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Justice and Gender-Based Violence*

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One of the most powerful expressions of condemnation of violence against an individual is the declaration that it is part of a larger, group-based injustice that constitutes a violation of the victim's civil or human rights.¹ Although gender-based violence against women by men is an on-going and nearly ubiquitous crime, it generally is not, except in some cases of rape in war-time, viewed as politically significant, let alone serious enough to be labeled a civil or human rights violation.² In this article, I explore the question: Why, in spite of over forty years of feminist anti-rape activism, is it still so rare for rape and other forms of gender-based violence against women to be characterized—in politics, the law, the media, popular culture, and everyday discourse—as a politically important

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¹ Civil rights are those held by a person qua citizen. Human rights are those held by virtue of being a human being. In this article I use both terms, since the right to be free from gender-based violence is both a civil right (which should be protected under federal anti-discrimination law) and a human right (which should be protected by international laws, conventions, and treaties). Catharine MacKinnon has, since the 1970s, done more than anyone else to change legal thinking and practice to reflect this position. See, for example, MacKinnon 1987, 1994, 2005, 2007.

² Although my focus in this paper is on the rape of women by men, I do not mean to imply that men are not raped or that men cannot be victims of gender-based violence, although it should be noted that such forms of violence are rare compared to gender-based violence against women.

phenomenon constituting a grave group-based injustice?³ Instead, such crimes tend to be viewed as either interpersonal and apolitical crimes of passion or as isolated and random acts of violence—particularly puzzling characterizations given their gendered nature and the fact that they occur everywhere and with mind-numbing regularity. We need to ask: What are the effects of such labeling? What does it keep us from seeing—and doing?

The answers to these questions highlight the necessity of viewing rape and other acts of gender-based violence against women as elements of an on-going politically significant phenomenon. This not only helps us to understand and address the causes of such crimes and to comprehend more fully the nature of the harm to the victims and to the larger community. It also facilitates our attempts to come up with appropriate forms of redress—legal and otherwise.⁴

After examining why it has proven so difficult to categorize rape and other forms of gender-based violence as group-based injustices, I will propose one strategy for reconceptualizing rape in a way that highlights its political dimension. Instead of calling rape “sex without consent”, I argue that we should refer to it as a form of “gender-based violence”. Doing so takes rape out of the exclusively interpersonal realm and reclassifies it as an injustice by situating it in the contexts of both criminal justice and civil rights law.

³ Arguably the most influential anti-rape feminists who characterized rape as gender-based violence are Brownmiller (1975) and MacKinnon (1987, 1994, 2005, 2007). The Violence Against Women Act, when initially passed by the U.S. Congress in 1994, included a section reconceptualizing rape and other sex-based crimes of violence against women as gender-motivated bias crimes which violate the civil rights of victims. But this provision of VAWA, which entitled victims of such crimes to hold their assailants (and other entities found responsible for the crime) liable for damages in civil court, was ruled unconstitutional by the U.S. Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000).

⁴ Ann Cudd correctly categorizes (much of) violence against women as systematic non-state sponsored violence by dominant against subordinate groups (2006, 89). I also find it a virtue of her account that it focuses on the victims’ perceptions of harm, not on the intentions of the perpetrators (see 89-89). I used to classify violence against women as gender-motivated violence (or as a bias crime or hate crime). These labels are problematic, for reasons Cudd’s account reveals: they focus on the perpetrators’ motivations, not on the oppressive effects on women. Since our legal system is based on what Cudd calls the “equal individual perspective” (210), however, bias crime legislation typically takes the form of enhanced penalties for the perpetrator, and it could be argued that, in order to justify increased punishments for gender-based crimes, we need to take into account the perpetrators’ motivations even if our concern is to address the harm to the targeted oppressed group. Nonetheless, the term “gender-based” violence seems to me more apt than “gender-motivated” violence.

