

Sex, Lies, and Honor in Italian Rape Law

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I. INTRODUCTION

In February 1998, the Italian Supreme Court issued a decision to overturn a rape conviction in part because the victim was wearing jeans. The Court's opinion stated that it is difficult to remove jeans worn by another, and therefore the victim must have assisted with the partial removal of her jeans and could not have been raped by the defendant, Cristiano.¹ The reaction to this decision was immediate and unanimous outrage. Alessandra Mussolini organized a protest; she and other female members of Italy's Parliament wore jeans to work and held placards reading "Jeans: An Alibi for Rape."² Kitty Calavita describes many newspaper reports, editorials, and letters to the editor in Italian media sources. Political leaders called the decision "shameful," "sick," and "ridiculous."³ Scholars have described the opinion as "anachronistic"⁴ and have stated that the opinion consists of biases and stereotypes.⁵

Lurking within the *Cristiano* opinion were ideas with deep roots in Italian culture and law about what constitutes appropriate female behavior when confronting a rape attempt. It is remarkable that judicial expectations of what a

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1. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163.

2. Gayle Young, *Italian Women Warn Court Ruling Makes Jeans 'Alibi' for Rape* (Feb. 11, 1999), at <http://www.cnn.com/world/europe/9902/11/jeans.rape.02/>.

3. Kitty Calavita, *Blue Jeans, Rape, and the "De-Constitutive" Power of Law*, 35 LAW & SOC'Y REV. 89, 94 (2001).

4. See Calavita, *supra* note 3, at 90.

5. See generally Giovanni Fiandaca, *Violenza su donna "in jeans" e pregiudizi nell'accertamento giudiziario*, 124 IL FORO ITALIANO 165 (1999).

woman should and should not do during and after a sexual assault have changed little over the last 400 years. Comparing the *Cristiano* opinion to another infamous Italian rape case reveals the enduring nature of such attitudes. Although nearly 400 years old, the trial of artist Agostino Tassi for the rape of the young Baroque artist, Artemisia Gentileschi, is instructive for what it reveals about the importance of honor in Italian culture and law. While there is very little judicial language from the Tassi trial to analyze for bias, the testimonies of Agostino, Artemisia, and others, as well as information about surrounding events, demonstrate not only attitudes about how women should behave, but also a specific concept of female honor that the *Cristiano* opinion echoed. The 1998 “Jeans” opinion exemplifies the weight still given to an ancient concept of honor in the context of sexual assault. Specifically, the opinion reflects how notions of honor have endured as a lens through which judges continue to scrutinize a victim’s credibility.

The first section of this Article describes the judicial proceedings against Agostino Tassi for the rape of Artemisia Gentileschi based on the documents uncovered by a number of historians. The next section discusses the importance of honor in Italy, both generally, and specifically during the late Renaissance period. This section also suggests links between the importance of preserving and restoring honor to the proceeding against Tassi, as well as how this concept may be reflected in the art of Artemisia. Against this background of the rape of Artemisia and the “honor culture,” this Article analyzes the Italian Supreme Court’s opinion overturning Cristiano’s conviction for raping a woman who wore jeans.

II. THE RAPE OF ARTEMISIA

Many historians have published descriptions and analyses of the legal proceedings against Agostino Tassi for the rape of Artemisia Gentileschi.⁶ Historians generally agree on the account of the rape in the court records, although recent research has uncovered additional information.⁷ Instead,

6. See generally ARTEMISIA GENTILESCHI/AGOSTINO TASSI: ATTI DI UN PROCESSO PER STUPRO (Eva Menzio ed., 1981); ANNA BANTI, ARTEMISIA (Shirley D’Ardia Caracciolo trans., 1988); MARY D. GARRARD, ARTEMISIA GENTILESCHI: THE IMAGE OF THE FEMALE HERO IN BAROQUE ART (1989) [hereinafter GARRARD, ARTEMISIA] (offering translation of trial transcripts); ALEXANDRA LAPIERRE, ARTEMISIA: A NOVEL (Liz Heron trans., 2000) (presenting research of trial documents in form of novel, including extensive notes and citations); Elisabeth Cropper, *Artemisia Gentileschi, La “Pittora,”* in BAROCCO AL FEMMINILE 191 (Giulia Calvi ed., 1992); Laura Benedetti, *Reconstructing Artemisia: Twentieth-Century Images of a Woman Artist*, 51 COMP. LIT. 42 (1999) (offering descriptions and analysis of fictional depictions of Artemisia); Elizabeth S. Cohen, *The Trials of Artemisia Gentileschi: A Rape as History*, 31:1 SIXTEENTH CENTURY JOURNAL 47 (2000) [hereinafter Cohen, *Rape as History*]; Kristine McKenna, *‘Artemisia’: Artistic License with an Artist*, L.A. TIMES, May 27, 1998, at F1; Deborah Solomon, *Out of the Past, An Ur-Feminist Finds Stardom*, N.Y. TIMES, May 3, 1998, § 2, at 24 (discussing controversy surrounding *Artemisia* film).

7. See LAPIERRE, *supra* note 6, at 430-57; Elisabeth Cropper, *New Documents for Artemisia Gentileschi’s Life in Florence*, BURLINGTON MAG., Nov. 1993, at 135.

disagreement surrounds the correct interpretation or meaning of the rape and the proceedings, and to what extent these events are relevant to understanding Artemisia's artwork. Elizabeth Cohen describes a number of accounts of the rape trial that range from blaming Artemisia by describing her as "a lascivious and precocious girl, [who] later had a distinguished and highly honorable career as an artist,"⁸ to portraying her as a heroine, who as a result of the rape "developed a feminist consciousness that expresses itself in her paintings."⁹ Cohen evaluates the trial records in their "proper seventeenth century context" and provides a historical interpretation of the testimony and other evidence.¹⁰ The 1612 trial of Agostino Tassi helps illuminate the anachronisms present in the 1998 Jeans case.

In 1605, Artemisia's mother died, leaving Artemisia's father, Orazio, a "moderately successful painter in Rome," to raise the twelve year old girl and her three younger brothers.¹¹ Orazio taught all of his children painting. Artemisia was gifted and able to produce "work of salable quality on her own."¹² Orazio eventually arranged with Tuzia, a married woman who lived nearby, to be a chaperon and companion to Artemisia as she drew near marriageable age. In 1610, Orazio began working with Agostino Tassi and the two became friends, and as a result, Tassi often visited the Gentileschi home.¹³ In May of the same year, Agostino came to call on Artemisia. After dismissing Tuzia to her own quarters, Agostino "chatted and flirted" with Artemisia.¹⁴ The two walked around a room that served as the Gentileschi studio together, when he suddenly pushed her into an adjacent bedroom and locked the door.¹⁵

He shoved me onto the edge of the bed, forcing me [*dandomi*] with a hand on my chest, he put a knee between my thighs so that I could not close them, and having lifted my skirts—it took him a great effort to raise them—he placed his hand with a handkerchief over my throat and mouth so that I would not cry out, and he let go of my hands which before he had held with his other hand, he having placed both his knees between my legs, and pointing his penis at my vagina he began to push and he put it inside so that I felt it burning strongly and giving me great pain, that because of the gag that he held at my mouth I could

8. Cohen, *Rape as History*, *supra* note 6, at 52 (quoting RUDOLF WITTKOWER & MARGOT WITTKOWER, BORN UNDER SATURN: THE CHARACTER AND CONDUCT OF ARTISTS 162 (1963)).

9. Cohen, *Rape as History*, *supra* note 6, at 52-53 (citing GERMAINE GREER, THE OBSTACLE RACE: THE FORTUNES OF WOMEN PAINTERS AND THEIR WORKS 207 (1979)).

10. Cohen, *Rape as History*, *supra* note 6, at 55. Benedetti expresses a similar caution to those who use Artemisia's story and her art. "[W]e must resist as much as possible the distortion of our own perspective, the easy superimpositions, and question our own motives as much as those of the characters we explore." Benedetti, *supra* note 6, at 60.

11. Cohen, *Rape as History*, *supra* note 6, at 48-49.

12. Cohen, *Rape as History*, *supra* note 6, at 49.

13. GARRARD, ARTEMISIA, *supra* note 6, at 207. Orazio and Agostino were working on the Consistorium of the Quirinal Palace in Rome. LAPIERRE, *supra* note 6, at 378.

14. Cohen, *Rape as History*, *supra* note 6, at 69.

15. Cohen, *Rape as History*, *supra* note 6, at 70.

not cry out; nevertheless I tried to scream as best I could, calling Tuzia.¹⁶

Artemisia also testified to fighting back. “I scratched his face and pulled his hair and before he penetrated me again I grasped his penis so tight that I even removed a piece of flesh.”¹⁷ Once Agostino was no longer on top of her, Artemisia retrieved a knife and told him that she would kill him for dishonoring her. While she did not stab him, she apparently managed to draw blood. Artemisia described how she “tearfully bewailed her injury” and how Agostino then attempted to pacify her by taking her hand and promising to marry her “as soon as [he got] out of the labyrinth [he was] in.”¹⁸ Artemisia testified that “with this good promise I felt calmer” and she subsequently had sex with him willingly many times.¹⁹ Cohen explains a shift in the tone of Artemisia’s narrative from “violent revenge to compliance”²⁰ as consistent with Artemisia’s goal of defending her honor in an “honor culture.”²¹

Nine months later, in March of 1612, Orazio petitioned²² Pope Paul V, accusing Agostino, Tuzia, and Cosimo Quorli, an officer in the papal household, of the forcible defloration of Artemisia and with theft of a painting.²³ The proceedings focused on the alleged rape. Agostino “adamantly and repeatedly denied sex with Artemisia.”²⁴ Artemisia submitted to judicial torture to confirm the truth of her testimony against Agostino. Lapierre quotes the entry of the clerk:

[t]o remove any trace of doubt, any slur that might prevail with regard to the person of Artemisia, to reinforce her words, and to all good purpose, considering her sex and her age—seventeen years, reckoning by her appearance—the judge orders that Artemisia Gentileschi should undergo the ordeal of the “sibyl” in the presence of and face-to-face with the defendant.²⁵

The “ordeal of the sibyl” involved placing cords between each of

16. Cohen, *Rape as History*, *supra* note 6, at 70 (quoting GARRARD, ARTEMISIA, *supra* note 6, app. B at 416 (alteration in original)).

17. GARRARD, ARTEMISIA, *supra* note 6, app. B at 416; Cohen, *Rape as History*, *supra* note 6, at 70.

18. GARRARD, ARTEMISIA, *supra* note 6, app. B at 416; Cohen, *Rape as History*, *supra* note 6, at 71.

19. GARRARD, ARTEMISIA, *supra* note 6, app. B at 416; Cohen, *Rape as History*, *supra* note 6, at 71.

20. Cohen, *Rape as History*, *supra* note 6, at 71.

21. Cohen, *Rape as History*, *supra* note 6, at 70.

22. Cohen, *Rape as History*, *supra* note 6, at 60 (noting fathers or brothers often brought complaints of forcible defloration).

