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Power, Sexual Violence and Mystification

Kym Atkinson and Helen Monk

Abstract

This chapter is concerned with the influence and legacy of Steven Box and specifically, his chapter *Rape and sexual assaults on females*. Box's chapter represented a challenge, not only to dominant discourses on sexual violence defined by the state, media and liberal academics, but also, to radical criminologies. Through centralising the gendered nature of sexual violence and addressing it as a strategy of social control, Box was able to uncover the processes of mystification which work to deny women's experiences of sexual violence, excuse the men who perpetrate it, and highlight the insidious role of the criminal justice system, and the media, in mystifying this violence.

We take Box's analysis of these processes of mystification as a starting point to highlight both the enduring importance of his work, and the developments we have witnessed since, with a particular focus on sexual violence at the level of discourse. We seek to contest the dominant lens through which sexual violence is understood, at institutional, discursive and subjective levels, by drawing upon dominant conceptualisations of masculinity, femininity and consent which obscure the nature, extent and effects of men's violence against women and girls. As such, we argue that these processes of mystification play a part in maintaining and reproducing the gendered social order and that we, therefore, must continue to challenge and deconstruct them as Box advocated.

Key words: Power, Sexual Violence, Mystification, Gender, Discourse.

Introduction

We are effectively facing the decriminalisation of rape in England and Wales. The number of rape convictions in the year ending September 2021 was 1,109 (End Violence Against Women Coalition (EVAW), nd). This is the lowest number of rape convictions on record. This stands in contrast with the highest number of sexual offences ever recorded during the same time frame, reaching the staggering figure of 170,973 (EVAW, nd). Rape also continues to have the lowest charging rate of all crimes (Syal, 2022). The complex web of injustice and harms, reliance on myths and stereotypes, the abiding constrictive nature of gendered subjectivities, and dangerous and narrow definitions of rape, consent, culpability and sexuality, articulated by state institutions and the media, underscore the figures above and are central to the arguments made by Box (1983) in his chapter 'Rape and sexual assaults on females'. Here, we outline the contemporary relevance of Box's work to the current theorisation and experience of, and responses to, sexual violence. To do this, we will concentrate on the developments which have taken place in sexual violence scholarship from a feminist, and predominantly, feminist poststructuralist perspective. We will argue that Box's work has an enduring utility in Critical Criminology. The chapter therefore aims to extend Box's analysis of sexual violence and the process of mystification, by continuing to see this issue through the eyes of the state, whilst also making explicit the discourses which

operate in and out of the realm of the state which serve to limit our understanding of sexual violence and their resultant, harmful effects.

The chapter is split into four sections. Firstly, we briefly outline the intersections of Box's approach to the process of mystification and our own perspective in addressing sexual violence at the level of discourse. Secondly, we explore how dominant discourses often obscure the nature, extent and effects of men's violence against women and girls. Thirdly, we address how the process of mystification operates in conjunction with narrow and unworkable definitions of consent. Finally, we explore institutional mystification and the limits of the law in dealing effectively with sexual violence. We consider the resistance to the limitations imposed by the gendered social order which has been generated by feminist scholarship and grassroots organisations.

Discursive formations of sexual violence

In relation to sexual violence, Alcoff (2018: 3) states that rape cultures produce a discursive formation in which:

the intelligibility of claims is not by logical argument or evidence, but by frames that set out who can be victimised, who can be accused, which are plausible narratives, and in what contexts rape may be spoken about, even in private spaces.

It is through this discursive formation that we seek to analyse the enduring legacy of Box's work on the process of mystification with respect to this violence. For us, it is at the level of discourse, and through the construction of knowledge, that we should locate the problematic truths established around sexual violence and examine the disciplinary power that they wield.

This understanding of discourse and the socially and culturally constructed nature of experience and meaning is used to extend Box's understanding of a 'cultural repertoire' (Box, 1983: 157) of excuses, exonerations and exclusions, at subjective, discursive and structural levels, around sexual violence. It is the discourses through which sexual violence is made intelligible to us that is important. This approach argues that the problem of sexual violence is not separate from the way that it is spoken about as it sets the boundaries around what is sayable and permissible (Alcoff, 2018).

It is through a compliance to, and internalisation of, culturally and historically contingent norms that the gendered operation of disciplinary power finds its footing (Foucault, 1995). Box contends that a central part of this process is mystification and that '[F]or too long too many people have been socialized to see crime and criminals through the eyes of the state' (1983: 14). We, like Box, seek to contest the dominant lens through which rape and sexual assault are viewed and to dismantle the relationship between power and claims to truth. As Gavey (1989: 463) argues, we should be concerned with 'disrupting and displacing dominant (oppressive) knowledges'. This has been the task for many feminist interventions into sexual violence; to try to lessen the stranglehold that dominant discourses have on the ways in which women live, move, think, act and experience gendered life.

