

THE PATRIARCHAL TREATMENT OF RAPE ACROSS CULTURES*

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The treatment of rape as a sanction by the criminal justice system stems from the notion of interests. The law, as an instrument of social control, serves the interests of the dominant class, which, for purposes of this paper, is interpreted as the patriarchy. Research shows that men dominate every role in the criminal justice system that directly impacts the treatment of rape. Definitions of crime, criminal and victim relative to the crime of rape are constructions which are formulated and applied by the male-dominated justice system. The result of this patriarchal domination of the criminal justice system is the treatment of rape not only as a crime, but also as an instrument of social control. Consequently, the victim is frequently treated as the subject of sanctioning rather than the offender.

The perspective on rape as an instrument of social control is derived from the most explicit application of rape as a sanction. This perspective on the patriarchal treatment of rape will become clearer through the analysis that follows.

The treatment of rape as a sanction among modern polities is presented here through an examination of the treatment of rape by the criminal justice systems of four modern political systems. These countries include the United States, Chile, Iran (Iran will refer to Iran under Shah Pahlavi throughout this paper) and the Philippines. The treatment of rape by the criminal justice system in the United States is the most comprehensive example of the legitimization of rape as a sanction against women. One reason for this state of affairs is the fact that research in the fields of criminology and criminal justice is directed at the criminal justice system of the United States more than that of any other country. As a result, more research has been conducted on rape in the United States than in any other country. In addition, primary resources on the American treatment of rape are more accessible than those of any other country as a result of geographic and linguistic fac-

* This article is part of the author's thesis submitted to the Faculty of Clark University, Massachusetts, U.S.A., in partial fulfillment of the requirements for M.A. in Criminal Justice.

tors. For these reasons, the American example serves as the most comprehensive basis for comparison with other systems of justice.

The selection of Chile, Iran and the Philippines is rooted, in part, in the fact that these countries are located in major cultural areas of the world. The treatment of rape extending from these cultural norms serves as an interesting basis of comparison with that extending from the American normative structure. However, the treatment extending from the cultural norms of Chile, Iran and the Philippines is frequently not evident as a result of domination by alien cultures, including the United States, Spain and France. The procedure and content of the formal justice systems of Chile, Iran and the Philippines, therefore, tends to be more reflective of the dominant culture, than of the indigenous culture. In order to more fully grasp the influence of the indigenous or majority cultures on the legal systems of these countries, extensive primary research is essential.

The principal basis for the selection of Chile, Iran and the Philippines is the fact that rape is directly applied as a sanction in all three countries. A discussion of the direct application of rape as a sanction in Chile, Iran and the Philippines is central to the theoretical framework presented in this thesis. The perspective on rape as an instrument of social control is most obvious when rape is directly applied as a punitive measure. By extending this view to an analysis of the processing of the crime of rape it becomes evident that the "crime" of rape is also frequently treated as a sanction against the victim's deviance. The treatment of the victim, rather than the offender, as the subject of social control is clearest when viewed from the perspective of the directly applied rape sanction.

However, the direct application of rape as a punitive measure is not limited to the justice systems of Chile, Iran and the Philippines. Nor can it be concluded that this treatment is more extensive in the countries examined in this paper than in any other country. Rather evidence of the direct and formal application of rape as a sanction is primarily the result of investigations by Amnesty International, The International Commission of Jurists, and The Symposium of the International Tribunal on Crimes against Women. The extensiveness of this information in the countries selected for purposes of this paper may, therefore, be more of a function of access to evidence than of prevalence.

The formal and informal treatment of rape by the criminal justice systems of these countries is affected by historical, political and cultural factors. These subjects warrant volumes of discus-

sion in themselves. However, through this essentially cursory treatment of a complex and delicate subject, an attempt will be made to accurately describe the treatment of rape by the criminal justice systems of Chile, Iran and the Philippines.

A major qualification of the role of the criminal justice system in Chile, Iran and the Philippines is the fact that access and recourse to the legal system is subject to class and culture-based social stratification. All three justice systems are based on Western models, specifically, Spain, France and the United States. It is, therefore, questionable whether these justice systems represent the treatment of rape by majority and indigenous populations. The result of this discrepancy is a potential conflict between formulated and applied law. In addition, access and recourse to the judiciary is limited by the stratified societies of all three countries. For this reason, a discussion of the treatment of rape by the criminal justice system is most relevant to those victims whose economic and social status dictates that the issue of rape be treated as a legal issue.

