



# GENDER NEWS

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## Scottsboro case helped redefine rape

*Professor Estelle Freedman speaks on changing conceptions of sexual violence in American history*

by Natalie Marine-Street on Wednesday, November 13, 2013 - 2:00pm



Juries swiftly convicted the 'Scottsboro Nine' despite contradictory evidence. (Source: Wikipedia)

In April 1933, an anxious nation watched Ruby Bates walk through the door of an Alabama courtroom. Two years earlier, near the town of Scottsboro, Bates and another white woman had charged nine black youths with rape. Juries had readily believed the women despite contradictory evidence, swiftly convicting the 'Scottsboro Nine' and sentencing all but one to death.

Many Americans believed that racism, rather than rape, had condemned the defendants, and they mobilized to reverse the convictions. Under pressure, Ruby Bates admitted she had lied.

The **Scottsboro affair** is a touchstone in American history. The tangled trials and the years of imprisonment endured by the defendants serve as sobering reminders of the costs of racial prejudice and the long struggle toward racial justice. Stanford history professor **Estelle Freedman** writes about the incident in her latest book, *Redefining Rape*. She believes that Scottsboro can be viewed as a "watershed" in the changing definition of rape.

"In Scottsboro, you can see understandings of rape moving away from an earlier, narrow configuration that envisioned rape as an attack on a chaste white woman by a male stranger who was usually an African American, and toward a newer more expansive configuration," Freedman says. During a recent talk at Stanford, she discussed the historical fluidity of the concept of rape, and the complex legacy of these changes.

### Scottsboro as a watershed in the redefinition of rape

Today, most Americans understand rape more broadly than they did in the years before Scottsboro. Rape can be committed by and upon members of any gender or race, regardless of marital status or past sexual behavior. The modern definition often includes an understanding that rape can be non-forcible, as well, achieved through methods of pressure and coercion other than physical force.

Scottsboro helped Americans to unlink race and rape. Although African Americans had worked for decades to debunk stereotypes portraying black men as sexual predators, it was not until Scottsboro that large numbers of white Americans began to understand both the unfair stereotype and its costs for African American men, according to Freedman.

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Traditionally, white southerners had used the stereotype of the black male rapist to justify the violent practice of lynching. African American activists had responded that lynching had little to do with rape, but that accusations of rape helped to legitimize racially-motivated mob violence.

"Leaders of the anti-lynching movement, like African American journalist Ida B. Wells, had boldly rejected cultural myths that linked black men with rape and assumed black women were unchaste and thus unable to be victims," says Freedman.

*It was not until Scottsboro that large numbers of white Americans began to understand both the unfair stereotype and its costs for African American men.*

In the years before Scottsboro, the black press and members of black women's clubs also called out the persistent racial double-standard surrounding rape. They noted that ever since slavery times black women had been subject to assault and harassment by white men who faced few legal consequences.

After Scottsboro, says Freedman, race continued to shape the way rape was prosecuted, but black men accused of rape began to have access to standard legal protections enjoyed by other citizens. Two important U.S. Supreme Court decisions resulted from the appeals of Scottsboro defendants – *Powell v. Alabama* (1932) established the right to counsel, and *Norris v. Alabama* (1935) held that jury rolls could not exclude African Americans.

"Far fewer [black men] faced lynching, the press was more likely to acknowledge the possibility that black defendants were innocent, and the state increasingly had to respect black defendants' rights to counsel and to a jury of their peers," says Freedman.

## Complex legacies of change

Changing understandings of rape brought new complications, however. The protections that white men had deployed when accused of rape, and that black men increasingly had access to, included the ability to use the excuse that "she consented" and the strategy of introducing the past sexual histories of their accusers.



*Ruby Bates and Victoria Price, pictured here, charged nine black youths with rape. (Source: Wikipedia)*

"The defense in the Scottsboro case rested in part on the idea that women lie about rape, especially poor women with sexual experience," notes Freedman. For nearly a century women had fought to have their voices heard in matters concerning white men's sexual privileges. Suffragists, for example, demanded greater citizenship rights for women, including the right to vote and the right to serve on juries, in part to ensure rape cases were fairly prosecuted. After Scottsboro, women faced fresh limitations on their believability.

