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# An Immodest Proposal: Foucault, Hysterization, and the “Second Rape”

LAURA HENGEGHOLD

*This article places Foucault's 1977 suggestions regarding the reform of French rape law in the context of ongoing feminist debates as to whether rape should be considered a sex crime or a species of assault. When viewed as a disciplinary matrix with both physical and discursive effects, rape and the rape trial clearly contribute to the "hysterization" of women by cultivating complainants' confessions in order to demonstrate their supposed lack of self-knowledge.*

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There are many respects in which the social thought of Michel Foucault is a rich resource for feminist theory. Foucault's rejection of the notion of self-contained subjectivity provides a perspective from which to critique the idea that women's subjectivity is unusually and pathologically incoherent or unselfcontained. His argument that the production of knowledge regarding sexuality and the grounding of discursive subjectivity are two mutually supportive historical endeavors allows feminists to identify the cultural institutions that shape and define not only our sexual concepts but also our idea of what constitutes valid or empowering confession. Likewise, Foucault's inquiry into the practices that encourage or institutionalize specific forms of discourse reveals the performative criteria that distinguish an authoritative pronouncement from hysteria. Finally, his persistent claim that power/knowledge is always *productive* rather than merely oppressive allows feminists to theorize the link between lived, practiced embodiment and the body's social meaning, as well as to identify points at which the power invested in the identification/production of "women's" physiology might be reclaimed by the subjectivities that were formed as a result of this process.<sup>1</sup>

Considering these valuable insights, however, Foucault's own application of his theory of sexuality can seem unusually conservative from a feminist point

of view (de Lauretis 1987, 36). One example to which a number of feminists have drawn attention is his now-notorious call for the “desexualization” of rape, made in a 1977 interview with the French journal *Change*.<sup>2</sup> His suggestion that rape law punish “just the violence” in rape, leaving the “sex” free of state interference, engages him with ongoing feminist debates regarding strategic legal and educational perspectives on sexual violence, but also implicitly suggests that rape law should protect the sexual expression of rapists before that of their victims. In fact, Foucault’s theoretical work detailing the interdependence of coercion, discipline, and the production of truthful discourse in the exercise of state and social power provides the basis for a more thoughtful analysis of rape and rape law than the philosopher himself seems to grant in this case. Rather than separate the “sex” from the “violence,” one might expect a Foucauldian analysis of rape to investigate the ways in which rape and rape trial process reinforce a discursive formation in which women are made to appear less coherent than the men from whom they are differentiated by their status as victims.

In a well-known critique of Foucault’s comments during this dialogue, French feminist Monique Plaza argues that rape is sexual precisely insofar as it “opposes men and women . . . essentially because it rests on the *very social* difference between the sexes” (1981, 29). In this article, I would like to expand on Plaza’s critique by exploring the way in which rape and the rape trial contribute to the deployment of sexuality by positioning women as “hysterical.” According to Carol Smart, the rape trial “constructs a category of Woman as if it was a unity. The individual woman who has been raped is subsumed into this single category of Woman which is known to be capricious and mendacious” (1989, 42). My interest, therefore, is *not* in rape’s status as an act of violence or an expression of physical power, but in its contribution to the realm of knowledge, its role in supporting a particular form of discourse and gendered subjectivity. How does rape “hysterize” women, both in the minds of men and in the minds of many assaulted women, by provoking and disciplining acts of confession?<sup>3</sup>

## I. THE DESEXUALIZATION “STRATEGY”

In an issue of the *collectif Change* (1977a), Foucault discussed a number of proposed reforms in the laws pertaining to sexuality, which he had been asked to comment on by a commission for reform of the French penal code. Possible reforms included the reclassification of rape as a pure crime of violence rather than as a sexual offense. Superficially, the strategy resembled the demand of some North American feminists (such as Susan Brownmiller [1975]) that rape be reconsidered as a genuine assault rather than a sex act, with the connotations of pleasure involved in such an association. In the context of the *Change* discussion, however, the strategy was intended not to combat public assump-

tions regarding the essentially innocuous nature of rape but rather to challenge the disciplinary inscription of sex upon the social body as an omnipresent and dangerous text, one most intensely concentrated on and mediated through the bodies of official sex criminals. However, as Monique Plaza pointed out in her trenchant critique of the *Change* discussion (1981), such a “liberation” of sexuality from the context of punishment (unlike Brownmiller’s proposal) would only be of practical benefit to men. Since women are the people most directly affected by rape (and rape law, by extension), it seems reckless at the very least for male theorists to choose rape law as the initial battleground for their counterdeployment of power/knowledge on behalf of an (apparently) genderless society. As Teresa de Lauretis explains in *Technologies of Gender*, “To speak against sexual penalization and repression, in our society, is to uphold the sexual oppression of women, or, better, to uphold the practices and institutions that produce ‘woman’ in terms of the sexual, and then oppression in terms of gender” (1987, 37).

