



Can a Woman Rape a Man and Why Does It Matter?

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Published online: 8 November 2018
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Abstract

Under current UK legislation, only a man can commit rape. This paper argues that this is an unjustified double standard that reinforces problematic gendered stereotypes about male and female sexuality. I first reject three potential justifications for making penile penetration a condition of rape: (1) it is physically impossible for a woman to rape a man; (2) it is a more serious offence to forcibly penetrate someone than to force them to penetrate you; (3) rape is a gendered crime. I argue that, as these justifications fail, a woman having sex with a man without his consent ought to be considered rape. I then explain some further reasons that this matters. I argue that, not only is it unjust, it is also both a cause and a consequence of harmful stereotypes and prejudices about male and female sexuality: (1) men are ‘always up for sex’; (2) women’s sexual purity is more important than men’s; (3) sex is something men do *to* women. Therefore, I suggest that, if rape law were made gender neutral, these stereotypes would be undermined and this might make some (albeit small) difference to the problematic ways that sexual relations are sometimes viewed between men and women more generally.

Keywords Gender · Sexual assault · Sex · Rape law · Sexual Offences Act

Many years ago, two of my friends (on separate occasions) experienced a similar thing happen to them. They both fell asleep at a party, severely inebriated, and woke up to find a stranger having sex with them. The reactions from others to these events were very different in each case; one was taken very seriously as a case of rape. The other was seen as a bit of a joke, and my friend was asked whether the rapist had been ‘hot.’ Indeed, this friend was happy to go along with this, or at least appeared to be.

If you haven’t worked it out already, the reason for the difference in responses was that the first of my friends is a woman who had woken up to find a man having sex with her; the second friend is a man who had woken up to find a woman having

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sex with him. Neither friend contacted the police, but had they done, my female friend could have pressed charges of rape, whereas my male friend could have pressed charges for sexual assault or ‘causing a person to engage in sexual activity,’ but not rape, because only a man can commit rape in the UK.¹

Male rape only became recognised as a crime at all in the UK in 1994; prior to then, rape could only be committed by a male against a female. If a man had sex with another man without his consent, the crime was buggery, and the maximum penalty was 10 years, compared with life imprisonment for rape. The Sexual Offences Act 2003 made the victim of rape gender neutral (so no longer differentiated between ‘rape’ and ‘male rape’), but maintained the requirement of penile penetration for a charge of rape, meaning that a woman cannot rape a man or another woman.² In this paper, I will argue that the penile penetration condition (henceforth the PPC) of rape represents a double standard in the law, and cannot be justified. Furthermore, the PPC reinforces harmful gendered sexual stereotypes, in particular that, rather than being something men and women do together, that sex is something men do *to* women. Therefore, I argue that the legal definition of rape should be changed to something like David Archard’s ‘sex-without-consent’³ or Sweden’s gender neutral ‘enforced sexual intercourse.’⁴ This would not only rectify the asymmetrical legal situation; it would also force us to question some of the widely held problematic attitudes regarding gender and sexuality of which the PPC is both a cause and a consequence.

The structure of this paper will be as follows. I will first outline the legal definition of rape in England and Wales,⁵ before considering three potential ways of justifying the PPC that I argue do not work: (1) it is physically impossible for a woman to rape a man; (2) it is a more serious offence to forcibly penetrate someone than to force them⁶ to penetrate you; (3) rape is a gendered crime. I then explain some further reasons that the PPC is a serious problem (given that it is unjustified), arguing that, not only is it unjust, it is also a consequence of, and a reinforcer of harmful stereotypes and prejudices about male and female sexuality: (1) men are ‘always up for sex’; (2) women’s sexual purity is more important than men’s; (3) sex is something men do *to* women. Acknowledging that a woman can rape a man does not entail denying that rape is frequently and systematically used to oppress women in a way that it is not used by women against men. However, it would entail the acknowledgement that women are sexual actors who can act sexually on men, not just be

¹ I have focussed mainly on the UK context in this paper, as this is where I am based. However, many countries have gendered definitions of rape, and 14 states in the US have gender restrictions in rape statutes (Czuy Levine 2018). Therefore, my arguments are not applicable only in the UK.

² Unless she has a penis but identifies as a woman.

³ Archard (2007, p. 382).

⁴ Swedish Penal Code, Chapter 6, Section 1.

⁵ Note that the corresponding legislation in Scotland is the Sexual Offences (Scotland) Act 2009, which defines rape very similarly to the Sexual Offences Act 2003, and includes penile penetration. Northern Ireland’s corresponding legislation is the Sexual Offences (Northern Ireland) Order 2008, and the wording of the legal definition of rape is identical to that of the Sexual Offences Act 2003.

⁶ I am using ‘they’ and ‘them’ as singular, generic, gender-neutral pronouns here and in other parts of the paper.

penetrated by them, and this, I think, could have important ramifications for how we see sex and gender relations more generally.

1 What is Rape?

The Sexual Offences Act 2003 defines rape in the following way:

- (1) A person (A) commits an offence if—
- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
 - (b) B does not consent to the penetration, and
 - (c) A does not reasonably believe that B consents.⁷

This definition thus includes cases where, for example, the woman is unconscious when the man has sex with her, is unable to consent to the sex due to a disability, or where she is too drunk to consent. In addition, Section 76(2) of the Sexual Offences Act states that if a man impersonates someone known to the woman personally, such as her partner, in order to have sex with her, then he can be charged with rape.⁸ Furthermore, the Act added that enforced penetration of the mouth should be taken as seriously as enforced penetration of the vagina and anus,⁹ as it is deemed to be just as ‘degrading and traumatic and horrific as penetration of the vagina or anus.’¹⁰

Thus, the law has extended what counts as rape by a man, but still makes it impossible for a woman to rape a man, or indeed, another woman. Thus, if a woman has sex with a man or a woman who is too drunk to consent, unconscious, unable to consent to sex due to a disability, or if she has duped the victim about her identity in order to get them to agree to have sex,¹¹ or even if she violently and sexually attacks her victim against their will, the incident is not classified as rape. It would instead be considered sexual assault or ‘causing a person to engage in sexual activity without consent.’ The maximum sentence for the latter crime is life imprisonment—the

⁷ Section 1, Sexual Offences Act (2003). Please note, the legal definition of rape is slightly different, but very similar, and is also gendered, so only a man can commit rape.

