

ESTELLE B. FREEDMAN

# Redefining RAPE

SEXUAL VIOLENCE IN

THE ERA OF SUFFRAGE

AND SEGREGATION

---

# Redefining Rape

*Sexual Violence in the Era of  
Suffrage and Segregation*

Estelle B. Freedman



Harvard University Press

Cambridge, Massachusetts, and London, England | 2013

Copyright © 2013 by Estelle B. Freedman  
All rights reserved  
Printed in the United States of America

*Library of Congress Cataloging-in-Publication Data*

Freedman, Estelle B., 1947–

Redefining rape : sexual violence in the era of suffrage and segregation /  
Estelle B. Freedman.

pages cm

Includes bibliographical references and index.

ISBN 978-0-674-72484-6 (alk. paper)

1. Rape—United States—History. 2. Women's rights—United  
States—History. 3. Civil rights—United States—History. I. Title.

HV6561.F74 2013

364.15'320973—dc23

2013002883

*For Susan*

# Redefining Rape

---

# Contents

Introduction: The Political History of Rape	1
1 The Narrowing Meaning of Rape	12
2 The Crime of Seduction	33
3 Empowering White Women	52
4 Contesting the Rape of Black Women	73
5 The Racialization of Rape and Lynching	89
6 African Americans Redefine Sexual Violence	104
7 Raising the Age of Consent	125
8 From Protection to Sexualization	147
9 The Sexual Vulnerability of Boys	168
10 “Smashing the Masher”	191
11 After Suffrage	210
12 The Anti-Lynching Movement	230
13 Scottsboro and Its Legacies	253
14 The Enduring Politics of Rape	271
Notes	291
Acknowledgments	373
Index	377

---

## Introduction

### *The Political History of Rape*

“‘Rape’ is a word in flux,” a *New York Times* editor acknowledged in 2011, after a spate of influential men—from priests to college athletic coaches to the president of the International Monetary Fund—denied accusations of assault, sexual harassment, or child sexual abuse. In the same year, congressional Republicans tried to tighten requirements for federal funding of abortions by changing the language of an exemption from “rape” to “forcible rape,” prompting a journalist to ask, “What’s behind the drive to redefine rape?” In 2012, when a Republican senatorial candidate justified his total opposition to abortion by claiming that victims of “legitimate rape” could not get pregnant, President Barack Obama told the nation that it did not make sense to “be parsing and qualifying and slicing” the subject because “rape is rape.” Yet federal policy had only recently incorporated that view. A year earlier, members of the Women’s Law Project told a national meeting of police officials that the narrow definition used by the Federal Bureau of Investigation in compiling the Uniform Crime Reports since 1927—“the carnal knowledge of a female, forcibly and against her will”—had led to the underreporting of rape. “You can’t ignore the politics of crime,” one police commissioner commented. Only in 2012 did the FBI revise its definition of rape to include any form of forced sexual penetration of a man or a woman as well as “non-forcible rape.”<sup>1</sup>

The effort to redefine rape is not a recent phenomenon in American history. Generations of women’s rights and racial justice advocates have contested the narrow understanding of rape as a brutal attack on a chaste, unmarried, white woman by a stranger, typically portrayed as an African American man. In the early nineteenth century, white women sought legal remedies to make it easier to prosecute coercive but nonviolent sexual relations with acquaintances. After emancipation, African American activists

insisted that black women could be victims of rape and that white men should be held accountable for assault. Suffragists claimed that women required equal political rights to ensure their public safety and fair rape trials. In the late twentieth century, feminists renamed nonconsensual sex with acquaintances and husbands as rape. Underlying all of their campaigns was the recognition that white men's freedom to be sexually violent or coercive lay at the heart of their political power.

These past contestations over the meaning of rape serve as reminders that sexuality, once viewed as a private matter, has proven to be thoroughly entwined with public life. Changing the definition and prosecution of rape has challenged the very meaning of citizenship in American history—that is, who was to be included in and who was to be excluded from privileges and obligations such as voting, jury duty, officeholding, and access to due process of law. On a practical level, the exclusion of African Americans and women from voting, lawmaking, and courtrooms (as jurors, lawyers, and sometimes even as observers) contributed to the immunities enjoyed by white men who seduced, harassed, or assaulted women of any race. On a rhetorical level, the constructions of black women as always consenting, white women as duplicitous, and black men as constant sexual threats all justified the very limitations on citizenship that reinforced white men's sexual privileges.