Box's chapter, therefore, represents a challenge not only to the dominant, discursive constructions of rape and sexual assault defined by the state, justice system and the media, but also by liberal and radical criminologies. His central argument, that the realities of sexual violence are mystified

through processes of discrediting, minimising and deflection, serve to centralise the gendered nature of this type of serious crime and harm and, as such, his work brought rape under the same ideological gaze as more established critical criminological considerations such as corporate and state crime. To position sexual violence as a crime of power and one which suffers from the same misleading social construction as other crimes gaining attention from critical scholarship at the time was incredibly important. Box moves away from discussions and explanations of rape predicated on biology, pathology, or individualisation and argues that sexual violence is ultimately a cultural expression bolstered by power, inequalities, institutionalised sexism and fruitful techniques of neutralisation (1983). For Box, '[T]he engine of rape is not to be found between a man's loins, but in his mind, and this in turn reflects cultural definitions of gender' (1983: 161). It is to these prevailing cultural constructs of gender, sexuality and violence that the chapter now turns.

Mystification through dominant 'truths'

Box is primarily concerned with analysing the ways in which power relations mystify the violence, masculinity and criminality of rape. Mystification occurs through the intersection and culmination of 'sexist male culture', structural gendered inequalities, a legal system predicated on deep-rooted misogyny and various techniques of neutralisation, all of which form the 'roots of rape' (1983: 163). One contemporary approach is to view these roots of rape and the insidious ways in which they are able to normalise sexual violence as rape culture. Rape culture is understood as:

a set of general cultural beliefs supporting men's violence against women, including the idea that this violence is a fact of life, that there is an association between violence and sexuality, that men are active while women are passive, and that men have a right to sexual intercourse (Phipps et al., 2018:1).

Phipps et al. (2018) urge us to be mindful of the populist energy of this type of concept and the tendency for over-generalisation in its applicability. However, for us here, rape culture is useful in an overarching sense to track and analyse a myriad of ways in which feminist praxis and theory has sought to account for the emission, operation and internalisation of cultural messages and societal norms around what Box (1983: 146) refers to as the 'permissibility of rape'.

Box (1983: 153) states that 'our sexist culture is replete with a library of accounts [...] and techniques of neutralisation [...] which enable the potential rapist to proceed without feeling inhibited by guilt' and, as we will argue, also enables the guilt to be deflected away from the rapist by institutions and deeply ingrained popular and political attitudes more broadly. This mystification occurs, it is suggested, by redescribing the reality of consent, desire, motives and blame of the rapist *and* the victim.

Box is keen to dispel arguments around victim-precipitated rape and his recognition of agency is important following years of feminist praxis. He is clear that our attention should lie with 'the man who *chooses* to rape...and beyond him, the broader macro-sociological factors which form the context in which that choice is made' (1983: 135, emphasis added). One of the ingredients that binds together the subjective and structural elements of rape, as well as the discursive elements, is the construction of masculinity. 'Rape

is primarily committed by men...who are relatively more attached and identified with notions of 'manliness' and feel the need to demonstrate this essentializing view of themselves whenever they experience some identity doubts or anxieties' (1983: 161). Here, Box is arguing that we examine the maleness of rape itself.

Prevailing cultural messages about what it means to be a real man – virile, aggressive, predatory, tough – identified by Box in 1983, and central to feminist work since, are fundamental to tackling the seemingly intractable problem of sexual violence. But these elements of sexist culture cannot be divorced from the operation of power which sustain and reproduce them. It is important that we understand that these discursive constructions – in a binary sense, the predatory nature of masculinity and by extension the passive nature of femininity – do not tell us what is true but rather what is *accepted* as truth. As such, it is the disciplinary power of these dominant discourses upon which much critical scholarship has tended to focus. (Collier, 2017; Howe, 2008). It is the dominant cultural scripts which fuel the process of mystification and produce plausible and customary narratives on sexual violence. It is precisely because these scripts pass as truth, that they are 'difficult to discern, identify and subvert' (Alcoff, 2018: 3).

