

1991

# Vicious Stereotypes in Polite Society

Douglas Laycock

Follow this and additional works at: <https://scholarship.law.umn.edu/concomm>



Part of the [Law Commons](#)

---

## Recommended Citation

Laycock, Douglas, "Vicious Stereotypes in Polite Society" (1991). *Constitutional Commentary*. 279.  
<https://scholarship.law.umn.edu/concomm/279>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Constitutional Commentary collection by an authorized administrator of the Scholarship Repository. For more information, please contact [lenzx009@umn.edu](mailto:lenzx009@umn.edu).

## VICIOUS STEREOTYPES IN POLITE SOCIETY

*Douglas Laycock\**

One of the less attractive patterns in human behavior is our tendency to stereotype those with whom we disagree, those whose interests conflict with our own, or those who are simply different from ourselves. Such stereotypes create and reinforce prejudice, and they distort our politics, our policy debates, and our constitutional debates. These evils are of course well known; they are an important part of racism, sexism, and discrimination against lesbians and gays. But we do not appear to have generalized the lessons.

Among the educated classes that have been most sensitized to the dangers of the most widely condemned stereotypes, other stereotypes and prejudices flourish. Respected academics and journalists, and respected journals who pride themselves on their tolerance, publish extraordinary statements about groups that have generally failed to engage the sympathies of intellectuals.

In this brief comment, I wish to illustrate the point with a few clear examples. Some involve religion; one involves a potpourri of political and class biases. These are by no means the only examples; the problem is pervasive. Many of us—probably most of us—have acted on unstated and unexamined assumptions that would be as offensive as these if we committed them to print without the veil of euphemisms. Printed or unprinted, flagrant or veiled, these stereotypes are corrosive of the social fabric. The only way to resist is to highlight them and to sensitize ourselves to them.

---

\* Alice McKean Young Regents Chair in Law, The University of Texas at Austin. I am grateful to Patricia Cain, Joe Feagin, Joseph Horn, Sanford Levinson, Carolyn Powe, Lucas Powe, Fred Schauer, and Teresa Sullivan for comments on earlier drafts, and to Mark Warr for introducing me to the social science literature on rape. I wrote most of this article during a very pleasant semester at the University of Michigan Law School, where Audrey Anderson provided valuable research assistance.

I should also note here my immense respect for a co-editor of this journal, Suzanna Sherry, who chose to publish this article despite its harsh criticism of a short passage from her own writings. We have agreed to disagree about the content of that passage. *My* account of that disagreement is that even the most open-minded people can lapse into stereotypes on particular issues.

It is instructive to compare Professor Sherry's editorial response to that of the *Yale Law Journal*. I submitted an earlier version of this paper to *Yale* as a reply to an article that had appeared in the most recent issue of that journal. The editors never acknowledged receipt of the manuscript.

One group that can still be safely insulted is the seriously religious. Fundamentalists, evangelicals, and Catholics remain fair game in many circles. Michael Smith has collected numerous anti-religious passages in Supreme Court opinions,<sup>1</sup> one of them a quotation from an anti-Catholic hate tract.<sup>2</sup>

Suzanna Sherry, writing in the *Michigan Law Review*, equated fundamentalist legislators with racist school boards: "There are still racist school boards in a nation that generally finds racism intolerable, fundamentalist legislators in a nation that rejects a national religion, and so on."<sup>3</sup> The skillful parallelism of the sentence packs powerful implications. Fundamentalism is parallel to racism as a threat to constitutional values; fundamentalists oppose the consensus against a national religion just as racists oppose the consensus against racism. If Professor Sherry knows that fundamentalist legislators are protected by the test oath clause,<sup>4</sup> she gives no hint of it. If she knows that few fundamentalists want a national religion, she gives no hint of that either.

