The Influence of Benevolent Sexism on Rape Laws

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My paper, “The Influence of Benevolent Sexism on Rape Laws,” has a heavy focus on diversity. My main argument is that non-traditional women are disadvantaged when it comes to legislation regarding rape. This argument is based on social congruity theory, which states that a person will be perceived more positively if they conform to the norms of their identified group, and the idea of benevolent sexism, in which women are viewed in both a positive and stereotypical light. Through an exploration of current and past rape laws, I make the case that the current legislation regarding rape is undermined by the toxicity of benevolent sexism. Because of this, women that disengage from their traditional roles are disadvantaged by the criminal justice system. Ultimately, my goal was to highlight the ways in which the criminal justice system denounces diversity in women’s culture.
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Abstract

Rape laws in the United States do little to protect or pay retribution to victims, or to discourage offenders, as can be seen through statistics showing the conviction rate in 1996 to be a little over 1% (Landsman, 2015). The aim of this paper is to attempt to provide some reasoning for why these laws fail to protect victims in 98% of cases. One reason may be the benevolent sexism that underpins most of western society, including American jurisprudence. The ideology behind benevolent sexism is that women who fulfill traditional gender roles are more likeable than women who do not, and thus plays an important role in how the general public views non-traditional (sometimes referred to as gender non-conforming) women and the subsequent sexual crimes committed against them. Through looking at the history of rape laws from around the world, this paper provides evidence that rape laws have always been sexist in terms of viewing women as property, and as being less “valuable” after they lose their virginity. I have identified four procedural issues in current rape laws that highlight the benevolent sexism so deeply intertwined with them: judicial attitudes, which assume women act emotionally and reactively, rape-shield laws, which enforce engaging in only approved forms of sex, the force requirement, which exclude unconscious women from the same legal protection as conscious women, and non-consent versus consent, which assumes syntactically that women are always consenting, and as such non-consent must be proven. As determined by benevolent sexism, non-traditional women are the least protected in current legislation regarding rape. Possible rectifications for these procedural issues include: judicial education on inherent biases, excluding
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Sexual assault is one of the most harrowing problems facing the United States in terms of criminal justice. According to the National Violence Against Women Survey of 1996, 17.6% of American women had been the victims of an attempted or completed sexual assault. Only 19.1% of these women reported the assault to the police, and less than 38% of these reported cases resulted in criminal prosecution (Landsman, 2015), meaning that a little over 1% of perpetrators were convicted for their crime. Today, estimates suggest that every 1 in 5 women will be raped at some point in her lifetime (Tuerkheimer, 2014), and with statistics like the ones above, it can be assumed that most of these cases will go unreported or without conviction. Why are the reporting and conviction rates so disproportionately low compared to the actual number of crimes being committed? In order to fully answer this question, gender roles and their part in the creation of rape laws must be examined, as well as how they continue to shape the reforms these laws have seen over the years. More specifically, how the efficacy of rape laws is diminished by benevolently sexist judicial attitudes, rape-shield laws, the force requirement, and consensual versus nonconsensual language are discussed. Today, rape laws in the United States are influenced by the benevolently sexist ideology that women should conform to gender specific roles, which in effect has led to a lack of appropriate representation for non-traditional women and a disproportionately low conviction rate.
What is benevolent sexism?

Benevolent sexism, by definition, is "a set of interrelated attitudes toward women that are sexist in terms of viewing women stereotypically and in restricted roles, but that are subjectively positive in feeling tone (for the perceiver) and also tend to elicit behaviors typically categorized as prosocial (helping) or intimacy seeking (self-disclosure)" (Glick & Fiske, 1996, p. 491).

Benevolent sexism, at its most positive, is directed at women who fulfill traditional roles, but at its worst, is directed at nontraditional women (Glick, Diebold, Bailey-Werner, & Zhu, 1997). Benevolent sexists differ from hostile sexists because they do not hold inherently negative views about women (Glick, Diebold, Bailey-Werner, & Zhu, 1997). Rather, they view women in a stereotypical but positive light. The symbiotic relationship between benevolent and hostile sexism is called ambivalent sexism (Casad & Lee, 2014). Although hostile sexism is typically seen as a prejudice against women, benevolent sexism is not. According to Glick and Fiske (1996), prejudice is “an antipathy based upon a faulty and inflexible generalization” (p. 491). Using this definition, benevolent sexism would classify as a form of prejudice, but it is not treated as such. In fact, most people do not even know what benevolent sexism is or how deeply it is entrenched in our perception of women.

What is role congruity theory?

