Feminism, Foucault, and Rape: A Theory and Politics of Rape Prevention

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Why isn’t rape the same as a punch in the face? In October 1977, the Paris-based Change Collective published a volume entitled “La folie encerclee.”¹ In it is reprinted a series of debates on themes related to repression. It was in one of these roundtable discussions that French philosopher Michel Foucault asked this very question, arguing that the crime of rape should be punished as a form of physical violence “and nothing but.”² He argued for the decriminalization of rape as a sexual crime:

One can always produce the theoretical discourse that amounts to saying: in any case, sexuality can in no circumstances be the object of punishment. And when one punishes rape one should be punishing physical violence and nothing but that. And to say that it is nothing more than an act of aggression: that there is no difference, in principle, between sticking one’s fist into someone’s face or one’s penis into their sex . . . . [T]here are problems [if we are to say that rape is more serious than a punch in the face], because what we’re saying amounts to this: sexuality as such, in the body, has a preponderant place, the sexual organ isn’t like a hand, hair, or a nose. It therefore has to be protected, surrounded, invested in any case with legislation that isn’t that pertaining to the rest of the body . . . . It isn’t a matter of sexuality, it’s the physical violence that would be punished, without bringing in the fact that sexuality was involved.³

Foucault’s claim sent a tremor through feminist intellectual circles and has

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2. Id.
3. Id. at 200-02.
since sustained an entire genre of feminist engagement.4 This paper situates Foucault's provocative question within his sprawling oeuvre on power and the body, focusing specifically on its implications for a feminist politics5 of rape and, in particular, rape prevention. What exactly does it mean to the gendered subject to "desexualize" rape? What might it mean to take seriously Foucault's paraphrased question: why isn't rape the same as a punch in the face? In particular, what might it bring to a feminist response to rape and rape prevention both theoretically and practically?6

This question is productive for feminism for two distinct reasons. First, it demands self-reflexivity by prompting feminism to problematize naturalized versions of sexual violence. Second, Foucault's notion that power "incites, instills and produces effects in the body"7 proves useful in evaluating feminist responses to rape and aids in the articulation of a politics of feminist agency.8 Each of these notions allows for a feminist account of rape that does not define women as pre-constituted victims, trapping them in the grip of an unforgiving biology. Moreover, weaving Foucault's notion of productive power into a feminist analysis of rape does not leave women bereft of agency in the moments leading up to rape. Rather, Foucault's theory of power leaves open the possibility of a different outcome, a different response.

In suggesting that feminism rethink naturalized versions of sexual violence, I mean specifically those conceptions of rape in which: sexual injury is always, already the worst form that violence can take; sexual injury is universally self-

4. See generally Winifred Woodhull, Sexuality, Power, and the Question of Rape, in FEMINISM AND FOUCALT: REFLECTIONS ON RESISTANCE 167 (Irene Diamond & Lee Quinby eds., 1998); Vikki Bell, Beyond the "Thorny Question": Feminism, Foucault and the Desexualisation of Rape, 19 INT'L J. SOC. LAW 83 (1991); Ann Cahill, Foucault, Rape, and the Construction of the Feminine Body, 15 HYPATIA 43 (Winter 2000); Monique Plaza, Our Damages and Their Compensation, 1 FEMINIST ISSUES 25 (1981).

5. It is clear that there is no "one" feminist politics or any "universal" feminism. Feminism is itself a political and social movement, yet it is also a mode of philosophical and linguistic critique. While Section Two, infra, outlines the broad contours of several feminist theoretical and pragmatic responses to rape, it is by no means an exhaustive list.

6. This paper is focused on the rape of women. Research suggests that 99.6 percent of rape offenders are male and 94.5 percent of rape victims are female. LAWRENCE A. GREENFELD, SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (1997). While my focus stems directly from the disproportionate numbers of female rape victims, it is not my intent to minimize or deny the rape of men. Further statistics show that only 16 percent of rapes are reported to the police. NAT'L VICTIMS CTR., RAPE IN AMERICA: A REPORT TO THE NATION (1992). I have no doubt that male rape is vastly underreported and that this fact influences the accuracy of the Department of Justice statistics. Nonetheless, I argue alongside many feminist theorists that the phenomenon of rape itself is sexed. That is, rape functions as a violent means of sexual differentiation; that is, as a society-wide means of producing and perpetuating a system of oppression that privileges heterosexual men.


8. See Amy Allen, Foucault, Feminism, and the Self, in FEMINISM AND THE FINAL FOUCALT 235, 243 (Dianna Taylor & Karen Vintges eds., 2004) (quoting Foucault and his definition of technologies of the self as "techniques that permit individuals to effect, by their own means, a certain number of operations on their own bodies, their own souls, their own thoughts, their own conduct . . . ").
shattering and selfhood is unrecoverable; men are always positioned as violent subjects, unaware of their own vulnerability, while women are positioned as universally vulnerable and anchored in their own fear; and lastly, the identities of rapist and rape preexist rape itself. Indeed, Foucault's notion of the "productive" capacity of power posits that these conceptions retain their salience through everyday discourse. If these essentialized conceptions of rape gain and retain meaning through a continued deployment by feminism, might feminism be unwittingly reinforcing rather than breaking down sexist and gender-stereotypic assumptions? As Renee Heberle asks:

[W]hat if in emphasizing the strategy of piecing together our reality of rape culture through speakouts and detailed descriptions of experience, we participate in setting up the event of sexual violence as a defining moment of women's possibilities for being in the world? . . . Simply put, what if this strategy furthers the reification of masculinist dominance?

During the last two decades, feminist anti-rape literature, activism, and policy development in the United States have increasingly polarized into two distinct genres. The first centers on a consciousness-raising model that encourages the speaking of women's stories about rape in an effort to fully acknowledge rape as a pervasive, society-wide problem. The second approach focuses on the development of police procedures and practices and the expansion of the legal definitions of rape. This relentless focus takes the very occurrence

9. SUSAN BROWNMILLER, AGAINST OUR WILL: MEN, WOMEN AND RAPE 14 (1975) (stating "in terms of human anatomy that possibility of forcible intercourse incontrovertibly exists. This single factor may have been sufficient to have caused the creation of a male ideology of rape. When men discovered that they could rape, they proceeded to do it.").

10. MICHEL FOUCAULT, THE HISTORY OF SEXUALITY, Vol. 1, 86 (1978) (suggesting that "power is tolerable only on condition that it mask a substantial part of itself.") [hereinafter HISTORY OF SEXUALITY]. Foucault argues that "the manifold relationships of force that shape and come into play in the machinery of production, in families, limited groups, and institutions, are the basis for wide-ranging effects of cleavage that run through the social body as a whole." Id. at 94.


12. See Terrence Crowley, The Lie of Entitlement, in TRANSFORMING A RAPE CULTURE 341, 448 (Emilie Buchwald, Pamela R. Fletcher & Martha Roth eds., 1993) (looking at consciousness-raising from the male perspective: "My hope is what Gloria Steinem said of women's consciousness-raising groups in the 1970s is true for men today: 'Personal truth-telling as a path to social change is the most important and enduring legacy.' I am breaking my silence and trying to tell my truth, trusting social change will follow. If men break the silence in concert with one another, we can transform this rape culture."); NANCY MATTHEWS, CONFRONTING RAPE: THE FEMINIST ANTI-RAPE MOVEMENT AND THE STATE 96 (contrasting governmental approaches to the issue of rape with grassroots consciousness-raising efforts by feminists) (1994); JILL RADFORD, MELISSA FRIEDBURG, & LYNN HARVE, WOMEN, VIOLENCE, AND STRATEGIES FOR ACTION: FEMINIST RESEARCH, POLICY, AND PRACTICE 167 (2000) (noting the commonalities in feminist approaches to rape in the United Kingdom and India).

