“It’s All Just a Game”: How Victims of Rape Invoke the Game Metaphor to Add Meaning and Create Agency in Relation to Legal Trials

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Abstract

Metaphors are common in legal discourse because they reify abstract legal concepts. The game metaphor, sometimes used to characterise legal trials, tends to be associated with legal professionals’ work in court. This metaphor portrays a legal trial as a competitive, hostile and masculine process that excludes victims from participating in the trial. In this article, I analyse interviews with victims of rape who have had their case prosecuted in the courts in Norway. The victims use the game metaphor to characterise both the trial and their participation in it. I investigate how the game metaphor adds meaning to rape victims’ understanding and experience of a legal trial and creates room for agency in relation to the prosecution of their rape case.

Keywords Agency · Game · Metaphor · Psychological trauma · Rape · Victims

Introduction

A legal trial is sometimes compared to a game (Ebbesson 2008). The game metaphor is applied to legal processes and accordingly shapes and promotes certain understandings of legal trials. It has been noted, for instance, that legal professionals characterise their prosecutorial and defence work in terms of playing a game (Carlen 1975; Robberstad 1999; Thornburg 1995). The game metaphor invoked by legal professionals typically refers to different kinds of games, including board games (e.g., chess), sports games (e.g., boxing), and duels or wars. Both Robberstad (1999) and Thornburg (1995) argue that the constitutive aspect of the game, which, in their writing, refers to battles and sports games, comprises one person or party competing against another to win. Additionally, in Silbey and Ewick’s (2000) study of legal consciousness among people in the United States, they argue that Americans use

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the game metaphor as an interpretative frame when accounting for their experiences with the law. This interpretative frame of law is represented as a strategic game in an arena where people can pursue their interests. In this way, the game metaphor emphasises people's agency in relation to legal proceedings.

The game metaphor has not yet been applied by or associated with rape victims' participation in legal trials. Instead, other metaphors are commonly used to portray the legal proceedings of rape, including 'the second rape' (Madigan and Gamble 1991), 'the second assault' (Martin and Marlene Powell 1994), 'secondary victimization' (Patterson 2011), and a lack of 'voice' (Iliadis and Flynn 2018, 551). The first three metaphors create an analogy between the rape/assault and the legal processing of said rape. Accordingly, the legal system is constructed as a dangerous place that can reinforce feelings of violation and trauma (Herman 2003), and legal professionals are pictured as rapists, bullies, and prejudiced and unprofessional actors. The 'voice' metaphor, commonly used to refer to oppressed and marginalised groups who have been 'silenced' by the law (Hibbitts 1994), refers to how victims of rape are unable to 'speak' or narrate their story on their own terms to a supportive and receptive audience that acknowledges it (Iliadis and Flynn 2018). This metaphor further refers to victims' ability to participate in legal proceedings in order to 'voice' their opinions, have their 'voices' heard, and 'have a say' (Edwards 2004). Together, these metaphors communicate that the legal system does not treat victims of rape with dignity and respect and that victims lack agency and control and have little influence over the process.

In my study of how female rape victims make sense of legal trials, the victims invoke the game metaphor to characterise both the trial and their participation in it. In this article, I therefore investigate how the game metaphor adds meaning to the rape victims' understanding and experiences of legal trials and creates room for agency in relation to the prosecution of their rape case. I base the analysis on qualitative interviews with rape victims who have had their cases prosecuted in the Norwegian legal system. I begin with how metaphors shape our thoughts and actions (Lakoff and Johnson 1980). To study metaphors will accordingly create knowledge of people's meaning-making processes and agency. By agency, I mean the possibilities to make choices and to act upon those choices. In this context, it specifically refers to how victims actively pursue their goals in relation to the legal processing of their case. I consider agency to be shaped by legal constraints and further perceive it to be "occurring along a continuum of restriction and freedom" (Cahill 2016, 757), meaning that agency and restrictions are scaled and not a question of either/or. According to Konradi (1996b), few studies consider how rape victims actively pursue justice in court; rather, most studies focus on how the demands of the legal process *affect* victims. In Konradi's words (1996b, 26), "the trauma of participating in a

rape trial as a witness has become common cultural knowledge, whereas rape survivors' efforts to pursue justice have not." This trauma is also communicated through the abovementioned metaphors commonly used to portray rape trials.

Larcombe (2002) has similarly argued that legal processes of disqualified rape cases have been given widespread attention. She describes how rape victims tend to be discredited if they do not conform to the stereotype of the ideal victim. However, she also states that rape victims whose cases end in convictions similarly fail to conform to the status of the ideal victim. According to Larcombe (2002, 141–142), this suggests that the disqualification of rape victims is not predetermined or prescribed. Rather, it is played out on a case-by-case basis. This means that victims have possibilities to make themselves credible in court, although legal rules, rituals, and conventions shape these possibilities. Larcombe suggests that rape victims can conduct resistance through cross-examination, because discursive resistance and consistency may be an important means by which victims can establish credibility. Victims accordingly need to know how to handle power-loaded situations, she continues, to be polite and co-operative without being compliant and submissive. Konradi (1999, 1996b) has shown how rape victims attempt to manage these power-loaded situations by adapting to both the witness role and victim role in court—an important strategy because, as Bumiller (1991, 97) has pointed out, symbolically speaking, the trial depends less on the witnesses' adherence to or betrayal of the truth, and more on the way the victims conform with images of victims. Based on Goffman's dramaturgical analysis and concepts of social roles and performances, Konradi (1999, 1996b) describes how rape victims develop and use strategies to strengthen their legal cases by the ways in which they prepare their testimonies and manage their emotions in court. She conceptualises part of the victims' preparations in terms of appearance work, which refers to their "intentional efforts to accommodate classic cultural stereotypes of rape" (Konradi 1996b, 30). An example is how the victims shaped their appearances in court in a conservative, business-like, and nonsexual way. According to Young (1998), rape trials are invested in the notion that a woman's clothing and bodily appearances can be regarded as sources of information about herself. In this way, Young contends, appearances perform crucial roles in substantive evidential terms. The analysis in this article will add to this literature by showing how the game metaphor allows victims to perceive their role in court as active participants who may engage in discursive strategies and performances to make themselves credible. One strategy the victims use is to speak and perform the truth of their rape claim by invoking the psychological trauma discourse. By analysing the game metaphor, I place emphasis on victims' actions, what they are doing in court, rather than on how legal proceedings affect victims.

