Rape:
On Coercion and Consent

Catharine A. MacKinnon

Negotiations for sex are not carried on like those for the rent of a house. There is often no definite state on which it can be said that the two have agreed to sexual intercourse. They proceed by touching, feeling, fumbling, by signs and words which are not generally in the form of a Roman stipulation.

—Honoré,
twentieth-century British
legal scholar and philosopher

If you're living with a man, what are you doing running around the streets getting raped?

—Edward Harrington, defense
attorney in New Bedford
gang rape case

If sexuality is central to women's definition and forced sex is central to sexuality, rape is indigenous, not exceptional, to women's social condition. In feminist analysis, a rape is not an isolated event or moral transgression or individual interchange gone wrong but an act of terrorism and torture within a systemic context of group subjection, like lynching. The fact that the state calls rape a crime opens an inquiry into the state's treatment of rape as an index to its stance on the status of the sexes.

Under law, rape is a sex crime that is not regarded as a crime when it looks like sex. The law, speaking generally, defines rape as intercourse with force or coercion and without consent.[1] Like sexuality under male supremacy, this definition assumes the sadomasochistic definition of sex: intercourse with force or coercion

Rape is an extension of sexism in some ways, and that's an extension of dealing with a woman as an object . . . Stinky [her rapist] seemed to me as though he were only a step further away, a step away from the guys who sought me on the streets, who insist, my mother could have died, I could be walking down the street and if I don't answer their rap, they got to go get angry and get all hostile and stuff as though I walk down the street as a . . . that my whole being is there to please men in the streets. But Stinky only seemed like someone who had taken it a step further . . . he felt like an extension, he felt so common, he felt so ordinary, he felt so familiar, and it was maybe that what frightened me the most was that how similar to other men he seemed. They don't come from Mars, folks.

—Carolyn Craven, reporter

can be or become consensual. It assumes pornography's positive-outcome-rape scenario: dominance plus submission is force plus consent. This equals sex, not rape. Under male supremacy, this is too often the reality. In a critique of male supremacy, the elements "with force and without consent" appear redundant. Force is present because consent is absent.

Like heterosexuality, male supremacy's paradigm of sex, the crime of rape centers on penetration.[2] The law to protect women's sexuality from forcible violation and expropriation defines that protection in male genital terms. Women do resent forced penetration. But penile invasion of the vagina may be less pivotal to women's sexuality, pleasure, or violation, than it is to male sexuality. This definitive element of rape centers upon a male-defined loss. It also centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity. Analysis of rape in terms of concepts of property, often invoked in Marxian analysis to criticize this disparity, fail to encompass the realities of rape.[3] Women's sexuality is, socially, a thing to be stolen, sold, bought, bartered, or exchanged by others. But women never own or possess it, and men never treat it, in law or in life, with the solicitude with which they treat property. To be property would be an improvement. The moment women "have" it—"have sex" in the dual gender/sexuality sense—it is lost as theirs. To have it is to have it taken away. This may explain the male incomprehension that, once a woman has had sex, she loses anything when subsequently raped.

To them women have nothing to lose. It is true that dignitary harms, because nonmaterial, are ephemeral to the legal mind. But women's loss through rape is not only less tangible; it is seen as unreal. It is difficult to avoid the conclusion that penetration itself is considered a violation from the male point of view, which is both why it is the centerpiece of sex and why women's sexuality, women's gender definition, is stigmatic. The question for social explanation becomes not why some women tolerate rape but how any women manage to resent it.

Rape cases finding insufficient evidence of force reveal that acceptable sex, in the legal perspective, can entail a lot of force. This is both a result of the way specific facts are perceived and interpreted within the legal system and the way the injury is defined by law. The level of acceptable force is adjudicated starting just above the level set by what is seen as normal male sexual behavior, including the normal level of force, rather than at the victim's, or women's, point of violation.[4] In this context, to seek to define rape as violent not sexual is as understandable as it is futile. Some feminists have reinterpreted rape as an act of violence, not sexuality, the threat of which intimidates all women.[5] Others see rape, including its violence, as an expression of male sexuality, the social imperatives of which define as well as threaten all women.[6] The first, epistemologically in the liberal tradition, comprehends rape as a displacement of power based on physical force onto sexuality, a preexisting natural sphere to which domination is alien. Susan Brownmiller, for example, examines rape in riots, wars, pogroms, and revolutions; rape by police, parents, prison guards; and rape motivated by racism. Rape in normal circumstances, in everyday life, in ordinary relationships, by men as men, is barely mentioned.[7] Women are raped by guns, age, white supremacy, the state—only derivatively by the penis. The view that derives most directly from victims' experiences, rather than from their denial, construes sexuality as a social sphere of male power to which forced sex is paradigmatic. Rape is not less sexual for being violent. To the extent that coercion has become integral to male sexuality, rape may even be sexual to the degree that, and because, it is violent.

