

RAPE, RESISTANCE AND WOMEN'S RIGHTS OF SELF-DEFENCE¹

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LARGELY UNDER THE IMPETUS OF FEMINISM, RAPE RESISTANCE AND RAPE avoidance have been a persistent focus of criminological, psychological and sociological research over the last two decades. Rape prevention advice formulated on the basis of this research has shifted considerably in this period. Women have variously been told not to resist and not to fight, to try to talk men out of raping them, or to use a combination of strategies including strong physical resistance. Current practice among those working in women's safety programs and rape crisis service provision is to avoid telling women they should or should not resist, and instead provide a range of options and strategies.

There have, at the same time, been significant feminist legal interventions into debates surrounding consent, resistance and self-defence. Some of the more discriminatory elements of rape legislation have been or are in the process of being removed or ameliorated, and some progress has been made towards legal recognition of the reality of women's experiences of sexual violence (*see*, for example, Scutt 1990a, pp. 469–75). There have also been preliminary moves towards recognising a woman's legal right to defend her life against a violent and sexually abusive husband by killing him if necessary. Reforms in both areas represent serious challenges to the longstanding bias against female victims of crime under masculinist law.

Despite clear continuities between acts of resistance and actions taken in self-defence, at least in women's experiences of sexual violence, there has been little attempt to link the

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research findings on rape avoidance to the analysis of laws relating to self-defence. This paper examines the connections between these changed understandings of consent, resistance and self-defence and suggests their implications for rape law reform and prevention strategies. Using the notion of a continuum of sexual violence, critiques of laws relating to domestic violence are applied to the analysis of women's rights of resistance and self-defence in rape. Our findings suggest that women's right to defend themselves against assaults on bodily integrity may best be protected by programs which challenge the masculinist perception that women's bodies constitute the primary site of consent.

Rape and Resistance

Crime victim studies (Braithwaite & Biles 1980; Walker, Dagger & Collins 1990, p. 63; Mukherjee, Neuhaus & Walker 1990; Queensland Criminal Code Review Committee 1991; Queensland Criminal Justice Commission 1991) suggest that a variety of situational factors severely circumscribe Australian women's capacity to defend themselves against a relatively high risk of sexual attack (Walker et al. 1990, Table 1). The female victim of crime is most likely to be a victim of a crime of sex, of interpersonal or family violence, or of the fear of violence: in other words, of crimes of an immediate, intimate and bodily nature. Her relationship with the offender—almost inevitably male—is also more likely to be personal (Queensland Criminal Justice Commission 1991, p. 53; Real Rape Law Coalition 1991b, p. 2). Knowing, or even living with, their attackers may limit women's self-defence options, and it may not always be appropriate to directly or physically resist rape.

Evidence of physical resistance in the form of documented injuries has, however, been considered necessary in order to secure a conviction. Defence counsel can use the absence of 'serious' injury to argue that the victim participated in consensual sexual intercourse. As statements made by the Supreme Court in overturning a jury conviction for rape in the case of *R v. Singh* in 1990 suggest, courts continue to place emphasis on such facts as 'no signs of force having been used on [the victim's] body and no evidence of any struggle or resistance . . .' (Real Rape Law Coalition 1991b, p. 4). Brereton's (1991, pp. 15–20) analysis of all rape prosecutions initiated in Victoria in 1989—a total of 144 accused men—demonstrates that the greater the injury, the greater the likelihood that the accused would be convicted: in cases in which medical treatment was required, 55 per cent of accused were convicted of rape, and another 40 per cent convicted of charges other than rape; in cases where there was no evidence of injury, 65 per cent were acquitted of all charges. The study convincingly demonstrates that, despite the acceptance by some sections of the community of the need for rape law reform, juries are still extremely reluctant to convict without evidence of injuries or admissions of guilt.

Yet until recently, women were advised not to resist, because resistance would lead to injury. The Queensland Police, for example, used to distribute a booklet called *Lady Beware*. Research conducted from the mid-1970s on rape avoidance and resistance patterns suggested, however, that the majority of rape victims/survivors resisted the rape in some way (Katz & Mazur 1979; Wilson 1978). Research conducted by Bart (1981) and Bart & O'Brien (1985) suggested that the most effective strategy in avoiding rape was a combination of yelling and physical force. Other researchers found no relationship between verbal and physical resistance and the amount of injury sustained (Hazlewood, Reboussin & Warren 1989).

