

Getting to Yes-Means-Yes: Re-thinking Responses to Rape and Rape Culture on College Campuses

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I. INTRODUCTION

Sexual assault and rape on college and university campuses is a significant problem in the United States,¹ as demonstrated by the national media attention paid to the issue.² The high rate of incidence of sexual assault and the often lackluster responses by universities³ have prompted scrutiny and even a Federal investigation under Title IX of the Education Amendments of 1972.⁴ Activists, politicians, and

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1. THE WHITE HOUSE TASKFORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, NOT ALONE: THE FIRST REPORT FROM THE WHITE HOUSE TASKFORCE TO PROTECT STUDENTS FROM SEXUAL ASSAULT, at 2 (2014), <https://www.notalone.gov/assets/report.pdf> [hereinafter NOT ALONE]; DEP'T OF JUSTICE, RAPE AND SEXUAL ASSAULT VICTIMIZATION AMONG COLLEGE AGE FEMALES 1995–2013 (2014), <http://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf> [hereinafter DOJ REPORT].

2. Colby Itkowitz, *There's a Moving Story Behind the Powerful Photo and a Sexual Assault Survivor at the Oscars*, WASH. POST (Mar. 7, 2016), <https://www.washingtonpost.com/news/inspired-life/wp/2016/03/07/the-amazing-story-behind-this-photo-of-a-sexual-assault-survivor-and-joe-biden-at-the-oscars/>; Eliana Docterman, *Obama says 'Sexual Violence Has to Stop' in Grammys Video*, TIME MAGAZINE (Feb. 8, 2015), <http://time.com/3700359/grammys-2015-obama-psa/>; Vanessa Grigoriadis, *Meet the College Women Who Are Starting a War against Sexual Assault*, N.Y. MAG. (Sept. 22, 2014, 9:00 PM), <http://nymag.com/thecut/2014/09/emma-sulkowicz-campus-sexual-assault-activism.html>; Jennifer Ludden, *Student Activists Keep Pressure on Campus Sexual Assault*, NPR (Aug. 26, 2014, 4:59 AM), <http://www.npr.org/2014/08/26/343352075/student-activists-keep-sexual-assault-issues-in-the-spotlight>.

3. See *infra* note 26 and accompanying text. Both Angie Epifano and Annie Clark discuss the anger and anguish they felt when their universities did not provide appropriate reporting avenues and effective investigation mechanisms to cope with their sexual assaults. Epifano, *infra* note 26; Clark, *infra* note 26.

4. Press Release, U.S. Dep't. of Educ., U.S. Department of Education Releases List of Higher Education Institutions with Open Title IX Sexual Violence Investigations (May 1, 2014) (on file with agency) [hereinafter Dep't of Educ. Press Release]. The Department of Education is openly investigating over 50 institutions of higher learning for violations of Title IX after receiving numerous allegations that the institutions failed to adequately investigate incidences of sexual assault on their campuses. *Id.*

scholars use the term “rape culture” to describe the endemic crisis on college campuses: the unwillingness to challenge gender norms as they pertain to sexual activity—that women are passive and men are active participants in sexual encounters—and the overwhelming belief that rape is perpetrated by strangers, not acquaintances.⁵

On January 1, 2015, California’s Affirmative Consent Law (ACL) went into effect.⁶ It mandates that any institution of higher education in California receiving state funds for student financial assistance must implement affirmative consent policies as a means of combatting rape culture through its victim-centered approach.⁷ Despite this inspiring goal, the law has been widely criticized in the media,⁸ indicating deep-seeded cultural beliefs about consensual sex, sexual assault, and rape.

This Note looks at how a complementary system of transitional justice and Truth and Reconciliation Commissions (TRCs)⁹ may help shift the cultural mentality of rape and sexual assault and provide recourse and closure for individuals who suffered assaults prior to the effective date of the new law. Like the crimes addressed by TRCs in post-conflict areas, rape on college campuses is largely perpetrated by persons known to the survivor,¹⁰ therefore, strategies addressing it should seek reconciliation for the community as a whole and not just the individual. TRCs permit perpetrators to enter the discourse,¹¹ which may help challenge existing narratives of rape and consent by introducing a more complete record.

Part II of this Note addresses the climate and context of sexual assault on college campuses and California’s ACL.¹² It will then

5. See *infra* notes 33–34 and accompanying text.

6. CAL. EDUC. CODE § 67386 (West 2015), *infra* notes 42–49 and accompanying text.

7. See ACL, *infra* notes 42–49 and accompanying text. See also *infra* notes 54–58 and accompanying text.

8. See *infra* notes 59–64 and accompanying text.

9. See *infra* notes 68–91 and accompanying text.

10. Fisher, *infra* note 22. This Note uses “victim” in the context of the Affirmative Consent Law, where it is used in the sources, or where it is contrasted with “perpetrator.” In general, I prefer the term “survivor,” because it is more empowering for those who have survived sexual assault, and thus, that term is used frequently throughout this Note when it would not confuse the reader.

11. See *infra* note 73 and accompanying text.

12. See *infra* Part II.A.

change direction, assessing strengths and weaknesses of TRCs¹³ using two examples: South Africa¹⁴ and Sierra Leone.¹⁵ These examples will then help uncover some tools that will be used to conceptualize a framework for how TRCs can be used in conjunction with the ACL to help achieve the goal of the ACL to challenge rape culture in Part III.¹⁶

Finally, Part IV will illustrate what a TRC might look like in the context of a college campus, highlighting some of the areas in which such a strategy may encourage a shift in the discourse surrounding sexual assault on college campuses.¹⁷ It will also acknowledge the limitations of this type of approach.¹⁸

II. CONTEXT AND CLIMATE: CONFRONTING THE SCOPE OF CAMPUS SEXUAL ASSAULT

A. *Sexual Assault on College Campuses*

In the past few years, news sources have reported numerous stories of young women detailing their experiences of rape and/or sexual assault by fellow students on college campuses across the nation.¹⁹ These narratives led authorities to monitor the prevalence of campus sexual assault and the institutional response to these incidents.²⁰ These reports reveal that 20% of women experience attempted or completed sexual assault or rape during college;²¹ approximately 90% of assaults are perpetrated by non-strangers, i.e.

13. *See infra* Part II.B.

14. *See infra* Part II.B.1.

15. *See infra* Part II.B.2.

16. *See infra* Part III.

17. *See infra* Part IV.A.

18. *See infra* Part IV.B.

19. *See, e.g.*, Ikowitz, *supra* note 2 (discussing Lady Gaga's performance at the 2016 Oscars where she invited many survivors of sexual assault to join her on stage, and one woman's tearful conversation with Vice President Biden afterwards); Grigoriadis, *supra* note 2 (detailing a Columbia student's activism surrounding her sexual assault); Ludden, *supra* note 2 (discussing new approaches to discussing sexual assault on college campuses and including pieces of several survivors' stories).

20. NOT ALONE, *supra* note 1, at 2; DOJ REPORT, *supra* note 1.

21. NOT ALONE, *supra* note 1, at 2.

someone known to the survivor;²² as few as 12% of campus survivors report the assault;²³ and estimates suggest that only 2–8% of those reports are false.²⁴ Together, these statistics suggest that out of every 100 women on a college campus, 20 of them are survivors of attempted or completed sexual assault or rape, and roughly 17 of them did not report the assault, and barely a fraction of those incidences reported are falsified.

Drug and alcohol abuse on college campuses may contribute both to the limited number of survivors who report their assaults and to the long-term impact of the assault on the survivor. At least one study indicates that only 2% of college women were incapacitated by drugs or alcohol at the time of their assault report.²⁵ Many students who do report feel alienated and betrayed by their college's lackluster response.²⁶ Drug and alcohol abuse can also become a coping

22. Deborah Tuerkheimer, *Slut Shaming in the Shadow of the Law*, 98 MINN. L. REV. 1453 (2014). See also BONNIE S. FISHER ET AL., THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 17 (U.S. Dep't of Justice).

23. WHITE HOUSE COUNCIL ON WOMEN AND GIRLS, RAPE AND SEXUAL ASSAULT: A RENEWED CALL TO ACTION 14 (2014), http://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf [hereinafter WHITE HOUSE REPORT] (citing D.G. KILPATRICK ET AL., DRUG FACILITATED, INCAPACITATED, AND FORCIBLE RAPE: A NATIONAL STUDY (Med. U. of S.C., Nat'l Crime Victims Res. & Treatment Ctr. 2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>).

24. KIMBERLY LONSWAY, JOANNE ARCHAMBAULT & DAVID LISAK, FALSE REPORTS: MOVING BEYOND THE ISSUE TO SUCCESSFULLY INVESTIGATE AND PROSECUTE NON-STRANGER SEXUAL ASSAULT 2 (Nat'l Cent. for Prosecution of Violence Against Women 2009); Some scholars question the concept of "false reporting" because those who receive reports, such as police officers, may not have the training and tools required to overcome their subjective beliefs about what constitutes rape and non-consensual sex versus what would be considered "normal sex." *Id.* For example, a Human Rights Watch (HRW) Report identified misconduct by the Washington, D.C. Metropolitan Police Department (MPD) in its response to survivors of attempted or completed sexual assault and rape. It found that a number of victims had their credibility questioned by the police officer to whom they attempted to report their sexual assault. HUMAN RIGHTS WATCH, CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA 123–35 (2013), www.hrw.org.