The fact that there is a dearth of literature on the subject of rape in other countries has been discussed earlier in this paper. As a result of this literary scarcity, information on the formal treatment of rape was derived from primary sources. In the case of Iran, this source was limited to English translations of the Iranian rape laws. In Chile, no English translations are available. It was therefore necessary to translate the original Spanish text of the *Codigo Penal* into English. More extensive information is available in the case of the Philippines as a result of the fact that relevant primary sources are written in English. As a result, the Philippine Penal Code as well as case texts are available.

Observations concerning the informal treatment of rape are more tenuous. Statistics on the treatment of rape are limited to incidence. And the treatment of rape in the literature with respect to the dominant cultures of these countries is generally tangential. The only exception to this limitation is the Philippines, from where articles on the subject of rape were gleaned from the popular literature. Use was also made of interviews with scholars from all three countries. As a result of these limitations, observations were necessarily inferred from more accessible information on more general subjects related to women. These observations are, however, limited to speculation. In order to verify the observations made here additional research is essential.

The Patriarchy and Rape in Chile

No statistics are available on the incidence of rape in Chile. However, the treatment of rape in Chilean society may be illuminated by the view that rape is a lower class crime.¹ This view suggests that more rapes are committed against lower class women. The attribution of rape to the lower classes may also suggest that rapes against lower class women are more widely publicized. Speculation on the disparate treatment of rape across class in Chile is based on both the treatment of rape by the criminal justice system and the treatment of the criminal justice system by Chilean society.

The treatment of rape in Chilean society converges on the issue of chastity. Chastity is highly prized in Chile as a result of the Catholic prohibition on women to abstain from sexual relations with everyone except their husbands. A chaste woman is viewed as morally and spiritually superior to men, particularly among the higher classes. Though women frequently engage in pre-marital sexual relations, their hymen is expected to remain intact. Women who deviate from this expectation find it difficult to secure a marriage. Male infidelity, on the other hand, is viewed as a natural extension of his *machista* character.² In effect, sexual activity is the prerogative of the Chilean male.

This singular expectation of virginity in Chilean women represents a remarkable departure from the contradictory expectations imposed on North American women. North American women are expected to be submissive and chaste simultaneously. Both "no" and "yes" are interpreted as affirmative responses to an invitation to sexual relations. Women in middle and upper class Chilean society do not experience this conflict in expectations; the virginity expectation is absolute.

The significance of a woman's chastity stems from the view of women as the property of the father of the household. Rape has consequences for the paternalistic interest in conforming to the Catholic chastity expectation. The violation of this chastity is interpreted as the violation of male honor. As a result of the paternalistic interests associated with a rape victim's loss of chastity among the middle and upper classes, the issue of rape is treated as a male issue. The male family members assert their interest in

¹ Interview with Ximena Bunster. Clark University, Worcester, Massachusetts, February 9, 1980.

² E. Stevenson, *Marianismo: The Other Face of Machismo in Latin America*, in *MALE AND FEMALE IN LATIN AMERICA* 91 (Pescatello ed., 1973); J. G. Bustos, *Mythology about Women With Special Reference to Chile*, in *SEX AND CLASS IN LATIN AMERICA* 39 (Nash & Safa ed., 1976).

the incident by taking retributive measures against the assailant. These measures frequently include castration or murder.³

The treatment of rape as an exclusively family affair differs markedly from the treatment of rape as a legal issue. However, the effect of both treatments is the affirmation of patriarchal interests. In the United States, patriarchal interests are asserted through the mythological justification of this sexist act. In Chile, patriarchal interests are asserted through the exercise of retributive measures against the violation of male honor. In both cases, the treatment of rape results in the assertion of male power.

The Chilean treatment of rape fosters female dependence on their male protectors. The North American treatment of rape legitimizes the male-female power relationship.

Women among the lower echelons of Chilean society are generally less able to realize the chastity expectation than the more idealized middle and upper class women. Economic and social instability results in the prevalence of common law or consensual marriages without the benefit of legal protection. These marriages commonly end in desertion as a result of the inability of the husband to effectively support the family. In order to meet the needs of her broken family, the woman is frequently driven to violate the chastity expectation in the course of her employment. The most direct violation is prostitution. The chastity expectation is also violated in the context of domestic service, where employees are commonly expected to initiate the maturing sons of their employers.⁴

The relative lack of male protectors among lower class women suggests that their vulnerability to rape victimization is greater. The stable family structure that predominates in the higher echelons of Chilean society is not an effective deterrent to rape among lower families. The lack of familial resources may also result in the dependence of lower class rape victims on public legal resources. For this reason, a discussion of the treatment of rape by the criminal justice system may have greater relevance to lower class women.

