VULNERABILITY AND VIOLENCE: THE DILEMMA OF THE MARIA CLARA DOCTRINE*

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> *"The truth of our bodies and our minds has been mystified to us."*
>
> —Adrienne Rich

> *"Victimhood happens to us. It is not a quality."*
>
> —Judith Shklar

I. INTRODUCTION

We live our lives through the practice of storytelling. We weave every wound, mishap, triumph, and moment of happiness into our consciousness as stories and narratives. Something happens to us and we think, *this happened because*, or *because it happened, something is now the way it is*, or, *something else might just happen.* We act a certain way and we integrate the way we act as part of a larger narrative. We locate ourselves within patterns and sequences; we ascribe character.

Oftentimes, these stories are told to us by others—some in our immediate, more familiar circles, some situated in circles that seem much bigger than we are—and we weave these stories into our consciousness. Oftentimes, stories get repeated to us every day that we accept them as truths—as stories that we now have to tell ourselves. Oftentimes, this is regardless of the truth, the falsity, the relevance, the applicability, the effects and the *harm* that these stories bring to us, because oftentimes we too don't realize that aftermaths exist after we've been told a story a hundred times.

It is with the realization that much of what we accept and repeat may be just stories relentlessly told to us without question that I hope to shed some light on one form of storytelling and its effects on how we situate

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and think of women. As Philippine feminist poet and scholar Lilia Quindoza Santiago urges, we must take a look at the stories that we read, tell, and hear once again for these texts to "undergo some kind of unreading and re-reading."[1]

In August of 2018, President Rodrigo Duterte said that "[t]here are many rape cases in Davao, [and that] [a]s long as there are many beautiful women, there will be more rape cases."[2] It is unfortunate that popular talk, such as jokes, small talk, and banter, about rape and rape cases reduce these serious matters into a simple equation of "more beautiful women, more rape cases." In 2017, the President also stated that he will "maybe…congratulate you for having the balls to rape [Miss Universe]."[3] These statements, especially because a prominent public figure and leader has said them, reinforce the story that sexual violence, such as rape, is acceptable behavior. Theresa de Vela, executive director of Miriam College's Women and Gender Institute, describes this as "sexual script."[4]

The same reinforcement of the sexual script can also be seen in the decisions of the Supreme Court in rape cases, where the Court has made comments on the natures and characters of the victims and the perpetrators. Often, these comments are made in light of perceived societal norms and "facts." For this paper, I will be focusing on one such perceived "fact": the Maria Clara doctrine—otherwise known as the woman's honor doctrine—which was first enunciated in the 1960 case *People v. Taño*[5]:

> It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor.[6]

I argue that this doctrine, while beneficial to complainants in terms of their credibility and ability to prosecute rape cases, is ultimately a problematic tool in reaching a decision. This is because the doctrine requires

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[1] Lilia Quindoza Santiago, *Sexuality and Narrativity in the Philippine Context*, *in* SEXUALITY AND THE FILIPINA 76 (2007).

[2] Felipe Villamor, *Duterte Jokes About Rape, Again. Philippine Women Aren't Laughing.*, THE NEW YORK TIMES, Aug. 31, 2018, *available at* https://www.nytimes.com/2018/08/31/world/asia/philippines-rodrigo-duterte-rape-joke.html

[3] Pia Ranada, *Not just a joke: The social cost of Duterte's rape remarks,* RAPPLER, *at* https://www.rappler.com/newsbreak/in-depth/211438-duterte-rape-remarks-social-cost-not-just-jokes

[4] *Id.*

[5] 109 Phil. 912 (1960).

[6] *Id.* at 914.

the presence of an essential characteristic in rape complainants—a primary preoccupation with honor—thereby perpetuating the need for an "ideal victim." This paper will scrutinize Supreme Court decisions to show that this need for an ideal victim has never ceased from the inception of the Maria Clara doctrine in 1960.

In particular, this study will focus on making a critique of the 2018 case of *People v. Amarela*[7], which controversially appears to have overturned the doctrine. At first, the ruling appears to mark a turning point in judicial decisions on rape cases. However, I argue that despite claims of progressiveness towards women and rape victims—through a call to recognize the "modern Filipina"—the Supreme Court still falls back on old gender-biased ideals to reach its ruling. This results in a superficial analysis that fails to address the problems present. I propose that either disposition of rape cases, using or "rejecting" the doctrine is unproductive, because any rape discourse solely focused on examining the qualities of victims is dangerously forgetful of the patriarchal structures that enable the very cases these victims are expected to litigate. In the end, I hope to continue maintaining a critical eye to the persisting biases against women and victims that are present in modern-day rape jurisprudence.

II. THE JUDICIAL DECISION

I would like to briefly emphasize the highly influential nature of judicial decisions. It may be counterintuitive to call anything emanating from legal discourse as narrations, and even more, gender-biased narrations. However, Peter Brooks, in "Narrative in and of the Law," reminds us of the pervasiveness of storytelling and narrative in many fields of the law:

> [W]hen one begins to reflect on the role of storytelling in the law in general, the topic begins to proliferate, and to show its pertinence on every head. It need not take an O. J. Simpson trial to remind us that the law is in a very important sense all about competing stories, from those presented at the trial court – elicited from witnesses, rewoven into different plausibilities by prosecution and defense, submitted to the critical judgment of the jury – to their retelling at the appellate level – which must pay particular attention to the rules of storytelling, the conformity of narratives to norms of telling and listening – on up to the Supreme Court, which must braid together the story of the particular case at hand and the history of constitutional

[7] People v. Amarela, G.R. No. 225642, 852 SCRA 54, Jan. 17, 2018.

> interpretation, according to the conventions of stare decisis and the rules of precedent, though often – since dissents are allowed – presenting two different tellings of the story, with different outcomes.[8]

Brooks goes on to warn us about how elusive it is to spot the storytelling capacities which law and legal discourse have:

> If the law rarely recognizes overtly how much it is intricated with narrative, it may nonetheless implicitly acknowledge the power of legal storytelling in its efforts at policing narrative: the ways in which it limits and formalizes the conditions of telling, in order to assure that narratives reach those charged with judging them in controlled, rule-governed forms.[9]

Of course, the elusiveness comes from how important impartiality and neutrality are regarded in law and by the courts. Some people may brush away statements made in judicial decisions as mere *obiter dictum* and dismiss them, hence minimizing the potency and power of the highest adjudicating body's rhetoric.

Another reason that stories told in judicial decisions often get accepted easily is that these stories inevitably come from cultural narratives. Robert Cover argues that legal narrative is inextricably linked with the cultural circumstances that surround it:

> No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning…[and once] understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.[10]

He then emphasizes that the legal tradition is also part of a "complex normative world," saying that:

> These [narratives] establish the paradigms for behavior. They build relations between the normative and the material universe, between the constraints of reality and the demands of an ethic. These [narratives] establish a repertoire of moves—a lexicon of

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[8] Peter Brooks, *Narrative in and of the Law,* A COMPANION TO NARRATIVE THEORY 416 (2008).

