

Debra Bergoffen

Contesting the Politics of Genocidal Rape: Affirming the Dignity of the Vulnerable Body

NEW YORK: ROUTLEDGE, 2012

Reviewed by Louise du Toit

"In line with established feminist arguments such as by Catharine MacKinnon and Ann Cahill (Cahill 2001; MacKinnon 2005), she argues that traditional human rights discourse hides an imaginary and idealized masculine body (intact and nonporous) as the most plausible subject of human rights underneath its gender-neutral facade."

Debra Bergoffen scrutinizes the February 22, 2001 groundbreaking verdict delivered by the International Criminal Tribunal for the Former Yugoslavia (ICTY) from a feminist perspective and draws out some of the philosophical implications of this development in international law. The tribunal convicted three Bosnian-Serb soldiers for their involvement in the war rape of Muslim women and girls, finding them guilty of both war crimes and crimes against humanity (hereafter referred to as the Kunarac case). Illuminating from diverse angles the war rapes as well as the legal process, Bergoffen sees the verdict as indicative of a paradigm shift in human rights law.

In line with established feminist arguments such as by Catharine MacKinnon and Ann Cahill (Cahill 2001; MacKinnon 2005), she argues that traditional human rights discourse hides an imaginary and idealized masculine body (intact and nonporous) as the most plausible subject of human rights underneath its gender-neutral facade. Such masculine bias underlying gender-neutral discourses often ensures that the most

salient aspects of female embodiment are used to justify discriminatory treatment of women. Put differently, where embodied, materially lived differences between the sexes such as pregnancy are concerned, gender-neutral legal approaches tend to "naturalize" these differences as prepolitical, to frame them as an exception to or deviance from the human norm, and thus use them to justify treating women as less than fully human. A good example of this problem, Bergoffen argues, is seen in the arguments for the defense in the Kunarac case where it was proposed that war rape be measured against the apparently gender-neutral standard of torture in order to decide whether rape qualifies as a human rights violation (23).

In agreeing with the defense that rape is not torture, in the crucial respect that rape need not entail physical wounding, the court granted the defense their point only, however, to radically challenge the deeper assumptions upon which their argument rested, notably that human dignity is violated only when body borders are forcibly breached. By attending carefully to the testimonies of the war rape victims, the court implicitly asserted the need to reimagine the material form of the subject of human rights. The idea that the body's dignity is violated only when its integrity (its borders) is violated through violent and painful wounding is rooted in an imagined masculine body whose default condition is to be invulnerable and capable of actively resisting an attack; this supposed closedness, moreover, constitutes an important aspect of its dignity. Under this imagined paradigm, the body's dignity is violated only once the normally invulnerable, impenetrable fortress of the body's defenses is breached, and when it is thereby exposed as (shamefully) weak and vulnerable (literally woundable). Under the sway of images such as these, when women's bodies are understood as already humiliatingly open and therefore vulnerable to the world, when women's sexuality is coded as ontologically shameful, to sexually penetrate the hole, the female "wound," cannot constitute a breach in her defenses, since no new wound is inflicted, and she has not actively resisted. Bergoffen reads the verdict as a radical shift in that, by affirming the dignity of women's bodies coded as sexually vulnerable in specific ways, it rewrites the subject of dignity and of human rights as the always already passively exposed, vulnerable body, rather than the invulnerable, active, and impenetrable body (44–45).

By affirming the vulnerable and exposed body as inherently dignified and worthy of protection against violation, the court started from the specific, culturally coded, sexual vulnerability of civilian women in war rape, but then on Bergoffen's reading, crucially went further to universalize this principle by affirming sexual vulnerability as a central aspect of the human condition as such (80). In other words, it is not as a special women's characteristic that women's sexual vulnerability needs to be protected, but as a universally human trait. All human beings as embodied are inherently vulnerable and exposed to one another, at risk from each other's violent and humiliating actions, on the basis of our sensate, sensual, and other corporeal characteristics. Men's human dignity as vested in their sexual vulnerability may also be violated absent wounding and pain (Bergoffen 2003, 12). For Bergoffen, it is as vulnerable and exposed in varied and specific embodied ways that we possess dignity, and our dignity must be protected against violation.

Whether our lived vulnerabilities are the product of nature or culture is not Bergoffen's main concern, since she recognizes that vulnerability is usually the outcome of a particular interplay of the two: vulnerability is culturally and politically produced through a certain interpretation of the body's particulars. Women's salient sexual vulnerability especially in situations of armed conflict is therefore also not simply "given" with their bodies, just as the power to rape is not simply "given" with men's bodies. Bergoffen shows convincingly how it is the patriarchal paradigm (shared between the enemy groups in Bosnia) that frames women's sexuality as men's possession and women's bodies as sites of communal identity and ethnic reproduction, which turns women's sexuality into such an effective and easily exploitable weapon of war (12–13). It is their shared patriarchal framework that allows the Bosnian Serbs to interpret the sexual bodies of Muslim women and girls as "the point where the religious and social structure [of the Muslim communities] is most fragile," according to the RAM military plan quoted by Bülent Diken and Carsten Laustsen (Diken and Laustsen 2005, 116). In the Kunarac case the court took an unprecedented stance against this patriarchal frame, thereby concretely contesting the logic of genocidal rape.

