

THIRD EDITION

PHILOSOPHY

and **SEX**

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20. *The New York Times*, April 19, 1992, p. 36.

21. She characterized a certain theory of equality in this way during the discussion after a Gauss seminar she gave at Princeton University, April 9, 1992.

22. For an illuminating discussion of the ways in which we need to treat people differently in order to achieve genuine equality see Martha Minnow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, N.Y.: Cornell University Press, 1990).

23. See Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (New York: Bantam Books, 1975).

24. Gordon and Riger, *The Female Fear*.

25. As recently as 1948, the United States Supreme Court upheld a state law prohibiting the licensing of any woman as a bartender (unless she was the wife or daughter of the bar owner where she was applying to work). *Goesaert v. Cleary*, 335 U.S. 464 (1948).

26. *The New York Times*, June 19, 1992, p. 1, A13.

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What's Wrong with Rape

Pamela Foa

It is clear that rape is wrong. It is equally clear that the wrongness of rape is not completely explained by its status as a criminal assault. Dispute begins, however, when we attempt to account for the special features of rape, the ways in which its wrongness goes beyond its criminal character. I shall argue against those who maintain that the special wrongness of rape arises from and is completely explained by a societal refusal to recognize women as *people*. I shall offer a different explanation: The special wrongness of rape is due to, and is only an exaggeration of, the wrongness of our sexual interactions in general. Thus, a clear analysis of the special wrongness of rape will help indicate some of the essential features of healthy, nonrapine sexual interactions.

I. The Wrongness of Rape Goes Beyond Its Criminality

It is to be expected during this period of resurgent feminism that rape will be seen primarily as a manifestation of how women are mistreated in our society. For example, consider these remarks of Simone de Beauvoir:

All men are drawn to B[rigitte] B[ardot]'s seductiveness, but that does not mean that they are kindly disposed towards her. . . . They are unwilling to give up their role of lord and master. . . . Freedom and full consciousness remain their [the men's] right and privilege. . . . In the game of love BB is as much a hunter as she is a prey. The male is an object to her, just as she is to him, and

From *Feminism and Philosophy* (Totowa, N.J.: Littlefield, Adams & Company, 1977). Reprinted by permission.

that is precisely what wounds the masculine pride. In the Latin countries where men cling to "the myth of woman as object," BB's naturalness seems to them more perverse than any possible sophistication. It is to assert that one is man's fellow and equal, to recognize that between the woman and him there is a mutual desire and pleasure. . . .

But the male feels uncomfortable if, instead of a doll of flesh and blood, he holds in his arms a conscious being who is sizing him up. "You realize," an average Frenchman once said to me, "that when a man finds a woman attractive, he wants to be able to pinch her behind." A ribald gesture reduces a woman to a thing that a man can do with as he pleases without worrying about what goes on in her mind and heart and body.¹

And rape is apparently the quintessential instance of women being viewed as objects, of women being treated as entities other than, and morally inferior to, men. It is implicit in this object-view that if men, and therefore society, viewed women as full moral equals, rape would be an assault no different in kind than any other. Thus, it is a consequence of this view that the special wrongness of rape is to be found in the nonsexual aspects of the act.

To this end, Marilyn Frye and Carolyn Shafer suggest in their paper "Rape and Respect" that the wrongness of rape is twofold: first, it is the use of a person without her consent in the performance of an act or event which is against her own best interests; and second, it is a social means of reinforcing the status of women as kinds of entities who lack and ought to lack the full privileges of personhood—importantly, the freedom to move as they will through what is rightfully their domain.² What is good about this account is that it provides one way of understanding the sense of essential violation of one's *person* (and not mere sexual abuse), which seems to be the natural concomitant of rape.

This account, further, gives one explanation for the continuous social denial of the common fact of criminal rape. On this view, to recognize rape as a criminal act, one must recognize the domains of women. But if domains are inextricably connected with personhood—if personhood, in fact, is to be analyzed in terms of domains—then it ought to be obvious that where there is no domain there can be no criminal trespass of domain; there can only be misperceptions or misunderstandings. To recognize domains of consent is to recognize the existence of people at their centers. Without such centers, there can be no rape.

