Millman & Rosabeth Moss Kanter, eds, *Another Voice: Feminist Perspectives on Social Life and Social Science* (New York: Doubleday, 1975) at 298; West, *supra* note 34 at 102-103. For more on the role of anger in social movements, see Francesca Polletta, “The Laws of Passion” (2001) 35:2 *Law & Soc’y Rev* 467 at 483-484; Mary Holmes, “Feeling Beyond Rules: Politicizing the Sociology of Emotion and Anger in Feminist Politics” (2004) 7:2 *European J Soc Theory* 209; Simon Thompson, “Anger and the Struggle for Justice” in Simon Clarke, Paul Hoggett & Simon Thompson, eds, *Emotion, Politics and Society* (New York: Palgrave Macmillan, 2006) 123; James M Jasper, “Constructing Indignation: Anger Dynamics in Protest Movements” (2014) 6:3 *Emotion Rev* 208; Maxime Lepoutre, “Rage Inside the Machine: Defending the Place of Anger in Democratic Speech” (2018) 17:4 *Politics, Philosophy & Economics* 398.

One might theorize the moral emotions through the lens of what Kamari Clarke calls “affective justice.”⁵⁶ According to Clarke, “affective justice reflects the way that people come to understand, challenge, and influence legal orders through the biopolitical instrumentalization of technocratic knowledge as well as through their affective embodiments, interjections, and social actions.”⁵⁷ Emotions constitute a bridge between precognitive sensory impressions in the body and the production of legal institutions by that body: “As the individual feels and expresses, social practices shape what ultimately counts as justice.”⁵⁸ Law is often presumed to fall outside the realm of such practices, relying on legal precedents that exist freely and independently from social construction. Clarke explains that this is a fallacy because law’s meaning is implicated in the ways that “bodies, psychology, and social practices come together to produce the terms on which justice is materialized, disaggregated, ruptured, and made legible again.”⁵⁹

Correspondingly, Amia Srinivasan calls attention to cases of “affective injustice” in which legal actors are forced to moderate their emotions, including anger, so as to appear “reasonable” and “credible” in light of the feeling rules of law and society, including in circumstances when anger would be a fitting response to their experiences.⁶⁰ As I intimated above, the right to express anger has not been recognized and affirmed in men and women equally. Anger has long been considered riotous and disruptive in women and subjected to legal restriction, medical pathologization, and biopolitical control on that basis.⁶¹ Community-based norms and structures continue to perpetuate harmful ideas about the “excessive” and “unbridled” nature of women’s emotions, with anger being relegated to the realm of female sentimentality as a means of pre-empting its translation into feminist rage.⁶² Anger is less threatening to male power if women are

56. Kamari Maxine Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Durham, NC: Duke University Press, 2019).

57. *Ibid* at 5.

58. *Ibid* at 6.

59. *Ibid*.

60. Srinivasan, *supra* note 42 at 127.

61. Anger is a characteristic of the historically feminized conditions of paranoia and hysteria. See Elizabeth V Spelman, “Anger and Insubordination” in Ann Garry & Marilyn Pearsall, eds, *Women, Knowledge, and Reality: Explorations in Feminist Philosophy* (Boston, MA: Unwin Hyman, 1989) at 264; Elaine Showalter, *Hystories: Hysterical Epidemics and Modern Media* (New York: Columbia University Press, 1997) at 9-10; Jonnette Watson Hamilton, “The Use of Metaphor and Narrative to Construct Gendered Hysteria in the Courts” (2002) 1:2 *JL & Equal* 155 at 161; Ruthann Robson, “Sexual Justice, Student Scholarship and the So-Called Seven Sins” (2010) 19:1 *Law & Sexuality* 31 at 49; Shani Orgad & Rosalind Gill, “Safety Valves for Mediated Female Rage in the #MeToo Era” (2019) 19:4 *Feminist Media Studies* 596 at 597.

62. Orgad & Gill, *supra* note 61 at 597, citing Lauren Berlant, *The Female Complaint: The*

forced to turn inwards and redirect their emotions onto something else. Pleas for calm are frequently assertions of prevailing ideologies, therefore, which regulate women's anger to bring about conformity with gendered power structures.⁶³

There is a particularly strong link between racialized women and anger. Lorde entreats racialized women to “focus” their anger on white supremacy and other systems of oppression: “Every woman has a well-stocked arsenal of anger potentially useful against those oppressions, personal and institutional, which brought that anger into being. Focused with precision it can become a powerful source of energy serving progress and change.”⁶⁴ However, the prevalence of the “black rage” and “angry black woman” tropes position racialized women as always already angry in order to render their “excess” of anger unreasonable.⁶⁵ Expressing anger is a perilous endeavour for racialized women who have been systematically denied the resources, opportunities, and process required to “focus” their emotion in a “socially acceptable” manner. The risks of misinterpretation and community backlash have forced many racialized women to choose between the harms of feeling publicly on the one hand and self-preservation on the other.⁶⁶ Critical analysis of the emotions requires a recognition of the fact that our society is constituted by feeling rules that impress upon racialized women and other historically marginalized groups differently.

Considering the patterns of repression that I canvassed above, the progress of campus sexual violence reform suggests that a fundamental shift in the power, visibility, and transmission of affect is taking place. Emotions travel in legal and political struggles.⁶⁷ Emotions gain meaning

Unfinished Business of Sentimentality in American Culture (Durham, NC: Duke University Press, 2008) at 10.

63. Jaggar, *supra* note 29 at 163-165.

64. Lorde, *supra* note 51 at 8. For complementary takes on the role of anger in combatting white supremacy, see James Baldwin et al, “The Negro in American Culture” (1961) 11:3 *CrossCurrents* 205; bell hooks, *Killing Rage: Ending Racism* (New York: Henry Holt, 1995) at 19-20; Debra Thompson, “An Exoneration of Black Rage” (2017) 116:3 *South Atlantic Q* 457 at 460, 473.

65. See Sara Ahmed, *The Promise of Happiness* (Durham, NC: Duke University Press, 2010) at 68 [Ahmed, *The Promise of Happiness*]; Brittney Cooper, *Eloquent Rage: A Black Feminist Discovers Her Superpower* (New York: St. Martin's Press, 2018) at 5-6; Pamela J Smith, “Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority” (1999) 6:1 *Wm & Mary J Women & L* 53 at 115; Charmaine C Williams, “The Angry Black Woman Scholar” (2001) 13:2 *NWSA J* 87; Kim, *supra* note 42 at 473; Thompson, *supra* note 64 at 461-464.

66. See Srinivasan, *supra* note 42 at 135-136; Jilly Boyce Kay & Sarah Banet-Weiser, “Feminist Anger and Feminist Respair” (2019) 19:4 *Feminist Media Studies* 603 at 605.

67. The circulation of emotion beyond and between individual subjectivities—a phenomenon that is captured by the terms “emotional contagion” and “affective transmission”—is a major focus of both psychological research and cultural studies of affect. See Teresa Brennan, *The Transmission of Affect* (Ithaca, NY: Cornell University Press, 2004); Sara Ahmed, “Affective Economies” (2004) 22:2 *Soc Text* 117 at 120 [Ahmed, “Affective Economies”]; Ahmed, *Cultural Politics*, *supra* note 34 at 59;

and value as their affective resonances circulate among people and places. Conditions in women's lives inspire different emotional reactions depending on whether a person takes a narrow and isolated or a more broad, systemic, and collective view of them. Consistent with this idea, research on the #MeToo movement reveals that many complainants felt "moved" into coming forward out of collective frustration, outrage, and wanting to be heard and make a difference for women.⁶⁸ Recent mass-marketed books by Soraya Chemaly (*Rage Becomes Her*), Gemma Hartley (*Fed Up*), and Rebecca Traister (*Good and Mad*) have embraced the role of anger in feminist consciousness raising, capturing both the social mood and the legal and political style of the moment.⁶⁹