Another example comes from Roger Mudd on National Public Television, on a special on religious liberty (of all things). An historian explained to Mudd that James Madison's fight against religious establishment in Virginia depended on the support of large numbers of evangelical Protestants.<sup>5</sup> Mudd responded: "That's really an interesting political alliance . . . to have enlightened men of reason tied in with the evangelicals."<sup>6</sup> Apparently Mudd thinks that no evangelical can be enlightened or a man of reason, and that it is surprising to find that evangelicals would support anything an enlightened man of reason would support.

A similar thought appears in Professor Sherry's comment that "divine revelation and biblical literalism are irrational superstitious

1. Michael E. Smith, *The Special Place of Religion in the Constitution*, 1983 Sup. Ct. Rev. 83, 98-100.

2. *Lemon v. Kurtzman*, 403 U.S. 602, 635 n.20 (1971) (Douglas, concurring), quoting Loraine Boettner, *Roman Catholicism* 360 (Presbyterian & Reformed Publ., 1962). For a description of the Boettner book, see Douglas Laycock, *Civil Rights and Civil Liberties*, 54 Chi.-Kent L. Rev. 390, 418-21 (1977).

3. Suzanna Sherry, *Outlaw Blues* (Book Review), 87 Mich. L. Rev. 1418, 1432 (1989).

4. U.S. Const., art. VI, cl. 3. ("[N]o religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."). The substance of the clause was applied to the states in *Torcaso v. Watkins*, 367 U.S. 488 (1961).

5. For the relevant history, including the role of the evangelicals, see Thomas E. Buckley, *Church and State in Revolutionary Virginia, 1776-1787* (U. Virginia Press, 1977); Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* (Oxford U. Press 1986); Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409 (1990).

6. "The Supreme Court's Holy Battles," broadcast on National Public Television, Sept. 19, 1989 (videotape in collection of Tarlton Law Library, The University of Texas at Austin).

nonsense."<sup>7</sup> This is somewhat different, because at least in form the attack is on particular ideas and not on the people who hold those ideas. But the harsh tone suggests a related disrespect for the people who would believe such things. These people would seem to be irrational, superstitious, and lacking in sense. That implication is consistent with her more personal attack on fundamentalist legislators.

Survey evidence shows that the great bulk of the population believes in divine revelation. Some 83% feel extremely close or somewhat close to God, 86% believe the Bible is divinely inspired, and 37% believe "the Bible is the actual word of God and is to be taken literally, word for word."<sup>8</sup> Whatever one thinks of the merits of these beliefs, the millions of Americans who hold them do not generally behave in irrational or superstitious ways.

Academic hostility to serious religion is part of a larger cultural gulf in contemporary society. The *Wall Street Journal* denounces limousine liberals, the Beltway crowd, and the white wine and brie set. The people targeted by these labels denounce Reaganites, hardhats, white ethnics, or—if they are above a certain age—Archie Bunker types. Some of these labels target a cluster of attitudes, some target a specific group, and none are used with precision. But from either side, such labels embody a set of political and cultural stereotypes: a whole group of people all have the same bad ideas, and that whole group of people is dangerous. Just how extreme such stereotypes can be is illustrated by Wendy Brown's remarkable anecdote in the *Yale Law Journal*.<sup>9</sup>

The anecdote is this: Emerging from a back-packing trip deep in the Sierra Nevada, Professor Brown discovered that her car would not start.<sup>10</sup> She enlisted the aid of a nearby sportsman, who spent the next two hours helping her get the car started. Her benefactor was culturally and politically very different from Professor Brown. He was wearing a National Rifle Association cap, he was surveying the woods for his hunting club, he was drinking beer and reading a porn magazine, and he had a satellite dish on his Winnebago.

Professor Brown apparently disapproves of all these things, which is her right. So far it is a wonderful story about the best of America: two strangers who disagree on practically everything, ig-

7. Sherry, 87 Mich. L. Rev. at 1427 (cited in note 3).

8. Dennis A. Gilbert, *Compendium Of American Public Opinion* 304-06 (Facts on File Publications 1988).

9. Wendy Brown, *Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's The Embarrassing Second Amendment*, 99 Yale L.J. 661 (1989).

