

**SLIDE 1: The Medical Gaze of Rape: Power, Pedagogy, and Blind spots**

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Reading, writing, and presenting papers on more than a dozen medical reports on rape examinations from 1815 to 1893 is a veritable challenge for the presenter and the audience. The detailed corporeal descriptions of inflicted violence are painful at best and unbearable at worst. Moreover, the discomfort and vulnerability of those undergoing a post-rape examination can be felt viscerally, experientially. In the 19<sup>th</sup> century, *médecins-légistes*, which loosely translates into English as forensic scientists, coroners or medico-legists, were court-appointed physicians who played an important role in helping the police and judges solve crimes. Their authority was second to that of the presiding magistrate to whom they directly sent their medical reports.

M.D. Judith Herman in *Trauma and Recovery* articulates why sexual abuse and assault might be such a difficult subject, imagining the responses of bystanders to both the aggressor and the aggressed:

**SLIDE 2:** It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil. The victim, on the contrary, asks the bystander to share the burden of pain. The victim demands action, engagement and remembering (7-8)

Although when reading the reports, I responded to the perpetrators' acts with disgust and incomprehension, today I have not included the clinical writing documenting child sexual assault, rape or incest because to do so can be obviously uncomfortable, traumatizing, voyeuristic, or even pornographic. While some brief details will be presented, what will be analyzed are the doctors' power, pedagogy, and blind spots when conducting those exams. The last third of this paper will report on the victims' voices, reported mostly through indirect speech in the doctors' reports.

Historian Benoît Garnot reminds us that using the term “victim” for these 19<sup>th</sup>-century cases might be anachronistic. The *Dictionnaire Universel* by Le Châtre’s first definition of “victim” speaks about human and animal sacrifices to the gods, a definition that reflects that of other nineteenth-century dictionaries (Lamarre 2). Used figuratively, it denoted someone who “perishes unjustly” (1526). In judicial and penal terms, a victim is someone who experiences “[la] souffrance du corps et de l’âme” (Porret paragraph 2, 1). As Porret contends, “évoquer la victime du crime, c’est en effet être attentive à l’histoire de la souffrance de celles et de ceux que la violence [...] frapp[e] en leurs corps [ou] en leur dignité. . . (paragraph 2, 2). For Garnot, out of four proposed definitions for a victim he favors: “quelqu’un qui est reconnu comme tel par une institution, en particulier par la justice, mais éventuellement aussi par l’Eglise ou par une autre institution” (3). Bringing in institutional recognition of victimhood is important for both medicine and the law. Many times, what modern readers discern as rape is not perceived as such by the attending 19<sup>th</sup>-century physician and judge.

**SLIDE 3** [Le médecin légiste doit] présenter un tableau froid, désincarné, dans lequel le rôle des victimes, le silence pétrifié ou bien encore un cri étouffé ne saurait se faire entendre. Le corps des victimes de viol s’apparente à celui des cadaves. . . . (Chauvaud paragraph 15, 13)

## Power and Pedagogy

In his *Human Remains*, Jonathan Strauss demonstrates that from the late eighteenth through the nineteenth centuries, medicine gained unprecedented credibility as a discipline: “It redefined and asserted its legitimacy in respect to other institutions, notably the courts and the church, while its theories and approaches gained a broader truth-value, extending their reach beyond the domain of health to issues of fundamental social interest” (6). The medical reports’ facts and detached scientific

method contributed to an already booming field of statistics, accumulating data on rape, murder and theft as well as other crimes.

All medical reports specified a **pedagogical function** to relaying medical expertise to future practicing doctors who would undertake writing comparable rapports médicaux. Diagnostic analyses of a patient were deduced by a *group of observed symptoms* (Devergie, 1837 7). Lacassagne gives an excellent overview of the interconnected relationship between the *médecin légiste* and the courts: Le médecin par ses études spéciales, permet souvent au magistrat d'arriver à la possession de la vérité. (iv). Pénard was equally conscientious of his role as an expert doctor when deciding cases related to *attentat aux moeurs*, which also included sodomy and *pédérastie*. Aware of the weight of his words; he knew that his pronouncements could lead to an individual's guilty verdict. Many *médecins-légistes* articulated reserve, insisting that they detailed their findings, but only the judge could determine if a rape occurred or not, partially based on the medical exam (Devergie 9; Toulmouche, 103; Pénard 106, 109; Lacassagne 21-23). Thanks to «une instruction ministérielle» on Sept 30 1826, justices and court police officers were able to call on experts to assist them in solving cases (Lacassagne 44).