23. Cohen, *Rape as History*, *supra* note 6, at 59. Orazio’s complaint accused Tuzia of procuring (*lenocinio*) and Quorli of participating in the theft of the painting. See FRANCESCO DE FRANCHIS, DIZIONARIO GIURIDICO: ITALIANO—INGLESE [Italian—English Law Dictionary] 932 (1996) (providing translation of *lenocinio*). Lapierre speculates that the stolen painting may have been *Judith and Her Maidservant with the Head of Holofernes* (Rome, circa 1612), which may have been painted by either Orazio or Artemisia. LAPIERRE, *supra* note 6, at 2d photo and accompanying caption.

24. Cohen, *Rape as History*, *supra* note 6, at 63; see Mary D. Garrard, *Art in America: Artemisia* (Oct. 1998) (describing Agostino’s denial as “so preposterous that the judge admonished him about bearing false witnesses” in movie review), at http://www.findarticles.com/cf_dls/m1248/n10_v86/21250047/print.jhtml.

25. LAPIERRE, *supra* note 6, at 150-51; see also *id.* at 58 (explaining judicial torture commonly used as method for “sorting out conflicting testimonies”).

Artemisia's fingers and tightening them around the joints with slipknots, twisting until these started to crush her joints.²⁶ This form of torture "took its name from the female seers of antiquity whose pronouncements always turned out to be true; it was a torture that made even the most reticent speak."²⁷ Artemisia confirmed her original testimony during this ordeal and in Agostino's presence. There is no evidence that Agostino was subjected to torture, although his adamant denials were at odds with Artemisia's account. According to Lapiere, it was immediately following this ordeal that Artemisia understood that marriage to Agostino was unlikely.²⁸

Despite his claims of innocence, Agostino was nonetheless convicted of "presumed defloration."²⁹ The original sentence gave Agostino a choice of five years on the galleys or banishment from Rome as punishment.³⁰ The next day, the judges issued a new sentence of five years exile.³¹ While Agostino could remain in Rome, he would be unable to work on any site in the city.³² Cohen states that this was not enforced, and thus Agostino was never punished.³³ Indeed, in 1613, Agostino was formally exonerated.³⁴ Lapiere suggests that the second sentence, issued the day after the first, and the failure to impose the usual remedy of either marriage or payment of a dowry, "betrays the ambivalence of the judges."³⁵ The judges' opinion does not reveal the reasons for their uncertainty. Their skepticism, however, may have been the result of prevailing views about women and sex that were dominated by notions of honor.

26. LAPIERRE, *supra* note 6, at 151.

27. LAPIERRE, *supra* note 6, at 151.

28. LAPIERRE, *supra* note 6, at 153 (speculating on questions Agostino may have asked Artemisia during face-to-face confrontation following her torture and Artemisia's response, "I had hoped to have you as my husband"); see Cohen, *Rape as History*, *supra* note 6, at 54 (describing Lapiere's work as "hybrid of scholarship and imagination").

29. LAPIERRE, *supra* note 6, at 186.

30. LAPIERRE, *supra* note 6, at 186.

31. LAPIERRE, *supra* note 6, at 187.

32. LAPIERRE, *supra* note 6, at 187.

33. Cohen, *Rape as History*, *supra* note 6, at 72.

34. Cohen, *Rape as History*, *supra* note 6, at 49 n.7.

35. LAPIERRE, *supra* note 6, at 187. A conviction for rape going unpunished has a modern parallel in another infamous Italian case, known as the "rape in Piazza Navona." In 1988, three men were caught in the act of raping a young woman in Rome's Piazza Navona. They were convicted and sentenced to four years and four months imprisonment. The Supreme Court reduced the sentence by half and imposed a suspended sentence. Eugenia Del Balzo, "Lo stupro di Piazza Navona": *Le sentenze e alcune valutazioni* [*The Rape in Piazza Navona*": *The Judicial Opinions and Some Observations*] QUESTIONE GIUSTIZIA, 1989 No. 1 at 119. The inclusion of a new offense, "group sexual assault," in the reformed law was in large part a public and legislative reaction to this incident. The 1996 law imposes a minimum sentence of six years for group rape, thus precluding suspended sentences. C.P. ART. 609; see also TINA LAGOSTENA BASSI ET AL., *VIOLENZA SESSUALE: 20 ANNI PER UNA LEGGE* [SEXUAL ASSAULT: 20 YEARS FOR A LAW] 64 (1998).

III. THE IMPORTANCE OF HONOR

The nature of the offense charged against Agostino, and other aspects of the events, specifically Artemisia's testimony, reveal early examples of what scholars today label "biases and prejudices" against rape victims, but at the time demonstrated the importance of honor—that of the victim and that of her family. "According to the canons of moral codes, both Christian and honor centered, virginity was the essence of a young female's virtue."³⁶ Thus, a young woman's virginity defined her identity and reputation.

A young women's virginity was also important to the reputation of her family in terms of reflecting the family's ability to control her sexuality.³⁷ If a young woman lost her virginity, she shamed not only herself, but also her family.³⁸ "One [family] member's fall into dishonor threw into doubt the authority and power of the family, proving its weakness and incapacity to defend the reputation of its members."³⁹ Although such assertions about the link between female chastity, a woman's honor, and the honor of her family appear consistently throughout sixteenth and seventeenth century Italian publications, Annibal Guasco's advice to his eleven-year-old daughter about her honor in 1586 is emblematic. He wrote that "to lose [your] honor means to lose [your] soul. The honor of which I have to speak to you . . . is of course that conferred by your chastity."⁴⁰ He then warned his daughter not to be the first in the family to lose what so many other women before her had preserved—their honor. Honor disappeared even if the loss of virginity was involuntary, that is, by force or violence. "[T]he woman who had committed the forbidden acts, even in spite of herself, might be implicitly and mutely condemned by that very fact."⁴¹

One way to attempt to restore honor was to seek judicial remedies. Such proceedings would, of course, publicize the defloration, and therefore result in greater damage to one's honor. Judicial recourse was often a last resort,

36. ELIZABETH S. COHEN, NO LONGER VIRGINS: SELF-PRESENTATION BY YOUNG WOMEN IN LATE RENAISSANCE ROME IN REFIGURING WOMAN: PERSPECTIVES ON GENDER AND THE ITALIAN RENAISSANCE 169, 172 (Marilyn Migiel & Julianna Schesari eds., 1991) [hereinafter COHEN, NO LONGER VIRGINS].

37. COHEN, NO LONGER VIRGINS, *supra* note 36, at 172-73.

38. COHEN, NO LONGER VIRGINS, *supra* note 36, at 173.

39. Sandra Cavallo & Simona Cerutti, *Female Honor and the Social Control of Reproduction in Piedmont Between 1600 and 1800*, in SEX AND GENDER IN HISTORICAL PERSPECTIVE 73, 81 (E. Mair & G. Ruggiero eds., 1990); see SUSAN ESTRICH, REAL RAPE 31 (1987) (discussing importance of chastity in common law's treatment of rape). Estrich noted the paradox that "[c]hastity may have been celebrated, but consent was presumed." ESTRICH, *supra*, at 31.

40. ANNIBAL GUASCO, DISCOURSE TO LADY LAVINIA, HIS DAUGHTER 62 (Peggy Osborn ed. & trans., 2003)

41. GEORGES VIGARELLO, A HISTORY OF RAPE: SEXUAL VIOLENCE IN FRANCE FROM THE 16TH TO THE 20TH CENTURY 24 (Jean Birrell trans., 2001). Vigarello cites this effect as one reason for the rarity of rape complaints. *Id.* "[T]he person afflicted was less able to accuse because she seemed herself contaminated." *Id.* at 30.

pursued only after attempts to resolve the matter informally had failed.⁴²

Rape, or *stuprum*, had a specific meaning: forcible defloration, or forcible taking of a victim's virginity.⁴³ Thus, this charge required proof that the victim had been a virgin, was no longer a virgin, and had not consented to sex. The focus on the loss of virginity was consistent with the value of virginity in the "marriage market."⁴⁴ Indeed, Cohen points out that "a common colloquialism for sexual intercourse was *negotiare*, . . . for doing business or selling things."⁴⁵ Virginity was a commodity that families often exchanged "to promote the collective, social, economic, or political interest."⁴⁶ To take a young woman's virginity was to damage her honor. A victim's marriage to the rapist, however, could restore or repair the victim's honor.⁴⁷ Similarly, a conviction for rape amounted to a determination that although the victim was no longer a virgin, she was "not morally responsible for her loss of virginity."⁴⁸ Indeed, despite the fact that Agostino was not punished, his conviction "proclaimed Artemisia's innocence to the world and restored the whole family's honour."⁴⁹ Representative of the economic value of virginity, another resolution was for the rapist to fund the victim's dowry. While the money itself could not restore the victim's honor or "modesty," it "may have been enough as a dowry to secure her a husband and the acceptable status of being married."⁵⁰

These remedies also repaired the reputation of the victim's family.⁵¹ Men convicted of defloration were usually given a choice between marrying the

42. See Daniele Peccianti, *Gli inconvenienti della repressione dello stupro nella giustizia criminale senese il dilagare delle querele nel settecento* [*The Drawbacks of Repressing Rape in Sieneese Criminal Justice: The Increased Use of the Querela in the 1700s*], in CRIMINALITÀ E SOCIETÀ IN ETÀ MODERNA 477 (Luigi Berlinguer & Floriana Colao eds., 1991) (describing how criminal justice system encouraged forms of private punishment, rather than punishing rapists with imprisonment).

43. Cohen, *Rape as History*, *supra* note 6, at 59 (citing COHEN, NO LONGER VIRGINS, *supra* note 36, at 169 n.1) (noting alleged rapes of nonvirgins seldom prosecuted in criminal court of Rome's Governor during late Renaissance).

44. GUIDO RUGGIERO, THE BOUNDARIES OF EROS: SEX CRIME AND SEXUALITY IN RENAISSANCE VENICE 25 (1985) [hereinafter RUGGIERO, THE BOUNDARIES OF EROS] (noting virginity constituted "a meaningful ideal" and its importance in securing marriage); VIGARELLO, *supra* note 41, at 14 (virginity "was a precondition for marriage . . . a 'deflowered' girl inevitably became a 'lost' girl"); Cohen, *Rape as History*, *supra* note 6, at 58, 60 ("a nonvirgin forfeited some worth in the marriage market").