It is important to acknowledge from the outset both Foucault’s ambivalence regarding “desexualization” and the long-standing debate within the feminist community as to whether rape should be considered a crime of pure violence or a criminal expression of sexuality.<sup>4</sup> Although Foucault never really endorses the desexualization strategy, he never refutes it either, and even entertains the possibility of removing rape from criminal law altogether and making it a civil offense, to be punished by heavy fines. He acknowledges the female discussants’ opposition to the desexualization of rape but remains unconvinced by their arguments as to why rape should be considered more than a form of physical violence; that is, why sexuality, as “located” in the sexual organs, should be “protected, surrounded, invested in any case with legislation that isn’t that pertaining to the rest of the body” (1988a, 202). Alluding to the politics of sexologist Wilhelm Reich, with whom he had taken issue in *The History of Sexuality* (1978), Foucault observed:

One can always produce the theoretical discourse that amounts to saying: in any case, sexuality can in no circumstances be the object of punishment. And when one punishes rape one should be punishing physical violence and nothing but that. And to say that it is nothing more than an act of aggression: that there is no difference, in principle, between sticking one’s fist into someone’s face or one’s penis into their sex. . . . But, to start with, I’m not at all sure that women would agree with this. (1988a, 200)

Indeed, the women discussants do not, citing the trauma and subsequent sexual paralysis of children who are raped. Thus the discussion becomes polarized around the question of whether a sexual act can ever legitimately be the target of state punishment, qua a sexual act, and the question of how the

psychic trauma peculiar to rape can be considered legally comparable to the effects of violence. As Jean-Pierre Faye (another of the *Change* discussants) puts it crudely, “From the point of view of women’s liberation, one is on the ‘anti-rape’ side. And from the point of view of anti-repression, it’s the opposite. Is that right?” (Foucault 1988a, 201). Unfortunately, the women discussants have difficulty defending their position where adult women are concerned, which is why so much of the discussion focuses on the rape of children. We do not know whether their hesitancy stems from sympathy with Faye’s Reichian viewpoint or (as Plaza suggests) from intimidation—or whether it reflects the importance of certain political considerations underlying Foucault’s perspective on sexuality law. At any rate, it is instructive to consider why Foucault might have held such a position and to inquire whether his own theory of sexuality might support the arguments of feminists who claim that rape cannot be regarded solely as a form of physical violence.

## II. RAPE AND SEXUAL DIFFERENCE

First, the understanding of sexual difference implied by Foucault’s “desexualization” strategy needs to be addressed. This is important because any proposal to punish “just the violence” in rape suffers from the implication that rape, like most other violent crimes, is gender neutral. Moreover, his choice of rape as a site of resistance to the surveillance and punishment of formerly anonymous sexual practices implies that rape itself is an “unconstructed” act prior to its insertion in the juridico-discursive apparatus.

In *The History of Sexuality*, Foucault argues that “the rallying point for the counterattack against the deployment of sexuality ought not to be sex-desire, but bodies and pleasures” (1978, 157). As Teresa de Lauretis observes, however, he fails to explain how “bodies and pleasures” are constructed differently from “sex-desire,” and in fact the reader is left with the implication that bodies and pleasures precede or exist beyond the scope of the discursive order (de Lauretis 1987, 36). If, as Plaza contends, Foucault unwittingly ends up defending rapists in the name of “bodies and pleasures,” he implicitly limits “pleasure” to the pleasure of men. He likewise implies that “men” are the primary targets of the deployment of sexuality, and that men are the persons who need to be protected from its inquisition. For instance, according to *The History of Sexuality*, both the creation of the “pervert” and the cultivation of concern regarding children’s sexuality were species of the deployment of sexuality. Yet Foucault cites the pedophile Jouy as his example of a newly scrutinized sexual type (1978, 31-32), rather than the children whose trauma or early initiation may have brought them into conflict with social or internal expectations regarding the practice of pleasure, or whose sexual experiences were being over-determined and scrutinized due to the pedagogization of children’s sexuality (de Lauretis 1987, 36 n. 3). Likewise, although Foucault identified the

hysterization of women as one of the four unified strategies in the deployment of sexual power/knowledge, he seems not to consider that rape may be the primary tool through which women are "hysterized."

Some feminists (Hartsock 1990; Bunting 1992; Eisenstein 1988) have expressed concern that Foucault's emphasis on power as it circulates throughout the entire social body, rather than being exercised hierarchically by one group against another, does not sufficiently explain how it is "concentrated and exercised to the detriment of certain groups in society, including women" (Bunting 1992, 833). In other words, even if a subordinate social group is created as the result of an investment of power, why are its members systematically frustrated in wielding this investment on their own behalf? Others, such as Lois McNay (1991) and Sandra Bartky (1988) discuss ways in which Foucault's recurrent blindness to the gender-specific effects of disciplinary institutions elides the question of the construction of femininity per se as a disciplinary category. "It is a tremendous irony," Bunting comments, "in a three volume treatise devoted to the history of sexuality that Foucault barely acknowledges the gendered nature of Western discourse about sexuality and that he himself is participating in that long tradition of male dominated discourses" (1992, 835).