Box was right, therefore, to argue that we examine the maleness of rape and to do this effectively we must examine power as it relates to men and masculinities and to the 'internal and external forces that complicate the entrenching and constraint of this power' (Collier, 2017: 45). Kate Manne (2018) outlines the complexities of misogyny and the ways in which systems

of power are able to work together on a 'punishment and reward' arrangement. This is well documented in terms of the policing of women's behaviour and the punishment of 'disorderly' women and, to a lesser extent, the valorisation of women who do conform and the part they often play in sustaining victim-blaming narratives (Manne, 2018: 192). The punishment and policing of men who fail to reach or live by the culturally prescribed norms of masculinity are also well versed. Conceptually often referred to as hegemonic masculinity, this desired form of masculinity separated itself from subordinated masculinities and took on a normative status (Connell and Messerschmidt, 2005). Indeed, hegemonic masculinity 'embodied the currently most honoured way of being a man, it required all other men to position themselves in relation to it, and it ideologically legitimated the global subordination of women to men' (Connell and Messerschmidt 2005: 832). The operation of hegemonic masculinity is constraining and oppressive for both men and women, and lies at the heart of how we understand sexual violence.

What is less drawn out from this analysis of masculinity, and what is important in relation to the truly epidemic proportions of rape and sexual violence, is the '*positive* and *exonerating* attitudes and practices of which the men who dominate women tend to be the beneficiaries' (Manne, 2018: 193; emphasis in the original). Box includes these attitudes in his overall analysis of 'techniques of neutralisation' (Box, 1983: 163), in terms of the various ways in which we, as a society, remove culpability and responsibility from men's violence against women. 'These techniques of neutralization are not private constructions thought up by rapists. They are part of our cultural repertoire

for evading personal responsibility' (Box, 1983: 157). These techniques of neutralisation include denial of the victim, of harm, of intention or of criminally culpable behaviour, and they continue to underscore how we are encouraged to view rape and sexual violence. For example, one of two former police officers, convicted in 2022 of sharing racist, sexist, misogynistic messages about rape and sexual assault, as well as other deeply offensive material, in a WhatsApp group that also included Wayne Couzens, the convicted rapist and murderer of Sarah Everard, stated that the messages were merely 'jokes' and that any insinuation of harm or upset resulting from them was 'ridiculous' (Cunliffe, 2022). This is a well-trodden path for neutralising the impact of sexual violence.

What underlines many of these techniques and enables them to persist with such ferocity is the discursive framing of men's and women's sexuality. The cultural construction of men's sexuality has remained depressingly familiar since Box described it as 'overpowering' and driven by 'biologically determined sexual urges' in 1983 (Box, 1983: 153). The framing of men's sexuality in 'natural', uncontrollable terms – urgent, insatiable, potent, and instinctual – is important for the consideration of rape and sexual violation and the social context, which surrounds it. The 'real' man, Box perceptively argued, must dominate his partner or prey by making recourse to 'charm, connivance, or cunning, and if these fail, by coercion' (1983: 145). A culture of (hegemonic) masculinity, an internalised cultural code about appropriate forms of masculinity revolved around the importance of being virile and utilising any means possible to be demonstrably sexually active and aggressive, again,

underpins the permissibility of rape. This belief is compounded by another cultural distortion around rape and sexuality, namely that to be dominated, persuaded or even coerced into sexual activity is ‘what “real” women really want’ too (Box, 1983: 146). This myth has endless repercussions for women’s safety. For example, a survey of public attitudes to rape and sexual violence found that a third of men think that even if a woman has not explicitly consented to sex, it is not rape if she has previously flirted on a date (EVAW, 2018). Similarly, almost a quarter (24%) of those asked believed that it is not rape if non-consensual sex occurs in marriage or a long-term relationship (ibid).

The need to understand women’s sexuality, for themselves and for men, is rooted in the apparently ‘problematic nature of female sexuality (which contrasts with the virile straightforwardness of male sexuality)’ (Smart 1989: 29). Men are taught to portray themselves through sexuality whereas women are taught to submit to the demands of male sexuality. As such, women become the gatekeepers of sexuality; to be passive, submissive, and responsive to sexual advances but also to manage the barometer of these encounters so as not to be too alluring, or encouraging of the insatiable, instinctive, sexual, male drive. These restrictive and punitive discourses about women’s sexuality, not only responsabilise women for men’s sexuality, but limit their ability to pursue their own desires. A woman’s ‘desire disqualifies her from protection, and from justice. Once a woman is thought to have said yes to something, she can say no to nothing’ (Angel, 2021: 4). As Box states, ‘the alleged masculine sexual burden become[s] the victim’s strict

responsibility' (1983: 149). The conflicting expectations placed upon women as the gatekeepers of sexuality identified by Box persist in a nuanced and contemporary way.