In content, the Chilean rape laws have remained essentially unchanged since their adoption from the Spanish Penal Code in 1850.⁵ Their content has remained immune to the effects of the rapid succession of governments of Frei, Allende and Pinochet since 1968. For this reason, Chile's rape laws continue to illuminate the per-

³ See note 1.

⁴ J. Nash & H. Safa, [eds.], *SEX AND CLASS IN LATIN AMERICA* 26 (1976); E. Stevens, *op. cit.*, *supra*, note 2 at 97.

⁵ CHILEAN CODIGO PENAL 144 (1968).

sistent sex role expectations of the dominant Spanish culture. However, the only interpretations of these laws available are those dating back to Frei's Christian Democracy. Much of this discussion is for this reason based on those interpretations. It is highly probable that the criminal justice system under Pinochet will be less egalitarian in its treatment of women than the Frei regime.

Rape (violacion) is viewed as a crime against the order of the family, public morality and sexual liberty, according to the *Codigo Penal* of 1968.⁶ It is committed by having carnal knowledge under any of the following circumstances:⁷

1. Through the use of force or intimidation.
2. When the woman is deprived of her reason or senses.
3. When the woman is under twelve years of age.

The element of consent is remarkably absent from the *Codigo Penal*. Consideration of the victim's age, marital status and reputation or virginity has also been eliminated from consideration under the Frei regime.⁸ Thus, the victim's unchastity does not constitute a formal defense against a rape charge.

The liberal interpretation of rape in the Chilean Penal Code may reflect the increasing status of women in Chilean society, in general, and in the criminal justice system, in particular. During the Frei regime, the number of women serving as deputies and senators on national levels in Chile exceeded that of the United States.⁹ The discrepancy in representation between the two countries would be increased by translating these numbers to percentages. In the legal system, 28 percent of the judges and court officials were women under Frei.^{10*} The percentage of women lawyers (10%) would have been expected to increase due to the fact that the percentage of female law school graduates was increasing.¹¹ This growing status of women in the legal system would be expected to affect the credibility of women as witnesses in the criminal justice system.**

However, the liberal interpretation of rape is contradicted by the implicit incorporation of consent into the law. Victims of rape

⁶ *Ibid.*, Art. 361.

⁷ *Ibid.*

⁸ *Ibid.*, p. 150.

⁹ E. M. Chaney, *Women in Latin America Politics: The Case of Peru and Chile*, in *MALE AND FEMALE IN LATIN AMERICA* 134 (A. Pescatello ed., 1973).

¹⁰ *Ibid.*, p. 119.

* This disproportionately high figure reflects, in part, the relatively low status of the judiciary.

** However, the system's response to this change is a function of the capacity of the organization to adapt to the change.

¹¹ *Ibid.*, p. 132, 133.

are required to maintain resistance throughout the assault.¹² This requirement is similar to that of the United States in that it transfers part of the responsibility for the assault away from the offender to the victim. The resistance requirement reflects the view of sex as a male prerogative, which women are responsible for controlling.

The implication of family order and public morality also implies that consent is a consideration in the treatment of rape in Chilean law. The view of rape as a crime against the family order and public morality suggests that where the family order and public morality was already violated by the victim's behavior or reputation, the rape would not be defined as a crime. The concept of family order appears to be particularly problematic for lower class families, as a result of the social view of rape as a crime against male honor. The dissolution of many lower class families results in the loss of paternalistic interests in the chastity of the victim. The legal view of rape as a crime against sexual liberty may, for this reason, be superseded by the informal interpretation of family order as male honor.

The Patriarchy and Rape in Iran

Statistics indicate that the rate of rape in Iran is near zero.¹³ Rapes that do occur are believed to be limited to urban areas. It is unlikely that these statistics reflect the actual incidence of rape in Iran. It is more probable that these figures reflect the social view of rape. This view guides the application of Iranian rape laws. The patriarchal interest served in the treatment of this act of power is illuminated in the fact that men continue to dominate every role of the criminal justice system. For example, in 1976 only 28 of the lawyers in Iran were women.¹⁴ The extent to which patriarchal interests dictated the legitimization of rape is reflected in the aforementioned statistics. Until further evidence is gathered, however, a discussion of the treatment of the victim as the subject of sanctioning is limited to speculation.

Rape in Iranian society is viewed as a sex crime caused by the victim's "lack of respect."¹⁵ Respect is achieved through the maintenance of modest behavior. Both men and women are expected to maintain high standards of modesty and the sexes are strictly segregated. For example, the practice of dating is remarkably absent

¹² CHILEAN CODIGO PENAL 150 (1968).

