

Feminist History of Rape

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A nation is not conquered until the hearts of its women are on the ground. Then it is done, no matter how strong the weapons or how brave the warriors.

— Cheyenne Nation

Rape is an expression of a violent culture that uses gender stereotyping, among other forms of oppression, to sanction and justify the brutalization of women, children and, increasingly, men. While the origins of sexual violence predate any statute or cultural collective, the manner by which social structures choose to intervene or ignore rape speaks volumes about larger norms.

Survivors of sexual violence testify again and again to the unique and devastating nature of rape. Their experiences and eloquence underscore the impact that sexual assault has on their lives.

It wasn't an act of sex I went through, I felt like I was being murdered.

There was nobody to tell because I was afraid no one would believe me. So I kept quiet.

And then there is the pain. A breaking and entering when even the senses are torn apart. The act of rape on a eight year old body is the matter of the needle giving because the camel can't. The child gives, because the body can, and the mind of the violator can not.

The origins of the word rape are found in the ancient Greek – to steal. The etymology of the word alone underscores the cultural assumptions locked within. Since recorded law until very recent history, the rape of women has been constructed as a property crime whose redress was directed to the husband or father of the victim.

In the Hamarabic code, women were seen as equally liable for acts of rape. Both the victim and perpetrator were subjected to death sentences. The appeals process was directed at husbands, only they could commute a death sentence for their wife.

Early Hebrew law also sentenced victim and rapist to death equally. However, there were concessions to time and place. If the assault occurred

within the city limits, the burden was placed on the woman to scream and demonstrate her lack of consent – the logic being that city residents would come and assist. Outside the city limits, where help was less likely to respond the punishment for the woman was eliminated and the perpetrator was forced to pay a bride price and marry his victim.

During the Middle Ages, Jewish women won the right to become litigants and pursue civil charges against perpetrators. In some limited circumstances, damages were even paid to victims themselves as opposed to husbands or fathers. This was the beginning of the conception of rape as a damage to the person, as opposed to the family estate.

During the reign of Henry II, women could file suit against their rapists, so long as they were not married to them. Women were referred to as the *prosecutrix* – a term occasionally still in use. Non-virgins were excluded from the ability to file suit. The standard of proof for this type of suit was blood, torn garments, and the vocality of the woman's objection in the aftermath. In this model, women were responsible for the prosecution and punishment of their rapists. It was also during the reign of Henry II that some of the first affirmative defenses were articulated: the woman was a concubine to the rapist, she consented, her accusations rose out of bitterness or jealousy, her family pressured her into making the accusation, or the defendant had an alibi.

It wasn't until Edward II that the canon of Western Law acknowledged that a non-virgin could be forcibly raped, but only by a non-spouse. Edwards's rule also had several other unique contributions to the legal construction of rape. It was under his reign that the concept of statutory rape was developed along with the differentiation of rape by degrees.

One of the most important changes was, however, the shift of rape as a crime against a person for which they have the responsibility to prosecute to the reality of

conceiving it as a crime against the state. For the first time in the West, the larger power structures of the community were charged with the prosecution of rape. While this represented an important step forward, that women still have no significant voice in criminal proceedings is another object to the larger process of justice. The implications of the criminal process on the safety, well being and long-term health of victims have been consistently underestimated.

Victims of sexual violence often characterize the investigative process necessary for the prosecution of sex crimes as the final act in a long series of violations. The invasive nature of the physical examinations, the rigor of the interview process, and the duration of time that transpires from allegation to trial wear down the resolve and stamina of even the most tenacious victims. The criminal process represents the ultimate polarization of rape: the public disclosure and examination of an intensely personal violation. While the representatives of law enforcement and prosecutorial agencies work tirelessly to ease the process of reporting rape, the reality will always remain: some victims, for very personal and important reasons, will never report their rape.