What Metaphors Are and Can Do

A metaphor is a figure of speech in which one thing (e.g., a legal trial) is described in terms of something else (e.g., a game) to suggest an analogy between them. Our ordinary language and conceptual system are characterised as metaphorical in nature, structuring not only our language but also our thoughts and actions (Lakoff

and Johnson 1980). Metaphors define our everyday realities. In other words, metaphors *do* something: they not only reflect reality but also shape it (Thornburg 1995). When a metaphor is used, something is experienced and understood by means of something else (Lakoff and Johnson 1980). When we define our realities in terms of metaphors and start acting upon them, they become true. In this perspective, truth is relative to a conceptual system that is largely defined by metaphors rather than being tied to an objectivist view in which the truth is absolute and unconditional. A metaphor sets meaning in motion by carrying meaning between one concept and another (Gurnham 2016). It makes something different similar by highlighting one aspect of a concept while simultaneously directing attention away from other aspects that are inconsistent with the metaphor (Lakoff and Johnson 1980). Most metaphors have gradually evolved in our culture, but some have been imposed upon us by people in power (Lakoff and Johnson 1980, 142). An example is the ‘war on crime’ (or drugs or terrorism) metaphor that has become common in the United States. Simon explains how this metaphor transfers a specific vision of the role of government from one domain (war) to another (law enforcement) in order to “invoke the image of an empowered central government mobilizing the nation and its resources to undertake systematic measures against an enemy that poses a mortal threat” (2001, 1053). According to Simon, the authorities use this metaphor to govern and control certain groups of people assumed to be dangerous in an apparently legitimate way rather than confronting dangerous practices, habits and technologies. In other words, metaphors can be useful rhetoric devices and potentially blind us and lead us astray (Ebbesson 2008, 260). On a more optimistic note, I will add that metaphors can redefine our realities and create possibilities for change.

Legal discourse is full of metaphors with different functions. It has been noted that legal metaphors reify abstract concepts to be talked and thought about (Stefan 2014). An example is the scale metaphor that is used to emphasise objectivity and silence subjectivity (Graver 2007). It describes the “balancing/weighting” of interests (Ebbesson 2008, 13). The game metaphor, on the other hand, suggests that the outcome of a legal trial is a result of strategies and competition (Thornburg 1995). According to Thornburg, the game metaphor functions to emphasise strategy and hide moral ambiguity in a legitimate way, since games are socially acceptable. She further argues that the game metaphor is gendered because of how it is intertwined with metaphors that link male (hetero) sexuality with conquest and power in which men are active subjects and women are passive objects. The game metaphor, Thornburg continues, consequently excludes women from participating in the legal game as active agents. She notes how the game metaphor is situated within the context of the stage metaphor, where a trial is portrayed as a staged play. She argues that the game metaphor has added a competitive edge to the stage metaphor, as actors perform and create stories on the legal stage to win the legal game. Consequently, the game metaphor indicates that a legal trial is less about objectivity and more about strategy or chance. Nonetheless, to portray a trial as a game downplays another aspect commonly associated with the legal system: conceptualisation of one objective truth by means of forensic evidence. Forensic evidence that is considered relevant in rape cases, such as DNA evidence, tends to be portrayed as an infallible scientific technique with a transcendent evidential quality (Cole 2007; Lynch et al.

2010). DNA evidence's scientific status evokes its confidence and further portrays it as more reliable than testimony evidence. In addition, the courts consider documented physical injuries important evidence in a rape trial.

The Norwegian Context

In Norway, both the district courts and appellate courts make decisions regarding criminal guilt by establishing the facts of the case. In the district court, there is a mixed panel of one legal judge and two lay assessors who make decisions. Decisions regarding the question of guilt and sentencing can be appealed. In the courts of appeal, a jury decides on all offenses with a maximum sentence of six years or more, which includes rape offences. A jury consists of 10 lay people with an equal number of men and women. However, the authorities decided to discontinue the jury in 2018 and replace it with a court of two legal professionals and five lay assessors. The main argument for discontinuing the use of a jury was to secure a written justification of the grounds for the verdict. However, the interviewees participating in this study had their cases decided on by a jury if the accused appealed the district court's decision, because I conducted this study before the jury was discontinued.

Until 2008, victims had only a witness role during a legal trial, but they gained a range of participatory rights as part of a victim reform (Ot.prp.nr. 11 2007–2008). Now, victims have the right to be present in the courtroom throughout the trial. Victims had a right to legal representation before the reform, but they gained additional rights as part of the reform. Victims' counsel gained access to case information at all stages of the criminal proceedings and can now ask questions to all witnesses in court, including the accused. Victims have a right to appeal the police's decision not to prosecute their case. Evidence regarding a victim's sexual history is generally not allowed unless the judge considers it strictly relevant to the case. However, any other types of evidence, including trauma evidence, is admissible in court because of the principle of freedom of evidence.

As mentioned earlier, the game metaphor is situated within the context of the stage metaphor and for this reason, it is relevant to consider how Norwegian courts and trials have been compared to a staged play. Skyberg (2001) argues that the architecture of the courtroom and the legal rituals contribute to the staging of a trial. She illustrates how the interior of the courtrooms and the legal properties (e.g., the robe), in combination with procedural law, assign people different roles in court and shape the content and status of the roles. Allocation of space in the courtroom is one way of symbolising status. Mulcahy (2010) makes the same argument in the British context, stating that space is not neutral but creates insiders and outsiders as well as empowered and disempowered participants. An example from the Norwegian district courtrooms offered by Skyberg (2001) is how the prosecutor is placed on one side of the room and the defence counsel together with the accused on the other side of the room; thus, they share the floor in front of the judges, which is supposed to symbolise equality between the parties. Having the accused next to his counsel rather than in a separate dock, as is done in the UK (Mulcahy 2013), further indicates his presumed innocence as he is not segregated from others on the floor and

is made to look guilty by the dock's cage-like environment. In addition, the robes that all legal professionals wear in court are supposed to hide the person behind the role and to symbolise the institution they represent (Skyberg 2001). It is a symbol of competency and authority. Accordingly, the robes distinguish the professionals from other people involved (e.g., the accused and witnesses) who are present in person. Skyberg (2001) further argues that to place witnesses on the stand is supposed to facilitate the interpretation of the trustworthiness of the witnesses' testimony by gaining access to *how* it is presented in court. This means that credibility appraisals depend upon the witnesses' appearance and performance in court. The staging of the testimony accordingly makes it possible for witnesses to perform a role in court. Skyberg notes that it is the defence counsel's role that is most clearly associated with the game metaphor. She views him as a trickster, someone who plays tricks. He is not obliged to promote the truth, as Norwegian prosecutors are, but to protect the accused's rights.