10. The anecdote appears *id.* at 666-67.

noring differences of politics, sex, and social and economic class, cooperating in the wilderness to solve a serious problem faced by only one of them. If de Tocqueville had been there, he would have reported it to his readers in France.

But, Professor Brown reflects, it is fortunate that she had three friends with her. If she had run into this man alone in the woods, she "would have been seized with one great and appropriate fear: rape."<sup>11</sup> Perhaps she would experience this fear because rape is so horrible that even a small risk looms large, and because at any time, and with any male not well known and fully trusted, there is some statistical risk of rape. I quite agree that rape is horrible, that there was some risk, that *if* the man had a propensity to rape, isolation and a gun would present a favorable opportunity and thus increase the risk, and that Professor Brown would be naive never to think of this risk. If her point were confined to this universal risk, it would arouse little comment.

Even so, it is significant that this general fear of rape from any unknown male is analogous to the fear of street crime that many urban citizens experience when they encounter an unknown black.<sup>12</sup> Both fears project on all members of a large class the dangers associated with a statistical risk arising from the misconduct of a small subset of the class. This is the essence of stereotyping—to attribute to all members of a group the bad traits of a few.

The fear of unknown blacks is widely deemed racist, and is unlikely to be legitimated in the pages of the *Yale Law Journal*. Treating all unknown blacks with visible caution may be entirely rational to the risk averse, but it is properly condemned because it imposes serious costs in racial isolation and ostracism on all blacks, the great majority of whom are law abiding.<sup>13</sup> Similarly, however rational it is for women to take precautions against unknown males, visibly treating all males as potential rapists inflicts costs on the innocent majority and further strains relations between the sexes. Whatever precautions may be necessary, it is important to distinguish in thought and rhetoric between two propositions: (1) Some men are potential rapists, and because it is impossible to tell which ones, there is always some risk. (2) All men are potential rapists. Proposition (1) is true, but proposition (2) does not follow from (1).

Professor Brown's anecdote goes well beyond either of these

---

11. *Id.* at 666.

12. See, e.g., letter to editor in *N.Y. Times* A26, col. 4 (Aug. 31, 1990).

13. For evidence of the psychological costs, see Joe R. Feagin, *The Continuing Significance of Race: Antiblack Discrimination in Public Places*, 56 *Am. Soc. Rev.* 101 (1991).

propositions. The juxtaposition of her fear of rape with this man's personal characteristics plainly implies that with this man, she perceived the risk of rape to be significantly greater than average. She could tell that he was a likely rapist because of his NRA cap, his hunting club, his beer, his satellite dish, and his porn magazine. That charge is implicit in the entire anecdote; there is no other reason to dwell on his personal characteristics. She eventually makes the point explicit: "During the hours I spent with him, I had no reason to conclude that his respect for women's personhood ran any deeper than his respect for the lives of Sierra deer . . .!"<sup>14</sup>

There are indeed people in our society who have no more respect for humans than for animals. We call them psychopaths, and when they act on their impulses and we catch them, we lock them up. They are mostly male, but as far as I can tell, they are a tiny percentage of the population. What is the evidence that this man was a psychopath? Well, the NRA cap, the hunting club, the beer, the satellite dish, and the porn magazine.

We also have the evidence that he spent two hours of his limited time in the mountains helping a total stranger fix her car. The stranger was a woman, and he gave his time to help her; that is some reason to conclude that he respects women more than deer. That he offered to help her is not dispositive, as there are occasional accounts of men who help a woman and then rape her. But there is no evidence that Professor Brown's benefactor was such a man. He simply helped her.

That did not earn him any credit with her, nor did it provide her any evidence that he respected women more than deer. Nothing in his individual conduct could overcome Professor Brown's stereotype. If you fixedly believe that blacks are lazy, a hardworking black is "no reason to conclude" otherwise. Either he is an exception, or his hard work is invisible to you. For Professor Brown, NRA members with porn magazines are likely rapists who think of women as animals, and individual traits and conduct are invisible to her even when she is the beneficiary.