The point of defining rape as "violence not sex" has been to claim an ungendered and nonsexual ground for affirming sex (heterosexuality) while rejecting violence (rape). The problem remains what it has always been: telling the difference. The convergence of sexuality with violence, long used at law to deny the reality of women's violation, is recognized by rape survivors with a difference: where the legal system has seen the intercourse in rape, victims see the rape in intercourse. The uncoerced context for sexual expression becomes as elusive as the physical acts come to feel indistinguishable. Instead of asking what is the violation of rape, their experience suggests that the more relevant question is, what is the nonviolation of intercourse? To know what is wrong with rape, know what is right about sex. If this, in turn, proves difficult, the difficulty is as instructive as the difficulty men have in telling the difference when women see one. Perhaps the wrong of rape has proved so difficult to define because the unquestionable starting point has been that rape is defined as distinct from intercourse,[8] while for women it is difficult to distinguish the two under conditions of male dominance.

In the name of the distinction between sex and violence, reform of rape statutes has sought to redefine rape as sexual assault.[9] Usually, assault is not consented to in law; either it cannot be consented to, or consensual assault remains assault.[10] Yet sexual assault consented to is intercourse, no matter how much force was used. The substantive reference point implicit in existing legal standards is the sexually normative level of force. Until this norm is confronted as such, no distinction between violence and sexuality will prohibit more instances of women's experienced violation than does the existing definition. Conviction rates have not increased under the reform statutes.[11] The question remains what is seen as force, hence as violence, in the sexual arena.[12] Most rapes, as women live them, will not be seen to violate women until sex and violence are confronted as mutually definitive rather than as mutually exclusive. It is not only men convicted of rape who believe that the only thing they did that was different from what men do all the time is get caught.

Consent is supposed to be women's form of control over intercourse, different from but equal to the custom of male initiative. Man proposes, woman disposes. Even the ideal in it is not mutual. Apart from the disparate consequences of refusal, this model does not envision a situation the woman controls being placed in, or choices she frames. Yet the consequences are attributed to her as if the sexes began at arm's length, on equal terrain, as in the contract fiction. Ambiguous cases of consent in law are archetypically referred to as "half won arguments in parked cars."[13] Why not half lost? Why isn't half enough? Why is it an argument? Why do men still want "it," feel entitled to "it," when women do not want them? The law of rape presents consent as free exercise of sexual choice under conditions of equality of power without exposing the underlying structure of constraint and disparity. Fundamentally, desirability to men is supposed a woman's form of power because she can both arouse it and deny its fulfillment. To woman is attributed both the cause of man's initiative and the denial of his satisfaction.

This rationalizes force. Consent in this model becomes more a metaphysical quality of a woman's being than a choice she makes and communicates. Exercise of women's so-called power presupposes more fundamental social powerlessness.[14]

The law of rape divides women into spheres of consent according to indices of relationship to men. Which category of presumed consent a woman is in depends upon who she is relative to a man who wants her, not what she says or does. These categories tell men whom they can legally fuck, who is open season, and who is off limits, not how to listen to women. The paradigm categories are the virginal daughter and other young girls, with whom all sex is proscribed, and the whorelike wives and prostitutes, with whom no sex is proscribed. Daughters may not consent; wives and prostitutes are assumed to, and cannot but.[15] Actual consent or nonconsent, far less actual desire, is comparatively irrelevant. If rape laws existed to enforce women's control over access to their sexuality, as the consent defense implies, no would mean no, marital rape would not be a widespread exception,[16] and it would not be effectively legal to rape a prostitute.

All women are divided into parallel provinces, their actual consent counting to the degree that they diverge from the paradigm case in their category. Virtuous women, like young girls, are unconsenting, virginal, rapable. Unvirtuous women, like wives and prostitutes, are consenting, whores, unrapable. The age line under which girls are presumed disabled from consenting to sex, whatever they say, rationalizes a condition of sexual coercion which women never outgrow. One day they cannot say yes, and the next day they cannot say no. The law takes the most aggravated case for female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness. This defines those above the age line as powerful, whether they actually have power to consent or not. The vulnerability girls share with boys—age—dissipates with time. The vulnerability girls share with women—gender—does not. As with protective labor laws for women only, dividing and protecting the most vulnerable becomes a device for not protecting everyone who needs it, and also may function to target those singled out for special protection for special abuse. Such protection has not prevented high rates of sexual abuse of children and may contribute to eroticizing young girls as forbidden.

