

Chicago-Kent College of Law

From the Selected Works of Katharine K. Baker

February, 2003

Asking What Before We Ask Why: Taxonomy, Etiology and Rape

Katharine K. Baker, *Chicago-Kent College of Law*

PDFlib PLOP: PDF Linearization, Optimization, Protection

Page inserted by evaluation version
www.pdflib.com – sales@pdflib.com

Asking What Before We Ask Why: Taxonomy, Etiology, and Rape

KATHARINE K. BAKER

Chicago-Kent College of Law, Chicago, Illinois 60661, USA

ABSTRACT: This article presents a spectrum of sexual coercion. By looking at the social meaning of the different acts of coercion along the spectrum, the author suggests that most acts of sexual coercion can be classified as either rape (a sexual act with intent to do harm to the victim) or sex (a sexual act engaged in without any intent to harm the victim). Ironically, though, the author suggests that the most and least egregious acts of sexual aggression, that is, the acts we most readily identify as rape and the acts we are most reluctant to label rape are the ones that most easily evade explanation as either rape or sex.

KEYWORDS: taxonomy; etiology; rape; sexual coercion; prostitution; social meaning; impersonal sex

Much of this volume is devoted to the scientific study of etiology. This article looks at etiological questions through a different lens, the lens of social meaning. To do that, the article lays out a taxonomy of rape, putting six different categories of sexual coercion along a spectrum from most to least severe. The taxonomy is not meant to be complete; it is instead trying to offer some ideal types from which we can draw inferences. I will draw those inferences by examining the social meaning of different acts of sexual coercion. By examining the social meaning, we also examine etiology, that is, the communicative content of many acts of sexual coercion helps explain why men rape. Social meaning may not be able to explain all acts of sexual coercion, however. Indeed, I will argue that it is those coercive acts at the most severe and least severe ends of the spectrum that evade social explanation.

This article first lays out a sexual coercion spectrum and a brief explanation of each category along that spectrum. It then proceeds to divide the spectrum into two different categories, rape and sex, explaining how all the acts of sexual coercion on the spectrum are socially understood as either rape or sex. The fact that we are able to discern the social meaning of many of these acts of sexual coercion should help us understand why men commit these acts and help us articulate strategies for prevention. Finally, the article looks at the forms of sexual coercion at the far ends of spectrum, “rape” and “sex,” and argues that in order to deal effectively with these

Address for correspondence: Katharine K. Baker, Professor of Law and Associate Dean for Faculty Development, Chicago-Kent College of Law, 565 West Adams, Chicago, IL 60661. Voice: 312-906-5391; fax: 312-906-5280.
kbaker@kentlaw.edu

Ann. N.Y. Acad. Sci. 989: 288–299 (2003). © 2003 New York Academy of Sciences.

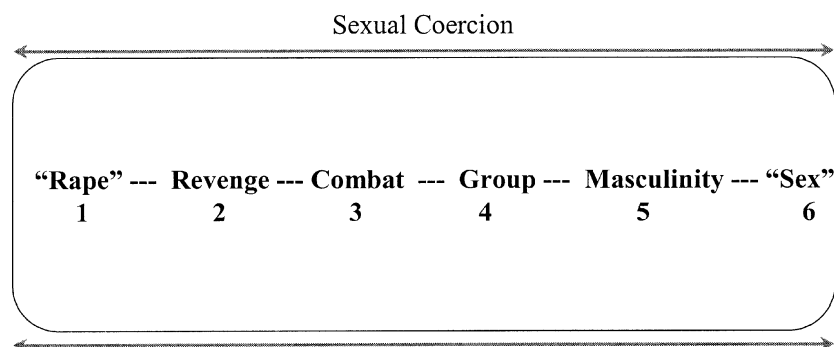


FIGURE 1.

acts we must change the social understanding of sex. In short, to prevent and justly punish *rape*, we must come to view the term *impersonal sex* as an oxymoron.

FIGURE 1 shows six categories of sexual coercion. Each category represents a different kind of sexual assault.