⁸ Clause 77, Sexual Offences Act (2003).

⁹ Non-consensual anal penetration was added to the legal definition of rape in 1994.

¹⁰ Sexual Offences Bill. Home Affairs Committee (Fifth Report of Session 2002–2003, HC 639, 2003), (para. 12).

¹¹ The recent Gayle Newland case in the UK is an interesting example of this. Newland met a female student online, while pretending to be a man called Kye Newman. They developed a relationship and finally met in person. Newland, pretending to have horrific injuries of which she was ashamed, insisted that the student be blindfolded the entire time. Their relationship became sexual, with Newland wearing a prosthetic penis and body suit. They had sex for several months until at one point the student ripped off her blindfold during sex. Newland was charged with three counts of assault by penetration, and sentenced to eight years in prison. See: <https://www.theguardian.com/uk-news/2017/jun/29/gayle-newland-found-guilty-at-retrial-of-tricking-female-friend-into-sex>.

same as rape—where it involves ‘penetration of a person’s anus or vagina with a part of B’s [i.e., the victim’s] body or by B with anything else.’¹²

However, although the maximum sentence for this offence is the same as for rape, the nomenclature matters. If a woman can’t commit rape, rape will be seen as something different to ‘causing a person to engage in sexual activity without consent,’ and given the force of the term ‘rape’ compared with ‘causing a person to engage in sexual activity without consent,’ the latter is likely to be seen as less serious.¹³ Indeed, given that rape *is* ‘causing a person to engage in sexual activity without consent,’ just with a penis rather than with a vagina, reserving the title ‘rape’ for penile penetration reinforces the penis-centric view of sex that positions the male as the dominant actor.

The nomenclature of a crime makes a difference to how the crime and the perpetrator are perceived and treated, as well as to how the crime is experienced by the victim. Male rape only being acknowledged as a crime in 1994 is an example of this; prior to this, many people, including male rape victims, would have thought of rape as something that simply could not happen to men. In the next section, I’ll consider three of the strongest ways that this apparent double standard could be justified, arguing that none work, and that the double standard is therefore unjust. Before I proceed though, I want to clarify my focus and the limits to my discussion.

For simplicity, my main point of comparison will be between a cisgender man forcibly penetrating a cisgender woman with his penis and a cisgender woman forcing a cisgender man to penetrate her. This is because it is this kind of case where we see the kind of gendered double standard and issues with which I am concerned in this paper most starkly. This is because non-consensual penetrative sexual intercourse occurs between a man and a woman, but it is treated differently depending on the gender of the person committing the assault.

However, it is also unjust that a woman cannot press charges against another woman for rape. This injustice raises other important issues regarding sexual norms, such as whether sex between women who do not have penises is seen as ‘real’ sex in the eyes of the law and society, given that it does not involve a penis. There are also important issues related to the rape of and by transgender people that I leave aside in this paper due to limitations of space.¹⁴ We might note though that, of course, a woman can rape a man, but only if she has a penis rather than a vagina, again, buying into a penis-centric view of sex.

Making rape law gender neutral retains the distinction between sexual intercourse and other kinds of sex, and so will be seen by some to not go far enough. There might be call for the definition of rape to be extended even further, for example, to

¹² Section 4, Sexual Offences Act (2003).

¹³ This is not to say that rape is always treated seriously; indeed, it is often not treated seriously enough. However, it is a reasonable assumption that many people in the UK would not even be aware that there is a crime called ‘causing a person to engage in sexual activity without consent.’ And, given that this is a separate crime to rape, and rape is generally held to be the most serious sexual crime, second only to paedophilia, it is likely that it will be taken to be less serious.

¹⁴ Several US studies report that roughly 50% of transgendered people report unwanted sexual activity, and many of them believe that this is due to homophobia/transphobia (Stotzer 2009, p. 172).

have one crime that encompasses forced penetration with a penis or with an object, or, indeed, to get rid of the rape/sexual assault/assault distinction and so abolish rape as a crime altogether and just have sexual assault, or assault with the seriousness of the assault reflected by the sentence.¹⁵ There is something to be said for these arguments; they would allow us to give greater recognition to non-penetrative sexual assault and would make the crime gender neutral. Nonetheless, there may be a justification for maintaining the crime of rape, given that penetrative sexual intercourse has particular cultural significance. Whether it should be or not, (and I will not address this question here) sexual intercourse is generally considered to be a particularly intimate and significant act. People talk about going ‘all the way’ or ‘full sex,’ meaning having sexual intercourse, and people are generally considered to be virgins until they have intercourse. For many people, forced sexual intercourse would be a very different experience than non-consensual penetration with an object, or non-consensual non-penetrative sexual contact. However, for the purposes of this paper, I take no strong view on these questions, and thus leave them aside. I am not questioning whether we should have a crime of rape. My main focus in this paper is to argue that if we are to have a crime of rape, as we do in fact have, there are important reasons to make it gender neutral, and to highlight that the fact that it is not gender neutral might be a product of problematic gendered views about sex.