Unfortunately, I do not believe that this kind of account can serve as an adequate explanation of what's wrong with rape. I find irrelevant its emphasis on the ontological status of women as persons of the first rank. It is granted that in any act of rape a person is used without proper regard to her personhood, but this is true of every kind of assault. If there is an additional wrongness to rape, it must be that more is wrong than the mere treatment of a person by another person without proper regard for her personhood. Later in this essay, I shall show that there is no need to differentiate ontologically between victim and assailant in order to explain the special wrongness of rape. However, it is impor-

tant to recognize that rape is profoundly wrong even if it is not an act between ontological equals.

The special wrongness of rape cannot be traced to the fact that in this act men are not recognizing the full array of moral and legal rights and privileges which accrue to someone of equal status. Rape of children is at least as heinous as rape of adults, though few actually believe that children have or ought to have the same large domain of consent adults (male and female) ought to have. In part, this is what is so disturbing about a recent English decision I shall discuss in a moment: it seems to confuse the ontological with the moral. Men's wishes, intentions, and beliefs are given a different (and more important) weight, just because they are (wrongly in this case, perhaps rightly in the case of children) viewed as different kinds of entities than women.

But even if one thinks that women are not people, or that all people (for example, children), do not have the same rights or, *prima facie*, the same domains of consent, it seems that rape is still especially horrible, awful in a way that other assaults are not. There is, for example, something deeply distressing, though not necessarily criminal, about raping one's pet dog. It is disturbing in ways no ordinary assault, even upon a person, seems to be disturbing. It may here be objected that what accounts for the moral outrage in these two cases is that the first is an instance of pedophilia, and the second of bestiality. That is, the special wrongness of these acts is due to the "unnatural" direction of the sexual impulse, rather than to the abusive circumstances of the fulfillment of a "natural" sexual impulse.

I would argue in response that outrage at "unnatural" acts is misdirected and inappropriate. The notion that acting "against" nature is immoral stems from the false belief that how things are in the majority of cases is, morally speaking, how things always ought to be. Acting unnaturally is not acting immorally unless there is a moral design to the natural order—and there is no such structure to it. This means, then, that if it is reasonable to feel that something very wrong has occurred in the above two cases, then it must be because they are rape and not because they are "unnatural acts." However, even if this argument is not conclusive, it must be agreed that the random raping of a mentally retarded adult is clearly wrong even though such an individual does not, in our society, have all the legal and moral rights of normal people.³

Of course, another very reasonable point to make here may well be that it is not just people who have domains, and that what's wrong with rape is the invasion by one being into another's domain without consent or right. But if something like this is true, then rape would be wrong because it was an "incursion" into a domain. This would make it wrong in the same way that other assaults are wrong. The closer the incursion comes to the center of a person's identity, the worse is the act.

The problem here is that such an argument suggests that rape is wrong the same way, and only the same way, that other assaults are wrong. And yet the evidence contradicts this. There is an emotional concomitant to this assault, one

that is lacking in nonsexual criminal assaults. What must be realized is that when it comes to sexual matters, people—in full recognition of the equal ontological status of their partners—treat each other abominably. Contrary to the Frye/Shaffer theory, I believe that liberated men and women—people who have no doubts about the moral or ontological equality of the sexes—can and do have essentially rapelike sexual lives.

The following case is sufficient to establish that it is not just the assault upon one's person, or the intrusion into one's domain, that makes for the special features of rape. In New York twenty or so years ago, there was a man who went around Manhattan slashing people with a very sharp knife. He did not do this as part of any robbery or other further bodily assault. His end was simply to stab people. Although he was using people against their own best interests, and without their consent—that is, although he is broadly violating domains—to be the victim of the Mad Slasher was not to have been demeaned or dirtied as a person in the way that the victim of rape is demeaned or dirtied. It was not to be wronged or devalued in the same way that to be raped is to be wronged or devalued. No one ever accused any of the victims of provoking, initiating, or enjoying the attack.

Yet the public morality about rape suggests that unless one is somehow mutilated, broken, or killed in addition to being raped, one is suspected of having provoked, initiated, complied in, consented to, or even enjoyed the act. It is this public response, the fear of such a response and the belief (often) in the rationality of such a response (even from those who do unequivocally view you as a person) that scorns to make rape especially horrible.

