

“I’m Not That Kind of Girl”

White Femininity, the Other, and the Legal/Social Sanctioning of Sexual Violence Against Racialized Women

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La vulnérabilité des femmes et leur inaccessibilité sexuelle sont associées dans des versions normatives culturelles de la féminité hétérosexuelle blanche et sont hautement valorisées dans la culture nord-américaine. Des survivantes de violence sexuelle qui incarnent ces valeurs sont mieux protégées par le système judiciaire. Cet article critique la relation entre cette féminité blanche hégémonique construite socialement, la féminité de “l’Autre” et le concept légal de la “non-victime” créée par cette dynamique chez les femmes discriminées et victimisées par la violence sexuelle.

Popular rhetoric on sexual violence reflects both the devastating impact it has on the lives of women and girls as well as the public’s accorded trust in “the severity of the potential consequences . . . meted out by the criminal justice system” in response to reported sexual crimes (Vopni 110). Indeed, women and girls experiencing sexual violence often go to the police “with the assumption that they [will] be believed” (Vopni 110) and protected from further victimization, and that the perpetrator will be held accountable for his actions. In reality the evaluation of a woman’s experience of sexual violence, disclosure, and admission into uncontested “victim” status is not static. Socially-situated constructs of femininity—as well as the gendered constructs of the sexual “advance” as opposed to sexual assault, “appropriate” sexual behavior, and the “good” victim—shape our notions of guilt and blamelessness. These in turn trickle down into social policy and legal systems. Consequently, legal understandings of sexual violence against women are less universal and instead are more dependent upon a woman’s ability to meet the requirements of hegemonic femininity.

This essay contends that dominant femininity, its associated tenets and characteristics and “the typically White upper-middle class women who can achieve [it],” are “conspicuously valued within mainstream American culture”; they are therefore more successfully protected in justice systems (Cole and Zuker 1). Further, this

paper will critically examine the symbiotic relationship between socially-constructed hegemonic (White) femininity, Other-identified (racialized) femininities, and the legally conceptualized and sanctioned non-victim—the constructed “terrorist, deviant or other form of miscreant”—that this dynamic creates of racialized women who experience sexual violence (Doe 80).

White, Aboriginal, African-Canadian, female. What is the relevance of such categories in a criminal prosecution? What is the relevance of these categories to the public eye? The presumed objectivity of law suggests confident assertions about the *irrelevance* of the woman’s social location. Yet while the criminal justice system has proven imperfect in addressing sexual violence in the lives of Canadian women in general, women of colour are even less likely to secure the support of justice systems in the context of sexual assault reporting (METRAC). Systemic bias and the experiences of women of colour suggest that non-White women are less likely to be conceptualized as true “victims,” as “blameless,” or even as real “women” when sexual violence touches their lives. Women’s experiences as survivors of sexual violence are divided along racial, ethnic, religious, age and class lines because “legal cultures create different categories of Woman according to these factors” (Cossins 78). Diverse and marginalized women’s experiences of gendered violence, and the application of laws meant to address these acts of violence indeed challenge “the idea of a unitary or universal ‘women’s experience’” (Cossins 78). Violence against women is in itself an expression of inequality. One’s social location—one’s sex, age, “race,” sexual orientation and class—directly affects one’s emotional, financial or physical well-being, as well as one’s relative safety. Social location also predicts state response to incidences of violence committed against marginalized populations of women.

Canada has seen some studies (Roberts and Doob; Bagby *et al.*) on the impact that racism has on verdicts and offender sentencing when the accused is racialized.

However, there is a “paucity of research on the influence of racist and sexist stereotypes in rape blame attribution” (Donovan 722) related to the woman who has been targeted by sexual violence. Few empirical studies of Canadian origin measure the impact of racism upon verdicts and sentencing in the context of sexual assault prosecutions when the *complainant* is racialized. This paper aims to discuss this objective from a feminist, anti-oppression framework, as well as bring forward some Canadian research and justice system anecdotes that bring the issue of rape committed against racialized women to the fore.

the case referenced above, presumptively an Aboriginal woman—is reduced to simply body parts: a “pair of hips.” Yasmin Jiwani’s report on *Immigrant Women of Colour, Violence & Health Care* notes that racialized communities, in particular non-White immigrant communities, are additionally “labelled and constructed as inherently violent,” thus normalizing violence directed at racialized women, and encouraging reduced system response (Jiwani). These examples show us how racialized women remain depicted as individually, culturally and systemically “different” or “less-than” White women.