25. RESPONDING TO CAMPUS SEXUAL ASSAULT, DEP'T OF JUSTICE, https://www.justice.gov/ovw/responding-campus-sexual-assault#_ednref6.

26. See, e.g., Angie Epifano, *An Account of Sexual Assault at Amherst College* (Oct. 17, 2012), <http://amherststudent.amherst.edu/?q=article/2012/10/17/account-sexual-assault-amherst-college> (describing her assault, the Amherst's response, and her mental anguish in the aftermath of the assault). University of North Carolina experienced a public outcry when several students came forward in early 2013 with stories of their mangled attempts to report their assaults through the campus grievance process and the impact on their mental health. Annie E. Clark, *Rape is Like a Football Game: Why Survivors of Sexual Assault Do Not Report Sexual Assault*,

mechanism for survivors.²⁷ These studies illuminate the sheer scope of the problem—that students are assaulted and either self-censor and do not report, or report and are ignored.²⁸ They also shed light on the ongoing consequences of the sexual assault and the limited response by universities on the survivors.

Comparatively, far fewer statistics concern perpetrators, though some studies do exist.²⁹ The most commonly cited statistic concerning perpetrators is equally a statistic about the survivors. It is that non-strangers perpetrate most sexual assaults,³⁰ though some studies also indicate that college campus perpetrators are serial.³¹ Almost universally, reports on this topic paint perpetrators as predators that “prey on incapacitated women.”³² The contrast between the scholarship on survivors and that on perpetrators raises questions about how the issue of sexual assault on college campuses is reported, recorded, and addressed.

HUFFINGTON POST (Feb. 28, 2013, 2:44 PM), http://www.huffingtonpost.com/annie-e-clark/rape-is-like-a-football-g_b_2769576.html.

27. Campus survivors suffer from high levels of depression, post-traumatic stress disorder (PTSD), and drug and alcohol abuse, all of which can lead to higher dropout rates. WHITE HOUSE REPORT, *supra* note 23, at 14 (citations omitted).

28. *See supra* notes 23, 25, 26.

29. *See, e.g.*, DAVID LISAK, UNDERSTANDING THE PREDATORY NATURE OF SEXUAL VIOLENCE 56 (Sexual Assault Report 2011) (discussing absence of meaningful data on characteristics of perpetrators of sexual violence on college campus as compared to incarcerated perpetrators prior to his study).

30. WHITE HOUSE REPORT, *supra* note 23, at 14 (offering only one statistic about perpetrators, that they are often serial offenders). *See generally* Aletta Brenner, Note, *Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape*, 36 HARV. J.L. & GENDER 503, 524–32 (2013) (describing the dangers of dichotomizing the rape narrative simply as female, helpless, victim/male, predator, and sexually empowered). Brenner’s analysis implicitly applies to the White House Report and the Task Force Report, both of which focus almost exclusively on female victims, ignoring the reality that sexual assault on college campuses is complicated, dynamic, nuanced, and informed by existing gender and cultural norms and stereotypes of sexuality and sex. *Id.*

31. Lisak, *supra* note 29, at 56. The study cited by Lisak is premised on interviews with 1,882 men in Boston. *Id.* Lisak’s study and assumption of serial rapists as the predominant perpetrators on college campuses has been criticized and challenged by a recent study concluding that only a small number of college perpetrators are serial. *See* KEVIN M. SWARTOUT ET AL., TRAJECTORY ANALYSIS OF THE CAMPUS SERIAL RAPE ASSUMPTION 1148 (JAMA Pediatrics 2015).

32. WHITE HOUSE REPORT, *supra* note 23, at 14. The White House Report defines “incapacitated women” as those who have consumed alcohol or drugs prior to their assault. *Id.* (citing KILPATRICK, *supra* note 23).

Scholars, commentators, and politicians use the term “rape culture” to describe the cultural underpinnings of these statistics.³³ The expectation of violence against women inherent in rape culture precipitates the prevalence of rape at post-secondary institutions across the nation, the apathetic response it receives in the criminal justice and campus reporting systems, and general discomfort at challenging gender norms around sex.³⁴ Inherent in the concept of rape culture is that women are responsible for their own rapes, or in the alternative, that a woman asked for sex if she consensually participated in any number of other related or unrelated activities with a man.³⁵ Historically, this idea of drawing consent from prior sexual and non-sexual interactions between the victim and perpetrator has informed rape jurisprudence—both criminally and in college

33. TRANSFORMING A RAPE CULTURE vii (Emilie Buchwald et al. eds., 1993) (defining rape culture). Holly Jeanine Boux and Courtenay Dunn wrote that “[s]exual violence and rape being validated, justified, and obfuscated, and the constraints on women and their behavior are key parts of rape culture. The ways in which society speaks about issues of sexual violence and rape serve to reinforce, normalize, and rationalize the sexual violence itself.” Holly Jeanine Boux & Courtenay Dunn, *At the Intersection of Social Media and Rape Culture: How Facebook Postings, Texting and Other Personal Communications Challenge the “Real” Rape Myth in the Criminal Justice System*, 2015 U. ILL. J.L. TECH. & POL’Y 149, 153 (2015).

34. See, e.g., Boux & Dunn, *supra* note 33, at 153–54 (describing the impact of rape culture in the criminal justice system); Robin R. Runge, *Symposium: Theory and Praxis in Reducing Women’s Poverty: Failing to Address Sexual and Domestic Violence at Work: The Case of Migrant Farmworker Women*, 20 AM. U.J. GENDER SOC. POL’Y & L. 871, 892 (explaining that “[c]lassic manifestations of rape culture in current American society include blaming a woman for the rape because of how she acted or dressed”).

35. Runge, *supra* note 34, at 892. For the purpose of this Note, the following illustration of “rape culture” is useful to understand its impact and scope in mainstream culture:

[I]f a woman previously consented to any connection with a man—developing a friendship with a male colleague or superior at work, accepting a date, going to a bar or a party and talking with a man (i.e., making a stranger a nonstranger through conversation), agreeing to drive a man she has just met to his home, allowing a man she just met to drive her home, dating a man for an extended period of time, consenting to sexual relations with a man once or many times, cohabitating with a man, marrying a man—a presumption arises that she subsequently consented to sexual contact during the incident in question. . . . [Also,] she is considered responsible for having placed herself in a situation that might result in sexual contact, and, therefore, she must accept the consequences of her own conduct (i.e., nonconsensual sexual contact).

Beverly Balos & Mary Louise Fellows, *Guilty of the Crime of Trust: Nonstranger Rape*, 75 MINN. L. REV. 599, 604–05 (1991).

campus investigations.³⁶ The growing publicity of stories of campus survivors, spurred our society to begin to confront the ugly truth of non-stranger sexual assault.³⁷

The startling statistics coupled with public denouncement of rape culture on college campuses by authority figures³⁸ and the media³⁹ evidence a burgeoning climate of concern for female college students,⁴⁰ leading to heightened awareness and stricter scrutiny of campus policies regarding sexual assault.⁴¹ In response, the State of California made history by passing Senate Bill 967, an affirmative consent law, on September 28, 2014.⁴² The ACL extends Title IX

36. Balos & Fellows, *supra* note 35, at 601 (stating “[c]urrent [rape] law allows defendants to use a preexisting relationship to give credibility to a defense of consent or reasonable, good faith belief of consent”). See also Emily Bazelon, *Have We Learned Anything from the Columbia Rape Case?*, N.Y. TIMES (May 29, 2015), http://www.nytimes.com/2015/05/29/magazine/have-we-learned-anything-from-the-columbia-rape-case.html?_r=0 (discussing Facebook messages that the Survivor’s claims were admitted during the hearing, the alleged perpetrator claims were not, and an explanation of how those Facebook messages could or could not be used in a criminal trial by law professor Deborah Turkenheimer).

37. Balos & Fellows, *supra* note 35, at 604–05.

38. The Associated Press titled President Obama’s attention to the issue as his “[shining] a light . . . on a college sexual assault epidemic that is often shrouded in secrecy, with victims fearing stigma, police poorly trained to investigate and universities reluctant to disclose the violence.” Nedra Pickler, *Obama Targets College Sexual Assault Epidemic*, ASSOCIATED PRESS (Jan. 22, 2014, 8:57 PM), <http://bigstory.ap.org/article/obama-targets-college-sexual-assault-epidemic>.

39. For example, Time Magazine calls the high incident of sexual assault on college campuses a “crisis” on American college campuses. Eliza Gray, *The Sexual Assault Crisis on American Campuses*, TIME (May 15, 2014), <http://time.com/100542/the-sexual-assault-crisis-on-american-campuses/>.