[9] *Id.* at 417.

[10] Robert Cover, *The Supreme Court, 1982 Term – Foreword: Nomos and Narrative,* 97 HARV. L. REV. 4, 5 (1983).

> normative action—that may be combined into meaningful patterns culled from the meaningful patterns of the past.[11]

Brooks echoes this, saying that a large part of the "narrative glue" that binds rape case decisions depends on the judge's view of standard human behavior. [12] Interestingly, he points out that the word and concept of "conviction" stems from the conviction created in those who judge the stories that are presented to them.[13] Because of this normative tendency and effect, we must endeavor to read the law and the court's judgments more closely and much more critically. This is vital in identifying and understanding under what premises the legal system operates,[14] which will become especially helpful in critiquing them.

III. FEMINIST LEGAL THEORY

Many feminist legal theorists agree with this idea. Many of them posit that the law's power lies not only in its capacity to impose punishment, but also in its imposition and affirmation of culturally powerful definitions of social reality.[15] Furthermore, it is not only the fact of legal discourse itself, or the language and words that judicial decisions take the form of, that makes such legal discourse powerful and potentially dangerous; it is also the "ability of the legal institution to have its definitions [recognized] and sanctioned."[16] Noted legal narrative theorist Kim Scheppele states that "[t]he experience of justice is intimately connected with one's perceptions of 'fact.'"[17] When we consider judicial decisions, they must not only be viewed as mere "judicial utterances," but as judicial *recognition.*

In this section, I will be discussing related ideas forwarded by Western thinkers in feminist legal theory, as well as other related arguments and observations made in Philippine literature and studies.

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[11] *Id.* at 9.

[12] Brooks, *supra* note 8, at 417.

[13] *Id.*

[14] Greta Olson, *Narration and Narrative in Legal Discourse*, THE LIVING HANDBOOK OF NARRATOLOGY, Jan. 17, 2014, *available at* http://www.lhn.uni-hamburg.de/article/narration-and-narrative-legal-discourse (last visited Oct. 7, 2018).

[15] SUSAN EHRLICH, REPRESENTING RAPE: LANGUAGE AND SEXUAL CONSENT 18 (2001).

[16] Christine Lovell, Legal Discourse on Rape (1994) (unpublished thesis for Department of Anthropology, University of Adelaide, on file with the University Library of Adelaide).

[17] Kim Scheppele, *Telling Stories*, 87 MICH. L. REV. 8, 2081 (1989).

In "Telling Stories," Scheppele makes a compelling case for the continued examination of legal storytelling. She emphasizes the importance of how stories are framed in the legal context, since different legal consequences arise from the choice of one story over another.[18] She then urges that we rethink legal narratives by keeping in mind that "[c]ourts can exacerbate and reinforce the differences and disagreements that invariably exist in a pluralistic society."[19] She considers examples in rape cases actually tried and decided on, where judges draw lines between, for example, a plaintiff's description of an attack as a "light choke" and the possibility that it may have just been a "heavy caress," as stated in the dissent. This study is one of the many that tackle the problem of exclusion and denial in legal narratives, especially in rape cases.

Carol Smart, another prominent figure in the field, talks of the law's "claim to truth" in her seminal work "Feminism and the Power of Law."[20] She argues that because law makes these claims to truth in its simultaneous exercise of punitive and normalizing power, in the end, "law exercises power not simply in its material effects (judgments) but also in its ability to disqualify other [knowledge] and experiences."[21] The peculiarity of legal discourse as a way of determining truths lies in its power to accord legitimacy. This is beneficial in the sense that law can extend rights, such as its ability to extend more and more rights of action to women. However, as Smart discusses, this is also potentially detrimental.

As regards the subject of rape, Smart details the mechanisms by which the law "consistently fails to 'understand' accounts of rape which do not fit with the narrowly constructed legal definition…of rape."[22] Drawing from both magazine articles and statements made in legal proceedings, she argues that "women's sexuality is constructed as separate from women themselves."[23] Christine Lovell also explains in her thesis on the legal discourse on rape that once rape is placed within the legal system, this system eventually defines what is true, and therefore "real," about allegations of rape.[24] Furthermore, Smart recognizes the dilemma that feminists face when engaging with the law; she observes that judicial decisions "often contravene the hard-won statutory reforms of feminists," further

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[18] *Id.* at 2085.
[19] *Id.* at 2098.
[20] Carol Smart, *The Power of the Law, in* FEMINISM AND THE POWER OF LAW (1989).
[21] *Id.* at 11.
[22] *Id.* at 26.
[23] *Id.* at 30.
[24] Lovell, *supra* note 16, at 8.

highlighting the need to constantly evaluate the way the judiciary writes about women.[25]

Interestingly, in observing the interactions of legal methods and rape, Smart takes note of the impervious nature of rape when situated in legal discourse. Although this is beyond the immediate scope of this research, I would like to bring attention to one of her more thought-provoking arguments: the law's operation on binary logic—that is, oppositional, insistent on binary opposites such as truth/untruth, guilt/innocence, among many others—is "completely inappropriate" to the ambiguity of rape.[26] She notes that the "'telling' of a story of rape or abuse inevitably reveals ambiguities,"[27] which inevitably run counter to the binary pull of adjudication in a legal proceeding.

I do not seek to resolve this dilemma in this paper, but I would like to place it in the vicinity of any future research that concerns the probe and analysis of rape as viewed from the standpoint of the law. Furthermore, I only make detailed mention of this because this binary thinking may be argued as vital and essential to the functions of the law and adjudication; it is entirely possible that without it, the systems of order that the law provides may very well collapse. However, I find it important to note that this dilemma inevitably arises when we consider it linked to the law's pursuit of and claim to "truth."

Smart also discusses in great detail the rape trial and its discursive implications and influence. Her contributions to this area of research are not without company—much of feminist legal literature centers on the rape trial. Linguist Susan Ehrlich surveys contemporary feminist scholarship on the rape trial, showing that there is a tendency in the rape trial for rape victims to be dominated and "revictimized."[28] Ehrlich then expands the scholarship by focusing on the language used in adjudication processes. She goes through transcripts of rape trials and analyzes the questions asked of complainants. This is under the assumption that the questions asked in rape trials "do ideological work."[29] She concludes that the questioning in rape trials control the evidence presented. She also identifies an "ideological frame" about the complainants' choices in resisting the rape.[30]

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[25] Ehrlich, *supra* note 15, at 27.
[26] *Id.* at 33.
[27] *Id.*
[28] *Id.* at 1.
[29] *Id.* at 64.
[30] *Id.* at 91.