Method

In this article, I analyse qualitative interviews with women who have experienced sexual violation. I recruited the participants through a youth health centre, an organisation working with rape victims and victims' counsel. The only inclusion criteria were being a woman and having a self-defined experience of sexual violation.

I recruited 24 participants to the study on which this article is based. Among the participants, 12 women had reported the sexual violation to the police, and six of these women's cases had been prosecuted. The analysis that I present in this study is based on the six interviewees who have had their cases prosecuted. The violations they had experienced were perpetrated by men the women knew or had met at a party the same day (friends, acquaintances, ex-boyfriends, dates). The participants' ages ranged from approximately 20 years old to the mid-50s, of which most had experienced rape within the last 3–5 years. All the interviewees lived in or close to Oslo, the capital of Norway, all except one had their cases prosecuted after the victim reform, and none of them had any prior experience of legal proceedings before their own trials.

Participation in the study was based on informed consent. All participants had to be 16 years or older to give consent by themselves. Before recruiting participants for the research interviews, I notified the data protection services at the Norwegian Centre for Research Data. I conducted the study in line with Norwegian legal requirements and ethical guidelines for research.

The interviews were tape recorded and transcribed. During the interviews, I asked the interviewees to narrate their sexually victimising experiences before I asked follow-up questions based on their narratives. I had an interview guide, which included the topics I wanted to cover, such as interactions with family, friends, police, the assault centre, the court, professionals, and non-professionals regarding the rape. I also tried to make them reflect on different concepts such as rape, victims, and health. I did not focus on or ask about metaphors during the interviews, but I started to notice how the interviewees used metaphors during the analytical process

after the interviews. The interviews lasted from approximately one and a half to four hours.

My analysis is informed by the poststructural interview analysis approach developed by Carol Bacchi and Jennifer Bonham (2016). This strategy examines what is said in an interview and how it is possible to say those things. It encourages reflection on how things that are said are considered intelligible, legitimate and truthful, and it scrutinises what the things said *do* or *produce*. The key term in this analytical approach is problematisation, that is, how the things said question what is commonly taken for granted and how the participants problematise the world in which they live. The starting point of this approach is that the things said invoke certain norms and establish ways for people to be. This approach consists of a set of questions to apply to the transcriptions to guide the analysis. For instance, "Precisely what is said in the interview?" "How was/is it possible to say those things?" "Which *things said* put into question pervasive ways of thinking?"

The number of participants in this analysis is rather small, which can be viewed as a shortcoming of the analysis, especially in relation to the possibility of generalising to a broader population. However, generalisation is not my intention. In qualitative research, it is more common to consider the transferability of knowledge claims and to make knowledge claims in relation to conceptual frameworks (Andenæs 2000; Maxwell and Earle Reybold 2015). My intention is therefore to further conceptualise the legal game metaphor to contribute to the existing knowledge of the relationship between the game metaphor and legal participation, and furthermore, to consider the transferability of this knowledge. Kvale (1999, 107) uses the term 'analytical generalization', which refers to "a reasoned judgement about the extent to which we can use the findings from one study as a guide to what might occur in another situation". This means that the context is important when considering the study's transferability. As I argue in this article, an important contextual factor concerning the game metaphor is the actors' possibility of participation in legal proceedings. In the Norwegian context, the victim reform described earlier has improved the legal status of victims. For this reason, I suggest that the game metaphor can be more readily invoked in Norway, but to transfer this knowledge to other jurisdictions requires a consideration of the victim's legal status and other contextual factors.

Staging the Legal Game and Spotting the Victim

I will begin by illustrating how the participants in this study evoke the stage metaphor by tracing how they speak about the legal processing of their respective cases. All the interviewees, except for one who had her case prosecuted years before the victim reform in 2008, evoke the stage and game metaphors in their accounts, albeit in different manners and to different degrees. The stage metaphor constitutes the context that facilitates the game metaphor. In the interviewees' version of the stage metaphor, they portray the courtroom and trial as a public space in which the legal game is staged in a way that places them (i.e., the victims) in the spotlight as passive

objects of knowledge (evidence), rather than as active participants who participate in the construction of the legal story of the incident in question.

All the interviewees portray the courtroom, especially in the court of appeal, as public because of the number and type of people inside it. One interviewee compares the district court with the court of appeal: “I thought it was more uncomfortable to testify in the courts of appeal, because there are a lot more people there.” The people she is referring to are the jury. In the interviewees’ accounts, the jury is often described as a large group of people, as a crowd. She continues by explaining how she felt she had very little space in court: “We had to sit in the same row. I was sitting here with my lawyer next to me, and he [the accused] was sitting next to her.” In the district court, where there is no jury, the court allocates the victim and the accused to either side of the room. In the courts of appeal, however, the court places them on the same side of the room to make space for the jury. This means that the presence of the jury limits the spatial distance between the victim and the defendant. The interviewee thus problematises the number of people present in the courtroom because they take up too much space, leaving her with too little room. Similarly, another interviewee describes the courtroom as small: “It was so uncomfortable because the court room is so small, and everyone had to enter and leave the room through the same door. It was kind of like being on top of each other.” If the allocation of space means that different roles in the court are shaped, thus empowering or disempowering participants, as Skyberg (2001) and Mulcahy (2010) argue, then the interviewees’ problematisation of their space in court can also be an expression of how victims lack a formal clarification of the space they should occupy in court. Victims were not present on the legal stage before the victim reform of 2008, and they have since simply been added to a pre-existing architectural structure. The court places them next to the prosecutor in some cases and behind the prosecutor in others. This lack of clarification can consequently create insecurity regarding what constitutes their space and status in court, thus resulting in feelings of disempowerment. However, one of the interviewees problematises the jury not only in terms of space but also in terms of qualifications:

I thought it was much better in the district court because in the courts of appeal, you feel ...or at least I thought it was very uncomfortable to unfold my life story and this incident, because this incident is very private. (...) Then, there are like ten strangers listening, right? It's one thing to have the legal system and the judges sitting there getting to know everything because they have an academic education and are supposed to make an assessment, but when you have like ten people straight from the street with no... or I don't know what kind of background they have or where they come from.

