

**‘But If You Can’t Rape Your Wife, Who Can You Rape?’**  
**Toward a Course-Of-Conduct Offence Centring Partner Sexual Coercion in Canada**

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EXTRACTS FROM THE INTRODUCTION

A woman walks hurriedly across the park, her breathing unsteady. Quick glance over the shoulder. It’s dark. Unsure if she is being followed, she picks up the pace. Walks under a broken streetlamp. She knows she shouldn’t be in this part of town. Almost there, almost there. A branch cracks; she jumps. Looks over her shoulder one more time. There is a man behind her. But is he following her? She starts running and can hear that he does too. She feels a strong grip on her arm, nails digging in. She screams. The man turns her to face him. He is grinning. He throws her on the floor and pulls out a knife. Scream, scream, scream. Does no one live around this park? Can’t they hear her call for help? He tries to pull down her pants but she kicks him in the stomach. He frowns. The knife is on her throat. Silent tears. The camera zooms in on her face as she is raped.

It’s been a while since Sophie has seen her friends. After the movie, they’ll chat until late. “Text me when you get home.” She’ll promise to do so. She’ll exit her friend’s place with her phone in her hand, just in case. Fleeting images of the rape scene will pass through her brain. She’ll be over-cautious in choosing her subway wagon. She won’t put on her earphones—she’s read that creeps sneak in on women who are distracted. She’ll feel a sense of relief locking her front door behind her. She’ll be as quiet as possible as she prepares to go to bed.

But Bill isn’t sleeping. She kisses him hello. “How was your evening?” He puts his hand on her hips and she softly moves it away. “I’m really tired.” He kisses her, rolls closer. “It’s been a while”, he reminds her. She shrugs. “Maybe tomorrow.” Suddenly a weight shift on the mattress, he’s on the other side of the bed. Looking away. “Are you f\*cking kidding me?” A thud as the bedside lamp hits the floor. She’s too tired for that. “You’re always tired. You always put your friends first. Whatever, let’s go to bed.” His body is tense. “I’m sorry, I’m sorry”, she murmurs. Silence lingers for a minute that feels like 10. “It’s okay”, he says. “It’s just... I love

you so much. I want you to love me the same as I do.” She kisses him reassuringly. “I love you too. It’s just been a long day. Let’s get some sleep.” “Please?” he asks. Silence. She tries to get up, he holds her arm. “Come on?” Silence. “If you really loved me, you’d want to be with me.” Silence. “Come one, baby, why are you doing this to me? Just say yes.” Sigh. Alright. She’ll make it quick.

## **Reimagining sexual violence**

There are two sexual violence scenes in this short story. The first one is the generic depiction of rape that pollutes movies, books, and nightmares. It is a culturally available sequence, a warning tale of danger that women carry within them from a young age. If you think of rape, talk about rape, read about rape, it’s scene #1 that will most quickly come to mind.

The second scene has another way of being familiar. Minor variations aside, many women have experienced this sequence more times that they can count. The man who doesn’t force you, but who also won’t take ‘no’ for an answer. This story is so common it is banal, and the coercion and constraint that it contains are almost too normal to be visible. For many, the second scene is ‘bad sex’, not ‘rape’.

We could play ‘Spot the differences’ with these two stories. One involves a stranger, the other a partner. Public place versus home. Weapon versus no weapon. Screams or no screams. Physical force or verbal pressure. Fighting back versus giving in.

But the most notable difference I see is that story #1 is fiction. Not because it is a movie scene, and not because it never happens, but because stranger rape is the rarest form of sexual violence—yet it receives disproportionate attention. Sexual violence is almost always committed against people known to the perpetrator. A woman is more likely to be sexually assaulted in her own bed than in an empty park. As one author puts it, “[d]espite generations of repeated storytelling, [physically forced stranger rape] is, in terms of actual incidence, a statistical

outlier—so different from the norm as to be exceptional rather than typical’.<sup>1</sup> Sexual violence is not a problem of deviance, caused by monster-predators who lurk in the shadows of some creepy parking lot; rather, as in my favourite quote on the topic, ‘[a]ll the evidence suggests that Mr. Average rapes Ms. Average’.<sup>2</sup>

Our collectively distorted perception of rape or sexual assault is far from innocuous. Sexual violence is not well discussed, understood, or even researched. Young women are encouraged to sign-up to self-defence classes. They learn from their peers to walk home with their keys in their hand—to use as a weapon, if needed. At the same time, we are collectively terrible at identifying common forms of domestic violence, we see home as a safe haven, we doubt women’s stories of partner or acquaintance rape. Seeing sexual violence as it is—not as moviemakers depict it—is fundamental to adequately address it. A problem that is misunderstood cannot receive an appropriate response.

