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Rape Culture, Victim Blaming, and the Role of Media in the Criminal Justice System

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Abstract: *Rape culture and the practice of victim blaming are inherently linked phenomena, and both are prevalent in American society. The existence of a rape culture which normalizes sexual violence and blames rape victims for the attacks against them strongly affects the American criminal justice system, influencing both the outcomes of rape trials and the treatment of rape victims. In particular, the media's methods of discussing and portraying rape are examined as primary sources for the perpetuation of rape culture, and the effects of these media representations of rape on the outcomes of real rape trials are also examined. The problematic links between rape culture, victim blaming, media, and criminal justice practices are reviewed, and potential solutions are discussed.*

Keywords: rape culture, victim blaming, media, criminal justice, criminology

On August 11, 2012, a sixteen-year-old high school student attended a party with her classmates in the town of Steubenville, Ohio. At this party she became incapacitated by alcohol and entered a blackout state in which she was unable to defend or think for herself. Once rendered defenseless, two of her male classmates, Trent Mays and Ma'lik Richmond, sexually assaulted her (Almasy, 2013). They took photographic evidence of their crimes and sent them to fellow students, as well as posting them on various social media sites (Almasy, 2013). The assault was similarly documented through text messages. When the girl woke up the next morning, she had no memory of the attack (Almasy, 2013). She discovered what had been done to her through her classmates' social media posts and messages, stumbling upon photos of her naked body being violated by Mays and Richmond (Almasy, 2013). She and her family contacted the police, and rape charges were filed against the perpetrators. The ensuing trial would prove a testament to the prevalence of rape culture and victim blaming, and their effect on rape cases in the criminal justice sphere.

While the sixteen-year-old victim has remained anonymous, there was intense speculation about her background and motivations, as well as her participation in her own victimization. The defense lawyers representing Mays and Richmond called her credibility into question, claiming that she was an imperfect witness because she was intoxicated at the time of the assault - this despite photo and video evidence clearly showing the

defendants committing their crimes (Almasy, 2013). A friend of the girl who took the stand said she did not believe the victim had actually been assaulted, because she “lies about things” (Almasy, 2013). The defense went even further by attempting to question the girl’s close friends about her past sexual history in order to discredit her claims, but were unable to do so because the court does not permit such questions under rape shield laws (Almasy, 2013). Despite such attempts, both Mays and Richmond were found guilty; Mays was sentenced to a minimum of two years in a juvenile corrections facility, while Richmond was sentenced to one year in the same facility (Almasy, 2013). They were also required to register as medium-tier sex offenders (Almasy, 2013). Richmond was released less than a year later (Caulfield, 2014), while Mays was released in January of 2015 (Jablonski, 2015).

The largest part of the girl’s revictimization, however, occurred in the media during and after the trial. Much of the news coverage on the case expressed sympathy for the perpetrators. In her coverage of the case, CNN reporter Poppy Harlow stated, “[It is] incredibly difficult to watch as these two young men who had such promising futures, star football players, very good students...literally watched as [their lives] fell apart” (as cited in Wade, 2013). Paul Callan, another CNN reporter on the case, said, “There’s always that moment of just - lives are destroyed. But in terms of what happens now, the most severe thing with these young men is being labeled as registered sex offenders...That will haunt them for the rest of their lives” (as cited in Wade, 2013). Neither reporter said a single word about the victim, expressing no sympathy for her suffering. An ABC News report presented excuses for Richmond’s behavior and spoke at length about his promising football career; they then posted a subsequent article describing the trial as “every parent’s nightmare and a cautionary tale for teenagers living in the digital age” - implying that the crime was the digital recording of the assault, not the assault itself (Strasser and Culp-Ressler, 2013). Both the Associated Press and USA Today stressed that the victim was drunk in the first sentences of their reports (Strasser and Culp-Ressler, 2013). Likewise, Yahoo News’ story on the verdict mentioned that the victim was “an intoxicated sixteen-year-old girl” in the first sentence, and their coverage focused mainly on the town of Steubenville’s pain over the boys’ punishment, not the girl’s victimization (Strasser and Culp-Ressler, 2013).

