

**REDEFINING RAPE: SEXUAL VIOLENCE IN THE ERA OF SUFFRAGE AND SEGREGATION** by Estelle B. Freedman. Cambridge, Massachusetts, and London: Harvard University Press, 2013. 416 pp. \$25.08 hardcover.

INTRODUCTION<sup>1</sup>

A recent study has shown that nearly one in three heterosexual men in college would rape a woman if they knew they could get away with it, and only a little under half of that group of men would actually call their actions “rape.”<sup>2</sup> It seems that for many heterosexual men, forcing or coercing a woman to have sex does not constitute rape. To them, and to many members of the public, rape remains a strange man’s violent attack on an unaccompanied woman in the park late at night.<sup>3</sup> But this vision does not reflect the reality: about two-thirds of rapes are committed by someone the survivor already knows.<sup>4</sup>

Misconceptions about rape have created a systemic problem. American society has created many qualified versions of rape, such as date rape, acquaintance rape, forcible rape, and “real” rape. While feminists and anti-rape activists may think that the appropriate definition of rape is natural or self-evident, society has yet to agree on a definition. What does this mean for the criminal justice system? For one thing, only about two percent of rapists will serve even one day in prison.<sup>5</sup> With politicians like Todd Akin drawing

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1. In *Redefining Rape*, Freedman portrays rape, and sexual violence more generally, as something a man does to a woman. She does not address the existence of sex or gender identities outside of this binary and only briefly touches upon homosexuality, as discussed below.
  2. See Sarah R. Edwards et al., *Denying Rape but Endorsing Forceful Intercourse: Exploring Differences Among Responders*, 1 *VIOLENCE & GENDER* 188, 190 tbl.1 (2014) (reporting that 31.7% of study participants indicated they would force a woman to have sexual intercourse, while only 13.6% indicated any intentions to commit “rape”).
  3. Note that most men are not rapists, but most rapists are men; similarly, most women are not rape victims, but most rape victims are women. See *Statistics*, BOSTON AREA RAPE CRISIS CTR., <http://www.barcc.org/information/facts/stats> (last visited Feb. 22, 2015) (reporting that nine in ten rape survivors are female and that 99% of female and 85% of male survivors were raped by a male).
  4. *The Offenders: The Rapist Isn’t a Masked Stranger*, RAPE, ABUSE & INCEST NAT’L NETWORK, <https://www.rainn.org/get-information/statistics/sexual-assault-offenders> (last visited Feb. 22, 2015).
  5. *Reporting Rates: Why Will Only 2 Out of Every 100 Rapists Serve Time?*, RAPE, ABUSE & INCEST NAT’L NETWORK, <https://www.rainn.org/get-information/statistics/reporting-rates> (last visited Feb. 22, 2015).

distinctions between rape and “legitimate rape,”<sup>6</sup> and jurors continuing to be influenced by the popular conception of rapists as strangers in the bushes, it is clear that America needs a definition of rape that can ensure justice to survivors.<sup>7</sup> Without such a definition, certain members of society will continue to believe that many women’s experiences of rape are not *actually* rape. Currently, only thirty-two percent of rapes are reported to the police,<sup>8</sup> despite the fact that one in six women and one in thirty-three men are victims of attempted or completed rape at some time in their lives.<sup>9</sup> Thus, the vicious cycle continues: many men rape women if they think they will get away with it, and even more will do so if they do not think of it as “rape” per se; society demonizes and silences women survivors by diminishing the seriousness of their sexual assault experiences; even when women *do* report, the criminal justice system rarely convicts their offenders, thereby setting the stage for the cycle to continue.

This continual debate over how to define rape is at the center of Estelle Freedman’s book, *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation*. Viewed as a historiographical text, Freedman’s *Redefining Rape* underscores how various communities defined and redefined rape throughout American history, with a particular focus on the decades before and after the turn of the twentieth century. Freedman links historical debates and activism surrounding the issue of sexual violence with even broader social movements around issues such as suffrage and anti-lynching to highlight the development of notions of citizenship. Over the course of the book, Freedman continuously draws connections between an individual’s type or level of citizenship—that is, the level and nature of an individual’s permitted involvement in society—and the law’s treatment of that person in the context of rape. Freedman posits that “[t]he history of repeated struggles over the meaning of sexual violence reveals that the way we understand rape helps determine who is entitled to sexual and political sovereignty and who may exercise fully the rights of American citizenship” (p. 11). This sentiment is one of the main conclusions Freedman draws from her survey of this “history of repeated struggles” (p. 11). Throughout her discussion, Freedman relates the effects of changing definitions of rape on various identity groups to the simultaneous development of citizenship status.

This book review begins by addressing the different ways of understanding Freedman’s *Redefining Rape*. Subsequent sections provide a summary of the book while highlighting the unintended consequences of various actions taken by individuals and groups on all sides of the debate on how to define rape.

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6. See Charlotte Alter, *Todd Akin Still Doesn’t Get What’s Wrong with Saying “Legitimate Rape,”* TIME (July 17, 2014), <http://time.com/3001785/todd-akin-legitimate-rape-msnbc-child-of-rape>.

7. This definition of rape should include the experiences of men, members of the LGBTQ+ communities, and members of historically marginalized and/or disfavored populations, such as prisoners and prostitutes, among others.

8. *Reporting Rates: Why Will Only 2 Out of Every 100 Rapists Serve Time?*, *supra* note 5.

9. *Statistics*, *supra* note 3.