¹³ F. Mirvahabi, *The Status of Women in Iran*, 14 J. FAM. L. 397, note 81 (1975-76).

¹⁴ S. Sadjadi & M. Hedin-Pourghasemi, *Law and the Status of Women in Iran*, 8 COLUM. HUMAN RIGHTS L. REV. 159, note 64 (1976).

¹⁵ Interview with subject who prefers to remain anonymous as a result of the controversial nature of the subject matter.

in Iranian society. Even among professional circles, men and women rarely consult alone with each other.¹⁶ However, the primary burden for modesty rests with the female sex.

The rationale behind the distribution of responsibility for the crime of rape stems from the Iranian view of sexuality. Women are viewed with suspicion due to the fact that the sexual impulses they invoked in men are believed to interfere with the fulfillment of men's religious and social responsibilities. Thus, women are viewed as a potentially disruptive force in society by virtue of their definition as sexual beings. In order to curb the disruptive force of women, the oppressive practices of burqa and purdah were imposed on the female sex.¹⁷ Burqa is the wearing of the chador, or veil, whenever the woman appears in public.¹⁸ Purdah is the practice of secluding women from men in the household.¹⁸ Subscribing to these practices is believed to reduce the chances of provoking rape.²⁰

Chastity is the central consideration in the treatment of sexuality in both Chile and Iran. In both countries protection of the woman's chastity is associated with male honor. However, in Iran, the honor associated with chastity is measured in terms of the woman's "cash value."²¹ This honor holds consequences for the woman's marital, and therefore, financial prospects. The issues of both virginity and financial status are shrouded in secrecy.²² For this reason, the issue of rape tends to be diverted away from the criminal justice system to be treated as a family issue. The loss of male honor associated with rape is commonly compensated for through the demand of restitution from the offender, and marriage between the victim and her assailant.²³ Marriage signifies a means of restoring male honor. This patriarchal interest supersedes consideration of the fact that marriage also signifies a permanent relationship with a misogynist.

The stigma associated with rape has serious consequences for the processing of rape cases by the criminal justice system. Victims of rape are often reluctant to risk the exposure of their dishonor, by reporting the rape to authorities.²⁴ However, the statistics on

¹⁶ L. Yarshater, *Iran*, in *WOMEN IN THE MODERN WORLD* 74 (R. Patai ed., 1967); C. W. Churchill, *The Arab World*, *WOMEN IN MODERN WORLD* 118 (R. Patai, ed., 1967).

¹⁷ F. MERNISSI, *BEYOND THE VEIL: MALE-FEMALE DYNAMICS IN A MODERN MOSLEM SOCIETY* 1-14 (1975).

¹⁸ J. L. Esposito, *Women's Rights in Islam*, 14 *ISLAMIC STUDIES* 99 (1975).

¹⁹ *Ibid.*

²⁰ Y. Yarshater, *op. cit.*, note 16 at 66.

²¹ P. Ardehali & D. Backer, *Stress and the Iranian Patient*, *BEHAVIORAL MEDICINE* 32 (1980).

²² *Ibid.*

²³ See note 15.

²⁴ *Ibid.*

rape suggest that this treatment of the victim's dishonor also serves as a basis for screening out cases of rape. The chastity of the victim is likely to be subjected to suspicious treatment in the course of criminal justice processing, as a result of the fact that rape is viewed as caused by the victim's dishonorable reputation or behavior. This view may serve as the basis for redefining cases of rape as non-criminal, through informal decision-making processes.

Complicating the social response to rape by Iranian society were the coercive efforts of the Pahlavi dynasty to raise the standard of living in Iran. Part of this effort involved the mandatory unveiling of women.²⁵ The liberation effort was escalated under Shah Pahlavi through the White (as opposed to Red) Revolution, whereby the political and economic participation of women was increased.²⁶ For example, in 1963, the rights to vote and to hold public office were extended to women.²⁷ The problem with these coercive efforts at liberation is the fact that Iranian society was unprepared for the rapid social change. With respect to rape, unveiling meant justification for the rape of women by men. The physical exposure of women does not provoke the violent crime of rape. However, from the viewpoint of Iranian society, unveiling serves as a precipitative factor in the crime of rape. This attitude invariably affected the treatment of rape by the criminal justice system. In effect, the Shah's egalitarian efforts were a mixed blessing for women.