The collision of sex, violence and power has been further normalised in the twenty first century. There is a culture-wide obligation for young women to embrace an ostensibly progressive view which sees a degree of violence as sexy and desired sexuality as violent (Savigny, 2020). This dominant construction has further normalised violence against women during sex and has resulted in women being sexually assaulted during otherwise consensual sex (Harte, 2019). These acts of assault include being choked, slapped, gagged and spat on. At times, this 'rough' sex results in death. Popularised via the term 'sex games gone wrong', a specific defence to murder which claims that a person consented to the violent acts inflicted upon them and that death was, therefore, a possibility (Yardley, 2020). The utilisation of cultural codes to establish a regime of truth around sex in contemporary society further exemplifies a reinscription of Box's techniques of neutralisation; that is, in this example, women get exactly what they have asked for - rough sex and strangulation - erasing guilt, a victim, and, at times, culpability. As Gavey (2005) argues, and as is explored in the next section of this chapter, consent can be given through a lens of reluctance, avoidance, discord or submission. Coercive sexuality, as noted by Box and as central to our and other feminist understandings of sexual violation, *is* normal sexuality.

Mystification through the limits of consent

Opening the chapter on rape and sexual assaults on females, Box (1983:121) argues that “normal” sexual encounters merge imperceptibly into sexual assaults of which rape is the most serious, and [...] the former provides the just ingredients out of which the latter can emerge’. Within this argument, there are three key points which have been addressed by feminist scholars, activists and agencies. Firstly, the suggestion that rape is the worst form of sexual violence that can be experienced. Secondly, that the distinction between what is often considered a ‘normal’ sexual encounter and sexual violence is not quite as clear as the law, criminal justice system and dominant discourse would have us believe. Finally, that many behaviours widely understood as ‘normal’ sexual encounters, in fact, provide the context, and arguably the justification, for the normalisation of sexual violence. It is these points which this section seeks to address and, following developments in feminist poststructuralist work, where we outline the harm of sexual violence as a violation of subjectivity.

Although this is not a key argument in the chapter, rather a passing comment, the point Box makes, that rape is the most serious form of sexual assault is taken for granted. Decades of feminist work has now highlighted, however, that experiences of sexual violence are interconnected and that a scale on which to place experiences from least to most serious is lacking in its ability to accurately reflect the multiple and often repeated forms of violence women experience and the harms which stem from these. In her seminal text *Surviving Sexual Violence*, Kelly (1988: 76) utilised the concept of a continuum to highlight the ‘basic common character that underlies many different events

[and]... a continuous series of elements or events that pass into one another and which cannot be readily distinguished'. Kelly (1988: 76) argues that 'clearly defined and discrete analytic categories', which Box also used, are not useful for explaining sexual violence, nor is a 'hierarchy of abuse' which denotes the seriousness of different forms of violence. She demonstrates that reactions to, and the consequences of, sexual violence, at the point of the incident and over time, depend on a multitude of factors which cannot be inferred from the type of sexual violence experienced, nor can they be separated out from other experiences of violence. Whilst it may be true for many that 'coitus with a stranger holding a gun or a knife to the victim's head is not the same as seduction-turned-into-rape between fairly intimate acquaintances where the "weapon" is persistent verbal pressure and threatened withdrawal of affection' (Box, 1983: 126), this misses the point that everyone experiences violence differently, and that coercion is as problematic as physical force. Box falls into the trap of maintaining the elevation of the law's 'truth', that rape involving direct physical violence, weapons and strangers should be taken most seriously, and this is at the expense and relegation of knowledge predicated on women's experience. Although Box clearly argues that rape should be conceptualised more broadly than legal definitions at the time allowed, by drawing distinctions between different types of rape based on perceived 'seriousness', where the presence of direct physical violence, or not, is always key to this distinction, he elevates the law's ability to define in and define out incidents deemed to be harmful cases of sexual violence.

Box discusses the ways in which behaviours deemed 'normal' sexual encounters merge into those considered sexual violence. In addressing this point, he argues that the law excludes some behaviours, and deems them legal, which are similar to those it judges to be illegal. Although Box was writing at a different time, and rape law has changed since the book's publication, much of his critique remains relevant today.