These constraints would bedevil black or white women who sought to bring sexual assault charges in the decades to come. In the 1950s and 1960s, new attentions to the rights of defendants led to calls for greater scrutiny of accusers and new requirements for verifying their testimony. The rape section of the influential 1962 Model Penal Code, for instance, called for corroborating witnesses and a three-month statute of

limitations. It also permitted an accuser's past sexual history to be considered as evidence. The motivation was, as Freedman puts it, "protecting men from duplicitous and hysterical women."

The feminist movement of the 1970s worked to reverse this direction, drawing attention back to women's experiences. Anti-rape activists critiqued the power relations that enabled sexual violence, and through their efforts the treatment of rape became a mainstream policy issue.

Feminists staged Take Back the Night marches and demanded reforms to state rape laws and changes in the way police and hospitals responded to assaults. In 1977, feminists in Wisconsin even achieved the recall of a male judge who had blamed a victim's clothing for her assault and treated her assailants lightly. They replaced him with a female judge.

## Sexual vulnerability and demonization

The complexities seen in the Scottsboro case were echoed at other times when Americans redefined rape. During the early twentieth century, Freedman notes, reformers became concerned with protecting children, including boys, from sexual abuse by adult men. Their efforts begat a broader understanding of rape as an act that was not necessarily a heterosexual one, along with a focus on



Freedman does not tell a narrative of uninterrupted progress in her new book. (Source: Natalie Marine-Street)

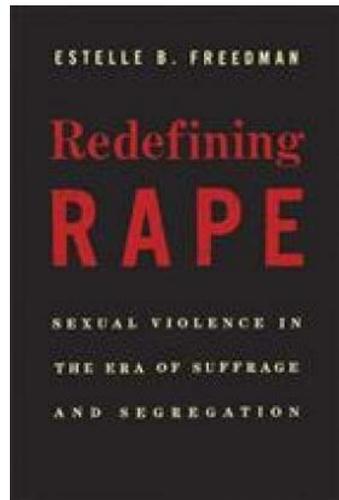
children as rapists' most vulnerable victims.

Yet, child-saving concerns emerged during a period of heavy immigration from southern and eastern Europe and heavy prejudice against these newcomers. The broader understanding of rape came accompanied by a pronounced sexual suspicion of immigrant men, an association that affected the ability of some to enter the country.

By the 1940s, as gay subcultures became more visible, the association of immigrants with sexual predation had been replaced by a fear that homosexual men imperiled young boys, a linkage the gay community would struggle to overcome.

## Continuing contestation

Freedman's work highlights the way white women and African American men and women challenged the privileges encased in the definition of rape. However, she is cautious about claiming any definitive victory or championing a narrative of uninterrupted progress.



At least until the anti-rape movement of the 1970s, challenges to the definition of rape were "racially parallel, rather than cooperative" and their results were mixed. "Earlier definitions of rape remain deeply embedded in our culture," she says, "and the benefits of redefinitions of rape are unequally distributed."

What's more, Freedman adds, "the underreporting of rape, the racial profiling of perpetrators, the silencing of sexually abused children, and the victim blaming that attributes assaults to women's clothing or their past sexual histories persist."

If history can be a guide, then the meaning of sexual violence will continue to be contested. As this happens, Freedman cautions that we pay attention to how our society defines both criminals and victims. "Who gets ignored?" asks Freedman. "What kind of inequalities are we diverting our attention from?"

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*Estelle Freedman discussed her book [Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation](#) during an October 17 talk sponsored by Stanford's [Program in Feminist, Gender, and Sexuality Studies](#) and co-sponsored by the [Clayman Institute](#). It was part of the [Stanford Alumni Association](#) "Classes Without Quizzes" portion of the 2013 Stanford Reunion Homecoming.*

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\*\*\* **Gender News Update 4/17/2014:** *The Organization of American Historians has recognized 'Redefining Rape' with the 2014 [Darlene Clark Hine award for the best book in African American women's and gender history](#). \*\*\**

## Estelle Freedman

Professor in U.S. History

**Estelle B. Freedman** is the Edgar E. Robinson Professor in U.S. History at Stanford University and the author of [Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation](#)



(Harvard University Press, 2013). Freedman specializes in women's history and feminist studies. She earned her Ph.D. and M.A. degrees in history from Columbia University and her B.A. in history from Barnard College. She has taught at Stanford University since 1976 and is a co-founder of the [Stanford Program in Feminist, Gender, and Sexuality Studies](#).

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