I begin with three examples that illustrate the difficulty many people have seeing rape and other acts of gender-based violence as acts of injustice:

1. In *The Demon Lover: On the Roots of Terrorism*, Robin Morgan writes of an incident (during the civil rights movement) in which the de-politicized, trivializing view of sexual violence against women was brought home to her:

“I am one of seven women—three of us white—in the office of CORE (the Congress of Racial Equality) at a joint meeting with SNCC (the Student Nonviolent Coordinating Committee). More than twenty men, black and white, are present, running the meeting. Three civil-rights workers—one black man and two white men—have disappeared in Mississippi, and the groups have met over this crisis. (The lynched bodies of the three men—James E. Chaney, Andrew Goodman, and Michael Schwerner—are later found, tortured to death.) Meanwhile, the FBI, local police, and the National Guard have been dredging lakes and rivers in search of the bodies. During the search, the mutilated parts of an estimated seventeen different human bodies are found. All of us in the New York office are in a state of shock. As word filters in about the difficulty of identifying mutilated bodies long decomposed, we also learn that all but one of the unidentified bodies are female. A male CORE leader mutters, in a state of fury, ‘there’s been one whole goddamned lynching we never even *knew* about. There’s been some brother disappeared who never even got *reported*.’

“My brain goes spinning. Have I heard correctly? Did he mean what I think he meant? If so, is it my racism showing itself in that I am appalled? Finally, I hazard a tentative question. Why *one* lynching? What about the sixteen unidentified female bodies? What about—

“Absolute silence. The men in the room, black and white, stare at me. The women in the room, black and white, stare at the floor. Then the answer comes, in a tone of impatience, as if I were politically retarded. ‘Those were obviously *sex* murders. Those weren’t *political*.’⁵

⁵ The use of the word “retarded” here is jarring and Morgan would not phrase her point this way if she were making it today (E-mail from Morgan on 21 June 2013). It is important to note that *The Demon Lover* was originally published in 1989 with the more informative subtitle: *On the Sexuality of Terrorism*. According to Morgan, that subtitle was considered too provocative to use by the time the book was republished at the end of 2001 in the wake of September 11. (Personal communication with Morgan at a panel on “Gender and Terrorism” at the American Philosophical Association Pacific Division Meeting in March 2002.)

“I fall silent.” Morgan (2001, 223-224).

2. The second example is one I mention in my book, *Aftermath: Violence and the Remaking of a Self*—a book prompted, in part, by my having survived a near-fatal rape and attempted murder outside Grenoble, France in July 1990.

A few months before my assailant’s trial, I went to Grenoble to look over legal documents and discuss the case with my lawyer. I also met with the attorney general, who had possession of the dossier for the case and, with some reluctance, agreed to show it to me. It included depositions, police records, medical reports, psychiatric evaluations, and photos of my bruised, swollen face and battered body, of my assailant’s scratched face and genitals, and of his muddied clothes. There were also photographs of the disturbed underbrush by the roadside, my belt found in the woods, and footprints in the mud at the bottom of the ravine where I had been left for dead. After our discussion of how the case would most likely proceed, as I was about to leave his office, the attorney general stunned me with these parting words of advice: “When the trial is over, you must forget that this ever happened.”

I protested that forgetting such a traumatic event is not an easy thing for a victim to do. He then looked at me sternly and said, “But, *Madame*, you must make an effort.” As if this had been simply an isolated event, of concern only to me.

3. The third example (I could, unfortunately, present many more) is that of the campus-wide reaction to the kidnapping, sexual assault, and murder of a female student at Colby College (in Maine, USA) in October 2003.⁶ The student had been abducted in the parking lot outside her dorm while getting into her car at 7:30 in the morning. The discovery of her body in the woods a couple of miles away sparked widespread alarm, an appropriately high level of concern on the part of the administration, and one oddly inappropriate, though well-intentioned, campus response, by the (male) members of the football team, who volunteered to accompany women around campus at night so that they would not have to walk without male protection.⁷

⁶ Some of what follows is adapted from an article I published in an issue of *Women’s Studies Quarterly* on witnessing (Brison, 2008). Assuming, perhaps mistakenly, that the readerships of that journal and this one do not overlap by much, I have decided to allow some redundancy.

⁷ The irony of men protecting women from other men as a solution to the problem of gender-based violence is apparent to those familiar with the feminist literature on rape as a kind of protection racket. (Peterson 1977). Furthermore, the vast majority of rapes are committed by friends and acquaintances of victims, not strangers.