40. This inference is based on the sheer number of media publications about sexual assault on college campuses. See, e.g., *supra* notes 20, 27, and 39 and accompanying text; NOT ALONE, *supra* note 1; Dep’t of Educ. Press Release, *supra* note 4.

41. Due to the crisis, President Obama initiated a task force to protect students from sexual assault. See generally NOT ALONE, *supra* note 1 (communicating the President’s decision to create a task force to give voice and support to survivors of sexual assault). Further, the Department of Education is openly investigating over fifty institutions of higher learning for violations of Title IX due to allegations that the institutions are failing to adequately investigate incidences of sexual assault on their campuses. Dept of Educ. Press Release, *supra* note 4.

42. ACL, *supra* note 6. The ACL opens schools up to losing funding from both state and federal budgets for failing to enforce this new policy. *Id.* Neither Title IX nor the ACL mandate criminal sanctions, so they do not provide the same protections afforded to defendants in the criminal justice systems. Bill 967 *Hearing Before the Comm. on Higher Ed.* of the S. Comm., (2014), http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0951-1000/sb_967_cfa_20140623_120659_asm_comm.html. While the complainant must show by a preponderance of the evidence that the incident occurred, the ACL eliminates and/or limits excuses the accused may use, and in some way requires a response from the accused showing affirmative consent. ACL,

protections by mandating that educational institutions in California receiving state and federal funds must change their internal sexual assault policies to an affirmative consent standard, which is not required by Title IX.⁴³ It went into effect on January 1, 2015 and does not apply retroactively to students whose assaults occurred prior to the effective date.⁴⁴ It requires that institutions of higher learning implement “affirmative consent” policies to cope with any sexual assault or rape complaints involving at least one student, in order to continue to receive state and federal funds.⁴⁵ The law fails to define “affirmative consent” beyond “affirmative, conscious, and voluntary agreement to engage in sexual activity;” that need not to be spoken, but must be ongoing throughout the sexual encounter, since it may be revoked at any time.⁴⁶

Instead, the law articulates what cannot be construed as affirmative consent. Prior relations, lack of resistance, or failure to protest are not indicators of consent.⁴⁷ An accused may not infer

supra note 6. In 2011, the Department of Education issued a “Dear Colleagues” letter to institutions of higher education specifying that the standard of review should be the preponderance of the evidence standard. Letter from Russlyn Ali, Assistant Secretary for Civil Rights, U.S. Dep’t. of Educ. (Apr. 4, 2011).

43. Under Title IX, educational institutions are legally required to “take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring.” *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, at 2–4 n.15, U.S. DEP’T OF EDUC. (Jan. 2001), <https://www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf>. Title IX does not mandate specific policies, nor does it require policies to adopt standards such as affirmative consent. *Id.*

44. CAL. EDUC. CODE § 67386 (West 2015).

45. *Id.* The law applies to all students regardless of whether they live on or off campus. *Id.*

46. *Id.* § 67386(a)(1). The law states:

(a)(1) An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

Id.

47. *Id.*

consent from her or his own intoxication or recklessness, or her or his failure to take reasonable steps to ascertain consent.⁴⁸ Nor may they infer consent if they “knew or reasonably should have known that the complainant was unable to consent” due to sleep, lack of consciousness, incapacitation from drugs, alcohol, medication, or other impairment making the complainant unable to comprehend the “fact, nature, or extent of the sexual activity.”⁴⁹

The law emphasizes confidentiality, outreach and treatment for the victim. It obliges victim-centered training for investigators, with specific provisions focusing on victim interviewing, and victim resources.⁵⁰ It limits its discussion of the accused to excuses that they

48. *Id.* § 67386(a)(2). The law states:

(a)(2) . . . [I]t shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the complainant consented to the sexual activity under either of the following circumstances:

(A) The accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused.

(B) The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.

Id.

49. *Id.* § 67386(a)(4). The law states:

(a)(4) . . . [I]t shall not be a valid excuse that the accused believed that the complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the complainant was unable to consent to the sexual activity under any of the following circumstances:

(A) The complainant was asleep or unconscious.

(B) The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the complainant could not understand the fact, nature, or extent of the sexual activity.

(C) The complainant was unable to communicate due to a mental or physical condition.

Id.

50. *Id.* § 67386(b). The law states:

(b) . . . [The universities] shall adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards. At a minimum, the policies and protocols shall cover all of the following:

(1) A policy statement on how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality.

can no longer make if confronted with an accusation,⁵¹ and how they should be contacted and interviewed.⁵² While the provisions offer campus resources, such as mental health services, to the victim, no such provision exists offering such services to the accused.⁵³ The ACL aspires to change rape culture, through its victim-centered application by diminishing the incidence of reported but not investigated (or insufficiently investigated) sexual assaults and unreported sexual assaults on college campuses in California.⁵⁴

(2) Initial response by the institution's personnel to a report of an incident, including requirements specific to assisting the victim, providing information in writing about the importance of preserving evidence, and the identification and location of witnesses.

(3) Response to stranger and non-stranger sexual assault.

(4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive follow up victim interview, as appropriate.

(5) Contacting and interviewing the accused.

(6) Seeking the identification and location of witnesses.

(7) Providing written notification to the victim about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate.

(8) Participation of victim advocates and other supporting people.

(9) Investigating allegations that alcohol or drugs were involved in the incident.

(10) Providing that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

(11) The role of the institutional staff supervision.

(12) A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

(13) Procedures for confidential reporting by victims and third parties.

Id.

51. *Id.* § 67386(a), (b).

52. *Id.* § 67386(b)(5).

53. *Id.* § 67386(b)(7).

54. Erica E. Phillips, *California's New Law Cracks Down on Sexual Assault on College Campuses*, WALL ST. J. (Sept. 29, 2014, 7:43 PM), <http://www.wsj.com/articles/californias-new-law-cracks-down-on-sexual-assault-on-college-campuses-1412004483>. See also *California Legislature Passes "Affirmative Consent" Law*, SEXUALITY INFO. & EDUC. COUNCIL OF THE

California State Senator Kevin de León, one of the co-authors of the ACL, stated that California has “shifted the conversation of sexual assault to one of prevention, justice and healing.”⁵⁵ Senator de León and the drafters are using this law as a means to “fundamentally change the rape culture.”⁵⁶ Once in effect,⁵⁷ it will “provide . . . students with education, resources, consistent policies and justice so that the system is not stacked against survivors.”⁵⁸ Thus, the ACL drafters intended to challenge the paradigm that sexual aggression towards women is natural part of our culture by creating a law that utilizes a victim-centered approach.

However, the ACL is shrouded in criticism.⁵⁹ Some argue that though the requirement of verbal consent was removed from the law

U.S. (SIECUS) (Nov. 11, 2014), http://www.siecus.org/index.cfm?fuseaction=Feature.showFeature&featureid=2374&parentid=478#_ednref3. Three California universities and a community college are among the 55 institutions under Title IX investigation by the Department of Education for allegations relating to the mishandling sexual assault complaints. *Id.*

55. Bill Chappell, *California Enacts ‘Yes Means Yes’ Law, Defining Sexual Conduct*, NPR (Sept. 29, 2014, 12:27 PM), <http://www.npr.org/sections/thetwo-way/2014/09/29/352482932/california-enacts-yes-means-yes-law-defining-sexual-consent>. Senator de León further noted, “[e]very student deserves a learning environment that is safe and healthy.” *Id.*

56. Press Release, Senator Kevin de León, College Campus Sexual Assault Legislation Passes the California Assembly Judiciary Committee (June 18, 2014), <http://sd24.senate.ca.gov/sb-967> [hereinafter de León].

57. The law became effective January 1, 2015 and does not apply retroactively. *Id.*

58. *Id.*

59. See, e.g., Batya Unger-Sargon, *‘Affirmative Consent’ is Bad for Women*, NEW REPUBLIC (Sept. 16, 2014), <https://newrepublic.com/article/119459/californias-campus-consent-laws-every-sex-act-potential-crime> (finding the ACL problematic because it “formalizes troubling arguments about gender and consent.”); Marshall Rottman, *Boycott College Women While in College*, NAT’L COALITION FOR MEN (Oct. 24, 2014), <http://ncfm.org/2014/10/news/discrimination-news/discrimination-against-men-news/ncfm-from-our-facebook-page-boycott-college-women-while-in-college/> (describing an extreme view of how the ACL and preponderance standard will impact men and advocating for men to “boycott college women”); Ezra Klein, *‘Yes Means Yes’ is a Terrible Law, and I Completely Support It*, VOX (Oct. 13, 2014, 10:30 AM), <http://www.vox.com/2014/10/13/6966847/yes-means-yes-is-a-terrible-bill-and-i-completely-support-it> (providing a nuanced view of the author’s gradual acceptance of the law despite his belief that the law is impractical in scope, “if the best that can be said about the law is that its definition of consent will rarely be enforced, then the definition should be rethought.”). A trend has also emerged echoing disapproval for laws and policies that approach sexual assault sanctions on college and university campuses in the same manner as the ACL. See, e.g., Michael Fein, *Rethink Harvard’s Sexual Harassment Policy*, BOSTON GLOBE (Oct. 15, 2014), <http://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZn7nU2UwuUuWMnqbM/story.html> responding to Harvard University’s recently

before it passed, it seems impossible to comply with an ACL investigation without it.⁶⁰ Others rebuke the law, fearing that consent must be documented, or that college women should be boycotted—not be the objects of male sexual attention.⁶¹ Yet others argue “this new discourse renders women as either receivers of, or victims in, the phallic pursuit of sexual satisfaction,”⁶² underscoring the conceptual framework of male sexual aggression and female passivity and victimhood. Those who critique the law in this way see it as reinforcing, rather than rupturing, the rape culture status quo.