13. See Vivian Burger, Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom, 77 COLUM. L. REV. 1 (1977) (focusing on the rejection or substantial modification of the
of rape for granted and offers limited possibility for intervention or prevention. While raising awareness about the pervasive nature of rape through experiential corroboration requirement and restraints on admissibility of the victim's past sexual behavior to prove consent or to impeach credibility; Susan Estrich, *Rape*, 95 YALE L. J. 1087, 1093 (1986) (arguing that "the answer is not to write the perfect statute. While some statutes invite a more restrictive application than others, there is no 'model statute' solution to rape law, because the problem has never been the words of the statutes as much as our interpretation of them . . . . The difference must come in our understanding of 'consent' and 'will' and 'force.'); Camille LeGrand & Frances Leonard, *Civil Suits for Sexual Assault: Compensating Rape Victims*, 8 GOLDEN GATE UNIV. L. REV. 479 (Women's Law Forum, 1979) (discussing the theoretical and practical aspects of tort litigation against a rapist); Camille LeGrand, *Rape and Rape Laws: Sexism in Society and Law*, 61 CAL. L. REV. 919 (1973), reprinted in *RAPE AND THE CRIMINAL JUSTICE SYSTEM* 197, 206 (Jennifer Tempkins ed., 1995) (noting that a finding by the police or prosecution that a rape is "unfounded" is not the same as a finding that the accusation was "false." "The term [unfounded] is a technical one, meaning only that police, for various reasons, have decided not to advise prosecution."); Arnold Loewy, *Returned to the Pedestal—The Supreme Court and Gender Classification Cases: 1980 Term*, 60 NO. CAR. L. REV. 87, 98 (1981) (criticizing California's statutory rape statute on the grounds that it "demeans all of California's young women by forbidding their sexual experimentation while allowing their younger brothers to experiment whenever they can find a willing older woman."); Toni M. Massaro, *Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 U. MINN. L. REV. 395 (1985) (arguing that even if evidence of rape trauma syndrome is not admissible to prove that the rape occurred, such evidence should be acceptable as proper rehabilitative matter to rebut defendant's assertion that the victim's conduct was no consistent with her claim of rape); Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 412 (1984) (exploring the conflict between the right to privacy and the right to be protected against harm from others that is illustrated by statutory rape laws.); Kathleen Quenneville, *Will Rape Ever Be A Crime of The Past?: A Feminist View of Societal Factors & Rape Law Reforms*, 9 GOLDEN GATE UNIV. L. REV. 581 (Women's Law Forum 1978-1979) (arguing that new rape laws are relatively ineffective, leaving untouched as they do underlying attitudes within the criminal justice system about rape and rape victims that conspire to prevent effective investigation, prosecution, and trial of the rapist); Lois Pineau, *Date Rape: A Feminist Analysis*, 8 LAW & PHILOSOPHY 217 (1989) (making the point that in cases of date rape, "what is really sexual assault is often mistaken for seduction."); Martin D. Schwartz, *Spousal Exemption for Criminal Rape Prosecution*, 7 VT. L. REV. 33, 38-41 (1982) (discussing the history of the marital rape exception); Alexander Tanford & Anthony J. Bocchino, *Rape Shield Laws and the Sixth Amendment*, 128 U. PA. L. REV. 544 (1980) (attacking rape shield laws, which restrict the defendant's ability to disclose the victim's prior sexual history to the jury, as violative of the Sixth Amendment); Thomas R. Bearrows, *Note, Abolishing the Marital Exception for Rape: A Statutory Proposal*, U. ILL. L. REV. 201, 202 (1983); Gail M. Ballou, *Note, Recourse for Rape Victims: Third Party Liability*, 4 HARV. WOM. L. J. 105 (1981) (arguing that civil actions are an important remedial device for rape victims); Thomas K. Clancy, *Note, Equal Protection Considerations of the Spousal Sexual Assault Exclusion*, 16 N. ENG. L. REV. 1, 2-3 (1980) (arguing that the marital rape exception does not further marital privacy because this right of privacy protects consensual acts, not violent sexual assaults.); Rita Eidson, *Comment, The Constitutionality of Statutory Rape Laws*, 27 U.C.L.A. L. REV. 757, 784-87 (1980) (evaluating the proper legal standard in the evaluation of such cases); Note, *Marital Rape Exemption*, 52 N.Y.U. L. REV. 306, 309 (1977) (noting the historical development of the marital exemption based upon the notion that the legal existence of the woman was incorporated and consolidated into that of the husband, thus, a husband could never rape a wife because the matrimony itself provided the necessary consent.); Christina M. Tchen, *Comment, Rape Reform and a Statutory Consent Defense*, 74 J. CRIM. L. & CRIMINOLOGY 1518, 1519 n.7 (1983) (arguing the stigma and other difficulties associated with a woman reporting a rape and pressing charges probably deter most attempts to fabricate an incident and as such, rape remains a grossly underreported crime).
truth-telling is one important aspect in a politics of prevention, it cannot articulate fully a politics of social change.\textsuperscript{14} The efforts of feminists to change the legal definition of rape, to increase the penalties for rape, and to render the terms of a rape trial less prejudicial to the raped woman are important goals. However, their implementation reflects an insistence on equitable reparation and vindication in the courts. While such reforms are much needed and represent a critical aspect of any feminist response to rape, it should be noted that all of these changes take place \textit{after} rape has already occurred. It is the argument of this paper that legal reforms, while both necessary and important in the prevention and aftermath of rape, are not enough. This paper envisions rape on a continuum of violence and takes as the beginning of that continuum the construction of the feminine body. Therefore, in articulating strategies that will prevent rape (that is, stop a rapist from successfully raping), this paper urges feminism to refocus on the earliest parts of the continuum. Rape prevention requires that rape not be theorized as a foregone conclusion; rather, feminism must learn to view rape as a sequence or process that can be undermined \textit{before} it occurs.

Foucault's notion that power produces effects in the body proves useful in evaluating feminist responses to rape because it aids in the articulation of a politics of feminist agency.\textsuperscript{15} Foucault's notion of power as a productive force provides insight into how the sexed body, in particular, is the primary target of techniques of disciplinary power. But Foucault's theory also suggests that the very targets of disciplinary power are also the point at which these techniques are resisted and thwarted. Indeed, Foucault's work offers a vehicle through which to critique feminist responses to rape, while simultaneously providing a mechanism through which to build a politics of rape prevention. Employing a Foucauldian analysis of the body requires a careful examination of the power relations that are inscribed on the feminine body. A significant part of the female victim's experience of rape is the constitutive element. That is, rape is an instance in which discourses of power produce the feminine body as violable and weak. Foucault tells us, however, that resistance to this constitutive discourse of power is also located with the feminine body. This notion has great import for a theory of rape prevention. If the feminine body is a surface on which the tenets of a sexually hierarchical culture are written, Foucault suggests that it is also the site where those tenets may be fought. Thus, when women's bodies are defined

\textsuperscript{14} It is true that the first step in articulating a feminist politics of rape prevention is acknowledging the particular problem of rape. It is my contention, however, that a steady focus on truth-telling can result in a stalled identity politics. A true focus on prevention must move beyond identification and into concrete action. As the editors of \textit{Transforming A Rape Culture} suggest: "Our reading plunged us deeper and deeper into despair. We began to sink into the morass of hopelessness and frustration such reading inevitably evokes. We knew we needed to change our way of thinking about the issue from one of reaction to a proactive search for possible solutions." EMILIE BUCHWALD, PAMELA R. FLETCHER & MARTHA ROTH, TRANSFORMING A RAPE CULTURE 13 (1993).

\textsuperscript{15} MCNAY, supra note 7, at 38.
as a powerful force of counteracting violence, the very power structures that support rape will be crippled.

While I have taken Foucault's provocative question as a starting point for re-theorizing a feminist approach to rape prevention, other feminists have argued that the very positing of the question dismisses the material reality of rape by removing the act from its social and cultural surroundings. Indeed, feminists make a compelling argument that in refusing to acknowledge or account for the power differentials that underlie the patriarchal, heteronormative structure, Foucault's question legitimizes the sexist workings of power across the female body, which is, in a sense, a fundamental component of rape. From this standpoint, Foucault presents a particular account of rape legislation that is not simply untenable for feminist goals, but also detrimental to the victims of rape.

The criticism is that while Foucault's work provides a compelling framework for re-thinking the ways in which rape and responses to rape are part of a learned language of sexual violence, ultimately, there are gross material difficulties with Foucault's theoretical "liberation" of sexuality from legal inscription. Foucault suggests that the physical violence of rape should be penalized. While Foucault's call for the desexualization of rape allows for a repositioning of female subjectivity, it does so in a particular way: at the expense of women's lived experience of rape. In Foucault's equation, raped bodies are rendered utterly independent from the social context in which rape occurs. Feminists have argued that it is only in a world sanitized from the material realities of gender

16. Sandra Bartky, *Foucault, Femininity and the Modernization of Patriarchal Power*, in *FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE* 75 (Irene Diamond & Lee Quinby eds., 1988) (arguing that Foucault's treatment of the body as an undifferentiated or neutral gender is inadequate because it fails to explain how men and women relate differently to the institutions of modern life); *MCNAY*, supra note 7, at 45 (stating "what Foucault fails to see is that such a decriminalization of rape would further legitimize the sexual oppression of women in so far as it overlooks that the violence in rape is fundamentally derived from the asymmetrical construction of sexual relations in modern society."); Plaza, *supra* note 4, at 28-39 (1981) (arguing that Foucault fails to consider the very real power differences between women and men, and that rape is in many ways a mere extension of what are culturally defined as "normal" heterosexual relations).


18. There is no doubt that many victims do experience rape as self-shattering. That lived reality has been the prompt for undertaking this project. Why, precisely, is rape experienced so profoundly? Are there ways of thinking through and experiencing rape outside of this gendered framework that ties the victim's very selfhood with their rape? This paper problematizes feminist approaches to rape that leave no room for a different account, a different story. While my project seeks to displace the paralyzing rhetoric surrounding rape, I do not want to undercut the very real experiences of rape victims. The power of rape narratives further illustrate the ways in which sexual violence is lived out on the body. This project takes that reality as its starting point and seeks to articulate ways in which we might rethink sexual violence to deconstruct the gendered framework of rape. In doing this, we might articulate a new strategy of rape prevention. To better understand the individualized impact of rape on its victims, see generally *PATRICK FRANCISCO, TELLING: A MEMOIR OF RAPE & RECOVERY* (1999); *CHARLOTTE PIERCE-BAKER, SURVIVING THE SILENCE: BLACK WOMEN'S STORIES OF RAPE* (2002); *DIANA RUSSELL, THE POLITICS OF RAPE* 23-48 (1975); *NANCY VENABLE RAINES, AFTER SILENCE: RAPE AND MY JOURNEY BACK* (1998).

that the genitals are just like any other part of the body. In Foucault's account, however, the patriarchal structures that underpin rape are left unacknowledged. Perhaps most tellingly, Foucault's suggestion that rape "isn't a matter of sexuality," seemingly ignores his own work on the effects of power upon the body. Foucault's failure to use his own work is particularly evident when discourse is worked out upon material bodies, where one's own sense of self is intertwined with and produced through this very negotiation of discourse and materiality. Thus, while Foucault's suggested desexualization of rape is provocative precisely because it questions assumptions about sexuality, gender, and sex, it neglects to consider the distinct ways disciplinary techniques operate on and inscribe gendered bodies. Foucault offers a way of understanding the body as a concrete phenomenon without eliding its materiality or positing a fixed biological or pre-discursive essence. In Foucault's analysis, the body is always already implicated in the play of power precisely because the inscription of power occurs at the moment at which the body enters culture; the body never exists as a clean slate. For Foucault, the body only and always exists as a social and cultural entity. Yet, when theorizing about rape, Foucault seemingly forgets that "the body" has, in fact, come to be naturalized. The body is not perceived as a neutral surface upon which formations of power act. Rather, we inhabit our bodies, our genders, our sexualities as though those aspects of ourselves were foundational, as though they were pre-cultural constants. Foucault's analysis of rape, therefore, has the tendency to obscure the complex social realities that

20. See Bartky, supra note 16, at 61, 64 (arguing that Foucault is "blind to those disciplines that produce a modality of embodiment that is particularly feminine. To overlook the forms of subjection that engender the feminine body is to perpetuate the silence and powerlessness of those upon whom these disciplines have been imposed."); Nancy Harstock, Foucault on Power: A Theory for Women?, in FEMINISM/POSTMODERNISM 157, 168-69 (Linda J. Nicholson ed., 1990) (stating that "much of what Foucault has to say about power stresses the systemic nature of power and its presence in multiple social relations. At the same time, however, his stress on heterogeneity and the specificity of each situation leads him to lose track of social structures and instead to focus on how individuals experience and exercise power. ... [w]ith this move, Foucault has made it very difficult to locate domination, including domination in gender relations.").