The legal system and Penal Codes of Iran are based on the Napoleonic Code of 1906.²⁸ Influencing this basically Western legal system are Islamic precepts and social custom.²⁹ The sum total of these influences on the Iranian Penal Code are rape laws which are less oppressive than would be expected from the view of rape by Iranian society. The discrepancy may stem in part from French influence. These discrepancies probably also result from the high standards of modesty in Iranian society. While rape is treated as a very serious offense, statistics suggest that very few cases survive the criminal justice system. In effect, this treatment of rape applies to a miniscule number of rape cases.

The emphasis on honor in Iranian rape laws is consistent with the central concern of Iranian society in cases of rape. The punishment mandated by law is directly related to the male honor violated by the rape. For example, the maximum punishment of ten years' imprisonment at hard labor is imposed if the victim is a virgin,

²⁵ F. Mirvahabi, *op. cit.*, note 13 at 388.

²⁶ Y. Yarshater, *op. cit.*, note 16 at 66.

²⁷ *Ibid.*

²⁸ W. Butler & G. Levasseur, *HUMAN RIGHTS AND THE LEGAL SYSTEM IN IRAN* 3 (1976).

²⁹ *Ibid.*

under eighteen years of age, or married.³⁰ In this respect, Iranian rape laws are not dissimilar to those of the United States. In both cases, the victim's chastity is a principal consideration in determining the sanction to impose on the offender. Iranian law deviates from traditional American law in omitting consent from the rape law. Though not a formal defense, consent probably serves as a critical element of rape on an informal level. In the case of an already dishonored victim, by virtue of her character or behavior, honor may not be treated as an issue. The incident may, therefore, not be defined a crime. Thus, the violent act is legitimized on the basis of the victim's questionable chastity.

A remarkable improvement over the American treatment is the provision for the payment of restitution by the offender to his victim.³¹ This provision represents a marked contrast to American law. The payment of restitution by the offender to the victim of rape is intended to compensate for the loss of honor to the victim and her family. In the United States, by contrast, victims of rape are generally ineligible for compensation of restitution as a result of limitations to physical and material loss. While it appears that the Iranian provision for the payment of restitution accounts for the non-physical loss of honor, that American justice does not compensate, it must be remembered that virginity in Iranian society also has a cash value.

An additional departure of Iranian rape laws from American treatment of rape concerns the victim-offender relationship. In the United States, prior relationship is informally treated as a mitigating circumstance in a rape case. However, in Iran, some prior relationships are viewed as aggravating circumstances. According to the Iranian Penal Code, the offender is subjected to the maximum penalty of ten years' imprisonment at hard labor when the offender is a person in a position of authority over the victim, such as a teacher, supervisor, or employer, or if the offender is an employee of the victim. If the offender is a close affinitious or consanguineous relative or guardian of the victim, a government official in charge of the victim, or a person religiously forbidden to the victim, he will be sentenced to life imprisonment at hard labor.^{32*}

The Iranian attitude toward such prior relationships, however, reflects the cultural conflict between Iranian society and the French authors of these provisions. This attitude stems from the loss in

³⁰ P. Saney, *IRANIAN LAWS AFFECTING POPULATION* 207 (1977), citing *IRANIAN PENAL CODE*, Art. 207.

³¹ U.S. DEPARTMENT OF COMMERCE, *PENAL CODE OF IRAN*, Art. 212 (1962).

³² P. Saney, *op. cit.*, note 30, citing *IRANIAN PENAL CODE*, Art. 207.

* These provisions are also found in Article 333 of the French Penal Code.

cash value that marriage and the payment of restitution are intended to compensate for. Rather than benefit the victim of rape, it is more probable that these provisions serve to aggravate the suspicion directed at women in Iranian society. The low incidence of rape may be partly accounted for by the suspicion that the complainant in a rape case intends to extort financial status or wealth from her alleged offender.

The Patriarchy and Rape in the Philippines

Statistics indicate that the rate of rape in the Philippines is higher than both that of the United States and that cited by Mirvahabi for Iran. 1965 figures indicate that the crime rate for sexual offenses, including rape was 15.5 per 100,000 population.³³ This figure is compared to a rate of near zero in Iran and 11.9 in the United States.³⁴ In Manila, the capital of the Philippines, this figures rise to 91.4 (See Table 2). Whether these figures indicate the actual incidence of rape is mere speculation. It is more probable that these figures reflect the social and legal response to rape.