Professor Brown's description of her benefactor emphasizes their political disagreements, but there are also important elements of class bias in the story, especially in its comparison of his beer and television to her trail mix and Nietzsche. However heroic the working class may be in the abstract, its members are a perpetual disappointment to many academics. They do not believe what academics believe, read what academics read, or choose the recreation that

---

14. Brown, 99 Yale L.J. at 666 (exclamation points added) (cited in note 9).

academics choose. They are also widely thought to be intolerant. But as far as I can tell, no class and no political faction dominates the market in intolerance.<sup>15</sup>

Friends who read this article in manuscript had divided reactions to Professor Brown's anecdote. Some readers of each sex found it outrageous; other readers of each sex suggested exculpatory explanations. Patricia Cain reports a different distribution of reactions.<sup>16</sup> In her experience most men are outraged by the anecdote, and most women are outraged by the male reaction. We are both generalizing from small and unrepresentative samples; neither of us has a careful study of the correlates of reactions to the Brown anecdote. But I think I have a more politically diverse set of reactions. It seems clear to me that the most important variable that causes different reactions is not sex, but politics. Liberal individualist feminists of either sex may be outraged by the Brown anecdote, but somewhere on the continuum from liberal individualist feminism to radical class-oppression feminism, people first begin to explain the anecdote away, then to not be troubled by it at all, and finally, to be angry at the suggestion that anyone might have been offended.

The suggested exculpatory explanations of the Brown anecdote are revealing in themselves. One reader said that Professor Brown was talking about her feelings, and not about an objective increase in risk. Another said that maybe she was talking about a tiny Bayesian increase in risk, but even a tiny increase is significant when the risk is as horrible as rape.

The extreme subjectivity of the first explanation contrasts sharply with the mathematical rigor of the second. Both explanations came from my readers' advocacy skills; neither came from the apparent meaning of Brown's text. These are the sort of explanations that are greeted with derision after a public figure says something offensive to racial minorities. If the authenticity of Professor Brown's feelings makes objective data irrelevant, then the authentic feelings of confirmed racists are equally valid and make objective data equally irrelevant. A willingness to explain away slurs against some groups, while putting the worst possible reading on every real

---

15. For other perspectives on class bias and related ethnic bias, see Andrew M. Greeley, *Why Can't They Be Like Us: America's White Ethnic Groups* (E.P. Dutton, 1971); Michael Lerner, *Respectable Bigotry*, 38 *Am. Scholar* 606 (1969). For a collection of other abusive epithets directed against gun owners in political debate, press accounts, and academic literature, see Don B. Kates, *Guns, Murders, And The Constitution* 6-9, 11-14 (Pacific Research Inst., 1990).

16. Patricia A. Cain, *Feminist Legal Scholarship*, 76 *Iowa L. Rev.* — (1991) (forthcoming). My account of Professor Cain's views also draws on several conversations and an oral presentation of her paper.

or imagined slight against other groups, independently illustrates the problem I am describing.

It is useful to consider how the story would have been told if Professor Brown's car had broken down in Harlem instead of in the mountains. Suppose her benefactor had been a young black male with a radical political button, and suppose he carried a gun, a beer, a porn magazine, and a boombox. I am confident that her report of the encounter would have been very different. Either her fear of rape would not have appeared in a respectable journal, or it would have appeared in a confessional tone and emphasized a very different moral. The point would have been: "He came only to help me, and I was afraid to let him help; see how fear and racism distorts our whole society." The point would not have been: "I was forced to ask him for help, and it is a good thing I was not alone or he might have raped me."

Some readers are undoubtedly thinking that stereotyping blacks or women or even white males is importantly different from stereotyping NRA members, evangelicals, or porn readers. NRA members, evangelicals, and porn readers have evidenced a belief, or at least a taste, that they hold individually and that makes them different in some important way from people who do not hold the same belief or have the same taste. But any individual black or woman or white male may be different from even a statistically accurate generalization about the group into which he or she was born.