As to adult women, to the extent an accused knows a woman and they have sex, her consent is inferred. The exemption for rape in marriage is consistent with the assumption underlying most adjudications of forcible rape: to the extent the parties relate, it was not really rape, it was personal.[17] As marital exemptions erode, preclusions for cohabitants and voluntary social companions may expand. As a matter of fact, for this purpose one can be acquainted with an accused by friendship or by meeting him for the first time at a bar or a party or by hitchhiking. In this light, the partial erosion of the marital rape exemption looks less like a change in the equation between women's experience of sexual violation and men's experience of intimacy, and more like a legal adjustment to the social fact that acceptable heterosexual sex is increasingly not limited to the legal family. So although the rape law may not now always assume that the woman consented simply because the parties are legally one, indices of closeness, of relationship ranging from nodding acquaintance to living together, still contraindicate rape. In marital rape cases, courts look for even greater atrocities than usual to undermine their assumption that if sex happened, she wanted it.[18]

This approach reflects men's experience that women they know do meaningfully consent to sex with them. *That* cannot be rape; rape must be by someone else, someone unknown. They do not rape women they know. Men and women are unequally socially situated with regard to the experience of rape. Men are a good deal more likely to rape than to be raped. This forms their experience, the material conditions of their epistemological position. Almost half of all women, by contrast, are raped or victims of attempted rape at least once in their lives. Almost 40 percent are victims of sexual abuse in childhood.[19] Women are more likely to be raped than to rape and are most often raped by men whom they know.[20]

Men often say that it is less awful for a woman to be raped by someone she is close to: "The emotional trauma suffered by a person victimized by an individual with whom sexual intimacy is shared as a normal part of an ongoing marital relationship is not nearly as severe as that suffered by a person who is victimized by one with whom that intimacy is not shared."[21] Women often feel as or more traumatized from being raped by someone known or trusted, someone with whom at least an illusion of mutuality has been shared, than by some stranger. In whose interest is it to believe that it is not so bad to be raped by someone who has fucked you before as by someone who has not? Disallowing charges of rape in marriage may, depending upon one's view of normalcy, "remove a substantial obstacle to the resumption of normal marital relationships."[22] Note that the obstacle is not the rape but the law against it. Apparently someone besides feminists finds sexual victimization and sexual intimacy not all that contradictory under current conditions. Sometimes it seems as though women and men live in different cultures.

Having defined rape in male sexual terms, the law's problem, which becomes the victim's problem, is distinguishing rape from sex in specific cases. The adjudicated line between rape and intercourse commonly centers on some assessment of the woman's "will." But how should the law or the accused know a woman's will? The answer combines aspects of force with aspects of nonconsent with elements of resistance, still effective in some states.[23] Even when nonconsent is not a legal element of the offense, juries tend to infer rape from evidence of force or resistance. In Michigan, under its reform rape law, consent was judicially held to be a defense even though it was not included in the statute.[24]

The deeper problem is that women are socialized to passive receptivity; may have or perceive no alternative to acquiescence; may prefer it to the escalated risk of injury and the humiliation of a lost fight; submit to survive. Also, force and desire are not mutually exclusive under male supremacy. So long as dominance is eroticized, they never will be. Some women eroticize dominance and submission; it beats feeling forced. Sexual intercourse may be deeply unwanted, the woman would never have initiated it, yet no force may be present. So much force may have been used that the woman never risked saying no. Force may be used, yet the woman may prefer the sex—to avoid more force or because she, too, eroticizes dominance. Women and men know this. Considering rape as violence not sex evades, at the moment it most seems to confront, the issue of who controls women's sexuality and the dominance/submission dynamic that has defined it. When sex is violent, women may have lost control over what is done to them, but absence of force does not ensure the presence of that control. Nor, under conditions of male dominance, does the presence of force make an interaction nonsexual. If sex is normally something men do to women, the issue is less whether there was force than whether consent is a meaningful concept.[25]

To explain women's gender status on a rape theory, Susan Brownmiller argues that the threat of rape benefits all men.[26] How is unspecified. Perhaps it benefits them sexually, hence as a gender: male initiatives toward women carry the fear of rape as support for persuading compliance, the resulting appearance of which has been considered seduction and termed consent. Here the victims' perspective grasps what liberalism applied to women denies: that forced sex as sexuality is not exceptional in relations between the sexes but constitutes the social meaning of gender. "Rape is a man's act, whether it is a male or a female man and whether it is a man relatively permanently or relatively temporarily; and being raped is a woman's experience, whether it is a female or a male woman and whether it is a woman relatively permanently or relatively temporarily."[27] To be rapable, a position that is social not biological, defines what a woman is.

Marital rape and battery of wives have been separated by law. A feminist analysis suggests that assault by a man's fist is not so different from assault by a penis, not because both are violent but because both are sexual. Battery is often precipitated by women's noncompliance with gender requirements.[28] Nearly all incidents occur in the home, most in the kitchen or bedroom. Most murdered women are killed by their husbands or boyfriends, usually in the bedroom. The battery cycle accords with the rhythms of heterosexual sex.[29] The rhythm of lesbian sadomasochism is the same.[30] Perhaps violent interchanges, especially between genders, make sense in sexual terms.

