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‘SHE ASKED FOR IT’.

**A TEXTUAL ANALYSIS OF THE RE-
NEGOTIATION OF THE MEANING OF RAPE
IN THE 1970s-1980s**

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2006**

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A Textual Analysis of the Re-negotiation of the Meaning of Rape in the 1970s-1980s.

A thesis presented in partial fulfilment of the requirements for the degree of
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Jacqueline O'Neill
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Me aro koe ki te ha o hineahuone

Pay heed to the dignity of women

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INTRODUCTION

The discursive construction of 'rape' has changed in an important way over the past twenty years. The way we consider and respond to rape today as a society, and often as individuals, is very different to the mid-1970s.¹ From this period, feminists played a considerable role in the re-negotiation of the meaning of 'rape'. From the narratives of rape victims, feminist discourse produced an alternative meaning. Feminist knowledge and action helped shape legal reform and brought radical changes to the treatment of rape 'victims'.² The focus of this thesis is the shift in the meaning of rape from the mid-1970s to the mid-1980s, and in particular, the role feminists played in it.

Meaning is produced in discourse. At any one time particular discourses will be dominant in constructing what is understood to be the 'real' meaning of 'rape'. While the experience of rape is 'real' enough for its victims, how rape is constructed has important implications for the identities and experiences of both rape victims and rapists, and more generally, the experience of all women. Its meaning is, however, always unstable. The discourses that converge to produce dominant meanings are not wholly consistent and at certain times contesting discourses arise. In the 1970s, the meaning of 'rape' became hotly contested. Newer ways of talking and acting, in particular feminist discourse, widened the discursive space for making sense of rape, challenged the constructions which produced the older meaning, and effected a shift in that meaning.

It is in this context that I intend to analyse the process in which discourses interwove, unmade, and remade the meaning of rape. This involves exploring the established and newly emerged discourses, on rape, their context, their relationship to social practices, and the ways in which they engaged with each other. Of particular focus is feminist discourse, its practices and its impact on both internal and external discourse. Internal discourse refers to how women themselves made sense of their rape experiences, and

¹ Amy Chasteen, "Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault", *Sociological Spectrum*, vol. 21, issue 2, April, 2001, EBSCOHOST, p. 1.

external discourse refers to how others constructed meaning of women's rape experiences. The discursive practices of institutions that dealt with rape victims, such as the government and its agencies, the judiciary and the medical profession, are also analysed. These discourses were principally engaged in a re-negotiation of the meaning of rape that culminated in significant reform of the law in 1985. An analysis of the reform can reveal the extent of the shift in the meaning of 'rape' within particular discourses. Therefore, the process and outcome of legal reform is a focal part of my discussion.

Contesting the meaning of rape

In the early 1970s, the dominant meaning of rape related a rape narrative in which a male stranger, either 'deviant' or over-amorous, probably working-class and/or Maori, got carried away with a 'she asked for it' kind of girl. Gender constructions embedded in medical and legal discourses contained the problem of rape by making it largely invisible. These masculinist discourses supported rape myths such as, women naturally lie, no really means yes, and rape is impossible, which denied the experiences of rape victims, effectively silencing them, and simultaneously, upheld male sexual privilege.

The Women's Liberation Movement that emerged in the 1970s contested this construction. Feminist discourse constructed an alternative meaning, founded primarily on the experiences of rape victims. It challenged assumptions about rape's prevalence, causes, and consequences, and provided an alternative analysis for making sense of sexual violence.³ Feminists took bold action. Speak-outs, Reclaim the Night marches, vigilante action, and the setting up of rape crisis centres, were some of the more significant feminist practices which challenged conventional social and political responses to rape.

The feminist challenge went further than individual analyses of individual cases: it located rape in 'normal' heterosexuality. This made possible the statements 'all men are

² Some people prefer the word 'survivor' to victim as 'victim' carries with it notions of powerlessness and vulnerability. But to speak of a person as a survivor who has only recently experienced such an event seems premature. I use the term 'victim' in this thesis.

³ Chasteen, p. 101.

potential rapists' and 'all women are potential victims'. Rape victims were not provocative women: instead, all women were vulnerable to the threat of rape. And rather than the stereotypical working-class, amorous, and coloured rapist, feminists pointed the finger at the relatively more powerful middle-class pakeha men. For some feminists, race became integral to their analysis of, and response to, sexual violence. This was reflected in The National Collective of Rape Crisis and Related Groups of Aotearoa actively accepting Maori as tangata whenua.⁴

Feminist knowledge constructed rape as an ordinary event, not an extraordinary one. The feminist challenge made the gender order problematic: it subverted long-held understandings people had about men, women and sexuality. Not surprisingly, many men had difficulty listening to feminist talk, and so too did many women who had invested their well-being and safety in that patriarchal genderised order.

Literally 'patriarchy' refers to 'rule by the fathers'.⁵ Radical feminists⁶ used it to refer to the constructions of gender which gave individual men power over women.⁷ As the 'rule makers', men controlled women's sexuality, especially through the virgin or madonna/whore dichotomy. The line between whore and madonna was an arbitrary one. "No woman knows just how much sexual experience will be sufficient to push her over the line into the debased class. This depends on surrounding male whim."⁸ But women who followed the 'rules' of femininity could also benefit from this distinction. To be a 'madonna' conferred status, and enabled one to demand protection. Distinguishing oneself from 'other' women, i.e. 'whores' also reduced one's perception of the personal

⁴ Lynne Alice, "Another Pair of Eyes: Women's Spirituality and Feminist Politics", in *Feminist Voices. Women's Studies Texts for Aotearoa/New Zealand*, Rosemary du Pleiss (ed.), Melbourne: Oxford University Press, 1992, p. 149.

⁵ Alison Jaggar, *Feminist Politics and Human Nature*, Totawa, New Jersey: Rowman & Littlefield, 1988, p. 102.

⁶ See chapter 3 for a discussion of radical feminism, p. 79.

⁷ Karen Dubinsky, *Improper Advances. Rape and Heterosexuality, Conflict in Ontario, 1880-1929*, Chicago: University of Chicago Press, 1993, p. 32.

⁸ Debbie Jones, "The Erotic Revolution: Is Sexual Freedom Revolutionary?", in *Learning About Sexism in New Zealand*, Phillida Bunkle, Stephen Levine, and Christopher Wainwright (eds), Wellington: Learmonth, 1976, p. 30.

threat of rape. Thus feminist talk had the effect of challenging both men and women's experiences.

To contest the meaning of 'rape' was to do more than ask who was telling the 'true' story in a rape event. It generated intense anxieties. It threatened other social constructions such as gender, race and class.⁹ Contesting the meaning of 'rape' also questioned the institutions of marriage and family, considered foundations of society, and the culture of masculinity. The rape debate became part of the social and political unease stirred up by the changing role of women. In this way sex can be viewed as a medium for wider social concerns and a focus of struggles over power.¹⁰

Parameters of the thesis

In this thesis, the meaning of rape is fluid, reflective of discourses used by people of the time rather than my own understanding of rape. The word 'rape' is also inclusive of the 'rape event', 'rapist' and 'rape victim'. For the purposes of my thesis, a 'rape victim' is an adult female subject to non-consensual sex; this is both a gender and age demarcation. It assumes women can be studied as a group because sex is of central cultural significance.¹¹ Acknowledging that there are differences among women's experiences, and even that gender may not frame their primary experience, does not detract from this. Feminist research demonstrates that rape was, and is, a reality that has an impact on all women whether they experience it as an actual event or as an effect of that event.

The centrality of sex makes it difficult to avoid making sense of the rape event without the filter of gender discourse. A woman's body was the site where a rape action was perpetrated and such an action was understood to be sexual. Although feminist discourse often used an analysis of power, it still located rape in a patriarchal order, the ultimate expression of male sexual dominance over women.

⁹ Class in this thesis is analysed only in context of the older construction of the rapist.

¹⁰ Jeffrey Weeks, *Sexuality and Its Discontents: Meanings, Myths, and Modern Sexualities*, London: Routledge, 1985, p. 16.

Much of the discursive space surrounding sexual violence at this time was also marked by this distinction. Legal and most feminist discourse restricted the word 'rape' to refer only to a specific act between a male assailant and a female victim.¹² Legally it was not possible for a man to be raped, although a man could be sexually assaulted. Nor was there much acknowledgment of male victims. Feminist discourse viewed rape as a powerful tool in the male oppression of women. Rape was seen, and still is by many today,¹³ essentially as male sexual aggression against females. The gender demarcation is also reflective of my perspective in this thesis, i.e. a feminist one. As Catherine MacKinnon, an American feminist theorist and practitioner of law says, "sexuality is to feminism what work is to Marxism: that which is most one's own yet most taken away".¹⁴

The discursive space of sexual violence also made a distinction between child and adult victims. Legal discourse on rape emphasised adult rather than child victims of rape. Other discourses constructed the experiences of children and adults differently, e.g. discourses on childhood could automatically define the event as non-consensual; there was no question of consent. But not all discourses separated adult from child victims. Feminist discourse often linked the two under a single analysis of power. The age demarcation is revealed to be even more arbitrary, for at times, young adolescents were treated as adult by the judiciary and the public.

Feminist perspectives

This thesis has a feminist perspective. 'Feminism' is a broad encompassing name; it does not represent a homogenous group of women. I have always enjoyed Rebecca West's definition: "I myself have never been able to find out precisely what feminism is: I only know that people call me a feminist whenever I express sentiments that differentiate me from a doormat."¹⁵ Cathy Roberts describes feminism as an intricate interweaving of feelings, ideas and experiences that have become a set of views on the situation of

¹¹ Judith Allen, *Sex and Secrets. Crimes Involving Australian Women Since 1880*, Melbourne: Oxford University Press, 1990, p. 1.

¹² This has a general application. Not all feminists held this restrictive definition.

¹³ Having said this it should also be added that there is now a greater acknowledgment of female perpetrators of rape and of specific gender obstacles that may deter male victims of rape from reporting.

¹⁴ Catherine MacKinnon quoted in Allen, p. 2.

women. She states the common ground in feminism is that women's position in the social structure should be defined by 'us'.¹⁶

For the purposes of this thesis, Naomi Wolf's ideas on feminism resonate with mine. She says feminism should be broadly understood as a humanistic movement for social justice. Thus it precludes hate - it is illogical to claim one's rights as a woman yet deny them to others. But feminism also sets a narrower focus than 'humanism': on this level it is appropriate to work on behalf of women because female humans are oppressed in ways unique to their sex.¹⁷

Shulamit Reinharz says feminist research does not entail defined feminist research methods but, rather, a feminist doing research.¹⁸ Feminist methods are not necessarily seen as being different from masculinist or mainstream methods, but feminists can make unique contributions by seeing patterns and inter-relationships, and implications of questions, that non-feminists may not see.¹⁹ Mainstream methods are thus reformulated to offer other possibilities. And "feminist scholarship and empirical research ... have particular qualities that distinguish it from other research ... in its choice of problems and objectives".²⁰ Nor is there only one way to do feminist research.²¹

Feminist scholarship has a strong relationship with action and does not separate the production of knowledge from its uses.²² In part, through this thesis, I intend to demonstrate the significance of the role of feminist groups in the law reform and in the treatment of rape victims that took place in the 1980s. I will contend that without their 'talk and walk' little would have changed. It is easy for marginal or minority groups to be written out of history. Cathy Roberts contends that feminist thought and action are not

¹⁵ As quoted on a postcard, Cath Tate Cards, London.

¹⁶ Cathy Roberts, *Women and Rape*, Hertfordshire: Harvester Wheatsheaf, 1989, p. 1.

¹⁷ Naomi Wolf, *Fire With Fire. The New Female Power and How It Will Change the 21st Century*, London: Chatto & Lindus, 1993, p. 152.

¹⁸ Shulamit Reinharz, *Feminist Methods in Social Research*, New York: Oxford University Press, 1992, p. 7.

¹⁹ *ibid.*

²⁰ Lott Bernice quoted in Reinharz, p. 3.

²¹ *ibid.*, p. 243.

²² *ibid.*, p. 94.

often acknowledged as part of our cultural heritage, but a part they are. Significantly, she asserts that the work of the feminist anti-rape campaign and the personal experiences of women who have been raped are a part of the background and development of therapy and support services the world over.²³

Charlotte Macdonald talks from her experience as a university lecturer in the 1990s of teaching students who had little if any memory of the Women's Liberation Movement of the 1970s, and says we need to present the contemporary movement in its historical context.²⁴ This relates to the feminist concern to reclaim the lives of past women, because in understanding what has gone on before we can better know and act upon our present.²⁵ Judith Allen also sees a study on a criminalised practice such as rape with regard to sexuality and power as contributing to the broader historical study of negotiations between the sexes.²⁶ This is more than just filling in a gap in women's history: it reveals how women as a group were marginalised. The deconstruction of discourses that made this possible has a contemporary relevance.

The ease with which minority voices, in this case those of feminists, can be erased from history, can stem from the colonisation of their self-definitions. Listening to contemporary conversations, it seems to me that the word 'feminism' has now attached to it a sense of embarrassment, or is perceived to equate to unfeminine man-haters.²⁷ This attests to the success of counter-discourses that have subverted the original meaning of feminism, as most feminists understood it, to mean something that is not 'normal', is extremist and scary. To counter this, I think it is important to reclaim the word

²³ Roberts, 1989, p. vii.

²⁴ Charlotte Macdonald, *The Vote, the Pill, and the Demon Drink. A History of Feminist Writings in New Zealand*, Wellington: Bridget Williams Books, 1993, p. 2.

²⁵ Liz Stanley quoted in Reinharz, p. 159.

²⁶ Allen, p. 12.

²⁷ I have heard women declare emphatically that they are not feminists when their behaviour is strongly suggestive that they are.

The National Collective of Women's Refuges is at present considering changing the descriptions of its four cornerstones, one of which is Feminism. The suggested change is to Women's Rights, and the rationale is that the previous title is outdated and they now need something that is more in keeping with contemporary society. Personal communication with Timaru Women's Refuge co-ordinator, March 2005.

‘feminism’ as something positive, complex and dynamic, and to demonstrate its significance in and for the experience of every woman.

By representing feminist talk and action in their own terms (mediated by a supportive feminist), women and men can access feminist meanings without the typical negativity. In a time when distinction between men and women is perceived to be less obvious, e.g. because of numerous women in higher levels of employment and more laws to support women’s rights, there is possibly a weaker base for feminist political mobilisation. A study of the roots of a feminist movement against sexual violence in the past can provide some clarity for a contemporary analysis.

Some stylistic differences are also associated with feminist scholarship. To reflect her feminist stance, Shulamit Reinharz makes decisions which include using ‘her’ as the generic pronoun rather than ‘him’, nonmasculinist terms such as ‘distribution’ rather than ‘dissemination’, women’s full names rather than impersonal, masculinist surnames, and the use of nonmilitary language.²⁸ Some of these particular stylistic choices make sense to me, and I intend to adopt them in the writing of this thesis.

Post-modern approaches

Post-modernism and feminism are useful allies in analysing gender. Discourse analysis is the primary tool I use to write this feminist social history. A discourse is a system of statements that construct an object. “It refers to a set of meanings, metaphors, representations, images, stories, statements and so on that in some way together produce a particular version of events.”²⁹ Discourse is manifested in texts, and given that virtually all aspects of human life are imbued with meaning, everything around us can be considered as ‘textual’.³⁰ Michel Foucault treated discourses and practices as if they were

²⁸ Reinharz, p. 16.

²⁹ Vivian Burr, *An Introduction to Social Constructionism*, London: Routledge, 1985, p. 48.

³⁰ *ibid*, p. 51.

the same thing. Material practices are always invested with meaning, i.e. they have the status of a text.³¹

Discourse analysis proceeds through deconstruction of the text. Textual criticism can identify “discrete meaning systems employed in the understanding of personal and social phenomena and entails an analysis that is attentive both to detail in language and to the wider social picture”.³² Deconstruction involves taking texts apart and seeing how they are constructed in different ways to project particular images of people and their actions.³³ This is necessarily a subjective and interpretative process. Several models provide a means of doing this.

Jacques Derrida describes dominant forms of Western thought as structured in hierarchical binary oppositions or dichotomies, but relying for their meaning on devices that fall outside this logic and are therefore denied in the official text.³⁴ Because language is a self-referring system (i.e. words or ‘signifiers’ gain meaning only from other ‘signified’, or what words refer to) to talk about something is necessarily to talk about what it is not. In this way, presence contains absence. Jacques Derrida referred to this as *différance*.³⁵

He argued that hierarchical binary oppositions are typical of ideologies. They lead readers to believe that one side of the dichotomy has a greater value, when neither can exist without the other.³⁶ To deconstruct a text is to draw out its conflicting logics with the aim of showing that the text never exactly means what it says or says what it means.³⁷ The deconstruction of a text seeks to reveal its ‘hidden’ internal contradictions and

³¹ Ian Parker, *Discourse Dynamics: Critical Analysis for Social and Individual Psychology*, London: Routledge, 1992, p. 17.

³² Damian O’Neill, “Men Against Violence: A Post-Structuralist Critique of the Science and Practice of Stopping Men’s Violence to Women in an Applied Community Setting”, Ph.D. thesis, Massey University, 1997, p. 31.

³³ Burr, p. 164.

³⁴ Chris Atmore, “The Mervyn Thompson Controversy: Feminist Deconstructive Reading”, *New Zealand Sociology*, 9 (2) 1994, p. 176.

³⁵ Burr, p. 107.

³⁶ *ibid.*

³⁷ Atmore, p. 177.

repressed meanings and shows us how we are led by the text into accepting the assumptions it contains.³⁸

Thus deconstruction has the potential to unsettle binary oppositions that embody power relations.³⁹ “Wherever, within the cultural matrix, power claims privilege for itself in the name of Being, presence, authoritative speech, essential nature, absolute Truth, in sum as pure identity and sameness, then *différance* can be called on to instigate a relativisation and subversion of that power.”⁴⁰ The domain of gender is viewed as particularly inviting of this strategy.⁴¹

Jacques Derrida has also identified logocentrism with *phallagocentrism*. He has claimed that “it is the one and the same system: the erection of a paternal logos ... and of the phallus as ‘privileged signifier’”.⁴² It is possible to conclude from this that the hierarchy of masculine/feminine is the most forceful and encompassing binary that links all others.⁴³ This goes some way to explain the centrality of sex to our lived experiences, and of the difficulty of interpreting rape outside a gender framework.

Instead of the logic of either/or, Jacques Derrida recommends that we adopt the logic of both/and. To merely invert the opposition by privileging the second term would retain the power relations previously exercised. This idea is expressed in Naomi Wolf’s definition of feminism, in which she says it is illogical to claim one’s rights as a woman and yet deny them to others.⁴⁴

Post-modernism identifies a multitude of ways of assigning meaning to the world, and to the understandings and defining of events and entities within it which are available to

³⁸ Burr, p. 165.

³⁹ Anthony Easthope and Kate McGowan (eds), *A Critical and Cultural Theory Reader*, Buckingham: Open University Press, 1994, p. 103.

⁴⁰ *ibid*, p. 107.

⁴¹ *ibid*.

⁴² Jacques Derrida quoted in Easthope and McGowan, p. 103.

⁴³ *ibid*.

⁴⁴ Wolf, p. 152.

people at any time in a specific socio-historical space.⁴⁵ Each version of reality favours particular possibilities for personal identities, social relationships and social institutions. It is through discourses that we make sense of our personal experiences, define them, and act in them. Meaning is plural, and consciousness is a site of conflict between competing discourses, as each discourse offers different subject positions for an individual to adopt or an institution to practice.⁴⁶

Within this discursive field, one discourse is usually more dominant, having procured for itself the stamp of truth. In this way, meaning-making and control over language are important resources held by those in power.⁴⁷ Discourses produce and reproduce power relations. Talk, writing, and social encounters can be viewed, therefore, as sites of struggle and conflict where power relations are acted out, contested and resisted.⁴⁸ Naming is power, and naming certain situations as sexually coercive or not will impact on how those situations are experienced and made sense of.⁴⁹ Thus discourse analysis enables us to examine how discursive practices create and uphold particular forms of social life and to expose power inequalities.

Discourses are not monolithic; there are internal points from which they can be attacked, and they are threatened by other discourses.⁵⁰ Ian Parker describes discourses as embedding, entailing and presupposing other discourses. Discourses provide spaces - the concepts, metaphors, models and analogies - for making new statements within any specific discourse.⁵¹ This reflects their inter-textuality. Context and text are relational. They stand a part of, and apart from each other. The process in which meanings are transferred from one body to another is never one of simple inscription, but rather one of

⁴⁵ O'Neill, p. 18.

⁴⁶ *ibid.*

⁴⁷ Charlene Muehlenhard, Irene Powich, Joi Phelps and Laura Giusti, "Definitions of Rape: Scientific and Political Implications", *Journal of Social Issues*, vol. 48, no. 1, 1992, p. 23.

⁴⁸ Burr, p. 41.

⁴⁹ Muehlenhard, Powich, Phelps and Giusti, p. 41.

⁵⁰ Burr, p. 74.

⁵¹ Parker, p. 13.

re-inscription.⁵² In this way, discourses interweave to unmake and remake both text and context.

Understanding the discursive process as relational and inter-textual, containing more fluid and complex dichotomies, allows for a fuller, and ultimately more human, analysis of history. Karen Dubinsky in her book, *Improper Advances. Rape and Heterosexual Conflict in Ontario 1880-1929*,⁵³ argues against conflating heterosexuality and sexual violence and seeks to recover the various ways women have resisted patriarchal norms of sexual behaviour and attempted to carve out their own sexual territory. Otherwise, she asks, how could we understand the many women who resisted unwanted male incursions on their bodies by taking their cases to court? Thus she promotes the concept of sexual autonomy in women, alongside their experiences of victimisation in sexual relations. The duality of women, as both victim and agent, is a particularly useful construct in viewing feminists in my study.

In a different way Susan Ehrlich uses the concept of a 'community of practices' to analyse language in order to shift away from overarching generalisations about women and men.⁵⁴ A 'community of practice' is defined as a group of people 'who come together around mutual engagement in some common endeavour'. As linguistic practices arise out of the kinds of community of practice with which we are involved, an understanding of such local practices and activities should provide greater insight into the differential linguistic behaviour of women. This allows for a focus on gender in its fuller complexity and reflects the fluid inter-textuality of context and text.

But a flaw in a less dichotomous understanding of We and Them, is a weaker basis for feminist political mobilisation. Conversely, such an understanding can be viewed as offering more opportunity for real change as it is more inclusive, has more potential for

⁵² Chris Hilliard, "Island Stories. The Writing of N.Z. History, 1920-1940", M.A. thesis, University of Auckland, 1997, p. 12.

⁵³ Karen Dubinsky, *Improper Advances. Rape Heterosexuality, Conflict in Ontario, 1880-1929*, Chicago: University of Chicago Press, 1993.

⁵⁴ Susan Ehrlich, "Communities of Practice, Gender and the Representation of Sexual Assault", *Language in Society*, 28, 1999, p. 239.

asserting rights without denying others, and forces a more sophisticated analysis of a problem. The latter, in particular, is realised in Karen Dubinsky's book when she seeks to replace an early feminist analysis of rape with one that takes into consideration the complex interplay of structures and ideologies that support patriarchal domination.

A strongly dichotomous understanding of We and Them characterised the early feminist movement on sexual violence. Though this provided a solid basis for political action, it also obstructed some feminists in developing their conceptualisation of, and response to sexual violence. Naomi Wolf sees 'victim feminism' as having slowed women's progress.⁵⁵ The difficulty in accepting that men could be victims, or support people in women's lives, also had this effect. When at times some rape crisis centres refused access to men, it had a negative effect on both women's and men's post-rape experiences.

Post-modernism provides for the possibility of agency. Power relations always involve the possibility of resistance, are intrinsically unstable, and can be reversed.⁵⁶ At an unconscious level we, as individuals, are constantly in the process of constructing and negotiating our own identities from the available discourses. But it is conscious engagement with discourses and related social practices that holds the potential for personal and social change.

Feminist consciousness-raising offered and realised this potential. "Although ... the subject is constituted in discourse, this subject is yet capable of historical reflection and is able to exercise some choice in respect to discourses and social practices that it takes up for its own use."⁵⁷ Change becomes possible because people are capable, given the right circumstances, of critically analysing discourses that frame their lives.⁵⁸ They can then either resist, claim, or re-contextualise the positions afforded them according to the

⁵⁵ Wolf, p. 147.

⁵⁶ Patrick Baert, *Social Theory in the Twentieth Century*, United Kingdom: Polity Press, 1998, p. 125.

⁵⁷ Burr, p. 90.

⁵⁸ *ibid.*

possibilities they wish to pursue. As these things have been made, they can be unmade, as long as we know how it was they were made.⁵⁹

But agency is not limitless. It is constrained by both the limits discourse places on what can be said about objects and on the identities that impact on what claims a person can make. Thus while women could claim they were raped, a legal discourse that positioned women as duplicitous made their claims of rape difficult to legitimate and privileged a male version that described what occurred as consensual sex.

Criticisms of a post-modernist approach are to the suggestion that there is nothing outside language, and to its potential to slide into relativism. Ian Parker observed that post-structuralism can provoke an exorbitation of language at the expense of everything else, including politics.⁶⁰ But he offers some way to ameliorate this problem that is useful in thinking about sexual violence. He provides for a reality that exists outside the texts. We can think of things as having one of three object statuses: ontological, epistemological and moral/political, and it is this reality that provides the raw material from which we may structure our understanding of the world through discourse. Ontological objects are objects that form the material basis of thought. These can include all aspects of our physical and social environment that structure our action. But we cannot directly know of them. They are mediated through language, which is a constructive process. When we give meaning to them they enter the epistemological sphere. The third realm of moral/political objects refers to special epistemological objects which are 'called into being' through discourse, such as mental illness and personality.⁶¹

The idea that emerges from Ian Parker's concepts is that while reality does not determine knowledge it lays down important restrictions on the way in which the world can be constructed. Thus a rape event has a material basis in reality but we can only make sense of it through the constructive process of language. This does not deny the actual experience of rape, but makes subjective the interpretation of it. It is this subjectivity that

⁵⁹ Baert, p. 127.

⁶⁰ Parker, p. 41.

⁶¹ Burr, p. 87.

provided the opportunity for feminists to challenge an essentially patriarchal definition of rape. And, while it is also this very subjectivity that can support claims of relativism, 'reality' limits what can be said about rape. When feminists related self-narratives of rape victims, previously silenced, the established rape narrative made less sense. For example, when women broke their silence and large numbers of women began to say they had been raped, the traditional position that rape was an extraordinary event fragmented.

In discourse analysis, power is defined as an effect of discourse. Michel Foucault defines power as a strategy, emerging out of the relationships between people, transmitted through subjects, rather than imposed on them.⁶² Knowledge has a relationship with power. Discourse is viewed as effective when its subjects identify with it and help to circulate it.⁶³ This has already been alluded to. But to discuss power only in these terms obscures the experience of the rape event of women. While discourses provided the limits of how rape victims could make sense of the rape event, power, as a physical force was also part of it. At the very least, it provided a material basis for thinking about rape. As such, power has a more multi-dimensional definition in this writing.

Rape was, and is, a traumatic experience for any individual. It is described as an attack on not only one's physical body, but also one's emotional, mental and spiritual being. Some people describe it as a death. The focus of this thesis is the contestation and re-negotiation of the meaning of rape as it was enacted in both language and social practices. But this can obscure the sense of personal destruction and disintegration voiced by rape victims and survivors describing their rape experiences. It is therefore imperative to draw attention to the fact that it is the experiences of these women that provide the impetus for such a discussion and that behind any sense-making of 'rape' is a woman's pain.

⁶² Baert, p. 124.

⁶³ Kungja Jung, "The Politics of Speaking Out: NESB Women and the Discourse of Sexual Assault in Australia", *Asian Journal of Women's Studies*, vol. 4, no. 3, 1998, p. 134.

Historiography

Rape was not seriously researched or discussed until the 1970s. Academic and clinical literature emphasised the psychopathological nature of sexual offenders and characteristics of victims. This implied a rapist who was inherently different to other men and a victim who contributed to her sexual victimisation.⁶⁴ These identities were largely informed by Sigmund Freud's conclusions regarding male and female sexuality based on his studies in psychoanalysis.

Feminist writings in the 1970s reinterpreted sexual violence from a woman's perspective. Susan Brownmiller's *Against Our Will*, published in 1975, regarded as a pioneer in the literature of rape, demonstrated that the political is personal, and that knowledge is rooted in experience. It was controversial because rape was defined as a political crime, and was argued to be a necessary consequence in the patriarchal control of women.⁶⁵ Rather than a deviation from 'normal' sexuality, rape was an extension of it. And rape was re-conceptualised as an act of violence rather than one of sex, having more to do with power than with sexual desire.

Susan Brownmiller has been criticised for essentialising rape, her treatment not truly historical; and for assuming a unity among women from a white liberal perspective. Seeing rape as violence rather than sex was also problematic for some feminists. Not all feminists made a distinction. Some, such as Stevi Jackson, defined rape as both a sexual act and an act of aggression.⁶⁶

Against Our Will was one of a number of publications in the 1970s that served to challenge long-held assumptions about rape, renaming them 'rape myths'. Following Susan Brownmiller's, there were more than four dozen books on the subject published in

⁶⁴ Colleen Ward, *Attitudes Towards Rape: Feminist and Social Psychological Perspectives*, London: Sage Publications, 1995, p. 9.

⁶⁵ Lisa Cuklanz, *Rape on Trial: How the Mass Media Construct Legal Reform and Social Change*, Philadelphia: University of Pennsylvania Press, 1996, p. 16.

⁶⁶ Stevi Jackson, "The Social Context of Rape: Sexual Scripts and Motivation", *Women's Studies International Quarterly*, vol. 1, 1978, p. 27.

the U.S.A. alone.⁶⁷ These both reflected and propelled a growing trend in changing attitudes about gender in the U.S.A. and would influence shifts in understandings of rape and gender in New Zealand.

The new feminist understandings of rape have also informed historical studies. These have used the past as a means to access the present, reflecting a Foucauldian practice. Through juxtaposition of the past with the present, assumptions or underlying structures that tend to be taken for granted by individuals are made visible. And the realisation that such structures are not universal, but particular to time and place, has allowed for contemporary assumptions, both traditional and feminist, to be challenged.

In *Female Sexuality and the Law*, Susan Edwards examined how discourse on femininity informed legal discourse and social practices. She adopted Michel Foucault's method of archaeology to reveal the specific constructs derived from medical, gynaecological, psychoanalytical and everyday discourses that informed legal discourse and were reproduced and perpetrated in judicial practices. Her concern was not with discovering the truth about sexuality, but in revealing the way of speaking about it and the ways it was assimilated into a system of values and prohibitions.⁶⁸

Judith Allen's *Sex and Secrets*, analysed historical crimes involving women within a framework of sex. She believed that "the historical specification of relationships between sex, power and sexuality will not proceed very far unless sex is accorded a distinct and indispensable analytic status".⁶⁹ Judith Allen's work, like that of Karen Dubinsky's, dissolved the unhelpful dualism of 'woman as victim' and 'woman as agent' and showed they were both the same woman. She described her work as a contribution to the historical study of negotiation between the sexes with regard to sexuality and power, and said that such an enquiry served those who wished to end oppression of the sex women by the sex men. Thus she made a connection between knowledge and its uses.

⁶⁷ Cuklanz, p. 16.

⁶⁸ Susan Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981, p. 13.

⁶⁹ Allen, p. 5.

Some studies in a specifically New Zealand context followed. Mary Gillingham in her study on sexual cultures in Wellington, 1900-1920, adopted Karen Dubinsky's framework of sexual pleasures and sexual danger.⁷⁰ She also used the concept of 'sexual scripts', a phrase coined by Stevi Jackson. 'Sexual scripts' are seen to provide for the occurrence of rape since they contain 'techniques of neutralisation' which a rapist may use to justify his actions in advance, and may serve to motivate him.⁷¹ This approach, which could also be described as a textual deconstruction, links discourse with identity and social practice. Rape was located in the unequal gender relations determined by a patriarchal society, but women's agency was also acknowledged.

Helen Bauchop described her thesis, "The Public Image of Rape in New Zealand",⁷² as an examination of the way accounts of rape were constructed, believed or disbelieved, condemned or ignored in the 1950s-1960s. Although Helen Bauchop defined her work as feminist, she herself eschewed the use of theory as she saw this as disguising the reality of the violence and pain rape causes women. But ultimately she did rely on deconstruction theories in order to analyse newspaper articles, exposing the unwritten rules and regulations that governed sexuality, and used a feminist framework to make sense of them.

A specific aim of her work was to "put rape back into the society from which it came". Thus rape was defined as a social act, and links again made between discourse and social practice. Her work is a functional point from which to begin my thesis as it provides a background to the period I am covering. Her insights also continue to be useful as the 'rules and regulations governing sexuality'⁷³ in the 1950s-60s persisted alongside newer ones that were to emerge in the 1970s-80s.

⁷⁰ Mary Gillingham, "Sexual Pleasures and Dangers: A History of Sexual Cultures in Wellington, 1900-1920", M.A. thesis, Massey University, 1998.

⁷¹ Jackson, p. 27.

⁷² Helen Bauchop, "The Public Image of Rape in New Zealand: A Case Study of Two Newspapers, 1950-1970", B.A. (Hons.) thesis, University of Otago, 1990.

⁷³ *ibid.*

David Shapcott, a member of the Carrington Rape Education Group in the 1980s, used a feminist analysis of rape in his ahistorical study of rape in the 1980s in New Zealand. He viewed the legislative changes as generally ineffective in achieving any real change in the sexual culture. He located rape in 'normal' male heterosexual practices and saw the perpetration of rape as a dramatisation of the power males hold over females. This power imbalance was rationalised by conscious and unconscious reference to myths about rape that are widely held in society. He argued that rape could exist only alongside rape myths, and as long as pornography was viewed as harmless.⁷⁴

Nicole Humphries' study on the development of the rape reform laws⁷⁵ departed from a feminist analysis. Rape was defined as a legal rather than a political issue, and was not located in a social context. Her thesis outlined the legislative changes, but provided only for Jim McLay, Minister of Justice, as an actor in the legal process; feminist efforts were largely invisible. It is interesting that the description of Jim McLay as the sole protagonist of legal reform was based on interviews with himself. And the assessment of the changes as "on the whole ... working well"⁷⁶ was based on personal communication with a barrister. This demonstrates how the experiences of marginalised groups of people can be made invisible. It could be said that Nicole Humphries' thesis provides a rationale for producing this one.

Prevailing sexual attitudes and sexual relations are embedded in rape. The attitudes revealed in several New Zealand publications on sexuality also supported feminist views on sexual violence. Alison Gray's book, *Expressions of Sexuality*,⁷⁷ produced in conjunction with a T.V. series, explored sexuality in New Zealand, in the past and in the 1970s, through personal histories. She and her co-workers described sexuality as something that is part of people's whole lives, in contrast to what they perceived people to understand as just a physical experience. The difficulty of talking about sexuality for men and women was acknowledged, as is a social and political attitude that discouraged

⁷⁴ David Shapcott, *The Face of the Rapist*, Auckland: Penguin Books, 1988.

⁷⁵ Nicole Humphries, "The Development of the Rape Law Reform Bills of New Zealand during the 1980s", M.A. thesis, University of Auckland, 1991.

⁷⁶ *ibid*, p. 250.

open discussion. This had the effect of abdicating space for the commercial model of sex to inform ideals of sexual behaviour. That sexuality was a social construct was thus tacitly acknowledged. Through public discussion of personal stories of sexuality, it was hoped that room would be created for change towards a healthier expression of human sexuality in our society.

Michael King explored changing attitudes towards masculinity in his book, *One of the Boys?* A number of men were interviewed, juxtaposing the ideas of masculinity they grew up with, with their feelings on masculinity in the present. Shifts in masculinity were often described as a result of challenges made by the Women's Liberation Movement. Some interviewees located rape within a social environment of gender inequalities. Mike Capeer saw the use of power as "not just about killing and raping. It's also about ... whose opinions get dismissed, who grows up expecting to give up her career to look after the children, to wash your clothes, the floors and the toilet".⁷⁸ Another interviewee, Kai Jensen, viewed sexuality as the final test of whether our social, economic and political attitudes are changing or not.⁷⁹

Jock Philips has also explored masculinity in his book, *A Man's Country? The Image of the Pakeha Male*,⁸⁰ in which he traced the historical origins of the Kiwi male and the changes in masculinity following the mid-1960s. He located the shift in masculinity in both socio-economic changes and the Women's Liberation Movement. But he soberly concluded that changes in masculinity have not necessarily been better for women and he acknowledged the persistence of the Kiwi macho culture.

This thesis seeks to analyse a significant shift in the understanding of rape in New Zealand, therefore makes a specific contribution to the history of rape, and indirectly, to the history of gender negotiations. It also has a contemporary application. It can be

⁷⁷ Alison Gray, *Expressions of Sexuality*, Auckland: Reed Methuen Publishers, 1985.

⁷⁸ Mike Capeer, "Coping with Shame", in *One of the Boys? Changing Views of Masculinity in New Zealand*, Michael King (ed.), Auckland: Heinemann, 1988, p. 218.

⁷⁹ Kai Jensen, "Naked Change: Revising Sexuality", in *ibid*, p. 228.

⁸⁰ Jock Phillips, *A Man's Country? The Image of the Pakeha Male – A History*, Auckland: Penguin Books, 1987.

regarded as taking up the feminist agenda from others, especially Helen Bauchop. Contemporary studies of rape and gender in other places and times, essentially feminist, have provided useful insights and approaches that I intend to apply to 'make sense' of my subject. And although the subject matter of my thesis has been approached recently by Nicole Humphries, her work had a different purpose and she made sense of the past in a non-feminist framework.

