Male Rape: The Need for Recognition and Protection in Language and Law

Abstract
The issue of male-on-male rape remains a social taboo in the area of sexual violence, resulting in a lack of published works about the rape of men and widespread perception that the crime is uncommon. In order for male victims to feel comfortable seeking help, society must acknowledge that male rape is a prevalent crime beyond the myths stemming from homophobia. Through a critical analysis of the language in rape laws, the definitions in human rights instruments, and cognitive biases in the courtroom, this paper seeks to address concrete revisions that can be made in language and law to recognize the severity of the crime. The aim of this paper is to break the silence on male rape so that victims can begin to address the psychological, emotional, and physical damage from their attack.

Keywords: Male Rape; Sexual Violence; Law; Language; Psychology

Introduction

As the issue of rape has become more openly addressed in criminal law and human rights instruments over the years, there emerges the problem of defining a language that accurately and completely covers all aspects of this act of violence. Although male rape is nothing new, discussions of rape still focus mostly on the abuse of women by men. This bias is visibly evident in the term male rape itself. The fact that the word male has to be added in front of the word rape to indicate a male-on-male violation signifies that it is not a prototype in the more general category of rape. Eleanor Rosch discovered that people subconsciously identify some objects to have a higher “goodness of fit” than others, even if all of them technically fit under the definition of the category.1 If rape is generalized as a man doing the deed with the woman as the victim, that leaves victims of male rape very vulnerable because they are left unprotected. By examining the wording of rape laws and the definitions in human rights instruments, it will become clear that they generally only address rapes involving male perpetrators and female victims, which

discourages male victims from reporting the rape and prosecuting their attacker. Even if the male victim succeeds in attaining a trial, cognitive biases in the courtroom pertaining to homophobia further increase the difficulty of prosecution. In order to foster an environment that adequately addresses male rape, many changes have to occur both in the prevention and prosecution of this violent crime.

**Male-on-Male Rape: Where and Why?**

The most widely acknowledged setting where male-on-male rape takes place is behind prison walls. In a practice called protective pairing, new inmates who are more effeminate face violent attacks unless they are protected by a stronger inmate who often demands a sexual relationship in return.\(^2\,^3\) Prison officers have a difficult time distinguishing between consensual sex and rape because even in the latter the victim appears to be a willing participant. But since protective pairing results in forced coercion through the threat of physical violence, it is unmistakably still rape because the weaker inmate has little individual choice in the matter.

Contrary to popular belief, male rapes also take place outside prisons, particularly in environments where “male-on-male assault…is motivated not by homosexuality, but power, intimidation, and domination.”\(^4\) In particular, new members of athletic teams and fraternities often have to go through a period of hazing to cleanse them of their femininity and to ingrain the idea of a dominance hierarchy. One incident in Waynesville High School in 1988 involved senior members of a team forcing freshmen to touch each other’s genitals.\(^5\) Because athletics are a domain where power play is common, there is tradition for an older member to show a younger one who is in charge.

Recently, the issue of male rape in the military—which had long been brushed aside in the past—is finally being addressed due to the increase of men willing to share their traumatic experiences. Fresh in the Army after high school, Blake Stephens had to deal with verbal and physical assaults from older officers for years, including one particularly terrible incident in which “a group of men…shoved a soda bottle into his rectum and threw him backward off an elevated platform onto the hood of a car.”\(^6\) Complaints to his platoon sergeant and even a letter to Senator Barbara Boxer were of no avail.\(^7\) None of the men who had treated Stephens so inhumanely were prosecuted for their actions. Like many other men in the military who have experienced sexual assault, Stephens later suffered from PTSD, depression, and a host of other mental-health issues.

Clearly, there is widespread prevalence of male rape in everyday situations, yet not enough is being done to fix wrongs because of society’s tendency to ignore this troubling problem. I believe there are several primary reasons for the stigma behind male same-sex rape. In particular, the narrow definitions of rape in human rights instruments, the current wording of rape laws, and homophobia inside and outside the courtroom contribute to the inability of society to confront male rape. The rest of this paper will examine these linguistic and legal problems, and explore ways in which they can be addressed with the hopes of finally breaking the silence on male same-sex rape.

**Problems with Language in Defining Rape**

Human rights instruments that “contain the most comprehensive and meaningful definitions of sexual violence exclude men…reflecting and embedding the assumption that

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\(^6\) Ellison, “Male Rape in the Military.”