The larger issue raised by sexual aggression for the interpretation of the relation between sexuality and gender is: what is heterosexuality? If it is the erotization of dominance and submission, altering the participants' gender does not eliminate the sexual, or even gendered, content of aggression. If heterosexuality is males over females, gender matters independently. Arguably, heterosexuality is a fusion of the two, with gender a social outcome, such that the acted upon is feminized, is the "girl" regardless of sex, the actor correspondingly masculinized. Whenever women are victimized, regardless of the biology of the perpetrator, this system is at work. But it is equally true that whenever powerlessness and ascribed inferiority are sexually exploited or enjoyed—based on age, race, physical stature or appearance or ability, or socially reviled or stigmatized status—the system is at work.

Battery thus appears sexual on a deeper level. Stated in boldest terms, sexuality is violent, so perhaps violence is sexual. Violence against women is sexual on both counts, doubly sexy. If this is so, wives are beaten, as well as raped, as women—as the acted upon, as gender, meaning sexual, objects. It further follows that acts by anyone which treat a woman according to her object label, woman, are in a sense sexual acts. The extent to which sexual acts are acts of objectification remains a question of one's account of women's freedom to live their own meanings as other than illusions, of individuals' ability to resist or escape, even momentarily, prescribed social meanings short of political change. Clearly, centering sexuality upon genitality distinguishes battery from rape at exactly the juncture that both existing law, and seeing rape as violence not sex, do.

Most women get the message that the law against rape is virtually unenforceable as applied to them. Women's experience is more often delegitimated by this than the law is. Women, as realists, distinguish between rape and experiences of sexual violation by concluding that they have not "really"

been raped if they have ever seen or dated or slept with or been married to the man, if they were fashionably dressed or not provably virgin, if they are prostitutes, if they put up with it or tried to get it over with, if they were force-fucked for years. The implicit social standard becomes: if a woman probably could not prove it in court, it was not rape.

The distance between most intimate violations of women and the legally perfect rape measures the imposition of an alien definition. From women's point of view, rape is not prohibited; it is regulated. Even women who know they have been raped do not believe that the legal system will see it the way they do. Often they are not wrong. Rather than deterring or avenging rape, the state, in many victims' experiences, perpetuates it. Women who charge rape say they were raped twice, the second time in court. Under a male state, the boundary violation, humiliation, and indignity of being a public sexual spectacle makes this more than a figure of speech.[31]

Rape, like many other crimes, requires that the accused possess a criminal mind (*mens rea*) for his acts to be criminal. The man's mental state refers to what he actually understood at the time or to what a reasonable man should have understood under the circumstances. The problem is that the injury of rape lies in the meaning of the act to its victim, but the standard for its criminality lies in he meaning of the act to the assailant. Rape is only an injury from women's point of view. It is only a crime from the male point of view, explicitly including that of the accused.

The crime of rape is defined and adjudicated from the male standpoint, presuming that forced sex is sex and that consent to a man is freely given by a woman. Under male supremacist standards, of course, they are. Doctrinally, this means that the man's perceptions of the woman's desires determine whether she is deemed violated. This might be like other crimes of subjective intent if rape were like other crimes. With rape, because sexuality defines gender norms, the only difference between assault and what is socially defined as a noninjury is the meaning of the encounter to the woman. Interpreted this way, the legal problem has been to determine whose view of that meaning constitutes what really happened, as if what happened objectively exists to be objectively determined. This task has been assumed to be separable from the gender of the participants and the gendered nature of their exchange, when the objective norms and the assailant's perspective are identical.

As a result, although the rape law oscillates between subjective tests and objective standards invoking social reasonableness, it uniformly presumes a single underlying reality, rather than a reality split by the divergent meanings inequality produces. Many women are raped by men who know the meaning of their acts to their victims perfectly well and proceed anyway.[32] But women are also violated every day by men who have no idea of the meaning of their acts to the women. To them it is sex. Therefore, to the law it is sex. That becomes the single reality of what happened. When a rape prosecution is lost because a woman fails to prove that she did not consent, she is not considered to have been injured at all. It is as if a robbery victim, finding himself unable to prove he was not engaged in philanthropy, is told he still has his money. Hermeneutically unpacked, the law assumes that, because the rapist did not perceive that the woman did not want him, she was not violated. She had sex. Sex itself cannot be an injury. Women have sex every day. Sex makes a woman a woman. Sex is what women are for.