Judith Butler contends that sexual difference is addressed by Foucault's analysis of the deployment of sexuality (1987, 137). However, despite Foucault's insistence that the facts of genital morphology do not imply the existence of sex "in itself," his inattention to gender-specific effects of disciplinary technology has led de Lauretis to suggest that the Foucauldian notion of sexuality "is not understood as gendered, as having a male form and a female form, but is taken to be one and the same for all—and consequently male. . . . So that, even when it is located in the woman's body (seen, Foucault wrote, 'as being thoroughly saturated with sexuality,' [1987, 104]), sexuality is perceived as an attribute or a property of the male" (1987, 14). Thus, sexual difference is considered accidental or irrelevant to the circulation of power as *sexuality*. This formulation helps make sense of Foucault's apparent belief that male sexuality must be undeployed in order to facilitate the undeployment of sexuality in general. But this is clearly erroneous: an attempt to define rape as an act of violence whose sexual aspect is regarded as natural or accidental ignores the fact that rapes are perpetrated almost entirely by men against women (Estrich 1987, 22). Likewise, it seems to judge the "sexual" component of rape, the penetration itself, a "natural" act, which under other circumstances a woman would welcome. Thus it reinforces the belief that men and women are "naturally" heterosexual, although there are clearly many women for whom intercourse with men is not experienced as "sexual" (i.e., pleasurable) at all.

## III. VIOLENCES OR SEX?

The feminist community has historically engaged in debate as to whether it is more politically efficacious and theoretically fruitful to view rape as a crime of violence or an extreme manifestation of sexuality. The fact that rape victims, unlike the victims of other assault crimes, are so disproportionately female forces one to consider the role of rape as a structural symptom of gender inequality. Second, as both Plaza and rape expert Susan Estrich make clear, it is far more difficult to obtain corroborative evidence in the case of rape than in the case of other violent crimes (Plaza 1981, 30; Estrich 1987, 21). Plaza parodies Foucault's suggestion that the complainant simply request damages for her assault:

—Mrs. Y brings charges; she says: I have been injured by Mr. X (since one is not raped—rape does not exist). She has her injuries recorded. And there the round of questions is going to begin: “But you do not have any lesions. Where is the sperm? Didn't you consent? Where are your witnesses?”

—Mr. Z brings charges: he received a blow of the fist in his face, given by Mr. X (the same assailant X). He shows his black eye. Will he be asked if by chance he consented? Will they try to take scraps of skin from the fist of Mr. Z? (1981, 30)

Of course, not all rapes involve violence. In many cases, women (sensibly) refuse to risk violence and comply with their attackers' demands. Some rape laws in the United States which were reformed in order to reflect the “rape is violence” model inadvertently made it all but impossible to prosecute rapes in which no violence was used (for instance, *State v. Alston*) (Estrich 1987, 60-63).<sup>5</sup> When the standard for force is expanded to include threats or other forms of coercion, questions arise as to whether a “reasonable” woman would have been so frightened by a given threat that her eventual acquiescence could only be the result of fear rather than genuine consent (Estrich 1987, 32, 63, 67). Thus attempts to reform rape law by focusing on the element of violence may end up establishing an ideal standard for reasonable resistance and fortitude to which the woman is (often impossibly) held accountable (Estrich 1987, 67). Finally, arguments that women would feel less victimized by rape if society would only learn to see rape as another form of assault run the risk of trivializing nonviolent rapes. According to one legal theorist, “When asked whether a woman could ever argue self-defense if she killed her rapist *during* an attack, a juror responded: ‘No, because the guy's not trying to kill her. He's just trying to screw her and give her a good time’ ” (Tong 1984, 119). There are echoes of this perspective in Foucault's argument that “just the violence,” not the sex, should be punished in rape cases.

Above all, Foucault's proposal to treat rape like a "punch in the face" (1988a, 202) not only grossly underestimates the psychological and physical trauma that rape imposes on women, it also ignores the potential impact of rape *as a practice*—not just a criminological category—on the communicative structures of a male-dominated society. For according to Foucault's own theory of social relations, no discourse, such as sexology, criminology, or law, is produced as truth without an exercise of power, and no exercise of power, such as systematic violence against women, can survive without contributing toward and being supported by a discourse that renders it legitimate and true (1980, 93). To view rape purely as a physical assault denies the role that rape might play in the production or maintenance of a particular discursive regime. In fact, rape and the legal process that gives rape a public form and inscribes it within discourse function hand in hand as practices which force women to present an inadequate, hysterical subjectivity, in comparison to which men's discourse and subjectivity appear far more stable and reasonable. Likewise, the "sex" and "violence" in rape are recognized and shaped in discursive contexts such as the law and psychiatry.

#### IV. THE VIOLENCE OF DISCOURSE

In keeping with Foucault's belief that law in the modern period is less legitimated by the sovereign right of the ruler than by concern for the health of the state, Annie Bunting comments that "the repressive elements of law as sovereign right ought to be de-emphasized in favor of an analysis of its constructive functions as discipline, surveillance, normalization, and a discourse of power/knowledge" (1992, 838). It is therefore all the more important to understand the way in which rape law (and the institution of rape which it *defines and directs*, by punishing certain acts and not others) is crucial to an understanding of the deployment of sexuality. As Judith Butler argues, in rape law, "the politics of violence operate through regulating what will and will not be able to appear as an effect of violence. There is, then, already in this foreclosure a violence at work, a marking off in advance of what will or will not qualify under the signs of 'rape'" (1991, 162). It is not the violence of rape *per se*, but the implications of rape and rape law for the construction of subjectivity, adequate rationality, and definitions of violence which are most significant to their function as a technology of gender, even though the violence may be most significant to some victims.