Redefinitions of rape occurred within a broader context of debates over the role of sexuality in the creation of what one historian has called a “stratified citizenry.” The exclusion of foreigners who were deemed immoral from entering the country, or, until recently, of men and women considered to be homosexual from serving openly in the military, illustrate how sexual norms shape the American polity.<sup>2</sup> Yet the subject of rape rarely appears in accounts of American politics. The exceptions are telling: studies of lynching in the post-Reconstruction South and accounts of the trials of nine black youths convicted of interracial rape in Scottsboro, Alabama, during the 1930s.<sup>3</sup> Each of these historical touchstones underlines the centrality of race to the political history of rape. But they represent only part of a prolonged struggle over the meaning of sexual violence in the American past.

Political critiques of rape originated in the context of antebellum moral reform and women's rights movements. They intensified during a series of turbulent historical processes in the late nineteenth century. After Reconstruction, struggles to enfranchise women and to disfranchise black men coexisted, while the scourge of lynching helped implement Jim Crow



segregation in the South. By the 1920s, women had won national suffrage, African Americans were abandoning the South, and lynching had declined markedly. Contributing to these transformations were a range of political actors—suffragists, free lovers, child-savers, African American journalists, anti-lynching crusaders, and interracial activists among them—who in diverse ways scrutinized the meaning of sexual violence. The expansion of civil rights and feminist politics in the late twentieth century fostered anti-rape campaigns that renewed the quest for female sexual self-sovereignty and helped transform both cultural interpretations and public policy concerning rape.

More than a social history of sexual violence told through the experiences of accusers and assailants, *Redefining Rape* asks how a series of distinctive political critiques of the construction and prosecution of sexual assault took shape in the United States. For almost two centuries a regionally, racially, and politically varied group of reformers has tried, in the face of formidable obstacles, to change legal understandings of rape. While we cannot know the actual extent of sexual violence or whether these reformers were effective in reducing it, we can begin to understand how these women and men formulated their ideas, how their influence on popular attitudes and public policies changed over time, and what legacies they left to later advocates of women's rights and racial justice.

AT ITS CORE, *rape* is a legal term that encompasses a malleable and culturally determined perception of an act. Different societies define which nonconsensual sexual acts to criminalize, which to condone, and how forcefully to prosecute the former. Indeed, the history of rape consists in large part in tracking the changing narratives that define which women may charge which men with the crime of forceful, unwanted sex, and whose accounts will be believed. The meaning of rape is thus fluid, rather than transhistorical or static. In contrast to those who view rape as a natural imperative resulting from male aggression and serving evolutionary ends, historians and feminist scholars ask how its definition is continually reshaped by specific social relations and political contexts.<sup>4</sup>

Legal definitions play an essential role in understanding the narratives of rape that vary over time. In British law, which provided the basis for most American statutes, the term *rape* originally referred to the nonsexual crime of violent theft (from the Latin *raptus* or *rapere*). That usage has continued in the present largely through metaphoric references to the

“rape” of the land or of specific countries, such as “the rape of Belgium,” signifying the violation of resources or of national sovereignty. By the fifteenth century, however, the legal definition of rape in England had narrowed to apply to the theft of a woman’s virtue, either a daughter’s virginity or a married woman’s honor. Because the crime appropriated the sexual rights of a husband, his assurance of paternity, and family honor, the father or husband of a raped woman pressed criminal charges. By the time of the colonization of North America, however, women could bring rape charges themselves. As in England, early American law defined rape as the carnal knowledge of a woman when achieved by force and against her will by a man other than her husband. For a child under the age of ten, English common law did not require force or, in principle, raise the question of consent.<sup>5</sup>

Formally, the crime of rape was characterized not only by a lack of consent but also by the use of force and by a male perpetrator unrelated by marriage; in court it usually required as well both penetrative sexual intercourse and evidence of female resistance. In nineteenth-century America, an array of legal categories could also apply to sexual crimes. On a continuum of physical force, these acts ranged from coercive but presumably nonviolent offenses (such as seduction, criminal seduction, and abduction) to violent acts (such as attempted rape, assault with attempt to rape, aggravated assault, felony assault with intent to commit a rape, carnal knowledge and abuse of an infant, and rape). The terms incest and statutory rape could refer to noncoercive, coercive, or physically violent acts, as could sodomy, which was the only crime that applied to nonconsensual same-sex relations. Here, the terms rape, sexual assault, and sexual violence are used interchangeably to denote a broad set of acts, except when referring to a specific legal term, such as attempted rape, seduction, incest, or sodomy.