Category #1: Rape. Category one is exemplified by a single rapist who uses physical force or threat of force to overpower his victim. Often, though not always, the physical injury (aside from the rape itself) is limited to that which is necessary in order to get the victim to stop fighting. The rapist in this category is probably the man with whom most of the contributors to this volume have the most experience. I say that because of the rapists presented here, he is the one most likely to be punished for his acts. As further discussion will show, the other acts of sexual coercion on the spectrum either do not get reported,¹ or get “unfounded” by the police,² or get excused by the jury.³

Category #2: Revenge. The man in this category rapes as a form of revenge against a woman whom he sees as having inappropriate control over him. This control is perceived as sexual. Men react with anger at women who are, in the men’s view, flaunting their sexuality, thereby making men want something they cannot necessarily have. Timothy Beneke describes this as men seeing women’s “appearance as a weapon.”⁴ Men fight back, using sex as a weapon. One of Beneke’s subjects put it this way, “If a guy’s not all there to begin with and then he gets fucked over by a couple of girls, he may just have something building up and something will just tick him off about what a girl says and he’ll just follow her through the night and rape her.”⁵ Professor Schulhofer quotes a man demonstrating this kind of attitude as well, “Women knew when I was attracted to them. ... I definitely felt played with, used, manipulated, like women were testing their power over me. I hated it with a passion. ... I wanted to slam someone’s head up against a wall.”⁶

Category #3: Combat. Whether in official or unofficial wars, men rape their opponents’ women as a way getting back at those men. One rather famous example of this is the massacre at My Lai, during the Vietnam war. American soldiers systematically raped and then murdered much of the female population in My Lai. A helicopter pilot flying over the scene several days later saw a body in the field below. “It was a woman ... She was spread-eagled, as if on display. She had an 11th Brigade patch between her legs—as if it were some type of ... badge of honor.”⁷ Eldridge

Cleaver talks about the use of rape for this purpose also, though the war he was fighting, the race war, did not involve organized armies and brigades. Nonetheless, rape played a role. "Rape is an insurrectionary act. It delighted me that I was defiling the white man's women."⁸ The numerous accounts of rapes in the former Yugoslavia, rapes designed to poison enemy women so that the enemy men could no longer love them, are also examples of this.⁹

Category #4: Group. Group rapes, fraternity rapes, "trains" in the lingo of some young men, are examples of a different kind of rape. These rapes usually involve one woman and many men. The woman, if she does not start out drunk or comatose, often ends up that way because she needs to turn off so as to numb herself to what is happening to her. One man after another usually takes turns penetrating the woman or sodomizing her or, in one case involving St. John's University lacrosse players, banging their erect penises against her head.¹⁰ It appears that men in these situations perform these acts as a way of bonding with each other.¹¹ In the words of Nathan McCall, who at 13 was part of a group rape of a neighborhood girl, the "train marked our real coming together as a gang."¹² Another rather famous example of this kind of behavior is the rape at the Big Dan Tavern in New Bedford Massachusetts, the story retold in the movie *The Accused*.¹³ There, the men in a bar stood around and cheered each other on as the men took turns penetrating the victim who was splayed on a pool table.

Category #5: Masculinity. This category includes a great many of what are also known as acquaintance rapes. I am not designating an "acquaintance rape" category generally because it would be too broad and overlap too significantly with some of the other categories. Category #5 involves rapes committed by mostly young¹⁴ men eager to assert their masculinity by asserting their sexual prowess as heterosexual beings. The studies done with college population males suggests that most of them use rape as a way of getting sex and they want sex so badly because sexual performance is critically constitutive of their sense of their own masculinity.¹⁵ Men demonstrate their masculinity in order to enhance their status with their male peers, and they demonstrate their masculinity by performing sexually.¹⁶ A perfectly explicit example of this was the Spurr Posse Gang's point system.¹⁷ It is an entirely recognizable dynamic to anyone familiar with locker-room banter, however. When men "score" they get "points" from their friends. The idea for this category is thus not only that rape is instrumental to getting sex, sex is instrumental to getting respect or status within the male community.

Category #6: Sex. Category #6 involves those acts of sexual coercion in which the woman actually says "yes," but her yes is a function of her very limited options. Because she says yes, I have labeled this category "sex." The kind of stories that make up this category come directly from the pages of Professor Schulhofer's book.¹⁸ They include the high school principal who demands sex from a high school senior, threatening to block her graduation if she refuses,¹⁹ the divorce lawyer who initiates sexual contact from a client he knows is resistant, extremely fragile emotionally, and under psychiatric care,²⁰ and the therapist who initiates sex with a patient after leading her to believe that sex is an important part of the therapeutic process.²¹ Into this category we might also put, if one reads the paper these days, literally hundreds of clergymen and probably many incest cases.