23. See McNAY, supra note 7, at 35 (arguing that "Foucault's historical analysis does not account for the different ways the female body may be positioned in relation to the generalization of a military technology of the body, to a wider form of social control.").

24. For a foundational account of the naturalization of gender, see generally JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990). Butler argues that the purpose of her inquiry "is to trace the way in which gender fables establish and circulate the misnomer of natural facts." Id. at xi. Butler further argues that "the production of sex as the prediscursive ought to be understood as the effect of the apparatus of cultural construction designated by gender." Id. at 7 (emphasis in original).
underlie, produce, and reproduce rape—that is, the very way that rape establishes the categories of "men" and "women" as stable and abiding terms.\textsuperscript{25}

The criticism that Foucault's analysis bypasses the effects of power upon the \textit{gendered} body,\textsuperscript{26} and in the process eclipses the bodily and sexually-specific meanings rape carries, overlooks the contributions that Foucault's "body politics" can have to an active politics of rape prevention. Foucault's suggestion that the crime of rape be punished as violence rather than a uniquely sexual offense refocuses legal inscription. I suggest that a significant transformation comes with this redefinition; by defining rape as an assault it effectively places it under the rubric of subject-subject violence. As such, women are repositioned as equal subjects in a fight; it is in this very positioning that rape prevention might occur. To be clear, I do not mean to suggest that rape can or should be defined as subject on subject violence—such a definition negates the gendered specificity of rape. Indeed, rape is a sexualized and gendered attack which imposes sexual difference along the lines of violence. What I do mean to suggest, however, is that Foucault's question allows for a subjective repositioning of women by positing a subject-subject framework. This refocus has great potential for a politics with rape prevention as its goal.

This paper envisions rape as one point along a continuum of violence, a continuum that includes violence and rape in all their forms. The continuum does not simply envision the "acts" of a violent perpetrator, but also the agency of the potential victim. Thinking through rape on a continuum of sexual violence allows us to pinpoint moments in which a woman might react forcefully to fend off her attacker. That continuum offers a nuanced approach to thinking through prevention because it locates the possibility of agency with the woman being attacked. Such a view of prevention is locational and specifically situated—it takes seriously a woman's ability to refuse a would-be rapist's attempt to place her in a sexualized, gendered position of passivity, fear, and weakness. This mode of rape prevention envisions the possibility that a woman can fend off the rape by positioning herself differently—as if she were in a fight. Foucault suggests that resistance to disciplinary power is located within the very bodies

\begin{itemize}
\item[25.] \textsc{Diana Fuss}, \textit{Essentially Speaking: Feminism, Nature \& Difference} 3 (1989) (discussing the essentialized terms "man" and "woman": "'Man' and 'woman' are not stable or universal categories, nor do they have the explanatory power they are routinely invested with. Essentialist arguments are not necessarily ahistorical, but they frequently theorize history as an unbroken continuum that transports, across cultures and through time, categories such as 'man' and 'woman' without in any way (re)defining or indeed (re)constituting them. History itself is theorized as essential, and thus unchanging; its essence is to generate change but not itself to \textit{be} changed."); \textit{see also Butler, supra note 24, at 5} (arguing that the real "task is to formulate within this constituted frame a critique of the categories of identity that contemporary juridical structures engender, naturalize, and immobilize.").
\item[26.] \textsc{McNay, supra note 7, at 33} (arguing that "one important criticism has been that Foucault's analysis does not pay enough attention to the gendered nature of disciplinary techniques on the body and that this oversight perpetuates a 'gender blindness' that has always predominated in social theory.").
\end{itemize}
that power is working to suppress. Weaving this notion of resistance into a feminist theory of rape prevention offers a critical repositioning: it locates one point of possible resistance in women’s bodies. Using Foucault, then, we can begin to see the contours of a counter-discourse: self-defense.

One criticism of this approach is that it misplaces the burden of rape prevention—placing it on the women who are attacked and not the perpetrators who target them. Shifting the burden to women could have the problematic effect of reifying stereotypical notions about women’s complicity in rape. Historically, women have been told to avoid rape by restricting their choices, movements, and behavior. A great deal of attention is placed, both inside the courtroom and in public perception, on whether the victim was dressed in a sexually provocative manner or whether proof of consent or lack of credibility can be gleaned from past sexual experiences. Given the continued tendency to locate blame with the victim, there is a valid concern that placing the burden to “fight off” a rapist on women is a mistake. There is no doubt that legislative reforms must be accompanied by broader efforts to redefine misogynist culture—in particular, changes in masculinist norms of socialization. But as Kathleen Quenneville suggests, “the omnipresence of rape directly affects women, and because few men have taken the initiative to change their own behavior or the attitudes of others, women must press those changes on men and our male-dominated society.” Rape prevention requires legislative reform and changes in heteronormative, hierarchical culture. Women’s agency, however, is one piece of an effective theory of prevention. Articulating a means of resistance in the strength of women’s bodies does not presuppose that the burden of preventing rape is theirs alone. Rather, it acknowledges the individual strength and power of the body and empowers women to call upon that strength and assert a truly physical feminism.

I. FOUCAULT, POWER, AND THE BODY

To contextualize Foucault’s analysis of rape it is necessary to consider his work on power and the body. Foucault’s conclusion regarding the desexualization of rape is contoured by three theoretical points in particular: his notion of productive power, his “denaturalized” account of sex and sexuality,

27. See Burger, supra note 13, at 1 (rejecting courtroom focus on victim corroboration and allowing evidence of the victim’s past sexual behavior to prove consent or impeach credibility).

28. This phenomenon is by no means exclusively historical. In a modern day example, the Israeli parliament went so far as to suggest a mandated curfew on women when the incidence of rape increased. In a response, Prime Minister Golda Meir suggested that the curfew be placed on men—“because they were the ones doing the raping.” See PAULINE B. BART & PATRICIA H. O’BRIEN, STOPPING RAPE: SUCCESSFUL SURVIVAL STRATEGIES 2 (1985).


30. Quenneville, supra note 13, at 606.
and finally, his analysis of the disciplinary effects of power over the body. It is within this particular framework that Foucault proffers his analysis of rape.

A. The Productive Capacity of Power

In *The History of Sexuality: Volume 1*, Foucault articulates a fundamental reversal of the operational dimensions of power. Foucault argues that historically, power has been conceived of in a particular way, what he terms a “juridico-discursive” formation. This formation envisions power as exclusively negative, that is, it represses, prohibits, and censors. Foucault argues that this repressive conception of power is simplistic and inadequate to understand fully the productive and disciplinary capabilities of power. For Foucault, power has a dual function: it is simultaneously juridical and productive. That is, it actively produces discourses of knowledge, sexuality, and subjectivity as opposed to simply repressing them. Foucault argues that a “juridical-discursive” notion of power has been accepted historically as the means by which power operates. Juridical-discursive power is something that is possessed, a tangible commodity that some individuals (the government, the monarch) hold and others do not. It is unidirectional, centralized in one locale, and flows top-down from that unified source. Perhaps most importantly, juridical-discursive power is essentially

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32. Id. at 82.
33. Id. at 84 (in elucidating the cycle of prohibition: “thou shalt not touch, thou shalt not consume . . . . To deal with sex, power employs nothing more than a law of prohibition.”).
34. Id. at 86 (“Why is this juridical notion of power, involving as it does the neglect of everything that makes for its productive effectiveness, its strategic resourcefulness, its positivity, so readily accepted? In a society such as ours, where the devices of power are so numerous, its rituals so visible, and its instruments ultimately so reliable, in this society that has been more imaginative, probably, than any other in creating devious and supple mechanisms of power, what explains this tendency not to recognize the latter except in the negative and emancipated form of prohibition? Why are the deployments of power reduced simply to the procedure of the law of interdiction?”).
35. Id. at 94 (“Relations of power are not in a position of exteriority with respect to other types of relationships (economic processes, knowledge relationships, sexual relations), but are immanent in the latter . . . . they have a directly productive role, wherever they come into play.”); Id. at 95 (“Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power. Should it be said that one is always ‘inside’ power, there is not ‘escaping’ it, there is not absolute outside where it is concerned, because one is subject to the law in any case?”).
36. Id. at 90 (“One remains attached to a certain image of power-law, of power-sovereignty, which was traced out by the theoreticians of right and the monarchic institution. It is this image that we must break free of . . . . ”).
37. Id. at 87-88 (“Through the development of the monarchy and its institutions this juridico-political dimension was established . . . . The history of the monarchy went hand in hand with the covering up of the facts and procedures of power by juridico-political discourse.”).
38. Id. at 84 (describing the uniformity of the apparatus: “Power over sex is exercised in the same way at all levels. From top to bottom, in its over-all decisions and its capillary interventions alike, whatever the devices or institutions on which it relies, it acts in a uniform and comprehensive manner . . . . ”).
negative, that is, repressive.\textsuperscript{39} It embodies the view that power enslaves free subjects. This vision suggests that freedom is “always already” opposed to power, that in fact, freedom is external to power itself.\textsuperscript{40} Within this conception, juridical-discursive power can be nothing but a “rejection, exclusion, refusal, blockage, concealment or mask.”\textsuperscript{41} Juridical-discursive power, then, is quite like Althusser’s conception of the monolithic Repressive State Apparatus, where the state functions as the centralized source of domination that operates on behalf of ruling class interests and against the masses.\textsuperscript{42} For Foucault, this conception cannot account for the productive capacities of power relations.