In an essay entitled "Truth and Power," Foucault writes that "each society has its regime of truth . . . that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true" (1980, 131).



It is by eliciting confessions in the courtroom, then allowing certain things to count as reasonable and certain things to count as unjust, that law functions as a form of power/knowledge. But rape law only allows certain kinds of stories to count as rapes. Disqualified stories include those of many black women raped by black or white men; women raped by acquaintances, husbands, or lovers; rapes involving no obvious violence; and in many jurisdictions, the homosexual rape of men and male children. "A woman is not allowed to tell her own story of rape, only what is deemed relevant in legal terms will have any influence" (Smart 1989, 33). The legal process structures the violence of rape not only by retrospectively identifying certain acts as violent and others as "normal"; it also forces many women to redefine what was "significant" about their experience in order to testify successfully, and often enhances the sense of violation and self-doubt begun by the physical rape. Requirements of physical resistance, cross-examination, and the use of psychiatric expertise by both prosecution and defense force a comparison between the rape victim and the "reasonable man," exemplified by the respected and authoritative voices of the judge, attorneys, and, potentially, the defendant.

For instance, the standard of resistance which rape victims in many jurisdictions are required to meet in order for their experience to count as a "real rape" is one example of the law's requiring and structuring violence that illustrates problems with the "just the violence" approach. Susan Estrich explains that when the viability of the story as a *rape story* rests on violence, the standards applied to it are drawn from men's expectations of what constitutes a threat or what constitutes a reasonable response to violence. The requirements of "adequate resistance," or its near cousin, "the presence of force" demand that women not be "sissies"; that is, that they defend themselves as seriously and as effectively as men imagine they would defend themselves if placed in similar circumstances, although few men have ever probably considered the possibility (Estrich 1987, 60-62).

Likewise, the incoherence to which women are often provoked on the witness stand compares unfavorably with the coherence that men are imagined likely to exhibit if ever they were faced with the task of explaining their own violation to the public. While women certainly know when they want or do not want a sexual encounter to take place, "the 'telling' of a story of rape or abuse inevitably reveals ambiguities. . . . The language [a rape survivor] will use to explain her experience will be seen as flawed, and may introduce 'ambiguities' which immediately imply she is guilty [*sic*] of consent" (Smart 1989, 34-35). Although Estrich affirms that "the prosecution bears the burden of proving guilt beyond a reasonable doubt," she cautions that juries may "require more than a victim can provide—that they will see it as their job to demand such perfect consistency in her account that even legitimate victims will not be believed" (1992, 27-28).

The trial itself, as an aspect of the phenomenon of rape (at least under “ideal” circumstances, in which the perpetrator is brought to justice) resembles nothing so much as the “confessional” structures Foucault identified at the heart of the deployment of sexuality. And it is the female victim, not the accused rapist, who is forced to confess her sexual experience and to explore her sexual motives publicly in excruciating detail. Although in order to obtain a conviction, the defendant must be proven guilty of intent to commit the crime of rape, it is common (especially in cases involving no physical force) for a defendant to plead that he made a reasonable mistake in assuming the woman was interested in sexual activity. “Because defendants are entitled to raise the reasonable belief defense without testifying,” Dana Berliner writes:

juries evaluate the defendant’s reasonable belief defense without hearing him testify that he in fact believed that the victim consented. Moreover, when the defendant does not testify, a jury may be instructed on the reasonable belief defense if the victim’s testimony about her own behavior suggests the possibility of reasonable mistake. Thus, the courts focus on the victim’s behavior, not the defendant’s subjective belief that the victim consented. (1991, 2694)

While the defendant is undoubtedly on trial for his liberty or life, his “reasonability” is assumed—in contrast to that of the woman testifying against him. It is the *speaker* in whom a subjectivity is being *cultivated* and *disciplined* by the structure of this questioning, and the speaker whose credibility and capacity to be perceived and to perceive herself as a “reasonable” member of society are at stake.

In *The History of Sexuality* (1978) and *Discipline and Punish* (1976), Foucault focuses on forms of confession which place the confessor in a relation of juridical/discursive dependence on the institutions that require his or her confession, as sociological data and/or an aid to self-surveillance and motivation. The confessor invents himself or herself as a subjectivity in accord with the style, explanatory logic, and moral perspective which the listener will deem convincing or sane.

The confession is a ritual of discourse in which the speaking subject is also the subject of the statement; it is also a ritual that unfolds within a power relationship, for one does not confess without the presence (or virtual presence) of a partner who is not simply the interlocutor but the authority who requires the confession, prescribes and appreciates it, and intervenes in order to judge, punish, forgive, console, and reconcile. (Foucault 1978, 61-62)