1.1 Potential Ways of Justifying the PPC

(a) It is Physically Impossible for a Woman to Rape a Man

The British Government’s reasoning for having separate offences depending on the gender of a perpetrator of non-consensual sex is not entirely clear. They state in their white paper, *Protecting the Public*, which preceded the Sexual Offences Act, 2003, that:

One of the principles underlying our new offences is that they should not be gender specific. However, the offence of rape is clearly understood to be non-consensual penile penetration perpetrated by a man, on a woman or a man. The anatomical differences between men and women must sensibly direct that the offence of Rape should remain an offence that can only be physically performed by a man (although women can be guilty as accessories to the crime).¹⁶

This seems to suggest that the British Government wanted two separate offences because it is believed that a woman cannot physically rape a man. Indeed, it is a common misconception that, due to the mechanics of sex, it is just impossible for a man to be raped by a woman; the thought is that if a man and a woman have sex,

¹⁵ See Davis (1984), for an argument that rape should not have a special status and should be treated as battery.

¹⁶ *Protecting the public. Strengthening protection against sex offenders and reforming the law on sexual offences.* 2002 (para. 42, p. 21).

the man must be sexually aroused and so must be consenting. However, even setting aside cases such as where the woman has duped the man as to her identity, men can, and often do, display physiological signs of arousal, including erection and ejaculation, when they do not want to have sex,¹⁷ just as women can lubricate and orgasm during rape.

Moreover, this is clearly the wrong way to think about consent. A man having an erection ought not to be enough for a woman to reasonably believe that he is consenting to sex, particularly if it is quite clear that he does not want it or is not in a state in which he can give consent. Indeed, if we were to accept that a man could not physically be raped by a woman for this reason, we must also accept that displaying physical signs of sexual arousal is akin to consenting to sex. Therefore, we would also need to conclude that if a woman displayed physical sexual responses during rape, then she was not raped, which, of course, we would not want.

Another way in which the ‘anatomical differences’ between men and women might account for why rape ‘can only be physically performed by a man’¹⁸ is due to the fact that men are often physically stronger than women. It might be supposed that, due to the differences in physical strength between men and women, if a man really didn’t want to have sex with a woman, he would be able to overpower her, and so if he had sex with her he must have consented.

However, a particular man might be physically weaker than the particular woman forcing him, be physically restrained, unconscious, too drunk to consent, physically or mentally disabled,¹⁹ drugged, duped about the woman’s identity, or he might simply not want to hurt her due to a belief that men should not hit women. In any case, claiming that someone who does not physically resist rape, when they are able to do so, has thereby consented to the sex, is, again, the wrong way of thinking about consent, and is reminiscent of old rape laws whereby a woman would have to show evidence of a physical struggle in order to secure a conviction. People do not consent to being beaten up just because they didn’t fight back, even if they are physically stronger than their attacker.

Therefore, the argument that the ‘anatomical differences’ between men and women make it impossible for women to rape men relies on thinking about consent in the wrong way, which, if accepted, could discount many clear cases of female rape. Thus, it is possible for a woman to have sex with a man without his consent; the question to which I now turn is whether this should be considered rape.

(b) It Is Worse to Forcibly Penetrate Someone Than to Compel Them to Penetrate You

¹⁷ Sarrel and Masters (1982, p. 128).

¹⁸ Protecting the public. Strengthening protection against sex offenders and reforming the law on sexual offences. 2002 (para. 42, p. 21).

¹⁹ The recent case of Anna Stubblefield, a philosophy professor at Rutgers University, who was convicted of raping a non-verbal man with cerebral palsy, but later had her conviction overturned and changed to aggravated criminal sexual contact, is an example of this kind of case. In the UK, it would have been impossible to convict her of rape. See, e.g., <https://www.nytimes.com/2018/04/05/magazine/the-strange-case-of-anna-stubblefield-revisited.html>.

If, as I have argued, a woman could have sex with a man without his consent, the justification for not considering this to be rape would need to be on the basis that there is something different, and indeed worse, about being forcibly penetrated than being compelled to penetrate another person. The very same act occurs (non-consensual sexual intercourse); the difference is simply which gender the perpetrator is. Therefore, having different crimes depending on the gender of the perpetrator could be because being raped by a man is worse than being raped by a woman. However, as I shall argue, if we want a definition of rape that includes any case of a woman or a man not consenting to sex with a man, such a definition would also have to include any case of a man not consenting to sex with a woman.

One difference between forced penile penetration of a woman and a man being made to penetrate a woman is that forced penile penetration carries the risk of unwanted pregnancy for the woman. However, this is not sufficient to distinguish between male and female rape because oral and anal penetration do not carry this risk, neither does the rape of sterile or post-menopausal women, or rape in which contraception is used effectively. In addition, although being forced to penetrate a woman doesn't carry the risk of unwanted pregnancy, there remains the possibility of fathering an unwanted child with her, and the risk of contracting a sexually transmitted disease is present whichever gender the attacker is.

Nonetheless, the PPC might be justified because penile penetration is more physically and psychologically damaging than being forced to penetrate someone else. This would then justify the retention of the PPC of rape in order to differentiate rape from other kinds of less harmful sexual assault, such as a woman forcing a man to have sex with her.²⁰

Whether a man being forced to penetrate a woman does, in general, harm him less than a woman being raped is an empirical question, and it is a question to which we don't have a definitive answer. It is plausible, perhaps likely, that, in general, men are less harmed, but it is also possible that a man would underestimate or play-down the psychological damage that has been done to him because he doesn't think that a woman can really rape a man, or because acknowledging that he has been raped by a woman might make him feel less masculine.

In addition, there are some ways in which forced sex will be different for men. For example, they might have no-one in whom to confide or they may find that the attack is taken even less seriously by friends or the police than it would be for a female. Furthermore, their difficulties might be compounded by being unable to give a name to what happened to them. This could be conceived of as what Miranda Fricker has called 'hermeneutic injustice,' which is 'the injustice of having some significant area of one's social experience obscured from collective understanding owing

²⁰ Indeed, there is another crime, 'assault by penetration' (Section 2, Sexual Offences Act 2003), which carries the same maximum sentence as rape life imprisonment—but includes forcible penetration by other body parts or objects. As this is a separate crime to 'sexual assault,' which carries a maximum sentence of 10 years, this suggests that there is seen to be something particularly bad about forcible penetration.

to a structural identity prejudice in the collective hermeneutic resource.²¹ As I said previously, the nomenclature of an offence matters. If a man was forced to have sex by another man before 1994, he may not have conceived of that as rape, since the crime did not exist. This could have affected how he interpreted what happened to him. Similarly, if men do not interpret women forcing them to have sex as rape, they might find that they do not have the resources to understand why it was wrong or why the experience has affected them in the way that it has.