Throughout the review, I interlace commentaries and critiques of Freedman's book. Next, this review will identify some of the underdeveloped areas in the book. Finally, this review will discuss the ways in which the ideas and historical narratives Freedman provides are still seen and felt today. In the end, I find this book to be well written and researched as well as highly informative. Those steeped in the anti-rape movement will find themselves nodding along with Freedman as they note similarities among the various struggles and debates around issues of sexual violence from the founding of the United States to today. Those who are less familiar or at odds with anti-rape discourse may be prompted to question their assumptions about women, sex, and sexuality.

### UNDERSTANDING THE BOOK

In *Redefining Rape*, it is important to note that Freedman mainly focuses on people, not the law.<sup>10</sup> She centers her discussion on three groups of individuals: people who were viewed historically as potential rapists—mainly black men; people who were viewed historically as possible rape victims—mainly chaste, wealthy white women; and people who advocated for legal reform to better address the issue of sexual violence—primarily activists in the suffrage and anti-lynching movements. Freedman tracks these three categories of people through the nineteenth and twentieth centuries to see how society's ever-changing definition of rape has influenced their treatment under the law. Because Freedman structures the book thematically, focusing each chapter on a particular type of sexual violence or identity group without clearly delineating the time periods of her focus, the reader will not come away with a clear historical chronology. However, through this thematic approach, Freedman describes a conceptual circle that encompasses the groups of individuals who could be classified as rape victims. She shows how this circle has expanded and contracted over time and across geographic regions in the United States. For instance, throughout most of the nineteenth century, only chaste, wealthy white women were considered possible victims of sexual violence, especially in the antebellum South (pp. 21-23). However, the conception of "victim" expanded over time to include first chaste, wealthy white women (pp. 10, 21), then women or girls without regard to race (p. 77), then women and children of both sexes (pp. 10, 189-90), and finally anyone (at least in theory) (pp. 10-11, 288).

Beyond reading *Redefining Rape* as a descriptive account of the history of sexual violence, readers should also approach the book with an eye for normative takeaways. Freedman's analysis has the greatest impact if readers focus less on the historical chronology and more on taking an active role in

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10. When Freedman does talk about the interaction between rape and the law, she confines her discussion to criminal law. Notwithstanding some points on restraining orders, divorce, and reproductive justice, Freedman does not go into an in-depth analysis of civil remedies. Note also that her discussion on civil seduction lawsuits are not properly about rape per se, as discussed below.

trying to understand experiences that may be unlike their own, especially given the many diverse groups of people Freedman discusses in her analysis.<sup>11</sup> As a white, male-presenting individual, I found that approaching the book in this way allowed me to truly immerse myself in its powerful historical narrative.<sup>12</sup>

Understanding others' perspectives is only one layer of this normative approach: one should also use her narrative to analyze the unintended consequences of seemingly progressive policies by feminist, anti-racist, and liberal activists. This type of analysis will shed the most light on why rape has come to mean what it means (and does not mean) today. Although Freedman did not necessarily write the book to expose the unintended consequences of rape reform, a normative reading of *Redefining Rape* has the potential to give modern policymakers the tools to overcome, not repeat, the mistakes from which our ancestors have already learned.

As people in different identity groups—based on race, gender, sexual orientation, etc.—fight for freedom and justice, the consequences of their actions may not always be what they intended. The next section shows how Freedman sheds light on the unintended consequences of anti-rape activists' gains and losses in the socio-legal realm of sexual violence.

#### UNINTENDED CONSEQUENCES

Many brave individuals have worked tirelessly to effect positive change in America. In *Redefining Rape*, Freedman highlights important landmarks in activists' work to gain suffrage, end lynching, dismantle rape culture, and prevent and respond to incidents of sexual violence. However, it is important to note that many of these achievements have had unintended, and usually negative, consequences. For instance, many of the protections afforded female victims of sexual violence in the nineteenth and early twentieth centuries also served to reinforce women's subordination to white male supremacy.

#### “Protecting” Women

From the beginning of colonialism in America, anti-sexual violence and anti-rape laws were designed to protect men's privileged status in American society. By maintaining the legal disabilities of African American men and women of all races, white men were able to protect their sexual prerogatives and

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11. Cf. Annelise Heinz, *Why Literature Matters for Social Justice*, CLAYMAN INST. FOR GENDER RES. (Oct. 14, 2013, 11:18 AM), <http://gender.stanford.edu/news/2013/why-literature-matters-social-justice> (“More understanding of alternative ideas promotes social justice by expanding readers' minds and allowing them to understand future experiences in a more nuanced and compassionate manner.”).
  12. See generally *Dear White, Straight, Cisgender, Man People: You Are Privileged*, IT'S PRONOUNCED METROSEXUAL, <http://itspronouncedmetrosexual.com/2014/05/dear-white-straight-cisgender-men-privilege/> (last visited Mar. 13, 2015) (“We can have conversations that will expose us and make us vulnerable, make us question ourselves and find answers, help us better understand ourselves and others.”).

maintain their high status of citizenship (p. 32). In the decades after the Civil War, laws protecting women from sexual violence were often designed to preserve female chastity (pp. 21-22). Thus, rather than protect the woman “as the injured party,” laws were meant to preserve a woman’s worth to her father (and family) and her future husband (pp. 21-22). In the suffragist era, some suffragists asked “how women could depend on chivalry” when men themselves posed the greatest danger to women (p. 53). However, some individuals continued to advocate for male protection of women on grounds that men were the stronger and more physically capable sex (pp. 76-77, 234-35).