He rightly takes issue with the notion of consent itself and its use as the standard which determines whether rape has taken place, or not. Whilst, as noted above, the law in relation to consent has changed since his chapter was written, the issue of 'reasonableness' remains, that is, whether there is a reasonable belief that someone consents (Sexual Offences Act 2003). As the law concentrates on uncovering whether a victim consented or not, the result is a focus only on rape as a result of direct physical or threatened violence. For Box (1983: 123), 'by making lack of consent the distinguishing feature of rape, the law misses an obvious point. It is not so much the absence of consent, although that has to exist, but the presence of coercion which makes rape fundamentally different from normal acts of sexual intercourse'. The law, he argues, is only able to account for submission under physical coercion, resulting in the omission of 'submission under threats of all types' (Box, 1983: 123). Returning to Box's original point, the law excludes behaviours which are similar to those it includes and, ultimately, we see the merging of normal sexual encounters and sexual assaults.

These points have again been addressed by feminist scholars since the book's publication, focusing on the limitations of the notion of consent. For Cahill (2001: 171):

Liberal theories of rape depend on a certain understanding of consent that demands it be freely given, that is, that the alternatives to the encounter in question are not so seriously inconvenient or harmful so as to be virtually unthinkable. Yet this conceptualisation of consent, when taken against political and social structures that seriously limit women's agency and autonomy under many circumstances, proves problematic.

Taking into consideration the gendered, heterosexed discourses discussed in this chapter and in the work of Box, in which men are required to be sexually aggressive and where women secretly yearn to be dominated, the concept of 'reasonableness', a focus in the law and in everyday speech, becomes an issue. As Pateman (1980, cited in Cahill, 2001: 173, emphasis in the original) highlights, 'at present it is widely believed that a woman's "no" does *not* constitute a refusal, that it *is* "reasonable" for men to put a lesser or greater degree of pressure on unwilling women in sexual matters, and that it *is* "reasonable" for consent to be inferred from enforced submission'. Such discourses contribute to what Gavey (2005: 3) terms 'the cultural scaffolding of rape'. This cultural scaffolding, it is argued, sets up the preconditions for rape and, taking these discourses into consideration, it becomes clear that an ungendered discourse of consent fails in its ability to conceptualise consent which is freely given.

Gavey (2005: 136) explores the experiences between 'what we might call mutually consenting sex, on the one hand, and rape or sexual coercion on the other'. That is, experiences in which women felt pressured into sex, felt unable

to resist, acquiesced, and situations where women ended up having unwanted sex although often without direct force being used. If we conceptualise consent as a scripted, gendered interaction, premised on men's sexual entitlement and women's roles as sexual gatekeepers (Faustino and Gavey, 2022), then the ability of women to say no to unwanted sex is constrained within these cultural scripts. For Olufemi (2020: 96) '[t]he happy face of consent' fails because it does not recognise the power relations entangled in sexual encounters. She argues that when consent is understood because of the negotiation of power relations, 'our "yeses" and "no's" do not carry the same weight' (Olufemi, 2020: 99).

Fundamental to the notion of consent is the requirement to speak out about what you want. Angel (2021: 5) discusses this and questions how women 'can know what we want, when knowing what we want is both something demanded of us and used as a source of punishment?'. For example, footballer Ched Evans had his conviction of guilt overturned following the introduction of sexual history evidence of the alleged victim. Such evidence, in this case, was that during previous consensual sex with other men, 'she liked to have sex "doggie style" and used the phrase "go harder" while having drunken, but consensual, relations with them' (Kale, 2016). Furthermore, for women to be able to speak out about what they want, they must also know what it is they want (Angel, 2021), which proves difficult in a context where gendered discourses limit the subjective positions available for women to realise their desires. The requirement to speak their sexual desires then, means women must negotiate their way through a tangled web of gendered

discourses and cultural expectations which are further restricted by the fact that not everyone's speech is granted the same level of credibility (Code, 1995).

Succinctly, Alcoff (2018: 128) argues that consent 'provides a low bar for sexual agency' and we should move away from a singular focus on the concept of consent as a valid way to indicate whether sexual violation has, or has not, occurred. When experiences of sexual violence do not always conform to a simplistic notion of non-consent, but can be understood as violations, intrusions, a result of coercion or something which is unwanted, a clearer understanding of the 'wrong' of sexual violence, is required. From our own perspective, key questions should address what violation we are addressing when we seek to understand the experience of rape and work out ways to challenge its prevalence. How can we understand the violence of subjectivity? How does this violence, and its mystification by state institutions and media outlets, which implicitly and explicitly legitimate it by their actions and non-actions, maintain the gendered social order?