Sources

Primary sources came from a variety of locations. Government archives provided political, public and feminist texts in the form of correspondence and submissions to select committees on rape reform legislation. The rape law reform bills and their enactments, the Crimes Amendment Act (no.3), the Evidence Amendment Act (no.2), and the Summary Proceedings Act (no.4), are significant texts for this study. So too is a government sponsored rape study in 1982 that offers an analysis of the experiences of rape victims as retold by themselves, and also of the law, judicial practices and police enforcement at this time. A government sponsored rape symposium held in 1982, and a Y.W.C.A. conference in 1983, provided an insight into understandings of rape from a variety of perspectives. These include those of feminists, members of the medical and legal profession, rape victims, police officers and members of government. Parliamentary debates provided further sources of political discourse.

Feminist texts were less accessible than political ones. As well as in sources already mentioned, feminist voices could be heard in *Broadsheet*, a significant document for this thesis, and in general articles penned by representatives of feminist groups in specific publications such as *Women's Studies Journal* and in the general press. Secondary publications focused on histories of women, especially in context of the Women's Liberation Movement, and also provided flashes of feminist voices and actions. Newspapers and periodicals such as the *Listener*, also acted as a source for a variety of discourses.

Thesis construction

The title of this thesis, 'She Asked For It', is both a reference to a powerful rape myth serving to blame rape victims, and an attempt to appropriate the phrase to refer to feminist demands for a new interpretation of sexual violence. In this context the phrase therefore takes on a new meaning, to subjugate the old while co-existing with it.

This thesis explores discursive themes in a chronological framework. Chapter one examines the 'rules of formation',⁸¹ or the contexts that impacted on, and were impacted upon by, discourse on sex, gender and rape within two times. Part 1 explores the old context in which legal discourse was informed by medical and psychoanalytical knowledge that defined gender and sexuality. Part 2 explores a new context that provided more possibilities for what could be said, and what could be done, about sex, gender and rape. Chapter two identifies the dominant meaning of rape through an analysis of statute law and social and legal practices, and explores its impact upon the experiences of women, especially those who were raped, and on rapists.

Chapter three looks at the older feminist meaning of sexual violence and at a newer one. Feminists in the 1970s explicitly challenged existing constructions of sexual violence and re-named it in women's terms. Feminists developed their own knowledge of rape, based on the experiences of women. Women were positioned 'knowers'. Feminist discourse enabled women to resist dominant subjectivities on offer for rape victims and rapists, and formulate their own. Chapter four analyses 'speaking out', or the unsilencing of women. Because feminist social action can be read for meaning, it can be considered 'textual'. New subjectivities offered in feminist discourse afforded new possibilities for feminist agency. 'Speaking out' was a form of resistance. It took many shapes, such as setting up of rape crisis centres and the sharing of experiences in small groups or at public events.

Chapter five analyses other voices contesting the dominant construction of rape, and at how the government responded to these challenges. It identifies the changes and the constants in the political construction of rape, and what this meant for the experiences of

⁸¹ Baert, p. 119.

rape victims and the experience of women in general. Chapter six analyses the rape reform legislation introduced in parliament and submissions made about it. These texts provide a rich source for analysing various constructions of rape. A final analysis of the reforms as they were enacted in 1985 reveals the limits of their impact on the lives of all women, and those women who were raped.

Chapter 1

CONTEXTS

Until the 1970s, what could be said about rape was shaped predominantly by medical, psychological and legal knowledge. While such knowledge continued to inform understandings of rape from the 1960s onwards, changing social practices, newly emerging discourses on civil rights and victimhood, and the construction of sexual violence as a 'problem', provided opportunity for making new statements. This chapter explores the 'rules of formation',¹ or the contexts that impacted on, and were impacted upon by, discourse rape within two distinct times. Part one explores the context prior to 1970s, and part two explores the changing context from the 1960s onwards.

Legal discourse is of particular interest because of the 'power' of the law. It embodies a claim to a superior and unified field of knowledge that concedes little to other competing discourses.² Part of the law's power lies in its ability to define or name, and to impose these definitions.³ When the law makes claims about other areas of social life, those claims are located within a legal framework. For example, a judge does not remove his wig when he comments on issues of sexual morality in a rape case.⁴ Legal discourse on rape made powerful claims to authority on the definition of rape, and strongly influenced the social construction and response to rapists and rape victims.

Part 1. Old context. Medical/psychological/legal knowledge

Legal discourse on rape was informed by medical and psychoanalytical discourses that defined gender and sexuality. Paradoxically, two contrasting models of female sexuality, one of passivity and one of seductive activity, informed the legal/social construction of rape. Susan Edwards has pointed out that, while a model of female sexual passivity

¹ Patrick Baert, *Social Theory in the Twentieth Century*, Cambridge: Polity Press, 1998, p. 119.

² Carol Smart, *Feminism and the Power of the Law*, London and New York: Routledge, 1989, p. 4.

³ *ibid.*

⁴ *ibid.* p. 13.

influenced statute law, a model of female active sexuality influenced case law.⁵ She sees statute law as evolving to protect women, and procedural rules as evolving to protect the male defendant.⁶ These models of female sexuality are accounted for, in part, by the classic virgin or madonna/whore dichotomy. The distinction is particularly relevant to the practice of rape law. But invariably in this practice, it was the model of active sexuality, female as ‘agent provocateur’, which was mobilised.⁷

From the mid-1800s, gynaecological discourse increasingly constructed women’s sexuality. In contrast to men, women did not possess their sexual organs; rather, they were possessed by them.⁸ This model asserted a physically weak and psychologically unstable female, and interpreted ‘unfeminine’ behaviour as a ‘sickness’, the cause of which was located in either normal reproductive life or a gynacaelogical disorder.⁹ Michel Foucault has interpreted this construction of female sexuality as the “hysterisation of women’s bodies”, and observed its power to control women.¹⁰ He viewed the body disciplined as the body controlled,¹¹ and gynaecological discourse as a disciplinary power through which elements of behaviour were rewarded or punished depending on their adherence or deviation from the established ‘norm’.¹² In a gynaecological framework, female narratives of rape were interpreted as false accusations against innocent men, made either out of spite or the desire to conceal an act of impropriety, or as hallucinations.¹³

Sigmund Freud’s psychoanalytical studies in the 20th century reinforced the binary construction of human sexuality that produced an image of women as weak, passive, dependent and intuitive, in contrast to an image of men as aggressive, controlling, rational and independent.¹⁴ The themes of female masochism and sexual fantasy were

⁵ Susan Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981, p. 49.

⁶ *ibid.*

⁷ *ibid.*, p. 50.

⁸ *ibid.*, p. 74.

⁹ *ibid.*, p. 75.

¹⁰ Michel Foucault, *History of Sexuality, Vol. I*, quoted in *ibid.*, p. 73.

¹¹ *ibid.*

¹² Baert, p. 126.

¹³ Edwards, p. 74.

¹⁴ *ibid.*, p. 102.

particularly damaging in the context of rape. Pschoanalysis presented the view that women secretly desired rape and violence on the physical level, humiliation and derision on the mental level, and that female narratives of rape were imagined.¹⁵ Helen Deutsch, a neo-Freudian, maintained that women needed to gratify their masochistic tendencies and protesting violently against sexual interactions was one way of achieving this.¹⁶ From jealousy and anger over imagined events, hysterical and neurotic women manifested symptoms of sexual delusion.¹⁷ Fantasising seduction could also be an attempt to subvert the memory and guilt of masturbation. In this way, Sigmund Freud interpreted his patients' narratives of father seduction as expressive of a girl's fantasy. Unlike gynaecological discourse that pathologised 'unfeminine' behaviour such as masochism and sexual fantasy, psychoanalysts characterised these as 'normal' aspects of female sexuality, albeit carried in the unconscious mind.¹⁸

From the 1850s, the notion of 'false complaints' gained momentum, and concern about corroborative evidence in rape trials grew.¹⁹ The belief that rape allegations were often false continued to inform the law. An obsession with false complaints characterised the practice of the law in the period under study, and continued to operate alongside newer constructions of rape victims even after major legal reform in 1985.

The doubting of rape allegations strengthened, and was strengthened by, the belief that rape was almost impossible. Professor John Glaister, an authority on medical jurisprudence, said, "there is no doubt that rape can be perpetrated in the case of a woman who has become exhausted by the resistance which she has offered, or when, on account of fear or injury, she has lost consciousness".²⁰ Purely on physiological grounds he declared that, although he did not doubt a woman could be raped, he also believed that so

¹⁵ *ibid*, p. 104.

¹⁶ *ibid*, p. 103.

¹⁷ *ibid*, p. 104.

¹⁸ *ibid*, p. 101.

¹⁹ *ibid*, p. 125.

²⁰ Quoted in Department of Justice, *Crime in New Zealand*, Wellington: Govt. Printer, 1968, p. 140.

long as a woman retained complete possession of her senses “it did not require great physical strength to deny sexual entry by apt disposition of her limbs”.²¹

These constructions of female sexuality seriously restricted women’s ability to define their experiences as rape. To qualify as a rape victim, a woman needed to resist sexual aggression to her utmost: perhaps to her death? And constructing the rapist as a marginal figure, one who had no relation to ‘normal’ masculinity, worked to protect men with status.

Gender and sexual discourse, embedded in medical and legal discourses, formed the meaning of ‘rape’. Masculinity was equated with aggression/conquest, and femininity with passivity/submission.²² Discourse on sexuality constructed male sexuality as directly produced by a biological drive; woman was the object that precipitated men’s natural sexual urges.²³ It afforded very different rights, positions and responsibilities for men and women. Women were accorded some power in their ability to attract men, but this was a double-edged sword. The positioning of women as provocateurs served to uphold male sexual privilege and made women responsible for the standards of sexual propriety.

In reproducing these models of female gender and sexuality, the law operated as a social control of female sexuality. Femininity provided the rules of conduct that should govern a woman’s life if she wanted the protection that the law afforded. The prescription included what to wear, how to talk, how to walk, where to go or not to go, and who to go with.²⁴ The law made a distinction between ‘good’ and ‘bad’ women. Women who subscribed to the codes of femininity were more likely to enjoy legal support if they were violated. Women who operated outside these boundaries could expect an unsympathetic response. The legal protection of women, therefore, was in practice conditional on the congruity of a woman’s behaviour with the code of femininity.

²¹ *ibid.*

²² Heah, Lee Lee, “Rape”, *Broadsheet*, no. 55, Dec 1977, p. 16.

²³ Vivienne Burr, *An Introduction to Social Constructionism*, London: Routledge, 1995, p. 143.

²⁴ Anne Summers quoted by Helen Bauchop, “The Public Image of Rape: A Case Study of Two Newspapers, 1950-1970”, B.A. (Hons.) thesis, University of Otago, 1990, p. 42.

Because the model of the female as ‘agent provocateur’ was more likely to be mobilised in the law courts and in police responses, women were discouraged from reporting rape. Few women managed to do so. Their individual responses to the threat of rape were attempts to reduce the opportunity for sexual violence in their personal lives. Thus women were encouraged to restrict their use of social space, self-police their behaviour, seek protection in men they knew, and be silent.

The powerful discourses of medicine, psychology, and law were historically male ones. Doctors, psychologists, and legal representatives became authoritative interpreters of women’s sexuality. The power to define women played a crucial role in establishing who could, and who could not, really be professional; that is, it governed on whom the status of authoritative knower could be conferred.²⁵ Dale Spender has written how, “women have not been in charge of the language and like many other activities, there are no words for sexual behaviour which encode the experience from the female perspective. The result of this is that women lack names invested with their meanings and women and men therefore ‘doubt’ the realities of women’s meanings. There is no better example of the silence of females than in the name of rape.”²⁶

As Susan Edwards has pointed out, female roles in sexual intercourse, and female proclivities for fantasy and masochism, have been constructed by men in a patriarchal language.²⁷ It was men, and not women, who defined female desire as wanting to be seduced, violated and dominated. But it is from this language that both men and women made sense of their experience. Both men and women drew on assumptions of female and male sexuality from the medical and legal discourses to make meaning of rape victims, rapists, and rape events. Therefore, understandings of rapes reflected a gendered culture. The effect of this was to privilege a male version of rape and invalidate a female one, silencing women.

²⁵ Phillida Bunkle, “Becoming Knowers: Feminism, Science and Medicine”, in *Feminist Voices. Women’s Studies Texts for Aotearoa/New Zealand*, Rosemary du Pleiss (ed.) Auckland: Oxford University Press, 1993, p. 59.

²⁶ Dale Spender quoted in Bauchop, p. 33.

Part 2. New Context. Social change and newly emerging discourses

Ian Parker describes discourses as embedding, entailing, and presupposing other discourses. "In practice, discourses delimit what can be said about an object whilst providing spaces - the concepts, metaphors, models, analogies – for making new statements in any specific discourse."²⁸ Metaphors and analogies in discourses allow a speaker to find a voice, even within discourses they oppose.²⁹

Discourses are bound up with social practices and social structures. While social organisation is shaped by various discourses, it simultaneously impacts upon these discourses. The social environment in which we live provides a material basis that favours the rise of some discourses over others. In the 1960s and 1970s, social changes and newer ways of talking provided more possibilities for what could be said about sex, gender and rape.

In particular, the status of women changed. In the post-war years, there had been intense propaganda for women to stay at home. Women married younger, and had children younger and closer together.³⁰ Sandra Coney identifies these "years of immersion in domesticity" as containing the seeds of women's later discontent.³¹ Charlotte Macdonald observed a shift in focus from economic issues to questions of self-fulfillment in the 1960s. This shift occurred in an environment of changing family size, increasing life expectancy, general prosperity and full employment. She regards 'the changing role of women' as the definitive issue, but as expressing a social questioning rather than a mood of indignation.³² In a new social climate where child-raising and child-rearing were occupying a much briefer period in women's lives, when women were educated more

²⁷ Edwards, p. 107.

²⁸ Ian Parker, *Discourse Dynamics. Critical Analysis for Social and Individual Psychology*, London: Routledge, 1992, p. 13.

²⁹ *ibid.*

³⁰ Sandra Coney, *Standing in the Sunshine, A History of New Zealand Women since They Won the Vote*, Auckland: Penguin Books, 1993, p. 55.

³¹ *ibid.*

³² Charlotte Macdonald, *The Vote, the Pill, and the Demon Drink. A History of Feminist Writing in New Zealand, 1869-1993*, Wellington: Bridget Williams Books, 1993, p. 8.

than they had ever been before,³³ the status of women inside and outside the domestic sphere was coming increasingly under scrutiny.

Women obtained greater control over fertility with the introduction of the oral contraception pill in the mid-1960s. By 1970, 40% of married, fertile women were using it.³⁴ Child-bearing was believed to be lessening in importance with the realisation that the world was over-populated.³⁵ Women's life expectancy had increased to 75 years from early century figures of 45 years.³⁶ A woman could expect to live as long after she had had her family as she had before it. Labour-saving devices had reduced the time necessary to carry out household chores.³⁷ Women now had more 'free' time than their role as homemakers had allowed them in the past.

New technology had opened employment opportunities. There were more jobs than there were workers, so women were under pressure to enter the workforce.³⁸ The state had also inadvertently encouraged married women into employment through its strategy of full male employment.³⁹ Staying at home was also regarded by some as a health risk.⁴⁰ But through the 1960s marriage continued to be seen as a woman's destiny, and her role in the workforce was regarded as a tying-over period between school and marriage. In 1966 it was reported that only 26% of women were working outside the home⁴¹ and the median income for women was 51% of that of men.⁴² This drew the critical attention of women's groups, because women were not reaching expected levels of responsibility.⁴³

³³ *ibid.* p. 8.

³⁴ Helen Smythe, *Rocking the Cradle. Contraception, Sex and Politics in New Zealand*, Wellington: Steele Roberts, 2000, p. 96.

³⁵ Bernadette Noble, "Who Says I'm a Cabbage?", in Macdonald, p. 155.

³⁶ Beverley Morris, "Women's Role in Perspective", in *ibid.* p. 147.

³⁷ *ibid.* p. 145.

³⁸ *ibid.*

³⁹ Melanie Nolan, *Breadwinning. New Zealand Women and the State*, Christchurch: Canterbury University Press, 2000, p. 229.

⁴⁰ Noble, p. 155.

⁴¹ Morris, p. 146.

⁴² Coney, p. 142.

⁴³ Morris, p. 146.

Even women who were homemakers had poor status. For all legal purposes, a married woman's identity was subsumed by that of the husband.⁴⁴ Women who worked in the domestic home all their lives had no automatic right to property brought to their marriage earned by their husbands. Their contributions went unrecognised. Women's organisations saw married women who cared for children as having little status as they had no recognised 'economic viability'.⁴⁵ In contrast, they themselves believed housewives performed good and important work in the economy.⁴⁶

Women's problems began to be identified and articulated, and by the mid-1960s women were organising. The Society for Research on Women was formed. A lecture series on 'The Changing Role of Women' was run and exceptional attendances were reported.⁴⁷ In 1969 four candidates for the Independent Women's Party stood for election to parliament on the platform of reform of marriage laws, especially those relating to property.⁴⁸ Social changes had provided an impetus for discussing women's 'problems'. In making sense of these, women drew on the various cultural discourses available to them. Of particular importance were newer ways of talking about sexuality and gender, and about human rights.

New identities on offer

In the first part of the 20th century, Sigmund Freud had seen gender identity as formed through psycho-sexual processes driven by biological determinants.⁴⁹ As has been demonstrated, this medical knowledge was assimilated into legal/social discourses on sex, gender, and rape. While such knowledge continued to inform legal/social discourse, newer understandings of sexuality provided new identities, or new subject positions, for women to take up. Jacques Lacan, a French psychoanalyst, challenged Sigmund Freud's biological essentialism. He combined Freudian concepts with semiotics – the study of signs, codes and structures. He considered the role of language of primary importance in

⁴⁴ Nolan, p. 289.

⁴⁵ *ibid.*, p. 291.

⁴⁶ Noble, p. 155.

⁴⁷ Coney, p. 142.

⁴⁸ *ibid.*

determining the formation of the unconscious, and of the person as a social entity. He saw the phallus still as the privileged signifier.⁵⁰

In the mid-20th century, Jacques Derrida, as outlined in the introduction, proposed a post-structuralist deconstruction that exposed Western thought as characterised by hierarchical binary oppositions, and as a social and cultural construction.⁵¹ This offered women new possibilities to define for themselves what being a 'woman' meant. There was no essential femininity or masculinity. The understanding that women could be as fully human as men conferred new rights. Femininity was not a biological straitjacket. It could be undone and remade.

The women's liberation movement burst onto the scene in 1970-71. While this 'second wave' of active feminism was founded on the struggles of women in the past, it marked a radical departure from anything that had gone before. Although some of the issues articulated by the women's liberation movement were simply more radical statements of those in the 1960s, the overall context was new.⁵² Women were able to apply arguments from civil rights and anti-war campaigns to their own situation. Alternative discourse on race provided space for women to identify themselves in new ways, as did the language that came from decolonisation struggles.

Words such as 'human rights' and 'liberation' were co-opted by the women's movement for its own purposes. The status of women was now a question of 'liberation'.⁵³ Women were asking for nothing less than the total transformation of the whole world.⁵⁴ Added to the pursuit of equal pay and employment conditions, women began to scrutinise the

⁴⁹ Anthony Easthope and Katie McGowan, (eds), *A Critical and Cultural Theory Reader*, Buckingham: Open University Press, 1992, p. 134.

⁵⁰ Sophia Phoca and Rebecca Wright, *Introducing Postfeminism*, Duxford, Cambridge: Icon Books, 1999, pp. 36, 58.

⁵¹ Chris Atmore, "The Mervyn Thompson Controversy: Feminist Deconstructive Reading", *New Zealand Sociology*, 9 (2), Nov 1994, p. 176.

⁵² Macdonald, p. 162.

⁵³ *ibid.*

⁵⁴ A woman from the Dunedin Collective for Women quoted in Coney, p. 142.

private world of relations between the sexes, sexuality, marriage, and child-rearing practices.⁵⁵

The New Zealand women's liberation movement was largely inspired by feminist developments in Britain and especially in the U.S.A. New Zealand was described as a fertile ground for the promulgation of feminist ideas from abroad because of the 'second-class' status of its women citizens.⁵⁶ American women had begun to organise politically in the 1960s. Their contradictory experiences in the civil rights movement and the Vietnam war protests led to an appraisal of their own situation. The reproduction of dominant gender constructions relegated women who were fighting to free other people to 'womanly' duties such as making tea and providing sexual comforts.⁵⁷ New Zealand women working in the Vietnam war protest movement were also subject to the general prejudices concerning woman's rightful place.⁵⁸

Consciousness-raising, a technique practised by social revolutionary groups the world over, characterised the beginnings of the movement. Women became aware, through discussion and debate, of their own and other women's disabilities imposed by society and the law.⁵⁹ Realising that a woman's experiences were not unique allowed for a connection to be made with broad structures.⁶⁰ It politicised women's personal experiences.

Consciousness-raising created knowledge from women's stories that otherwise might have remained unheard. It necessitated some level of separatism. Women separated from men for the purpose of consciousness-raising to discuss their own experience and re-interpret it in light of an explicit recognition of male dominance.⁶¹ Affirming women as a

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ Christine Dann, *Up from Under. Women and Liberation in New Zealand, 1970-1985*, Wellington: Allen & Unwin/Port Nicholson Press, 1985, p. 142.

⁵⁹ Hilaire Barnett, *Introduction to Feminist Jurisprudence*, London: Cavendish Publishing, 1998, p. 19.

⁶⁰ Hilary Haines, "Women's Mental Health as a Feminist Issue", *Women's Studies Journal*, 5 (2), Dec 1989, p. 27.

⁶¹ Alison Jaggar, *Feminist Politics and Human Nature*, Totawa, New Jersey: Rowman & Littlefield, 1983, p. 271.

separate united group, it was a first step in feminist resistance. Radical and socialist feminists believed the creation of a women's culture was essential to a women's sense of themselves as a group with common interests, and encouraged their political organisation.⁶² Women as women were a single political force. Consciousness of women's oppression as a group and feminist knowledge enabled women to both resist the traditional subjectivities on offer in male dominant discourses and become agents of social change. Decolonisation and civil rights discourses also provided for social action within the women's movement. Therese O'Connell of the Wellington Women's Liberation Front said, "we adopted the name Women's Liberation and added Front to portray action as in the National Liberation Front. We were out for a fight".⁶³

Women's liberation, a loosely organised movement, spread rapidly. By 1972, 20 liberation groups had been created.⁶⁴ The first National Women's Liberation conference was held in Auckland in 1972, and in 1973 the first of four biennial United Women's Conventions was held. These were large-scale gatherings. But differences among women were apparent from the first meeting. In the early years, equality and an end to stereotypical gender roles were the main goals. But as the movement grew, more women began to insist that they did not want to live in a man's world.⁶⁵ Some radical feminists took this to the extreme and advocated total separatism. Feminism was not a homogenous ideology and practice.

Maori women had ambivalent reactions to women's liberation. For some of those campaigning for the revival of their Maori culture, it was an inopportune time to question its patriarchal values. For others, women's liberation was a pakeha concept with little relevance for Maori. These women's primary experience of the world was as a Maori rather than as a woman.⁶⁶

⁶² *ibid*, p. 335.

⁶³ Therese O'Connell quoted in Coney, p. 142.

⁶⁴ *ibid*.

⁶⁵ Phillida Bunkle quoted in *ibid*, p. 143.

⁶⁶ Tilly Reedy quoted in *ibid*.

With more and more women joining, the women's movement became increasingly prone to internal dissension. In 1979, Sandra Coney described a development towards conformity, correct lines, and an emphasis on "divisions among women rather than on our common class interests".⁶⁷ She felt women, as an exploited group or class, should be focused on countering oppression. 1979 also marked the last year in which a United Women's Convention would be held. It attracted record numbers but the dissension made it a painful event for all feminists. There was no spirit for another.⁶⁸

Discord within the wider women's movement moved the emphasis to practical single-issue groups, such as women's refuge and rape crisis, that could have a direct impact on lives. The emergence of such groups could also be seen as a natural outcome of consciousness-raising. Organising around a single issue gave satisfaction in actually doing something, a feeling of making a difference. It also provided for a shared understanding and generated feminist knowledge. For example, women worked together against sexual violence and developed an alternative knowledge of it. Uniting against male violence tended to position men as the enemy and women as their victims. But this singular focus did not always avoid dissension.

The concept of gender equality, framed by the language of civil and human rights, was also taken up by national and international government bodies. This acceptance, at some level, provided a more supportive environment for feminist demands for a re-interpretation of sexual violence. The United Nations declared 1975 as International Women's Year. This marked the beginning of the Decade for Women, in which the United Nations was to support the expansion of women's rights, in law and in practice. The New Zealand government was already committed to expanding women's rights in law. It had passed the Equal Pay Act in 1972, the Domestic Protection Act 1976, Matrimonial Property Act 1976, the Maternity Leave and Employment Protection Act 1980, and the Human Rights Commission Act 1981.

⁶⁷ Sandra Coney, "Comment", *Broadsheet*, no. 75, Dec 1979, p. 32.

⁶⁸ Dann, p. 23.

In 1975, the United Nations asked governments to establish a plan of action, declaring “the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields. It has declared that all human beings without distinction have the right to enjoy the fruits of social and economic progress It has condemned sex discrimination as fundamentally unjust, an offence against human dignity and an infringement of human right.”⁶⁹ In 1984, the New Zealand government was required to produce a report to show the outcome of the U.N. programme, and this was presented at the End of the Decade Conference in Nairobi. In the same year New Zealand ratified the Convention on the Elimination of all Forms of Discrimination against Women. The pursuit of women’s rights, therefore, was legitimated from the very top.

The ‘problem’ of sexual violence and emerging discourse on victimhood

In the 1960s and 1970s, sexual violence and violence in general began to be constructed as a serious ‘problem’. Conditions do not become problems until they are constructed as such. The ‘problem’ of sexual violence provided a space for feminists to express a voice, even within a discourse they opposed. Part of the discourse on violence reconstructed the victim. It offered a new subject position for victims of violent crime and made it possible to legitimate feminist constructions of rape victims.

In the 1960s rape was still viewed officially as an uncommon crime of relatively stable incidence.⁷⁰ This was based on the number of annual rape convictions, which, at least until the mid-1960s, usually averaged around 10 per year.⁷¹ Despite the official view, a public perception of increasing violence constructed violence as a serious social problem, and this was quickly assimilated into political discourse. Public interest was in specific kinds of assault then getting attention in the news media.

Gang rapes and inadequate sentencing of child rapists led to moral indignation and a public outcry. In 1961 there was an unusual occurrence of gang rapes, resulting in 44

⁶⁹ Claudia Bell for the National Council of Women of New Zealand, *Women and Change. A Study of New Zealand Women*, Wellington: The National Council of Women of New Zealand, 1985, p. 10.

⁷⁰ *Crime in New Zealand*, p. 15.

⁷¹ *ibid*, p. 143.

convictions that year.⁷² The *Listener* described the growing concern about the incidence of sex crimes,⁷³ but in the main these concerns related to girl victims. Petitions were presented to parliament in 1957, 1963 and 1966 regarding child victims, usually girls.⁷⁴ The 1963 petition contained more than 1,500 signatures and prayed for an increase in penalties for sex offenders against victims aged 12 years and under.⁷⁵ In 1966, Ralph Hanan, Minister of Justice, received letters from more than 6,000 people relating to a child rape incident in Auckland.⁷⁶ Although sexual assaults were held to be very serious offences, irrespective of the age of the victim, they were deemed more serious in the case of children.⁷⁷ Children 12 years and under were considered unable to consent, therefore could be described as “poor innocent young girls”.⁷⁸

Innocent victims made rape less problematic; it was safe to vent moral outrage. This was not the case for females over 12 years of age, when ideas of seductiveness and provocation came into play.⁷⁹ Rona Stevenson, M.P. for Taupo, was able to declare unchallenged, “it is obvious that in some cases the girl has been provocative and more than willing”.⁸⁰ This belief was echoed in the *Listener*, which, in reference to gang rape, conveyed a suspicion that the girls had invited trouble and the young men were not wholly to blame.⁸¹ Female victims were also blamed when they were perceived to have failed as ‘moral guardians’ by “permitting everything except intercourse when a man has become so excited as to be unable to control himself”,⁸² a statement clearly formed by male sexual drive discourse.

⁷² *ibid.*

⁷³ Monte H. Holcroft, “Editorial: Redemption by Surgery”, *Listener*, 10 June 1966, p. 12.

⁷⁴ Bauchop, p. 52.

⁷⁵ John George, M.P. for Otago Central, *New Zealand Parliamentary Debates (NZPD)*, vol. 336, Sept 1963, p. 1615.

⁷⁶ Bauchop, p. 54.

⁷⁷ Robert Macfarlane, M.P. for Christchurch Central, *NZPD*, vol. 336, Sept 1963, p. 1618.

⁷⁸ *ibid.*, p. 1617.

⁷⁹ Bauchop, p. 51.

⁸⁰ Rona Stevenson, *NZPD*, vol. 346, June 1966, p. 216.

⁸¹ Holcroft, p. 12.

⁸² *Crime in New Zealand*, p. 152.

In 1970 the Department of Justice initiated a study on violence, and a report was produced the following year.⁸³ Violent crime convictions had increased at an annual average rate of around 10% from 1967 to 1975.⁸⁴ By 1975 parliament and all of New Zealand were said to be well aware of this growing violence. "Taxi drivers are attacked, citizens are mugged, women are frightened to walk in our streets."⁸⁵

In 1977 a parliamentary committee was appointed to consider the incidence and causes of violent offending, including sexual violence, and the means of reducing it.⁸⁶ The following year it was reported that "evil and decadence are daily growing in strength, sustained by declining moral standards and the diminishing threshold of honesty and compassion. Those who question this assertion need but examine crime statistics, study prison occupancy rates, and take note of the new proximity of offending to their own front doors."⁸⁷

By 1975 reports of rapes had become part of the "daily media diet"; it was perceived to have the largest growth rate of any crime.⁸⁸ The increase in rapes reported to police supported this perception. From 1971 to 1981, the number had doubled.⁸⁹ While some feminists saw this increase as a result of more women laying complaints with the police, most people regarded it as evidence of more actual rapes. In 1978 this perception was politically expressed when the Advisory Committee for Women, a government body charged with the responsibility for advising on all matters pertaining to the welfare of women, set up a working party to study violence, in particular sexual violence, committed against women.⁹⁰ The importance of these developments lay not so much in

⁸³ Preface to "Report on Violent Offending", Department of Justice, ABGX W3704, box 83, session 1, Violent offending, 1974-78 [Archives New Zealand Head Office (ANZHO), Wellington].

⁸⁴ Eric Benton, newspaper clipping "Disappointing Reaction to Violent Crimes Committee", ABGX W3706, box 85, Violent offending, 1978, [ANZHO, Wellington].

⁸⁵ Keith Allen, M.P. for Tauranga, *NZPD*, vol. 397, May 1975, p. 1223.

⁸⁶ *Appendices to the Journals of the House of Representatives*, (*AJHR*), vol. III, section I.15A, 1978, p. 3.

⁸⁷ *AJHR*, "Report of the N.Z. Police Department", vol. V, section G. 6, 1978, p. 5.

⁸⁸ Michael Colgan, "Cry Rape", *Thursday*, 9 Oct 1975, p. 45.

⁸⁹ Statistics N.Z., *All About Women in New Zealand*, Wellington: Statistics N.Z., 1993, p. 166.

⁹⁰ Letter from Miriam Dell, Advisory Committee on Women (ACOW) to Mr. Walton, Commissioner of Police, 2 May 1978, ABKH W4105, box 2, part 1, Women and violence [ANZHO, Wellington].

what was said about rape victims or rapists, but in the fact that sexual violence was constructed as a serious social problem.

During the 1960s there was a growing recognition of and sympathy for the victims of violent crimes. A shift was occurring, from a concern for the needs of the criminal to those of the victim. This was both a national and international phenomenon. In 1963 Sir Basil Arthur, M.P. for Timaru, believed that the victim was often overlooked when considering what best to do for the accused.⁹¹ John George, M.P. for Central Otago, expressed a need to remember that in many cases the victim was a very young person who needed as much treatment and looking after as the accused.⁹² Robert Muldoon, M.P. for Tamaki, interpreted the petitions to parliament as reflecting people's belief that too much time had been spent in caring for the welfare of the criminal and not nearly enough for the ordinary citizen who was a potential victim of violence.⁹³

Concern for the victim promoted the Criminal Injuries Compensation Act 1963. "The object of this Act was to provide compensation for economic and financial losses suffered in consequence of criminal injuries."⁹⁴ It established a Crime Compensation Tribunal to hear applications from victims of crimes of violence and to make appropriate awards. Interestingly, it was not necessary for the offender to have been detected or convicted for the victim to make an application.

The concern with victims influenced the way in which rape was discussed in the media. Previously the victim's perspective of rape had been ignored, but in the early 1970s rape narratives from their perspective began to appear. *Thursday*, a woman's magazine, published an article in 1972 in which a victim's story was part of a general discussion of rape.⁹⁵ A few years later, it published another article on rape that solely featured a woman's rape narrative.⁹⁶ A concern with women's narratives of rape also provided the

⁹¹ Basil Arthur, *NZPD*, vol. 336, Sept 1963, p. 1622.

⁹² *ibid*, p. 1623.

⁹³ Robert Muldoon, *NZPD*, vol. 349, Oct 1966, pp. 3115-52.

⁹⁴ *AJHR*, "Report on Crime in N.Z.", vol. III, section H.20c, 1969, p. 15.

⁹⁵ Maggie Tully, "Rape. Could it Happen to You", *Thursday*, 2 March 1972, pp. 12-13, 40-41, 51.

⁹⁶ Susan Woodhouse, "Rape Victim", *Thursday*, 25 Dec 1975, pp. 27-30, 42.

impetus for Ann Lloyd, a staff reporter for the *New Zealand Herald*, to publish a book examining rape in the mid-1970s.⁹⁷

Victimhood became a powerful social construct. It had several key components that related to the construction of sexual violence and provided opportunity for its reconstruction. First, victims were argued to be very common, that large numbers of people were affected. This is considered a necessary prerequisite of construction of a problem as serious and in need of public attention.⁹⁸ Secondly, victims suffered long-lasting damage. Thirdly, victim status was argued to be unambiguous, though this often went unrecognised. A related theme was that 'new victims' had to learn to rename their experiences as victimisation.⁹⁹

The international community also provided a model for the re-conceptualisation of sexual violence in rape law reform. In 1974, the state of Michigan passed the Michigan Criminal Sexual Conduct Act. This was the first piece of legislation to incorporate a feminist understanding of rape and it gave new weight to the perspective of the female rape victim.¹⁰⁰ This radical law change served as a model of rape law reform in other American states and several Commonwealth jurisdictions over the next decade. It eliminated the need for corroboration, barred sexual history evidence (in the belief it was irrelevant to the issue of consent), and provided for a hierarchy of sexual offences to increase chances of conviction.¹⁰¹ Importantly, it widened the definition of 'sexual penetration' to include oral and anal sex as well as any other intrusion of any part of a person's body or of the insertion of any object into the genital and anal opening of another person's body.¹⁰²

⁹⁷ Ann Lloyd, *Rape: An Examination of the Crime in New Zealand: its Social and Emotional Consequences*, Auckland: Wilson & Horton, 1976.

⁹⁸ Amy Chasteen, "Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault", *Sociological Spectrum*, vol. 21, issue 2, April 2000, EBSCOHOST, p. 5.

⁹⁹ *ibid.*

¹⁰⁰ Lisa Cuklanz, *Rape on Trial. How the Mass Media Construct Legal Reform and Social Change*, Philadelphia: University of Pennsylvania Press, 1996, p. 3.

¹⁰¹ *ibid.*

¹⁰² A.J. Lee and G. David, "The Ways Before and Possible Ways Ahead", in *Rape in New Zealand*, p. 63.

Particularly influential in a New Zealand context, was the New South Wales rape law reform in 1981, which, like the Michigan reforms, abolished the offence of rape and replaced it with four grades of sexual assault. It was gender neutral, recognising that it was not just women who are raped, and not just men who rape. The first New Zealand Rape Law Reform Bill 1983 adopted the NSW approach, changing only the occasional word.¹⁰³ Australian medical and police practices regarding the care of rape victims were also drawn on as a resource by New Zealand government bodies.¹⁰⁴

Context and text

Social changes created the impetus for a questioning of women's 'problems'. The identities or subject positions offered in emerging discourses provided new opportunities for feminists to reconstruct understandings of sexuality, gender and sexual violence. This reflects what has already been said: that discourses are not monolithic. They contain weak points at which they may be attacked and points at which other discourses pose a threat.¹⁰⁵ They are contradictory, and can yield unintended consequences. Feminism was able to exploit new understandings of sexuality, the language of the civil rights movement, and the reconstruction of the victim, to challenge the dominant discourse on sexual violence. Constructions from these discourses were re-inscribed by feminism in ways that served its own purposes. The resonance of claims made in feminist discourse with these newly sanctioned cultural discourses would impart some legitimacy to it.

But this is not to suggest that feminist discourse was an outcome of its context. "Texts are created by the combination of different contextual elements A text is a permutation of contexts, and contexts are maintained and renewed in texts."¹⁰⁶ Thus in re-conceptualising sexual violence, feminist discourse both grew out of and impacted on its context.