Even where women advocated for protecting one another, their progress sometimes served only to reify traditional gender norms. In some cities at the turn of the century, women were hired as policewomen, in part to address the street harassment that women were facing (pp. 204-05). In other states, activists called for women to serve on juries, arguing that female jurors would better understand the plight of female victims of sexual violence and exert a “maternal influence” on the adjudication of cases (pp. 58-59). These arguments served to reinforce traditional gender roles. Freedman does not make clear why these women activists chose to emphasize women’s feminine qualities as part of their advocacy efforts. Was it because, as Freedman claims, “whenever women gain access to male privilege, some critics see portents of a masculinity crisis” (p. 179)? Perhaps these women were attempting to preempt the social backlash of hypermasculinity and misogyny they knew would come by playing up their purportedly feminine qualities so they could engage in the public sphere without challenging traditional gender norms. Freedman’s discussion would have been more effective had she provided a deeper analysis of the ways in which women sought to navigate a social climate that was resistant and even hostile to women’s exercise of legal, social, and political power. Additionally, a more in-depth analysis of women activists’ intentions in relying on gender stereotypes to advance their social and political goals would allow modern-day scholars to better evaluate the success or failure of activists’ efforts.

### **Rape of Black Women**

In discourses surrounding the need to “protect women,” the missing—though probably presumed—adjective before “women” was “white.” That is, all too often, black women were left out of the conversation of how to define rape. When it came to discussing the difficulties of being a woman, the conversation was really about white women; when it came to discussing the difficulties of being black, the conversation was really about black men. With oppression in the forms of racism and sexism, black women were often silenced in dialogues about sexual violence.

For some, the intraracial rape of black women was simply (and literally) impossible. Many white southerners believed a black woman could not be raped because she was innately immoral and thus lacked sexual sovereignty (p. 85). In

part because of the perceived immorality of the African American community, intraracial rape of black women was largely ignored by Americans for much of the nineteenth century (p. 83). In addition, the “protective stance” adopted by black women toward men in their communities in light of white fears about “black male rapists” often made black women more reluctant to come forward when they were assaulted by black men (p. 119). Unfortunately, the concerns of black women were largely ignored by those seeking to advance civil rights (p. 265). With the nationally famous Scottsboro case<sup>13</sup> and the rise of a male-led and male-dominated anti-lynching movement with strong roots in the 1920s and 1930s, the black press and activists in the National Association for the Advancement of Colored People (NAACP) tried to refocus attention on the issue of sexual violence perpetrated against black women by white men (p. 266). At the same time, these groups were reluctant to call attention to intraracial black rape out of fear that doing so would undercut civil rights activism (p. 266). Even as black women began to form their own women’s clubs in response to “the damaging, pervasive cultural stereotype of black female immorality” (p. 115), such clubs failed to address the issue of intraracial rape (p. 119). Thus, the unique concerns of black women were essentially made invisible as an unintended consequence of early civil rights efforts, subsumed under a broader preoccupation with racialized violence toward black men. In the late nineteenth and early twentieth centuries, black women in clubs called on white women to be allies (p. 249). Eventually, they were able to convince white women to call “for a single standard of respect for women of all races” (pp. 250-51).

Unfortunately, Freedman does not address the rape of black women in great depth, instead confining the bulk of her discussion of black women to this one chapter. Part of the reason may be that black women were mentioned less frequently in the primary source material. However, this gap in Freedman’s discussion is likely also due to the fact that Freedman spends a great deal of time discussing falsely accused black men as the victims in her historical narrative. Yet black women’s voices and stories are important to pay attention to.<sup>14</sup> Through their stories we can better understand how race and gender affect

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13. The Scottsboro case involved young black men sentenced to death for raping two white women. Many members of the anti-lynching movement, and even the judge, were skeptical of the women’s testimony because of their class, sexual history, and potential employment as sex workers (pp. 258-63). Even though there were many other alleged incidents of interracial rape in the South during this time period, the case gained national attention because of “the intervention of the Communist Party” and the NAACP (p. 253).

14. Black women are left out of other important discussions, such as the current national discourse on police brutality against the black community. See, e.g., Kate Abbey-Lambertz, *These 15 Black Women Were Killed During Police Encounters. Their Lives Matter, Too*, HUFFINGTON POST (Feb. 13, 2015, 7:30 AM), [http://www.huffingtonpost.com/2015/02/13/black-womens-lives-matter-police-shootings\\_n\\_6644276.html](http://www.huffingtonpost.com/2015/02/13/black-womens-lives-matter-police-shootings_n_6644276.html) (quoting activist and writer, Dream Hampton, as saying: “The reason why it’s important to center girls and women in this conversation is because the other narrative . . . is that this only happens to black boys and men . . . We have always only framed this as a black male problem, and it is time to tell the entire truth.”).

citizenship, as black women are forced to walk an impossible tightrope, “knowing [their] existence [is situated] at the intersections of racism and misogyny.”<sup>15</sup> Without a particular focus on women of color, any discussion of progress for women in general will be incomplete.<sup>16</sup>

### Statutory Rape and Age of Consent

As the legal and cultural definitions of rape changed over time, so too did the idea of who was considered a minor for the purposes of sex. While both state<sup>17</sup> and federal<sup>18</sup> laws today place the age of consent between sixteen and eighteen, some states used to set the age as low as ten years old (pp. 125-27). Historically, child victims of sexual violence have been treated more favorably and sympathetically than adults (p. 128). Because of society’s greater revulsion toward sexual violence against children, even white offenders faced lynch mobs and harsh sentencing, although non-white men remained disproportionately targeted for such punishment (pp. 30-31, 163).

Despite this concern for the well-being of children, many people took issue with the implementation of age of consent laws. Freedman argues that some people viewed the laws as an affront to the sexual privileges of men as well as a challenge to white supremacy more broadly (p. 142). Others found the difference between the male and female age of consent problematic, arguing that the laws unfairly punished men and boys for sexual conduct (pp. 140-41). After all, they argued, these laws failed to account for the girls who actually *did* consent or the boys who did *not* (pp. 140-41).