Thus, what is especially bad about rape is a function of its place in our society's sexual views, not in our ontological views. There is, of course, nothing necessary about these views, but until they change, no matter what progress is made in the fight for equality between the sexes, rape will remain an especially awful act.

II. Sex, Intimacy, and Pleasure

Our response to rape brings into focus our inner feelings about the nature, purpose, and morality of all sexual encounters and of ourselves as sexual beings. Two areas which seem immediately problematic are the relation between sex and intimacy and the relation between sex and pleasure.

Our Victorian ancestors believed that sex in the absence of (at least marital) intimacy was morally wrong and that the only women who experienced sexual pleasure were nymphomaniacs.⁴ Freud's work was revolutionary in part just because he challenged the view of "good" women and children as asexual creatures.⁵ Only with Masters and Johnson's work, however, has there been a full

scientific recognition of the capacity of ordinary women for sexual pleasure.⁶ But though it is now recognized that sexual pleasure exists for all people at all stages of life and is, in its own right, a morally permissible goal, this contemporary attitude is still dominated by a Victorian atmosphere. It remains the common feeling that it is a kind of pleasure which should be experienced only in private and only between people who are and intend to be otherwise intimate. Genital pleasure is private not only in our description of its physical location, but also in our conception of its occurrence or occasion.

For the rape victim, the special problem created by the discovery of pleasure in sex is that now some people believe that *every* sex act must be pleasurable to some extent, including rape.⁷ Thus, it is believed by some that the victim in a rape must at some level be enjoying herself—and that this enjoyment in a nonintimate, nonprivate environment is shameful. What is especially wrong about rape, therefore, is that it makes evident the essentially sexual nature of women, and this has been viewed, from the time of Eve through the time of Victoria, as cause for their humiliation. Note that on this view the special evil of rape is due to the feminine character and not to that of her attacker.⁸

The additional societal attitude that sex is moral only between intimates creates a further dilemma in assessing the situation of the rape victim. On the one hand, if it is believed that the sex act itself creates an intimate relationship between two people, then, by necessity, the rape victim experiences intimacy with her assailant. This may incline one to deny the fact of the rape by pointing to the fact of the intimacy. If one does not believe that sex itself creates intimacy between the actors, but nonetheless believes that sex is immoral in the absence of intimacy, then the event of sex in the absence of an intimate relationship, even though involuntary, is cause for public scorn and humiliation. For the rape victim, to acknowledge the rape is to acknowledge one's immorality. Either way, the victim has violated the social sexual taboos and she must therefore be ostracized.

What is important is no longer that one is the victim of an assault, but rather that one is the survivor of a social transgression. This is the special burden that the victim carries.

There is support for my view in Gary Wills's review of Tom Wicker's book about the Attica prisoners' revolt.⁹ What needs to be explained is the apparently peculiar way in which the safety of the prisoners' hostages was ignored in the preparations for the assault on the prison and in the assault itself. What strikes me as especially important in this event is that those outside the prison walls treated the *guards* exactly like the *prisoners*. The critical similarity is the alleged participation in taboo sexual activity, where such activity is seen as a paradigm of humiliating behavior. In his review Wills says,

Sexual fantasy played around Attica's walls like invisible lightning. Guards told their families that all the inmates were animals. . . .

When the assault finally came, and officers mowed down the hostages along with the inmates, an almost religious faith kept faked stories alive

against all the evidence—that the hostages were found castrated; that those still living had been raped. . . . None of it was true, but the guards knew what degradation the prisoners had been submitted to, and the kind of response that might call for. . . .

