Cultures of Violence 3rd Global Conference: Diversity within Unity

Jennifer Suchland, PhD candidate University of Texas, Austin, USA
suchlandj@mail.utexas.edu

Sexual Morality and the Impossibility of a Violent Act

I. Introductory Remarks

The central question I will raise here today regards how certain behaviors become recognized as crimes, and more specifically as forms of violence against women. I will be drawing on research that I am currently conducting in Russia for my dissertation on the legal and cultural development of sex crimes in [Russian] Soviet and post-Soviet society. Therefore, the ideas discussed here are preliminary and only parts of a larger whole.

Again, the central question I am interested in is how certain behaviors or acts become legal and/or cultural categories. The first part of this question requires reflection on the term *how*. I have chosen this word very carefully, given that "why" could also be an appropriate word to use. For example, why are certain behaviors regarded as criminal in one country or culture and not in another? Or, why has the criminal status of certain acts changed historically even within the same cultural context? Such questions have been asked. Take for example the debates within international human and women's rights organizations regarding the practice of female genital mutilation in Africa. Some activists ask why this practice is still legal in some countries when many other countries would never allow for it. Or, for example, why has the legal status of homosexuality flip-flopped several times in Russia? These question, it seems to me, are important and interesting but in order to get inside of them we may need to dig a bit deeper.

To do this I believe that we must investigate how the very categories we operate under emerged and developed. In this way, an entire network, or what I like to call economy, of ideas and practices surfaces. "Why" questions often assume the categories and processes at work. Why female genital mutilation remains a legal practice rests in part on the creation of that term itself (certainly in Africa it is not called FGM). Why the legal status of homosexuality has vacillated rests in part on how the category of homosexuality emerged and developed as well as the object of that criminalization.

II. Section Title here

I will now turn more concretely to the development of rape laws in Russia. My intensions for focusing on Russia are not to make it an exemplary case (in either a pejorative or positive sense). The kinds of questions I am interested in, I hope, lend to cross-national and cross-cultural reflection. And, as with the case of most contemporary questions regarding violence, few country or regional-specific studies can be disconnected from international discourses regarding violence, human rights and law. This is particularly true with respect to violence against women, or the categorization of violent acts against women. If categories operate like standards, then the characteristics of international human rights or women's rights function as standards (intentionally and unintentionally). The influence of such standards cannot be ignored within the contemporary global-political context.

While there are reasons for striving toward "universal" standards of freedom, such as eliminating servitude and trafficking in women and children, the process of how such standards develop is not innocuous. For example, who gets to decide what constitutes a human right or a form of violence? Who has the power to set the standards for freedom and democracy? Who has the power to decide when the use of violence is an ethical tool for protecting/achieving freedom and democracy? While I do not have the space to address these specific questions here, my work on the development of rape laws in Russia is placed within this larger context (historically and culturally within Russia, in the post-Soviet period and in the larger discourse of women's/human rights).

From my preliminary research, I argue that the subject of rape laws, as they have developed over time in Russia, is not violence. By subject I mean the reason(s) why forced sexual relations are recognized as criminal. From an early period, the register in which forced sexual relations were recognized focused on sexuality and the distinction between licit and illicit sex. This concern may no longer be explicitly present, but it is there nonetheless as it helped to shape contemporary categories of sexual and violent crimes. For example, rape [изнасилование] continues to be recognized in exclusively heterosexual terms and in terms of the protection of women. This is not necessarily harmful, but within the context of other sex crimes and civil rights these terms are

problematic. I will return to this analysis shortly. For now, I will turn to a brief look at medieval laws on rape.

During the Slavic medieval period the Orthodox Church understood sexuality to be an evil thing in itself. The devil had incited sexual desires in humans and therefore, most contact of a sexual nature was morally corrupt and suspect (Brundage 1987; Levin 1989). Because of this general demonization of sexuality, there were scores of stipulations distinguishing licit and illicit sex. Of course the only holy form of sexual relations was conjugal heterosexuality. But even within this category there were rules regarding the time, position and frequency of these events. Eve Levin, a medievalist, found that Slavonic rules during this period regarded the lack of sexual activity between spouses saintly. "Even when spouses consummated their marriage in the beginning, it was considered a sign of piety to renounce further marital relations" (Levin 1989, 61).

Take for instance and story described in Levin's work of Juliana Lazarevskaja, a seventeenth-century Russian saint, who decided against her husband's will to not engage in sex after their marriage was first consummated. Her behavior was touted as a model for proper Christian life. St. Philothea, another Russian saint, also chose to live in chastity during marriage. She argued that she and her husband "should remain everlasting with Christ, to avoid the Devil's traps" (Levin 1989, 63). St. Philothea also argued that "pregnancy is uncomfortable, childbirth is dangerous, child care is burdensome, and children often disappoint their parents" (Levin 1989, 63). Of course, these women were saints and therefore we cannot say with certainty that most married couples acted similarly.