Opposition to age of consent laws did not come only from those concerned with the rights of men and boys. Some black women also feared that the laws would be used as another tool to target black men, while offering little protection for black girls (pp. 143, 155). Additionally, many suffragists and other feminists viewed the laws as paternalistic because they took away a young girl’s right to

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15. Hannah Giorgis, *Many Women of Color Don’t Go to the Police After Sexual Assault for a Reason*, GUARDIAN (Mar. 25, 2015, 7:49 AM), <http://www.theguardian.com/commentisfree/2015/mar/25/women-of-color-police-sexual-assault-racist-criminal-justice> (“To be a ‘good rape victim’ is to immediately report your assault to the police (even knowing you will likely never see ‘justice’), but to be a good *black person* is to avoid the police entirely because your life quite literally depends on it.”).
  16. See Brittney Cooper, *Feminism’s Ugly Internal Clash: Why Its Future is Not Up to White Women*, SALON (Sept. 24, 2014, 10:45 AM), [http://www.salon.com/2014/09/24/feminisms\\_ugly\\_internal\\_clash\\_why\\_its\\_future\\_is\\_not\\_up\\_to\\_white\\_women](http://www.salon.com/2014/09/24/feminisms_ugly_internal_clash_why_its_future_is_not_up_to_white_women) (“White women’s feminisms still center around *equality* . . . . Black women’s feminisms demand *justice*. There is a difference. One kind of feminism focuses on the policies that will help women integrate fully into the existing American system. The other recognizes the fundamental flaws in the system and seeks its complete and total transformation.”).
  17. See ASAPH GLOSSER ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS 6 tbl.1 (2004), available at <http://aspe.hhs.gov/hsp/08/sr/statelaws/summary.shtml>.
  18. See 18 U.S.C. § 2243 (2007).

control her own body and sexuality (pp. 144-45). In sum, many individuals seemed to think that the potential unintended consequences of age of consent laws outweighed the threat of sexual violence toward children. At this point in the discussion, Freedman declines the opportunity to offer suggestions for how legislatures might have tailored statutory rape laws to help assuage some of these concerns.<sup>19</sup>

After the number of prosecutions (of white men) under these new age of consent laws increased significantly, courts and legislatures in the early twentieth century started reining in the application of statutory rape laws by requiring witness testimony, applying higher standards of evidence, and allowing girls' past sexual history and chastity to be considered by juries and judges (pp. 148-49). Anecdotal evidence suggests that factors such as the race and class of the victims made at least some courts and public officials more reluctant to punish perpetrators of sexual violence (pp. 154-55). Other people supported these requirements out of a concern that the new age of consent laws unfairly targeted innocent young men (pp. 161-62).<sup>20</sup> By sapping the strength of statutory rape laws, however, states effectively granted men more political and civil rights while removing protections for citizens under the age of majority.

### Boys and Homosexuality

Despite their great political power in the realm of statutory rape, men were rarely seen as potential rape victims prior to the twentieth century (p. 170). Since "[r]ape statutes did not apply to same-sex relations," authorities initially used anti-sodomy laws "to prosecute nonconsensual sexual acts between men" (p. 171). When the sexual act involved two adults, both men were prosecuted, with one of the men considered an "accomplice" (p. 172).

During the early twentieth century, many statutory rape laws were amended to apply to both boys and girls as a way to better protect boys from homosexuals (p. 176). Despite these expanded protections, however, the courtroom drama looked the same: men used familiar arguments about lack of proof, the believability and character of the victim, and the presence of consent to avoid conviction (p. 177). Yet those convicted of sodomy were more likely to serve harsher and longer prison sentences than men convicted of raping a girl or woman (p. 178). This may have been due, in part, to the stigma surrounding

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19. For another discussion of the need for statutory rape laws despite the issues they may raise, see Heather Price-Wright, *Torrington Rape Case: This Is Why We Need Statutory Rape Laws*, MIC (Apr. 26, 2013), <http://mic.com/articles/38117/torrington-rape-case-this-is-why-we-need-statutory-rape-laws>.

20. During this time psychologists also applied a "new diagnostic category, the psychopath," to prostitutes and "sexually active young women" as a means of discrediting their allegations of rape (p. 157). Here, Freedman misses or ignores an opportunity to discuss the implications of this new psychological diagnostic category. Was this category also applied in cases involving other forms of sexual violence, such as sexual harassment, stalking, or male rape? Does the creation of the "psychopath" diagnostic category continue to affect the treatment of prostitutes and sexually active women in sexual violence cases today?

homosexual sex (p. 178). It may also have been the product of male privilege: male victims of same-sex rape were perceived by society as more believable and less likely to have engaged in prostitution (p. 178).