A week after the victim's body was discovered, her assailant was apprehended and confessed to the crime. (There was also enough physical evidence that the police—and the rest of the community—were confident that the perpetrator had been caught.) Subsequent memos stressed that the perpetrator was not a Colby student and that this was a “random act of violence.” The service escorting women around at night that had been provided by the football team stopped and, for many on campus, things quickly returned to “normal.” But, many, if not most, female students had their earlier sense of security shattered.

When I gave a talk at the campus two weeks after the murder, some women told me their male friends had become exasperated with them for still being afraid after the perpetrator was caught: “What’s the matter? They found the guy! It was just an isolated incident. It’s not going to happen again.” That it was clearly a gender-based sex crime against a woman—part of a larger pattern of such crimes—was a terrifyingly obvious truth to some and a faintly ridiculous proposition to others.

The women with whom I spoke were not reassured once the perpetrator had been caught. The crime had made more salient to them than ever the on-going state of affairs in which women are more vulnerable than men to sexual violence.

One reason it is so hard for so many to recognize acts of *gender*-based violence *as* such is that if it is an attack by a stranger, it is viewed as “a random act of violence,” typically by a psychopath, a monster, “not one of us,” whereas, if it is an attack by a date/acquaintance/partner/spouse, it is considered to be a crime of passion—motivated by uncontrollable lust or jealous love (that is, if it is considered a crime at all, which, in all too many cases, it is not). That such violence constitutes a violation of women’s civil rights is seldom acknowledged.

Although racist violence against individuals is, at present, more easily recognized as a kind of group-based victimization, it, like gender-based violence against women, is nonetheless frequently decontextualized as well, with the result that its political significance is minimized or ignored. This is especially true of racist verbal assaults, which the U.S. legal system has been reluctant to view as part of a larger, systemic, politically significant phenomenon of discrimination and violence. A striking example of such decontextualization can be found in Judge Avern Cohn’s 1989 opinion in *Doe v. University of Michigan*, a U.S. District Court opinion striking down the University of Michigan’s Policy on Discrimination and Discriminatory Harassment of Students in the University Environment which had been drafted in response to escalating racist incidents:

According to the University, in the last three years incidents of racism and racial harassment appeared to become increasingly frequent at the University. For example, on January 27, 1987, unknown persons distributed a flier declaring “open season” on blacks, which it referred to as “saucer lips, porch monkeys, and jigaboos.” On February 4, 1987, a student disc jockey at an on-campus radio station allowed racist jokes to be broadcast. At a demonstration protesting these incidents, a Ku Klux Klan uniform was displayed from a dormitory window. These events and others prompted the University’s President on February 19, 1987 to issue a statement expressing outrage and reaffirming the University’s commitment to maintaining a racially, ethnically, and culturally diverse campus. The University was unable to identify any of the perpetrators. It is unknown whether the culprits were students. Likewise, there was no evidence to suggest that these were anything other than isolated and purposeless acts. (721 F. Supp. 852, 854)

One wonders on what grounds Judge Cohn found these repeated racist incidents to be “isolated and purposeless acts.” Here are a few likely possibilities: The acts were not sanctioned by the university. They apparently were not perpetrated by the same individual or group. He assumed that, if they were not jointly coordinated by the various perpetrators, they could not have a “purpose.” But consider the irony of that: The very thing that made these racist acts so harmful, viz. that they were widespread, coming in a range of different media and from a variety of unrelated sources, was quite likely what led the judge to call them “isolated and purposeless” and thus to consider them, as a class, less worthy of redress.

In contrast, if one experiences—or simply recognizes—such incidents in the context of not only the current climate in which these incidents took place, but also the overarching event of on-going American racism, of which these incidents are parts, they can hardly be described as “isolated” or “purposeless.” The ontological recasting of these incidents as connected (via the past and present reality of structural racism) to one another and as part of a larger event (racism in America) enables a reconsideration of their political significance and moral gravity. A similar recasting of gender-based violence is needed and long overdue.

One reason it can be difficult to see gender-based violence as an on-going politically significant event is that it, like much racist violence, is diffuse. That is, it happens to people spatially and temporally distant from one another. However, diffuseness is not always taken to render violence less politically significant.

