

# Gender, Race, and Rape During the Civil War

-Julie Beck, Feb 2014, "The Atlantic"

Slavery, the value of chastity, and laws that favored men all made it difficult for women to find justice during the chaos of war.

While researching a fictional trilogy about the Civil War, Kim Murphy kept coming across the assertion that it was a "low-rape" war. At first she didn't question the idea, she says, but after finding official records that mentioned rape in the same sentence as pillaging and burning—crimes generally accepted to have happened—she started to suspect there was a hole in the history that needed filling. She did more digging, and what she uncovered became her new, nonfiction book, *I Had Rather Die: Rape in the Civil War*.

Historians, Murphy says, largely had the idea that the Victorian era was characterized by restraint, and therefore there was little rape. For example, she mentions a passage from Reid Mitchell's book, *The Vacant Chair: The Northern Soldier Leaves Home*, which reads:

"Few northern soldiers raped...True manhood was characterized by sexual restraint not sexual assertion; even mutually agreeable intercourse would have threatened masculine identity. Letting anger toward women break out in unsanctioned violence against women would have been unmanly."

"There were 109,397 cases of gonorrhea, and 73,382 cases of syphilis—and that's just among the U.S. white troops; we don't have the records for the Confederacy," Murphy says. "Quite frankly, that doesn't suggest restraint."

Murphy's book states that there are records of 450 rape or attempted rape cases in Union military courts (destruction of the Confederate records leaves the stats on that side a mystery). Outside the courtroom, societal pressures and the value placed on chastity made it difficult for women to come forward at all. And there was a huge race factor—even Mitchell admits, two paragraphs down from his dissection of the era's conception of manhood, that "most of the rapes that northern soldiers committed were of black women," and Murphy writes that "most states had laws stating that no crime of rape against slave women existed," leaving them even less recourse to seek justice.

I spoke with Murphy over the phone about Civil War-era rape laws and how attitudes toward the crime in the 19th century still resonate today.

Why does war, in general, tend to breed rape?

Because, basically, men can get away with it. Very few men are prosecuted for it during war, and commanders usually do not come down very hard on it. I mean, it's kind of like the military right now, what they're going through. Military women are being raped and they often have to report to the person who may have been the rapist, or who may have been friends with the rapist. So it really hasn't changed. [Ed. Note: In a 2012 survey, 6.1 percent of active duty military women reported they had experienced "unwanted sexual contact" in the past year. Of these, 67 percent did not report the incident.]

You mention a lot of difficulties with determining what happened during the Civil War in particular—for example, many of the Confederate records were destroyed. How do you go about extrapolating what may have happened that was not reported?

Unfortunately, because we don't have all the records, we don't really know. But when I uncovered several hundred cases [of rape], I think that speaks loudly because very few women would have come forward. Very few women come forward during peacetime; it's even fewer that come forward during wartime, so we know that this is just the tip of the iceberg in terms of what's being reported. "If he was holding a gun to her head and she was scared to death, that was still considered that she had given her consent."

Also, the thing that most people don't recognize is that most of the records, like the court-martial records that we do have, were reported during times of occupation. That means that the troops were there, they weren't in an active battle situation. That's when women could find someone to go forward to. During times of battle, the chances of them even knowing who they could report to would be almost nil, and even if they did find someone, the chances that the officer in charge would be able to find enough officers to take on a court martial at that time would be next to impossible.

In the book, I mention [a rape that occurred during] Sherman's March, when the army was on the move. The victim did report it. But by the time the case made it to court martial, they were 100 miles away, so she could not testify. That's what people don't understand—it was totally against the women to even be able to report it.

Can you give an overview of how the rape laws worked at the time?

The court martial tried to do by the state laws of the time. During the time, women had to essentially prove they had been raped, and that meant that she had to give the ultimate resistance against the attacker's force. One thing that was different in the Civil War era was that girls as young as 10 could often be considered as trying to entice men.

Women in court settings also were often barraged with questions of how she had resisted his advances. If she consented because he beat her, or if he was holding a gun to her head and she was scared to death, that was still considered that she had given her consent.

Do you know what would have been an acceptable answer?

As far as resistance? Well, the woman usually had to go out of their way to say how much they had resisted. That's where the title came from, "I had rather die." A woman was testifying that she "had rather die" than be raped, and it was during those resistance questions.

Explain the distinction between "persuasion" and "force"—it seemed like that was a very nebulous thing.

Basically, if a man could persuade a woman in any way to have intercourse, then it was not considered rape. Again, it didn't matter if he beat her silly in order to "persuade" her, or if he had a weapon and persuaded her that way. In other words, a man could use as much persuasion as he wanted in order to have intercourse and it not be considered rape.

There's a sort of double standard, especially if you think about the idea of what was considered "being a lady" at the time. Now you have to be able to fight off a man—even though normally society thought you should be dainty.

Even if it was an upper-class white woman, who was more likely to be believed, sometimes judges would dismiss it because they would feel, "Oh, [if she were really a lady] she would have been too ashamed to actually come forward." So everything was stacked against the woman.

That's the other thing: both the North and the South rarely thought it was rape when it was a black woman. It wasn't until the Civil War when black women were actually able to come forward and call it rape. Before that time, even in the North, they would make it a lesser charge [for black women], if at all. I do have at least one record where a black woman was able to testify about a sexual assault in New York or someplace like that, but that was very rare. For the most part, black women's voices went unheard.

It seems there was every kind of hurdle: race, class, and whether or not the person had a weapon, or witnesses to corroborate the story. And the more factors you had in your favor, the more likely you'd be successful.

And if you had a white male witness, you generally were more likely to be believed.

Most of the black men that were found guilty of rape and executed, generally speaking, they were gang rapes, so it was multiple men against a white woman. And

with the white men, most of them had other crimes [on their records], and a high percentage of the white men that were executed were foreign born—so there's an obvious prejudice there, too. They tended to have a history of desertion or other crimes that they were guilty of in the past.

Can you talk a little bit about this quote:

“It is true that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered, that it is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.”

-- Sir Matthew Hale, *The History of the Pleas of the Crown* (1736)

It seemed, from your book, that all the laws and attitudes at the time revolved around this idea.

Yeah, that came from the judge, Matthew Hale, in the 18th century. He was saying that men had it very difficult to prove that they hadn't raped. That woman was vindictive so, therefore, she would “cry rape.” His words were used in the court martial records and civilian records in the 19th century, and were still used in courtrooms well into the 1970's.

Whether or not those [specific] words are used, do we see this attitude continue today?

For sure. There's no doubt about that. It seems like so many times women still have to prove that they've been raped when they shouldn't. I think we have made some steps forward, but unfortunately women don't go forward enough because they still feel like they're going to be lost in the justice system. And I know we've had several cases recently where athletes were considered more important than women who had been raped, and that's essentially the same thing that was going on during the Civil War era. It was more important to have a good soldier, whether or not he had committed rape.

So you can see parallels between now and then?

Mmhm. And I see it more and more each day, it seems like, where people keep saying, “Oh, we need to say a woman had been forced in order to be raped.” Well, rape is rape, and any kind of rape is forced.