According to Diekman and Goodfriend (2006), role congruity theory states that a person or group will be perceived in a more positive light if their characteristics conform to the individual or group’s prescribed social roles. Therefore, it can be concluded that prescribed social roles can lead to the devaluation of individuals or groups that do not fit them. In this way, benevolent sexism is extremely toxic to women who do not fit their expected gender roles. According to Casad and Lee (2014), women who fulfill traditional roles are seen as being more warm, likeable, and caring, whereas non-traditional women are seen to lack warmth and to be
overbearing. Some personality traits attributed to non-traditional women are assertiveness, independence, and being career driven (Casad & Lee, 2014). These personality characteristics are not inherently negative, though. They are only perceived as negative when they are present in women. This localization of gendered characteristics tends to put pressure on men and women to adhere to their prescribed social roles.

In a study done by Casad and Lee (2014), participants were split into two groups and read a short story in which a woman was the victim of domestic abuse. In the first group, the woman was described as an assertive, intelligent, and capable stock broker. In the second scenario, the woman was described as a warm, nurturing, and friendly stay-at-home mom. After hearing the story, participants were given a series of questionnaires assessing their benevolent sexism scores, as well as the likeability, personality traits, and overall impressions of the victim. The results of the study showed that participants who had a higher benevolent sexism score rated the traditional woman more positively than participants with a lower benevolent sexism score. These results indicate that emergency responders, jurors, lawyers, or judges that hold a benevolently sexist worldview will perceive a gender conforming sexual assault victim more positively than if the victim were gender non-conforming (Casad & Lee, 2014). This can have an immediate effect on non-traditional women that seek help when suffering from physical or sexual abuse. For example, a masculine woman who reports sexual abuse is less likely to see her attacker get prosecuted and convicted than if she were a traditional woman. This is because masculine women are perceived as being more capable of defending themselves, as well as less likely to get sexually abused because of their masculine traits.

In another study done by Marin and Guadagno (1999), it was found that women who labeled an incident of sexual assault as “sexual assault” were perceived as having fewer feminine qualities and received more blame for the incident. Women who did not label the incident as “sexual
assault” were perceived as having more feminine qualities and did not receive as much blame for the incident. These results suggest that the mere act of labeling an incident of sexual assault violates the gender role of passivity (Diekman, & Goodfriend, 2006), leading to women being perceived as less trustworthy, less feminine, and less likeable (Casad & Lee, 2014). It was also found that participants’ benevolent sexism score was positively correlated with victim blame in cases of rape and sexual assault (Abrams, Viki, Masser, & Bohner, 2003). It is evident from these results how gender conformity can play a role in victim blaming and helping behaviors in legal settings. The implications of these results are that non-traditional women, who label and report incidents of rape or sexual assault, are seen as having less feminine qualities and receive less social and legal help than women who conform more to their gender role by remaining passive. In this way, western culture almost endorses the underreporting of rape or sexual assault.

**History of rape laws**

Historically, women have almost always suffered some form of oppression. Rape laws, although perceived as being beneficial to women, furthered this trend of oppression. Originally, rape was defined as the loss of virginity; consent was not considered (Swanson & Stone, 2019). Furthermore, rape laws were directed more at protecting the victim’s father because of the perception that his property had been devalued (Sandoval, 2019). In the case Regina v. Prince (1875), it was stated that the defendant was convicted of taking an unmarried girl out of possession of her father. The woman’s rights were not considered. In the case of Seagar v. Sligerland (1805), it was stated that if a woman was violated by force, her father was entitled to compensation for the loss of her service from the defendant. Early rape laws were based on the notion that the loss of virginity devalues the woman (Tenzer, 2019). From this worldview, married women or women that were not virgins were not protected under the law because their
“value” had already been compromised. In cases of gang rape, only the man who took the woman’s virginity was required to stand trial (Swanson & Stone, 2019). These laws enforced a blatantly sexist attitude that 1) women were property and 2) a woman’s virginity was the source of her value. This attitude can be seen in current legal systems that enforce the idea that sexually promiscuous women do not deserve the legal protection of “pure and innocent” women. Many rape laws have followed suit in the definition of rape as an attack on a woman’s honor instead of as an act of sexual violence. Laws were put into place as recently as 1977 correlating rape and women’s honor (Davidson, 2018). Another problem with early rape laws was the judicial attitude surrounding them. Sir Matthew Hale, Lord Chief Justice of the King’s Bench, can be quoted saying: “rape is an accusation easy to be made, hard to be proved, and harder to be defended by the party accused though ever so innocent” (Landsman, 2015). The language used by Sir Hale is reflective of his innate bias towards men, regardless of the circumstances: “though ever so innocent.” The Model Penal Code of 1962 even barred rape prosecutions if the victim did not notify authorities within a given amount of time (Sandoval, 2019).