What motivates these men in Category #6? That is an important question. It has a very different answer than the same question posed for Categories #4 and #5, be-

cause the Category #6 rapists are not engaging in sex in order to garner the esteem that comes with sexual activity. These men cannot make their actions public. Getting sex in the manner these men have has, for years, subjected them to severe sanction from their governing boards, superiors, ethics panels, or school boards. These men have not been subject to legal sanction because the victims involved consented in a physical sense. There is no force or threat of force; there is just a power dynamic that effectively destroys any ability the victim might have to meaningfully exercise an autonomous choice to say no. The professional organizations, aware of that power dynamic, make these acts sanctionable. Thus, these men cannot brag about their exploits, so their sexual encounters stay private, and they stay private because they are condemned socially. What motivates these men to do it despite the social condemnation?

This article will not answer that question fully, but it will suggest that what motivates these men, at the far right of the spectrum, may not be very different than what motivates the rapists in Category #1, at the far left of the spectrum. Thus, it is the acts that have not been illegal at all, Category #6, that may share the most with the acts that have always been illegal, Category #1. Moreover, this article will suggest that the motivation common to categories #1 and #6 is very different than what is motivating the men in between.

To explain why, let us examine the social meaning of the different acts on the spectrum. As a matter of social meaning, if not law, one can divide the spectrum into two groups, with all of the left hand categories falling into a definition of rape, and all of the right hand categories falling into a definition of sex.²² By dividing it as FIGURE 2 does, it is easier to unpack what the acts are really about.²³

What do these broad labels of rape and sex mean? By rape, I mean, "intent to do harm through sexual activity." By sex, I mean "intent to engage in sexual activity without necessarily doing harm." These are not, lest anyone wonder, legal definitions. The legal definition of rape is far more complicated,²⁴ and to my knowledge,

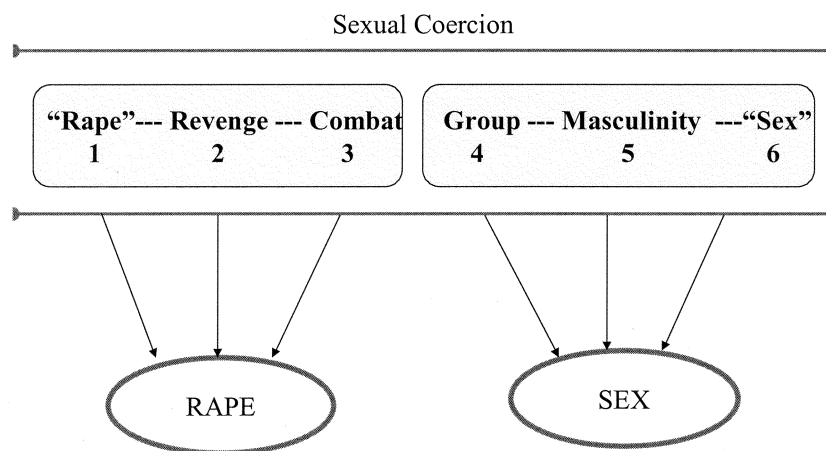


FIGURE 2.

there is no legal definition of sex. The definitions that I have given to the terms rape and sex are social definitions. We know what I am talking about because the term “rape” has social meaning, as does the term “sex.” The social meaning implicit in the term rape incorporates a notion of harm toward the victim. When one rapes the land, for instance, one harms the land, one takes from the land its ability to give life and nourishment.⁴⁹ The social meaning implicit in the term sex involves no such notion of harm. Thus one can have sex without meaning to do harm, but one cannot rape without meaning to do harm.

What the men in Categories #2 and #3 are doing is using sex and sexual acts as weapons to do harm, and everyone knows it. The communicative content of the act is purposefully degrading. In Category #2 they are trying to hurt the victim because they perceive her as hurting them. In Category #3 they are trying to hurt the victim because by hurting her they will be inflicting injury on other men with whom she is associated.²⁵

The acts in Categories #4 and #5 are actually quite different. Pathetic as it is, the victim in these cases rarely seems to be the focus of the perpetrator’s acts. The victim is secondary to the sex itself. Men perform these acts because the sexual act will send a message, not to the woman whom they are raping, but to other men. The status of the woman, whether she is completely drunk, unconscious, or petrified into paralysis, is inconsequential to these men.²⁶ In one of his projects Eugene Kanin found five cases of women who were actually so immobilized by fear that they could not communicate nonconsent.²⁷ One might take just a moment to think about what sex would be like in that instance. What is it that motivates a man to have sex with a woman who is too paralyzed to say no. What can that sex be about?

The empirical and theoretical work done with these populations suggests that the sex is about neither harming nor expressing affection for the victim.²⁸ These men want sex, not rape, and while they might be okay with something like lovemaking, for the most part they cannot be bothered. What they are interested is not a relationship with the woman with whom they are engaging; they are interested in the accomplishment of having engaged. It is that accomplishment that gives them masculinity points with their peers.

