

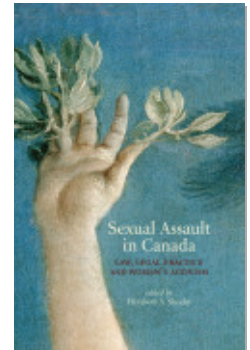


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12. Sisterhood Will Get Ya: Anti-rape Activism and the Criminal Justice System

Meagan Johnston

Meagan Johnston's paper builds on the work of Lise Gotell by proposing that the activism of the Garneau Sisterhood be read as an alternative legal order to the criminal justice system. She offers a detailed comparison of the premises, principles, and practices of these two legal orders in response to sexual assault. For example, returning to the justice system's skepticism about women's reports and police unfounding discussed by Fran Odette and Teresa DuBois, Meagan contrasts the Sisterhood's "rule" that follows from its understanding that rape is a widespread social phenomenon: women do not need to "prove" they were raped; they are simply believed. She demonstrates that the criminal justice system is woefully inadequate to the task of addressing sexual assault at every turn, from the way that police have narrowly interpreted their legal obligation to warn, established by Jane Doe, through to the systemic devaluation of Aboriginal women's bodies and lives, so eloquently described earlier by Marie Campbell, Priscilla Campeau, and Tracey Lindberg. The Sisterhood's legal order, Meagan argues, offers far more potential for social change.

The spectre of a serial rapist invading homes is terrifying. Women who are conditioned from a young age to monitor their behaviour to protect themselves from rape react strongly when they are faced with the prospect of being attacked in their most vulnerable moments — at home, sleeping, presumptively safe. In the summer of 2008, women in my Edmontonton neighbourhood, the Garneau, were being attacked by a serial rapist. Newspaper headlines announced "Southside Sex Attack Makes Four,"¹ "New Crime Target,"² and "Neighbours on Alert after Sexual

- 1 Ben Gelinas, "Southside Sex Attack Makes Four; Police Link Similarities with Garneau Rape Suspect to Saturday Case 35 Blocks Away" *Edmonton Journal* (12 August 2008) online: www.canada.com/edmontonjournal/news/story.html?id=197418-c7e5B1.
- 2 Victoria Handysides, "New Crime Target" *Metro Edmonton* (30 September 2008), online: <http://www.metro news.ca/edmonton/Local/article/119359>.

Assault.”³ These messages were manifestations of the fear many women in the largely student neighbourhood felt; friends were walking each other home, creating emergency plans, and making beds on couches so no one would be home alone.

After a few days, however, I began to notice the posters. They were brightly coloured photocopies of originals that had obviously been handwritten in marker. In flagrant disobedience of city bylaws, they were glued to lamp posts, to bus stop benches and shelters, to the sides of buildings, to fire hydrants and power boxes. Instead of fear, they talked about power. They warned, “Attention, rapist. We are watching you. We will find you,” and “We are organizing to find you and we will.” They announced, “If a woman is raped other women react. There is no such thing as an isolated attack on an individual woman.... When a sister is raped it is a rape of the sisterhood and cannot go unpunished! The sisterhood is watching!” And, triumphantly, one poster proudly stated, “Dear rapist: I am *not* changing *my* life because of a pathetic fuck like *you!*” Many were signed, “Love, the Sisterhood.”

The posters were the work of a loose association of neighbourhood women that came to be known as the Garneau Sisterhood. Despite the group’s cheesy name — or perhaps because of it — its members, who vehemently remained anonymous, directly challenged and subverted the way the criminal justice system conceptualizes and addresses rape. Through posterizing, media work, and the operation of an email address to collect tips and provide emotional support to women in the neighbourhood, the Sisterhood’s work provides a poignant example of the importance of grassroots feminist responses to a crime that is increasingly being transformed “from an object of political contestation into an issue of criminal law, privatized, individualized, and depoliticized.”⁴

The Garneau Sisterhood’s work recalls the work of anti-rape activists in the 1970s and 1980s, when feminist responses to rape were based on “women taking action from a position of real or perceived power, either collective or individual.”⁵ Strategies were developed “by women for women,” emphasized “individual or collective resistance,” and so represented “unexpected examples of ‘acting out’ by those meant to

3 Emily Senger, “Neighbours on Alert After Sexual Assault; Nearly 450 Turn Out for Community Meeting Following Another Attack” *Edmonton Journal* (15 August 2008) B1.

4 Lise Gotell, “When Privacy Is Not Enough: Sexual Assault Complainants, Sexual History Evidence and the Disclosure of Personal Records” (2005–06) 43 *Alta L Rev* 743 at 753.

5 Nora West, “Rape in the Criminal Law and the Victim’s Tort Alternative: A Feminist Analysis” (1992) 50 *UT Fac L Rev* 96 at 98.

have been silenced and made passive by victimization.”⁶ Feminists argued that rape included much more than isolated incidents of violence — as a manifestation of sexual inequality, rape was a pervasive epidemic.⁷ This feminist anti-rape movement gave birth to a wide array of activist work, from Take Back the Night marches to self-defence classes, from sexual assault centres and hotlines to campaigns on rape awareness. Much of this activism took place outside the criminal justice system; indeed, many feminists scorned any engagement with the courts, as it was seen as more important for women to take rape into their own hands.

The criminal justice system and the Garneau Sisterhood can be considered two separate legal orders. Each order purports to have a solution to rape; however, each uses different substantive and procedural rules, and each rests on a distinct set of guiding principles. By juxtaposing the Garneau Sisterhood’s proposed legal order with the legal order of the criminal justice system, I expose the criminal law’s fundamental inability to deal with rape as a social phenomenon. In this paper, I will explore the ways in which members of the Sisterhood are caught between the two legal orders, and investigate the tension that arises from this relationship. This tension produces a space for sharp critique of the criminal justice system. It is tempting to see the Sisterhood’s work as a supplement to the criminal justice system, filling in the gaps where the criminal justice system cannot adequately respond and providing a more “well-rounded” response to rape, one that is more in line with feminist principles. It is also tempting to view the criminal justice system as a small but necessary part of a broad and complex feminist anti-rape strategy. The most radical reading of the Sisterhood’s work, and the one that I want to promote here, is a reading that analyzes the way that the criminal justice system is fundamentally at odds with a feminist anti-rape analysis. By considering each response as a legal order unto itself, I can compare them more closely, each on its own terms. Considering the Sisterhood’s work as a legal order can also imbue it with a legitimacy that makes its critique of the criminal justice system harder to ignore.

Legal pluralism offers a productive way to map the complex and nuanced relationship between these two orders. Some theorists hold that multiple legal orders always exist in a hierarchy, with state law at the top subsuming all legal orders beneath it. I resist this reading of legal pluralism — arguing instead that different legal orders cannot be con-

6 *Ibid* at 109.

7 *Ibid* at 97.

ceived of in a neat hierarchy, but instead are tightly interwoven. The relationship between different legal orders is constantly shifting according to the experience of the legal subject who navigates between them. The result is a productive tension between legal orders — a tension here that results in feminist critique of the criminal justice system's approach to rape, while also offering women in the Garneau neighbourhood the opportunity to directly rearticulate anti-rape strategies.

To state that the criminal justice system is a legal order seems embarrassingly obvious. The status of the Garneau Sisterhood as a legal order, however, is more tenuous. Through its work to engage with rape on its own terms, the Garneau Sisterhood can be read as creating its own legal order with its own substantive content, procedural rules, and ideology. To state that the Sisterhood constitutes a legal order may not reflect how group members came to see themselves, or the work of their organization. Indeed, some Sisters could argue that to describe their work as the creation of a new legal order detracts from its grass-roots potential. I do not wish to suggest that the Garneau Sisterhood's work *is* a legal order — but rather, I am arguing that it can be *read* as a legal order, and that such a reading permits the most complete articulation of the Garneau Sisterhood's critique of the way the criminal justice system deals with rape, and its efforts to promote a more feminist response to the Garneau rapist.

I will begin my analysis by engaging with models of legal pluralism to highlight the “pervasive plurality” of law, which creates a state of “inter-normativity,” or “interlegality” for the Garneau Sisters. Once the members of the Sisterhood are situated within this theoretical framework, I will describe each legal order on the basis of its substantive rules, procedural rules, and fundamental principles. I will then use this description to evaluate how each order can respond to rape, ultimately concluding that the Garneau Sisterhood's order does much more to address the specificities of rape than the criminal justice system. Finally, I will consider particular examples of the way members of the Sisterhood navigate between the two legal orders. I will consider examples of collaboration between the Sisterhood and the criminal justice system, and then examine the tension and critique that emerges from these relationships.