TABLE 2

RAPE RATES OF FOUR PHILIPPINE CITIES

	<i>Manila</i>	<i>Rizal</i>	<i>Cebu</i>	<i>Pangasinan</i>
Number of Rapes*	1,041	749	163	135
Population**	1,139,000	1,146,000	1,333,000	1,124,000
Rate per 100,000 Population	91.4	51.5	12.2	12.0

* 1965 figures as cited by P. A. Zapata in "When Will a Pretty Girl Be Safe?" *Sunday Times Magazine*, July 16, 1967, p. 31.

** Latest census figures for the year 1965 as cited in *Encyclopaedia Britannica* 14, 1975, p. 236.

The high incidence of rape in the Philippines may be accounted for by the relatively high status historically enjoyed by women in Philippine society. The restrictive customs of surrounding Islamic and Far Eastern cultures were never adopted by women in the Philippines. Philippine women were never expected to bind their feet, to practice purdah or burqa, or to walk behind their husbands. Green attributes this high status to the egalitarian social

³³ P. A. Zapanta, *When Will A Pretty Girl Be Safe?*, *Sunday Times Magazine*, July 16, 1967, p. 31.

³⁴ U.S. FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS 1970 65 (1971).

* This is the figure cited for the year 1965. Latest figures cited in U.S. FEDERAL BUREAU OF INVESTIGATION UNIFORM CRIME REPORTS 1978 p. 39, indicate that the incidence is 30.8. The highest rate cited in the same source, p. 72, is 79.7.

structure of the Philippine family. The bilateral extended family of the Philippines prevented the concentration of power that prevailed in patriarchal nuclear and extended families. Currently, while less than 10 percent of practicing attorneys are women, over half of those who pass the bar exam are women. Similarly, women in the Philippines are as well represented as men in the media.³⁵

Despite the relatively high status enjoyed by Philippine women the treatment of rape has been influenced by both Spanish and American patriarchal views. Rape in the Philippines is viewed as a sexual offense. The burden for preventing such allegedly illicit sexual relations is on the woman who is expected to abstain from sexual relations outside of marriage. This double standard reflects the fact that 80 percent of the population in the Philippines is Catholic.³⁶ The effect of this discriminatory treatment of rape in Philippine society is reflected in the following statement by a police-woman: "A very short dress may entice a person—the man may read it as an invitation from the woman saying she wants sex."³⁷

The Philippine treatment of chastity in a rape case not only serves as the basis for discrimination against rape victims, but also as the basis for the retributive treatment of rape. The retributive attitude toward the violation of chastity through rape is expressed in an article entitled, "When Will A Pretty Girl Be Safe?" The author states that: "It [rape] was a crime that looked more hateful than murder, one that made a mockery of our age-old custom to uphold and protect, at any cost, the honor of Filipino womanhood."³⁸

This attitude serves as the basis for public outrage over sensationalized rape case. In 1964, this outrage led to the introduction of capital punishment in cases of rape.³⁹ As amended, capital punishment applies to cases involving gang rape or a deadly weapon.⁴⁰ The formulation and application of capital punishment in cases of rape parallels the informal use of violent retribution against rape offenders in Chile and Iran. This parallel suggests that the criminal justice system has assumed the role of the family in taking revenge against the violation of the victim's chastity. In all three countries the pivotal consideration in the use of retribution is the

³⁵ J. J. Green, "Philippine Women: Towards a Social Structural Theory of Female Status", pp. 12-14 (Villanova, Pennsylvania, 1979) (Mimeographed).

³⁶ I. R. Cortes, *Philippine Law and Status of Women*, 8 COLUM. HUMAN RIGHTS L. REV. 240 (1976).

³⁷ "Precautions Against Rape", *Fina Magazine*, 1974, p. 7.

³⁸ P. A. Zapanta, *op. cit.*, note 33.

³⁹ R. AQUINO, REVISED PENAL CODE OF THE PHILIPPINES 1678 (2d ed., 1976); F. V. Tutay, *Death for Rapist?*, 56 PHIL. FREE PRESS 63, 64 (May, 1963).

⁴⁰ PHIL. REV. PEN. CODE, Art. 335.

victim's violated chastity. And in all three countries chastity is essential for one's marital prospects.

Whether the prevailing view of rape in the Philippines represents the views of the indigenous culture or those of the dominant American and Spanish cultures is unclear. However, it is clear that the formal treatment of rape by the criminal justice system in the Philippines is rooted in the laws of these dominant cultures. The Philippine Penal Code was adopted from the Spanish Penal Code in the course of over 330 years of Spanish colonialization.⁴¹ Subsequent American domination resulted in the imposition of American procedural law into the Spanish-based Penal Code.⁴² The net effect of these influences on the Philippine criminal justice system is a legal system that is Spanish in content and American in procedure.