One has to go very far down into the human psyche to understand what went on in that placid town. . . . The bloodthirsty hate of the local community was so obvious by the time of the assault that even Rockefeller . . . ordered that no correction personnel join the attack. . . . [Nonetheless] eleven men managed to go in. . . . Did they come to save the hostages, showing more care for them than outsiders could? Far from it. They fired as early and indiscriminately as the rest. Why? I am afraid Mr. Wicker is a bit too decent to understand what was happening, though his own cultural background gives us a clue. Whenever a white girl was caught with a black in the old South, myth demanded that a charge of rape be brought and the “boy” be lynched. But a shadowy ostracism was inflicted on the girl. Did she fight back? Might she undermine the myth with a blurted tale or a repeated episode? At any rate, she was tainted. She had, willed she or nilled she, touched the untouchable and acquired her own evil halo of contamination. Taboos take little account of “intention.” In the same way, guards caught in that yard were tainted goods. . . . They were an embarrassment. The white girl may sincerely have struggled with her black assailant; but even to imagine that resistance was defiling—and her presence made people imagine it. She was a public pollution—to be purged. Is this [comparison] fanciful? Even Wicker . . . cannot understand the attitude of those in charge who brought no special medical units to Attica before the attack began. . . . The lynch mob may kill the girl in its urgency to get at the boy—and it will regret this less than it admits.¹⁰

Accounts like the one offered by Frye and Shafer might explain why the *prisoners* were treated so callously by the assaulting troops, but they cannot explain the brutal treatment of the hostages. Surely they cannot say that the guards who were hostages were not and had never been viewed as people, as ontological equals, by the general society. And yet there was the same special horror in being a hostage at Attica as there is for a woman who has been raped. In both cases the *victim* has acquired a “halo of contamination” which permanently taints. And this cannot be explained by claiming that in both cases society is denying personhood or domains of consent to the victim.

The victim in sexual assault cases is as much a victim of our confused beliefs about sex as of the assault itself. The tremendous strains we put on such victims are a cruel result of our deep confusion about the place of, and need for, sexual relationships and the role of pleasure and intimacy in those relationships.

In spite of the fact, I believe, that as a society we share the *belief* that sex is only justified in intimate relationships, we act to avoid real intimacy at almost any cost. We seem to be as baffled as our predecessors were about the place of intimacy in our sexual and social lives. And this is, I think, because we are afraid that real intimacy creates or unleashes sexually wanton relationships, licentious lives—and this we view as morally repugnant. At the same time, we

believe that sex in the absence of an intimate relationship is whoring and is therefore also morally repugnant. It is this impossible conflict which I think shows us that we will be able to make sense of our response to rape only if we look at rape as the model of all our sexual interactions, not as its antithesis.

III. The Model of Sex: Rape

Though we may sometimes speak as though sexual activity is most pleasurable between friends, we do not teach each other to treat our sexual partners as friends. Middle-class children, whom I take to be our cultural models, are instructed from the earliest possible time to ignore their sexual feelings. Long before intercourse can be a central issue, when children are prepubescent, boys are instructed to lunge for a kiss and girls are instructed to permit nothing more than a peck on the cheek. This encouragement of miniature adult sexual behavior is instructive on several levels.

It teaches the child that courting behavior is rarely spontaneous and rarely something which gives pleasure to the people involved—that is, it is not like typical playing with friends. It gives the child a glimpse of how adults do behave, or are expected to behave, and therefore of what is expected in future life and social interactions. Importantly, boys are instructed *not* to be attentive to the claims of girls with respect to their desires and needs. And girls are instructed *not* to consult their feelings as a means of or at least a check on what behavior they should engage in.

Every American girl, be she philosopher-to-be or not, is well acquainted with the slippery-slope argument by the time she is ten. She is told that if she permits herself to become involved in anything more than a peck on the cheek, anything but the most innocent type of sexual behavior, she will inevitably become involved in behavior that will result in intercourse and pregnancy. And such behavior is wrong. That is, she is told that if she acquiesces to any degree to her feelings, then she will be doing something immoral.

Meanwhile, every American boy is instructed, whether explicitly or not, that the girls have been given this argument (as a weapon) and that therefore, since everything that a girl says will be a reflection of this argument (and not of her feelings), they are to ignore everything that she says.

Girls are told never to consult their feelings (they can only induce them to the edge of the slippery slope); they are always to say “no.” Boys are told that it is a sign of their growing manhood to be able to get a girl way beyond the edge of the slope, and that it is standard procedure for girls to say “no” independently of their feelings. Thus, reasonably enough, boys act as far as one can tell independently of the explicit information they are currently receiving from the girl.

