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Aliens No More? Addressing Feminist Critiques to Human Rights with Regard to Sexual Violence in the West

ABSTRACT. This paper will examine why the feminist critique to human rights is still relevant even in so-called 'progressive' Western societies today, with specific attention to sexual violence. The first part of this essay will explore the feminist critique concerning the public/private sphere, paying attention to its historical emergence, and effect on the progression of women's rights in the area of sexual violence. This will be followed by a discussion of what has formally been done to address the issue, and a general discussion on shortcomings that exist today, with particular attention to the Larry Nassar case in the United States.

KEYWORDS: Feminism, Critiques, Sexual Violence, Sexual Assault, Larry Nassar, Human Rights

Introduction

Debated during the Enlightenment period, demanded during the French and American independence movements, and officially acknowledged after the Second World War, human rights have now become an integral part of both, national and international law. The aim of human rights is to grant all individuals certain rights and protections simply because they are human (United Nations. *Human Rights*). In this regard, human rights are said to have universal effect, in that their content and application are not restricted to nationality, gender, color, religion, language or any other status (United Nations. *Human Rights*). Although human rights have been lauded for promising a better world, they are highly contested (Dembour, 2014, p. 53–54). For instance, human rights are supposedly universal, but some critics might argue that they do not adequately represent the rights and interests of various groups in society. This is a prevalent view in feminist scholarship. Feminist perspectives are complex and varied, incorporating numerous factors such as

race and sexual orientation (Crenshaw, 1990, p. 1241). However, regardless of which school is followed, critics stress the the falsely constructed dichotomy between private and public life, which perpetuates certain gender roles (Parisi, 2010, p. 1) as well as the androcentric approach to human rights. Both critiques are highly pertinent to the topic sexual violence against women. The WHO defines sexual violence as:

any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work (World Health Organization, 2002, p. 149).

Sexual violence may be phrased as 'the violent use of sex' which results in the creation of a victim who is 'exploited or abused by it' (Roark, 1987, p. 368). The term is multifaceted, including rape, sexual harassment and sexual assault. What is important to note in all instances is that there is a lack of, or unwillingness to give consent to the other party. In recent years, attention has been drawn towards sexual violence in everyday life through the #MeToo movement, where millions of women around the world shared their experiences related to sexual violence online. This movement has highlighted that although women's rights have vastly improved in comparison to a decade ago, a lot remains to be done in practice. This paper will therefore provide a general view on why the feminist critique to human rights is still pertinent today in terms of everyday sexual violence, with particular focus on Western society. To do so, theafore mentioned feminist critiques to human rights will be discussed in greater depth. Next, significant legal developments in terms of sexual violence will be outlined, followed by a discussion on why sexual violence remains a problem in society with particular attention to the Larry Nassar gymnastics case in the United States.

Feminist Critique of Human Rights and Developments

Because of how multidimensional human rights are, many critiques exist to address their shortcomings. A feminist critique examines the distinction between the public and private sphere. The public-private split refers to an artificial, socially constructed distinction between home and the workplace (Parisi, 2010, p. 3). There are three components

that stem from this distinction. Firstly, that the public/private dichotomy has resulted in a socially constructed hierarchy in which men have a more elevated status compared to women, secondly that human rights are more focused on granting protection to rights in the public sphere, and finally that women suffer from the lack of regulation in the private sphere. The public/private divide concept has been embedded in political discourse for centuries. In Ancient Greece, citizens were granted particular rights to enable their participation in society. However, citizenship was only allocated to male subjects, excluding women and slaves (Parisi, 2010, p. 5). These groups were classified as 'aliens' (Romany, 1993, p. 87) who were seen as 'inferior' to citizens. Then in the 19th century Enlightenment period, scholars such as Locke and Rousseau envisioned a similar state with a gendered public/private dichotomy (Castro, 2010, p. 143) where, like in Ancient Greece, a woman's role was relegated to the private sphere, to provide sexual, reproductive and emotional services for men (Castro, 2010, p. 144). In regards to the second component, the first notions of 'human rights' were initially civil and political, made to grant citizens (who were, at the time men) certain protections from the State. Even in matters of the private sphere, legislation was originally crafted to limit state involvement, such as the right to privacy or government non-interference in matters of family and relationships (Radacic, 2007, p. 451). But it is precisely here that women suffered—this is representative of the third component. Because women were not traditionally consulted in matters of governance, the protection they were entitled to was were limited, situated in the shadow of their male counterpart. This component also concerns the universality of human rights. Specifically, feminists have commented on the androcentric nature of human rights. For instance, when the UN first emerged as an international human rights body, nearly sixty nations from around the world participated in the drafting of the UDHR. However, Boaventura de Santos maintains that the UDHR lacked the universality it wanted to highlight because it 'was drafted without the participation of the majority of the peoples of the world' (Frick, 2013, p. 23). The drafting committee of the UDHR consisted of nine primarily white members, of which only one was a woman. Female delegates did take part in the drafting process; however, they were a minority. This meant that although certain rights favoring women were pushed for (such as the right to enjoy family life), it was not necessarily as though the opinions of women were substantially represented, since their place was