**LEGAL PLURALISM & CREATIVE LEGAL SUBJECTS:
FRAMING THE SISTERHOOD**

Broadly speaking, legal pluralism describes situations where “two or more legal systems coexist in the same social field.”⁸ Legal pluralists seek to look beyond the “traditional image of lawyer’s law,” which limits its recognition of law to “those forms, processes and institutions of normative ordering that find their origins and legitimacy in the political state or its emanations.”⁹ Legal pluralism challenges conventional accounts of law by maintaining “the existence and circulation in society of different legal systems.”¹⁰ In so doing, it illuminates the complexity of the relationship between law and society, “since there is not one single law, but a network of laws.”¹¹

As a framing device, legal pluralism is particularly well-situated to consider the relationship between the criminal justice system and the Garneau Sisterhood. The idea of legal pluralism emerged from observation of the interaction between indigenous and colonial legal systems in colonial societies.¹² Theorists extended this early analysis to document “forms of local legality in rural areas, [and] in marginalized urban sectors.”¹³ Legal pluralism came to provide a framework to analyze the “relations between dominant and subordinate groups such as religious, ethnic or cultural minorities, immigrant groups and unofficial forms of ordering located in social networks or institutions.”¹⁴ Legal pluralism thus emerged in a context of negotiation between imposed state law and the rules, customs, and norms that mapped more closely onto individuals’ and groups’ own worldviews.

Over the last twenty years, legal pluralism has expanded significantly beyond its original focus on dual and parallel legal orders. It now signals the “pervasive pluralism in law” — that is, legal pluralism is not a specific feature of particular societies, but a feature of law itself.¹⁵ There is a “diversity of norms, processes and institutions within

8 Sally Engle Merry, “Legal Pluralism” (1988) 22 *Law & Soc’y Rev* 869 at 870.

9 Martha-Marie Kleinhans & Roderick A Macdonald, “What is a *Critical* Legal Pluralism?” (1997) 14 *CJLS* 25 at 27.

10 Boaventura De Sousa Santos, “Law: A Map of Misreading. Toward a Postmodern Conception of Law” (1987) 14 *JL & Soc’y* 280 at 280.

11 *Ibid.*

12 Franz von Benda-Beckmann, “Who’s Afraid of Legal Pluralism?” (2002) 47 *J Legal Pluralism & Unofficial L* 37 at 60.

13 De Sousa Santos, *supra* note 10 at 287.

14 Merry, *supra* note 8 at 872–73.

15 Kleinhans & Macdonald, *supra* note 9 at 31.

any given normative system within any particular legal order.”¹⁶ This pervasive plurality recognizes that families, socio-cultural communities, neighbourhoods, and an “almost infinite variety of other sites of human interaction” are experienced as “sites of regulation,” and thus all normative interaction between them must be plural as well.¹⁷ De Sousa Santos argues that this plurality represents a “porous legality” as “multiple networks of legal orders [force] us into constant transitions and trespassings.”¹⁸ Our “legal life” is one of interlegality, and we constantly experience an “uneven and unstable mixing of legal codes.”¹⁹

I do not wish to locate the Garneau Sisterhood in a particular spot on a hierarchy with regards to the “hard law” of the criminal justice system. I am not referring to a pluralism that conceives different legal orders as “separate entities co-existing in the same political space.”²⁰ The postmodern thread of legal pluralism that most effectively captures the complexities of the Garneau Sisterhood’s relationship to the criminal justice system, as it describes a conception of different legal spaces as “superimposed, interpenetrated, and mixed in our minds as much as in our action.”²¹ Aspects of the Garneau Sisterhood operate as a parallel alternative to the criminal justice system at the same time as aspects of its work operate to critique this system. It is this complexity, this tension, which makes the work of the Garneau Sisterhood so profoundly radical: it is a legal order that empowers women in the neighbourhood by directly addressing rape from a feminist perspective, thus starkly exposing the criminal justice system’s failings.

The risk of this new legal pluralism, of course, is that it threatens to subsume all forms of social control under an overly broad definition of what is law.²² To argue that the Garneau Sisterhood created law, for example, could be to widen the category of “law” so far as to make it meaningless. This argument, however, is based on a rigid understanding of law as a specific domain of social organization.²³ Instead, legal pluralists argue that law is merely a “dimension” of social life, a “system

¹⁶ *Ibid* at 32.

¹⁷ *Ibid*.

¹⁸ De Sousa Santos, *supra* note 10 at 298.

¹⁹ *Ibid*.

²⁰ *Ibid* at 297.

²¹ *Ibid*.

²² Merry, *supra* note 8 at 870.

²³ von Benda-Beckmann, *supra* note 12 at 48.

of meanings, a cultural code for interpreting the world.”²⁴ Rather than focusing on what law is, this broad view focuses on the many functions law serves, including “social control, conflict regulation, securing expectations, social regulation, coordination of behaviour, or disciplining bodies and souls.”²⁵ The Garneau Sisterhood provides social control by creating an empowering counterpoint to the police discourse of fear. The Sisterhood rearticulates the conflict between the rapist and the survivors of his attacks, and coordinates the behaviour of women in the neighbourhood who might otherwise have simply reacted with fear. As a cultural code for interpreting the world, the Garneau Sisterhood inserts feminist discourse into public space, providing women with relief from the mainstream chorus of fear and risk management. The Sisterhood literally put its message onto lampposts, mailboxes, bus benches, and fire hydrants, thereby providing an alternative way of interpreting the events surrounding the attacks by the Garneau rapist.

The members of the Garneau Sisterhood play a vital role in maintaining the nuanced relationship between the two legal orders. They epitomized Kleinhans and Macdonald’s portrait of the legal subjects of critical legal pluralism, who are “heterogeneous/multiple creatures” with a “transformative capacity that enables them to produce legal knowledge and to fashion the very structures of law that contribute to constituting their legal subjectivity.”²⁶ These legal subjects are “law-inventing, and not merely law-abiding.”²⁷ They possess not only the capacity, but the “responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity.”²⁸ Finally, these (critical) legal pluralist subjects show “an element of construction or creativity ... when they are confronted with internormative conflicts.”²⁹

The Garneau Sisters fulfill this responsibility by creating and maintaining a legal order that responds to their own feminist vision of what a truly transformative response to rape looks like. They participate in the criminal justice system to a certain extent, critiqued it to a certain extent, and finally provided alternatives to it. They were at once subjects

24 *Ibid* at 48. Merry, *supra* note 8 at 886.

25 Gunther Teubner, “The Two Faces of Janus: Rethinking Legal Pluralism” (1991–92) 13 *Cardozo L Rev* 1443 at 1451.

26 Kleinhans & Macdonald, *supra* note 9 at 38.

27 *Ibid* at 39.

28 *Ibid* at 38.

29 *Ibid* at 44.

of the criminal justice system, its creators, and its outsiders. The attacks of the Garneau Rapist presented members of the community with a vital internormative conflict between the criminal justice system's response to rape, and feminist analyses as to the nature, cause, and appropriate solution to rape.

Community members responded to this normative conflict by creating their own legal order, one that they saw as more responsive to the conflict in their own neighbourhood. It is this multiplicity, this complexity, and this nuance that is revealed by the legal pluralist framework. It is within this framework that I will examine each of these legal frameworks.

SKETCHING THE LEGAL ORDERS

To explore the relationship between the two legal orders, I will consider the substantive content, procedural rules, and then the ideological foundations of each order in turn. This comparative examination is vital to understanding the way these two orders work together and challenge each other. This examination shows how the neutrality and formal rules of the criminal justice system cannot respond to rape in the same way as the subjective and informal rules of the Garneau Sisterhood's legal order. The Sisterhood's emphasis on the experience of survivors and the widespread gendered impact of rape provides the structure for empowering grassroots anti-rape activism.

1. Substantive Rules

(a) What is rape?

In the criminal justice system, rape refers to a particular category of incidents of individual violence. Canadian jurisprudence defines sexual assault as "an assault committed in circumstances of a sexual nature so as to violate the sexual integrity of the complainant."³⁰ For a rape to merit the attention of the criminal justice system, however, it must constitute an offence under the *Criminal Code* of Canada. The *Criminal Code* currently recognizes three "levels" of sexual assault: "simple" sexual assault,³¹ sexual assault causing bodily harm or accompanied by threats of bodily harm,³² and aggravated sexual assault.³³ Simple sexu-

30 Renu Mandhane, "Efficiency or Autonomy? Economic and Feminist Legal Theory in the Context of Sexual Assault" (2001) 59 UT Fac L Rev 173 at 175.

31 *Criminal Code*, RSC 1985, C-46 at s 271.

32 *Ibid* at s 272.