The jury consists of ten people—or “ten strangers,” to quote the previous interviewee—who are presented as misplaced because of their lack of legal education. The interviewee seems to assume that professionals can listen to private stories because their professions justify their role in court by enabling them to make a proper assessment. At the same time, the interviewee portrayed lay people as outsiders who simply add a public dimension to ‘the scene’ in court because they listen to private stories apparently without any justified reasons for doing so. The members

of the jury do not wear a robe and have no other legal properties that can symbolise their competence in court. This can reinforce the interviewees' perception of the jury as a misplaced crowd. In these accounts, the interviewees present the jury as a crowd that appears to be invading their private space both by taking up space in the courtroom and by constituting a public dimension in court.

The jury is further associated with an audience. One interviewee describes how she felt she was at the centre of attention in court: "You sit in the middle of the room, it is fully lit, with a lot of random people, and then you're supposed to talk about private things." The courtroom is in this quote transformed into a kind of stage on which the victim is in the spotlight, and the jury constitutes the audience of "random people." The victims are in the spotlight even when they are not on the witness stand because of how the legal system enquires into an alleged rape by means of evidence. "It was about me, all of it. When his [the accused's] friend testified, that was the only time it was not about me. It was different from the other witnesses who testified on my mental health and on how they perceived me that night." The victim is in this quote placed at the centre of attention in the presentation of evidence in court. Expert examinations of the victim's health as well as observations of the victim's reactions to the incident in question are central evidence in a trial regarding rape (Laugerud 2020b). In addition, the quoted interviewee's legal case included evidence based on an analysis of the victim's body (the medical examination), such as documented bruises and vaginal cuts. The interviewee's remark regarding the focus on her in court illustrates how a legal trial inquires about the victim's body and mind and accordingly places the victim in the spotlight as an object of evidence to be scrutinised (Laugerud 2020a).

The interviewees present the jury as a crowd of random strangers constituting an audience rather than qualified decision makers. The randomness of the jury is further associated with the metaphor of the legal game. "It [the trial] is a lottery game; it actually is a lottery because they draw lots when selecting the jury. It's absurd! ... and interesting." The legal game is not merely a metaphor, as the selection of the jury is literally a lottery. The presiding judge in court select a jury by ballot from a panel. The randomness of the jury is further associated with good and bad luck in relation to the outcome of the trial. One interviewee who had a jury convict the accused thought that she was lucky with the jury, while another who had a jury acquit the accused said, "I think, to be honest, that I was really, really unlucky with the jury." In other words, the outcome of the case is depicted as a result of chance rather than a qualified decision. They further characterise the outcome of a trial as something they win or lose. In one case, the court stated that the victim had been raped, but the court found the perpetrator not criminally responsible; this victim said, "It's really unfair – it has happened; still, he is the only one winning."¹

Some of the interviewees further draw on the stage metaphor when describing appearances in court. For instance, one interviewee calls the defence lawyer a

¹ In this case, the accused was considered "psychotic or unconscious at the time of committing the act" (Penal Code 1902, Section 44), and for this reason he was not considered criminally responsible for the crime he had committed.

“showman.” This suggests that playing the legal game is a performance. The defence lawyer is not the only one who has to perform in court in order to succeed.

I remember I was really stressed because I’m not a person who reveals my emotions in front of people I don’t know or trust. So, I was afraid they [the jury] would think I was indifferent, because they are ordinary people, and as they say, in the courts of appeal, you need to engage with the jury’s feelings.

When a jury is present, the interviewee perceives her appearance in court as being a performance, which is associated with the game metaphor. She explains this by the jury’s lack of legal professional background, portraying them as simply “ordinary” people. The ritualised staging of a victim’s credibility, as described by Skyberg (2001), requires her to perform while on the stand; if she does not, she risks being disbelieved. To use Goffman’s (1956) words, she needs to perform to create an impression that corresponds to the jury’s expectations of the victim role. As already pointed out by Konradi (1999), victims need to manage their emotions in court by evoking and suppressing specific emotions to appear in an appropriate manner and in accordance with their assigned role.

Altogether, the interviewees present the jury as a public, random and misplaced audience that decides on legal issues by chance. By portraying the jury as an audience, emphasising how they as victims were placed in the spotlight and referring to various types of performances, the interviewees thus far appear to refer to a play mixed with elements of a lottery when they invoke legal metaphors.

Playing the Legal Game

In a trial, the victim’s role as a legal participant is rather limited, even though the Norwegian government in 2008 increased victims’ rights to participate. However, by invoking the game metaphor, victims can redefine their role and expand their scope of action. The game metaphor, therefore, creates possibilities for victims to play the legal game and to be active participants rather than passive objects of knowledge. The game the interviewees refer to in the following parts of this article is a strategic and competitive game.

One participant, who first had her case dismissed by the police but then filed a complaint about the police’s decision, had her case reopened and prosecuted, and the defendant was convicted. She explains how her case did not include any forensic evidence; rather, it was based on the fact that she immediately made a scene in response to the assault once she woke up from sleep and on the fact that their friends witnessed her reactions and testified on them to the police and in court.

I’ve learned so much about the courts by having my case prosecuted, and this knowledge has to be disseminated to everyone. I used to think, I don’t have DNA evidence in my case, and people would warn me, saying it’s very difficult to get a conviction, so I thought it would be impossible. Then, I thought I was really lucky in the district court, but then, the judge in the courts of appeal summed up the case by saying it’s a lot of evidence in this case. The fact that

I told my story in a consistent manner and that all my witnesses retold my story in a comparable way... that I'd been talking about it from the moment it happened and that I reacted as I did when it happened. It's all evidence. Also, my subsequent [psychological] reactions and medical follow up were a type of evidence, and I don't think many people know, or think about it in that way.