\(^7\) Ibid.
sexual violence is a phenomenon relevant only to women and girls.” Although gender-based violence should encompass attacks against both men and women, the United Nations (U.N.) has strictly made the term female-specific. The U.N. Declaration on Violence Against Women defines gender-based violence as: “any act…that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women.” Violence against women is a form of gender-based violence, but the U.N. seems to carelessly interchange the two terms. A search across the seventy-four-page U.N. Population Fund guide on gender-based violence comes up with multiple occurrences of the phrase violence against women but zero for violence against men. The website of the International Planned Parenthood Federation (IPPF) fares slightly better in broadening gender-based violence to include men. The webpage still mostly addresses the abuse of women, but includes a small footnote at the bottom that “gender-based violence can also be perpetrated against boys and men due to their sexual or gender identity.” Unfortunately, the IPPF ends it at that, leaving readers to believe that male sexual abuse is less of an important issue than sexual abuse faced by the opposite sex.

The language used in these international human rights publications to describe sexual assault has widespread implications on the way that society perceives gender-based violence. The fact that definitions are currently female-specific lead people to believe that female rape victims vastly outnumber male ones when that actually might not be the case. One study has shown that each year 290,000 men are raped just in prison settings alone, which is almost double the 162,640 women who reported rape in 1994. Human rights instruments carry much weight in

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10 Ibid.
forming perceptions on rape because they are consulted by health care providers who deal
directly with victims and by lawmakers looking to make changes in rape laws. In addition, if the
language defining sexual violence excludes men, they are further discouraged from reporting the
crime and seeking necessary medical attention because they feel that their victimization is
unrecognized. Given the scarcity of material on male rape, victims also miss critical information
in educational resources that help them come to terms with what happened, detail facts about
health risks such as HIV transmission, and provide other pertinent information.

An examination of the history of human rights can help to explain why male rape is not
recognized on an international level. Decades after the 1948 Universal Declaration of Human
Rights was passed, women’s rights were still largely neglected until the formation of feminist
organizations that spearheaded the international movement for women’s rights.13 Their efforts
pushed women’s rights to the forefront of issues in need of remedy. As a result, governments and
the U.N. published “well-researched documentation on the causes, consequences, and frequency
of violence against women, which helped frame the issue and give it saliency.”14 The U.N.
Convention on the Elimination of All Forms of Discrimination Against Women, adopted in
1994, has been called “the international bill of rights for women. ”15 Other numerous
accomplishments for women’s rights include passage of the Declaration on the Elimination of
Violence Against Women by the U.N. General Assembly in 1993.16 Because the early human
rights movement failed to include violence against women as an issue, the U.N. felt a need to
overcorrect for its mistakes, leading to human rights instruments that are female-specific. The
U.N. has framed sexual violence as a traumatizing experience that only women face, leaving
male rape victims out of the picture. It is interesting to think that if the human rights movement

14 Ibid., 626.
had included women’s issues from the beginning, the U.N. might have been able to address sexual violence in a way that included all genders.

Problems with Language in Rape Laws

Given that definitions of sexual violence largely address only women, it is not surprising that rape laws do the same. In the United States, rape laws differ from state to state, meaning that their applicability to people of different genders also vary. The rape laws of several states will be compared and contrasted below to examine how many of their wordings favor the protection of women against male perpetrators.

In Florida, rape requires carnal knowledge involving a female victim, which allows the defense to take advantage of this narrow wording when it comes to male-on-male rape. The case of *Washington v. State of Florida* in 1974 came about when the defendant was accused of raping another male inmate while in prison. In the appeal, his lawyers used the argument that “rape can only apply to the rape of one sex by another...[because] carnal knowledge is defined as being ‘sexual intercourse, that is the actual penetration of the male sexual organ into the sexual organ of the female.’”\(^\text{17}\) Although the court ended up denying the appeal by recognizing that carnal knowledge includes sexual acts besides intercourse, the fact that the defense included it at all in their argument indicates that the female-specific language in rape law is a troublesome loophole. Thus, the outcome of cases could depend on whether the judge follows judicial activism or judicial restraint. Judges who follow the latter philosophy may be unwilling to look beyond the scope of the text, leading them to view vaginal rape and anal rape as crimes of unequal severity.

The New York Penal Law defines sexual intercourse as having its ordinary meaning and anal sexual conduct as “contact between the penis and anus,”\(^\text{18}\) so that sex offenses of vaginal

\(^{17}\) Scarce, *Hidden Toll*, 209.