33 *Ibid* at s 273.

al assault is a hybrid offence, and can thus be punished either on summary conviction or on indictment, with maximum sentences of eighteen months if pursued on the former, and up to ten years if pursued on the latter.³⁴ Sexual assault causing bodily harm is an indictable offence with a maximum sentence of fourteen years. Aggravated sexual assault is the most severe offence, referring to sexual assaults where the offender “wounds, maims, disfigures or endangers the life of the complainant” and carries the possibility of life imprisonment.³⁵ Beyond these provisions, however, the *Criminal Code* does not specifically define sexual assault; jurisprudence has simply referred to the definition of assault in s 265, which states that “a person commits assault when without the consent of another person, he applies force intentionally to that person, directly or indirectly.”³⁶

As with any other crime, sexual assault has two components: the *actus reus* and the *mens rea*. The *actus reus* of sexual assault is “established by proof of three elements: (i) touching, (ii) sexual nature of the contact, and (iii) the absence of consent.”³⁷ The first two elements are objective; the third is subjective, and is to be determined “by reference to the complainant’s subjective internal state of mind towards the touching, at the time that it occurred.”³⁸ The *mens rea* of sexual assault has two elements: (i) the intention to touch and (ii) “knowing of, or being reckless of or willfully blind to, a lack of consent on the part of the person touched.”³⁹

The defining factor in the criminal justice system’s designation of a particular event as a sexual assault is consent. Consent is defined as the “voluntary agreement of the complainant to engage in the sexual activity in question.”⁴⁰ When first considered as part of the *actus reus* of sexual assault, consent is “subjectively determined from the perspective of the complainant.”⁴¹ When considering the *mens rea* of sexual assault, however, courts consider consent from the perspective of the accused — that is, courts ask whether the accused knew of, was reckless

34 *Ibid* at s 271.

35 *Ibid* at s 273.

36 *Ibid* at s 265; *R v Ewanchuk* [1999] 1 SCR 330 at para 24, (1999) 169 DLR (4th) 193. Mandhane, *supra* note 30 at 181.

37 *Ewanchuk*, *ibid* at para 25.

38 *Ibid* at para 26.

39 *Ibid* at para 41.

40 *Criminal Code*, *supra* note 31 at s 273.1.

41 Mandhane, *supra* note 30 at 184.

of, or wilfully blind to a lack of consent on the part of the complainant. The *Code* elaborates several circumstances in which no consent can be obtained: these include situations where a person other than the complainant expresses agreement,⁴² the complainant is incapable of consenting,⁴³ the accused has induced agreement through abuse of a position of authority,⁴⁴ or when the complainant has expressed her lack of agreement to a particular “activity”⁴⁵ or to continuing with activities in progress.⁴⁶

Defences based on consent do, of course, exist. In *Ewanchuk*, the Supreme Court of Canada held that “since sexual assault only becomes a crime in the absence of the complainant’s consent, the common law recognizes a defence of mistake of fact which removes culpability for those who honestly but mistakenly believed that they had consent to touch the complainant.”⁴⁷ Use of this defence, however, is limited. The accused must show that he took “reasonable steps ... to ascertain that the complainant was consenting” in the circumstances known to the accused at the time.⁴⁸ Currently, “the belief that silence or passivity is indicative of consent is a mistake of law” and the accused must have taken “reasonable steps to ascertain consent — given the circumstances known to him at the time” before he can argue that there was mistaken belief in consent.⁴⁹ If the prosecution manages to show that the complainant did not consent, and that the accused did not have an honest but mistaken belief in consent, then the legal system will recognize the event as a sexual assault and find the accused guilty.

For the Garneau Sisterhood, rape is a social phenomenon. It is much more important to identify the systemic problem of rape than to articulate a definition of rape that could help assess whether a particular incident qualifies as rape. The Sisterhood thus use a much looser definition of what rape is. Some posters cite the *Criminal Code* definition of sexual assault as “any form of sexual contact without voluntary consent,”⁵⁰ and the Sisterhood’s first public statement specifies that sexu-

42 *Criminal Code*, *supra* note 31 at s 273.1(2)(a).

43 *Ibid* at s 273.1(2)(b).

44 *Ibid* at s 273.1(2)(c).

45 *Ibid* at s 273.1(2)(d).

46 *Ibid* at s 273.1(2)(e).

47 *Ewanchuk*, *supra* note 36 at para 42.

48 *Criminal Code*, *supra* note 31 at s 273.2(b).

49 Mandhane, *supra* note 30 at 184, 188, citing *Ewanchuk*, *supra* note 36.

50 Poster; image on file with author.

al assault included “situations where consent is obtained through pressure, coercion, force, or threats of force.”⁵¹ These attempts at definition are much less detailed than those found in the *Criminal Code*. For the Sisterhood, it is much more important to recognize the “astounding prevalence of rape in our culture.” Posters and public statements urges people to “truly take a moment to let it sink in that one in four women, and one in eight men, will experience sexual assault in their lifetime.”⁵² For the Sisterhood, rape is one tool in a “toxic society” where “sex and violence are conflated,” and “male violence is accepted, even encouraged.”⁵³

(b) What is the legal order’s threshold for recognizing that a rape has occurred?

For the criminal justice system to recognize that a rape has occurred, the charge must be proved “beyond a reasonable doubt.” This is the highest standard of proof in law — higher than either “reasonable probability” or the “balance of probabilities” required in civil law cases. This high standard is deemed necessary by the criminal law because the possibility of imprisonment threatens the liberty interest of the accused. This standard of proof can be very difficult to achieve, as it necessitates significant amounts of evidence and testimony. Due to the nature of the crime, many sexual assaults happen in private, without any witnesses except for the complainant and the accused. As such, many sexual assault trials rely almost entirely on the judge’s assessment of the credibility of the complainant.

The Garneau Sisterhood has no corresponding “threshold” for recognizing that a rape has occurred; if someone claims to have been sexually assaulted, the Sisterhood believes her. Individual accounts of rape do not have to be measured against some standard of truth and accountability — they are accepted at face value. The only principle setting out any kind of “threshold” for recognizing rape is the importance of centering the accounts of people who had been sexually assaulted. This low threshold is closely linked to the Sisterhood’s definition of rape. If rape is a social phenomenon, then survivors can be easily believed, as there is no need to “prove” the individual instance of rape and establish the guilt of individual rapists.

51 Garneau Sisterhood, “Garneau Sisterhood Organizing in Response to Sexual Assaults” *Vue Weekly* (12 June 2008), online: <<http://www.vueweekly.com/article.php?id=8743>>.

52 *Ibid.*

53 *Ibid.*

(c) Who can be raped?

The criminal justice system's use of gender-neutral and non-specific terms in the codification of sexual assault offences emphasizes that anyone can be raped. This neutrality has not always been in place — for example, the *Criminal Code's* definition of rape excluded “forced sexual acts that occurred within the context of marriage” until 1983.⁵⁴

The Garneau Sisterhood also holds that anyone can be a victim of sexual assault. Where the criminal law is gender-neutral, however, the Sisterhood explicitly acknowledged the gendered dimensions of sexual assault. Posters and public statements emphasized the gender disparity between men who will experience sexual assault (1 in 8), and women (1 in 4). Posters also called attention to the fact that “98% of sexual assaults are perpetrated by heterosexual men.”⁵⁵

(d) Who does rape affect?

According to the criminal justice system's story of itself, the system recognizes that rape affects the broader “public interest” in addition to the particular individual complainant. At trial, the Crown is charged with serving both of these interests. By vigorously prosecuting criminals, the Crown fulfills the public's interest in deterring future crimes and maintaining confidence in the administration of justice and the rule of law. The Crown represents the complainant's interest by ensuring her rapist is punished and his actions are condemned by the criminal justice system. This conception of the complainant's interests, however, is narrow. Once the trial has begun, the complainant is reduced to one witness among many on the Crown's roster. She may be able to submit a victim impact statement detailing the ways that the accused's attack affected her; however, this right is not guaranteed. If the Crown wins, her rapist will be punished, but the criminal justice system does not provide for an award of damages that could, for example, cover counselling services for a woman who has been raped.

The Garneau Sisterhood, on the other hand, consistently emphasizes how rape affects everyone, not just individual women in isolated incidents. The Sisterhood's first newspaper states that the “trauma” from the Garneau rapes was “psychologically oppressing an entire

54 Janice Du Mont, “Charging and Sentencing in Sexual Assault Cases: An Exploratory Examination” (2003) 15 CJWL 305 at 310.

55 Poster; image on file with author.

community of women.”⁵⁶ A poster in the neighbourhood posited, “if a woman is raped, other women react. We understand that there is no such thing as an isolated attack on an individual woman. All women are us. When a sister is raped, it is a rape of the sisterhood and cannot go unpunished. The Sisterhood is watching!” For the Sisters, “no one feels ‘lucky’ that it was ‘some other woman’ who got raped. There is no such thing as ‘some other woman’ when you have compassion and love for yourself.”⁵⁷ This legal order views the question of “who crime affects” more broadly, and focuses on the role of crime in the community instead of the particular relationship between the accused, the complainant, and the public interest in upholding the justice system.

2. Procedural Rules

(a) How does the legal order recognize a rape?

The criminal justice system recognizes rape through the police investigation process and the results of a criminal trial. Rape enters the criminal justice system when a person who has been raped reports the incident to the police. The particulars of the investigation will differ — in some cases, police officers will visit the scene of the crime, a medical report (“rape kit”) may be completed, or the complainant may simply recount her story to the police. The police will then evaluate the complainant’s credibility. If they believe her story, they will proceed to gather further evidence. If the police have sufficient evidence, they will arrest the accused. Once arrested, the police will lay charges against the accused under the appropriate section of the *Criminal Code*. The case will then proceed to trial, carried by the Crown prosecutor.