She continues to explain that she used to think that evidence "is that little piece of paper that you bag in a plastic bag at the crime scene... or DNA in rape cases," making a clear reference to forensic evidence. When talking about DNA evidence, she adds that it "usually becomes pointless anyways, and then, it's just 'his word against hers.'" Here, she refers to cases in which the accused argue that the rape they were accused of was instead consensual. This perception of evidence is also common among the interviewees who did not report the rape to the police or had their case dismissed by the police. They tend to explain that they did not report their experiences to the police or the police dismissed their case because they did not have any forensic evidence in their cases. The quoted woman above continues to describe that during the proceedings of her case, she realised how important it is to consult the rape emergency room, even though it feels useless because there might not be anything to document. As she explains, it is important to "do those things, to show others how serious you take it." Here, she refers to behaviour that the courts tend to consider reasonable victim behaviour. Doing what the courts consider the right or reasonable thing to do, such as consulting medical expertise after a rape, can benefit the credibility of the claim. In this case, the interviewee performs, in Goffman's (1956) terms, according to other people's expectations of ideal victims. The interviewee accordingly gains credence and acquires the social status of a victim (Larcombe 2002; Christie 1986).

Another participant makes a similar point. She also tells me that she realised how important it was to do the "right thing" immediately after the rape. She said she accompanied a man to his apartment after meeting him on a night out, and he raped her while she was asleep. She went to the police the same night, after being encouraged to do so by her friends, and she said she was very cooperative. After talking to the police and taking the police to the accused's apartment, she went to the sexual assault centre at the hospital to have a medical examination. "I was kind of meek as a lamb, doing all the police asked me to do, that night – and after," she recounts. Being docile and cooperative became her strategy to pursue her legal aims. When she finally received the message that the police had decided to prosecute her case, she said:

It was like, 'Yes! Now I feel they really do believe me.' I felt empowered. I was really strengthened by it, and then, I felt ready to go to court. Then, we were sitting there [in the courtroom] – we were three people and he [the accused] was – they were two, in a way. I felt I had one more [person] on my side than he had on his side.

Because she did all "the right things", the police and the prosecutor became her allies. Then, it became three against two; she had her counsel and the prosecutor on her side, while he had only his counsel. Later on, when describing how it

was to meet the accused in court, she adds, “I felt like, you know, arriving at this stage – sitting in court – I felt I had the upper hand.” However, the accused was strategising. “It was a lot fuss with his counsel; he substituted his counsel twice, and we met his third counsel in court. He was from x [a big law firm], and then, I realised this will not be pleasant.” She was worried about how a counsel from this particular law firm would question her because of the firm’s reputation, so she discussed it with her counsel.

She prepared me. She said I could get many questions that I will think are terrible. Then, she said they [her counsel and the prosecutor] might let it slide; they might not stop him; they might see it through to let him realise he’s not getting anywhere and also to have the judges wonder what he is up to.

She elaborates on how the defence counsel’s tactics accordingly resulted in “him making a fool of himself.” Nonetheless, she describes how the defence counsel’s questioning made her feel like she was “run over by a bulldozer.” She explains that he had a certain “tone of voice” and an attitude of “looking down on her.” She says, “I understand that he is keen on winning, and that that’s all he cares about,” and she says that she understands that it is his job to raise doubt. However, her counsel’s strategy of not stopping him appeared to work. “He [the defence counsel] made me come back the next day just to ask me why I took the elevator rather than the stairs [when I left the accused apartment] if I really was hysterical. He was obsessed about that!” Then, she tells me that the legal judge eventually intervened: “Then, even the judge said ‘it could be because they had taken the elevator up to the apartment.’ She [the judge] kind of asked him many times – to kind of stop him – ‘where are you going with this; what’s your point’ because he was asking all these weird questions.” To endure the defence counsel’s tactics, she managed to extend the alliance with her counsel and the prosecutor to include the judge. At that point, she had all on her side, and the accused was isolated on his side.

The interviewee continues by further distancing her side from his side. She explains that the defence counsel tried to claim the accused had a condition that they wanted medical experts to examine and that they tried to have the trial postponed, but the judge would not allow it. She comments, “That’s the card they’re trying to play to get him acquitted.” His counsel managed to call a number of new witnesses. She says one of the witnesses, a psychologist, was a relative of one of the accused’s friends. She comments, “He [his counsel] made her look like an expert witness. I thought it was terrible because she was going to evaluate me – from his point of view. It was not like when the police do it from a neutral perspective.” She considers the accused’s strategy a last-minute move, and she portrays it as partial. In this way, his side was not only outnumbered in terms of having fewer pawns than she had, but it was also biased, unlike her side, because she was siding with the prosecutor, who is supposed to be objective. This strategy of making allies in court can be compared to the ‘team building’ strategy described by Konradi (1996a) in which the victims recruited friends and family to join them in court to support them in maintaining their performances on the stand. However, in this study the team members are the legal professionals in court, not family and friends.

The Dilemma of the Legal Truth Game

The game metaphor creates possibilities for victims to have agency in relation to the legal processing of their case. However, making space for their own agency in legal proceedings is potentially a risky game because being associated with a game can undermine their credibility. Therefore, playing the legal game creates a dilemma.

One interviewee told me that she realised that she became very cynical throughout the legal proceedings. She became preoccupied with 'winning' the case and started to act strategically by engaging in discussions with her lawyer on whom to call as a witness based on who could benefit her case. For instance, she tells me how she struggled with her relationship with her (former) good friend because of the friend's affiliation with the incident, but she explained that she could not confront her friend because she was a very important witness in court.

I realised I became cynical because it is a game, and I wanted to win. You know, there was another lawyer in this case who was paid by my tax money in order to make up a different truth. Then, you need to hold on to your truth, and make sure your lawyer is dedicated to promoting your truth, because you're the only one invested in your case. This is just a routine job for the lawyers. It is just another day in court.