As the discussion above illustrates, early efforts to protect boys from rape failed to account for the possibility that men and boys could be raped by non-male perpetrators. Here, Freedman declines, or misses, an opportunity to discuss how or why men were or were not seen as victims of rape perpetrated by women.<sup>21</sup> Although she briefly discusses how some congressional committee members were concerned that age of consent laws would unfairly target young boys who “might have been more sinned against than sinning,” Freedman does not adequately discuss how rape laws have almost certainly perpetuated the idea that men could not be victims, only perpetrators, of sexual violence (pp. 140-41) (internal quotation marks omitted). According to the Department of Justice:

The longstanding, narrow definition of forcible rape, first established in 1927, is “the carnal knowledge of a female, forcibly and against her will.” It thus included only forcible male penile penetration of a female vagina and excluded oral and anal penetration; rape of males; penetration of the vagina and anus with an object or body part other than the penis; rape of females by females; and, non-forcible rape.<sup>22</sup>

The Department of Justice has only recently amended its definition of rape to include “[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”<sup>23</sup> However, it is not clear whether this new legal definition of rape applies when an offender forces another person’s penis into the offender’s vagina, anus, or mouth. Some male survivors of sexual violence remain skeptical that the new legal definition of rape will include such an act.<sup>24</sup>

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21. Although women are the disproportionate victims of sexual violence in the United States, one in thirty-three men “report[] experiencing an attempted or completed rape at some time in their lives.” *Statistics*, *supra* note 3. Note also that Freedman rarely discusses the possibility that women can be perpetrators of sexual violence. Buried in a paragraph about how slaveowners’ sexual privileges harmed enslaved men, she does acknowledge that during slavery, “[w]hite women, too, could coerce their male slaves to have sex with them” (p. 30).
  22. *Attorney General Eric Holder Announces Revisions to the Uniform Crime Report’s Definition of Rape*, U.S. DEP’T JUST. (Jan. 6, 2012), <http://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-revisions-uniform-crime-report-s-definition-rape>.
  23. *Id.*
  24. See, e.g., Anonymous & Amanda Mannen, *5 Bizarre Realities of Being a Man Who Was Raped by a Woman*, CRACKED.COM (Jan. 30, 2015), [http://www.cracked.com/article\\_21884\\_5-awful-realities-being-man-who-was-raped-by-woman.html](http://www.cracked.com/article_21884_5-awful-realities-being-man-who-was-raped-by-woman.html) (discussing the author’s experience as a male survivor of rape by a female and noting that the legal definition of rape does not seem to specify “whose vagina or anus” must be penetrated, the victim’s or the perpetrator’s).

### Street Harassment

After discussing the perpetration of sexual violence against boys and men, Freedman jarringly shifts gears to discuss street harassment.<sup>25</sup> Although a discussion of street harassment, or the “flirting” done by so-called “mashers,” is not something one might expect to be discussed in this book, Freedman is justified in including it, as it allows readers to gain a deeper understanding of rape culture and the sexual privilege enjoyed by white men (p. 191).

As women gained greater independence in the public sphere during the first decades of the twentieth century, they increasingly found themselves the victims of street harassment perpetrated by men (pp. 192-94). Despite efforts to address the problem, however, “[t]he image of the harmless street flirt began to supplant that of the dangerous male pest” after World War I (p. 203). Men were thus recast as victims of the campaign against “mashers”: after all, who could blame them for their behavior when women were dressing and behaving in provocative ways (pp. 204-05)? Moreover, men felt they were being unfairly targeted by policewomen, who were hired in many cities at this time, sometimes with the specific intent of cracking down on street harassment (pp. 204-05). With women claiming the political and civil rights due to them as citizens, men were claiming unfair treatment because their masculine dominance was being challenged. Importantly, though, Freedman acknowledges the influence of race on efforts to combat street harassment: street harassment only became a national issue when white women began to join the workforce in greater numbers (p. 209). She notes that many black women had entered the public sphere much earlier and were already accustomed to such harassment (pp. 82-83, 206, 209).

### Defending Black Men

Just as black women’s presumed lasciviousness often made them the targets of street harassment, so too did black men’s perceived lustfulness make them the targets of rape accusations. For most of America’s history (and some argue that this continues today),<sup>26</sup> black men were seen as stereotypical, “brutal” rapists (p. 90). Yet, given the way race shapes both the legal system and the media, it is hard to know how many rapes were actually committed by men of a particular race (p. 32). For instance, some have posited that mostly white men commit rape and other forms of sexual assault (pp. 5, 56, 237-38). However, Freedman’s argument would be more persuasive had she explained her methodology and provided data regarding the types of sources she used and the

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25. Throughout the book, the reader may find these transitions a little abrupt. This is, in part, a result of the way Freedman has organized the book—around categories of sexual violence and groups of people, with the sections only loosely tied to the historical chronology.

26. See, e.g., Tracey Owens Patton & Julie Snyder-Yuly, *Any Four Black Men Will Do: Rape, Race, and the Ultimate Scapegoat*, 37 J. BLACK STUD. 859 (2007) (discussing the “interdependence of criminal scape-goating and race” and examining the effects of false rape allegations against black men on rape survivors, black men, and women).

frequency with which she identified certain historical trends in the source material. Despite the absence of reliable statistics on rape, many individuals and groups have perpetuated this myth of the black rapist (p. 91). For decades during the era of segregation, black men were disproportionately pursued by law enforcement because of rape allegations (p. 92). After they were caught, black men would be tried before a white judge and a jury of twelve white “peers” and then sentenced to harsher sentences than white men convicted of similar offenses (p. 92).

After the Civil War, legal reforms made rape statutes more race-neutral and white people began to fear that black people would be treated too leniently (or equally) under the law (p. 97). As a consequence, white men turned to lynching as a way to punish black men accused of rape (p. 97). This racialization of lynching<sup>27</sup> was further perpetuated by elite white Southern women who lied to protect their chastity or their family’s honor (pp. 98-100). Indeed, many lynchings occurred in response to rape allegations made by a white woman against a black man with whom she had had a consensual relationship (pp. 93-99).<sup>28</sup> Even after lynching had become a widespread practice, white people continued to use the black rapist myth as a primary justification for any lynching of a black man, despite the fact that “the majority of these murders had nothing to do with sexual assault” (p. 100).