Feminist work in this area, particularly from a poststructuralist perspective, has developed an understanding which recognises the short and long term harmful and traumatic effects of sexual violence on an individual's sense of self, and subjective functioning, such as the impact on their physical and emotional health, their social, financial, employment and educational lives and, broadly, how an individual negotiates the world following sexual violence.

The discourses and processes of mystification discussed by Box can also be seen to limit the ways in which we understand sexual violence and the legitimate subject positions women can have when it comes to sex, desire and

consent. Within this already constrained context, sexual violence can be understood as a violation of subjectivity, a violation which has transformative effects. For Alcoff (2018: 110):

Sexual violation transforms us. Both victims and perpetrators are transformed, as well as their families, friends and social circles. Just the knowledge that such events are real possibilities in one's life, however remote, has an impact on those who have had no direct experience of them.

Cahill (2001) develops the argument about rape as a gendered, embodied experience, one which has enduring effects, extending beyond the temporal limits of the act of violence itself. She states, 'the social death a rape can impose can qualitatively transform the victim's being' (Cahill, 2001: 179) and that an understanding of sexual violence as an embodied experience helps us to see the ways in which women respond to sexual violence and the effects of these experiences on their subjective functioning. Beyond the often traumatic experience of the act itself, there are a range of harms which can potentially follow. One way of conceptualising the multitude of harms which follow an experience of sexual violence is what Bufacci and Gilson (2016: 32) term 'the ripples of the same act of violence'. These ripples develop and change over time with broader and less clear boundaries than the act itself. Rape and sexual violence more broadly, therefore, should be understood as an *experience*, rather than an act, which is temporally indeterminate, with deeply traumatising and devastating, rippling effects on a person's subjective functioning.

The effects of the prevalence of sexual violence are often that a person will place restrictions on their own behaviour following an experience of, or in

anticipation of, violence - such as not walking alone at night, not drinking alcohol, and other well-rehearsed measures women undertake with the hope of avoiding sexual violence (Vera-Gray, 2018). This means violence can be seen as productive, in that it alters and reconstitutes a victim's subjectivity. Through a poststructuralist lens, whereby rape is understood as a violation of subjectivity, there is no distinct self that exists separately to the traumatic experience (Cahill, 2001). As the survivor of Brock Turner's sexual violence stated, 'my damage was internal, unseen, I carry it with me. You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence [...] I am a human being who has been irreversibly hurt' (Buncombe, nd). The notion that there is one event and a defined number of harms which the victim needs to transcend in order to return to herself is insufficient in explaining the ways in which sexual violence alters a person and their position in the world.

Through focusing on the consequences of sexual violation, Alcoff (2018: 110) argues that the distinct harm is a violation of sexual subjectivity, specifically our capacity for sexual agency which encompasses but is not limited to consent, desire, pleasure and will. She points out that sexual violation 'severely constricts the possibilities for [...] self-directed sexual formation' (Alcoff, 2018: 112). Of course, heterosexed, gendered, raced, classed and disablist discourses also limit the accepted subject positions available for people, whether that relates to sexual violence or not. As Alcoff (2018) notes, sexual violence should not be viewed as separate from sexuality and the ways in which it has been constructed. The everyday, taken for granted forms of

heterosexuality (Gavey, 2005), therefore, regulate our conceptualisation of what counts as sex and sexual violence and restricts our agency.

Therefore, through a feminist poststructuralist lens, we can better understand the ways in which sexual violence is a violation of subjectivity, which changes a person's relation to themselves. As Alcoff (2018:120) argues though, 'it is not only the rape that changes her relationship to herself, but the social context that protects rapists'. The following section therefore, highlights the role of institutions in this violation of subjectivity and the ways in which the law acts as a permitting force, an argument made persuasively by Box.

Institutional mystification and the limits of the law

Box argues that rape and sexual assault are mystified in a plethora of ways. For him (1983: 157) 'men are assisted considerably' in this process 'by the criminal justice system and the media's dramatic representation of rape cases'. This takes many forms, with justice denied because the accused is portrayed as 'sex starved', 'drunk', 'provoked' or 'too enthusiastic' (Box, 1983: 158). Overlapping with this, the law protects only certain types of women, that is, those who conform to the ways in which women are taught to be, in line with the social construction of femininity and insidious gendered ideals. Those women who deviate from these ideals do not receive the same purported protection from the law (Chadwick and Little, 1987; Smart, 1995a).