At trial, the case is cast as an issue between the state and the accused. Lise Gotell outlines how “constructed as a crime, the ‘reality’ of rape (that is, whether or not a set of events can properly be called rape) can only be discerned through the rigorous applications of legal method.”⁵⁸ This involves “careful consideration of all ‘relevant evidence’ [and] an adversarial confrontation between the defence attorney and the crown prosecutor.”⁵⁹ This process is necessary for judges to be able to arrive at the “truth of the matter at hand — a determination of the guilt or inno-

56 Sisterhood, “Organizing,” *supra* note 51.

57 *Ibid.*

58 Lise Gotell, “The Ideal Victim, The Hysterical Complainant and the Disclosure of Confidential Records: The Implications of the Charter for Sexual Assault Law” (2002) 40 *Osgoode Hall LJ* 251 at 258.

59 *Ibid.*

cence of the accused beyond a reasonable doubt.”⁶⁰ It is only once this standard of “beyond a reasonable doubt” has been met and the accused declared guilty that the criminal justice system officially recognizes that a rape has occurred.

The Garneau Sisterhood’s legal order has no such formal procedure for “recognizing” rape. Indeed, to institute such a set of procedures would be antithetical to the Sisterhood’s focus on believing survivors. The Sisterhood’s recognition of rape takes place through media reports, and more importantly through messages sent to its email account, where neighbourhood residents sent in accounts of peeping toms, suspicious tenants in their building, and threatening encounters with men in the neighbourhood. The Sisterhood sent a message to each person who sent in a tip or a story reassuring them that the Sisterhood believed them.

(b) Who decides whether or not a rape has occurred?

The criminal justice system restricts the authority to decide whether or not a rape has occurred to particular individuals. Police officers evaluate whether or not they believe the complainant’s story and wish to press charges. The Crown will then evaluate whether they have enough evidence to proceed to trial. If the Crown prosecutor does not have enough evidence, or doubts the complainant’s credibility, the prosecutor will often attempt to negotiate with the accused for a plea bargain. While this may result in a guilty plea to a lesser charge and subsequent “punishment” for the accused, it also means that the complainant’s story will never be heard to the courtroom, and that the legal system will minimize how it has occurred. In rendering their decisions, judges make the penultimate decision as to whether or not a rape has occurred in law.

The Garneau Sisterhood’s broad definition of rape and emphasis on believing survivors’ accounts of rape means that members of the Sisterhood do not have to decide whether or not a rape has occurred. There was no need to grant particular individuals the power to determine whether or not a particular instance was indeed a rape. Instead, decisions made in this legal order centers on the question of what should be done to prevent future rapes from occurring. In this sense, there are two levels of decision-making: decisions made within the more formal membership of the Sisterhood, and decisions about how to address rape made by members of the community at large. Neither of these

⁶⁰ *Ibid.*

types of decisions require the “fact-finding” necessary to support a finding of rape by the criminal justice system. Instead, they either assume the facts or leave the fact-finding to the individual who claims a rape had occurred. This assumption is a logical extension of the Sisterhood’s definition of rape as a social phenomenon.

(c) What rules decide whether or not a rape has occurred?

In the criminal justice system, the rules of fundamental justice govern decisions on whether or not a rape has occurred. Many principles of fundamental justice have been codified as part of the *Charter of Rights and Freedoms*, and include the right to remain silent, the right to counsel, and the right to a fair trial within a reasonable delay. The accused also has the right “to be presumed innocent until proven guilty according in a fair and public hearing.”⁶¹ This is usually interpreted to mean that the accused has the right to know all the evidence against him and present a full defence. In sexual assault cases, this principle has been used in the past to attack the complainant’s credibility by bringing her sexual history as evidence that she consented to the sexual activity in question. More recently, the defence has worked to introduce third-party evidence, such as the complainant’s counselling records, into the court to poke holes in the complainant’s testimony or impeach her credibility.

While the rules of the criminal justice system are meant to protect the rights of the accused, they give little thought to the larger social context in which rape occurs. The Garneau Sisterhood’s analysis gives precedence to this broader social context of rape culture. There are thus no formalized rules for “deciding” whether or not a rape occurred.

3. Fundamental Principles

Having sketched the substantive and procedural workings of each legal system, I now consider the principles that underpin each order. These fundamental principles most clearly illustrate the stark differences between the two legal orders.

(a) Objectivity/subjectivity

Objectivity is a key principle of the criminal justice system. The criminal justice system’s role is to arrive at the legal truth of a matter by dispassionately weighing the facts to determine the guilt or innocence of the accused. This need to arrive at an objective perception of “truth”

61 *Constitution Act, 1982*, s 11(d).

is the reason why the criminal justice system has so many “steps” before arriving at a conviction. A woman’s story of sexual assault may be unique, but for it to be recognized by the legal system, it must be measured against the objective standards of the *Criminal Code’s* definition of the offence, and then tried by a neutral and impartial judge. As Gotell summarizes, “the rape trial is an abstracted exercise of logic unrelated to the context of sexual interactions and the complainant’s own account of her violation. Courtroom scene and [legal] language create an image of law as separating out the “truth” from the hysteria of the victim.”⁶²

The Garneau Sisterhood, on the other hand, rejects this objectivity in favour of a subjective analysis of rape. This is the natural progression from the Sisterhood’s emphasis on believing survivors and empowering community members to take action in whatever way they see fit. To submit incidents of rape to the objective legal framework of sexual assault is to remove experiences of rape from those who are survivors of this crime. This analysis is partially inspired by feminist standpoint theory, which argues that women are the experts of their own experience, and so are best placed to both speak about this experience and create responses to it.

The Garneau Sisterhood emphasizes this “subjective” analysis by encouraging people to respond to the attacks in whatever way they felt was most appropriate. The Sisterhood also nurtures a discourse in which people could create their own definition of rape. In response to an email challenging the group’s use of the term “rape,” one member wrote, “How do you define rape? Do you strongly differentiate it from sexual assault? Do you feel that we have misrepresented whatever information is currently known about these crimes?”⁶³ The email emphasized how “the individual crimes that took place may be called sexual assaults by the media ... but [the use of] the term rape on the signs was a sentiment that came from women in the community ... those feelings should not be silenced.”⁶⁴ Instead of citing an “authoritative” or objective definition of rape, the Sisterhood encourages people to think about what they consider rape, how they name rape, the terms they use — and to think about how the act of defining rape could silence the experience of others. Indeed, these subjective and multiple “tellings” of rape explode the silencing inherent in the criminal justice system’s attempts to set out a singular and comprehensive definition of rape.

62 Gotell, “Ideal Victim,” *supra* note 58 at 258.

63 Email correspondence (21 June 2008), on file with author.

64 *Ibid.*

(b) The appropriate site to address rape

The criminal justice system sees itself as an appropriate mediator between perpetrators and victims. Police protect people by patrolling neighbourhoods and catching criminals; those perpetrators caught will then see their fate determined by the objective standards of the criminal trial. The criminal justice system does not see a need for any kind of direct action between complainants and their rapists — indeed, this would be highly undesirable. The rights of the accused can only be infringed if their guilt has been proven beyond a reasonable doubt. As one feminist puts it, “in a traditional patriarchal society such as ours, the first articulated response to fear is to protect the women and children. The good ones anyways. The only way to do that, they say, is to increase police presence, to build more prisons and to enact harsher sentencing.”⁶⁵ Developments such as the emergent victims’ rights movement of recent years fail to modify this principle. Indeed, they strengthen it, by enlisting victims of crimes in the project of legitimizing the criminal justice system as the societal actor best equipped to deal with rape.

The Garneau Sisterhood vehemently disagrees with the criminal justice system’s image as the best site to address rape. The Sisterhood continually states that the issue was not just about catching rapists — it was about preventing rape and rearticulating public space. When police and the media accused the group’s posters of being “threatening” and warned against “vigilanteism [*sic*] where the public is going after or targeting or finding their own suspects,”⁶⁶ they missed the point entirely. The Garneau rapist put a spotlight on sexual assault in the neighbourhood, but his actions only represented a tiny part of the spectrum of rape in the Garneau. The group did not focus its energies on catching this one perpetrator, but on situating him in a spectrum of perpetrators.