Further, the ACL fails to move away from a “he said/she said” conflict. To determine which story is accurate, the accused’s or the victim’s, it merely shifts the burden “to the accused to articulate how he or she obtained consent from the other person.”⁶³ One commentator said, “[i]f the Yes Means Yes law [a nickname for the ACL] is taken even remotely seriously it will settle like a cold winter on college campuses, throwing everyday sexual practice into doubt and creating a haze of fear and confusion over what counts as consent.”⁶⁴ However, he argued that this unsettling fear of possible rape in each sexual interaction needed to happen to challenge and “upend” the culture of rape on college campuses.⁶⁵ This type of analysis gets to the very heart of rape culture and highlights a

changed sexual assault policy that is now more victim-centered with affirmative consent elements).

60. Unger-Sargon, *supra* note 59.

61. Rottman, *supra* note 59.

62. Unger-Sargon, *supra* note 59. Other feminists may critique this aspect of the law. *See generally* Brenner, *supra* note 30 (arguing that the victim/perpetrator framework—advocated for by feminists—creates an extremely dichotomous understanding of rape that imbues our laws and distorts our ability to respond to sexual assault and rape). The ACL very sharply reinforces this dichotomy. The binary view is problematic because it does not address some of the underlying issues of non-consent, some of which the yes-means-yes approach seeks to correct. However, the law fails to address issues like who perpetrators rape and if those individuals consider their own actions as rape or sexual assault. It also fails to require counseling be made available to the perpetrators. *Id.*

63. Wendy Adele Humphrey, “Let’s Talk about Sex”: *Legislating and Educating on the Affirmative Consent Standard*, 50 U.S.F. L. REV. 35, 62 (2016).

64. Klein, *supra* note 59. Klein is still advocating for this law because he believes that “[b]ecause for one in five women to report an attempted or completed sexual assault means that everyday sexual practices on college campuses need to be upended, and men need to feel a cold spike of fear when they begin a sexual encounter.” *Id.*

65. *Id.*

perplexing contradiction in the narrative of rape and sexual assault and the dichotomy of victim and perpetrator. On the one hand there is acknowledgement that many women survive attempted or completed sexual assault during college, but on the other, there seems to be a pervasive fear that a law like California's ACL may render any well-meaning man the victim of its implementation.⁶⁶

Very little information has been published about the rollout of these new affirmative consent policies on campuses around California in the year and a half since the ACL became effective. However, other states have considered or adopted legislation that mandates similar policies for state funded institutions in their jurisdictions.⁶⁷ The following part examines Truth and Reconciliation Commissions (TRCs)⁶⁸ as processes of restorative justice. It identifies advantages and disadvantages of utilizing TRCs in periods of transition. These guideposts will then be considered in the context of California during this period of transition into adopting affirmative consent policies.

B. Lessons from Truth and Reconciliation Commissions

TRCs are a process of transitional justice, or the “set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses.”⁶⁹ TRCs seek to limit conflict in the aftermath of intense violence, civil or international conflict, or severe and pervasive

66. *Id.*

67. See Humphrey, *supra* note 63, at 63–64 (identifying ten states considering similar legislation and one, New York, adopting legislation in July of 2015).

68. This Note uses “truth and reconciliation;” “truth and reconciliation methods;” “truth and reconciliation process;” “truth and reconciliation commissions” (TRCs), and “truth commissions” interchangeably throughout this article. In reality, TRCs are really a subset of a broader truth and reconciliation process (or method). A TRC’s aim “should be to prevent further violence and rights abuses in the future. It may hope to do this by breaking the cycle of revenge and hatred between former enemies, somehow encouraging reconciliation between opposing groups who may feel they have much to hate or fear in the other, or a history to avenge.” PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS 182 (Routledge 2d ed., 2011).

69. This Note uses the definition from the International Center for Transitional Justice (ICTJ), Shelby Bice, *Spotlight on Peacebuilding: ICTJ*, CTR. FOR INNOVATION JUST. & TECH. (Nov. 10, 2015), <http://www.thecenter.org/spotlight-on-peacebuilding-ictj>.

human rights violations while encouraging the installation of democratic regimes.⁷⁰ These mechanisms aim to balance the need for justice in the traditional sense and the need for reconciliation and peace.⁷¹ Ultimately, the hope is to deal with past violations in a transitioning society while fostering a more peaceful future.⁷² The process addresses victims and perpetrators⁷³ in order to avoid similar human rights violations in the future.⁷⁴ TRCs may operate as a complementary—though at times discordant—process to criminal prosecution because they may grant amnesty to some perpetrators in order to encourage participation.⁷⁵ At the same time, TRCs can promote restorative justice by working on the relationship between victims, perpetrators, and the community.⁷⁶

Beginning in the 1980s and 1990s, many transitional societies implemented TRCs as part of a reconciliatory process.⁷⁷ Generally, there were two overarching goals: “advancing reconciliation and promoting institutional reform.”⁷⁸ TRCs “can facilitate a more complex understanding of underlying premises for mass atrocities and advance a process of social inclusion by engaging the society in a

70. LYAL S. SUNGA, *Ten Principals for Reconciling Truth Principals with Criminal Prosecutions*, in THE LEGAL REGIME OF THE INTERNATIONAL CRIMINAL COURT: ESSAYS IN HONOUR OF PROFESSOR IGOR BLISHCHENKO 1071, 1071–72 (José Doria, Hans-Peter Gasser & M. Cherif Bassiouni eds., Leiden: Nijhoff 2009).

71. *Id.*

72. *Id.* at 1080.

73. TRAGGY MAEPA, *The Truth and Reconciliation Commission as a Model of Restorative Justice*, in BEYOND RETRIBUTION—PROSPECTS FOR RESTORATIVE JUSTICE IN SOUTH AFRICA 66, 67 (Traggy Maepa ed., 2005).

74. Margret Maisel, *Have Truth and Reconciliation Commissions Helped Remediate Human Rights Violations Against Women? A Feminist Analysis of the Past and Formula for the Future*, 20 CARDOZO J. INT'L & COMP. L. 143, 144 (2011).

75. Sunga, *supra* note 70, at 1072.

76. Though debate still remains as to the definition of “restorative justice,” one prominent definition is “a process in which offenders, victims, their representatives and representatives of the community come together to agree on a response to a crime [P]erspectives of restorative justice often underline equal emphasis on victims, offenders and community, emphasis on relationships and a forward looking approach.” LINDA GRONING & JORN JACOBSEN, *Introduction: Restorative Justice and the Criminal Justice System*, in RESTORATIVE JUST. & CRIM. JUST. 12 (Linda Groning & Jorn Jacobsen eds., 2012).

77. There have been over thirty examples of TRCs worldwide. *Truth, Justice and Reparation: Establishing an Effective Truth Commission 1*, AMNESTY INT'L (June 11, 2007), <https://www.amnesty.org/en/documents/POL30/009/2007/en/>.

78. Hayner, *supra* note 68, at 182.

comprehensive process of repair.”⁷⁹ Further, TRCs can provide a cathartic forum for people who have been traumatized to tell their stories to reconcile both as individuals and collectively as a community.⁸⁰

There has been a lot of discussion regarding the relative successes and limitations of TRCs. Some criticize the TRCs for failing to adequately address violence perpetrated against women and the specific needs and realities of women, thereby failing to promote gender-neutral access and aid.⁸¹ TRCs risk re-victimization of participants by requiring participants to discuss their experiences without necessarily providing closure,⁸² and thus, can sometimes disappoint participants if they are promised too much.⁸³ Without appropriate governmental, institutional, and public support, TRCs findings may not be implemented and therefore may fail to meet its goals or the community’s expectations.⁸⁴ TRCs allow for holistic review and recitation of past events from survivors and perpetrators

79. CHEAH WUI LING, *Justice as Practised by Victims of Conflict: Post-World War II Movements as Sites of Engagement and Knowledge*, in RESTORATIVE JUST. & CRIM. JUST. 145, 150 (Linda Groning & Jorn Jacobsen eds., 2012).

80. Roslyn Myers, *Truth and Reconciliation Commissions 101: What TRCS Can Teach the United States Justice System About Justice*, 78 REV. JUR. U.P.R. 95, 97–98 (2009). Many experts believe that telling ones’ story in a safe and secure environment promotes catharsis:

Psychologists and sociologists have long known that people who have been traumatized can benefit from retelling their experience—under certain circumstances. Examples of such oral and written testimony memorializing the individual stories of survivors of historical mass crimes and other victims are plentiful. Testimony, and the healing process it can inspire, is fundamental to the concept of justice.

