

## Rape: A Philosophical Analysis of an Inexcusable Abuse

There are times in the highly civilized reality of the West when the legal system ostensibly set up for the protection of all citizens seems designed rather to protect the deeply immoral and pathological at the expense of the weak, foolish and/or trusting. Even more galling, it ties the hands of those who would exact some type of retribution for offenses deserving, in other times and cultures, of a good beating, imprisonment, and/or public humiliation. Rape and its more dissembling cousins, sexual assault and so-called date rape, are offenses the prosecution of which in the United States today fall into the category of crimes which leave victims more often than not humiliated, isolated, and psychologically and emotionally scarred, but for which victims have very little recourse to justice. This is a staggering reality when one considers the vast numbers of mostly women who report having at some time or another in their lives been the object of forced, coerced or seduced but unwanted sex. As philosophy professor Susan Brison, herself a victim of a brutal rape and attempted murder, reports in her essay "Surviving Sexual Violence: A Philosophical Perspective," in the United States a rape occurs on an average of every six minutes (481). More disturbingly, this figure covers only those rapes that are reported; 70 to 80 percent of all rape crimes, estimated at three to ten times the number reported, are committed by assailants known to the victim (Warshaw 12). Confronted with the contradiction created by a system purporting to offer justice to citizens regardless of gender, and the failure of this system to adequately address the harm done to women by such acts of sexual aggression, a philosophical exploration of the problem seems the best approach for those who would hope to establish a foundation upon which to build a better society, one in which both men and women would work in partnership to eliminate the kind of dominator/dominated dynamics between the sexes that perpetuate this most pernicious and widespread offense.

That violent rape, like murder, is morally evil may require no defense, but that so-called date or acquaintance rape constitutes serious injury to the victim and is not simply sex, does. Rape, even when unaccompanied by visible signs of physical force, raises a whole range of philosophical questions from the epistemological to the ethical, the ontological to the metaphysical. A philosophical examination of rape requires an exploration of memory, truth and meaning, of subjective interpretation and objective fact; of free will, choice, consent and volition versus determinism and natural selection; of identity, the self and the other; and of good and evil, morality and society. That rape flourishes in our own culture forces us to analyze that which is dysfunctional in our conceptual framework and moral behavior, and casts doubt on the validity of the often arrogant claims to having arrived at the proverbial "good society."

On an epistemological level, rape, unlike murder for example, more often than not provides no solid evidence and thus presents the immediate challenge of determining what happened. This opens the door to a slew of difficulties: appearances versus reality, the subjective interpretation versus the objectively determined fact of what happened, (if indeed that can be said to exist,) and the meaning assigned to the act by the parties involved. When a charge of rape is made, how is the court to decide between the differing versions of events, in particular when there is an absence of visible physical injury? As Catherine MacKinnon points out in "Rape: Coercion and Consent," under current interpretations of the law, which she sees weighted in favor of the male accused,

appearances based simply on the agreed-upon fact that some sort of sex took place win out. As she points out, “Under law, rape is a sex crime that is not regarded as a crime when it looks like sex” (497). Lacking a “smoking gun,” the court shifts focus from the victim’s point of view and resorts to the *mens rea* or “guilty mind” standard of law which states that to be guilty the defendant must have committed the criminal act in a certain mental state. In the case of rape, he must have sincerely believed that the woman did not consent to sex. The question becomes then what he actually understood at the time, or what a reasonable man should have understood under the circumstances.

The problem with this approach is two-fold. First of all, as MacKinnon points out, the whole argument rests on the meaning of the act to the accused. Whereas the injury of rape lies in the meaning of the act to its victim, the standard for its criminality lies in the meaning of the act to the assailant (497). Thus it is the man’s perceptions of a woman’s desires that determine whether she is deemed violated or not. The task becomes, then, determining whose view of the meaning of the encounter constitutes what really happened. This presumes, of course, that what happened objectively exists to be objectively determined. As MacKinnon asserts, the rape law presumes a single underlying reality, not a reality split by the divergent meanings that gender inequality produces. If to the man, the meaning of the act is sex, then to the law it is sex. That becomes the single reality (502). In other words, the law assumes there are a-theoretical facts that exist and which can be discovered to support an objective reality, but at the same time, operating as it does within a patriarchal framework, it identifies the male assailant’s point of view as what is objectively true.

A second problem with this approach is the biased nature of the “evidence” accepted by the court. As Lois Pineau writes in “Date Rape: A Feminist Analysis,” to defeat the criteria of *mens rea*, the man must convince the court that he had a sincere belief that the woman was consenting. To be sincere, the belief must be reasonable. The evidence of the reasonableness of his belief alone constitutes the evidence that consent did take place and that no violation occurred (511). In what seems a quantum leap from apples to oranges, evidence of the reasonableness of his belief constitutes evidence that consent did take place. Not only can belief not constitute evidence for reality, even if we did accept the flawed logic of this argument, what is missing is any exploration whatsoever of what would be reasonable for the woman to agree to (Pineau 512).