According to Delia Dumaesq, “An individual woman who is raped is thrust into the arena of that discourse which constructs an ‘intentional’ sexuality to be investigated” (1981, 56). The subjectivity that a woman discloses during her testimony has been constrained but also cultivated by the questioning she has encountered at every stage of the criminal justice process, as well as by her own desire to communicate outrage, fear, and a need for public vindication. In Kristin Bumiller’s account of the New Bedford case, for instance, a prosecutor was “concerned that [the victim’s] testimony would contradict the police officers’ official version and the testimony of witnesses.” Therefore, the victim’s strategy “was not to reveal the ‘whole’ story, but to construct a narrative that she felt would best establish her innocence” (1990, 133). However, the criteria for successful performance of a confession require that the speaker present his or her intentions and recollections as if they were already contained within a unified, self-transparent self, even at the time of the incidents. Under close questioning or in the process of meticulous self-examination, someone with a superficially coherent narrative may become aware of gaps or inconsistencies (Estrich 1992, 28-29). It is in the process of trying to “explain away” this self-ignorance that confession becomes a truly *inventive, productive* enterprise exhibiting the presence and exercise of power. According to Foucault, the disciplinary form of power characterizing the deployment of sexuality is one which works “to incite, reinforce, control, monitor, optimize, and organize the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them” (1978, 136). The trial process does not disqualify a woman’s explanation of her sexual experiences by a refusal to listen, nor simply by exposing and exploiting some weakness on her part, but by cultivating her power for speech and by forcing her to elaborate her story at each stage of the criminal process until she either withdraws her complaint in self-doubt or is rendered incoherent on the stand. Just as Bentham’s Panopticon mobilized prisoners’ own power to police themselves and thereby increased the overall efficiency of the prison apparatus, the deployment of sexuality mobilizes women’s own desire for credibility and their capacity for speech in order to generate evidence of their “inferior” self-understanding or honesty with respect to sexual matters.<sup>6</sup>

The interpretation of social history that claims that the prevalence of rape had been ignored suggests that women’s silence is associated with powerlessness while their voice is a symbol of power. This perspective leads to the assumption that victims serve their own interests by telling the full story in the courtroom. This is *not* true, however, because it is not the victim’s perception of experience that frames the questions. The victim in the Madison rape trial, for example, discovered that telling

*more* of the story at each stage of the criminal process (from police report to trial) enabled the defense to highlight non-consequential inconsistencies. (Bumiller 1987, 85)

Those who are forced to confess or explain themselves more frequently or at greater length than others are therefore more likely to find themselves falling short of the criteria for successful speech performance. Likewise, those who hear or extract confessions from others are more likely to retain the appearance of credibility or self-sufficiency, if only by virtue of the fact that they are not required to demonstrate the intricacy and coherence of their own “mental contents.” As Foucault explains, “the agency of domination does not reside in the one who speaks (for it is he who is constrained), but in the one who listens and says nothing” (1978, 62). In this way the production of knowledge coincides with and is reinforced by the exercise of power. Those who are less frequently the subject of surveillance earn the privilege of determining what questions shall be asked and what categories shall be considered relevant, because the coherence which they exhibit in comparison to their subjects clearly identifies them as persons deserving of authority. The “reasonable man’s” assumptions about what constitutes adequate resistance or a threatening situation are not “male” in the sense that they reflect the kind of decisions men make under these circumstances or the way that men retrospectively make sense of their own experiences. The point is that men are seldom *in* these circumstances. If men are regarded as reasonable qua “men,” it is partly because particular women are conclusively proven unreasonable through rituals such as rape and the rape trial. In this sense, then, rape has greatly assisted the establishment of male subjectivity as *de facto* coherent and authoritative—by producing women as hysterics and thereby demonstrating the *importance* of sexual difference for communicative agency.

#### V. THE SECOND RAPE AND HYSTERIZATION

In the aftermath of a sexual assault, a woman’s faith in the credibility of her own discourse and self-understanding is seriously shaken. Not only do some members of her community express skepticism as to the reality of the attack, the victim wonders if she did not in some way provoke or deserve her assault—by presenting an inadequate or visibly vulnerable self. Psychologists Lee Madigan and Nancy Gamble have identified the social skepticism and self-distrust experienced by many rape victims as a “second rape”:

Because she is unprepared for and unenlightened about the second rape, she feels that she must be crazy. She believes that she has been lied to, ignored, and treated inhumanely by others. Those around her couldn’t be wrong, so she begins to hate and distrust herself, setting in motion the vicious cycle of further

victimization, depression, and masochism. (Madigan and Gamble 1991, 7)

This “second rape” is often formalized in court proceedings, when a witness who enters cross-examination with complete faith in her own self-understanding nevertheless finds herself unable to explain why she did certain things or why she chose to explain them in a certain way. As the victim’s increasingly prolific explanation diverges farther and farther from the ideal of self-contained subjectivity, she appears “beside herself,” “hysterical,” even to herself. Lacan describes a symptom as “a metaphor in which flesh or function is taken as a signifying element” (1977, 166). Like a nervous tic or a physiological symptom which may have a psychiatric or medical explanation but which conveys no meaning to the listener, the words issuing from such a speaker seem unrelated to her intended message and unreflective of her will to communicate.