Id.

81. Maisel, *supra* note 74, at 145–52 (describing how transitional justice institutions have “fail[ed] to consider the importance of gender, [and] take into account harms suffered primarily by women”).

82. ESTELLE ZINSSTAG, *Sexual Violence Against Women in Armed Conflicts and Restorative Justice*, in FEMINIST PERSPECTIVES OF TRANSITIONAL JUSTICE: FROM INTERNATIONAL CRIMINAL TO ALTERNATIVE FORMS OF JUSTICE 187, 217 (Martha Albertson Fineman and Estelle Zinsstag eds., 2013).

83. Angelika Schlunck, *Truth and Reconciliation Commissions*, 4 ILSA J. INT’L & COMP. L. 415, 421 (1999).

84. *Id.* at 420 (arguing that “[e]ven if commissions come up with comprehensive reports, their findings can only have an impact if the public takes notice and if policymakers allow for significant changes.”).

to create a comprehensive narrative for the community,⁸⁵ apologies from individuals or institutions responsible,⁸⁶ and can promote personal and societal healing through the telling of one's story and the listening to it.⁸⁷ These criticisms underscore the importance of monitoring and evaluating the goals and the outcomes of a TRC to safeguard its progress and to address the needs of the community.

TRCs are flexible and can be adapted specifically to the situation at hand.⁸⁸ They have the capacity to address the particular needs of that situation—including gender or sex based violence—because they can take into account the context in which the crimes occurred as well as the particular effect of a crime on a survivor.⁸⁹ Further, TRCs provide a forum for crimes committed in the past to be acknowledged formally in a way that criminal or other proceedings may not since they include the context and surrounding circumstances of the crime regardless evidence constraints that would be required in a criminal proceeding.⁹⁰ TRCs also utilize an independent investigative commission, which may diminish influence exerted by private or governmental interests.⁹¹

The following two parts will address two of these commissions; South Africa, one of the first and best-known TRCs; and Sierra Leone, the first TRC to incorporate gender considerations at every

85. MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 59–60 (Beacon Press, 1998). Minow states that “[p]utting narratives of distinct events together with the actions of different actors demands materials and the charge to look across cases and to connect the stories of victims and offenders. Truth commissions undertake to write the history of what happened as a central task.” *Id.*

86. *Id.* at 74–79 (discussing how though the South African TRC did not require apologies, some perpetrators did apologize and some victims felt it was useful for forgiving and overcoming trauma).

87. *Id.* at 74–76. *See also* PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGES OF TRUTH COMMISSIONS* 146–47 (2d ed. 2011) (discussing the differing views of whether speaking out promotes catharsis or not, but also granting that “official acknowledgement of previously denied events, especially by a state-sponsored body such as a truth commission, can . . . be extremely powerful.”).

88. Schlunck, *supra* note 83, at 420.

89. *Id.* at 419–20.

90. *Id.*

91. *Id.* at 420.

level of the process.⁹² These two examples provide tools and lessons that could be applied in the United States, particularly to cope with the endemic problem of sexual assault on college campuses in conjunction with laws like the ACL.⁹³

1. South Africa

The South African TRC is perhaps the best-known example of a TRC, and the “most clearly associated with the principles of restorative justice.”⁹⁴ It was established in 1995 to cope with the devastating history of apartheid,⁹⁵ in order to address the violent past and build a foundation for a more peaceful and democratic future.⁹⁶ The TRC’s process included extensive fact gathering through hearings of about twenty-one thousand victims.⁹⁷ It aspired to create a complete public record to respond to the history of human rights

92. Maisel, *supra* note 74, at 164–65. These two examples were chosen to examine the both the successes and shortcomings of each TRC and to demonstrate the ability of a later TRC to respond to criticisms of an earlier one, thereby exhibiting the potential for fluidity and flexibility in the process.

93. TRCs are not new to the United States. In 1999, the idea of bringing a TRC to Greensboro, North Carolina, arose during the twentieth anniversary observances of the tragic shootings of five black community leaders, and injuring many others, on November 3, 1979, during a march against the Klu Klux Klan. The Trial ultimately led to an acquittal of all the defendants, though civil charges brought later found the Klu Klux Klan, Nazi Party, and Greensboro Police guilty and responsible for the death and injury of many community members. Despite the civil convictions, the legacy of the 1979 event remained, continuing to unsettle the greater community. The TRC held public hearings, listened to testimony, established the facts, wrote the story, and provided recommendations for moving forward. GREENSBORO TRUTH AND RECONCILIATION COMMISSION, REPORT EXECUTIVE SUMMARY 2–3 (1996), http://www.greensborotrc.org/exec_summary.pdf.

94. WUI LING, *supra* note 79, at 151.

95. Between 1948 and 1990, South African society operated under a legally enforced system of racism called Apartheid. Apartheid formally expanded societal customs under colonial rule and “[i]nstitutionalized racism [that] stripped blacks of their civil and political rights.” U.S. INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, <http://www.usip.org/publications/truth-commission-south-africa> (last visited Oct.22, 2014). Actual and perceived resistance by Blacks met with violence, imprisonment, torture, and police brutality. *Id.*

96. South Africa TRC’s stated goal was to develop a “bridge-building process designed to help lead the nation away from a deeply divided past to a future founded on the recognition of human rights and democracy.” THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, Vol. 1, at 48, <http://www.justice.gov.za/trc/report>.

97. UNITED INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, *supra* note 95.

abuses.⁹⁸ It made amnesty possible for certain perpetrators who came forward and honestly testified to all of the atrocities they had committed, though in reality it granted amnesty to a relatively small portion of those who applied for it.⁹⁹

The South African TRC was composed of three sub-committees, and it included both victims and perpetrators in the process.¹⁰⁰ It included “several elements of restorative justice,” such as face-to-face confrontation; victims’ ability to cross-examine amnesty applicants; public hearings; and the encouragement of perpetrators to acknowledge their participation in front of victims.¹⁰¹ The final report proposed recommendations to the State Government to promote reconciliation. These suggestions included: financial compensation to victims and families of victims for their suffering;¹⁰² integration of civil, political, and economic institutions into the reconciliation process; consideration of prosecution in those cases in which amnesty was not sought or was denied; and preservation of the Commission’s work.¹⁰³

The TRC and the ensuing implementation of its report faced some criticism within South Africa and beyond. For instance, the amount paid to victims in reparations was far less than that recommended by the Commission and delayed for a long period of time.¹⁰⁴ Though some victims desired to see justice done through prosecution, a few perpetrators could not be prosecuted because they were awarded amnesty, while others simply were never prosecuted.¹⁰⁵ Others

98. Roslyn Myers, *Truth and Reconciliation Commissions 101: What TRCS Can Teach the United States Justice System About Justice*, 78 REV. JUR. U.P.R. 95, 100–01, 104–11 (2009).

99. *Id.* at 105. See also U.S. INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, *supra* note 95 (stating that “[a]mnesty was granted in 849 cases and refused in 5,392 cases”). Myers, *supra* note 98, at 105.

100. Myers, *supra* note 98, at 109. See also U.S. INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, *supra* note 95 (briefly describing the Commission structure: The TRC was composed of three subcommittees—(1) The Human Rights Committee, (2) The Reparations and Rehabilitation Committee, and (3) The Amnesty Committee—and included 17 Commissioners).

101. WUI LING, *supra* note 79, at 152.

102. MAEPA, *supra* note 73, at 67.

103. U.S. INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, *supra* note 95.

104. *Id.*

105. *Id.*

criticized the TRC for focusing on the impossible goal of establishing a complete truth, including all the stories of everyone harmed and those who harmed them.¹⁰⁶ Failing to reveal this complete truth, “undermined the process of reconciliation as it was originally envisaged.”¹⁰⁷ Beyond the substantive criticisms of the truth seeking process, other scholars have complained about the procedural guidelines of the TRC.

Feminists criticize the “gender-neutral”¹⁰⁸ process for eschewing women’s victimization during apartheid and for ignoring the particular concerns of women throughout the TRC process.¹⁰⁹ Specifically, some protested that the TRC addressed only violence that occurred in a political context, ignoring larger structures of gender subordination and inequality—like domestic and sexual violence.¹¹⁰ The mandate of the South African TRC simply failed to incorporate women’s issues, and therefore, crimes and atrocities targeting them were largely left unaddressed.¹¹¹ These limitations, coupled with cultural taboos of discussing sexual violence and stigmas concerning sexual abuse, reduced women’s experiences to that of “secondary witnesses” of apartheid.¹¹²

106. Brandon Hamber, *Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland*, 26 *FORDHAM INT’L L.J.* 1074, 1077–78 (2003) (lauding many achievements of the South African TRC but also criticizing it because “not all the truth about the past has emerged.”).

107. *Id.* at 1078.