One can think of politically significant events (typically, but not always, in the past) that are spatially and temporally extended: slavery in the U.S., British colonialism, the Holocaust, or, simply, slavery; colonialism; genocide. Each of these is made up of countless events, but can also be usefully described as a single phenomenon. We need to ask why we individuate politically significant phenomena in the way we do. What is gained and what is lost by the different ways of individuating them?

This raises the further question of why we individuate events in general in the ways that we in fact do. One reason is that it is useful to do so. For example, we individuate hurricanes and racist hate crimes in the ways that we do because we find it useful for scientific and legal purposes, respectively. Instead of distinguishing among hurricanes (and among hurricane seasons), we could speak of The Hurricane, an on-going event which manifests itself periodically. But presumably this would not help us to understand and to predict the “manifestations.” We could speak of the (on-going) Racist Hate Crime, but this would make it more difficult (if not impossible) to bring individual perpetrators to justice.

There are drawbacks, however, to individuating events too narrowly. Should increasingly destructive hurricanes be part of a larger (and more temporally extended) event of global warming, it is important to know this in order to address the causes of individual hurricanes. If racist hate crimes are prompted by—and, in turn, perpetuate—a climate of racism, this is important to acknowledge in order to assign responsibility for them and to work towards eliminating them. The same is true for gender-based crimes.

Currently, in the U.S. legal system, gender-based crimes are considered to be distinct singular events, and responsibility for them is attributed only to particular agents (or to relatively small groups of identifiable agents). There are, however, advantages to viewing such crimes as part of a larger phenomenon for which we are all, to some extent, responsible.

Just as, in environmental law, we recognize cases in which a toxic environment and a particular person’s (or corporation’s) polluting action interact to cause harm to an individual or group, we should acknowledge that the harm of gender-based violence is a function of more than the acts of individual perpetrators. Not only does a sexist environment play a role in influencing perpetrators to commit gender-based crimes, but it also makes such crimes more harmful to their targets than they otherwise would be. If we lived in a world without pervasive sexism—one in which women and men were genuinely held to be of equal worth—a victim would be able to perceive a gender-based crime against her as an anomaly, something truly random. But in the actual world, in which,

because of pervasive sexism, victims of gender-based violence are often viewed as lacking credibility and perpetrators are rarely brought to justice, a sex crime can be, for a victim, a brutal confirmation of an already unjust status quo.

Another reason why gender-based violence is not generally seen as a politically significant phenomenon is that it typically happens in private. The fact that it is most often hidden has meant that, all too often, and for all too long, it has been considered a private, personal matter, and thus not worthy of public, political concern.⁸ In contrast, the typically male-on-male public violence of war has been viewed as a paradigmatic political event. Pamela Ballinger, for example, in an article in *History and Memory*, asserts that “war veterans and survivors of the Holocaust and the A-bomb” are distinguished from “survivors of incest and other abuse” by the fact that “[i]n the case of abuse victims, no overarching historical ‘event’ (particularly that of state-sponsored violence...) exists within which individual memories may participate or contest. Rather, the event of abuse took place privately. Its recollection, however, is facilitated by a broad social environment obsessed with memory and in which groups may jockey for benefits through appeal to collective histories” (1988, 121-122). The political relevance of such spatio-temporal considerations is never made clear, however. What Ballinger considers “private,” i.e. sexual, abuse, as opposed to collective violence, can be viewed instead as gender-based violence against women, which is perpetrated against women collectively, albeit not all at once and in the same place. The fact that it occurs all the time, in places all over the world, may render it less noticeable as a collective trauma, but does not make it an exclusively “individual” trauma.

The one exception to the commonly held view of gender-based violence as a private, individual matter, has been rape in war. That Kuwaiti women were being raped by Iraqi soldiers in Kuwait City was considered by some (Kuwaitis, pro-Gulf War U.S. lawmakers and citizens) to be a politically very weighty event, and one requiring an international military intervention—the first Gulf War. (It was one factor that was cited, anyway.) Presumably, the same number of women were raped, during that period, in some U.S. city, let’s just say Phila-

⁸ The following two paragraphs are adapted from Brison (2002, 97-98).

delphia.⁹ These rapes, in contrast, were not viewed as a politically significant event, but, rather, as simply part of life. Certainly, no one suggested that the National Guard be called in to protect the women of Philadelphia. If anything, the fact that the Philadelphia rapes occurred (had occurred and would continue to occur) in ‘our’ neighborhood obscured their political import, making them seem natural, inevitable, and, thus, not so bad.¹⁰ It does seem to be the case that, if we think we can’t *do* anything about an evil (say, rape), we tend to trivialize it or even deny it. It may be that we do this in order to avoid becoming completely demoralized by our political concerns.