An important component of American understandings of rape has been the concept of consent, which lays at the heart of both Anglo-American law and the American ideal of liberal individualism.<sup>6</sup> Wives were not the only group lacking the right to withhold consent. Slave women could not refuse sex with their masters, a dictate that continued to haunt African American women long after emancipation. Though formally protected by law, in practice many servants also had little recourse when assaulted. Most formal statutes did not require chastity for a woman to charge rape, and jurists even debated whether a prostitute could be raped. But having had sexual relations, or even having a reputation for impurity, strongly disadvantaged women in the eyes of judges and jury members, who as-

sumed that once a woman had consented she would consent again. These categorical restrictions flowing from marriage, enslavement, class, or reputation limited a woman's ability to withhold consent and influenced the prosecution of rape.

Conversely, the definition of the rapist depended strongly upon a man's class, race, or other social position. In the eighteenth century, the libertine, or rake, was typically an Anglo-American elite male who presumed the privilege of sexual access to women of any class, but he was rarely considered a criminal. In the South, the racialization of the rapist that accompanied the institutionalization of slave labor escalated after emancipation. Until the late nineteenth century, however, white tramps and strangers dominated much of the discourse on sexual assault. A common feature of these stereotypical rapists was the belief that (white) women would be unlikely to consent to have sex with men from these groups, making the "consent defense" less available to certain (nonwhite or marginal) men.

Along with these specifically American constructions, the highly variable representations of rape in western culture influenced understandings of sexual violence. One recurrent theme was the association of women with sexual duplicity, from the biblical account of Potiphar's wife falsely accusing Joseph of rape when he scorned her advances to later depictions of women who "cry rape." At the same time, rape has been linked to an ideal of female virtue, a crime against honor rather than a physical assault on a woman. The oft-cited story of the exemplary Roman matron Lucretia, who preferred suicide to living with the dishonor of having been raped, affirmed the belief that rape was a "fate worse than death." These two extremes, the seductress and the honorable woman, infiltrated both legal and cultural understandings of rape in America, casting doubt on rape claims and requiring an honorable reputation to support them.<sup>7</sup>

Narratives of conquest and empire, which tended to naturalize sexual violence as part of historical processes, also significantly influenced American definitions of rape. Depictions of the rape of the Sabine women treated assault as a nation-building episode in the establishment of Rome. Myths and tales conflated rape with the abduction or seduction of young women by powerful men, exemplified in the myth of the rape of Europa by the Greek god Zeus. While these heroic images continued to circulate, during the eighteenth century several writers made the conquest of women an object of satire or farce, as in Alexander Pope's "The Rape of the Lock" (a poem about the theft of a woman's beauty), or in the rape scenes in Henry Fielding's comic novels.<sup>8</sup>

References to rape have also communicated nonsexual political concerns, for rape has often functioned in an allegorical mode. With the rise of print culture in the eighteenth century, literary and artistic representations of rape increasingly used images of women under assault to protest violations of national sovereignty, as when a ravished woman stood for the colonists forced by the British to pay taxes on tea. Modern writers continued the practice, as did W. E. B. Du Bois when he invoked “Black Africa—frustrated, raped, and shamed” in his critique of colonialism.<sup>9</sup> A common theme running through all of these cultural representations, as well as the legal response to rape, was an ideal of female chastity that was more significant as a measure of family or national honor than as a form of female sexual sovereignty.

SINCE RAPE HAS LONG BEEN a powerful cultural and political symbol—one that has helped shape sexual, racial, and national ideals—why did concerted efforts to redefine sexual violence emerge in the nineteenth century? In part, a narrowing construction of rape provoked these reinterpretations, while recently established voluntary organizations intent on improving morality or extending rights provided structures for initiating legal reforms. Equally important, political ideas about gender, race, and sovereignty set the stage for rethinking sexual violence. In particular, the role of consent in western politics, along with more immediate concerns about the meaning of citizenship in the United States, explains the timing of the campaigns to redefine rape.