This opens up a second philosophical angle, that of consent, volition, and woman’s will. The line between rape and intercourse centers on an assessment of the woman’s will. How, we might ask, is the law or the accused for that matter to know what the woman’s will is? Notwithstanding the number of myths that undermine the woman’s credibility (women are socialized to be coy about sex and really want it when they say they don’t, for example,) and given the total disregard for the reasonableness of a woman’s argument that she did not consent to sex under various circumstances in which any reasonable woman would not consent to sex, MacKinnon questions whether the very concept of consent has any meaning in societies where women are socialized to passive receptivity. MacKinnon asserts that force and desire are not mutually exclusive in a society of male supremacy and points out how, in a culture where dominance and submission are eroticized, seduction turns into consent (500). Citing Susan Brownmiller, she goes so far as to argue that males use the fear of rape to force compliance, which from the male point of view is interpreted as seduction and is then called consent. In a

nod to Carol Pateman's article, "Women and Consent," MacKinnon agrees that "consent as an ideology cannot be distinguished from habitual acquiescence, assent, silent dissent. . . submission or enforced submission. . . Unless refusal of consent or withdrawal of consent are real possibilities, we cannot speak of 'consent' in any genuine sense" (Notes 505, Pateman 150).

The epistemological uncertainties that arise from rape – consent, volition, will, subjective interpretation versus objective fact, and the difficulty of knowing the truth of what happened - often translate into the legal defense of the accused. Another way to come at some justification, if not excuse, for rape is to consider the evolutionary biological and sociobiological explanations that Larry May and Robert Strikwerda explore in their article, "Men in Groups: Collective Responsibility for Rape." The biological argument is that rape is an adaptive response to different sexual development in males and females (543) and the sociobiological, owing much to the work of Lionel Tiger, argues that men are predisposed to engage in aggression to achieve their own ends, which include violent aggression to get sex. The authors argue that it is the socialization of men in their bonding groups and the view of women that is engendered that provides the strongest cues for rape (544.) Steven Pinker makes a similar argument in his controversial book, *The Blank Slate*, frequently citing Randy Thornhill and Craig T. Palmer's ground-breaking work, *A Natural History of Rape*. Thornhill and Palmer make the argument that a male capacity to rape could have been selected for, if not as a typical mating strategy, at least as an opportunistic tactic (qtd in Pinker, 364). This kind of determinist argument flies in the face of claims such as that made by Fred Pelka who agrees with the gender-feminist theory that rape is not about sex but about control and the disempowerment of women as a group (492). For Pinker, not only does this argument lack any moral standing whatsoever, it also stands as "an example of extraordinary popular delusions." As Pinker sees it, "Evil men may use violence to get sex, just as they use violence to get other things they want (362). While the nature argument does not excuse the rapist or support the argument that "he just can't help it," it does put rape on a continuum with the rest of male sexuality (Pinker 365). Even this interpretation seems to open the door, however, to a conception of males that is far too sympathetic to their biological impulses and that disregards the fact of at least forty thousand years of moral and ethical development that should preclude such impulsive abandonment to primal urges.

Whether or not a rapist acts from free will, whether or not he pathologically if sincerely believes a woman wants forced, coerced, or manipulated sex or is fully aware of the evil of the tactics he uses, the prevalence of rape in our society raises the question, then, of how we are to arrive at a model of a preferable society for the future, one where rape and any kind of sexual aggression towards women, and towards more vulnerable men, is eradicated. While we may not agree with MacKinnon's extreme assertion that rape "is an act of terrorism and torture within a systemic context of group subjection (496), we resonate with Robert Baker's call, in his article, "Sex and Language," for a new conception of the male and female sexual roles, and the eradication of the kind of sexual discrimination that Baker sees reflected even in the grammatical structures used to describe sexual intercourse in the English language. In an insightful examination of the terms we use to describe coitus, terms which place men in the subjective active role and women in the passive objective position, Baker argues that "The conception of sexual

intercourse in our culture is antithetical to the conception of women as human beings, as persons rather than objects (508). Not only does our language reveal how women are objectified, but it also demonstrates that we conceive of sexual roles in such a way that only females are thought to be taken advantage of in intercourse while males are presented as the agents of harm. Neither case is a viable or desirable model for men and women in a good society that must include among its primary values gender equity and mutual respect. As Baker so convincingly argues, “We need to redefine our conceptions not only of fucking, but also of the fucker and the fucked” (509).

Language aside, how do we move towards a more egalitarian society? Pineau suggests that this would require a recognition and acceptance of our moral responsibility to respect the end desire of others in personal, especially intimate, relationships. As she states it, “Failure to respect the ‘dialectics of desire’ when operating under the auspices of friendship and trust is to act in flagrant disregard of the moral requirement to avoid manipulative and exploitative behavior” (517). May and Strikwerda go a step further and encourage men to take responsibility for resocializing themselves and their fellow men. I would add that women need to resocialize themselves as well and find the courage to break out of the passive role they have been socialized to accept. Perhaps scholar, author, feminist and peace activist Riane Eisler, in her book, *Sacred Pleasure*, provides the clearest vision for what a society of “new Eves” and “new Adams” would look like. It is only when both sexes move beyond what Eisler calls the dominator mentality to a partnership model where men and women have equal status, and build relationships based on mutual respect and cooperation rather than domination and submission, that human society can begin to overcome not only problems like rape, but environmental, political and other social problems as well. What a brave new world that would be, a world without rape.

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