The Sisterhood’s posters suggest that women could channel their fear into anger. They could do more than simply lock their doors and their windows. They could assert, in the words of one poster, “I am *not* changing *my* life because of a pathetic fuck like *you!*”⁶⁷ They could focus on their own power: “Attention rapist: we are organizing to find you and we will.” They could take comfort in the fact that “a lot of bril-

65 Jane Doe, *The Story of Jane Doe: A Book About Rape* (Toronto: Random House, 2003) at 324 [*The Story of Jane Doe*].

66 Gelinias, *supra* note 1.

67 Poster; on file with author.

liant women all thinking about the same thing at the same time is very powerful. We do not have to blame ourselves or quietly accept this violent reality.”⁶⁸

All of these reactions take place outside of the criminal justice system. They can only take place in a legal order that is not governed by the tangle of procedural and substantive rules that must be followed for the criminal justice system to recognize rape. They must take place in a legal order that is focused on preventing rape, not punishing rapists. They grow in a legal order with a broad definition of rape, one that believes survivors and centres their accounts of their experience. They are nurtured by an analysis that sees rape prevention as everyone’s responsibility, and that encourages each member of the community to take action as they see fit. The Garneau Sisterhood’s legal order permits a much richer and broader understanding set of strategies for rape prevention. This set of strategies makes the suggestion that the criminal justice system is an appropriate site for addressing rape seem farcical.

(c) Justice in the context of rape

The criminal justice system sees two aspects to justice in the context of rape. Firstly, on a micro level, the criminal justice system’s goal is to identify and punish individual perpetrators of sexual assault. Sexual assault is treated as any other crime, with a victim and a perpetrator for each incident. There is little recognition of the systemic prevalence of sexual assault or its gendered nature. For victims, justice is served when their rapists are found guilty and punished. Justice is also served for the broader public: as each accused is tried by the same procedural rules and by the same substantive definitions of rape, the public can be confident in the impartial administration of justice. In this sense, then, the public’s need for justice is served regardless of the actual substantive outcome of a case.

Second, on a broader level, the criminal justice system sees its task as punishing rapists. According to the criminal law, it is the threat of punishment that prevents people from committing crimes. In this view, crime prevention relies heavily on the justice system’s ability to locate criminals, try them, and punish them if they are found guilty. As the criminal justice system’s energy is dedicated to the pursuit of individual perpetrators, all other aspects of rape prevention become the responsibility of community members. In the Garneau neighbourhood, police issued warnings but only provided minimal information, citing fears of jeopardizing the investigation by releasing too much. Here,

68 Sisterhood, “Organizing,” *supra* note 51.

“catching” the rapist in the hopes of punishing him took precedence over any need to provide women with concrete information that could help them protect themselves.

The Garneau Sisterhood’s legal order challenges both of these principles. As mentioned above, the Sisterhood’s goals are to expose rape culture and reclaim safe spaces for the women in their communities. The Sisterhood uses the Garneau attacks as a point of entry to discuss the larger climate of violence that makes these kinds of incidents possible. The group repeated its message over and over: “rape is not ‘something that happens’ to women,” “it is not because of: clothing, drinking, locked doors, ‘assertiveness’ — rape happens because of rapists!”⁶⁹

The Sisterhood also uses this argument to challenge the police force’s emphasis that women were responsible for protecting themselves from rape. Police attempts at rape prevention were limited to trite warnings for women to lock their doors and windows. The Sisterhood vehemently protested, arguing that “telling me to lock my door does not make me safe” and pointing out that “it’s probably safe to say that most women in this city already lock their doors on a regular basis.”⁷⁰ Instead of providing women with vague warnings that were unlikely to make a significant change, the Sisterhood’s legal order rests on the principle that women’s behaviour is not a relevant factor when dealing with sexual assault.

4. Evaluating the Legal Orders

By considering the specifics of the different rules and principles underpinning each legal order, we can see how the Garneau Sisterhood challenges virtually every aspect of the criminal justice system’s response to rape. Each order recognizes and deals with sexual assault in a particular way based on its goals, features, and function. Mapping the different rules and principles underpinning each order allows us to see how each system achieves the functions of social control, conflict regulation, securing expectations, social regulation, and coordinating behaviour. A closer comparison, however, allows us to see how the Garneau Sisterhood is much more effectively equipped to deal with rape and its consequences in a way that centres the accounts of survivors and empowers a myriad of community responses to rape. This comparison reveals that by using a broad conception of what rape “is,” the Garneau Sisterhood sidesteps formal procedural rules and is able to centre the

69 Posters, images on file with author.

70 Garneau Sisterhood, press release; on file with author.

accounts of survivors and focus on grassroots community responses and rape prevention.

(a) Substantive rules

By refusing to set out specific categories of rape, the Garneau Sisterhood permits both a greater variety of survivor discourse and a broader public discussion about the nature and prevalence of rape. The lack of categories responds to the feminist argument that “the harm that’s done by rape is the same,” “whether it’s a strange man with a knife, your boss, boyfriend, or doctor.”⁷¹ This opens up space for “survivors’ discourse [that] exceeds legal discourse in important ways, [thus] reflecting the non-legal conception of rape that describes feelings of violation and is not bound to the nature of the act.”⁷² By forgoing a systematic definition of what rape is, the Sisterhood challenges the taxonomizing instinct of law, just as “in the early 1970s, feminist activists in the anti-rape movement named the problem of sexual violence in a different way; they claimed that it was not a personal, individual problem, but instead a systemic political problem.”⁷³

By focusing on the prevalence of rape, the Sisterhood sidesteps the need to “prove” rape. Rape is not episodic, but systematic and engrained in our culture, so it is safe to believe survivors’ accounts. The high threshold of “beyond a reasonable doubt” is unnecessary and antithetical to the Sisterhood’s objectives. One of these goals is to provoke public discussion about sexual assault. Once we start talking about sexual assault, the Sisters hold, “more people will come forward and feel believed. Through this we will break the silence and stop perpetrators from thinking they can get away with it.”⁷⁴ Again, because the Sisterhood comes from a place that recognizes the prevalence of rape, it can focus on providing a supportive environment for the vast numbers of sexual assault cases that are unreported. The Sisterhood thus provides a welcome contrast to the criminal justice system’s high standard of “beyond a reasonable doubt.”

Both the Sisterhood and the criminal law purport to believe that “anyone can be raped.” Feminists, however, have long critiqued the criminal law for its use of rape myths — fallacies and misunderstandings about the nature of rape that implicitly shape which sexual as-

71 *The Story of Jane Doe*, *supra* note 65 at 114.

72 Gotell, “Ideal Victim,” *supra* note 58 at 259.

73 Gotell, “Privacy,” *supra* note 4 at 750.

74 Sisterhood, press release, *supra* note 70.

saults will be recognized as crimes in Canadian law. In the words of L'Heureux-Dubé J in *R v Seaboyer*, “sexual assault is not like any other crime. More than any other offence it is informed by mythologies as to who the ideal rape victim and the ideal rape assailant are.”⁷⁵ Rape myths also “codify what is seen as ‘legitimate’ or ‘real’ sexual victimization (for example forced intercourse by a stranger resulting in physical injuries).”⁷⁶ Rape myths continue to influence all levels of the criminal justice system, from police screening practices, to court processes, to overall rates of conviction.⁷⁷ In *Ewanchuk*, L'Heureux-Dubé J cited examples of the way rape myths work:

Myths of rape include the views that women fantasise about being rape victims; that women mean ‘yes’ even when they say ‘no’; that any woman could successfully resist a rapist if she really wished to; that the sexually experienced do not suffer harms when raped (or at least suffer lesser harms than the sexually ‘innocent’); that women often deserve to be raped on account of their conduct, dress, and demeanour; that rape by a stranger is worse than one by an acquaintance.⁷⁸

These words in *Seaboyer* echoed L'Heureux-Dubé J's earlier statements in *R v Osolin*, where she said that rape myths suggest that:

[w]omen by their behaviour or appearance may be responsible for the occurrence of sexual assault. They suggest that drug use or dependence on social assistance are relevant to the issue of credibility as to consent Furthermore, they are built on the suggestion that ... victims in many, if not most sexual assault trials, are inclined to lie about sexual assault.⁷⁹

Through the operation of these rape myths, the law contrasts images of the “good victim — the virtuous, white, middle-class woman assaulted by a stranger in her home” against those of “the ‘suspect’ victim who is sexually experienced and dares to venture outside after dark.”⁸⁰

Despite several high-profile Supreme Court cases, such as *Ewanchuk*, that recognized the existence of rape myths and worked to coun-

75 *R v Seaboyer*; *R v Gayme* [1991] 2 SCR 577 at para 84, (1991) 83 DLR (4th) 193.

76 Du Mont, *supra* note 54 at 309.

77 *Ibid* at 311.

78 D Archard, *Sexual Consent* (1998), cited in *R v Ewanchuk*, *supra* note 36 at para 82.

79 *R v Osolin*, [1993] 4 SCR 595.

