

# Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights

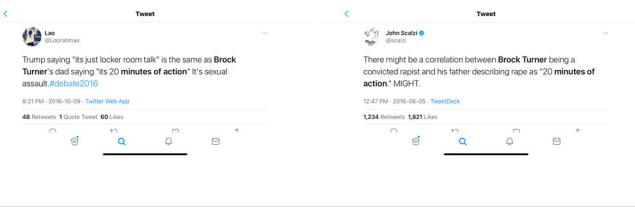
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SOC 3310: Theorizing Crime, Law, and Social Justice

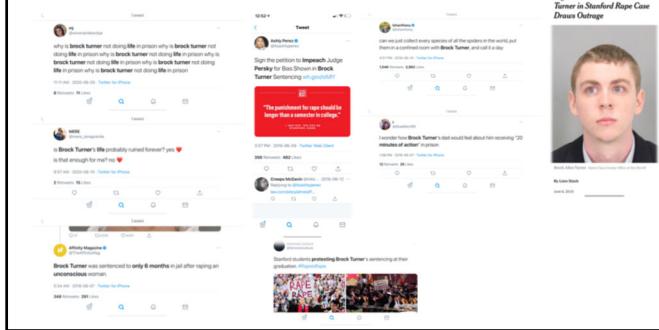


## Activation Topic: Remember the Brock Turner Case?

- There was much to be critical of in the case of Brock Turner, a Stanford University student caught sexually assaulting a fellow student while she was unconscious—from a feminist, critical criminological, and/or social justice perspective.
  - One line of critique: pushing back against the rape myths and discursive framings that attempt to neutralize or diminish the harm done in such an act.



## Complication: Progressive Politics Meets Penal Populism



### The Conundrum

- Sexual assault is a *serious crime*. But are **heavy prison sentences the only way to take crime seriously?**
- If so, how is this reconciled with the contributions that many strains of feminist criminology have made to critiquing *mass incarceration*, *carceral politics*, *penal populism*, and their effects on marginalized intersectional communities?
- **What would it look like to take crime (like sexual assault) seriously without resorting to penal populism and carceral politics?**
  - We generally equate “taking crime seriously” with imposing prison sentences, yet using prisons as punishment is a rather modern phenomenon. This is testament to how much we have naturalized incarceration as the prime solution to criminal and deviant behaviour.

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### Bernstein: Carceral politics as gender justice?

- Bernstein offers a thoughtful, challenging feminist approach to this complicated situation.
- She isn't looking specifically at the Turner case or at campus sexual assault. She is writing about the **contemporary anti-trafficking movement in the U.S.**
  - What, criticizing the anti-trafficking movement?! Who would say that they are “okay” with forced sex-trafficking?! No one!
  - Well, she isn't saying that either...
- But she *is* looking at the complicated issue of that kind of penal populism, or “carceral politics,” being equated with “gender justice” and “women’s human rights”

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### Theorizing Mass Incarceration

- According to Bernstein, explaining the rise of mass incarceration in the U.S. (and other Western countries) has been a major theoretical question for decades.
- Some approaches:
  - “linking contemporary carceral strategies of social governance to the spread of neoliberal economic agendas, to late modern ‘cultures of control,’ to new modes of racial domination, and to the emergence of new political paradigms of ‘governing through crime.’”

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### Feminist Approaches to Power & Penal Policy

- Foregrounding the role played by sex and gender in processes of penal transformation
  - Describing the social implications of rapidly accelerating incarceration rates of female offenders (p.234)
  - Describing the control over women's lives and bodies that is increasingly exercised at a cultural level through a gendered & ubiquitous "fear of crime"
- But also exploring "the surprising ways that feminist activism itself—especially in its hegemonic, US guise—has often served to facilitate, rather than to counter, the carceral controlling arm of the neoliberal state"
  - E.g. the rise of carceral politics within second wave feminism
  - "describing the ways in which feminist campaigns against sexual violence have not only been coopted by, but in fact been integral ingredients to the evolution of criminal justice as an apparatus of control" (p.235)

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### The Article's Objectives

