DEFINING RAPE AND SEXUAL ASSAULT

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Myths which are believed in tend to become true.
George Orwell, *The English People* (1944)

Mythos (3) The pattern of basic values and attitudes of a people, characteristically transmitted through myths and the arts.


As subordinates of the justice system, the authors are inclined in that direction when it comes to terms and definitions. We define sexual attacks in terms of the nature of any physical contact and the amount of force or coercion. That is to say, rape and sexual assault tend to be defined by tangibles that can be investigated, and then either supported or refuted by witness or victim statements, and further corroborated by forensic evidence. We investigate the facts and examine them, and the penal codes guide the nature of any subsequent arrests or charges.

In this work we will not use the term rape interchangeably with the generic term sexual assault. *Rape* will be defined as nonconsensual sexual penetration. *Sexual assault* will be defined as nonconsensual sexual contact. There are other definitions worth examining, however, without which ours are perhaps misleading.

DEFINITIONS

A review of the myriad rape-related laws, publications, and research reveals definitions and thresholds unique to each. Whenever rape is considered it is redefined, often becoming more and more vague and complex. This is because rape means different things to different groups of people, each with their own goals, biases, and assumptions. Subsequently, definitions of rape are determined largely by the divergent roles and agendas of those who need the word defined.
There are, primarily, four types of definitions to contend with:

1. Legal
2. Clinical
3. Moral
4. Political

We will briefly discuss each.

**LEGAL DEFINITIONS**

For most investigators, rape is a legal term defined by a penal code with the assistance of the court. Each state defines the crime of rape or sexual assault differently. Some criteria are short and general; others are lengthy and specific. A review of these laws is at best trying, if not ultimately confusing and frustrating.¹

Penal codes tend to define rape in unemotional, functional language for the purpose of successful criminal prosecutions. Or at least they should. As discussed in Tredoux (1997):

> By the common law definition, rape is sex without consent. Rape is thus sexual robbery, sexual burglary being unknown, and this sort of definition has been employed in all major legal systems.

Legal statutes tend to distinguish between degrees of rape and other forms of sexual assault. However, a few antiquated sex-crimes-related laws do remain on the books entrenched with intensely moral and ultimately judgmental language, sometimes providing arguably inappropriate and even bizarre exemptions.²

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¹ Illinois, for example, passed a new rape law in 2003 to clarify the issue of consent by emphasizing that people can change their mind while having sex. According to Wills (2003):

> Under the law, if someone says “no” at any time the other person must stop or it becomes rape. . . .

> Lyn Schollett, general counsel for the Illinois Coalition Against Sexual Assault, said the law was important to make it clear to victims, offenders, prosecutors and juries that people have the right to halt sexual activity at any time.

Some call the law empowering to prosecutors and victims. Others call it demeaning to existing laws and common sense.

² The law has often treated men and women differently. For example: Until the 1970s, husbands were immune from rape charges in most states (Lithwick, 2003). North Carolina law still provides that it is illegal for a man to peep through a window at a woman, but it is not illegal for anyone to peep into a room occupied by a man (NCGA General Statutes, Chapter 14, Criminal Law, Sub-
Consider these examples of legal definitions.

According to Article 130 of the *New York State Consolidated Laws*, “Sexual intercourse” is required for the crime of *rape* to occur, and the term “has its ordinary meaning and occurs upon any penetration, however slight.” Furthermore, rape is broken down into three levels of severity with the following criteria:

**Section 130.25 Rape in the third degree.**

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or
3. He or she engages in sexual intercourse with another person without such person’s consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

**Section 130.30 Rape in the second degree.**

A person is guilty of rape in the second degree when:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

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Also, much written law is infected with subjective and personally intrusive morality, often reflecting religious origins. For example: Michigan law provides that it is a felony for anyone to engage in acts of “gross indecency,” including masturbation and fellatio, whether public or private (The Michigan Penal Code, Act 328 of 1931, 750.338 Gross indecency; between male persons; 750.338a Gross indecency; female persons). And Michigan law is not alone in referring to sodomy (oral and/or anal penetration) as an “abominable and detestable crime against nature” (The Michigan Penal Code, 750.158 Crime against nature or sodomy; penalty). However, on June 26, 2003, the U.S. Supreme Court ruled 6–3 that all sodomy laws are unconstitutional (*Lawrence v. Texas*).
S 130.35 Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

In Texas, the criterion for the crime of sexual assault is quite detailed and specific, with the additional crime of aggravated sexual assault. As provided in Title 5 of Chapter 22 of the Texas Penal Codes regarding “Assaultive Offenses”:

§ 22.011. Sexual Assault

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

   (A) causes the penetration of the anus or female sexual organ of another person by any means, without that person’s consent;
   (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person’s consent; or
   (C) causes the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

   (A) causes the penetration of the anus or female sexual organ of a child by any means;
   (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
   (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
   (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
   (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:
the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s emotional dependency on the actor; or

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person’s emotional dependency on the clergyman in the clergyman’s professional character as spiritual adviser.