Even worse than the news media’s coverage of this case was the indictment of the victim on social media. After the verdict, strangers posted tweets although they had never met the anonymous girl or the offenders: “There is no justice in Steubenville today. The girl asked for it and wanted it, in my opinion. They gave it to her. No crime. Appeal!” and “Disgusting outcome on #Steubenville trial. Remember kids, if you’re drunk/slutty at a party, and embarrassed later, just say you got raped!” (As cited in Wade, 2013). Most alarming were the tweets which claimed the perpetrator’s crimes were normal behavior; one user wrote, “Steubenville: Guilty. I feel bad for the two young guys, Mays and Richmond, they did what most people

in their situation would have done” (As cited in Wade, 2013).

Unfortunately, this reaction is a common phenomenon in American media today. News services and social media posters alike tend to home in on the victim, calling her names and questioning her past sexual history, or completely ignore her in favor of sympathizing with her rapist(s); this is evidenced by the news articles and social media posts quoted earlier, and those are but a few of many examples. Particularly prevalent is the practice of “victim blaming,” in which victims are accusing of playing a role in their own victimization (The Canadian Resource Centre for Victims of Crime, 2009). Victim blaming is part of a larger rape culture which accepts violence toward women as commonplace; it is a gendered practice which targets women via multiple institutions, namely media and the criminal justice system. I intend to use a review of the literature to assert that victim blaming, rape culture, and the criminal justice system are all inherently related, and that the effects of this relationship precipitate the revictimization of rape survivors in court and are immensely detrimental to the prosecution and sentencing of accused rapists.

During the 1970s second wave feminists were instrumental in the exposure of rape culture, when the feminist movement first sought to raise awareness about the frequency of sexual violence against women in America (Mardorossian, 2014). Rape culture has since been defined as “a complex of beliefs that encourages male sexual aggression and supports violence against women,” and which normalizes the physical and emotional scare tactics used to terrorize women (Buchwald, Fletcher, and Roth, 1993). These scare tactics are pervasive; women are afraid to venture out at night, to travel alone, to drink alcohol, to attend parties - all because the threat of rape is constantly hanging over their heads. Rape culture is perpetuated most significantly by popular media. Media shapes the way that people think about social problems (such as sexual violence), and for many of those people, the media is their only source of information (Berns, 2004). This lack of alternative sources of information is problematic because unless people have other experiences outside of the media that help shape their opinions, they have difficulty critically evaluating the media’s credibility (Berns, 2004). Depictions of rape are all too common in American media, and the ubiquity of those depictions naturalize rape’s place in American society (Projansky, 2001). In a culture where rape is so often depicted and discussed, rape becomes an expectation, a part of the “social milieu” (Burnett, 2009, p. 479). Constantly seeing and hearing about women being raped or threatened with rape also perpetrates another social harm: it desensitizes male viewers and facilitates rape (Miedzian, 1993). While few believe that men see rape on television and immediately decide to assault someone, it is clear that the media’s normalization of rape does inform male attitudes about it; given the pervasiveness of its representations of rape, even a man who is only a moderate consumer of mass media would have difficulty not coming across the subject, and such discourses about rape have the ability to affect and even make way for future actions (Projansky, 2001). There is

also the fact that this socialization to accept rape as a normal part of society begins early; Miedzian writes that a large part of children's socialization now depends on media, and cutting down on rape is assuredly not the media's main goal (1993). If that effect were true in 1993, it is certainly even more so now, in the era of smartphones and easy internet accessibility. Ready access to media which blames women for the attacks against them can only serve to exacerbate this issue, since - as Miedzian states - so much of children's socialization depends on the media they imbibe (1993). Men and women alike are exposed to the media's ideas about rape from the time they are small children, and this exposure likely contributes to their own ideas about how and why rape occurs. Boys are especially vulnerable to these messages, because they are rarely depicted as victims and are presented with endless violent rapist male "role models" in the media (Miedzian, 1993, p. 155).

The way that media portrays rape is just as important as the frequency of those portrayals because they are often ill-informed; mainstream media depicts rape in a way that is inadequate and often biased (Mukhopadhyay, 2008). For example, sexual assault is often depicted as stranger rape, despite the fact that 73% of assaults are committed by someone the victim knows (Filipovic, 2008, p. 21). This depiction of rapists as crazed animals who are hypersexual and jump out from behind bushes to attack women at night is harmful because it informs the public's view of who is and is not capable of committing rape, therefore convincing them that men who do not act in such a way could not have raped someone (Taslitz, 1999). Framing rape in this way - as a crime which is committed only by men who are "sick" - does not address male power and sexism (Berns, 2004), and therefore fails to address the dominant masculine hegemony which majorly facilitates sexual violence against women.