An additional reason gender-based violence is not viewed as political is that it is not (generally) perpetrated by state actors. When it is perpetrated by state actors (as in the rape of Kuwaiti women by Iraqi soldiers), and especially when it is part of an official state policy such as “ethnic cleansing” (as in Bosnia), it *is* (recently, anyway) viewed as political violence.

But why is “rape under control” (as Catharine MacKinnon has labeled the genocidal rape of Muslim women by Serbs in Bosnia) considered to be politically more significant (and, thus, more an occasion for international condemnation) than rape out of control?¹¹ Is it because the latter is explained or even excused as a crime of passion? Because acting badly on the basis of emotion is more understandable/excusable than acting badly on the basis of some coolly conceived and rationally executed plan? From the perspective of the victims—the most important one, though one that is often overlooked—this may make little or no difference. The communicative impact of rape—the message it conveys to the victim—is not obviously more harmful when it is the result of a state-sanctioned plan than when it is the result of a subtler, more insidious and pervasive, socially tolerated misogyny. The harm might be greater and harder to address in the latter case, precisely because it is less noticeable or even invisible, just part of the way things are.

⁹ I have attempted to make this example more concrete by comparing rape rates in Kuwait City in the months leading up to the first Gulf War to those in an actual U.S. city during the same time period, but, given the wide range of methodologies for reporting rapes globally, and given the fact that rape is a notoriously underreported crime everywhere in the world, finding reliable statistics that would enable such a comparison has proven impossible. However, although I find concrete examples helpful, indeed essential, in philosophical writing, the point I am making here, viz. that the same number of rapes that took place in Kuwait City occurred *somewhere* in the U.S. during that period of time, which we know to be true given that more rapes occurred each month in the U.S. than occurred in any month leading up to the Gulf War, still holds.

¹⁰ Of course, some domestic rapes—e.g. black-on-white rapes—are exceptions here. Just one of those, or the mere allegation of one, is considered a politically significant event by many whites.

¹¹ MacKinnon herself poses this question in (1994).

We can also recognize some peace-time rape, in conflict zones, such as the continuing rapes of women in the Democratic Republic of Congo, as politically significant and very weighty. Even though such rapes are not part of any official state-sanctioned policy, they are sufficiently unlike rape that happens at home that we can identify them without fear of implicating ourselves. And they are systematic enough to be traceable to an identifiable cause, and one that does not implicate us, namely, ethnic hatred. But ubiquitous ordinary, everyday, peace-time rape can also be viewed as systematic political violence, if one considers it to be motivated by misogyny.

Some of the factors that we use in determining the political significance of acts of violence are the number of people harmed, the quantity of harm inflicted on each individual, the timing of the harm (the temporal density of the harm), and the spatial location of the harm (the geographical density of the harm). It is not clear, though, why density—temporal or spatial—should carry such political weight. Density sometimes (but not always) indicates systematicity, or, at least, a common, potentially identifiable cause, which, in turn, may yield a solution, or, at any rate, may point to someone who could be held responsible. But spatially- and temporally-extended events, such as rape (viewed globally and over time) may also be systematic, stemming from and, in turn, reinforcing, environments and ideologies, e.g. misogynistic ones, in which particular groups are victimized. And, if we accept Martha Minow's proposed definition of "responsibility" as, not blameworthiness, but rather the ability to respond (Minow 1993), then the fact that a harm cannot be traced to a particular perpetrator in some place and time—or to some state-sanctioned policy—does not mean that there is no one to be held responsible for the on-going, pervasive harm. It may be that the everydayness, the mind-numbing repetitiveness, the very banality of rape, is precisely what adds to its significance, its weightiness, as something which should concern us all because it is a political event for which we are *all* responsible.