She characterises the legal proceedings as a game in which different truths are competing, and she suggests that playing this game is cynical. As outlined above, the game metaphor highlights strategy and winning. Winning tends to be associated with the outcome of a trial in which the court convicts the accused. This way of thinking about winning can be associated with anger, revenge, and punishment (McGlynn 2011), which are considered inappropriate in court and they are further associated with a false victim (Konradi 1999). Based on various conceptualisations of justice, winning can also have symbolic meanings such as being believed and having a public acknowledgement of the crime, having the accused acknowledge responsibility, and overcoming fear (McGlynn et al. 2012; Konradi 1999).

If the interviewee considers winning a question of convicting the accused, her feelings of cynicism might be related to the inappropriateness of having punitive feelings towards the accused, or she might fear others will associate these kind of feelings with her when what she wants is to be believed. Nevertheless, the feeling of cynicism can simultaneously indicate that she fears that others will perceive her strategies as an attempt to manipulate the truth for self-gain, which could be interpreted by others as revealing her lack of innocence. Goffman (1956) has described how people tend to be sceptical of performances and will attempt to judge their reliability by looking for cues of misrepresentation in which misrepresentation for self-gain is considered particularly problematic. People's suspicion can further be connected to their expectation of the victim's role in court. Symbolically speaking, a legal trial can force the victim into the role of an innocent angel (Bumiller 1991). This role might be considered incompatible with the role of strategic play. Konradi (1999) has previously directed attention toward the

tension created by the conflicting roles of victim and witness, in which the victim ideally should display emotions of trauma and the witness should behave in a controlled, neutral and polite manner. The cynicism the interviewee expresses can similarly be a result of a tension between the conflicting roles of victim and strategic play. 'Strategic play' is perhaps something more commonly associated with the accused and his counsel.

The interviewee discusses cynicism in relation to another dilemma later on in the interview. She tells me how she has been trying to participate in various therapeutic settings. "I tried to talk to a psychiatric nurse, but that didn't work at all. She didn't have anything to contribute. She tried to tell me about common reactions in relation to a rape, but when she was talking, I could not relate to anything she said." Later on, she tells me, "I don't consider myself sick. I do have some mental challenges, but I'm not depressed or anything." She continues to describe how she tried to find another therapist to talk to within the same institution, but she was told that the institution wanted to sign her out. Later on, her physician referred her to a psychologist. "That was pointless! He didn't say one word throughout the sessions. It was so crazy! I needed to talk about the forthcoming trials, but the psychologist barely knew what a legal trial is. It was so frustrating." She tells me how after a while, she was ready to give up talking to anyone, both because she did not really know if she needed therapy and because it seemed to be rather useless. However, she realises it can be beneficial in some other respect.

After a while, I realised, or I started to think about it in a cynical way, it actually looks good for my case if I've been talking to some professionals, because it will be read out loud in court. That's something I realised in the district court, when all my therapeutic sessions were documented. 'She has had a problem. She has consulted health institutions.'

Here she points to how she realised that psychological trauma could be used as evidence in court. Trauma evidence is increasingly adopted in legal trials, and credibility appraisals depend upon the perceived trauma of the victim (Harris 2008). The trauma diagnosis can be used as evidence in court because it makes a connection between harmful experiences and psychiatric symptoms (Breslau 2004; Fassin and Rechtman 2009). The interviewee characterises her strategy as cynical because she applies the language of trauma to speak the truth of her claim, even if the concept of trauma does not fit her experiences. Others could perceive this strategy as a misrepresentation of her rape claim (Goffman 1956). However, she feels this is justified because she argues that the crime has affected her, even though she does not feel traumatised. Although she recognises that documenting her mental health might be beneficial for her case and she does not mind using it strategically, she problematises the use of mental health information as evidence.

I think it sucks that it means something whether you've asked for help or not because the crime has happened, but suddenly this is important evidence. You know, it's a bit unfair because what happens if you didn't consult any professionals, even if you had good reasons not to do so? It doesn't really concern whether the crime was committed. I've more or less been on my feet, in good

health, working. That could have turned out negative for my case because [people would ask themselves if] I could have been that affected [by the incident] if I've been working all the time.

She is questioning whether trauma is a prime signifier of rape, as the importance of trauma evidence suggests. Although she acknowledges that psychological problems can substantiate a rape claim, she does not accept the opposite proposition, i.e., that good mental health undermines a rape claim. Psychological trauma has increasingly been associated with rape and it has been argued that the trauma framework limits the conceptual tools available for victims because victimisation is increasingly conflated with traumatisation (McGarry and Walklate 2015; Gavey and Schmidt 2011). For this reason, the trauma framework might easily play into notions of the ideal victim (Christie 1986), in which the victim must become traumatised in order to be perceived as a true victim (Lamb 1999). Lack of trauma might then undermine a rape claim.

The cynicism she refers to is further associated with other aspects of the legal game.

But, you know, that's the game – it's all about performances in court. You know, my lawyer, she said, because I'm often up in arms when I talk to her, often crying, and we were preparing for the trial in the courts of appeal, and she said that it's not bad to show some emotions in court. I mean, it's not like you're supposed to... or... you are supposed to be yourself. And she said, 'They will believe you because you're very trustworthy, it feels real when you react as you do.' So, I mean, then it's not a game, because it's real, but still, somehow, it's advice on the staging of the play.

The staging of a testimony to reveal its authenticity, as described by Skyberg (2001), creates possibilities to perform trauma by displaying emotions of distress and by engaging with the trauma discourse on the witness stand. Although this interviewee characterises her emotions as a performance, she still claims that they are real. In other words, a performance can be authentic. She suggests that she can make herself credible by strategically engaging the trauma discourse both in producing evidence by means of documenting an apparent need for psychological help and by the ways in which she manages her health as well as performs distress in court (Laugerud 2019). However, by taking this position, she encounters a dilemma. The dilemma she sketches out concerns the relation between the constructed legal truth and the authenticity of her claim. Her concern relates to the possibility of playing the legal game without jeopardising the authenticity of her rape claim and accordingly undermining her credibility. She argues that even if she is playing the legal game, she is not manipulating the realities of the incident or her experience of it. She claims that her actions are justified because she argues that the crime has affected her even though she does not feel traumatised. This suggests that the conceptual tools offered by the trauma framework do not necessarily fit everyone's experiences, as suggested by McGarry and Walklate (2015), which can create a dilemma in which one is forced to be excluded from the conceptual framework and the benefits associated with it or risk being revealed as insincere in one's claim.