80 Lynn A Iding, “Crossing the Line: The Case for Limiting Personal Cross-Examination by an Accused in Sexual Assault Trials” (2004-05) 49 Crim LQ 69 at 72.

teract them, courts still rely on an “ideal victim” when they evaluate the question of whether an individual woman has been raped. Lise Gotell has written extensively about what she terms “neo-liberal sexual citizenship,” arguing that “if once the ideal victim was characterized by her chastity and sexual morality, the new ideal victim is consistent, rational, self-disciplined, and blameless.”⁸¹ Women who seek redress for their rapes through the legal system must ensure that their stories are consistent and coherent, and that they did everything they could to prevent their rapes. Gotell documents how the increased use of third-party records, such as counselling notes, has further increased women’s vulnerability to “any inconsistency, any undesirable fact, even anything surprised or unexpected about her.”⁸² While the image of the “ideal victim” has thus changed, it still casts women as “unrapeable,” especially “extensively documented women, such as women with mental health histories, Aboriginal women, immigrant women, childhood assault survivors, foster children, and women with disabilities.”⁸³ Rape myths are still alive and well in the criminal justice system, and continue to play a significant, if often unacknowledged, role in the way courts decide who can be raped.

The Garneau Sisterhood, on the other hand, places much less emphasis on the question “who can be raped.” The Sisterhood’s loose definition of rape and non-existent threshold of proof make the question of “who can be raped” virtually irrelevant. The Sisterhood holds that anyone can be raped, but that it is much more important to ask who *is* raped, and who is a rapist. The Sisters emphasize that consistently and overwhelmingly it is women who are raped. And it is men who rape women. Part of the Sister’s response thus called upon men to acknowledge the role they play in perpetuating rape culture. One poster asks if men “watch[ed] women through their windows,” or “[made] excuses for other men.”⁸⁴ Other posters issue warnings to men to avoid circulating alone at night to avoid coming under suspicion. This focus on the gendered nature of rape provides a vital counterpoint to the criminal justice system’s insistence on gender neutrality.

The question of “who is raped” also influences the Sisterhood’s composition. As women in the neighbourhood experienced a unique vulnerability to sexual assault, members of the Sisterhood were all wo-

81 Gotell, “Ideal Victim,” *supra* note 58 at 259.

82 *Ibid* at 260.

83 *Ibid* at 262.

84 Poster; image on file with author.

men-identified persons. While it is unclear whether or not this was a conscious decision at the beginning, as the group mobilized, men were encouraged to form their own solidarity groups. Many Sisters reported that it was vital for them to feel that the women of the neighbourhood were taking action in light of both women's broader systemic vulnerability as well as in the particular nature of the attacks of summer 2008. This gendered analysis to the question of who can be — and who is — raped is necessary to any political and legal strategy that hopes to address sexual assault substantively.

All of these substantive criteria highlight how the criminal justice system cannot resolve a social problem such as rape. The criminal justice system is designed to address individual instances of sexual assault. It considers each incident in isolation, and operates solely to determine if this particular accused is guilty of sexual assault. As such, the criminal justice system is not equipped to address any vulnerability beyond that of the individual complainant, such as the gendered vulnerability all women experience in the face of sexual assault. It is this very idea of gendered vulnerability upon which the Sisterhood was founded. By centering its work on community responses to widespread vulnerability, the Sisterhood frees itself to take direct action to prevent rape.

(b) Procedural rules

Procedurally, the Sisterhood is better able to address rape because the group eschewed the complicated rules of criminal procedure in favour of the simple principle that survivors will always be believed. This simplicity ensures that the Sisterhood can expose rape as a social phenomenon; it is also necessary in a community where many members do not feel safe sharing their experiences with the police. As one woman wrote, when she told police that a man had attempted to break into her home while she was present, the response she got was that “they couldn’t do anything because the perpetrator had not committed a crime.”⁸⁵

The criminal justice system's pervasive skepticism of survivors was exemplified in a community newsletter issued some months after the attacks. The newsletter quoted a representative of the Edmonton Police Service who proudly reported that McKernan “is a safe neighbourhood.” Although six “sexual offenses” unrelated to the Garneau rapist were reported, “one of these was cancelled, three were unfounded, and the remaining two incidents were of a male subject observed exposing

85 Email to the Garneau Sisterhood (27 June 2008). On file with author.

himself.”⁸⁶ The newsletter does not specify why over half of all reported sexual offenses in the neighbourhood were deemed unfounded, but such a high percentage seems extremely suspicious, especially in the context of a police report designed to make people feel safe in the community. The Sisterhood had not, at the time of writing, issued any public statement on the contents of this newsletter, but it is safe to say that the Sisters may call into question how they could feel safe in their community when the police service that purports to protect them is instead likely to find that the “truth” of their story does not match the standard of “truth” required by law and will say that their rapes never happened.

(c) Fundamental principles

My mapping above shows that the two legal orders are based on starkly divergent fundamental principles. The criminal justice system views its objectivity as key to making it an appropriate site for catching and punishing rapists. A hierarchy of police officers, Crown prosecutors, judges, and even juries assess each rape according to the standards outlined in the *Criminal Code* and Canadian jurisprudence. Any allegation of rape must be proven beyond a reasonable doubt before the legal system will attribute criminal liability to the accused. This framework is very limiting when contrasted with the Garneau Sisterhood’s grounding in subjective analyses of rape that privilege survivor discourse and promote the responsibility of an entire community to prevent rape by challenging rape culture.

MAPPING THE RELATIONSHIP: COLLABORATION, TENSION, COMPLICITY

The pervasiveness of rape culture often necessitates difficult tactical choices in responding to rape. Many people who have been sexually assaulted still wish to see their attackers caught and punished in the criminal justice system, as it is this system that carries the full weight of moral sanction in our society. Women not “directly” victimized by the crimes also wish to see that perpetrators are punished, as this can help women feel safer. In the Garneau Sisterhood, women experience a state of “internormativity” as they negotiate between the criminal justice system and the Sisterhood’s legal order. This makes the relation-

86 McKernan Community League, “McKernan Not a Crime Hotspot in Year’s Stats” *McKernan Messenger* (October 2008) 1, online: <<http://www.mckernancommunity.org/news/messengerOct08p4.pdf>>.

ship between the two orders a complex one, marked by instances of collaboration but also instances of insurmountable tension. This tension, however, is a positive one. It illustrates the shortcomings of the criminal justice system while also giving women the opportunity to take direct action to prevent rape and feel safe in their neighbourhood. As the model of internormativity suggests, subjects do not need to “resolve” the conflicts between the different legal orders they experience. Instead, they can remain in a constant state of flux, experiencing the push and pull of each normative order in different situations.

It is important to note here that I am deliberately resisting the argument that the Garneau Sisterhood simply represents a necessary supplement to the work of the criminal justice system. This argument would locate the Sisterhood’s work in the extra-legal world of civil society, and would emphasize the way that it both collaborates with law, but also accomplishes the tasks that the law cannot. This reading of the Sisterhood’s work is not altogether false. The Sisterhood *did* collaborate with the criminal justice system in some small ways, and certainly provided space for public discussion and community empowerment in ways that the criminal justice system did not. Indeed, this reading may correspond to the ways some group members conceptualizes the group’s work.

What I want to promote, however, is a more radical reading of the Sisterhood’s work — a reading that focuses on the fundamental challenge the Sisterhood presents to the criminal justice system. In this more complex account of the dynamics between the two, I first explore examples of collaboration between the Sisterhood and the police. The Sisterhood encouraged people to submit tips on the rapist and his activities, hoping that this would lead to his arrest. The Sisterhood also encouraged police to give women more information on the rapist’s *modus operandi*. After considering these two examples, I then explore the way that any collaboration with the criminal justice system threatens to render us complicit in the criminal justice system. To collaborate with or complement the criminal justice system presumes its validity, and indeed further legitimates it. To work with the criminal justice system reinforces the law’s power to criminalize people and to issue moral sanctions. By reading the Sisterhood’s work from a radical perspective, I will emphasize how the state of internormativity is vital to ensuring that the two legal orders can share an uneasy coexistence; the tension between the two is necessary to ensure that the Sisterhood’s legal order is not subsumed by the criminal law.

1. Collaboration

The Sisterhood's direct collaboration with police occurred through messages on posters and attempts to build an information-sharing relationship with police. The Garneau Sisterhood openly acknowledged that the group hoped that the police would arrest the person responsible for the Garneau rapes. The campaign was inspired by the work of Jane Doe, a woman who postered her neighbourhood after she was attacked by a serial rapist in downtown Toronto in 1988. A day after her posters went up, police received a tip from the rapist's girlfriend and he was arrested.⁸⁷ In her book, Jane Doe states, "the concept of posterding neighbourhoods or workplaces where a rapist is known to be operating was not invented by me. The Toronto Rape Crisis Centre had been promoting and engaging in posterding for years."⁸⁸ The Sisterhood's posters were part of this tradition, and urged people to send any information they had on the Garneau assaults to the group's email account, or to Crime Stoppers, an anonymous tip line run by the Edmonton Police. Posters also commanded "rapist, turn yourself in now" and warned "attention rapist we are watching *you* we will find *you*."⁸⁹

The posters served part of their purpose, as many community members sent in tips to the Sisterhood. As mentioned above, these included stories of peeping toms, attempted break-ins, suspicious prowlers, and physically violent altercations with men. Furthermore, an individual claiming to be close to one of the victims emailed the group with more details of the attacker's methods. The Sisterhood collected this information in the hopes of passing it along to police; however, the police were reluctant to build a relationship with an anonymous group.⁹⁰ Group members were also hesitant to simply hand over the information to the police, as they were unsure how to deal with consent issues on the part of those who had originally sent in the tips. To date, these initial attempts at creating a relationship have not materialized into anything productive.

