

“Legitimate rape,” moral coherence, and degrees of sexual harm

Brian D. Earp

University of Oxford

Authors' personal copy – accepted manuscript. In press:

Earp, B. D. (in press). “Legitimate rape,” moral coherence, and degrees of sexual harm. *Think: A Journal of the Royal Institute of Philosophy*, in press.

Note: This article has been accepted for publication and will appear in its final form in *Think*, © The Royal Institute of Philosophy, and published by Cambridge University Press.

The full bibliographical details and final version of the article will be available at this link: <http://journals.cambridge.org/action/displayJournal?jid=THI>.

Abstract

In 2012, the politician Todd Akin caused a firestorm by suggesting, in the context of an argument about the moral permissibility of abortion, that some forms of rape were “legitimate” (i.e., carried out with great force or violence). This seemed to imply that other forms of rape must be “illegitimate” (i.e., carried out with less force or violence). In response, several commentators emphasized that rape is a “heinous crime” and that there are “no varying degrees of rape.” While the intention of these commentators was clear, I argue that they may— inadvertently—have played into the very stereotype of rape (implicitly) endorsed by Akin. Such a response, I claim, actually obscures a range of sexual harms, including some that may not rise to the level of being a crime. I also offer some thoughts on the moral psychology behind anti-abortion arguments of the kind advanced by Akin.

* * *

Key words: rape, consent, sex, violence, ethics, discourse, harm, Akin

Introduction

Should abortions be allowed in the case of rape? Republican Todd Akin—in the course of his 2012 U.S. Senate campaign—argued that they should not be. His reasoning was as follows:

From what I understand from doctors, [pregnancy resulting from rape is] really rare. If it's a legitimate rape, the female body has ways to try to shut that whole thing down. But let's assume that maybe that didn't work or something. I think there should be some punishment. But the punishment ought to be of the rapist, and not attacking the child.¹

Now, contrary to the view advanced by Akin, there appears to be no scientific basis for the claim that the trauma of forced intercourse can interrupt ovulation or in any other way prevent a pregnancy. Indeed pregnancy is just as likely after rape as after consensual sex, according to a review of the evidence by Dr. Kate Clancy of the University of Illinois.² But let us start with a bit of data that is *not* in question: thousands of pregnancies per year, in the U.S. alone, ensue from cases of reported rape or incest: either through the caveat of Akin's theory that "maybe [the body's defenses] didn't work or something" or through the medically orthodox explanation that the body has no such defense.³

Assuming that falsely reporting rape is rare, as is generally believed to be the case; and acknowledging that many rapes are never reported in the first place, it seems reasonable to conclude that pregnancies resulting from rape are a life-changing reality for thousands of women on an annual basis.⁴ Granting this conclusion, then, how might one explain Todd Akin's moral reasoning? By this, I mean his attempt to downplay the relevance of rape and incest to the abortion debate while simultaneously maintaining (as he does), that there should be no exceptions made for abortion even in those cases.

The psychologist Brittany Liu uses the notion of "moral coherence" to provide a plausible explanation:

The misuse of scientific information in support of one's moral position is not new. When it comes to controversial and morally-laden issues such as abortion, it is difficult for people to separate their moral intuitions from their factual beliefs. With Akin, for example, his stance that abortion is fundamentally immoral (even in cases of rape and incest) is tightly wrapped up in his beliefs about the consequences of abortion and the science of female reproduction.

According to Liu, "moral coherence" refers to "the power our moral intuitions have to shape beliefs about facts, evidence, and science. Often, our intuitions about right and wrong conflict with well-rehearsed economic intuitions based on a cost-benefit logic. That is, it is often the case that a particular act feels morally wrong even though doing it would maximize positive consequences."⁵ How, then, do people resolve this kind of moral conflict? In an important article with her colleague Peter Ditto, Liu suggests that people's desire for moral coherence "initiates a motivated cost-benefit analysis in which the act that feels the best morally becomes that act that also leads to the best consequences."⁶ Applying this logic to the Akin case:

Strong opponents of abortion, like Akin, argue that abortion is fundamentally immoral and should be prohibited. But what if the pregnancy results from a rape? This creates a

problem for a principled moral position on abortion. Isn't abortion always wrong? But is it right to make a woman live with a baby conceived from a violent, traumatic act she did not consent to? One way to resolve the conflict is to convince oneself that pregnancies from "legitimate" rapes are exceedingly rare. If this is true, then prohibiting abortion even in the case of rape really has relatively few costs because it occurs so infrequently. Thus, it is easy to see Rep. Akin's views about rape and pregnancy (views that are held by many other anti-abortion activists as well) as emerging from his struggle to construct a coherent moral position on abortion that refuses to make exceptions for rape and incest.⁷