Rape, first and foremost, was a crime of illicit sexuality. It was a form listed with other kinds of improper sexual relations (homosexuality, incest, adultery, etc). The recognition of forced sexual relations was possible in so far as the Church was concerned about proper sexuality. We can see this in the church response to rape, which was to have both the woman and man repent.

At the same time, rape was considered a civil crime against property. When a virgin was taken prior to marriage, the father lost what was once valuable to him—the virginal status of his daughter and the power it allowed her to marry. In this case, either the rapist married the woman (which was less common according to Levin because it was

believe that such men were unfit for marriage) or a large fine was charged in an attempt to regain the woman's status (if he could not pay, he was put in jail). If someone other than her husband raped a married woman (because marital rape was not recognized) it was a crime against property as well; in this case the property of her husband. This was viewed in some ways as a graver crime because the rapist could not correct his transgression by marrying the woman as she was already married. In this case a fine was levied. In both cases however, the codes discuss rape as a crime against women's honor. In fact, the fines used for compensation were commensurate to the social status of the woman's family (Levin 1989).

Yet, the medieval Slavic focus on women's honor when recognizing and determining compensation for rape was part of the larger network of ideas supporting the conjugal-patriarchal system. Rape was a transgression of honor, but either the father or husband regulated that honor. Thus, the crime of forced sexual intercourse was less a form of violence against women than a transgression against the property of either the father or husband who controlled that honor. A woman's honor was produced through this patriarchal economy and thus the protection of honor worked to maintain that system of controlled sexuality. We can see that a concern for women's inviolability as human beings was not subject of the rape law.

This is supported by Eve Levin's research. She found that rape, because it dishonored women through the patriarchal system, "was popularly viewed in medieval Russian secular literature as an acceptable way of taking revenge on a woman who ridiculed a man" (Levin 1989, 234). Rape was also acceptable if used as a method to convince a woman to enter a marriage. Like some contemporary views on rape, at times Slavic medieval culture presented the idea that forced sexual intercourse can be enjoyable for women. In the case of medieval Russia, if the man convinced the woman to marry him through the act of forced sex, there was no dishonor and consequently no rape. With regards to rape within the conjugal setting, it was argued that men were not allowed to force sex on their wives because sex was undesirable in the first place—not because it was disrespectful or violent to the woman. A woman could make a claim for divorce if her husband requested sex too much, but again this was due to the medieval moral understanding of sex, not rape (Worobec 1991, 22). At the same time, men were given

almost free license to use physical abuse in the house. Wife beating was believed to be an appropriate form of discipline and affection towards the man's spouse (Johnston Pouncy 1994; Kon 1999; Levin 1989).

In 1845 the first collected version of civil laws was published in Russia under Alexander I. Although an earlier draft was completed in 1813 it was not adopted. In 1835 a less radical compilation was adopted and then was later revised and reprinted in 1845. Rape and other sex crimes fell under the chapter on "crimes against live, health, freedom and honor" (Сводь Законовь Российской Импери). Rules regarding proper sexual conduct such as those stipulated by the Orthodox Church are gone from the code. While the concept of honor is still present, and frames the whole chapter, the notion of consent is introduced. The age of the victim is recognized as an important factor in determining criminality. Fourteen is the set year when a girl no longer has de facto innocence—hence the creation of statutory rape. After that time it was assumed that a girl would marry (and thus become a woman) and therefore no longer need the protection of the laws.

In the case where the victim is over fourteen (or married) the status of her "psychological innocence" determines the extent to which she was understanding and possibly consenting to the advances of the perpetrator. In the process of determining guilt the code recognizes that a woman needs have her innocence. This innocence is provided in when under the age of 14 or by marriage. From my analysis of these statues a conjugal notion of proper sexuality and femininity frame the distinctions of the sex crimes laws. Woman's feminine innocence needs to be protected and indeed it is her innocence that allows for the recognition of the sexual crimes against her. In this way, the tradition set during the medieval period whereby the raping of a woman is recognized within a conjugal/patriarchal system that exchanges her chastity rather than recognizing the infliction of violence on another human being.