45. COHEN, NO LONGER VIRGINS, *supra* note 36, at 172.

46. COHEN, NO LONGER VIRGINS, *supra* note 36, at 172.

47. Cohen, *Rape as History*, *supra* note 6, at 60. The doctrine of reparatory marriage was only recently abolished in Italy. Le Leggi, Aug. 5, 1981, n.442.; cf. Frances Ferguson, *Rape and the Rise of the Novel*, 20 REPRESENTATIONS 88, 92 (1987) (describing reparatory marriage in Jewish and Saxon law).

48. Cohen, *Rape as History*, *supra* note 6, at 72 (noting Agostino's "conviction for *stuprum* exonerated Artemisia").

49. LAPIERRE, *supra* note 6, at 187.

50. RUGGIERO, THE BOUNDARIES OF EROS, *supra* note 44, at 30 (describing case in which man abandoned woman after living with her for many years and fathering five children). Although the two had not formally married, the man was ordered to pay the woman fifty ducats "for her modesty." *Id.*

51. COHEN, NO LONGER VIRGINS, *supra* note 36, at 174 (noting victim's honor also restored by becoming nun).

victim, or paying a fine and fund her dowry as punishment. Two days after Agostino's conviction, Artemisia married Pierantonio Stiattesi and while scholars have not found any documents indicating dowry arrangements, there is evidence that Stiattesi's brother was indebted to Orazio,⁵² suggesting that "these debts may have entered into the nuptial exchange."⁵³

The market value of virginity has led some scholars to conclude that some women may have used a claim of rape to secure a husband or a dowry. Cohen describes a dozen rape cases, from 1602 to 1604 in Rome, including a few "opportunistic victims,"⁵⁴ usually young women of little means. Cohen describes two cases in which young women "bartered" their virginity for either immediate material gain, or for promises that the man would provide her with a dowry.⁵⁵ There are suggestions that families lacking funds for a dowry might have schemed to acquire a husband for their daughter.⁵⁶ In other cases, the value of virginity sometimes aided lovers whose parents would not agree to their marriage; the couple's announcement that they had engaged in sexual intercourse often forced the parents to accept the marriage.⁵⁷

The law no longer singles out forcible defloration for separate treatment to protect virginity.⁵⁸ Examining the Jeans case through the prism of Artemisia's conduct and testimony, and their historical significance, however, supports the idea that courts and judges continue to view rape as inflicting damage on a woman's honor. In contrast, modern scholars conceptualize rape as a violation of a woman's sexual autonomy. Cohen criticizes historians, particularly feminist historians, of "anachronistically [endowing the rape and Artemisia's

52. LAPIERRE, *supra* note 6, at 395.

53. Cohen, *Rape as History*, *supra* note 6, at 73 n.100.

54. COHEN, NO LONGER VIRGINS, *supra* note 36, at 180-81.

55. COHEN, NO LONGER VIRGINS, *supra* note 36, at 181-83; *see also* GUIDO RUGGIERO, VIOLENCE IN EARLY RENAISSANCE VENICE 166 (1980) (explaining convictions for raping very young girls difficult to secure, "perhaps because the Forty was wary of attempts by parents to secure dowries through accusations of rape").

56. THOMAS V. COHEN & ELIZABETH S. COHEN, WORDS AND DEEDS IN RENAISSANCE ROME: TRIALS BEFORE THE PAPAL MAGISTRATES 130 (1993). It has been suggested that in some cases, a rape victim's family may have lacked funds for a dowry and was willing to put a young woman in position where man might "compromise her sexually and then by shame or litigation be forced to marry her" to avoid having to fund a dowry. *Id.*

57. COHEN, NO LONGER VIRGINS, *supra* note 36, at 187 n.37. Cohen mentions "Antonio, [who was] charged with the rape of a young virgin, whom all the neighborhood knew he wanted to marry but to whom his kin objected." *Id.*

58. Some American courts view statutory rape statutes and imposition of the death penalty for sexual assault of minors as indirect attempts to protect virginity. *See Garnett v. State*, 632 A.2d 797, 805 (Md. 1993) (discussing justifications for "traditional view of statutory rape as a strict liability crime designed to protect young persons from . . . loss of chastity"). The American Civil Liberties Union, in an amicus brief filed in *Coker v. Georgia*, argued that "[t]he death penalty for rape should be rejected as a vestige of an ancient, patriarchal system in which women were viewed as both the property of men and as entitled to a crippling 'chivalric protection.'" Brief of Amici Curiae American Civil Liberties Union et al. at 11, *Coker v. Georgia*, 433 U.S. 584 (1977) (No. 75-5444), *quoted in* JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 68 (3d ed. 2003).

response to it] with twentieth-century psychology and gender-consciousness.”⁵⁹ In reality, however, judges, like those who reversed Cristiano’s rape conviction, reflect and perpetuate the vestiges of the “honor culture” of which Artemisia was a product.

The importance of honor and social reputation are central to Cohen’s interpretation of the rape trial documents. Cohen describes Tuzia’s testimony as an attempt “to portray Orazio as a man of honor and conscientious parent and Artemisia as a reputable young woman.”⁶⁰ Agostino adopted a common strategy of “blackening the honor of his accusers,” depicting Artemisia as a “promiscuous flirt with a bad reputation around town.”⁶¹ At one point, Agostino even claims that Artemisia was having an incestuous relationship with her father.⁶²

In her own testimony, “Artemisia highlights her social identity, particularly her honor.”⁶³ For example, Artemisia demonstrated that she understood and observed appropriate behavior between men and women when she testified that she had “refused a male visitor with [the] message that ‘[i]t is not done to talk with unmarried women in the evening.’”⁶⁴ Her account of her violent attack on Agostino immediately after the rape is another example of her attempt to defend her honor. “In honor’s terms, she constructs herself as the better man than [Orazio] was.”⁶⁵ Arguably, Orazio’s honor was also damaged because it was his responsibility to protect his daughter’s virginity.⁶⁶ Garrard explains that for men “loss of honor came from not adequately defending the sexual purity of his women.”⁶⁷ Artemisia attempted to defend her honor by violence.⁶⁸

In contrast to Artemisia’s violent resistance, as discussed above, her testimony reflects a tone of compliance after Agostino promises to marry her. “In reputation’s terms [Agostino’s] promises did transform the situation, and a single-minded quest for social respect demanded of [Artemisia’s testimony] a parallel reorientation.”⁶⁹ Indeed, Ruggiero states that “[i]t was not atypical to

59. Cohen, *Rape as History*, *supra* note 6, at 50.

60. Cohen, *Rape as History*, *supra* note 6, at 61.

61. Cohen, *Rape as History*, *supra* note 6, at 63.

62. GARRARD, ARTEMISIA, *supra* note 6, app. B at 453 (quoting Agostino’s testimony).

63. Cohen, *Rape as History*, *supra* note 6, at 67.

64. Cohen, *Rape as History*, *supra* note 6, at 69 (quoting GARRARD, ARTEMISIA, *supra* note 6, app. B at 414-15).

65. Cohen, *Rape as History*, *supra* note 6, at 72.

66. See RUGGIERO, THE BOUNDARIES OF EROS, *supra* note 44, at 17-18 (providing example of damaged honor of rape victim’s family). An uncle or father’s honor would be damaged by the rape of his niece or daughter because these men were responsible for protecting the virginity of their charges. *Id.*

67. MARY D. GARRARD, ARTEMISIA GENTILESCHI AROUND 1622: THE SHAPING AND RESHAPING OF ARTISTIC IDENTITY 84 (2001) [hereinafter GARRARD, ARTEMISIA AROUND 1622].

68. See RUGGIERO, THE BOUNDARIES OF EROS, *supra* note 44, at 18. During the Renaissance, Venetian authorities discouraged “the traditional pursuit of vengeance through vendetta . . . as a method of restoring honor” and instead “governmental discipline” was to be imposed. *Id.*

69. Cohen, *Rape as History*, *supra* note 6, at 71.

begin a relationship with rape, move on to a promise of marriage, and continue with an affair From rape to fornication to marriage appears to have been a relatively common progression.⁷⁰ Thus, it was not peculiar that Artemisia would have continued to have sex with Agostino. “For a year [after the rape] Artemisia continued to regard Agostino as her betrothed.”⁷¹ Artemisia testified that Agostino repeated his promise of marriage many times after the rape.⁷²

Artemisia’s willingness to marry Agostino and her refusal to withdraw the claim of defloration were consistent with her concern for her honor. While Agostino was in jail, but before Artemisia was subjected to judicial torture, she visited Agostino in a further attempt to reach a marriage agreement. Instead, he asked her to withdraw her allegations. She refused. To retract the allegation of rape would be to “sacrifice her good name [and] her credibility by agreeing that someone else had taken her virginity after all.”⁷³ Shortly after this visit, Artemisia learned that Agostino was married and his wife was still alive.⁷⁴ Thus, it became clear that marriage to Agostino was no longer an option to remedy Artemisia’s damaged honor.

IV. ARTEMISIA, JUDITH, SUSANNA, LUCRETIA, AND HONOR

In her critique of art historians such as Garrard, Cohen emphasizes the need to look at the written record of Agostino’s trial and consider it in the proper historical context. Cohen correctly states that a woman’s honor, and the restoration of her honor, was tied to her virginity and chastity and that restoring her honor was also tied to chastity; a dowry could compensate for lost virginity, as could marriage. The rapist’s conviction might also restore a woman’s honor because the conviction implicitly demonstrates a lack of consent and the woman’s attempt to protect her honor. It is not clear, however, that the conviction of the rapist always declared the victim free from blame. For example, a nun who had been raped could not return to her respectable convent

70. See RUGGIERO, *THE BOUNDARIES OF EROS*, *supra* note 44, at 31; see also COHEN, *NO LONGER VIRGINS*, *supra* note 36, at 189 (noting “it was apparently common for women to acquiesce [to subsequent sexual activity with the man who had deflowered them] on the grounds that the promise of marriage coupled with sexual intercourse constituted a binding relationship”); Cohen, *Rape as History*, *supra* note 6, at 58 (“[i]f promises of marriage, even words blurted in private, accompanied sex, many understood it as a part of courtship”).

71. Cohen, *Rape as History*, *supra* note 6, at 71 (citing GARRARD, *ARTEMISIA*, *supra* note 6, app. B at 416, 464, 467); *id.* at 58 (noting “even forced intercourse established a continuing relationship in which further physical intimacy might be tolerated”). See generally Abigail Dyer, *Seduction by Promise of Marriage: Law, Sex, and Culture in Seventeenth-Century Spain*, 34:2 *SIXTEENTH CENTURY J.* 439 (2003) (discussing use of law to transform deviant sexual conduct into acceptable behavior, thus restoring honor of women involved).