The idea of "moral coherence"—a clear cousin of Leon Festinger's famous cognitive dissonance theory⁸—seems plausible enough, and Liu lays it out in a thoughtful, compelling manner. However, other responses to the Akin affair were less constructive, in my view. For example, consider this press release from the American Congress of Obstetricians and Gynecologists (ACOG):

Recent remarks by a member of the US House of Representatives suggesting that "women who are victims of 'legitimate rape' rarely get pregnant" are medically inaccurate, offensive, and dangerous. Each year in the US, 10,000–15,000 abortions occur among women whose pregnancies are a result of reported rape or incest. An unknown number of pregnancies resulting from rape are carried to term. There is absolutely no veracity to the claim that "If it's a legitimate rape, the female body has ways to shut that whole thing down." ... Any person forced to submit to sexual intercourse against his or her will is the victim of rape, a heinous crime. There are no varying degrees of rape. To suggest otherwise is inaccurate and insulting and minimizes the serious physical and psychological repercussions for all victims of rape.⁹

This is a very different way to respond to Akin's views. Rather than (merely) setting the factual record straight, or (as Liu did) supplementing those facts with a reasonable explanation of how it is that Akin may have come to adopt a medically unfounded position, the ACOG adds in some additional bits of information about how "offensive" and "insulting" Akin's remarks were, while declaring that there are "no varying degrees of rape."

The press release was undoubtedly well-intentioned. Moreover, the sentiment behind its specific choice of words is easy to understand, and inspires strong feelings of empathy. Nevertheless, I think there may be some hidden problems in responding to Akin's argument in the precise manner done by the ACOG—problems that may, in fact, actually undermine certain arguments for the moral permissibility of abortion, as well as the important efforts of anti-rape advocates to reduce the incidence of sexual assault. I shall start with "offensive" and "insulting" and then turn to the statement about "varying degrees" after that.

Problem #1: The threat to scientific authority and the undermining of public trust

First—"offensive" and "insulting." In my view, these words have no place in an official press release issued by a scientific and/or medical organization. This is because the public trusts (and should be able to trust) such organizations to weigh in on matters of fact, without bias, and from a position of genuine authority. Thus equipped with the best available evidence (on some disputed empirical point), the public will be able to carry out its moral and political debates in a more productive and well-informed manner.

On the other hand, for an organization such as the ACOG to declare—in an official capacity—that an individual’s remarks just *are* “offensive” and “insulting,” is to inject what is essentially a (contestable) value judgment into an already politicized discussion. This is problematic. It is problematic because—among other issues—it might have the effect of calling into question the ACOG’s ability to give a ‘value-free’ assessment when it comes to judging matters-of-fact.

In other words, if the ACOG is willing to pass judgment on matters of opinion—or so the public might think—then perhaps it is willing, as well, to evaluate the relevant *empirical* information through the lens of a particular worldview. If so, then this would have the effect of undermining the scientific integrity of its pronouncements. In this case, such an outcome would be a problem, it seems to me, for those who stand in opposition to Akin’s view on the moral permissibility of abortion. This is because Akin’s view (or so I have suggested) depends upon certain facts being such-and-so; yet the facts are not that way. Therefore, his view is untenable. However, if we cannot be sure about ‘the facts’ in the first place—because they might have been presented to us in a biased or distorted fashion—then the strength of such an argument will be diminished.

This is one reason, at least, why organizations such as ACOG should refrain from making public value judgments concerning contentious matters of moral disagreement.¹⁰

Problem #2: The inadvertent obscuring of degrees of sexual harm

The other part of the press release that deserves attention, in my view, is the assertion that “there are no varying degrees of rape.” One can guess that this was meant to refute the notion of “legitimate rape,” which seems to imply the existence of other kinds—or “degrees”—of rape that (by contrast) should not be considered “legitimate.” And by “legitimate,” Akin apparently intended to refer to rape that is particularly violent or traumatic (since, on the discredited ‘rape shuts down pregnancy’ theory, it is meant to be extreme stress that triggers the body’s defenses).

That said, it is not entirely clear what the “no varying degrees of rape” phrase should be taken to mean. And whatever it was *intended* to mean, I think that it may unwittingly cause problems for anti-rape advocacy, as I shall now explain.