- Drawing upon "sociology, jurisprudence, and feminist theory in order to assess the ways in which feminism, and sex and gender more generally, have become intricately interwoven with punitive agendas in contemporary US (and by extension, global) politics."
- Elaborating upon "the ways that neoliberalism and the politics of sex and gender have intertwined to produce a carceral turn in advocacy movements that were previously organized around struggles for economic justice and personal liberation"
- Demonstrating "how human rights discourse has become a key vehicle both for the transnationalization of carceral politics and for folding back these policies into the domestic terrain in a benevolent, feminist guise"

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### Carceral Politics as Neoliberal Governance

- Bernstein's theoretical overview of the late 20<sup>th</sup> century's carceral turn examines influential books by three authors
- Each offers "a broad theorization of the relationship between contemporary modes of punishment and more general trends within late-capitalist culture and political economy"
- David Garland's *The Culture of Control* (2001)
  - "an array of social dislocations common to late modernity has contributed to heightened disorder and to crime, as well as to a stark reorientation in penal trends away from social remedies and towards politically conservative versions of 'expressive justice'" (p.237)
  - crime not seen "as a problem of economic deprivation but rather of inadequate social controls, in which human beings are naturally inclined to commit crimes unless inhibited from doing so by social authorities"
  - "his analysis usefully points towards the cultural underpinnings of punitive politics and a widening embrace of the carceral worldview, particularly amongst the affluent middle classes"

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## Carceral Politics as Neoliberal Governance

- Loic Wacquant's *Punishing the Poor* (2006)
    - "the carceral state supplants previous regimes that were organized around the provision of material welfare" (p.237)
    - "a shift in the predominant form and functions of the state in which new penal policies are a core feature"
    - "Because neoliberal economic strategies redirect public moneys away from the provision of goods and services, they in fact require an enhanced penal apparatus to contain newly disenfranchised populations"
    - "wherever neoliberalism reigns ascendant, carceral politics will too" (p.237-238)
    - Gendered component: neoliberalism as a "remasculinization of the state": "Its soft "social bosom" is transformed into a hard "penal fist," one that dictates that poor women transition from welfare to welfare while their male counterparts are relocated from ghetto to prison"
    - Accounts for the divergent fates of differently raced, classed, and gendered bodies under conditions of neoliberalism

## Carceral Politics as Neoliberal Governance

- Jonathan Simon's *Governing through Crime* (2007)
    - "emphasizes the structural similarities that have emerged across boundaries of race, class, and ethnicity to justify carceral strategies of social control, whether that confinement occurs within the walls of one's own suburban home or through literal imprisonment" (p.238)
    - Mass incarceration & tough on crime policies are revealed to be "a policy solution to the political dilemmas of governing through crime," i.e. governing through crime as a political strategy (p.238)
    - "Simon argues that new versions of liberal, middle class 'freedom' are secured not against but precisely through the domain of contemporary penal policy" (p.239)
    - "Simon argues that the crime victim has supplanted the rights-bearing citizen as the idealized legal subject of our time" (p.239)
    - And "observes that feminism has itself played an active role in advancing the new tough-on-crime frame"

## Bernstein on the Three Theorists

- While they “rightly identify gender and sexuality as important galvanizing factors in the changing modes of governance that they describe, they fail to theorize their operations in systematic or sufficiently nuanced ways”
  - Although each “observes that contemporary carceral politics are enabled through the specter of sexualized violence (whether or not they grant feminists a pivotal role in the construction of this framework), they neglect to explain *why* the threat of sexual violence is a uniquely effective cultural vehicle for ushering in this transition” (p.239)
  - “there is still much to be explained about how and why contemporary sexual and political-economic transformations intersect” (p.240)

### Carceral Feminist Work

- Marie Gottschalk (2006) & Kristin Bumiller (2007): two recent genealogies of second wave feminism; examinations of how activism around questions of sexual violence have been a crucial enabler of the late-capitalist carceral turn in the U.S.
- Ticktin (2008), Kempadoo (2005), and Kulick (2003) have pointed to similar trends within an array of different national contexts
  - Ticktin: contemporary feminist concern with issues of sexual violence "is often recognized only through the framework of racial, cultural, and religious difference;" in essence, "fighting sexism with racism" & enabling the French state to clamp down through border patrol & policing