There is a partial analogy to commodification that can be helpful here. A man in Category #4 or #5 rapes to get something. Because he gets it without the woman’s consent, it is akin to stealing. But it is not stealing, because what he gets is not what she loses. He may not even want her to lose at all and, according to his world view, it would be possible for him to gain without her losing. This illustrates an important difference between the rape and sex categories. With rape, the gain that the perpetrator is able to get, the sense of satisfaction with his act, is directly tied to how hurt the victim is. With the sex crimes, her pain or lack thereof is irrelevant to what he is able to take from the experience.

Where does this breakdown into rape and sex get us? For one thing, it helps us understand how and why the law has treated these acts as it has. The crimes on the right have not been prosecuted because they are not seen as crimes of violence, as crimes in which there was *mens rea*⁵⁰—or intent to do harm.²⁹ In contrast, the crimes on the left are seen as crimes of violence, crimes in which there was intent to do harm, but for Categories #2 and #3, that crime has been excused because the intent to do harm was legitimate in the circumstances. Thus, we have a jury foreman who judged a case in which a man was charged with knifing, beating with a rock, and

twice raping a woman dressed in a lace miniskirt and wearing no underwear, saying "We felt she ... asked for it the way she was dressed ... [W]ith that skirt, you could see everything she had."³⁰ The jury acquitted, but the foreman did not suggest that the woman was not raped. He suggested that the rape was justified. Comparably, the behavior of soldiers in wartime is seen as inevitable, the sexual byproduct of an intrinsically violent situation.³¹

I think that the fact that we can unpack what is going on in Categories #2–#5 both socially and legally is good news. It is good news because once we unpack the social meaning, we can actually start trying to alter the social conditions and messages from which the social meaning emanates. Thus, for Categories #2 and #3, we can work to make clear that there is no such thing as asking for rape. It is absurd that people think it is somehow legitimate for men to avenge any feeling of frustration they might have when a woman makes them feel needy. It is as absurd for men to feel offended by women's dress as it was 40 years ago for whites in the South to feel offended when African-Americans looked them in the eye. What is wrong is our still current social structure in which men presume that it is somehow unfair for any woman to have the power to affect them. As far as attempts to remedy the extent to which the legal system has excused these acts, the following simple jury instruction could help: "frustration, sexual attraction, flirtation, or anger, however understandable, can never be a legitimizing reason for coercing sex."

In a world of equality, the combat rapes in Category #3 would drop out also. If women were not seen as the property of men, it would make little sense to rape women as a way of aggressing against men. Anecdotal evidence, from the North Vietnamese, who used women soldiers in combat, lends credence to this hypothesis. The ban on raping women, even the enemy's women, was enforced by the North Vietnamese because they could not afford for their men to view their comrades as "rapable."³²

As for the right-hand side of the spectrum, there is clearly a need to change the social meaning of sex. As I have argued elsewhere, if we were to try to alter the social understanding of sex, by teaching our young and forcing ourselves to reject the patterned behavior that allows us to avoid awkward and difficult conversations about sex, we could emerge with an understanding of sex as about creating, enriching, and/or solidifying a relationship.³³ Having sex could be seen socially, like having children is, an act of love and sacrifice—one whose benefits exist almost exclusively in the unique relationship created by the act. The purpose of having sex, like the purpose of having children, could be to create a relationship of mutual understanding, and maybe even love, a relationship that has no currency to anyone other than those in it.

This is not easy work. It is extraordinarily difficult work, but it is work that we can begin to conceptualize. Once sex is seen as something that cannot be separated from the person with whom one experiences it, her loss cannot be irrelevant to him. Her loss is his loss. In such a world it seems unlikely that men would tie the number of their sexual encounters to accomplishment. We simply do not think of relationships in such ordinal terms.³⁴ The need for masculine competition, if indeed it is innate, can work itself out on the football field and in automobile ownership—areas far less likely to have as byproducts the number of sexual assault victims we see today. Legal reform must emphasize that the intent to do harm is not the defining characteristic of rape. The defining characteristic of rape is coercion. The jury must be instructed that "intent to have sex regardless of consent" is a self-contradictory phrase.