The media also portrays female rape survivors in a misleading fashion, usually as "hypersexual, selfish liars" (Taslitz, 1999). The media is where victim blaming tends to occur most frequently, since an especially popular trend in media is perpetuating myths which blame the victim (Mukhopadhyay, 2008). In this media frame of victimization, women are often held responsible for solving their own problems, and rape is no exception - especially since women are often accused of "provoking" the abuse somehow (Berns, 2004). This is evident in the language media uses to represent rape victims, historically using descriptors such as "pretty" and "flirtatious" to characterize survivors; this perpetuates the "rape as normal and pleasurable" myth and undermines its origin as a violent crime which is committed in search of power and control, not sexual pleasure (Benedict, 1993, p.104). Vocabulary is important, and the media possesses a "language of rape" which describes rape as an act of pleasure, using words like "fondled" and "caressed" when describing sexual assault (Benedict, 1993, p.103-104). This idea of rape as a pleasurable sexual act also further sustains the erroneous idea that women enjoy rape or "ask for it."

An old ideology, victim blaming has its roots in Freud's 1924 theory that an inherent part of femininity is masochism, which encourages the false

notion that women enjoy rape (Allison and Wrightsman, 1993). In the 21st century (and the century before it), victim blaming is a part of rape culture because it is so prevalent in media, which makes a widespread rape culture possible through its insidious ability to reach and influence massive numbers of people. Studies conducted in the 1990s show that many people have a tendency to blame victims (Berns, 2004), and while these attitudes may have progressed since then (and definitely have since Freud's 1920s), the phenomenon is still prevalent, as evidenced by present-day media coverage of real rape trials like the Steubenville case. The antifeminist frame is particularly notorious for bolstering victim precipitation theory, which posits that women are partially to blame for their own victimization; it challenges female victims' innocence by holding them responsible for the attack (Berns, 2004). This has real-world consequences; attributions of responsibility assigned to the rape survivor are common, and consequently, individuals exposed to rape often purposely assign the victim some role in her own victimization (Allison and Wrightsman., 1993). Furthermore, women are often given tips about how to avoid rape - such as always going out in groups, never being alone at night, and never leaving their drink unattended - which implies that if they are sexually assaulted, it is their fault for being unprepared (Filipovic, 2008). Media coverage of real rape cases often questions what women did to provoke the attack (Mukhopadhyay, 2008), and effecting a corollary of the distinction between "good" women and "bad" women which occurs in the media; it is a gendered dichotomy which gives men the benefit of the doubt in the court of public opinion (Humphries, 2009). "Good" women are the ones who are not promiscuous, who were not drunk at the time of the assault, and who followed all the "rules" to avoid being raped; conversely, "bad" women are the ones who violated one or more of the "avoiding sexual assault" guidelines that the rape culture has laid out for them.

Like the concept of rape culture, feminist theories on violence first emerged during the 1970s movement to raise awareness about violence against women, and many of these theories address the problem of victim blaming (Berns, 2004). One imperative concept in feminist theory is the idea that the systems of knowledge in a patriarchal society (like America) reflect masculine understandings of the world, and that these systems justify the innate authority of men and the subordination of women (as cited in Humphries, 2009). One such system of knowledge is the criminal justice system, which is a patriarchal environment that perpetuates rape culture and as such encourages and depends on violence against women (Projansky, 2001). Analyzing how the media affects the way people think about social problems is important, and it is especially important to do so through a feminist lens because the way media affects thinking also influences public policy, and criminal justice policy is a part of public policy (Berns, 2004). The justice system needs to be extra careful where media coverage is concerned, because it can affect the outcome of the trial - and, on an even larger scale, it can affect the way violence against women is treated in the