at home not in politics. The only way in which gender inequality was dealt with in the UDHR was through Article 2, the non-discrimination provision, which stipulates that everyone is entitled to the rights and freedoms regardless of 'race, color, sex' etc. (Universal declaration..., 1948, art. 2).

The feminist critique highlights the need for further human rights protection guaranteed to women, since women suffer from different types of human rights violations (Radacic, 2007, p. 444). This is problematic since most gender-based violence occurs in the private sphere, behind closed doors (Parisi, 2010, p. 5). For instance, marital rape has only recently been considered a criminal act, this too in only some states (Parisi, 2010, p. 6). In short, the public sphere is where legislation is created and implemented. Because men have traditionally had greater authority in this domain, it is their view that is represented in the rules and regulations that are drafted. This results in greater protection of rights they consider fundamental, such as civil and political rights. Obviously, these rights are also fundamental for women. However, women also suffer from a whole other category of human rights violations that have not adequately been taken into account, such as rights violations in the private sphere. This is illustrated by the preamble of the recent 2018 UN resolution 63/155 on the intensification of efforts to prevent and eliminate all forms of violence against women and girls: sexual harassment (Intensification of efforts..., 2018, preamble), which states that:

Violence against women and girls, including sexual harassment, is rooted in historical and structural inequality in power relations between men and women, seriously violates and impairs or nullifies the enjoyment of all human rights and fundamental freedoms by women and girls and constitutes a major impediment to their full, equal and effective participation in society, as well as economic and political life.

Because the public-private dichotomy is so deeply engraved in society, it will take time for this criticism to be fully tended to. However, it is important to note that women's rights have evolved significantly, thereby addressing these critiques. Barack Obama wrote in an article for Glamour magazine that:

one thing that makes me optimistic for [my daughters] is that this is an extraordinary time to be a woman. The progress we've made in the past

100 years, 50 years, and, yes, even the past eight years has made life significantly better for my daughters than it was for my grandmothers. And I say that not just as President but also as a feminist (Obama, 2016).

Women only acquired the right to vote 100 years ago—since then, much has changed. After the Second World War, subsequent human rights documents such as the Convention on the Political Rights of Women (1952) emerged to grant women equal civil and political rights in comparison to men (Parisi, 2010, p. 6). Such documents emphasized ‘equality’ between men and women, but did not necessarily recognize women’s unique experiences (Parisi, 2010, p. 6). The 1979 UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was a drastic step towards recognizing women’s rights, identifying all forms of discrimination against women, such as reproductive rights, as well as intersectional elements such as race, sexuality and religion (Convention on the elimination..., 1979). CEDAW also plays a substantial role in addressing the public/private dichotomy, acknowledging gender stereotypes, women’s contributions to the private sphere as well as the discrimination they face in the public sphere (Convention on the elimination..., 1979). Violence against women has only become a topic of concern more recently: With the UN Declaration on the Elimination of Violence Against Women in 1993, gender-specific violence is now considered as a legitimate human rights issue (Parisi, 2010, p. 6). Furthermore, the ICC has deemed violence against women as a punishable offence (Parisi 2010, p. 6). In the US, 1rape was pronounced a crime in each state by 1993. In addition, in May 2002, the 1976 European Union Council Directive on the equal treatment of men and women in employment was amended in 2002 and later in 2006 to include a prohibition on sexual harassment in the workplace, deeming it ‘contrary to the principle of equal treatment between men and women’ as well as ‘discrimination on the grounds of sex.’ (European Parliament and European Council, 2006, para 6 and 7). As an EU Directive, all member states were obligated to adopt laws in regards to sexual harassment or amend existing laws to reflect the content of the Directive. In 2014, The Council of Europe Convention on preventing and combating violence against women and domestic violence came into force (European Parliament and European Council, 2006). As of March 2019, the document has been ratified by 46 member states as well as the European Union. All of these steps signify that there is a significant amount of legislation in the West (and world-

