

1983

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Recommended Citation

Laurie Woods, *Book Review: Rape in Marriage*, 1 LAW & INEQ. 187 (1983).

Available at: <http://scholarship.law.umn.edu/lawineq/vol1/iss1/9>

Law & Inequality: A Journal of Theory and Practice is published by the
University of Minnesota Libraries Publishing.

BOOK REVIEW:

Rape in Marriage

By Diana E.H. Russell

New York: Macmillan Publishing Co., Inc. 1982.

Until recently, rape of women by their husbands or male mates has remained a silent and hidden crime. Men's rape of their wives is, in fact, not legally a crime at all in most states. The legal right of marital rape is known as the "marital rape exemption" and is embodied in most state criminal statutes as well as the Model Penal Code.¹

Rape In Marriage is the first book written on marital rape. The book centers around Dr. Russell's study of a random sample of married women. The study found that 14% of the women surveyed disclosed an experience of sexual assault by their husbands. The book also includes a comprehensive review of social science research to date and an appendix, prepared by the National Center on Women and Family Law, presenting a detailed summary of the status of the marital rape exemption in the criminal law of every state as of May, 1981.

Wife rape is illegal in only six states.² Seven others have partially stricken the marital rape exemption so that it is a crime in most circumstances.³ Of the remaining states, fourteen states have a full exemption,⁴ and twenty-two states provide that the marital rape exemption ends under various conditions—for example, the parties are separated under a court order, the parties are living apart, and/or one spouse has filed a petition for divorce or separation.⁵

At the same time that feminists have been working for the abolition of the marital rape exemption in the legislatures and have challenged it successfully in the courts in three states,⁶ the exemption has been

1. Model Penal Code § 213 (Proposed Official Draft 1962).

2. National Center on Women and Family Law, *The Marital Rape Exemption Chart* (1981 & update Sept. 1982) (available from the Center at 799 Broadway, Room 402, N.Y., N.Y. 10003).

3. *Id.*

4. *Id.*

5. *Id.*

6. *State of N.J. v. Albert Smith*, 85 N.J. 193, 426 A.2d 38 (1981); *State of Fla. v. Larry*

extended in thirteen states to prohibit *unmarried* women from charging the men with whom they are cohabiting with rape.⁷ Five states have even gone so far as to enact a partial exemption for "voluntary social companions," thereby, to an extent, legalizing "date rape."⁸

The marital rape exemption traditionally only applied to, and protected, husbands in legally valid marriages. Various theories have been offered as the basis for the marital right or privilege of rape: the "unity of person" common-law doctrine, whereby the legal identity of a woman merged upon marriage into that of her husband and made rape by her husband legally impossible since he could not rape himself; the position of women as chattel of their husbands meant that a husband's rape of his wife was merely one way of making use of his property; and Hale's doctrine of "matrimonial consent" which says that by marrying the woman consents to all intercourse with her husband whenever and however he wants it. All of the rationales underlying the marital rape exemption required a valid marriage contract. The extension of the exemption to rape of women by men to whom they are not married goes beyond those theories.

Russell defines wife rape as oral, anal, or vaginal penetration by use of force, threat or victim helplessness. She does not classify unwanted sex in marriage as marital rape. The author suggests that even more women would be raped if, instead of submitting to unwanted sex, they refused to submit to it. Wife rape directly affects all women because the exemption tells all women that they have no legal or socially accepted right to refuse their husband's sexual advances.

According to the author, at least forty-seven husbands in the United States have been charged with raping their wives. Twenty-three of those cases went to trial and nineteen resulted in convictions.⁹ Dr. Russell suggests that the conviction rate, which is higher than that obtained when the rape victims are not married to the rapists, is a result of the fact that wives who charged their husbands with rape have often been subjected to particularly brutal experiences. It may also be a result of the resistance that must be overcome to convince and motivate a prosecutor to bring such a case.

Dr. Russell places wife rape in the context of other violence against women and explores the similarities and differences between marital rape and woman battery, stranger rape, and acquaintance rape. She suggests that wife rape may be more traumatic than rape by a stranger because of

Smith, 401 So. 2d 1126 (Fla. App. 1981); *Commonwealth v. Chretien*, 417 N.E.2d 1203 (Mass. 1981).

7. The Marital Rape Exemption Chart, *supra* note 2.

8. *Id.*

9. D. Russell, *Rape In Marriage* 22 (1982).

both the sense of betrayal by one's spouse and the social, economic and psychological obstacles to leaving the violent spouse. Her survey indicates that a large group of women experience both wife rape and wife beating, a large group of women experience wife beating but no rape, and a smaller but significant group of women experience wife rape without beatings.

Russell explores the question of why women stay, and identifies such factors as lack of economic resources, lack of social or emotional support for leaving, and the simple fact that, without money, there is no place to go. She points out that the real question that should be asked is why the men do not let them go: one-sixth of the men raped their wives after separation.

Russell explores the causes of wife rape only briefly. She identifies wife rape as one of the consequences of the unequal power relationship between husband and wife. The husband's greater economic power makes the wife dependent upon him. While this does not make rape inevitable, it does encourage it. Russell argues it is necessary to eliminate this imbalance in power in order to eliminate the abuse of that power—wife rape. Dr. Russell believes that wife rape is also a consequence of two male problems: violence in general, and predatory male sexuality. She argues that violence is overwhelmingly committed by men and that male sexuality is oriented toward conquest and domination.

The legality of wife rape perpetuates the problem, and in fact helps cause it because consequently both men and women believe that it is acceptable. Russell concludes that wife rape must be made universally illegal. As long as wife rape is legal, then wife rape will be tolerated and its perpetration sanctioned. Making wife rape a crime would create some deterrence. Some men would not rape their wives because it would be a crime. In addition, the process of seeking legislative change or challenging the exemption by litigation offers an opportunity to raise public awareness about the issue.

Changing the laws will not be enough, however, Russell points out. We must also educate women about their rights and encourage prosecutors to bring charges against husbands who rape. In addition, we must strip wife rape of its myths and understand clearly that wife rape is rape. This book is a step forward in the process of reaching that goal.

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