Furthermore, it might be argued that even if, in general, men are less harmed by forced sex than women are, the offence should still be classified as rape if it is similar enough in kind to what we understand as the wrong of rape. Though the amount of hurt caused by any offence ought to be taken into account when deciding how that offence should be punished, it should not always be considered when defining an incident as an example of a particular offence. Stealing five pounds from a millionaire will not harm her, and this might be taken into account when punishing the thief, but the act would still be classified as theft. What we need to know is what, at root, is the wrong committed by the offence. For example, we might say stealing is wrong, at root, because it denies someone of her right to her property. How wrong it is, and what the punishment for the offence should be, will then depend, in part, on how much hurt or harm it causes the victim (in addition to many other factors, such as the motivation of the offender, whether there are any mitigating factors, etc.).

In order to decide how to define rape, we need to be able to say why, at root, it is wrong. Part of what is wrong with rape is the hurt it causes, both psychological and physical, but as Archard acknowledges, there is such thing as a ‘hurtless rape,’ such as when a woman is drugged and raped but doesn’t remember the rape and never finds out about it. In these cases, the rape is still wrong, and, therefore, Archard concludes that hurtfulness is evidence of the wrong of rape, but not constitutive of it.²² We might also note that a woman might even enjoy the rape, if, for example, a man has duped her in order to have sex with her by impersonating her partner, but she never finds out.²³ Again, the rapist has still committed a wrong.

Therefore, as Archard concludes, ‘whether or not she experiences it as hurtful, a woman who is raped is wronged.’²⁴ Archard argues that what is wrong with rape is that it indefensibly sets back a person’s interests in their sexual integrity, and this is an interest we all share because human beings are ‘sexed beings’; ‘our sexuality, our sexual nature, is central to our identity.’ That is, even if a person chooses to be celibate, they

²¹ Fricker (2007, p. 155). See also Jenkins (2017) for an argument that rape myths in particular constitute hermeneutical injustices.

²² Archard (2007, pp. 379–380). See also Wertheimer (1996).

²³ Wertheimer notes a similar case where A rapes B but unbeknownst to A, it is actually B’s fantasy to be raped (1996, p. 101). I do not describe this kind of case in the main body of the paper because I find it problematic and implausible to assume that some women would enjoy rape on the basis that it is ‘their fantasy.’

²⁴ Archard (2007, p. 379).

might ‘still greatly value their integrity as sexual beings.’²⁵ I will not provide a defence of Archard’s account here, because we can be ambivalent about whether sexuality is central to our identity while still holding that the vast majority of us value our sexual integrity and our sexual autonomy. By ‘sexual autonomy,’ I mean simply the right to choose which sexual acts we engage in and with whom. Sexual integrity follows from this—we have sexual integrity when we have made our sexual decisions autonomously. Rape is a serious violation of the right to choose which sexual acts one engages in and with whom. By denying victims sexual autonomy, rapists turn them into mere means for their gratification.²⁶ To treat persons in this way is a serious wrong, regardless of whether they experience it as such, and regardless of the gender of the perpetrator.

Indeed, as the focus is on consent in the Sexual Offences Act, 2003, the law seems to also take the view that what is, at root, wrong with rape is that it denies persons the right to choose which sexual acts they engage in. However, this only applies in law if the perpetrator has a penis. This seems odd; if the baseline for what is wrong with rape is that it is a violation of someone’s autonomy or integrity, then the legal definition ought to be gender neutral because men can have their sexual autonomy violated too through non-consensual sexual intercourse with women. If this is not the baseline, and the hurtfulness of the assault is constitutive of it being rape, then some assaults against women, such as those which were not physically painful, or emotionally traumatic, would be no longer considered rape, and this is, of course, not what we want.

Indeed, the Home Office’s own report, *Setting the Boundaries*, which set out the proposals for the Sexual Offences Act 2003, proposed that:

if we are to consider a rape as being not just an offence of violence, but a violation of the integrity of another person, then there is neither justification nor robust grounds for grading rape into lesser or more serious offences Gradation of the seriousness of a particular offence is best reflected in the sentence finally imposed rather than creating separate offences.²⁷

The report here proposes that what is, at root, wrong with rape is that it is ‘a violation of the integrity of another person’ and that the sentence imposed should reflect the harmfulness/hurtfulness of the particular rape. However, when considering the possibility of a woman forcing a man to have sex with her, the report seems to contradict itself, stating: ‘We have also noted concerns about women who compel men to penetrate them. ... We do not regard that as rape, but as a serious assault on the man’s sexual autonomy.’²⁸ Women can indefensibly set back others’ interests in their sexual integrity, and, as the report says, ‘seriously assault their sexual autonomy’ just as men can. Therefore, if we, rightly, want to include any case of a man having sex with a woman without her consent as an instance of rape because it is a violation of her sexual integrity or autonomy, the law should allow for men to be raped by

²⁵ Archard (2007, p. 391).

²⁶ Baber (1987, p. 126).

²⁷ Setting the boundaries: Reforming the law on sex offences. Vol. 1. Home Office. (2000, at para. 2.8.8).

²⁸ *Ibid* at para. 2.20.1.

women on the same grounds. The sentence imposed could then be used to reflect the relative harm done by a particular rape.