Men set sexual mores ideologically and behaviorally, define rape as they imagine women to be sexually violated through distinguishing that from their image of what they normally do, and sit in judgment in most accusations of sex crimes. So rape comes to mean a strange (read Black) man who does not know his victim but does know she does not want sex with him, going ahead anyway. But men are systematically conditioned not even to notice what women want. Especially if they consume pornography, they may have not a glimmer of women's indifference or revulsion, including when women say no explicitly. Rapists typically believe the woman loved it. "Probably the single most used cry of rapist to victim is 'You bitch . . . slut . . . you know you want it. You all want it' and afterward, 'there now, you really enjoyed it, didn't you?' "[33] Women, as a survival strategy, must ignore or devalue or mute desires, particularly lack of them, to convey the impression that the man will get what he wants regardless of what they want. In this context, to measure the genuineness of consent from the individual assailant's point of view is to adopt as law the point of view which creates the problem. Measuring consent from the socially reasonable, meaning objective man's, point of view reproduces the same problem under a more elevated label.[34]

Men's pervasive belief that women fabricate rape charges after consenting to sex makes sense in this light. To them, the accusations are false because, to them, the facts describe sex. To interpret such events as rapes distorts their experience. Since they seldom consider that their experience of the real is anything other than reality, they can only explain the woman's version as maliciously invented. Similarly, the male anxiety that rape is easy to charge and difficult to disprove, also widely believed in the face of overwhelming evidence to the contrary, arises because rape accusations express one thing men cannot seem to control: the meaning to women of sexual encounters.

Thus do legal doctrines, incoherent or puzzling as syllogistic logic, become coherent as ideology. For example, when an accused wrongly but sincerely believes that a woman he sexually forced consented, he may have a defense of mistaken belief in consent or fail to satisfy the mental requirement of knowingly proceeding against her will.[35] Sometimes his knowing disregard is measured by what a reasonable man would disregard. This is considered an objective test. Sometimes the disregard need not be reasonable so long as it is sincere. This is considered a subjective test. A feminist inquiry into the distinction between rape and intercourse, by contrast, would inquire into the meaning of the act from women's point of view, which is neither. What is wrong with rape in this view is that it is an act of subordination of women to men. It expresses and reinforces women's inequality to men. Rape with legal impunity makes women second-class citizens.

This analysis reveals the way the social conception of rape is shaped to interpret particular encounters and the way the legal conception of rape authoritatively shapes that social conception. When perspective is bound up with situation, and situation is unequal, whether or not a contested interaction is authoritatively considered rape comes down to whose meaning wins. If sexuality is relational, specifically if it is a power relation of gender, consent is a communication under conditions of inequality. It transpires somewhere between what the woman actually wanted, what she was able to express about what she wanted, and what the man comprehended she wanted.

Discussing the conceptually similar issue of revocation of prior consent, on the issue of the conditions under which women are allowed to control access to their sexuality from one penetration to the next, one commentator notes: "Even where a woman revokes prior consent, such is the male ego that, seized of an exaggerated assessment of his sexual prowess, a man might genuinely believe her still to be consenting; resistance may be misinterpreted as enthusiastic cooperation; protestations of pain or disinclination, a spur to more sophisticated or more ardent love-making; a clear statement to stop, taken as referring to a particular intimacy rather than the entire performance."[36] This vividly captures common male readings of women's indications of disinclination under many circumstances[37] and the perceptions that determine whether a rape occurred. The specific defense of mistaken belief in consent merely carries this to its logical apex. From whose standpoint, and in whose interest, is a law that allows one person's conditioned unconsciousness to contraindicate another's violation? In conceiving a cognizable injury from the viewpoint of the reasonable rapist, the rape law affirmatively rewards men with acquittals for not comprehending women's point of view on sexual encounters.

Whether the law calls this coerced consent or defense of mistaken belief in consent, the more the sexual violation of women is routine, the more pornography exists in the world the more legitimately, the more beliefs equating sexuality with violation become reasonable, and the more honestly women can be defined in terms of their fuckability. It would be comparatively simple if the legal problem were limited to avoiding retroactive falsification of the accused's state of mind. Surely there are incentives to lie. The deeper problem is the rape law's assumption that a single, objective state of affairs existed, one that merely needs to be determined by evidence, when so many rapes involve honest men and violated women. When the reality is split, is the woman raped but not by a rapist? Under these conditions, the law is designed to conclude that a rape did not occur. To attempt to solve this problem by adopting reasonable belief as a standard without asking, on a substantive social basis, to whom the belief is reasonable and why—meaning, what conditions make it reasonable—is onesided: male-sided.[38] What is it reasonable for a man to believe concerning a woman's desire for sex when heterosexuality is compulsory? What is it reasonable for a man (accused or juror) to believe concerning a woman's consent when he has been viewing positive-outcome-rape pornography?[39] The one whose subjectivity becomes the objectivity of "what happened" is a matter of social meaning, that is, a matter of sexual politics. One-sidedly erasing women's violation or dissolving presumptions into the subjectivity of either side are the alternatives dictated by the terms of the object/subject split, respectively. These alternatives will only retrace that split to women's detriment until its terms are confronted as gendered to the ground.

NOTES

1. W. LaFave and A. Scott, *Substantive Criminal Law* (St. Paul: West, 1986), sec. 5.11 (pp. 688–9); R. M. Perkins and R. N. Boyce, *Criminal Law* (Mineola, N.Y.: Foundation Press, 1980), p. 210.