Most of these developments have been progressive and illuminating to feminism because they have created opportunities for women to engage on more free and equal terms. However, the role of emotions is more contradictory and ambivalent than this narrative suggests. Could there be knowledges and experiences of justice that are relevant to the transformation of gendered and intersectional power structures, but which have been overlooked in parts of feminism because they feel less emotionally gratifying and therefore less fulfilling to our sense of what justice means? Relatively little work explores the effects of public feeling, relationality, and embodiment in feminist legal scholarship. Even less work explores the limits and exclusions of such "regimentations of feelings," as Clarke puts it, and their constraints on our perceptions of what counts as feminist in campus sexual violence cases. These are challenging issues that require a much longer treatment to explore comprehensively. In the next section, I provide my initial and admittedly partial reflections on what it means to feel justice as a feminist, focusing on the Dalhousie Dentistry

Kristyn Gorton, "Theorizing Emotion and Affect: Feminist Engagements" (2007) 8:3 *Feminist Theory* 333 at 337-339; Margaret Wetherell, *Affect and Emotion: A New Social Science Understanding* (London: Sage, 2012) at 140; Sara Ahmed, *Living a Feminist Life* (Durham, NC: Duke University Press, 2017) at 22 [Ahmed, *Living a Feminist Life*]. For legal commentary on this phenomenon, see Elizabeth F. Emens, "The Sympathetic Discriminator: Mental Illness, Hedonic Costs, and the ADA" (2006) 94:2 *Geo LJ* 399 at 432-435; Kathryn Abrams, "Emotions in the Mobilization of Rights" (2011) 46:2 *Harv CR-CLL Rev* 551 at 555; Illan rua Wall, "The Ordinary Affects of Law" (2019) *L, Culture & Humanities* 1 at 15; Clare Gunby & Anna Carline, "The Emotional Particulars of Working on Rape Cases: Doing Dirty Work, Managing Emotional Dirt and Conceptualizing 'Tempered Indifference'" (2020) 60:2 *Brit J Crim* 343 at 345; Kim, *supra* note 42 at 457-458.

68. See Kaitlynn Mendes & Jessica Ringrose, "Digital Feminist Activism: #MeToo and the Everyday Experiences of Challenging Rape Culture" in Bianca Fileborn & Rachel Loney-Howes, eds, *#MeToo and the Politics of Social Change* (Cham, Switzerland: Palgrave MacMillan, 2019) at 37.

69. Soraya Chemaly, *Rage Becomes Her: The Power of Women's Anger* (New York: Atria Books, 2018); Gemma Hartley, *Fed Up: Emotional Labor, Women, and the Way Forward* (New York: HarperCollins, 2018); Rebecca Traister, *Good and Mad: The Revolutionary Power of Women's Anger* (New York: Simon & Schuster, 2018).

case to illustrate how the circulation of affect shaped the terms of my legal advocacy in politically illuminating and incendiary ways.

II. *Reflections on the Dalhousie Dentistry case*

The term “feminist flashpoints” captures the effects of reading emotionally triggering reports of campus sexual violence and other harms of gender and sexuality on the feminist legal imagination. Feminist flashpoints operate through light and fire. Banet-Weiser explains: “[Flashpoints] can *light* up an issue and show us the importance, the urgency, of feminist politics. They move feminism into the spotlight. They are also *hot*, in that gendered abuses of power can ignite and encourage a quick response and commentary.”⁷⁰ According to Banet-Weiser, the combination of light and fire can lead us to formulate opinions that obscure the issues they aim to illuminate—in media circles, they are called “hot takes.”⁷¹ Banet-Weiser writes: “The hot take depends on the same capitalist circuits of media visibility that provide the light for a flashpoint. These capitalist conditions become the grounding for much of popular feminism, where it is easier to personalize than to critique structure, easier to moralize than to historicize.”⁷²

I focus the remainder of this section on the combined effects of these two elements, light and fire, on the progress of campus sexual violence reform. In the first subsection below, I reflect on my emotional reactions to the Facebook group in the Dalhousie Dentistry case. My personal experience attests to the ways that feminist student activism has relied on emotions to raise the public’s awareness about the nature and severity of campus sexual violence. In the second subsection below, I reflect on my emotional reactions to the restorative justice process in the case. Crucially, I suggest there is a contingent relationship between emotion and the “common sense” ideology of crime logic that has controlled many feminist perceptions, including my own, of what counts as justice in campus sexual violence cases.

1. *Lighting a spark: the role of emotions in exposing rape culture*

I remember what I felt when I heard about the Facebook group for the first time. A feminist and LGBTQ2 rights advocate, I was an LL.M. student at Harvard Law School in the 2014–2015 year, a place steeped in public intellectual debates surrounding campus sexual violence and the enforcement of Title IX, a US law requiring gender equity in federally

70. Banet-Weiser, *supra* note 26.

71. *Ibid.*

72. *Ibid* [emphasis removed].

funded education programs.⁷³ It was a combination of emotions— insecurity, frustration, hopelessness, and rage—feelings that I shared with feminist colleagues who expressed the same feelings to me. Campus was already buzzing about the presence of Patrick Witt, a first-year student at the law school, who published a controversial *Boston Globe* op-ed in November 2014 claiming that a sexual harassment policy had “nearly ruined [his] life.”⁷⁴ Reactions to the Witt affair were prelude to a much-larger controversy surrounding the release of the popular documentary, *The Hunting Ground*, in February 2015, which criticized the law school for its handling of sexual assault charges against one of its former students, Brandon Winston.⁷⁵ I recall vividly the impression of these events encircling me, creating a sense of connection and means of engagement with my colleagues who experienced the same thing, reinforcing the legitimacy of my emotions and compounding their effects.

Enlightening people about the nature and severity of campus sexual violence is a necessary first step toward addressing the problem. Emotions play an important role in this recognition function, signalling to the public that women and other historically marginalized groups recognize the harms being done to them. In the social movement literature, the recognition that a person has been wronged is said to constitute a “moral shock.”⁷⁶ The recognition can inspire a range of emotions that vary with the nature and severity of the shock, leading one to conclude that the shock resulted from a harm that needs addressing.⁷⁷ Kathryn Abrams explains: “Apprehending this [moral] shock—understanding that one has sustained an injury—may be the initial stage of this reorientation; but this perception is followed by an equally important phase of interpretation. The affected individual must perceive the effect as something that is not an inevitable state of affairs, but is rather a development to which she might productively respond.”⁷⁸ Responses to moral shocks are both individually and collectively generated because they are influenced by a person’s relationships with other people, conditioned by our participation in broader social movements and the circulation of affect within them: “Affective connections with others...

73. 20 USC §§ 1681-1688 (1988).

74. Patrick Witt, “A Sexual Harassment Policy That Nearly Ruined My Life,” *The Boston Globe* (3 November 2014), online: <www.bostonglobe.com/opinion/2014/11/03/sexual-harassment-policy-that-nearly-ruined-life/hY3XrZrOdXjvX2SSvuciPN/story.html> [perma.cc/JBM2-A9LG].

75. *The Hunting Ground* (New York: The Weinstein Company, 2015).

76. See James M Jasper, “The Emotions of Protest: Affective and Reactive Emotions In and Around Social Movements” (1998) 13:3 *Sociological Forum* 397 at 409.

77. See Abrams, *supra* note 67 at 554.

78. *Ibid.*

may permit individuals to perceive patterns of injury that they would have been unable to identify on their own.”⁷⁹

Most immediately, the revelation of the Facebook group reminded me about the urgency of my feminist mandate. It revealed campus sexual violence to be a cause and effect of substantive inequality between men and women. There could be no denying the nature and severity of the issue any longer. It was clearly visible for everyone to see, splayed in the crudest and most explicit of terms, “*hate fuck*,” across the front pages of national newspapers. I imagined that the men felt comfortable repeating the word online, performing the fact of their will to rape their classmates whom they hated, apparently, in a sexually violent expression of masculine bravado. I thought about the effects of the Facebook group on female students at Dalhousie, some of whom reported feeling unsafe around the men after the story broke, and potential risks to the broader patient community in light of the men’s comments about sexual assault.⁸⁰ The fact of the women’s harm, considered in light of the men’s status as privileged wrongdoers holding on to privileged positions at an elite and highly competitive professional school, made me angry.