(c) Rape as a Gendered Crime

However, there is a different way of arguing that the PPC represents a distinctive wrong-making feature of certain sexual assaults, such that it justifies having a different category of crime. This does not focus on the act itself, but instead purports that rape is not just a wrongful interaction between two individuals, but in some ways is representative of, and reinforces, the subjugation of women by men. It has been argued by many that rape is a gendered crime that is paradigmatic of patriarchy and misogyny, indeed that it is a crime for which all men bear some responsibility and all women suffer as a result of. For example, Susan Brison argues that rape is ‘gender-motivated violence against women, which is perpetrated against women collectively, albeit not all at once and in the same place.’²⁹ Susan Brownmiller calls rape ‘nothing more or less than a conscious process of intimidation by which *all* men keep *all* women in a state of fear.’³⁰ Jean Hampton argues that rape is ‘a moral injury to all women ... insofar as it is a part of a pattern of response of many men toward many women that aims to establish their mastery qua male over a woman qua female.’³¹ Making the perpetrator of rape gender neutral could be construed as a denial of the gendered nature of rape and could thus belittle the harm caused to women directly and indirectly by rape and let men off the hook for the particular way in which rape affects women and the way in which men, collectively, benefit from rape, and thus bear responsibility for it.³²

Of course, a problem with this view of rape is that men are raped too. However, one obvious argument for rape being a gendered crime is that women are much more likely to be raped than men. Consequently, rape affects many more women directly, but also indirectly, through the fear of being raped. UK crime survey data from the year ending March 2017 showed that 3.1% of women compared with 0.8% of men had been sexually assaulted and 0.9% of women compared with 0.1% of men had been raped in the last 12 months.³³

However, there may be more non-consensual sex³⁴ carried out by women against men than is reported. A study of 2474 UK men interviewed via GP practices in 2000 found that 3% of the total had experienced non-consensual sex as adults and

²⁹ Brison (2002, p. 98).

³⁰ Brownmiller (1975, p. 15).

³¹ Hampton (1999, p. 135).

³² May and Strikwerda (1994, p. 184).

³³ See: Sexual offences in England and Wales: year ending March 2017 (Office for National Statistics) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#which-groups-of-people-are-most-likely-to-be-victims-of-sexual-assault>.

³⁴ I do not use the term ‘rape’ here, or in the following discussion, because, legally speaking, women cannot rape men.

5% as children. Only 2 of the men had reported the assault to the police.³⁵ Moreover, 50% of the perpetrators for the adult cases and 20% for the child offences were women.³⁶ A more representative sample, and more surprising figures, comes from The National Intimate Partner and Sexual Violence Survey, carried out by the Center for Disease Control in the US in 2010, where 18,049 men and women were interviewed. This survey found that, although only 1.4% of men said they had ever been raped with 93.3% of those being by male perpetrators, 2.2% of men said they had been ‘made to penetrate’ someone, with 79.2% of perpetrators in these cases being female. Moreover, the survey estimated that, during the last 12 months, 1.1% of men had been ‘made to penetrate’ someone, *exactly* the same percentage as the number of women the survey estimated had been raped during the same time period.³⁷

The results of this survey suggest that, when you specifically ask men about being ‘made to penetrate’ women, you get different results than when you ask them if they have been raped.³⁸ However, a large problem with finding accurate data on male victims of forced sex by women is that, as previously discussed, many men will not think it is possible for a woman to rape a man and so they won’t conceive of what has happened to them as rape. In addition, some men might not want to admit that they have been forced to have sex with women, perhaps because they think it will make them seem unmanly. Indeed, women themselves might be unaware that they have committed an offence because they believe that only men can commit rape.

Therefore, we lack reliable data, but it is possible that more men than might be thought are the victims of sexual assault/rape with female perpetrators. In any case, one can still make a convincing case, as Ann Cahill does, that, although men can be raped, ‘they are not subjected to the pervasive threat of rape which faces women in the present culture.’³⁹ Cahill notes that the fear of rape leads women to avoid certain areas at night, and to attempt to make themselves ‘tinier,’ more invisible.⁴⁰ Thus, rape affects all women and:

individual rape victims who prosecute their cases were marked by the threat of rape – simply because they were women – long before their bodies were actually violated, and ... their experience of rape is not exhausted (although

³⁵ King et al. (2000, p. 8).

³⁶ *Ibid* p. 12.

³⁷ National Center for Injury Prevention and Control. The National Intimate Partner and Sexual Violence Survey, 2011. See: https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

³⁸ There is no national legal definition of rape in the US, but the Department of Justice defines it as ‘Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.’ As the penetration must be ‘by a sex organ,’ this implies that the perpetrator is male. See: <https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/rape>. Fourteen states in the US have gender restrictions in rape statutes (Czuy-Levine 2018).

³⁹ Cahill (2000, p. 45).

⁴⁰ *Ibid* p. 55.

it is certainly dominated) by the one particular incident which commands the court's attention.⁴¹

The rape victim feels like she:

should have known, but temporarily forgot that she was always at risk, that in fact the risk followed her everywhere she went, that it was inescapable. To have believed for even a moment that she was not in danger, for whatever reason, is felt to be the cause of the attack.⁴²

Thus, that the *threat* of rape is so much more significant for women than for men affects the way that rape is experienced. Therefore, even if more men than we think have been forced to have sex with women, most men do not live in fear of this happening. To draw a comparison, racism perpetrated by a white person against a black person might be more damaging than racism perpetrated by a black person against a white person because of the social and historical context in which it takes place. The black person will feel more in danger of racism and this might affect the way she lives her life. Furthermore, when black people suffer racism, they might experience it as a 'threat fulfilled'⁴³ and blame themselves (erroneously, of course) for not pre-empting it.

This is all true. It is undeniable that, generally speaking, men do not feel the threat of being raped or sexually assaulted by women with anything like the force that women feel the threat of rape and sexual assault by men. However, it does not deny or belittle the suffering of female victims of rape to acknowledge that men can be victims of rape by women, just as it does not belittle the suffering of black victims of racism to acknowledge that white people can also be victims of racism by black people. This does not mean that racism is the same in both cases. As I said, the social and historical context affects how it might be experienced and how we, as a society, should view it. Nonetheless, we would not think it appropriate to make racism be, by definition, something that people of certain ethnic groups cannot do.