On the contrary, considerable evidence now exists for both stranger and acquaintance rape that women who resist by screaming for help, running away or fighting back are more likely to avoid being raped (Sanders 1980, p. 74). While criticised for its methodology (Chappell 1989, p. 92; Levine-MacCombie & Koss, 1986, p. 312), Bart and O'Brien's (1985) research and their advice to women—'do not be a nice girl'—was widely adopted and reinforced in the 1980s by other researchers (Levine-MacCombie & Koss 1986; Caignon & Groves 1989).

The promotion of active resistance strategies supported a wider move in the 1980s to place women centrally as decision-makers and actors in cases of sexual violence, and to view women as survivors rather than victims of rape and sexual assault (Sanders 1980, p. 74; Caignon & Groves 1989, p. xxvi). Kelly (1988) suggested that the distinction between active and passive resistance was misleading. She proposed instead a resistance model which acknowledged a range of women's choices, decisions and agency in situations of sexual violence. Her definition of resistance encompassed active resistance, coping strategies, and 'passive' resistance including situations in which women chose over other alternatives to submit or 'consent'.

These more positive meanings of resistance are qualified to some extent by evidence of its complexity. Women's capacity to resist is often constrained by fear (of death, physical injury or mutilation), especially in situations that appear to be hopeless or dangerous such as group rapes (Katz & Mazur 1979, p. 173; Chappell 1989, p. 92). For those women who do resist sexual assault, the particular form and extent of resistance varies considerably (Katz & Mazur 1979, pp. 177–8; Wilson 1978: p. 45). For example, women raped by their husbands—an estimated 13 per cent of wives according to one Australian study (cited in Scutt 1990b, p. 143)—are more likely to avoid rape by leaving or divorcing their husbands than they are to use strong physical resistance (Russell 1982, pp. 313–24; Scutt 1990b, p. 157). Women married to or living with men who have a history of violence have few escape options and fear that if they resist sexual assault they will be hurt even more seriously. Knowing that they need to keep the peace and will have to face their partner the next day, appeasement may seem the best tactic (Russell 1982, p. 314).

In extreme circumstances, resistance can have damaging or even fatal consequences. There is no guarantee that resisting will prevent either rape or murder (Chappell 1989, p. 92). Women who resist strongly or put up a severe struggle against particularly violent men may be more likely than other victims to sustain serious physical injuries (Wilson 1978, p. 31; Chappell 1989, p. 92). American data collected from forty-one incarcerated serial rapists suggested that when the victim resisted, the amount of pleasure experienced by the rapist was greater and the duration of the rape was longer (Hazelwood, Reboussin & Warren 1989, pp. 72–3).

The diversity of contexts in which a sexual attack may occur makes it difficult to provide a standard set of advice to women. Even if a woman is acquainted with her attacker (as a neighbour or co-worker, for example), how is she to know if he is a serial rapist, a particularly aggressive man, or a potential rapist who will be easily deterred by verbal assertion? Rape situations and the backgrounds of both attacker and victim vary considerably (Wilson 1978, pp. 32, 45; Hazelwood, Reboussin & Warren 1989). A strategy that works in one situation will not necessarily work in another, and that adopted by one woman may not be appropriate for another (Bart & O'Brien 1986, p. 34).

An more equivocal picture is now emerging from this literature on rape response strategies (Carter, Prentky & Burgess 1988, p. 107). Some researchers acknowledge the 'disservice that might be done by providing universal advice, meant to fit all women'. There is an interest instead on individual decision-making processes and the multiple ways in which women weigh up the consequences of different responses to rape (Furby, Fischhoff & Morgan 1991, p. 60).

Women's safety programs are now tending to avoid providing women with a standard set of advice on how best to defend themselves against sexual attack. As a current leaflet on safety for women motorists states:

There are no hard and fast rules about what to do.

Trust your instincts and do what makes you feel safe. However, planning ahead or thinking about possible options may enable you to think more clearly when faced with a problem. Remember people react differently in difficult situations . . . (*Safety Tips for Women Motorists*, n.d.).