**Judicial attitudes**

Keeping the historical context of rape laws in mind, the current procedural problems with rape laws will be discussed. First, there remains a toxic belief that judges must protect the defendant in the case that he is innocent. An Oregon judge can be quoted saying that a rape charge is “easily made and once made, difficult to defend against even if the person accused is innocent” (Sandoval, 2019), almost the exact same attitude held by Sir Hale. The trouble with this judicial attitude is that rape allegations are almost always hearsay. If judges and jurors are more concerned with protecting a possibly innocent defendant than paying retribution to a victim of a sexual crime, the trial is already unfairly biased. This attitude undercuts the seriousness of the crime to the victim and, instead, focuses on the possible ramifications for the defendant.
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(Sandoval, 2019). This judicial attitude correlates to the benevolently sexist view that women are inherently reactive and emotional, and as such men need be protected. The judicial attitude of “protecting the innocent man” ostracizes the harm that the woman was put through. Statistics show that a very small percentage of men accused of rape are actually innocent, and as such, more education on inherent biases and actual statistics would be beneficial for both judges and the general public when determining if a defendant is guilty or not.

Rape-shield laws

A major problem that arose with rape proceedings is cross-examination by a defense attorney. By bringing to light the victim’s prior sexual history, they are made to seem promiscuous and not “rapeable” (Sandoval, 2019). To search into the victim’s sexual history not only embarrasses the victim, it enforces the idea that women must conform to societal pressures to be innocent and virtuous. To protect victims from this type of victim blaming, many states have enacted rape-shield laws, with Michigan being the first state in 1974 (Landsman, 2015). These laws essentially ban defense attorneys from bringing up a victim’s prior sexual history unless it proves a pattern of sexual deviancy (Landsman, 2015). Circumventing this law has proved to be quite easy, with sexually deviant acts most commonly defined as prostitution, sadomasochism, group sex, polygamous sex, frequent sex, teenage sex, or sex initiated by the woman (Tuerkheimer, 2014). If the victim has a pattern of “deviant sex,” this information is used in court proceedings as a means to prove that she was not raped, but rather, actively engaged in it. Sometimes, the defense will even claim that the man was simply making an assumption because of the victim’s sexual past. By determining what kinds of consensual acts are okay to engage in and what is off-limits, these rape-shield laws are only further enforcing the benevolently sexist attitude that women should be “innocent” and lack sexual agency (Tuerkheimer, 2014). In this sense, non-traditional women see almost no protection from these
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laws, and experience more victim blaming from the defense than a traditional woman. Instead of focusing on the acts of the defendant, the prior acts of the victim are put in the spotlight (Landsman, 2015). According to Sandoval (2019), it is unfair to scrutinize the actions of the victim while simultaneously refusing to scrutinize the actions of the defendant in the same manner. If a prostitute were to get raped, for example, the defense attorney would most likely use her status as a prostitute to prove that she cannot be raped, instead of focusing on the defendant’s intentions at the time of the crime. Rape-shield laws are in dire need of reformation. Specifically, the latter part of these laws, which states that the victim’s sexual history can be brought up if it shows a pattern of sexual deviancy, should be taken out altogether. The victim’s prior sexual history should have nothing to do with the crime that has been committed against her. By removing this part from rape-shield laws, the legal system is effectively eliminating the benevolently sexist attitude that women who engage in risqué forms of sex deserve less legal protection than women who conform to society’s standards of “good” sex.

The force requirement

Another procedural problem with current rape laws is the force requirement. Essentially, victims must be able to prove that there was some amount of force used against them to constitute a rape charge (Sandoval, 2019). Therefore, in cases where victims were drugged or drunk to the point of unconsciousness, they cannot pursue a rape charge. Instead, this forced penetration is considered non-consensual sex and is defined as sexual assault (Davidson, 2018), resulting in a much more lenient conviction than rape. About half of the states in the United States include the force requirement in their definition of rape (Davidson, 2018). This seemingly syntactical difference enforces a victim-blaming attitude most likely influenced by benevolent sexism (Sandoval, 2019), in which women who drink heavily or use drugs, resulting in the lack of ability to protect themselves, receive more blame and less legal representation than women who were
forcibly raped while conscious. The “virtuous and innocent” woman who was sober is perceived as having less responsibility in the matter of her rape. The force requirement should be removed as a definable characteristic of rape. By removing the force requirement, legislators are opening up the legal system to women who have been raped while unconscious or otherwise raped without the external use of force. In turn, this definition will no longer ostracize women who drink heavily or use drugs and will allow them to pursue legal action if a sexual crime is committed against them.