In both the medieval and imperial laws, rape is strictly a man on woman crime. The very verb rape in Russian (изнасилование) denotes this constellation. Furthermore, the subjects described in the laws are feminine, either denoted by how the nouns are declined in the clauses or by mentioning the word woman/girl explicitly. As such, sexual violence inflicted against men does not fall under the rubric of rape. From my

preliminary research it seems as if male rape would only be recognized in so far as homosexual sodomy is criminalized as well. And, in this case the subject of the crime is not sexual violence but illicit sexuality or depraved acts. This has changed somewhat in the post-Soviet Russian Criminal Code but I will turn to that later. For now, I want to suggest that the way in which rape has been recognized historically (through the beginning of the Soviet period) is through a specific framework of conjugal sexuality. Conjugal sexuality gives women legal subjectivity only in terms of her marital status. In the medieval period the rape crime recognized women as legal victims insofar as her father or husband owned that property. In the Imperial codes, again women are recognized in terms of their innocence within the conjugal framework—if she is unmarried she needs protection if she is married her moral status must be obtained in order to recognize a the crime.

I believe that this framework of conjugal sexuality existed through the Soviet period, if to varying degrees, and is again present in the newly written Criminal Code of the Russian Federation. Important changes and developments of course occurred during the Soviet period. Due to time constraints I will shift now to discuss the contemporary Criminal Code and the rape statutes therein, leaving the nuances of the Soviet Criminal Codes to another time. Generally speaking, the Communist Party heavily emphasized proper personal contact (Field 1998; Neuberger year; De George 1969). The role of sexuality in society was a consistent theme and topic of anxiety for the Party. It was believed that the desires of the heart could be harnessed and directed toward the creation of the socialist state (Kon 1995). According to Igor Kon, the Party's anxieties concerning sexuality and appropriate sexual behavior led to what he calls "sexophobia." Sexophobia is the social and personal stigma associated with anything related to the physical and psychological aspects of sex and sexuality. This is evident in the following excerpt from the 1961 Soviet Moral Code, "in the interests of revolutionary expedience, the class has the right to interfere in the sexual life of its members. The sexual must be subordinate in everything to the class, in no way hampering it, and serving in all it does" (Kon 1995, 58). While many centuries later, the Soviet control of sexuality is reminiscent of the medieval sentiment that sexuality is impure—but in the latter case sexuality must be subordinated for the sake of godliness and rather than for the socialist cause.

In the newly written Criminal Code of the Russian Federation, rape is recognized as one of five crimes against sexual inviolability and sexual freedom of the individual. Rape is legally defined as sexual intercourse with the application of force or threat of the application of force. The subject of the crime, the victim, is declined as a feminine noun. Again, this shows that rape is exclusively understood in the statute as a man raping a woman. This is in contrast to the proceeding statute regarding violent acts of a sexual nature where both the female and male declension is used (действия сексуального характера с применением насилия или с угрозой его применения к потерпевшему/потерпевшей ...). I will be investigating further why rape is made distinct from other violent acts of a sexual nature. At this point, I think that this separation is due to the historical and cultural ideas about proper sexuality and gender.

It seems to me that rape laws have developed under the rubric of protective legislation whereby women are viewed as vulnerable and men are viewed as aggressive. The object of the law is protecting women's vulnerable position in society and not violence. Why, for example, make explicit that there are other forms of violent acts of a sexual nature? Presently the classification of forced heterosexual intercourse is separate from what are called "homosexual, lesbian or other acts of a sexual nature." The language and classification of sex crimes suggests that sexual morality and not violence is the subject of the laws. This idea has been supported thus far by the research I have done in the criminological and sexological literature in Russia. For example the recent work of Iu. M Antonian and A. Tkachenko. In the introduction they state that "a civilized society strictly defends the honor and dignity of women like a symbol of its own honor and the effectiveness of these protections is an indicator of a society's culture" (Antonian and Tkachenko 1993). The point that I want to make is not that rape shouldn't be recognized or protected against. Rather, I am interested in how rape has been recognized and therefore how particular ideas of sexuality and gender are substantiated through that recognition.

What difference would it make if violence or the use of sexual violence were the object of the statutes on rape? I cannot say with certainty, of course, but I do believe that at a minimum two things could happen. First, there would not be a door open for the criminalization of homosexuality. Presently, there is. If particular sexual acts are made

distinct then some kind of quality is ascribed to those differences. If violence is our concern then the gender and sexuality of the victims and perpetrators should be left open in the laws. Furthermore, with regards to rape, I think that obviously it would be more socially acceptable to recognize male rape if the term was not so clearly sexed in Russian. It may also be the case that a more robust consciousness of violence in society would be possible. From the secondary literature I have read on rape crimes in Russia it looks as if the status of rape as a crime against women's vulnerability feeds into larger societal norms about proper gender roles.

III. Conclusion

In this brief discussion I have tried to argue that the way criminal categories develop matters and that contemporary questions regarding violence against women, for example, require deeper investigations into the cultural economies of gender and sexuality.

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