My determination to speak publicly about my assault first arose while I was being transported by ambulance to the hospital where I was treated. I vowed that, if I survived, I would dedicate myself to doing something (I didn't know what, but *something*) to help other women who had been beaten. At the very least, I would bear witness to sexual violence against women—speaking out not only about my own assault but also about the countless other gender-based crimes that occur daily around the world.

I was extraordinarily lucky for a victim of rape and attempted murder, not only because I somehow survived, in spite of a fractured trachea and multiple head traumas, but also because my recountings of the assault were believed.

There was ample physical evidence that I had been attacked in the ways that I described, and the perpetrator, who was apprehended not long afterwards, confessed to the assault.

Although my account of the physical facts of my assault was believed, my attempts to bear witness to sexual violence—that is, to an on-going group-based phenomenon of gender-motivated violence—were thwarted from the start.

Whereas most people around me were determined to see what had happened to me as—at one and the same time—an understandable rape-followed-by-a-murder-attempt *and* an inexplicable, random, isolated incident (firmly entrenched in the past and now best forgotten), I—still hearing my assailant’s vile anti-female epithets and still seeing, feeling, and even smelling the sexual degradation he subjected me to—viewed myself as having been very nearly murdered by misogyny.

While I was still in the hospital, my own lawyer (whom I’d retained to help me through the legal morass of my assailant’s prosecution and trial—and who had been recommended as the best lawyer in the area for sexual assault victims) said to me: “Don’t think of your assailant as a man, a human being. Think of him as a lion, a wild beast.” But I couldn’t help but think of him as a man—a Frenchman, actually, like my lawyer. And I knew that, just as victim-blaming is a way of enabling continued violence against women, by assuring us that the victim is “not one of us” (and that we would never fall prey to such an assault), viewing an assailant as “not one of us,” but, rather, an out-of-control monster, also enables violence against women by absolving society of all responsibility for such violence and by viewing the assault as something akin to a force of nature. My assailant was a man who harbored enough rage against all women to want to rape, torture, and kill me.

It is hard for most people to see rape or sexual murder as group-based gender-motivated violence against women: people tend to think of rape victims’ testimonies as *individual* stories. We do not, generally, use the words “testimony” or “witnessing” in discussing rape narratives (unless we are speaking of courtroom scenarios). Holocaust survivors give their testimonies. Political prisoners bear witness to the torture they endured. Rape survivors tell their stories.¹²

Over two decades after having been raped and nearly murdered, I continue to tell my story, albeit with decreasing frequency. Frankly, I’m bored by it, but telling it is bearing witness to something much larger, and much worse,

¹² In making reference to the Holocaust, I am not suggesting that what I experienced and what victims of the Holocaust suffered were in any way commensurable.

than what happened to me personally, namely, to the atrocity of widespread and on-going gender-based violence against women around the world. I also mention it, paradoxically, in order to reassure other victims of sexual violence that I've moved beyond it and don't feel the need to talk about it anymore. In spite of my having written, many years ago, that I died in that ravine, I now have more in common with my pre-assault self than with the person I became for well over a decade afterwards.

But I continue to bear witness to sexual violence—that is, to an on-going group-based phenomenon of gendered violence—because I find it is still hard for most people to see rape or sexual murder as group-based violence against women. People tend to think of victims' rape testimonies as individual stories of either interpersonal violence (and thus, completely explained by the particular relationship between the victim and perpetrator) or random violence (and thus totally inexplicable).

Reactions to my attempts to bear witness to gender-based violence indicated to me that society seems to hold (simultaneously) two contradictory views about it: first, that there is no such thing as gender-based violence and, second, that gender-based violence (or, at any rate, one form of it—male sexual violence against women) is to be expected, only natural, and something that makes sense.

At the end of my hospitalization in France following my assault, I returned home to the U.S. and began to tell friends and family members about the assault. Initially, I did not mention the rape. Whether that was because I felt, somehow, ashamed, or because it seemed less salient to me than the attempted murder, I still don't know. Later, when I told others that I had been nearly murdered and they asked "why?" they were satisfied with the "explanation" that the attack began as a sexual assault. A young man jumping a woman from behind on a country road, beating and strangling her and leaving her for dead makes no sense. Add that the woman was sexually assaulted and, suddenly, it all makes sense! How the addition of a further criminal act (the rape) helps to explain the murder attempt remains a mystery to me, even more so because the further act was, physically, the same as the act we refer to as "making love." But the fact that a man-rape-and-then-attempting-to-murder-a-woman *makes sense* to people reveals that we do, as a society, grasp the concept of gender-based violence against women, even as we manage to deny that such a group-based phenomenon really exists.