Educators attached to the Queensland Police Women's Safety Project, for example, are reluctant to state that women should always in every circumstance physically resist sexual attacks. There is a danger that if women are told they ought to resist and precisely how to resist, those who choose not to, or are unable to, will feel that they have failed or are in some way responsible for the attack. Instead, a range of possible options and empowering strategies stressing protective behaviours are presented (Interview with Lisa Rosier & Dianne Jeans, 30 March 1992).

Brisbane Rape Crisis Centre workers at Women's House, Brisbane, also prefer not to prescribe a particular course of action in rape avoidance. The Centre's emphasis, rather, is on promoting self-defence awareness, unlearning passive behaviours and facilitating women's access to as many protective skills and knowledges as possible (Interview with Cheryl Parsons, Women's Safety Project, Queensland Police Service, 31 March 1992). Simply saying to women that the answer is to fight back ignores the complicated meanings our culture gives to rape, resistance and consent, and the problems posed by the systemic nature of women's low self-esteem, vulnerability and often daily experiences of male abuse. It is important, therefore, that women know they have the right not to be abused and that they deserve and have the right to resist. However, a woman's choice not to resist is equally valid.

Self-Defence and the Law

If a woman does choose to defend herself against a rape attack, is she protected by the law? Recent studies of the laws of self-defence and provocation as they apply—or, rather, fail to apply—to women victims of domestic assaults (Tarrant 1990a, 1990b; Gillespie 1989; Greene 1989; Rathus 1989) suggest women's legal rights of self-defence against male sexual violence are limited.

Sexual violence, perceived as a continuum ranging from choice to pressure to coercion to force (Kelly 1988), is a common thread in crimes against women. Violent men frequently rape their wives as well as beat them in their attempts to terrorise, humiliate, intimidate and dominate (Russell 1982; Gillespie 1989, p. 52; Scutt, 1990b). Domestic violence is a crime of sex and of violence, not only because it frequently occurs in the context of a sexual

relationship, but also in the sense that it is overwhelmingly committed by members of the most powerful sex against members of the less powerful sex. Cases of assault in male homosexual and lesbian relationships, though much less common, also suggest the complex and often violent ways in which sex and power find expression within some domestic situations.

The law maintains a distinction between resistance and self-defence. However, from the perspective of the female victim of crime, they are inextricably linked. In order to prove that she did not consent to the crime, a woman has to resist, in other words to defend herself. Resistance is thus a form of self-defence and, in extreme circumstances, can result in a woman killing her attacker in order to survive. The difference between the woman who struggles with, kicks, hits or seriously injures a man attempting to rape her and a woman who kills in self-defence a husband who has been repeatedly sexually and physically abusive is one of degree. The success of recent attempts in Australia and elsewhere to have expert testimony on the battered woman syndrome/reality admitted in defence of women accused of killing abusive husbands—other potentially negative implications notwithstanding—is, therefore, as much a statement about women's right to resist sexual violence as it is a significant shift in the application of the laws of self-defence to women who kill.

Women are nevertheless still disadvantaged by laws of self-defence which, even in recently revised laws such as the draft Queensland Criminal Code (Queensland Criminal Code Review Committee 1991, p. 37), still fail to recognise the sexually-specific realities of women's experiences as victims. The paradigmatic danger envisaged by the law is that of an immediate single, purely physical contest between strangers in a public place (Tarrant 1990a, pp. 597–8; Gillespie 1989, p. 51; Real Rape Law Coalition 1991a, p. 155). The law thus ignores the constraints acting on women not only in cases of prolonged and cumulative domestic violence (Tarrant 1990a), but also in rape situations where the rapist is known to them. Notions of 'reason' and 'self-control' embedded in the laws of self-defence are based on an assumed rational man who is unlikely to consider women's actions in self-defence against rape proportionate to the provocation. Women appear to have limited legal rights of self-defence against men who attempt to rape them.