The Enlightenment ideas that influenced the American experiment in republicanism rested heavily upon a social contract that required the consent of the governed. The ability to consent was a prerequisite for autonomous personhood in nineteenth-century liberal thought, which idealized self-sovereignty. At their origins, both the social contract and classical liberalism intentionally applied only to white males. The flip side of the social contract was a sexual contract that gave ownership of women to their husbands. Only white men had the capacity to enter into civil society because women, like non-Europeans, were seen as particularly irrational, sexually unlimited, and bound to nature.<sup>10</sup> A central project of contemporary feminism has been the inclusion of women as fully human and autonomous beings, the “owners” of their own bodies rather than the instrumental objects of the needs of men. In the nineteenth century, however, only rare political writers insisted that self-sovereignty be ex-

tended to women of any race, including the right to determine when and with whom they had sexual relations.<sup>11</sup>

The implications of the sexual contract can be found in antebellum American links between legal capacity, political consent, and citizenship. In the early nineteenth century, newly written state constitutions bestowed rights upon citizens who had legal capacity. But the principle of coverture, by which male heads of households represented women and children, denied all women the right of political consent. Adopted from British common law, coverture meant that a husband governed over his wife, controlling her property, her earnings, and her person. Preserving the sexual entitlements of husbands required a dependent economic and legal identity for wives. In contrast to the independent male head of household—the ideal citizen—a woman remained dependent and thus unable to participate in republican government, apart from her role of inculcating virtue in her family.<sup>12</sup> Women's legal incapacity to refuse sexual, and thus reproductive, consent in marriage contributed to their political incapacity to exercise the rights of citizens, for they remained subjects, not sovereigns.

The issue of consent was central not only to rape but also to the entire struggle for women's rights. It was largely in response to the gap between ideals of consenting citizenship and the limitations of gender that beginning in the 1840s activists waged a series of campaigns against coverture. They succeeded in gaining married women's rights to property but encountered long term obstacles in the path to suffrage. Their efforts took on a new urgency after the Civil War, when more women entered public life as wage earners or sought higher education and professional lives. At the same time, the emancipation of slaves opened a discussion of women's rights. Freedwomen faced the possibility of being owned neither by a white master nor by a husband, while the postwar constitutional amendments promised to extend civil and political rights to all citizens. But the rights the Constitution now granted to freedmen were not extended to any women. Congressional debates made clear that the Fourteenth Amendment's guarantee of equal protection of the laws should apply to men across race lines but not fully to wives of any color, for they owed their services to their husbands. Nor did the Fifteenth Amendment include suffrage rights for women. In 1875 the Supreme Court affirmed that national citizenship did not entitle women to independent political identities, ruling unanimously that although women were citizens, states could curtail their right to vote.<sup>13</sup>

For freedmen, even the post-Civil War constitutional guarantees of the rights of citizens did not necessarily ensure self-sovereignty. Without the

economic leverage of a secure livelihood, a requirement for insuring civil freedom, formal rights can be merely symbolic. And without access to justice through the rule of law, political rights remain fragile.<sup>14</sup> Although southern black men could now contract as free workers, coercive practices such as debt peonage and convict labor undermined their nominal free labor status. During the Jim Crow era, southern states devised mechanisms for disenfranchising African American men and reestablishing white rule, including the escalation of racial lynching, a form of political terror that made it difficult for southern blacks to resist the erosion of their rights. Key to national tolerance for vigilantism was the myth perpetrated by southern white politicians that lynching defended southern white womanhood against the sexual threat of black men. Even though most lynchings had nothing to do with sexual assault, rape accusations became central to the political strategy of disenfranchisement.

The specter of lynching suppressed dissent among African Americans and simultaneously reinforced white women's dependence.<sup>15</sup> In another political consequence, the southern rape myth represented "bestly" black sexual predators as incapable of the rational control required to exercise rights such as voting, officeholding, and jury duty. Again, beliefs about the capacity to control one's sexuality contributed to exclusion from citizenship. It is not a coincidence that a political discourse on rape emerged at the height of these controversies over restrictions on the rights of women and African Americans.

THE STRUGGLE TO REDEFINE RAPE in America has remained historically invisible, in part because the disparate critics considered here never formed a unified social movement. No single organization, such as those focused on achieving suffrage or temperance, addressed sexual violence. Thus there is no collection of national conference proceedings or a periodical devoted to the subject of exposing rape as a social and political problem. Nor was there a consistent set of local interventions, akin to the anti-vice commissions that addressed prostitution in American cities in the early twentieth century. A variety of legal sources and popular media help to document contestations over the meaning of rape in American history, including accounts of rape in the white and black press, in popular magazines, and in legal and medical journals. Appellate court decisions in seduction, rape, statutory rape, and sodomy cases provide insight into the interpretations of rape that helped limit rights based on race and

gender.<sup>16</sup> While courtroom dramas offer important evidence of how Americans understood sexual violence, the writings of social purity, women's rights, free love, and anti-lynching reformers, and the work of organizations such as the Woman's Christian Temperance Union and the National Association for the Advancement of Colored People help document political interpretations of rape.