wide) that addresses violence against women. Nonetheless, progress is still to be made in practice: the #MeToo movement, which spread virally in October 2017, demonstrated the ubiquity of sexual violence.

The Larry Nassar case

On 24 January, Dr. Lawrence Nassar was sentenced to 40–125 years, 40–175 years and 60 years in three different courts for first-degree criminal sexual conduct as well as for child pornography (Mountjoy, 2019, p. 57). Nassar was an osteopathic sports physician who worked with young female gymnasts through the Sports Medicine Clinic at Michigan State University (MSU), the national American gymnastics team (USAG), the gymnastics center Twistars (Nassar case para 7) and a member of the US Olympic medical team (Mountjoy, 2019, p. 57).

Over the course of his career, Nassar is said to have sexually abused approximately 256 female athletes from 1998 to 2015 (Mountjoy, 2019, p. 57, case para 19). Plaintiff (one of initiating parties, unnamed to protect identity), recounted that Nassar had ‘raped, sexually assaulted, abused and molested’ her between 1992 and 2016 by ‘nonconsensual vaginal and anal digital penetration or by rubbing and sucking on her breasts, and without the use of gloves or lubricant’ (Erika Davis, Plaintiff v. Lawrence Nassar, 2018, para 9). Nassar acted without completely explaining the ‘treatment’ and without obtaining consent from Plaintiff or their parents (para 26). This failure ‘robbed them of the opportunity to reject the ‘treatment’ (para 28). Consequently, Nassar abused his position of ‘trust and confidence’ to abuse his patients, causing them to suffer not only psychological injuries such as shock, humiliation, emotional distress, but also physical manifestations including embarrassment, loss of self-esteem, disgrace, and depression (para 29). In her victim impact statement, gymnast Kyle Stephens said that, “sexual abuse is so much more than a disturbing physical act. It changes the trajectory of a victim's life, and that is something that nobody has the right to do” (Mountjoy, 2019, p. 57). Additionally, 2000 Olympic bronze medallist Jamie Dantzcher recounted that she suffered from depression, anorexia, bulimia and had attempted suicide as a consequence of her abuse (Mountjoy, 2019, p. 57). What is particularly disturbing about the Larry Nassar case is how many women came forward, relaying similar experiences of abuse—how many women it took to sentence him.

Shortcomings in Practice

Legislation on a global scale is constantly developed to protect women from subsequent human rights violations. After Larry Nassar, the US Congress passed the Protecting Young Victims from Sexual Abuse Act of 2017 to grant greater protections to minor or amateur athletes (2017). However, because sexual violence was such a widespread historical practice and is only being legally acknowledged in the past few decades, gaps still exist in practice. In her recent *New York Times* article, feminist scholar Catharine MacKannon illustrates this notion, stipulating that even though an act might be illegal, it does not necessarily mean that people do not continue engage in it, especially if such acts are built into structural social hierarchies (MacKannon, 2018). MacKannon writes that although equal pay has been prescribed in law for decades, it still does not exist. Furthermore, racial discrimination is banned in many forms, yet it is still used against people of colour (MacKannon, 2018).