§ 22.021. Aggravated Sexual Assault

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of another person by any means, without that person’s consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person’s consent; or

(iii) causes the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
(B) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is 65 years of age or older.

(b) In this section, “child” has the meaning assigned that term by Section 22.011(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).
(d) The defense provided by Section 22.011(d) applies to this section.
(e) An offense under this section is a felony of the first degree.

In Georgia, the rape statute is short and very specific, covering only penile–vaginal penetration. However, it does specifically address the issue of marriage. According to the Criminal Code of Georgia, Chapter 16, Section 6-1:

16-6-1

(a) A person commits the offense of rape when he has carnal knowledge of:

   (1) A female forcibly and against her will; or
   (2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

If a sexual attack does not involve penile–vaginal penetration but rather “the sex organs of one person and the mouth or anus of another”, the Criminal Code of Georgia provides that it be prosecuted as *aggravated sodomy* (Criminal Code of Georgia, Chapter 16, Section 6-2).

**CLINICAL DEFINITIONS**

Clinicians and therapists define rape in treatment-oriented terms, helpful to the purpose of understanding the pathology of an offender, or seeing a victim through personal and emotional crisis.

According to Groth (1979, p. 3) a treatment-oriented definition should focus on the perceptions of the victim and the impact of offense behavior, rather than the intent of the offender:

... from a clinical rather than a legal point of view, it makes more sense to regard rape as any form of forcible sexual assault, whether the assailant intends to effect intercourse or some other type of sexual act. ... The defining element in rape is lack of consent.

This definition is related to understanding and helping victims overcome the impact of their trauma.

Groth and Hobson (1983, p. 159) present rape as “a form of sexual aggression” that is not sexually motivated. They define it by explaining that rape is (p. 160):
... any type of sexual activity imposed on a person against will and without consent. It refers, then, to any form of sexual assault. In every act of rape, sexuality and aggression are involved but we conceptualize rape as the sexual expression of aggression rather than the aggressive expression of sexuality. Rape, then, is a pseudo-sexual act, complexly determined, but serving primarily non-sexual purposes ...

This definition is wrought with an eye to understanding, classifying, and treating sex offenders.

According to Palmer and Thornhill (2000, p. 1):

Rape is copulation resisted to the best of the victim’s ability unless such resistance would probably result in death or serious injury to the victim or injury to individuals the victim commonly protects. Other sexual assaults, including oral and anal penetration of a man or woman under the same conditions, also may be called rape under some circumstances.

This definition was fashioned to serve the purpose of researching the biological origins of rape with an eye to treatment of both the victim and the offender.

POLITICAL DEFINITIONS

Political definitions of rape are based on or motivated by partisan or self-serving objectives. Rather than assisting justice or clinical treatment, they seek to advance the agenda of a particular group. This includes the varied agendas of offender or victim advocates, political parties and movements, and religious institutions.

In a class on rape investigation taught by one of the authors (Turvey), a female student defined rape as any sexual conduct between a male and female, including consensual partners. This, she argued, because it is not possible for females to engage in consensual sexual activity in any context with a male. She seemed to argue that the power structure of society has eliminated the ability of a woman to choose whether or not to have sex, because of the economic dependence of many women on men, and their greater physical and political power. Men and women cannot be considered equally leveraged, she argued, and subsequently women cannot not give their consent. Sex under such circumstances is necessarily pressured at best, and therefore must be considered a form of rape.