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### Carceral Feminism & "Traffic in Women"

- Another recent domain of the carceral turn in feminist activism: gathering political and cultural attention to the "traffic in women."
  - Until mid-90s: "an incipient sex workers' rights movement had sought to decriminalize and to destigmatize women's sexual labor and to gain rights and protections for sex workers from within a labor frame" (p.242)
  - More recently: "a bevy of new federal, state, and international laws that equate all prostitution with the crime of 'human trafficking' and which impose harsh criminal penalties against traffickers and prostitutes' customers"
- Alice Miller on 2000 UN Protocol Against Trafficking in Persons
  - "a focus on crime control methods and rescue, to the detriment of the promotion of the full range of rights needed by trafficked persons."
  - created international law "in the context of crime control—not human rights or labor protections"

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### Trafficking

- As defined in int'l protocols & U.S. fed law trafficking "could conceivably encompass sweatshop labor, agricultural work, or unscrupulous labor practices on military bases in Iraq"
  - Instances of sexually trafficked women & girls are less common than these, but have stimulated the most concern (p.242)
- Crucial to transforming anti-trafficking into a legal framework with powerful material & symbolic effects:
  - Focusing on sexual violation, rather than the structural conditions of exploited labour more generally
  - Strategic partnership with evangelical Christians

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## Anti-Trafficking

- How some commentators have situated the anti-trafficking movement:
    - Attribute its ascendancy to moralistic sexual politics of “radical feminists” & conservative Christians (though Bernstein footnotes that this use of “radical feminists” would be a misnomer, or misuse of the term)
    - Outline strong parallels between uprisings against trafficking now with “those that surrounded the White Slavery scare in the postbellum years of the last century, which similarly derived their impact through tropes of violated femininity, shattered innocence, and the victimization of ‘women and children’” (p.243)
    - “Have situated contemporary mobilizations again [sic] trafficking in terms of successive waves of ‘sex panics’ that have occurred at periodic intervals in the United States through the twentieth and twenty-first centuries” (similar to anti-pornography movement of 1980s)
  - Bernstein: most accounts fail to analyze sufficiently the “newfound and nearly ubiquitous insistence upon carceral versions of gender justice”
    - Feminist & evangelical Christian constituencies linked: “the ‘left’ and ‘right’ ends of the political spectrum are joined together in a particular, dense knot of sexual and carceral values”

## Unlikely Alliance Centered on 'Family Values'

- “the mainstream feminist embrace of family values and its primary focus upon extrafamilial forms of sexual violence is sociologically significant in and of itself”
    - “neoliberal carceral politics and the ‘conservative’ sexual politics that are their accompaniment are also increasingly situated within the liberal-leaning, professional middle classes”
    - “secular feminists are advocating for family values, together with a new-middle class contingent of evangelical Christians”
  - Two recent shifts enable such an alliance:
    - a secular feminist shift from a focus upon bad men inside the home... to sexual predators outside of it
    - the feminist-friendly shift of a new generation of evangelical Christians away from sexually improper women... to a focus upon sexually improper men

## Unlikely Alliance Centered on 'Family Values'

- “masculinist institutions of big business, the state, and the police are reconfigured as allies and saviors” (rather than the enemies of migrant sex workers) (p.244)
  - “responsibility for trafficking is shifted from structural factors and dominant institutions onto individual (often racially coded) criminal men” (p.245)
    - Reformulating Spivak: “it is white women who have joined forces with key sites of institutional power in order to save brown women from brown men”
  - It’s not changing gender roles that have created new social insecurities, but rather their identification of a new consumer-driven paradigm of extra-familial sexuality that might be best defined as more recreational than relational
    - Still surprising, though: “the extent to which feminist anti-trafficking activists have embraced a pro-familial strategy for battling this trend, one that is itself intricately interwoven with neoliberal commitments to capitalism and criminalization” (p.246)
    - “Rather than regarding the heterosexual nuclear family as another institution of male domination to be abolished... contemporary anti-trafficking discourse situates the family as a privatized sphere of safety for women and children that the criminal justice system should be harnessed to protect” (p.246-7)