Conclusion: How the Game Metaphor Adds Meaning and Creates Room for Agency

The interviewees who had their cases prosecuted after the victim reform apply the stage and game metaphors. It appears that their experiences in court have led them to apply these metaphors. Before the trial, these interviewees thought that the outcome of a trial depended upon forensic evidence. They shared this perception with the interviewees who did not report their experiences to the police and those who had their cases dismissed by the police. However, during the trial, their perception changed. One reason why they resorted to the game metaphor may be the actual similarities between a trial and a game that they observed in court, such as selecting the jury by means of drawing lots. Although they primarily talk about the game not as a lottery but as a strategic game, the actual similarities between a trial and a lottery that they observe make the game metaphor easily invokable. This observation is only possible because of victims' increased rights to participate in legal proceedings. The victim reform granted victims a right to be present in court throughout a legal trial. Without this right, victims would not be able to observe the similarities between a trial and a lottery. Additionally, the possibilities of preparing their testimonies with their own counsel and suggesting further evidence to be presented in court through their own counsel would not be possible without the right to a counsel and other rights to participate in legal trials. This study shows that the game metaphor, in the context of increased victims' rights to participate in legal trials, create possibilities for victims' agency. Feminists' and victim advocates' efforts to increase victim's participatory rights have accordingly contributed to facilitating the victims' agency in court.

The game metaphor they apply—which highlights strategy and competition while downplaying objectivity, weighting of evidence and conceptualisations of one single truth—reshapes their understanding and experience of the trial. If they perceive the outcome of a trial as the result of strategic play, even if it is based on an uneven hand of cards, then they have the possibility to take part in the framing of the story the court decision will be based upon. If winning the case is contingent upon forensic evidence, they have little opportunity to do anything that can influence the legal decision. For that reason, forensic evidence limits their agency, whereas the game metaphor makes room for strategic action, including the use of rhetoric and performance. Similarly to Konradi (1999, 1996b) and Larcombe (2002), this study suggests that victims actively engage in appearance work and discursive strategies to pursue their aims in court. Although the game metaphor is situated within the stage metaphor, the game is not an act but rather a game the interviewees play that contributes to reshaping the strategies they think they can employ in relation to the trial. The game metaphor further works as an interpretative frame that shapes the ways in which the interviewees make sense of legal proceedings (Silbey and Ewick 2000).

Playing the legal game poses simultaneously a challenge to victims' credibility. The game metaphor can jeopardise the authenticity and credibility of the rape claim if others do not consider a trial a legal game. If others do not apply

the game metaphor, they can interpret performance and rhetoric as means of manipulating the truth. This can be considered a risk if they invoke the trauma discourse, for example, without feeling traumatised. However, trauma does not have to be conceptualised as an abnormal psychological condition that either fits or does not fit one's feelings, but it can be conceptualised as a doing in which one takes responsibility for one's future's health by following expert advice on how to manage one's health (Laugerud 2019). In this way, invoking the trauma discourse does not have to imply a misrepresentation of one's self, in Goffman (1956) terms, but a performance in line with expert advice and other peoples' expectations. Still, strategic play is not without its drawbacks because, as Skyberg (2001) argues, it is primarily the defence counsels that are associated with the game metaphor in the Norwegian legal system because prosecutors are obliged to be neutral and objective. The victim has traditionally been the prosecutor's witness, so even though the victim today has a more independent role because of increased participatory rights, the victim is still associated with the prosecutor. Being associated with the neutral and objective party can arouse suspicion about any attempt to be strategic.

This article shows how the game metaphor allows victims to perceive their role in court as active participants who can make themselves credible through discursive strategies and performances. To gain credence they use expert knowledge to speak the truth of their claim and perform according to experts' and other people's expectations of the victim role. However, when victims take an active role in court some actions can pose a risk to their credibility, so they need to navigate other people's expectations carefully to avoid being discredited. Furthermore, the game metaphor places emphasis on what victims do in court, rather than on how the demands of the legal system affect them.

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References

- Andenæs, Agnes. 2000. Generalisering: Om ringvirkninger og gjenbruk av resultater fra en kvalitativ undersøkelse. In *Kjønn og fortolkende metode. Metodiske muligheter i kvalitativ forskning*, ed. Hanne Haavind. Oslo: Gyldendal akademisk.
- Bacchi, Carol, and Jennifer Bonham. 2016. Appendix: Poststructural interview analysis: Politicizing 'Personhood'. In *Poststructural policy analysis. A guide to practice*, ed. Carol Bacchi and Susan Goodwin. New York: Palgrave Pivot.