72. GARRARD, *ARTEMISIA*, *supra* note 6, app. B at 416. Artemisia also testified that Agostino did not give her presents during this time, other than when they exchanged Christmas gifts, stating, “I didn’t want [gifts], since what I was doing with him [engaging in sexual intercourse] I did only so that, as he had dishonored me, he would marry me.” *Id.* app. B at 418.

73. GARRARD, *ARTEMISIA*, *supra* note 6, app. B at 464; Cohen, *Rape as History*, *supra* note 6, at 71.

74. LAPIERRE, *supra* note 6, at 153; Cohen, *Rape as History*, *supra* note 6, at 71 n.94.

after her rapist's conviction. Rather, she was sent to a *Convertite*, a home for reformed prostitutes.⁷⁵

Given this historical context, Cohen dismisses characterizations of Artemisia and her art as suggesting an “emergent feminist consciousness rooted in anger.”⁷⁶ Rather, according to Cohen, Artemisia responded “with strength to the rape and its troubled social consequences but within the constraints of her time, not as might a twentieth-century heroine.” Certainly, Artemisia’s response was constrained by the link between chastity and honor, as socially and legally defined during that time. In the context of the trial, and in attempts to negotiate a marriage with Agostino, Artemisia attempted to work within these constraints and restore what society defined as valuable.

Cohen acknowledges that “while corporeal experiences no doubt shaped the personalities of individual early modern women, their culture offered little with which to understand the links between their bodies and their place in society”⁷⁷ and concludes that women of Artemisia’s time identified themselves with their honor more than their “bodily or psychological integrity.”⁷⁸ Cohen argues that the culture of that time did not define rape in those terms, and therefore neither should scholars of today. Cohen does not consider the possibility that Artemisia, and other women of her time, may have experienced such “modern” feelings, but that the patriarchal discourse did not provide words with which to discuss these feelings, nor a forum in which they could be heard. Rather, culture and law recognized only language that described damaged honor, and therefore women formulated their injury in these terms.⁷⁹ It is only relatively recently that certain concepts of the body and of rape as power have been articulated, but this does not necessarily mean that these feelings did not exist in the past. Indeed, Artemisia’s art, or at least some of it, may have been the vehicle through which she attempted to articulate such feelings of violation.⁸⁰ Such feelings may have included not only the physical violation itself, but also

75. Laura Jane McGough, “Raised from the Devil’s Jaws”: A Convent for Repentant Prostitutes in Venice, 1530-1670 52 (1997) (unpublished dissertation, Northwestern University) (on file with author).

76. Cohen, *Rape as History*, *supra* note 6, at 48.

77. Cohen, *Rape as History*, *supra* note 6, at 74.

78. Cohen, *Rape as History*, *supra* note 6, at 68.

79. See Cavallo & Cerutti, *supra* note 39, at 76 (describing testimony of women in 1600s characterizing man’s “insistence on sexual intercourse” as “aggression against their honor”); see also GWENDOLYN MINK, HOSTILE ENVIRONMENT: THE POLITICAL PORTRAYAL OF SEXUALLY HARASSED WOMEN 11 (1999) (describing author’s more modern experience with sexual harassment). Mink wrote, “it [sexual harassment] did not yet even have a name . . . I did not have the vocabulary to describe what had happened to me as sexual harassment . . . I did have a vocabulary to express anger and fear, however.” MINK, *supra*, at 11.

80. Rape trauma syndrome developed as a way to better understand the reactions of rape victims and to better treat such victims. The syndrome identifies both physical and psychological responses to rape that women experience in both the long term and in the short term. These responses include “headaches, fatigue, . . . nightmares, phobic reactions.” KATHARINE T. BARTLETT ET AL., GENDER AND THE LAW: THEORY, DOCTRINE AND COMMENTARY 970-71 (3d ed. 2002) (including bibliography of sources and judicial opinions addressing admissibility of rape trauma syndrome evidence).

feelings about power imbalances between men and women. The images Artemisia portrayed, including the ones discussed in this section, were images portrayed by many artists throughout the sixteenth and seventeenth centuries. This section compares some of the typical representations of these women with those of Artemisia.

Many scholars contend that the “violence and realism” of Artemisia’s *Judith Slaying Holofernes*, painted at the time of the trial, “suggest that the painter is settling personal scores.”⁸¹ For some scholars, the calm Judith who slits Holofernes’ throat resembles Artemisia,⁸² and the face of Holofernes, of which the viewer has nearly a full shot, arguably bears a likeness to Agostino. “Vengeance through vendetta”⁸³ was a traditional way to restore injured honor. While Cohen seems to dismiss such interpretations of Artemisia’s art that are linked to the rape and the trial,⁸⁴ figurative violent revenge, similar to the actual violent behavior of Artemisia immediately following the rape, is consistent with Cohen’s thesis that Artemisia was motivated by a “preeminent commitment to her honor.”⁸⁵ Artemisia’s portrayals of Judith, Susanna, and Lucretia—and their stories—confirm the significance of honor in law and society. As Garrard points out, Artemisia’s renditions of these images reflect a complexity and depth of emotions that modern women are able to articulate verbally, but which Italian society in Artemisia’s time described only in terms of female honor. This aspect of Artemisia’s paintings is in sharp contrast to the dichotomous portrayals most commonly found.

Just as interpretations of Artemisia’s art and the relevance of the rape and trial have varied, so too have explanations and understandings of the story of Judith varied.⁸⁶ Stated briefly, to save the Israelite town of Bethulia from General Holofernes’ army, Judith, a virtuous and pious widow, claims defection to Holofernes’ guards and is provided shelter, along with her maid. Holofernes becomes smitten, but the women remain aloof. After three days, Holofernes arranges a banquet in his tent “for the explicit purpose of seducing

81. LAPIERRE, *supra* note 6, photo insert and accompanying caption; Garrard, *Art in America*, *supra* note 24, Part 2 (pointing out “that Artemisia the rape victim must on some level have identified with Judith the tyrannicide has escaped no commentator”).

82. See GARRARD, ARTEMISIA, *supra* note 6, at 312-13 (discussing different views on whether Judith resembles Artemisia or whether maidservant, Abra, painted self-portrait).

83. See RUGGIERO, THE BOUNDARIES OF EROS, *supra* note 44, at 18 (explaining Venetian authorities sought to replace this tradition with “governmental discipline”).

84. Cohen, *Rape as History*, *supra* note 6, at 72 n.98 (referring to Garrard’s comments on relationship between Artemisia and Tuzia). Garrard speculates that “a female solidarity expressed in the Judith pictures might reflect Artemisia’s nostalgia for a friendship lost.” *Id.* Cohen asks, “[m]ight she not as likely have evoked anger or distrust of other women?” *Id.*

85. Cohen, *Rape as History*, *supra* note 6, at 69 n.82.

86. See Elena Ciletti, *Patriarchal Ideology in the Renaissance Iconography of Judith*, in REFIGURING WOMAN: PERSPECTIVES ON GENDER AND THE ITALIAN RENAISSANCE 35 (Marilyn Migiel & Julianna Schesari eds., 1991) (describing various meanings given to story of Judith); see also GARRARD, ARTEMISIA, *supra* note 6, at 280-91 (providing further description of Judith and interpretations of story).

Judith.”⁸⁷ After Holofernes drinks himself unconscious, Judith takes his sword and beheads him, places his head in a sack and flees, returning to Bethulia. Ciletti explains that “[f]rom the start, considerable stress was placed on the chastity of the heroine, rooted in her explicit denial of any ‘pollution’ at the hands of Holofernes.”⁸⁸

The story concludes that Judith “knew no man all the days of her life after the death of Manasses her husband.”⁸⁹ This last part of the story may have been an attempt to address the fact that Judith was a widow, “the archetypal ambiguous woman, to whom . . . characteristics of wildness and sexual rapacity were traditionally attributed.”⁹⁰ The assertion that Judith knew no other man further supports her purity. Nonetheless, interpretations of this story have run the gamut throughout history from depicting Judith as a “heroic virgin,” linking chastity to virtue⁹¹ to portrayals of “a dangerous, erotic Judith”⁹² who used “feminine wiles” to defeat Holofernes.⁹³ This alternative interpretation of Judith is consistent with the idea that women are scheming and use their sexuality to obtain something from men, similar to the earlier discussion about speculations that women bring false rape charges in order to obtain a husband or a dowry.⁹⁴

Related interpretations of this story emphasized a cautionary message to men, that is, the danger of their lust. This portrayal makes the story an example of “the dangers of powerful women to men.”⁹⁵ Indeed, the controversy surrounding the placement of Donatello’s *Judith and Holofernes* reflects such gendered concerns.⁹⁶ Yael Even traces the different placements of this sculpture in Florence and concludes that ultimately it was replaced by “other, more patriarchally sanctioned images.”⁹⁷ In 1504, a commission was assigned the task of determining where to place Michelangelo’s *David*. The committee favored removing *Judith and Holofernes* from its prominent place in the Loggia dei Lanzi,⁹⁸ and replacing it with the *David*. Members expressed

87. Ciletti, *supra* note 86, at 40.

88. Ciletti, *supra* note 86, at 42.

89. Ciletti, *supra* note 86, at 42.

90. Cavallo & Cerutti, *supra* note 39, at 79.

91. Ciletti, *supra* note 86, at 43.

92. Ciletti, *supra* note 86, at 46.

93. Ciletti, *supra* note 86, at 45.

94. See *supra* Part III.

95. GARRARD, ARTEMISIA, *supra* note 6, at 292.

96. Yael Even, *The Loggia dei Lanzi: A Showcase of Female Subjugation*, in EXPANDING THE DISCOURSE: FEMINISM IN ART HISTORY 127 (Norma Broude and Mary D. Garrard eds., 1992). These images were Giovanni de Bologna’s *Rape of a Sabine* (1581-1583) and Benvenuto Cellini’s *Perseus and Medusa* (1545-1554). *Id.*

97. Even, *supra* note 96, at 127.

98. Even, *supra* note 96, at 129 (describing Loggia dei Lanzi on the Piazza della Signoria as “political center of the city [of Florence]”).

concerns that “it is not fitting that the woman should kill the man.”⁹⁹

It seems, however, that the dominant interpretations around at the time of Artemisia’s rape and around the time she painted the scene emphasize Judith’s purity.¹⁰⁰ Specifically, that Judith’s “virginal purity” gave her such power and strength that she was able to defeat Holofernes.¹⁰¹ Similarly, Donatello’s sculpture, *Judith and Holofernes* has been seen as embodying an “allegory of victory: of Sanctity over Lust, or Humanity over Pride,”¹⁰² emphasizing virtue in terms of “civic action.”¹⁰³ Yet, Donatello’s representation of *Judith* seems more masculine than that of Botticelli’s Judith.¹⁰⁴ Nonetheless, without meaning to unduly simplify the meanings attributed to the story of Judith, even if Artemisia had not seen Donatello’s and Botticelli’s portrayals of Judith, she had seen Caravaggio’s and would have been aware of the prevailing interpretation of Judith as powerful because of her purity.¹⁰⁵ Indeed, Artemisia’s depiction of Judith emphatically evokes power and strength and the triumph over evil.