Among other things, my emotional reactions to the Facebook group conveyed the fact that Canadians are living in a “rape culture.” The feminist literature is rife with critiques of the concept.⁸¹ Coined in 1993, “rape culture” has been defined as a social and cultural continuum of ideas, expressions, practices, and structures in which campus sexual violence is

79. *Ibid* at 555. Lauren Berlant comments on the circulation of pain within social movements in terms that resonate with Abrams’s work: “Pain thus organizes your specific experience of the world, separating you from others and connecting you with others similarly shocked (but not surprised) by the strategies of violence that constantly regenerate the bottom of the hierarchies of social value you inhabit.” Lauren Berlant, “The Subject of True Feeling: Pain, Privacy, and Politics” in Wendy Brown & Janet Halley, eds, *Left Legalism / Left Critique* (Durham, NC: Duke University Press, 2002) at 123.

80. Backhouse Report, *supra* note 1 at 25.

81. For commentary on rape culture at Canadian schools, see Elizabeth Quinlan, “Introduction: Sexual Violence in the Ivory Tower” in Elizabeth Quinlan et al, eds, *Sexual Violence at Canadian Universities: Activism, Institutional Responses, and Strategies for Change* (Waterloo: Wilfred Laurier University Press, 2017) 1 at 6-7; Nicole K Jeffrey et al, “‘Strangers Are Unsafe’: Institutionalized Rape Culture and the Complexity of Addressing University Women’s Safety Concerns” in Diane Crocker, Joanne Minaker, & Amanda Nelund, eds, *Violence Interrupted: Confronting Sexual Violence on University Campuses* (Montreal: McGill-Queen’s University Press, 2020) 141 at 142-143. For critical takes on rape culture discourse, see Tuulia Law, “Towards Acknowledging the Ambiguities of Sex: Questioning Rape Culture and Consent-Based Approaches to Sexual Assault Prevention” in Crocker, Minaker & Nelund, eds, (*ibid* at 263); Aya Gruber, “Anti-Rape Culture” (2016) 64:4 U Kan L Rev 1027; Ummni Khan, “The Rhetoric of Rape Culture” (5 December 2016), online: *Centre for Free Expression* <cfe.ryerson.ca/blog/2016/12/rhetoric-rape-culture> [perma.cc/E2LD-PMY9]; Laura Kipnis, *Unwanted Advances: Sexual Paranoia Comes to Campus* (New York: HarperCollins, 2017) at 18.

routinely encouraged, condoned, and covered up as banal.⁸² The concept originates in Susan Brownmiller's radical feminist text *Against Our Will*, published in 1975, in which Brownmiller argues that the "ideology of rape is fueled by cultural values that are perpetuated at every level of our society."⁸³ Catharine MacKinnon comments on the effects of rape culture: "One explanation for the persistence and prevalence of campus sexual assault is that some college cultures support it. Studies suggest that rape cultures are fostered on college campuses when rape by acquaintances or dates—most frequently but not exclusively of women students by men students—is an encouraged and accepted, even integral, part of campus life."⁸⁴

Campus sexual violence, like rape culture, is a diffuse target. Campus sexual violence has been defined by feminist law and policymakers to include everything from crude jokes about sex to flirting aggressively, catcalling, flashing and exposing oneself, gender stereotyping, revenge porn or image-based sexual abuse, rape chants, sexual harassment, "stealth" condom removal, and sexual assault.⁸⁵ As such, campus sexual violence is a highly politicized and not always legal category, including grounds for sanction that would have little traction off campus.⁸⁶ Illustrating this, campus sexual violence is defined by a Canadian study led by Mallory Harrigan, published in 2020, to include "physical violence" as well as "heteropatriarchal speech and behaviours that encourage or justify sexual victimization," including "sexually degrading remarks and victim-blaming rhetoric."⁸⁷ Harrigan's study suggests that heteropatriarchal speech is problematic regardless of whether it is legally actionable as a form of sexual harassment under Canadian human rights laws. Feminist law and policymakers have sought to expand the relevant field of vision in order to subject a broader range of behaviours to legal and critical scrutiny—an

82. See Emilie Buchwald, Pamela Fletcher & Martha Ross, eds, *Transforming a Rape Culture* (Minneapolis: Milkweed Editions, 1993).

83. Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975) at 437.

84. Catharine A MacKinnon, "In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education" (2016) 125:7 Yale LJ 2038 at 2056.

85. See Claire Potter, "Does Title IX Work" (2017), online: *Signs: Short Takes* <signsjournal.org/unwanted-advances/#potter> [perma.cc/LX8M-C8Z9]; Heidi Matthews, "#MeToo as Sex Panic" in Fileborn & Loney-Howes, *supra* note 68, 267 at 272-273. For commentary in the #MeToo context, see Brenda Cossman, "#MeToo, Sex Wars 2.0 and the Power of Law" (2019) 3:1 Asian YB Human Rights & Humanitarian L 18; Eva Cherniavsky, "Keyword 1: #MeToo" (2019) 30:1 differences 15 at 15; Matthews (*ibid* at 275).

86. Potter, *supra* note 85.

87. Mallory Harrigan et al, "Understanding Students' Intentions to Intervene to Prevent Sexual Violence: A Canadian Study" in Crocker, Minaker & Nelund, *supra* note 81, 164 at 165.

important objective if one believes that rape culture is an “encouraged and accepted, even integral, part of campus life.”

Broad definitions of campus sexual violence rely on a rhetorical trope called the *copula*, or the postulation of equivalences—crude jokes *and* catcalling *and* flashing *and* stealthing *and* sexual assault, etc.⁸⁸ Many years ago, Sharon Marcus referred to the same trope as the “collapsed continuum” in the feminist modeling of rape by writers like MacKinnon and Liz Kelly.⁸⁹ Commenting on this phenomenon, Joseph Fischel criticizes parts of Title IX enforcement for “lumping” together and flattening more and less serious types of campus sexual violence without making clear the legal distinctions between them.⁹⁰ The strong implication from this kind of “lumping” rhetoric is that rape culture is everywhere. The breadth and severity of the problem is intended to feel overwhelming, inescapable. It is a telling coincidence that shortly before the Facebook group came down, the male students’ phrase “hate fuck” appeared in media reports about former CBC radio host and accused rapist Jian Ghomeshi’s treatment of his female colleagues at work.⁹¹ Similarly, the men’s comment about a rag smelling like chloroform was based on a comment from the hit television show *Family Guy*, in which a male character uses the rag to render a woman unconscious.⁹²

Eliciting affect is one of the primary purposes of such “lumping” rhetoric. Emotions can ratchet up or down the moral significance of something. Generally speaking, the more emotionally affecting the problem is, the more visible it becomes and the more pressing the need to

88. See Judith Butler, “Against Proper Objects” (1994) 6:2/3 *differences* 1 at 9; Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton: Princeton University Press, 2006) at 193.

89. Sharon Marcus, “Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention” in Judith Butler & Joan W Scott, eds, *Feminists Theorize the Political* (New York: Routledge, 1992) 385 at 389. For Kelly’s work on the continuum, see Liz Kelly, “The Continuum of Sexual Violence” in Jalna Hanmer & Mary Maynard, eds, *Women, Violence and Social Control* (New York: Macmillan Press, 1987) 46; Liz Kelly, *Surviving Sexual Violence* (Cambridge, UK: Polity Press, 1988). For commentary on the radical feminist and dominance feminist origins of this work, see Judith Lorber, *Gender Inequality: Feminist Theories and Politics* (Los Angeles: Roxbury, 2005) at 119; Vanessa E Munro, “From Consent to Coercion: Evaluating International and Domestic Frameworks for the Criminalization of Rape” in Clare McGlynn & Vanessa E Munro, eds, *Rethinking Rape Law: International and Comparative Perspectives* (New York: Routledge, 2010) 17 at 18.

90. See Joseph J Fischel, *Screw Consent: A Better Politics of Sexual Justice* (Oakland, CA: University of California Press, 2019) at 173; Joseph J Fischel, “Catharine MacKinnon’s Wayward Children” (2019) 30:1 *differences* 34 at 37 [Fischel, “Catharine”]. See also Andrew Peyser, “#MeToo Has Lumped Trivial in with Legitimate Sexual Assault” (17 November 2017), online: *New York Post* <nypost.com/2017/11/17/metoo-has-lumped-trivial-in-with-legitimate-sexual-assault/> [perma.cc/B8J7-967Z].