In vigorously defending black men accused of raping white women, both defense attorneys and the black press were more than willing to use the same tactic used by defense attorneys in cases involving white offenders: “[Q]uestion white women’s accounts of sexual assaults” (p. 236). This defense strategy was used with only greater frequency after Scottsboro<sup>29</sup> and the cases that followed it in the 1930s (p. 257). Due in part to this legal tactic, women were, and continue to be, shamed and distrusted when alleging rape (pp. 258-59). Thus, although these types of defenses undoubtedly served black men who were falsely accused of rape, they also helped keep alive the narrative that women are just “crying rape” when they make an allegation of sexual assault (p. 260).<sup>30</sup> This narrative

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27. In the early history of the United States, lynch mobs primarily targeted white men (p. 96). By the late 1800s, however, lynching had come to be “associated primarily with the South, the intimidation of former slaves, and the charge of rape” (p. 97).

28. Of course, just because a relationship is consensual per se does not mean that every or any sexual encounter between the individuals in that relationship is consensual. Consent is an active, ongoing process that must be gained for any and every sexual encounter and may be withdrawn at any time. It is thus important to acknowledge that sexual violence can and does occur in the context of consensual relationships.

29. See discussion *supra* note 13.

30. As a slight aside, Freedman introduces the idea that anti-miscegenation statutes could be linked to both racism and rape culture (p. 233). Many black men called for the decriminalization of interracial marriage and sex out of the belief that legalizing interracial marriage would help debunk the myth that white women would never consent to sex with non-white men (p. 233). In addition, the legalization of interracial marriage would help to “undermine the practice of concubinage, which allowed white men to have black mistresses who raised their children without the possibility of marriage” (p. 233). This type of aside is not uncommon in *Redefining Rape*, as Freedman sometimes chooses to address very specific

has persisted into the modern era even though it is almost never true.<sup>31</sup>

### Conclusion

An analysis of the unintended consequences of historical activists' well-intended work can serve current activists in their efforts to effect social and legal change in the area of sexual violence. It not only allows for a more accurate assessment of the relative successes and failures of historical social movements, but also serves as a cautionary tale for modern activists. For example, it is at least partly because of the legal defense strategy employed on behalf of both white and black men accused of rape—the discrediting of white women's testimony—that people today continue to approach rape allegations with skepticism. Additionally, Freedman illustrates how different categories of people were largely ignored in historical discourses. Black women were made largely invisible in early civil rights efforts, as activists were focused on protecting black men from being lynched. During the time periods included in Freedman's analysis, there was also no acknowledgment that women could be perpetrators of sexual violence, as the progress made on behalf of male survivors revolved almost exclusively around the notion of homosexual men as perpetrators. Unfortunately, this focus also served to stigmatize homosexual men. Finally, by trying to “protect” women in various ways—against street harassment, seduction, and statutory rape—anti-sexual violence activists sometimes unintentionally reinforced traditional gender norms and garnered more sympathy for perpetrators.

### UNDERDEVELOPED AREAS

Although Freedman deserves a lot of praise for her work, she may have stretched herself too thin in *Redefining Rape*, leaving certain parts of the book underdeveloped.

In a book entitled *Redefining Rape*, one may be surprised to find a discussion on seduction. Freedman has a chapter on seduction quite early on in the book (pp. 33-51). Seduction was the legal wrong where a man would promise a woman marriage if she had sex with him and then recant that promise (p. 38). If a woman were seduced in this way, she would lose her chastity and her father would bring the suit because he essentially owned her (pp. 40-41). From seduction law, three ideas can be extrapolated: chaste women are the only people who can be seduced and thus protected by law (pp. 39, 49); women are nothing more than the property of their fathers and husbands (pp. 35, 38); and

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issues/topics that are only loosely related to the broader subject matter as a way to enhance her discussion.

31. Various studies conclude that only 2-10% of rape reports are false. See Michelle Ye Hee Lee, *The Truth about a Viral Graphic on Rape Statistics*, WASH. POST (Dec. 9, 2014), <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/12/09/the-truth-about-a-viral-graphic-on-rape-statistics>.

white women can be sexually coerced by those they already know (p. 51). Yet Freedman's discussion of seduction laws could be better developed since it essentially ends at the turn of the century without explanation. Moreover, Freedman does not draw more than a couple of clear connections between seduction laws and laws surrounding rape. Without a better understanding of why she included seduction at all, the reader may be left wondering what to do with this tangentially related topic.

Furthermore, though Freedman attempts to cover the most salient aspects of what it means to be an American citizen by tackling multiple identities, such as gender, race, age, and class, she may have chosen breadth over depth. To be clear, Freedman makes sure to highlight the identities that are most relevant to a specific area of study. For instance, age necessarily predominates in Freedman's discussion of statutory rape laws, just as sexual orientation does in her discussion of male rape.<sup>32</sup> However, at times the reader may struggle to keep track of the different identities being discussed and their influence on constructions of sexual violence. For instance, in just one paragraph on raising the age of consent, Freedman discusses the influence of gender, race, class, and age (p. 143). While each of these characteristics undoubtedly affects how society treats different groups of people, the reader may want a clearer, more thorough picture of how the existence of different identities and biases have influenced the way American society has addressed the issue of sexual violence.

Additionally, Freedman could have been more explicit about why she chose to discuss the identities she did. Why address the role of immigrant status in a discussion about homosexuality (pp. 179-84), but not in a discussion about the rape of black women? Why address the role of sexual orientation in a discussion about the rape of boys by men but not in a discussion regarding female-on-female rape, a topic never mentioned in the book? While it would be difficult for any author to address in great depth the role of multiple axes of oppression within a particular area of law, Freedman might have explained why she made the choices that she did.