Garrard describes Caravaggio’s *Judith Beheading Holofernes* (1598-1599) as “a significant change in the artistic treatment” of the story, by focusing on the “human conflict between the two principal characters.”¹⁰⁶ In her first rendition of the scene, *Judith Slaying Holofernes* (1612-1613) (the Naples *Judith*), Artemisia builds on this theme, by depicting the scene with more action. Her Judith is neither a glamorous *femme fatale* nor a manly heroine;¹⁰⁷ she is “no longer dichotomized into saint or sinner.”¹⁰⁸ Rather, she is “an individualized figure . . . who is convincingly engaged in a specific action.”¹⁰⁹ In a subsequent rendering, the Uffizi *Judith Slaying Holofernes* (1620), Artemisia incorporates cues that clearly identify Judith’s triumph with “Christ’s victory over Satan.”¹¹⁰ Specifically, the sword used to slay Holofernes now resembles a cross, and the maidservant, Abra, “bends over Holofernes in direct vertical alignment with the sword.”¹¹¹ Garrard concludes, “Abra represents divine justice, while Judith is allowed to stand for human vengeance.”¹¹² Thus,

99. Even, *supra* note 96, at 127, 130 (quoting H.W. JANSON, *THE SCULPTURE OF DONATELLO* 199 (1963)).

100. Ciletti, *supra* note 86, at 41 (examining Botticelli’s 1470 painting, *The Return of Judith to Bethulia*).

101. Ciletti, *supra* note 86, at 43.

102. Ciletti, *supra* note 86, at 58.

103. Ciletti, *supra* note 86, at 63.

104. Ciletti, *supra* note 86, at 63.

105. See GARRARD, ARTEMISIA, *supra* note 6, at 307 (pointing out “she found in Caravaggio her primary inspiration for the image” of Judith beheading Holofernes).

106. GARRARD, ARTEMISIA, *supra* note 6, at 290.

107. GARRARD, ARTEMISIA, *supra* note 6, at 303.

108. GARRARD, ARTEMISIA, *supra* note 6, at 320.

109. GARRARD, ARTEMISIA, *supra* note 6, at 303.

110. GARRARD, ARTEMISIA, *supra* note 6, at 325.

111. GARRARD, ARTEMISIA, *supra* note 6, at 324-25.

112. GARRARD, ARTEMISIA, *supra* note 6, at 325.

Artemisia builds on the story of Judith as the triumph over evil, but by eschewing both the temptress and the pious traditional portrayals, Artemisia's Judith falls outside the patriarchal discourse. As Garrard explains, by not depicting Judith as either virtuous or glamorous, Artemisia "challenge[d] by omission the value structure of the society in which [these Judiths] were produced."¹¹³

Artemisia's *Susanna and the Elders* suggests another attempt to defend her honor by proclaiming her innocence. Painted perhaps around 1610, this work tells a "story about lascivious old men viewing and even moving to rape a beautiful woman, vulnerable and naked at her bath."¹¹⁴ When Susanna refuses the elders, they take revenge by accusing her of adultery with another man. They take their accusation to court and Susanna is condemned to death. The wise Daniel saves the innocent Susanna by proposing to question the two elders separately. This "sequestration of witnesses"¹¹⁵ results in inconsistent stories, revealing the accusers to be liars.

There are several examples of the importance of preserving sexual honor (virginity or chastity) in the story of Susanna. Garrard points out that the Elders' advances threatened Susanna's reputation.¹¹⁶ Likewise, their subsequent accusation threatened her honor as well. In addition, the Elders threatened the honor of Susanna's husband, Joachim, since his wife's "sexuality was [his] exclusive property."¹¹⁷ Indeed, the sexual honor threatened in this story is so important that Susanna was willing to accept death rather than "yield to the Elders."¹¹⁸

The story of Susanna also reflects the importance of society's honor. Although Joachim's honor is threatened by the situation, he has no "independent right to forgive his wife's apparent infidelity."¹¹⁹ This is consistent with Ruggiero's explanation of the stake Venetian authorities had in redressing honor "by judging the extent of its loss and providing a socially acceptable vengeance" rather than through private vendetta.¹²⁰ Joachim's "only stake is as a member of the society, which judges the crime."¹²¹

Despite the fact that the story's "fundamental moral [is] the discovery of truth and the execution of justice," many artists have depicted Susanna as a

113. GARRARD, ARTEMISIA, *supra* note 6, at 336.

114. Carol Weisbrod, *Susanna and the Elders: A Note on the Regulation of Families*, 1998 UTAH L. REV. 271, 271 (1998).

115. Weisbrod, *supra* note 114, at 271.

116. GARRARD, ARTEMISIA, *supra* note 6, at 194.

117. GARRARD, ARTEMISIA, *supra* note 6, at 194.

118. GARRARD, ARTEMISIA, *supra* note 6, at 194; *see also* Weisbrod, *supra* note 114, at 275 (discussing difficulty of determining what actually happened in garden between Susanna and the Elders). Weisbrod further notes difficulty in assigning meaning to these events. Weisbrod, *supra* note 114, at 275.

119. Weisbrod, *supra* note 114, at 273 n.19.

120. *See* RUGGIERO, THE BOUNDARIES OF EROS, *supra* note 44, at 18.

121. Weisbrod, *supra* note 114, at 273 n.19.

half-willing participant, implying that the story is really about “Susanna’s dilemma [of] whether or not to give in to her sexual instincts.”¹²² By contrast, Artemisia’s Susanna

presents the image of a victimized woman, oppressed rather than intrigued by her would-be seducers . . . [Artemisia’s Pommersfelden *Susanna*] offers a perspective on sex crime distinctly at odds with literary convention but perhaps more accurately reflective of social practice, unmasking in its very difference the raw reality of male manipulation of female chastity.¹²³

Garrard points to a number of features in this painting that break with traditional renditions of the story. “[Susanna’s] wrinkled brow, strained flesh and taut muscles, heighten our sense of the victim’s distress and vulnerability.”¹²⁴ Susanna’s facial expression and defensively raised arm convey her distressed reaction to the two men. By contrast, other paintings of this scene include a lush “garden of love” as the location of her bath, and Susanna looking at her would-be rapists with an almost amorous gaze, as in the 1590 rendition by Annibale Carracci.¹²⁵ Sebastiano Ricci’s painting of this scene depicts a Susanna whose body and facial expression suggest “outright acquiescence.”¹²⁶ Another painting evokes a comparison between Eve’s temptation by including an apple tree in the garden where Susanna bathes.¹²⁷ Even Tintoretto’s *Susanna and the Elders* (1555-1556) portrays Susanna as pure by including links to the Virgin Mary, the “emphasis [of the painting is] upon Susanna’s voluptuous body.”¹²⁸

Artemisia’s choice of this subject may be another figurative attempt to restore her honor. While historians dispute the year, it seems to have been painted around the time of the rape trial.¹²⁹ In addition, Susanna’s resemblance to Artemisia suggests that Artemisia herself was threatened by the men in the painting. Although the biblical story describes two old men, one of the men in Artemisia’s work has a full head of “beautiful brown curls” indicating both youth and a similarity to Agostino.¹³⁰ If Artemisia did, in fact, depict Agostino, it suggests not only that he raped her, but also may refer to the fact that throughout the judicial proceedings Agostino accused Artemisia of having numerous lovers, including her own father. Thus, Artemisia may have used the story of Susanna to declare her own innocence of such accusations.

122. GARRARD, ARTEMISIA, *supra* note 6, at 194. The Elders were subsequently executed by stoning. *Id.*

123. GARRARD, ARTEMISIA AROUND 1622, *supra* note 67, at 85.

124. GARRARD, ARTEMISIA AROUND 1622, *supra* note 67, at 77-79.

125. GARRARD, ARTEMISIA AROUND 1622, *supra* note 67, at 81; *see also* GARRARD, ARTEMISIA, *supra* note 6, at 190.

126. GARRARD, ARTEMISIA, *supra* note 6, at 192.

127. GARRARD, ARTEMISIA, *supra* note 6, at 193 (reproducing and discussing Peter Paul Rubens’ *Susanna and the Elders* (1636-1640)).

128. GARRARD, ARTEMISIA, *supra* note 6, at 191.

129. LAPIERRE, *supra* note 6, at first photo insert and accompanying caption.

130. LAPIERRE, *supra* note 6, at first photo insert and accompanying caption.

An additional link between the trial of Artemisia and the trial of Susanna is that Agostino suborned perjured testimony to her lasciviousness, just as the Elders were ultimately revealed as liars, resulting in a finding of Susanna's innocence. After Agostino presented witnesses claiming to have seen Artemisia kissing other men, Orazio brought suit against these men for bearing false witnesses.¹³¹ Artemisia testified that prior to the rape Cosimo Quorli, with Agostino present, had attempted to persuade Artemisia to "be nice to Agostino," and then accused Artemisia, "You have given it to so many, you can give it to him as well."¹³² This parallels the male conspiracy involved in the Susanna story. There is also a parallel to the theme of threatened honor. Artemisia testified that after the rape by Agostino, Cosimo attempted to rape her, but she resisted. In response, Artemisia stated that Cosimo told her "that he was going to boast about it in any case and would tell everyone [even though it was false]."¹³³

A third subject of Artemisia's paintings was the story of Lucretia. This story begins with Tarquinius Collatinus,¹³⁴ and other men, at a gathering over food and wine, who start to argue about whose wife is the most virtuous.¹³⁵ They decide to go check up on their wives to settle the dispute. "While [the other wives] were having luxurious banquets and were engaged in idle revelry, Lucretia [Collatinus' wife] was found alone with her handmaidens, quietly and industriously spinning wool."¹³⁶ Lucretia was, without dispute, deemed the most virtuous. One of the other men, Sextus, however, became "seized with the desire to seduce [Lucretia] or to take her by force."¹³⁷ Sextus later returned to Collatinus' home, awakened Lucretia with his sword drawn, and threatened to kill her if she did not submit to him. "When she refused even in the face of death, he added a more ominous threat: he would also kill his own slave, and place their naked bodies side by side in bed, so that they would appear to have been put to death in adultery."¹³⁸

With this threat, Sextus succeeded in overcoming Lucretia's unwillingness. Lucretia then called for her husband, her father, and two of their friends to tell them what happened. Although the men told Lucretia that she was not to blame, she stated, "though I acquit myself of the sin, I do not absolve myself

131. GARRARD, ARTEMISIA, *supra* note 6, app. B at 479, 481. Niccolò Bedino was subjected to torture to test the truth of his statements against Artemisia and he confirmed his testimony. The outcome of the complaint by Orazio against Bedino has not been determined. LAPIERRE, *supra* note 6, at 185.