This difference is real. It is reasonable to infer that Professor Brown and her NRA benefactor disagree fundamentally about guns, about hunting, and about pornography. They probably disagree about sex roles, but this inference is less certain.<sup>17</sup> It is entirely legitimate to take their disagreements seriously, and for each to argue about the costs that the other's views and behavior might impose on other individuals or on the society generally. It is equally legitimate for religious believers and non-believers to take their disagreements seriously.

What is illegitimate is to assume that these real differences imply other more offensive differences, up to and including a propensity to felony. Millions of American men own guns, go hunting, drink beer, and read porn magazines. The group targeted by Brown's smear includes my father, my father-in-law, and most of the working-class men I knew as a youth. They were mostly decent human beings, struggling to support their families, with a small

---

17. One study found no correlation between gun ownership and attitudes toward feminism. See text accompanying note 36.



fraction of the power and status that Wendy Brown enjoys as a tenured academic. In retrospect, I do not think much of their sexual politics, although at least one of them raised an extraordinary daughter. But it is an enormous inferential leap from their politics and their social class to a propensity to rape. Very few men of any social class rape strangers in surprise attacks or equate women with the deer they hunt. There is a name for the mental process that imputes to such a large group the evil of a few members. The name is bigotry.

It is easy to be tolerant of unimportant differences. But all of us tend to think the worst of people who disagree with us on really important things. We tend to assume that our opponents followed the same chain of reasoning we did, so that if they reject our conclusion, they must also reject our most fundamental premise. If they believe *that*—fill in any belief that really upsets you—then they must also believe even worse things, and if they believe such bad things, they are likely to act on them. We have all thought in this way, and sometimes spoken or written in this way. I do not exempt myself.

Direct mail fund raisers play on these stereotypes, aggravate them, and profit from them.<sup>18</sup> It is much easier to raise money to fight the devil than to raise money to fine-tune the balance of interests between two groups of Americans who subscribe to many of the same basic values. Stereotyping the opponent lends itself to powerful labels in an argument. There is emotional punch to calling someone a racist or a likely rapist, an atheist or a communist, a persecutor or a fanatic. Willingness to use such labels can intimidate some opponents into silence.

But these stereotypes also poison our public discourse, distort our understanding of the real differences among us, and reduce the chances for resolving those differences even in part. These stereotypes corrode the bonds of mutual concern and respect that hold a pluralistic society together. These bonds are stretched enough by honest disagreement and simple demands for change. Once in our history they broke entirely, and some minority groups have been placed outside their protection for long periods. But generally these bonds have held. They make it unsurprising when Americans from “opposite ends of the political and cultural universe” help one another.<sup>19</sup>

To corrode these bonds unnecessarily is a dangerous thing.

---

18. See E. J. Dionne, *Politics: To Give the Devils Their Due, It Pays From a Fundraising Standpoint to Have Them Around*, N.Y. Times A24, col. 5 (May 23, 1989).

19. The quotation is from Brown, 99 Yale L.J. at 666 (cited in note 9).

And we should have no illusions about who is most endangered. In any outbreak of intolerance, in any reduction of mutual concern and respect, the weak and oppressed will suffer more than the strong and dominant. Those who are most endangered by stereotypes and prejudice have special reasons to avoid invoking their own stereotypes and prejudices against others.

### Appendix

At the risk of diverting the issue, I feel compelled by readers' comments to report some of the available social science data on the stereotypes embodied in Professor Brown's anecdote. I emphasize that the data in this Appendix are distinctly secondary to my principal point. It is generally a mistake to think of persons with different political or cultural values as prone to rape or any other evil. That point holds whatever the general incidence of rape, and even if rape occurs at a slightly higher rate among the particular political or cultural group than in the general population. The issue I raise is not whether the true risk is 10% or 1% or 1/10 of 1%, but rather that it is wrong to impute the dangerous propensity to the other 90%, 99%, or 99.9%.

