Rape in Alberta: An Overview

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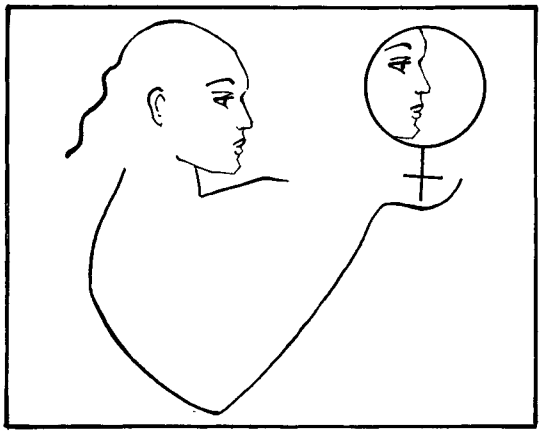
Se concentrant sur l'Alberta, l'auteur place les mythes entourant le viol, la victime du viol et l'auteur du viol dans un contexte historique canadien.



In 1978, the province of Alberta attained the distinction of harbouring the two cities with the highest incidence of sexual assaults in Canada; the two cities being Edmonton and Calgary. And while it has been suggested that in the City of Edmonton alone more than 22,000 sexual assaults occurred from 1974 to 1979, it must be remembered that the problem of sexual assault in Alberta and in Canada, is not as new a phenomenon as investigative reports would lead one to believe. In their haste to criticize the present-day Canadian justice system for its handling of sexual offences, studies have neglected the fact that the written and unwritten societal laws pertaining to sexual assaults have a history. Using Alberta and the crime of forcible rape, that is sexual intercourse without the consent of the female, as frames of reference this article attempts to place the traditional social and legal attitudes regarding this type of sexual assault within a historical context.

Recently, it has been argued that Canada's rape laws are based upon 'two sexist assumptions': that (1) 'the primary value of a woman lies in her sexual and reproductive function' and that (2) 'a woman is the exclusive sexual property of a male.' The historical facts tend to support such contentions. Various sources ranging from the Canadian *Household Guide* of 1894 to the 1897 Canadian edition of *What a Young Man Ought to Know* portrayed the epitomy of happiness for a woman in late 19th century Canada as being married, having children and maintaining the home. If a woman did not want to have children, then she should not marry, for she would be denying 'the mother soul' which was thought to be 'strong in women.'

The very fact that the institution of marriage was placed upon a pedestal, along side that of motherhood and the home, diminished any thoughts of sexual autonomy for women. Thus, women were 'valuable sexual property for the exclusive ownership of those men who could afford to acquire and maintain it.' Marriage furnished a means of 'exclusive ownership'. Since sex was for the purpose of propagation and was to occur only in marriage, woe to the woman who had sex before marriage. For example, the Aug. 28, 1890 issue of the Macleod *Gazette* appeared to be sympathetic to three men who had been found guilty of assaulting a female Salvation Army Officer in Toronto, Ont. Each of the men had been sentenced to two years in prison with hard labour plus a total of three floggings of 10 lashes. However, the paper noted that since the convictions, 'there has been a rumour that the character of the woman was not so high as it was first believed' and in fact they might have received a lighter sentence if this had been known.

One woman recalled that 'in the early 1900s, girls were brought up to think that every able-bodied man was just waiting to seduce them.' Another woman remembered 'that every precaution was taken to ensure a woman's virtue before marriage.' For a woman to remain chaste before marriage required a concerted effort and any lapse would place the female in a position from which she could 'never return. She became an outcast.' The importance given to chastity before marriage and the value placed upon the institution of marriage itself, lent credence to the contention that a woman was, and is, 'the exclusive sexual property of a male.'

Alberta's participation in a puritanical campaign against prostitution during the first three decades of the 20th century tended to reinforce late 19th century concepts of chastity. Women were still divided into two categories — good and bad. While a good woman remained chaste until she

married, a bad woman had sex without marriage. One fatal lapse in their vigilence on chastity, even if marriage was promised, placed a woman in the latter category. It became apparent that 'no decent woman would become a sexual partner unless: a) she was forced to do so (rape); b) she was promised marriage (seduction); c) she contracted to do so (marriage).'

Whereas today we like to think that the female who has sex without the benefit of marriage is no longer considered to be a prostitute, her character is immediately brought into question during a rape trial. Such an occurrence is based upon outdated moral notions of chastity, rather than any legal definition of the term. Although Justice Scott of the Supreme Court of Alberta stated in a 1916 case that, in charges of rape or indecent assault, the previous chastity of the victim 'is not an element of the offence and evidence of unchastity *should* properly be refused', this was not, and has yet to become, the prevailing attitude in Alberta.