criminal justice system as a whole (Mukhopadhyay, 2008). The influence of media is evident in the way that rape victims are treated in the criminal justice system; criminal justice professionals are not immune to the effects of media, and since the media perpetuates rape culture, police, attorneys, and judges are often skeptical of rape victims and may even harass them (Allison and Wrightsman, 1993). Jurors are also included, since they are members of the public and are therefore equally (if not more) susceptible to the media's messages; in fact, rape myths perpetuated by rape culture are often the crux of many prejudices held by jurors (Taslitz, 1999). A large part of the justice system's failure to handle rape cases effectively lies in this suspicion of the victim and her motivations. For example, prior sexual history of any kind causes reluctance to convict alleged rapists, and less severe penalties are often given when the victim has been involved in "unconventional" living arrangements - here meaning cohabitation with a partner before marriage (Allison and Wrightsman, 1993). Similarly, any evidence whatsoever of the victim's drinking or drug use leads jurors to doubt whether a rape has occurred (Allison and Wrightsman, 1993). It is essentially as if the victim is on trial for accusing the perpetrator, rather than the perpetrator being on trial for committing sexual assault, and therefore the victim's truthfulness is likely to be challenged (Allison and Wrightsman, 1993). Even in cases where the victim is not harassed by various members of the justice system, she is still treated as unimportant; the sentences that rapists receive often do not reflect the seriousness of their crimes, and in many cases these sentences are the results of plea bargains which ignore the victims' suffering (Bensimon, Jaishankar, and Ronel, 2008). The survivor's narrative and the harm caused by the violence she was subjected to are not satisfactorily addressed; the victim is used for her testimony and subsequently abandoned (Bensimon, Jaishankar, and Ronel, 2008). Of her own experience dealing with this treatment of rape survivors by the justice system, Peterson writes, "What happened in the courtroom is a by-product of rape culture--when what happens to women is marginalized, when beyond a shadow of a doubt still isn't enough, when your past, manner of dress, grade point average, or intoxication level are used to excuse the despicable acts of sexual violence inflicted upon you by another" (2008). The criminal justice system has always installed barriers to proving rape charges, and the practice of blaming the victim or accusing her of lying is one of those barriers (Allison and Wrightsman, 1993). In fact, the entire criminal justice system is a barrier in and of itself because of the way it operates; it is based on competition, and it is assumed that through "a battle between warring adversaries" the truth will be revealed (Taslitz, 1999). However, since American society is patriarchal in nature and the criminal justice system is phallogocentric on both the professional and offender levels, the battle is skewed against women. The fact that women suffer from anti-woman biases in the justice system extends the challenges they face in using the system as a means to "transcend victimhood" (Bensimon, Jaishankar, & Ronel, 2008).

The blaming of victims by media, and the subsequent blaming and

challenging of victims in the justice system, also contributes to the revictimization of women (Bensimon, Jaishankar, & Ronel, 2008). Not only do all the aforementioned harassments occur on a regular basis between criminal justice officials and sexual assault survivors, but some women have been forced to undergo experiences that further their trauma in the name of solving their cases, such as forced mental health evaluations (Taslitz, 1999). Such evaluations contribute to the revictimization of women in that they are often done not for the purposes of assessing or treating trauma, but rather as another means of analyzing the truthfulness of the victim's complaint (Mazza, 2012). Mazza (2012) writes that, "Even when victims voluntarily seek post-rape counseling from mental health professionals, if such persons express doubt about the veracity of their stories, victims are left feeling 'violated and re-raped'" (p.765). Moreover, when the evaluations are ordered by the judge at the request of the accused attacker, this can make the victim feel as if their credibility is being questioned even further (Mazza, 2012). Of revictimization in the justice system, McLeer (1998) writes, "The actions of the police, that often make a woman feel like the criminal, and the courts, where many women report feeling violated for a second time by the legal process, as well as the difficulty of procuring a conviction, both function, to varying degrees, under the assumption that the woman is to blame for being raped" (p.45). McLeer's words further reinforce the relationship between rape culture, victim blaming, and the criminal justice system.