¹⁰³ Nicole Humphries, "The Development of the Rape Law Reform Bills of New Zealand During the 1980s", M.A. thesis, University of Auckland, 1991, p. 90.

¹⁰⁴ Letter from Nicky Hill, Advisory Committee on Women, to Director of Sexual Offence Referral Centre, Sydney, Oct 1978, p. 1, ABKH W4105, box 2, 30-0-9, part 1, Women and violence [ANZHO, Wellington].

¹⁰⁵ Burr, p. 74.

¹⁰⁶ Chris Hilliard, "Island Stories. The Writing of NZ History, 1920-1940", M.A. thesis, University of Auckland, 1997, p. 12.

Chapter 2

THE DOMINANT MEANING OF 'RAPE' AND ITS EFFECT

Legal and medical discourses were the most powerful producers of the meaning of 'rape'. As discussed in the preceding chapter, legal discourse on rape was primarily shaped by contrasting cultural assumptions of sexuality located in medical knowledge. The law, its practices, medical practices and social responses to rape, provide a textual basis for analysing the dominant meaning of rape. Discourses construct social phenomena in different ways that entail different possibilities for human action.¹ The law symbolises as well as prescribes appropriate conduct. What could be said about rape and the identities offered by medico/legal discourse had specific effects on the experience of both men and women, and especially on the experiences of rape victims. These discourses produced sexual scripts which provided "a vocabulary of motives relevant to sexual situations and guides for action within them".² They also contributed to the occurrence of rape since they contained 'techniques of neutralisation' which rapists may have used to justify their actions in advance, and therefore could motivate them.³ Such scripts embodied socio-cultural expectations and norms,⁴ and formed the legal, medical and social response to rape victims and rapists.

Part 1. Statute law

The Crimes Act 1961

The Criminal Code Act 1893 codified the criminal law in New Zealand, which meant a person could not be punished except for an offence created by a New Zealand statute. The law at this time described rape as an act of a male person, not under the age of 14 years, having carnal knowledge of a woman who was not his wife, without her consent. It

¹ Vivien Burr, *An Introduction to Social Constructionism*, London: Routledge, 1995, p. 15.

² Stevi Jackson, "The Social Context of Rape: Sexual Scripts and Motivation", *Women's Studies International Quarterly*, vol. 1, 1978, p. 27.

³ *ibid.*

also allowed for situations in which consent was procured under extortion, by impersonation of a woman's husband, and by false and fraudulent representation of the nature of the physical act. The prescribed penalty provided for a maximum of life imprisonment, hard labour and corporal punishment.⁵

In 1908, the 1893 act, along with other statutes, was consolidated in the Crimes Act, which essentially expressed the 1893 legal definition of rape. The penalty remained unchanged until 1941, when corporal punishment was abolished. In 1958 the act was reviewed, resulting in the Crimes Act 1961. This represented a departure from the 1908 position in the following:

- the term 'carnal knowledge' was replaced by 'sexual intercourse';
- age did not preclude a man's capability of intercourse;
- a man could now be charged with raping his wife if they were living apart in separate residences;
- the maximum penalty of life imprisonment was replaced by a term of 14 years.⁶

Statute law on rape at this time was gender-specific, and expressed a phallogocentric view of sex. Women were considered incapable of perpetrating a rape, only men could do so. A binary model of human sexuality, in which the female was viewed as passive and the male aggressive, informed the law. The proclivity to commit a sexual offence rested on a symbolic power ascribed to the phallus and the hidden nature of the vagina which contributed to its passive ascription.⁷ Men were sexual initiators.

Male sexual privilege was upheld in the legal support for a husband's 'conjugal rights'. Men had a legal right in marriage to have their 'sexual urges' satisfied. The definition of rape as non-consensual sexual intercourse, constituting sex as penetration of the vagina

⁴ Mary Koss, Lisa Goodman; Angela Browne, Louise Fitzgerald, Gwendolyn Puryear Keita, Nancy Felipe Russo, *No Safe Haven. Male Violence Against Women at Home, at Work, and in the Community*, Washington DC: American Psychological Association, 1994, p. 9.

⁵ A. Lee and G. David, "The Way Before and the Possible Ways Ahead", in *Rape in New Zealand. Papers Presented at the Rape Symposium, September 1982*, Hilary Haines and Max Abbott (eds), Mental Health Foundation, 1983, p. 60.

⁶ *ibid*, p. 63.

⁷ Susan Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981, p. 37.

by a penis, reflected a male interpretation of sex. Phallic pleasure did not necessarily coincide with female pleasure. Nor did the symbolic power of the phallus coincide with a woman's interpretation of violation. As only penetration of the vagina by a penis could constitute rape, the law made a qualitative distinction between penile and other penetrations of a woman's vagina. It also assumed a qualitative difference between penetration of a vagina and other orifices of a woman's body. Thus the law was constructed around a male version of rape. It remained silent on how a female might experience or interpret rape, or even sex.

Two conditions were required for a conviction of rape. Firstly, the act itself must be proved; secondly, the accused must have sufficient intention, i.e. *mens rea*, to carry out the rape. If an accused had an honest belief that a woman was consenting then the event was not defined as rape. The basis on which a man could claim an honest belief was not defined in law. It was assumed to reflect the standard of care a man should take with regard to consent; one which could be expected of a reasonable man.⁸

But what a man might define as 'reasonable', a woman might not. Given the assumptions of what constituted appropriate sexual behaviour for men and women, it was acknowledged that there would be no criminal intent in many instances where a woman would perceive intercourse as rape.⁹ A woman presenting her sexually violated body was not sufficient to equate to her body being defined as 'raped'; it required the authority of a rapist to define it as such. In effect, *mens rea* worked to deny a woman's authority as a 'knower' of her experiences.

The 'Morgan ruling' and recklessness

In 1975, a rape trial in Britain, *D.P.P v. Morgan*, raised the question of whether in rape a defendant can be convicted if he believed that the woman consented if such belief was

⁸ Warren Young, *Rape Study. Volume 1, A Discussion of Law and Practice*, Wellington: Department of Justice, 1983, p. 95.

⁹ Jim McLay, Minister of Justice, "Opening Address", in *Rape in New Zealand*, p. 9.

not based on reasonable grounds.¹⁰ The case involved three men accused of raping another man's wife. The husband had invited his comrades home to have intercourse with his wife, telling them that any resistance would be feigned as she was 'kinky'.¹¹ In the court hearing, the judge directed the jury that belief in consent must be reasonable.¹² The jury ruled against the defendants, who then appealed. By a majority of three to two, the appeal judges decided that a defendant could not be convicted on these grounds, and the men were acquitted.¹³ The 'Morgan ruling' held that if a person accused of rape honestly believed that the woman was consenting to intercourse, he should not be convicted, even where that belief was not based on reasonable grounds.¹⁴ Recklessness about gaining consent did not constitute *mens rea*.

The ruling provoked considerable outcry in both Britain and New Zealand. It was described as a "licence to rape" and a "rapist's charter".¹⁵ Keith Allen, M.P. for Tauranga, believed it was "a retrograde step in law, a moral devaluation, and an encouragement to the rapist", and was not acceptable in New Zealand.¹⁶ It appeared to make a mockery of a woman's right to consent or not consent to intercourse.

The New Zealand statute gave no guidance on questions of *mens rea* when a man was indifferent to as to whether a woman was consenting, or failed to take reasonable care in determining consent.¹⁷ However, in summings up to juries in rape trials, judges often stated that a man must have intercourse with a woman with intent to do so without her consent, or with indifference as to whether or not she was consenting.¹⁸ Thus not caring whether the woman was a consenting partner was sufficient *mens rea* in practice.

¹⁰ Helen Bauchop, "The Public Image of Rape in New Zealand: A Case Study of Two Newspapers, 1950-1970", B.A (Hons.) thesis, University of Otago, 1990, p. 68.

¹¹ N.Z. Press Association, "Rape Ruling Must Go, Say M.P.s", *Evening Standard*, 7 May 1975, p. 6.

¹² Bauchop, p. 67.

¹³ *ibid.*, p. 68.

¹⁴ Kathleen Johnson, "Discussion Paper for the Women's Gallery Seminar on 'Women and Justice'", MS-Papers - 4580, folder 8, Kathleen Johnson Papers, 1970-1983, Alexander Turnbull Library, Wellington, p. 11.

¹⁵ Jim McLay quoted in Jessica Weddell, "Rape: the Victim on Trial", *Listener*, no. 1915, 21 Aug 1976, p. 52.

¹⁶ Keith Allen, M.P. for Tauranga, *NZPD*, vol. 397, May 1975, p. 1223.

¹⁷ Young, p. 93.

¹⁸ *ibid.*

However, what constituted recklessness was debatable.¹⁹ As well as the issue of 'consent', the 'Morgan ruling' drew attention to the complainant's experience of the trial.²⁰

The Evidence Amendment Act 1977

The defence's use of past sexual experience as evidence to support the rapist's belief in a woman's consent was being questioned. Jim McLay, M.P. for Birkenhead and Minister of Justice from 1978, introduced the Evidence Amendment Bill in 1976, mirroring a similar process in Britain. For Jim McLay, changing social mores meant that a "girl should not have to prove she is a virgin to avoid being labeled as a provocative or promiscuous victim". The prescription for appropriate femaleness was modified.

Because the admission of previous sexual experience was seen to work in favour of the accused, and there was a new awareness of under-reporting the crime of rape, the law was seen as in need of change.²¹ When enacted the following year, the bill introduced substantive and procedural changes in rape trials. Only by leave of the judge could the court hear evidence of a complainant's sexual experience with persons other than the accused, or of her sexual reputation.²²

However, a woman's sexual history was still considered relevant in some circumstances. With leave of the judge, past sexual activity with the accused could be considered as evidence, as too could sexual experience involving third parties. Jim McLay demonstrated just how limited the intention of the act was. Sexual history could be relevant when a complainant might be a prostitute or a person of "notoriously immoral character", he said, or when she may have behaved immorally with others, or the accused, on other occasions. If she was a 'girl' who was abducted up by a "bunch of

¹⁹ *ibid*, p. 94.

²⁰ Justice Jefferies, "The Substantive and Evidentiary Law on Rape: A Judicial Perspective", in *Rape in New Zealand*, p. 32.

²¹ Jim McLay quoted in Weddell, p. 52.

²² McLay, "Opening Address", p. 7.

bike-riding marauders and taken to a quiet place and raped by a large number of men, then it is very likely that her previous sexual record” would be irrelevant.²³

Thus, while the Evidence Act appeared to break new ground regarding women and sexuality, and virginity was no longer necessary for unmarried women to be considered ‘good’ women, conceptually it reproduced existing understandings. For sexual history to be irrelevant, a rape victim had to be young, innocent, abducted by more than one social ‘deviant’, and raped somewhere others would be unable to respond to her screams. In effect, most women were still subject to the madonna/whore dichotomy. The effectiveness of the Evidence Act was also questionable. Defence counsels were still able to ask questions about women’s sexual experience, “so even if the judge objected the inference would already be in the minds of the jury”.²⁴ Seminars were given to young lawyers on how easily a clever line of questioning could get around this amendment.²⁵

The Contraception, Sterilisation and Abortion Act 1977

In the same year, the Royal Commission of Inquiry into Contraception, Sterilisation and Abortion scrutinised the issue of rape. The Commission held that rape was not, in itself a reason for abortion, but it recognised that the effect on the pregnant woman’s health of a pregnancy resulting from rape could justify it. This position was recognised in statute. The Commission based its belief that few pregnancies resulted from rape on communication with “experienced police officers”.²⁶ Thus its findings were sourced in a male-told narrative reproducing the ‘official’ picture of rape, one that said more about conviction rates of rape than its incidence.

Although the Commission saw no reason why rape should not be taken into account in making an abortion decision, it was concerned that making rape grounds for abortion would be open to abuse. Instead, the plight of such women could be better met by using

²³ Alastair Carthew, “Rape Law Reform Likely This Year”, *Timaru Herald*, 7 Jan 1977, p. 7.

²⁴ Beverley Curtis quoted in Virginia Myers and Anne Else, “Women and the Law”, *Listener*, no. 2145, 28 Feb 1981, p. 21.

²⁵ *ibid.*

²⁶ No author, “Rape – An Emotional Issue”, *The Guardian*, 17 Aug 1977, p. 18.

the morning-after-pill or an intrauterine device such as Copper-7. Both were said to be effective means for preventing pregnancy if administered within 72 hours.²⁷ The potential side-effects of these treatments were not considered. Thus the rights of unborn children had higher status than those of women who claimed to be raped. The Commission's advice practised the belief that genuine victims of rape both made complaints and did so at the earliest opportunity, presumably within 72 hours.

Legal statutes relating to the crime of rape expressed and supported a male narrative of rape that reflected the symbolic power ascribed to the phallus. Men defined 'rape' in, and on, their terms. Women's narratives of rape were silent. Legal statutes uncritically reproduced, and in effect normalised, cultural assumptions of female passivity and male aggressive sexuality that characterised women's and men's sexual interaction. In contrast to claims of protecting women, the law discursively provided for the possibility of privileging male sexuality and stigmatising that of women.

Part 2. Social and legal practice

The meaning of 'rape' reproduced in law was congruous to that expressed in medical and other social settings. After all, participants in judicial procedures shared a culture with other members of society. But in contrast to statute law, legal procedures were formed by the assumption of woman as sexual provocateur. Medical knowledge that held women 'ask for it', rape was 'sex', and women lie, was assimilated uncritically.

Because knowledge is sustained by social processes and meaning is something made rather than a given, 'knowledge' can be described as a social construction. Rape beliefs were 'constructs'. The three medical constructs of rape, mentioned above, were central to shaping the meaning of 'rape' as reproduced in legal and social responses to the rape victim until the mid-1970s. After this time, a different context made it possible to talk about rape in newer ways. But this is not to say that the older meaning of 'rape' was

²⁷ *ibid.*

erased. Rather, it continued to operate, co-existing with newer ones, each competing for a privileged position.

In 1974, a detective-sergeant said that many rapes “were caused by the negative and thoughtless attitudes of the women involved” and that “most had almost asked for it”.²⁸ Dr. W. McLeod, associate-professor of Psychiatry at Auckland University, felt that “girls invite rape by the way they dress and where they go”. And “that it’s no use crying rape if you put yourself in a situation where you are likely to be raped”.²⁹ Detective-Sergeant Hill attributed more than 75% of rapes to women getting into cars.³⁰ “They take the risks and often suffer the consequences”³¹

Specialist literature supported the belief that women invited rape. An influential study in the late 1960s, by an American criminologist, Menachim Amir, used the term ‘victim precipitated’ to refer to rapes in which actions of the victim were interpreted as having contributed to the crime.³² In a New Zealand study of violent offending, Mary Schumacher observed that in 20 of 27 cases she studied, there was evidence of ‘provocation’.³³

This belief also informed advice given to women. Police agencies in the U.S.A., cited for a New Zealand audience, advised women to give up their ‘provocative’ clothing, tone down their language and drop any habits that might indicate ‘excessive’ sexuality.³⁴ But, even being a woman could be construed as a provocation. A martial arts instructor advised women that the best prevention of an attack was to look like a man.³⁵

The construction of rape as a sexual crime supported the construction of rape victims as provocative. Fred Masters, a psychologist with the Justice Department, was concerned

²⁸ Sandra Coney, “Rape: Demolishing the Myths”, *Broadsheet*, no. 21, Aug 1974, p. 20.

²⁹ Maggie Tully, “Rape. Could it Happen to You?”, *Thursday*, 2 March 1972, p. 13.

³⁰ *ibid.*

³¹ *ibid.*

³² Coney, p. 20.

³³ Schumacher cited in *ibid.*

³⁴ Tully, p. 13.

³⁵ *ibid.*

that the sexual deprivation of rapists in prison would compel them to re-offend.³⁶

Detective-Inspector Pat Donovan felt that there was more rape in urban areas because in rural areas “the boys will probably know the girls who are willing”.³⁷ Kevin Ryan, an Auckland barrister with experience in rape cases, described rape as when “the hunger of the male animal comes out ... lust is the word”.³⁸ Mr. Justice Wallace assumed that when a 24 year-old man raped an 83 year-old woman in her home, he must not have realised the extreme age of the woman.³⁹

The belief that women made false complaints was a logical extension of the notion that women ‘asked for it’ and rape was ‘sex’. Belief in false complaints was based on the assumption that many women were hostile to men, were amoral, or that they could secure convictions solely on the basis of fabricating reports. Shame, protection of another person, malice, and revenge or fantasy were believed to be common motives for false complaints.⁴⁰ In 1975 *Thursday* reported that in the majority of rape accusations, New Zealand police found no supporting evidence that the offence occurred, and that there was no barrier to false complaining.⁴¹ Police officers frequently mentioned the problem of unfounded complaints.⁴² Some officers believed that one-third to a half of complaints were false, and that a promiscuous woman was more likely than other women to make a false complaint.⁴³

³⁶ Ann Lloyd, *Rape, An Examination of the Crime in New Zealand: its Social and Emotional Consequences*, Auckland: Wilson & Horton, 1976, p. 63.

³⁷ *ibid*, p. 33.

³⁸ *ibid*, p. 38.

³⁹ “5 Year’s Gaol for Raping Woman, 83”, *Herald Tribune*, 4.5.1983, ABKH W4105, box 3, 30-0-13, Rape General 1979-1984 [Archives New Zealand Head Office (ANZHO), Wellington].

⁴⁰ McLay, p. 8.

⁴¹ Michael Colgan, “Cry Rape”, *Thursday*, 9 Oct 1975, p. 45.

⁴² Michael Stance, “Rape Complaints and the Police”, in *Rape Study, Research Reports, Volume 2*, Wellington: Department of Justice, 1983, p. 45.

Effect of the construction of the rape victim as provocateur

The belief that women ‘asked for it’ and lied, produced the suspicion and lack of sympathy that characterised the social/legal response to rape victims. From judges to parents, from doctors to female friends, narratives of rape victims were judged and disbelieved.

When ‘Mandy’ got home and started screaming that she had been raped, her father said it was because of the way she had been dressed. She had been wearing a long black dress and a black shawl. She described the doctor who examined her as “very callous and unsympathetic”. The examination was initiated by his abrupt instruction, “up on the table and spread your legs”. The policemen who handled her case were described as “really good” but “other cops kept coming up and perving, asking half-lewd questions”.⁴⁴ A 20 year-old victim asked the policeman if he believed her and he replied, “this happens all the time – women cry rape”.⁴⁵ ‘Norma’ described the detective who handled her case as looking at her as if she were a bit of a nut and giving the impression he did not believe her.⁴⁶

These rape victims’ narratives were not untypical. Though not all police, parents or doctors could be unsympathetic and skeptical, such a response was common. The Auckland Rape Crisis Centre’s (RCC) study, based on victim narratives, substantiated the likelihood of a negative response to a rape victim telling her story. 61% of people told had reacted negatively. Two-thirds of mothers, fathers, and husbands and almost two-thirds of lovers and friends did so. Almost half the doctors told responded cynically. While police officers were presented comparatively positively, with less than half giving negative responses, these were among the most brutal. Common negative responses were disgust, disbelief and blaming of the victim.⁴⁷

⁴³ *ibid*, pp. 45, 49.

⁴⁴ Lloyd, p. 9.

⁴⁵ Joan Stone, Rosemary Barrington and Colin Bevan, “The Victim Survey”, in *Rape Study, Volume 2*, p. 38.

⁴⁶ Lloyd, p. 12.

When rape victims did make official complaints and prosecutions resulted, they could expect what some described as a second ‘rape’. Carol Smart has described the rape trial as a process of disqualification of women and a celebration of phallocentrism.⁴⁸ A rape trial in practice ignored the heterogeneity of women and unified them under the category of woman. This equated duplicity with womanhood, and brought into play the classic construct, the madonna/whore dichotomy. A woman’s account could be disqualified in a number of ways: by constructing women as lying or ‘asking for it’, through the focus on consent and pleasure, and through the sexualisation of women’s bodies.⁴⁹

Case law was dominated by an obsession with false complaints. This was expressed in the ‘corroborative warning’, a rigid rule of law that required a judge to direct a jury that it was dangerous to convict a rape defendant on the complainant’s uncorroborated evidence. The warning was justified by a belief that sexual charges were easy to make and hard to defend.⁵⁰ This originated in Lord Chief Justice Hale’s famous dictum in the 17th century that rape is a charge “easily to be made and hard to be proved, and harder to be defended by the party accused...”.⁵¹ His words were quoted by legal writers and used extensively in judges’ summings-up to juries in the 1970s-1980s.⁵²

So too was the ‘recent complaint rule’, another that served to cast doubts on the complainant’s credibility and strengthened the defence of the accused. This enabled a complaint made by a rape victim at the first ‘reasonable’ opportunity to be introduced as evidence in court, but not as corroboration. While the law did not suggest a delayed complaint was false, in practice the two were linked.⁵³ This reflected an understanding that a ‘genuine’ rape victim would report the offence quickly and seek help from services that were largely male. Like the corroborative warning, the early complaint rule served to focus attention on the woman’s behaviour rather than that of the accused.

⁴⁷ Auckland Rape Crisis Centre, “1981 Questionnaire on Rape”, in *Rape in New Zealand*. pp. 137, 150, 151.

⁴⁸ Carol Smart, *Feminism and the Power of the Law*, London and New York: Routledge, 1989, p. 35.

⁴⁹ *ibid*, pp. 34-38.

⁵⁰ Prue Oxley, “Results of Questionnaires to Judiciary and Lawyers”, in *Rape Study, Research Reports, Volume 2*, p. 8.

⁵¹ Jefferies, p. 37.

⁵² McLay, p. 8.

The powerful constructs of rape that projected women as lying, as ‘asking for it’ and rape as a sexual act, ensured the close scrutiny of a woman’s behaviour leading up to the rape event. Often the woman felt she was the one on trial. Rape victims were asked what clothing they were wearing and whether they had been consuming drugs or alcohol.⁵⁴ In judicial decisions, ‘provocative’ behaviour by victims could be construed as a mitigating factor. In 1973 a judge granted extraordinary leniency in sentencing a rapist, because in part the girl concerned was seen to have contributed to the offence.⁵⁵ Similarly, in 1974, a judge was able to describe two young rape victims as “incredibly stupid”.⁵⁶

A woman’s sexual history was laden with meaning. A man who raped a virgin or married woman, those most ‘worthy’ of patriarchal protection, had the highest chance of conviction. Mr. Justice Speight declared a rape case he presided over as very serious because the victim was a thoroughly virtuous young married woman.⁵⁷ It was considered important for the jury to know if a girl was a virgin⁵⁸ because it was believed that the more innocent and honorable a ‘girl’ was, the more she would suffer.⁵⁹ In contrast, those who raped a ‘promiscuous’ woman or a prostitute were unlikely even to be prosecuted. A detective told ‘Norma’ that her rapist got off because she “had been immoral, because she had been with too many other men before”.⁶⁰ This reflected the belief that having consented to having sex with one man, a woman was more likely to have consented to another. Consenting to sex with one man was, in effect, as good as granting consent to them all.

A woman’s conduct during a trial was also scrutinised. Stephanie Smith was aware that making an emotional show would be advantageous to her case but felt her case was a strong one and this was not necessary. However, after the trial she concluded that her calm demeanor had worked to her disadvantage and was presented as evidence that she

⁵³ Young, pp. 145, 146.

⁵⁴ *ibid.*, p. 75.

⁵⁵ Coney, p. 22.

⁵⁶ *ibid.*

⁵⁷ Sandra Coney, “The Crown v Sharon Kroot”, *Broadsheet*, no. 120, Jan 1984, p. 14.

⁵⁸ Beverley Wakem, “Taken by Force”, *Listener*, no. 1831, 28 Dec 1974, p. 8.

⁵⁹ Lloyd, p. 37.

⁶⁰ *ibid.*, p. 12.

didn't really mind being raped.⁶¹ The girlfriend of 'Pedro', a convicted rapist, commented on his victim's testimony saying, "she's not upset, she's lying".⁶² This assumed a construct of passive femininity, contrary to woman as 'provocateur'. Acting outside the narrow boundaries of what constituted being a 'woman' meant a woman's story would be doubted.

The construction of rape victims as 'provocative' was particularly powerful in the practice of a rape trial obsessed with protecting innocent men, so that even those 'worthy' of patriarchal protection were vulnerable. 'Stephanie', a married housewife, described how, despite a full confession from the rapist, she was accused of seducing "a young man without much sexual experience [and] that she was a bored housewife looking for something to do". The billboard advertising the newspaper was, "Naked Woman Suggests Sex Games".⁶³

Because rape victims were believed to be provocative, extensive physical injuries were necessary to prove that rape 'really' happened. When 'Stephanie' responded to the rapist's question whether she knew of any sex games by suggesting that she could be on top, this was seen by the court to equate to consent. For Stephanie, such a position allowed for a potential escape and lessened the chance of the rapist killing her.⁶⁴ He had a knife and had his hands around her throat. Despite this, it was constantly emphasised throughout the trial that Stephanie was not battered or bruised.⁶⁵ The rapist was acquitted of one of two charges of rape. This was after she had tried to escape three times, with violent repercussions. Similarly a rape trial reported in the *Auckland Star* in 1975 related a case where a woman had been knifed and raped. Despite her knife wounds, the defence attorney asked her, "did you ever scream 'God help me, I'm being raped? Were your legs immobilised? Were your legs broken?'"⁶⁶

⁶¹ Susan Woodhouse, "Rape Victim", *Thursday*, 25 Dec 1975, p. 29.

⁶² Lloyd, p. 19.

⁶³ Woodhouse, p. 30.

⁶⁴ *ibid*, p. 28.

⁶⁵ *ibid*, p. 29.

⁶⁶ Julie Thompson, "Rape: Violating the Other Man's Property", *Broadsheet*, no. 33, Oct 1975, p. 32.

The idea that pretending to go along with the sexual act “is often the most effective course of action for a woman who has been threatened with death or extreme physical abuse”, was not one countenanced by the judiciary in Stephanie’s case.⁶⁷ Women were expected to resist to the utmost. If they did not, it was not a ‘real’ rape, one that embodied all the dominant constructs of rape. A woman’s reputation was supposed to mean more to her than life itself. Kevin Ryan observed, “there had to be violence to convince most men that rape’s taken place”.⁶⁸ Almost two-thirds of judges interviewed for the 1982 Rape Study believed that it was unlikely that rape occurred if the woman did not scream or struggle. For the majority, lack of struggling was viewed as a significant indicator of consent.⁶⁹ In contrast, robbery victims were told that they did the right thing by not resisting and risking injury. This suggests it was more serious to take physical property than to sexually violate a woman’s body.⁷⁰

For practising Catholics, the canonisation in 1950 of an Italian girl, Maria Goretti, my favourite childhood saint, provided a strong direction to women. At the tender age of eleven years, she was described as not hesitating to shed her blood and to sacrifice her life to defend her virginal purity.⁷¹ She had resisted the advances of her attacker who meant to rape her, and for her efforts was stabbed fourteen times. Maria Goretti, choosing death over submission, was upheld as a model of honorable femininity. For others, it was her capacity to forgive her attacker before she died that was of greater importance. Either way, the message for women was clear.

When women related their accounts of rape in court, they had to name parts of their body, parts that in the act of naming revealed their sexual content.⁷² Catherine MacKinnon argued that women do not want to go to court because in the flesh in court women come to embody the standard fantasy of the pleasure of abuse and sexual power. It is not just

⁶⁷ Woodhouse, p. 30.

⁶⁸ Lloyd, p. 37.

⁶⁹ Oxley, pp. 13, 14.

⁷⁰ Kathaleen Yurchesyn, Ann Keith, and Edward Renner, “Contrasting Perspectives on the Nature of Sexual Assault Provided by a Service for Sexual Assault Victims and by the Law Courts”, *Canadian Journal of Behavioural Science*, 24 (1), Jan 1992, p. 72.

⁷¹ <http://www.mariagoretti.org>, p. 1.

⁷² Smart, p. 38.

that they must repeat the violation but that the women's stories give pleasure in the way that pornography gives pleasure. The woman's account, distorted by the defence counsel, not only sexualises her, but it becomes a "pornographic vinaigrette".⁷³

The effect of a "pornographic vinaigrette" is made more relevant when we observe that the juries that judged rape victims were more often than not, male. In 1981, 47 out of 55 rape trials had seven or more males on the jury, and five were all male.⁷⁴ Detective Pat O'Donovan believed that men in the jury would think back to occasions where they had gone too far and voted for acquittal because of a "there but for the grace of God go I" attitude.⁷⁵

The belief that women 'asked for it', rape was 'sex', and that women lied were reproduced in the practising of law to effect a silencing of women's narratives of rape. A rape trial focused on a woman's behaviour rather than that of the accused, and put the woman on trial rather than the defendant. In practice, law, in contrast to Lord Hale's dictum, had the effect of discouraging rape complaints and invalidating many of those that were made. And it made rape, when it was prosecuted, one of the easiest crimes to defend.⁷⁶

The intersection of race and gender

Rape victims could expect even less sympathy when they were Maori. The police response to the rape of a young Maori woman named 'Ra', only thirteen years old, revealed how race discourse intersected with, and impacted on rape discourse. ACORD (Auckland Committee on Racism and Discrimination) had approached the Auckland Women's Liberation Movement for support in Ra's rape case. This is Ra's story as told in *Broadsheet*.⁷⁷

⁷³ Catherine MacKinnon cited in *ibid*, p. 39.

⁷⁴ Young, p. 155.

⁷⁵ Pat Donovan quoted in Lloyd, p. 35.

⁷⁶ Mike Bungay quoted in Stone, Barrington and Bevan, p. 79.

⁷⁷ No author, "A Case of Rape", *Broadsheet*, no. 25, Dec 1974, pp. 8, 9.

Upon hearing his daughter had been forced into a car by two men and raped, Mr. P., Ra's father, phoned the police. Police took Ra and her mother to the police station to have Ra examined. However, she was not examined and instead, according to her mother, interrogated aggressively by a policewoman who used "crude and vulgar language" and "bullied" Ra into answering yes or no to her questions. When Ra did not perform to the policewoman's satisfaction, she was threatened that a man would come in and "it would be more embarrassing". The policewoman then said Ra had told a pack of lies and Ra was forced to sign a statement which neither she nor her mother had read.⁷⁸

When Ra got up to go outside for fresh air while her mother was on the phone, she was grabbed by two police officers, "thrown to the ground" and "pinned down". She was then dragged to and thrown into a holding cell. Police told her father that Ra had been arrested, and would be "going to a girl's home". His request to take her home was refused on the grounds that he couldn't take care of her even if he tried. This was particularly insulting as Ra's parents were well respected in the community, were deeply religious and had been active in a number of Maori organisations. When Mr. P asked what Ra was being charged with, the police replied "Being not under the proper control of her parents".⁷⁹

Later that night Ra was taken to another police station for an examination that subsequently proved that intercourse had taken place. She was then taken to a Girl's Remand Home. When Ra spoke to a girl she knew there, she had her arm twisted up behind her back by a constable and a policewoman threatened her to "watch it or I'll punch your guts in". In court the following day, Ra was remanded in the custody of those same parents who were being charged with not being able to control her, and her original complaint of rape was seemingly lost.⁸⁰

Ra's story seems almost incredible, and one can only feel horror upon hearing it. While the police officers' actions were outrageous, they can appear more understandable, or less

⁷⁸ *ibid*, p. 8.

⁷⁹ *ibid*.

surprising, when their context is revealed. A text can be seen as “a permutation of contexts”.⁸¹ Assumptions of female sexuality were not the only cultural beliefs shaping the response to rape victims. Race discourse positioned Maori as less civilised, less appropriately behaved and sexually regulated than Pakeha. Historically, Maori had been viewed as less intelligent.⁸² In the 1960s, voices within the Family Planning Association opined that it was unlikely that Maori girls would marry as virgins,⁸³ and that large Maori families were undesirable because they were at the “wrong end” of the population.⁸⁴ Maori were also implicated in the increasing problem of crime.⁸⁵ The exodus of Maori from rural areas to the city resulted in overcrowding and possibly worked to strengthen a belief in Maori being less civilised.

Constructions of race which positioned Maori as less sexually regulated and having a greater propensity to crime and disorder, worked with constructions of rape which positioned victims as lying or ‘asking for it’, to provide a ‘script’ that supported even more callous treatment of the victim than one might have expected. A Maori identity increased the likelihood that a female narrative of rape would be disbelieved.

One may have expected the policewoman to have had some sense of solidarity with a female victim of rape, despite her race. The policewoman in Ra’s story alluded to this when she threatened that she would get a man to come in, implying it was better for her with a woman present. Susan Ehrlich’s concept of ‘community of practices’ provides some insight into this. She describes institutions as non-neutral. They are structured along gender lines to lend authority to not only reigning classes and ethnic groups, but specifically to men’s linguistic practices.⁸⁶ Police persons can be viewed as constituting a

⁸⁰ *ibid.*, p. 9.

⁸¹ Chris Hilliard, “Island Stories. The Writing of N.Z. History, 1920-1940”, M.A. thesis, University of Auckland, 1997, p. 12.

⁸² Helen Smythe, *Rocking the Cradle. Contraception, Sex and Politics in New Zealand*, Wellington: Steele Roberts, 2000, p. 75.

⁸³ *ibid.*, p. 107.

⁸⁴ *ibid.*, p. 114.

⁸⁵ *Appendices to the Journals of the House of Representatives (AJHR)*, “Report of the Department of Justice”, vol. III, H. 20, 1969, p. 5.

⁸⁶ Susan Gal quoted in Susan Ehrlich, “Communities of Practice, Gender, and Sexual Assault”, *Language in Society*, 28, 1999, p. 251.

‘community of practice’, i.e. they are mutually engaged on a regular basis with police business. Male linguistic practices are seen to shape police practice. The policewoman is invested with the responsibility of upholding the standards and values of the institution - standards and values that do not necessarily serve the interest of many women. In this way gender interacts with other aspects of social identity and gives rise to variable constructions of femininity across women.⁸⁷ Being ‘woman’ is more complex than a simple gender analysis might suggest.

Self-positioning

The limited linguistic possibilities of what could be said about ‘rape’ meant that rape victims often internalised that they were somehow responsible for the rape. This has also been described as a ‘survival response’. It is more comforting to feel that what one did precipitated the event rather than acknowledging the chaotic and random nature of the crime. In this way, one still has control over one’s safety.

When rape victims perceived themselves as contributing to the rape, they defined the event as not a ‘real’ rape, i.e. one that did not resonate with the dominant rape ‘script’. The effect of this myth could be seen in the feelings of shame and guilt expressed by women who had been raped. The Auckland RCC’s study revealed most rape victims felt ashamed or blamed themselves.⁸⁸ As one woman said, “society makes women feel they were to blame in some way, that no woman can be raped without consent”.⁸⁹

Constructions of rape victims ‘asking for it’ and the madonna/whore dichotomy informed women’s choices not to report. Sheila did not report her rape because she doubted it was a ‘real’ rape as she had let herself be picked up.⁹⁰ Margaret did not report her rape as she had been living with a boyfriend for four years and thought this might be a problem.⁹¹ Jane doubted hers was a ‘real’ rape because, “rather than get beaten up”, eventually she had given in.⁹² The Auckland RCC’s study reported that only 23% of rape victims made

⁸⁷ *ibid*, pp. 251, 252.

⁸⁸ Auckland Rape Crisis Centre, p. 156.

⁸⁹ Wakem, p. 8.

official complaints. The main reasons given for not reporting were fear of other's reactions and feelings of self-blame.⁹³

Thus constructions of rape victims worked to discourage women from reporting a rape to police, and sometimes even worked to shape their interpretation of a rape event as not really 'rape'. A lack of reporting reinforced the perception that rape was an uncommon phenomena and that only 'bad' girls got raped. Social practices were not neutral. Though shaped by discourse on rape, once bound, they had their own effect.

But women did not passively accept how others made sense of their experience of a rape event. Some women who felt shame still defined the rape event as 'rape'. Not all women felt shame. Some women shared their narratives with people who would support them. Some women reported the rape event to authorities. Some chose to go through the harrowing experience of a rape trial to have their stories legitimated. Others chose to remain silent as this best worked in their interests, regardless of whether it coincided or not with the interests of others. While silence was an effect of male control, it can also be interpreted as a survival tactic for women who were raped. The fact there was little discursive space for women's narratives of rape to be heard and legitimated did not translate simplistically to women's uncritical acceptance of what was being said about 'rape'.

Construction of the rapist

The image of a rapist embodied age, sexuality, class and race constructions. It seems that 'class' operated to make men more vulnerable to allegations of rape, but 'class' is in New Zealand difficult to define objectively, even if felt subjectively. Its usage here implies a relationship with occupation. Crime was generally understood to have a relationship with poverty,⁹⁴ and in a discussion of individual rapists by the Department of Justice in 1968,

⁹⁰ Lloyd, p. 7.

⁹¹ *ibid*, p. 3.

⁹² *ibid*, p. 7.

⁹³ Auckland Rape Crisis Centre, p. 137.