The Sisterhood also attempted to collaborate with police regarding the issue of warnings. When the police first "broke" the story of the serial rapist, they warned women to lock their doors and windows and "take extra safety precautions."⁹¹ The Sisterhood quickly pointed out

87 *The Story of Jane Doe*, *supra* note 65 at 38.

88 *Ibid.*

89 Posters created June 2008; text on file with author.

90 Email received 6 July 2008; on file with author.

91 Patricia Chalpczynska, "Media Release from the Edmonton Police Service" (released

that “not only will tips like this not keep us safe, they perpetuate a culture of fear,” and that they emerge from dominant narratives that suggest “women should be able to avoid [violent] situations if we follow certain tips: don’t walk home alone at night, don’t wear ‘provocative’ clothing, don’t put down your drink at the bar, don’t engage in ‘risky’ behaviour.”⁹² The problem, of course, is that “this lock-your-doors advice puts the onus solely on individual women to protect themselves and leaves them open to blame if they are attacked.”⁹³ This discourse makes women responsible for rape prevention, leaving police free to take on the punishment of rapists. This responsabilization puts women’s behaviour under the microscope — a fact that the Sisterhood reiterated on a poster urging people to “start questioning offenders’ behaviour and not the survivors.”⁹⁴

In addition to questioning the warnings’ reliance on rape myths, however, the Sisterhood demanded that the police provide women with more information. This is perhaps the most profound moment of interlegality in the experience of the Garneau Sisterhood — to ask for more information for women to protect themselves at the same time as rejecting the idea that women should be responsible for policing their own behaviour. This is a key moment of interlegality and of multiple subjectivities: members of the Garneau Sisterhood were caught between their critique of warnings and their practical urge to have as much information as possible. This contradiction was embodied in a press release that deconstructed the warnings, but then a few paragraphs later admitted:

we’re also questioning the police refusal to release specific information about the attacks. If something is happening to women in this community, why can’t we have all the details?...Why not use a strategy that could combat fear, rather than perpetuating it with vague, shadowy details under newspaper headlines that simply run up tallies of attacks as if there’s nothing that we can do about it?⁹⁵

Many of the people who corresponded with the Sisterhood over the

27 May 2008). Gelinas, *supra* note 1.

92 Sisterhood, “Organizing,” *supra* note 51.

93 Press release, *supra* note 70.

94 Poster; image on file with author.

95 Somewhat painfully, this rhetorical flourish directly contradicted a poster that announced, “Rape is not ‘something that happens’ to women.”

course of the summer echoed this frustration, seeking information “beyond the police’s oh-so-helpful advice to ... beware any average-size male in dark clothes.”⁹⁶

Feminist engagement with police warnings is nothing new. Jane Doe, who led the poster campaign in Toronto mentioned earlier, successfully sued the Toronto police for failing to warn women of a serial rapist operating in their neighbourhood. McFarland J found that the decision not to warn was made by police who thought “women living in the area would become hysterical and panic and their investigation would thereby be jeopardized.”⁹⁷ Interestingly, McFarland J then added that police were not motivated by any sense of urgency because they did not see the attacks as violent, another example of the rape myth that there is no violence inherent in the act of rape itself. *Jane Doe* has come to stand for the precedent that “a meaningful warning could and should have been given to the women who were at particular risk ... such warning should have alerted the women at risk, and advised them of suggested precautions they might take to protect themselves.”⁹⁸ Police cannot cite concerns over their investigation as justification for the refusal to issue a warning.

While *Jane Doe* created a legal duty for police to issue warnings, the way that warnings were handled in the case of the Garneau rapist suggests that police are only taking the bare minimum of this precedent into account. Police refused to release information on the attacker’s method of entry into homes or to release details about the facial disguise he wore. After being aggressively taken to task by members of a public meeting in the second neighbourhood where the attacks occurred, police reluctantly revealed that the rapist entered women’s homes between midnight and five in the morning. Again and again, they attributed their reticence to concerns over their investigation and claimed that sharing information could harm the criminal trial should the rapist ever be apprehended.⁹⁹ Despite Jane Doe’s previous efforts to hold the criminal justice system accountable in this way, it remains only minimally responsive.

96 Email received 8 June 2008; on file with author.

97 *Jane Doe*, *supra* note 65 at 56–57.

98 *Ibid* at 57.

99 Gelinias, “Southside Attack,” *supra* note 1. Robin Collum, “Some Women Disagree Over Rape Warnings: Police Say They Aren’t Playing the Blame-Victim” *Edmonton Journal* (14 August 2008) B3. I still fail to see how providing women with information about the attacks that target them could jeopardize a criminal trial.

Although they fought unsuccessfully to get more useful police warnings, the Sisterhood also flipped the commonplace gendered dynamics of warnings. In keeping with their efforts to focus on the perpetrator's behaviour instead of the survivors' and to challenge the culture of fear the warnings perpetuated, the Sisters issued a series of posters pronouncing: "WARNING! MEN! THERE IS A RAPIST in the neighbourhood. Please *do not* go out at night unless you are with a friend." In smaller text at the bottom, the poster read: "I'll do this if you will." This series provides a powerful challenge to the idea that it is women who must be afraid of rapists, women who must police their behaviour, and women who must prevent rape. It refocuses public discourse on the perpetrators of rape, who are overwhelmingly men. These messages were inspired by Jane Doe, who suggests warnings to men could include "one of you is raping women, and we don't know, can't tell which one, so until we find out, stay at home, do not use underground parking or take shortcuts through the park ... [unless] you are accompanied by a woman who can vouch for your good male status."¹⁰⁰ Jane Doe shrewdly observes that:

The warning above and the one we are accustomed to hearing are both stupid and outrageous and call on a large group of people to censor their lives. Our response is to laugh at one and obey the other, when it is the "funny" one that would more effectively address the crime because it puts the onus on the offending group.¹⁰¹

Rachel Hall has also written about the subversive potential of warning men, pointing out that this practice "publicly pervert[s] and mock[s] that language in a manner that highlights how nonsensical it is to socialize women to stop rape."¹⁰² By producing posters that focused attention on men's behaviour, the Sisterhood was able to subvert its own engagement with the warnings, producing a sly and provocative message out of this moment of interlegality.

2. (Positive) tension?

This ambivalence about a relationship with police demonstrates the deep ambivalence many community members feel about working with

¹⁰⁰ *The Story of Jane Doe*, *supra* note 65 at 325.

¹⁰¹ *Ibid.*

¹⁰² Rachel Hall, "It Can Happen to You: Rape Prevention in the Age of Risk Management" (2004) 19:3 *Hypatia* 1 at 12.

the Edmonton police. By situating the attacks of the Garneau rapist within a spectrum of rape culture, the Garneau Sisterhood called attention to the problem of rape as a whole, not just to these particular incidents. By focusing on rape as a broader social issue, however, the Garneau Sisterhood could not ignore analyses of rape that focused on the race and class differences that shape the ways rape is experienced as much as gender does. With regards to the police, this analysis of race and class imports the question of “who is policed, and how.”¹⁰³

Ambivalence towards the Edmonton police service’s relationship with Aboriginal people is long-standing. Aboriginal women’s groups and, more recently, segments of the White feminist community, have decried police inaction towards the disappearance of thirty-two Aboriginal women from the city’s streets since the 1980s. The repeated failure of police to act to investigate these disappearances becomes even more alarming when contrasted with the high-profile police press conferences, public meetings, and investigations regarding the relatively isolated incidents of sexual assault in the middle-class white neighbourhood of the Garneau. This police inaction means that violence against Aboriginal women “becomes routinized and treated as if it were a naturally occurring phenomenon.”¹⁰⁴

A recent series of high-profile incidents further highlights the police force’s overt violence towards the city’s Aboriginal residents. In the summer of 2005, police detained nine homeless people in a police van on a hot summer afternoon.¹⁰⁵ Their “crime” was to be drunk in public. After holding them in the van for over two hours, the police dropped them off in an isolated neighbourhood in Edmonton’s northeast, where they were left to find their own way back into the downtown area.¹⁰⁶

When the story broke in February of 2007, police tried to argue that this was an isolated incident; however, when a local newspaper conducted interviews with homeless people, outreach workers, and repres-

103 Sherene Razack, “Race, Space and Prostitution: The Making of the Bourgeois Subject” (1998) 10 *CJWL* 338 at 355.

104 Lise Gotell, “Third-Wave Anti-rape Activism on Neoliberal Terrain: The Garneau Sisterhood,” Chapter 11 in this book.

105 John Cotter, “RCMP to Investigate Allegations by Homeless Against Edmonton Police” *Canadian Press* (Factiva) (2 February 2007). I have discussed this incident in another paper: Meagan Johnston, “Hurtin’ Albertans: Race, Space and the Law in Edmonton’s Housing Crisis.” Conference at McGill University (22 April 2008) 13–15 [unpublished paper on file with author].