Foucault asserts that to suggest that power is fundamentally repressive in the juridical-discursive sense is to oversimplify its situational, productive and relational capacities. Foucault argues that power is not something that is possessed but rather something that is exercised. Thus, while situations of \textit{relative disempowerment} can be theorized, one is never completely “out” of power.\textsuperscript{43} Freedom, then, is an \textit{effect} of power. It is \textit{internal} to power, not inherently opposed to it from some exterior space. Indeed, from this perspective, productive power, essentially, subjectivates: it produces the very notion of free subjects, and produces an individual’s sense of being free. For Foucault, productive power produces subjects.\textsuperscript{44} Furthermore, Foucault envisioned power to be everywhere; dispersed, fragmented, and based in a multitude of locations.\textsuperscript{45} It is precisely this diffusion of power in which Foucault is principally interested. For, if power is everywhere,\textsuperscript{46} then its role in simple interactions of everyday life

\begin{itemize}
  \item[39.] \textit{Id.} at 90 (describing his historical project, Foucault notes that we must “try to rid ourselves of a juridical and negative representation of power, and cease to conceive of it in terms of law, prohibition, liberty, and sovereignty.”).
  \item[40.] \textit{Id.} at 86 (arguing that power’s “success is proportional to its ability to hide its own mechanisms . . . . Power as a limit set on pure freedom is, at least in our society, the general form of its acceptability.”). Note, however, that for Foucault, freedom can never be separated out from deployments of power. This is precisely because “power is everywhere; not because it embraces everything, but because it comes from everywhere.” \textit{Id.} at 93.
  \item[41.] \textit{Id.} at 83.
  \item[42.] Louis Althusser, \textit{Ideology and Ideological State Apparatuses}, in \textit{ESSAYS ON IDEOLOGY} 137 (1976).
  \item[43.] \textsc{Foucault, History of Sexuality}, \textit{supra} note 10, at 95 (“[R]esistance is never in a position of exteriority in relation to power. Should it be said that one is always ‘inside’ power, there is no ‘escaping’ it, there is no absolute outside where it is concerned, because one is subject to the law in any case?”).
  \item[44.] Note that Foucault is talking about how power functions between “free” subjects in the liberal state. \textit{See Nancy Fraser, Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory} 18 (1989). Fraser offers a critique of what she calls Foucault’s suspension of the “standard modern liberal normative framework.” \textit{Id.} Fraser says that Foucault brackets this framework, which distinguishes between legitimate and illegitimate exercise of power. \textit{Id.} at 18-19.
  \item[45.] \textsc{Foucault, History of Sexuality}, \textit{supra} note 10, at 93.
  \item[46.] \textit{Id.} at 84-85 (“[P]ower operates according to the simple and endlessly reproduced mechanisms of law, taboo, and censorship: from state to family, from prince to father, from the tribunal to the small change of everyday punishments, from the agencies of social domination to the structures that constitute the subject himself, one finds a general form of power, varying in scale alone.”).
\end{itemize}
acquires political significance.

B. Denaturalizing Sex

Foucault posits that power, in the juridical sense, produces certain effects. The productive capacity of power, however, is effectively masked through the repetition of its productions, resulting in the concealment of its genesis. In this sense, Foucault suggests that power actually produces social bodies and realities. Feminism has often made use of this analysis of power's productive capabilities. For example, in *Gender Trouble: Feminism and the Subversion of Identity,* Judith Butler uses a Foucauldian notion of productive, disciplinary power to re-theorize feminism's relationship to concrete notions of identity. Similarly, she uses a Foucauldian paradigm to articulate her theory of gender performativity. Indeed, Butler argues that it is through the productive power of repetition that gender, and indeed sex, comes to be “naturalized” into a coherent whole. Foucault's distinction between productive and juridical notions of power, then, has proved crucial to recent feminist scholarship on identity.

Foucault's work also produced a denaturalized account of sex. *The History of Sexuality* suggests that sex is a discursive site of productive meaning making. In Foucault's conception, "sexuality" refers to a historically constructed apparatus: a dispersed system of morals, techniques of power, and discourses and procedures designed to mold sexual practices and the body-subject towards certain strategic and political ends. Foucault writes:

> [T]he notion of "sex" made it possible to group together, in an artificial unity, anatomical elements, biological functions, conduct, sensations, and pleasures, and it enabled one to make use of this fictitious unity as a causal principle, an

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47. See generally BUTLER, supra note 24.
48. Id. at 5 ("The task is to formulate within this constituted frame a critique of the categories of identity that contemporary juridical structures engender, naturalize, and immobilize.").
49. Id. at 145 ("The subject is not determined by the rules through which it is generated because signification is not a founding act, but rather a regulated process of repetition that both conceals itself and enforces its rules precisely through the production of substantializing effects.") (emphasis in original).
50. Id. at 6-7 ("Can we refer to a 'given' sex or a 'given' gender without first inquiring into how sex/gender is given, through what means? And what is "sex" anyway? Is it natural, anatomical, chromosomal, or hormonal, and how is a feminist critic to assess the scientific discourses which purport to establish such 'facts' for us? ... Are the ostensibly natural facts of sex discursively produced by various scientific discourses in the service of other political and social interests? ... This production of sex as the prediscursive ought to be understood as the effect of the apparatus of cultural construction designated by gender.")
51. FOUCAULT, HISTORY OF SEXUALITY, supra note 10, at 148 ("Power delineated [sex], aroused it, and employed it as the proliferating meaning that had always to be taken control of again least it escape; it was an effect with a meaning value.") (emphasis in original).
52. Id. at 154-55. Referring to sex as a "fictitious unity," Foucault suggests that "'sex' performs yet another function ... . It is through sex—in fact, an imaginary point determined by the deployment of sexuality—that each individual has to pass in order to have access to his own intelligibility." Id.
omnipresent meaning, a secret to be discovered elsewhere . . . the notion of sex brought about a fundamental reversal; it made it possible to invert the representation of the relationships of power to sexuality, causing the latter to appear, not in its essential and positive relation to power, but as being rooted in a specific and irreducible urgency which power tries as best it can to dominate; thus the idea of "sex" makes it possible to evade what gives power its power; it enables one to conceive power solely as law and taboo.\textsuperscript{53}

It is evident from this passage that Foucault is separating out "sex" from a host of other functions, feelings, desires, and pleasures. In doing this, he is suggesting that "sex" has come to be a site that is hyper-saturated with meaning. This excess, this presumed meaning, secures the positioning of "sex" as a natural fact, where sex is understood as the origin of sexuality.\textsuperscript{54} Foucault suggests that this generative fiction is legitimized and propagated by discourses of power that are instrumental in the very production of what has come to be "the natural."\textsuperscript{55} In this sense, Foucault has suggested that "sex" is productive; it functions as a generative discourse insofar as it creates meanings that play themselves out on lived bodies. The historical, social, and cultural construction of sex, then, has a fundamental role in shaping an individual's pleasures, pains, and sense of selfhood.

C. Disciplining the Body

Foucault's work also suggests that the effects of power are not simply productive, but disciplinary as well. In Discipline and Punish: The Birth of the Prison,\textsuperscript{56} Foucault chronicles the emergence of the "norm" and its replacement of the "law" as the primary instrument of modern social control.\textsuperscript{57} Foucault suggests that the production of a norm of behavior (which classifies individuals along a spectrum of normalcy versus degeneracy) "individualizes" populations.\textsuperscript{58}

\textsuperscript{53} Id.
\textsuperscript{54} Id. at 155 (arguing that the notion of "sex" "made it possible to invert the representation of the relationships of power to sexuality, causing the latter to appear, not in its essential and positive relation to power, but as being rooted in a specific and irreducible urgency which power tries as best it can to dominate; thus the idea of 'sex' makes it possible to evade what gives 'power' its power.").
\textsuperscript{55} Id. ("We must not make the mistake of thinking that sex is an autonomous agency which secondarily produces manifold effects of sexuality over the entire length of its surface of contact with power. On the contrary, sex is the most speculative, most ideal, and most internal element in a deployment of sexuality organized by power in its grip on bodies and their materiality, their forces, energies, sensations, and pleasures.").
\textsuperscript{56} See generally FOUCAULT, DISCIPLINE & PUNISH, supra note 22.
\textsuperscript{57} Id. at 184 (arguing that the "power of the Norm appears through the disciplines. Is this the new law of modern society?").
\textsuperscript{58} Id. ("In a sense, the power of normalization imposes homogeneity; but it individualizes by making it possible to measure gaps, to determine levels, to fix specialities and to render the differences useful by fitting them one to another. It is easy to understand how the power of the norm functions within a system of formal equality, since within a homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of measurement, all the
Foucault suggests that this distinctively modern form of power operates as a means through which bodies are regulated, controlled, and normalized. Disciplinary power, Foucault suggests, replaces violence and force of arms with the “gentler” constraint of uninterrupted visibility. Indeed, Foucault suggests that the “perfect disciplinary apparatus would make it possible for a single gaze to see everything constantly.”

Hence, disciplinary power aims not at suppressing individuals but rather at retooling them. It seeks to produce what Foucault calls “docile and useful bodies.”

Feminism has engaged with Foucault’s notion of disciplinary power, asking specifically after the production of gender roles, norms and stereotypes. Feminists have asked how gender identity is formed through the reiterative capacity of regulatory, disciplinary society. Indeed, feminists have argued that gender identity is both produced by and potentially accelerates the production of that aspect of disciplinary society which “ceaselessly characterizes, classifies, and specializes,” and works through “surveillance, continuous registration, perpetual assessment, and classification,” through a social machinery “that is both immense and minute.”

If, as Foucault claims, bodies and their social meaning are produced through both vertical and horizontal power dynamics, then it becomes clear that gender is a “dominant discourse”—a site of active, productive power—that works itself out on material bodies. This account of gendered bodies and identities offers a particular insight into Foucault’s stance on rape and, in the process, the formation of a politics of rape prevention.