Victorian concepts of morality and traditional attitudes concerning social and sexual mores have tended to perpetrate several myths surrounding the crime of rape. Ever since a number of Freudian psychiatrists came to the conclusion that it was the universal wish of females to be subjected to sexual attacks, society has advanced the idea that women want to be raped and, in fact, ask for it. A few years ago, a majority of 133 male and female students at the University of Calgary agreed that 'it is impossible to rape a woman against her will' and 'women rape victims "lead men on" and are therefore responsible for provoking men sexually.' Periodically, letters to various newspaper editors have spoken of reducing the number of rapes through the prevention of the motive and opportunity for perpetuating the offence. Such ideas however, are based upon societal notions of female behaviour; for 'if a woman agrees to have a drink with a stranger or to hitch-hike in a stranger's car . . . she will find that she is interpreted by men and women as giving a sexual carte blanche to the man.'

According to Section 143 of the Canadian Criminal Code: 'A male person commits rape when he has sexual intercourse with a female person who is not his wife, without her consent, or with her consent if the consent is extorted by threats or fear of bodily harm.' This definition has remained relatively unchanged in Canadian law. Since what is at issue in a forcible rape case is whether or not consent to the act was freely given, the justice system and the public have historically measured consent through the degree of physical force used. And while there seems to be universal abhorrence of sexual assaults against small children and older women, the same feeling is not forthcoming to those women in the interim age group unless signs of physical violence are present. In 1906, for example, both the Calgary Morning *Albertan* and the Edmonton *Journal* expressed a great deal of sympathy and admiration for a 22-year-old woman who 'died defending her honour' in British Columbia.

It is readily apparent that unless a woman is left half dead, 'the atmosphere of the courtroom [is] heavy with the suggestion that the victim had lured the poor man and that she really enjoyed the encounter.' Whereas evidence of physical assault greatly adds to the credibility of the victim, it does not necessarily follow that the degree of violence will be reflected in heavier sentences for the guilty party. During a January, 1976, sentencing of three Edmonton men for the rape of a 16-year-old girl, Mr. Justice J. Boyd McBride of the Supreme Court of Alberta stated that, 'Only by the grace of God was murder not committed.' After such a statement, he sentenced each of the three men to six years in penitentiary and six strokes of the paddle. Given McBride's statement and the fact that the maximum penalty for the crime of rape is life imprisonment, this sentence seems to be relatively light. Yet a Nov. 20, 1975 appeal to the Alberta Supreme Court by an accused regarding his sentence of life imprisonment for the rape of a 14-year-old girl was successful because it was noted that the victim did not obtain any severe physical injuries. Consequently, the sentence was reduced to eight years.

There are also indications that it has made little difference in the length of sentence given to a rapist if he has a prior conviction for that particular offence or any other serious offence. Simply speaking, one would assume that if the accused had a criminal record, especially of sexual assault, then he would receive a stiffer sentence than a first offender. However, in the year ending Sept. 30, 1913, out of the two men who were reportedly convicted for the crime of rape in Alberta, it was the first conviction for one and the second rape conviction for the other. Both men received a sentence of more than five years in penitentiary. Yet another example is served by a Nov. 29, 1979 sentencing of an Inuit man who pleaded guilty to beating and raping an Edmonton woman in May, 1977. Brushing aside the defence counsel's plea for a maximum sentence of three years, and noting that the accused had a record of prior convictions for assaults including one for manslaughter in 1969, the judge added five more years to the two-and-a-half years that the accused had already spent in custody. While admittedly this five-year increase was substantial, there have been several instances where far heavier sentences have been given to first offenders or where there have been no apparent signs of violence.

While all these generalizations concerning the relationship between prior convictions and the degree of violence used to the sentencing process are interesting, they are highly suspect. It is a fruitless venture to look for 'complete uniformity in the practise and procedure of sentencing' in rape cases or indeed in any case. Despite the fact that the apparent laxity in sentencing rouses great public indignation, each case is an entity onto itself and should be regarded accordingly. One cannot forget that the judges are individuals and

their sentences reflect their individuality. To seek uniformity is to seek 'the Holy Grail of liberalism, a consistent system of punishment for unequivocally defined crimes.'