Lovell's thesis discusses a wide array of topics, ranging from proof of consent and the credibility of men (as well as the "incredibility" of women) to representations of rape.[31] She also discusses the whole process of a rape complaint, from the documentary procedures (e.g. filing the formal complaint) to the rape trial.[32] She makes key points about attribution and responsibility in relation to the construction of women's credibility.[33] This paper will be integral in the analyses of Philippine Supreme Court decisions later on.

IV. LEGAL LITERATURE ON RAPE IN THE PHILIPPINES

Unfortunately, there is not a lot of feminist legal scholarship on rape in the Philippines. Of course, this is not to say that there is a dearth of feminist criticism and scholarship in the country; in fact, there are many publications, papers, institutions, and writers that delve into many topics from a feminist viewpoint. There is a rich body of literature on women's studies in general,[34] as well as militant feminist publications.[35] However, the subject of rape vis-à-vis law has not yet been extensively tackled in the country. Despite this, the sources cited here merit mention in this paper.

Women's Legal Bureau, Inc. ("WLB"), a feminist non-governmental organization based in the country, surveys rape myths used as presumptions in Supreme Court decisions in the book "'Making Sense' of Rape: A Review of Presumptions Relied Upon by the Supreme Court in Decisions of Rape," resulting in the following list of prevalent rape myths:

1. Rape happens only to young, pretty or desirable women.
2. Rape is a crime of lust or passion.
3. Rape involves the loss of a woman's most prized possession, her "chastity."
4. Men can have sex freely with women deemed to be of loose morals because these women have nothing to lose.
5. Rape is committed by sex maniacs or perverts [who are usually strangers to the victims.]
6. Rape happens in poorly lit or secluded places.
7. Sexy clothes excite men, [so to avert rape it is a woman's responsibility to avoid provocative or revealing attire.]

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[31] Lovell, *supra* note 16, at 74.

[32] *Id.* at 42.

[33] *Id.* at 56.

[34] *See* Institute of Women's Studies (St. Scholastica's College), WOMEN'S STUDIES READER (2004).

[35] *See* GABRIELA, ISSUES, CHALLENGES AND STRATEGIES (1990).

8. When a woman's chastity is threatened, she will exert every effort to protect it, whether by violent resistance, escape attempts, or screams for help. [If she doesn't fight back it means she gave her consent.]
9. When violated, a woman's first reaction is to tell the authorities or her family, particularly her menfolk, who must be informed of the assault upon the woman's, and thus the family's, honor.
10. [Many] rape charges are fabricated in order to avenge a slight or to extort money.[36]

This survey is commendable as it rounds up many of the rape myths that the Supreme Court relies on. The organization also provides data that counter such rape myths; for example, WLB states that the first myth that rape happens only to young, pretty or desirable women is "disproved by [case] reports," where the youngest victim was an eight-month-old baby and that the oldest victim was a 67-year-old.[37] WLB also asserts that rape is a crime involving power and not merely a crime involving lust or passion, countering the second rape myth.[38]

Unfortunately, this study was published back in 1995 and can no longer serve as an up-to-date collation of data, especially since the Philippine anti-rape law was subsequently amended in 1997 to reflect a shift from viewing rape as a crime against chastity to a crime against persons. In light of that amendment, WLB's assertion that the judiciary reinforces the law's view that rape is a crime against chastity[39] is now inaccurate. Furthermore, the study merely acts as a primer and an introduction to data involving rape myths. It is apparent that it does not seek to provide an in-depth analysis. In line with the recognition of the importance of publications such as this, I hope to provide an updated survey and study that integrates a deeper feminist analysis.

Other writers have gone into judicial stereotypes with a deeper critical eye. The Alternative Law Groups, Inc. ("ALG"), a coalition of legal resource non-governmental organizations, assesses gender bias in the Philippine courts, including Shari'a courts, and surveys gender-based issues involving judicial action. This includes issues such as the invisibility of gender bias and non-recognition of its reality, gender stereotypes affecting

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[36] WOMEN'S LEGAL BUREAU, INC., "MAKING SENSE" OF RAPE: A REVIEW OF PRESUMPTIONS RELIED UPON BY THE SUPREME COURT IN DECISIONS OF RAPE 28 (1995).

[37] *Id.* at 3.

[38] *Id.*

[39] *Id.*

court actions, and double victimization of female victims in cases of sexual violence.[40]

In the beginning, the ALG makes mention of feminist law professor Kathleen E. Mahoney's work on gender sensitivity in the court system, stating that one of the most "formidable barriers" to women's equality is gender bias in the courts because court decisions are influenced by biased attitudes, sex stereotypes, and myths and misconceptions about male and female traits, roles, and capacities.[41] In particular, the ALG talks of the Maria Clara image and the Court's reliance on the values of virginity, purity, and innocence. It even integrates the previously mentioned WLB research and affirms it by saying that "[c]ourts are benevolent when the complainant fits the bill of being young, innocent, naïve, and helpless, but this generosity is not for prostitutes and women from other lands."[42]

V. "CHARACTER, CREDIBILITY, AND CONTRADICTION"

This benevolence of the courts towards young, innocent Filipinas has been extensively researched and discussed by Professor Dante Gatmaytan in his article, "Character, Credibility, and Contradiction: Rape Law and the Judicial Construction of the Filipina."[43]

In this 1998 piece, Prof. Gatmaytan conducts a survey of Supreme Court decisions in which Article 335 of the Revised Penal Code was applied, particularly those that make an express reference to the "typical Filipina." He also proposes to undertake a feminist analysis of rape law.[44] *First*, he highlights several standards by which the Supreme Court assesses a rape complainant's credibility, calling them "the rules of rape":

> 1. [W]hile rape is a most detestable crime, and ought to be severely and impartially punished, it must be borne in mind that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent;

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[40] ALTERNATIVE LAW GROUPS, TUNING IN TO WOMEN'S VOICES ON JUSTICE 68 (2005).

[41] *Id.* at 23, *citing* MYRNA S. FELICIANO, ET AL., GENDER SENSITIVITY IN THE COURT SYSTEM, 10-11 (2002).

[42] *Id.* at 27.

[43] Dante Gatmaytan, *Character, Credibility, and Contradiction*, in UNDERCLASS: PUBLIC INTEREST LAW PERSPECTIVES (2018).

[44] *Id.* at 252.