⁹⁴ Department of Justice, *Crime in New Zealand*, Wellington: Govt. Printer, 1968, p. 13.

all were young men.⁹⁵ The vast majority of rapists were perceived “to belong to that growing proportion of under-educated manual workers aged between 15 and 30 who have become concentrated in our inner city areas over the past 20 years. Also abuse of alcohol is nearly always involved”.⁹⁶

Cultural factors were also believed to be influential, demonstrating further the intersection of race discourse with that of rape. Of the Maori rapists seen by psychologists, many were reported not to be psychiatrically abnormal, but rather the fact they were Maori was considered significant. It was suggested that rape was not viewed as reprehensible to Maori Polynesian men as it was to European men.⁹⁷

Dr. W. McLeod saw rapists as “immature people with potency problems”. And he attributed gang rape to underlying homosexual ‘problems’. He also blamed society at large. Rape was not a surprise in a society that placed emphasis on immediate gratification and which brutalised and dehumanised men, particularly in preparation for war. Urbanisation was also a contributory factor, as of course were, women, who added “fuel to the fire”.⁹⁸

Kevin Ryan saw two types of men as committing rape. The first type had “a psychological disorder: difficulty in finding a girlfriend, perhaps suffering from a personality disorder”, and the second had “an enormous longing which is heightened by proximity, liquor, and the vulnerability of the girl”. The second rapist commits a rape “he might never have meant to, but the opportunity comes along”.⁹⁹ Jack Hobson, Superintendent of Paremoremeo Prison, believed that many rapists “are from broken homes, homes where there is a de facto relationship, or a complete lack of communication”.¹⁰⁰ Thus illness, deprived social backgrounds, alcohol, and a formidable sex drive, all served to remove responsibility for the rape from the rapist.

⁹⁵ *ibid*, pp. 153-55.

⁹⁶ Colgan, p. 45.

⁹⁷ *Crime in New Zealand*, pp. 152-153.

⁹⁸ Tully, p. 13.

⁹⁹ Lloyd, p. 38.

¹⁰⁰ *ibid*, p. 40.

The concept of 'sexual scripts' gives an alternative interpretation of these neutralisations. Stevi Jackson,¹⁰¹ and Mary Koss and colleagues,¹⁰² have used this term to describe the assigning of different roles and behaviours to men and women. Sexual scripts guide interactions between genders. The basic heterosexual script eroticised gender inequality and supported male dominance as natural and normal.¹⁰³ Such scripts were said to "support violence when they encourage the male to be a sexual stalker and the female his prey, deprive the female of her right to say 'no' to further sexual advances, and hold the female responsible for the extent of sexual involvement that occurs".¹⁰⁴ They sanction rape in that they contain 'techniques of neutralisation' which a rapist, or others, may use to justify his actions in advance.¹⁰⁵

'Pedro' said that if there is a person who needs mothering and the only way he has learned to be loved comes through sex, and the only way is to take it, then that is not rape.¹⁰⁶ 'Bill' was able to say in reference to his wife, "if she hadn't deprived me of what I wanted, I mean, I mightn't of went out and done this".¹⁰⁷ 'James' said he raped many times in his teens because sometimes he was drunk.¹⁰⁸ Similarly, the belief women 'asked for it' provided motivation for rapists. 'Joseph', a convicted rapist, used to pick up hitchhikers and rape them. While he knew "it definitely was rape" and the fact that "they were being stupid and hitchhiking" did not come into it, he was able to rely on the victims doubting it was a 'real' rape to not complain.¹⁰⁹

A sympathetic construction of the rapist allowed for sympathetic treatment. Jack Hobson described what they were trying to do in prison as righting "the wrongs done to these men in many cases before they were ten years old".¹¹⁰ Mr. Justice Hillyer found it "immensely

¹⁰¹ Jackson, pp. 27-38.

¹⁰² Koss, Goodman, Browne, Fitzgerald, Keita and Russo.

¹⁰³ *ibid*, p. 9.

¹⁰⁴ *ibid*, p. 10.

¹⁰⁵ Jackson, p. 27.

¹⁰⁶ Lloyd, p. 38.

¹⁰⁷ Wakem, p. 8.

¹⁰⁸ Lloyd, p. 20.

¹⁰⁹ *ibid*, p. 22.

¹¹⁰ Lloyd, p. 40.

sad” when he was forced to sentence four young men to prison for a rape on a young woman.¹¹¹ Fred Masters felt that, “where part of the reason for a man committing a rape is an unsatisfactory relationship with his wife, it would be a great help to us in our treatment of this man if conjugal visits were allowed, so that we could help him improve his relationship with his wife”.¹¹² This widened woman’s responsibility for rape even further, implying ‘conjugal rights’ and female passivity. One wonders if the feelings of the wife were considered. Did the criteria for a ‘satisfactory’ relationship include women’s experiences? Was there any thought that the wife might not want to continue a sexual relationship with a man who had committed rape?

Because what could be said about rape was limited by the discursive field, rape victims too drew on and reproduced sympathetic constructions of rapists in making sense of their experiences. Stephanie Smith felt that her rapist might have been an acceptable member of society if he had been able to receive intensive psychiatric counselling.¹¹³ ‘Mandy’ felt guilty about the man who raped her. She thought perhaps he needed help.¹¹⁴

That many of the men convicted of rape were working-class or black reinforced the perception that these made up the bulk of rapists.¹¹⁵ A 1983 study of newspaper reports suggested that the rapist who went to court was overwhelming young, working class or unemployed, a stranger to the victim, and likely to be Maori or Pacific Islander.¹¹⁶ Paula Wallis interpreted this to mean that it was men who were powerless relative to other men that presented as the public image of rapists, for less powerful men were more likely to be caught, prosecuted, and penalised.¹¹⁷ Such attitudes shaped the punitive treatment of Polynesian overstayers. In 1983, there was a strong push for a Tongan man from New Zealand to be deported following a prison sentence for rape, reflecting the belief that men who rape are black.¹¹⁸ Mr. Justice Moller remarked on sentencing a Cook Islander to

¹¹¹ No author, “Hogwash”, *Broadsheet*, no. 120, Jun 1984, p. 47.

¹¹² Lloyd, p. 30.

¹¹³ Woodhouse, p. 30.

¹¹⁴ Lloyd, p. 9.

¹¹⁵ Auckland Rape Crisis Centre, “Rape Study”, *Broadsheet*, no. 106, Jan/Feb 1983, p. 37.

¹¹⁶ Paula Wallis, “Our Public Face”, *Broadsheet*, no. 112, Sept 1984, p. 31.

¹¹⁷ *ibid.*

¹¹⁸ Judith Jolland, “‘Pass Laws’ in NZ”, *Broadsheet*, no. 117, March 1984, p. 1.

prison for rape that, “this is another example of an immigrant drinking too much and resorting to violence”.¹¹⁹

The practice of law generated both sympathetic and sinister images of a rapist, depending on his social status and relationship to the victim. The news media similarly focused on rape events which featured a rapist who was a stranger, working-class and black, and a rape victim who was either very young or very old and was often at home.¹²⁰ This scenario avoided the issue of seduction and sexual attractiveness and presented a simplistic view of the rapist as a sinister Jack the Ripper. This encouraged a punitive response to the rapist, shaping a public outcry for higher sentencing. Most submissions on sentencing to the Department of Justice’s 1982 Rape Study supported higher penalties.¹²¹

Because of the incoherence of discourses, contradictory constructions of rape could not only co-exist but entangle with each other. An understanding of rape as ‘sex’, meant that rape could be trivialised, and by extension, be linked with romance, the notion of a male ‘stud’, and humour. This afforded a possibility of the name ‘rapist’ embodying some status. While in news media discourse the rapist was a ‘monster’, simultaneously he could be thought of as quite the opposite. A trendy menswear boutique on Queen St. Auckland dressed up its windows to model prison cells. A sign told those who walked by that the macho man in one window was in for “Rape, and more rape”.¹²² On relating an occurrence where the judge had been mistaken for the rapist on trial, Mr. Justice Speight is said to have added that rather than being upset, he had been flattered.¹²³

The dominant construction of a rapist presented in the practice of law and by the news media, was a male who was young, working-class, coloured, and a stranger to his victim. Even within this narrow construction, a number of sexual ‘scripts’ neutralised the rapist’s

¹¹⁹ NZ Press Association, “‘Animal’ Rape is Blamed on Drinking”, *Evening Standard*, 4 Aug 1977, p. 5.

¹²⁰ Wallis, p. 31.

¹²¹ Jonathan Petterson, *Rape Study, Submissions on the Rape Study, An Analysis*, Wellington: Department of Justice, 1983, p. 21.

¹²² Heah Lee Lee, “Rape”, *Broadsheet*, no. 55, Dec 1977, p. 34.

¹²³ No author, “Hogwash”, *Broadsheet*, no. 87, March 1981, p. 35.

responsibility for his actions and by extension, negated women's narratives of rape. The dominant construction thus protected men with status and normalised the gender inequality that characterised heterosexual relationships.

The dominant construction was informed by contrasting assumptions about female sexuality located in medical knowledge. Understandings of women as both passive sexual objects and active provocateurs operated in various discourses to produce suspicion and unsympathetic treatment of the rape victim. A limited discursive space had the effect of privileging male sexuality and denying the lived experiences of women. Men were unchallenged as 'knowers'.

But from the 1960s, there were new possibilities for talking about sexuality and sexual violence. Women began to critique and challenge male knowledge and developed feminist knowledge based on women as 'knowers' of their own experiences. The discursive field for making meaning of rape was dramatically widened.

Chapter 3

FEMINIST KNOWLEDGE

Women have always lived with, and resisted, male sexual aggression. What has changed, however, is how it has been understood and responded to. In the late 19th and early 20th centuries, feminist discourse on sexual violence restricted women's identity to that of 'victim'. Protection of women was sought through legal solutions, practical actions and female guidance of young women. Men's behaviour was unchallenged. The name 'protection' acted as a euphemism for sexual domination. It disguised the problem of sexual violence and silenced the women who experienced it.

From the 1960s, the new contexts described in chapter 1 made possible new statements. Feminists in the 1970s explicitly challenged the assumptions surrounding sexual violence and radically widened the discursive space for making sense of it. Importantly, they themselves announced the problem: challenged male sources of knowledge and developed a feminist knowledge of sexual violence based on women's narratives that redefined rape in women's terms, and gave women a dual identity of both 'victim' and 'survivor'.

Part 1. The older feminist meaning of sexual violence

In the late 19th and early 20th centuries after the demise of chaperonage, a number of organisations formed to protect women. These included the Society for the Protection of Women, which agitated for law improvements, and the Young Women's Christian Association (YWCA).¹ The YWCA was concerned about young women moving into mixed work-places and the streets. Women's concern for safe access to public places propelled women's groups to agitate for better lighting in streets and parks, and for rest rooms for women in towns and cities.²

¹ Sandra Coney, *Standing in the Sunshine. A History of New Zealand Women since They Won the Vote*, Auckland: Penguin Books, 1993, p. 109.

² *ibid.*

Entwined with the concern for safety of women was a desire to protect girls' virginity or 'purity'.³ Women's groups agitated to raise the age of consent. Unmarried girls were thought innocent victims of older and more experienced men.⁴ Some women believed that by making sexual intercourse with young women illegal, the sexual appetites of such men would be discouraged. Feminist political pressure resulted in gradual rises in the age of consent, which became sixteen in 1896. Some feminists advocated still higher ages; others had difficulty with the actual concept of consent: Annie Schnackenberg of the Women's Christian Temperance Union felt it should be called "the age of protection ... because it ought never be possible for a girl or woman to consent to her own ruin".⁵

These women worked to protect their own kind within the dominant discourse of sexuality and sexual violence: females were passive and men aggressive. In the earlier part of the century, the notion of young women pursuing sexual autonomy, in freely agreeing to or inviting sexual activity, was never seriously considered. Nor was male sexuality challenged. However, by the 1940s, in a time of disruptive change, there was anxiety and moral panic about active female sexuality.⁶ This was in part formed by the cultural practice of dividing women into two categories, one good and the other bad.⁷ The threat of being classed with the 'bad' women was a powerful social control on women's sexuality. Women internalised the belief that women were responsible for standards of moral propriety. As Dr. Alice Bush reminded women in 1941, it was they who were responsible for men's behaviour.⁸

The problem of male sexual aggression was located in public space. There was no talk of protecting women and young girls in their own homes. And, as we have seen, women who did experience actual sexual assault tended to remain silent. Because of cultural factors, such as the double standard of sexual morality, disclosing sexual contact with

³ *ibid.*

⁴ *ibid.*, p. 127.

⁵ *ibid.*

⁶ Deborah Montgomery, *The Women's War. New Zealand Women 1939-1945*, Auckland: Auckland University Press, 2001, p. 149.

⁷ *ibid.*

⁸ Coney, p. 317.

particular men could mean that girls had nothing to gain and everything to lose. Consequently, relations of sex tended to be secrets.⁹

A few women widened the discursive space around sexual violence. In the early 1900s, Flossie Le Mar had described men as continuously committing “outrageous” assaults on innocent women and girls and identified some of these men as “drunken parents and husbands”.¹⁰ She believed that if women were to learn the art of jujitsu they could be the “mistresses of the situation whenever assaulted or insulted”, even when their attacker was larger.¹¹ This was intended to have an effect on internal discourses through which women constructed themselves. If women did not reposition themselves, they could not recognise sexual aggression, let alone resist it. Women could “take that active part which (women’s) higher feelings have often prompted us to take but which lack of confidence and presumed physical weakness have often prevented”.¹² In 1913, she produced a booklet, *Life and Adventures of Miss Florence Le Mar*, in which she gave detailed instructions on how to deal with dangerous men.¹³

Empowering young women through the art of self-defence was also the aim of the Girl Peace Scouts, formed in 1908, a precursor to the New Zealand Girl Guides’ Association. In support of its motto, “never say die until you’re dead”, girls were taught jujitsu.¹⁴ One hold, the wrist lock and thumb twist, was said to produce the following result: “He will howl in pain, his grip will relax, but he cannot get his hand away. You may then ... dash his hand in his face, or break his wrist.”¹⁵ However, without a change in internal discourse, women would be unlikely to fight back even if they could.

⁹ Judith Allen, *Sex and Secrets. Crimes Involving Australian Women Since 1880*, Melbourne: Oxford University Press, 1990, p. 2.

¹⁰ Coney, p. 118.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*, p. 119.

¹⁴ *ibid.*, p. 118.

¹⁵ *ibid.*

Part 2. A new feminist meaning of sexual violence

When the women's liberation movement arose in the 1970s, women began to share experiences among themselves, and in light of the commonality of those experiences began to re-interpret them. In 1974 New Zealand feminists began to articulate and respond specifically to the problem of rape,¹⁶ so initiated the development of a feminist knowledge of sexual violence and redefined its meaning. This began with a group of women sharing their narratives of sexual violence. In May of that year, a group of feminists from the Wellington Women's Workshop (W.W.W.) took direct action against a man who raped one of their members.¹⁷

Helene Robinson described in her article in *Broadsheet* how the action came about.¹⁸ The woman had been out with friends at a party where she had resisted unwanted attentions from a man. When she left the party the man followed her, then raped her. She said she did not offer great physical resistance because she was overcome with fear. She complained to the police but they said they would not prosecute because she was not sufficiently bruised and battered, and people at the party (mostly the rapist's friends) had described the two of them as being together. After this response she felt "upset, angry and eager to do something about it", and asked other women at the W.W.W. for their help.¹⁹

This rape event became a focus of discussion of sexual violence, which had a consciousness-raising effect. The women discovered that many of them had had similar experiences, and all "had gotten some kind of hang-up".²⁰ Despite this, the subject had never been raised in their group before. These women had never talked about it because of the "vague feelings of guilt" that they still felt. That the women felt guilty can be understood as women making sense of their rape experiences within the limits of the

¹⁶ Christine Dann puts these developments in 1973 in "*Up from Under. Women and Liberation in New Zealand 1970-1985*", Wellington: Allen & Unwin/Port Nicholson Press, 1985, p. 16, but from readings in *Broadsheet* I think 1974 is the more likely year.

¹⁷ Helene Robinson, "Wellington Women's Workshop takes Action Against the Rapist", *Broadsheet*, no. 21, Aug 1974, p. 24.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

discursive field available to them. In sharing their narratives, women were able to 're-name' the rape event in women's terms. The way rape had been traditionally understood began to make less sense.

Realising that their experience of sexuality and rape was not unique allowed a connection to be made with broad political structures.²¹ Rape was not a result of bad luck, ignorance or negligence, but rather, of systematic oppression. The telling of secrets directly challenged dominant understandings of rape that feminists re-named as 'rape myths' because they did not resonate with women's own narratives. A shared consciousness revealed that rape was common, had long-lasting effects, and that even though women had not asked to be raped they were blamed for it. This consciousness made resistance possible. As conscious agents, the women could, as a group, direct their energies towards social change. In this case, the women responded with a 'rape action'.

The form of action was discussed. There was a need for swift action that would shame the man, give comfort to the woman, and relieve the anger of the other women involved. Direct physical retaliation against the man was dismissed as contrary to the group's pacific ideals. The group settled on the following plan. Around thirty women, including the raped woman, "stormed the pub where the rapist was ... and ... all pointed at him chanting 'rapist, rapist' rising from a whisper". They then changed the chant to "sack the rapist", and marched out.²²

A feminist discourse on rape based on women's experiences, the focus on the victim, and the apparent ineffectiveness of the legal system, empowered the W.W.W. to form a 'rape squad'. This took the form of a telephone crisis line that would be "womanned" on Friday and Saturday nights and a mobile unit to provide help for rape victims.²³ This expressed a gender-specific version of rape: one that positioned men as the perpetrators of rape and women as their victims. The separatism reflected in "womanned" proclaimed women as

²¹ Hilary Haines, "Women's Mental Health as a Feminist Issue", *Women's Studies Journal*, 5 (2), Dec 1989, p. 27.

²² Robinson, p. 24.

²³ *ibid*, p. 25.

'knowers' of the experience of a rape event: as 'authorities' on rape experiences, they were best positioned to provide help. "Womanned" could also be viewed as reflecting a strong dichotomy of 'we' and 'them': men were rapists and women were victims. But through the group's political action, women were constructed as both victims and survivors, giving women a dual identity. Unfortunately, the W.W.W. ran into difficulty with finances and personnel and was unable to expand into a fully-fledged rape crisis centre.²⁴

By taking direct action against the rapist, the women's group circumvented the law and challenged its ability to provide justice for women. From talking with other women, it was learnt that most women would not, and had not, reported to police after a rape. And women who had gone through a court trial said they felt little better after it, as the men usually got off lightly and the women were treated like criminals.²⁵

The 'rape action' was a feminist statement on rape. It brought the issue of rape into public space; the traditional response, to remain silent, was eschewed. It challenged the dominant understanding of rape as a woman's fault, and laid responsibility with the rapist. It broadened the meaning of rape by 'naming' the physically unhurt woman as a 'rape victim.' For the W.W.W. the importance of the action lay in the woman feeling "supported and helped in a tangible way", rather than in its punitive effect which shamed the rapist.²⁶ The cultural assumption of female passivity was undermined. With support from each other, women could fight back.

The W.W.W.'s 'rape action' impacted on both public and feminist consciousness. It marked the beginnings of a power struggle between feminist anti-rape groups and existing bodies of knowledge. As the 1970s progressed, feminists formulated a coherent counter-interpretation of rape. A feminist discourse on sexual violence based on the experiences of women provided for the legitimization of women's narratives of rape and a language for women to express their experiences as rape and violence.

²⁴ Dann, p. 132.

²⁵ Robinson, p. 25.

²⁶ *ibid.*

Developing a feminist knowledge

Development of feminist knowledge initially involved a re-reading of dominant discourse and practice on sexual violence. In the *Broadsheet* issue on rape, Sandra Coney examined three prevalent ‘rape myths’: that rape is impossible, is sexually motivated, and that women are to blame.²⁷ She refuted these myths, using non-feminist research, mainly from the U.S.A, based on interviews with rapists. At this time there was little feminist research and no specific research on rape in New Zealand. What there was rested on the official picture of rape, i.e. based on conviction rates. Convicted rapists were a highly selected group; filtered out from those who did not fit the rapist stereotype. The ‘objective’ research of psychologists and criminologists also reproduced the existing discourse on sexuality and rape. Consequently, in using these texts, Sandra Coney both challenged and perpetuated traditional understandings of rape.

She interpreted the fact that rape literature did not contain any reference to women successfully resisting rape through struggle to mean rape was not impossible. But the absence of resistance stories may or may not have had a relationship to actual events. Such cases may not have been reported, may have been interpreted as no harm being done, and may not have been viewed as ‘real’ rapes outlined in the previous chapter. Similarly, the belief that rapists did not have ‘normal’ attitudes to women and were more likely to be strangers to their victims continued to operate.

As has been previously discussed, discourses can converge as well as contradict. They can provide spaces for making new statements.²⁸ Despite his belief in ‘victim precipitation’ (outlined in chapter 2), Menachim Amir’s research found that most rapes were planned. This undermined the notion that rapists were overcome with sexual lust, and enabled Sandra Coney to critique the popular ‘victim provocation’ theory which held that victims, by virtue of their behaviour, often contributed to the act perpetrated against them. This discursive space supported a feminist analysis of rape as an act of violence rather than sex.

²⁷ Sandra Coney, “Rape: Demolishing the Myths”, *Broadsheet*, no. 21, Aug 1974, pp. 19-22.

'Re-naming'

The construction of rape as violence was produced from the experiences of women, and was central to a feminist analysis. Susan Brownmiller is credited with an analysis of rape as violence, and knowledge of it as rooted in experience. Her construction of rape as gendered violence was taken up uncritically by most feminists. The Auckland Rape Crisis Centre (RCC) asserted rape was an act of violence by a man against a woman.²⁹ Heah Lee Lee declared rape was violence, not sex, and hatred, not love.³⁰ The idea stimulated new responses to rape victims. Alison Copeland suggested that because rape was an act of violence and sex the weapon, women should be treated as damaged rather than sexually assaulted.³¹

The significance for feminists of this construction of rape was its 'naming' of the meaning of rape in women's terms. Rape as sexual was male-defined. It was not defined as sexual by raped women. Women did not like being violated. The violence construct was particularly attractive as it refuted prevalent 'rape myths' that held women 'asked for it', and rape was not that bad. It also assumed a lack of consent; the pivotal point in the process of rape court trials. Thus it could make it easier for women to find support in various forms for an event they defined as rape.

But not all feminists agreed with this analysis. Stevi Jackson described rape as both a sexual act and an act of aggression.³² Angela Graham, a New Zealand feminist, viewed the violence construct as reducing the status of rape and denying its sexual connotations. Rather, she saw rape as the "sexual manifestation of the age-old male fear of women".³³ Catherine MacKinnon believed that the notion that rape was violent came from women wanting to say they were not 'turned on' by being violated, but that problems arose from

²⁸ Ian Parker, *Discourse Dynamics. Critical Analysis for Social and Individual Psychology*, London: Routledge, 1992, p. 13.

²⁹ Ann Lloyd, *Rape. An Examination of the Crime of Rape in New Zealand: its Social and Emotional Consequences*, Auckland: Wilson & Horton Ltd., 1976, p. 49.

³⁰ Heah Lee Lee, "Rape", *Broadsheet*, no. 55, Dec 1977, p. 14.

³¹ Joan Simmons, "The Myths and the Reality", *Broadsheet*, no. 42, Sept 1976, p. 14.

³² Stevi Jackson, "The Social Context of Rape: Sexual Scripts and Motivation", *Women's Studies International Quarterly*, vol. 1, 1978, p. 27.

³³ Angela Graham, "Downgrading Rape", *Broadsheet*, no. 46, Jan 1977, p. 7.

this. She saw the idea that rape was violence as a wishful lie. This is because she viewed us as living in a world where power is eroticised and that it was not true of the male experience of sex that rape is violence, not sex.³⁴ “The problem was that violence against women was practised as a form of sex.”³⁵ Catherine MacKinnon saw the violence construct as potentially leading to a powerless relationship with the law. For example, they say, “Okay rape is violence, not sexuality, but this is sexuality. She wore a T-shirt and jeans. When I was a boy, that was the kind of thing that I took to be provocation. That’s sex. Therefore it isn’t rape.”³⁶ And Catherine MacKinnon argues that “so long as we say that those things are abuses of violence, not sex, we fail to criticise what has been made of sex, what has been done to us through sex, because we leave the line between rape and intercourse, sexual harassment and sex roles, pornography and eroticism, right where it is”.³⁷ By calling rape violence, feminists weakened their challenge to ‘normal’ heterosexuality because it avoided male sexuality.

Discourse on sexual violence had been promulgated largely by ‘others’, not women themselves. Because power produces subjectivity through discourse, knowledge and power are joined together.³⁸ Power was exercised through dominant discourse on sexual violence against women. Michael Foucault wrote that resistance could be achieved through reverse discourses. “Discourse transmits and produces power, it reinforces it but it also undermines and exposes it, renders it fragile and makes it possible to thwart it.”³⁹ In this way, women making their own discourse can be understood as a means of resistance. Through feminist discourse, women resisted dominant subjectivities on offer for rape victims and rapists, and formulated their own.

Feminist discourse was based on women’s experiences and positioned women as ‘knowers’. Knowledge based on victims’ narratives came mainly from those related in

³⁴ Edited version of interview with Catherine MacKinnon in 1983, Carol Ann Douglas, “Sex, Violence and the Law”, *Broadsheet*, no. 116, Jan/Feb 1984, p. 36.

³⁵ Catherine MacKinnon cited in Chris Atmore, “Pornography”, *Broadsheet*, no. 164, Dec 1988, p. 18.

³⁶ Douglas, p. 36.

³⁷ Catherine MacKinnon quoted in Carol Smart, *Feminism and the Power of the Law*, London and New York: Routledge, 1989, pp. 43, 44

³⁸ Kyungja Jung, “The Politics of ‘Speaking Out’: NESB Women and the Discourse of Sexual Assault in Australia”, *Asian Journal of Women’s Studies*, vol. 4, no. 3, 1998, p. 131.

consciousness-raising groups, rape crisis centres and public sharing of narratives called speak-outs. Overseas feminist literature, primarily from the U.S.A., was also contributory. New Zealand feminists had promptly recognised the need for feminist local research to supplement these sources.

In 1976, the National Organisation of Women (NOW) organised a seminar on rape for sharing of ideas, and most importantly, conducted a national survey on rape victims in New Zealand through the *New Zealand Women's Weekly*.⁴⁰ Ninety-four women responded. The survey was considered an exploratory rather than a scientific study, and echoed similar findings in the U.S.A. that sharply contrasted with commonly held beliefs about rape.⁴¹ Similarly, in 1981 the Auckland RCC published a more sophisticated questionnaire in the *New Zealand Women's Weekly* to which 204 women responded. Many of its findings affirmed those in the 1976 study. Both studies focused on the victim and drew on, and impacted on, newer ways of understanding victims.

Victim narratives of rape revealed a contrasting image to that of the stereotypical rapist. In the NOW study, the typical rapist was a European, in his twenties, and often married. Occupations of rapists were all-encompassing, including policemen and professionals.⁴² As Susan Brownmiller said, he could be "the boy next door".⁴³ Both the NOW and Auckland RCC studies found that four-fifths of rape victims knew their attackers.⁴⁴ What rapists did share was a desire to dominate and control women through violence. In the words of one rapist, "I proved to this woman that I'm all man by taking control, dominating".⁴⁵

³⁹ Michel Foucault quoted in *ibid*, p. 117.

⁴⁰ NOW was formed in 1972, modeled after the American NOW. It aimed to act as a catalyst in directing social change for the benefit of women and was a significant player in the shift in understandings of rape.

⁴¹ Pauline Ray, "The Reality of Rape", *Listener*, 22 Oct 1977, p. 14.

⁴² *ibid*, pp. 14, 15

⁴³ Quoted in Amy Chasteen, "Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault", *Sociological Spectrum*, vol. 21, issue 2, April 2000, EBSCOhost, p. 4.

⁴⁴ Auckland Rape Crisis Centre, "1981 Questionnaire on Rape", in *Rape in New Zealand. Papers Presented at the Rape Symposium Wellington September 1982*, Hilary Haines and Max Abbott (eds), Mental Health Foundation, 1983, p. 143.

⁴⁵ Lee Lee, p. 15.

Similarly, rape victims' narratives projected a rape victim that had little in common with the stereotypical image that held victims to be "cheap women who flaunt themselves". Victims who responded to the NOW study tended to be young; almost half were married, and came from 'respectable' occupations such as nurses, students, housewives and librarians.⁴⁶ Victims' narratives always described long-term trauma effects, even suicidal thoughts. In 1979, Ann Burgess and Lynda Holstrom published results of their study of crisis responses of victims and their recovery. They defined the wide group of responses as Rape Trauma Syndrome. The new construction of rape victims' responses had great significance for the way in which the behaviour of victims after a rape event was understood. The syndrome had two phases – immediate and long-term. In the immediate stage, a victim exhibited two main emotional states, either expressed or controlled. Presenting a controlled emotional state had particular repercussions for a victim's credibility. The long-term phase could last from several months to years, and result in physical, psychological, social and sexual disruption.⁴⁷

The women's responses told a story of deficient judicial practices, evident in low reporting and conviction rates, and in unsympathetic police behaviour. Less than one-fifth of women reported the rape to police, and over half that did so found them to be unsympathetic. Of 278 reported rape-related offences in 1975, there were only 119 prosecutions and 50 convictions.⁴⁸ This led Pauline Ray to conclude, "rape is a crime that pays".⁴⁹

The Auckland RCC's study widened the discursive space for talking about rape by re-defining 'rape' itself, highlighting the child victim of rape, and challenging the view of rape as an isolated incident. The law named forms of sexual invasion outside penis/vagina penetration as "indecent assaults", reflecting the view that these sexual invasions were not as traumatic for women. But because survivors of rape made no distinction among various forms of sexual invasion in how they felt after the event,

⁴⁶ Ray, p. 15.

⁴⁷ Eileen Swan, "Victim Services – HELP Sexual Assault Counselling Centre", in *Rape in New Zealand*, pp. 171, 172.

⁴⁸ Results of Auckland RCC's survey in Ray, p. 15.

feminists felt that penis/vagina rape was “not qualitatively different for the ‘survivor’ than the invasion of any other bodily orifice, whether that invasion is with a penis, any other part of an attacker’s body, or a bottle”.⁵⁰ The Auckland RCC included other sexual invasions as ‘rape’ in its study. Sexual intercourse was reported in 64% of the rapes.⁵¹

In contrast to the dominant construction of a victim of rape as an adult woman, women’s stories of rape highlighted the child victim of rape. A quarter of the respondents to the NOW survey and half of those to the Auckland RCC study were under 15 years at the time of the rape event, and one-fifth of the latter study were under ten.⁵² Feminists now believed that child rape was much more common than people thought. One-third of women reported being raped by the same man or men over time, the average period being four and a half years. Long-term rapists were usually fathers or father figures, other relatives, or husbands.⁵³ This problematised the institutions of family, marriage, and masculinity.

Feminist knowledge, therefore, asserted a contrasting rape vignette to that of dominant rape discourse. Rape was an unspecified sexual invasion. The rapist was non-distinguishable from other men, most likely known to his victim, and had planned the attack. A rape victim could be any female, was more likely to be a child, would experience disruptive post-trauma, and was more at risk at home than in public places.

Gender and power

Feminist knowledge had wider repercussions than its effect on rape discourse. It supported a critiquing of discourse on gender and sexuality. While all feminism can be defined as radical, through its challenges to social institutions and practices, radical feminism, while taking many diverse forms, refers to a specific mode of thought. It formed the dominant feminist analysis of sexual violence. In contrast to liberal feminism that sought formal equality between men and women, radical feminism’s organising

⁴⁹ *ibid.*

⁵⁰ Auckland Rape Crisis Centre, “Rape – Legal Reforms”, in *Rape in New Zealand*, p. 124.

⁵¹ Auckland Rape Crisis Centre, “1981 Questionnaire on Rape”, p. 145.

⁵² *ibid.*, p. 131.

focus was the problem of universal dominance of men over women and women's correlative subordination to men.⁵⁴

Women's sexuality was at the heart of the radical feminist debate. Radical feminism did not accept that equality would be achieved for women simply through law reform. Rather than focusing on specific legal inequalities, radical feminism challenged the very structure of society by focusing on its patriarchal hierarchy and practices.⁵⁵ It interpreted the gender category of 'women' as a social construction and conceptualised the problem of gender in the light of power relationships, and the disparity of power between men and women being supported by law and society.⁵⁶

The fact that rapists appeared to have carefully planned their attacks rather than suddenly being overcome with lust⁵⁷ was interpreted to mean that women's behaviour had nothing to do with the rape event. For feminists, this meant that if women did not contribute to the event, and therefore had no control over its occurrence, they were faced with the frightening realisation of a 24-hour fear that they had no control over their body, their self or their sexual autonomy.⁵⁸ Feminists interpreted the fact that young girls were taught to beware of a shadowy stranger, tacitly understood to be male, and that the threat of rape was used to deter women from going out at night, as a sinister form of social control, rather than keeping women safe.⁵⁹

Julie Thompson, a New Zealand feminist, said that rape could be like indiscriminate terrorism, happen to any woman.⁶⁰ As Catherine MacKinnon put it, "to be about to be raped is to be gender female in the process of going about life as usual".⁶¹ Fear of rape was viewed as worse than the actual likelihood of rape; it was the fear that totally

⁵³ *ibid.*, p. 132.

⁵⁴ Hilaire Barnett, *Introduction to Feminist Jurisprudence*, London: Cavendish Publishing, 1998, p. 163.

⁵⁵ *ibid.*, p. 164.

⁵⁶ *ibid.*, p. 18.

⁵⁷ Ray, p. 15.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ Julie Thompson, "Rape: Violating the Other Man's Property", *Broadsheet*, no. 33, Oct 1975, p. 33.

⁶¹ Catherine MacKinnon quoted in Chasteen, p. 4.

incapacitated a woman.⁶² This meant all women were socially controlled by the threat of rape. Nor was this control unstructured: the judicial action taken in response to rape was highly selective.⁶³

Julie Thompson described men who were punished for rape as those who raped inappropriately. She viewed the mechanisms of law as assuming a category of 'justifiable' rape, and that in court women had to prove they were raped unjustifiably. 'Justifiable' rapes included those of prostitutes and 'liberated' women – women who had sought independence from men and had stepped outside the boundaries of 'normal' feminine behaviour.⁶⁴

Zeta Anich saw the most distressing effect of rape as a means of social control on young girls. "They're always being told, no, you can't do this, you mustn't go there, no you're not going there on your own." This kept women passive and at home, wrapped up within the bounds of typical feminine behaviour. It also worked to keep women back, stunting their growth and intelligence.⁶⁵ In contrast, men were free to walk the streets, work certain night shifts, and experienced fewer childhood restrictions. This meant that rape benefited all men.⁶⁶

Within a framework of power disparity, feminists interpreted some male attitudes towards women as expressing a view of women as property. Some husbands found it difficult and even impossible to accept a wife back after she had been raped. "She's been violated, defiled; his property has been damaged."⁶⁷ Julie Thompson reported a professional man who said, despite his rational thoughts about it, he was divorcing his wife after she had been raped because he just could not bear the thought that she had been with another man".⁶⁸ One woman who had been gang-raped reported that after the men

⁶² Gisele Barclay of the Auckland RCC in Lloyd, p. 51.

⁶³ Miriam Saphira, "The Male Responsibility of Rape", in *Rape in New Zealand*, p. 17.

⁶⁴ Thompson, pp. 31, 32.

⁶⁵ Zeta Anich in Lloyd, p. 50.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Thompson, p. 33.

had finished with her, one said, “let’s get rid of this one and find another piece of meat”.⁶⁹

Marriage too was interpreted as an expression of women as property. “On marriage a woman’s ownership transfers from her father to her husband. She is her husband’s possession.”⁷⁰ The law reinforced the notion of wives as property. Rape law enabled ‘spousal immunity’ from rape allegations, or alternatively, was said to justify rape within marriage. Feminists viewed this as a means to protect the rights of the male over his possession, not the right of the female over her body.⁷¹

Feminists firmly located rape within a socio-cultural context. Male violence against women was seen as both a manifestation of gender inequality, and as a means for the subordination of women.⁷² Feminists argued that people learnt ‘scripts’ of male sexual dominance and female passivity (described in chapter 2) that encouraged sexual violence against women. ‘Femininity’ made women more vulnerable to rape and conditioned women to be potential ‘victims’ who were unable to fight back. Women were from infancy encouraged to improve themselves, especially visually, yet when they were raped these were the very reasons cited for it.⁷³ Men saw women as sexual commodities, objects of desire, to be ‘had’, and not as equal human beings with emotions and desires of their own.⁷⁴ Women were brought up to be weak, dependent, sweet and lady-like. They were socialised to internalise the psychological characteristics of defenceless victims who had not learned, or could not apply, the techniques of self-defence.⁷⁵ More dangerous still, being weak and dependent necessitated a reliance on fathers, brothers, male friends or husbands, to protect women from the ‘rapist’. But given that a woman was more likely to know her attacker, the price of patriarchal protection was high.

⁶⁹ Lloyd, p. 49.

⁷⁰ Thompson, p. 33.

⁷¹ *ibid.*

⁷² Mary Koss, Lisa Goodman, Angela Browne, Louise Fitzgerald, Gwendolyn Keita, Nancy Russo, *No Safe Haven. Male Violence against Women at Home, Work and in the Community*, Washington DC: American Psychological Association, 1994, p. 4.

⁷³ Zeta Anich in Simmons, p. 40.

⁷⁴ Auckland RCC, “Suggestions for Public Speaking”, p. 3, ABKH W4105 box 3, 30-0-11, part 1, Refugees [Archives New Zealand Head Office (ANZHO), Wellington].

⁷⁵ Lee Lee, p. 16.