108. Peggy Maisel, *Greensboro and Beyond: Remediating the Structural Sexism in Truth and Reconciliation Processes and Determining the Potential Impact and Benefits of Truth Processes in the United States*, *FLA. INT’L U.*, no. 13-11, at 225–26 (July 2013) [hereinafter Maisel, *Greensboro and Beyond*].

109. *Id.* at 225–32 (discussing how the Commissioner interpreted the TRC mandate narrowly so as to address only specifically severe crimes such as murder or disappearances, and not the daily human rights violations, exacerbated by gender, that occurred during the apartheid regime).

110. Maisel, *supra* note 74, at 155–56.

111. Maisel, *Greensboro and Beyond*, *supra* note 108, at 228, 232. Eventually, at the pressure of women’s groups, the TRC did attempt to make an inquiry in to violence against women. The TRC “held three special hearings on women to provide a comfortable forum for women to talk about specific, gender-related crimes.” *Core Element of Facilitating Women’s Participation in Truth and Reconciliation Commissions*, *PUB. INT’L L. & POL’Y GROUP* 1, 15 (Jan. 2013), http://syriaaccountability.org/wp-content/uploads/PILPG-Womens-Participation-in-Truth-Commissions-2013_EN.pdf.

112. Maisel, *Greensboro and Beyond*, *supra* note 111, at 229.

Despite the shortcomings, the TRC process achieved undeniable success.¹¹³ It “facilitate[d] a peaceful transition from apartheid rule to democracy, revealing many of the gross human rights violations under apartheid, and promoted at least some degree of reconciliation between victims and perpetrators.”¹¹⁴ It promoted a conception of justice elevating “truth, recordation, and communal grieving” above retributive justice,¹¹⁵ and diminished some of the individualized bitterness, resentment, pain, and anger to form a collective spirit that recognizes the “memories and pains of the violations” while tempering the embattled tension in the society.¹¹⁶

The subsequent part examines the contributions and criticisms of the Sierra Leonean TRC. Like South Africa’s TRC, Sierra Leone’s TRC focused on fact-finding and recording to determine a comprehensive and truthful account of the atrocities.¹¹⁷ Unlike in South Africa, amnesty was not offered, though perpetrators still regularly appeared and participated in the process.¹¹⁸ Finally, as discussed below, the Sierra Leonean TRC was more gender-inclusive in its procedures and interpretation of its mandate and promoted more opportunities for women to participate and share the atrocities they survived.¹¹⁹

113. James L. Gibson, *Overcoming Apartheid: Can Truth Reconcile a Divided Nation*, 31(2) POLITIKON 129, 130 (2004). Gibson aptly underscores South Africa’s success stating, “[i]ndeed, the world has acknowledged the success of South Africa’s experiment through the numerous attempts to replicate its truth and reconciliation process in other troubled areas of the globe.” *Id.*

114. Maisel, *supra* note 74, at 152.

115. Myers, *supra* note 98, at 112.

116. *Id.*

117. Abdul Tejan-Cole, *The Complementary and Conflicting Relationship Between the Special Court for Sierra Leone and the Truth and Reconciliation Commission*, 6 YALE HUM. RTS. & DEV. L.J. 139, 146 (2014). It further hoped “to restore human dignity to victims and promot[e] reconciliation by provid[e] victims the opportunity to give an account of the violations and abuses suffered, and providing perpetrators the chance to relate their experiences.” *Id.*

118. William A. Schabas, *Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, 11 U.C. DAVIS J. INT’L L. & POL’Y 145, 152–53 (2004). Schabas suggests that there may have been several motivators for perpetrators to participate including a desire to confess, put a positive spin on their participation, or “some form of social acceptance.” *Id.* at 153.

119. *See infra* notes 123–29 and accompanying text.

2. Sierra Leone

In 2000, the Government of Sierra Leone created a TRC in compliance with the peace agreement signed between the Government of Sierra Leone and the Revolutionary United Front, after years of civil war in the early 1990s.¹²⁰ Much of the conflict targeted the civilian population, engendering crimes such as rape, mutilation, and recruitment of child soldiers.¹²¹ The TRC was only one of several institutionalized mechanisms used in the aftermath of the armed conflict.¹²²

The TRC in Sierra Leone was more inclusive of women at every level—from the consideration of gender and ultimate selection of women for commissioner seats,¹²³ to the requirement that crimes committed against women and children receive attention,¹²⁴ to the Commissioner’s interpretation of “their mandate as requiring them to capture women’s ‘gendered experiences at a political, legal, health and social welfare level.’”¹²⁵ The mandate was an important piece of the TRC because it identified the damage or breakdown in relationships that the reconciliation effort endeavors to recover.¹²⁶

120. TRUTH COMMISSION: SIERRA LEONE, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-sierra-leone> (last visited Oct. 22, 2014).

121. *Id.*

122. Tejan-Cole, *supra* note 117. Complementing the national TRC was a United Nations Security Council (UNSC) Sanctioned Special Court for Sierra Leone (SCSL) to prosecute abuses of international humanitarian law, like Crimes against Humanity, War Crimes, and acts that were prohibited under customary international law at the time they were committed. *Id.* at 143–47.

123. Maisel, *supra* note 74, at 165–69.

124. *Id.* at 167.

125. *Id.* at 166 (quoting WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION 87 ¶ 11 (2004), <http://www.sierra-leone.org/TRCDocuments.html> [hereinafter Sierra Leone TRC Report]). The mandate of the TRC was:

[T]o create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.

See The Truth and Reconciliation Act, § 6(1) (2000) (Sierra Leone), <http://www.usip.org/sites/default/files/file/resources/collections/commissions/SeirraLeone-Charter.pdf> [hereinafter TRC Act].

126. *See, e.g.,* Maisel, *Greensboro and Beyond*, *supra* note 108, at 239 (describing the mandate of the Greensboro TRC).

The mandate—along with the procedural changes exhibited in Sierra Leone—broadened the opportunity of Sierra Leone’s TRC to address sexual and gender-based violence.

Commissioners engaged with national and international civil society and women’s organizations to educate themselves and receive training on how to approach women and girls to obtain testimony without causing re-victimization.¹²⁷ There was a specific outreach plan targeting women,¹²⁸ and the TRC allowed three methods for women to tell their stories of sexual violence: *in camera* in front of the Commission; at public hearings, but behind a screen; or openly before a public audience.¹²⁹

There were some setbacks and criticisms of the Sierra Leonean TRC. Like in South Africa, the impact of the Sierra Leonean TRC faltered by making recommendations that were not followed by the Government, specifically when the Government failed to provide appropriate funding for the reparations program suggested by the TRC.¹³⁰ But, the Sierra Leonean TRC is often heralded as a success,¹³¹ particularly in its strides to recognize sex and gender based violence and its effect on women.¹³² Sierra Leone’s TRC demonstrates the importance of crafting the reconciliation plan to match the context.¹³³

127. Maisel, *supra* note 74, at 167–68.

128. *Id.* at 168.

129. Binaifer Nowrojee, *Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims*, 18 HARV. HUM. RTS. J. 85, 94 (2005).

130. Hayner, *supra* note 68, at 175–76.

131. Matiangai V.S. Sirleaf, *Beyond Truth and Punishment in Transitional Justice*, 54 VA. J. INT’L L. 223, 247 (2014), recognizing:

The TRC-SL’s Report received acclaim for its thorough accounting of the conflict and the factors that contributed to the civil war. Interviewees remarked that the TRC-SL’s Report left a positive legacy and is an advocacy tool that can be used as a catalyst for change. The BBC’s survey revealed that 66% of respondents believe that the TRC-SL has provided an accurate account of what happened during the Sierra Leone conflict.

Id.

132. Maisel, *Greensboro and Beyond*, *supra* note 108, at 234 (internal quotation marks omitted). Finally, the Final Report had an entire chapter devoted to women, including specific recommendations “to protect women from future violence and abuse while providing greater educational and economic opportunities.” Maisel, *Greensboro and Beyond*, *supra* note 108, at 234.

133. Hayner, *supra* note 68, at 189. “There is no one, single way to achieve reconciliation; it must be context-specific.” *Id.*

III. COULD THE CONTEXT IN CALIFORNIA SURROUNDING THE AFFIRMATIVE CONSENT LAW BENEFIT FROM TRCs?

Transition requires something more than mere legal change. Juxtaposing examples of TRCs that dealt with atrocity on a large scale in order to build more peaceful and stable future¹³⁴ with the context of rape culture as it plays out across the nation's colleges and universities¹³⁵ underscores the need for a holistic approach to the implementation California's victim-centered ACL.¹³⁶ The ACL endeavors to change rape culture.¹³⁷ But the law's ample criticism and derision on social media forums,¹³⁸ failure to address those who were assaulted prior to its enactment,¹³⁹ and failure to address perpetrators in a meaningful way¹⁴⁰ could hinder its ability to truly challenge the overriding culture.