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Consider, for example, the sexual assault and murder of Cree youth Helen Betty Osborne. Osborne died in 1971; her assailants were not convicted until 1987. An inquiry resulting from this case found that “police had long been aware of white men sexually preying on Indigenous women and girls [in the region] but did not feel that the practice necessitated any particular vigilance” (Amnesty International 105). But if this case sounds dated, consider more recent sexual crimes paired with murder against Aboriginal women in Canada: in Vancouver, where Aboriginal people make up only about seven per cent of the entire population, an estimated one-third of Robert Picton’s murder victims were Aboriginal (Harper 36). And in April 2010, a man acquitted—despite the presence of multiple witnesses—of raping and murdering 13-year-old Aboriginal youth, Nina Courtepatte, in Edmonton in 2005, has just now seen a new trial ordered by the Alberta appeals court (Hanon).

Measurable shortcomings in system response, as above, tell us a little about the justice system experiences of racialized survivors of sexual assault. Attitudinal biases that differentiate between White women complainants and racialized complainants continue to exist amongst justice players. A Canadian judge, Michel Bourassa, once distinguished between complainants in remarks to the media, where he stated: “The majority of rapes in the Northwest Territories occur when the woman is drunk or passed out. A man comes along and sees a pair of hips and helps himself. . . . That contrasts sharply to the cases I dealt with before (in Southern Canada) of the dainty co-ed who gets jumped from behind” (Bilge 178). His description of the southern woman is rife with popular associations of White femininity: *dainty* (that is, feminized), *co-ed* (that is, middle-class), and finally *jumped from behind* (that is, defenceless and innocent). The northern complainant—in

Indeed, women marginalized by racism have historically been treated and depicted “as though they exist outside of [femininity’s] boundaries” (Cole and Zucker 2). Racist depictions of “Black women as unattractive, aggressive, sexually promiscuous and bad mothers,” (Cole and Zucker 2) for example, stand in direct contrast to dominant—that is, White—representations of femininity. Social constructions of Aboriginal women are also created relative to White womanhood: throughout history in Australia and the Americas, Aboriginal women were depicted as “overly sexual, standing in contrast to the ideal of the passive, prudish Victorian woman” (Pinnuck and Dowling 54). This comparison is so often-repeated in colonial history, contemporary media, and racial stereotypes that the descriptions appear naturalized, “real,” and thus invisible to those in hegemonic social locations and systems. These comparatives also create a hierarchy amongst women, where women of colour are constructed as “less-than” women, Othered women, or “prepackaged ‘bad women’” (Cossins 95).

Further, the successful prosecution of sexual assault in the Canadian criminal justice system still implicitly embodies “this problem of who meets the . . . ideal of femininity and who is cast out from its bounds” (Ringrose 413). Popular representations of “good” or “real” femininity continue to abound in sexual assault cases. The “assumption that [a complainant] consented to sexual activity and then needed an excuse to deny it later” reflects stereotypes about the importance of feminine virtue (Vopni 111). And defence lawyers in sexual assault cases still regularly incorporate representations of the woman’s unfeminine actions—for example, intoxication, sexualized behaviour, or simply being unaccompanied in the company of men—in order to substantiate the blamelessness of the assailant.

Good vs. Bad Women

Within these processes, we see how sexual assault trials are in fact trials of hegemonic femininity: “Is she, the complainant, or isn’t she ‘that kind of girl?’” So who is “that kind of girl”? Women in Canada live in a culture that continues to normatively differentiate between “good women who can be raped and bad women who cannot” (Cossins 95). This divide falls along behavioural, situational, and socially-located lines.

Numerous feminist authors have identified a socially-

sexual temptresses” (Donovan 733). They also reveal a colonial and “historical ... script that has evolved into current-day carnal images of and expectations for all black females” (Hillman 15).

A Canadian study detected similar trends. In 2002, a study measuring mock jurors’ ratings of guilt attracted 213 English Canadian participants—81 men and 132 women. In this study, participants were asked to comment on the presumed guilt of a perpetrator after reading transcripts depicting a sexual assault case. In the transcripts, the race and ethnicity of the woman and the accused

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constructed “prescriptive set of normative feminine behaviours” and attributes related to womanhood. These include, among others, “beauty, demeanour ... sexuality, and (White) race” (Cole and Zucker 1). Inevitably, these standards create “a normative yardstick for all femininities in which [non-White] women are relegated to the bottom of the gender hierarchy” (Cole and Zucker 1).

