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## Rape: Brief Histories on the Power of Language within the U.S. Leydy Ruiz

In 2013 the state of New York introduced an “act to amend the penal law, in relation to the definition of the term "sexual intercourse" as such term applies to sex offenses; and to amend the penal law... establishing the crimes of anal rape and oral rape to replace crimes involving criminal sexual acts.”<sup>1</sup> The penal law constructs differences in the definition of rape and criminal sexual acts, where S130.40, 45, and 50 classify anal and oral acts under criminal sexual acts and not under rape.<sup>2</sup> Both men and women can testify that they have been raped; however, the manner in which they could have been violated is put to question because of this exclusion to include oral and anal acts within the definition of rape. When rape is designed by the law with preconceived notions of marriage, gender, and (hetero) sexuality the discourse that is distributed amongst society is that there are only certain people who can rape or be raped. The discourse produced then comes to exclude crimes between same-sex individuals and rape through anal or oral penetration by suppressing the victims by not defining the crime as rape. By going through a series of court cases this essay demonstrates how legal language and implementation matter. There must be a broader more inclusive definition of rape and sexual offenses for loopholes to be addressed accordingly. While there are numerous topics in how rape cases were handled and who battled against them. I will focus how particular cases debate controversial topics that ultimately lead to redefining and constructing new laws to help advocate for victims that experience rape or injustices.

### Misconception of Marital Rape

The recognition of marital rape, or spousal rape, as a crime was finally established across the United States by 1993; however, the heteropatriarchal beliefs that were established within marital rape continued to dominate personal beliefs within marriages. Historically, marital rape was exempted from ordinary rape laws creating a leeway for the husbands to rape their wives with impunity. Jill Elane Hasday, explains how the discourse on nineteenth century feminists believed that marital rape was a private concern that stayed within the domestic sphere. Hasday explains that this thought was untrue and many advocates, "publicly demanded for the right for sexual self-expression in marriage, they pressed the [of marital rape] constantly, at length and in plain language."<sup>3</sup> By understanding that marital rape has not been a recent predicament but instead a legal problem that has long been debated, we can see the urgency if pushing the state to abolish differentiation between marital rape and rape.

The exemptions come from a heteropatriarchal belief within masculine spouses that believe marriages allow for the head of the family to dominate the partner in the relationship. Before under the New York penal Law, with accordance to the Blackstone Commentaries from 1966, a married man could not be convicted for raping or sodomizing their wife.<sup>4</sup> However,

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<sup>1</sup> NY Legis. Assemb. S3710C. Reg. Sess. 2013-2014 February 12, 2013.

<sup>2</sup> NY Penal Law S 130.40,45,50.

[http://ypdcrime.com/penal.law/article130.htm?zoom\\_highlight=rape#p130.25](http://ypdcrime.com/penal.law/article130.htm?zoom_highlight=rape#p130.25)

<sup>3</sup> Jill Elaine, Hasday, "Contest and Consent: A Legal History of Marital Rape." *California Law Review* 88, no. 5 (2000), pg. 1379.

<sup>4</sup> Watchler, PEOPLE v. LIBERTA 64 N.Y.2d 152, 474 N.E.2d 567, 485 N.Y.S.2d 207(1984), pg. 2.

Judge Watchler, during the trial of *People V Liberta* (1984), states, "Certainly, then, a marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman."<sup>5</sup> This statement ultimately allows for individuals to govern their own bodies and for those that harbor overly masculine beliefs that they are not entitled to overstep boundaries within a marriage. Addressing how marital rape and rape were for a vast majority of U.S. history not placed under the same recognition allows us to see how these differences affect how rape is handled within the court system.

### ***State v. Limon, October 2005***

Matthew Limon was charged with criminal sodomy statute for engaging with M.A.R., a victim who was about 14 years old in 2004. M.A.R had consented to oral-genital contact, and the defendant had stopped when asked to. But Limon being the age of 18, at the time was criminalized for, "the engagement in sexual activities with a child under sixteen."<sup>6</sup> Limon built his case around the Romeo and Juliet Law. The state of Kansas has a special law called the Romeo and Juliet which serves to mitigate the sexual intercourse when both actors are close to age.<sup>7</sup> To confirm the Romeo and Juliet law, the offender must be under 19 and no more than 4 years older than the child; the child and the offender must be the only two parties involved and they must be of the opposite gender.<sup>8</sup> Since, due to both participants being male, however the Rome and Juliet law did not apply, and Limon had to be convicted for a longer verdict. The ruling from the Court of Appeals state that while the Romeo and Juliet Law is gender specific, "creates no discernible difference between the sexes."<sup>9</sup> But in the same ruling it states earlier, "the classification is proper because it is rationally related to the purpose of protecting and preserving the traditional sexual mores ... and the historical development of children."<sup>10</sup> The language that was being used to define who could constitute legal subjects for the Romeo and Juliet Law excluded Limon and criminalized his sexuality by placing heterosexual activity but not same-sex activity as legally proper.