91. See Backhouse Report, *supra* note 1 at 42.

92. *Ibid.*

address it feels. Consider the title of *The Hunting Ground*, which suggests that sexual predators have declared open season on “hunting” innocent women and girls.⁹³ The figure of the rape victim is compelling to many of us because of the emotions that it evokes—fear, shock, anger—and the moral indignation that surrounds the cause of protecting them.⁹⁴ Colleges and universities have similarly adopted a “rape crisis” framing of campus sexual violence, with many schools partnering with community rape crisis centres to address a problem that is presumed to be as proximate, widespread, and devastating as the term “crisis” suggests.⁹⁵ The Chancellor of the University of Ottawa has called rape culture a terrible “disease” that “needs to be curbed and then cured.”⁹⁶ Framings of campus sexual violence as an “epidemic,” “emergency,” and “scourge” have operated in the same way, creating the impression that rape culture has infected the body politic and may be getting worse.⁹⁷ The exceptionalism of rape culture resonates less with the feeling that campus sexual violence is new and unusual, but that campus sexual violence is a moral issue and evidence of a growing social “crisis” and “disorder” that is potentially incurable.⁹⁸

Reflecting on this operation, I can personally attest to the ways that feminist student activism has relied on the collective generation, representation, and circulation of affect in the service of campus sexual violence reform. My emotional responses to the Facebook group helped to organize my experiences as an activist, connecting me with feminist colleagues who were similarly affected by the structures of male domination and female subordination—rape culture—that we felt and therefore knew to exist. Emotions bore witness to the truth and authenticity of our relative subject positions as women, LGBTQ2 people, and members of other historically marginalized groups. Collectively, our emotions levelled a clear and powerful indictment of the colleges and universities that failed

93. For another example, see Kelly Oliver, *Hunting Girls: Sexual Violence from ‘The Hunger Games’ to Campus Rape* (New York: Columbia University Press, 2016).

94. See Fischel, “Catharine,” *supra* note 90 at 47. For more on the role of indignation in social movements, see Abrams, *supra* note 67 at 577.

95. See Jamie R Abrams, “The #MeToo Movement: An Invitation for Feminist Critique of Rape Crisis Framing” (2018) 52:4 U Rich L Rev 749 at 759-761; Jennifer S Hirsch & Shamus Khan, *Sexual Citizens: A Landmark Study of Sex, Power, and Assault on Campus* (New York: WW Norton, 2020) at 211.

96. See e.g. Brian Hutchinson, “Is There an Epidemic of ‘Rape Culture’ at Canadian Universities?,” *National Post* (7 March 2014), online: <nationalpost.com/news/is-there-an-epidemic-of-rape-culture-at-canadian-universities> [perma.cc/EXR7-42BC].

97. *Ibid.* See also Gruber, *supra* note 81 at 1032.

98. For a complementary take on the exceptionalism of hate crimes, see Leslie J Moran, “The Emotional Dimensions of Lesbian and Gay Demands for Hate Crime Reform” (2004) 49:4 McGill LJ 925 at 935.

to handle complaints of campus sexual violence in a timely and effective manner—a story that was not being heard or publicly acknowledged to our emotional satisfaction. As such, our emotions fed into the means of our feminist resistance and critique of the institutions that made us feel insecure, frustrated, hopeless, and angry in the first place. Emotions were instrumental to our process of feminist mobilization because they provided the necessary motivation to both struggle and express our legal and political grievances to the world.

2. *Playing with fire: the role of emotions in punishing rape culture*

My interest in the relationship between law, gender, and equality is inspired by longstanding concerns about feminism’s complicity with the carceral state. Previously, I explained that the restorative justice process in the Dalhousie Dentistry case was conducted under constant threat of being terminated. Feminist critics were extremely vocal about the perceived weakness of the university’s response at the time, with many of their objections expressing the view that restorative justice was too “soft on crime” and failed to “take sexual abuse seriously.” Isabelle Côté wrote in the *Huffington Post Canada* that restorative justice was a “depiction of rape culture” that required a more punitive response: “No wonder all 13 of those male students agreed to participate in the [restorative justice] process; it constitutes an easy way out considering the severity of their actions and the risk of expulsion from the school.”⁹⁹ I remember feeling something similar upon hearing about the restorative justice process at the time. It felt like the male students were getting a mere slap on the wrist, like colleges and universities had found yet another way to sweep the problem of campus sexual violence under the rug. The breadth and severity of the male students’ conduct made me angry, but the prospect of the men finding an “easy way out” and the university escaping a more searching review of its climate and culture made me angrier still.

Feminist debates about campus sexual violence reform have been characterized by a particular feminist orthodoxy about what “taking sexual abuse seriously” requires. Amanda Nelund reviewed the content of campus sexual violence policies at 43 colleges and universities between May 2016 and August 2017, one of the most comprehensive Canadian studies of its kind.¹⁰⁰ According to Nelund, most policies state that complainants

99. Isabelle Côté, “Restorative Justice at Dalhousie is a Depiction of Rape Culture” (18 December 2014), online (blog): *Huffington Post* <www.huffingtonpost.ca/isabelle-cote/restorative-justice-is-a_b_6347818.html> [perma.cc/4PZM-BD2K].

100. Amanda Nelund, “New Policies, Old Problems? Problematizing University Policies” in Crocker, Minaker & Nelund, *supra* note 81 at 223.

can choose how their complaints will be processed, but choices are often limited to whether complaints will trigger a criminal process, campus adjudication, or no response at all.¹⁰¹ Additionally, most policies encourage complainants to report their experiences to campus security services.¹⁰² Some policies provide that complainants have informational and participatory rights in campus adjudication, but complainant involvement in the process is relatively limited.¹⁰³ Complainants are free to stop engaging with campus adjudication at any time, but most policies establish the university's right to proceed with an investigation or hearing without the complainants' consent.¹⁰⁴ There are parallels to the criminal justice system here, specifically the police or prosecutor's sole right, depending on the province, to decide whether to proceed with laying charges. Correspondingly, Nelund finds that few of the policies create opportunities for complainants and respondents to engage in relational dialogue or community-based norm clarification around campus sexual violence.¹⁰⁵ Provisions on consensual dispute resolution, where they exist, are often brief and unelaborated or significantly limited in their availability to students. Most colleges and universities have revised their policies since Nelund's study was conducted, but her findings remain accurate. In a forthcoming book chapter, Diane Crocker and Gena Dufour review these developments and conclude that as of May 2021, "campus sexual violence policies have replicated the disadvantages of criminal justice responses to gender-based violence and have not adopted the advantages of restorative justice approaches."¹⁰⁶

Make no mistake—campus sexual violence policies are civil in nature; the cases involve private parties; and as I explained above, the procedures apply to conduct that may or may not be independently prosecutable as crimes. Nevertheless, I would argue that the structure of campus sexual violence policies reflects the acceptance of what Donna Coker calls "crime logic" in the Title IX context, a set of beliefs and attitudes about the role of the carceral state in regulating and punishing campus sexual violence.¹⁰⁷

101. *Ibid* at 231.

102. *Ibid* at 232.

103. See Karen Busby & Joanna Birenbaum, *Achieving Fairness: A Guide to Campus Sexual Violence Complaints* (Toronto: Thomson Reuters Canada, 2020) at 60-61.

104. See Nelund, *supra* note 100 at 231.

105. *Ibid*.

106. Diane Crocker & Gena Dufour, "Developing Campus Anti-Violence Policies: Lessons Learned from the Criminalization of Gender-Based Violence" in Christopher Dietzel & Shaheen Sharraf, eds, *IMPACTS: Reclaiming the Role of Universities to Address Sexual Violence through Multi-Sector Partnerships in Law, Arts, and Social Media* (Toronto: University of Toronto Press) [forthcoming] at 20.