Why else might it be so hard to see sex crimes against women as political violence constituting a group-based injustice? I have already mentioned the diffuseness, ubiquity, and physical isolation of the crimes as factors. Another

reason it is difficult for many to see violence against women as political—as a force of gender-based oppression—is that we live in a culture in which violence is sexualized and sex is increasingly bound up with the degradation, humiliation, and brutalization of women. The sex-violence link is reinforced (and trivialized) by pornography, prostitution, and other forms of the commodification of women's bodies.

Contributing to the normalization, if not valorization, of the sex-violence link is the recent work of queer theorist Janet Halley (2008). Halley's critique of feminist anti-rape activism is not new, but her work is considerably more theoretically sophisticated than that of the so-called "pro-sex" or "do me" feminists of the 1990s who were critical of what they labeled "victim feminism."¹³ Her book is a continuation of the "sex wars" within the women's movement which began in the 1980s as disagreements over whether pornography should be regulated by the state and which continue to divide radical feminists and queer theorists. I had argued, in conversations with Wendy Brown and Judith Butler years ago, that the same line of reasoning they used to defend the thesis that the government should not restrict even *harmful* violently misogynistic pornography and other forms of hate speech could be used to defend the thesis that the government should not criminalize rape.¹⁴ Knowing me, knowing that I had been raped and nearly murdered and how that experience had drastically changed my life, they were concerned about—and resisted—this possible implication of the theoretical basis for their views about the state regulation of harmful speech.

But now someone, Halley, is prepared to say it: rape is not such a terrible thing, it is not necessarily even a bad thing, and the fact that feminists continue to characterize it as such is grounds for "taking a break from feminism." As Halley puts it: "Why so many feminisms [sic] want women to experience themselves as completely devoid of choice when they bargain their way past a knife by having sex they really, really don't want, I don't know" (2008, 355). On her view, feminism is at fault for turning women into victims by inventing or

¹³ See, for example, Katie Roiphe (1994) and Naomi Wolf (1994).

¹⁴ I first raised this concern in conversation with Judith Butler during the summer of 1995 when she visited Dartmouth as a lecturer in the School of Criticism and Theory and was working on her book *Excitable Speech* (1997). I discussed this by phone with Wendy Brown in the spring of 1998 when I was a visiting lecturer in the Society for the Humanities at Cornell University and was preparing to participate in a discussion of her book *States of Injury* (1995).

exaggerating harms for them to suffer from, things like rape, or so-called “sex without consent.”¹⁵

There *is* a problem with the rape narratives victims need to tell in order to have even a hope of getting “their” rapists convicted¹⁶. I have written about how such narratives must stress the utter helplessness of the victim at the time of victimization and can, for that reason, hinder healing. But it is not feminists who have imposed this (potential) harm on women who have been raped: it is a criminal justice system that is informed by victim-blaming rape myths and that forces victims to underplay any agency they exerted at the time of the assault, lest their innocence and credibility be questioned.

Recall the liberal feminist line—rape isn’t sex, it’s violence—and the radical feminist rejoinder: but it’s both—it’s *sexual* violence and it has everything to do with heterosexual sex and gender relations of dominance and subordination. Suppose that we reconsider this. One way to do this is to question the standard colloquial (if not legal) definition of rape as “sex without consent.”

Suppose that, instead of calling rape *sex* without consent, we call it gender-based violence. Doing so enables one to see rape as politically significant. The word “violence” captures the severity of the act of rape and also situates it in a criminal justice context, in which norms of responsibility focus on individuals and their actions. Calling rape “gender-based” makes salient the fact that it is also a form of sex discrimination and a human rights violation; it situates rape in a civil rights and human rights context and highlights the social and political conditions in which men rape women.