2. One component of Sec. 213.0 of the Model Penal Code (Philadelphia: American Law Institute, 1980) defines rape as sexual intercourse with a female not the wife of the perpetrator, "with some penetration however slight." Most states follow. New York requires penetration (sec. 130.00 [I]). Michigan's gender-neutral sexual assault statute includes penetration by objects (sec. 750.520 a[h];

720.520[b]). The 1980 Annotation to Model Penal Code (Official Draft and Revised Comments, sec. 213.1[d]) questions and discusses the penetration requirement at 346–48. For illustrative case law, see Liptroth v. State, 335 So.2d 683 (Ala. Crim. App. 1976), *cert. denied* 429 U.S. 963 (1976); State v. Kidwell, 556 P.2d 20, 27 Ariz. App. 466 (Ariz. Ct. App. 1976); People v. O'Neal, 50 Ill. App. 3d 900, 365 N.E. 2d 1333 (Ill. App. Ct. 1977); Commonwealth v. Usher, 371 A.2d 995 (Pa. Super. Ct. 1977); Commonwealth v. Grassmyer, 237 Pa. Super. 394, 352 A.2d 178 (Pa. Super. Ct. 1975) (statutory rape conviction reversed because defendant's claim that five-year-old child's vaginal wound was inflicted with a broomstick could not be disproved and commonwealth could therefore not prove requisite penetration; indecent assault conviction sustained). Impotence is sometimes a defense and can support laws that prevent charging underage boys with rape or attempted rape; Foster v. Commonwealth, 31 S.E. 503, 96 Va. 306 (1896) (boy under fourteen cannot be guilty of attempt to commit offense that he is legally assumed physically impotent to perpetrate).

3. In the manner of many socialist-feminist adaptations of marxian categories to women's situation, to analyze sexuality as property short-circuits analysis of rape as male sexuality and presumes rather than develops links between sex and class. Concepts of property need to be rethought in light of sexuality as a form of objectification. In some ways, for women legally to be considered property would be an improvement, although it is not recommended.

4. For contrast between the perspectives of the victims and the courts, see Rusk v. State, 43 Md. App. 476, 406 A.2d 624 (Md. Ct. Spec. App. 1979) (*en banc banc*), *rev'd*, 289 Md. 230, 424 A.2d 720 (1981); Gonzales v. State, 516 P.2d 592 (1973).

5. Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Simon and Schuster, 1975), p. 15.

6. Diana E. H. Russell, *The Politics of Rape: The Victim's Perspective* (New York: Stein and Day, 1977); Andrea Medea and Kathleen Thompson, *Against Rape* (New York: Farrar, Straus and Giroux, 1974); Lorenne M. G. Clark and Debra Lewis, *Rape: The Price of Coercive Sexuality* (Toronto: Women's Press, 1977); Susan Griffin, "Rape: The All-American Crime," *Ramparts* (September 1971), pp. 26–35. Ti-Grace Atkinson connects rape with "the institution of sexual intercourse," *Amazon Odyssey: The First Collection of Writings by the Political Pioneer of the Women's Movement* (New York: Links Books, 1974), pp. 13–23. Kalamu ya Salaam, "Rape: A Radical Analysis from the African-American Perspective," in *Our Women Keep Our Skies from Falling* (New Orleans: Nkombo, 1980), pp. 25–40.

7. Racism is clearly everyday life. Racism in the United States, by singling out Black men for allegations of rape of white women, has helped obscure the fact that it is men who rape women, disproportionately women of color.

8. Pamela Foa, "What's Wrong with Rape?" in *Feminism and Philosophy*, ed. Mary Vetterling-Braggin, Frederick A. Elliston, and Jane English (Totowa, N.J.: Littlefield, Adams, 1977), pp. 347–59; Michael Davis, "What's So Bad about Rape?" (Paper presented at the annual meeting of the Academy of Criminal Justice Sciences, Louisville, Ky., March 1982). "Since we would not want to say that there is anything morally wrong with sexual intercourse per se, we conclude that the wrongness of rape rests with the matter of the woman's consent"; Carolyn M. Shafer and Marilyn Frye, "Rape and Respect," in Vetterling-Braggin, Elliston, and English, *Feminism and Philosophy*, p. 334. "Sexual contact is not inherently harmful, insulting or provoking. Indeed, ordinarily it is something of which we are quite fond. The difference is [that] ordinary sexual intercourse is more or less consented to while rape is not"; Davis, "What's So Bad?" p. 12.

9. Liegh Bienen, "Rape III—National Developments in Rape Reform Legislation," 6 *Women's Rights Law Reporter* 170 (1980). See also Camille LeGrande, "Rape and Rape Laws: Sexism in Society and Law," 61 *California Law Review* 919 (May 1973).