107. Donna Coker, "Crime Logic, Campus Sexual Assault, and Restorative Justice" (2016) 49:1 *Tex*

Crime logic is reflected by the following characteristics: (a) a focus on individual legal responsibility rather than on collective accountability; (b) a disdain for policy attention to the social determinants of behaviour; (c) a preference for narratives that feature bad actors and innocent victims; and (d) a preference for punishing and removing individuals who have harmed others from society.¹⁰⁸ The elements of crime logic correspond almost exactly to Elizabeth Bernstein's critique of "carceral feminism," which is a term that captures feminism's complicity with a reactionary, neoliberal politics of crime control, blurring social justice and criminal justice, punishing in the name of gender equality.¹⁰⁹ Crime logic is predicated on the commission of reciprocal acts of carceral state violence against individual perpetrators. In many cases, it functions like a neoliberal publicity stunt. Colleges and universities cleanse themselves of financial and reputational risk by exacting swift and harsh punishments on targeted individuals, returning the community to its previously "safe" condition while, in fact, the systemic problem is left unaddressed.¹¹⁰

Critical theories of law and the emotions help to explain the prevalence of these trends. Arguably, crime logic is evidence of a phenomenon that Jonathan Simon calls "governing through crime," whereby "crime and the forms of knowledge historically associated with it...[have become powerful tools with which to interpret and frame all forms of social action [areas] as a problem for governance."¹¹¹ Extrapolating out from the Title IX context, Simon explains that law and policymakers have engendered a culture of fear by promulgating legal regulations to combat the ostensible pervasiveness of crime.¹¹² Fear operates by making the audience believe

Tech L Rev 147 at 156.

108. *Ibid.*

109. See Elizabeth Bernstein, "The Sexual Politics of the 'New Abolitionism'" (2007) 18:3 *differences* 128; Elizabeth Bernstein, "Carceral Politics as Gender Justice? The 'Traffic in Women' and Neoliberal Circuits of Crime, Sex, and Rights" in David M Halperin & Trevor Hoppe, eds, *The War on Sex* (Durham, NC: Duke University Press, 2017) 297. For complementary takes on feminism's complicity with the carceral state, see Angela Y Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence* (Durham, NC: Duke University Press, 2008); Judith Levine & Erica R Meiners, *The Feminist and the Sex Offender: Confronting Sexual Harm, Ending State Violence* (London, UK: Verso, 2020); Margo Kaplan, "Reconciling #MeToo and Criminal Justice" (2020) 17:2 *Ohio St J Crim L* 361; Aya Gruber, *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration* (Oakland, CA: University of California Press, 2020).

110. See Alison Phipps, "The Fight Against Sexual Violence" (2019) 71:1 *Soundings: J Politics & Culture* 62 at 68, 71-72; Lisa Duggan, "The Full Catastrophe" (18 August 2018), online (blog): *Bully Bloggers* <bullybloggers.wordpress.com/2018/08/18/the-full-catastrophe/> [perma.cc/Q7L3-2NNE].

111. Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press, 2007) at 17.

112. *Ibid* at 4-7.

that crime is imminent and threatening.¹¹³ The production of fear has been so effective and widespread that it became directed at individuals who are neither current nor prospective criminals, strengthening the carceral state in the process.¹¹⁴ Simon writes: “At its core, the implicit fallacy dominating many school policy debates today consists of a gross conflation of virtually all the vulnerabilities of children and youth into variations on the theme of crime.”¹¹⁵ Fischel’s critique of “lumping” rhetoric and similarly evocative, sensationalist language reveals the effects of power and discourse that such representations of campus “crime” produce.

Postulating in a similar vein, Wendy Brown suggests that when feminist law and policymakers make emotional appeals to women’s fearful, traumatized subjectivity by campus sexual violence or otherwise, they run the risk of performing and circulating feelings of victimhood in reality. According to Brown, the criminal justice system contains an incitement to what Friedrich Nietzsche calls *ressentiment*, or the “moralizing revenge of the powerless.”¹¹⁶ Brown writes: “*Ressentiment* in this context is a triple achievement: it produces an affect (rage, righteousness) that overwhelms the hurt; it produces a culprit responsible for the hurt; and it produces a site of revenge to displace the hurt (a place to inflict hurt as the sufferer has been hurt). Together these operations both ameliorate (in Nietzsche’s term, “anaesthetize”) and externalize what is otherwise ‘unendurable.’”¹¹⁷ If the cause of *ressentiment* is women’s victimhood, the creative process of *ressentiment* is reworking this condition into a negative form of action by establishing it as a measure of social virtue.¹¹⁸ Rather than transforming victimhood into something else, the creative process of *ressentiment* externalizes the condition by legitimizing the state’s role in punishing the individuals responsible for causing it.¹¹⁹

The study of feminist legal imagination is a critical inquiry into the reference points through which feminist law and policymakers construct,

113. See Marta Gil, “Emotions and Political Rhetoric: Perception of Danger, Group Conflict and the Biopolitics of Fear” (2016) 26:2 Human Affairs 212 at 220. For more on the links between fear and crime control, see Moran, *supra* note 98 at 938-939; Rachel F Moran, “Fear: A Story in Three Parts” (2004) 69:4 Mo L Rev 1013 at 1027-1029; Roger N Lancaster, *Sex Panic and the Punitive State* (Berkeley: University of California Press, 2011) at 15.

114. Simon, *supra* note 111 at 260-261.

115. *Ibid* at 209.

116. Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995) at 66-67.

117. *Ibid* at 68.

118. *Ibid* at 70.

119. *Ibid*. I have written about the potential of ADR and restorative justice to transcend the constitutive limitations of politicized identity elsewhere. See Daniel Del Gobbo, “Queer Dispute Resolution” (2019) 20:2 Cardozo J Conflict Resolution 283.

maintain, and reproduce mental images in the legal field.¹²⁰ Crime logic is a complex legal and political operation. I cannot trace its foundations in a comprehensive way in this article, but it strikes me that emotions must be partially responsible for constructing its rational claims and lending them moral force. Simon and Brown provide compelling accounts of the role of fear, anger, and vengeance in rationalizing carceral norms and logics. My point in highlighting these emotions is not to commit the “genetic fallacy”—the fallacy of thinking that the nature or falsity of a proposition (crime logic) can be demonstrated by a causal claim concerning the origins of the belief in that proposition (fear, anger, etc.) as false, corrupt, or otherwise less than.¹²¹ Empirical evidence shows that the falsity of crime logic can be established by other means.¹²² Rather, my point is to highlight that emotions provide one of the rhetorical and epistemological bases on which the rationality of crime logic has been established. Many community members feel that by exacting legal punishments and other forms of discipline, something meaningful has been done about campus sexual violence.

Correspondingly, I would argue that central to understanding the role of emotions in legitimizing the carceral state is recognizing a corollary claim about the role of emotions in fostering skepticism of theories and methodologies that challenge the carceral state. One of the co-facilitators of the restorative justice process in the Dalhousie Dentistry case, Jennifer Llewellyn, suggests that “[t]he certainty offered by [formal] systems resulted in considerable disappointment, occasionally rising to the level of outrage, that restorative justice had denied what was deserved or owed according to the existing formal processes.”¹²³ The certainty of punishment was so engrained in the case, Llewellyn suggests, that it effected an epistemic occupation with criminal justice, causing some feminists to experience “profound difficulty imagining and conceptualizing the redress and prevention of violence (including state violence) without recourse to the heteropatriarchal violence of the state.”¹²⁴ Arguably, the cognitive

120. Maksymilian Del Mar provides the following definition of imagination in his work on the legal imagination: “the process of deliberately and effortfully constructing mental images of what it might be like for someone else to experience a certain situation.” Del Mar, *supra* note 28 at 148.

121. See Jeffrie G Murphy, “Moral Epistemology, the Retributive Emotions, and the ‘Clumsy Moral Philosophy’ of Jesus Christ” in Bandes, ed, *supra* note 30, 149 at 150-151. For more on the genetic fallacy, see Kevin C Klement, “When is Genetic Reasoning Not Fallacious” (2002) 16:4 *Argumentation* 383.

122. *Supra* note 109 and accompanying text.