For women, it is very disconcerting to find that from the age of eight or nine or ten, one's reports of one's feelings are no longer viewed as accurate, truthful, important, or interesting. R. D. Laing, the English psychiatrist and theorist, claims that it is this type of adult behavior which creates the environment in which insanity best finds its roots.¹¹ It is clear, at least, that such behavior is not a model of rationality or health. In any event, rape is a case where only the pretense of listening has been stripped away. It is the essence of what we have all been trained to expect.

In a sexually healthier society, men and women might be told to engage in that behavior which gives them pleasure as long as that pleasure is not (does not involve actions) against anyone's will (including coerced actions) and does not involve them with responsibilities they cannot or will not meet (emotional, physical, or financial).

But as things are now, boys and girls have no way to tell each other what gives them pleasure and what not, what frightens them and what not; there are only violence, threats of violence, and appeals to informing on one or the other to some dreaded peer or parental group. This is a very high-risk, high-stake game, which women and girls, at least, often feel may easily become rape (even though it is usually played for little more than a quick feel in the back seat of the car or corner of the family sofa). But the ultimate consequences of this type of instruction are not so petty. Consider, for example, the effects of a recent English high-court decision:

Now, according to the new interpretation, no matter how much a woman screams and fights, the accused rapist can be cleared by claiming he believed the victim consented, even though his belief may be considered unreasonable or irrational.

On a rainy night seven months ago, a London housewife and mother of three claims she was dragged into this dilapidated shed. Annie Baker says she screamed for help and she fought but she was raped. Mrs. Baker lost her case in court because the man claimed he thought when she said no, she meant yes.

One member of Parliament [predicts juries will] "now have the rapist saying that the woman asked for what she got and she wanted what they [*sic*] gave her."

However, the Head of the British Law Society maintains, "Today juries are prepared to accept that the relationship between the sexes has become much more promiscuous, and they have to look much more carefully to see whether the woman has consented under modern conditions. . . . One mustn't readily assume that a woman did not consent, because all indications are that there is a greater willingness to consent today than there was thirty years ago."¹²

"The question to be answered in this case," said Lord Cross of Chelsea, "as I see it, is whether, according to the ordinary use of the English language, a man can be said to have committed rape if he believed that the woman was consenting to the intercourse. I do not think he can."¹³

This is the most macabre extension imaginable of our early instruction. It is one which makes initially implausible and bizarre any suggestion that the recent philosophical analyses of sexuality as the product of a mutual desire for communication—or even for orgasm or sexual satisfaction—bear any but the most tangential relation to reality.¹⁴

As we are taught, sexual desires are desires women ought not to have and men must have. This is the model which makes necessary an eternal battle of the sexes. It is the model which explains why rape is the prevalent model of sexuality. It has the further virtue of explaining the otherwise puzzling attitude of many that women will cry "rape" falsely at the slightest provocation. It explains, too, why men believe that no woman can be raped. It is as though what was mildly unsatisfactory at first (a girl's saying "no") becomes, overtime, increasingly erotic, until the ultimate turn-on becomes a woman's cry of "rape!"

IV. An Alternative: Sex between Friends

Understanding what's wrong with rape is difficult just because it is a member of the most common species of social encounter. To establish how rape is wrong is to establish that we have *all* been stepping to the wrong beat. Rape is only different in degree from the quintessential sexual relationship: marriage.

As Janice Moulton has noted, recent philosophical attention to theories of sexuality seem primarily concerned with sex between strangers.¹⁵ On my view, we can explain this primary interest by noticing that our courting procedures are structured so that the couple must remain essentially estranged from each other. They do not ever talk or listen to each other with the respect and charity of friends. Instead, what is taken as the height of the erotic is sex without intimacy.

As long as we remain uncertain of the legitimacy of sexual pleasure, it will be impossible to give up our rape model of sexuality. For it can only be given up when we are willing to talk openly to each other without shame, embarrassment, or coyness about sex. Because only then will we not be too afraid to listen to each other.

Fortunately, to give this up requires us to make friends of our lovers.¹⁶ Once we understand that intimacy enlarges the field of friendship, we can use some of the essential features of friendship as part of the model for sexual interaction, and we can present the pleasures of friendship as a real alternative to predatory pleasures.