**The pedagogy of those medical reports also passed on values related to notions of consent which discounted rape and victims' narratives of assault.** According to Vibert, lawyers would try to establish that a woman was more or less a consenting partner when it came to sexual relations (303). When the victim was a virgin who had vague notions about human sexuality, Virbert recognized that she could be taken advantage of without having the time to defend herself (303). He showed the most prejudice when it came to accusations of rape by an adult victim who was knowledgeable about sex:

**SLIDE 4** Mais quand il s'agit d'une femme qui sait ce que sont les rapports sexuels, il est impossible de croire qu'un homme seul réussisse [sic] à accomplir sur elle un viol. En admettant, en effet, que l'agresseur réussisse à la fois à lui immobiliser les bras et à lui maintenir les cuisses écartées, la femme pourra toujours exécuter certains mouvements du bassin qui n'ont pas besoin d'être bien étendus pour empêcher l'intromission du membre viril. (303-04)

Lacassagne (1878), like Vibert had difficulties imagining that a woman could be raped by a single man.

Hence in those cases consent would be given by the woman:

**SLIDE 5** L'appréciation du consentement est parfois très difficile et cependant la plus haute importance pour savoir s'il y a eu ou non violence, lutte ou non entre la victime et l'inculpé. Disons d'abord, avec la plupart des auteurs, que les efforts d'un seul homme ne suffisent pas pour effectuer un viol, quelle que soit la résistance de la femme à moins cependant de circonstances toutes spéciales, telles qu'une trop grande disproportion de forces, une syncope, des coups sur la tête qui déterminent un évanouissement. (Lacassagne 468-69)

For what Lacassagne envisaged as extenuating circumstances, were ones that Tardieu saw as frequent happenings. Tardieu reframed this question stating that the *médecin légiste* ought to evaluate the relative strength of plaintiff and accused as well as other factors that could have temporarily paralyzed the victim into not being able to thwart her attacker (67).

### **Doctors' Blindnes ; victims who « speak » their abuse**

To document the signs of abuse, incest, or rape the *médecins légistes* documented their observations with clinical, positivist precision for the courts. To that end, they were exceedingly meticulous in explaining how to carry out a medical post-rape exam. While conducting them, through mostly reported speech, the victims' voices, their cries of pain or physical agitation were included in their final reports, but almost as if in passing. In two cases, only Dr. Tardieu presents a girl's and several young boys' physiological effects of rape, similar to the emotional symptoms that Herman presents through the work of Ann Burgess and Lynda Holmstrom a century later in the United States: "They observed a pattern of psychological reactions that they called 'rape trauma syndrome.' . . . They remarked that in the aftermath of rape, victims complained of insomnia, nausea, startle responses and nightmares, as well as dissociative or numbing symptoms" (31). Hence, what was usually missing in the great majority of doctors' reports was an interest in "the psychological effects of victimization," the recognition and writing of signs of "psychological trauma" and a lack of "empathic identification with their patients' reactions" (Herman 31-32).