II. FEMINIST THEORIES OF RAPE: SEX, VIOLENCE AND POWER

Foucault’s attempt to separate sex and violence within a legal framework calls both terms into question. Is rape about sex or violence? As Vikki Bell has suggested, this debate has long been regarded as “the thorny question” within feminist theories of rape.

Bell herself argues that the terms of the debate have historically been reduced to two: sex or violence. In the section that follows, I map out the most influential feminist theories of rape.

During the 1970s, feminists often argued that rape was not “about” sex but...
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was rather an assault: an act of violence. This move towards “desexualization” (which is different from Foucault’s) was a direct response to a naturalist discourse that “posited man as some kind of rutting stag whose ardour is not to be encroached upon.” This discourse suggests that rape must necessarily originate in nature, and certainly not in sexist society. It is against this biological account of male sexual “need” that feminists argued that rape is fundamentally an aggressive rather than a sexual act. Conversely, Foucault’s desexualized account of rape is based upon the notion that by collapsing the crime of rape into the crime of assault, only the violence of rape is punished. In so doing, one avoids the disciplinary and regulatory effects of power over sexuality. However, feminist theorizing on rape, beginning largely in the 1970s, argued that rape was specifically not about sex in order to highlight the power relations and politics that are involved in rape from a feminist perspective. Thus, while Foucault seeks to avoid the disciplinary effects of power, feminist theorizing attempts to bring to light the very differentials of power that structure rape.

A. Biology

Perhaps the most influential feminist response to rape is Susan

66. BROWNMILLER, supra note 9, at 14 (stating “[t]his accomplished, rape became not only a male prerogative, but man’s basic weapon of force against woman, the principle agent of his will and her fear.”); Susan Griffin, Rape: The All-American Crime, in FEMINISM AND PHILOSOPHY 313, 332 (Mary Vetterling-Braggin, Frederick A. Elliston, & Jane English eds., 1977).

67. Plaza, supra note 4, at 36.

68. See Woodhull, supra note 4, at 170 (arguing that “the refusal to link the crime to sex comes in response to the reactionary claim that rape is the inevitable result of a supposedly innate male aggressivity coupled with an uncontrollable sexual need.”).

69. Early feminists’ views on rape reflected a singular consensus. See Anne Edwards, Male Violence in Feminist Theory: An Analysis of the Changing Conceptions of Sex/Gender Violence and Male Dominance, in WOMEN, VIOLENCE AND SOCIAL CONTROL 18 (Jalna Hamner & Mary Maynard eds., 1987) (arguing that “[w]ithin the women’s movement . . . rape in the early 1970s was the feminist issue. It symbolized women’s unique vulnerability to attack from men at any time and an attack involving a fundamental violation of their physical and sexual being. Unlike other issues at the time, such as prostitution or abortion, rape had the advantage of uniting all women, whatever their status, values or beliefs. Indeed, it has been wryly observed that on rape, and on rape alone, women on the radical right and on the radical left find themselves in agreement.”).

70. See generally Barbara Mehrhof & Pamela Kearson, Rape: An Act of Terror, in RADICAL FEMINISM 228 (A. Koedt, E. Leviine & A. Rapone eds., 1973) (introducing the radical feminist view of rape as a political act that keeps women subordinate); Giffin, supra note 64 (exploring the consequences of the fear of rape). For an early popular article, see also Greer, Seduction Is a Four-Letter Word, PLAYBOY, January 1973, at 80 (attacking the myth that women desire to be raped and elaborating on the fear of rape).

71. See Woodhull, supra note 4, at 170 (evaluating feminist of the 1970s: “many American feminists insist on the importance of desexualizing rape by defining it as a crime of power, not of sex. According to this view, rape should be seen as the logical outcome of political, economic, and social processes that generate and foster men’s domination over women in every cultural domain.”).
Brownmiller’s in Against Our Will: Men, Women, and Rape. Brownmiller endeavors to place the phenomenon of rape within the context of social and biological realities, to reveal its political purposes, and to counter the persistent myths surrounding it. Primarily, however, she seeks to counter the notion that rape is a sexual act. Brownmiller posits that rape is not about a natural or biological need, but rather it is grounded in political motivations to dominate. In refusing the primacy of sexuality in the phenomena of rape, Brownmiller vehemently denies its individualistic nature. The meaning of rape cannot be elucidated by mere reference to individual cases, because rape is, as she phrases it, “nothing more and nothing less than a conscious process of intimidation by which all men keep all women in a state of fear.”

Brownmiller asserts that rape in all its forms is primarily political. Given the social context in which we find ourselves, wherein the institutions by which men dominate women are well established, rape, Brownmiller argues, is an act that expresses a political dominance that is already, by and large, accepted. Rape is thus “a deliberate, hostile, violent act of degradation and possession on the part of a would-be conqueror, designed to intimidate and inspire fear.” By raping a woman, Brownmiller argues, the rapist degrades and denies her being and her autonomy and in doing so elevates his own. The act of rape therefore becomes an echo and an imposition of a social structure by which the full personhood of women is not recognized. Brownmiller’s contention is that even in the context of an individual case, the meaning of rape is never individual. Rapists do not rape individuals, but members of a class; the act of rape, then, functions as a reminder to both assailant and victim that membership in one of these classes is the defining element of their sexed identities.

72. See generally Brownmiller, supra note 9.
73. Id. at 11-15 (outlining her argument about the “mass psychology of rape”).
74. Id. at 256 (arguing that “all rape is about power”).
75. Id. at 209 (stating “[a] world without rapists would be a world in which women moved freely without fear of men. That some men rape provides a sufficient threat to keep all women in a constant state of intimidation, forever conscious of the knowledge that the biological tool must be held in awe for it may turn to weapon with sudden swiftness borne of harmful intent . . . . Rather than society’s aberrants or ‘spoilers of purity,’ men who commit rape have served in effect as front-line masculine shock troops, terrorist guerillas in the longest sustained battle the world has ever known (emphasis in original).”).
76. Id. at 15.
77. Id. at 396 (calling for a “law that reflects the female reality and a social system that no longer shuts women out of its enforcement and does not promote a masculine ideology of rape”).
78. Id. at 391.
79. See Shafer & Frye, Rape and Respect, in Feminism and Philosophy 333, 334 (Mary Vetterling-Braggin, Frederick A. Elliston, & Jane English eds., 1977) (discussing Brownmiller, the authors argue that “rape is a man’s act, whether it is a male or a female man and whether it is a man relatively permanently or relatively temporarily; and being raped is a woman’s experience, whether it is a female or a male woman and whether it is a woman relatively permanently or relatively temporarily.”). Thus, whenever women are victimized, regardless of the biology of the perpetrator, this system is at work.
80. Brownmiller, supra note 9, at 397 (recognizing that “in daring to speak the unspoken, women had uncovered yet another part of our oppression, perhaps the central key: historic,
Despite Brownmiller's ardent claim that her analysis desexualizes rape by uncovering its roots in social power, a closer look suggests otherwise.

What it all boils down to is that the human male can rape. . . . Man’s structural capacity to rape and women’s corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself. Had it not been for this accident of biology, an accommodation requiring the locking together of two separate parts, penis and vagina, there would be neither copulation nor rape as we know it. . . . We cannot work around the fact that in terms of human anatomy the possibility of forcible intercourse incontrovertibly exits. This single factor may have been sufficient to have caused the creation of a male ideology of rape. When men discovered that they could rape, they proceeded to do it. 81

For Brownmiller, the very fact of differentiated male and female bodies makes rape a possibility, which is then exploited on behalf of male dominance. 82 Women, she argues, incapable of retaliating in kind, have no suitable response to rape, no similar threat they can make in turn. 83 They are marked only by a structural vulnerability that is undeniable and inescapable. 84 They are, prior to the social structures that rape inspires and supports, rapable. 85 In this view, women are their bodies, coded as a place of empty vulnerability; yet, rape is as "natural" to women as the fact of intercourse itself. Thus, Brownmiller leaves us with a paradoxical assertion: women are raped because they are rapable, and women are rapable because they are women. 86 This circular (il)logic of an

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81. Id. at 13-14.
82. Id. at 16 (noting that "[b]y anatomical fiat—the inescapable construction of their genital organs—the human male was a natural predator and the human female served as his natural prey").
83. Id. at 14 ("fleet of foot and spirited, she would have kicked, bitten, pushed and run, but she could not retaliate in kind") (emphasis in original); id. at 16 ("not only might the female be subjected at will to a thoroughly detestable physical conquest from which there could be no retaliation in kind—a rape for a rape.
84. Id. at 14 (arguing that "[h]is forcible entry into her body, despite physical protestations and struggle, becomes the vehicle of his victorious conquest over her being, the ultimate test of his superior strength, the triumph of his manhood").
85. Brownmiller would contend that "being rapable" is a social, not biological, position, and it is that social position that defines what a woman is. Her persistent reliance on biology, however, clouds this analysis and, in the end, leaves only a rapable woman, incapable of response or retaliation: a woman paralyzed by the accident of her very biology.
86. Of course, Brownmiller's argument provides no satisfactory explanation or nuanced account of men's very real rapability. Unlike Catharine MacKinnon's theory of structural inequality, which accounts for (indeed, offers insight into) the rape of men, Brownmiller's work remains silent on this point. For additional sources on male rape, see generally, Brochman, Sue, Silent Victims: Bring Male Rape Out of the Closet, THE ADVOCATE, 582, 38-43 (July 30, 1991); Helen M. Eigenberg, Prison Staff and Male Rape, in PRISON SEX: PRACTICE AND POLICY 49 (Christopher Hensley ed., 2002); Joseph Harry, Conceptualizing Anti-Gay Violence, in HATE CRIMES: CONFRONTING VIOLENCE AGAINST LESBIANS AND GAY MEN (Herkeck, Gregory & Kevin Berrill, eds., 1999); Gary H. Lipscomb et al., Male Victims of Sexual Assault, Journal of the American Medical Association, 267(22):3064-3066 (1992).
essentialist/identity politics is precisely what Foucault warns against. For Foucault, “sex” does not preexist the social. Indeed, the designation of “sex” is not a biological or ontological given. Rather, sex and sexuality are produced in relation to other workings of power. Foucault would posit that a feminist politics that rests on a notion of power divorced from sex, as if sex preexisted the social, is compliant with the very power it aims to elude.