> 2. [I]n view of the intrinsic nature of the crime of rape where only two people are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and
> 3. [T]he evidence of the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[45]

In line with this assessment of credibility, Prof. Gatmaytan points out that the Supreme Court relies on a "good/bad girl" dichotomy when determining whether a Filipina rape complainant should be believed. First, he points out that "Philippine rape law at first glance may seem overly advantageous to women" because they are presumed truthful due to their desire to protect their honor.[46] However, he also points out that "the judiciary also imposes standards of conduct for the Filipina to enhance her credibility, and straying from these standards impairs her chances of obtaining judicial relief."[47] This, Prof. Gatmaytan shows, is a double standard. He gleans from numerous cases that the typical Filipina, to the Supreme Court, is "a romanticized version of the country girl,"[48] "[young], [innocent], naïve, shy, poor, uncouth, almost unlettered"[49]—and if the rape complainant is this typical Filipina, then "courts almost invariably convict the defendant."[50] In the following passage, he provides an overview of the Supreme Court's construction of the Filipina:

> The typical Filipina is a young girl, an innocent country girl, a rural-bred minor, artless and guileless, naïve, shy, poor, uncouth, almost unlettered [...] a ten-year old virgin, of decent repute, whose virtue has heretofore been unblemished, whose morality is beyond dispute, is of unsullied reputation, or definitely inexperienced in sexual matters. She is a student of a religious school [...] admittedly a virgin and without any previous record of aberrant sexual behavior [...] She has a husband of her own and a reputation to protect [...] There is also an almost constant reference to her youth because, '[y]outh and immaturity are generally badges of truth and sincerity.'[51]

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[45] *Id.* at 257-258, *citing* People v. Godoy, G.R. No. 115908, Dec. 6, 1995, 250 SCRA 676, 703.

[46] *Id.* at 256.

[47] *Id.* at 250.

[48] *Id.* at 261.

[49] *Id.* at 262.

[50] *Id.* at 263.

[51] *Id.* at 262-263.

He thereafter proceeds to discuss the "atypical Filipina." First, he remarks that the "[Supreme] Court's double standard has not remained unheeded and has been invoked by defendants," and shows that it has, unfortunately, "welcomed" efforts to show that the complainant is an exception to the typical Filipina[52] and that moral looseness has still proven itself to be a viable defense.[53] Despite there being cases wherein the Court rejects this defense, Prof. Gatmaytan concludes that these are exceptions rather than the rule.[54]

Prof. Gatmaytan considers the woman's honor doctrine a truism about the social costs of filing rape cases. He then echoes the earlier cited writers on judicial texts, saying that "[t]he Court's statements are not harmless prattle; they harden into judicial rules."[55] In the end, however, he is explicit in not attempting to debunk the Supreme Court's theory of what a typical Filipina is; his objective was just to "assess the effect of the Court's standard on the complainants' credibility in rape cases."[56] Of course, this is an important contribution to present literature on the subject, as it is a comprehensively made resource regarding the treatment of women in rape cases. Furthermore, Prof. Gatmaytan forwards very important points and makes crucial findings in his paper, and despite his explicit objective, even goes as far as saying that the Court should abandon the use of the "typical Filipina" in deciding rape cases.[57]

Although Prof. Gatmaytan has successfully undertaken a feminist analysis of rape law, which is quite admirable, he has ultimately reviewed the long line of cases with a broad, general feminist outlook. I believe that the study can be further expanded through a more nuanced and more layered analysis. To this end, I seek to look at cases decided by the Supreme Court after the first publication of Prof. Gatmaytan's article, up until this year, when *Amarela* was decided, using a more specific feminist framework.

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[52] *Id.* at 271.
[53] *Id.* at 275.
[54] *Id.* at 272.
[55] *Id.* at 265.
[56] *Id.* at 254.
[57] *Id.* at 283.

VI. PHILIPPINE RAPE JURISPRUDENCE, 1998-2018

A review of Philippine rape jurisprudence from 1998 to 2018 shows that ultimately, nothing has changed. In many of its decisions on rape cases, the Court makes the following pronouncement:

> When a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[58]

This is in recognition of the intimate nature of rape, being a crime often bereft of witnesses other than the accused and victim. Once a claim of rape has been made, supposedly, all that is necessary has already been declared. It is unlikely that another person can bolster or make a corroborating declaration. On one hand, this is a rule by which the victim or complainant is afforded ease of prosecution, because it is straightforward in its requirement; the only hurdle to be overcome is the appreciation of the victim's credibility in her testimony. This test of credibility provides that testimony which is "straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency" is sufficient to convict the accused in a rape case.[59]

On the other hand, this is actually where the problem arises. We must be careful to note that in its determination of what "human nature" and the "normal course of things" are, the Supreme Court still relies heavily on the Maria Clara doctrine in deciding cases brought before it; furthermore, we must make specific note that the Maria Clara doctrine is still based on a very specific set of characteristics. Of course, it is to be conceded that the Court is bound to look to a standard of behavior in appreciating testimony in order to have structure and reference in ruling and setting precedents.

However, as will be shown later on, there seems to be an inordinate fixation on evaluating the *character* of the complainant, even in aspects that do not necessarily relate to the truthfulness of her testimony. In line with this, Prof. Gatmaytan also states that "[w]hile fitting into the cast of the typical Filipina helps some women attain convictions, it harms others because it suggests that only the meek have a legitimate case in court."[60] He

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[58] People v. Elpedes, G.R. No. 137106, 350 SCRA 716, 725, Jan. 31, 2001.
[59] People v. Wile, G.R. No. 208066, 789 SCRA 228, 256, Apr. 12, 2016.
[60] Gatmaytan, *supra* note 43, at 280.

urges that "[a] rape case can be decided without making any reference to a typical Filipina."[61]

In *People v. Villamor*,[62] decided in 1998, the Court wrote that "[n]o young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same was true, for it would be instinctive on her part to protect her honor and obtain justice for the wicked acts committed upon her."[63] This description, like with the set of cases in Prof. Gatmaytan's study, sets the tone for the rest of the decisions, save for two decided in 2018.