123. Llewellyn, *supra* note 22 at 139. According to Llewellyn, “[the response] was the product of an inability and/or unwillingness to understand because it would disrupt the power of those with regulatory authority or who took comfort in established and formal systems” (*ibid* at 139-140).

124. *Ibid* at 140, citing Brady T Heiner & Sarah K Tyson, “Feminism and the Carceral State: Gender-

process is similar to what Maksymilian Del Mar calls the “affective dimension of imaginative resistance,” citing the challenges that arise “when a subject is asked to imagine a particular situation, but is either unable or unwilling to do so.”¹²⁵

Recall that feminist student activists lined the streets to publicly condemn the male students’ conduct in the case, holding signs that read “Expel Misogyny,” “We Want Names,” and “Expel Rape Culture.” The political resonance of these framings is inextricably bound up in collectively generated experiences of “good victimhood” and “bad victimhood,” emphasizing the vulnerability of “good victims” in particular, most often white, heterosexual, cisgender, and class-privileged women, who are presumed to be fearful and traumatized and therefore most in need of the state’s protection.¹²⁶ Consistent with this view, feminist critics of the restorative justice process petitioned the university to conduct a more punitive process than restorative justice on a parallel track.¹²⁷ Llewellyn comments on the influence of more established justice narratives: “The public demanded—in petitions, tweets, blogs, online posts and on talk radio—that the University play its traditional part in the justice story. They were to find the monsters and punish them, ideally by isolating them from the rest of us by expelling them to make them pay and somehow make us all richer for their loss.”¹²⁸

I should not be taken to suggest that the restorative justice process in the case was conducted without fault. As I mentioned above, feminist critics raised serious concerns about the restorative justice process at the time, particularly with respect to female students and other community members who were harmed by the male students’ conduct, but whose interests could not be adequately addressed by the process.¹²⁹ A comprehensive review

Responsive Justice, Community Accountability, and the Epistemology of Antiviolence” (2017) 3:1 Feminist Philosophy Q 1.

125. Del Mar, *supra* note 28 at 152, citing Magdalena Balcerak Jackson, “On the Epistemic Value of Imagining, Supposing and Conceiving” in Amy Kind & Peter Kung, eds, *Knowledge Through Imagination* (Oxford: Oxford University Press, 2016) 41 at 47.

126. See Theresa A Kulbaga & Leland G Spencer, *Campuses of Consent: Sexual and Social Justice in Higher Education* (Boston: University of Massachusetts Press, 2019) at 10, 26. For commentary on the rape myth of “good victimhood,” see Melanie Randall, “Sexual Assault Law, Credibility, and ‘Ideal Victims’: Consent, Resistance, and Victim Blaming” (2010) 22:2 CJWL 397; Lise Gotell, “Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Sexual Subjects and Risky Women” (2008) 41:4 Akron L Rev 865; Lancaster, *supra* note 113 at 203; Gunby & Carline, *supra* note 67 at 346.

127. See Backhouse Report, *supra* note 1 at 18.

128. Jennifer Llewellyn, Amanda Demsey & Jillian Smith, “An Unfamiliar Justice Story: Restorative Justice and Education: Reflections on Dalhousie’s Facebook Incident 2015” (2015) 25:1 Our Schools / Our Selves 43 at 49.

129. Calls on the university to conduct a parallel process to restorative justice were framed, inter

of procedural fairness and equity considerations in the case is beyond the scope of this article.¹³⁰ However, Llewellyn's observations about what the male students' punishment was supposed to make us feel ("richer for their loss") resonate with me because they help to explain my initial objections to the restorative justice process. The circulation of affect contributed to a feminist climate in which loud, public calls to punish the male students—to literally "Expel Misogyny" personified with or without a fair hearing—felt like it was a legal and political necessity and emotional salve for the community's harms. Correspondingly, restorative justice felt like it was a morally inadequate response to campus "crime" because it failed to produce a single culprit, a single "monstrous" other to isolate and condemn, and thus failed to assuage my emotions in a manner consistent with crime logic. As such, emotions provided one of the rhetorical and epistemological bases on which restorative justice was conceived as a form of "weak justice," insufficiently "tough on crime," and therefore outside the bounds of feminist action.

Looking ahead, feminist law and policymakers should instrumentalize the power of feminist flashpoints to build community and solidarity, raise political consciousness, and take moral action on campus sexual violence. Reflecting on my reactions to the restorative justice process, however, I am concerned that the powerful, galvanizing force of light and fire has caused our feminist politics to flashover. The prevalence of crime logic suggests that it is often easier to moralize than to historicize about gender and sexuality. It is often easier to punish a few "bad apples" who abused their power advantage over women than to challenge the structural conditions that have facilitated power advantages in our society, often but not always along gender-based lines, which is more complicated and can feel less emotionally gratifying to us. In feminist legal cultures steeped in

alia, as responding to the needs of female students in the faculty who chose not to participate in restorative justice and reported that they were prevented from accessing more formal complaint options. See Backhouse Report, *supra* note 1 at 18; Aly Thomson, "Dalhousie Professors Go Public with Complaint Against Dentistry Students," *The Globe and Mail* (4 January 2015), online: <www.theglobeandmail.com/news/national/dalhousie-professors-go-public-with-complaint-against-dentistry-students/article22283414/> [perma.cc/DG3N-JZEK]; "Dalhousie Students Condemn Restorative Justice in Facebook Scandal," *CBC News* (6 January 2015), online: <www.cbc.ca/news/canada/nova-scotia/dalhousie-students-condemn-restorative-justice-in-facebook-scandal-1.2891365> [perma.cc/XTF4-VBKK]. The facilitators of the restorative justice process and other students in the faculty contested these reports. See Llewellyn Report, *supra* note 12 at 26.

130. I canvas a range of feminist perspectives on the use of consensual dispute resolution in campus sexual violence cases in two recent works, albeit without exploring the role of emotions in depth. See Daniel Del Gobbo, "The Return of the Sex Wars: Contesting Rights and Interests in Campus Sexual Violence Reform" in Crocker, Minaker & Nelund, eds, *supra* note 81 at 87; Daniel Del Gobbo, "Feminism in Conversation: Campus Sexual Violence and the Negotiation Within" (2021) 53:3 UBC L Rev 591.

carceral thinking, legal and political formations that feel less gratifying than punishment are frequently read as an external threat to the politics at issue, preventing us from engaging with them and constraining our legal imaginations in the process. The “common sense” ideology of carceral feminism has pushed complexities about the relationship between law, gender, and equality into the shadows. “Like the vapor that ignites at a specific temperature,” Banet-Weiser writes, “hot takes often radically, but only temporarily, transform the historical contexts of the situation to which they are responding.”¹³¹

In the next and final section, I provide my key takeaways from this analysis, shifting the focus of the article from reflection to praxis—evaluating thoughts, feelings, and moral action together to gain perspective on feminist method and inform our legal and political practices for the better. On the level of action, how can feminist law and policymakers craft our emotions in a manner that recognizes the problem of rape culture as real, while remaining mindful of the potentially harmful consequences that result from them? How can feminists cultivate our rage at campus sexual violence into a more critical and effective stance, while resisting the lure of carceral norms and logics that feel like they are feminist?