An example of the harm that can be done by the force requirement is the case of a 14-year-old girl from Barcelona, Spain who was gang raped by six men. The victim and defendants had all been drinking at an outdoor party, but the men ended up taking the young girl to an abandoned factory to rape her. The victim claimed that she only remembered some of the events that transpired, but that one of the men brandished a gun while forcing her to have sex with him. When taken to court, the jury found the defendants guilty of sexual abuse, a much lighter sentence than sexual assault, because the victim had been unconscious; therefore, the attackers did not have to use intimidation or force, which are requirements for sexual assault in Spanish rape laws (Kitson, 2019).

Consensual vs. nonconsensual language

Another problem with current rape laws is the focus on non-consent on the woman’s part. Instead of scrutinizing the defendant’s intentions, many courts focus on the victim’s actions. The victim is considered responsible for stopping the attack and saying “no,” instead of the defendant being responsible for not attacking her or asking if she consents (Sandoval, 2019). If it can be proven that a woman did not verbally object, some courts will rule the defendant not guilty.
because there was no non-consent. According to Tuerkheimer (2014), by equating non-action with consent, current rape laws essentially render women as sexual objects that lack agency. Passivity is considered a woman’s role in sex, instead of an actual sexual desire (Tuerkheimer, 2014). But consent is affirmative; it is not the absence of a “no” (Tuerkheimer, 2014).

Regardless, women who do nothing to indicate their willingness or desire to engage in sex may still be seen as consenting by a court. Therefore, if a woman is drugged and later raped, it can be argued that she consented by her lack of non-consent. The benevolently sexist ideology that is present is the idea that women lack sexual autonomy, and as such, their consent can be assumed.

Due to the language used in rape laws, a woman who is in unconscious or simply too scared of her attacker to tell him to stop, will see little if any protection from current rape laws. The language used in rape laws needs to see a shift from a focus on non-consent to a focus on consent. By forcing the defendant to prove there was consent instead of forcing the victim to prove there was not consent, the legislation would effectively eliminate the victim blaming attitude that is enforced by almost half of the state’s current rape laws. This will also reflect a change in ideology in the current legal system: that women are not sexual objects and their consent cannot be assumed. Also, victims who were drunk, unconscious, or drugged at the time of sexual activity would not legally be capable of affirmative consent. A shift to affirmative consent would not only create fairer laws for rape victims, it would create a clearer set of guidelines for offenders to abide by and a more progressive view of women’s sexual agency (Sandoval, 2019).

The 14-year-old from Barcelona who was gang raped also had to deal with consent standards protecting her attackers, not her. The jury claimed that because the victim was drunk to the point
of unconsciousness, she “did not know what she was and wasn’t doing, and consequently, did not have the ability to agree to or oppose the sexual relations most of the defendants had with her” (Kitson, 2019). Because she was drunk, her consent could be assumed. Furthermore, she could not even legally prove non-consent because she was drunk. The idea that a drunk or unconscious woman foregoes her ability to say “no” is completely backwards and harmful to any women that drink.

Rape laws have been historically sexist, and although they have seen massive improvements through the 1970s and 1980s and in recent years, there is still a long way to go before these laws protect women in the same ways that they inherently protect men. Some of the most pressing issues are judicial attitudes, rape-shield laws, the force requirement, and non-consent versus consent. Through these procedural problems, it can be seen how current legislation continues to enforce a benevolently sexist ideology on women, doing the most harm to non-traditional women. Current judicial attitudes reflect benevolent sexism in that they assume that the man is telling the truth and must be protected, as women can sometimes make rash and emotional decisions. Women are also expected to engage in only approved forms of sex, and any evidence that they stray from this norm is used as evidence that they are not “rapeable” (i.e. dominatrix, prostitute, polygamous sex, etc.). Any non-traditional women that engage in “deviant sexual acts” are therefore not protected by rape-shield laws. The force requirement ostracizes non-traditional women that engage in heavy drinking or drug use that lead to unconsciousness from appropriate legal protection by requiring the victim to prove some kind of force was used on her. A victim blaming attitude is also very apparent in court proceedings where women are forced to prove non-consent, instead of the offender being forced to prove
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consent. The non-consent standard reflects benevolent sexism in that legislation assumes the consent of women at all times due to a lack of sexual autonomy, and as such, non-consent must be proven. As argued by the feminist Elizabeth Iglesias, legislation regarding rape will enforce the dominant culture’s narratives of feminism and sexuality (Davidson, 2018). Therefore, in order to further the efficacy of rape laws, citizens must continue to press forward for societal equality for women. Specially, feminists should focus on a pro-agency agenda for women and a shift away from traditional gender roles. In turn, the legislation regarding rape will reflect the shift in ideology of the dominant culture, and finally provide fair legal representation to all women.
References


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