Gender-based violence is a broader category than rape (defined in a legal sense as involving penetration of some sort). Had my assailant not raped me, but done everything else that he did, he would still have committed an act of gender-based violence. Acts of so-called “domestic violence” are typically acts of gender-

¹⁵ Halley accuses feminism of “contributing to” and even “constituting” rape victims’ suffering. “What if,” she writes, “the politics of injury and of traumatized sensibility that have almost completely occupied the space cleared by MacKinnon’s politics of domination and subordination are helping to authorize and enable women as sufferers? If indeed feminism is a powerfully constitutive discourse, it might well have a shaping contribution to make to women’s suffering when, for instance, it insists that a raped woman has suffered an injury from which she is unlikely ever to recover. What if real raped women, believing this feminist line, proceed never to recover?” (2008, 345)

¹⁶ I am not comfortable with language that appears to attribute assaults or assailants to victims, e.g. “my assault,” “their rapists,” since they are not responsible for the assaults that others perpetrated on them. But, in some contexts, I have not been able to find a better way to convey the particularity of rape, that is, the fact that it does not just occur, but is, rather, an act that someone does to someone else, a violation *of* someone *by* someone.

based violence. The murders of fourteen women at the Ecole Polytechnique in Montreal in December 1989 were acts of gender-based violence.

The fact that we call rape “sex” when it is not that from the victim’s point of view (and may not even be from the perpetrator’s) is significant. We do not call theft “gift-giving without consent.” Why not? Because that is a contradiction in terms. Something not freely given does not count as a gift. So why does penetration of some sort without consent count as sex? Why is it that we see no contradiction in this?

I have been puzzled for some time by the fact that we view rape as sex without consent, whereas we do not view murder as assisted suicide without consent or theft as gift-giving (or philanthropy) without consent or stabbing as surgery (albeit rather inept) without consent.

Let us focus on theft. Susan Estrich begins her groundbreaking book *Real Rape* (1988) with a discussion of her own rape, pointing out that the police were more inclined (than they otherwise would have been) to believe her story of having been raped because, in addition, her car was stolen. They assumed she was more likely to have sex with a stranger who accosted her in a parking lot than to give her car away to a stranger who accosted her in a parking lot. Is that a reasonable assumption? Do “pro-sex” queer theorists such as Halley want us to think that is a reasonable assumption? And, if so, is this because sex (wherever, whenever, with whomever) is (intrinsically?) more pleasurable than gift-giving or charity? But can’t gift-giving or charity be extremely gratifying? Think of the pleasure a parent has in giving a longed-for present to his or her child. One can only imagine the pleasure Oprah Winfrey gets from giving away cars to a roomful of strangers. We would not want the state to interfere with that sort of pleasurable gift-giving. But notice: we do not think that having laws against theft (which could be as easily viewed as gift-giving without consent as rape is viewed as sex without consent) in any way threatens the practice of gift-giving. Criminalizing theft is not taken to send us sliding down a slippery slope to criminalizing gift-giving.

It makes no more sense to call rape “sex without consent” than it does to call theft “gift-giving without consent.” If the one who has the right to give the gift does not consent to giving it, there is no gift-giving—even if the recipient of the item that changed hands takes himself to have received a gift. So why call rape “sex without consent”?

In one sense, if one is conscious and able, in any way, to resist a rape, even at the risk of what appears to be certain death, one is consenting to *something*—in

the way one consents to handing over one's cash when a mugger says (convincingly) "your money or your life." But, in the former case, one is not consenting to what I would call "sex," anymore than, in the latter case, one is consenting to "gift-giving" or "charity." There is a physical event that may (to some alien anthropologist) resemble what we call "gift-giving" or "charity" (I suppose we could even call it "rough charity"), but, to the person who hands over the money (note this *is* an action), it is neither gift-giving or charity, it is theft—and *what the victim says goes*. We do not privilege the mugger's take on it by calling it gift-giving without consent.

Viewing individual acts of violence against women as a part of a much larger phenomenon of gender-based injustice might seem to hold the danger of overwhelming and demoralizing us. But, as depressing as it is to talk about violence against women, I find it, ultimately, encouraging to conceptualize it—and to bear witness to it—as culturally induced, gender-based violence, since doing so enables us to envision—and work towards—eliminating it. If it is not a fact of nature, hardwired into our genes or coming from out of nowhere like a natural disaster, it is something we can—and must—work hard to eliminate.

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