The cumulative risk of rape over a lifetime is substantial, but the risk in any one encounter with an unknown male is incalculably small. The largest data set is the Justice Department's fourteen-year aggregation of data from the National Crime Survey.<sup>20</sup> More than one hundred thousand respondents per year, half of them women, all age twelve or older, were asked a series of questions about whether they had been victims of crime in the preceding year. The reported annual incidence of rape and attempted rape was 1.6 per 1000 women, or 1/6 of 1%.<sup>21</sup> In the Survey questionnaire, a "verbal threat" of rape counts as an attempt,<sup>22</sup> and in an earlier publication based on the first ten years of these data, 25% of the reported incidents were verbal threats.<sup>23</sup> Over the entire fourteen-year period, the annual rate of completed rapes in the general female population aged 12 and over was .6 per 1000, or about 6/100 of 1%.<sup>24</sup>

Only about half these incidents had been reported to the po-

---

20. Caroline Wolf Harlow, *Female Victims of Violent Crime* (U.S. Dept. of Justice, 1991) ("*Female Victims*").

21. *Id.*, Table 13.

22. *Id.* at 10.

23. U.S. Dept. of Justice, *The Crime of Rape*, Bureau of Justice Statistics Bulletin 5 (1985).

24. Harlow, *Female Victims* at Table 13 (cited in note 20).

lice.<sup>25</sup> Thus, the Survey does much to correct for the underreporting of rape in official crime statistics. But there is still some underreporting in the Survey. A small study in San Jose found that one-third of rapes reported to the police were not reported to interviewers when the Survey questionnaire was later administered to victims.<sup>26</sup> There is no reliable way to estimate the percentage of victims who report neither to the police nor to interviewers. If we inflate the Survey data by a third based on the San Jose study, and by another third as a sheer guess about the rapes reported to neither police nor interviewer, the annual rate of rape, attempted rape, and verbal threat of rape rises to 2.8 per 1000, or not quite 3/10 of 1%.

The Survey reports age- and race-specific rates for seven age classes.<sup>27</sup> The highest rate was 5.5 per 1000 for black women aged 20-24. In the classes that include most women academics, the rate was 2.3 per 1000 for white women aged 25-34, and .6 per 1000 for white women aged 35-49. If we make the simplifying assumption that the reported rate for each age class applies to each age in the class, and if we then cumulate the age-specific rates for each age, we get a crude estimate of the lifetime risk of rape. These Survey data suggest that from age 12 to 80, 85.4 of every 1000 women, or about 8.5%, would experience a rape, attempted rape, or verbal threat of rape. Just over a third of these women, or about 3% of the population, would experience a completed rape. If we inflate these numbers by a third and then by another third as a crude estimate of underreporting, we get a lifetime risk of 15.2% for rape, attempted rape, or verbal threat of rape, and 5.2% for completed rape.<sup>28</sup>

An estimate of women's lifetime risk of rape is not an estimate of the percentage of men who will rape. Large numbers of rapes are committed by a small number of serial rapists.<sup>29</sup> There is no way to quantify this factor, but the percentage of men who rape—and thus the odds that Professor Brown's benefactor might someday commit or attempt a rape—must be very much smaller than the percentage of women who are raped.

25. Id. at Table 18.

26. City of San Jose Law Enforcement Assistance Administration, *San Jose Methods Test Of Known Crime Victims* (1972).

27. Harlow, *Female Victims* at 8 (cited in note 20).

28. A rounding error in the Survey data makes the ratio of completed to attempted rapes ambiguous in a way that slightly affects this calculation. The Survey reports rates per 1000 female population of .6 completed rapes, 1.1 attempted rapes, and 1.6 total. Carried to two decimals, the ratio of completed to attempted rapes could be as low as .55 to 1.10 (.33) or as high as .59 to 1.06 (.36). The figures in text use the median possibility of .57 to 1.08, or .35.