Brownmiller accepts a particular organization of male and female bodies as a fact of nature. This state of affairs (namely that all men are, by definition, potential rapists and all women are, by definition, potential rape victims) is framed as a biological reality, beyond politics. The “fact” of rape is taken up, expressed, and utilized within the realm of political and social action, but the possibility of rape is a biological one, inherent in the human bodily condition.

In locating the possibility of rape in the specifics of genitalia, both male and female, Brownmiller renders biology a politically innocent field of knowledge. To define men as potential rapists on the basis of their physiology, however, is not merely a biological claim, but also, and perhaps more importantly, a social and political one. To view the penis as an instrument of rape is already to organize the male body in such a way as to privilege the genitals as the grounding of sexuality and to understand heterosexuality as a process of conquest, wherein women are disadvantaged by their inability to use the penis as an instrument of force and violence. To suggest that men rape because they can does not explain why they do; and the fact that we understand men, by biological definition, as rapists further undermines a politics of rape prevention and human autonomy. Indeed, if, at the most basic level, men rape

88. FOUGACUT, POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977 210 (Colin Gordon ed., 1980) (stating: “But I said to myself, basically, couldn’t it be that sex—which seems to be an instance having its own laws and constraints, on the basis of which the masculine and feminine sexes are defined—be something which on the contrary is produced by the apparatus of sexuality? What the discourse of sexuality was initially applied to wasn’t sex but the body, the sexual organs, pleasures, kinship relations, interpersonal relations, and so forth.”).
89. See FOUGACUT, HISTORY OF SEXUALITY, supra note 10, at 157 (counseling that “we must not refer a history of sexuality to the agency of sex; but rather show how ‘sex’ is historically subordinate to sexuality. We must not place sex on the side of reality, and sexuality on that of confused ideas and illusions; sexuality is a very real historical formation; it is what gave rise to the notion of sex, as a speculative element necessary to its operation. We must not think that by saying yes to sex, one says no to power; on the contrary one tracks along the course laid out by the general deployment of sexuality. It is the agency of sex that we must break away from, if we aim—through a tactical reversal of the various mechanisms of sexuality—to counter the grips of power with the claims of bodies, pleasures, and knowledges, in their multiplicity and their possibility of resistance”).
90. See BROWNMILLER, supra note 9, at 16.
91. For a contrasting analysis see JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY 95-96 (1990) (noting that Foucault’s “ostensible problem with feminism seems also to emerge here: Where feminist analysis takes the category of sex and, thus, according to him, the binary restriction on gender, as its point of departure, Foucault understands his own project to be an inquiry into how the category of ‘sex’ and sexual difference are constructed within discourse as necessary features of bodily identity.”).
because they can—because the bodies of men can enter the bodies of women by force and without women’s consent—then the prospect of attempting to eradicate rape seems close to futile. Indeed, Brownmiller’s argument (inadvertently) presents women as primordially disempowered. Yet, if the biological “reality” of the masculine ability to rape is itself political, then there exist other ways of understanding the bodies, politics, and power dynamics that underlie rape. It is this theoretical possibility that affords room for social and political change.

B. De-sexualization

Unlike Brownmiller, there are feminists who have argued for a desexualized account of rape, who, like Foucault, posit rape as yet another form of violence. Consider, for example, the argument of Christina Hoff Sommers, a self-proclaimed “equity feminist,” in support of a gender-free conception of rape:

Equity feminists find it reasonable to approach the problem of violence against women by addressing the root causes of the general rise in violence and the decline in civility. To view rape as a crime of gender bias (encouraged by a patriarchy that looks with tolerance on the victimization of women) is perversely to miss its true nature. Rape is perpetuated by criminals, which is to say, it is perpetuated by people who are wont to gratify themselves in criminal ways and who care very little about the suffering they inflict on others... Rape is just one variety of crime against a person, and rape of women is just one subvariety. The real challenge we face in our society is how to reverse the tide of violence.

92. Traditionally, equity feminism is linked to the “First Wave” Feminist movement, which focused its efforts on legal reforms and political and economic equality. The focus of this early movement was fair treatment. In her address to the New York State Legislature in 1855, Elizabeth Cady Stanton argued forcefully: “We ask no better laws than those you have made for yourselves. We need no other protection than that which your present laws secure to you.” THE ELIZABETH CADY STANTON-SUSAN B. ANTHONY READER 51 (Ellen Carol Dubois ed., 1992). Sommers claims that she’s a feminist, and journalists have largely taken her at her word. She has been identified as such on television, and many of the reviews of Who Stole Feminism? ran under headlines such as “Rebel in the Sisterhood,” Barbara Carton, A Rebel in the Sisterhood: Author Christina Sommers Wants to Rescue Feminism from its “Hijackers,” THE BOSTON GLOBE, June 16, 1994, at 69, or “A Feminist on the Outs,” Barbara Ehrenreich, A Feminist on the Outs: Christina Hoff Sommers’ BOOK IRKS HER IDEOLOGICAL KIN BY ATTACKING THEIR EXCESSES AND DOWNTRODDEN FATE of WOMEN, TIME MAGAZINE, August 1, 1994, at 61. I would argue that Sommers work is rife with anti-feminist sentiment and rhetoric, and to label her as a feminist is a misnomer. Indeed, Sommers was quoted in Esquire Magazine stating: “There are a lot of homely women in women’s studies. Preaching these anti-male, anti-sex sermons is a way for them to compensate for various heartaches—they’re just mad at the beautiful girls.” Esquire Magazine, February 1994.

Sommers’s analysis of rape excludes any overall analysis of patriarchy or structural misogyny. But what happens when the sex-specific elements of rape are denied, when it is perceived as merely another kind of violence? Many feminists would argue that the patriarchal aspects that underlie rape are lost. Within Sommers’s equation, the problem of rape does not stem from the structural, social, or economic divisions that oppose men and women in a closed binary. The problem is rather violence in general. Her theory requires no further inquiry into the gendered specificity of rape and ignores data that would dispute “rape of women” as merely “one subvariety” of violence instead of a dominant mode of it. Like Sommers, Foucault pries violence free from the gendered aspects of rape. Foucault’s motivations, however, differ radically from those of Sommers. Foucault poses his provocative question with the precise goal of getting at the social meanings that comprise naturalized “sex.” Sommers, however, denies the gendered component of rape entirely. Sommers’s project seeks to uncover the “true,” sex-neutral meaning of rape (that it is “really” about “violence,” and not about sex) by discarding the social imposition of gender division, and in so doing, she underestimates the depth of the significance of gender, as well as the various ways sex and gender are co-constituted. If rape is socially constructed as a gender-specific method of supporting, producing, and enforcing a gender hierarchy, then that construction will be basic and essential to any one instance of rape. The challenge for feminism, then, is to acknowledge and destabilize these defining aspects of rape, while cautioning against tendencies to essentialize rape as a static component of our social formation.

C. Re-sexualization

Given the tendency of feminist theories to “desexualize” the act of rape, it is significant that several more recent feminist scholars have sought to reintroduce the notion that “rape is sex” back into feminist theorization. Monique Plaza, in her vehement and direct response to Foucault, argues that “we must confirm that rape is sexual, to the extent that it refers to social sexing, to the social differentiation between the sexes.” In Plaza’s view, sex cannot be dissociated from rape precisely because social sexing not only precedes rape, but actively reinforces it as well. For Plaza, social sexing is the primary system through which women are differentiated and subordinated to men; it is a violent

94. See, e.g., MACKINNON, supra note 29, at 178 (“Considering rape as violence not sex evades, at the moment it most seems to confront, the issue of who controls women’s sexuality and the dominance/submission dynamic that has defined it.”).
95. See Greenfeld, supra note 6.
96. See BUTLER, supra note 91, at 3 (1990) (arguing that it is “impossible to separate out ‘gender’ from the political and cultural intersections in which it is invariably produced and maintained”).
97. Plaza, supra note 4, at 36.
98. Id. at 31 (arguing that “rape is sexual essentially because it rests on the very sexual difference between the sexes . . . . It is social sexing which is latent in rape. If men rape women, it is precisely because they are women in a social sense.”).
process of heteronormative socialization. It is another feminist theorist, however, whose work is marked by an insistence that “sex” inform, at its most basic level, any analysis of rape.

Like Plaza, Catharine MacKinnon argues that rape and sex must not be dissociated because “to say rape is violence not sex preserves the ‘sex is good’ norm by simply distinguishing forced sex as ‘not sex.’” For MacKinnon, rape is not “less sexual” simply by virtue of being violent. Indeed, MacKinnon makes a direct (though implicit) reference to Foucault: “a feminist analysis would suggest that assault by a man’s fist is not so different from assault by a penis, not because both are violent but because both are sexual.” For MacKinnon, violence against women within a sexist society is always sexual.

Indeed, MacKinnon’s analysis of the violence featured and sexualized in pornography illustrates that, as Andrea Dworkin once put it, “any violation of a woman’s body can become sex for men.” By conditioning sexual desire and, by extension, shaping sexual behavior, pornography causes the dominance/submission model of sexuality to become an empirical “fact” about sexual behavior, which renders the distinction between reality and myth or stereotype virtually meaningless. Thus, to divorce sex from violence in any theory of rape is to ignore both its social impetus and implications. MacKinnon places the phenomenon of rape squarely within the confines of “normal” (but imposed) heterosexuality. For MacKinnon, heterosexuality is marked by a dominance/submission model of desire where women come to be defined by inequality.