Victims' bodies speak the abuse they endured if there were broken or indented hymens, bruises, lacerations, or suspicious discharges in the vaginal or rectal areas of the body or on the child's clothing. If the victim was a male child, Toulmouche had an elaborate set of diagnoses in order to determine whether he had assumed/been forced to be active or passive in cases of pedophilia, homosexuality or male prostitution. For cases of repeated abuse both boys' and girls' countenance, crying and/or bodily ailments revealed sexual assault (see also Tardieu 87, 88-90, 90-92). The first case, a young female child's mien and lethargy «communicated» signs of abuse: "La pâleur du visage, le teint plombé, le regard éteint, les yeux cernés, la peau sèche, l'essoufflement, la lenteur et la difficulté des digestions, une extrême faiblesse, concourent à révéler l'influence pernicieuse qu'a éprouvée tout l'organisme d'actes contre lesquels la morale et la nature se soulèvent également (Tardieu 38). In a case involving six adult women who repeatedly abused young boys, Tardieu relays his examination of the boys' physiognomy, physiology and corporal signs of violation. In that case, they too revealed similar traumas of abuse that the girls suffered such as skin problems, breathing and digestive problems, fatigue, sullen eyes and swollen, sensitive genitals. Tardieu proved to be a highly observant physician who picked up on subtler cues of malaise and distraught that communicated sexual assault.

As previously stated, the victims' bodies and voice served as testimonies of abuse, abuse that was both heard and seen and even taken as "truth" but that was also disregarded, as the case of 9-year old Aimée Griarvais revealed:

**SLIDE 6** 2<sup>e</sup> observation.—Visite d'Aimée Griarvais, âgée de neuf ans.—Le 5 juin 1843, je fus appelé à la chambre d'instruction pour y visiter cette enfant. Je ne trouvais aucune trace de violence aux cuisses, ni aux parties génitales. [...] La membrane de l'hymen était intacte; on ne pouvait y introduire que l'extrémité d'un tuyau de plume d'oie, et non sans que la petite criât. (Toulmouche 106)

In the quote, we see that "the little one shouted out," one presumes in pain, as the *médecin-légiste* conducted his examination, of Aimée Griarvais's vaginal opening with a goose quill. He made note of her "sensibilité prononcée" "au moindre contact." Despite Aimée's pain and discomfort, the doctor determined

that she had not been deflowered because her hymen was intact. However, the irritation she was experiencing the doctor wrote, was probably due to “des attouchements plus ou moins rudes, ou de tout autre cause” (106). He did not elaborate what those other causes could be; however his evaluation stated that this child was not a victim of rape. Interestingly as well, he did not consider Miss Griarvais to have been a victim of “*tentative de viol, [ou] d’actes érotiques*” which both were designated as *attentats à la pudeur* in French jurisprudence, while nonetheless concluding that her pain was due to rather forceful fondling, or another cause. Eliding rape with “actes érotiques” in this context needs to be unpacked from the perspective of French jurisprudence and how rape or *attentats à la pudeur* were documented by 19<sup>th</sup>-century médecins légistes and experienced from the victim’s point of view.

In the medical reports examined here, the doctors (Toulmouche, Devergie [1837], Penard [1860] and Tardieu [1864]) all spoke of inserting their finger, a narrow tube, or a goose quill up victim’s vaginal canal when trying to determine if a rape occurred. This phase of the medical exam would have been triggering for a young child or an adult woman, replicating the inappropriate touching or criminal raping they endured. Was that necessary? Vibert’s report explained that this was done in order to have a sense of the placement of the hymen. For the doctors, a young female’s hymen was the central focus of the court-ordered exam. Although the presence of a hymen in all young girls’ bodies has a long contested medical history since the Renaissance<sup>i</sup>, in my corpus, its presence meant the girl was still a virgin and no deflowering transpired; its absence or indented shape meant the doctor had “proof” that that a rape or attempted rape had occurred. The defendant could therefore be tried for the crime of rape, *attentat à la pudeur avec violence*, or *attentat à la pudeur*, a lesser crime in French law, representing more sexual assault. Those three determinations along with perhaps evidence of other marks of violence on the victim’s body or young victims having an STD were also key for prosecuting attorneys to make their cases.