Robin Morgan, the poet, writer and editor of Ms. magazine, argues that (Lewis, 2003) “rape exists any time sexual intercourse occurs when it has not been initiated by the woman, out of her own genuine affection and desire.” This definition suggests that women who did not initiate sexual intercourse must have been coerced to engage in it.
MORAL DEFINITIONS

Moral definitions of rape are a particular kind of political definition. They are judgmental, emphasizing the goodness, badness, rightness, or wrongness of offenders or their actions. Often inflammatory, they are a vehicle for anger, a desire for retribution and even revenge. Moral definitions tend to come from victims, their advocates, and the media. They are easy to discern, including subjective and emotional terms like “loser,” “coward,” “vicious,” “perversion,” “evil,” “monster,” “heinous,” and “animal.”

There are those, however, who do provide moral definitions and descriptions of rape in favor of the offender. In a highly publicized incident, Seiichi Ota (shown in Figure 1-1), a Liberal Democratic Party politician from Tokyo, Japan, stated during a debate on population growth organized by a kindergarten association that (“Fury . . .”, 2003):

Gang rape shows the people who do it are still vigorous, and that is OK. I think that might make them close to normal. . . .

According to other reports regarding the statements of Mr. Ota (Simkin, 2003):

The senior lawmaker declared that, “those who gang rape are fine as they are in good spirits,” and suggested such people are “close to normal” compared with spineless men.

Mr. Ota later apologized for the statements, saying (“Fury . . .”, 2003):

Figure 1-1
Seiichi Ota, Liberal Democratic Party lawmaker, Tokyo, Japan.
If you only took what I said, well of course it would be regarded as extremely careless remark. I wanted to add that rape is a serious crime that should be punished severely, but the topic had changed and I wasn’t given the chance to speak any further.

I think the fact that such comments were reported made victims . . . and many women feel unpleasant, so I want to reconsider and express my apologies . . .

In response, Japanese Prime Minister Junichiro Koizu levied his own opinion of Mr. Ota and of the crime of rape (“Fury . . .”, 2003):

He deserves to be criticised. Rape is an atrocious act of cowardice and has nothing to do with virile qualities.

. . .

Yasuyuki Takai, vice chairman of the Japan Federation of Bar Association’s committee on victim support, said Mr Ota’s remarks were indicative of Japanese society’s passive attitude to rape, which often goes unreported.

The role of investigative and forensic personnel is to examine and describe sex-crime-related behavior in the most objective manner possible. Political and moral definitions of rape should be of little interest, detracting from the task at hand. Such terminology certainly should not find its way into investigative or forensic reports. The use of moral definitions or inflammatory descriptions of rape in such contexts telegraphs bias and ignorance and identifies a training need.

PRECONCEIVED THEORIES AND INVESTIGATIVE BIAS

Even when we follow the more objective legal-style definitions as our guide to rape investigation, there are still dangers with the application of those definitions to actual casework. Specifically, no matter how we try, it is impossible to remove the observer from the observed. Each of us sees events through our own lens of experience and accumulated prejudice. The result is a haze of a priori investigative bias, or preconceived theories, which clouds objective reasoning.

As discussed in Turvey (2002, pp. 54–57) a priori investigative bias is a phenomenon that occurs when investigators, detectives, crime-scene personnel, or others somehow involved with an investigation develop theories uninformed by the facts. These theories, which are most often based on subjective life experience, cultural bias, and prejudice, can influence whether or not investigators recognize and collect certain kinds of physical evidence at the scene. A priori
investigative bias can also influence whether or not certain theories about a case are ever considered.

Similarly, in *Criminal Investigation*, Dr. Hans Gross has explained the concept of *preconceived theories*. The discussion is so valuable, and the volume so difficult to obtain, that it is best presented here in nearly its entirety. Despite being over a century old, his writings are still terribly relevant (Gross, 1924, pp. 10–12):

**Section iv.—Preconceived Theories.**

The method of proceeding just described, that namely, in which parallel investigations are instituted, which to a certain extent mutually control each other, is the best, and one is tempted to say the only, way of avoiding the great dangers of a "preconceived theory"—the most deadly enemy of all inquiries. Preconceived theories are so much the more dangerous as it is precisely the most zealous Investigating Officer, the officer most interested in his work, who is the most exposed to them. The indifferent investigator who makes a routine of his work has as a rule no opinion at all and leaves the case to develop itself. When one delves into the case with enthusiasm one can easily find a point to rely on; but one may interpret it badly or attach an exaggerated importance to it. An opinion is formed which cannot be got rid of. In carefully examining our own minds (we can scarcely observe phenomena or a purely psychical character in others), we shall have many opportunities of studying how preconceived theories take root: we shall often be astonished to see how accidental statements of almost no significance and often purely hypothetical have been able to give birth to a theory of which we can no longer rid ourselves without difficulty, although we have for a long time recognized the rottenness of its foundation.