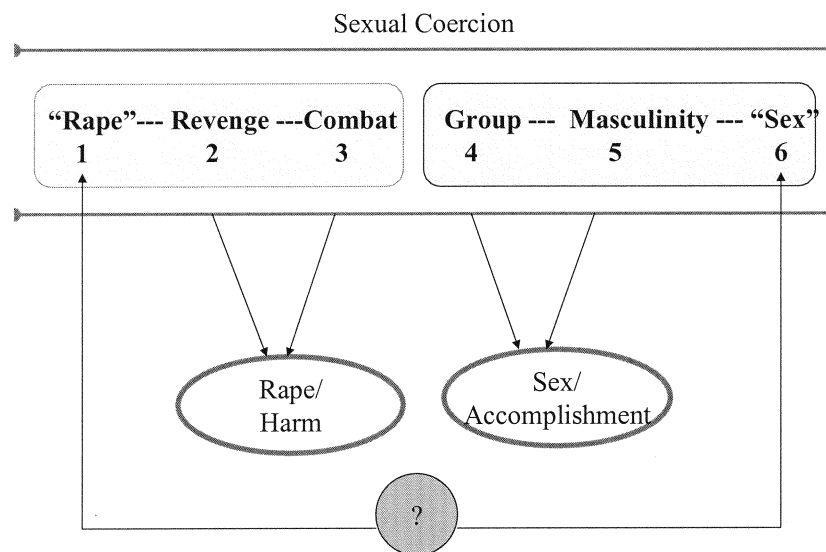


FIGURE 3.

This then leaves us with Categories #1 and #6 (FIG. 3). Category #6 is like Categories #4 and #5 in the extent to which the women's enjoyment or lack thereof is irrelevant, but it is unlike Category #4 and #5 in that the men in Category #6 are not using sex as a way to get the esteem of others. If we change the meaning of sex such that everyone understands sex to be more about relationship than accomplishment, then maybe the men in Category #6 will stop because they will understand that what they are getting is not sex as that term will come to be culturally understood. I am not particularly confident of that, though. My lack of confidence stems from our confusion over what motivates these men in the first place. We can help eliminate the acts in Categories #4 and #5 by making sex not equal masculinity anymore, but are we as sure that this will help the men in Category #6, who do not seem to be getting masculinity points out of their currently coercive practices? Nor are the Category #6 men getting what we can see the men in Categories #2 and #3 getting. They do not necessarily intend to cause their victims pain. Instead, what these men seem to be getting is what the men in Category #1 get, which I take to be the satisfaction of some kind of physical urge, a pathological demand to satisfy a sexual need regardless of the mutual desire of the participant.

Some might explain this male desire for sex devoid of relationship and communication in evolutionary terms.³⁵ Others might explain it as a function of hormonal differences in men and women.³⁶ Still others would suggest that male sexual demands are primarily a socially constructed aspect of patriarchy that helps routinize male dominance.³⁷ Whatever explains the origins of men's "appetites" for impersonal sex, our task must be to teach men to overcome them, to make a desire for sex devoid of relationship as pathological as is raping someone at gunpoint. People see Category #1 as pathological because for most people the idea of using a gun or a

knife to force a woman to have sex is abhorrent. From where does the horror emanate, though, the gun or the forced sex? It is critical that we understand the origins of our horror, because from the woman's perspective, the use of a knife, gun, or fist may not be that different than the threat of losing your therapist, your lawyer, or your high school diploma. Various studies of women's reactions suggest that violent, stranger rapes and rapes by someone to whom the victim is emotionally close have comparable negative impacts on victims.³⁸

If we conclude that the difference between Categories #1 and #6 is merely the kind of weapon, it should refine our etiological inquiries and our strategies for prevention. We have let the presence of the gun imply an intent to do harm and therefore harm. In doing so, we have pathologized the gun, not the coercion, and we have ignored the fact that harm comes even when there is no intent. We have also ignored the fact that the motivating factor for the man in Category #1 may be nothing other than the "sex" that motivates the men on the right side of the spectrum. If the motivating factor is the same, it seems odd to label Category #1 as pathological "rape" and Category #6 as understandable "sex." Some people might read this as a conclusion that the man in Category #1 is therefore not pathological. I think the inverse conclusion is more appropriate. It is our willingness to condone the behavior on the right-hand side of the spectrum, to accept as legitimate a desire for impersonal sex, that we must come to view as pathological.

A world in which sex devoid of relationship was seen as pathological need not be a world in which sexual experimentation and one-week flings cease to exist. It need only be a world in which the two parties have communicated enough with each other to understand that their consensual sex is a mutually desired aspect of a consensual relationship. One-night stands and temporary relationships are acceptable as long as neither party thinks about sex as a goal independent of the thinking, feeling, communicating person who shares the experience. It is the disregard for the other person that we must see as abhorrent.