They all follow the same idea: that the complainant, who is "young" and "decent," feels that her "honor" has been "tainted" by her "ravishment," and so follows her instinct to obtain justice. To the eye and mind of the Court, it goes against human experience for a "girl" to fabricate stories that would bring her and even her family "a lifetime of dishonor" unless those stories were true.[64] Sometimes, the Court will elaborate, such as when it says, "no *young* girl of *decent* repute would allow the examination of her private parts or subject herself to the shame, embarrassment and humiliation of a public trial, if she has not in fact been raped."[65]

In *People v. Patriarca*,[66] decided in 1999, the Court convicted the accused of rape because the latter failed to show that the complainant, "a young girl from a decent family [...] was a woman of loose morality whose characteristic Filipina modesty was absent."[67] The Court goes on to write that "it would be unbecoming [sic] a young Filipina to publicly admit that she had been criminally abused and ravished unless such is the truth, for it is her natural instinct to protect her honor."[68]

This is again echoed across the years following, as the Supreme Court always takes the time to make reference to the complainant as a "young barrio lass [incapable of concocting] a tale of defloration,"[69] "young and decent,"[70] a "country lass"[71], "young and immature,"[72] "virtuous."[73] In

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[61] *Id.* at 281.
[62] G.R. No. 124441, 297 SCRA 262, Oct. 7, 1998.
[63] *Id.* at 272.
[64] People v. Tundag, G.R. No. 135695, 342 SCRA 704, 713 Oct. 12, 2000.
[65] Elpedes, *supra* note 58, at 727. (Emphasis supplied.)
[66] G.R. No. 132748, 319 SCRA 87, Nov. 24, 1999.
[67] *Id.* at 97.
[68] *Id.* at 98.
[69] People v. Alberio, G.R. No. 152584, 433 SCRA 469, 478, July 6, 2004.
[70] People v. Suyu, G.R. No. 170191, 499 SCRA 177, 198, Aug. 16, 2006.

one case, the Court makes specific mention that the complainant is a "young and immature girl [...] who has lived her whole life in a faraway island wherein almost all residents know everybody."[74] The Court even goes as far as pronouncing that it is "natural"[75] and "instinctive" for a "young and unmarried woman" to protect her honor.[76]

At times, the Supreme Court demands of its complainants a display of a specific emotional reaction. In *People v. Delamar*,[77] the complainant was accorded belief by the Court because "each time she recalled in court the brutal acts[,] the twinge on her otherwise innocent face as in actual suffering and helplessness, the anguish, the pain, the fear [sic] they were the streams of emotions of a girl deeply seared by her experience."[78]

The Maria Clara doctrine, as it is most commonly formulated, then states thus:

> The oft-repeated adage that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor finds application in this case. No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[79]

It is apparent that the Supreme Court still premises its belief in the complainant to her being young, decent, modest, and protective of her honor. In determining what "human nature" is, women are invariably tied up to a preoccupation with their honor. Furthermore, such a preoccupation with honor—and therefore, truthfulness—always occurs and exists alongside youth and decency. This is the generalized model that successful complainants unknowingly follow, that the Court uses as a measure of

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[71] People v. Cadap, G.R. No. 190633, 623 SCRA 655, 662, July 5, 2010.

[72] People v. Bonaagua, G.R. No. 188897 650 SCRA 620, 632, June 6, 2011.

[73] People v. Lagangga, G.R. No. 207633, 777 SCRA 363, 370, Dec. 9, 2015.

[74] People v. Barberan, G.R. No. 208759, 794 SCRA 348, 356, June 22, 2016.

[75] People v. Menaling, G.R. No. 208676, 789 SCRA 421, 436, Apr. 13, 2016.

[76] People v. Bang-Ayan, G.R. No. 172870, 502 SCRA 658, 668, Sept. 22, 2006.

[77] G.R. No. 136102, 350 SCRA 707, Jan. 31, 2001.

[78] *Id.* at 713.

[79] Menaling, *supra* note 75, at 436. *See also* People v. Estoya, G.R. No. 200531, 687 SCRA 376, 386-387, Dec. 5, 2012; People v. Bonaagua, G.R. No. 188897, 650 SCRA 620, 632, June 6, 2011; People v. Baroil, G.R. No. 194608, 676 SCRA 24, 34, July 9, 2012; People v. Plurad, G.R. No. 138361, 393 SCRA 306, 315-316, Dec. 3, 2002; People v. Ayungon, G.R. No. 137752, 358 SCRA 756, 765, June 19, 2001.

credibility. All of the cases surveyed for this paper employed the Maria Clara doctrine, which led to a turnout of convictions almost across the board. This finding echoes Prof. Gatmaytan's conclusion regarding cases from 1960 to 1998—that there is "compassion [and sympathy]" for the "typical Filipina."[80]

VII. THE IDEAL VICTIM AND THE "TYPICAL FILIPINA"

Heavy reliance on an ideal is not a novel occurrence or concept in the study of crime. Sociologist and criminologist Nils Christie first introduced the term "ideal victim," to refer to "a person or a category of individuals who—when hit by crime—most readily are given the complete and legitimate status of being a victim."[81] He identifies the following attributes related to such ideal victim: (1) the victim is weak; (2) the victim was carrying out a respectable project; (3) the victim was where she could not possibly be blamed for being;[82] (4) the offender was big and bad; (5) the offender was unknown and in no personal relationship to her;[83] and (6) the victim is powerful enough to make her case known and successfully claim the status of an ideal victim.[84]

As regards the ideal victim in rape cases, Christie uses as an example "the young virgin on her way home from visiting sick relatives," but not "the experienced lady on her way home from a restaurant, [nor] the prostitute who attempts to activate the police in a rape case."[85] As evidenced earlier, this holds true for the Philippine Supreme Court as well. As previously discussed, youth is the foremost consideration in the evaluation

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[80] Gatmaytan, *supra* note 43, at 263.

[81] Nils Christie, *The Ideal Victim, in* FROM CRIME POLICY TO VICTIM POLICY: REORIENTING THE JUSTICE SYSTEM 18.

[82] *Id.* Christie uses an example of a "little old lady" to help explain the attributes, hence the pronoun.

[83] *Id.* at 19.

[84] *Id.* at 21; James Dignan provides a useful rephrasing of these attributes in *Victims, Victimization, Victimology, in* UNDERSTANDING VICTIMS AND RESTORATIVE JUSTICE 17, as follows: (1) the victim is weak in relation to the offender – likely to be either female, sick, very old or very young; (2) the victim is, if not acting virtuously, then at least going about their legitimate, ordinary, everyday business; (3) the victim is blameless for what happened; (4) the victim is unrelated to and does not know the 'stranger' who has committed the offense; (5) the offender is unambiguously big and bad; and (6) the victim has the right combination of power, influence or sympathy to successfully elicit victim status without threatening strong countervailing vested interests.

[85] Christie, *supra* note 81, at 19.

of a victim's credibility and penchant for truthfulness. Oftentimes, it is the signal or marker for a woman's decency.

However, Christie says that weakness as a characteristic, while a necessary condition, is often insufficient, hence, the addition of the sixth attribute. The ideal victim, while weak, must also be strong enough to be able to talk about what had happened to her. The Maria Clara operates in the same way: the young Filipina is overwhelmingly concerned about the shame and embarrassment that will be brought upon her and her family by the rape, but in the end, she is strong enough to defend her honor and would "publicly admit [to] having being ravished."[86] To bolster the chances of a successful prosecution, it is necessary that she be simultaneously susceptible to ravishment and strongly committed to avenging herself.