Nothing can be known if nothing has happened; and yet, while still awaiting the discovery of the criminal, while yet only on the way to the locality of the crime, one comes unconsciously to formulate a theory doubtless not quite void of foundation but having only a superficial connection with the reality; you have already heard a similar story, perhaps you have formerly seen an analogous case; you have had an idea for a long time that things would turn out in such and such a way. This is enough: the details of the case are no longer studied with entire freedom of mind. Or a chance suggestion thrown out by another, a countenance which strikes one, a thousand other fortuitous incidents, above all losing sight of the association of ideas end in a preconceived theory, which neither rests upon juridical reasoning nor is justified by actual facts.

Nor is this all: often a definite line is taken up, as for instance by postulating, “If circumstances M. and N. are verified then the affair must certainly be understood in
such and such a way.” This reasoning may be all very well, but meanwhile, for some cause or other, the proof of M. and N. is long in coming; still the same idea remains in the head and is fixed there so firmly that it sticks even after the verification of M. and N. has failed, and although the conditions laid down as necessary to its adoption as true have not been realized.

It also often happens that a preconceived theory is formed because the matter is examined from a false point of view. Optically, objects may appear quite different from what they really are, according to the point of view from which they are looked at. Morally, the same phenomenon happens, the matter is seen from a false point of view which the observer refuses at all costs to change; and so he clings to his preconceived theory. In this situation the most insignificant ideas, if inexact, can prove very dangerous. Suppose a case of arson had been reported from a distant locality, immediately in spite of oneself the scene is imagined; for example, one pictures the house, which one has never seen, as being on the left-hand side of the road. As the information is received at head quarters the idea formed about the scene becomes precise and fixed. In imagination the whole scene and its secondary details are presented, but everything is always placed on the left of the road; this idea ends by taking such a hold on the mind that one is convinced that the house is on the left, and all questions are asked as if one had seen the house in that position. But suppose the house to be really on the right of the road and that by chance the error is never rectified; suppose further that the situation of the house has some importance for the bringing out of the facts or in forming a theory of the crime, then this false idea may, in spite of its apparent insignificance, considerably confuse the investigation.

All this really proceeds from psychical imperfection to which every man is subject. Much more fatal are delusions resulting from efforts to draw from a case more than it can yield. Granted that no Investigating Officer would wish by the aid of the smallest fraud to attach to a case a character different from or more important than that which it really possesses, yet it is only in conformity with human nature to stop the more willingly at what is more interesting than at what belongs to everyday life. We like to discover romantic features where they do not exist and we even prefer the recital of monstrosities and horrors to that of common every day facts. This is implanted in the nature of everyone, and though in some to a greater, in some to a lesser, extent, still there it is. A hundred proofs, exemplified by what we read most, by what we listen to most willingly, by what sort of news spreads the fastest, show that the majority of men have received at birth a tendency to exaggeration. In itself this is no great evil; the penchant for exaggeration is often the penchant for beautifying our surroundings; and if there were no exaggeration we should lack the notions of beauty and poetry. But in the profession of the criminal expert everything bearing the least trace of exaggeration must be removed in the most energetic and
conscientious manner; otherwise, the Investigating Officer will become an expert unworthy of his service and even dangerous to humanity. We cannot but insist that he should not let himself slip into exaggerations, that he should constantly with this object criticize his own work and that of others; and that he should examine it with extra care if he fail to find traces of exaggeration. These creep in in spite of us, and when they exist no one knows where they will stop. The only remedy is to watch oneself most carefully, always work with reflection, and prune out everything having the least suspicion of exaggeration. It is precisely because a certain hardihood and prompt initiative are demanded of Investigating Officers that one finds in the best of them a slight leaning towards the fictitious: one will perceive it in careful observation of oneself and get rid of it by submission to serene discipline.

The challenge for all concerned is to develop strategies for focusing on the facts despite our walls of habit and belief, and despite our personal interests.

The first line of defense against any kind of bias is a strict adherence to the physical evidence, without embellishment or exaggeration. Offenders, victims, and witnesses can lie or be entirely mistaken, but the evidence won’t. As provided by the court in *Philippines v. Aguinaldo* (1999):

> When physical evidence runs counter to testimonial evidence, conclusions as to physical evidence must prevail. Physical evidence is that mute but eloquent manifestation of truth which rate high in our hierarchy of trustworthy evidence.