Domestic violence is another crime that is more likely to be perpetrated against women by men than by women against men, and is often used as a tool of female subjugation, but we do not, thereby, make it legally impossible for a woman to domestically abuse a man. Acknowledging that women can domestically abuse men does not entail refusing to acknowledge that domestic abuse affects more women than men or that it might, in general, affect women in a different way to how it affects men. It also does not deny that domestic violence can be paradigmatic of patriarchy and misogyny. Similarly, making the definition of rape gender neutral is compatible with acknowledging that rape can, and often is, used by men as a tool of oppression over women, and that there might be important differences in the impact that rape has on women compared to men. Rape can, and does, have different meanings, motivations, and consequences depending on the context. For example, sometimes

⁴¹ *Ibid* p. 59.

⁴² *Ibid* p. 60.

⁴³ *Ibid* p. 60.

it might be appropriate to view it as a hate crime against women, or against homosexual men; sometimes it is used as a horrific act of war.⁴⁴ The context, motivation for, and consequences of the rape, among other factors, should be considered when determining the rapist's sentence. Therefore, in many cases, it will be appropriate for a man to get a harsher sentence for rape than a woman. Furthermore, making the law gender neutral does not mean that we stop campaigning against sexual violence against women or supporting victims of rape. This has not happened in Germany⁴⁵ or Sweden, where rape is defined gender neutrally. It simply means acknowledging that women can assault men's sexual integrity and autonomy.

Furthermore, my motivation for arguing that rape law should be gender neutral, in addition to being a matter of fairness, is that, perhaps paradoxically, it could have some good consequences for women, as I will outline below, in that it would be a recognition that sexual intercourse does not consist of a woman being penetrated by a man.

2 The PPC and Harmful Sexual Stereotypes

If I am right that the above justifications are the strongest potential justifications for the PPC, but that they are unsuccessful, and thus that the PPC is unjustified, then the PPC is an issue simply because it legitimises a double standard in the legal system. The law ought to be changed for this reason. However, the PPC is also problematic, and is something feminists should care about, because it reinforces societal prejudices and stereotypes regarding male and female sexuality that colour the way we think about sex and affect the way we view rape. As Keith Burgess-Jackson notes, the law reflects what people think, but it also 'has some causal connection to how people think,'⁴⁶ and rape law has historically been both a reflection of, and a contributor to, the way that people have thought about the role of men and women more generally. For example, it only becoming illegal for a man to rape his wife in 1991 in the UK is often seen as indicative of the way that women used to be seen as their husbands' property, and/or that rape law was not primarily there to protect women's sexual autonomy or integrity, since the sexual autonomy and bodily integrity of married women was not protected.⁴⁷

I will now briefly outline three (related) stereotypes that the PPC seems to uphold: a) men are 'always up for sex'; b) women's sexual purity is more important than men's; c) sex is something men do *to* women. I will explain why these

⁴⁴ See, for example, Catherine MacKinnon's description of the genocidal rape campaign perpetrated by Serbians against Muslim and Croatian women during the Bosnian war (2006, pp. 187–188).

⁴⁵ See Section 177 of the German Criminal Code: <http://www.legislationline.org/documents/section/criminal-codes/country/28>.

⁴⁶ Burgess-Jackson (1999, p. 15).

⁴⁷ Indeed, other countries, such as India, still have an exemption in rape law for rape within marriage. It has been suggested that this shows that rape law in India is more about controlling women's sexuality than protecting their bodily integrity (Westmarland and Gangoli 2011, p. 104).

stereotypes are problematic and how the current rape law is both a cause and a consequence of them.

(a) Men Are ‘Always up for Sex’

The stereotypical view of men as ‘always up for sex’ might make some women think it is acceptable to coerce them into sex, even that the men will thank them for it afterwards. Men might also feel that they have to go along with unwanted sex and not be (openly) upset about it afterwards. It could even make them question their masculinity if they are upset about it, and/or were overpowered. As Karen Weiss notes, ‘men who are victimized by rape or sexual assault contradict hegemonic definitions of male sexuality that require men to be sexually potent, dominant, and in control.’⁴⁸ Of course, we can’t know for sure whether this stereotype of men as ‘always up for sex’ *does* lead to women thinking it acceptable to coerce them into sex, since there has been very little research done on women coercing men into sex. However, given the strength of the stereotype, it is reasonable to think it has some influence. One place we can see this stereotype in action is in popular fiction. A woman forcing a man to have sex can seem like a legitimate subject of comedy and jokes, and has been depicted in TV and film in a way that would cause outrage had the genders been reversed. For example, in an episode of the popular British comedy series from 2008, *Peep Show*, Mark, the protagonist, wakes up to find a woman having sex with him and she does not stop when he asks her to. The next morning, he tells his friend, Jeremy, that he has been raped, but the incident is not taken particularly seriously, and is in the midst of other comedic incidents. In the 2005 popular American comedy film, *Wedding Crashers*, Vince Vaughan’s character is tied to the bed and gagged with duct tape and forced to perform sex acts with Isla Fisher’s character. Despite stating the next day that he has been raped, by the end of the film, they are a couple and he is in love with her. In the 2002 American romantic comedy film, *40 Days and 40 Nights*, Josh Hartnett’s character is chained to the bed (he has chained himself to the bed to prevent himself from masturbating) and an ex-girlfriend, who has sneaked into his house, has sex with him while he is only semi-conscious. His current girlfriend blames him for cheating on her, though by the end of the film she has forgiven him. In none of these depictions was there any talk of the men reporting the incidents to the police, or of the woman being brought to justice. Of course, these are all one-off examples, but the fact that these are all popular comedies and haven’t caused public uproar for their depictions of men being raped by women is an indication of societal double standard.⁴⁹

Indeed, this stereotype very likely does make men less likely to report the offence, and might make the police and legal officials take female sex offending less seriously than male sex offending. For example, an American study by Weiss, which examined men’s sexual victimisation experiences, found that only 15% of male

⁴⁸ Weiss (2010, p. 277).