MacKinnon’s concern is that the sexual use and abuse of women does not register as harm because it is seen as only natural in a world where “sex is what women are for.” The hierarchical conception of gender operates in advance,

99. Id.
100. MACKINNON, supra note 29, at 173 (1989).
101. Id. (stating “Rape is not less sexual for being violent. To the extent that coercion has become integral to male sexuality, rape may even be sexual to the degree that, and because, it is violent. The point of defining rape as ‘violence not sex’ has been to claim an ungendered and nonsexual ground for affirming sex (heterosexuality) while rejecting violence (rape). The problem remains what it has always been: telling the difference.”).
102. Id. at 178.
103. Id. at 174 (noting that “[t]he convergence of sexuality with violence, long used at law to deny the reality of women’s violation, is recognized by rape survivors with a difference: where the legal system has seen the intercourse in rape, victims see the rape in intercourse . . . . Most rapes, as women live them, will not be seen to violate women until sex and violence are confronted as mutually definitive rather than as mutually exclusive.”).
105. MACKINNON, supra note 29, at 172 (arguing that “[i]n feminist analysis, a rape is not an isolated event or moral transgression or individual interchange gone wrong but an act of terrorism and torture within a systemic context of group subjection, like lynching.”).
106. Id. at 174 (“Perhaps the wrong of rape has proved so difficult to define because the unquestionable starting point has been that rape is defined as distinct from intercourse, while for women it is difficult to distinguish the two under conditions of male dominance.”).
107. Id.
108. Id. at 191 (emphasis in original).
undermining individual women’s accounts of their experiences of discrimination and violation by making such treatment seem appropriate to them. MacKinnon’s theory takes as its starting point the material effects of systemic gender inequality, which not only hides women’s responses to sexual violence, but also shapes them. This theoretical position raises important questions concerning the violence inherent in imposed heterosexuality, and the relation between what is perceived as “normal” heterosexual sex and rape. Indeed, MacKinnon is warding off the commonplace acceptance of hierarchical sexual relations as a “natural” (and thus innocuous and immutable) difference between men and women. She does this precisely because any such acceptance undergirds our tendency to accept other “differences” between the sexes. MacKinnon reminds us that when equality is premised on sameness, this leads to a real disparity in social power between men and women, with the result that women are rarely “similarly situated” to men.

In MacKinnon’s analysis, women can find it difficult to distinguish rape from ordinary heterosexual intercourse because they have been told that what they experience as rape is simply sex. The criminal law of rape, for instance, maintains a legal definition of rape that fails to capture those events that many women experience as rape. MacKinnon’s analysis indicates that it is not the violence surrounding a particular act of rape (the use of a weapon, the force that immobilizes the victim or the fear that comes with the threat of further violence for non-compliance) that gives rape its particular character. Rather, the violence of rape is to be found in its heterosexual characteristics. Rape is violent insofar as it is located along a continuum of heterosexual experience, which is itself saturated by coercion and force.

For MacKinnon, the violence in rape has much in common with the violence central to the imposition of compulsory heterosexuality as it socially

109. Id. at 174; see also ROBIN WARSHAW, I NEVER CALLED IT RAPE: THE MS. REPORT ON RECOGNIZING, FIGHTING AND SURVIVING DATE AND ACQUAINTANCE RAPE 3 (1988) (“Indeed, study after study has shown that women who are raped by men they know often don’t even identify their experiences as rape.”).

110. MACKINNON, supra note 29, at 178 (“[W]hat is heterosexuality? If it is the eroticization of dominance and submission, altering the participants’ gender does not eliminate the sexual, or even gendered, content of aggression. If heterosexuality is males over females, gender matters independently. Arguably, heterosexuality is a fusion of the two, with gender a social outcome, such that the acted upon is feminized, is the ‘girl’ regardless of sex, the actor correspondingly masculinized. Whenever women are victimized, regardless of the biology of the perpetrator, this system is at work. But it is equally true that whenever powerlessness and ascribed inferiority are sexually exploited or enjoyed—based on age, race, physical stature or appearance or ability, or socially reviled or stigmatized status—the system is at work.”).

111. Id. at 175 (“The law of rape presents consent as free exercise of sexual choice under conditions of equality of power without exposing the underlying structure of constraint and disparity. Fundamentally, desirability to men is supposedly a woman’s form of power because she can both arouse it and deny its fulfillment. To woman is attributed both the cause of man’s initiative and the denial of his satisfaction. This rationalizes force. Consent in this model becomes more a metaphysical quality of a woman’s being than a choice she makes and communicates. Exercise of women’s so-called power presupposes more fundamental social powerlessness.”).
exists and is inculcated.\textsuperscript{112} MacKinnon has vehemently refuted those who interpret her theory as a claim that all sex is rape,\textsuperscript{113} and those who use this charge have been conspicuously unable to cite where she has ever written such a statement.\textsuperscript{114} MacKinnon's analysis is a structural one, and it in no way denies the possibility of equality in relations between the sexes (hence sexual relations) at the individual level. To reduce MacKinnon's comprehensive body of work to such an oversimplified statement as "all sex is rape" is a way to defame her work and attack her credibility without ever responding to the ideas and analysis she presents.

MacKinnon's position accurately notes that what is often called gender difference is, in all actuality, gender dominance. However, her theory of power and social construction tends to obscure the possibility of female sexual agency.\textsuperscript{115} For example, one academic described her notion of coercion quite aptly: "A woman who jumps is not evidence of lack of coercion, but of coercion so fundamental that it has become foundational to a woman's self-understanding."\textsuperscript{116} Thus, while I agree with MacKinnon that to the extent that dominance and submission are eroticized as the basis of heterosexual relations, it is difficult for both men and women to discern the line between sex and rape, I would disagree as regards the extent and totality of that dominance. Indeed, Foucault's work on power suggests that the possibilities for resistance are greater than MacKinnon acknowledges.

This survey of feminist responses to rape contextualizes Foucault's statements on the desexualization of rape and his corresponding work on sexuality and the body. Indeed, Foucault grounds his legal suggestions for the decriminalization of rape as a specific sexual crime on the notion that sexuality, under no circumstances, should be the object of punishment.\textsuperscript{117} Foucault's primary aim is to "liberate" sexuality from a disciplinary discourse. This goal fits into his larger thesis that the sexuality of the individual, far from constituting the

\textsuperscript{112} Id. at 178 ("Considering rape as violence not sex evades, at the moment it most seems to confront, the issue of who controls women's sexuality and the dominance/submission dynamic that has defined it.").

\textsuperscript{113} See, e.g., Catharine MacKinnon, The Roar on the Other Side of Silence, in IN HARM'S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 3 (Catharine MacKinnon & Andrea Dworkin eds., 1997); Editors' Note (Feb. 12, 2006), http://www.nytimes.com/2006/02/12/books/review/12ednote.html?sec=rct&ex=1174104000&en=c62be8ab3586306&ei=5070 (noting that "while this and similar statements equating heterosexual intercourse and rape have often been attributed [sic] to MacKinnon, she has long and vigorously denied having made such assertions or that they represent her beliefs" and that "MacKinnon traces the origin of her identification with such statements to attempts by ideological opponents to discredit her.").

\textsuperscript{114} David M. Estlund, Shaping and Sex: Commentary on Parts I and II, in SEX, PREFERENCE, AND FAMILY: ESSAYS ON LAW AND NATURE 140, 167 (David M. Estlund & Martha C. Nussbaum eds., 1997).

\textsuperscript{115} MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, supra note 29, at 172 ("If sexuality is central to women's definition and forced sex is central to sexuality, rape is indigenous, not exceptional, to women's social condition.").

\textsuperscript{116} Denise Schaeffer, Feminism and Liberalism Reconsidered: The Case of Catharine MacKinnon, 95 AM. POLITICAL SCIENCE REV. 699, 702 (September 2001).

\textsuperscript{117} See POLITICS, PHILOSOPHY, CULTURE, supra note 1, at 200.
most intimate truth about oneself, is in fact an instrument of social regulation. Foucault's work points out that the sexual body is both the principal instrument and effect of modern disciplinary power—thus his call for desexualization is an attempt to disrupt the regulatory and productive capabilities of power manifest in the law. It is within this particular logic that Foucault seemingly suggests that legislating against rape is in some way synonymous with punishing sexuality. Foucault's call to subordinate the sexually explicit component of rape in favor of an analysis of violence provides an interesting mechanism for rape prevention. The contribution, however, is not located in the denial of the sexual specificity of the crime. Rather, Foucault's theory of productive power offers a new way to conceive of the feminine body. On the one hand, the disciplinary effects of power have shaped the feminine body as weak and marked by passivity and violability. On the other, Foucault tells us that resistance is located "right at the point where relations of power are exercised."

III. RAPE AND RESISTANCE: PERSPECTIVE AS RE-EVALUATION

To return to the question formulated by Foucault: why isn't rape like a punch in the face? There are two equally valid answers to Foucault's provocative question about rape. The first lies in the social production of the gendered, female body—rape is precisely not like a punch in the face because our sexual parts are so imbued with social meaning. Winifred Woodhull points to this:

If we are seriously to come to terms with rape, we must explain how the vagina comes to be coded—and experienced—as a place of emptiness and vulnerability, the penis as a weapon, and intercourse as violation.

This first answer suggests that Foucault's question foregoes any theoretical inquiry into the structural and political implications of rape, nor does it consider rape's gendered specificity. It also fails to address the complexity of the gendered sexual coding of which Woodhull speaks. Foucault infers from the sexual definition of rape a continuation of the privileging of the genitals with regard to sexuality, a privileging that supports the "naturalness" of the sexed body and therefore serves to obscure the complex relation of sexuality and power. His focus, then, is not appropriate—it obscures the reality of the raped body in an effort to destabilize the disciplinary effects of the law.