- Breslau, Joshua. 2004. Introduction: Cultures of trauma: Anthropological views of posttraumatic stress disorder in international health. *Culture, Medicine and Psychiatry* 28 (2): 113–126.
- Bumiller, Kristin. 1991. Fallen angels: The representation of violence against women in legal culture. In *At the boundaries of law (RLE feminist theory)*, ed. Martha Albertson Fineman and Nancy Sweet Thomadsen. London: Routledge.
- Cahill, Ann J. 2016. Unjust Sex vs. Rape. *Hypatia* 31 (4): 746–761.
- Carlen, Pat. 1975. Magistrates' courts: A game theoretic analysis. *The Sociological Review* 23 (2): 347–379.
- Christie, Nils. 1986. The ideal victim. In *From crime policy to victim policy: Reorienting the justice system*, ed. Ezzat A. Fattah, 17–30. London: Macmillan.
- Cole, Simon A. 2007. How much justice can technology afford? The impact of DNA technology on equal criminal justice. *Science and Public Policy* 34 (2): 95–107.
- Ebbesson, Jonas. 2008. Law, power and language: Beware of metaphors. *Scandinavian Studies in Law* 53: 259.
- Edwards, Ian. 2004. An ambiguous participant: The crime victim and criminal justice decision-making. *British Journal of Criminology* 44 (6): 967–982.
- Fassin, Didier, and Richard Rechtman. 2009. *The empire of trauma: An inquiry into the condition of victimhood*. Princeton, NJ: Princeton University Press.
- Gavey, Nicola, and Johanna Schmidt. 2011. "Trauma of rape" discourse: A double-edged template for everyday understandings of the impact of rape? *Violence Against Women* 17 (4): 433–456.
- Goffman, Erving. 1956. *The presentation of self in everyday life*. Edinburgh University of Edinburgh.
- Graver, Hans Petter. 2007. Fornuft og følelser—om klassisk retorikk som modell for moderne juridisk metode. *Tidsskrift for rettsvitenskap* 120 (04): 527–562.
- Gurnham, David. 2016. Law's metaphors: Introduction. *Journal of Law and Society* 43 (1): 1–7.
- Harris, Rebecca C. 2008. *Black robes, white coats: The puzzle of judicial policymaking and scientific evidence*. Rutgers University Press.
- Herman, Judith Lewis. 2003. The mental health of crime victims: Impact of legal intervention. *Journal of Traumatic Stress* 16 (2): 159–166.
- Hibbitts, Bernard J. 1994. Making sense of metaphors: Visuality, aurality, and the reconfiguration of American legal discourse. *Cardozo Law Review* 16: 229.
- Iliadis, Mary, and Asher Flynn. 2018. Providing a check on prosecutorial decision-making an analysis of the victims' right to review reform. *The British Journal of Criminology* 58 (3): 550–568.
- Konradi, Amanda. 1996a. Preparing to testify: Rape survivors negotiating the criminal justice process. *Gender & Society* 10 (4): 404–432.
- Konradi, Amanda. 1996b. Understanding rape survivors' preparations for court: Accounting for the influence of legal knowledge, cultural stereotypes, personal efficacy, and prosecutor contact. *Violence Against Women* 2 (1): 25–62.
- Konradi, Amanda. 1999. "I Don't have to be afraid of you": Rape survivors' emotion management in court. *Symbolic Interaction* 22 (1): 45–77.
- Kvale, Steinar. 1999. The psychoanalytic interview as qualitative research. *Qualitative Inquiry* 5 (1): 87–113.
- Lakoff, George, and Mark Johnson. 1980. *Metaphors we live by*. University of Chicago Press.
- Lamb, Sharon. 1999. Constructing the victim: Popular images and lasting labels. In *New versions of victims. Feminist struggle with the concept*, ed. Sharon Lamb, 108–139. New York: New York University Press.
- Larcombe, Wendy. 2002. The 'Ideal' victim v successful rape complainants: Not what you might expect. *Feminist Legal Studies* 10 (2): 131–148.
- Laugerud, Solveig. 2019. Narrating the harm of rape: How rape victims invoke different models of psychological trauma. *BioSocieties*. <https://doi.org/10.1057/s41292-019-00178-0>
- Laugerud, Solveig. 2020a. Common sense, (Ab)normality and bodies in Norwegian rape verdicts. *NORA - Nordic Journal of Feminist and Gender Research* 28 (1): 18–29.
- Laugerud, Solveig. 2020b. Embodied truths and authentic selves: The constitution of evidence and credibility in rape cases. *The International Journal of Evidence & Proof* 24 (3): 307–320.
- Lynch, Michael, Simon A. Cole, Ruth McNally, and Kathleen Jordan. 2010. *Truth machine: The contentious history of DNA fingerprinting*. University of Chicago Press.
- Madigan, Lee, and Nancy C. Gamble. 1991. *The second rape: Society's continued betrayal of the victim*. Macmillan Pub Co.

- Martin, Patricia Yancey, and R. Marlene Powell. 1994. Accounting for the "second assault": Legal organizations' framing of rape victims. *Law & Social Inquiry* 19 (4): 853–890.
- Maxwell, Joseph A., and L. Earle Reybold. 2015. Qualitative research. In *International Encyclopedia of the Social & Behavioral Sciences*, ed. James D. Wright, 2nd ed., 685–689. Oxford: Elsevier.
- McGarry, Ross, and Sandra Walklate. 2015. *Victims: Trauma, testimony and justice*. Routledge.
- McGlynn, Clare. 2011. Feminism, rape and the search for justice†. *Oxford Journal of Legal Studies* 31 (4): 825–842.
- McGlynn, Clare, Nicole Westmarland, and Nikki Godden. 2012. 'I just wanted him to hear me': Sexual violence and the possibilities of restorative justice. *Journal of Law and Society* 39 (2): 213–240.
- Mulcahy, Linda. 2010. *Legal architecture: Justice, due process and the place of law*. Routledge.
- Mulcahy, Linda. 2013. Putting the defendant in their place why do we still use the dock in criminal proceedings? *The British Journal of Criminology* 53 (6): 1139–1156.
- Ot.prp.nr. 11. 2007–2008. Om lov om endringer i straffeprosessloven mv. (styrket stilling for fornærmede og etterlatte) [Regarding the act on amendments to the criminal procedure act, etc. (strengthened position for the aggrieved and bereaved person)]. Edited by Justis- og politidepartementet. Oslo: Justis- og politidepartementet.
- Patterson, Debra. 2011. The linkage between secondary victimization by law enforcement and rape case outcomes. *Journal of Interpersonal Violence* 26 (2): 328–347.
- Robberstad, Anne. 1999. *Mellom tvekamp og inkvisisjon. Straffeprosessens grunnstruktur belyst ved fornærmedes stilling*. Oslo: Universitetsforlaget.
- Silbey, Susan S., and Patricia Ewick. 2000. The rule of law—Sacred and profane. *Society* 37 (6): 49–56.
- Simon, Jonathan. 2001. Governing through crime metaphors. *Brooklyn Law Review* 67: 1035.
- Skyberg, Lisbeth Fullu. 2001. *Isenesatt rettferdighet: en sosiologisk analyse av domstolens praksis*. Hovedfag: Sosiologisk institutt, Universitetet i Oslo.
- Stefan, Larsson. 2014. Karl Renner and (intellectual) property—How cognitive theory can enrich a socio-legal analysis of contemporary copyright. *Law and Society Review* 48 (1): 3–33.
- Thornburg, Elizabeth G. 1995. Metaphors matter: How images of battle, sports, and sex shape the adversary system. *Wisconsin Women's Law Journal* 10: 225.
- Young, Alison. 1998. The waste land of the law, the wordless song of the rape victim critique and comment. *Melbourne University Law Review* 22 (2): 442–465.

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