Physical evidence is the only objective record of events when a crime of any kind has been committed. All statements, including confessions, should be contrasted with the known forensic evidence. This guideline will resound throughout all of the chapters in this work.

The second line of defense is full knowledge and appreciation of the true nature and extent of rape, its perpetrators, and its victims. As provided in Palmer and Thornhill (2000, p. 2): “Most people don’t know much about why humans have the desires, emotions, and values that they have, including those that cause rape.”

Developing this and other related knowledge is a goal of this work. Before we can do that, however, we must tear down some of the prevalent stereotypes and thinking that persist.

**OFFENDER MYTHS**

One of the most pervasive myths about rape is that it is committed to satisfy an offender’s sexual desires, as though they become overwhelmed with sexual
excitement and commit rape because they cannot control themselves. The stereotypical rapist is described by Groth (1979, p. 2) as:

...a lusty male who is the victim of a proactive and vindictive woman, or he is seen as a sexually frustrated man reacting under the pressure of pent up needs, or he is thought to be a demented sex fiend harboring insatiable and perverted desires.

Additional stereotypical elements include the ignorant notion that rapists tend to be strangers or loners. The loners are characterized as single “losers,” fixated on pornography, who live alone or, as suggested above, with overbearing women. These elements too often find themselves in what are offered as professional reports assessing rape behavior and offender characteristics (“An FBI . . .”, 2000; “East End . . .”, 2001; Giguiere, 2003; Ross, 1998; Shearer, 1996).³

These stereotypes are not just false, but potentially misleading to the inexperienced investigator.

THE MYTH OF THE STRANGER

There are still those who consider rape a crime that can and does only happen between strangers. This conjures up images of shadowy figures lurking in dark alleys in undesirable parts of town. This myth is particularly dangerous because it suggests that there is perfect safety being out in the daylight, being in your own home, in your own car, or being with people that you know. Potential

³ It is possible for a rapist to be a “loner” (whatever that may mean) or to possess some or all of the stereotypical characteristics described. However, the frequent boilerplate manner in which such assessments have been offered, as well as the use of subjective and judgmental terminology (i.e., “loser”), is a hazard for investigators to avoid. They speak to an overreliance on the perception of average offender types, forgoing in-depth case analysis in favor of expediency, and the desire to appeal to the masses. Neither is of interest to rape investigators.

On the issue of pornography, Murrin and Laws (1990, p. 89) explain that their research suggests:

it is not pornography per se that has an influence upon the incidence of sexual crime, but rather the nature of the person being exposed and the existing cultural milieu in which that exposure occurs.

This was conceptualized earlier by Groth (1979, p. 9), who argued as follows:

Although a rapist, like anyone else, might find some pornography stimulating, it is not sexual arousal but the arousal of anger and fear that leads to rape. Pornography does not cause rape; banning it will not stop rape. In fact, some studies have shown that rapists are generally exposed to less pornography than normal males.

Subsequently, those who suggest a causal or even correlational link between pornography and crimes do so most frequently with a political or moral agenda. They are essentially pandering, betting on the inflammability and ignorance of their audience.
victims are at risk from without and from within, in public and private, at home and away, in familiar surroundings and strange ones, at all times day and night, as shown in Figures 1-2 and 1-3.

Kilpatrick (2000) has compiled data from a number of studies to refute the stranger myth:

**Relationship of the Victim to the Offender**

The NWS [National Women's Study] dispelled the common myth that most women are raped by strangers. For example:

- Only 22% of rape victims were assaulted by someone they had never seen before or did not know well.
- Nine percent of victims were raped by husbands or ex-husbands.
- Eleven percent by fathers or stepfathers.
- Ten percent by boyfriends or ex-boyfriends.
- Sixteen percent by other relatives.
- Twenty-nine percent by other non-relatives, such as friends and neighbors.

In addition to the data just presented, the NWS gathered information about new cases that happened to adult women during the two-year follow up period. This information on the 41 such cases provides excellent information about the breakdown for new rapes experienced by adult women (Kilpatrick, Resnick, Saunders, & Best, 1998) (Dohrenwend book chapter).

- 24.4% of offenders were strangers.
- 21.9% were husbands.
- 19.5% were boyfriends.
- 9.8% were other relatives.