In some jurisdictions of the United States and England, rape laws have been altered in an attempt to circumvent the transformation of rape victims’ testimony into verbal static by allowing the prosecution to introduce “expert testimony” from psychologists or psychiatrists on the victim’s behalf. Such testimony informs the judge and jury that certain patterns of behavior among rape survivors which may seem “unreasonable” from the viewpoint of someone who has never been sexually assaulted (such as showering immediately or refusing to speak about the attack) are in fact common responses to rape. Similar expert testimony has sometimes been successful in the defense of battered women who have killed their abusers (Cahn 1992). In the case of rape, however, such strategies often have the effect of further inscribing women within the jurisdiction of psychiatry, another power/knowledge deployment identified by Foucault and consistent with the discourse of “hysteria.” Although allowing mental health professionals to “certify” a woman’s testimony may increase convictions, Carol Smart observes that in no way does this “requalify” women’s accounts; rather, it “simply empowers the ‘psy’ professions to speak for women” (1989, 47). Women’s speech thereby remains data for a discourse concerning female “symptomatology”; in fact, such a discourse judges women’s behavior and explanations reasonable *to the very extent* that they conform to a recognized *pathology*—“rape trauma syndrome”—not only suggesting that rape makes a woman “understandably insane” but also implying that women who *do* follow the suggested guidelines for victim response and manage to deal with the criminal process in a “stoic” manner are somehow abnormal as well (Estrich 1992, 18). Finally, Estrich has noted that with the increase in prosecutorial use of psychiatric testimony has come an equal increase in defense demands for victims’ psychiatric records (1992, 17). Defendants and their attorneys can thereby attempt to undermine the credibility of an accuser by appealing to evidence of past instability in her relations with

men. Thus, women who attempt to prosecute their attackers risk the introduction of their personal therapeutic or psychiatric records into a public arena (Stern 1980, 25-26; Estrich 1992, 15-19; Buchanan and Trubek 1992, 694-700).

The reduction of a rape victim's testimony to symptomatology is most dramatic (quite literally so) in those cases where the actual narration of events takes on the character of a pornographic performance. As Smart explains, "Bits of female anatomy are heavily encoded with sexual messages and women are aware, whether consciously or not, of the sexual meaning of parts of their bodies" (1989, 38). At every stage of the judicial process, from the police station to the hospital to the courtroom, a victim must name parts of her body and explain what was done to them. "It is not just that they [victims] must repeat the violation in words, nor that they may be judged to be lying, but that the woman's story *gives pleasure* in the way that pornography gives pleasure. The naming of parts becomes almost a sexual act, in that it draws attention to the sexualized body" (Smart 1989, 39). This is an extreme example of a case in which the act of confession places a woman in a speaking position that severs her words from her intent in speaking, so that they function *for her listeners* like bodily symptoms. As Bumiller explains in the New Bedford case: "The ambiguity and uncertainty in [a victim's] accounts of violent sexual experiences are appropriated in a field of language that interprets these responses as self-doubt created by her repression of sexual desire. Like a pornographic show [this victim's] 'hysterical' cries of violation were received as utterances of wantonness and denial" (Bumiller 1990, 141).

Psychoanalysis explained the black hole at the center of confession in terms of the unconscious. Many legal scholars and practitioners, often drawing (if incorrectly)<sup>7</sup> upon psychoanalysis, blamed the phenomena of rape and the rape trial on women's "blind spot" of denial, under which, they felt sure, lay either a story of desired or completed but unsatisfactory seduction. But one of Foucault's goals in *The History of Sexuality* and other philosophical works was to show that sexual subjectivity is neither the effect of unconscious structures nor of innate and instinctive desires, but rather of the conditions of its *production* within juridico-discursive fields. No law or power represses the "true, complete story," for the reason that the story does not *exist* as a story except in the various versions that are structured by the demands of different confessional situations—interviews with police, confrontations with parents, testimony in court, and, perhaps, in the therapist's office. In court, power and the law refuse to set a limit to the exploration and development of a story which has no preordained telos and whose energy is sustained by the woman's will to reinscribe herself within the speaking community.

## VI. RAPE REFORM IN THE ERA OF RIGHT-WING PUBLIC POLICY

Undoubtedly, there are several positive aspects to the line of analysis employed by Foucault and the other discussants of the *Change* dialogue. As could be expected from the author of *The History of Sexuality*, Foucault's own concern is less the pure Reichian imperative of antirepression and more the cultural conditions that have historically prompted changes in laws concerning sexuality: fear of homosexuality and anxiety concerning children's sexual activity. Foucault fears the tendency of many contemporary political movements to reify "sexuality" as an entity inhering in certain kinds of bodies or certain body parts, a danger requiring constant management and supervision, invested in amorphously "dangerous individuals" who represent a threat to society. As Guy Hocquenghem, a fellow sex theorist, comments in another interview with Foucault, "There is the problem of rape in the strict sense, on which the women's movement and women in general have expressed themselves perfectly clearly, but there is the other problem of the reactions at the level of public opinion. One triggers off secondary effects of man-hunting, lynching, or moral mobilization" (Foucault 1988a, 283).