### ***People v. Pena***

The case of *People v Pena*, 2012, is discussed to examine how Lydia Cuomo's situation came to demonstrate that the way law is written can be significant in deciding how justice is carried out. Within the case of *People v Pena*, Lydia Cuomo, a school teacher, was coerced into submission by Michael Pena. Pena, a police officer, who threatened Cuomo at gunpoint into an alley and courtyard where he committed criminal sexual acts against her. A witness had testified that from what she had heard Cuomo was screaming "no!" and she saw from her own

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<sup>5</sup> Watchler, *PEOPLE v. LIBERTA* 64 N.Y.2d 152, 474 N.E.2d 567, 485 N.Y.S.2d 207, 1984, pg. 2.

<sup>6</sup> Shulamit H. Shvartsman, "Romeo and Romeo: An Examination of *Limon v. Kansas* in Light of *Lawrence v. Texas*." *Seton Hall L. Rev.* 35 (2004), pg 361.

<sup>7</sup> Shulamit H. Shvartsman, "Romeo and Romeo: An Examination of *Limon v. Kansas* in Light of *Lawrence v. Texas*." *Seton Hall L. Rev.* 35 (2004), pg 361.

<sup>8</sup> Shulamit H. Shvartsman, "Romeo and Romeo: An Examination of *Limon v. Kansas* in Light of *Lawrence v. Texas*." *Seton Hall L. Rev.* 35 (2004), pg 361.

<sup>9</sup> *State v Limon*, 83 P 3d. 229 – Kan: Court of Appeals, 2004, Pg.382.

<sup>10</sup> *State v Limon*, 83 P 3d. 229 – Kan: Court of Appeals, 2004, pg. 377.

window was “joyless sex.”<sup>11</sup> However, despite substantial amounts of evidence, such as the matching semen found on Cuomo’s undergarments linked to Pena, there was no verdict from the jury. The jurors came to be persuaded by Pena’s lawyer, Ephraim Savitt, who admitted that while Pena did feel guilty for his criminal sexual acts against Cuomo, him being guilty of the acts he did, did not mean he had ‘raped’ her. Savitt argued that the witnesses would have been too far away to initially know that Pena had raped Cuomo and convinced the doctor to admit that the redness of the victim’s genitals was unable to be connected to actual rape, and the redness was just a resemblance.

Pena was sentenced a sum amount of time because he was charged for three counts of criminal sexual acts. Within the NY Slip Op 99330, the document states that, “Although defendant's convictions on three counts of predatory sexual assault involved a single transaction and shared the dangerous instrument element, consecutive sentences were permissible because the three criminal sexual acts were separate and distinct.”<sup>12</sup> The law separated the sexual acts and did not term the assault on Cuomo as rape. Ultimately, the case led toward a movement to redefine the definition of rape within the penal law system in New York. The bills that followed the case, S3710 and S3710a-c, and the newest S2997. Within the years of 2012 to 2015 all deal with the movement for, “Rape Victims Equality Act.” This Act amend the penal law to redefine criminal sexual acts as oral and anal rape to appropriately reflect the specific offenses done against victims.

A definition of rape that is narrow allows for other criminal acts to be done, as this happened with Cuomo, where the sexual assaults committed against her were seen not as rape. The discourse that is implemented into society makes women, but also men, come to deny and not report that they were raped. The power that they once had in saying that they were violated is taken away, and they are unable to confront the actions committed against them. The underlying problem is that the law only applies to women being vaginally raped. Staying a virgin and not being vaginally penetrated has come to represent a woman’s purity. This outdated belief that sex is connected to purity is still used to determine sexual violence and criminality. Patricia Donat and John D’Emilio expand on the concept women’s purity and state, “The rape of a virgin was considered a crime against the father of the raped woman rather than against the woman herself.”<sup>13</sup> The fact is that the law is addressing women’s purity and where it is by showing how their pride and protection is not their own. Before women are property of their husband they are property of their fathers, casting women to have no control over their own bodies or self-worth within their household. This allows for hyper-masculine men to be the ones to dominate the relationship. Having males assume that women are possessions allow for them to be taken advantage and abused of their rights. By defining rape as contact between penis and vagina or vulva, the vagina is placed as a spot that is untouchable by men and if touched then it is a crime and termed as rape. However, anywhere else the crime is diminished and seen as less damaging to the individual. Cuomo, during the trial, spoke of her pain but because of the controversy on the type penetration the jurors could not come to a verdict and did not see the similarities that the acts of being anal, vaginal, or oral could cause the same pain.