## Grewal's "Gender of Security"

- Inderpal Grewal on the “gender of security”; “identifies the figure of the “security mom” as one who seeks to harness the power of a securitized state apparatus to protect herself and her children” (p.247)
    - Bernstein’s ethnographic observations: “reveal a specifically gendered set of investments in the neoliberal carceral state, one that is intricately interwoven with activists’ own social locations as racially and class-privileged women”
  - Bernstein: “Particularly notable are the moral and political legitimacy afforded to domestic care work as late-capitalist informal sector employment” (p.248)
    - n17: “Although by some estimates trafficking for domestic work has been found to be more prevalent than trafficking into the sex sector..., the former is more compatible with professional class women’s gendered interests in the home.”

As members of the class fraction that is most likely to reap strong material and symbolic rewards from marriage, anti-trafficking activists are heavily invested in the maintenance and reproduction of this status and are ready to enlist the state apparatus on behalf of the gendered and sexual interests that are most pertinent to themselves: a version of “feminist family values” that is premised upon liberal understandings of formal equality between women and men, and the safe containment of sexuality within the pair-bonded couple. As with Grewal’s analysis of the “security mom,” these women utilize and promote the carceral state in order to securitize the sexual boundaries of home. (p.247)

## Neoliberal Logic

- underlying neoliberal logic: "the social inequalities that globalization has wrought are legitimate so long as the sexual boundaries of middle-class family life can be maintained" (p.249)
  - "the model of prostitution and trafficking that the CATW panelists invoked bore little if any connection to structural or economic factors..."
  - "the state is thus able to assume a feminist rationale for arresting those who stand in the way of neoliberal agendas of urban restructuring and the removal of race and class Others from public space"
  - "the ideology of 'family values' becomes particularly critical when other possibilities for social relations are eclipsed (p,250)
    - "the rise of 'family values' politics is necessary to fill in the caring gaps that the obliterated welfare state has left vacant"

## Neoliberal Circuitry of Crime, Sex, and Rights

- Rise of carceral feminism connected to collapse of social welfare state (p.250)
    - As a new social strategy for regulating race and class others; and
    - As part of a neoliberal *gender* strategy that secures the family and lends moral primacy to marriage
  - "With 'women's human rights' understood as pertaining exclusively to questions of sexual violence and to bodily integrity (but not to the gendered dimensions of broader social, economic, and cultural issues), the human rights model in its global manifestation has become a highly effective means of disseminating feminist carceral politics on a global scale"
  - Anti-trafficking activists have successfully lobbied for developments such as:
    - US sanctioning countries that fail to pass sufficiently punitive anti-prostitution laws
    - Transnational push to criminalize male demand for sex services
    - Tightening of international borders as a means to "protect" potential trafficking victims
    - New restrictions on female migrants' capacity to travel
    - US removal of funding for NGOs which are not sufficiently anti-prostitution

## Neoliberal Circuitry of Crime, Sex, and Rights

- Human rights discourse has become an indispensable tool for spreading the increasingly mainstream paradigm of feminism-as-crime-control internationally
  - Earlier struggles for state action against prostitution & pornography had been hampered by liberal feminist factions & ACLU who were opposed to the potentially discriminatory effects of using a criminal justice frame (p.252)
    - Framing this as politically neutral questions of humanitarian concern about third world women and human rights brought new success
  - Now, a recent shift toward “domestic” sex trafficking

## Racial Impacts of the Carceral Project

- 2,515 human trafficking investigations conducted between 2008 and 2010
    - 389 were confirmed incidents of trafficking; of these:
    - 85% were sex trafficking cases
    - 83% of victims were US citizens
    - 62% of confirmed sex trafficking suspects were African American
    - 25% of all suspects were Hispanic/Latino
  - Racial impacts:
    - young men can now be given 99-year prison sentences as “domestic sex traffickers” (versus the prison sentences of several months that were previously typical) (p.253)
    - “migrant sex workers are themselves increasingly arrested and deported for the sake of their ‘protection’”
    - “US anti-trafficking policies have thus contributed to unprecedented police crackdowns upon people of color who are involved in the street-based sexual economy (including pimps, clients, and sex-workers alike)”