Bergoffen is cautiously hopeful about the possibility that this verdict may inaugurate a new politics of the vulnerable body. Although she reads the finding as effectively creating a new human right to sexual self-determination, she warns that the potential of the verdict to more broadly destabilize "our current gender

codes" that function "as invitations to genocidal rape campaigns" (82) is under constant threat. If the human right to sexual self-determination is narrowly read as an expression of the right to autonomy, then the radical potential of the verdict will be lost. If instead the right to sexual self-determination is read as a right that exists between individuals, it has the potential to "inaugurate a paradigm shift where the subject of rights, instead of being understood in terms of the first person singular imaginary autonomous 'I,' will be understood in terms of the first person plural corporeal, sexed, intersubjective and vulnerable "we" (80). Bergoffen's analysis is thus enormously helpful for a consideration of the broader implications of this ruling.

Lorraine Code responded to an earlier publication by Bergoffen, questioning the political impact that the Kunarac verdict is likely to have on what she calls the "instituted imaginary" (Code 2009, 330). Code supports her pessimism in part with reference to the situation in South Africa, where, in contrast with the later ICTY, the TRC failed to take rape seriously as a human rights violation (336ff.). South Africa is indeed an interesting place from which to read Bergoffen's interpretation of the broader (also domestic and peacetime) implications of the Kunarac decision. South Africa currently has little ethnic conflict but a very high rape rate. Annually more than double (up to 56,000) the number of rapes committed during 1992 in Bosnia at the height of the war rape campaign there are reported to the South African police. Estimates by Interpol indicate that the actual annual figure may be closer to 1.6 million rapes. Moreover, the overwhelming majority of rapes in South Africa are committed within ethnic, racial, and class groups, rather than across such borders. On the face of it, the Bosnian story and the ICTY's response to it seem too far removed from South Africa to help make sense of what is happening there. Yet there are a number of insights to be gained from Bergoffen's analysis for the South African context. I will highlight only three.

First is her emphasis on the ways in which feminist groups have worked for more than a century, preparing the stage for what was finally the ICTY condemnation in 2001 of (war) rape as a crime against humanity, and the concomitant creation of the human right to sexual self-determination. Feminist activism was crucial for shaping the way in which the ICTY and its role was conceived. A wider women's and feminist solidarity existed that helped empower the rape victims by validating their stories, corroborating their evidence, and supporting their decision to testify about their plight in spite of the silencing thrust of patriarchal codes of modesty and shame. A clear political will undergirded the ICTY process itself to do justice to the rape victims of Bosnia. The ICTY, for example, ensured that the women witnesses could remain anonymous, that experts in sexual violence were included among those who listened to them and "received" their stories, and in general bestowed epistemological authority on the women (26). The implications for South Africa seem clear: feminist solidarity mobilized across racial, ethnic, and other divides is crucial and must work to cultivate the political will to prioritize and address the pandemic of sexual violence. It is, moreover, essential that the "othering" discourses of rape be addressed, that is, the ability of rape rumors, stereotyping, and the media to create an image of the rapist as being of the "other" race, ethnic group, or class. Rape must therefore be fought as a gender issue and decoupled from other identity issues that threaten to press the problem into the service of racial and ethnic battles.

Second, from my reading of Bergoffen, I gained insight into the ways in which rape can play a crucial role in the implicit but widespread masculinization of national and other identities. She points to "a toxic combination of gender and ethnic/nationalist politics that can ignite . . . wherever patriarchal, nationalist and ethnic ideologies intersect and flourish" (54). This suggests that an assertion through rape of fragile masculine/group identity may manifest even in the absence of clear outsider enemies. Bergoffen turns to Lacan to explain the connection between genocidal rape and the "fantasies of masculine sovereignty" that lie at the heart of genocidal rape. Lacan describes the helplessness and fragmentation of self that the infant experiences and in response to which it then develops the mirror image as a fantasy of wholeness. Bergoffen sees this "imaginary ego" as "[acquiring] an adult political life in the legal discourses of the autonomous subject" *as well as* in "nationalist ideologies of a homogeneous body politic living within clearly defined boundaries" (78). Lacan shows that considerable violence is needed to keep this inherently fragile ego intact and protect it from disintegration, importantly by obscuring to itself its own vulnerability.