Because these characteristics have to be self-evident on the part of the complainant, there arises a burden on the victims to act according to two specific constructions. In my opinion, these constructions are an attempt to remark on the "essence" of what being a believable woman entails. This is particularly problematic because while it allows for female complainants sympathy from the Court, easing up their access to favorable judgment, it does so in a prescriptive and limited way.

In an article updating Christie's framework, James Dignan expands the conversation to talk about different approaches to "victimology," that is, the study of victimization in crime. [87] In response to one strand called "positivist victimology," he critiques the usage of a prescriptive eye. Lamenting the view that all victims display measurable "culpable" behavior, discoverable as set patterns and regularities exhibited by the victim, he says that such a stance overlooks "the process of social construction that is involved in the labeling of victims [...] and the aforementioned possibility that some who are victimized may nevertheless actively resist or even reject the label altogether."[88] In making the assumption that the identities of victims are self-evident and regular, it is forgotten that the idea of victimhood is "shaped not only by the law itself but also by the pressures that may be brought to bear on the state and the legislature by different organizations and individuals seeking to influence that law."[89]

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[86] Barberan, *supra* note 74, at 656.
[87] Dignan, *supra* note 84, at 33.
[88] *Id.*
[89] *Id.*

VIII. *PEOPLE V. AMARELA*

Interestingly, in 2018 the Supreme Court came out with the controversial *Amarela* decision. In a sudden turn of events, Justice Samuel Martires writes:

> More often than not, where the alleged victim survives to tell her story of sexual depredation, rape cases are solely decided based on the credibility of the testimony of the private complainant. In doing so, we have hinged on the impression that no young Filipina of decent repute would publicly admit that she has been sexually abused, unless that is the truth, for it is her natural instinct to protect her honor. However, this misconception, particularly in this day and age, not only puts the accused at an unfair disadvantage, but creates a travesty of justice.[90]

For the first time since the 1960 case of *Taño*, the Court refused to apply the Maria Clara doctrine. It even goes as far as describing the "women's honor" doctrine as being "[on the border of] the fallacy of [*non sequitur*]."[91] For this, the Court reasons thus:

> [T]oday, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We, [sic] should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.
>
> In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.[92]

It is for this reasoning that the case has become controversial. The General Assembly Binding Women for Reforms, Integrity, Equality, Leadership, and Action (GABRIELA) Secretary-General Joms Salvador says

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[90] Amarela, *supra* note 7.
[91] *Id.*
[92] *Id.*

that this apparent abandonment of the doctrine "will now open floodgates to many more rapes."[93] Salvador says that by assuming that the Filipina's position in society has already improved, the Supreme Court forgets that Filipino women are still highly prone to abuse. Salvador says that "[t]here is no reality-based connection to be drawn linking women's transformed social status or even willingness to fight for their own rights to making women immune to rape and other sexual attacks." Furthermore, Salvador stated that "[t]he reasoning that the Supreme Court used flies in the face of actual rise of reported and unreported rapes, sexual harassment, bullying, trafficking, and other crimes against women."[94]

Supreme Court spokesperson Theodore Te later clarified that the Court has not abandoned the Maria Clara doctrine, citing the Constitutional provision mandating that "no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc."[95] However, based on the passage cited above, it is clear that the Philippine judiciary has indeed begun to shift its gears in the appreciation of a complainant's character in rape cases. Furthermore, the new *Amarela* "doctrine" was already adopted and reproduced in a subsequent case, *People v. Vibar*,[96] albeit only as a "[cautioning] against…over-reliance on the presumption."[97]

What is interesting to note in *Amarela* and *Vibar* is that despite the usage of the same abandonment or cautionary doctrine, these cases were decided differently. In *Vibar*, the Court affirmed the conviction of the accused for rape. Following the new emphasis on an unbiased notion of credibility, the Court noted that the complainant in that case was "straightforward and categorical," and found for the prosecution. On the other hand, *Amarela* ended with an acquittal. The Supreme Court reversed and set aside the lower courts' conviction of the accused for rape because of inconsistencies in the complainant's affidavit and testimony, as well as dubious identification. Perhaps over time, this may prove significant in seeing whether or not the shift away from the application of the Maria Clara

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[93] Kristine Patag, *SC has not abandoned ruling on Maria Clara doctrine*, PHILSTAR, Feb. 21, 2018, *available at* https://www.philstar.com/headlines/2018/02/21/1789994/sc-has-not-abandoned-ruling-maria-clara-doctrine

[94] *Gabriela fears SC ruling on 'Maria Clara' doctrine could lead to more rape cases.* INTERAKSYON, Feb. 21, 2018, *at* http://www.interaksyon.com/breaking-news/2018/02/21/120683/gabriela-fears-sc-ruling-on-maria-clara-doctrine-could-lead-to-more-rape-cases

[95] CONST. art. VIII, § 4, ¶ 3.

[96] G.R. No. 215790, 858 SCRA 179, Mar. 12, 2018.

[97] *Id.* at 240.

doctrine avoids any gender-biased regularities in the adjudication of rape cases.

Unfortunately, it must also be noted and shown that the two decisions still express troubling views. This is despite the broad pronouncements made in *Amarela* that we should "stay away" from the Maria Clara mindset for being *non sequitur*. For example, in *Vibar*, the ponente writes, "AAA's minority coupled with her immediate action to seek redress for the wrong committed against her, tend to support her testimony that indeed she was raped."[98] It is obvious that the Court still considers minority and youth to be a sign of credibility. In addition to this, immediate recourse to the courts was considered a favorable circumstance. In the end, the Court is steadfast in what it seeks: the ideal victim who is young and vulnerable, but at the same time strong enough to report her rape immediately.

More concerning is the disposition of the Court in *Amarela*. The Court indeed disposed of the case by taking into account inconsistencies in the testimony made by the complainant, which would necessarily fail the required clarity in any witness's testimony. As the lower court stated, "her testimony must be clear, straightforward, convincing, and consistent with human experience."[99] This is an understandable consideration. However, the Supreme Court quotes the lower court in saying that "[a]lthough we cannot acquit Amarela solely based on an inconsistency, this instance already puts AAA's credibility in question."[100]

I must reiterate that the Court prefaced its ruling by dismissing the "Maria Clara stereotype of a demure and reserved Filipino woman"[101] and by brandishing a "woman's dynamic role in society today."[102] According to the Court, this woman has "transformed into a strong and confidently intelligent [...] person, willing to fight for her rights."[103] A perusal of the decision in full reveals that the complainant in *Amarela* failed to establish her case because she had failed to meet the standard of being a woman "willing to fight for her rights."[104] The Court ratiocinates:

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[98] *Id.* at 243.
[99] Amarela, *supra* note 7.
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*

> From this, AAA would like us to believe that Amarela was able to undress himself and AAA, and place himself on top of her while under a 2-feet high makeshift stage. It is physically impossible for two human beings to move freely under a stage, much more when the other person is trying to resist sexual advances. Moreover, AAA failed to mention how exactly Amarela pulled her to the makeshift stage without any sign of struggle or resistance. If indeed she was being held against her will, AAA could have easily called for help or simply run away.[105]

However perplexing it may be, it may very well be said that when the Court declared the modern Filipina to be a woman willing to fight for her rights, it also had a woman who struggled in mind. In the end, it was still abiding by ideals—in this case, ideals that are still unjustly burdensome on the victims. Again, the Court, in this case, made sure to state that it did not rally for an acquittal based solely on the inconsistencies in the complainant's testimony. Unfortunately, what decided the case was the lack of struggle and resistance on the part of the complainant.