### INFLUENCE ON MODERN POLITICS<sup>33</sup>

"[T]he history explored in this book suggests strongly that contestations over the meaning of sexual violence will continue as long as social inequalities, particularly those based on gender and race, characterize American life" (p. 289). Here, Freedman makes a bold statement that she had been hinting at in other

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32. This makes sense, as 85% of male survivors were raped by men. *Statistics, supra* note 3. It is important to note, however, that male-on-male rape does not implicate or depend on the perpetrator's or victim's sexual identity or orientation. Many anti-rape advocates consider rape to be an act of power, not sex or lust. *But see* Craig T. Palmer et al., *Is it Sex Yet?: Theoretical and Practical Implications of the Debate Over Rapists' Motives*, 39 *JURIMETRICS J.* 271, 272 (1999) (arguing that "formulating legal measures to prevent rape requires integrating evolutionary theory into an understanding of rape causation").

33. In this review, "modern" refers to any time during the twenty-first century.

parts of *Redefining Rape*; albeit not a main thesis in the book, this line offers some wisdom for those looking to redefine sexual violence. Notice that instead of giving advice to those who are trying to change the definition of rape, she tells them something that could work for almost any area of law: “[C]ontestations over the meaning of [laws concerning larceny, murder, theft, etc.] will continue as long as social inequalities, particularly those based on gender and race, characterize American life” (p. 289). Thus, even if leaders and policymakers take a strong stance, as President Obama has recently done,<sup>34</sup> and even if the majority of Americans say they support government funding for victims of sexual violence,<sup>35</sup> true, widespread change will only come if American culture also progresses. For instance, the media needs to change. Instead of lamenting the impact these lawsuits might have on the rapists’ futures, news stations like CNN should decry the horrific nature of the crimes and call for swift and full justice for the victim and the State.<sup>36</sup>

Furthermore, we need more women and people of color in politics. Many suffragists believed that giving women the vote would allow them to hold the political and legal establishments more accountable for the way they dealt with sexual violence against women (pp. 57-58). Part of this hope was realized when women used the vote to recall a judge who was particularly lenient on rapists (p. 220). But even after women gained the right to vote, activists had to work for decades to get women on juries (p. 216). Today, women, people of color, and other minorities continue to be largely underrepresented in politics.<sup>37</sup> Freedman could and should have made more calls to action. If early feminists “overstate[ed] the power of suffrage and of legal reform more generally [and] underestimated broader obstacles, including economic and racial inequalities and deeply engrained gender norms,” what practical steps can be taken to tackle these broader obstacles today (p. 63)? No matter what we do or how much progress we make, are we always “set[ting] the stage for disappointment” (p. 63)? Is Freedman trying to leave us confused or hopeless? Given her deep understanding of the history of rape in the United States, Freedman could have taken the opportunity to provide some practical advice for advocates on how to

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34. See, e.g., Memorandum, The White House, Office of the Press Secretary, Establishing a White House Task Force to Protect Students from Sexual Assault (Jan. 22, 2014), available at <https://www.whitehouse.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a>.

35. See Lydia Saad, *Most in U.S. Back Funding for Sexual Violence Victims*, GALLUP (Mar. 8, 2013), <http://www.gallup.com/poll/161180/back-funding-sexual-violence-victims.aspx> (reporting that 82% of those surveyed said they would vote for a law providing federal funding for programs that help victims of crimes against women in the United States).

36. The Sublime Degree, *CNN Grieves that Guilty Verdict Ruined “Promising” Lives of Steubenville Rapists*, YOUTUBE (Mar. 17, 2013), <https://www.youtube.com/watch?v=MvUdyNko8LQ> (content from CNN).

37. See Aaron Blake, *Yes, Politics Is Still Dominated by Old, White Men. Here’s Why*, WASH. POST (Sept. 3, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/2014/09/03/why-politics-is-still-dominated-by-old-white-men>.

dismantle rape culture and bring justice to survivors of sexual violence.<sup>38</sup>

Further, there are places in the book where Freedman fails to use her historical knowledge to critique current debates. In her discussion about making rape “too inclusive,” Freedman discusses nineteenth- and twentieth-century concerns over the “blurring of the line” between “real rape,” which involved physical force, and nonconsensual sex (p. 284). Yet she fails to connect this historical discussion to current debates over how to define rape.<sup>39</sup> This is particularly surprising, given recent events in popular culture that have reinforced the notion of “blurred lines” between what is consensual sex and what is rape.<sup>40</sup> Thus, Freedman ought to have included at least a brief discussion of the relationship between historical themes and more recent historical moments, movements, and phenomena, such as the New Right, the rise of the Internet and social media, and the redefinition of consent as “Yes means yes.”<sup>41</sup>

Beyond necessary cultural changes<sup>42</sup> to overcome “broader obstacles” to legal reform, such as “economic and racial inequalities and deeply ingrained gender norms,” Freedman does not suggest any legal or policy changes to improve the way we address rape in the United States (p. 63). For example, Freedman might have argued in favor of increased funding for rape kit testing in