The fantasy of autonomy is expressed as a flight from the anxiety-inducing memory of the helplessness of the infant. From its inception, this fantasy is especially fragile in relation to the mother, whom the infant

wishes to believe to be an image of itself, so that her love for him or her will be guaranteed. Once we mature and leave the "imaginary" for the symbolic, for the demands of intersubjective communal life, we must "give up our attachment to the fantasy of autonomy" and face up to "intersubjective life," which means that we must come to terms with our mutual vulnerability before each other. Our vulnerability *vis-à-vis* the mother's power of recognition is now in principle extended to everyone else, and each adult must live his or her own finitude, incompleteness, vulnerability, and mortality (78). If this admittedly difficult project fails, and the subject refuses to let go of the fantasy of autonomy, it will act destructively as it tries to force others into the position of the deceived mother.

In a South Africa that is still struggling to fully emerge from a colonial and apartheid past, and to define itself, to reach a position of autonomy and maturity *vis-à-vis* the wider world, imagery that equates fragile masculinity with the nation itself is rife. The flood of sexual violence against women, Bergoffen's analysis suggests, may then be understood as the violent assertion/affirmation of the fantasy of masculine sovereignty as an expression of national identity. The effect on the women and girls (and their communities) could be as devastating as in any ethnic war, yet the political will is lacking to condemn this kind of violence as forcefully as the ICTY condemned war rape. The gendered dimension of this crime could be explained by the fact that in patriarchal societies such as South Africa, boys are typically raised into the fantasy of autonomy, and girls out of it.

Bergoffen's description not only clarifies the link between masculine and ethnic or national autonomy, it has the further advantage that it accounts in the third place for the joy, the pleasure of raping. In South Africa there is no formal rape policy employed as a war strategy; one has to assume that men do it because they gain something from it. Bergoffen helps to solve this puzzle by arguing that the protection and affirmation of the imaginary ego requires violence and aggression. In situations such as war where men are excessively confronted with their own vulnerability and mortality, those bodies that are marked as being sexually vulnerable to their power present a *temptation*, she says, in that they appear "as legitimate objects of their [the soldiers'] desire" (2). Raping such bodies can clearly be experienced as a joyful, violent celebration not only of being alive, but also of being sexually powerful, sensually awake, and above all, autonomous and free. Bergoffen agrees with De Sade and Agamben who see sexual transgression as the act that "epitomize[s] the sovereign's extralegal status" (55). The power to rape is the power of the sovereign who positions himself outside or beyond the law and who lays down the law for others.

Many attempts to account for the sheer number of rapes in South Africa proclaim that South African men feel threatened, vulnerable, excluded, beleaguered, emasculated, and that they rape in response to these feelings (for example, Hamber 2007). Such explanations, Bergoffen helps us to see, are both correct and importantly wrong. They are right insofar as all humans share the same fear of being reduced to their infant helplessness. However, where South African women are raised to live with this fear constantly and to never forget our vulnerability, our cultures allow men never to mature and to carry on violently enforcing their fantasy of invulnerability through the sexual violation of those more obviously vulnerable than themselves. South African men who rape are thus not realistically threatened by feminism, women's empowerment, education, or employment. Instead, they are indulged in that they are allowed to turn their normal, human anxieties about vulnerability and exposure, their flight from the human condition, into an adult reign of terror.

References

Bergoffen, Debra B. 2003. February 22, 2001: Toward a politics of the vulnerable body. *Hypatia* 18 (1): 116–34.

Cahill, Ann J. 2001. *Rethinking rape*. Ithaca, N.Y., and London: Cornell University Press.

Code, Lorraine. 2009. A new epistemology of rape? *Philosophical Papers* 38 (3): 327–45.

Diken, Bülent, and Carsten Bagge Laustsen. 2005. Becoming abject: Rape as weapon of war. *Body & Society* 11 (1): 111–28.

Hamber, Brandon. 2007. Masculinity and transitional justice: An exploratory essay. *International Journal of Transitional Justice* 1: 375–90.

MacKinnon, Catharine A. 2005. *Women's lives, men's laws*. Cambridge, Mass., and London: The Belknap Press of Harvard University Press.

Prosecutor v Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković, Case IT-96-23 & IT-96-23/1-T, “Foča”, Judgment 22 February 2001. <http://www.icty.org/action/cases/4> (accessed October 15, 2012).

Louise du Toit is a South African feminist philosopher and an associate professor in the Department of Philosophy at the University of Stellenbosch. She published *A Philosophical Investigation of Rape: The Making and Unmaking of the Feminine Self* with Routledge in 2009, and guest edited a special edition of *Philosophical Papers*, entitled 'Rape and its Meaning/s' in November 2009.