Gender relations and rape were both based on domination and submission. Because sexual scripts supported male violence, feminists argued that a 'rape culture' existed that cultivated widespread assault of women, not by men outside the mainstream, but rather, by men who were in some way hyper-masculine or overly socialised males.⁷⁶ Sexual scripts also led some feminists to declare that all men were potential rapists.⁷⁷ Feminists re-named sexual violence in ways that reflected the experiences of women. In contrast to the existing narratives of victims 'asking for it' and rapists as deviant or over-sexed men, feminists named many forms of sexual invasion as 'rape', asserted any woman was a potential victim, and that the rapist was more likely to be an ordinary man known to the victim. They widened the discursive field for making sense of rape. Women's experiences of rape were interpreted within a framework of power disparity. The development of a feminist analysis of sexual violence provided for particular possibilities for social change. Women were not restricted to an identity of 'victim' or 'potential victim'. It is in discourse that power and knowledge are joined together. In discourse power can function in productive ways by producing new subjectivities. A new knowledge supported a range of feminist activities that can broadly be described as 'speaking out'.

⁷⁶ Chasteen, p. 4.

⁷⁷ Cathy Roberts, *Women and Rape*, Hertfordshire: Harvester Wheatsheaf, 1989, p. 28.

Chapter 4

CONTEST. FEMINISTS 'SPEAKING OUT'

When women shared their experiences in small groups or at public events (consciousness-raising), carried out 'rape actions', protested, circulated feminist analyses of rape, made submissions on law, practised feminist self-defence and set up rape crisis centres, they were 'unsilencing' women' or 'speaking out'. Speaking out' can be seen as a crucial step, both politically and psychologically.¹ In a male-dominated society, one strategy by which men controlled and exploited women was through women's silence.² Silence was regarded as a high virtue in women. If women's silence was associated with powerlessness, then their voices were power. For the personal to become political, it first needed to be announced, hence the women's liberation movement's slogan: 'break the silence'.³ 'Speaking out' can be understood as a form of resistance.

Consciousness of the oppression of women as an effect of dominant discourse on rape and sexuality directed feminists towards social change. Having articulated and defined the problem of rape, feminists were faced with the question of what to do about it. New subjectivities offered in feminist discourse afforded new possibilities for feminist agency. Feminist social action both addressed the needs of the rape victim and entailed the use of conventional and unconventional means to circulate a critique of the dominant view of rape to the general public. Because feminist social action can be read for meaning, it can be considered as 'textual'.

Empowerment

In the earlier days, feminists gave advice on self-defence to keep women safe. Two styles were offered. The first, for the cautious, was to avoid situations where sexual attacks were thought to occur. The other was for the more aggressive, or for when being cautious

¹ Kyunga Jung, "The Politics of 'Speaking Out': NESB Women and the Discourse of Sexual Assault in Australia", *Asian Journal of Women's Studies*, no. 3, vol. 4, 1998, p. 116.

² *ibid.*

³ *ibid.*

failed, and involved a physical counter-attack.⁴ An exhaustive list of preventative measures was thought to minimise the chances of sexual attack, but involved a curtailment of freedom, likened to “living in a constant state of incipient siege”.⁵ Even when women adhered to stringent rules, it was acknowledged that their safety could not be guaranteed as, “unfortunately, rapists never play by the rules”.⁶

The Sydney Rape Crisis Centre caricatured a list of avoidance tactics, reproduced for a New Zealand audience, which exposed the lack of control women had over the occurrence and threat of rape in their lives.

HOW TO AVOID RAPE

Don't go out without clothes - that encourages men.

Don't go out with clothes - that encourages some men.

Don't go out alone at night - that encourages men.

Don't go out with a female friend - some men are encouraged by numbers.

Don't go out with a male friend at night – some male friends are capable of raping you or you may meet a rapist who will assault your friend before starting on you.

Don't go out alone at anytime – any situation encourages men.

Don't stay at home – intruders and relatives are both potential rapists.

Avoid childhood – some rapists are turned on by the very young.

Avoid old age – some rapists inflict themselves upon aged women.

Don't have neighbours – these often rape women.

Don't have a father, grandfather, uncle or brother – these are the rapists who most often rape young women.

Don't marry – rape is legal within marriage.⁷

Feminist advice on fighting back when attacked was contradictory. Some believed that resistance put women in danger of being maimed and killed, and that women were not even potentially as strong as men.⁸ Yet the plan of self-defence rested on the idea that women could be strong physically, if they knew how.⁹ This mirrored the ambiguous advice to women from police and experts in self-defence. While Victor Sargent, a martial arts expert, believed that he could teach women to “be very vicious and very effective”,

⁴ No author, “Women Can Fight Back”, *Broadsheet*, no. 21, Aug 1974, p. 29.

⁵ *ibid.*

⁶ Maggie Tully, “Rape. Could it Happen to You?”, *Thursday*, 2 March 1972, p. 13.

⁷ Quoted in Ann Lloyd, *Rape. An Examination of the Crime: its Social and Emotional Consequences*, Auckland: Wilson & Horton, 1976, p. 56.

⁸ Sandra Coney, “Rape: Demolishing the Myths”, *Broadsheet*, no. 21, Aug 1974, p. 19.

⁹ No author, “Women Can Fight Back”, p. 29.

other martial-arts instructors did not agree.¹⁰ Detective-Sergeant Hill recommended using scratching, biting and kicking to keep free from one's attacker, but his rationale appeared more to procure evidence than avoid rape. His advice concluded, "the more marks on his body, the better chance the police have of catching him".¹¹

In 1979, the strategy of self-defence shifted conceptually when Sue Lytollis applied a feminist philosophy of empowerment. Sue Lytollis, a martial-arts expert, approached the Young Women's Christian Association (YWCA) with an outline of a defence course. The Association agreed to sponsor her. The demand was such that in 1982 other women were trained to teach her courses. Sue Lytollis published a book, *Self-Defence for Women*, in 1983, and produced a video called *Take a Walk on the Safe Side*.¹² By 1992, more than 100,000 girls and women in New Zealand had taken her course. A changing understanding in rape underwrote this high demand. Previously, women tended to go to defence courses for a short time after there had been publicity of a stranger rape, then stopped when they got a new boyfriend.¹³ Women's interest in learning self-defence became part of normal living, not just a response to an unusual event.

A feminist philosophy of empowerment radicalised the strategy of self-defence. The course placed as much emphasis on developing psychological strength as physical strength. Sue Lytollis believed that self-defence was 99% in the mind and 1% in the body. Thus much of her work involved 'deconditioning' women not to be passive, and to not feel responsible for sexual attacks.¹⁴ Through these courses, women learnt that strength, confidence and skills were normal female attributes that all women could develop.¹⁵ Attacks against women were put in a wider context of male power and control, dominant discourses on gender and rape were subverted, and a feminist narrative of rape

¹⁰ Tully, p. 40.

¹¹ *ibid.*

¹² Sandra Coney, *Standing in the Sunshine. A History of New Zealand Women since They Won the Vote*, Auckland: Penguin Books, 1993, p. 119.

¹³ Victor Sargent quoted in Tully, p. 40.

¹⁴ Sue Lytollis, *Self-Defence For Women*, Auckland: New Women's Press, 1983, pp. 7, 8.

¹⁵ Christine Dann, *Up From Under. Women and Liberation in New Zealand 1970-1985*, Wellington: Allen & Unwin/Port Nicholson Press, 1985, p. 136.

asserted. If women refused to give in and fought back instead, then male violence could no longer flourish as it did. "Self-defence is a women's strength."¹⁶

To be effective, discourses "require activation through the agency of individuals whom they constitute and govern ... as embodied subjects. This occurs through the identification by the individual with particular subject positions within discourses".¹⁷ When women identified with the subject positions offered in feminist discourse, they helped circulate it. While social practice is an outcome of discourse, and social space of social organisation, neither are neutral entities. Once they are shaped, they exert their own influence.

In this way, the internal discourse reconstructing 'women' could lead to a stronger engagement with social discourses on sexuality and rape. When women were 'devictimised' they had the potential to behave in new ways that undermined social expectations of 'feminine' behaviour and asserted a new 'femininity'. Fear could be turned into anger. For example, Sue Lytollis reported a woman jogger giving a rude hand signal to obscenities yelled out to her by a male motorist. He reversed his car and said, "You, bitch, how dare you do that?" She ran up to his window and said, "You bastard, how dare you think you have the right to poke fun at me". He quickly drove off.¹⁸ A woman who had been to Sue Lytollis' classes said, "she made you realise you do have a lot of strength and you don't have to act like Fay Wray with King Kong".¹⁹ Acting out a new 'femininity' could also contribute to a stronger engagement with legal discourse.

While most feminists located rape at the end of a continuum of sexual violence against women, Sue Lytollis used the name 'rape' to refer to all acts that functioned to keep women in line. These ranged from lewd verbal abuse, to a man friend slapping a woman's bottom, to when a male with whom one may be in a heated argument puts his arm on a shoulder and says, "Now don't get hysterical dear". For Sue Lytollis, there were

¹⁶ Lytollis, p. 7.

¹⁷ Weedon quoted in Jung, p. 134.

¹⁸ Lytollis, p. 21.

¹⁹ Pauline Ray, "Rape: The Real Issue", *Listener*, 27 March 1982, p. 22.

many rapes.²⁰ Miriam Jackson also described actions such as whistles and jibes as “little rapes”.²¹

Using the name ‘rape’ to refer to other abuse may have been to make women aware of their oppression on many levels, which would be central to ‘deconditioning’ and ‘devictimising’ women. It may also have indicated the “lack of names” that encoded “the experience from a female perspective”.²² However, this tactic ran the risk of trivialising the brutalising experiences of women who were raped, especially in a social environment where many believed rape was not that bad. As Naomi Wolf says, we should not have to pretend that such experiences feel like rape in order to show that they are offensive and humiliating.²³

Women also began in the early 1980s to defend themselves collectively against sexual violence. They set up neighbourhood groups, generally in response to rapes by armed intruders.²⁴ One of the more successful was the St. Mary’s Bay Neighbourhood Support Group, formed after a stranger attack on a woman in her home in 1983. Hundreds of women supported its establishment. Its original emphasis was on catching the unknown attacker and on women protecting themselves from other stranger attacks, which many believed to be perpetrated by Polynesians. It organised funding to put together a Neighbourhood Support Group kit and a video, and it inspired the setting up of groups in other Auckland suburbs.²⁵

This consciousness-raising produced a shift to a feminist analysis of sexual violence. From stranger danger, the focus moved to “crime inside the home”. When women spoke publicly they would ask people how often they had heard of a trainee bank manager who had raped his best friend’s sister and who was charged in the courts. And they would

²⁰ Sue Lytollis, “Shin-kicking, Eye-gouging, Ball-bruising, and other Vicious Tactics for Self-Defence”, *Broadsheet*, no. 71, July/Aug 1979, p. 20.

²¹ Miriam Jackson, “Sexual Harassment at Work”, *Broadsheet*, no. 87, March, 1981, p. 10.

²² Dale Spender quoted in Helen Bauchop, “The Public Image of Rape in New Zealand: A Case Study of Two Newspapers, 1950-1970”, B.A. (Hons.) thesis, University of Otago, 1990, p. 33.

²³ Naomi Wolf, *Fire with Fire. The New Female Power and How it Will Change the 21st Century*, London: Chatto & Windus, 1993, p. 209.

²⁴ Dann, p. 136.

criticise racist comments from judges and others, in particular the Minister of Immigration, Aussie Malcolm, who said overstayers rape and bash.²⁶ Thus they challenged the image of a rapist as a coloured stranger, and reoriented the understanding of sexual violence to one of male/female relationships within a social context of oppression and subordination.

The groups impacted on both internal and external discourse. The women themselves were rejecting passivity and engaging in political action. Many had never before been involved in situations that required them to stand up and be assertive. And problems within the community that had never been talked about, or had been ignored, such as incest and domestic violence, began to be addressed. There were many women who, for the first time, began to seek help for rapes that had happened many years before.²⁷

Initially such groups often encountered negative responses from officials. Auckland police thought the St. Mary's Bay Neighbourhood Group were a "bunch of hysterical women". They advised them to stay off the streets at night and lock themselves in. Police responded slowly to women reporting peeping toms and prowlers, and told women such incidents were not important. Thus police reproduced dominant understandings of sexual violence that trivialised it and silenced women's voices. But women's groups refused to go away. They persisted in speaking out about sexual violence from a feminist perspective. Women's narratives of rape gained credibility, and eventually police responses were reported to have shifted. In St. Mary's Bay, response times to once 'trivial' incidents dropped from 15 to 3 minutes.²⁸

The politics of space

Feminists extended their claims to their physical world. In 1979, the first 'Reclaim the Night' march was held in Wellington. One of its slogans was, "Women take back the night – safety is our right". Nearly three hundred women took part in a celebratory march

²⁵ Jenny Rankine, "Organising your Neighbourhood", *Broadsheet*, no. 119, May 1984, p. 15.

²⁶ *ibid*, p. 16.

²⁷ *ibid*, p. 17.

²⁸ *ibid*, pp. 16, 17.

featuring torches, singing, drums, speeches, poetry and theatre. The focal point of the evening was when feminists marched through Central Park, the scene of many sexual assaults.²⁹

'Reclaiming the Night' was a way in which women all over the world loudly affirmed women's culture, their narratives, and actively rejected the notion that women must not go out at night unescorted. Marches typically took place in areas where attacks on women had occurred. The marches began in Germany where women reclaimed the extensive 'red light' and porn shop districts of major cities by marching through them with flaming torches, banging drums and pot lids, embarrassing male clients and sometimes damaging porn shops.³⁰ Feminists viewed the marches as proclaiming their "right to be anywhere, anytime, with or without whoever" they chose. The importance of the march lay in women taking the initiative and openly declaring their right to move freely without the threat of rape or violence. Marches were also viewed as a celebration of "the strong feelings of unification aroused by reclaiming the night together".³¹ A collective identity was essential for political action.

Asserting freedom to move in public spaces made sexual violence a civil rights issue. As citizens, women could demand the same rights as men. Safety of women was a social responsibility and should not rely on women cloistering themselves. An anti-rape proclamation posted on the streets of Wellington that ordered a curfew on men after dark laid the problem of violence with men.³² This probably took its inspiration from the Prime Minister of Israel, Golda Meir. It was suggested that, to counter the problem of rape in Israel, a curfew should be imposed on women. Golda Meir replied that no, it was not the women that should have a curfew imposed on them, but rather the men – it was the men who were doing the raping, not the women.³³

²⁹ Joan Davidson, Margaret Ingram and Lyn Benson, "Women Reclaim the Night. A Women's Celebration", *Broadsheet*, no. 75, Dec 1979, p. 7.

³⁰ Dann, p. 135.

³¹ Davidson, Ingram and Benson, p. 7.

³² Sandra Coney, "Rape Victims", *Broadsheet*, no. 105, Dec 1982, p. 3.

³³ Lloyd, p. 51.

Protest

Picketing was another militant tactic used by feminists to publicise sexual violence. In 1980, feminists in Hawkes Bay staged two public demonstrations over judicial abuses.³⁴ The first involved a gang rape trial in which the defence lawyer challenged all thirteen women called for jury service. Both men and women took to the streets on Suffrage Day to protest the all-male jury.³⁵ The second concerned the sexual assault on an 82-year old woman. The judge dismissed the case, citing the fact that the defendant (who had climbed through a window) was “too drunk to know what he was doing”.³⁶ The judge’s comments employed a neutralising script by attributing the rape to alcohol. It also expressed a view of rape as sex. Because an elderly woman was not commonly viewed as sexually attractive, she could not be a potential rape victim.

Women could also be targets of feminist protest. When feminists in Auckland heard once again that a lawyer had used rape myths to defend her client, they picketed her Queen St. office. About twenty women draped in ‘blood’ stained rags inscribed with the word ‘victim’ held placards and handed out leaflets explaining what their protest was about and highlighting the treatment of rape victims in court. The group did not think that the lawyer, Honoria Gray, should be exempted on account of her sex, but rather, that her sex might validate such behaviour in the eyes of her male colleagues. Their media statement put the case in the general context of the treatment of rape victims, and linked this to why victims were disinclined to report. They also threatened that this might be only the first of a number of pickets, and that other lawyers would be targeted for their treatment of rape victims.³⁷

Locating sexual violence within a social context of male oppression of women enabled feminists to support all women, not just those in their own country. Thus the Auckland Rape Crisis Centre (RCC) could describe itself as part of a world-wide fight against

³⁴ Dann, p. 135.

³⁵ Coney, *Standing in the Sunshine*, p. 40.

³⁶ Dann, p. 135.

³⁷ Sandra Coney, “Gray Justice”, *Broadsheet*, no. 107, March 1983, p. 6.

violence against women.³⁸ In 1978, the Auckland Women's Action Group initiated the first of a number of feminist Anzac Day gestures when they laid a wreath at the Auckland Cenotaph. The accompanying card read, "In memoriam. We remember all the forgotten women. All those who died in battle. Those raped and mutilated ...".³⁹ The action served to reorient a national celebration of culture exclusively focused on masculine experience to one inclusive of female experiences of war. But its effect was greater than mere inclusion. The 'unsilencing' of women's voices problematised the male narrative of war that either rationalised rape of 'enemy' women as 'spoils of war,' or through silence, made their rape experiences invisible.

In 1984, a group of feminists carried out an action that used violence. Although it was unusual for feminists to practice violence as a means of resistance, the aftermath of the Mervyn Thompson affair is of interest because the case was played out extensively in the media and told a number of stories. Mervyn Thompson, a playwright and lecturer at Auckland University, was abducted by six women, tied to a tree, and the word 'rapist' spray-painted on his car. The women claimed that he had used his position of authority to commit several rapes, and they wanted to encourage women to take action if they were not satisfied that justice has been done in the court system.⁴⁰ They said "he represents that portion of rapists who are seldom prosecuted through legal channels because of their status as white, middle-class men".⁴¹

Men were horrified by the vigilante attack, and the subsequent cancellation of a performance of Mervyn Thompson's play, *Songs for Uncle Scrim*, caused consternation. In contrast, there had been no outcry the previous year when Jim McLay had supported vigilante action by saying that if rape happened to a member of his family, the offender would be lucky if the police got to him first.⁴² A.K. Grant described the women as a "bunch of vicious feminists", and feminists involved in the play's cancellation as less

³⁸ Auckland Rape Crisis Centre, "Rape - Legal Reforms", in *Rape in New Zealand. Papers Presented at the Rape Symposium, Wellington, September 1982*, Hilary Haines and Max Abbott (eds), Mental Health Foundation, 1983, p. 119.

³⁹ Dann, pp. 143, 144.

⁴⁰ Mervyn Thompson, "Victims and Vengeance", *Listener*, no. 2305, 14 April 1984, p. 21.

⁴¹ Jenny Rankine, "Six Angry Women", *Broadsheet*, no. 117, March 1984, p. 11.

honest than the Nazi book-burners.⁴³ Media coverage was sympathetic to Mervyn Thompson. Feminists interpreted this as men being “forced to look at their behaviour and possibly change it, to take account of the feelings of women, and they don’t like it”.⁴⁴ The action brought attention to male sexual behaviour that had traditionally been seen as good by men’s rules and raised the subject of sexual harassment. Mervyn Thompson’s sexual liaisons with some of his students, once described as “womanising” or “philandering”, were now being defined as “treating women as sex objects”⁴⁵ and as rape.

Feminists contrasted the degree of public attention given to Mervyn Thompson with the “silent collusion with the more serious and much more widespread suffering of raped women”. Women were not “accorded the public concern and horror he is able to attract as a man”.⁴⁶ When Brenda Cheyne, a rape victim, said that when she was gang-raped and wanted to tell the world about it, only Felix Donnelly, a talk-back radio host, responded.⁴⁷ And in contrast to the three pages the *Listener* devoted to Mervyn Thompson telling his own story, Henri Maes asked, “how many of the women victims are offered space in the *Listener* to state why they didn’t deserve to be bashed and/or raped, to list their virtues and their many services to patriarchy?”⁴⁸ One male ‘victim’ was clearly of greater concern than the hundreds of women victims.

The action raised the question of the use of violence, considered a ‘male’ strategy, as a means of achieving feminist goals. Many women were sympathetic to the attackers. The action was interpreted as sheer frustration many women felt at the lack of change in the treatment of rape victims.⁴⁹ Perhaps women had the right to not respect or obey rules which did not fulfill their needs?⁵⁰ But in actuality, very few feminists endorsed the use of violence. Its potential, however, could encourage reform. Rosemary Barrington, of the Institute of Criminology at Victoria University, said, “surely it is to everyone’s benefit

⁴² Cited in Denis Welch, “Editorial. Rape and Revenge”, *Listener*, no. 2272, 20 Aug 1983, p. 10.

⁴³ A.K. Grant, “Songs for Uncle Scrim”, *Listener*, no. 2307, 28 April 1984, p. 29.

⁴⁴ Jenny Rankine, “The Media and Mervyn”, *Broadsheet*, no. 120, June 1984, p. 10.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ Brenda Cheyne, “Letter to Editor”, *Listener*, no. 2309, 12 May 1984, p.10.

⁴⁸ Henri Maes, “Letter to Editor”, *Listener*, no. 2309, 12 May 1984, p. 10.

⁴⁹ Kathleen Ryan, “Letter”, *Broadsheet*, no. 119, May 1984, p. 12.

that we find more appropriate solutions before others take out their frustration in this manner”.⁵¹

Feminist institutions

A feminist analysis of sexual violence had highlighted the glaring inadequacies in the treatment of rape victims. Feminists directly and indirectly addressed the needs of rape victims through the establishment of women’s refuges and rape crisis centres, safe spaces for women. In 1974, the first women’s refuge opened in Christchurch, with another soon following in Auckland.⁵² In 1981, the National Collective of Independent Women’s Refuges (NCIWR) was formed to provide a collective political voice and a co-ordinated approach to government and other funding bodies.⁵³

Women’s refuges provided a sanctuary for women and children fleeing violent husbands and fathers. Sexual violence was such a prevalent expression of domestic violence that refuges often did not record it.⁵⁴ And it was partially sanctioned by law through the ‘spousal immunity’ from rape prosecutions. Social responses to domestic violence were either silence or intervention by charitable organisations. These groups favoured returning women to their violent homes, “because of a belief in the necessity and validity of marriage and family”. In contrast, feminists were guided by “what was good for the women”.⁵⁵ And in contrast to feminists of the 19th century, helping women and children only was a conscious choice, rather than based on the consideration that helping men was ‘improper’ for women.⁵⁶

The structure of feminist women’s refuges was shaped by feminist principles. Critical of conventional hierarchical structures, feminists ran their organisations on a co-operative

⁵⁰ Heah Lee Lee, Jenny Holdt, and Debbie Moran, “Letter”, *Broadsheet*, no. 119, May 1984, p. 12.

⁵¹ Rosemary Barrington, “Letter to Editor”, *Listener*, no. 2309, 12 May 1984, p. 10.

⁵² Dann, pp. 17, 18.

⁵³ *ibid.*, p. 131.

⁵⁴ Letter to Advisory Committee on Women from Doris Kerrisk, co-ordinator of Battered Women’s Support Group, Christchurch, 30.8.79, ABKH W4105, 30-0-9, box 2, part 1, Women and violence [Archives New Zealand Head Office (ANZHO), Wellington].

⁵⁵ Dann, p. 129.

and collective basis. All members participated in decision-making and had equal status. For some this was a political act: a way of challenging patriarchal forms of oppression.⁵⁷ Self-help was critical. The first step was to get women out of the passivity and helplessness they had been reduced to, to regain a sense of self-worth and confidence.⁵⁸ This meant rejecting usual practices in which others made decisions for women and treated them as though they were incompetent. Instead, the women were expected to take responsibility for the daily running of the refuge, had a right to refuse offered assistance, and had a final say in decisions which affected them personally.⁵⁹

A feminist analysis of domestic violence blamed the beaters, not the beaten. Domestic violence was viewed as inevitable in a society in which men had more status and power than did women.⁶⁰ Factors such as alcohol and deprived social backgrounds were considered contributory rather than causative. Feminists' practices within the refuge were therefore political. Women's refuges aimed to destroy what they regarded as the social and legal practices that supported men who were violent to their families.⁶¹ To further this aim, refuge work was extended into the community.

In many ways, the development of women's refuges provided a model and pathway for rape crisis groups to follow. The first rape crisis centre was formed in May 1975 by about twelve women in Auckland.⁶² Like the Wellington Women's Workshop's rape service, the centre had difficulty getting started and it was not until 1978 that it was established on a permanent basis.⁶³ Others followed. By 1983 there were nine rape crisis centres. Until 1986, when a national body was established, the National Collective of Rape Crisis and Related Groups of Aorearoa Incorporated, the centres were organised autonomously, serving local needs and reflecting local influences. But informal links between centres

⁵⁶ Anne Else (ed.) Historical Branch of Internal Affairs, *Women Together. A History of Women's Organisations in New Zealand*, Wellington: Daphne Brasell Associates Press, 1993, p. 117.

⁵⁷ Jane Vanderpyl, "An Unstable Achievement: Conflicts in Feminist Collective Organising", *Women's Studies Journal*, 14 (1), Autumn, 1998, p. 7.

⁵⁸ Dann, p. 130.

⁵⁹ *ibid.*

⁶⁰ *ibid.*, p. 131.

⁶¹ *ibid.*

⁶² Lloyd, p. 44.

⁶³ Dann, p. 13.3

were made much earlier, reflecting feminist solidarity. Centres participated in training and setting up others, and shared information. In 1981, the first national rape crisis workers gathering was organised and a monthly newsletter, *NZ Rape Crisis Workers*, followed.⁶⁴

Rape crisis centres were established to fight back against male violence against women, to provide support to ‘survivors’ of rape, to change public attitudes so that they were more supportive to rape survivors, and to work towards social change that would prevent rape.⁶⁵ A feminist analysis of sexual violence had clarified women’s oppression, subordination and pain, but also women’s strength to survive and resist.⁶⁶ The ability of women to bond together and set up small bases challenging male power was seen as the ability to overthrow it.⁶⁷ Rape crisis centres, like women’s refuges, therefore, embodied both resistance and subversion, and provided a radical alternative to existing services.

Like the women’s refuges, rape crisis centres aimed to provide a positive environment of self-determination. In contrast to existing counselling relationships in which the counsellor was seen to exert power over the woman seeking help, rape crisis workers aimed to listen to women rather than give them advice, and believe them, rather than judge them.⁶⁸ How much and what kind of support, was determined by the women’s wishes. In particular, a woman was never persuaded to go through such a “harrowing experience as a rape prosecution and trial. She herself must want to prosecute”.⁶⁹ Thus counselling practice had political implications. It sought to reduce power imbalances between professionals and victims, and between men and women. The feminist use of the term ‘survivor’ rather than ‘victim’ can also be seen in this light. ‘Victim’ was seen to reflect a sense of helplessness. In contrast, ‘survivor’ expressed strength and the ability to recover.

⁶⁴ Auckland Rape Crisis Centre, “Administration of the Centre”, p. 128.

⁶⁵ Auckland Rape Crisis Centre, “Rape – Legal Reforms”, p. 119.

⁶⁶ Edmundson, p. 35.

⁶⁷ *ibid.*

⁶⁸ *ibid.*, p. 34.

⁶⁹ Lloyd, p. 46.

A number of services were provided to support the rape 'survivor'. Rape crisis groups set up crisis telephone lines and provided a physical space for women only. Working "towards the elimination of rape and sexual abuse against women and children"⁷⁰ extended into the community. Education talks were given, programmes were conducted in high schools, media interviews held and statements made.⁷¹ The aim of this community education was to bring the subject of rape into the open, offer support to victims and others close to them, challenge rape 'myths', and to foster a more aware and sympathetic public.⁷²

Education and liaison could be effective. Education workers reported a high level of acceptance of a feminist analysis of 'rape culture'.⁷³ The Auckland RCC thought its efforts had a positive influence in police procedures.⁷⁴ Inspector A.J. Leslie said the Wellington RCC was an excellent resource to be used, and "co-opted their intelligence" for training police.⁷⁵ The Wellington RCC's school programme was widely endorsed by participating high schools.⁷⁶ A significant effect of education was the 'unsilencing' of victims of sexual violence. For example, the Wellington RCC was "staggered" at the "high number of students" who later contacted them requesting support as sexual abuse victims.⁷⁷

In the early days, lesbians were leaders in setting up centres, but by the early 1980s women of many different cultures and sexual orientation had become involved.⁷⁸ Many workers, nearly all volunteers, had experienced sexual abuse. This was viewed as helping the women to empathise with other 'survivors'. Women volunteers were selected from

⁷⁰ Jenny Holdt, *National Collective of Rape Crisis and Related Groups of Aotearoa Inc. The First Five Years. Rape and Sexual Abuse in New Zealand, 1992-1996 Clients*, Auckland: Holdt and Associates Evaluation and Research Services, 1997, p. 2.

⁷¹ Jane Vanderpyl and Elizabeth Butterfield, "Auckland Rape Crisis. New Directions", *Broadsheet*, no. 212, Summer 1996, p. 39.

⁷² Hamilton Rape Crisis, "Annual General Report 1983", p. 21, ABKH W4105 box 3, 30-0-11, part 2, Refuges [ANZHO, Wellington].

⁷³ *ibid.*

⁷⁴ Auckland Rape Crisis Centre, "Administration of the Centre", p. 128.

⁷⁵ A.J. Leslie, NZ Police District Headquarters Wellington, 21 Sept 1982, ABKH W4105 box 3, 30-0-11, part 1, Refuges [ANZHO, Wellington].

⁷⁶ Letters from various Wellington high schools, in *ibid.*

⁷⁷ Wellington Rape Crisis Centre, in *ibid.*

training programmes, as it was deemed important that they be able to work within a specific feminist framework.⁷⁹ But the culture of each centre varied. Some began as overtly feminist, but over time became less politicised and functioned more like an existing service provider. Others, like the Christchurch RCC, started out as a self-help group for women rape survivors and developed into a centre expressing a strong radical feminist interpretation of sexual violence.⁸⁰ At times this led to disagreements within the rape crisis movement. A conference that the YWCA held in 1983, on 'Sexual Violence to Women and Children', demonstrated the diversity among feminists. Many participants were described as being so steadfast in their views that Helen Warren, a member of the Rape Education Group of Carrington Hospital, considered it "an extremely disturbing phenomenon".⁸¹

A radical feminist interpretation of sexual violence was a "subject-centred discourse that privileged the female speaking subject in opposition to the male speaking subject dominant in patriarchy".⁸² A radical feminist position unproblematically viewed all women as potential 'victims' and men as potential 'rapists'. It did not readily accommodate the construction of men as 'victims', or women as rapists. The pronoun 'she' was almost exclusively used to refer to both adult and child victims of rape. Their rape crisis centres were women-only organisations. Their focus was on women empowering women, a form of identity politics that emphasised a commonality based on the oppression women felt as a group.⁸³ Men were seen to arouse feelings of fear and insecurity in the victims of violence, and inhibit discussion, so were not welcome.⁸⁴ But not all radical feminists practised a rigid binary structure of gender. Power disparity and problematic social structures and practices could be seen in other relationships besides those between male and female.

⁷⁸ Holdt, p. 2.

⁷⁹ Edmundson, p 32.

⁸⁰ *ibid.*, p. 3.1

⁸¹ Helen Warren, "Workshop 18. National Rape Education Programme", in *YWCA Rape and Sexual Violence to Women and Children, Conference Report*, Carmel Peteru (ed.), 1983.

⁸² Vanderpyl, p. 26.

⁸³ *ibid.*

⁸⁴ Dann, p. 134.

When in 1982, the Wellington RCC hired a male worker, it was severely criticised by other rape crisis centres, and by other feminists in Wellington, who attempted to overturn the decision. The presence of male workers was viewed as violating the ideal of empowerment. If women were to become strong they must have strong female role models to learn from; and because women were so far behind men in the job market, they needed all the experience they could get.⁸⁵

In contrast, the Wellington RCC hiring a man meant men and women working together. The group believed that some women wanted to speak to men, and that it was unrealistic to have the centre an all-women space because women had to face up to men some time. Women also needed access to 'nice' men.⁸⁶ In time, other groups found it expedient to work with men. The Christchurch RCC worked in alliance with Men Against Rape in school education programmes because they believed that boys did not want to hear about rape from women.⁸⁷

The Wellington RCC encountered further criticism when, in 1982, it sent a man as one of its three representatives to a rape symposium. Given a lack of representation for 'black' women and smaller RCC groups, this was interpreted as women taking second place in the Wellington RCC priorities.⁸⁸ There was dissension also within the Wellington centre. Its provision of support and counselling services to *all people* who had been raped was viewed by some as undermining its feminist base.⁸⁹ This reached a crisis point when selected women were ejected from the collective.⁹⁰ Hamilton RCC also gave assistance to male victims, and welcomed males supporting victims.⁹¹

The strong radical feminist position used the term 'male' to describe something negative. A sharp dichotomy meant being 'female' necessitated rejecting everything associated

⁸⁵ *ibid.*

⁸⁶ Ruth Charters and Sue Visser, "Crisis at the Crisis Centre", *Broadsheet*, no. 108, April 1983, p. 10.

⁸⁷ Edmundson, p. 34.

⁸⁸ Charters and Visser, p. 8.

⁸⁹ Wellington Rape Crisis Centre newsletter, 21 May 1983, ABKH W4105 box 3, 30-0-11, part 1, Refuges [ANZHO, Wellington].

⁹⁰ Charters and Visser, p. 10.

⁹¹ Hamilton Rape Crisis Centre, "Annual General Report 1983", p. 10.

with male power. For example, radical feminists critical of the ejection of some members carried out by the Wellington RCC accused those responsible of being male-identified and using male tactics like calling the police.⁹² But this practice actually reinforced 'male' as the primary signifier. It also served to restrict the boundaries of femininity. These effects, conceptually reproduced in patriarchal gender relations, were exactly what feminists had sought to unmake. In 1979, Sandra Coney remarked on an "imperative towards conformity, correct lines and an emphasis on divisions among women rather than on our common class [i.e. women as a group] interests".⁹³ Feminism, like any other discourse, required disciplining.

The Wellington RCC also distinguished itself by talking about female sexual autonomy in a way that addressed female responsibility in gender interactions. At a time when dominant feminist discourse projected dichotomous identities of men and women, it was unusual to critique female behaviour. The group's high school programme talked about girls being clear as to "what they want in relationships, what behaviour they will accept and what they won't from guys".⁹⁴ With the expectation of men respecting women's sexual boundaries came the responsibility for women to be clear about them to themselves and others. For others not to possess women's sexuality without their consent, women must possess their own sexuality more fully.⁹⁵

Rape crisis centres were initially run from a Pakeha perspective. When Maori women began to organise their own services in 1982, they were critical of the cultural biases of the RCC groups. They queried the Pakeha emphasis on running phone lines, as Maori and Polynesian women were not comfortable discussing such an intimate and traumatic event as rape over the phone. Instead, they emphasised the need for face-to-face support.⁹⁶

⁹² Charters and Visser, p. 10.

⁹³ Sandra Coney, "Comment", *Broadsheet*, no. 75, Dec 1979, p. 32.

⁹⁴ Audrey Young, "Rape Support Group Plays Education Role", *Evening Post*, March 28, 1983, p. 20. ABKH W4105 box 3, 30-0-11, part1, Refuges [ANZHO, Wellington].

⁹⁵ Wolf, p. 206.

⁹⁶ Dann, p. 133.

The feminist principle of 'separatism' was also a source of cultural tension. In 1983 some Maori women established a collective to support Maori survivors of sexual violence and shared premises with the original Auckland RCC, a strongly radical feminist collective. Maori challenged the Pakeha position that prohibited men visiting the centre. An agreement, which only partially worked, was that men could enter only the front rooms, and a communication system was set up to warn the group of their presence.⁹⁷ For Maori, including whanau meant that women and girls were not isolated from the rest of the community, and sexual abuse was not dealt with in isolation from other issues affecting them.⁹⁸

Internal cultural tensions were worked out through a feminist analysis that located rape in unequal power relations. An analysis of power was applied to race. Maori understandings of rape impacted on those of Pakeha. Pakeha feminists in rape crisis groups have been described as coming much closer than many other groups to a full acceptance of Maori as tangata whenua.⁹⁹ When the government proposed to share money between existing rape crisis centres in a way that would favour Pakeha, both Pakeha and Maori groups pushed for a 50/50 split.¹⁰⁰

The National Collective of Rape Crisis and Related Groups of Aotearoa Incorporated recognised the following:

- bodily rape cannot be isolated from the rape many women feel of their land and their culture.
- Maori people as Tangata Whenua and their unalienable birth right to sovereignty.
- a responsibility to examine and act on oppressive structures in our organisations, for example racist and heterosexist ways of operating.¹⁰¹

⁹⁷ Vanderpyl, p. 18.

⁹⁸ Else, p. 51.

⁹⁹ Lynne Alice, "Another Pair of Eyes: Women's Spirituality and Feminist Politics", in *Feminist Voices. Women's Studies for Aotearoa/New Zealand*, Rosemary Du Pleiss (ed.), Melbourne: Oxford University Press, 1992, p. 149.

¹⁰⁰ Hinewirangi Kohu, "Funding for (some) Rape Crisis Groups", *Broadsheet*, no. 128, April 1985, p. 11. The government denied that Maori groups were unfairly discriminated against, Margaret Shields, "Ministry Replies", *Broadsheet*, no. 129, May 1985, pp. 4, 5.

¹⁰¹ "Constitution of the National Collective of Rape Crisis and Related Groups of Aotearoa Incorporated", reprinted on 1.9.95, Archives Auckland Rape Crisis Centre.

This supported the practice of appropriate responses to different cultures, in particular encouraging Pakeha awareness of Maori and Pacific Island cultures.