Consent and the Law

A similar assumption that resistance is a physical and violent manifestation of a struggle between strangers is evident in legal and criminal justice notions of resistance (Scutt 1977; Vandervort 1987–88; Real Rape Law Coalition 1991a, 1991b; Carter 1991). Recent feminist legal interventions into rape laws (*see*, for example, Scutt 1990a, pp. 469–81) have included shifting the meaning of 'without consent' away from physical resistance towards a notion of consent as a performative act; that is, as absolute, positive and verbal (Vandervort 1987–88, p. 309; for Australia *see* Carter 1991, p. 32). Rape law reform has begun to move in this direction in most states, the most comprehensive explanation of consent as 'free agreement to sexual penetration' being incorporated into the *Crimes (Rape) Act 1991* (Vic.) (*see* also Western Australian Statutes 1985; Queensland Criminal Code Review Committee 1991).

Proposals to eliminate evidential requirements relating to physical injury have met with opposition from those concerned to protect the rights of the accused. The accused, however, cannot be convicted unless the prosecution has proved beyond reasonable doubt

his intention to have intercourse with the woman without her consent (Scutt 1977, p. 76). As the Real Rape Law Coalition of Victoria pointed out, the intention of defining consent in verbal terms is simply to redress the balance of justice in favour of the victim by placing proper responsibility on the accused to articulate what he has done that constitutes a criminal offence and to redefine circumstances of coercion to take account of women's experience of sexual assault (Real Rape Law Coalition 1991b, p. 9).

The consequences of these non-physical definitions of 'without consent' extend beyond the legal sphere into consenting sexual relations. They suggest, for example, that the female body can no longer be seen as the site of sexual consent. It is commonly assumed that a woman's agreement to sexual intercourse can be read from compliant body language and the absence of physical opposition. One rapist, asked how he would know that a woman was not willing to have sex with him, replied: 'If she fought me the whole time we were having sex' (Gelman et al. 1990, p. 70).

Male lawyers and judges still make statements in court which reinforce the popular belief that a woman's body and external appearance give unambiguous messages of sexual access (Carter & Wilson 1992, p. 8). The absence of verbal consent in 'normal' heterosexual relationships is used as an argument in favour of the accused. One judge held that:

when a man has intercourse with a woman, it is not preceded by the man saying to the woman, 'May I have intercourse with you?' and the woman saying 'Yes'. I mean this does not happen (Real Rape Law Coalition 1991b, p. 4).

But perhaps it should. The courts have played an important role in perpetuating the masculinist notion that what a woman's body 'says' is more significant than what she makes verbally explicit.

Consent communicated implicitly and passively by non-verbal or physical means via the woman's body is taken to be a part of 'normal' sex. The female body is represented in this discourse, as it is in some 'sex toys', as inevitably and by nature inert and compliant, a thing that is acted upon. Thus, the model of normal heterosexual intercourse on which the law and the criminal justice system is based incorporates the understanding that passive body language is not incompatible with female sexual pleasure. Vandervort argues that:

once consent is viewed instead as the act of an agent, of a person who is the bearer of certain rights, all non-verbal behaviours are suddenly of secondary significance (1987–88, p. 275).

Consent, according to Kelly (1988) also becomes a conscious decision, an observable act, and a clear agreement to engage in a sexual transaction. Attempts to negotiate an explicit but non-physical way of communicating lack of consent are particularly important in the case of 'date rape', marital rape or other assaults that take place within the familiar context of an established heterosexual relationship—and often of 'normal' relations between men and women.

The extent to which rape inflicts bodily harm must also be recognised by the law if women's rights of self-defence are to be effectively guaranteed. Cynthia Gillespie argues that rape:

involves such an overwhelming invasion of personal bodily integrity that it constitutes, by itself, the serious injury contemplated by the self-defence law (Gillespie 1989, p. 188).

There should be no requirement that there be evidence of additional physical injury or attempted homicide before a rape victim can use any means available to fight back. Women, according to Gillespie, must have the right to defend themselves against rapists with deadly force if necessary.

Proposed changes to the law and criminal justice system may not be sufficient, however, to guarantee the rights of Aboriginal women to defend themselves against rape by Aboriginal men. Recent studies have revealed appallingly high rates of rape, child sexual abuse and domestic violence within Aboriginal communities in Queensland, the Northern Territory and New South Wales (cited in Bell 1991, p. 387). White colonisation has effectively dismantled women's customary laws and traditional ways of resisting men who raped or beat them (Bell & Nelson 1989, p. 415). Aboriginal women, forced to turn to white law for protection, understandably have little faith in a criminal justice system represented by racist white male police and defence lawyers who trivialise or ignore the harm they have suffered (Atkinson 1990, p. 6). Arguments based on customary law—for example, claims that violence against women is an accepted part of Aboriginal customary practice—also fail to protect abused Aboriginal women.