Historically, “true womanhood was based on a sexual script that perceived women to be pure, weak, inaccessible, sexually prohibited and chaste” (Hillman 21). One outcome of this expectation was that “all women were judged against this standard, so working women, single women and women of colour were not considered ‘true women’”. Women of African descent “prior to slavery, [and] during slavery ... have been used to describe and represent the *worst* of femininity” (Hillman 16, 21). These models of dominant femininity remain operative today. Notions of female vulnerability, sexual inaccessibility, and submissiveness readily collude with normative cultural versions of White, heterosexist femininity. And normative cultural constructs of passive White femininity, in turn, continue to clash against racist constructs of the “stereotypical Urban Girl ... assumed to be poor, of color and out of control” (Brubaker 530).

What happens when these “bad,” subordinated or “Othered” women enter our criminal justice system as survivors of sexual violence? An American study on rape blame attribution found that “in general, Black rape perpetrators are perceived as more culpable when their victims are White versus Black” (Donovan 724). Further, “White male participants [in the study] viewed the Black victim as more promiscuous than the White victim when the perpetrator was White” (Donovan 733). These attitudinal biases reflect racialized sexism, for example, the “Jezebel stereotype, where Black women are perceived as

varied, although the details of the case itself did not. The study found that “participants rated the Native Canadian defendant significantly more guilty than the English or French Canadian defendant if the victim was portrayed as English Canadian or French Canadian. In addition, participants rated the English Canadian defendant as significantly less guilty if the victim was portrayed as Native Canadian rather than French or English Canadian” (Pfeifer and Ogloff 307, 308, 305). From this study, we draw two conclusions related to racialized women: one, the woman’s Whiteness indeed affects our impression of the “guilty status” of the perpetrator. And two, more specifically, if the woman is racialized, the perpetrator appears less guilty of committing a sexual crime.

Is this a shocking revelation? According to our legal history, it shouldn’t be: “during slavery in America, the rape of a Black woman by any man, white or Black, was simply not a crime” (Cossins 90). And here in Canada, from the 19th century until 1996, residential schools effectively institutionalized the sexual abuse of (and White complicity toward) Aboriginal children (Indian Residential Schools).

Recognizing categories of difference created through racism is problematic for processes like the law, which is “framed in an ideology that emphasizes objectivity and universalism” (Marchetti 155). However, in a society where racial and sexual hierarchies continue to exist, violence against women from marginalized communities will also continue to exceed that experienced by majority communities. In this case, “colorblindness,” the minimization of difference, or the assertion that “race” and thus the impact of racism is legally irrelevant, represents both a lived reality of privilege and an ignorance that “operate[s] as a shield,” protecting the system itself “from realizing [its] complicity in an oppressive situation” (Sullivan 127, 128).

Sexual assault prosecutions still appear to be as much about distinguishing between complainants who are good (that is, performatively successful/proper) girls and those who are bad (subversive/un-rapeable) girls as they are about proving an offence has even occurred. And because hegemonic femininity is not automatically attributed to racialized women and girls, women marginalized by other social locations will always experience systemic bias (Cossins 93).

But will we see the systemic bias? The privileging of White habits, White constructs, and White values “is all the more effective because it presents itself as...an allegedly contextless perspective that sees race as insignificant” (Sullivan 158). The cumulative effect of such uniformity is not social equivalence, but a concealment of the truth: “an innocence that amount[s] to the transgressive refusal to know” experiences and reality outside White experience, including the impact of racism on the lives of racialized women (Sullivan 127).

Indeed, sexual assault laws have seen progress in the last decades: yet “sexual assault law reform strategies have generally taken an ‘everywoman’ approach... assuming that such strategies will be universally relevant to all women” (Cossins 97). In this, the law does not function as a social mediator of relations between *all* people; instead, it is a tool that merely functions to protect the more privileged: those who meet the requirements of hegemony and for women, those who meet “the requirements of hegemonic femininity, i.e. white, middle-class, heterosexual, able-bodied” (Batacharya 183). Feminist strategies for the next generation must therefore strive to make visible and consciously account for systemic racism in their advocacy and law reform endeavours.

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