Maori influence on the National Collective's definition of rape, "bodily rape cannot be isolated from the rape many women feel of their land and their culture",¹⁰² broadened even further a feminist construction of rape. Not just female bodies could be raped, but also land: in theory anything that was a victim of male, or colonial power. While extending rape into a metaphor for colonialism converged with and reinforced the construct of male power, it could be said that it undermined the primary meaning of rape as sexual violence actually and immediately experienced by women.

Feminist impact

Women's initiatives constructed sexual violence against women as a social problem that demanded new solutions. Conditions themselves do not come to be seen as 'problems' without actively being framed as such. Some feminist principles were accepted through their resonance with other discourses, such as of the 'victim', the 'problem' of crime, and civil rights. Feminists challenged everyday assumptions about the meaning, causes, and consequences of sexual violence, and introduced concepts such as 'rape trauma syndrome' into popular, legal and academic discourse.¹⁰³ This resulted in significant changes in how the public, government and legal system perceived rape, and affirmed women's right to be out in the world.¹⁰⁴

Some of the effects of both feminist internal and external discursive reconstructions of 'rape' have been demonstrated in this chapter. The subject of rape became increasingly a topic for public discussion and debate in the late '70s and early '80s. The impetus for this development was widely acknowledged to have been the women's movement, which stimulated social analysis and research and played a major role in the growth of support

¹⁰² *ibid.*

¹⁰³ Amy Chasteen, "Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault", *Sociological Spectrum*, vol. 21, issue 2, April 2001, EBCOHOST, p. 2.

¹⁰⁴ Coney, *Standing in the Sunshine*, p. 109.

services for female rape victims.¹⁰⁵ The 1982 Rape Study initiated by the Minister of Justice, Jim McLay, assimilated some primary insights of feminism. It emphasised the need for sympathetic treatment of rape victims and included women's narratives of rape and its lasting emotional effects. It stated that rape has nothing to do with sexual desirability or uncontrollable sexual urges but was a crime of violence.¹⁰⁶ Jim McLay also acknowledged the role of women's groups when he called for a review of rape laws.¹⁰⁷

Some individual men assimilated feminist viewpoints. Kai Jensen noticed that, "seen this way, everything looked different".¹⁰⁸ He began to accept that in many ways he had been brought up to patronise, belittle and disregard women, in ways he hadn't even noticed.¹⁰⁹ After learning about feminist constructions of sexual violence, he was able to describe his belief, that a sexual overture would be welcome by a woman and that if he felt desire then so must she, as self-delusion. He also revised his picture of a past sexual experience in which he had blamed the woman involved.¹¹⁰ Similarly, when things began to look different for Mike Capeer, he found himself loathing men in general.¹¹¹ He, along with other friends, "privileged Pakeha", attempted to break the old moulds that formed their male lives and make both personal and social changes.¹¹²

In 1982, the police introduced a new training programme for district staff on how to deal with sexual abuse victims. This was driven by a new awareness, based on feminist research, that only 1 in 10 women raped were estimated to report to the police.¹¹³ Feminist narratives of the trial trauma for victims had also encouraged a public awareness of victims' plight that encouraged political action. Many made their feelings known to

¹⁰⁵ "Preface", in *Rape in New Zealand*, p. v.

¹⁰⁶ Advisory Committee on Women, rape directory, p. 8, ABKH W4105 box 18, 30-2-13-19, part 2, Information and resources [ANZHO, Wellington].

¹⁰⁷ Jim McLay, Minister of Justice, "Opening Address", *Rape in New Zealand*, p. 3.

¹⁰⁸ Kai Jensen, "Naked Change: Revising Sexuality", in *One of the Boys? Changing Views of Masculinity in New Zealand*, Michael King (ed.) Auckland: Heinemann Publishers, 1988, p. 230.

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*, p. 223.

¹¹¹ Mike Capeer, "Coping with Shame", in *One of the Boys?* p. 213.

¹¹² *ibid.*, p. 218.

¹¹³ Pamela Stirling, "After Rape: An Alternative to Interrogation", *Listener*, no. 2233, 13 Nov 1982, p. 32.

Members of Parliament, saying they would not drag their daughters or wives through a court system by reporting a rape.¹¹⁴ The impact of feminist discourse can be seen in the increase of rapes reported to police. Identifying with feminist subjectivities enabled women to define more readily their experiences as 'rape', and believing they were not to blame may have encouraged higher reporting rates. In 1979 there were 297 reported rapes and attempted rapes. By 1981 this had increased to 396.¹¹⁵ From 1980 to 1981 there was a 28% increase in reporting.¹¹⁶ (Convictions, however, did not keep pace.¹¹⁷) There are several interpretations for the increase. Some believed that crime had actually increased. Chris Trotter related the increase to the baby boom and the high population of young men in the 25-40 year old bracket.¹¹⁸ However, many feminists believed that the increase meant more women were actually reporting rape.¹¹⁹ Quite possibly, both interpretations were correct.

Feminists working in the field of sexual violence became recognised as significant contributors to a new meaning of 'rape' and a new treatment of rape victims. Feminist social action in the 1970s was practised on feminist terms, without connection to traditional institutions. From the early 1980s, feminists entered a phase of negotiation over the meaning of 'rape', with government, legal and medical agents.

¹¹⁴ Paul East, M.P. for Rotorua, *New Zealand Parliamentary Debates*, vol. 424, Aug 1979, p. 2241.

¹¹⁵ Detective Chief Inspector B.F. Scott, "The Police Processing of Rape Complaints", in *Rape in New Zealand*, p. 90.

¹¹⁶ *ibid*, p. 81.

¹¹⁷ Gordon Campbell, "Rape under Review", *Listener*, 24 Sept 1983, p. 39.

¹¹⁸ Chris Trotter, "Minister Must Defend All Citizen's Rights", *Timaru Herald*, Friday, 4 October 2004, p. 4.

¹¹⁹ Miriam Saphira in Ray, p. 23.

Chapter 5

SHIFTS AND RESISTANCE

By the early 1980s rape had become widely debated. Crime statistics supported a public perception that it was increasing both in incidence and in violence. Feminist knowledge that related an enormous gap between incidence and reporting rates, the fact that any woman could be a victim, and the huge psychological costs incurred, had helped construct rape as a serious crime and health concern. There was some acceptance, at least in rhetoric, of feminist accounts of sexual violence that challenged older ones of women 'asking for it', rape as sex, and men as slaves to an uncontrollable sexual urge. This was not always evident in practice. Older constructions continued to operate alongside newer ones; the rapist as stranger proved particularly resilient. But it was now generally accepted within government, medical and legal circles, that how rape and rape victims were understood had been formed by many false assumptions and myths.

While feminists who worked against sexual violence most challenged older constructions of rape that supported a harsh treatment of rape victims, they were not alone. In particular, some health professionals, once silent on sexual violence, were addressing the psychological and emotional post-trauma experience of victims. The connection between psychiatric disorder and abuse had not been noted earlier. This blindness was attributed, at least in part, to the influence of Freudian theory which turned attention away from actual sexual abuse, particularly of children, by treating such accounts as the outward manifestations of unconscious wishes and fantasies.¹

Feminist knowledge that rape victims endured long-term suffering, and the new subjectivities offered in feminist discourse on sexual violence, may have helped to legitimate women's narratives of sexual abuse and given them new authority. Some medical personnel, lawyers, and other concerned people, participated in rape seminars, made submissions on law reform, and worked towards better treatment of rape victims.

¹ Paul Mullen, Sarah Romans-Clarkson, Judy Martin and Jessie Anderson, "The Long-Term Effects of Sexual Assault on Women's Mental Health", *New Zealand Medical Journal*, 13 Dec, 1989, pp. 633-634.

This chapter identifies and analyses contesting constructions of rape, in particular from groups that specifically formed to address the problem of sexual violence.

The chapter also analyses government constructions of sexual violence. Rape became an important issue politically. There was strong pressure from the public, especially women, for a new deal for rape victims, and for women in general. The government responded to these demands in several ways. It made ameliorative statutory changes. It commissioned the Department of Justice and the Institute of Criminology at Victoria University to undertake a study of rape with an emphasis on the victim (the 1982 Rape Study), and invited public submissions. In the same year it helped organise a national symposium on rape, and introduced rape reform legislation the following year.

Negotiating a new meaning of rape: other voices

The Mental Health Foundation was the most influential body to work towards a new meaning of 'rape'. The Foundation saw violence towards women as a significant social problem, especially in terms of the mental health consequences for the victim.² Causes of violence were located in both personal experiences (the most salient factor being witnessing or being a victim of parental violence), and in a social context (factors including inequalities between the sexes, attitudes of blaming the victim and attitudes towards women in general).³ All causes were viewed as preventable, and the Foundation worked to promote social change that would reduce violence towards women and the development of support services for victims.

The Foundation was close in sentiment to, and highly supportive of, feminist organisations working against violence. As well as providing funds for both women's refuges and rape crisis centres, it assisted in the development of national bodies for both organisations and acted as an advocate to secure ongoing government funding. It also provided fifteen places for rape crisis representatives at the 1982 national symposium on

² Hilary Haines (Mental Health Foundation) to Moira Lake (Advisory Committee on Women), 10 Nov 1983, ABKH W4105, 30-2-13-19, box 18, part 1, Information and resources [Archives New Zealand Head Office (ANZHO), Wellington].

³ *ibid.*

rape, met the costs of their travel, and waived their attendance fees. This made them the largest group. Its intent was to have a strong rape crisis input.⁴

In 1982 also, personnel from Carrington Hospital, a specialist mental hospital, formed the Rape Education Group (REG). The group aimed to explode rape myths and “play a role in both monitoring public attitudes to rape and changing them”.⁵ Its principles mirrored those of feminists working against sexual violence. David Shapcott, one of the group’s founders, asserted that there was no other crime where society went to such pains to protect the attacker rather than the victim, and that a rape culture existed.⁶ That the Justice Department acknowledged it allowed 96% of rapists to walk free⁷ meant it actively promoted sexual violence and denied the rights of women to adequate protection under the law.⁸ Rape was “as much a part of our social activities as drinking beer, watching rugby and going to the movies”.⁹ It was an extension of traditional sex roles, not an aberration; thus rape was within ‘normal’ male sexuality.¹⁰ Because public attitudes were seen to support the incidence of rape, and such attitudes could be undone and remade, rape was not inevitable.

The REG developed, and taught for a short time, a rape education programme for which it unsuccessfully sought government funding.¹¹ It believed the social costs of sexual abuse were as heavy as those of alcohol abuse, and just as there was a government-funded nationwide education programme run by the Alcohol Liquor Advisory Council, so too there should be a similar one to counter the impact of sexual abuse.¹² Health statistics supported the allegation of the high social cost of sexual abuse. At Carrington Hospital,

⁴ Letter from Max Abbott, Mental Health Foundation, 4 Jun 1982, ABKH W4105, 30-0-14A, box 3, Research symposium [ANZHO, Wellington].

⁵ Jenny Wheeler, “Exploding Myths About Rape”, *New Zealand Women’s Weekly*, 30 August 1982, p. 5.

⁶ David Shapcott quoted in *ibid*, pp. 4, 6.

⁷ This is in reference to the figure of a possible 4% conviction rate for rapists in Warren Young’s *Rape Study* described later in this chapter.

⁸ Helen Warren, Rape Education Group, “Letter to Editor”, *Listener*, no. 2384, 26 Oct 1985, p. 9.

⁹ Submission by Rape Education Group, 23 Jan 1984, p. 1, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁰ Rape Education Group, “Nationwide Rape Education Programme, A Preliminary Survey”, p. 2, ABKH W4105, 30-0-13, box 3, Rape general 1979-84 [ANZHO, Wellington].

¹¹ Pamela Stirling, “Like Every Mother’s Son”, *Listener*, no. 2306, 21 April 1984, p. 18.

¹² Robert Mannion, “Constructive Proposals”, *New Outlook*, 2 (3), Oct/Nov 1983, p. 7.

about 20% of acute admissions volunteered they had been sexually abused, and at the Odyssey House drug rehabilitation centre it was reported that 53% of females and 47% of males treated had been sexually abused.¹³ Spending money now on education would save money later.¹⁴

Politicians and separatist radical feminists were wary of the REG's proposals. Jim McLay, Minister of Justice, did not regard the suggested \$2.5 million as a "realistic figure", and thought the first priority of public spending should be to support groups assisting victims rather than on education.¹⁵ Separatist radical feminists were critical of the REG allowing men in their group, for speaking to non-segregated audiences, and for being 'professionals', i.e. mental health workers.¹⁶ Some rape crisis centres, such as those in Hamilton and Whangarei, supported the proposal, provided that a central programme not displace the work of local centres.

Also in 1982, a community-based trust established, with the co-operation of Auckland police surgeons, the HELP Centre, a crisis counselling centre for both male and female victims of sexual assault. The Auckland Rape Crisis Centre (RCC) assisted in its establishment. It aimed to provide a comprehensive psychological and medical service for victims. A rape victim's subjectivity was defined within a health discourse: their body and mind had been assaulted, and medical support was needed for recovery. The premises had a medical examination room, a shower unit, a kitchen, a lounge, and counselling room.

Counselling was seen to play a crucial role in the recovery of the victim. It aimed to assist the victim to return to 'her' previous life-style as soon as possible, and to prevent maladaptive responses such as drug and alcohol dependency, and other psychological

¹³ *ibid.*

¹⁴ *ibid.*, p. 8.

¹⁵ *ibid.*

¹⁶ *ibid.*

disorders associated with the loss of personal control and self-esteem.¹⁷ It catered for anyone who considered they had been sexually assaulted, or was close to someone who had been, providing them with counselling too, if necessary.¹⁸

HELP assimilated many feminist principles. Because rape was violence and not sex, rape victims were treated as victims of sexual assault needing medical assistance. The 'sexual assault' title also broadened the legal construction of rape to include other forms besides penile penetration of the vagina. Victims could self-refer, define themselves, rather than being subject to a legal construction made by others. There was no obligation to report to the police. This validated the victim's experiences, recognised their rights as an individual, and reflected a philosophy of empowerment. It was a major shift in the treatment of rape victims. As well as addressing the aftermath of rape, the Centre concerned itself with social change and believed like feminists that, until social attitudes altered, the occurrence of rape would stay the same. In particular, gender expectations were seen to contribute to men developing aggression and women passivity. This supported a 'rape culture'.¹⁹

Not all health bodies reconstructed the rape victim as HELP had. Despite the Centre's clear medical orientation, its request to move into a vacant space at National Women's Hospital was vigorously opposed by the staff and the Auckland Hospital Board, due to their "vision of hordes of women, with bkie friends and other 'non-desirables,' taking over every nook and cranny in the building".²⁰ This older construction of rape still operated, and could dominate. It identified victims as females who 'asked for it' and rapists as young social deviants, and may have been strengthened by the feminist understanding of rape as violence rather than sex. This older construction of the rape victim as female was also at play in HELP's request to move into a woman's hospital.

¹⁷ Eileen Swan, "Victim Services – HELP Sexual Assault Counselling Centre", in *Rape in New Zealand. Papers Presented at the Rape Symposium, Wellington, September 1982*, Hilary Haines and Max Abbott (eds), Mental Health Foundation, 1983, p. 170.

¹⁸ *ibid.*

¹⁹ Eileen Swan (HELP) to Moira Lake (Advisory Committee on Women's Affairs), 8 Dec 1983, ABKH W4105, box 18, 30-2-13-19, part 1, Information and resources [ANZHO, Wellington].

²⁰ Dr. W.L. Daniels, Police Surgeon, "Medical Aspects of Sexual Abuse", in *Rape in New Zealand*, pp. 114, 115.

Again in 1982, a group of social workers, nurses and other trained counsellors formed a service in the Hutt Valley known as the Hutt Valley Rape Counselling Network.²¹ Sexual violence against women was predicated on the perpetuation of gender inequality and stereotypes, so was preventable, in both the short and long term. Like feminist and other groups working against sexual violence, it extended its services to community education and the co-ordination of self-defence courses for women.²²

The Young Women's Christian Association (YWCA) proposed both political and social changes. Its primary focus was prevention. To effect social change, it aimed "to examine the power structure prevailing in society and to implement a strategy for the development of social justice for women".²³ To this end, it directed its efforts at "women's own perceptions of their situations and needs, and empowering those who have no power".²⁴ Its philosophy reflected that of feminists. It supported the feminist challenge to older constructions of rape through its promotion of Sue Lytollis' self-defence programme, and in organising in 1983 a conference for women titled, "Sexual Violence to Women and Children". Constructing rape as reflecting power disparity accommodated an inclusion of child and women victims. The YWCA believed there was an urgent need for community-based rape programmes.²⁵ A resolution at the Conference called on the government to make a long-term commitment to education and social programmes to combat sexual and physical violence to women and children.²⁶ It also made submissions on law reform.

In the early 1980s, a few male-only groups formed to combat sexual violence. Among these were Men Against Rape, Men Against Sexism, and the Men's Action Collective. The latter was a white men's group committed to working against racism and sexism. An analysis of gender and race was intertwined, and the language of civil rights converged

²¹ Justine Peterson to Moira Lake, 15 Nov 1982, ABKH W 4105, 30-2-13-19, box 18, part 1, Information and resources [ANZHO, Wellington].

²² Justine Peterson to Moira Lake, 16 Dec 1983, *ibid*.

²³ Advisory Committee on Women's Affairs, "Directory for Support Services for Victims of Violence", p. 95, ABKH W4105, 30-2-13-19, box 18, part 2, Information and resources [ANZHO, Wellington].

²⁴ *ibid*.

²⁵ Submission made by the YMCA, p.2, ABGX W3706, box 44, part 2, Submissions rape law reform bill, [ANZHO, Wellington].

²⁶ Venn Young, Minister of Social Welfare, *New Zealand Parliamentary Debates (NZPD)*, vol. 454, 1983, p. 3512.

with that of women's rights. It acted as a support for Tauranga Rape Crisis, was involved in community education, and offered counselling for male partners of rape victims and to men and boys who had been sexually abused.²⁷

In Christchurch, another all-male group of health workers formed the Rape Research and Education Group. This departed from a feminist analysis of rape that the preceding groups had assimilated to varying degrees. It aimed to bring about change in the behaviour of convicted rapists. Its focus, therefore, was severely restricted, especially when considering that only 4% of rapists were convicted.²⁸ The group believed that prison was ineffective, and aimed to convince authorities to provide counselling and treatment programmes. Rape was frequently seen as a result of an inability on the rapist's part to exercise social skills. This could in some cases be compounded by broad social and political circumstances. For example, the high rate of unemployment was considered a contributory factor, increasing men's frustration and lowering their threshold of anger. The men then expressed their anger towards women, who were second-class citizens in their minds.²⁹

Although the group interpreted rape through both gender and power frameworks, its explanations could neutralise the rapist's responsibility for his actions. Its emphasis on an individual analysis over a social one was also problematic. Living in a low anger-stimulating environment and knowing how to communicate effectively did not necessarily address the de-personalisation of women the group observed. Although the group did aim to raise male consciousness by making men see that certain behaviour was not acceptable,³⁰ it did not appear to address the gender discourse that men drew on when directing their anger towards women rather than other culpable parties. For example, in identifying high unemployment as a factor, the group did not appear to consider why anger was directed towards women rather than perhaps the government, nor how the

²⁷ Advisory Committee on Women's Affairs, "Directory for Support Services for Victims of Violence", p.79, ABKH W4105, 30-2-13-19, box 18, part 2, Information and resources [ANZHO, Wellington].

²⁸ A figure projected in Warren Young, *Rape Study, Volume 1, A Discussion of Law and Practice*, Wellington: Department of Justice, 1983, p. 14.

²⁹ Garry Arthur, "Concerned Men Unite in Bid to Cut Down the Incidence of Rape", *The Press*, ABKH W4105, 30-0-13, box 3, Rape general 1979-84 [ANZHO, Wellington].

lower employment status of women might impact on male attitudes to them. It was however, one of the few male bodies that took responsibility for the problem of rape, and blamed the rapist rather than the female victim.

Not all men's groups organised to effect social change. One called the Men's Right Campaign Group, of some seventy supporters, formed to counter the proposed early 1980s reforms to domestic violence and rape law (outlined in chapter 6). From a survey it conducted of forty-seven participants, presumably members of the group, it asserted an astronomically high occurrence of false allegations made by women against their partners, and was outspoken in its criticism of "vocal minority groups" i.e. feminist ones.³¹

Female politicians were an active informal force behind parliamentary scenes. Fran Wilde, Labour M.P. for Wellington Central, was a strong campaigner for rape law reform, along with Marilyn Waring, National M.P. for Waipa. In January 1982, Fran Wilde wrote a letter to her women colleagues on the other side of the House to enrol their support for the common cause. She felt that the time was right, and that with eight women M.P.s they could "raise the collective consciousness of Parliament to the level where some action" could be taken.³² This practised feminist culture: women working together could overcome.

Some lawyers were also re-negotiating the meaning of 'rape'. In 1982 the Legal Research Foundation organised a seminar, "Sexual Violence – A Case for Law Reform", in response to growing dissatisfaction with existing legal practices.³³ Many were aware of discriminatory practices within the criminal justice system which they identified in the 1982 Rape Study (discussed later in this chapter), in a survey carried out by the Legal

³⁰ *ibid.*

³¹ Submission made by Men's Right Campaign Group, ABGX W3706, box 44, part 2, Submissions on rape law reform bill [ANZHO, Wellington].

³² Fran Wilde, "Letter to Friends", 29 Jan 1982, ABKH W4105, 30-3-16-3, box 30, Rape legislation [ANZHO, Wellington].

³³ P. T. Finnigan, "Introduction", in *Sexual Violence – A Case for Law Reform*, Auckland: Legal Research Foundation, 1982, p. 3.

Research Foundation, and in submissions to the government. In the main, their suggestions were limited to law reform, in particular, procedural practices.

Negotiating a new meaning of rape: the government response

The government had responded to the problem of rape in the previous decade with ameliorative statutory changes. Two more acts were passed following the Evidence Amendment Act 1977 discussed in chapter 2. A concern with the victim marked these changes. The Criminal Justice Amendment Act 1980 reversed the pre-1980 position in which a complainant would have his or her name published unless there was a specific direction to the contrary from the court. Now, publication of details of complainants 16-years and over required express permission of the court.³⁴ The intent was to encourage victims to report offences to police by removing some of the apprehension of a court trial.³⁵ The Family Proceedings Act 1980 restricted spousal immunity from rape, amending the Crimes Act to provide that a man could be convicted of raping his wife if they were living apart in separate residences;³⁶ pre-1980, an official separation order was required to annul spousal immunity.

Public discussion about the need for radical change in the law relating to rape and sexual violence was intensifying.³⁷ By the early 1980s disquiet was such that a greater political response was prudent. The public was alarmed by crime statistics in 1981 that projected a 70% rise in rapes.³⁸ Amanda Samuel, a writer for the *New Zealand Women's Weekly*, reported this as “frightening – when random surveys have revealed that 80% of rapes go unreported”.³⁹ Rape was frequently in the headlines; by 1983, rape events were reported almost daily.⁴⁰ Although there was a shift in the image of the rape victim to demonstrate

³⁴ Paul East discussing the act in its bill form, National M.P. for Rotorua, *NZPD*, vol. 424, Aug 1979, p. 2237.

³⁵ *ibid.*

³⁶ Jim McLay, “Opening Address”, in *Rape in New Zealand*, p. 10.

³⁷ Fran Wilde, “Letter to Friends”, 29 Jan 1982.

³⁸ Amanda Samuel, “Why More Women are Being Raped”, *New Zealand Women's Weekly*, 15 Feb, 1982, p. 12.

³⁹ *ibid.*

⁴⁰ Feature page of the *Dominion*, 28 Jul 1983, p.13, ABKH W4105, 30-0-13, box 3, Rape general 1979-84 [ANZHO, Wellington].

the vulnerability of all women, media reports still projected the rapist as a stranger.⁴¹ Pauline Ray wrote in the *Listener* that rape accounts in the first two months of 1982 featured stranger rapes of a 10 year-old girl, a nun and a 77-year old single woman.⁴²

The public was also concerned with the rape victim's trauma, both at the event and in the criminal justice system.⁴³ Members of the public frequently reported that they would not have members of their family complain of rape to police because of the harrowing court process. Some of these directly contacted their M.P.s.⁴⁴ Anger also characterised the public response. Many believed the courts were too lenient towards rapists.⁴⁵

By now rape had "become a symbol of sexism in society and of unhealthy social attitudes towards women in general".⁴⁶ Politically, it had to be considered a primary women's issue that needed addressing. Women's groups, both feminist and non-feminist, pressed for reforms.⁴⁷ They made over a third of the submissions to the 1982 Rape Study, and individual women contributed almost another third.⁴⁸ Submissions made by a number of women's sections of the National Party suggest the Party itself was under internal pressure to respond.⁴⁹ The government's response was shaped by three concerns: with the victim, the liberal support for equal rights for women, and political expediency. These concerns defined the problem of rape within a legal and law-and-order framework.

The existing treatment of rape victims was thought to perpetuate their victimisation. When in March 1982 Jim McLay initiated the Rape Study, its focus was on the rape victim. He invited public submissions, and called for a review of the rape laws.⁵⁰ The

⁴¹ Sally Ruth, "Our Public Face", *Broadsheet*, no. 112, September 1984, p. 31.

⁴² Pauline Ray, "Rape: The Real Issue", *Listener*, no. 2200, 27 March 1982, p. 21.

⁴³ Warren Young, *Rape Study, Volume 1, A Discussion of Law and Practice*, Wellington: Department of Justice, 1983, p. 1.

⁴⁴ Marilyn Waring, National M.P. for Waipa, *NZPD*, vol. 424, Aug 1979, p. 2238.

⁴⁵ Denis Welch, "Editorial. Rape and Revenge", *Listener*, no. 2272, March 1983, p. 10.

⁴⁶ Young, p. 1.

⁴⁷ Frank O'Flynn, Labour M.P. for Island Bay, *NZPD*, vol. 455, Dec 1983, p. 4802.

⁴⁸ Jonathan Petterson, *Submissions on the Rape Study. An Analysis*, Wellington: Department of Justice, 1983, p. 1.

⁴⁹ *ibid*, seven Women Divisions of the National Party were involved in writing 5 submissions, p. 38.

⁵⁰ Young, p. i.

rationale of the study was to make informed law changes and avoid piecemeal ones.⁵¹ It was to investigate the rape complainant's perception and experience of criminal justice procedures, and whether the law and its practice required modification.⁵² The Rape Study had no mandate to explore causes of rape.

The focus was further restricted by the discussion of the victim within a framework of law and its administration. The accepted knowledge that around only 1 in 5 women reported rape meant the experiences of victims who did report were over-emphasised. Of the 50 women victims interviewed for the study, 30 had their rape event reported to the police.⁵³ The 20 non-reporting women could be considered a rather small representation of the many more women who did not report rape. This tended to support older constructions of rape that described the rapist as a stranger and the typical rape victim as a young woman. Half the victims' stories involved strangers and less than 17% were under 16 years.⁵⁴ In comparison, only 1 in 5 victim stories in the Auckland RCC's study involved strangers, and over half were 15 years or under.⁵⁵ The Rape Study's results tended to obscure the feminist knowledge that rape was more likely to be committed against children in their own homes by men they knew intimately. By 1984, most rape crisis centres were reporting that over half their calls related to sexually abused children.⁵⁶ Other reports from the 1982 Rape Study explored legal practices: police responses, court files, and opinions of judges and lawyers.

The 1982 Rape Study confirmed criticisms of the justice system as predicated upon a number of false assumptions and myths about gender and rape, and heavily and unfairly

⁵¹ McLay, p. 12.

⁵² Young, p. i.

⁵³ Of these 30 women, 22 of their rape events were reported on other's initiatives, although it was believed that they may have contacted police themselves when they had recovered from the shock, Joan Stone, Rosemary Barrington and Colin Bevan, "The Victim Survey", in *Rape Study, Research Reports, Volume 2*, Wellington: Department of Justice, 1983, p. 20.

⁵⁴ *ibid*, p. 10.

⁵⁵ Auckland Rape Crisis Centre, "1981 Questionnaire on Rape", in *Rape in New Zealand*, pp. 140, 143.

⁵⁶ Moira Lake (Advisory Committee on Women's Affairs), "Directory for Support Services for Victims of Violence", p. 20, ABKH W4105 30-2-13-19, box 18, part 2, Information and resources [ANZHO, Wellington].

weighted against rape complainants.⁵⁷ It estimated that the chances that a rapist would actually be caught and convicted could be as low as 4%.⁵⁸ Thus, it supported the need for legal and procedural reform. But as Toni Allwood, National Spokesperson for Rape Crisis, later asked, as most rape victims never enter the criminal justice system, what justice would there be for most of the women and children who were raped?⁵⁹ The limitations of the Study were also contrary to the Minister of Justice's stated intent that it would allow for a "total re-conceptualisation ... of the crime of rape, or attempt to bring about a more far-reaching congruence between nature of the offence and its causes, [and] the politics of its incidence ...".⁶⁰

The belief that the rape victim had long been neglected in law dominated the political debate. Jim McLay had made it very clear that rape victims were to be the focus of any reforms, and that their needs would take priority over other initiatives such as education programmes.⁶¹ While concern with rape victims resonated with feminists and others calling for change, its singular focus served to avoid addressing the causes of rape. It framed talk of rape within a more comfortable zone that did not deal with allegations of problematic male sexuality, or the existence of a rape culture, that would demand different, and more radical solutions. Its emphasis on 'effect' rather than 'cause' also suggested a sense of inevitability,⁶² an acceptance of 'boys will be boys'.

The government's declared concern for victims proved less palpable in practice. The Accident Compensation Corporation (ACC), established in 1974, had statutory responsibilities to both compensate for injuries and reduce the incidence of them. Compensation for personal injury resulting from sexual assault can be seen as society's

⁵⁷ Warren Young, "Rape in New Zealand 1985-95", in *The proceedings of Rape: Ten Years Progress? An Inter-Disciplinary Conference*, Juliet Broadmore, Carol Shand and Tania Warburton (eds), Doctors for Sexual Abuse Care, 1996, p. 10.

⁵⁸ Gordon Campbell, "Rape Under Review", *Listener*, no.2277, 24 Sept 1983, p. 39.

⁵⁹ Toni Allwood, National Spokesperson for Rape Crisis, member of Panel Discussion on "Commentary on Sentencing", in *The proceedings of Rape: Ten Year's Progress*, p. 130.

⁶⁰ A quote from an unnamed writer commenting on the South Australian rape law reform, used by Jim McLay to support the necessity of a rape study in New Zealand to precede law reform, McLay, p. 12.

⁶¹ Mannion, p. 8.

⁶² Justice Jefferies, "The Substantive and Evidentiary Law on Rape: A Judicial Perspective", in *Rape in New Zealand*, p. 42.

recognition of the suffering that resulted from sexual assault, and as the theoretical application of ACC's founding principle of 'no blame' to rape victims. This superseded the Criminal Injuries Compensation Act 1963, which provided compensation for economic and financial loss suffered as a result of criminal injuries (as discussed in chapter 1). Under the Accident Compensation Commission Act 1982, once a claim was accepted, a victim was entitled to appropriate benefits which could include compensation for loss of earnings, and lump sums for pain and mental suffering and loss of capacity for enjoying life.⁶³ ACC also had money for counselling services, but the requirement that an organisation need provide services for both sexes and use properly trained counsellors worked to exclude many rape crisis centres.⁶⁴

Even though many rape victims would have been eligible for compensation, the number of claims was small. In 1981, only three claims were paid, the sums for which were, \$31, \$617 and \$694.⁶⁵ As Warren Young, principle author of the 1982 Rape Study, said, "in view of the number of rapes reported annually to the police, it is surprising that only three legitimate claims should be made".⁶⁶ Interviews with victims showed that most were just not aware, and had not been advised, that they were entitled to compensation.⁶⁷ Very little had been done to ensure that police, HELP, rape crisis centres and doctors had information to pass on to rape victims.⁶⁸ This suggests that in practice rape victims continued to be judged as undeserving, that a blame-the-victim attitude still operated, and that rape victims' suffering was trivialised. However, in November 1983, ACC circulated a bulletin to medical practitioners informing them of the circumstances in which the Corporation would provide cover for the physical and mental consequences of sexual assaults.⁶⁹

⁶³ J. Fahy, Managing Director of ACC, "Compensation For Victims of Sexual Assault", Nov, 1983, ABKH W4105, box 18, 30-2-13-19, part 2, Information and resources [ANZHO, Wellington].

⁶⁴ Number and amount of grants from "Report of Meeting of Government Departments to Consider Support for Rape Crisis Centres", ABKH W4105, 30-3-55-4, box 41, part 1, Government funding of rape crisis centres [ANZHO, Wellington].

⁶⁵ Young, *Rape Study, Volume 1, A Discussion of Law and Practice*, p. 72.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Claire-Louise McCurdy, "Accident Compensation for Sexual Assault", *Broadsheet*, no. 153, Nov 1987, p. 8.

⁶⁹ J. Fahy, Managing Director of ACC, "Compensation for Victims of Sexual Assault".

In contrast to ACC inaction, in 1981 fifty-six abortions were granted on the grounds of rape.⁷⁰ Warren Young considered that since the psychiatric grounds for abortion would usually also constitute eligibility for compensation for pain and suffering, the disparity between these two figures is startling.⁷¹ It appeared that doctors were more ready to provide abortion as a solution to rape than to advise women of compensation. This may have said more about attitudes towards abortion than to rape victims, or that there was resistance to the newer constructions of rape, or may have indicated a lack of awareness of compensation among doctors.

Despite the statutory obligations of a public corporation like ACC, and the specific recommendation of the 1982 Rape Study that “there be a commitment to the funding of support groups and agencies assisting adult and child victims of violence”,⁷² victim support and educational services had difficulty getting adequate funding for their work.⁷³ Government departments reported that most centres operated on a “hand to mouth basis”.⁷⁴ It appeared that funding was “another one of those ‘F’ words, along with feminism and female”, that caused “a frantic tightening of the government purse strings”.⁷⁵

Of a number of rape crisis groups applying for ACC money in 1984, only one was awarded a grant, of \$5000.⁷⁶ The Mental Health Foundation pointed out that in the three years to 1982, ACC paid out \$10.5 million in claims arising from rugby injuries and in 1983 awarded \$129,000 to the Defensive Driving Council and \$62,370 to the NZ Water

⁷⁰ Figures according to the Abortion Supervisory Committee cited in Young, *Rape Study, A Discussion of Law and Practice*, p. 72.

⁷¹ *ibid.*

⁷² “Grants to Rape Crisis Centres”, ABKH W4105, 30-3-55-4, box 41, part 1, Government funding of rape crisis centres [ANZHO, Wellington].

⁷³ Mannion, p. 8.

⁷⁴ “Report of the Meeting of Government Departments to Consider Support for Rape Crisis Centres”, p. 3, ABKH W4105, 30-3-55-4, box 41, part 1, Government funding of rape crisis centres [ANZHO, Wellington].

⁷⁵ Elspeth Brackenridge, member of Future Directions Panel Discussion, “If the Conference Reconvenes in Ten Years Time, What will have Changed?”, in *The proceedings of Rape: Ten Years Progress?*, p. 171.

⁷⁶ Submission by the Mental Health Foundation, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

Safety Council.⁷⁷ While Jim McLay regarded the estimated cost of the REG's nationwide education programme of \$2.5 million as "unrealistic" and "a very large sum of money", this was the actual budget given to the Alcohol Liquor Advisory Council.⁷⁸

Some financial assistance had been given to rape crisis centres through other government agencies. The Department of Social Welfare had made two grants of around \$5,000. The Auckland Hospital Board had paid the salary of the co-ordinator of HELP. The Department of Labour had funded a number of positions within rape crisis centres under two employment-promotion schemes. The Advisory Committee on Women's Affairs had made 13 grants since 1979, ranging from \$250-\$2000. Eight rape crisis centres had benefited from grants made by the Lottery Grants Board.⁷⁹

Government funding of rape crisis centres began under Labour late in 1984. The Ministry of Women's Affairs allocated \$150,000 to rape crisis centres and for rape awareness programmes.⁸⁰ This was a seemingly paltry sum given that some twenty groups were identified as service providers. There was also a condition: the establishment of a national body with a cohesive philosophy was necessary for government funding, and workers would require professional training.⁸¹

The government's intention that legal reform would result in further convictions, translating to more prisoners serving longer sentencing, also ran into funding constraints.⁸² The National Party conference in 1983 was reported to "give expression to a growing mood of public anger when it passed a remit seeking automatic minimum sentences for violent crime".⁸³ Both Jim McLay and the Prime Minister, Robert

⁷⁷ *ibid.*

⁷⁸ Mannion, p. 8.

⁷⁹ Number and amount of grants from "Report of Meeting of Government Departments to Consider Support for Rape Crisis Centres", ABKH W4105, 30-3-55-4, box 41, part 1, Government funding of rape crisis centres [ANZHO, Wellington].

⁸⁰ "Grants to Rape Crisis Centres", in *ibid.*

⁸¹ "Report of Meeting of Government Departments to Consider Support for Rape Crisis Centres", p. 5, in *ibid.*

⁸² Mannion, p. 6.

⁸³ Welch, p. 10.