\(^{18}\) New York State Penal Law, §130.00.
rape and anal rape differ vastly in terms of punishment. Rape in the first degree, second degree, and third degree only recognize sexual intercourse, and they are all categorized as felonies (Class B, Class D, and Class E, respectively). On the other hand, anal sexual conduct is classified alongside “sexual conduct with an animal or a dead human body” as sexual misconduct. Sexual misconduct is not considered a felony, since it is only given a Class A misdemeanor, which means that male-on-male rapists face less severe sentences than males who rape females. The maximum term of sentences for felonies of Class B, Class D, and Class E are twenty-five years, seven years, and four years respectively while the maximum term of sentence for a Class A misdemeanor is only one year. The much lighter sentence for male same-sex offenders discourages men who have been raped from reporting their victimization, since they will feel that the trouble of going to court is not even worth the best outcome of a conviction.

Aside from differences in prison sentences, the diction surrounding the legal terminology of male rape “holds great symbolic meaning in terms of validation and the ways in which [men who have been raped] make sense of their victimization.” If a man who reports his rape is told that his victimization was not rape but sexual misconduct, he would feel that the police are not taking him seriously and perhaps even start blaming himself for what happened since the word misconduct suggests wrongful behavior. In addition, classifying male-on-male rape with bestiality and necrophilia is especially degrading, and it “reinforces the idea that male rape is more of a sexual perversion than a form of violence.” Distinguishing between vaginal rape and anal rape only contributes to the shame of male rape victims and highlights the homophobia present in rape law.

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19 New York State Penal Law, §130.25-35.
20 New York State Penal Law, §130.20.
21 New York State Penal Law, §70.00-70.15.
22 Scarce, Hidden Toll, 199.
23 Ibid., 199.
On a more positive note, Michigan’s revision in April 1975 to gender-neutralize its sexual assault statute shows the positive outcomes that can occur when male same-sex rape is just as acknowledged as prototypical rape. In 1983, four male students of Michigan State University reported that they had been raped by other men.\textsuperscript{24} This number was much higher than in previous years when reporting of this type of crime had been virtually nonexistent. The coordinator of the university’s sexual assault and safety education program claimed that the revision in the state’s rape law “created a climate in which men felt more comfortable in reporting the attacks.”\textsuperscript{25} Although this is only one isolated episode, it does serve to show that the language in law has far-reaching effects on shattering silence about rape. States with gender-neutral rape laws demonstrate that they are willing to take male same-sex rapes seriously, which encourages victims to speak out about their personal experiences.

**Homophobia and Masculinity**

The historical emphasis on men retaining an image of masculinity contributes to the atmosphere of homophobia that still lingers today. Heterosexual men who have been raped suffer from intense shame as they question their manhood and sexual identity, since they are expected as men to be able to fend off attacks. They decide to stay silent about their victimization because they are “shamed by the taboo of same-sex sexual contact.”\textsuperscript{26} Society prefers to turn a blind eye because recognizing that men can be raped acknowledges the fragility of masculinity. Unsurprisingly, this culture of homophobia and manhood further discourages reporting by making authorities insensitive to victims’ needs.

Inmates interviewed about rape in prison complain again and again that the biggest problem is the inadequate response of officers to complaints of rape. Officers make the mistake

\textsuperscript{24} Ibid., 201.
\textsuperscript{25} Ibid., 201.
\textsuperscript{26} Ibid.
of associating same-sex rape with homosexual sex, not recognizing that same-sex rape is usually an act of empowerment, not pleasure, for the rapist. When one Texas inmate tried to seek help from correctional staff, they simply left after making a rude comment that he “must be gay for letting [the aggressors] make him suck dick.”

Gay inmates have an even more difficult time convincing officials that they were raped. Many guards believe that sex between a gay prisoner and another man is always consensual, fueled by the stereotype that “gay men are attracted to all men and can’t control their desires.” Some guards even go as far as making homophobic comments to gay inmates that further encourage rape by other stronger inmates. The most common response from guards, however, is that inmates who are violated should protect themselves through violent retaliation. Guards often play the masculinity card by saying something among the lines of “Be a man. Stand up and fight.” This type of attitude forces the burden on inmates when it should be the officers who are responsible for oversight.