I am not here committing myself to the view that the correct model for lovers is that of friends. Though I believe lovers involved in a healthy relationship have a fairly complex friendship, and though I am at a loss to find any important feature of a relationship between lovers which is not also one between friends, it may well be that the two relationships are merely closely related and not, in the end, explainable with the identical model.

It remains an enormously difficult task to throw over our anachronistic beliefs, and to resolve the conflict we feel about the sexual aspects of ourselves. But once this is done, not only will there be the obvious benefits of being able to exchange ignorance and denial of ourselves and others for knowledge, and fear for friendship, but we will also be able to remove the taboo from sex—even from rape. There will be no revelation, no reminder in the act of rape which we will need so badly to repress or deny that we must transform the victim into a guilt-bearing survivor. An act of rape will no longer remind us of the “true” nature of sex and our sexual desires.

Where there is nothing essentially forbidden about the fact of our sexual desires, the victim of rape will no longer be subject to a taboo or be regarded as dirty and in need of societal estrangement. The victim can then be regarded as having been grievously insulted, without simultaneously and necessarily having been permanently injured.

Further, if the model of sexual encounters is altered, there will no longer be any motivation for blaming the victim of rape. Since sex and rape will no longer be equated, there will be no motive for covering our own guilt or shame about the rapine nature of sex in general by transferring our guilt to the victim and ostracizing her. Rape will become an unfortunate aberration, the act of a criminal individual, rather than a symbol of our systematic ill-treatment and denial of each other.

Notes

1. Simone de Beauvoir, *Brigitte Bardot and the Lolita Syndrome* (London: New English Library, 1962), pp. 28, 30, 32.

2. Frye and Shafer characterize a domain as “where . . . a person . . . lives. . . . Since biological life and health are prerequisites for the pursuit of any other interests and goals, . . . everything necessary for their maintenance and sustenance evidently will fall very close to the center of the domain. Anything which exerts an influence on . . . a person’s will or dulls its intelligence or affects its own sense of its identity . . . also comes very near the center of the domain. Whatever has a relatively permanent effect on the person, whatever affects its relatively constant surroundings, whatever causes it discomfort or distress—in short, whatever a person has to live with—is likely to fall squarely within its domain” (“Rape and Respect,” [in *Feminism and Philosophy* (Totowa, N.J.: Littlefield, Adams, 1977)], p. 337).

3. This societal attitude, however, that the mentally retarded are not the equals of normal people is not one with which I associate myself.

4. Françoise Basch, *Relative Creatures: Victorian Women and Society in the Novel* (New York: Schocken Books, 1974), pp. 8–9, 270–71.

5. See *The Basic Writings of Sigmund Freud*, ed. A. A. Brill (New York: Random House, 1948), pp. 553–633.

6. William H. Masters and Virginia E. Johnson, *Human Sexual Response* (Boston: Little, Brown, 1966).

7. It may well be that Freud’s theory of human sexuality is mistakenly taken to support this

view. See Sigmund Freud, *A General Introduction to Psychoanalysis* (New York: Washington Square Press, 1962), pp. 329–47.

8. What is a complete non sequitur, of course, is that the presence of such pleasure is sufficient to establish that no criminal assault has occurred. The two events are completely independent.

9. Tom Wicker, *A Time to Die* (New York: Quadrangle Books, 1975).

10. Gary Wills, “The Human Sewer,” *New York Review of Books*, April 3, 1975, p. 4.

11. See, for example, R. D. Laing and A. Esterson, *Sanity, Madness and the Family* (Baltimore: Penguin, Pelican Books, 1970).

12. “CBS Evening News with Walter Cronkite,” May 22, 1975.

13. *New American Movement Newspaper*, May 1975, p. 8.

14. See R. C. Solomon, “Sex and Perversion,” Tom Nagel, “Sexual Perversion,” and Janice Moulton, “Sex and Reference,” in *Philosophy and Sex*, 1st ed., ed. Robert Baker and Frederick Elliston (Amherst, N.Y.: Prometheus Books, 1975).

15. Janice Moulton, “Sex and Sex,” unpublished manuscript.

16. See Lyla O’Driscoll, “On the Nature and Value of Marriage” [in *Feminism and Philosophy*]. She argues that marriage and the sexual relations it entails should be based on friendship rather than romantic love.