⁴⁹ They could also be viewed as a parallel to the way in which Langton (1993) argues that pornography ‘silences’ women, by making their ‘no’ not really sound like ‘no.’

victims of sexual assault and rape reported their assaults to the police (compared to 30% of female victims). This decreased to 7% when the perpetrator was female.⁵⁰ Weiss suggests that ‘men’s reluctance may be exacerbated by a sense of shame for not fulfilling their masculine roles that dictate they be in control and take care of matters themselves.’⁵¹

The view that men are always ‘up for’ sex not only has harmful consequences for male victims of sexual assault and rape, it also has an impact on the way that we see the rape of women. The idea that men have an uncontrollable sex drive leads to the belief that it is somehow the job of women to rein it in for them. This contributes to the victim-blaming culture that surrounds the rape of women. The rape victim is often viewed with suspicion, as though had she ‘done her job properly,’ she would not have been raped. Women are sometimes described as ‘asking for it’ for being drunk, flirtatious, or even just wearing sexy clothes; the implication is that men cannot help themselves if tempted. Indeed, a 2009 study of men in London who pay for sex, conducted by Melinda Farley, Julie Bindel, and Jacqueline Golding, found that 44% believed that prostitution decreases rape⁵² (there is no empirical evidence for this claim), suggesting they believed that men need a sexual outlet, and if they can’t pay for it, they will rape women. Acknowledging that rape is something women can do too, would undermine the myth that rape is just a consequence of men being unable to control their rampant sex drive in the face of temptation.

(b) Women’s Sexual Purity Is More Important Than Men’s

Linked to the idea that men have an uncontrollable sex drive is the idea that women do not have a strong sex drive and should be, in some ways, protected from sex. Traditional views held that a woman’s worth was determined, at least in part, by her sexual purity and that rape was wrong, either fully, or in part, because it led to a loss of honour for the raped woman’s family or community, and/or to the loss of the woman’s monetary value to her father. For example, under ancient Hebrew law, if a man raped a virgin outside of the city walls, his ‘punishment’ was ‘to pay the girl’s father 50 silver shekels in compensation for what would have been her bride price and the pair was simply commanded to wed.’⁵³ Her sexual purity was valued, if she was unmarried, because it would make her more desirable to a future husband (because he wanted to marry a virgin), and if she was married, so that her husband knew she was faithful to him. Therefore, her sexual purity was important, not in itself, but insofar as it made her more valuable to men. These sexist and deeply harmful views are, unfortunately, still widespread in many cultures today.⁵⁴ They

⁵⁰ Weiss (2010, pp. 284–286).

⁵¹ *Ibid* p. 285.

⁵² Farley, Bindel and Golding (2009, p. 13).

⁵³ Brownmiller (1975, p. 20).

⁵⁴ See, for example, Westmarland and Gangoli (2011). On p. 112, Westmarland and Gangoli discuss a judgement made regarding the rape of a nine-year-old girl whereby the judge noted that the girl would never be able to get married due to the loss of her virginity.

are, to some extent, being slowly eroded in many Western cultures, but we still see them in the gendered use of words such as ‘slut,’ ‘slag,’ and ‘whore’ to refer to a woman, who is deemed to be sexually impure, but not to a man. ‘Slut-shaming’ is a way to control women’s sexuality, by making them seem less desirable to men, the more sexually experienced they are.

Harriet Baber argues that the view that rape is the most serious harm that can befall a woman backs up the traditional view that women’s sexual integrity is more important than their intellectual integrity. She suggests that, whilst rape is a very serious act of violence, viewing it as the worst kind of harm that can happen to a woman confirms the idea that women should be seen as sex objects, ‘beings who have little of value beyond their sexuality’ and by this she means their sexuality as conceived for others: ‘in terms of their roles as lovers, wives and mothers.’⁵⁵ This is linked to the sexual purity story above in that, if a woman’s value is determined in large part by how much men value her, and men value her more the fewer penises have been inside her, then rape will harm women in a way that it does not harm men.⁵⁶ Indeed, as Robert Baker notes, the language that we usually use to describe sexual acts is indicative of male sexual dominance, and they are also words that are used to depict harm—the woman is ‘fucked,’ ‘screwed,’ ‘had’ by a man.⁵⁷ A man’s sexual purity, and hence his value, will not be viewed as ‘contaminated’ by a woman raping him in the same way as a woman’s is if raped by a man.⁵⁸ Of course, these are, again, not myths that we want to endorse.

(c) Sex Is Something Men Do *To* Women

By viewing sex as something men always want but women must be protected from, we are more likely to view sex as something *for* men; men are sexual agents and women’s sexuality is important only insofar as men want to have sex with them. This feeds into other harmful sexual stereotypes, such as that men are or should be sexually dominant and women are or should be sexually submissive. This is important,

⁵⁵ Baber (1987, pp. 136–137). MacKinnon also makes the point that ‘sex is regarded as what women are for’ (2016, p 453).

⁵⁶ One objection to my view, which was brought to my attention by an anonymous referee, is that, if we want to make things gender neutral, why favour ‘levelling up’ the protection of men over ‘levelling down’ the protection of women? If men are less affected by non-consensual sex with women, then, the objection goes, perhaps we should be aiming to make women less affected by non-consensual sex with men. I strongly disagree that this could be an appropriate response and I think it is potentially very dangerous. As I have argued, rape is a clear violation of someone’s sexual integrity and autonomy and is often extremely traumatic. In addition, given that we currently live in a patriarchal society where a lot of sexual harassment and violence occurs, a ‘levelling down’ approach would likely have disastrous consequences for women. Furthermore, as I have argued, in any case, it is not clear that men are less affected by non-consensual sex with women; this is an empirical question to which we do not have a definitive answer.