A world in which sex devoid of relationship was seen as pathological would be a world without legal prostitution. The fact that we have labeled what prostitutes sell as "sex" shows just how impoverished our understanding of sex is. As others have cogently observed, what a prostitute really sells is rape.³⁹ It is rape because, as the accounts written by prostitutes or those who work with them clearly demonstrate, prostitutes do not want the sex.⁴⁰ A prostitute's job is to "project" back his fantasy.⁴¹ To survive at all, prostitutes numb themselves and fake their pleasure at a client's demand.⁴² Prostitution belongs in Category #6. The commodification question that surrounds the issue of prostitution is thus not whether sex should be bought and sold, but whether rape should be.

Various different writers, across many decades, have argued that regardless of whether prostitution is best conceptualized as rape, it is most honestly evaluated as an alternative form of marriage, that is, male payment for access to female sexuality.⁴³ There is an important difference, though, between marriage (even if seen in the crassest of market terms) and prostitution. Marriage involves a relationship that is composed of more than just the sex itself, whereas prostitution institutionalizes sex devoid of relationship. Institutionalizing impersonal sex in this manner perpetuates a culture that condones sexual coercion because it legitimates male desire for impersonal sex. It is that male desire for impersonal sex that we must work to make pathological.

It is far from clear that the appropriate way to delegitimize prostitution is to punish the prostitutes, however. First, it seems remarkably strange to punish rape victims, even if they did receive compensation for the rape. Second, as many have documented, the great majority of prostitutes “enter” the profession under conditions that are themselves coercive. Prostitutes start at a very young age.⁴⁴ Sex with many of these women is a violation of statutory rape laws.⁴⁵ Most prostitutes, somewhere between 60 and 70%, were victims of childhood sexual abuse.⁴⁶ Punishing women for “choosing” prostitution when for most of the girls involved the choice first came when they were not even old enough to enter into a legal contract and when their understanding of sexuality had already been horribly polluted by past abuse seems gravely unjust. Third, what is pathological is not a young and traumatized women’s “choice” to make money given the male demand for impersonal sex, but that so many men want impersonal sex. It is the estimated 60% of American men who have used prostitutes,⁴⁷ most of whom have not been subject to childhood abuse, most of whom are not children themselves, most of whom are not desperately poor, and many of whom live perfectly respectable middle and upper middle class lives, whose behavior is so problematic. As Kathleen Barry writes, “Women are in prostitution because men buy them for sex. . . . Prostitution is a male consumer market. The intense public focus on women’s will, her choice or her ‘right to prostitute’ deflects attention from the primary fact that prostitution exists first because of male customer demand.”⁴⁸ If demand is the problem, then the solution must address the problem of that demand. One way to address that problem is to get serious about arresting and punishing the john (with a felony conviction perhaps), not the hooker.

CONCLUSION

Male demand for impersonal sex, and the perceived legitimacy of that demand, explains not only prostitution, but a tremendous amount of rape. If we are serious about trying to prevent rape, we must shun, shame, and ban the male demand for impersonal sex. It is no answer to say that the male demand for impersonal sex is natural or biological or innate. We do not accept such answers for other forms of physical violence (battery, assault, or murder, for instance) and there is no reason to accept such answers for rape. Only by making the demand for impersonal sex itself strange, pathological, and “other” can the law deal effectively with rape.

The law is made up of decision makers—police, prosecutors, judges, jurors, and victims. When male demand for impersonal sex is understood as normal, those decision makers condone coercive sex because they do not see intent to do harm. Once we collectively see impersonal sex itself as harmful, wrong, and other, we not only eliminate the motivations of many men who currently rape, we move into a world in which we can finally punish those who still rape.

NOTES AND REFERENCES

1. Many acquaintance rapes do not get reported. For a discussion, see KATHARINE K. BAKER *Sex, Rape and Shame*, 79 B.U. L. REV. 663, 683 (1999).
2. When police and prosecutors determine that a victim’s rape allegations are unverifiable or highly likely to result in acquittal, they “unfound” the allegation. See LYNN HECHT