Rape is something that has to be defined. Indeed, it has been defined in a number of different ways across jurisdictions and points of time. The FBI used to define rape as “the carnal knowledge of a female forcibly and against her will.” Now it defines it as “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” The United Nations has its own definition; so does the World Health Organization, and so on.¹¹

Moreover, there are many different *types* of rape (on some classifications), which take into account things like the *motivation* behind the rape, the *relationship* between the perpetrator and the victim, the *context* of the rape, the *method* of the rape, and so on. There is anger rape, power rape, spousal rape, stranger rape, acquaintance rape, friend rape, date rape, rape of children, statutory rape, gang rape, and a list of others. There are also clearer and less clear crossings of the boundary of consent, as well as more vs. less intentional violations of another’s sexual autonomy.

Now, it seems beyond dispute that a person’s physical and psychological response to rape might vary tremendously depending upon these and other factors. However, this is something that the “no varying degrees of rape” claim—in conjunction with the ACOG’s description of rape as a “heinous” crime with “repercussions for all victims” (as though “all” victims have a similar experience)—may actually serve to obscure. Indeed, rape is *not* a unitary, metaphysically-determined category: it is a value-laden, socio-legally defined phenomenon. Its causes are many and its effects are many. Rape is complicated.

Why does this matter? One reason it matters is that some people do not realize the *range* of sexual acts, nor the range of situations in which they occur, that have the potential to cause serious harm to another person. To talk about rape as a monolithic thing that doesn’t vary—that unfailingly causes “serious physical and psychological” harm, as the ACOG press release suggests—does much to play into the cartoon of rape that occurs in dark alleyways, perpetrated by a stranger at gunpoint. Take this satirical skewering of Akin and his comments by *The Onion* as a case in point:

Pregnant Woman Relieved To Learn Her Rape Was Illegitimate

Though she was initially upset following the brutal sexual assault last month that left her pregnant, victim Martha Byars told reporters she was relieved Sunday to learn from Rep. Todd Akin (R-MO) that her ability to conceive her unwanted child proves she was not, in fact, legitimately raped.

“Being violently coerced into having sex was the worst thing that’s ever happened to me, so I take comfort in knowing it wasn’t actually rape,” Byars said of the vicious encounter in which she was accosted in an alleyway by a stranger, pinned to the ground, and penetrated against her will for 25 minutes. “It was absolutely horrific—I felt violated in the worst way imaginable—but thanks to Congressman Akin, I now realize it must, at some level, have been consensual after all.”¹²

The intention of this satire is clear, and its grim point is more or less effectively conveyed. But it also highlights a problem with the discourse surrounding rape in our society, which turns on a collective mental picture of rape as being the sort of thing experienced by *The Onion*’s Martha Byars. However, that is not the only sort of sex that counts as rape legally; and it is not the only sort of sex that causes problems morally.

When a person is penetrated sexually without consenting to it, the person doing the penetrating is very rarely a stranger. According to one source,¹³ the statistics break down as follows:

- Someone with whom the respondent was in love: 46%
- Someone that the respondent knew well: 22%
- Acquaintance: 19%
- Spouse: 9%
- Stranger: 4%

So for sheer factual reasons to begin with (assuming that these data are reasonably accurate), we need to move away from the “stranger in an alleyway” model of rape, and think about the sorts of harm(s) that can occur via unconsented sex between acquaintances, friends, lovers, husbands and wives, etc.

The moral goal is clear. It should be that whenever sex occurs, both parties want it (and are competent to agree to it). On the far end of missing this goal is a violent attack at gunpoint. Somewhere in the middle might be a nonviolent, alcohol-fueled encounter between people who are just beginning to date and whose consent-signals are muddy or honestly misunderstood. And on the near end might be a partner who verbally consents to sex even though he’s not particularly in the mood. Harmful sex—definitions of rape to one side—can take many forms, and the degree of harm is *not* the same across the board.

Indeed, the psychological impact of various forms of nonconsensual sex might range pretty widely. And not necessarily in the ways that can first come to mind. If a friend or partner pushes sex, for example, this violation of trust might have a profound effect on the victim—even more profound than if the sexual act were forced on one by a stranger. Furthermore, a great deal of harmful sex occurs when the person doing the penetrating doesn’t think of the act as rape—since “rape” (“legitimate” rape?) is the sort of thing that only scary criminals do while brandishing a weapon.

If we want there to be less sexual harm in the world, then we need to think about the manifold ways that harm can come about, and contribute to a discussion of rape that gets men and women thinking seriously about consent in places other than alleyways. We need some nuance. While the ACOG statement was surely well-intentioned, its “offended” tone and its portrayal of rape as something that doesn’t admit of any degrees, as something that is “heinous” in all its manifestations, and that inevitably causes serious harm, paradoxically calls to mind a model of rape—the “stranger” model used by *The Onion*—that actually *obscures* the more complex range of harms that occur in the messy real world of sexual interaction.