Toulmouche states that several times he became certain that sexual abuse had happened based on the stories told by the young girls: “et ce n’est le plus souvent, que d’après les dires des victimes de

ces aberrations érotiques qu'on apprend qu'elles ont eu lieu" (103). It is a relief to read that children's personal stories were taken seriously and believed. Yet, with this passage, one notes that Toulmouche has again referred to rape as an aberrant, but erotic act. This sexualized language represents legal language in French jurisprudence from decisions rendered in 1859 and 1864. **SLIDE 7** Rape is depicted as a crime of passion, sexual desire and sexual satisfaction: «Il n'est pas nécessaire pour l'existence du crime que [l'attentat à la pudeur] ait été commis pour *satisfaire une passion* [...]. Il diffère du viol en ce que le viol a essentiellement pour objet de procurer à son auteur les jouissances sexuelles. [...] (Cass. 23 déc. 1859 : B : 286 ; 24 juin 1864 : B 215). (Hélie 665, my emphasis). The medico-legist Vibert also referred to male motivations for sexually abusing a child as a "but de satisfaire une jouissance vénérienne," in addition to male curiosity, vengeance or depravity (282). Most contemporary rape scholars argue today that rape is an act of power rather than one of sexual rapture—especially from the woman's perspective. Still in the 20<sup>th</sup> and 21<sup>st</sup> centuries, scholars have advanced that when a male rapes, he does so for sexual reasons, not solely for reasons of power. That said, differentiations have to be made between what rape represents to the perpetrator and to the victim. Nowhere in sexual violence scholarship is it suggested that victims experience sexual pleasure from the assault they have endured.

Penard also relied on the stories recounted by his patients during his examinations of male and female child rape victims to confirm that sexual abuse occurred. In one case he stated that «la défloration et ses conséquences auront donné lieu à *de telles manifestations de douleur et à de tels désordres, que l'expression des révélations de l'enfant permettra certainement de porter une juste appréciation sur les faits qui se seront accomplis* (my emphasis 98).

Luce Irigaray asks in *Speculum de l'autre femme* "What if the 'object' started to speak? Which also means beginning to 'see,' etc. What disaggregation of the subject would that entail?" (135). Disaggregation, according to the *OED*, means an "inability to coordinate various sensations and a failure to observe their mutual relations." Hence, when victims spoke, the doctors' conclusions at times did not

align with the victims' narratives. What if the object began to speak? Certainly, she or he would articulate a resistance to the method, the medicalization their bodies and the doctors' blindness, stoicism, or detached scientific observation to *the effects* of the violence they recounted and endured. Dr. Toulmouche, like Drs. Devergie and Tardieu, would have given equal space to transcribing their patients' "confessions" (Toulmouche 101) "dires" (Toulmouche 103), and "aveux" (Toulmouche 108) as they gave to their clinical observations, procedures and protocols.

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<sup>i</sup> Since the 1500s, European doctors have debated the hymen question. Those who believed that the hymen was a vaginal membrane in all girls from birth are Fodéré (1764-1835), considered the father of *la médecine légale*; Cuvier (1769-1832), known for his forensic work on the cadaver of the «Vénus hottentote» who was Saartjie Baartman; Zacchias (1584-1659), often considered the (Italian) inventor of *la médecine légale* in the 17<sup>th</sup> century; and Belloc (1730-1807), considered the founder of French *médecine légale* (Chauvaud “La preuve” paragraph 2, 3). To this list, Toulmouche adds Boyer (1757-1833), Napoleon 1’s first surgeon; Plouquet (1774-1814), German doctor; Desault (1738-1795), surgeon, anatomist and founder of the first school of

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surgery; Orfila (1787-1853), a Spanish doctor/naturalized Frenchman who was a chemist and a pioneer in toxicology; Devergie (1798-1879), a French doctor and dermatologist and a pioneer of *la médecine légale* in France; and Capuron (1767-1850), French obstetrician who published several treatises on diseases of women and children. Toulmouche emphatically states with certitude that in 999/1000 cases the hymen exists in little girls (103). Some of the doctors who denied the existence of the hymen were naturalists Buffon (1707-1788) and Fallope (1523-1562); Colombo (1510-1559), Italian doctor of anatomy, said to have discovered the clitoris; and Mahon (1752-1801), French doctor and professor of *la médecine légale* and the history of medicine at the Ecole de Médecine (Chauvaud, “La prevue” paragraph 3, 3).