**Figure 1-2**

*From the author’s case files—a jogging path around Delaware Park, centrally located in downtown Buffalo, NY. This very open, public location has been a hunting ground of choice for at least one unapprehended serial rapist who prefers to attack some of his victims in the morning while they are jogging or walking.*
• 9.8% were friends.
• 14.6% were other nonrelatives.

The NVAW [National Violence Against Women] survey used different categories for victim–perpetrator relationships but reported similar findings with respect to the types of perpetrators most prevalent in rape cases occurring after age of 18.

• 76% of perpetrators were intimate partners (i.e., current and former spouses, cohabiting partners, dates, and boyfriends/girlfriends).
• 16.8% were acquaintances.
• 14.1% were strangers.
• 8.6% were relatives other than spouses.

The NSA [National Survey of Adolescents] provides a different perspective because it provides data on cases during childhood and adolescence (Kilpatrick and Saunders, 1996).

• 32.5% of perpetrators were identified as friends.
• 23.2% were strangers.
• 22.1% were relatives (fathers, stepfathers, brothers, sisters, grandparents, others).
• 18.1% were other nonrelatives known well by the victim.

THE MYTH OF UNCONTROLLABLE AROUSAL

This myth has its origins in some facts that are easily confused by those with an agenda or a less than perfect understanding of human biology, chemistry, and psychology. It is true that visual and auditory stimuli play a major role in human sexuality. Put more simply, seeing things and hearing things can cause sexual arousal. However, a male’s erection, one primary indicator of sexual arousal, occurs as a result of harmony achieved among nerves, hormones, blood vessels,
and psychological factors. Each of these elements is aroused and dampened differently in different individuals. Everyone’s brain chemistry is different; everyone’s psychological pleasure and pain associations are different. In the case of the rapist who successfully achieves an erection and penetrates their victim, more often than not it is not just arousal that is at work, but arousal associated with the circumstances of a particular kind of rape. Ejaculation is the same; everything has to be working harmoniously or it simply won’t happen.

The first clue to the fallacy of the argument that rape is the result of sexual arousal gone awry is the fact that many people experience extreme levels of sexual arousal every day without thinking about, let alone committing, the crime of rape.

More specifically, and perhaps lesser known to the general public, there are rapists who experience varying degrees of sexual dysfunction during the commission of their crimes. That is to say, they may experience the inability to achieve an erection, maintain an erection, or ejaculate. Some rapists experience sexual dysfunction infrequently; some rapists experience it during many if not all of their crimes. Certainly, for serial rapists who fall into this category, personal sexual arousal and sexual gratification are not a primary concern, although anger over the condition may well be.

Moreover, as discussed in Baker (1997):

Seventy percent of rape victims report no physical injury and another twenty-four percent report only minor physical injury. Most rape victims are not victims of angry, sadistic rapists. This does not mean that most rape victims are not raped; it does not mean that rape victims fabricate their stories; and it does not mean that what happens to them is okay. It does belie the common belief that rapists are crazy men whose sadistic hunger for sex or hatred of women compels them to rape.

There is wide agreement in the literature that rape is not committed to satisfy sexual arousal gone unchecked. Rather, rape is currently believed to be committed to satisfy the offender’s need for power (Groth, 1979; Marshall, Laws, and Barbaree, 1990; Schlesinger and Revitch, 1983). Darke (1990, p. 58) provides a very useful definition of power as the ability to control. Power also includes the feelings and perceptions (i.e., strength, authority, acceptance, reassurance) that may come from achieving that control.

Rape is subsequently best described as a pseudosexual act (“pseudo” meaning “false”). That is to say, rape involves sex, and it can involve sexual arousal, but that’s not what it’s all about. Sexual penetration, sexual contact, and sexual control are only means to achieving the rapist’s goals, not the goals themselves.
THE MYTH OF THE “LONER”

For some reason, there are a number of experts who believe, and a general public eager to accept, that rapists are largely disenfranchised social outcasts who are not able to have normal sexual relations and must therefore resort to rape. This is perhaps because it fits nicely with images of an undersexed male whose social isolation and sexual inactivity result in uncontrollable sexual arousal that must lead to rape. This was not the case with Mark Rathbun, shown in Figure 1-4, and David Alan Shuey, shown in Figure 1-5.