The ACL's passage demonstrates that the California Legislature cares about the safety, health, and wellbeing of students on its college campuses. However, its victim-centered provisions fail to provide any avenue of reconciliation for students who were victims prior to the law's enactment,¹⁴¹ or truly change or curb the problematic sexual behavior of the perpetrators—and perhaps of the victims, too.¹⁴² The law focuses almost solely on survivors of sexual assault while condemning the accused to the burden of demonstrating consent.¹⁴³ To the extent that the ACL addresses perpetrators, it merely clarifies what excuses may not be used for their defense and the procedures

134. *See supra* notes 94–133 and accompanying text.

135. *See supra* notes 19–41 and accompanying text (discussing rape culture on college campuses).

136. *See supra* notes 41–59 and accompanying text (discussing the ACL).

137. *See supra* notes 56–58 and accompanying text.

138. *See supra* notes 59–66 and accompanying text.

139. *See de León, supra* note 56.

140. *See supra* note 62.

141. *See supra* note 44 and accompanying text (explaining that the ACL does not apply retroactively to students who were assaulted prior to its effective date). An inference can be drawn from Senator de León's strong language that the prior sexual assault policies were not appropriately addressing the needs of victims on college campuses in California, and thus the need for a law mandating how the policies should be drafted.

142. *See supra* notes 46–59 and accompanying text. Indeed, the law abruptly changes the requirements for consensual sex without giving even truly defining “affirmative consent.” *See ACL, supra* note 43 and accompanying text.

143. *See supra* notes 51, 67 and accompanying text.

for contacting and interviewing the accused.¹⁴⁴ In doing so, it mimics the government statistical reports, equating perpetrators with a predatory male,¹⁴⁵ rather than looking at the types of behaviors, attitudes, and culture that informs the participants—active or not—in their sexual desires, their conceptions of sex and sexuality, and their judgment during sexual encounters.¹⁴⁶

The ACL does not in and of itself provide an actual mechanism through which to override the dominant cultural understanding of sex, sexual assault, and rape *until* there is a complainant and investigation.¹⁴⁷ It reinforces and rigidifies rape culture's underlying assumption of the passive victim/aggressive perpetrator dichotomy,¹⁴⁸ since without "affirmative consent" there is necessarily a victim.¹⁴⁹ It establishes a victim-centered approach, excluding those assaulted prior to the law's effective date¹⁵⁰ and perpetrators,¹⁵¹ who may also require psychological counseling and trauma support. The explosion of criticism in the media after the California Legislature passed the ACL underscores the tension and weariness surrounding its application and suggests that the broader community still struggles with the concept of acquaintance rape and consent.¹⁵²

144. See *supra* notes 48–52 and accompanying text.

145. See Brenner, *supra* note 30, at 506 (identifying a presumption "that rape perpetrators are misogynistic predators who act freely to harm victims[]").

146. *Id.* (discussing limitations of using a victim/perpetrator framework to analyze sexual assault on college campuses as it prevents colleges "from developing more nuanced approaches to allegations of acquaintance rape and the harms of nonconsensual, unwanted, or confusing sex").

147. See *supra* notes 19–37 and accompanying text. Moreover, the ACL must be implemented before one can determine if the policy can function as the drafters intended. See, e.g., Unger-Sargon, *supra* notes 59, 62 and accompanying text (identifying that the he said/she said analysis will still be present under the new ACL). See also Klein, *supra* notes 59, 64–66 and accompanying text (arguing that the law needs to be extreme in order to truly have the impact its drafters intended).

148. See *supra* notes 44–50 and accompanying text (describing what can and cannot constitute "affirmative consent" in such a way as to infer that the aggressor must be taking advantage of a situation). See also Unger-Sargon, *supra* note 59 (expressing concern that the new law "dangerously expands the category of sexual assault to include consensual acts that take place in the absence of 'affirmative agreement.'").

149. See ACL, *supra* note 46.

150. See *supra* note 44 and accompanying text (mentioning that the ACL does not apply retroactively to students who were assaulted prior to its effective).

151. See *supra* note 53 and accompanying text.

152. *Supra* notes 59–66 and accompanying text. At least some of the critics found in these texts focus on what the new line for consensual sex will be and how people will know where it

TRCs can be used as joint and temporary operations to help jumpstart the lofty goals of the ACL and give legitimacy to its mission. For instance, Sierra Leone's TRC operated alongside criminal trials conducted by the United Nations-mandated Special Court for Sierra Leone.¹⁵³ The experiences in South Africa and Sierra Leone demonstrate that TRCs can offer many benefits for advancing restorative justice and peaceful transition (or cultural change).¹⁵⁴ First, TRCs are more holistic than the ACL. Though victim-centered, TRCs include perpetrators, striving to incorporate all stories into the narrative and history of the conflict.¹⁵⁵ Second, TRCs foster communication and rebuilding of relationships between the victims, perpetrators, and the community.¹⁵⁶ Moreover, providing a forum to allow survivors and perpetrators to speak may help encourage individual catharsis for trauma.¹⁵⁷ Third, TRCs can be tailored to specific context,¹⁵⁸ and an independent investigation commission could even heal wounds between the survivors and their schools by demonstrating that the schools are serious about challenging rape culture.

The criticisms of the South African TRC for being gender-neutral and failing to address violence against women was largely rectified in the Sierra Leonean TRC.¹⁵⁹ So too were the criticisms of allowing amnesty for some perpetrators, as the Sierra Leonean TRC did not offer any promise of amnesty, and still perpetrators participated in the TRC hearings.¹⁶⁰ Still, both TRCs struggled with the government ignoring recommendations to further reconciliation, particularly neglecting to pay the suggested amount of reparations.¹⁶¹ In part, these lapses occurred due to the lack of governmental commitment to

is drawn. *See, e.g.,* Fein, *supra* note 59; Rottman, *supra* note 59.

153. Tejan-Cole, *supra* note 117, at 143.

154. *See supra* notes 111–15, 129–32 and accompanying text.

155. *See, e.g., supra* notes 98–100, 117 and accompanying text.

156. *See, e.g., supra* notes 77, 84–86, 115 and accompanying text.

157. *See supra* note 87.

158. *See* Hayner, *supra* note 133 and accompanying text.

159. *Compare supra* notes 118–28 and accompanying text (detailing the inclusion of women in the Sierra Leonean TRC process) *with supra* notes 108–10 and accompanying text (describing gendered criticisms of the South African TRC).

160. *See* Schabas, *supra* note 118 and accompanying text.

161. *See supra* notes 103, 129 and accompanying text.

provide appropriate funding or follow through with all the recommendations.¹⁶² However, even with the shortcomings, both commissions are largely seen as successes.¹⁶³ The Sierra Leonean TRC evinces that criticisms from prior TRCs, like those denouncing South Africa's TRC, can inform design and scope of future TRCs to mitigate similar pitfalls.¹⁶⁴

The context and climate of campus sexual assault is quite different from that of a state-imposed system of racism, or an internal conflict where civilians were targeted and deliberately raped or killed like the Sierra Leonean and South African conflicts.¹⁶⁵ However, some broad similarities may be drawn. Statistics indicate that most sexual assault happens between acquaintances, with perpetrators and victims living in close proximity even after complaints are reported.¹⁶⁶ Further, a significant population of students—reportedly one in five women—are survivors, demonstrating the scale of the issue.¹⁶⁷ These statistics belie the inference that the number of women and men affected as survivors, perpetrators, friends, siblings, children, parents, and as students is oppressive and needs to be dealt with in a comprehensive manner that will facilitate a change in rape culture. The following part proposes what one of these campus TRCs might look like and accomplish.

IV. APPLYING LESSONS LEARNED IN SOUTH AFRICA AND SIERRA LEONE TO THE CALIFORNIA CONTEXT

A. Proposal

Because TRCs can be used alongside more traditional retributive justice institutions,¹⁶⁸ are created to cope with atrocity affecting and

162. See *supra* notes 103, 129 and accompanying text.

163. See *supra* notes 111–15, 129–32 and accompanying text.

164. Compare *supra* notes 107–10 and accompanying text (explaining South Africa's shortcomings concerning the inclusion of women and gender-based violence within the purview of the TRC) with *supra* notes 123–29 and accompanying texts (describing the specific measures adopted by the Sierra Leonean TRC to ensure women's presence).

165. See *supra* notes 95–133 and accompanying text.

166. See Tuerkheimer, *supra* note 22 and accompanying text.

167. See NOT ALONE, *supra* note 21 and accompanying text.

168. See *supra* notes 75, 121 and accompanying text.

pervading the lives of many,¹⁶⁹ can be tailored to specific contexts,¹⁷⁰ and can urge reconciliation and peaceful transition,¹⁷¹ they would be a useful tool in California—and in other states considering this legislation—as schools comply with the ACL and adopt policies accordingly. TRCs can simultaneously begin to change cultural conceptions of sex, rape, and rape culture as the law begins to take effect by promoting understanding of non-stranger rape, an integral part in confronting the present climate surrounding the issue of sexual assault on college campuses. A shift in the understanding of rape and the people it affects is necessary for effective implementation of the ACL. It could encourage a broader discourse and include multiple voices to inform and develop the consent narrative.