The same goes for law concerning sexual violence: Although legislation exists to protect victims, sexual violence is still prevalent in the West. In many instances, it goes unreported. For example, in the United Kingdom, rape and sexual assault are believed to be two of the most under-reported crimes (Grubb & Turner, 2012 p. 443). Even in cases that are reported, there is often a requirement for female victims to be unnamed in case law. This is done to shield their identities in the event that public association will result in societal backlash, such as victim blaming (Thomson, 2018). This includes being labeled as 'characterless,' as 'a bad woman,' or being accused of lying, as well as receiving threats from perpetrators as a consequence (Bhattacharyya, 2018). Victims may also fear being degraded and 'disbelieved by those in the Criminal Justice System' (Grubb & Turner, 2012 p. 444). In regards to prosecuting Larry Nassar, although dozens of complaints had been filed from 1997 onwards, MSU did not take action to investigate the cases (case, para 17). Instead, it took a decade of women filing claims, and a series of investigative reports by newspaper, *The Indianapolis Star* for Nassar to be tried (Hauser and Astor, 2018). This case demonstrates the system's reluctant to believe victims of sexual violence.

Victims may also be deterred to come forward because they believe that the legal system may undermine their experiences by failing to punish the perpetrator even if the crime is reported (Grubb & Turner,

2012, p. 444). This is evident in the recent Brett Kavanaugh case. Several sexual assault allegations were made against US Supreme Court nominee Brett Kavanaugh. Kavanaugh had 'ranted, raged, cried and apparently lied' while testifying, yet despite this, his position to the Supreme Court was still confirmed (Gessen, 2018). Kavanaugh's example illustrates that even if the victim comes forward, the perpetrator can easily escape liability, as if the victim had never spoken. Not only do researchers claim that justice mechanisms fail to punish the perpetrators of sexual violence, but this process is often exacerbated by 'unsympathetic authorities' (Grubb & Turner, 2012, p. 444). Gymnast McKayla Maroney, one of Nassar's victims, was offered a non-disclosure agreement in which she would receive \$1.25 million dollars to remain silent about her experiences in late 2016 (Barr, 2017). If this is how sexual violence is dealt with, it is natural for a victim to feel as if naturally the victim would feel as if their story is insignificant.

Sexual violence is a highly nuanced topic. It often occurs behind closed doors and where bystanders may not necessarily be present, or willing to come forth. This makes it easier to deem an accusation false, and is also likely the reason why dozens of victims must testify against a single perpetrator. Cases of sexual violence are even more complicated when other factors such as substance abuse are involved. Alcohol prevents victims from consenting properly since they might be incapacitated, and causes perpetrators to act more severely (Klein et al., 2018, p. 8). For instance, sexual violence is prevalent on college campuses, where alcohol and drug consumption is common: approximately 50–70% of sexual assault on campuses involves alcohol (Klein et al., 2018, p. 8). The use of alcohol adds a layer of doubt and disbelief in regards to a victim's claim, and further deters a victim from speaking up.

It is important to also note that typically sexual violence occurs when there is an abuse of power in the relationship (Mountjoy, 2019, p. 59). In the case of Larry Nassar, the physician was in a position of power over his victims, who were young, injured athletes. In case of sexual harassment at the workplace, perpetrators may also abuse their position to lure victims, such as film producer Harvey Weinstein who used his position to abuse young women, inviting them to hotels with the promise to help with their careers if they complied to his demands (Davis, 2018, p. 1059). The public-private dichotomy also comes into play, since women were deemed as less powerful to men, and

their voices therefore not heard as prominently (Radačić, 2007). This highlights that in order for change to be implemented, long-lasting values need to be changed.

Conclusion

Although women's rights have come a long way in the past century with regard to sexual violence, there is still a lot of progress to be made even in Western societies. The #MeToo movement has not only demonstrated the magnitude of sexual violence but has also amplified the collective voice of women: those who had been ignorant towards sexual violence became more aware, and those who had experienced it were able to share their stories (Gilmore, 2017). Now more than ever, sexual violence is being taken seriously, and women's voices are valued. #MeToo is a large step forward. What is needed now is a continuation of awareness-raising and an increase in prevention measures, for instance through education—especially in schools and universities, and an avenue to ensure that a victim has the agency and voice to speak up if they have encountered such experiences and feel secure while doing so, whether.

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