Since the publication of *Power, Crime and Mystification* (1983), understanding of the ways in which appropriate forms of femininity are modified and shaped

by other colluding forms of oppression and privilege, such as, but not limited to, race, ethnicity, class, sexuality and ability/disability has developed. It is vital to make these intersectional connections across processes of victimisation and criminalisation, to understand the specific ways in which these complex regimes of inequality impact upon hierarchies of power and gendered experiences, expectations and responses (Walby, 2009; Yuval-Davis, 2006). For example, rape laws are intended to protect us all, but they do not protect us equally. They are part of a broader apparatus of categorising who has and has not ‘...communicated through their behaviour and commitments (to men and children) that they recognize their place in the established order of things’ (Box, 1983: 158). In this highly gendered social order, women do not know or own their own sexuality and they are constrained and punished by the ways in which the law, and the state, more broadly, are able not only to reflect appropriate forms of femininity and sexuality but also to reproduce them (Smart, 1995b).

Box (1983) also outlines the role of the media in maintaining and replicating this distinction between ‘good’ and ‘bad’ women, worthy, or not, of state ‘protection’. In this way, the media, alongside the law and the state, are able to set and reset the discursive parameters of acceptable behaviour and appropriate forms of femininity. These parameters impact significantly on public awareness around sexual violence. Since the book’s publication, we have seen the development and impact of social media, and its grip on the discursive climate in which we talk about and understand sexual violence (Gash and Harding, 2019), as well as being a medium for the perpetration of

sexual violence (Huber, 2022). Reporting rates have increased notably since Box published *Power, Crime and Mystification* in 1983, but traumatic and triggering experiences of the criminal justice system, including the dissection of character, appearance, choices and relationships, low conviction rates, pitiful sentencing patterns and a concentration on sensational cases, persist. The message to potential rapists remains clear, 'this is a type of crime for which there is a very low rate of being convicted and imprisoned' (Box, 1983: 159).

Feminist scholarship, and grassroots organisations, have built on the evidence and ideas presented since the publication of Box's work on the way in which the legal system, and state more broadly, functions in part to maintain the gendered social order by reinscribing ideal gendered subjectivities. For many, the issues relate to discourse and our wider cultural beliefs about gender, sexuality and, by extension, sexual violence. It is this line of thinking which has led to some significant developments in understanding and challenging the exercise of law's power and this work suggests we should do more than problematise Box's interpretation of the law as an 'unwitting' contributor to the mystification of rape (1983: 157). Law plays a central role in how rape is constructed and understood. It plays a significant part, therefore, in the overall 'cultural expression' of rape (Box, 1983: 161).

Smart (1989: 162) argued that the law, as discourse, can 'refute and disregard alternative discourses and claim a special place in the definition of events'. She maintained that the law has a claim to truth in that it sets itself outside

of the social order, 'as if through the application of legal method and rigour, it becomes a thing apart which in turn can reflect on the work from which it is divorced' (Smart, 1989: 11). In this sense, the law is a gendering strategy, (re)producing a series of 'truths' about rape, whilst also disqualifying alternative, supposedly inferior, knowledges (Smart, 1989). Whilst the law has historically established these 'truths', feminists have contested them, instead exposing them as stereotypes and myths which both deny women's experiences and 'refuse women the status as truth-tellers' (Serisier, 2018: 71). As a gendering strategy, the ways in which the law operates to produce a 'truth' about sexual violence is clear. Through the deployment of gendered discourses on women's bodies and sexuality, medical discourses on the 'typical' bodily signs of rape (Lees, 1997) and a standard of how the 'reasonable woman' would respond if she did not consent to sex (Ussher, 1997), the realities of women's actual experiences of sexual violence are mystified. As Smart contends, these are the mechanisms through which the 'law consistently fails to "understand" accounts of rape which do not fit within the narrowly constructed legal definition' (1986: 36).

Of further importance, is the law's discursive framing of 'real' rapists, as monsters or predators, and as someone who would be clearly distinguishable from non-rapists (Manne, 2018). This discursive framing has effects, particularly in relation to reporting and speaking out about incidents. As Brison (2014) discussed, the myth that only those who are inhumane rape, generates a political and popular common sense around rape, which can lead to a disbelief of those who experience sexual violence at the hands of people

known to the victim. As these discourses do persist, there are effects on the numbers and types of cases which are deemed truthful and ultimately, 'by scapegoating "the few" as rapists, the law legitimates "the many" as normal' (Jeffreys and Radford, 1984: 160). Through claims to truth, the law has the power to disqualify women's experiences of sexual violence (Howe, 2008). The law, therefore, needs to be understood as a site of struggle, not simply an unwitting contributor to the mystification of sexual violence, due to its participation in constructing meaning and subjectivities (Smart, 1995a). What we must also be mindful of, as Box argues, is that 'the majority of rapists...are not touched directly by the actual operation of the law' (1983: 161). As such, we cannot rely either on the law, or state institutions, despite the contradictions within and between them, as a solution to sexual violence.