Groth (1979, p. 5) dispels the myth of the predominance of “loner” or socially outcast rapists by explaining that

one third of the offenders that we worked with were married and sexually active with their wives at the time of their assaults. . . Of those offenders who were not married

Figure 1-4

Alleged serial rapist 32-year-old Mark Rathbun. He was stopped by police riding his bicycle three blocks from the most recent attack in Long Beach, CA. After police received a report of a break-in and attempted sexual assault, they immediately activated a perimeter around the location where the crime had occurred. Rathbun was questioned by police, had an injury to his finger in the location where the victim said she had bitten her attacker, and was taken into custody for allegedly possessing a crack cocaine pipe. After voluntarily giving police a DNA sample, he was released on bail until his DNA results came back positive, linking him to 13 rapes since 1997. According to reports, he would enter his victim’s homes, typically in the middle of the night; they were single women, from 30 to 77 years old, who lived alone. He would also cover his face during the attacks to conceal his features. Rathbun was by accounts friendly, sociable, and lived with various friends over the years; they even trusted him enough to let him housesit while they were away.
that is, single, separated, or divorced), the majority were actively involved in a variety of consenting sexual relationships with other persons at the time of their offenses.

Furthermore, Groth and Hobson (1983, p. 161), who studied 1000 offenders over a 16-year period, found the following:

All of the offenders we have seen were sexually active males involved in consensual relationships at the time of their offense. No one raped because he had no other outlet for his sexual needs.

The literature goes on to describe rape as a symptom of psychological disturbance that tends to manifest itself during times of stress or tension. However, the rapist is not necessarily crazy or intellectually diminished. They are in a state of desperation and turmoil (Groth, 1979, p. 6).
VICTIM MYTHS

The view that rape is about sex and unchecked sexual arousal can lead to the false conclusion that victims may be in some way responsible for arousing the rapist or failing to fully dissuade them. Even to this day the authors hear comments from professionals regarding victim culpability, suggesting that they were dressed too seductively, or acting in a provocative manner. This includes statements regarding the victim’s clothing if they are wearing a skirt that is too short, heels that are too high, an outfit that is too tight or revealing, or failing to wear a bra and/or underpants. The inference is that the victim’s conduct was essentially encouraging the rapist, and the victim is therefore less deserving of sympathy and the benefit of a complete and thorough investigation. The further inference being that perhaps their crime falls into a gray area that isn’t actual rape.

As explained by Groth (1979, p. 7):

Issues of provocation really are ridiculous when one realizes that the victims of rapists include males as well as females and occupy all age categories from infancy to old age. . . . There is no place, season, or time of day in which rape has never occurred, nor any specific type of person to whom it has never happened.

Sadly, the more competent serial offenders count on this reaction from investigators and target those victim populations they perceive as being less likely to be investigated thoroughly, or less likely to be believed. As argued in Maples (1999, p. 38): “In short, they are attracted to vulnerability. Wherever and whenever their victims are available and vulnerable, that’s where they’ll be.” He further places the responsibility right back on leaderless, untrained, and inexperienced law enforcement (Maples, 1999, p. 57):

Years of uncreative policing must have taught the crooks to overestimate how much they could get away with, because despite our notoriety, our unit enjoyed a front-row view of the predatory instinct at work.

These vulnerable victim populations include drug addicts, the homeless, those under the influence of drugs or alcohol, runaways, and prostitutes. Although it is true that such populations do take more risks with their personal safety and have more contact with crime, it should not be true that crimes committed against them have less meaning. It is certainly not true that they are responsible for the sexual offenses committed against them. Serial offenders hunt them because they perceive investigators are less likely to give such cases their full attention and skill; they are a lower risk than someone whose tragedy will catch the sympathetic eye of an investigator or a news camera.
Nobody ever desires actual rape be committed against them, by the very nature of rape itself. Nor should the way that a person walks or dresses or simply lives be interpreted as any kind of invitation or entitlement to rape. Investigators must accept this and attend the details of every case not as though it was committed against some undeserving stranger, but as though the victim is someone’s mother, wife, sister, or daughter. Because they are.

It helps to recall the words of Alice Vachss, former chief of the Special Victims Bureau of the Queens District Attorney’s office (Vachss, 1993): “Sexual assaults flourish in a climate of ‘gray areas.’ So long as the myth of ‘real’ rape survives, rapists will thrive.”

REFERENCES


Lithwick, D. (2003) She said, he said? Our mixed-up rape laws have created a system that’s bad for both sides. Slate (slate.msn.com), July 30.