In the United States, the connection between rape, racism, and oppression is profound. In 1866 a brave group of African American women testified before congress about their sexual assaults during the Memphis Riots. They were, perhaps, the first women in this country to publicly speak out about rape. At that time, rape was a capitool offense only when Black man raped a White woman – the rape of a Black woman was not even considered a crime. It was their voices, and their courage that furthered the analysis and statutory construction of rape laws in this country.

Even with the introduction of Rape Shield laws, designed to mitigate the bias created by exploring

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past sexual histories, victims are still suffering the moral judgement of juries. "In cases of sexual violence involving evidence of prior consenting sexual relationship, the victim's past will be scrutinized and judged in court, even with states with Rape Shield Laws. If women who have been used in prostitution, pornography and other areas of the sex industry bring action for redress of grievances, they rarely stand a chance for justice."

Although great strides have been made to facilitate the prosecution of rapists and increase reporting across this country, laws still exist that make exceptions for marital rape, define a lesser punishment for predators that commit incest, and make sentencing decisions without consulting victims.

They finally told me they thought I was lying. They said I'd probably been having sex with my boyfriend and probably was afraid I was pregnant. They also theorized that my boyfriend had set me up for it. They wanted to know if he'd ever asked me to have relations with his friends.

Extensive statutory definitions exist from state to state: Rape, Sexual Assault, Molestation, Incest, Sexual Abuse, Indecent Liberties, Communication with a Minor for Immoral Purposes and others. And while the history of these legal constructs is an important testament to the social conception of rape, for the victim / survivor of sexual violence, the definition is exceedingly simple: rape is coerced sex. The tools of coercion are varied: brute force, weapons, threats, dependence, poverty, isolation, and fear.

Rape is a part of a larger continuum of violence that finds its roots in the innocuous. Sexual violence can be seen as a continuum. All forms of sexual violence feed and draw strength from one another. Sexual violence can begin with emotional abuse, such as leers, comments and gestures. Sexual violence may also progress to more physical forms of abuse, such as molestation and rape.

Language that degrades and demeans whole groups of people allows for a conception of individuals that renders them less valuable than other individuals. These generalizations and stereotypes can serve as a rationalization for abuse and mistreatment. In the case of sexual assault, preconceptions regarding women of color, gays and lesbians have created biases that are very real barriers to reporting the violence and accessing necessary services.

Sexual violence occurs in environments that are harassing, threatening, and demeaning. Sexual violence is present when workers are sexually harassed. Sexual violence is present when women are raped and beaten for sport in movies. Sexual violence is present when women are demeaned and battered in pornography.

Words, pictures and attitudes create an environment in which sexual violence thrives. The media reflects and reinforces cultural values that make sexual violence acceptable. Media can also reinforce gender roles that encourage men and boys to be aggressive, and women and girls to be submissive. These early constructions of attitude and cultural belief create a foundation by which sexual violence can flourish.

Ending rape involves the integration of new policies and procedures that will facilitate both the pursuit of justice and the healing of victims. New, state-of-the-art programs such as blind reporting, Sexual Assault Nurse Examiner programs, Sexual Assault Response Teams, special assault teams, and the development of multi-disciplinary investigation protocols will assist jurisdictions in the prosecution of rapists and will help larger systems become more victim-centered.

The enhancement and refinement of Crime Victims Compensation Programs, and access to civil litigation will improve services to victims and their access to the legal system. Continuing, specialized education for law enforcement, prosecutors, defense bar representatives, and medical personnel will improve both outreach and resolution of rape claims.

My pain I will always feel. But I Will Survive, and I hope you other victims do too. We are stronger than they thought.

Collaboration between systems is an essential element of not only managing the crime of rape, but eliminating the culture that perpetuates it. The only humane and ethical approach ending rape focuses on the balance of prevention and intervention. This symbiotic relationship is based on a model of community collaboration.

As a feminist, I carry the rape of all the women I've talked to over the past ten years personally with me. As a woman, I carry my own rape with me.

NOTES:

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