The Philippine rape laws remain essentially unchanged since their adoption from the Spanish Penal Code in the nineteenth century. The only significant changes incorporated into these rape laws are those of American procedural provisions. In fact, the statutes themselves are identical to those of Chile, as a result of the common origin of both penal codes in Spanish Law. According to Article 35 of the Philippine Penal Code, "rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. Through the use of force or intimidation.
2. When the woman is deprived of reason or consciousness.
3. When the woman is under twelve years of age."⁴³

Consent is not specified as an element of rape in either Philippine or Chilean Penal Codes. For this reason, the victim's provocative behavior or character does not formally constitute a defense against a rape charge. However, the expectation that the victim prove non-collusion in the allegedly sexual act is incorporated into the requirement that the victim resist "tenaciously."⁴⁴ For example, *People v. Castro* it was determined that:

Where complainant did not offer any resistance or vocal protestation against the alleged assault, such circumstance does not support the conviction for rape.⁴⁵

As in the United States and Chile, rape is the only crime in which the victim is expected to resist.

⁴¹ R. V. del Carmen, *Constitutionality and Judicial Politics*, in MARCOS AND MARTIAL LAW IN THE PHILIPPINES 85 (D. A. Rosenberg ed., 1979).

⁴² *Ibid.*

⁴³ PHIL. REV. PEN. CODE, Art. 335.

⁴⁴ U.S. v. De Dios, 8 Phil. 279 (1907).

⁴⁵ *People v. Castro*, G.R. No. L-33075, August 19, 1974, 58 SCRA 473 (1973).

Consent is also relevant to the issue of credibility in Philippine law.⁴⁶ In this respect, Philippine rape laws are similar to the traditional rape laws of many American jurisdictions. The assumption underlying the relevance of chastity to credibility is that the testimony of an unchaste rape victim is less credible than that of a chaste rape victim in a rape case. This assumption is reflected in the widely cited case *People v. Gan*, where the following statement is qualified by the victim's "decent repute":

No young Filipina of decent repute would publicly admit that she had been criminally abused [raped], unless that is the truth.⁴⁷

The effect of this provision is that cases in which the victim is unchaste are less likely to result in a conviction than are cases in which the victim is of "decent repute."

Another common denominator of Philippine and American rape laws is the use of Lord Hale's suspicious statement. This statement is quoted almost verbatim in *People v. Reyes*:

While rape is a detestable crime, it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the accused, ever so innocent.⁴⁸

This statement represents the formal imposition of the suspiciousness formally and informally directed at rape victims in the United States on the Philippine criminal justice system.

In general, however, the Philippine legal system reflects the view of rape victims as credible witnesses. This view is summarized in *People v. Royeras*, where it was decided:

When a woman testifies that she has been raped she says, in effect, all that is necessary to show that rape has been committed?⁴⁹

This Philippine view represents a radical departure from the American suspicious view reflected in Lord Hale's biased statement.

Consistent with this positive attitude toward rape victims, corroboration of the victim's testimony is not formally required for either an indictment or a conviction for rape in the Philippines.⁵⁰ It is unclear, however, whether corroboration is required on an informal level. Requirements for corroboration may be greater in cases in which the victim's reputation is viewed as a legitimizing factor in a rape case. The requirement for corroboration may also depend upon the extent to which the American attitude towards rape has

⁴⁶ 3 AQUINO, *op. cit.*, note 43 at 1680.

⁴⁷ *People v. Gan*, G.R. No. L-33446, August 18, 1972, 46 SCRA 667 (1972).

⁴⁸ *People v. Reyes*, G.R. Nos. L-36874-76, September 30, 1974, 60 SCRA 126 (1974).

⁴⁹ *People v. Royeras*, G.R. No. L-31883, April 29, 1974 SCRA 666 (1974).

⁵⁰ *People v. Obsania*, G.R. No. L-24447, June 29, 1968, 23 SCRA 1249 (1968).

been adopted by individual actors in the criminal justice system. Those adhering to Lord Hale's cautionary statement are probably more inclined to require corroboration as a result of their greater suspiciousness toward victims of rape.

Another major departure from American justice is the use of restitution in cases of rape. This payment of "indemnity" by the offender to the victim is in addition to the sentence of "reclusion perpetua" or life imprisonment. In cases of gang rape or involving the use of a deadly weapon, this sentence is death.⁵¹ Similar to the element of consent, the payment of restitution is not specified in Article 345. However, its frequent application in cases of rape indicates that restitution is an integral part of the Philippine justice system. In essence, the Philippine rape victim is not only viewed as a credible witness, the Philippine rape victim is also viewed as justifying the payment of restitution.