III. *Feeling beyond carcerality*

Central to asking the fundamental praxis question—to asking what can and should be done—is reminding ourselves of what should not be done. In my view, feminist law and policymakers should not be told to feel less or feel differently about the immorality of campus sexual violence. As I explained previously, Srinivasan’s work reveals the affective injustice that results from calling on feminists to moderate their emotions according to white, male, and objectivist standards, as if the primary offence lies not with the perpetrators of campus sexual violence, but with feminists whose “excess” of emotions threatens to challenge the institutions that support them.¹³² The containment and suppression of feminist rage to meet the feeling rules of the political majority is a racist and sexist form of emotional labour.¹³³ Ahmed’s writing on “feminist killjoy” methodology makes this point clearly.¹³⁴ Across a wide range of contexts, feminists who “kill joy” because they contest racism and sexism become the problem when they express their emotions publicly: “It is because [feminists] expose violence that we are heard as violent, as if the violence of which we speak originates

131. Banet-Weiser, *supra* note 26.

132. Srinivasan, *supra* note 42 at 133-134.

133. See Hochschild, *supra* note 27 at 7.

134. See Ahmed, *The Promise of Happiness*, *supra* note 65 at 20, 50-87.

in us.”¹³⁵ The harms of affective injustice are therefore cyclical: “Through feminism you make sense of wrongs; you realize that you are not in the wrong. But when you speak of something as being wrong, you end up being in the wrong all over again.”¹³⁶ Ahmed concludes: “It is enough to make you emotional.”¹³⁷

Emotions themselves are not right or wrong, feminist or not feminist. However, emotions can be mobilized in support of carceral state practices and other moral actions that contradict the mission of substantive equality. In the previous section, I explained that the causal links between emotions and action are contingent and non-linear—feelings of rage and righteousness, to use Brown’s example of *ressentiment*, may or may not produce a site of revenge, may or may not lead to retribution, and may or may not entail the use of carceral state practices—but the possibility for this kind of progression exists. Concerns about instrumentalization are not unique to carceral feminism as such. Jeffrie Murphy and Jean Hampton comment on the emotions associated with carcerality generally: “[The criminal law] institutionalizes certain feelings of anger, resentment, and even hatred that we typically (and perhaps properly) direct towards wrongdoers, especially if we have been victims of those wrongdoers.”¹³⁸ Emotions provide one of the rhetorical and epistemological bases for the constitutive, institutional violence of the law to occur writ large.¹³⁹

None of this is inevitable. Commenting on how feelings of anger are culturally produced and mediated, Judith Butler observes that “people craft rage, they cultivate rage, and not just as individuals. Communities craft their rage. ... Collective forms of crafting rage are important. They don’t deny rage, but they choose not to enter into the cycle of violence.”¹⁴⁰ Riffing on Lorde’s point about “focusing” one’s anger on white supremacy and other systems of oppression, Butler encourages feminists to craft our emotions for the better, not to meet gender expectations or other ritualized terms of public life, but to expose violence and counter it without causing harm in the process.¹⁴¹ Carceral feminism and its law are not fixed, but

135. Ahmed, *Living a Feminist Life*, *supra* note 67 at 253.

136. *Ibid* at 38.

137. *Ibid*.

138. Jeffrie G Murphy & Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988) at 2 [emphasis removed].

139. See Robert M Cover, “Violence and the Word” (1986) 95:8 Yale LJ 1601; Austin Sarat & Thomas R Kearns, “A Journey Through Forgetting: Towards a Jurisprudence of Violence” in Austin Sarat & Thomas R Kearns, eds, *The Fate of Law* (Ann Arbor: University of Michigan Press, 1991) 209.

140. Brandon M Terry & Judith Butler, “The Radical Equality of Lives,” *Boston Review* (7 January 2020), online: <bostonreview.net/articles/brandon-m-terry-butler-int/> [perma.cc/VK2E-C2JY].

141. *Ibid*.

effects of power and discourse that can and must be changed. Crafting our emotions as part of a radical critique of the carceral state is one way to do that. Such a crafting process requires feminists to channel and transform our emotions into a more “engaged” legal and political stance, Ahmed suggests, to move “from anger into an interpretation of that which one is against, whereby associations or connections are made between the object of the anger and broader patterns or structures.”¹⁴²

As a first step, feminist law and policymakers should examine how evocative, sensationalist representations of rape culture operate, not to challenge their truth value, but to consider and evaluate their real-world consequences, including how these representations feed into publicly held interests in safety and order. Rhetorical framings of colleges and universities as being in a state of “crisis” or “emergency” suggest an imminency to rape culture that lends itself to carceral solutions, including mandatory reporting and referral policies, campus safety audits, and increased police presence which might feel like they keep complainants safe, but have actually proven to be ineffective at addressing campus sexual violence as a systemic problem.¹⁴³ The paradigm image of the fearful, traumatized victim reinforces this connection between crime logic and campus sexual violence reform. On this point, Aya Gruber charts the progress of the “feminist war on crime,” showing how claims of campus sexual violence may be overdetermined and overdrawn, often motivated by fear, homophobia, racial animus, and other cultural biases about gender and sexuality.¹⁴⁴ As a result, feminist campaigns against campus sexual violence have leant themselves to criminal prohibitions that target members of historically marginalized groups, including Black, Indigenous, and

142. Ahmed, *Cultural Politics*, *supra* note 34 at 175-178. For an overview of research on the law’s role in channelling emotions, see Abrams & Keren, *supra* note 34 at 2054.

143. See Abrams, *supra* note 95 at 769. For research on the inefficacy of these methods, see Doris Buss et al, “The Response to Sexual Violence at Ontario University Campuses” (June 2016) at 28, online (pdf): <www.scribd.com/document/320699612/The-Response-to-Sexual-Violence-at-Ontario-University-Campuses> [perma.cc/ZF4J-2J8V]; Erin Collins, “The Criminalization of Title IX” (2016) 13:2 Ohio St J Crim L 365 at 377; Nancy Chi Cantalupo, “For the Title IX Civil Rights Movement: Congratulations and Cautions” (2016) 125 Yale LJ Forum 281 at 296; Nancy Chi Cantalupo, “Title IX’s Civil Rights Approach and the Criminal Justice System: Enabling Separate but Coordinated Parallel Proceedings” in Sara Carrigan Wooten & Roland W Mitchell, eds, *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response* (New York: Routledge, 2016) 125 at 139-141; Alexandra Brodsky, “Against Taking Rape Seriously: The Case Against Mandatory Referral Laws for Campus Gender Violence” (2018) 53:1 Harv CR-CLL Rev 131 at 141; Mandi Gray, Book Review of *Sexual Violence at Canadian Universities: Activism, Institutional Responses, and Strategies for Change* by Elizabeth Quinlan et al, eds, (2019) 13:1 Studies in Social Justice 196 at 199-200; Kate Rossiter, Tracy Porteous & Misha Dhillon, “Critical Components of a Survivor-Centred Response to Campus Sexual Violence” in Crocker, Minaker & Nelund, eds, *supra* note 81, 21 at 27.

144. See Gruber, *supra* note 109.

other racialized men, low-income people, and people with mental illness for punishment and mass incarceration.¹⁴⁵ Positioning the carceral state as protective rather than oppressive of men and women's equality interests is a function of white supremacy, settler colonialism, and heterosexism. Feminists should actively resist these forces.

The issue of trauma raises additional considerations in this context. On the one hand, elevating trauma as a marker of sexual harm has raised the public's awareness about the importance of trauma-informed lawyering in campus sexual violence cases.¹⁴⁶ Feelings of terror, helplessness, and despair can affect complainants' ability to interpret events in the past, manage the stress of a legal process, and respond in ways that members of the legal system expect.¹⁴⁷ Recognizing this, feminist law and policymakers have sought to educate legal actors on how to implement trauma-informed approaches to professional service delivery. Considerable research has been done on how to improve criminal reporting procedures, police-victim interviews, and cross-examination techniques in order to better protect complainants' health and well-being.¹⁴⁸ Legislative changes to facilitate these kinds of approaches are needed. In the criminal justice system and elsewhere, the law contributes to the therapeutic conditions in which trauma and related emotional and psychological states are born, nurtured, and left to worsen. As Robin West argues, "[w]e need to hold the law and the bodies of law that produce emotional toxicity accountable, and to do so we need to examine the multiple connections, causal, circumstantial, intended, or not, between not only law and the emotions it consciously seeks to regulate or suppress or honor, but also between our socially widespread emotional ill-health and our various legal cruelties."¹⁴⁹

On the other hand, Lauren Berlant cautions that emotional and specifically fearful, traumatized subjectivity has replaced rational subjectivity as an essential index of value for personhood and thus for society.¹⁵⁰ Berlant's claim is not that emotional and rational subjectivity are psychologically distinct, but that expressing one's "true" self as the

145. *Ibid.*

146. See generally Judith Daylen, Wendy Van Tongeren Harvey & Dennis O'Toole, *Trauma, Trials, and Transformation: Guiding Sexual Assault Victims through the Legal System and Beyond* (Toronto: Irwin Law, 2006).