The initial responses to sexual violence, which were highly fragmented and regionally varied, occupied a very broad spectrum of American politics. At one extreme they included the nineteenth-century anarchist free love community, which condemned rape in marriage; at another extreme they included post-Reconstruction southern white supremacists who used rape fears to justify lynching. In between could be found an assortment of overlapping analyses of female sexual vulnerability and male aggression: among moral reformers who sought to protect white women from seduction; social purity and child protection advocates who argued for stronger statutory rape laws; white suffragists who condemned the male-dominated criminal justice system for its leniency to rapists; and African American women and men who attempted both to expose the myth of the black rapist and to condemn white men's sexual abuse of black women.

While diverse in membership and goals, each of these groups invoked the specter of rape to advance a political agenda: to reform or reject marriage; to sustain or undermine white supremacy; to empower or to protect women. Each group approached rape instrumentally and incrementally, only rarely challenging white male dominance directly. A racial divide, rather than cooperative efforts, characterized this history well into the twentieth century. Given their sometimes contradictory impulses, it is not surprising that no national group devoted its energies to the subject of reforming rape laws and criminal procedures. And given the range of actors and goals, this history does not have a singular narrative of social change. It is neither a story of unrelenting progress through legal and cultural interventions nor a story of a failed reform movement. Changes in law and culture did result from the efforts chronicled here, though unevenly over time and across regions. Some campaigns were surprisingly effective, such as statutory rape reform. Others were painstakingly slow, as was the drive to end lynching. Even the most successful redefinitions of rape had either mixed, contradictory, or limited results, as so often happens within the history of reform. Taken together, however, these efforts testify to the role of sexual violence in sustaining white men's political privileges and in mobilizing challenges to those privileges.

Until recently, contestations over the rights of women and of African Americans have dominated the political discourse on sexual violence, overshadowing subjects of current concern, such as the sexual abuse of children by clergy, rape in prisons, wartime rape, and racial constructions beyond the black/white binary. Nineteenth- and early twentieth-century commentators on rape rarely pointed to prisons, religious institutions, or the military, nor did they look far beyond African American men as racialized sexual threats.<sup>17</sup> By the time that immigration from eastern and southern Europe peaked in the early twentieth century, the image of the black rapist had become so solidified that, with a few exceptions, it monopolized the cultural landscape. Certain immigrants did become associated with sodomy, however, especially when the sexual vulnerability of children outside the home attracted the attention of reformers. Along with race and gender, age provoked heated debates about the definition of sexual violence. At times children came close to dominating the discourse, even trumping the racial construction of rape, as when southern whites decried assaults on black girls. For any race, the ideal—that is, believable—victim became younger over time: from a woman, to an adolescent, to a girl. By the 1920s, the category included boys as well, an indication of the shift toward a gender-neutral legal approach to rape, one that developed more fully in the late twentieth century.

This narrative unfolds against a backdrop in which parallel white and black women's movements flourished, segregation and the disenfranchisement of African Americans solidified, and a national racial justice agenda took shape. For the history of feminism, the response to rape reveals how an initial emphasis on protective strategies that emphasized chastity and the reproductive family shifted increasingly to the championing of independent citizenship, including suffrage, jury service, and police authority. For the history of race relations, the discourse on rape shows not only how southern white polemics contributed to the deteriorating status of blacks but also how the anti-lynching campaign confronted the myths about race and rape, eventually converting some white liberals to their cause. For the history of sexuality, the redefinition of rape in the early twentieth century exposes the contradictions of sexual liberalism, which both empowered women to seek sexual sovereignty and masked coercive practices by presuming female consent.

Today *rape* remains a word in flux, and how we understand sexual violence continues to influence American politics. Contemporary debates over what constitutes sexual violence resemble conflicts that have recurred for



almost two centuries. Women and their allies are still trying to expand the legal definition of rape to make it easier to prosecute men, whether or not they were strangers and whether or not the assault was physically violent. They continue to meet opposition from those who believe that only a narrower construction will protect men, whether from the fear of false accusation or from the loss of sexual privilege. African Americans and other ethnic minorities maintain their challenges to racial differentials in the prosecution of rape and to the heightened sexual vulnerabilities of women of color. As in the past, much more than the legal definition of rape is at stake. The history of repeated struggles over the meaning of sexual violence reveals that the way we understand rape helps determine who is entitled to sexual and political sovereignty and who may exercise fully the rights of American citizenship.