Most policemen lack training in dealing with male-on-male rapes, so their responses to such attacks are oftentimes dismissive and laced with stereotypes about same-sex rape. After this type of interaction with the police officer, male rape victims are not only refused proper investigations, but they also begin internalizing what the officer wants them to believe: that their promiscuous behavior motivated the assault, that the attack was not serious, and that men should be able to take care of themselves. Because interaction with the police is often the first time victims get a feel for how others will react, a negative experience can leave them even more psychologically damaged and withdrawn than before their report to authorities. Appearing bruised and shaken after being raped, one victim identified as Jonathan told a policeman that he

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29 “No Escape.”
30 Ibid.
31 Scarce, Hidden Toll, 216.
had been raped and wanted to go home. The officer coldly responded, “We’re not your taxi service” before driving away.\(^{32}\) Jonathan himself said that he was clearly dressed like a gay man, so it is likely that the officer refused to offer assistance after identifying the victim as gay. Other law enforcement officials pin the blame on the victim, suggesting that his style of clothing or effeminate behavior initiated the assault, similar to the sort of stereotyping that female rape victims are subjected to. The emphasis on masculinity in law enforcement culture causes policemen, who are mostly male, to sympathetic less with defenseless victims of the same sex. Plus, the nature of the job gives policemen power over civilians so that victims are too intimidated to press for further help when policemen show initial signs of disbelief that men can be raped by other men.

**Changes in Rape Definitions and Rape Laws**

The failure of human rights instruments to include male victims in their definitions of rape perpetuates the cultural norm of masculinity by indirectly asserting that men cannot be raped. While amending human rights canons to reflect the prevalence of male rape may not be one hundred percent effective in changing people’s perceptions on same-sex rape, it certainly would not hurt. More importantly, the collective effort by LGBT groups, civil liberties groups, feminist groups, and HIV/AIDS groups to advocate for sexual rights and health rights for all genders is key to tackling the problem of sexual violence.\(^ {33}\) It is important to remember that women’s rights became a dominant issue through the efforts of feminist grassroots organizations. If victims want male rape to be swiftly recognized as a human rights issue, they will also need to show similar initiative. Feminists who are wary that opening up gender-based violence to include

\(^{32}\) Ibid., 217.

men will take away attention from female rape victims should remember that treating sexual violence as something that only happens to women preserves the image of them as rape victims.

Rewriting laws so that the rape of men and the rape of women are equal in the eye of the law, and therefore result in the same severity of punishment for the rapist, is essential in reducing the occurrence of male rapes. This reform is not designed to make sexual violence against women any less significant, but to “acknowledge that men…deserve an [equal] avenue for justice and recourse against their attacker.”34 For example, the New York Penal Code can be revised to categorize anal sexual conduct alongside sexual intercourse as a state felony. The language in rape laws that describe male-on-male rape as “deviate” or “unlawful” also need to be adapted to remove the idea of subordinate behavior.35 The current wording of legal codes reflect a historical time when homophobia was even more prevalent than today, so as times change, legal reform should also redefine the archaic wording of laws.

The Rape Shield Laws passed in the 1970s were written to protect the past sexual histories of female rape victims who feared being humiliated when called to the witness stand. The laws were especially useful at preventing defense lawyers from taking advantage of the “inflammatory nature of prior sexual history” that resulted in high percentage of acquittals.36 Although the Rape Shield Laws were intended for female victims, legislators from most states did not specify the gender of the accused or the gender of the complaining witness when the bills were being written.37 For example, Pennsylvania’s Rape Shield Law states: “Evidence of specific instances of the alleged victim’s past sexual conduct, opinion evidence of the alleged victim’s past sexual conduct, and reputation evidence of the alleged victim’s past sexual conduct shall not

36 Kramer, “Rape Shield Laws,” 296.
37 Ibid., 301.
be admissible.” Thus, male victims of same-sex rape can make a strong claim that Rape Shield Laws also apply to them.

Indeed, courts in states where rape statutes are gender-neutral have held that Rape Shield Laws apply to male-on-male rape, despite the fact that legislative history has not upheld such an application. In Commonwealth v. Quartman, the Superior Court of Pennsylvania noted that the legislative intent of the Rape Shield Laws was to protect female victims of opposite-sex rape, but because the language of the state’s rape statute was now gender-neutral, extending the applicability of the Rape Shield Laws to male victims of same-sex rape was consistent. Because the application of rape shield laws to male-on-male rape depends on definitions of rape, gender-neutralizing statutes is critical for ensuring the complete applicability of the Rape Shield Laws to male victims. When rape statutes do not contain gender-neutral language, courts are wary of extending the scope of Rape Shield Laws. In State v. Dixon, the Missouri Court of Appeals held off on applying the Rape Shield Law to male same-sex rape victims because at the time the state statute defined rape as “penetration…of the female sex organ by the male sex organ.” As frustrating as the outcome of that case may be for advocates of equal protection, the court was doing its job by respecting what was written in the law.