132. GARRARD, ARTEMISIA, *supra* note 6, app. B at 415. Quorli died during the proceedings against Agostino before being questioned. *Id.*

133. GARRARD, ARTEMISIA, *supra* note 6, at 417.

134. GARRARD, ARTEMISIA, *supra* note 6, at 216. Kin of the "tyrannical ruler Tarquinius Superbus." *Id.*

135. GARRARD, ARTEMISIA, *supra* note 6, at 216; WOMEN'S LIFE IN GREECE AND ROME: A SOURCE BOOK IN TRANSLATION 132 (Mary R. Lefkowitz & Maureen B. Fant eds., 1992) [hereinafter WOMEN'S LIFE].

136. GARRARD, ARTEMISIA, *supra* note 6, at 216.

137. GARRARD, ARTEMISIA, *supra* note 6, at 216.

138. GARRARD, ARTEMISIA, *supra* note 6, at 216.

from the punishment; nor in time to come shall ever unchaste woman live through the example of Lucretia.”¹³⁹ She then plunged a dagger into her heart and died. Her body was displayed in the Roman Forum while “Brutus eloquently described the crimes and tyranny of the Tarquins, the people rose up against the king and banished his family from Rome.”¹⁴⁰

Much like the story of Judith, it is a virtuous Lucretia who “triggers the downfall of tyranny.”¹⁴¹ Honor plays a central role in this story as well. “Romans regarded suicide not as morally wrong, but simply as the final act of rational choice in a life lived nobly and honorably.”¹⁴² Lucretia does not submit to Sextus to save her life, rather she submits so that she may tell her husband and father, and then kills herself to restore her honor posthumously. The threat Sextus posed to Lucretia’s honor parallels the Elders’ attempts to ruin Susanna’s honor, and both threats involve fabricated allegations of their lack of chastity, just as Agostino fabricated stories about Artemisia’s lack of chastity.

In examining female honor between 1600 and 1800 in Piedmont, Cavallo and Cerutti explain that this was a frequent tactic. “The woman was pressed into sexual intercourse against her wishes with threats of being defamed and dishonored no matter what.”¹⁴³

Similar to interpretations of the Judith and Susanna stories, depictions of Lucretia’s story range from describing Lucretia as pure, and virtuous, and willing to sacrifice her life for her honor and for her family’s honor, to rewritings of the story that question Lucretia’s chastity.¹⁴⁴ Garrard points out that the suggestions that Lucretia was not really raped center on the reluctance to believe “that she could have been raped by Tarquin without experiencing at least some enjoyment . . . being flesh and blood, she could not help feeling physical pleasure in the act, and thus she must die because she *is* a willing participant.”¹⁴⁵ Thus, the suggestion that Lucretia was willing explains her suicide; that is, it was out of guilt and not shame. As Vigarello has pointed out, “[T]he woman who had committed the forbidden acts, even in spite of herself, might be implicitly and mutely condemned by that very fact.”¹⁴⁶

Lucretia’s story emphasizes the importance of honor and the need to sacrifice even one’s life in order to preserve honor. Yet the above interpretations represent an enduring skepticism about whether a woman can

139. GARRARD, ARTEMISIA, *supra* note 6, at 216. This has also been translated as: “[A]lthough I absolve myself of guilt, I do not release myself from paying the penalty. From now on, no woman can use the example of Lucretia to live unchaste.” WOMEN’S LIFE, *supra* note 135, at 133.

140. GARRARD, ARTEMISIA, *supra* note 6, at 216.

141. GARRARD, ARTEMISIA, *supra* note 6, at 217.

142. GARRARD, ARTEMISIA, *supra* note 6, at 217-18.

143. Cavallo & Cerutti, *supra* note 39, at 79.

144. GARRARD, ARTEMISIA, *supra* note 6, at 219.

145. GARRARD, ARTEMISIA, *supra* note 6, at 219.

146. VIGARELLO, *supra* note 41, at 24.

ever be raped. Indeed, Garrard points out that many portrayals of the suicide paint Lucretia in suggestive poses and with seductive gazes, “symbolically re-enacting the rape but this time with pleasure.”¹⁴⁷

Artemisia’s painting, *Lucretia* (circa 1621), shows the heroine holding the dagger pointing up, rather than aiming at her heart, with an expression of doubt rather than assured determination. Artemisia’s version “places emphasis on postponing, questioning and shielding Lucretia from such an unjust fate.”¹⁴⁸ Garrard suggests that Artemisia’s *Lucretia* is an answer to Saint Augustine’s dilemma about Lucretia’s story.¹⁴⁹ Saint Augustine struggled with the question of determining Lucretia’s crime, adultery or murder. Lucretia is a murderess if she killed “an innocent and chaste woman,” but “to extenuate the homicide . . . confirm[s] the adultery; if you acquit her of adultery, you make the charge of murder heavier.”¹⁵⁰ By contrast to this either-or dichotomy, Garrard suggests the following:

Artemisia reminds us that “Augustine’s dilemma” is properly Lucretia’s. And the new terms of that dilemma broaden its human meaning. It is no longer a philosophical exercise, but an immediate psychological reality, no longer a question of rules of behavior derived from patriarchal rights of possession, but now of an individual’s choice of action in a situation in which no course of action is without penalty.¹⁵¹

Even though Lucretia takes her own life after suffering the damage to her honor by Tarquin, this sacrifice was not enough to quell doubts about her claim of rape; her honor was not restored. Similarly, while Lapierre states that Agostino’s conviction declared Artemisia’s innocence, Artemisia nonetheless married Stiattesi two days later, indicating that her honor had not been completely restored by Agostino’s conviction.¹⁵² Both Lucretia and Artemisia have been subjected to “lingering suspicion that [they] might have enjoyed [the rape] and thus that it was not ‘really’ rape.”¹⁵³

The stories of all four women, Artemisia, Judith, Susanna, and Lucretia, reveal enduring dichotomies about women and sexuality. As discussed above, Artemisia has been described as both an unfortunate victim and as a “lascivious and precocious girl.”¹⁵⁴ While a successful rape prosecution against Agostino would restore her honor, it would do so only by making the facts public and putting her honor at additional risk. Cohen states since “litigation threatened to

147. GARRARD, ARTEMISIA, *supra* note 6, at 224.

148. Janice A. Jaffe, *Sor Juana, Artemisia Gentileschi, and Lucretia: Worthy Women Portraying Worthy Women* 40 ROMANCE Q. 141, 150 (1993).

149. GARRARD, ARTEMISIA, *supra* note 6, at 218.

150. GARRARD, ARTEMISIA, *supra* note 6, at 218 (quoting ST. AURELIUS AUGUSTINE, CITY OF GOD, BOOK I ch. 19 (Rev. Marcus Dods trans., 1871-1872)).

151. GARRARD, ARTEMISIA, *supra* note 6, at 213.

152. See *supra* note 54 and accompanying text.

153. GARRARD, ARTEMISIA, *supra* note 6, at 232.

154. See *supra* note 10 and accompanying text.

air the family's dirty linen, a father scrupulous of honor might well prefer to settle matters quietly."¹⁵⁵ Judith was either a model of purity and strength, or an opportunist who used her sexuality to defeat a man. Susanna was either an innocent victim whose honor was sullied by the Elders and was willing to sacrifice her life to preserve her honor and that of her husband, or she was enticed and tempted, at the very least, by the overtures of the Elders. Similarly, Lucretia may have been virtuous and pure and may have taken her life to preserve her honor and that of her husband, or she was indeed guilty of enjoying the adultery and had to suffer the punishment.

Honor plays a critical role in every version of these stories and reveals two contradictory ideas about women and sex, ideas common in Artemisia's time and still disturbingly present today. First, honorable women are not, and cannot be, victims of rape. Such women resist, fight back, and are willing to sacrifice their lives rather than dishonor themselves or their families. Second, dishonorable women use sex (or virginity) to acquire power (or marriage or a dowry) over men and such women are likely to bring false rape accusations.¹⁵⁶ The Italian Supreme Court's opinion in the 1998 Jeans case illustrates how these notions of female honor and the dichotomous views of women have endured. In a number of ways, the Court indicates that the harm of rape is the damage inflicted on female honor, as defined by chastity.

IV. THE "JEANS" DEFENSE TO RAPE

On July 12, 1992, eighteen year old P.R. told her parents, and subsequently the police, that her forty-five-year-old driving instructor had raped her earlier that day.¹⁵⁷ P.R. recounted that her instructor, Carmine Cristiano, picked her up around 12:30 p.m., as he had on other occasions, for driving lessons. Cristiano told P.R. that they first had to pick up another student for lessons, and he drove outside the center of the city and parked in a small street. He then threw P.R. to the ground, and, after removing her jeans from one of her legs, raped her. Cristiano then directed P.R. to drive back to her home and threatened her not to tell anyone what happened. P.R.'s parents observed that she seemed disturbed upon returning from her driving lesson and asked what was wrong. P.R. did not tell them at this point. It was only after returning

155. Cohen, *Rape as History*, *supra* note 6, at 60. Indeed, one of Agostino's witnesses testified that he had "heard people say everywhere" that Orazio sued Agostino for deflowering Artemisia. GARRARD, ARTEMISIA, *supra* note 6, app. B at 479.

156. See Rachel A. Van Cleave, *Prosecuting Rape by Querela in Italy: Protection of Victim Agency or Legislative Compromise?* (2004) (unpublished manuscript, on file with author) (discussing traditional requirement of rape prosecuted by *querela*—formal declaration by victim). Prosecution by *querela* effectively reduced the number of rape allegations because to bring a rape allegation was to admit to being "vulgar and ill-bred." *Id.* (quoting Giovanni Cazzetta, "Colpevole col consentire" *Dallo stupro alla violenza sessuale nella penalistica dell'Ottocento* ["Guilty by Consent" From Rape to Sexual Assault in 18th Century Criminal Law] 1997 *Rivista Italiana di Diritto di Procedura Penale* 424 (1997)).

157. Cass., sez. tre, 6 nov. 1998, Cristiano, *Foro It. II* 1999, CXXII, 163.

home later in the day, after she had attended the classroom component of the driving course, that she told her parents of the rape.

