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#MeToo, Statutory Rape Laws and the Persistence of Gender

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Abstract

In the late 1970's and early 1980's, feminists pushed for reform of statutory rape laws. At that time, states' laws explicitly provided that only males could be charged with the crime of having sexual intercourse with a female below a certain age. The victims of statutory rape were always female. Feminists advocated that the law should be rewritten in gender-neutral terms. They hoped that formal equality in statutory rapes laws would lead to the recognition that both males and females have sexual agency and greater equality in society as a whole. Unfortunately, the prosecutorial discretion granted by the language of these laws perpetuate rather than abolishes traditional male/female stereotypes.

In October 2017, a social movement erupted out of the unacceptable exercise by men of their power over female subordinates. The #MeToo movement exposed the widespread prevalence of sexual harassment, sexual abuse, and sexual violence that women experience in the workplace. The #MeToo movement's objective is not dissimilar to the goal of proponents of gender-neutral statutory rape laws, which seek to have men and women treated equally. Unfortunately, #MeToo and state adoption of gender-neutral statutory rape laws share another phenomenon. **Both the #MeToo movement and the practical enforcement of gender-neutral laws create a "victimology paradigm." It seems that recognizing inequality among genders requires conceding perceived female frailties.**

Using the example of statutory rape laws, this article explains how movements for increased equality between men and women can fail to meet their stated goals. The article begins by exploring traditional statutory rape laws, which stereotypically gendered perpetrators and victims. It follows with a discussion of the political forces behind the nation-wide change to neutralize gendered statutes. The article dedicates significant attention to the flaws of gender-neutral statutory rape laws, which, by removing gender designations of victims and perpetrators, grant prosecutors unchecked discretion to choose which partner to charge in cases of mutual consent to

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the same prohibited conduct. Today prosecutors are three times more likely to charge males with statutory rape than they are to charge females with the crime. Parents of females' alert authorities of prohibited sexual activity of their daughters at a rate that is largely disproportionate to that of parents of males. Prosecutorial stereotyping as it pertains to prohibited sexual intimacy between consenting teens has created an unfortunate return to the female-victim paradigm that proponents of gender-neutral statutory rape laws sought to erase. The article concludes with a recommendation for achieving a more balanced application of gender-neutral laws.

Cultural movements can have unintended consequences. This article explains how the women's rights movement's campaign to neutralize gendered statutory rape laws failed to achieve its goal of an equal society. **Today, a growing number of voices suggest that #MeToo, like the practical application of gender-neutral statutory rape laws, disempowers women.** This article exposes the pernicious effects of the legislative shift to gender neutrality and explains how it serves as a cautionary tale to the #MeToo movement and the fight for workplace equality.

Keywords: Statutory Rape, Legislation, Feminism, Feminist, Criminal Law, prosecutorial discretion, consensual sex, teens, #MeToo, social justice


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