- SCHAFFRAN, *Writing and Reading about Rape: A Primer*, 66 ST. JOHN'S L. REV., 979, 1010–1011 (1993).
3. See *infra* text accompanying note 30.
 4. BENEKE, T. (1982). *Men on rape* (p. 20). St. Martin's Press. New York.
 5. *Id.* at 37.
 6. SCHULHOFER, S.J. (1998). *Unwanted sex: The culture of intimidation and the failure of law* (p. 48). Harvard University Press. Cambridge.
 7. Susan Brownmiller recounts this description in her book *Against our will: Men, women and rape* (p. 105). (1974). Fawcett Columbine. New York.
 8. CLEAVER, E. (1968). *Soul on ice* (p. 14). Dell Publications. New York.
 9. LABER, J. (1993, March 25). Bosnia—Questions of rape. *New York Review of Books*, pp. 3,4 (discussing the prevalence of rape as an aggressive tool in Bosnia).
 10. The story of this rape is told in KAREN KRAMER, *Rule by Myth: The Social and Legal Dynamics Governing Alcohol-related Acquaintance Rapes*. 47 STAN. L. REV. 115, 136–138 (1994).
 11. It is worth reiterating that each category represents a type. It is perfectly possible for the types to overlap, so that during one rape, men could be both trying to inflict injury on a common enemy (Category #3) and trying to bond with each other (Category #4).
 12. MCCALL, N. (1994). *Makes me wanna holler* (p. 47). Random House. New York.
 13. For an account of the actual rape, see LYNN S. CHANCER, *New Bedford, Massachusetts, March 6 1983–March 22, 1984: The "Before" and "After" of Group Rape*. 1 GENDER & SOC. 239, 244–245 (1987).
 14. Somewhat arbitrarily, I will define "young" as under age 25.
 15. See BAKER, *supra* note 1 at 673–679.
 16. *Id.* at 675–676.
 17. For a discussion of this incident in which boys literally kept score of their number of sexual encounters and compared their scores with each other, see Michelle Oberman *Turning Girls into Women: Re-evaluating Modern Statutory Rape Law*. 85 J. CRIM. L. & CRIMINOL. 15–18 (1994).
 18. See SCHULHOFER, *supra* note 6.
 19. *Id.* at 2.
 20. *Id.* at 239.
 21. *Id.* at 206.
 22. I think it not coincidental that the two categories of social meaning that I have chosen, "rape" and "sex" track quite closely the two main predictive factors, "hostile masculinity" and "impersonal sex" that Neil Malamuth highlights in his study of etiology. See *supra* this volume. The attitudes that we can identify as "causing" sexual coercion are developed in a social setting that may promote and/or condone the byproducts of those attitudes.
 23. The caveats here are Categories #1 and #6. For reasons explained *infra*, it is not clear that Category #1 belongs exclusively in the rape category or that Category #6 does not.
 24. Each state has its own definition of "rape" or "sexual assault," and the definitions vary widely. For a brief discussion of this variety, see KATHARINE K. BAKER, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 HARV. L. REV. 563, 575 n. 56 (1997).
 25. There are those, particularly in the biological fields, who dismiss these arguments, suggesting that whatever violence may or may not be involved, what motivates rapists is biological and essentially sexual in origin. The violence or harm involved is instrumental to the sex. See, for instance, CRAIG T. PALMER et al., *Is it Sex Yet? Theoretical and Practical Implications of the Debate over Rapists' Motives*. 39 JURIMETRICS 271 (1999) (making fun of those that argue rape is more about violence than sex). There are both long and short responses to the biological characterization. The short response I will offer here is the simple facts from *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), as reported by the Court of Appeals for the Fifth Circuit, 83 F.3d 118, 118–19 (1996). *Oncale* did not involve any form of intercourse, or even ejaculation, and it did not involve any kind of male on female violence. Both the victim and the perpetrators were men. The acts that were held to