Once P.R. reported the rape, Cristiano was questioned. He confirmed having had intercourse with P.R. at the time and place she had reported, however, he specified that the sex had been consensual. Cristiano was charged¹⁵⁸ with “carnal violence,”¹⁵⁹ “private violence,”¹⁶⁰ “abduction for the purpose of lust,”¹⁶¹ “personal injury,”¹⁶² and “obscene acts in public.”¹⁶³ In February 1996, the trial court convicted Cristiano of engaging in obscene acts in a public place, but the court acquitted him of the other offenses. The prosecutor appealed the acquittals,¹⁶⁴ and Cristiano appealed the conviction. In

158. See *Le Leggi*, Feb. 15, 1996, n.66. In 1996 Italy reformed its law on sexual assault. See *id.* Cristiano, however, was charged under the pre-1996 provisions which included the categories set out in the text.

159. This offense was set out as article 519 of the Italian Penal Code before the 1996 reform in this area. “Whoever, by violence or threats, compels another to have carnal intercourse shall be punished by imprisonment from three to ten years.” This provision imposed the same punishment for “carnal intercourse” with minors under the age of fourteen years; with minors under the age of sixteen years when “the offender is an ascendant or guardian or another person to whom the minor was entrusted for purposes of treatment, education, instruction, supervision, or custody”; with one who is “mentally ill, or unable to resist by reason of a condition of physical or mental inferiority”; or one who was “deceived because the offender impersonated another person.” See *The Italian Penal Code*, at 177 (Edward M. Wise trans., 1978) [hereinafter *Italian Penal Code Translated*]. The 1996 law repealed this provision. *Le Leggi*, Feb. 15, 1996, n.66, art. 1. The relevant provision under the 1996 law is article 609 *bis* of the Penal Code, which provides “[w]hoever, by violence or threats or abuse of authority, compels another to do or submit to sexual acts shall be punished by imprisonment for from five to ten years.” This provision imposes the same punishment for inducing another to engage in or submit to sexual acts by taking advantage of a condition of physical or mental inferiority of the victim, or by impersonating another and deceiving the victim. C.P. 609 *bis*(2). Finally this article states that “in less serious cases the punishment is to be reduced by no more than two-thirds. C.P. 609 *bis*(3). I NUOVI QUATTRO CODICI [THE FOUR NEW CODES]1039 (2003); see Van Cleave, *supra* note 158; see also Amy Jo Everhart, *Predicting the Effect of Italy’s Long-Awaited Rape Law Reform on “The Land of Machismo,”* 31 VAND. J. TRANSNAT’L L. 671, 692 (1998) (discussing 1996 reform).

160. C.P. art. 610. “Whoever, by violence or threats, compels another to do, endure, or omit to do anything what[so]ever, shall be punished by imprisonment for up to four years.” *Italian Penal Code Translated*, *supra* note 159, at 205.

161. *Le Leggi*, Feb. 15, 1996, n.66, art. 1 (repealing “abduction for the purpose of lust” as criminal offense in 1996). This offense was set out under article 523 as “Whoever, by violence, threats, or deceit takes away or detains, for purposes of lust, a minor, or a woman of full age, shall be punished by imprisonment for from three to five years.” *Italian Penal Code Translated*, *supra* note 159, at 178.

162. C.P. art. 582. “Whoever causes personal injury to another, which results in physical or mental illness, shall be punished by imprisonment for from three months to three years.” *Italian Penal Code Translated*, *supra* note 159, at 195.

163. C.P. art. 527. “Whoever, in a public place or place open or exposed to the public, commits obscene acts shall be punished by imprisonment for from three months to three years.” *Italian Penal Code Translated*, *supra* note 159, at 179.

164. Mirjan Damaška, *Structures of Authority and Comparative Criminal Procedure*, 84 YALE L.J. 480, 491 (1975) (explaining in hierarchical model of authority, routine reconsideration of judicial decisions resulted in a postponement of finality of decisions). In Italy, as in other civil law countries, a trial court verdict is not final. *Id.* Therefore, the prosecution can appeal an acquittal. *Id.* An appeal is “part and parcel of one single proceeding Thus, an appeal by the prosecution from an acquittal would not violate the prohibition against double jeopardy.” *Id.*; cf. Myron Moskovitz, *The O.J. Inquisition: A United States Encounter with Continental Criminal Justice*, 28 VAND. J. TRANSNAT’L L. 1121, 1159-60 (1995) (explaining in civil law system “the

1998, the intermediate appellate court declared Cristiano guilty of all of the offenses charged and sentenced him to two years and ten months imprisonment.

The Italian Supreme Court¹⁶⁵ overturned this decision, creating what some commentators have labeled “the jeans defense to rape.”¹⁶⁶ In considering the appellate court’s evaluation of P.R.’s credibility, the Court stated, “we must also consider that it is a fact of common experience that it is nearly impossible to remove jeans on another person without the wearer’s active cooperation, after all [taking off jeans] is a difficult enough operation for the one wearing them.”¹⁶⁷ This portion of the opinion has been the basis for the slogan “jeans: an alibi for rape,” and the “jeans defense to rape” to describe the Supreme Court’s decision. Other aspects of the opinion, however, reveal equally troubling views of the judges about women and sex. The opinion highlights dichotomous views about women and reflects the persistent importance of a woman’s honor linked to her chastity.

The Supreme Court concluded that the appellate court’s decision lacked sufficient and convincing support.¹⁶⁸

Given the defendant’s claims of innocence and his assertion that the girl consented to the sexual conduct, the lower court should have rigorously scrutinized the credibility of P.R.’s accusations. Instead, the [appellate] court determined the defendant’s guilt while giving weight to circumstances consistent with Cristiano’s assertions and while either minimizing or ignoring other circumstances that were inconsistent with the alleged rape.¹⁶⁹

Thus, the Italian Supreme Court determined that the lower court had not properly evaluated the evidence. The Court then listed several examples of the lower court’s flawed analysis of the facts. Each of the examples relate to conclusions about P.R.’s credibility, therefore, it seems that it was P.R.’s version of the facts that the Court found unconvincing. Or, as Estrich might say, “[t]he debate quite clearly focused not so much on whether [Cristiano] is a rapist but on whether [P.R.] is a real victim.”¹⁷⁰

The appellate court had determined that P.R. had no motive for bringing a

prosecutor may appeal too”).

165. See Calavita, *supra* note 3, at 92.

166. See Gil Grantmore, *Lex and the City*, 91 GEO. L.J. 913, 919 (2003) (observing “we live in a world where a court may rule that blue jeans prevent rape”); see also Calavita, *supra* note 3, at 95-96 (citing placard held by women members of Parliament reading “Jeans: An Alibi for Rape”); Samantha Frank, *Jeans: An Alibi for Rape*, 7 BUFF. WOMEN’S L.J. 10, 10 (1999) (discussing Italian Supreme Court decision); Phoebe A. Haddon, *All the Difference in the World: Listening and Hearing the Voices of Women*, 8 TEMP. POL. & CIV. RTS. L. REV. 377, 377 (1999) (noting “the court concluded that there could be no ‘consented to’ sexual act committed on a jeans-wearing woman”).

167. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 169 (translation by author); see also Calavita, *supra* note 3, at 93 (offering further translation).

168. In Italy, appellate courts are not limited to reviewing for procedural or legal errors. Rather, there is greater ability to evaluate the evidence and perhaps even consider evidence not presented in the trial court.

169. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 167-68.

170. ESTRICH, *supra* note 39, at 130 n.27.

false complaint against Cristiano, and thus found that her statements were credible. The Supreme Court determined that this reasoning was flawed. The Court stated that P.R. might have lied in order to “justify to her parents a sexual relationship with someone so much older than herself, and furthermore with a married man, a relationship she did not wish to keep hidden because she may have been worried about the possible consequences of such a sexual relationship.”¹⁷¹ The Supreme Court asserted that this hypothesis seems quite probable in light of P.R.’s conduct after the incident. In particular, the Court emphasized the fact that P.R. did not immediately tell her parents that she had been raped, even though they thought she seemed upset and asked her what had happened. The appellate court presumed that P.R. did not tell her parents right away because she was too embarrassed or may have felt guilty. The Court dismissed this explanation as “not convincing.”¹⁷² The Supreme Court stated that it could not comprehend what embarrassment or guilt P.R. could have felt if she was actually a victim of rape, given the seriousness of the crime and the fact that it was committed by her driving instructor.

The Court’s reasoning relies on two conflicting portrayals of P.R. First, in casting doubt on P.R.’s credibility, the Court suggests that she may have lied because she could have been concerned about the “consequences” of admitting to a sexual relationship with a married man. The Court does not specify the nature of these consequences, but it is likely that the Court contemplated the shame and embarrassment both P.R. and her family would suffer if such a relationship were revealed because it would show P.R. to be unchaste. The Court, however, does not explain why P.R. would have said anything at all about the sexual encounter with Cristiano if this would have caused embarrassment. Another possible negative consequence is the effect such a relationship would have on Cristiano’s marriage, but the Court should not have attributed this to P.R. Nonetheless, the Court suggests that P.R. could have lied to her parents out of shame.

The Court further stated that P.R.’s credibility is in doubt because the appellate court should not have speculated that she may have felt guilty or embarrassed. A true victim of such a crime is not guilty. Stating this in such absolute and unambiguous terms, the Court ignores the historical skepticism toward women alleging rape. Agostino’s conviction without punishment, as well as the depictions of Susanna, Lucretia and Judith as either tempted or temptresses are examples of similar suspicions. In addition, the stories of these women indicate that women themselves have always been aware of this suspicion. Judith specifically asserts that she was not “polluted” by Holofernes. Lucretia kills herself so that true or willing adulteresses cannot

171. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 169.

172. *Id.*

rely on her as precedent.¹⁷³ Garrard's interpretation of Artemisia's *Lucretia* indicates that Artemisia was also aware of the "no-win situation."¹⁷⁴ Susanna was believed only once the Elders were revealed to be liars. The Court's declaration about how a "true victim" would feel leaves no room for the complexity of emotions rape victims may experience. Rather, the Court adopts an either/or dichotomous view of women.

In evaluating the credibility of P.R., the appellate court considered the undisputed fact that her jeans had not been completely removed. The court reasoned that if the sex had been consensual she would have removed her jeans completely. The Supreme Court disagreed. "It would have been peculiar for P.R. to have completely undressed since she and Cristiano were in a public place, albeit secluded, in the middle of the day. Given these circumstances, partial removal of clothing could be consistent with consent."¹⁷⁵ The above quote regarding the difficulty involved in removing jeans comes at this point in the opinion. "We must also consider that it is a fact of common experience that it is nearly impossible to remove jeans on another person without the wearer's active cooperation."¹⁷⁶ The location of this statement in the opinion following the Court's critique of reliance on partial disrobing as inconsistent with consent suggests that the Court viewed the difficulty of removing jeans as consistent with partial disrobing and consensual sex.