⁵⁷ Baker (1998, pp. 260–266).

⁵⁸ Incidentally, this could explain why a man being raped by another man is generally viewed as a more serious wrong than him being raped by a woman, particularly when the victim is heterosexual. The man’s ‘sexual purity’ in terms of his masculinity and/or his heterosexuality *is* considered to be ‘contaminated’ here.

for, as Kate Millet noted in 1969, ‘sexual dominion ... provides [patriarchy’s] most fundamental concept of power.’⁵⁹

We see the idea that sex is something men do *to* women, rather than *with* them, in the way that we commonly talk about sexual consent. As John Gardner points out, when we talk about sexual consent, what we have in mind is a woman consenting to have sex with a man, and

our cultural preoccupation with sexual consent is a preoccupation with women as those whose consent is called for, and men as those to whom the consent is to be given. As thus imagined, sex is something in respect of which men are active and women are passive.⁶⁰

Gardner’s main point is that we should think of good sex as involving agreement and teamwork, rather than consent, since this would lead to better, more equal sex. However, the point is also relevant to this paper—the view that only men can commit rape feeds into the idea that men are active sexually and women are passive. Men initiate sex; women are merely the gatekeepers, who consent or don’t consent. Consequently, women are taught that the satisfaction of their sexual needs is not as important as the satisfaction of male sexual needs and that they ought to be responsive to men, rather than sexual initiators. The large sex industry that caters almost exclusively to men could also be seen as evidence of this, with 11% of men admitting to having paid for sex in 2014.⁶¹

The current legal definition of rape, with the PPC, seems to be both a consequence of, and a reinforcement of, the view of sex as something men do *to* women (potentially in a way that harms women). As Catherine MacKinnon, in her 2016 paper, ‘Rape Redefined’ notes, ‘the male dominant view of essentialist sexuality that continues to underlie much rape law,’ which she argues first appeared in Freud ‘[has as a] basic idea ... that sexual intercourse, by nature is an injury, an intrinsic violation of the woman by the man.’⁶²

The view of sex as something done by men to women is also found in Andrea Dworkin’s *Intercourse*, in which she describes a view of sex as perceived in patriarchal culture as male possession or occupation of women’s bodies. As she puts it:

men possess women when men fuck women because both experience the man being male. This is the stunning logic of male supremacy. In this view, which is the predominant one, maleness is aggressive and violent, and so fucking, in which both the man and the woman experience *maleness*, essentially demands the disappearance of the woman as an individual; thus in being fucked, she is possessed.⁶³

⁵⁹ Millet (1969, p. 25).

⁶⁰ Gardner (2018, p. 22). Ann Cahill has also argued that consent theory reinforces normative heterosexuality with the male as the person instigating sex and the woman accepting or rejecting the offer. Cahill (2016, p. 753).

⁶¹ Jones et al. (2014). This figure is based on a survey of 6293 men.

⁶² MacKinnon (2016, p. 475).

⁶³ Dworkin (1987, p. 64).

A different way of looking at the same act would be for the man to be possessed, for, as Dworkin notes, ‘remarkably, it is not the man who is considered possessed in intercourse, even though he (his penis) is buried inside another human being ... even though his penis is gone—disappeared inside someone else, enveloped, smothered.’⁶⁴ She quotes Shere Hite, with an ideal of sex rooted in equality, in which ‘thrusting would not be considered as necessary as it now is [There might be] more a mutual lying together in pleasure, penis-in-vagina, vagina-covering-penis.’⁶⁵

The view that it is impossible for a woman to rape a man seems an extension of the view that sex *is* the penetration of a woman by a man, and thereby, forced sex, or rape, is the forced penetration of a woman by a man. The forced ‘envelopment’ of a man’s penis by a woman’s vagina, is seen as something altogether different, perhaps in part, because of the underlying assumption that women do not ‘do sex,’ they ‘have sex done to them.’ I appreciate that it seems odd to try to make sex more equal by making rape law more equal. However, as I said previously, rape law has, throughout history, been both a cause and a consequence of the way that gender relations are viewed more broadly, and changes to rape law have reflected, and also contributed to, shifts in the way that gender, sex, and sexuality have been seen. A public discussion and acknowledgement that sex between men and women is something that they do together, rather than something that men do to women, would have an impact on the way that sex is viewed more broadly.

3 Final Thoughts on Gender and Rape

The belief that a woman cannot rape a man, therefore, might be both a cause and a consequence of these kinds of harmful gendered stereotypical beliefs:

- (a) Sex is something that men do *to* women.
- (b) This is, in part, because men have an uncontrollable desire for sex; women are less bothered about sex.
- (c) Due to men’s uncontrollable desire for sex, women must moderate their behaviour so that they don’t tempt men to rape them.
- (d) Men are sexually aggressive/dominant (or should be); women are not (or shouldn’t be).
- (e) A woman’s worth is determined, in part, by her sexual purity; a man’s worth is determined, in part, by his sexual prowess.

Of course, these beliefs are outdated, and not held by all people. However, they are pervasive and we do see remnants of them in parts of Western society and in some non-Western cultures. Rape law is by no means the only, or most important, cause or consequence of these beliefs, nor would changing it eradicate them. However, it would be an indication that the government recognises that women can be

⁶⁴ *Ibid.*

⁶⁵ Shere Hite in Dworkin (1987, p. 128).

sexually aggressive and dominant, that men are not always ‘up for’ sex, and that *both* men and women have an interest in their sexual integrity and autonomy not being violated. This would not mean denying that rape has been and continues to be a tool used systematically by men as a way to oppress women, nor would it mean claiming that rape affects men and women in the same way. It could, however, undermine some of the sexual gendered stereotypes that cloud the way that sex between men and women is viewed and which can be particularly harmful to women.

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