Nonetheless, throughout Alberta's history, the public has demanded some measure of consistency through harsher penalties and stiffer sentences for convicted rapists. In 1945 and 1946, the Alberta Council on Child and Family Welfare participated in a nation-wide campaign by the Child Welfare Council which 'asked for more severe punishment for sex offenders and for examination and treatment and segregation of these people to prevent them repeating their crimes.'

Reacting to a January, 1956 rape-murder of a five-year-old girl in London, Ont., the Calgary *Albertan* editorialized that the time had come for 10, 20 and 30-year sentences to be meted out to those individuals convicted of any type of sex crime. The Calgary *Herald* warned that, unless punishments and sentences were brought into line with the wishes of the people, Ottawa would have only itself 'to blame if, at some time, the public [took] the law into its own hands.' In fact, the demand for a longer prison term coupled with a return to the lash for the convicted rapist can be found in a recent Feb. 9, 1980 letter to the editor of the Calgary *Herald*.

Directly related to the public's demand for stiffer penalties is its perception of the rapist. Throughout the years, a person who has committed a rape has been portrayed as being anything from a brute, a sex criminal, a dangerous sexual psychopath to a sex pervert. It seems evident that out of those Albertans who made their opinions known, a majority viewed the rapist as an abnormal person who had to be cast out of society, treated, pronounced cured and then returned to lead a normal life. But if there was no guarantee that they would not repeat the offence, then the offender was not to be released. However, in the last few years, the treatment of a rapist has been more in keeping with a newly emerging philosophy; 'that the average rapist is a general citizen leading a conventional, if restricted life.'

Although proposals for the therapeutic treatment of sex offenders in general and rapists in particular have been the subject of some discussion in Alberta since the mid-1940s, it would appear that the need for special police handling of the rape victim has not. Until the mid-1970s, the policy of several Alberta police departments towards rape investigations had consisted of delegating them to whomever happened to take the call or to the officer who arrived first at the scene. Untrained in rape investigations, the officer might handle a rape case every two years. Such a situation proved to be disasterous for both the police officer involved and the person assaulted. Now, Calgary and Edmonton have sex crime units which handle all investigations into those offences classified as 'sexual' under the criminal code.

But if there are to be any increases in the number of rapes reported to the police or any fundamental changes in societal attitudes towards the offence, then the media's presentation of such cases must undergo major revisions. It has been argued that 'rape is kept alive in the public conscience by sensational newspaper accounts ... presented as titillating warnings to young women about the dangers of hitch-hiking or other "unlady-like conduct." This reinforces what every woman has been taught from childhood — rape is the worst thing that can happen to a woman.' Even a brief survey of a few Alberta newspapers as far back as the 1890s, indicate that the nature of reporting leaves much to be desired. Implicit is the idea that a woman is required to 'raise a hue and cry' immediately after being raped. If she did not, then her claim was highly suspect. Such accounts tend to reflect the underlying thought that rape is 'a natural consequence of the sexual game in which man pursues and a woman is pursued.'

Feminists are quick to condemn the justice system's handling of rape cases by pointing out that: 'The law itself is the creation of male lawyers and judges and the administration of this law for the most part is also in the hands of men.' To date, Canadian studies have been content to discuss how the law has been prejudiced against women. This can be attributed to the fact that by legal definition 'rape is the only major crime in which the victim is always a woman and the offender always a man.' It is readily apparent that Canada's rape laws are in dire need of change. As they are now, these laws reflect both the traditional stereotype sex roles for males and females and the sexual mores of society as they existed in the past. But over the years, the sex roles have become less rigid as have societal notions of female behaviour. Historically, if a female had consented to sexual intercourse just once, then it was felt that she would do so 'on the occasion in question' in a rape case. Now, however, 'most people would agree that if a woman has engaged in consensual intercourse with a friend or lover, that fact does not make it more likely that she would consent to intercourse with, for instance, a stranger.' But at present, the written law as it exists in the Canadian Criminal Code does not reflect such an attitude and clings to outdated concepts of chastity. Any changes in the laws pertaining to sexual assaults against females must rid them of the 'uncompromising moral judgment' implicit in any discussion of chastity and so-called acceptable female behaviour.

It must be realized that rape is a violation of the basic human right to be free from personal attack. Then and only then will discussions of the sexist nature of Canada's rape laws and their application in the provinces, in this instance in Alberta, be relegated to interpretations of sexual assault as it occurred in the past.

Extensive footnotes have been eliminated because of space restrictions. For a copy of this, please apply to the author at: 1084 Acadia Drive S.E., Calgary, Alberta T2J 0E3.