These are phenomena about which many feminists are also acutely concerned. In *Erotic Welfare* (1993), Linda Singer suggests that AIDS has provided a context in which right-wing groups have begun to discuss all aspects of sexuality using a language of "epidemic"; potential anti-feminist applications of this language include rhetoric concerning the supposed "epidemic" of abortions or sexually active teenagers. Angela Davis (1990) and Nancy Matthews (1989) have reminded white antirape organizers and legal theorists that antirape campaigns sometimes (if inadvertently) reinforce racist assumptions regarding the sexuality of people of color, bringing down state repression against communities thought likely to harbor "dangerous individuals." The historical lynching of black men as "retribution" for the supposed rape of white women, as well as contemporary police occupation of inner city areas and exorbitant imprisonment rates for black men, is unjust both to black men and the women of black communities and should be as much a target of feminist outrage as rape itself. Finally, Smart observes that when in 1981 the Canadian government did alter the law—ironically, so as to treat rape as a crime of violence, just as Foucault suggested—the resulting legislation "became part of a package or greater regulation over sexual behaviors deemed undesirable, e.g. homosexuality or under-age sex. . . . So the feminist reforms coincided with other demands for greater control over sexual behavior, but only those which gave more powers to the criminal justice system were adopted" (Smart 1989, 46).

Smart's conclusion, therefore, is that efforts to win safety for women through legal reform alone may backfire and create an even more dangerous situation.<sup>8</sup> But this does not mean that feminists should downplay the importance of rape

as a political and personal issue—rather, that antiracism and gay and lesbian rights should be an intrinsic element of every antirape analysis and campaign. “Just the violence” approaches are clearly as vulnerable to right-wing co-optation as radical feminist analyses blurring the distinction between rape and compulsory heterosexuality (witness MacKinnon’s flirtation with conservatives via *Women Against Pornography*). A sexuality which has historically been deployed from “innumerable points, in the interplay of nonegalitarian and mobile relations” (Foucault 1978, 94) must be reorganized and counterdeployed at multiple points, not simply or even primarily through the legal system.

If Foucault were to stand behind the suggestion that the victim of rape seek redress in the form of financial compensation, he would ignore both the discursive process that accompanies and interprets the act of rape and the effects of this physical violence within the discursive arena. To imagine that the violence can easily be separated from the “sex” in rape or to imagine that the corporeality of either violence or sex can be excised from juridico-discursive structures like the proverbial pound of flesh wreathes in silence the sociodiscursive effects peculiar to the phenomenon of rape—a phenomenon perpetrated in part by the legal institution (and one that will not, for these reasons, be solved within the law alone). Ultimately, and ironically, Foucault would risk accusing women of being “hysterical” for making rape into something more than a simple assault and blaming them for the continued deployment of sexuality, of which rape is an intrinsic element. As Plaza argues, “Foucault’s line of argument is dangerous in that it risks making us, women, guilty. What men—situated in a patriarchal power relationship—persist in creating and perpetuating (the oppression of women, the ‘difference between the sexes,’ the primacy of sex) they impute to us as wanting to create and perpetuate” (1981, 32).

In the process, Foucault obscures the role of gender in the deployment of sexuality. It is not women who (as feminists) are the points of dispersion for a form of power/knowledge directed against rapists and, by right-wing association, against homosexuals and sexual minorities, but rapists who are among the many points of dispersion for a deployment that enforces heterosexuality. Rape and the rape trial function as a privileged forum on the meaning of sexual difference for rational discourse in Western culture. “[Rape] is very sexual in the sense that it is frequently a sexual activity,” Plaza writes, “but above all in the sense that it opposes men and women: it is *social sexing* which underlies rape,” (1981, 29) or rather, makes one’s sex an issue for one’s credibility. A woman’s unraveling confession in the courtroom justifies not only the dismissal of her complaint but even seems to excuse the crime—if one “were to have been” committed. Moreover, just as the initial crime served to cast a woman’s self-confidence and feeling of self-control into disarray, so the trial process seems to confirm her own innate susceptibility to victimization. If rape is more



than a “punch in the face,” it is not because the sexual organs should be protected and invested with special legislation, but because, as Foucault observes, we exist in a society which has taught us to think of our subjectivity and our capacity for truth in terms of an honest and confident performance and understanding of our sexuality. “It is through sex—in fact, an imaginary point determined by the deployment of sexuality—that each individual has to pass in order to have access to his [sic] own intelligibility . . . to the whole of his body . . . to his identity” (Foucault 1978, 155-56). Thus Plaza angrily confronts Foucault: “We cannot function in an ideal state and act as if—here and now—the sexual organ was a hair!” (1981, 33).

According to Luce Irigaray, what contemporary philosophical and political discussion requires “is a discourse in which sexuality itself is at stake so that what has been serving as a condition of possibility of philosophical discourse, of rationality in general, can make itself heard” (1985, 168). It is this disorientation that feminists have sought in Foucault’s work; it is also this potential that Foucault has applauded within feminism as a political movement: “The real strength of the women’s liberation movements is not that of having laid claim to the specificity of their sexuality and the rights pertaining to it, but that they have actually departed from the discourse conducted within the apparatuses of sexuality” (1980, 219-20). Such a “displacement effected in relation to the sexual centering of the problem” is necessary in order that women can pass through an alternative “point” in order to have access to their intelligibility and corporeality when the reason supported by sexual power/knowledge leaves them mute or hysterical. Foucault writes:

Insofar as the multiple games of truth are concerned . . . what has always characterized our society, since the time of the Greeks, is the fact that we do not have a complete and peremptory definition of the games of truth which would be allowed. . . . There is always a possibility, in a given game of truth, to more or less change such and such a rule and sometimes even the totality of the game of truth. (1988b, 17)