The South African and Sierra Leonean TRCs offer important guidance to instruct a successful TRC process for California institutions of higher learning to work alongside the implementation of the ACL. Considerations should include: (1) tailoring the mandate to meet the specific goals of the TRC;¹⁷² (2) picking an appropriate time period for investigation;¹⁷³ (3) ensuring there is enough funding to fulfill the recommendations of the commission;¹⁷⁴ (4) using the expertise and capacity of local organizations to help promote sensitive inquiry for survivors and for perpetrators,¹⁷⁵ since rape culture embodies male sexual aggression and challenging it requires

169. See UNITED INST. OF PEACE, TRUTH COMMISSION: SOUTH AFRICA, *supra* note 97 and accompanying text.

170. See Hayner, *supra* note 133 and accompanying text.

171. See *supra* notes 111–15, 129–32 and accompanying text.

172. See Hayner, *supra* note 133 and accompanying text.

173. See Schlunck, *supra* note 83 and accompanying text. In South Africa and Sierra Leone, there were more clearly defined periods in which the human rights abuses took place than can necessarily be found in the context of rape and sexual assault. It would be impractical and incredibly expensive to investigate any incidence of sexual assault at a particular institution going back an infinite number of years. Since the purpose of a TRC on a college campus would be to create an open dialogue that helps engender the change in cultural perceptions of rape that the ACL is supposed to embody, it may perhaps be prudent to select a timeframe of incidences that occurred from five years prior to January 1, 2015, the effective date of the ACL.

174. See *supra* notes 84, 104, and 130 and accompanying text (noting that TRCs are limited by restrained public, institutional, governmental support and/ or insufficient funding).

175. See *supra* notes 126–27 and accompanying text. Though, the focus still was largely on the victims in Sierra Leone, specifically the support offered by the civil society organizations, Maisel, *supra* note 74, at 167–68, this approach could be expanded to also include support to perpetrators.

an inquiry into learned sexual behavior of both parties of an assault in order for both parties to evolve past the incident;¹⁷⁶ (5) using outside observers—not related to the institutions—as the commissioner;¹⁷⁷ and (6) providing several methods through which survivors could tell their story, to preserve anonymity if required.¹⁷⁸ As demonstrated by both examples, TRCs are flexible and context specific.¹⁷⁹ This characteristic embodies the great capacity for TRCs to fit into many situations and environments including on many different college and university campuses.

Giving leeway to the commissioners to tailor the mandate of the TRC to meet its specific goals—as was done in Sierra Leone—ensures that the process adopted by the TRC stays true to its mission.¹⁸⁰ A TRC mandate working in conjunction the ACL should encompass combatting rape culture through public discourse and records of incidences that occurred prior to the effective date of the ACL. This date could be flexible depending on the campus's interest and funding for the program. The TRC Commissioners could also determine how the hearings would occur and what they would entail, what the report would look like, and how to offer services to those who participated.¹⁸¹ Each institution could choose the time period the TRC would investigate, limiting it to ensure that there would be appropriate funds to implement the recommendations by the TRC to accomplish the goal of changing rape culture on that campus.¹⁸²

Having a TRC independent from the institution could encourage former students who had negative interactions when reporting sexual assaults, or did not report because of perceived inadequacy in the institution's reporting mechanism, to come forward and contribute

176. See *supra* notes 33–37 and accompanying text.

177. See Schlunck, *supra* note 83 and accompanying text.

178. See Nowrojee, *supra* note 129 and accompanying text. The method selected in Sierra Leone—that survivors of rape were permitted three possible ways to come forward and participate in the TRC—is an effective way to encourage participation without re-victimizing survivors by forcing them to publicly relive their stories. *Id.*

179. See Hayner, *supra* note 133 and accompanying text.

180. See *supra* notes 125–26 and accompanying text.

181. For example, in Sierra Leone, commissioners permitted sexual assault survivors to testify before the Commission in three different ways. See Nowrojee, *supra* note 129.

182. Ensuring funding is important, considering complaints from both the South African and Sierra Leonean TRCs included the fact that the governments in each country did not adopt all the recommendations by the TRCs. See *supra* notes 103, 129 and accompanying text.

their stories to the rape and sexual assault discourse and even promote personal healing among survivors.¹⁸³ The institution can further protect those who participate by drawing on lessons learned in Sierra Leone and allowing for multiple types of survivor disclosures.¹⁸⁴

Since the ACL requires higher education institutions to work with local civil society organizations to provide services to victims,¹⁸⁵ the TRC could choose to interpret the mandate to include participating alumni and current students as victims, perpetrators, or bystanders. Allowing participation by more students could uncover deep-seeded issues about learned sexual behavior that may contribute to sexual assault and rape culture. Acting in tandem with the ACL, the discourse and records provided by the TRC would help educate and immerse the community in the cultural change beginning to take place.

Some of the weaknesses of the TRCs seen in South Africa and Sierra Leone¹⁸⁶ would be inapplicable or could be avoided in the context of campus TRCs. For instance, since the TRC would be limited in time and focused exclusively on events prior to the effective date of the law, it would address a group of survivors who likely did not see any type of justice materialize after reporting their incident—if they even reported the incident. Further, there need not be an expectation of reparations. Reparations are not part of the ACL and they need not be contemplated as part of the TRC. Instead, the purpose could be limited to an acknowledgement of the seriousness of the issue of sexual assaults on college campuses, a recognition and apology for tolerating its pervasiveness for so long, and an opportunity to create a new dialogue surrounding issues of consent, so as to inform the implementation of the ACL going forward.

183. See Epifano, *supra* note 26. Both Angie Epifano and Annie Clark discuss the anger and anguish survivors feel when their universities do not provide appropriate reporting avenues and effective investigation mechanisms to cope with sexual assault on their campuses. Epifano, *supra* note 26; Clark, *supra* note 26.

184. See Nowrojee, *supra* note 129 and accompanying text.

185. See ACL, *supra* note 51 and accompanying text.

186. See *supra* notes 80–83, 103–10, and 129 (describing some general setbacks of TRCs, as well as specific setbacks from the South African and Sierra Leonean TRCs).

Finally, the very existence of the ACL demonstrates a commitment by the California Legislature to challenge and change rape culture.¹⁸⁷ Its existence points to the potential for the TRC to have a great impact as long as the State, institutions, and public continue to support the goal behind the law.¹⁸⁸ The TRC's purpose would be to help ensure that the law actually meets its goal to change the cultural understanding and discourse around rape and sexual assault. TRCs could lay the groundwork for diminishing incidences of sexual assault on college campuses by raising awareness of the crude realities of campus rape and sex through personal stories,¹⁸⁹ and by informing a more nuanced interpretation of the law.

B. Limitations

There are practical limitations to adopting TRCs alongside the ACL to tackle past incidences of sexual assault. TRCs can be expensive, and California higher education institutions are already burdened with costs of implementing the ACL. They may not want to spend more money, go back in time, and look at incidences that occurred between individuals who are no longer students at the institutions. Further, since TRCs need those involved in the incidents to come forward, there is a chance that the TRC will be ineffective if former students, survivors, or perpetrators see the TRC as worthless and decide not to appear. The fewer people who came forward, the less effective such an approach would be.

Further, the entire analysis of this Note revolves around the limitations within the ACL itself—it reinforces cultural myths about rape, that victims are passive and perpetrators are predatory.¹⁹⁰ It also largely addresses sexual assault as a crime committed by men against women, which is not a holistic (or accurate) perspective.¹⁹¹

187. *See supra* notes 55–58.

188. *See Schlunck, supra* note 83 and accompanying text.

189. *See supra* notes 19–32 and accompanying text.

190. *See Brenner, supra* note 30.

191. *Id.* at 526–28 (describing how some have trouble comprehending a female rapist or a male survivor, and how this perspective “contributes to the law’s tendency to marginalize male, queer, transgender, and intersex rape survivors.”).

Finally, TRCs are only one way to challenge and change rape culture, and institutions may attempt other successful mechanisms to ensure the implementation of the ACL meets its goal of combatting rape culture.

V. CONCLUSION

It is unclear how the ACL will impact complainants and perpetrators on college campuses going forward, especially since no publications have commented on its first year and a half in existence. In looking at the goals of the law (to change rape culture) and the mechanism (the statute itself) the ACL appears to adopt a one-sided approach that may not actually address the roots of rape culture.

If an institution decides to adopt a TRC to implement alongside the ACL or similar legislation, it could gain legitimacy in the eyes of current and future students, society at large, and survivors who never saw justice. It could also engage perpetrators who never answered for their actions. It would acknowledge the abuses of the past—including the institution's failure to adequately respond—and it would use past experiences to lay the groundwork for the successful implementation of the ACL. It could open the discourse around sexual assault on college campuses that includes all parties involved and challenge rape culture by rewriting the narrative of consensual sex based on actual experience. A TRC, if successful, could be replicated and adapted as needed for other institutions throughout the country regardless of whether they are governed by a policy like that laid out in the ACL.