This runs counter to the trend followed by cases decided prior. Just in 2016, the Court had already declared that "[a] victim should never be faulted for her lack of resistance to any forms of crime particularly as grievous as rape."[106] In another decision, the Supreme Court makes the following lucid disposition:

> The Court need not require AAA to prove that she fought back or protected herself in some way to stop the rape or to keep the rape from happening again. It is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.[107]

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[105] *Id.*

[106] Barberan, *supra* note 74, at 358.

[107] People v. Tejero, G.R. No. 187744, 674 SCRA 244, 257, June 20, 2012. It should be noted, however, that despite this lucidity, the Court still made use of the Maria Clara doctrine, saying: "[W]hen the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true."

In addition to this, the Court makes the following finding:

> We find it odd that AAA was not brought to the police right after she arrived at Godo Dumandan's house to seek help. Instead, she was brought to the Racho residence where she told Neneng Racho what happened. Again, instead of reporting the incident to the police, AAA insisted that she be brought to her aunt's house nearby. This is way beyond human experience. *If AAA had already told other people what happened, there was no reason for her not to report the incident to the proper authorities.*[108]

It is strange now to see the Court shifting in other aspects of rape case adjudication as well, especially regarding these circumstances. Given all of this, it is likely that the forceful pronouncements made at the beginning of the final ruling in *Amarela* were formulated without an actual reconsideration of the faults of the Maria Clara doctrine and what it sets up for rape victims seeking to prosecute.

If *Amarela* were indeed a recognition of the *non sequitur* nature of the doctrine, the Court should have applied the same criticism to the rest of the arguments. Failing that, it merely rehashes the underlying import of the doctrine—that is, that women complainants in rape cases must act a certain, ideal way—albeit under the guise of a progressive viewpoint. In this sense, the Maria Clara doctrine is not to be taken in isolation. What results is that under the *Amarela* doctrine, while it is allowable for complainants to not be stereotypically demure and reserved, it is still not allowable for women to be too weak to struggle against their rapists.

Indeed, the Court advocates for the acceptance of "the realities of a woman's dynamic role in society today,"[109] but strangely, it cannot accept the reality of a woman who may not be able to resist a rapist's advances and force; it cannot even accept the reality of a woman who chooses not to report the crime to authorities immediately, even after prior disclosure to those close to her. The Court's idea of "a strong and confidently intelligent and beautiful person, willing to fight for her rights"[110] is limited to one who can resist and make an immediate report to the authorities.

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[108] Amarela, *supra* note 7. (Emphasis supplied.)
[109] *Id.*
[110] *Id.*

IX. VULNERABILITY OF THE VICTIM AS QUALITY

In this light, I forward that the problem may lie in the complete fixation of the Court on the qualities of the victim. As discussed earlier, youth and decency must be evident in the complainant for her to become an effective victim. On top of this, she must also be so preoccupied with ridding herself of shame and restoring honor in her reputation and even in her family's name. Most of the time, it is the complainant who must signify herself as a certain way to the Court.

In her article "Vulnerability After Wounding: Feminism, Rape Law, and the Differend," Rebecca Stringer finds the necessity to characterize the victim in rape cases problematic. She prefaces this by recognizing that studies of rape still inevitably contend with highly attenuated criteria for identifying the "ideal victims" of "real rape":

> [W]hether or not someone is recognized as a victim does not depend on what happened or is happening to them, or the apparent severity of their experience. It depends rather on the particular parameters of victim recognition that exist in their social world, including their positioning within gender relations…class stratification, and other engines of social difference, and their positioning in relation to dominant discourses that distinguish between worthy and unworthy victimhood, between sufferings that demand humane recognition and response, and claims of suffering that are able to be cast as suspect or otherwise unworthy of recognition.[111]

However, as with Dignan, she takes the conversation a step further and criticizes the conceptualization of victimhood as a *resultant quality*—in general—by modern rape discourse. Much like Prof. Gatmaytan, she does this by picking apart a dichotomy that has arisen in modern developments of feminist rape discourse: "victim-bad" versus "agent-good." This dichotomy, Stringer writes, exists because now, "[modern] rape law typically figures femininity not as [an] embodied vulnerability but as [a] responsible agency."[112] This "responsible agency" is typified in the figure of the powerful, active, and resistant woman as an agent, which has been the subject of several works by feminist theorists.[113] Such formulation is a response to past critiques of feminism as being too focused on "the

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[111] Rebecca Stringer, *Vulnerability after Wounding: Feminism, Rape Law, and the Differend*, 42 SUBSTANCE 3, 150 (2013).

[112] *Id.* at 149.

[113] *Id.* at 152.

paternalistic myth of women's vulnerability"[114] (i.e. women as vulnerable victims who require protection). Such critics observed that it "runs counter to [...] female autonomy"[115]—hence asserting, victim-bad, and agent-good.

This is exactly how the doctrine in *Amarela* operates. The Court is explicit: "we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman."[116] The decision is a reaction to the "embodied vulnerability" of women under the *Taño* regime of the Maria Clara doctrine; according to the Court, we must move away from the stereotype of a demure and reserved Filipino woman because the Filipino woman today is now "willing to fight for her rights."[117] In other words, the Filipino woman now being touted by the Court is the strong, responsible agent that Stringer talks about.

Stringer recognizes that this feminist critique led to successes in reforms that alter legal perceptions of rape—a "feminist capture of 'prosecutorial power.'" [118] However, despite appearing beneficial, the "woman-as-agent" construction is, according to Stringer, yet another expectation of alignment with an ideal imposed on women—this time, the ideal of being a "rape-preventing subject."[119]

Of course, it must be recognized and emphasized that the observing eye cannot be fully averted from the complainant, because in most cases, rape is an event known only to the perpetrator and the victim. There is a reason why feminist studies on rape have been, for the longest time, concerned about the parameters of victim recognition. Heavy reliance on the victim or complainant's testimony is a distinctive feature of rape prosecution. However, Stringer points out that continuing feminist interventions in the area of rape law and jurisprudence are all efforts in "[shifting] juridical vision away from a primary focus on the traits, behaviors, and histories of rape complainants, in order to reverse [the] positioning of victim behavior as heuristically central in the explanation of rape."[120] Put another way, feminist interventions attempt to re-focus legal insight on rape away from the traits, behaviors, and histories of rape complainants. This is

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[114] *Id.* at 153, *citing* Rachel Hall, *"It Can Happen to You": Rape Prevention in the Age of Risk Management*, 19 HYPATIA 1, 1 (2004).