10 People v. Samuels, 58 Cal. Rptr. 439, 447 (1967).

11. Julia R. Schwendinger and Herman Schewendinger, *Rape and Inequality* (Berkeley: Sage Library of Social Research, 1983), p. 44; K. Polk, "Rape Reform and Criminal Justice Processing," *Crime and Delinquency* 31 (April 1985): 191–05. "What can be concluded about the achievement of the underlying goals of the rape reform movement? . . . If a major goal is to increase the probability of convictions, then the results are slight at best . . . or even negligible" (p. 199) (California data). See also P. Bart and P. O'Brien. *Stopping Rape: Successful Survival Strategies* (Elmsford, N.Y.: Pergamon, 1985). pp. 129–31.

12. See State v. Alston, 310 N.C. 399, 312 S.E. 2d 470 (1984) and discussion in Susan Estrich, *Real Rape* (Cambridge: Harvard University Press, 1987), pp. 60–62.

13. Note, "Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard," 62 *Yale Law Journal* 55 (1952).

14. A similar analysis of sexual harassment suggests that women have such "power" only so long as they behave according to male definitions of female desirability, that is, only so long as they accede to the definition of their sexuality (hence, themselves, as gender female) on male terms. Women have this power, in other words, only so long as they remain powerless.

15. See Comment, "Rape and Battery between Husband and Wife," 6 *Stanford Law Review* 719 (1954). On rape of prostitutes, see, e.g., People v. McClure, 42 Ill. App. 952, 356 N.E. 2d 899 (1st Dist. 3d Div. 1976) (on indictment for rape and armed robbery of prostitute where sex was admitted to have occurred, defendant acquitted of rape but "guilty of robbing her while armed with a knife"); Magnum

v. State, I Tenn. Crim. App. 155, 432 S.W. 2d 497 (Tenn. Crim. App. 1968) (no conviction for rape; conviction for sexual violation of age of consent overturned on ground that failure to instruct jury to determine if complainant was "a bawd, lewd or kept female" was reversible error; "A bawd female is a female who keeps a house of prostitution, and conducts illicit intercourse. A lewd female is one given to unlawful indulgence of lust, either for sexual indulgence or profit . . . A kept female is one who is supported and kept by a man for his own illicit intercourse"; complainant "frequented the Blue Moon Tavern; she had been there the night before . . . she kept company with . . . a married man separated from his wife . . . There is some proof of her bad reputation for truth and veracity"). Johnson v. State, 598 S.W. 2d 803 (Tenn. Crim. App. 1979) (unsuccessful defense to charge of rape that "even [if] technically a prostitute can be raped . . . the act of the rape itself was no trauma whatever to this type of unchaste woman"); People v. Gonzales, 96 Misc. 2d 639, 409 N.Y.S. 2d 497 (Crm. Crt. N.Y. City 1978) (prostitute can be raped if "it can be proven beyond a reasonable doubt that she revoked her consent prior to sexual intercourse because the defendant . . . used the coercive force of a pistol).

16. People v. Liberta, 64 N.Y. 2d 152, 474 N.E. 2d 567, 485 N.Y.S. 2d 207 (1984) (marital rape recognized, contrary precedents discussed). For a summary of the current state of the marital exemption, see Joanne Schulman, "State-by-State Information on Marital Rape Exemption Laws," in Diana E. H. Russell, *Rape in Marriage* (New York: Macmillan, 1982), pp. 375–81; Patricia Searles and Ronald Berger, "The Current Status of Rape Reform Legislation: An Examination of State Statutes," 10 *Women's Rights Law Reporter* 25 (1987).

17. On "social interaction as an element of consent" in a voluntary social companion context, see Model Penal Code, sec. 213.1. "The prior social interaction is an indicator of consent in addition to actor's and victim's behavioral interaction during the commission of the offense"; Wallace Loh, "Q: What Has Reform of Rape Legislation Wrought? A: Truth in Criminal Labeling," *Journal of Social Issues* 37, no. 4 (1981): 47.

18. E.g., People v. Burnham, 176 Cal. App. 3d 1134, 222 Cal. Rptr. 630 (Cal. App. 1986).

19. Diana E. H. Russell and Nancy Howell, "The Prevalence of Rape in the United States Revisited," *Signs: Journal of Women in Culture and Society* 8 (Summer 1983): 668–95; and D. Russell, *The Secret Trauma: Incestuous Abuse of Women and Girls* (New York: Basic Books, 1986).

20. Pauline Bart found that women were more likely to be raped—that is, less able to stop a rape in progress—when they knew their assailant, particularly when they had a prior or current sexual relationship; "A Study of Women Who Both Were Raped and Avoided Rape," *Journal of Social Issues* 37 (1981): 132. See also Linda Belden, "Why Women Do Not Report Sexual Assault" (Portland, Ore.: City of Portland Public Service Employment Program, Portland Women's Crisis Line, March 1979); Menachem Amir, *Patterns in Forcible Rape* (Chicago: University of Chicago Press, 1971), pp. 229–52.