An additional practice not specified in Article 345 is the use of marriage between the victim and offender.⁵² The rationale behind the alternative of marriage in the Philippine criminal justice system is similar to that of the Iranian systems of justice. In both countries it is intended to compensate the victim and her family for the loss in "cash value" resulting from the rape. Marriage is, legally, the prerogative of the victim in the Philippines. However, the decision to marry is guided by persistent Catholic prohibitions against sexual relations between a woman and a man other than her husband. The alternative to marriage with the offender is frequently spinsterhood as a result of internalized Catholic values.⁵³ The injustice of this double standard is carried to its logical conclusion when a victim of rape is compelled by this standard to marry her rapist.

The use of marriage and restitution is intended to protect the financial interests of the victim. The attitude towards these compensatory schemes, however, frequently reflects a design to protect the offender rather than the victim. Isolated cases of attempted extortion by rape complainants have prompted the surfacing of attitudes reflected in the following statement:

Lately the cases of rape have a seeming scheme and pattern deviously devised by supposed aggrieved parties to entrap the unsuspecting executive, lawyer, businessman, the scion's son, the professional and other well-to-do men in a web of cold blood intrigue and extortion for a sum of money.⁵⁴

⁵¹ AQUINO, PHIL. REV. PEN. CODE, Art. 335.

⁵² Interview with Myrna Feliciano, Harvard University International Law Library, Cambridge, Massachusetts, February 6, 1980. See PHIL. REV. PEN. CODE, Art. 89(7).

⁵³ *Ibid.*

⁵⁴ L. O. Ty, *An Unusual Rape Case*, 14 EXAMINER 7 (1976).

To the contrary, it is equally probable that the superior financial status of such offenders prevents the processing of rape cases through the use of bribery.

Parallels in the History of Western Rape Laws

The treatment of rape in Chile, Iran and the Philippines parallels the treatment of rape in early Western law. The materialistic use of restitution and marriage and the retributive use of murder is also noted in Biblical law by Sir William Blackstone:

This [rape] by the Jewish law was punished with death, in case the damsel was betrothed to another man; and in case she was not betrothed, then a heavy fine of fifty shekels was to be paid to the damsel's father, and she was to be the wife of the ravisher all the days of his life; without that power of divorce, which was in general permitted by the Mosaic law.⁵⁵

The retributive and materialistic treatment evident in Mosaic law was also applied to rape cases under Roman law:

The civil law punishes the crime of ravishment [rape] with death and confiscation of goods....By restraining and making so highly penal the solicitation of the men, they meant to secure effectually the honour of the women.⁵⁶

However, as the issue of rape was removed from the family to the legal arena, rape came to be viewed as a crime against the state, rather than a family. At this juncture, it was discovered that women held sanctioning power over men through the rape complaint. Unchastity, then, came to serve as a basis for justifying the commission of this sexist act. Blackstone notes this basis for legitimization in his discussion of Roman law:

The civil law seems to suppose a prostitute or common harlot incapable of injuries of this kind: not allowing any punishment for violating the chastity of her who hath indeed no chastity at all, or at least no regard for it.⁵⁷

The fact that rape is also viewed as a crime against chastity in Chile, Iran and the Philippines suggests that unchastity is also a basis for the informal legitimization of rape in these countries.

Additional protections against "malicious accusations" by rape victims against their assailants were introduced under English law. These protections evolved into the notion of victim responsibility for the crime of rape. Consequently, rape was legitimized not only on the basis of the victim's unchastity, but also on the basis of the

⁵⁵ W. BLACKSTONE, BLACKSTONE'S COMMENTARIES ON THE LAWS OF ENGLAND 210 (1769).

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 213.

victim's suspected collusion in the commission of the rape. According to Blackstone:

Our English law does not entertain quite such sublime ideas of the honour of either sex (as does Roman law), as to lay the blame of a mutual fault upon one of the transgressors only; and therefore makes it a necessary ingredient in the crime of rape that it must be against the women's will.⁵⁸

Proof that rape was committed "against the victim's will" consisted of corroboration, "good fame," and screaming.⁵⁹ These factors continue to serve as the basis for the construction of rape formulated and applied by the American criminal justice system. However, it appears that these factors are also integrated into the constructions of rape formulated and applied by other patriarchal justice systems. In effect, the legitimization of the crime of rape appears to be a cross-cultural phenomenon.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*