29. Gene G. Abel, Mary S. Mittelman & Judith V. Becker, *Sexual Offenders: Results of Assessment and Recommendations for Treatment*, in Mark H. Ben-Aron, Stephen J. Hucker, and Christopher D. Webster, eds., *Clinical Criminology: The Assessment and Treatment of Criminal Behavior* (Univ. of Toronto, 1985).

These numbers from the National Crime Survey are considerably lower than the numbers commonly cited in the feminist literature. The reasons for the discrepancy are complex and not entirely clear. But I am tentatively persuaded by Susan Estrich, who concludes that the difference is "largely definitional."<sup>30</sup> Most women appear not to define as rape a range of sexual pressure in dating situations that feminist scholars do define as rape.<sup>31</sup> The percentage of men who would take unfair advantage in a dating situation is probably much larger than the percentage of men who would rape a stranger. Whatever one thinks of the moral value of that distinction, large numbers of both men and women appear to see the situations as quite distinct. Estrich would begin to solve the problem by defining degrees of rape, or lesser included offenses.<sup>32</sup>

This definitional dispute is not relevant to the Brown anecdote. Professor Brown was not in a dating situation; what she had to fear was stranger rape at gunpoint. The National Crime Survey data appears to provide the best available estimate of that risk. The Survey reports any incident that the victim defines as a rape or attempted rape, and surely few women would define stranger rape at gunpoint as anything other than rape.

There is no evidence that hunters or gun enthusiasts are disproportionately prone to rape. One study found no correlation between reported incidents of rape and the number of hunting licenses issued in a jurisdiction;<sup>33</sup> another study found statistically significant *negative* correlations after controlling for population.<sup>34</sup> A third study found no correlation between rape and the number of subscriptions to gun and hunting magazines.<sup>35</sup> A fourth study

---

30. Susan Estrich, *Rape*, 95 *Yale L.J.* 1087, 1169 (1986).

31. See *id.* at 1161-69. For some of the questions and definitions used in studies cited in the feminist literature, see Neil Gilbert, *The Phantom Epidemic of Sexual Assault*, 103 *The Public Interest* 54, 57-61 (Spring 1991). For the questions and definitions used in the National Crime Survey, see Harlow, *Female Victims* at 10 (cited in note 20).

32. Estrich, 95 *Yale L.J.* at 1179-84 (cited in note 30).

33. L. Baron & M. Straus, *Legitimate Violence and Rape: A Test of the Cultural Spillover Theory* (paper presented at the Eastern Sociological Society meeting, 1985) (cited in 1 *Attorney General's Commission On Pornography, Final Report* 946 (1986)) ("*Final Report*").

34. Chris W. Eskridge, *Zero-Order Inverse Correlations Between Crimes of Violence and Hunting Licenses in the United States*, 71 *Sociology & Social Research* 55, 56-57 Tables 2-3 (October 1986). For other studies showing no correlation or negative correlations between gun ownership and rates of violent crime, see David McDowall, *Gun Availability and Robbery Rates: A Panel Study of Large U.S. Cities, 1974-1978*, 8 *Law & Pol. Q.* 135 (1986); Gary Kleck, *The Relationship Between Gun Ownership Levels and Rates of Violence in the United States*, in Don B. Kates, ed., *Firearms And Violence* 99 (Ballinger Pub., 1984); Alan J. Lizotte and David J. Bordua, *Firearms Ownership for Sport and Protection: Two Not So Divergent Models*, 46 *Am. Soc. Rev.* 499 (1981); Douglas R. Murray, *Handguns, Gun Control Laws and Firearm Violence*, 23 *Soc. Probs.* 81 (1975).