Traditionally, rape law was developed to protect men’s interest in their property—women—against defilement by strangers. Today, the law seeks to protect women against all kinds of sexual violence, including violence by partners. Yet the law and legal research continue to be guided by the image of stranger rape. I wish this thesis to shift the conversation; to draw the law’s and legal scholars’ attention to the reality of partner sexual violence.

Overall, my work aims to displace fiction with reality. By researching partner sexual violence, I aim to recentre legal debates on the statistical norm of sexual violence. Not only is partner sexual violence an important empirical problem, it is also an area that has consistently been neglected by legal research and one where the law continues to fail victims. The law should learn from lived experiences, not movies scenes. Only by focusing on partner sexual violence can the law truly hope to address the most common forms of sexual victimization.

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<sup>1</sup> Michelle J Anderson, ‘All-American Rape’ (2005) 79 *John’s Law Review* 625, 626.

<sup>2</sup> Stevi Jackson, ‘The Social Context of Rape: Sexual Scripts and Motivation’ (1978) 1 *Women’s Studies International Quarterly* 27, 29.

## EXTRACTS FROM THE CONCLUSION

In 1979, addressing a group of feminists lobbying for the removal of the marital exemption, one California State senator reportedly said: ‘but if you can’t rape your wife, who can you rape?’<sup>3</sup> Sometimes there is truth in the wrongest of statements. Wives and girlfriends are the most ‘rapeable’ of women. For centuries, men could rape them in complete impunity. After decades of feminist work, fight, and engagement with legal reform, they can now do so in quasi-complete impunity, as only a fraction of partner sexual assaults will ever lead to a conviction.

The idea behind my project is that, in a way, if you can’t rape your wife, you can’t rape anyone. I have proposed to place partner sexual violence at the centre of our legal reflections regarding sexual offences, working with the assumption that once the prevalent, tricky, socially accepted issue of partner sexual violence is solved, ‘simpler’ problems such as that of stranger rape will pose no difficulty. I believe that addressing partner sexual violence can cut through the Gordian knot of sexual violence against women. This intuition echoes how Black feminists have proposed that addressing the oppression of Black women will solve white women’s plight of sexism better than white feminism could ever help Black women. Since centuries of centring stranger rape have done little to reduce or even factually criminalize men’s sexual violence against their intimate partners, it is time to try a different approach.

The main contribution I see for this thesis is thus the paradigm shift of seeing partner sexual violence as a central rather than a special case. Violence by intimate partners is not an exception to the so-called ‘typical’ stranger rape case. On the contrary, we might say that sexual violence against acquaintances and strangers is the extension of partner sexual violence, with men appropriating other women as if they were theirs. Proposing to start from partner sexual violence in developing legal rules and doctrines is the mirror opposite of the law’s traditional approach, which has started from a focus on stranger rape and has seen subsequent attempts at integrating partner sexual violence within the stranger rape paradigm through the removal

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<sup>3</sup> Nicola Gavey, *Just Sex?: The Cultural Scaffolding of Rape* (1st edn, Routledge 2005) 39.

marital exemptions. My thesis has shown that such a strategy has failed to deliver, and that a major shift is required for women to truly be protected against sexual violence by their partners.

[...]

I conclude this thesis with a thought for all the victims of partner sexual violence who continue to wait—and often to fight—for justice in a world that seeks to silence them. Since I started to be vocal against sexual violence roughly eight years ago, countless women—friends and strangers—have trusted me with their personal stories and experiences. I am always reminded of a famous speech in which Andrea Dworkin, begging for a single day without rape, said the following:

As a feminist, I carry the rape of all the women I've talked to over the last ten years personally with me. As a woman, I carry my own rape with me. Do you remember pictures that you've seen of European cities during the plague, when there were wheelbarrows that would go along and people would just pick up corpses and throw them in? Well, that is what it is like knowing about rape. Piles and piles and piles of bodies that have whole lives and human names and human faces.<sup>4</sup>

As a woman, as a feminist, as an educator, I carry my fair share of corpses. Every woman who has shown me hers has nourished a fire inside me that will burn until the day my work finally becomes obsolete. Dworkin said 'we do not have time. We women. We don't have forever.'<sup>5</sup>

May that day come soon.

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<sup>4</sup> Speech given at the Midwest Regional Conference of the National Organization for Changing Men in the fall of 1983 in St Paul, Minnesota. Published in Andrea Dworkin, *Letters from a War Zone* (1st ed, Lawrence Hill Books 1993).

<sup>5</sup> *ibid.*