From this viewpoint, Foucault's position regarding rape is particularly disturbing, precisely because it seemingly disregards his own work on power and the body. Indeed, in the collection Power/Knowledge, Foucault argues that "nothing is more material, physical, corporeal than the exercise of power."
Feminist theorists, such as Woodhull, have long argued that rape is a primary way in which the feminine body is socially constructed. Indeed, they assert, any analysis of rape must have at its origin a critique of gendered relations of power.\textsuperscript{122} Foucault’s question, then, overlooks the fact that we inhabit our genders. It is precisely because we live as sexed beings that normative judgments must be made about what it means when our bodies are violated as the gender we inhabit. The intimacy with which power operates on the level of the body is perhaps most clearly stated by Foucault himself:

What I want to show is how power relations can materially penetrate the body in depth, without depending even on the mediation of the subject’s own representations. If power takes over the body, this isn’t through its having first to be interiorised in people’s consciousness. There is a network or circuit of bio-power, or somato-power, which acts as the formative matrix of sexuality itself as the historical and cultural phenomenon within which we seem at once to recognise and lose ourselves.\textsuperscript{123}

One feminist response to Foucault’s concern: genitals do hold socially specific meaning. That meaning cannot be legally (or personally) suspended in the hope that it will begin the process of de-saturating this misplaced meaning. Indeed, to ask rape victims to re-evaluate the meaning of their genitals and of sexuality as a whole after they have experienced rape as gendered women seems a questionable priority. This method surely eclipses the point of view of the rape victim, just as it fails to consider adequately the social and political motives of the rapist. Feminists do need to make normative judgments and to offer emancipatory alternatives. Rape is not simply a matter of violence. Rather, it is a concrete example of gendered violence that reinforces social scripting and gender oppression. While it is clear that Foucault seeks to displace inordinate meaning from the genitals, this strategy grossly underestimates the material and legal ramifications of ignoring the meanings that genitals already hold socially and politically. As Monique Plaza suggests:

If I understand correctly, because of women, sexuality is going to acquire a predominant position, is going to be surrounded . . . Have you forgotten that this has already happened? Have you forgotten that sexuality “far from being

\textsuperscript{122} Plaza, supra note 4, at 1 (arguing that Foucault fails to consider the very real power differences between women and men, and that rape is in many ways a mere extension of what are culturally defined as “normal” heterosexual relations); MCNAY, supra note 7, at 45 (stating “what Foucault fails to see is that such a decriminalization of rape would further legitimize the sexual oppression of women in so far as it overlooks that the violence in rape is fundamentally derived from the asymmetrical construction of sexual relations in modern society.”); Sandra Bartky, Foucault, Femininity and the Modernization of Patriarchal Power, in FEMINISM AND FOUCAULT: REFLECTIONS ON RESISTANCE 75, (Irene Diamond & Lee Quinby eds., 1988) (arguing that Foucault’s treatment of the body as an undifferentiated or neutral gender is inadequate because it fails to explain how men and women relate differently to the institutions of modern life).

\textsuperscript{123} FOUSAULT, POWER/KNOWLEDGE, supra note 88, at 186.
repressed in contemporary society, on the contrary has been continually aroused\(^{124}\)

Indeed, vaginas are socially different than penises. And genitals are socially different from the nose and the hair. It is precisely through this differentiation of social and discursive meaning that we see that rape is not simply an attack on the body. It is because our genitals are couched with social meaning that rape must be read as an attack on a gendered, sexualized body.

**IV. TOWARD A FEMINIST THEORY AND POLITICS OF RAPE PREVENTION**

There is a second answer to Foucault's question, however. And it is this second answer that I believe to be the most fruitful for a feminist politics of rape prevention. Foucault is asking after the disciplinary effects of rape discourse—that is, precisely how rape comes to be realized as the trauma that it is and why being violated in one’s sexual parts is different from being violated elsewhere. Rape is realized as such an embodied trauma because sex and sexuality are produced as the core of one’s being; as foundational to the self. Our genitals, and the gendered identity they signify, are saturated with social meaning.\(^{125}\) As such, their violation is experienced as a trauma distinct from other forms of violence. Foucault’s theories on power and the body, however, need not operate solely on the level of the discursive. Rather, they might be seen as illuminating a feminist discourse that posits the trauma of rape as a given.

That feminism speaks about rape as self-shattering or natural has the ironic consequence of participating in its being experienced as such. Indeed, Foucault’s notion that power is productive, that meaning is made through discourse, sheds light on this point. Furthermore, Foucault’s notion of productive power offers a mode of resistance to the social scripts which underlie rape—both discursively and physically. Foucault tells us that “where there is power, there is resistance.”\(^{126}\) Resistance, I argue, to a social scripting of rape that posits women as preexistent victims. Resistance, I argue, to the notion that rape is a biological fact—a fact that precedes any given instance of rape. Resistance, I argue, to a conceptualization of rape bound by the confines of subject (rapist)/object (victim) violence.

The terms of the feminist debate over rape must refocus on rape prevention. Understanding power in its productive capabilities suggests that feminism can destabilize the notion that women are always already raped or inherently rapable. A feminist politics that seeks to prevent rape must assert that rape is not the fixed reality of women’s lives. A workable feminist approach to rape cannot begin by defining women by their violability and rape as a fate

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124. Plaza, *supra* note 4, at 34.

125. Foucault, *History of Sexuality, supra* note 10, at 43 (noting the invention of the sodomite as a class of persons).

126. *Id.* at 95.
worse than death. Such a view is problematic for two distinct reasons. First, it participates in the reduction of the core of one’s being to sexuality; thus, to be raped is to be stripped of all sense of oneself, of some inner, private and intimate space. Second, it helps to assign rape a “metaphysical status,” forcing all dialogue concerning rape into the confines of fear. To embrace this rape discourse is to embrace an articulation of fear and inevitability, but not prevention.

Harnessing Foucault’s notion of productive power and resistance allows for a dramatic reconceptualization of the female body. As such, it aids in the articulation of a theory of rape prevention precisely because it positions the female body as a direct force against the rapist who seeks to subordinate through sexualized violence. The strength of this reconceptualization of the female body for a politics of rape prevention is two-fold; it is at once resistance and prevention. First, it is an active tactic of rape resistance in that it positions women’s bodies as a direct force against rape. Second, reconceptualizing the female body as one of strength works as a normative force for rape prevention. It does this by breaking down a dominance/subordination model of gender differentiation. As women’s bodies are perceived differently, so too will hierarchical notions of gender be challenged. Currently, both feminist and gendered social scripts set women up to be raped rather than to avoid or stave off rape when attacked. The fight against rape need not (and should not) be confined to the legislative or judicial realm. Foucault’s work reminds us that our bodies are, in a sense, the battlefield. If that is true, then feminism needs to get a good deal more physical.

What might a theory of physical feminism mean? The construction of the feminine body is marked by the contours of passivity. Rearticulating the feminine body requires a change in the way women live in their physical bodies and their physical space. Claudia Card argues that patriarchal culture constructs women’s bodies in a particular way—as violable:

Women who lack martial training are an easy mark for those who would communicate the message of domination. Women in patriarchies are commonly unarmed and untrained for physical combat . . . . Not only do females need to be able to call on skills when attacked (for which conventional military weapons may not be helpful) but the social meaning of “female” needs to be changed so that it no longer connotes “victim.”

Foucault’s work would tell us that reconceptualizing feminine embodiment from one of passivity or fragility to one of strength is an integral mode of resistance against rape culture. An instinct toward self-defense and bodily preservation needs to be cultivated among women. To do so not only locates resistance to sexual violence with women themselves; it also undermines the

127. Claudia Card, Rape as a Weapon of War, 11 HYPATIA 5-18 (Fall 1996).
social values that construct the feminine body as weak and replaces them with values of strength.

A focus on self-defense reframes the discussion about rape to one of prevention. It contextualizes the sexually-specific harm of rape while empowering the female body. In *Real Knockouts: The Physical Feminism of Women’s Self-Defense*, Martha McCaughy details this dual benefit:

This is precisely why rape is harmful and worth fighting against: It reduces a woman’s mode of being-in-the-world from an absorbed lived body to a broken body with a self somewhere else or a self reduced to a body-thing. Women are regarded by men who rape (and, regrettably, by many others) as things, void of a moral will or a body-self distinct from the rapist’s, or they are reduced to his (mis)interpretation.¹²⁸

McCaughy is suggesting that teaching women to defend themselves repositions their bodies in relation to male dominance, transforming women into embodied weapons of strength. In so doing, she rewrites the terms of rape by giving women’s bodies and physical abilities a space in the equation. Her theory is one of bodily transformation—and resistance, indeed change, is located within that transformation of self.

By requiring women to act in unfeminine ways, self-defense instruction makes possible the identification of not only some of the mechanisms that create and sustain gender inequality but also means to subvert them. Self-defense is a counter-discourse. It represents woman, man, and aggression in new ways that oppose those we take for granted. Women’s new bodily comportment affects not only their confidence with respect to thwarting assaults; it proves highly consequential for many areas of their lives.

Gender is a lived ideology—a system of ideas about men and women which we live our lives. As lived ideology, those ideas get transformed into specific bodily practices.... What feminists talk about interrupting—femininity—self-defenders practice interrupting: They enact the deconstruction of femininity. In the process, self-defense enables women to internalize a different kind of bodily knowledge. As such, self-defense is feminism in the flesh.¹²⁹

Re-imagining women’s bodies as powerful and fighting responses to rape changes the terms of violence from subject-object to subject-subject. This rearticulation does not deny the structural inequalities that underlie rape culture, nor does it simply perpetuate and re-present the violence of rape, reifying rape as

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¹²⁹ *Id.* at 89-90.
an insurmountable fear. Rather, a feminist response to rape built on a model of self-defense redefines women’s bodies in terms of strength and capacity, not passivity and vulnerability. It reorganizes the female form into a coherent and powerful force against the occurrence and meaning of rape—that is, rape prevention based on a woman’s own body emphasizes the spaces in which things might be changed, the spaces in which women can try and intervene, overpower and deflect a rape.

A theory of rape prevention is not limited to one means of dislodging the political structures of patriarchy. Women’s self-defense is but one tool of resistance against rape. As a tool, however, self-defense provides a truly powerful response to rape culture by redefining women’s bodies, replacing violability with strength. Locating resistance within one’s self, within one’s own body, changes the occurrence and meaning of rape by underscoring women’s strength and capacity. Rape prevention through self-defense offers a truly physical feminism—a “feminism in the flesh.”

130. Id. at 90.