As to the difficulty of removing jeans, there was no evidence presented at trial regarding the tightness of P.R.'s jeans. As Fiandaca has pointed out, the judges may have revealed that they are only familiar with a style of jeans that was in vogue many years ago—very tight.¹⁷⁷ Perhaps this question of the victim's clothing fed the judge's suspicion in Agostino's trial. Artemisia testified that Agostino worked to lift her skirts while holding her down on the end of the bed, stating that "it took him a great effort to raise [my skirts]."¹⁷⁸ Indeed, portrayals of Judith, Susanna, and Lucretia as scantily clad or nude seem to have been methods for suggesting their complicity in illicit sex, or at least their enjoyment of alleged or attempted rape. In addition, the Court's focus on the victim's clothing has been a common critique of rape prosecutions and has resulted in changes to rules at trial so that the victim does not become the accused. Yet, the Court in *Cristiano* continues to focus on P.R.'s conduct and to use this to discredit her.

The Court then gives other reasons why it was not convinced by the appellate court's decision. These also relate to P.R.'s credibility and focus on the conduct of P.R. during and after the alleged rape. First, the Court points out

173. GARRARD, ARTEMISIA, *supra* note 6, at 217.

174. GARRARD, ARTEMISIA, *supra* note 6, at 230.

175. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 169.

176. *Id.* at 169.

177. Fiandaca, *supra* note 5, at 168.

178. *See supra* note 18 and accompanying text.

that there were no physical signs of a struggle between P.R. and Cristiano, or any indication that “the girl vigorously resisted her aggressor.”¹⁷⁹ Yet the appellate court had stated that it is not necessary for the victim to have suffered other violence to establish rape. Furthermore, in this case, P.R. did not resist because she feared greater harm to her physical safety.

Perhaps even more troubling than the Court’s statement about jeans, is the following statement about the victim’s failure to resist: “But it is instinctive, especially for a young woman, to resist with all of her strength one who tries to rape her and it is illogical to suggest that a girl would passively submit to rape, which is a serious assault on the person, out of fear of some other hypothetical and certainly not more serious harm.”¹⁸⁰ Further focusing on the conduct of P.R., rather than Cristiano’s, the Court stated that:

[T]he challenged decision [of the appellate court] does not clarify how to reconcile the alleged rape with the fact that P.R. did not attempt to flee as soon as Cristiano stopped the car and manifested his intentions. Similarly, the appellate court does not give a plausible explanation for the girl’s behavior when, after the alleged rape, she got behind the wheel of the car and drove home.¹⁸¹

The Court dismissed the appellate court’s conclusion that P.R. would have wanted to return home immediately.

The appellate court failed to recognize that it makes no sense that a girl, after having been raped, would be in any condition to drive a car while her rapist sat next to her. Especially where, as in the present case, as a student driver she had to drive while following the instructions of her driving teacher who only moments earlier had raped her.¹⁸²

The Court’s statement that no injury could be more harmful than unwanted sex reveals most clearly the persistent importance of honor. The Court declares that it would have been better for P.R. to have suffered physical injury, or even death, rather than submit to rape. As indicated earlier, the stories about Susanna and Lucretia illustrate how honor is more important than life and how

179. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 169.

180. *Id.* (translation by author); see also Calavita, *supra* note 3, at 93 (offering further translation). This language is remarkably similar to the following:

[A rape victim] must follow the natural instinct of every proud female to resist, by more than mere words, the violation of her person by a stranger or an unwelcomed [sic] friend. She must make it plain that she regards such sexual acts as abhorrent and repugnant to her natural sense of pride. She must resist unless the defendant has objectively manifested his intent to use physical force to accomplish his purpose.

State v. Rusk, 424 A.2d 720, 733 (Md. 1981) (Cole, J., dissenting).

181. Cass., sez. tre, 6 nov. 1998, Cristiano, Foro It. II 1999, CXXII, 163, 169.

182. *Id.*; see Carol Sanger, *Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space*, 144 U. PA. L. REV. 705, 732 (1995) (offering insightful discussion of car’s role and dangers it poses in women’s lives). “[B]ecause cars provide a male-controlled privacy, they are also common sites for sexual assault.” Sanger, *supra*, at 732.

portrayals of these two women as virtuous because they were willing to sacrifice their lives further supports the primary importance of honor. Similarly, Artemisia underwent physical torture to support her credibility and to preserve her honor.

Just as the decision to torture the alleged victim and not the alleged perpetrator “revealed a great deal about the court’s attitude towards Artemisia’s accusation and sent a clear warning to any woman who might, in the future, submit a similar claim,”¹⁸³ the Court in *Cristiano* sends a message that women who have not suffered additional physical injury or risked death in resisting rape will be subject to the Court’s careful scrutiny if they allege rape. Such a message ignores studies finding that women who attempt to resist rape are much more likely to suffer serious physical injury or death.¹⁸⁴ In addition, like the skepticism expressed in some depictions of Artemisia and Lucretia, the Court ignores the evidence of violence recounted by P.R. She stated that after stopping on a secluded road, Cristiano threw her to the ground. Sextus drew a knife on Lucretia, while Agostino relied on physical power as did Cristiano. Yet, those who are suspicious of the resulting rape charges seem to dismiss such violence, indicating that violent sex may nevertheless be consensual.¹⁸⁵

These attitudes echo the skepticism about whether a woman can ever be raped. Even though Artemisia testified about how she fought and physically injured Agostino, the Court seems not to have entirely believed her because Agostino was not punished and eventually exonerated. Had she not fought back, it is likely that the Court would not have believed her at all.

The Court’s inability to reconcile P.R.’s conduct of driving home with her allegation of rape further indicates a one-dimensional view of how a rape victim should act. According to the Court, if P.R. had really been forced to engage in sex with Cristiano, she would have been too upset and distressed to drive back home with him in the passenger seat. Once again, the Court ignored the complex emotions and different reactions a victim of rape may experience. For example, a rape victim might reasonably fear what they think the rapist is capable of and therefore try to follow his orders after the assault to avoid further injury. In addition, this limits the Court’s focus to the conduct of the victim in an apparent effort to determine whether she is a victim, rather than evaluating the actions of the defendant.

About two years after the *Cristiano* opinion, another defendant, Akid, was charged with rape and claimed that the intercourse was consensual because the

183. Benedetti, *supra* note 6, at 48.

184. See BATTELLE MEMORIAL INSTITUTE, LAW AND JUSTICE STUDY CENTER, U.S. DEP’T OF JUSTICE, FORCIBLE RAPE: A NATIONAL SURVEY OF THE RESPONSE OF PROSECUTORS 169 (1977).

185. See CATHERINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 174 (1989) (discussing distinction between assault and sexual assault). “[A]ssault . . . cannot be consented to, or consensual assault remains assault. Yet sexual assault consented to is intercourse, no matter how much force was used.” *Id.* (footnote omitted).

victim, the defendant's ex-wife, was wearing jeans at the time of the alleged sexual assault. In response to this argument, the Italian Supreme Court declared "jeans are certainly not a chastity belt and some models are easy to take off."¹⁸⁶ The Court affirmed Akid's conviction.

The *Akid* decision, however, does not support the argument that the *Cristiano* opinion is merely aberrational, and there are critical distinctions between the two cases. In *Akid*, there were witnesses to the defendant's use of force when he compelled his ex-wife to get into a car with him. There was also evidence that the defendant hit the victim. The Court stated that "her fear of additional consequences in addition to the punches Akid had already inflicted made it easier to remove her jeans." Thus, there was additional physical evidence of the defendant's use of force. It is not clear from the *Akid* opinion that the Court would have believed the victim absent eyewitness testimony and physical evidence corroborating the victim's account. Moreover, the final resolution of the *Cristiano* case detracts from the notion that the Court's opinion was a mere aberration. After the Italian Supreme Court vacated Cristiano's conviction and remanded the case, an intermediate appellate court in Naples ultimately acquitted him.¹⁸⁷

VI. CONCLUSION

Italy is certainly not the only country in which biases against and stereotypes about women exist. Indeed, earlier this year after looking at the photo of a rape victim who had been beaten by her rapist, Florida Circuit Judge Gene Stephenson remarked, "Why would he want to rape her? She doesn't look like a day at the beach."¹⁸⁸ In another case, Maryland Judge Durke G. Thompson, in the context of sentencing a defendant convicted of a second-degree sex offense with an eleven-year-old girl, stated that "it takes two to tango," indicating that the preteen "shared the blame with the man who sexually molested her."¹⁸⁹ These types of comments indicate judicial skepticism about whether a woman can be raped similar to arguments raised by the Court in *Cristiano*.

While there are many troubling aspects of the Italian Supreme Court's opinion in *Cristiano*, the most remarkable is how the Court restates precisely

186. Cass., sez. tre, 26 nov. 2001, Akid, n.42289/2001, available at www.cittadinolex.kataweb.it/Article/0,1519,15793/1,00.html.

187. *Napoli, assolto l'imputato dello "stupro in jeans"* [Naples, defendant in the "jeans rape" case acquitted] (Oct. 13, 1999), available at www.repubblica.it/online/fatti/assol/assol/assol.html.

188. Robert Perez & Rene Stutzman, *Judge's Insult Shocks Rape Victim*, ORLANDO SENTINEL, Jan. 29, 2004, at A1.

189. Clarence Williams, *Female Lawmakers Call for Probe of Judge*, WASHINGTON TIMES, Feb. 3, 2000, at C1; see Deborah M. Weissman, *Gender-Based Violence as Judicial Anomaly: Between "The Truly National and the Truly Local,"* 42 B.C. L. REV. 1081, 1092 nn.58-60 (2001) (offering additional examples of judicial bias against female victims of violence).

the notion that seems to have guided the law around the time of Artemisia's rape; that is, the enduring significance of female honor and that a woman can suffer no greater injury than damage to her honor. In addition, the Court perpetuates dichotomous views of women. The Court suggests that P.R. may have lied about the rape because she was embarrassed about having had sex with an older and married man, indicating that she was a willing participant, like Susanna and Artemisia have been portrayed, and in which case there was no rape. Conversely, the Court declares that a "real" victim of rape would not have felt any guilt or shame and thus would not have hesitated in reporting the crime.

This portrayal of a victim evokes the renditions of Judith and Lucretia as pure and virtuous, yet even their innocence and purity has been doubted. On the one hand, female honor is important enough to require substantial sacrifice, including life. On the other hand, the historic methods of repairing honor result in diminishing the significance of the violation. Where a rape victim was left to either marry her rapist or accept money as a remedy, while perhaps restoring her reputation in the community, these remedies did not address the sense of violation the victim likely felt.

The persistence of honor as reflected in the *Cristiano* opinion endures as a patriarchal description of the harm of rape. Perhaps even more importantly, however, the focus on honor diminishes the significance of the harm to the victim's sexual autonomy. While women now have the words to articulate this injury, as long as courts continue to rely on concepts of honor, there is no judicial forum for expressing this.