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<sup>11</sup> Melissa Grace and Barbara Ross. “*Mistrial declared after Manhattan Jury deadlocked on rape charge against canned NYPD Michael Pena.*” The New York Daily News. 2012.

<sup>12</sup> PEOPLE v. PENA, 2015 NY Slip Op 99330(U), Court of Appeals of New York., Decided November 4, 2015.

<sup>13</sup> John D’Emilio and Patricia Donat, *A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change*. University of North Carolina at Greensboro. 1992, Pg.10.

By claiming that the circumstance is not rape within a case can cause damaging effects for the survivors involved because the law lacks consideration to the wide range of victims. Rape within this narrow definition of penetration limits how their bodies can be hurt. The specificity of this rape can produce three outcomes. The first outcome would be accepting that their circumstance is not rape and distrust the law, including the police and system that failed to protect them. The second outcome would be that the survivors know they were raped but feel disempowered and distrusting of the law and legal system. The third would be to redefine how rape is being stated within the law to better accommodate how rape is presented.

The bills of S3710, S3710a-c, and S2997 are trying to redefine rape within New York, the language being used within these bills demonstrates how power is being placed back into the individuals and allowing their circumstance to be rape crimes and their attackers to be rapists, instead of the added sentence for criminal sexual acts. However, the bills are still struggling to come to pass, currently S3710C is active and S2997 was introduced on February 2, 2015. S3710C states that the movement of anal and oral criminal acts would be placed within the same grounds as rape. The main change that has been introduced within the bill is the definition and it entails:

By redefining sexual intercourse-as an element of the crime of Rape- as any contact between the penis and vagina or vulva, rather than the current definition, which requires penetration, this bill would eliminate the disparity in possible punishment between Rape and other crimes, and provide equal protection against forcible sexual attack to all intimate parts of a victim's body.<sup>14</sup>

The new proposed definition of sexual intercourse gives the needed flexibility combats the notion of being harmed in only one place and glorifying that place as pure. The purity becomes part of the whole body belonging to the individual because they are given recognition of the damage and unwanted consent. By reaffirming to the victim that the crimes done against constitute rape, it gives justification that they are worthy of being protected and part of society.

However, there are points within this new bill that follow the heterosexual hegemonic model that it did from the previous definition of sexual intercourse. The quote specifically details that rape is now seen as any contact between the penis and vagina or vulva, but by only addressing the contact between these two the law is only addressing rape between those of opposite sex, excluding individuals of the same sex. Despite the bill creating different variations of rape, such as anal and oral rape alongside with their own specific punishments. The bill states separate types of rape to apply to different individuals and circumstances, which in some case would help because the bill allows for the courts to address more blatant cases, such as anal rape could be applied easier to same-sex individuals. The problem with this is that the discourse of rape will not be fixed by being separated. Assuming anal and oral rape is between same-sex individuals is problematic arise because this generalizes that only people that have anal sex are same sex individuals. Especially when the wording within the bill is clearly heterosexually focused, where rape is defined as contact between female and male genitalia while anal and oral rape is left ambiguous. To avoid falling into a hegemonic heterosexual language, rape should be defined without the context of genitalia and state rape as one meaning, not as rape, anal, and oral rape. By having genderless rape, people from whichever sexuality and gender can be represented equally and have their situations be validated.

The next outcome to be produced from a narrow definition of rape is the lack of trust within the legal system and the police force. For example, returning to Pena's background, he used his position as an officer and gun to intimidate Cuomo. By taking advantage of his position

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<sup>14</sup>NY Legis. Assemb. S3710C. Reg. Sess. 2013-2014 February 12, 2013.

as a police officer, a person that regulates the law within the community, Pena did everything counterproductive in what his position entails and destroyed what trust there could be between the law enforcement and the community. Police abusing their power over citizens in how they handle victims of rape or becoming their perpetrators creates a position where people cannot confide in them or turn toward them in their time of need. Philip Rumney addresses situations that males experience in reporting that they were raped and the issues they face whether being homosexual or heterosexual. Rumney states, “male rape victims non-reporting to police challenges the sexuality and homophobia were frequently mentioned, along with the macho type organization that the police service is, which suggests that the police would challenge survivors’ masculinity and, be unsympathetic, and uncaring.”<sup>15</sup> The individuals feel that they cannot approach the police force to admit they were raped because the aura that policemen have an overbearing male masculinity. Male victims feel that their situation has allowed them to become emasculated and unable to talk about rape without being ridiculed.