Although the Rape Shield Law has performed well in barring prior sexual history from being a factor in criminal court cases, one additional protection should be added on for men who are raped. One fear that female rape victims do not have to worry about, but male rape victims do, is that jurors’ discrimination against homosexuality can influence the outcome of the case. Especially if the victim is gay, the many stereotypes that mischaracterize homosexuality can lead jurors to decide early on to acquit the rapist without having heard all the evidence. Once jurors

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39 Kramer, “Rape Shield Laws,” 301.
40 Ibid., 302.
41 Ibid., 302.
commit to these early tentative verdicts, confirmation bias in the courtroom can lead them to subconsciously give weight to evidence that already align with their views.\(^\text{42}\) In order to prevent prejudice against homosexuality from determining the outcome of the case, Rape Shield Laws should also limit the admission of sexual orientation in court.

**Initiating Change Outside Legal Reform**

Although revising laws is desperately needed to ensure the protection of male rape victims, it may not always lead to the practical outcomes we want to see. Military laws defining rape and sexual assault are gender-neutral,\(^\text{43}\) but male-on-male rape still remains largely hidden in the traditional military culture that takes pride in its reputation. In 2010, a Pentagon survey on active-duty soldiers who had been raped revealed the reasons they refused to report: “a third said they didn’t think anything would be done, and almost 30 percent said they were afraid of retaliation or reprisals.”\(^\text{44}\) In a military system that emphasizes ranks, the commander who refuses to take action prioritizes promotion over the safety of his men. He is afraid that word getting out of same-sex rape incidents will tarnish the image of his unit, and thus ruin his chances of retiring as a decorated officer. In this case, it is the military culture, not the law, that is at the crux of the problem. Demoting commanding officers who do not follow through with prosecutions of reported rapes is harsh but necessary to get the message across. Military procedures for prosecuting crimes of rape are also in need of revision to increase their effectiveness. Reports of sexual violence are currently handled by commanding officers, but perhaps establishing an outside support system to handle these cases would result in more reports and more prosecutions. Convincing the staunchly traditional military to make changes will take time, but it is a problem we have to confront for the sake of our soldiers.

\(^{43}\) U.S. Code, §920.120
\(^{44}\) Ellison, “Male Rape in the Military.”
Similarly, if the culture of rape in incarcerated settings is ever to be subdued, criminal prosecutions of male-on-male rape need to be fully carried out by authorities so that guilty inmates realize the repercussions their actions have on their prison sentence. Preventative measures to stop rapes from happening in the first place are also essential. Two-man cells, which have become more common due to overcrowding in American prisons, force inmates to live together in intimate settings, which pose much higher risk of sexual abuse than one-man cells.\textsuperscript{45} If single cells are not possible due to space constraints, prison officials should at least pay attention to roommate compatibility when assigning spaces.

Recalling how policemen often mishandle cases of male rape, sensitivity training must be provided so that they can better understand victims’ mentality. Seattle policemen were required to go through a male rape sensitivity program in the early 1980s. The exercise aimed to generate more sympathy and understanding amongst officers after asking them to imagine that they were being raped.\textsuperscript{46} Granted, there are other more effective methods that generate sensitivity for male same-sex rape without requiring imagined scenarios of rape. Because most of the ignorance about male rape comes from a lack of experience in dealing with such cases, simply incorporating more information about same-sex sexual violence into law enforcement training can help officers a great deal in working with victims.\textsuperscript{47} Useful information for officers to know can include the importance of collecting evidence as soon as possible after an attack has occurred.

\textbf{Conclusion}

Male victims of same-sex rape face an uphill battle when it comes to convincing authorities that they have been raped. It is unfortunate that they have to go through such

\textsuperscript{45} “No Escape.”
\textsuperscript{46} Scarce, \textit{Hidden Toll}, 253.
\textsuperscript{47} Ibid., 254.
traumatizing experiences both during and after the attack, only to rarely end up seeing their aggressors prosecuted. Identifying the core problems behind the stigma of male rape—narrow definitions in human rights instruments, female-specific rape statutes, homophobia, and the emphasis on male masculinity—means that we can begin tackling these problems one by one. Initiating any of these changes though requires letting go of old prejudices about sex between men, which is especially challenging because it involves changes in human attitudes. In the short run, strengthening avenues of support for victims will go far in assuring them that they do not have to face the problem alone. Fostering an environment where both men and women can walk freely without fear of sexual assault is the ideal end goal, but given its difficulty it will no doubt take the most time to see any visible changes. Men who have been raped deserve support and justice for their victimization just as much as their female counterparts. As efforts are made to eliminate sexual violence, we have to make sure that male rape victims are not left behind.
Bibliography