35. Scott and Schwalm (1985) (cited without further identification in 1 *Final Report* at 948 (cited in note 33)).

found no correlation between gun ownership and attitudes toward feminism.<sup>36</sup> Guns are used in only 9% of all rapes and attempts,<sup>37</sup> and it is a reasonable guess that nearly all of these are handguns rather than hunting weapons. But Professor Brown is right that a gun increases a rapist's chance of success: guns were used in 6% of attempted rapes and 13% of completed rapes.<sup>38</sup>

A Philadelphia study suggests that the rapist had been drinking in 24% of rapes,<sup>39</sup> but alcohol is implicated in a much larger percentage of other violent crimes.<sup>40</sup> Thus, alcohol is generally conducive to crime, including rape, but the relationship is weaker for rape than for other crimes. No one appears to have studied whether beer drinkers, as opposed to wine drinkers or hard liquor drinkers, are disproportionately prone to rape. Nor does anyone appear to have studied whether owners of Winnebagos or satellite dishes are disproportionately prone to rape.

Whether rapists are incited by pornography is a hotly debated question. Many of the conflicting studies are summarized in the Report of the Attorney General's Commission on Pornography, which tentatively concluded that sex offenses are related at least to exposure to violent or deviant pornography at an unusually early age.<sup>41</sup> A more recent study found a statistically significant correlation between rape rates and the sale of soft core pornographic magazines in each state.<sup>42</sup> But the correlation disappeared when the researchers controlled for attitudes towards non-sexual violence.<sup>43</sup>

Thus, there is evidence that some rapists have been influenced by alcohol or pornography. This relationship might turn out to be substantial when rapists are the denominator—when we ask what percentage of rapists drink beer or read pornographic magazines. But the effect remains very small when rapists are the numerator—

36. Arthur L. Stinchcombe, et al., *Crime And Punishment: Changing Attitudes In America* 113 (Jossey-Bass Pub., 1980).

37. Harlow, *Female Victims* at Table 25 (cited in note 20).

38. *Id.*

39. Menachem Amir, *Patterns in Forcible Rape* 99, Table 33 (U. Chi. Press, 1971).

40. Another Philadelphia study found that 54.4% of homicide offenders had been drinking shortly before they killed. Marvin E. Wolfgang, *Patterns in Criminal Homicide* 136, Table 14 (U. Penn., 1958).

41. The social science literature is reviewed in 1 *Final Report* at 901-76 (cited in note 33). The conclusions are summarized *id.* at 974-76. For criticism and defense of the report, see Daniel Linz, Steven D. Penrod, & Edward Donnerstein, *The Attorney General's Commission on Pornography: The Gaps Between "Findings" and Facts*, 1987 Am. B. Foundation Research J. 713; Frederick Schauer, *Causation Theory and the Causes of Sexual Violence*, 1987 Am. Bar Found. Res. J. 737.

42. Larry Baron and Murray A. Strauss, *Four Theories of Rape in American Society: A State-Level Analysis* 182-86 (Yale U. Press, 1989).

43. *Id.* at 186-87.

when we ask what percentage of men who drink beer or read pornographic magazines commit or attempt rape.

Exposure to beer and pornographic magazines is very widespread. A Gallup Poll in 1985 reported that more than 90% of American males under age 50 have "ever" read a magazine "like Playboy or Penthouse," and that about 60% "sometimes buy or read" such magazines.<sup>44</sup> Similarly, some 72% of the male population sometimes drinks alcoholic beverages,<sup>45</sup> and 86% of what they drink is beer.<sup>46</sup> Only a tiny percentage of these men ever rape or attempt to rape a stranger. The inference from beer and a pornographic magazine to a risk of rape is weak—so weak that its principal function is to viciously stereotype the great majority. Whatever the evils of alcohol and pornography, it is a serious mistake to think of all these men as prone to rape in a chance encounter.

---

44. 1 *Final Report* at 920 (cited in note 33).

45. Gallup Report No. 258 at 9 (March 1987).

46. U.S. Dept. of Commerce, *Statistical Abstract Of The United States* 125, Table 204 (110th ed. 1990).