Rumney mentioned that this belief was amongst people that did not approach police officers; interestingly enough the individuals that admitted they were raped, were met with negative comments, Rumney quotes Isely who states, “Frequently, the males had encountered reactions such as hysterical laughter and assumptions of how ‘gay men would want to be raped.’”<sup>16</sup> The outcome of confiding within the police and telling the authorities that they were raped is met with an outcome that is as much negative as not admitting a thing. The survivors either feel ignored or that their situation was not handled accordingly. The problem that is being continued is a heterosexual masculine ideology that men cannot be raped, especially if they are heterosexual, and if they are raped and they are gay then they enjoyed the experience. The discourse that exists among male rape victims is unfortunate because there is less room for them to admit that they were violated. If the police force is unproductively managing rape cases of male victims, then the same could be applied to woman where they are expected to be raped and deemed to be submissive. If the law is exclusive against rape victims and the police force is unwilling and unapproachable to male victims, then the issue of men being raped will not be fixed.

Aliraza Javaid, citing Cohen, explains this issue further, “Cohen (2014) warns us that comparing and contrasting male rape with female rape is deleterious because it fuels the continued polarisation of debate and limits the conceptualisation of harm, rendering male rape invisible or at least on the margins.”<sup>17</sup> By noticing the warnings of how rape is compared or contrasted produces dangers toward male rape being left to the side allow for a broader more inclusive perspective to be created toward rape. Where rape applies to those wide range of individuals. Laws should equally mirror these beliefs and include male presence when talking about rape and who is the victim.

The discourse of males as rapists, especially black males against white women are especially more prone to be convicted and give higher punishments. Kimberle Crenshaw states within her article, “the use of rape to legitimize efforts to control and discipline the Black community is well established, and the casting of all Black men as potential threats to the sanctity of white womanhood was a familiar construct that antiracists confronted and attempted

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<sup>15</sup> Philip N.S. Rumney, *Gay Male Rape Victims: Law enforcement, social attitudes, and barriers to recognition*. Routledge; University of West of England, 2009, pg. 235.

<sup>16</sup> Philip N.S. Rumney, *Gay Male Rape Victims: Law enforcement, social attitudes, and barriers to recognition*. Routledge; University of West of England, 2009, 238.

<sup>17</sup> Aliraza Javaid, *Feminism, Masculinity, and Male Rape: Bringing Male Rape ‘Out of the Closet.’* University of York, 2014, pg. 287.

to dispel over a century ago.”<sup>18</sup> The stereotypes created on black male bodies is widely used within the law to persecute these individuals. Within the documentary, *The 13<sup>th</sup>*, four black male individuals and one of Hispanic descendant were stereotyped and convicted of being the rapists and potential murderers of Trisha Meili.<sup>19</sup> The case is known as the Central Park Joggers Case, the criminalization of black male bodies was so entrenched that no evidence was needed to incarcerate the individuals involved.

Rape therefore should be reevaluated to suit the victims, those accused, and professionals, such as police officers and sexual assault counselors. Debra Parkinson, states, “sexual assault counselors can improve communications across the legal system and that collaboration reduces re-victimization.”<sup>20</sup> The use of sexual assault counselors was stated to help the victims feel empowered when going into court. Having the counselors give them the needed support to talk about their experience can allow for victims to share what happened, but because of the laws being inclusive with gender and sexuality norms this creates people to still lack confidence in approaching the legal system. Language is shown to be crucial in how society perceives rape, who can be raped, and who has the power to stand up against it. Taking into consideration the effect of how the language of legal law is used within bills can help describe how rape is used as a power structure not only through the gender roles but through a legal system that supports and reinforces them.

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<sup>18</sup> Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*. Stanford Law Review. Vol. 43, No. 6; Jul., 1992, pg. 1266.

<sup>19</sup> Ava DuVernay, *The 13<sup>th</sup>*, Netflix Productions, 2016.

<sup>20</sup> Debra Parkinson. *Supporting Victims through the legal process: The Role of Sexual Assault Service Providers*. ACSSAwrap. No.8 2010. PG. 5

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