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38. For instance, in modern sexual politics, many have called for more education of men, who are the most likely to rape. See Patricia L. N. Donat & John D’Emilio, *A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change*, 48 J. SOC. ISSUES 9, 20 (1992) (calling for education to “change society’s attitudes about rape” and noting that although “women have been the target for increased awareness” about rape in the past, men are now “also being included in the process of consciousness raising”). However, more than fifteen years after that article, feminists are still calling for more education for men. See, e.g., Anna North, *What If Keeping Women Safe Meant Educating Men?*, JEZEBEL (Sept. 9, 2009, 6:00 PM), <http://jezebel.com/5355724/what-if-keeping-women-safe-meant-educating-men>. But some criticize these calls for educating men as being too focused on male behavior when campaigns should also be teaching women how to avoid becoming victims. See, e.g., Cathy Young, Op-Ed., “*Teach Men Not to Rape*”: *Turn Off the Outrage Machine*, BOSTON GLOBE (June 29, 2014), <http://www.bostonglobe.com/opinion/2014/06/28/teach-men-not-rape-turn-off-outrage-machine/xnKG1WH7rcwd5kgmMERPYO/story.html>. Fortunately, though, many men still recognize the important role men can play in preventing sexual assault. See, e.g., MEN CAN STOP RAPE, <http://www.mencanstoprape.org/> (last visited Feb. 22, 2015).
39. Discussions about what acts constitute “legitimate rape” persist in the media. See, e.g., David Ferguson, *Ann Coulter: Most Women Who Say They Were Raped Are Just “Girls Trying to Get Attention”*, RAW STORY (Dec. 17, 2014, 1:18 PM), <http://www.rawstory.com/rs/2014/12/ann-coulter-most-women-who-say-they-were-raped-are-just-girls-trying-to-get-attention> (quoting Ann Coulter as saying that “unless a victim gets ‘hit on the head with a brick,’ it isn’t a legitimate rape”).
40. See, e.g., ROBIN THICKE, *BLURRED LINES* (Star Trak Entertainment 2013).
41. See discussion *infra* note 44 (explaining affirmative consent).
42. See *Ten Things to End Rape Culture*, NATION (Feb. 4, 2013), <http://www.thenation.com/article/172643/ten-things-end-rape-culture> (“It is not enough to bring individual perpetrators of rape and sexual violence to justice. Since the problem lies in a culture that is entertained by degrading acts and images of women, the solution is to look at the individual acts as a symptom of rape culture and solve it holistically. We all have a part to play in allowing rape culture to exist—so, we can all do something to eradicate it.”).

hospitals and police departments.<sup>43</sup> She could have also taken a stance on how the law should define rape. Would she endorse an affirmative consent law, as California has enacted for its publicly funded state schools?<sup>44</sup> Or would she side with critics of the law who claim that the requirement of affirmative consent overstates what rape is, and poses a threat for unwitting offenders?<sup>45</sup> Connecting historical narratives with modern debates is an essential component of any historical text. However, Freedman's *Redefining Rape* does not do enough justice to these important connections. Without addressing how the surveyed history influences today's debates over issues such as affirmative consent, Freedman does not bring her historical work to a satisfying conclusion.

### CONCLUSION

Despite some shortcomings, Freedman's book is a must-read for any feminist, anti-racist, anti-violence, anti-rape, or other social justice activist. *Redefining Rape* goes beyond the promise of the title: it shows the intersections and implications of important identities—such as race, gender, and class—in a society shaped and controlled by white male supremacy<sup>46</sup> and a political-legal establishment that has failed to adequately address the issue of sexual violence.<sup>47</sup> Freedman's book provides another revelation: even when those in power take a strong stance against sexual violence and for survivors, as President Obama has done,<sup>48</sup> problems persist because it is the *culture* that really influences policymaking and enforcement.

Freedman does not always establish a clear connection between the history described in her book and today. However, Freedman closes her book by drawing some parallels between the historical time period she researched and contemporary America, observing that “[t]he protests waged by those at the political margins a century ago have turned into mainstream policy debates” (p. 289). Because of the work of anti-sexual violence activists that Freedman highlights in *Redefining Rape*, we now have rape crisis centers and hotlines,

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43. See Taylor Kate Brown, *New Hope for Rape Kit Testing Advocates*, BBC NEWS MAG. (Jan. 4, 2015, 7:15 PM), <http://www.bbc.com/news/magazine-30554719> (discussing recent calls for testing backlogged rape kits, which has resulted in the prosecution of a number of previously unsolved rape cases).

44. Under the statute, affirmative consent is defined as “affirmative, conscious, and voluntary agreement to engage in sexual activity.” CAL. EDU. CODE § 67386 (2014). “Affirmative consent” is also colloquially referred to as “yes means yes.” See, e.g., Cathy Young, *Campus Rape: The Problem with “Yes Means Yes”*, TIME (Aug. 29, 2014), <http://time.com/3222176/campus-rape-the-problem-with-yes-means-yes> (referring to the California affirmative consent law as the “so-called ‘Yes means yes’ law”).

45. See, e.g., Young, *supra* note 44 (suggesting that the California “Yes means yes” law requiring affirmative consent for all sexual acts “codif[ies] a standard that may implicitly criminalize most human sexual interaction”).

46. See, e.g., Blake, *supra* note 37.

47. See, e.g., *Reporting Rates: Why Will Only 2 Out of Every 100 Rapists Serve Time?*, *supra* note 5.

48. See Memorandum, *supra* note 34.

events and organizations centered specifically on rape and sexual assault, and broader national debates over what it means to rape and be raped (pp. 276-280).<sup>49</sup> If the reader is looking for a legal work that will critique the law and make definitive, perhaps even normative, statements about how things should change, one may want to look elsewhere.<sup>50</sup> However, if the reader is searching for a historical text that traces the movements to gain suffrage, dismantle Jim Crow, end lynching, and redefine American citizenship, Freedman's *Redefining Rape* is just right.

*Cory D. Hernandez*

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49. Freedman makes a valuable contribution in recognizing the efforts and successes of legal advocates and anti-rape activists. Additionally, by highlighting the progress that has been made within the anti-rape movement, she ends her discussion of a heavy topic on a positive note.

50. For a discussion of the successes and failures of the anti-rape movement, see ROSE CORRIGAN, *UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS* (2013).