Box ends the book with the question, '[A]nd justice for all?' (Box, 1983: 219) His vision is one which challenges law and order policy and campaigns as a means to justice as, for him, this often does not reflect the interests of those harmed and instead reinforces and legitimises state punishment. As Box outlined, and as feminist scholarship and activism has shown us in the period since the book's publication, the extension of this power to punish excludes the most marginalised people from access to this limited conceptualisation of justice and reproduces the harms that are supposed to be repaired (Olufemi, 2020; Richie, 2012). In relation to sexual violence, justice for survivors relates to 'consequences, recognition, dignity, voice, prevention and connectedness' (McGlynn and Westmarland, 2019: 179). Justice is not incident based, but should instead be understood 'an ever-evolving, nuanced, lived experience'

(ibid). Responses therefore should be built on this knowledge, moving away from a singular focus on punishment through the means of criminal 'justice'. Following the developments in feminist poststructuralist work in conceptualising the nature and harms of sexual violence, striving for justice would mean expanding the discourse of justice to not only reflect the broader range of harms to subjectivity, but also the harms which stem from engagement with the criminal justice system. Specifically, challenging law's grasp on defining what is, and is not, considered harmful and who, and who is not, understood as a victim or perpetrator is crucial. Ultimately though, to challenge law's exercise in power, it is vital to expand and produce new discourses which challenge the current gendered social order beyond the legal system.

Conclusion

To use rape and sexual assault to highlight the process of mystification was a radical move by Box in 1983. Drawing our attention to the coordinated and surreptitious ways in which sexual violence is concealed, justified and, at times, encouraged, was a powerful statement amongst the scholarship of critical criminology at the time. The inclusion of rape and sexual assault as an example of 'crime' as an ideological construct and as a social control strategy in a collection by a male criminologist, alongside chapters on corporate crime and police crime, with a focus on power and how power is exercised over people, was a progressive step and one which undoubtedly had far reaching implications for centralising the gendered nature of sexual violence in critical criminology and academia.

In this chapter we have argued that many of the central arguments made by Box hold contemporary value and have been both extended and refined by four decades of critical and feminist thought. Ultimately, the mystification of sexual violence continues unabated despite relentless challenge from counter discourses and radical sites of resistance. We continue to problematise the taken for granted ideas about sex, sexuality and interpersonal relationships which take hold on subjective, discursive and structural levels but we reach the same broad conclusion that Box did. For agents of the state, broadly conceived, there is 'no way' to 'treat men's violence as a serious crime without undermining the social order it serves so well' (Hanmer et al., 1989: 11). Processes of mystification obscure our view of rape and sexual assault, hindering the fight for women to live a life of freedom and safety in exceptional ways, some of which we have outlined above.

What we believe to be of central importance to the maintenance of the gendered social order via sexual violence is the culturally accepted, 'commonsense' and conventional ideas about gendered identities, heterosexuality and interpersonal relationships. In this chapter, we have outlined the importance of Box's analysis of sexual violence which focuses on the role of the state from a materialist perspective in not responding adequately to the issue. We have also suggested though, that his analysis can be extended through focusing on the operation of harmful and restrictive discourses, from a poststructuralist feminist analysis, which are (re)produced by institutions of the state, but are also inherently connected to the broader gendered discourses which shape women's lives outside of the legal arena. By

making these connections, and by focusing on discourses outside of the realm of the state, as well as within, we can further understand sexual violence experienced by those who have not necessarily interacted with the criminal justice system, or who have not been harmed in line with restrictive legal definitions. To tackle these discourses and their effects would mean to dismantle normative forms of masculinity and femininity which are ingrained in, and exercised by, all aspects of our society. Whilst this task can seem insurmountable, we have argued that an approach to sexual violence which centralises discourse and works with the complexities of cultural ways of life, can best demand change. As Cahill (2019: 290) argues:

The anti-rape movement needs to be undergirded with a recognition of the ways in which all discourses that surround and construct the phenomenon of sexual violence – overlapping, intersecting discourses about sex, agency, narrative, race, the self, gender, and so on – shape it into the particular phenomenon that it currently is. Any conceptual or rhetorical approach that assumes a givenness to rape beyond its discursive particularity will by definition miss the mark.

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