Muldoon, expressed concern that rapists were getting off too lightly,⁸⁴ but it cost \$28,422 to keep one man in a maximum security prison for one year. Increased convictions and increased sentences were estimated to cost \$4.5 million, nearly twice that of the REG's preventative programme.⁸⁵ It appeared that, while the Government was "chary of spending on prevention", it was "quite willing to spend vast sums on punishment".⁸⁶

That the law-and-order solution to rape served to divert attention away from the causes has been noted. It also removed the responsibility from ordinary men. Calls for higher sentencing were formed by the assumption that rape was a crime committed mostly by strangers, and on a denial that male sexuality was itself problematic. Politicians' discussion of heavier sentencing generally included stories of stranger rapes. Just before the 1983 National Party conference, sentencing comments were accompanied by reports of elderly women being raped in their own homes.⁸⁷ It was then that Jim McLay said that if a member of his family was raped, then "the offender would be lucky if the police got to him first".⁸⁸ This was seen to fuel public anger and promote revenge on rapists.⁸⁹

Concern for rape victims was in part subsumed by the law-and-order construct. Political expediency shaped it in that direction. This did not accommodate the experiences of women who were raped. The Auckland RCC's 1981 survey had revealed that four-fifths of women knew their attackers.⁹⁰ As well as protecting the institution of masculinity, with its social and economic privilege, a law-and-order solution to rape was simple, and a sure vote pleaser.

Negotiating a new meaning of rape: the 1982 Symposium

In 1982 government bodies, the Advisory Committee on Women's Affairs and the Justice Department, planned a rape symposium in collaboration with the Mental Health

⁸⁴ *ibid.*, p. 10 and Mannion, p. 6.

⁸⁵ Mannion, p. 6.

⁸⁶ *ibid.*

⁸⁷ Welch, p. 10.

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Auckland Rape Crisis Centre, p. 135.

Foundation and the Institute of Criminology at Victoria University. Those invited to participate included lawyers, doctors, police, counsellors and rape crisis workers.⁹¹ The Symposium, the first such meeting, was intended as “a place for the exchange of information and ideas”.⁹²

While there was general public disquiet over rape and treatment of rape victims, the Symposium was split over what direction reform needed to take. This was not surprising, given the different constructions of rape. Essentially two views were expressed: a liberal, and a radical feminist one. A liberal view supported equal rights for men and women under the law, while a radical feminist one proposed major social change, impacting on institutions of sexuality and family. Professor Warren Young described the meeting as “a tense and emotional occasion”. On one side were representatives of victims who were extremely frustrated by the “lack of progress and an absence of significant reform to our laws and practices”, and on the other those from the legal profession and police who had difficulty understanding “the sources of that frustration or the intensity of emotion that lay behind it”. Thus for much of the time, the participants talked past each other.⁹³

Rape crisis workers were initially sceptical of what could be achieved for women at the Symposium because they believed it would be “dominated by the distancing and avoidance mechanisms of powerful white men”.⁹⁴ Their scepticism was appropriate, if one believes Marilyn Waring’s account of a seminar on rape at an ANZAAS Conference in 1979 in which a judge, a number of magistrates, police persons, and a police doctor, were present. She said the seminar began with a number of rape jokes, and that the police doctor spoke in a most callous and insulting manner of the victims he had examined. The laughter ceased only when the few women present intervened and gave notice that they would leave the seminar.⁹⁵

⁹¹ Hilary Haines and Max Abbott, (eds.) “Preface”, *Rape in New Zealand*, p. v.

⁹² *ibid*, p. vi.

⁹³ Young, “Rape in New Zealand 1985-1995”, p. 11.

⁹⁴ Jenny Rankine, “Feminists at Rape Symposium”, *Broadsheet*, no. 104, Nov 1982, p. 21.

⁹⁵ Marilyn Waring, National M.P. for Waipa, *NZPD*, Aug 1979, p. 2238.

However, rape crisis workers believed that the 1982 Symposium turned into “a forum for strong radical anti-racist and feminist views”.⁹⁶ Every sexist and racist comment was challenged, especially Jim McLay’s refusal to “recognise the economic and social power men hold over women that supports ...rape”. Feminists reported that while men at the Symposium tried to divert the focus into legal technicalities or women’s false complaints, they kept the focus on women’s experiences, their pain about rape and racism.⁹⁷ Jenny Rankine’s feminist account of the Symposium suggests many non-feminist participants would not have known what had struck them. Maori women demanded control of fisheries, land and culture, a concept bound up in their definition of rape. Fran Wilde and pakeha rape crisis workers accused the courts of racism. At the end of a rape crisis contribution most of their workers got up and sang “Fightback”, a feminist anti-rape song.⁹⁸ Women participants also met informally, and radical feminists formed useful connections with women in institutions of power.⁹⁹

Feminists believed that the Symposium had been structured to look only at law changes. It did appear that there was a resistance by non-feminist participants to go further than this. While Jim McLay’s opening speech stressed the impact of rape on the victim, he offered only that “some ameliorative measures” were called for in the way the rape victim was treated.¹⁰⁰ These were to be met through law reform and procedural changes. Although he stated that law reform itself would not necessarily effect changes in behaviour, nonetheless, he believed the law should be scrutinised as its creation was not an “apolitical or value-free” process. And while he did raise the need to modify societal attitudes, his focus lay in shorter-term measures.¹⁰¹ Other participants, such as judges, crown prosecutors, doctors and police, were very much focused on their roles in legal and medical practices relating to the rape victim. Thus the attention of most non-feminist participants was on the rape victim once he or she had engaged legal and medical services.

⁹⁶ Rankine, p. 21.

⁹⁷ *ibid.*

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ McLay, p. 3.

¹⁰¹ *ibid.*, pp. 11, 12.

But despite a diverse spectrum of views being expressed and feminists believing that few powerful male participants had made any commitment to real changes that would benefit women,¹⁰² the Symposium did provide for a general consensus around the point that the existing procedures for dealing with rape cases caused unnecessary distress to the victim.¹⁰³ Concern for the rape victim provided the common ground between a liberal and radical feminist position. And it was the concern for the victim that led to the introduction of rape reform legislation.

¹⁰² *ibid.*

¹⁰³ Douglas Graham, Minister of Justice, "Opening Address", in *The proceedings of Rape: Ten Years Progress?*, p. 7.

Chapter 6

RE-NEGOTIATION

Two rape reform measures were introduced to parliament in 1983 and 1984, one by National, which lapsed because of the election, the other by Labour, which became law in December 1985.¹ The Rape Law Reform Bill (no. 2) was passed as three separate acts: the Crimes Amendment Act (no. 3), the Evidence Amendment Act (no. 2), and the Summary Proceedings Act (no. 4).² It appeared there was competition between the parties to take leadership of, and credit for, rape law reform, so much had the discourses shifted in that direction, as outlined in chapter 5. This shift was borne out by the large number of submissions received.

The 1983 Rape Law Reform Bill (no. 1) attracted around 140 submissions, a considerable response for the time.³ The deadline for submissions, 3 February 1984, disadvantaged the many women's groups that usually recessed over December and January.⁴ But despite this, women made the majority of submissions. Almost half were from victim support and women's groups, and another fifth from individual women.⁵ The 1984 Rape Reform Bill (no. 2) attracted around 80 submissions. The submissions provide a valuable text for analysing constructions of rape held by a wide spectrum of the public.

¹ There was a third bill introduced by Jim McLay as a private member after the new Labour government had introduced theirs. This was not allowed to proceed as it was judged by the Statutes Revision Committee to have been superseded by Labour's bill, so it was not debated in parliament.

² Jeremy Harrington of the Law Reform Division, Department of Justice in Ginette Sullivan for Wellington Rape Crisis Centre, *Rape Crisis Handbook. Counselling for Sexual Abuse*, Hamilton: Rimu Publishing, 1986, p. 41.

³ Nicole Humphries, "The Development of the Rape Law Reform Bills of New Zealand During the 1980s", M.A. thesis, University of Auckland, 1991, p. 11.

⁴ Submission made by Women's Electoral Lobby, Taranaki Branch, ABGX W3706, box 44, part 2, Submissions rape law reform bill [Archives New Zealand Head Office (ANZHO), Wellington].

⁵ Sandra Davies, "Rape Law Reform Bill: Summary of Submissions", p. 1, ABGX W3706, box 43, part 1, Administration rape law reform bill [ANZHO, Wellington].

The Rape Law Reform Bills no. 1 and no. 2

Because the two bills were closely connected, I have discussed them together. Parts II and III of the second bill were in “substantially the same form”⁶ as in the first, and many who made submissions to the first bill did not repeat their positions to the second. The bills are discussed under thematic headings; an analysis of the first bill will precede that of the second, followed by what was ultimately enacted.

Both sides of the House welcomed the first rape law reform bill introduced by Jim McLay, Minister of Justice in the National Government, in December 1983. Ruth Richardson, National M.P. for Selwyn, saw it as symbolising “a growing recognition of women’s rights” and as “the major unfinished business in the agenda of reform for women” after a decade of “legislative promotion of equality of opportunity for women”.⁷ Ann Hercus, Labour M.P. for Lyttelton, welcomed National’s bill but noted “it was one part, and at the moment the only visible part, of a much needed package of wider reform”.⁸

The bill broadly followed the rape reform legislation enacted in New South Wales. Its significant features were:

- Gender neutrality.
- A widening of the definition of rape to include forced oral and anal sex, and violation with an object.
- A list of the states of mind that constituted ‘*mens rea*’ or criminal intent.
- Removal of the mandatory requirement of the judge to give the jury the ‘corroboration warning’. The warning could still be at a judge’s discretion.
- The hearing of complainants’ oral evidence given in the preliminary trial to be subject to the discretion of the judge. Evidence could be given in a written form.
- All preliminary hearings to be heard by a district court judge rather than J.P.s.
- The clearing of courts at both the preliminary and main hearings, for the hearing of complainants’ oral evidence, except for those working in the proceedings and accredited media representatives.⁹

⁶ Geoffrey Palmer, Minister of Justice, *New Zealand Parliamentary Debates (NZPD)*, vol. 457, Aug 1984, p. 73.

⁷ Ruth Richardson, National M.P. for Selwyn, *NZPD*, vol. 455, Dec 1983, p. 4806.

⁸ Ann Hercus, Labour M.P. for Lyttelton, *NZPD*, vol. 455, Dec 1983, p. 4805.

⁹ Outlined from descriptions of the bill given by Jim McLay, Minister of Justice, *NZPD*, vol. 455, Dec 1983, pp. 4800-4802.

Despite the unusually wide background of research and public discussion that preceded the bill, it can only be described, and was, as a less than “adequate response to the complex of issues presented by the problem of rape and sexual abuse in N.Z.”¹⁰ It aimed only to secure more convictions through higher reporting rates, and to reduce the trauma for those who proceeded through the courts.¹¹ The bill reproduced a newer construction of the victim, but this was contained within the law-and-order construct. It did not appear to acknowledge the 1982 Rape Study’s finding that one of the main reasons victims did not report rape was their feelings of guilt and shame. The authors of this study asked whether, as these had little to do with fear of police or legal processes, it was realistic to expect that legal and procedural reform would achieve a major increase in reporting.¹²

National’s rape law reform bill addressed only the crimes of rape and attempted rape in the Crimes Act. Other sexual crimes - sexual intercourse with a girl under one’s care or protection, sexual intercourse with a girl under 12, indecency with a girl under 12, sexual intercourse or indecency with a girl between 12 and 16, sexual intercourse with a severely subnormal girl or woman, indecency between man and boy - remained unchanged.¹³ The bill also retained spousal immunity, contrary to the overwhelming number of submissions made to the 1982 Rape Study that advocated its abolition.¹⁴

Nor did National’s bill make any provision for effecting social change. It was silent on issues of education, rehabilitation, and funding of victim support services. It dealt with the rape victim only within the criminal justice system. Even within this limited scope, it did not consider training legal and medical agents to improve their handling of rape victims. The structure of the bill set the parameters for change. Its narrow framing of the problem of rape, especially its isolation from other provisions, severely restricted the possibilities of change.

¹⁰ Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹¹ Davies, “Summary of Discussion by the Statutes Revision Committee on the Rape Law Reform Bill”, ABGX W3706, box 43, part 1, Administration rape law reform bill [ANZHO, Wellington].

¹² Joan Stone, Rosemary Barrington and Colin Bevan, “The Victim Survey”, in *Rape Study, Research Reports, Volume 2*, Wellington: Department of Justice, 1983, p. 22.

¹³ Jenny Rankine, “Another Man-Made Bill”, *Broadsheet*, no. 117, March 1984, pp. 23-24.

The Rape Law Reform Bill (no. 2), introduced by Geoffrey Palmer, Minister of Justice in the new Labour Government in August 1984, departed conceptually from the first in only a few significant ways. It replaced the term ‘rape’ with ‘sexual violation’. It abolished spousal immunity. And it created two new offences: obtaining sexual connection by coercion; and compelling a person to do or submit to an indecent act with an animal.¹⁵

Spousal immunity

Spousal immunity was the most canvassed issue in submissions to the first bill. Conservatives and radicals alike were united in their condemnation of it. Only four submissions, three individuals and the Society for the Promotion of Community Standards, supported its retention.¹⁶ They based their arguments on biblical texts, that the marriage contract afforded ‘sexual rights’, the sanctity of the marriage and family institution, and the potential for ‘vindictive’ wives to make false complaints. The main grounds for abolishing spousal immunity were that it was “discriminatory towards married women, anachronistic in viewing wives as husbands’ property, and inconsistent with other legislation, e.g. the establishment of the Human Rights Commission and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women”.¹⁷ These contextual aspects, a concern with human and women rights as outlined in chapter one, significantly intersected with and helped shape discourse on rape.

Support for the abolition of spousal immunity was founded on a liberal view of equal treatment for all individuals, challenging the sanctity of the family. The Church and Society Commission of the National Council for Churches described a husband’s entitlement as archaic.¹⁸ The Young Women’s Christian Association (YWCA) astutely pointed out that by retaining spousal immunity, the law was not condemning the act of

¹⁴ Jonathan Petterson, *Submissions on the Rape Study. An Analysis*, Wellington: Department of Justice, 1983, p. 2.

¹⁵ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, pp. 71-72.

¹⁶ Secretary for Justice, “Rape Law Reform Bill: Report of the Department of Justice”, p.11, ABGX W3706, box 43, part 1, Administration rape law reform [ANZHO, Wellington].

¹⁷ Davies, “Rape Law Reform Bill: Summary of Submissions”, p. 7.

¹⁸ Submission from the Church and Society Commission of the National Council of Churches, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

rape itself, but rather the choice of victim.¹⁹ In response to fears of ‘vindictive wives’, the New Zealand Association of Social Workers reversed positions challenging gender assumptions and asked if this “meant that rape within marriage was used by vindictive men”.²⁰ The Mental Health Foundation believed that “a family or marriage in which one person is being raped is plainly unworthy of support” and that spousal immunity lent credence to the view that violence within the family was not the concern of the law or society.²¹ Wellington Rape Crisis Centre (RCC) believed that the “law must place the same value on the lives of all individuals”.²²

The authors of the 1982 study found “no real arguments of logic or principle to justify the immunity”, and conversely, found positive arguments for abolishing it.²³ They also noted that, in other jurisdictions that had abolished it, the prosecution of husbands was a rare occurrence.²⁴ As mentioned, most submissions to the study also favoured the abolition of spousal immunity. So why was it retained?

In 1983, Jim McLay as Minister of Justice, said he had no fixed opinion on the issue of spousal immunity.²⁵ But some seven years later he said he had wanted to remove it but believed it would be difficult to convince other M.P.s to support such a reform. Strategically he retained spousal immunity to invite submissions on it and intended it to act as a “lightning rod” for change. He believed that “history has proved that strategy to be correct”.²⁶

The intransigence of male M.P.s had been noted by others,²⁷ which supports Jim McLay’s account of political manoeuvring. However, it can be argued that first retaining

¹⁹ Submission from the YWCA, p. 2, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

²⁰ Submission from the New Zealand Association of Social Workers in *ibid*.

²¹ Submission from the Mental Health Foundation in *ibid*.

²² Submission from Wellington Rape Crisis in *ibid*.

²³ Warren Young, *Rape Study, Volume 1, A Discussion of Law and Practice*, Wellington: Department of Justice, 1983, p. 121.

²⁴ *ibid*, p. 120.

²⁵ Jim McLay, “Opening Address”, in *Rape in New Zealand. Papers Presented at the Rape Symposium, Wellington, September 1982*, Hilary Haines and Max Abbott (eds), Mental Health Foundation, 1983, p. 10.

²⁶ Communication between Nicole Humphries and Jim McLay, in Humphries, p. 26.

²⁷ Marilyn Waring, “The Real Problem”, *Listener*, no. 2478, 15 August 1987, p. 42.

and then rejecting spousal immunity may have been a deliberate strategy to restrict change. Firstly, as the minister responsible, surely Jim McLay be expected to lead the reform, and his statements to have some effect on it. Secondly, retaining spousal immunity did not support Jim McLay's statement that "as long as women have reservations about the law and the criminal justice system, the issue of violence against them will be largely unresolved – and that will be to the detriment of all of us".²⁸

The immunity clause attracted outrage. "Many of the submissions concentrated on the matter to the exclusion of virtually everything else ...".²⁹ Such was the public response that in April 1984, the National Government caucus removed spousal immunity from its bill. This was hailed as a victory, albeit a minor one, for New Zealand women.³⁰ The change was attributed to the weight of public opinion at the time.³¹ But public opinion was already known to be at a level that made the abolition of spousal immunity inevitable. It was an easy victory to concede to women, gave the appearance of a government sensitive to women's needs, and encouraged women's confidence in the bill. If the retention and discarding of the clause was deliberate, and the intent was to restrict the reform, immunity served as a 'smoke screen'. It averted potentially critical eyes away from other serious questions, questions described by the Mental Health Foundation as "the complex of issues presented by the problem of rape" not addressed in the bill.³² The possibility of a defence based on spousal rights was eventually laid to rest with the passing of Labour's Rape Law Reform Bill (no. 2), which explicitly removed any defence of rape based on spousal immunity.

The name 'rape'

The definition of 'rape' raised several issues. The first concerned the merit of 'degenderisation'. Most submissions to National's Rape Law Reform Bill (no. 1)

²⁸ McLay, p. 3.

²⁹ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 72.

³⁰ Di Cosslett, "Marital Rape", *Broadsheet*, no. 128, April 1985, p. 37.

³¹ *ibid.*

³² Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill[ANZHO, Wellington].

supported gender neutrality,³³ because it was seen as emphasising the absence of consent and the use of coercion, rather than focusing on the detail of the act that took place,³⁴ and acknowledging that males and females could be both offenders and victims.³⁵ Feminist groups were divided. Gisborne and Wellington RCC supported it, as did the Mental Health Foundation.³⁶

The significant number of submissions opposed to gender neutrality generally saw “rape as motivated by a desire to humiliate and subjugate women”.³⁷ For the Women’s Subcommittee of the Wellington Trades Council (WTC), Women Against Sexual Abuse of Children, and Auckland RCC, gender neutrality detracted from the significance of rape as an expression of men’s oppression of women.³⁸ Some went further and did not believe that women could commit rape.³⁹ This view projected dichotomous images of woman as victim and man as assailant. While it was apparent gender neutrality had some positive effects, it obscured the fact it was women who were more often than not the victims, that all women were affected by rape, and it made it difficult to link rape with wider social structures.

The second issue was the extension of the definition, now re-named as ‘sexual connection’, to include “forced oral sex, forced anal sex, and violation by means of an object held or manipulated by the offender”.⁴⁰ This reflected feminist knowledge that other sexual behaviours committed upon victims were experienced as just as, or even more, repugnant than forced sexual intercourse. There was considerable support for the expanded definition, but eight submissions felt it was still too narrow.⁴¹ These groups,

³³ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 70.

³⁴ Submission from Gisborne Rape Crisis, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

³⁵ *ibid.*

³⁶ Submission from Wellington Rape Crisis and Mental Health Foundation; and Gisborne Rape Crisis, ABKH W3706, 30-3-16-3, box 30, Rape legislation [ANZHO, Wellington].

³⁷ Davies, “Rape Law Reform Bill: Summary of Submissions”, p. 2.

³⁸ Submissions from Women’s Subcommittee of the Wellington Trades Council, Auckland Rape Crisis, and Women Against Sexual Abuse of Children, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

³⁹ Submission from Maxine Gundersen and Alison Laurie in *ibid.*

⁴⁰ Jim McLay, Minister of Justice, *NZPD*, vol. 455, Dec 1983, p. 4800.

⁴¹ Davies, “Rape Law Reform Bill: Summary of Submissions”, p. 2.

many of which were feminist, recommended that 'rape' should cover other sado-masochistic acts of sexual humiliation, and the insertion of the penis into other bodily orifices such as armpits.⁴² The Women's Electoral Lobby wished to protect the complainant where animals were involved.⁴³ The Tauranga Women's Centre offered the most encompassing definition; any forced sexual assault should be regarded as rape.⁴⁴ But this had the potential of trivialising more extreme acts of sexual assault.

Some feminists did not separate rape from other forms of violence committed by men against women. For the Women's Subcommittee of WTC, "this violence runs the gamut from being beaten or raped, to being physically abused, to having to work in a work place surrounded by pornographic pictures and degrading comments".⁴⁵ Jenny Rankine of Auckland RCC believed that sexual harassment should be included in the bill. "At the moment such attacks are included with common assault and there is no recognition of the way they are used by men and the special humiliation they carry for women and children."⁴⁶ In contrast, by dealing exclusively with rape and isolating it from other forms of violence against women, both the first and second rape bills minimised, or disguised, the connection between male behaviour and violence against women.

Because most submissions to the first rape bill supported gender neutrality and the wider definition of rape, Labour's Rape Law Reform Bill (no. 2) re-named rape as 'sexual violation' although the old name 'rape' persisted in the bill's title. This re-naming was seen to better "capture the essence of those crimes" which involved "a most injurious attack on a person's physical integrity", and would help eliminate the myths surrounding rape.⁴⁷ The second bill also widened sexual violation to include forced indecent acts with animals.

⁴² *ibid*, these included National Collective of Independent Women Refuges and Auckland Rape Crisis.

⁴³ Submission from Women's Electoral Lobby, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁴⁴ Submission from Tauranga Women's Centre in *ibid*.

⁴⁵ Submission from Women's Subcommittee of Wellington Trades Council in *ibid*.

⁴⁶ Rankine, p. 23.

⁴⁷ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 71.

Geoffrey Palmer, Minister of Justice, also suggested the possibility of de-genderising rape by making two offences, a tandem structure, rather than the present composite structure of one offence. The ultimate structure of the law would depend on feelings expressed in submissions. In a tandem structure, the word 'rape' would be used to apply only to those acts of male penetration of a female as currently constructed in law, and the words 'sexual violation' as a gender-neutral term, to describe other forms of unlawful sexual connection.⁴⁸ Older gender discourse persisted however. On a number of occasions, despite rhetoric, the bill failed to be gender-neutral - e.g. judges were referred to only as males.⁴⁹ This attests to the entrenched status of gender constructions.

Most disagreement centred on the 'name' rape and a composite versus a tandem form of law. Of fifty-five submissions, thirty-seven supported the composite form,⁵⁰ because it was simpler, and because a tandem structure could lead to the possibility of categorisation of crimes into major and minor. The National Collective of Independent Women Refuges saw grading rape as dangerous, because it tended to emphasise the additional violence done to victims rather than the actual violence of the rape itself. It wanted additional violence to be treated as a separate charge to rape, with cumulative sentencing.⁵¹ Only a very small minority of submissions said there were qualitative differences in how rape victims experienced the various forms of sexual offences constructed as rape in the wider definition. Those who supported a tandem form did so because it retained 'rape' to refer to a specific violent act committed by a man against a woman.

Amongst submissions in support of a composite structure, there was no decisive preference for the names 'rape' or 'sexual violence'. 'Sexual violation' was seen to remove the stigma and symbolism attached to 'rape'. But some argued that community education carried out by rape crisis groups had already begun to displace this, and

⁴⁸ G. Rudd, Secretary of Statutes Revision Committee cited in Humphries, p. 91.

⁴⁹ Submission from The Church and Society Commission of the National Council of Churches, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁵⁰ Humphries, p. 95.

⁵¹ Submission from the National Collective of Independent Women's Refuges, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

changing names would negate the progress made.⁵² It was also questioned whether the public would find it difficult to equate 'rape' with some of the added offences.⁵³ While women and feminist groups were divided on which form the law should take, in general there was strong feminist support for retaining the name 'rape'.

Auckland RCC believed that "changing the name of the crime would contribute to the mystification about its real nature and deny a major part of its significance".⁵⁴ The National Council of Women was split evenly. Some saw the dropping of 'rape' as lessening the seriousness of the crime. Other members saw 'sexual violation' as better capturing the equally or even more offensive acts of rape, and acknowledging an acceptance that offenders and victims could be male and female alike.⁵⁵

Some feminist groups, and the Mental Health Foundation, opposed the change because victims of sexual violence had said the name 'sexual violation' did not describe their experience as adequately as did 'rape'.⁵⁶ Many rape crisis groups also saw the new name as emphasising the sexual aspects of the crime. Tauranga RCC said rape was not a sexual act, it was an act of violence, and accordingly, there should not be any mention of the word sex.⁵⁷

While Whangarei RCC thought a word change would bring about a change in attitudes, "hopefully this will remove the 'stranger in the park' image from the minds of likely offenders",⁵⁸ Christchurch and Auckland RCCs criticised the proposal. The Christchurch group observed that "as new terms gradually come into more widespread use they too acquire the negative attributes of the word rape and become tainted with the attitude that

⁵² Simon France, "Report on Rape Law Reform Bill (no. 2)", p. 2, ABGX W3706, box 45, part 1, Rape law reform [ANZHO, Wellington].

⁵³ *ibid.*

⁵⁴ Auckland Rape Crisis, "Rape - Legal Reforms", in *Rape in New Zealand*, p. 122.

⁵⁵ Submission from National Council of Women, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁵⁶ Submissions from Wellington Rape Crisis, Mental Health Foundation, and National Collective of Independent Women's Refuges, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁵⁷ Submission from Tauranga Rape Crisis quoted in Humphries, p. 114.

⁵⁸ Submission from Whangarei Rape Crisis, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

rape survivors are defiled women who have usually in some way asked to be raped. Thus, it is attitudes rather than words which need to be changed".⁵⁹

In this way, the meaning of what we say depends on its discursive context rather than the words themselves. Words reflect how we construct the world rather than reflecting the world itself. If the images and attitudes that form the construction of 'rape' persist, then 'sexual violation' will be constructed in the same way. Repressed meanings will also continue to operate. Jacques Derrida describes words or 'signified' as only gaining their meaning from other words. Presence always contains absence. Words implicitly talk about what they are not.⁶⁰ Thus discourses impact on each other. If constructions of male sexuality did not shift, it was not likely that new constructions of the female victim of rape as not asking for it would shift wider social and economic practices.

Similarly, because the discursive environment constitutes words, a significant number of submissions advocated a legal re-classification of the offence of rape from Part VII of the Crimes Act (Crimes Against Religion, Morality and Public Welfare) to Part VIII (Crimes Against the Person).⁶¹ This was viewed as better reflecting, and constructing, a meaning of rape as violence rather than sex.⁶² Although the Department of Justice agreed with this in principle, it hesitated to "tinker further with the already unsatisfactory classifications of the Crimes Act".⁶³

In response to feminist pressure, the Government adopted the tandem structure of law.⁶⁴ As it passed into statute, the new offence of sexual violation included two categories: rape and unlawful sexual connection. 'Rape' was defined as penetration of the vagina by the penis, and 'sexual connection' was a gender-neutral term including forcible anal, vaginal and oral intercourse and penetration of the vagina or anus by an object or any part

⁵⁹ Submission from Christchurch Rape Crisis in *ibid*, and Auckland Rape Crisis, "Rape – Legal Reforms", p. 122.

⁶⁰ Vivien Burr, *An Introduction to Social Constructionism*, London: Routledge, 1985, pp. 106-107.

⁶¹ Davies, "Rape Law Reform Bill: Summary of Submissions", p. 14.

⁶² Among others, submission from Wellington Rape Crisis, and N.Z. Association of Social Workers, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁶³ Secretary of Justice, "Rape Law Reform Bill. Report of the Department of Justice", p. 18.

⁶⁴ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6266.

of the body.⁶⁵ The new law both acknowledged the gender specificity of the crime of rape, and that both males and females could be perpetrators and victims of sexual violation. The offence of compelling another to perform an indecent act with an animal was also enacted.

Mens rea and consent

New Zealand law practised, in effect, the 1975 ‘Morgan ruling’ of the House of Lords that sexual intercourse was legal if there was an honest belief that the other party consented and that there need not be reasonable grounds for this belief.⁶⁶ There had been much criticism of this (see chapter 2) even within the legal system.⁶⁷ To address this, National’s 1983 Rape Law Reform Bill (no. 1) added the concept of recklessness to capture the man who paid too little attention to whether he had obtained consent. Jim McLay, Minister of Justice, outlined five mental states that constituted *mens rea* or criminal intent:

“The person charged –

- (i) knows that the other person does not consent; or
- (ii) is indifferent whether the other person consents or not; or
- (iii) knows or believes that there is a risk that the other person does not consent; or
- (iv) fails to turn his mind to the question of consent when, if he were to turn his mind to that question, he would realise that the other person does not consent; or
- (v) believes, without reasonable grounds, that the other person consents.”⁶⁸

This was designed to catch the accused who knew there was no consent, knew there was a risk of non-consent but chose to ignore the risk, did not care about consent and failed to consider the issue of consent.⁶⁹ The clarification of circumstances in which consent was not given, and the introduction of a test of ‘reasonableness’ for *mens rea* or criminal liability, were also an attempt to address the different assumptions men and women held about appropriate sexual behaviour. It was acknowledged that “the victim will perceive the intercourse as rape much more frequently than will the perpetrator”.⁷⁰

⁶⁵ Harrington in Ginette Sullivan, p. 42.

⁶⁶ Jim McLay, Minister of Justice, *NZPD*, vol. 455, Dec 1983, p. 4800.

⁶⁷ *ibid*, refer to chapter 2 for a criticism of the Morgan ruling.

⁶⁸ Rape Law Reform Bill (no. 1) quoted in Humphries, pp. 72-73.

⁶⁹ Secretary of Justice, “Rape Law Reform Bill: Report of the Department of Justice”, pp. 5-6.

⁷⁰ McLay, p. 9.

Many submissions supported this clause, or at least its intent to do away with the Morgan ruling.⁷¹ But the exhaustive list of culpable mental states was seen as too convoluted and possibly causing confusion in the minds of juries. It was also viewed as too narrow in scope. The Mental Health Foundation believed rape occurred when a person acquiesced in sexual connection under the influence of other serious threats that did not involve the infliction of actual bodily harm, e.g. threats to evict them from homes or sack them from jobs.⁷² Feminist and non-feminist groups alike supported the inclusion of, among others, psychological force, intimidation and economic blackmail, as negating consent.⁷³

The list of mental states for determining culpability was criticised by three legal bodies. The Faculty of Law and the Institute of Criminology at Victoria University sought to protect the defendant who was incapable, through no fault of their own, of achieving an objective standard of reasonableness.⁷⁴ The New Zealand Law Society, very much alone, held that a defendant who honestly believed consent had been given should not be guilty.⁷⁵ The Department of Justice felt this was too simplistic. “Belief is a difficult word. One can believe something to be true while appreciating that it may not be. There is a point at which ‘belief’ shades into mere hope.”⁷⁶ There was virtually no support for upholding the Morgan ruling.

There was other criticism of ‘reasonable’. Auckland RCC felt uneasy that ‘belief based on reasonable grounds’⁷⁷ could become an escape clause for defendants. “Though the bill degenderises rape, it is our belief that most rapes are committed by men against women and female and male children. Many such acts are done by reasonable men under circumstances still considered by themselves and other men, to be quite reasonable. As women who have been raped by our fathers, brothers, boyfriends, husbands, close

⁷¹ Davies, “Rape Law Reform Bill. Summary of Submissions”, pp. 4-5.

⁷² Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁷³ 27 submissions to the first rape bill supported an extension of circumstances that negated the issue of consent, Davies, p. 6.

⁷⁴ *ibid*, p. 5.

⁷⁵ Submission from NZ Law Society, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁷⁶ Secretary of Justice, “Rape Law Reform Bill. Report of the Department of Justice”, p. 6.

⁷⁷ A reference to the draft legislation concerning the objective test for a belief based on reasonable grounds.

relatives, friends and strangers, we know only too well how reasonable our attackers are.”⁷⁸

Women Against Sexual Abuse of Children questioned the very inclusion of the phrase ‘reasonable grounds’. The group felt it assumed that “a man might make a genuine mistake about such a matter”, so “perpetuate the myths of women’s passivity and inscrutability in sexual situations. It should be the man’s responsibility to ensure that the women is consenting to what is going on.”⁷⁹ It also meant a man’s belief had higher status than a woman’s experience.

Shifting the evidential burden of proof of non-consent from the victim to proof of consent to the accused, attracted considerable support.⁸⁰ Many submissions were critical of the defendant’s right to silence while the complainant had to endure an arduous cross-examination. “Any pro-woman rape law has to put responsibility for establishing consent with the man.”⁸¹ To encourage a shift of the evidential burden, a smaller group recommended a positive definition of consent.⁸² “A clear distinction should be made between consent and acquiescence, the giving of consent being willing and active.”⁸³ “Silence, for example, is not consent.”⁸⁴ Auckland RCC and the University Students’ Association said that consent should mean “knowledgeable assent and willing participation”.⁸⁵ Consent defined as such explicitly challenged the assumption of female passivity in the law on rape. The concept of consent had implied passive agreement, acquiescence to something that was done to women. It had not carried a positive idea of female initiative and participatory sexuality.⁸⁶ “Knowledgeable assent and willing participation” asserted female sexual autonomy.

⁷⁸ Submission from Auckland Rape Crisis, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁷⁹ Submission Women Against Sexual Abuse of Children in *ibid.*

⁸⁰ Davies, p. 4.

⁸¹ Rankine, p. 24.

⁸² Submissions from Auckland Rape Crisis, Wellington Rape Crisis, Auckland Council for Civil Liberties, University Students Association, National Centre of Community Volunteers, among others, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁸³ Submission from Women Against Sexual Abuse of Children in *ibid.*

⁸⁴ Submission from Auckland Rape Crisis in *ibid.*

⁸⁵ Submissions from Auckland Rape crisis and University Students Association in *ibid.*

⁸⁶ Cathy Roberts, *Women and Rape*, Hertfordshire: Harvester Wheatsheaf, 1989, pp. 7-8.

But principles of innocence, that the accused was innocent until proven guilty, that the burden of proof rested with the prosecution,⁸⁷ and that an accused should not be compelled to be a witness against her/himself, had shaped legal practices and were not negotiable. They were deeply entrenched legal values, institutionalised as common law, and to question them indirectly questioned the entire legal system. The Department of Justice did question whether the 'right to silence' still served the interests of justice,⁸⁸ but in contrast, the Royal Commission on Criminal Procedure (1981) supported the status quo because requiring an accused to answer a *prima facie* case would weaken the initial burden of proof placed on the prosecution.⁸⁹ The Department of Justice was unable to offer a solution.⁹⁰ So while there was sympathy for complainants who had to prove that rape occurred, the institutionalised discursive field of justice and law would ensure that the burden of proof remained with the prosecution.

Labour's 1984 Rape Law Reform Bill (no. 2) adopted a similar approach to the issue of *mens rea* and consent. Despite the Statutes Revision Committee's criticism of the first bill's confusing list, Labour's bill also included a list of five culpable mental states. Submission because of fear was specifically disqualified as constituting consent. It was hoped that this would encourage men to think more, and would displace "the casual assumption that women are willing partners unless they actually struggle and scream. This kind of male attitude is no longer acceptable."⁹¹ Apart from some legal groups, few submissions on the second rape bill commented on this clause.⁹² Many probably felt they had already expressed their feelings on this issue in their submissions on the first bill.

The section passed into statute with just one requirement for a culpable mind. This was to avoid confusion. Sexual violation occurred when one person had sexual connection with another without the consent of the other, or without believing on reasonable grounds that

⁸⁷ McLay, p. 8.

⁸⁸ Secretary of Justice, "Rape Law Reform Bill. Report of the Department of Justice", p. 17.

⁸⁹ *ibid.*, p. 18.

⁹⁰ *ibid.*

⁹¹ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6267.

⁹² Humphries, p. 82.

the other person consented.⁹³ The circumstances in which there was no consent were clarified. Not offering resistance or protest; submission or acquiescence because of application, fear of, or threat of force (physical); and mistake as to identity of person or nature and quality of act, did not constitute consent.⁹⁴ The new law also held that rape could be committed where a woman withdrew her consent during sexual intercourse and the male continued.⁹⁵ It was hoped that less weight would be given to lack of evidence of struggle because of these details.

In response to submissions, the second bill introduced a second new offence (in addition to acts with animals), obtaining sexual connection by coercion (psychological force), which incurred a maximum penalty of 7 years.⁹⁶ All women's groups welcomed this move, but felt that the maximum imprisonment should be consistent for all offences: physical and psychological force were viewed as the same. The effects on complainants of rape by coercion were interpreted as just as traumatic as rape by other means.⁹⁷ The Rape Education Group asked facetiously if the reason for half the maximum penalty for rape by coercion was that the offence was half as serious.⁹⁸ The Mental Health Foundation was the only group to support the lesser penalty for rape by coercion, as this would encourage more convictions. While it did not see a qualitative difference among the various forms of sexual violation, it thought that the public would.⁹⁹

Others rejected feminist knowledge that there was no distinction between the effects of rape by coercion and by other means. The Department of Justice felt that "while a person who has been coerced into unwanted sexual relations by means of a threatened detriment no doubt feels degraded, and in that sense raped, it is a rather long step to say that the

⁹³ *ibid.*, p. 88.

⁹⁴ Harrington in Ginette Sullivan, pp. 42-43.

⁹⁵ *ibid.*, p. 43.

⁹⁶ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 27. Twenty-seven submissions had recommended such an offence, Humphries, p. 216.