106 Charles Rusnell & Mike Sadava, “Constitution Violated, Lawyers Say: No Legal Rights to Transport Them Anywhere” *Edmonton Journal* (6 February 2007) A3.

entatives of community associations, all revealed that police had “for years routinely picked up homeless people in various stages of drunkenness from the Whyte Avenue area and released them in inner-city neighbourhoods.”¹⁰⁷ Philip Dainard, another Edmontonian, “reported a similar experience of being arrested by three police officers while he was barefoot, drunk, and panhandling on Whyte Avenue. The police drove him to the outskirts of the city, and dropped him off on the side of the road.”¹⁰⁸ He walked for hours in the dark before finding a bus stop.¹⁰⁹ In June of 2008, Crown prosecutors announced that while the police conduct was “wrong,” they were not criminal, and so no charges would be laid.¹¹⁰ Police had acted in accordance with their own internal policy, which permits police to pick up intoxicated persons “who are conscious, responsive, and without apparent illness or injury, and able to care for themselves” and transport them to a “residence of friend’s place, or a homeless shelter as long as they are left in the care of a responsible person.”¹¹¹ The investigation further held that the policy was authorized under the *Gaming and Liquor Act*.¹¹²

These incidents reveal the nature of the criminal justice system’s policing of “crime” in Edmonton. Almost all of the detainees were Aboriginal; the policy thus replicates colonial narratives wherein white settlers “claim space as their own, dictate the laws that govern the space, and claims the authority to violently evict Aboriginals when they so choose.”¹¹³ This practice has been used many times before. Tragically, in 1990, 17-year-old Neil Stonechild froze to death after police dropped him off on the outskirts of Saskatoon on a bitterly cold prairie

107 *Ibid.* Whyte Avenue is a popular strip of bars, shops, and restaurants in the Old Strathcona neighbourhood, across the river from the inner-city neighbourhoods east of downtown that are home to most of Edmonton’s homeless population.

108 Johnston, *supra* note 105 at 14.

109 Charles Rusnell, “It Sure as Hell Happened to Me” *Edmonton Journal* (2 February 2007) B1.

110 Ben Gelin, “Officers Avoid Criminal Charges; Police Dumped Drunken Homeless People on City’s North Side” *Edmonton Journal* (12 June 2008) B1.

111 Edmonton Police spokesman Dean Parthenis (as quoted in *ibid.*). Many authors have explored how drunkenness has come to be associated with Aboriginality. An Aboriginal person, especially one who is visibly poor and/or homeless, is thus often more vulnerable to being deemed unruly and degenerate and seen as deserving of punishment and violence; see eg Sherene Razack, “Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George,” in Sherene Razack, ed, *Race, Space and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines, 2002) 121. Razack outlines in much more nuanced form the complex interactions between gender, race, and class in urban space.

112 RSA 2000, G-1. The investigation results were discussed in Gelin, *supra* note 110.

113 Johnston, *supra* note 105 at 15.

night.¹¹⁴

By collaborating with the police system, the Garneau Sisterhood is collaborating with a system that claims the power to recognize some violations but not others, all according to its own supposedly objective standards. This collaboration places the Sisters in a profound moment of what De Sousa Santos would term “interlegality” — the moment where subjects find themselves equally subject to different legal orders. The Sisterhood’s legal order and the criminal justice system’s legal order each has a very different answer to the questions “what constitutes a crime?” and “what factors do we take into consideration in deeming an act criminal?” While the Sisterhood’s legal order prioritizes survivors’ accounts of violence and locates acts within their broader social and political contexts, the criminal justice system ignores these factors and treats each incident in isolation. The criminal justice system moved to recognize the Garneau rapes as crimes at the same time as it denied the violence and racism of police practices. Collaboration with the police investigation is tantamount to complicity in this dynamic; when members of the Sisterhood assist in police investigations they are acting according to both the norms of the Sisterhood and of the criminal justice system. This is an uncomfortable space, but it is a space that exposes some of the ways that the criminal justice system is at odds with a more radical paradigm.

The Garneau Sisterhood’s legal order is also explicitly at odds with the way that rape is treated in Canadian law. Comack and Peter explain how only 6 percent of sexual assaults are reported: “Of those, 40 percent result in charges. Of these, two-thirds result in a conviction.” From this data, they estimate a 1.6 percent conviction rate — a rate much lower than most other crimes.¹¹⁵ Lise Gotell argues that feminists — including feminist judges — have “called attention to how a woman’s interaction with the justice system mimics the violation of a sexual assault ... the experience of medical evidence gathering, making a police statement and sometimes engaging with Crown prosecutors and enduring a trial leaves a sexual assault complainant with little autonomy,

114 Cotter, *supra* note 105. For an excellent overview of these so-called “starlight tours,” see Don Kossick, “Death By Cold: Institutionalized Violence in Saskatoon” (2000) 34:4 *Canadian Dimension* 19.

115 Elizabeth Comack & Tracey Peter, “How the Criminal Justice System Responds to Sexual Assault Survivors: The Slippage Between ‘Responsibilization’ and Blaming the ‘Victim’” (2005) 17 *CJWL* 305.

self-determination, or control.”¹¹⁶ The criminal justice system thus only recognizes a farcically tiny proportion of the total instances of rape in society.

The Garneau rapes only represent a tiny fraction of the sexual assaults that occur in the city each year; however, they sparked a media frenzy and public hysteria. The Garneau Sisterhood recognized that this focus was due to the way the police and the media perceived these rapes as “real.” There could be no debate about consent or witness credibility when women were being attacked while sleeping in their homes. The Sisterhood worked to take advantage of this new public focus by pointing out that “only two percent of sexual assaults are assaults by a stranger [and] the overwhelming majority are perpetrated by partners, family members, or co-workers.”¹¹⁷ Indeed, the police’s focus on warning women to lock their doors “distracts from our culture of rape ... locked doors do not protect women from their family members, partners and dates.”¹¹⁸ For the Sisterhood, this larger context of rape is the “context of violence that we, the Garneau Sisters are seeking to address. We need to publicly denounce all perpetrators of sexual assault. Each of us in this city needs to ask ourselves what we can do to stop all rape, not just this particular rapist.”¹¹⁹

The Sisterhood’s efforts to locate the Garneau rapes on a broader spectrum of rape culture are particularly necessary given the characteristics of the Garneau neighbourhood. The Garneau is roughly situated between the University of Alberta and Whyte Avenue, a popular strip of bars. Between the fraternity houses, first-time university students living in residence, student parties, and the significant numbers of drunken hooligans patrolling the neighbourhood’s streets every weekend, the neighbourhood has many of the perfect conditions for date rape and acquaintance assault. One infamous fraternity house, the “Deke” house, throws a notorious party each Halloween where women have reportedly been sexually assaulted. An organizer of the university’s production of *The Vagina Monologues*¹²⁰ disclosed to the audience that she had been drugged at a neighbourhood fraternity party and raped on the front lawn. In December of 2005, a good friend of mine was drugged at a popular local pub. Despite these stark examples

116 Gotell, “Privacy,” *supra* note 4 at 744. See also *Osolin supra* note 79 and *Seaboyer, supra* note 75, both per L’Heureux-Dubé J.

117 Sisterhood, “Organizing,” *supra* note 51.

118 Press release, *supra* note 70.

119 *Ibid.*

120 Eve Ensler, *The Vagina Monologues* (New York: Villard, 2001).

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of “rape culture,” the Garneau was never seen as an “unsafe” neighbourhood until the summer of 2008, providing painful proof of the persistence of the idea that stranger rapes are “real” rapes. Everything else presupposes a lesser level of violence and is not worthy of large-scale public concern. This discourse of rape in the criminal justice system and in mainstream society illustrates the many complex dynamics at work for members of the Garneau Sisterhood.

CONCLUSION

The summer of 2008 incidents in Garneau provide a potent example of the myriad ways communities can deal with rape. The juxtaposition of the legal orders provided by the activists in the Garneau Sisterhood and the criminal justice system show the systemic inadequacies inherent in the way the criminal law addresses rape. The Garneau Sisterhood posits a vibrant, dynamic, and empowering model of fighting back against rape in which women from the affected community are directly able to reclaim their space in the way they best saw fit. The Sisterhood’s work is enabled by a variety of characteristics of their “legal order,” including a broad definition of rape and a lack of formal thresholds or rules for determining whether or not a rape has occurred. This loose structure enables the Sisters to centre the stories of survivors to obtain a broad account of how rape affects everyone in the community. Furthermore, as a larger segment of the community is considered “directly affected” in this legal order, a larger segment of the community can invent imaginative strategies that cut to the core of the gendered, racialized, and classed nature of rape as a social phenomenon.