

THE DANGERS OF INVOKING CULTURAL EXPLANATIONS IN THE FIGHT AGAINST SEXUAL ASSAULTS ON COLLEGE CAMPUSES

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The Obama administration has made fighting sexual assaults on college campuses a national priority. Relying on a 2007 web-based survey administered by the Centers for Disease Control, the White House asserts that one in five college women will be sexually assaulted. In its January 2014 “Renewed Call to Action,” the White House Council on Women and Girls declared that sexual assault happens on college campuses because “our culture still allows it to persist.” Schools contribute to rape culture by not holding perpetrators accountable. “To make our campuses safer,” concludes the Council, schools must step up their enforcement mechanisms and federal agencies must make sure they are “living up to their obligations” to punish perpetrators.

Although the White House’s concerns for student safety are laudable, the culture argument undermines the presumption of innocence. Alternative approaches to the social complexities of sex on campuses might do a better job of encouraging more mutually respectful sexual encounters while protecting individual rights.

Faulting Culture versus Holding Individuals Responsible

Let’s pause to think through the internal tensions in the new White House push to combat a culture of rape through tougher campus prosecutions. If the culture is at fault for so many campus sexual assaults, then targeting young males who are susceptible to cultural forces doesn’t seem quite right. Are they guilty because of their freely chosen actions or are they guilty because they are acting out cultural scripts that tend to make men behave inappropriately toward women on campus? In practice, this dilemma can all too easily lead simply to looser standards for finding guilt in campus proceedings with few legal safeguards.

Since the Office of Civil Rights at the Department of Education issued new guidelines for handling campus sexual assault cases in April 2011, standards of proof have been dropped from “clear and convincing” evidence to “preponderance of the evidence.” In cases where people have divergent understandings of the sexual encounter, the lower standard paired with a general sense that individuals must be punished to promote cultural change makes it difficult for a campus panel not to convict a male accused of rape. In a typical situation such as a drunken party, he may say the sex was consensual and she may say that it was coerced. If college authorities presume that a pathological culture encourages men to think women want to be raped, the scales will be tilted against any defense the man can offer. “Misunderstanding” goes against him.

By contrast, in courts of law, rape cases are notoriously hard to prosecute. Without evidence of a struggle, it is hard for a jury to convict, especially in a criminal court where the standard of evidence is “beyond a reasonable doubt.” On campus, a looser standard for determining guilt and

the sense that the culture encourages rape makes it much easier to convict accused perpetrators, but at what cost to longstanding American legal principles?

Reliance on culture as an explanation for sexual assault is at odds with the basic principle of liberal jurisprudence, the idea of moral autonomy. In liberal jurisprudence, individuals are held accountable for actions of their own choosing. Indeed, liberalism operates as if it exists beyond the pull of culture. One way to see this is to move away from the campus rape discussion and consider how Americans understand their own culture versus Islamic culture. In that context, explains Wendy Brown, a political theorist at the University of California, Berkeley, “‘We’ have culture while culture has ‘them.’” Americans assume that our liberal culture promotes moral autonomy, while other people’s cultures determine their decision-making. The trouble with the culture argument, writes Brown, is that it justifies liberal aggression against peoples perceived to be controlled by inferior cultures. Brown cites the example of the war in Afghanistan, where native culture is presumed to make it impossible for women to be independent actors, justifying changes imposed by invading U.S. troops. A similar argument was at work in the traditional U.S. South, where whites considered black men culturally unable to resist raping white women. Draconian punishments were dispensed with little judicial pause.

These examples may seem extreme, but their dynamics suggest why assumptions about culture can clash with liberal standards of individual responsibility and proof of guilt. By heightening attention to a presumably general, culturally encouraged rash of sexual assaults on college campuses, the new national guidelines put young men in a very vulnerable position. When men are seen as driven by culture, constitutional protections for individuals are bound to weaken.

Another Way Forward?

The culture argument is certain to spark more legal contention, because not all prosecuted male students are willing to give up liberal legal protections. Male students convicted under new guidelines have brought discrimination cases against Xavier University, Vassar College, Williams College, Bucknell University, St. Joseph’s University and College of the Holy Cross, arguing that they were deprived of due process rights purely on the basis of their gender. Unlike African-Americans living under Jim Crow, young men at elite colleges are able to push back, often with support from affluent families and powerful legal advocates.

Rather than invoke culture as the villain and weaken legal protections, campus leaders might do better to encourage discussions and other cultural interventions to promote more respectful sex. In the process, everyone needs to be more honest about the male brain’s capacity to make moral decisions during arousal and more realistic about the misfires in sexual encounters between young people. It may be that liberal jurisprudence, with its emphasis on the cool reason of consent, cannot account for the heat of sexual encounters. But we cannot even have these conversations if assumptions about guilty male aggression are simply taken for granted in the new paradigm of rape culture. As things stand now, the rape culture view can easily become self-fulfilling and cut off reasoned debate about sex, because cracking down on more young men will, in turn, make the presumed pathologies of campus rape culture seem ever more inescapable.

Research and data for this brief were drawn from The White House Council on Women and Girls, “Rape and Sexual Assault: A Renewed Call to Action,” The White House, January 2014; Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton University Press, 2006); and John Brigham, “Rape Culture, Due Process, and State Feminism,” in *Mistaken for Monsters: Wrongly Accused of Child Abuse and Sexual Crimes* (edited by Ros Barnett) (Oxford University Press, forthcoming).