⁹⁷ Among many others, Whangarei Rape Crisis, Wellington, Taranaki and Marlborough Clerical Administrative and Related Workers Industrial Union of Workers, National Collective of Independent Women's Refuges, NZ Association of Social Workers, Public Service Association, SROW, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

⁹⁸ Rape Education Group (see chapter 5 for discussion of this group) quoted in Humphries, p. 239.

⁹⁹ *ibid.*

other person's conduct in those circumstances should amount to legal rape. Consent extorted through the use of threat of immediate physical force does seem to us to be qualitatively different from consent reluctantly given to avoid future detriment. In the first case resistance may be futile, and even dangerous. In the second there is always choice, however unpalatable."¹⁰⁰

Such a view ignored the narratives of rape victims. It also raised questions as to how a qualitative difference could be made between physical force and losing one's job or home. And defining 'choice' as merely having more than one option, no matter that either were unpalatable, seemed to model a new application of the rape myth that women should resist to their utmost, even if this be to their non-physical detriment.

A small number of submissions opposed the definition of rape as psychological coercion completely. Winston Peters, National M.P. for Tauranga, referred to it as the "starlet on the couch" clause.¹⁰¹ This construction reflected the rape myths that women 'asked for it', that they lied about rape, and that the male sexual drive gave women power to attract, therefore made them responsible for sexual propriety (see chapter 1). Such beliefs supported Winston Peter's concern about determining who initiated the sexual interaction.¹⁰² It also realised Catherine MacKinnon's argument that the feminist principle that rape was violence could lead to a powerless relationship with the law (see chapter 3). For Winston Peters, the scenario of a 'starlet on the couch' suggested sex rather than violence, therefore was not rape.

By including the offence of sexual violation by coercion in the Crimes Amendment Act (no. 3), the discursive field on rape was considerably widened. This challenged the rape myth that rape victims needed to be physically injured. The written test for a guilty mind and the introduction of the requirement of 'reasonableness' overturned the practical effects of the Morgan ruling. However that 'reasonable' was still a subjective term was

¹⁰⁰ Department of Justice quoted by Ruth Richardson, National M.P. for Selwyn, *NZPD*, vol. 465, 1984, p. 6340.

¹⁰¹ Winston Peters, National M.P. for Tauranga, *NZPD*, vol. 457, Aug 1984, p. 84.

¹⁰² *ibid.*

demonstrated by Auckland RCC. There would still be different perceptions between men and women of what constituted 'reasonable'. Knowing that women and men had different perceptions of rape, was it what a 'reasonable' woman might believe, or a 'reasonable' man? Given that juries tended to be male dominated, it was more likely that rape victims would be judged from a male perspective.

Corroboration and the recent complaint rule

National's 1983 Rape Law Reform Bill (no. 1) did away with the mandatory requirement for a judge to warn a jury of the danger of convicting on uncorroborated evidence. Judges still had discretion to warn juries if they deemed it in the interest of justice, but their choice of words was restricted. Words to the effect that it is unsafe or dangerous to convict on the uncorroborated evidence of a complainant could not be used.¹⁰³ The bill made it clear that an accused could be convicted in absence of corroboration of a complainant's evidence. It was recognised that the corroboration warning had been formed by the rape myth that held women to be naturally untruthful and spiteful.¹⁰⁴ To demonstrate the need for change, Jim McLay used the example of an elderly woman raped in her own home by a stranger,¹⁰⁵ an image that perpetuated the image of a rapist as a stranger. It was perhaps this image, re-produced in the media's selective reporting of rape, which brought a shift from the corroboration warning.

The change attracted considerable support. Some submissions said the corroboration warning should be scrapped altogether.¹⁰⁶ While the Statutes Revision Committee was unable to countenance the complete abolition of the corroboration warning, because "that ... could cause injustice in particular cases and we are unable to support it",¹⁰⁷ Canada had however: "Corroboration is not required for purse snatching, so why should it be required for rape."¹⁰⁸ People who said they were robbed were not suspected of lying, so why should women alleging rape? Retaining the discretionary use of the warning seemed

¹⁰³ Davies, "Rape Law Reform Bill: Summary of Submissions", p. 10.

¹⁰⁴ Jim McLay, Minister of Justice, *NZPD*, vol. 455, Dec 1983, p. 4801.

¹⁰⁵ *ibid.*

¹⁰⁶ 37 submissions supported this clause, 7 felt it should be scrapped, Davies, "Rape Law Reform Bill: Summary of Submissions", p. 10.

¹⁰⁷ Secretary of Justice, "Rape Law Reform Bill. Report of the Department of Justice", p. 13.

to be saying that rather than all women not being unnaturally truthful and spiteful, only some were. Or given the example of the elderly woman used by Jim McLay, perhaps it meant that although women lied, there were circumstances in which they were not given the opportunity.

Labour's Rape Law Reform Bill (no. 2) sought to prohibit only the words "unsafe or dangerous to convict", and not words that were similar in effect to what the first bill had. It was felt that "in a few cases it may still be necessary for a judge to give a fairly strong direction to the jury on the absence of corroboration if there is to be a fair trial".¹⁰⁹ The principles of the innocence of the accused helped to restrict the shift. But principles of innocence could be applied to the complainant, so could propel the shift. By making it no longer mandatory for a judge to give a corroboration warning, it was hoped that a jury would not be inevitably swayed towards the accused. This benefitted the rape victim. The 1985 Crimes Amendment Act (no. 3) made it no longer necessary for judges to give a warning about the lack of corroboration, and if they decided to do so, no particular form of words was required.¹¹⁰

In some rape cases the defence argued that if a complaint was genuine, it would have been made at the first opportunity.¹¹¹ This was challenged by feminist knowledge that held many rape victims did not, for a myriad of reasons, make early complaints. Both rape bills assimilated feminist knowledge and provided that judges, if they so chose, explain to the jury that there could be good reason for the delay. This received significant support¹¹² and was made law. Another twenty-three submissions recommended that a judge 'should,' rather than 'may,' explain the delay.¹¹³

¹⁰⁸ Commentator quoted in *ibid.*

¹⁰⁹ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 73.

¹¹⁰ Harrington in Sullivan, p. 45.

¹¹¹ Davies, "Rape Law Reform Bill: Summary of Submissions", p. 11.

¹¹² *ibid.*

Procedural changes

National's 1983 Rape Law Reform Bill (no. 1) made a number of procedural changes intended to reduce the trauma of the rape victim at a trial, and subsequently encourage more reporting of rapes. Labour's 1984 bill added more. All but one, relating to suppression of a complainant's name in court, were enacted. Victims interviewed in the 1982 Rape Study had recounted traumatic experiences, and its authors emphasised that much of this distress was avoidable.¹¹⁴ Procedural changes were practical, and avoided "the complex issues presented by the problem of rape and sexual abuse".¹¹⁵ The majority of submissions welcomed the proposals. The extent of changes was, however, restricted by discourse on justice which included constructions of a 'fair trial', the right to face one's accuser, and principles of innocence.

Because of the renegotiated construction of the offence 'sexual violation', the safeguards against oppressive and irrelevant questioning of the complainants about their previous experience with other persons besides the accused had to be re-enacted.¹¹⁶ Questions of this nature required leave of the judge. Labour's bill added the words "directly or indirectly" to questions of this nature put to the complainant because it was possible to avoid the intent of the previous Evidence Amendment Act (see chapter 2).¹¹⁷ Eight submissions on the first bill recommended that a complainant's sexual history should not be admissible as evidence under any circumstances. These included those from Wellington RCC and the Institute of Criminology at Victoria University.¹¹⁸ Allowing as evidence past sexual behaviour with the accused projected the belief that once having given consent a woman was more likely to give it again. The fear of 'lying women' still operated on some level. In contrast, past convictions of an accused were not admissible evidence.

¹¹³ *ibid.*

¹¹⁴ Young, p. 124.

¹¹⁵ Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹¹⁶ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 72.

¹¹⁷ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6269.

¹¹⁸ Davies, "Rape Law Reform Bill: Summary of Submissions", p. 11.

The 1982 Rape Study had highlighted the lack of control over defence counsel that J.P.s exercised in preliminary hearings.¹¹⁹ Defence counsel often took the opportunity to assess the complainant's character, and vulnerability under cross-examination, to devise a trial strategy.¹²⁰ The 1982 Rape Study also related the difficulty that victims experienced in public giving evidence, "the details of which were often intimate, embarrassing and often humiliating to them".¹²¹ Both reform bills provided for the complainant to give evidence in written form at preliminary hearings unless a complainant elected to give oral evidence, and/ or the judge found it necessary in the interests of justice that they did so. The New Zealand Law Society was the principal opponent of these changes. Its argument began with the possibility that each complaint of rape was false, and the defendant should have the right to test the Crown's evidence to the fullest degree.¹²² This invoked the right to face one's accuser. However, a preliminary hearing was to ascertain whether there was a *prima facie* case to be answered, not to give defence counsel an opportunity for extensive cross-examination.¹²³

Preliminary hearings were now to be heard by a district court judge rather than J.P.s. If a complainant gave oral evidence, the court was to be cleared of those not involved in the proceedings. Media representatives and persons expressly permitted by the judge were able to remain, but judges were given powers to prohibit publication of details of the criminal acts alleged to have occurred. Clearing of the court during oral evidence by a complainant was applied to the High Court too. Labour's bill also provided that complainants would not be required to state their names, addresses, and occupations in open court. This was intended to reduce the risk of intimidation and harassment of complainants at home or at work by friends of the accused.¹²⁴ However, suppression of the complainant's name was not enacted because it was thought impractical to conduct an entire hearing without it.¹²⁵ And the act that passed obliged the judge to advise the

¹¹⁹ Young, p. 149.

¹²⁰ *ibid.*, p. 150.

¹²¹ *ibid.*, p. 126.

¹²² Secretary of Justice, "Rape Law Reform Bill. Report of the Department of Justice", p. 15.

¹²³ *ibid.*

¹²⁴ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, pp. 72-73.

¹²⁵ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6269.

complainant of the right to request that a person be present in support while they gave evidence.

The enacted procedural changes were welcomed. They made for a less traumatic experience in a trial. But there were other recommendations made in submissions that were not considered. A number were concerned at the effect of the defendant's presence when the complainant had to give evidence. Some suggestions included screening the accused from the complainant, if the complainant so requested, the defendant not being in the complainant's direct line of vision, and the exclusion of the defendant from the court during the giving of a complainant's evidence.¹²⁶ These proposals were thought to interfere with the right of an accused to face their accuser. The entrenched legal right of the accused limited changes benefitting the complainant.

Penalty and the penalised

Debate centred on the length of prison term. National's 1983 Rape Law Reform Bill (no. 1) proposed to "flag for the courts the principle that rape should always be punished by a prison term unless there were unusual circumstances".¹²⁷ There was a widespread belief, shared by some members of the National party, that the average penalty for rape of a little more than four years, was too short.¹²⁸ Both Jim McLay and Robert Muldoon had called for tougher penalties¹²⁹ but the bill did not increase prison terms. While National politicians endorsed imprisonment, submissions gave no clear message on the matter.

Because there had not been time for the Statutes Revision Committee to consider penalties, the second bill's proposal was the same as the first.¹³⁰ However Labour did not favour higher penalties and rejected the National Party's suggestion that the maximum penalty should be increased. It did not believe there was any evidence that heavier penalties would deter rape.¹³¹ There was also a concern that penalties for rape should not

¹²⁶ Davies, "Rape Law Reform Bill: Summary of Submissions", p. 9.

¹²⁷ Jim McLay, Minister of Justice, *NZPD*, vol. 455, Dec 1983, p. 4801.

¹²⁸ *ibid.*, and John Banks, National M.P. for Whangarei, *NZPD*, vol. 457, Aug 1984, p. 81.

¹²⁹ See chapter 5.

¹³⁰ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 457, Aug 1984, p. 72.

¹³¹ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6267.

get out of line with those for other serious assaults.¹³² The Statutes Revision Committee felt that if the penalty for sexual violation equalled that for murder, there would be nothing to stop rapists from murdering their victims to silence them.¹³³

The re-negotiated meaning of 'rape' as violence placed it in a much wider context of 'violence against the person'. This supported the feminist construction of rape as violence, not sex, but it also worked against feminist intentions to address broader and deeper questions about sexuality and power in society. The image of the rapist as a stranger supported National's calls for higher penalties; the narrative of an elderly woman raped in her own home being invoked several times. Paul East, National M.P. for Rotorua, saw rapists as "thugs".¹³⁴ It was unlikely he was referring to fathers and uncles. Stranger rapes were violent. But if rape was violence too, then it could be graded against other forms of violence. A more 'violent' attack could be constructed as deserving of a higher penalty. And so Paul East could call for sterner penalties for elderly women in their own homes raped and assaulted by young thugs.¹³⁵

Understanding rape as violence also supported concerns of the Department of Justice and the Criminal Law Reform Committee over the same treatment for the various forms of sexual violation previously discussed.¹³⁶ The Labour government took on these concerns. It added the words, "including the nature of the conduct constituting the offence, because of the wide range of conduct included in the offence of sexual violation" to its bill. "The section might otherwise have an excessively harsh effect in relation to lesser forms of the offence."¹³⁷ This belief, evident in the older rape laws, expressed a male narrative of sex. Phallic pleasure did not necessarily coincide with female pleasure, nor did its symbolic power coincide with a woman's interpretation of violation.

¹³² Reported in Humphries, p. 132.

¹³³ Fran Wilde, Labour M.P. for Wellington Central, *NZPD*, vol. 468, Nov 1985, p. 8841.

¹³⁴ Paul East, National M.P. for Rotorua, *NZPD*, vol. 465, Aug 1985, p. 6270.

¹³⁵ *ibid.*

¹³⁶ Secretary of Justice, "Rape Law Reform Bill. Report of the Justice Department", p. 12, and Submission from Criminal Law Reform Committee, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹³⁷ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6267.

Generally, feminists felt that rape was one violent act, and any other violent acts that occurred with it should be dealt with separately. Most feminist groups were not in favour of higher penalties. They were not seen as a solution to rape. Instead they focussed on the causes of rape. The Mental Health Foundation did not support higher penalties because, as well as “tackling the problem from the wrong end”, they could even lead to juries acquitting because they did not feel the offence warranted such a penalty.¹³⁸

The softening of a mandatory sentence in the passing of the act did not appear to attract feminist attention; it probably went unnoticed. It was contrary to feminist knowledge that held no qualitative differences among the offences covered in the wider definition of sexual violation. Narratives of rape victims had expressed their experiences of other forms of sexual violation as just as, or more, repugnant than rape. It was also contrary to the next enacted change that raised the penalty for sexual violation by sexual coercion from seven to fourteen years. The result of the two changes together meant, on the one hand, an acceptance of rape victims’ narratives, while on the other, a retaining of discretionary powers when sentencing, allowing a distinction to be made among the various forms of sexual violation.

The passing of the Labour’s Rape Law Reform Bill (no. 2) replaced only the crimes of rape and attempted rape. Feminists were critical of this. Other sexual offences involving girls and boys, e.g. incest, were retained in the Crimes Act, and all carried a lesser penalty than rape. So a father figure who raped a girl could still be charged with sexual intercourse with a girl under care and protection, which had a seven-year maximum penalty versus fourteen years for rape.¹³⁹

The Mental Health Foundation criticised both rape law reform bills’ focus “upon the conviction and imprisonment of those who have committed so-called ‘stranger’ rapes”, and the avoidance, possibly even deliberate avoidance, of issues presented by rape within

¹³⁸ Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹³⁹ Rankine, p. 24.

the family.¹⁴⁰ The National Collective of Independent Women Refuges wanted the reformed law to cover children under the age of 16 years.¹⁴¹ Women Against Sexual Abuse of Children believed that separating incest from the criminal offence of rape left unchallenged an attitude of many men who felt they had a right to abuse the children and young women in their family: “the lesser penalty for incest perpetuates the assumption about a man’s proprietary rights over his family, and trivialises the suffering of great numbers of children and young women”.¹⁴² Because of the power differential between adult male and child or adolescent, the group recommended that in cases of incest, girls under the age of 16 be presumed to lack the power of consent.¹⁴³ Girls under 16 were at times treated as adult women by defence counsel in court and could be subjected to the rape myths applied to adult women.

By the 1980s, feminist knowledge based on rape narratives projected a different construction of the rape victim (see chapter 3). Rape crisis centres were reporting that historical child rape, i.e. women who had been raped in the past as children, was the most commonly reported rape. Feminists conferred on children the same civil and human rights as adults. The disparity in penalties according to the status of the victims – adult woman versus a child within a family – may have been an outcome of the bills’ focus on stranger rape and the effect of the more powerful discourse on family. There was resistance to feminist knowledge that women and girls were in most danger of sexual violation from male relatives.

What the new law was silent on

Many submissions on the bills took the opportunity to comment on the lack of commitment to fund education, rehabilitation and victim support services. Twenty-three submissions to the first bill advocated a nation-wide rape education programme to change the socialisation process whereby most rapes were seen as a normal, something society

¹⁴⁰ Submission from Mental Health Foundation, ABGX W3706, box 44, part 2, Submissions rape law reform bill and ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁴¹ Submission from National Collective of Independent Women’s Refuges, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁴² Submission from Women Against Sexual Abuse of Children, ABGX W3706, box 44, part 2, Submissions rape law reform [ANZHO, Wellington].

had to live with. Twenty advocated funding for victim support groups, and 18 recommended that rehabilitation be an integral part of the sentence.¹⁴⁴

Labour M.P.s were outspoken in their criticism of the absence of social reform in National's 1983 bill, but Labour's Rape Law Reform Bill (no. 2) did not incorporate any of these recommendations either, despite submissions urging it to do so. Labour conceded that the legislative changes were unlikely to result in any decrease in the incidence of rape offences, but believed that the bill reflected "the important principle that women, who are primarily the victims of sexual offending, are entitled to the full protection of the law against the invasion of their sexual autonomy".¹⁴⁵

Somehow this does not sound very reassuring. Were women entitled to protection only after the event? If to protect means to guard, defend or shield from injury or attack, the law was clearly ineffective. While the Labour government acknowledged more needed to be done "at other levels to complement legislative reform",¹⁴⁶ it made limited efforts in this direction. It avoided the "complex of issues" the Mental Health Foundation had referred to, i.e. an engagement with wider socio-cultural discourses. Despite recognising the need of wider social changes, it was resistant to making these. The image of the rapist as a violent stranger may have restricted engagement with such discourses. Discourses on sexuality and the family may also have constrained the power of feminist discourse to shift this image.

A year after the introduction of Labour's bill, Ann Hercus, Minister for Police, Social Welfare and Women's Affairs, said that all the portfolios she was responsible for were "involved in a planned strategy of education on the subject of violence, particularly against women".¹⁴⁷ She did not elaborate. The government did put funding of rape crisis centres on a permanent basis in 1984 (see chapter 5). But this, and her promises of more

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*, p. 8.

¹⁴⁵ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6270.

¹⁴⁶ *ibid.*

¹⁴⁷ Ann Hercus, *NZPD*, vol. 465, Aug 1985, p. 6274.

to come,¹⁴⁸ were not enough to satisfy community groups working against sexual violence. Subsequently many submissions on the second rape bill repeated calls to address these absences.

Feminists saw sexual violation as both symbol and act of women's subordination to men. Feminist groups working against sexual violence were united in their calls for the funding of education programmes, self-defence classes for girls and victim support services. Auckland RCC concluded that, "tinkering with the law by itself will do nothing for most women and children who are being raped in Aotearoa unless it is supported by broader legislative and police changes".¹⁴⁹ Similarly, the National Centre for Community Volunteers believed, "our society urgently requires adequately funded training, education and rehabilitation programmes in schools, prisons and the work place".¹⁵⁰ Because these groups located the rapist within 'normal' masculinity, they called for greater changes than the government intended.

Attitude changes were considered more important than symbolic ones. At the symposium on rape, the vast majority had identified changing people's attitudes as an objective of law reform; 40% believed it to be the most important.¹⁵¹ While the law could announce substantial improvements in the status of rape victims, the actual interpretation of law depended on a variety of discourses essentially external to the law.¹⁵² As Whangarei RCC pointed out, little change could be expected in trial outcomes when members of a jury are likely to "have been well educated" in rape myths.¹⁵³ The 1982 Rape Study revealed that many working within the legal system had completely absorbed rape myths. Geoffrey Palmer had said, "it is particularly important that those who administer the criminal justice system are guided by the change in the bill".¹⁵⁴

¹⁴⁸ Ann Hercus *NZPD*, vol. 457, Aug 1984, p. 77.

¹⁴⁹ Submission from Auckland Rape Crisis, ABKH W4105, 30-3-16-3, box 30, Rape legislation [ANZHO, Wellington].

¹⁵⁰ Submission from National Centre of Community Volunteers, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁵¹ Young, p. 21.

¹⁵² Susan Edwards, *Female Sexuality and the Law*, Oxford: Martin Robertson, 1981, p. 174.

¹⁵³ Submission from Whangarei Rape Crisis, ABGX W3706, box 45, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁵⁴ Geoffrey Palmer, Minister of Justice, *NZPD*, vol. 465, Aug 1985, p. 6270.

Despite political rhetoric, there were no new initiatives to bring about further change. This limited the benefits of the changes already made. The law still contained many subjective definitions, such as 'reasonable'. Given the conservative views of the New Zealand Law Society, expressed in submissions, further change was unlikely to happen on its own. If attitudes remained the same, rape victims would still be discouraged from reporting offences, and they would still experience further trauma when engaged with the legal process.

By locating rape within a social context rather than a more narrowly legal one, links could be made with other social practices. Sexist and racist advertising was seen as a "powerful vehicle for inciting violent abuse and belittlement of females".¹⁵⁵ Some feminist and Maori groups called for controls on pornography as the motivation for using pornography and for committing rape were viewed as identical.¹⁵⁶

However, not all feminists made a link between pornography and sexual violence against women. Allanah Ryan believed it was simplistic to reduce the link between pornography and rape to one of theory and practice, and that men and women had rights to be sexual objects.¹⁵⁷ This assumed that women and men had equal sexual and social status. It also presented a view of pornography as sex. But as Catherine MacKinnon argues, the violation of women and children that is essential to the making of pornography is obscured. The objects in pornography are the socially powerless – the poor, the young, the innocent, the desperate, the female.¹⁵⁸ For Catherine MacKinnon and many others, pornography sexualises women's inequality and interweaves sex with violence.¹⁵⁹

Pornography talks about sexual and gender relationships, and therefore forms part of the discursive field for making statements about sexuality and gender. This does not mean it

¹⁵⁵ Submission from Kotiri Maori Women's Welfare League, p. 5, ABGX W3706, box 44, part 2, Submissions rape law reform bill [ANZHO, Wellington].

¹⁵⁶ Submission from Women Against Sexual Abuse of Children in *ibid*.

¹⁵⁷ Allanah Ryan, "Policing – Pornography – A Repressive Strategy", *Broadsheet*, no. 158, May 1988, pp. 38-41, reprinted in *The Vote, the Pill, and the Demon Drink. A History of Feminist Writing in New Zealand, 1869-1993*, Charlotte Macdonald (ed.), Wellington: Bridget Williams Books, 1993, pp. 232, 233.

¹⁵⁸ Catherine MacKinnon, *Women's Lives. Men's Laws*, Cambridge, Massachusetts and London: The Belknap Press of Harvard University Press, 2005, p. 300.

will be the dominant discourse. But if one views pornography as more than explicit sexual images, and rather as a manifestation of gender inequality, it shares assumptions of gender sexuality that shape constructions of rape. And pornography itself exerts its own power, and reinforces the gender inequality from whence it came.

Given that sexual violence was constructed as a symbol and practice of gender inequality, links were also made with the dependent economic status of women. Recognising that this limited freedom to be safe, Auckland RCC recommended changes that would enable more raped women and children to escape violent fathers, partners, or employers, and survive by themselves. These included “an adequate living wage for women and men whether in paid employment or not”, “that the government increases its commitment to non-stereotyped job opportunities for women”, and “that the Housing Corporation provide housing for those women and children who are either homeless or lacking in safe accommodations”.¹⁶⁰

The new rape laws did not address the possibility of prevention; they appeared to accept sexual violence as inevitable. In effect, they defined rape as an individual problem rather than locating it within a social context, and as a singular, rather than an on-going event. While in part understanding rape as a crime of violence rather than sex, the new laws rejected the feminist construction of rape as a crime occurring within a framework of power imbalance. They avoided issues such as family sexual violence, problematic ‘normal’ male sexuality, and the social and economic power that men held over women that supported rape. But feminist knowledge based on rape narratives held that most rape victims were young and knew their attackers, and many of these experienced rape as on-going. Consequently, new rape legislation was selective of which victims it would help. And by not addressing social and economic power disparity between men and women, the laws did not address women’s fear of rape. They made no impact on the lives of women who practised restrictive behaviours so they would be safe.

¹⁵⁹ *ibid*, p. 303.

¹⁶⁰ Submission from Auckland Rape Crisis, ABKH W4105, 30-3-16-3, box 30, Rape legislation [ANZHO, Wellington].

Within the juridicial discourse, some long established concepts, like the right to not give evidence against oneself, facing one's accuser, innocent until proven guilty and *mens rea*, limited the effect of specific changes which could be made to improve a rape victim's experience in the judicial process. An understanding of rape as violence, while helping to construct rape as a serious crime, also obstructed feminist intentions of challenging male sexuality. Because power was eroticised, the male experience of rape could be sex, not violence. This supported a perception that different types of sexual violation could be graded. Male narratives of sex that ascribed power to the phallus continued to be privileged. This weakened the acceptance of feminist knowledge that held rape victims did not experience the various forms of sexual violation differently. The broader and deeper social discourses that constructed gender with its unequal dichotomous identities, and related discourse on the family, worked against changes to broader social and economic structures. Deeper discourse on gender appeared to submerge the newer feminist version that women, while different, were equal, and that women's status was not biologically determined.

CONCLUSION

Through language we make meaning of our lives. At any one time a number of discourses exist to make sense of our personal experiences: each of these offer different subject positions for individuals to adopt or institutions to practise. While the experience of rape is 'real' enough for victims, the name 'rape' is a social construction. Thus, how rape is constructed has important implications for the identities and experiences of rape victims and rapists, and the experience of all women. Whether certain situations are called rape or not will affect how they are experienced and made sense of.

Within a discursive space, one discourse has usually established itself as the dominant maker of meaning. Naming is power, and language a site of contestation and resistance. "Meaning making and control over language are important resources held by those in power."¹ Dominant groups use language "to define, label and rank".² But dominant meanings are inherently unstable, and are unfixed. At particular times contesting discourses arise. In the 1970s and 1980s, newer ways of talking and acting, in particular feminist discourse, widened the discursive space for making sense of rape. They challenged constructions producing the existing meaning, and effected a shift in this.

Until the late 1970s, the dominant construction of rape was produced through legal and medical discourses. Legal constructions of rape were primarily shaped by cultural assumptions of sexuality produced through medical knowledge. Male sexuality was constructed as being directly produced by a biological drive and woman the object that precipitated men's natural sexual urges. This discourse afforded very different rights, positions and responsibilities for men and women. The positioning of women as provocateurs upheld male sexual privilege, made women responsible for the standards of sexual propriety, and supported the belief that women 'asked for it'.

¹ Charlene Muehlenhard, Irene Powich, Joi Phelps and Laura Giutsi, "Definitions of Rape: Scientific and Political Implications", *Journal of Social Issues*, vol. 48, no. 1, 1992, p. 23.

² *ibid.*

Legal statutes constructing the crime of rape also derived from a male narrative of it. Thus, rape was gender specific, could not occur between married partners, was limited to the sexual act of intercourse, and because an accused needed only an honest belief that consent had been given, it was a male-defined event. Legal, medical and wider social practices assumed female sexuality as provocative. Medical knowledge constructed women as 'asking for it', as naturally untruthful, and rape as sex. These generated a 'blame the victim' attitude, and encouraged unsympathetic treatment of them. Until the 1970s, the dominant narrative of 'rape' was one in which a male stranger, either 'deviant' or over-amorous, got carried away with a 'she asked for it' kind of girl. This construction of rape meant women's rape narratives were not believed, and women were discouraged from reporting rape to either police or anyone else. Because rape victims drew on the same cultural knowledge as did others, they often described their experience as not being 'real' rape.

The production of legal and medical knowledge was historically a male activity. This "man-made"³ language constructed the experiences of men and privileged their personal, social and political needs.⁴ Sexuality was named in male terms. This meant women lacked names invested with their meanings, and women and men doubted women's interpretations of their experiences.⁵ Doctors, psychologists and judges became the authoritative knowers of female sexuality. Women's narratives of rape were silenced by the 'male' knowledge that rape was an unusual crime, rape was sex, and that women 'asked for it'.

As the women's liberation movement developed in the early 1970s, feminists challenged the assumptions about sexual violence. They provided a safe space for women to share their experiences. When victims began to share stories with one another, they realised that their experiences were not reflected in legal and social knowledge on rape. Feminists

³ Dale Spender in *ibid.*

⁴ *ibid.*

⁵ Dale Spender in Helen Bauchop, "The Public Image of Rape in New Zealand: A Case Study of Two Newspapers, 1950-1970", B.A. (Hons.) thesis, University of Otago, 1990, p. 33.

radically widened the discursive space for making sense of sexual violence by developing a feminist knowledge based on women's narratives of it.

This feminist knowledge was that a rape victim could be any woman, was more likely to be a child, was more likely to be raped at home, and suffered long-term trauma. A rapist was not distinguishable from other men, was most likely known to his victim, and had planned the attack. Because women did not experience penis/vagina rape qualitatively differently from other forms of sexual invasion, the construction of rape was widened. Rape was re-named as violence. Men had defined it as sex; women experienced it as violence. The significance of this feminist construction of rape was its re-naming of rape in women's terms.

Feminists developed an analysis of rape that blamed the rapists and the culture that produced them. Male violence against women was re-interpreted as an outcome of gender inequality and also as perpetuating it. Feminists interpreted gender as a social construction, and argued that people learnt 'sexual scripts' of male sexual aggression and female passivity that encouraged male violence against women. Legal and social practices were seen as supporting gender inequality.

Through feminist discourse on sexual violence, women resisted the subjectivities on offer for rape victims and formulated their own. Power can function in productive ways in discourse by producing new subjectivities. Rape victims were not to blame and women were 'knowers' of their own experiences. Feminist discourse impacted on internal discourse (how women themselves constructed meaning of their experiences), and provided a language for rape victims to describe better how they experienced rape. Women were 'speaking out'.

Breaking the silence had both political and psychological effects. In a society where powerlessness was associated with silence, women's voices were a symbol of power.

Speaking out was also considered essential for healing.⁶ The narratives of rape victims were being told and listened to. Many more women began to report rape, either to support services or police. More women began to eschew the traditional passivity that had characterised their lives. 'Speaking out' challenged the dominant discourse on rape and cleared space for a new construction of rape as embedded in the social order.

Having announced the problem of sexual violence, feminists were faced with the question of what to do about it. The feminist analysis had exposed women's oppression and suffering, but also their strength to survive and resist.⁷ Women addressed the needs of rape victims directly by setting up women's refuges and rape crisis centres. These women-only centres provided a safe space for women. They provided a positive environment in which women could reclaim their self-worth and self-determination. Victims were listened to, rather than advised, and believed, rather than judged. Empowered victims challenged usual practices in which others made decisions for the women and treated them as incompetent. The very nature of the women-only centres was radical. Critical of conventional hierarchical 'male' structures, feminists ran their organisations on a collective and co-operative basis.

Feminists used both conventional and unconventional means to circulate publically a critique of the existing construction of rape. They protested, organised seminars and speak outs, marched at night to reclaim public space, developed a feminist model of self-defence, set up neighbourhood self-defence groups, made submissions to government, and carried out education programmes. These feminist actions worked towards the elimination of rape by empowering women and changing wider social attitudes towards gender and sexual violence.

The feminist construction of sexual violence as a serious social problem resonated with a public perception of increasing sexual crime, the emerging discourse on victims of crime,

⁶ Jyngja Jung, "The Politics of 'Speaking Out': NESB Women and the Discourse of Sexual Assault in Australia", *Asian Journal of Women's Studies*, vol. 4, no. 3, 1998, p. 116.

⁷ Miria Edmundson, "Feminist Response to Male Violence: Christchurch", *Race, Gender, Class*, no. 2, Dec 1985, p. 35.

and the pursuit of women's and civil rights. By the 1980s, rape had become a widely debated subject. Feminist challenges impacted on external (other's) constructions of rape. Feminist knowledge that there was a gap between incidence and reporting rates of rape, that any woman was a potential victim, that rape was violence, and that victims suffered psychological costs, entered popular and academic discourse on sexual violence. However, older meanings of rape continued to operate alongside newer ones. The image of a rapist as a stranger proved particularly resilient, as did the image of a rape victim as a woman rather than a child.

The major impact of feminist knowledge was on society's understanding of rape victims. Health professionals, once silent on sexual violence, began to acknowledge and address the psychological post-trauma experienced by victims. Some became outspoken advocates for a new deal for rape victims. Feminists' approaches to women in crisis shaped a new medical response to rape victims of counselling and the provision of social services. For example, feminist principles shaped the establishment and culture of the HELP centre. Victims' stories and their long-term suffering were more likely to be related in the media. And the government put funding for rape crisis centres, however meagre, on a permanent footing.

The government responded to the new understanding of rape by proposing law changes that assimilated feminist views, but merged them with rape as a law-and-order problem. This can be described as containment, a concept referring to a dominant power's tendency to turn impulses and meanings away from their original course and toward the maintenance of current understandings, beliefs and practices.⁸ While feminists and others were able to negotiate a better deal for rape victims within the legal system (one limited by entrenched legal concepts within juridical discourse), and a construction of rape that better reflected women's experience of it, the law-and-order construct displaced feminist knowledge that rapists were more likely to be known to the victim, and that women were more at risk in their own homes than in public places. Political and legal discourse

⁸ Lisa Cuklanz, *Rape on Trial: How the Mass Media Construct Legal Reform and Social Change*, Philadelphia: University of Pennsylvania, 1996, p. 5.

continued to focus on imprisoned rapists rather than on everyday male behaviour. Broader and deeper discourses of gender and the family limited changes. This meant law reform was unlikely to make a significant impact on the experiences of women and children raped by men they knew, and on women whose lives were compromised by the fear of rape.

It seems that the feminist construction of rape as violence rather than sex may have undermined an acceptance of feminist knowledge that the culture, gender 'scripts', and gender inequality produced rapists and rape victims. Constructing rape as violence may not have effectively displaced the male narrative of rape as sex. It may have prevented a serious critique of sexuality itself.

New legislation was significant as a symbol of change, but the law tended to frame rape in terms of individual pathology, and offered individual remedies. The law left untouched the institutions and practices that generated violence against women and their subordination.⁹ By limiting the political response to law reform, the government failed to address social and economic practices, and power disparities between men and women, that supported what feminists described as a 'rape culture'.

Legal reform enacted by the Labour Government in 1985 did not address the discursive context in which the meaning of rape was produced. Actual interpretation of the law is dependent on a number of discourses that are external to it. If images and attitudes that formed the older construction of rape continued, newer constructions of rape and rape victims could eventually become tainted with these. If nothing was done to address people's education in 'rape myths', should they have been expected to have different attitudes towards rape and rape victims? When images objectifying women continued to be practised, e.g. in advertising, literature, pornography, then, the construction of rape victims as 'asking for it', and women as the passive object of men's desire, could persist.

⁹ Loraine Gelsthorpe and Allison Morris (eds), "Feminism, Politics and Action", in *Feminist Perspectives in Criminology*, Buckingham: Open University Press, 1990, p, 143.

In discourse, presence implies absence. Words implicitly talk about what they are not. Discourses impact on each other. This thesis did not address the effect of law reform, but an analysis of the reform suggests a disappointing outcome. If constructions of male sexuality did not shift, would new constructions of the rape victim displace the older: would men be expected to regard less obvious coercive sexual behaviour as rape rather than sex? If social and economic practices that subordinated women continued, would men be expected to view women as equal and autonomous sexual beings? If women were constrained financially through gender practices, could they be expected to have a choice to leave sexually abusive relationships in which they were financially dependent?

However, despite the glaring absences evident in the 1985 legislative changes, the law provided a better deal for rape victims and women more broadly. Marital rape was identified, so married women gained legal sexual autonomy. The law recognised a wider range of sexual invasions that women experienced as rape. A belief in consent had to be based on 'reasonable' grounds rather than an individual's subjective feelings. Physical injury was not necessary to prove rape. Procedural changes meant a rape victim's experience in court should be less traumatic. While it is difficult to measure, some accounts suggest shifts in police attitudes, in schools, and among the public.

"Knowledge about any social struggle is socially constructed through struggles between groups over who has the power to establish their argument as truth."¹⁰ In the 1970s and early 1980s,¹¹ feminists engaged in a power struggle with traditional bodies of knowledge for the meaning of rape. Feminists announced the problem of sexual violence. Their campaign against sexual violence was successful in distinct ways. Despite the inevitable problems arising from the early separatist feminist principle that viewed all men as potential rapists and all women as potential rape victims, feminist discourse provided a voice to women as a victimised gender and made them less vulnerable. They radically widened the discursive field for making sense of rape. Although rape continued at an unabated rate, there was now space for women's stories to be told and listened to, a rape

¹⁰ Amy Chasteen, "Constructing Rape: Feminist, Change and Women's Everyday Understandings of Sexual Assault", *Sociological Spectrum*, vol. 21, issue 2, April 2001, EBSCOHOST, p. 2.

¹¹ Of course, the feminist struggle against sexual violence continues.

victim was more likely to be treated sympathetically, and there was support for rape victims' healing.

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