- constitute sexual harassment included "restraining Oncale while [a co-worker] placed his penis on Oncale's neck on one occasion and on Oncale's arm, on another occasion," and "push[ing] a bar of soap into Oncale's anus. ..." Under my definition, Mr. Oncale was raped. The perpetrators used sexual acts to inflict injury, mostly emotional, on their victim. If we can agree that sex can be used as a weapon to harm Mr. Oncale, then it seems perfectly self-evident that sex can be used as weapon to harm women also—even though that harm or violence against women may also have reproductive consequences.
26. The men from the St. John's incident communicated with their victim only once. When she screamed, they slapped her and told her screaming was not allowed. Otherwise, they let her drift in and out of consciousness, more interested in watching each other's performances than in her. See KRAMER, *supra* note 10.
 27. KANIN, E. (1984). Date rape: Unofficial criminals & victims. *Victimology*, 9, 95, 97.
 28. See BAKER, *supra* note 1 at 666–667 (citing studies).
 29. An observer of a gang rape trial in Michigan explained the acquittal this way, "I don't believe she was raped ... I believe they ran a train on her." CHRIS O'SULLIVAN, *Acquaintance Gang Rape on Campus*, in *ACQUAINTANCE RAPE: THE HIDDEN CRIME* (Andrea Parrot & Laurie Bechhofer, eds., 1991) at 140. A juror interviewed after the acquittal of the St. John's University lacrosse team explained the jury did not "want to ruin the boys' lives." JOSEPH FRIED, *St. John's Juror Tells of Doubts in Assault Case: He Went Along with Vote to Acquit*, N.Y. TIMES, Sept. 14, 1991, at 24.
 30. *Jury: Woman in Rape Case "Asked For It"*, CHI. TRIB. Oct. 6, 1989 at 11.
 31. See BROWNMILLER, *supra* note 7 at 31–34. For a comprehensive analysis of the prevalence of rape by soldiers and an argument challenging the inevitability of sexual violence by soldiers, see MADELINE MORRIS, *By Force of Arms: Rape: War and Military Culture*, 45 DUKE L. J. 651 (1996).
 32. BROWNMILLER, *supra* note 7 at 90–91.
 33. BAKER, K.K. (1999). Unwanted supply, unwanted demand. *Green Bag*, 2, 103, 110–112.
 34. For instance, we no longer (if we ever did) think the man who sires twelve children is somehow more masculine or in any way more accomplished than the man who sires two. We look at the quality of his relationships with his children, not the number of children.
 35. THORNHILL, R. & PALMER, C.T. (2000). *A natural history of rape: Biological bases of sexual coercion*. MIT Press. Cambridge, MA.
 36. KAFKA, M. (2003). The monoamine hypothesis for the pathophysiology of paraphilic disorders: An update, this volume.
 37. HENDERSON, L. (1992). Rape and responsibility. *Law and Philosophy*, 11, 127.
 38. RUSSELL, D. (1975). *The politics of rape: the victim's perspective*.
 39. As Carter and Giobbe write, prostitution is "rape that is bought and paid for." VEDNITA CARTER AND EVELINA GIOBBE, *Duet: Prostitution, Racism and Feminist Discourse*, 10 HASTINGS WOMEN'S L. J. 37, 46 (1999).
 40. "[W]hat they're buying, in a way, is power ... They can tell you what to do and you're supposed to please them, follow orders. Even in the case of masochists, who like to follow order themselves, you're still following his orders. Prostitution not only puts down women, but it puts down sex—it really puts down sex." "J" in *THE PROSTITUTION PAPERS* 25, 33 (Millett ed., 1975)(emphasis supplied). St. Albans, UK, Paladin.
 41. LEIDHOLDT, D. (1993). Prostitution: A violation of women's rights, *Cardozo Women's Law Journal*, 1, 133, 135 (emphasis supplied).
 42. "I close my eyes and ears. I cut out everything to do with feelings." CECILE HOIGARD & LIV FINSTAD, *BACKSTREETS: PROSTITUTION, MONEY AND LOVE* 65–66 (1992). Penn State Press, University Park, PA; "I was so numb I felt nothing." "J," *supra* note at 43. "You were the lowest of the low if you allowed yourself to feel anything with a trick ... The way you maintain your integrity is by acting all the way through." ROBERTA VICTOR in *STUDS TERKEL, WORKING* 91, 94 (1974). Pantheon. New York.
 43. MACKINNON, C. (2001). *Sex equality* (pp. 1422–1423).
 44. From the studies done, it appears that the average age of entry into the profession is somewhere between thirteen in San Francisco, MIMI SILBERT & AYALA PINES, *Occupations Hazards of Street Prostitutes*, 8 CRIM. JUST. BEHAV. 395, 397 (1981), and 15 and a half in Norway. See HOIGARD AND FINSTAD, *supra* note 42 at 76.

45. For a sample of statutory rape laws, see BAKER, *supra* note 23 at 575, n. 58.
46. See LEIDHOLDT, *supra* note 40 at n. 4.
47. ERBE, N. (1984). Prostitutes: Victims of men's exploitation and abuse. *Law & Inequality Journal*, 2, 609, 624 n. 117 (citing JENNIFER JAMES, *Prostitutes and Prostitution*, in *DEVIANTS: VOLUNTARY ACTORS IN A HOSTILE WORLD* 398, 402 (Edward Sagarin and Fred Monanima eds., 1977). General Learning Press. Morristown, NJ.
48. BARRY, K. (1995). *The prostitution of sexuality* (p. 39). NYU Press. New York.
49. This observation was first made by Robin West. See Robin West, *Legitimizing the illegitimate: A comment on 'Beyond Rape,'* 93 Colum. L. Rev. 1442, 1449 (1993).
50. *Mens rea* is a legal term used to describe criminal intent.