Conclusion

In light of these observations, let me try to summarize what I see as the major take-away lessons from the so-called Akin affair:

1. Todd Akin, and others like him, are (apparently) wrong on their facts. Traumatic sexual encounters are no less likely to lead to pregnancy than gentle, affirming, consensual intercourse.
2. Todd Akin, and others like him, cannot be assumed to be willfully ignorant, nor to be people who just “hate women” (notwithstanding various comments to that effect in the media following his remarks). What is clear, by contrast, is that Akin *does* have a motivated moral reasoning system, as each of us does, whose operation extends from certain—arguably objectionable—premises, to mistaken (or even dangerous) factual conclusions. This phenomenon might be explained by something like Liu and Ditto’s “moral coherence” theory, although other explanations seem possible as well.
3. Scientific and/or medical organizations play an important role in shaping public discourse. However, it is important for these organizations not to abuse this role by deciding for their

audiences just how “offended” or “insulted” they should feel when it comes to certain controversial comments. Instead, they should address the relevant empirical claims—in a measured, unambiguous fashion—and leave the value judgments about “offensiveness” to others.

4. We should be careful about how we talk about rape. Both the ACOG and *The Onion* made earnest efforts to remind their readers of just how traumatizing rape can be, on their way to making a medical point about the relationship between rape and pregnancy. But they both—directly in the case of *The Onion*, and indirectly in the case of the ACOG—reinforced a one-size-fits-all myth about rape, according to which it is fundamentally a physically violent, uniformly traumatic crime: the sort of thing that happens outside, in the middle of the night, and leaves its victim bleeding and bruised. We have to remember, however, that sexual harm goes way beyond such “alleyway” cases, takes many forms, and can be traumatizing in ways those cases fail to capture.

Sex should always be wanted; sexual harm should always be avoided. There are many ways to cause sexual harm—and we should be aware of, and talk about, the gamut.¹⁴

Brian D. Earp is a writer and ethicist. He holds degrees from Yale, Oxford, and Cambridge Universities. He may be contacted at brian.earp@gmail.com.

Notes

¹ See <http://fox2now.com/2012/08/19/the-jaco-report-august-19-2012/>.

² Clancy, K. (2012, August 20). Here is some legitimate science on pregnancy and rape. *Scientific American*. Available at <http://blogs.scientificamerican.com/context-and-variation/2012/08/20/here-is-some-legitimate-science-on-pregnancy-and-rape/>.

³ See statement by the American Congress of Obstetricians and Gynecologists at http://www.acog.org/About_ACOG/News_Room/News_Releases/2012/Statement_on_Rape_and_Pregnancy.

⁴ By “rape” I mean any penetrative act done without consent; and here I’m calling attention to the sub-set of such acts that result in conception.

⁵ Liu, B. S. (2012, August 22). Fitting factual beliefs to moral evaluations: How moral coherence explains Todd Akin’s “legitimate rape” position. *YourMorals* (blog). Available at http://www.yourmorals.org/blog/2012/08/moral_coherence/.

⁶ Liu, B. S., & Ditto, P. H. (2013). What dilemma? Moral evaluation shapes factual belief. *Social Psychological and Personality Science*, 4(3), 316-323.

⁷ See note 5.

⁸ Festinger, L. (1962). *A theory of cognitive dissonance*. Palo Alto: Stanford University Press.

⁹ See note 3.

¹⁰ For a related discussion, see Earp, B. D. (2015). Do the benefits of male circumcision outweigh the risks? A critique of the proposed CDC guidelines. *Frontiers in Pediatrics*, in press.

¹¹ See <http://en.wikipedia.org/wiki/Rape>.

¹² “Pregnant woman relieved to learn her rape was illegitimate” (2012). *The Onion*, August 20. Available at <http://www.theonion.com/articles/pregnant-woman-relieved-to-learn-her-rape-was-ille,29258/?ref=auto>.

¹³ Rathus, S. A., Nevid, J. S., & Fichner-Rathus, L. (1997). *Human sexuality in a world of diversity*. Boston, MA: Allyn & Bacon.

¹⁴ This paper is adapted from material that was originally posted by the author at the *Practical Ethics* weblog hosted by the University of Oxford. See <http://blog.practicaethics.ox.ac.uk/2012/08/legitimate-rape-moral-consistency-and-degrees-of-sexual-harm/>. Thanks are due to Julian Savulescu for helpful feedback during revisions.