Atkinson (1990, p. 8) proposes a model of Aboriginal community justice which would include training Aboriginal women to investigate sexual offences, Aboriginal involvement in dispute resolution and community education. White anthropologist Diane Bell, doubting the value of 'spurious appeals to "tradition"', suggests that Aboriginal women's voices would be heard more effectively if courts drew on expert testimony relating to women's customary authority to speak on laws relating to sexual conduct and on the specific cultural context within Aboriginal communities of notions of consent (Bell 1991, pp. 405–7). Some Aboriginal women (Huggins et al. 1991, pp. 506–7), however, believe that rape in Aboriginal communities is 'their business', not that of white women.

Recent rape law reforms certainly go some way, as rape law reform advocates claim, towards replacing a male world view of resistance, force and sexuality with the female reality of sexual violence. These interventions into legal interpretations of consent have more than semantic significance. New legal definitions of consent not only improve the chances that the rape victim/survivor will achieve justice and equality before the law, but fundamentally challenge men's assumed rights of sexual access to women's bodies. Defining the notion of consent and the conditions under which it may not be freely given makes a space within the law for the female corporeal reality of rape. The rape law reform campaign thus contributes to a wider exploration of the lived female body as a surface on which social laws are etched. Defining consent as free verbal agreement helps reinscribe the body of the female victim/survivor with different and more positive meanings (Grosz 1987, pp. 14–15).

Self-Defence Strategies

Preventative measures such as community education programs, curriculum change, the incorporation of women's safety considerations into urban design, feminist self-defence programs and 'comprehensive feminist-oriented programs that tackle the structural and cultural foundations of women's victimisation' (Searles & Berger 1987, pp. 76–80) are all

clearly necessary in the struggle to dismantle rape cultures. An analysis of the legal language of the female body suggests, however, that those programs that promote a view of women's bodies as strong, capable and self-reliant are those most likely to counter the image of the passive body and give women the means with which they can resist. Campaigns to encourage women to engage in contact sports are not only physically empowering for individual women, as Bart and O'Brien (1985, p. 121) suggest, but may allow women to remake their bodies, extend their bodily limits and reshape their imaginary body in more resistant ways.

Self-defence programs, as rape crisis centre workers readily acknowledge, are only part of the answer. They can perpetuate many of the myths surrounding rape by focussing on attacks by strangers. Those that rely on a martial arts model rather than feminist principles and taught by men are often paternalistic and in co-educational settings women may feel embarrassed or uncomfortable exerting themselves physically with men present. The self-defence movement in the USA and probably elsewhere has been less successful than other initiatives in attracting funding (Searles & Berger 1987, pp. 76–8). There is a need therefore for more extensive government funding for feminist self-defence programs. These programs and rape resistance advice generally must, however, make women fully acquainted with the current limits to their rights to defend themselves under the law (Bernholtz 1989).

The new laws relating to rape also demand that, in addition to educational programs which aim to eliminate men's violence, men learn the meanings and signs of consent and are fully aware of their responsibilities in ascertaining whether or not a woman consents to sex. Consent must be seen as the outcome of a choice made by an independent agent, freely and verbally given, not seen to have been granted by custom (in the case of Aboriginal women) or implicitly and bodily granted. These revised meanings of consent constitute an important component of the self-defence movement and strategies aimed at structural resistances to male violence. A more explicit attention to the positioning of the female body in the law and the inscription of the law on women's bodies might strategically be incorporated into moves to fully extend to women the legal rights of self-defence, law reform aimed at clarifying from women's standpoint definitions of consent and non-consent, and efforts to change in women's interests the practices and procedures of the criminal justice system and crime prevention programs.

Summary

In summary, this study of the literature on resistance and self-defence suggests that rape prevention strategies need to be directed at three objectives. First, efforts need to focus on changing men's behaviour in consenting sexual situations. Second, the law must be reformed to give women more rights of self-defence against sexual assaults, especially by men who are known to them. Third, to successfully resist sexual violence women need to be provided with a range of knowledge and techniques which enhance self-esteem and allow the female body to be experienced as active and resistant.

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