Because they have never heard someone they know explicitly blame a victim or excuse a rapist, there are some who would argue that victim blaming and rape culture do not exist (Palmatier, 2013). However, this argument fails to account for the insidiousness of rape culture and victim blaming; more often than not, those who blame the victim do not explicitly say, "She wanted to be raped and it was her fault." Rather, they make comments like "Well, her skirt was pretty short..." and "She was drinking an awful lot..." These kinds of statements, while not directly stating that the victim precipitated the attack against her, are definitely implying so. There is also the argument that rape culture theory does not address the sexual violence committed against boys and men (Palmatier, 2013), and while it is true that media portrays men as victims much less often than women, it is widely accepted that the normalization of sexual violence in a rape culture silences both male and female victims. While it cannot be said that men suffer just as much as women in rape culture - after all, rape culture thrives on the sexual terrorization of women (Buchwald, Fletcher, & Roth, 1993), and victim blaming is a phenomenon which targets mainly female survivors - men are not immune to its detrimental effects. There are also many who argue that the criminal justice system's persecution of rape survivors is necessary because women often lie about rape (Palmatier, 2013); however, studies show that only between two and eight percent of rape allegations are false (Lisak, Gardinier, Nicksa, & Cote, 2010). Male rape victims in court also do not experience the same degrading lines of questioning, and are

rarely, if ever, asked to explain their prior sexual history, choice of dress, or whether or not they imbibed drugs or alcohol. Likewise, male rape survivors are almost never described in terms of their attractiveness in media coverage of their trials (Benedict, 1993).

In a patriarchal society, men are able to trust the court system to defend them because it speaks in their dominant language (Burnett, 2009). Women, however, do not enjoy this same freedom - they may not report to male dominant structures like the court system because they feel the dominant language therein does not provide the best vocalization of their experiences (Burnett, 2009). American society should be casting a more critical eye on how rape culture is perpetuated on an institutional level, especially where the justice system is concerned; someone must lead the way in telling the criminal justice system that rape apologists and victim blamers will not be tolerated (Peterson, 2008). One of the best ways to address the justice system's treatment of rape victims is to approach the issue from a feminist perspective. Feminist responses to women's issues within the criminal justice system differ from the norm in that they address the needs of victims directly (Gelsthorpe & Morris, 1990). Feminist criminology has contended for a long time that the interests of perpetrators in rape cases are given priority over the protection of survivors; therefore, feminist criminological theories seek to shift that focus (Gelsthorpe & Morris, 1990). On a legislative level, feminists have been responsible for most of the major victories in rape law reform, including the introduction of rape shield laws (Taslitz, 1999). Prior to the 1970s, American rape law focused almost entirely on protecting the alleged rapist against the unmitigated claims of the "dishonest, vengeful, and even psychopathic" victim (Cuklanz, 1996). Feminist criminologists recognized the problematic nature of this approach and therefore brought about the legal changes that were sorely needed, creating the still problematic but slightly less backwards justice system that exists today.

As an alternative to the flawed criminal justice system, feminist theorist Catharine MacKinnon argues for using the civil tort system instead, because civil litigation allows the victim to better regain their power (Bensimon, Jaishankar, & Ronel, 2008). In tort law, the victim is presumed to be in complete control - she initiates and conducts the proceedings herself, thereby recovering some of the power that was stolen from her during the sexual assault (Bensimon, Jaishankar, & Ronel, 2008). Using tort law as a means to address the discrepancies in power between men and women in American society signifies a feminist agenda that works to find surrogate paths to fight discrimination (Bensimon, Jaishankar, & Ronel, 2008). Feminist criminologists like MacKinnon specifically propose a path completely separate from criminal justice because the justice system "positions the feminist struggle alongside governmental interests" (Bensimon, Jaishankar, & Ronel, 2008), and as such rarely has the best interests of female victims in mind.

While avoiding the criminal justice system entirely by using civil law is one way for rape survivors to regain their power, it is not enough in the

long run; taking the civil route does not ensure any criminal punishment for the offender, and the offender has the option of countersuing the victim, which could potentially contribute to the same revictimization we see in criminal court. The fact that women are forced to use other avenues to seek justice for the violence committed against them is unacceptable, and simply using the civil system instead is not an adequate solution; we must come up with a way to ensure that those who commit sexual assault face criminal ramifications. The system has come a long way from the days when corroboration was required as proof of rape and defense attorneys were allowed to question victims about their sexual histories; however, the need for further development is clear. Feminist theorists must continue to work toward dismantling rape culture and seeking true justice for women in the criminal court system - as the ones who have been responsible for much of the progress rape survivors benefit from today, it only makes sense for feminists to see this movement through to equity and justice.

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