[115] *Id.* at 152, *citing* Aya Gruber, *Rape, Feminism and the War on Crime*, 84 WASH. L. REV. 581, 607 (2009).

[116] Amarela, *supra* note 7.

[117] *Id.*

[118] Stringer, *supra* note 111, at 157.

[119] *Id.* at 149.

[120] *Id.* at 154.

to get rid of the notion that rape complainants themselves are elemental in explaining why rape occurs.

Instead of discussing how Stringer applies theorist François Lyotard's concept of *differend*, I will summarize in more general terms her critique of the new binary. First, she succinctly critiques the "victim-bad/agent-good" dichotomy, saying that "[i]n their multiplication of idioms, they have merely re-dressed femininity in vulnerability and masculinity in agency, committing the reformist wrong of complicity with the masculinist powers of state and law and failing ultimately to eliminate the problem of sexual violence."[121] The problem of the *Amarela* reaction to the Maria Clara doctrine is that it is merely a redressing of femininity, without taking a deeper look at patriarchal notions. The regime remains complicit in patriarchal modes because its understanding of women and sexual violence is still that the burden of prevention remains with the victims. What the Court in effect contemplates is simply the burden of resisting sexual violence and not the burden of the existence of sexual violence at all.

Stringer further states that by re-casting women only as powerful, agents capable of resistance, such reforms have sought to cast women's victimization as *non-inevitable*, such that the prevention and non-occurrence of rape is a result of whether or not the potential victim is responsible enough to act on her agency.[122] She writes:

> The "victim-bad/agent-good" formulation blinds us to theorizations and politicizations of victimization that are not based in a presumption of the victim's passivity or haplessness, and to instances in which recognition as a victim is progressive; *it also blinds us to instances in which recognition as an agent is problematic, deflecting critical attention away from the various and gendered ways in which agency is constituted.*[123]

She laments rape law's consistent attentiveness to women's agency: "[t]o the extent that rape law has been skewed toward indicting the victim and protecting the accused, it has been more prepared to see men as victims of agentic women than it has women as victims of agentic men."[124] "Protectionism," Stringer poses, "aptly names the victim-blaming discourses

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[121] *Id.* at 157.
[122] *Id.* at 162.
[123] *Id.* at 165. (Emphasis supplied.)
[124] *Id.* at 164.

by which images of women as agents provide systematic and reliable protection for those who may stand accused of rape."[125]

In the end, Stringer makes the powerful conclusion that in focusing on characterizations of the rape complainant, "vulnerability is recognized not as social, but as individual, personal, and psychological," which effectively dispenses with concepts of structural subordination and collective responsibility.[126] The most important takeaway here is that as we know that rape adjudication is inevitably focused on the victim's assertions, we must always be critical of the sorts of ideas surrounding victims that get cemented as legal doctrine, lest we become forgetful of the overall position of women in today's society.

X. CONCLUSION

Again, we must make connections between our judicial decisions and the realities they are situated in. In this paper, I have attempted to show that since the *Taño* decision in 1960, the Court has made use of the Maria Clara (or "women's honor") doctrine, a very specific "ideal victim" in rape cases—the young, decent Filipina who would not report a rape had it not happened at all, because of a keen interest in protecting and preserving her honor. Building on Prof. Gatmaytan's study on the Supreme Court's construction of the Filipina in rape cases, I surveyed cases that have made use of the Maria Clara doctrine until the 2018 decision of *Amarela*, where the Court seemingly abandoned it.

Not much has changed in the Court's construction of the Filipina in rape cases over the years. There remains a "good/bad girl" dichotomy in the Court's appreciation of how a woman is and how she is supposed to act. Furthermore, despite the declaration in the *Amarela* decision against the Maria Clara doctrine, I believe that the Court fell back on the same patriarchal tropes and demands of women. In the end, the Court had still required the modern, strong Filipina to be responsible for preventing and resisting rape. To further examine this, the concept of the "ideal victim" and the idea of victimhood as a "resultant quality" were used to critique what seems to be the underlying problem.

Placing the onus of attention solely on the woman, especially on her vulnerability and attributes, may very well be a dangerous oversight of the

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[125] *Id.*

[126] *Id.* at 151.

patriarchal structures that enable the very cases which the victim is expected to litigate. Requiring women to be of any character in relation to their rapes—to either follow the stereotype of Maria Clara or the image of a strong woman responsible for and able to prevent and resist their potential rapes—is ultimately a letdown. We are missing questions relating to why rape happens in the first place, and questions relating to the perpetrators, instead of their victims, and what sexually violent and abusive behavior should be prevented and inhibited by them in the first place.

As a closing note, I would like to state that this puts my research in a peculiar position vis-à-vis the law. In looking at judicial decisions, I am aware that law reform and criminal justice serve primarily as a post-rape remedy.[127] These texts only occur post-rape and can only do so much in preventing the crimes from occurring. I am also doubly aware of the separation of powers within our government, such that the judiciary can only make pronouncements in the interpretation of the law and the evidence presented before it, effectively barring it from making certain pronouncements as if legislating. However, despite these, I am also aware that the judiciary is a powerful institution that helps shape how we talk about rape and how we think of those who are violated by such a dastardly act. When such a powerful institution continues to characterize women in certain ways for decades, such continuance ripens into an instance and dimension of societal acceptance. Given the Supreme Court's supreme authority and influence, we must take pains to assert ideas that assure the continuous re-shaping of the forms this authority and influence take.

I would also like to note that despite the overwhelming literature that points to the complicity of judicial decisions in patriarchal discourse, the intention of this paper is, as Christine Lovell succinctly puts it, "not to positivistically fill the gaps of legal exclusion with the 'complete' and 'authentic' account of what rape is about but, rather, to create spaces by indicating the distinctive partiality or perspectivism of this knowledge."[128] It is not in my interest to fall into the hole of essentialism by countering patriarchal narratives with another set of reductions. Instead, it is in my interest to simply uncover a pattern in the stories that are told about women

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[127] Stringer, *supra* note 111, at 158.

[128] Lovell, *supra* note 16, at 7.

in judicial decisions. This is because simply becoming aware of a pernicious pattern in what gets told over and over again is a step closer to active change.

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