21. Answer Brief for Plaintiff-Appellee, People v. Brown, Sup. Ct. Colo., Case No. 81SA102 (1981): 10.

22. Note, "Forcible and Statutory Rape," p. 55.

23. La. Rev. Stat. 14.42. Delaware law requires that the victim resist, but "only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant"; II Del. Code 761(g). See also Sue Bessmer, *The Laws of Rape* (New York: Praeger, 1984).

24. See People v. Thompson, 117 Mich. App. 522, 524, 324 N.W. 2d 22, 24 (Mich. App. 1982); People v. Hearn, 100 Mich. App. 749, 300 N.W. 2d 396 (Mich. App. 1980).

25. See Carol Pateman, "Women and Consent," *Political Theory* 8 (May 1980): 149–68: "Consent as ideology cannot be distinguished from habitual acquiescence, assent, silent dissent, submission, or even enforced submission. Unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of 'consent' in any genuine sense . . . Women exemplify the individuals whom consent theorists declared are incapable of consenting. Yet, simultaneously, women have been presented as always consenting, and their explicit non-consent has been treated as irrelevant or has been reinterpreted as 'consent'" (p. 150).

26. Brownmiller, *Against Our Will*, p. 5.

27. Shafer and Frye, "Rape and Respect," p. 334.

28. See R. Emerson Dobash and Russell Dobash, *Violence against Wives: A Case against the Patriarchy* (New York: Free Press, 1979), pp. 14–21.

29. On the cycle of battering, see Lenore Walker, *The Battered Woman* (New York: Harper and Row, 1979).

30. Samois, *Coming to Power* (Palo Alto, Calif.: Alyson Publications, 1983).

31. If accounts of sexual violation are a form of sex, as argued in Chapter 11, victim testimony in rape cases is a form of live oral pornography.

32. This is apparently true of undetected as well as convicted rapists. Samuel David Smithyman's sample, composed largely of the former, contained self-selected respondents to his ad, which read: "Are you a rapist? Researchers Interviewing Anonymously by Phone to Protect Your Identity. Call . . ." Presumably those who chose to call defined their acts as rapes, at least at the time of responding; "The Undetected Rapist" (Ph.D. diss., Claremont Graduate School, 1978), pp. 54–60, 63–76, 80–90, 97–107.

33. Nancy Gager and Cathleen Schurr, *Sexual Assault: Confronting Rape in America* (New York: Grosset and Dunlap, 1976), p. 244.

34. Susan Estrich proposes this; *Real Rape*, pp. 102–103. Her lack of inquiry into social determinants of perspective (such as pornography) may explain her faith in reasonableness as a legally workable standard for raped women.

35. See Director of Public Prosecutions v. Morgan, 2 All E.R.H.L. 347 (1975) [England]; Pappajohn v. The Queen, III D.L.R. 3d 1 (1980) [Canada]; People v. Mayberry, 542 P. 2d 1337 (Cal. 1975).

36. Richard H. S. Tur, "Rape: Reasonableness and Time," 3 *Oxford Journal of Legal Studies* 432, 441 (Winter 1981). Tur, in the context of the *Morgan* and *Pappajohn* cases, says the "law ought not to be astute to equate wickedness and wishful, albeit mistaken, thinking" (p. 437). Rape victims are typically less concerned with wickedness than with injury.

37. See Silke Vogelmann-Sine, Ellen D. Ervin, Reenie Christensen, Carolyn H. Warmsun, and Leonard P. Ullmann, "Sex Differences in Feelings Attributed to a Woman in Situations Involving Coercion and Sexual Advances," *Journal of Personality* 47 (September 1979): 429–30.

38. Estrich has this problem in *Real Rape*.

39. E. Donnerstein, "Pornography: Its Effect on Violence against Women," in *Pornography and Sexual Aggression*, ed. N. Malamuth and E. Donnerstein (Orlando, Fla.: Academic Press, 1984), pp. 65–70. Readers who worry that this could become an argument for defending accused rapists should understand that the reality to which it points already provides a basis for defending accused rapists. The solution is to attack the pornography directly, not to be silent about its exonerating effects, legal or social, potential or actual.

Mothers, Monsters, and Machines

Rosi Braidotti

Figuring Out

I would like to approach the sequence "mothers, monsters, and machines" both thematically and methodologically, so as to work out possible connections between these terms. Because women, the biological sciences, and technology are conceptually interrelated, there can not be only one correct connection but, rather, many, heterogeneous and potentially contradictory ones.

The quest for multiple connections—or conjunctions—can also be rendered methodologically in terms of Donna Haraway's "figurations."[1] The term refers to ways of expressing feminist forms of knowledge that are not caught in a mimetic relationship to dominant scientific discourse. This is a way of marking my own difference: as an intellectual woman who