This possibility arises when “individuals who are free . . . find themselves thrust into a certain network of practices of power and constraining institutions” (Foucault 1988b, 17). One such situation is that of the rape victim whose dutiful narration of her experience is translated into hysterical static within the courtroom. She finds her own speaking body to be the site of a rupture in the techniques of knowledge and power. Resistance inflames “certain points of the body, certain moments in life, certain types of behavior” (Foucault 1978, 96), *certain failures* of a regime of knowledge to unify the speaking body within a subjectivity bearing its aegis. A major task of any transformative political philosophy is to make such a rupture the site of a new community and a new sanity capable of altering contemporary techniques for

the production of truth. A Foucauldian analysis of rape leads neither to “desexualization” of the crime nor to the argument that women should avoid bringing their complaints before the law for fear of disqualification. Rather, it indicates that a woman’s attempt to publicly reassert herself as a rational and powerful speaker in the aftermath of rape may demand the creation of another speaking community (such as the women’s movement) besides that which is mediated by law, and that only an alternative (feminist) discourse capable of analyzing the asymmetrical speech situation within the courtroom can confirm the sanity and communicative agency of the supposed hysteric.

## NOTES

1. For examples of recent feminist engagement with Foucault, see Bartky (1990), Butler (1990), Diamond and Quinby (1988), Fraser (1989), McNay (1993), and Sawicki (1991).

2. An English translation of this dialogue is available in *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* (Foucault 1988a). All further citations refer to this translation. Feminist discussions of the “desexualization” proposal include Plaza (1981); Woodhull (1988); de Lauretis (1987, 36-38); Bell (1991); and McNay (1993; 178, 194-95).

3. Foucault has described the “hysterization of women” as a “process whereby the feminine body was analyzed—qualified and disqualified—as being thoroughly saturated with sexuality, whereby it was integrated into the sphere of medical practices; by reason of a pathology intrinsic to it” for the ultimate social goal of committing those female bodies wholly to the task of reproduction (1978, 104). My use of this term relies more heavily on its psychoanalytic connotations than does Foucault’s. However, by understanding “hysterization” as the failure of a speaking body to express and recirculate the power invested within it by social and discursive structures, I hope to expand upon the *discursive* aspects of that “saturation” and “pathology” which Foucault’s phrasing seems to describe purely in physiological terms.

4. Canadian feminists Lorenne Clark and Debra Lewis are probably the best-known advocates of the “rape is violence not sex” position; their book *Rape: The Price of Coercive Sexuality* (1977) served as the theoretical basis for the 1981 reforms of Canadian rape law. On the other hand, both Plaza and U.S. radical feminists Catherine MacKinnon and Andrea Dworkin believe that by declaring rape “violence not sex” one exonerates “sex” (intercourse) from any connotation of violence or force. They question whether any woman can freely “consent” to intercourse in a society where the economic and social pressures to be heterosexual are so intense. For a discussion of the differing perspectives and their respective advantages and disadvantages, see Rosemarie Tong, *Women, Sex, and the Law* (1984, 112-19).

5. In *State v. Alston* (1984), the victim had previously been in a consensual (though abusive) relationship with her attacker, during which she passively submitted to sexual activity. A month after their separation, the attacker visited the school she was attending, took her aside forcefully, and insisted on discussing their relationship. After threatening to “fix her face” and asserting his right to have intercourse with her, the man took her to an acquaintance’s house and proceeded to engage in intercourse even though she had

stated her unwillingness and cried throughout the act. Although he was initially convicted of rape, the North Carolina Supreme Court reversed the ruling because it did not consider threats and a history of violent behavior to constitute the “force” necessary to classify this incident as an act of rape.

6. The Panopticon was a proposed model prison in which prisoners were to dwell in cells arranged around a central guard tower, visible from the tower at all times. Such a structure was designed to aid in the control of large numbers of people by threatening them with constant surveillance and thus increasing their incentive to police themselves. For a complete discussion of the Panopticon as a model for the structural incitement of self-surveillance, see *Discipline and Punish* (Foucault 1977b, 200-209).

7. Psychoanalytic scholar John Forrester contends that the psychoanalytic “unconscious” is irrelevant to a court of law, since consent depends on a woman’s conscious will. Insofar as analytic practice attempts to renew the connections between psychic elements within an individual personality, the analyst may argue that “where there are inconsistencies” in a personal account, “the diagnosis is probably hysteria” (1990, 74). Nevertheless, Forrester insists that this gap cannot be interpreted by the court as an indication of possible unconscious motivations, for such an interpretive framework is only appropriate in the analytic relationship.

8. Smart observes that increasing the penalties for rape is not necessarily of benefit to women, since juries may be more reluctant to convict if penalties are seen as unreasonably high (1989, 45). Moreover, Estrich makes it clear that in “close” cases, juries *should* acquit the defendant if the prosecution’s evidence is inadequate; what must end is the declaration of “open season on the psyches or sexual pasts or honesty of women victims” (1992, 27). One might add that longer prison sentences, which involve the threat of homosexual rape for many inmates, are unlikely to dissolve men’s association between power, right, and sexual violence.

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