

A Brief and Depressing History of Rape Laws

In many societies, rape was defined as a crime against property—if it was defined as a crime at all.



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Jun 8 2016, 1:07pm



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By Allie Conti

June 8, 2016, 4:07pm

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All of a sudden, Brock Turner is the most famous rapist in America. The 20-year-old former Stanford swimmer was sentenced last week to just six months in jail for sexually assaulting a passed-out woman behind a dumpster; the light punishment drew outrage, as did a letter from Turner's father saying that his son's life had still been ruined more than "20 minutes worth of action" and a letter from a childhood friend of Turner's blaming the whole thing on political correctness.

Nearly a week after the sentencing, the media and public is still fixated on the case. A statement the anonymous victim read aloud in court went viral after being posted on BuzzFeed, an online petition is calling for the lenient judge's removal, observers have called Turner's case a glaring example of white privilege, and Turner himself is still casting about for excuses, calling his crime a result of college "party culture."

VIDEOS BY VICE

At the heart of the controversy is the complex and sometimes seemingly unfair way sexual assault is prosecuted. In April, for instance, a judge in Oklahoma found that according to state statutes, performing oral sex on an unconscious person is technically legal. But at least we think of rape as a violent crime—historically, in societies where rape was even a crime, it was often a property crime, not a violation of a person. Here are how some cultures dealt with people like Brock Turner:

The Ancient Near East

Life in Biblical times wasn't a barrel of laughs for anyone, but women, unsurprisingly, consistently got the short end of the staff. Robert Kawashima, who teaches Biblical law at the University of Florida, referenced Exodus 20:17 as evidence that women were legally thought of as objects, because they're listed among things that people shouldn't covet alongside homes and servants. "The basic shocking principle—in my view—is that women were seen as a type of property," he told VICE. "So the ancient near east, including Israel, didn't have a proper notion of 'forcible rape'—just adultery with another man's wife or fornication with another man's virgin daughter. The other man, in either case, was the victim of the crime."

For instance, in Babylonia, if a woman who was set to be married was raped and she was a virgin, the rapist would be killed. But if the woman was married, she would be killed, too. In Assyria, the father of a rape victim was allowed to rape the rapist's wife as punishment.

Perhaps the strangest piece of rape law from the region comes from the Israelites, who made a distinction between what happens in the city and in the field. Basically, if a woman was raped inside the city walls, it was assumed that she could have cried out for help if it wasn't actually consensual. She and her attacker would be stoned to death. If the rape took place outside of city walls, however, the woman would be blameless, since no one would have been around to help her. Instead of being stoned to death, she would be forced to marry her attacker (who would pay a dowry to her father) if she were not set to be wed already. If she was already engaged, that arrangement would be canceled because she was considered damaged goods, and she would be put back on the market at a discount price.

America Before Columbus

Women in pre-Columbian America were safer than their Biblical counterparts, according to Amy Casselman, a professor of Native American studies at San Francisco State University. She told VICE that sexual assault was basically unheard of in America before the Europeans came over. “Because women played central roles in all aspects of indigenous culture, violence against them was fundamentally incongruent with one’s conception of self and society,” she told me. “And, in the rare cases in which violence against native women did occur, native nations used their own fully functioning systems of law and order to swiftly address the perpetrator and restore balance to the community.”

Native Americans had their own tribal courts, which Casselman contrasted with the American ones of today, which she called less survivor-oriented because they rely on maximum/minimum sentences and presume the alleged assailant’s innocence. Tribal courts would let victims decide what punishment they want to see doled out—like if they wanted an apology, a shorter sentence than what a federal court would give now, or some form of public shaming. “Today, women who report sexual assault are routinely put on trial themselves and rarely get a voice in the outcome,” she said. “Stanford’s Brock Turner is a perfect example of this.”

The Roman Empire

Rape as a concept didn’t exist in either Ancient Greece or Rome—there wasn’t a word for it, even though it seems like every story in mythology involves what we’d call sexual assault. “If one were wealthy and/or powerful enough, personal revenge was a possibility,” says Michael Peachin, a classics professor at New York University. “However, sexual assault of any and every kind was simply not understood as a matter in which the state should involve itself.”

He says that unlike in the near east, rape wasn’t even considered a property crime. In fact, it was worse in some ways: If the woman was married, she could be tried for adultery. Rome was an even more lawless place when it came to

protecting children, though. “Indeed, if one did not want a baby, one could, without any legal consequence, throw it away—literally, on the garbage dump,” Peachin says.

Medieval England

Rape was made a capital punishment in 1285 in England, but jurors were always reluctant to convict people of the crime because women were perceived of as temptresses who asked for or deserved assault, according to historian Sean McGlynn. In an [article](#) for *History Today*, he wrote about how unlikely it was for all-male juries condemn one of their peers for what we would today called sexual assault: “In the English Midlands between 1400 and 1430, of 280 rape cases, not one led to a conviction.”

While noting that women had little recourse if they were raped, he added one exception. In 1438, an English jury acquitted Joan Chapelyn for killing a man in self-defense as he was assaulting her. The past pretty much sucked.

Colonial America

In America, the word “rapist” wasn’t referred to until the late 19th century, in reference to lynchings. The Oxford English Dictionary [notes](#) its first use in reference to a “nigger rapist.” It was much easier to convict black men of crimes than whites, because they were tried in slave courts that did not require unanimous jury verdicts. Sharon Block, the author of *Rape and Sexual Power in Early America*, told VICE that white men accused of rape would often get their charges reduced.

She gave the example of a woman named Sylvia Patterson, who was raped by Captain James Dunn in New York City during the early 19th century. He was only charged with “assault with intent to seduce,” which was common when powerful white men were accused of raping working-class women—particularly women of

color. During the course of the trial, Patterson was called promiscuous, and it was said that she had venereal diseases.

“In the end, the court convicted Dunn, but the judgment was only one dollar—a real commentary on what they thought her sexual integrity was worth,” Block said. “What went on in the Stanford case is very much reminiscent about colonial America. Men with social power could engage in sex virtually unheeded—social power translated to sexual power.”

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