147. *Ibid.* See also Melanie Randall & Lori Haskell, "Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping" (2013) 36:2 Dal LJ 501; Melanie Randall, "Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law" (2013) 36:2 Dal LJ 461 at 491.

148. See Randall & Haskell, *supra* note 147; Randall, *supra* note 147 at 493.

149. Robin West, "Law's Emotions" (2016) 19:4 Rich JL & Pub Int 339 at 360.

150. Berlant, *supra* note 79 at 111.

subject of feeling—what Brown refers to as “compulsory discursivity”—has emerged as a functional prerequisite for identification, recognition, and belonging in the public sphere.¹⁵¹ The clearest example is the #MeToo movement, in which a combination of social and cultural pressure effectively compelled complainants to take up voice and produce emotional testimony. The self-evidence and objectivity of their painful experiences legitimized claims to increased punishments in their names.¹⁵² Such moral actions, Berlant suggests, feel like justice because they help to eradicate complainants’ pain.¹⁵³ Feeling justice comes to mean the same thing as feeling better. Berlant never makes this point explicitly, but one of the consequences of this regime is that it becomes challenging to talk about the so-called “minor” injuries—the more banal and quotidian, but no less significant harms that women and other historically marginalized groups endure—because they are read as less painful and exceptional and therefore less worthy of being heard.

A related concern is that certain representations of fear and trauma, specifically white women’s stories, are more legible to the masses and tend to invoke stronger emotional reactions in members of the public than others.¹⁵⁴ Feeling someone else’s pain and suffering is not necessarily coextensive with the extent of pain and suffering that is happening on a wider scale.¹⁵⁵ Critics have referred to this phenomenon as “emotional selectivity,” which suggests that our emotions may not be comprehensive indicators of equality and justice in some cases.¹⁵⁶ The paradigm image of the fearful, traumatized victim elides important distinctions in the modalities of victimization that complainants experience, while further isolating complainants and racialized women especially who cannot or choose not to express their emotions in a “socially acceptable” manner, inspiring less compassion and empathy as a result. Research on rape myths and stereotypes confirms that complainants who do not look or act like “good victims” are less likely to be believed, have their reports taken

151. *Ibid* at 111-112. For Brown’s work on compulsory discursivity, see Wendy Brown, *Edgework: Critical Essays on Knowledge and Politics* (Princeton: Princeton University Press, 2005) at 85.

152. See Berlant, *supra* note 79 at 107, 111; Moran, *supra* note 98 at 934.

153. Berlant, *supra* note 152 at 108, 112.

154. Susan A Bandes, “Moral Imagination in Judging” (2011) 51:1 Washburn LJ 1: Illustrating this, Susan Bandes observes that “[j]udges may be skilled at empathetic understanding, or they may exercise empathy selectively toward certain groups, though those groups are more likely to be powerful than disenfranchised” (*ibid* at 9). See also Ahmed, *Cultural Politics*, *supra* note 34 at 191-192.

155. See Buhler, *supra* note 48 at 413. Emily Kidd White makes the related point that a claimant’s subjective experience of a rights violation may or may not correspond with a rights violation at formal law. See Kidd White, *supra* note 35 at 114.

156. See Megan Boler, *Feeling Power: Emotions and Education* (New York: Routledge, 1999) at 185-186.

seriously, and receive the community services they need to recover.¹⁵⁷ This “feeling gap” in legal and political apprehension, as one might call it, is a serious problem.

To bridge this gap, feminist law and policymakers should centre the lived experiences of racialized, Indigenous, and bisexual women, and trans people in campus sexual violence law and policy because they represent the most likely targets of campus sexual violence.¹⁵⁸ Centering the experiences of these groups should lead feminists and other stakeholders to become more emotionally invested in their welfare. Fostering compassion, empathy, and other pro-social emotions toward intersectional communities is relevant to enabling one’s capacity for “multi-perspectival” legal imagination—the practice of imagining the “needs, interests and values of another person as they are refracted in the concrete and particular experiences of persons in their relations with the world and others.”¹⁵⁹ Considering a variety of such perspectives is likely to improve feminist law and policymaking by constructing a more complete picture of the relationships at issue in a given case, and thereby expand the possibilities for creating relations for the future that are marked by care, concern, and respect for other people, consistent with the principle of substantive equality.¹⁶⁰ Challenging the law’s violence requires us to recognize that our fates are interconnected and everyone’s lives, without exception, are both the subjects of feeling and proper objects of feminist attention.

Conclusion

In this article, I explained how emotional incitements in the Dalhousie Dentistry case contributed to a legal and political infrastructure that supported carceral state responses to campus sexual violence.

157. See Kulbaga & Spencer, *supra* note 126 and accompanying text. See also Abrams, *supra* note 95 at 771.

158. See Nancy Chi Cantalupo, “Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Violence” (2011) 43:1 Loy U Chicago LJ 205 at 210; Carrie Bourassa et al., “Campus Violence, Indigenous Women, and the Policy Void” in Quinlan et al, eds, *supra* note 81 at 45; Rosanne Kennedy & Hannah McCann, “Splitting from Halley: Doing Justice to Race, Unwantedness, and Testimony in Campus Sexual Assault” (2020) 46:1 Signs 79 at 94; Hirsch & Khan, *supra* note 95 at 244.

159. See Del Mar, *supra* note 28 at 150. For more on the importance of fostering compassion in law, see Benjamin Zipursky, “*DeShaney* and the Jurisprudence of Compassion” (1990) 65:4 NYUL Rev 1101; Nussbaum, *supra* note 36 at 441-454; Laura E Little, “Adjudication and Emotion” (2002) 3:2 Fla Coastal LJ 205 at 209; Jonathan Herring, “Compassion, Ethics of Care and Legal Rights” (2017) 13:2 Int’l JL Context 158; Michal Buchhandler-Raphael, “Compassionate Homicide” (2020) 98:1 Wash UL Rev 189.

160. For complementary takes on legal imagination and consciousness, see Mari Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11:1 Women’s Rts L Rep 7; Bandes, *supra* note 154 at 24.

Correspondingly, I explained why the restorative justice process in the case was framed by some commentators as a form of “weak justice,” insufficiently “tough on crime,” and therefore outside the bounds of feminist action. My central claim is not that particular emotional reactions to campus sexual violence are right or wrong—emotions just are—but that feminist law and policymakers should reflect on the consequences of their moral actions taken in response. Feeling like something is effective at addressing campus sexual violence does not necessarily make it so.

I have focused on crime logic as one emotional politics that contradicts feminist goals, but there are many others that researchers should examine and criticize as well, providing the basis for future work. I am particularly struck by the fearful rhetoric and strategic, conservative outrage of trans-exclusionary radical feminists that is focused on oppressing trans women and gender non-conforming people through the passage of “bathroom bills” and other restrictive interpretations of human rights laws, both in Canada and elsewhere.¹⁶¹ One could similarly focus on the feelings of shame, disgust, and antipathy that prohibitionist women’s groups have mobilized toward sex workers in the process of advocating for the Nordic model of prostitution law reform.¹⁶² In each of these contexts, emotional investments being made in and through feminist law and policymaking have the effect of regulating gender and sexuality without challenging the power structures of transphobia and heteronormativity that bear down on historically marginalized groups in harmful ways. If emotions are central to the process of feminist mobilization, then it should be incumbent on feminists to consider the force of our emotions from a substantive equality perspective. Moral actions are not all morally and politically equal. Critically reflecting on the progress of campus sexual violence reform helps us to see that.

161. See Boyce Kay & Banet-Weiser, *supra* note 66.

162. See Hannah Betts, “We Need to Face Up to Hatred of Prostitutes—Among Feminists, Too” *The Guardian* (5 March 2013), online: <www.theguardian.com/commentisfree/2013/mar/05/hatred-prostitutes-feminists-brutality> [perma.cc/4LCP-8L4K]; Birgit Sauer, “Mobilizing Shame and Disgust: Abolitionist Affective Frames in Austrian and German Anti-Sex-Work Movements” (2019) 12:3 *J Political Power* 318.

