



The Incredible Woman: Power and Sexual Politics, Volume 1

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BY JOCELYNNE A SCUTT

This is the first of two volumes of Scutt's collected writing. The material in this volume dates back to 1980 but makes reference to material as far back as the 1960s. It is a reminder of how little has changed that many of the issues raised in the material continue to have great relevance to current questions of law reform. For example, Scutt was recommending judicial education (p 38) and gun law reform (p 111) in the 1970s and yet these are still issues on the agenda. Given the backlash against feminism and against the idea that equality can recognise and incorporate difference, this book is timely. It recognises that the problem is not women's difference *per se* but that this difference has been measured against a male standpoint and invariably falls short. As a result, women are seen to be 'incredible' (p iv), 'sick' (p 30), 'disorderly' (p 144), 'insane' (p 216), 'abnormal' (p 223) and so on, when compared to men.

The theme of the collection is the credibility, or rather the lack of credibility, of women when they become involved in the legal system or in various medical procedures. Scutt argues that credibility is often a primary issue in women's interactions and collisions with the legal system; for example, as the sexual assault survivor; as the witness at trial; as the mother in a child residence or contact dispute; as the offender in a criminal matter; as the party in a tort or contract suit; or in relation to father-child incest allegations. Credibility is also an issue in relation to women's participation in surrogacy arrangements and IVF procedures.

The collection includes an examination of the 1989 case involving the Collis sisters (p 10).¹ In this case, two sisters made complaints to police about the sexual assaults committed by their father. Their statements were ultimately retracted, leading to the sisters being convicted of perjury and receiving sentences of two years imprisonment. An appeal against sentence resulted in a slight reduction in the term. The police took considerable time to act on the women's complaints of assault but little time at all to act on their retractions. The women were quickly charged with perjury. Scutt cites this as an example of the law accepting that women will lie about sexual assault. That the law sees them as 'incredible' explains why the sisters' 'admissions' to lying were acted upon almost immediately.

The infamous *Hakopian*² and *Harris*³ cases are discussed in some depth. In *Hakopian*, the complainant was a prostitute who allegedly used heroin and was raped at knifepoint. In *Harris*, the complainants, a practising and former prostitute and also allegedly addicted to heroin, were also raped. Scutt points out that when the offenders in these cases were sentenced, the 'antecedents' of the victims (in particular, whether they were prostitutes or drug addicts and the type of clothing they wore) were considered highly relevant in sentencing the offender and led to a reduction in sentence (p 45). Two problems arise from this. First, it establishes a hierarchy of women complainants. Secondly, the complainant's 'antecedents' were not required to be proved in any way. The first issue leads courts to implicitly accept and argue that the more 'chaste' the complainant, the more trauma she will suffer as a result of rape. The second issue recognises that as a crown witness, the victim usually has no opportunity to prove her chasteness in this context. Scutt points out both the 'elusiveness of the chaste women' (p 44) and the fallibility of the argument that an unchaste woman will suffer less than a chaste woman. The author goes on to suggest that this type of judicial analysis fails to recognise the power relations involved in rape (p 49). Further, it is not simply judges who take into account these kinds of 'victim antecedents'. Studies indicate that juries are less likely to convict an alleged rapist where the victim is a divorcee, a prostitute, an unmarried non-virgin or where the victim had been drinking alcohol (p 65).

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- 1 *Collis and Collis v Attorney General* (unreported, Vic Supreme Court, 14 September 1989).
 - 2 *R v Hakopian* (unreported, Vic County Court, 8 August 1991).
 - 3 *R v Harris* (unreported, Vic Supreme Court, 18 August 1981).

Until relatively recently, the traditional rule was that in a case of alleged sexual assault of a male upon a female, the judge should warn the jury that it is dangerous to act on the uncorroborated evidence of the complainant. The effective rationale for this rule was that female evidence in such cases was intrinsically unreliable. Thus, women's incredibility was formally constructed and entrenched. Although this rule has been formally rejected, it is clear that female complainants in sexual assault cases still have to produce some form of corroborative evidence to prove their chastity or their credibility in order to be assured of a conviction or a reasonable sentence for the offender. Given the 'elusive' nature of chasteness, it is likely to be impossible to find appropriate corroborative evidence.

Another theme addressed by Scutt is the public/private split which continues to inform the law. The recognition of this dichotomy in feminist literature is nothing new. Scutt points out that it took the findings of the Wood Royal Commission in New South Wales for the state to address paedophilia and the Bryant massacre in Tasmania to make gun laws more stringent. Meanwhile, incest, child abuse (p 87) and 'all the little massacres' (p 121) in private homes continue to be relatively ignored. To some extent, children complaining of sexual abuse in family court proceedings are, like women, labelled incredible. Rights of fathers to have contact with children are balanced against rights of children to be protected from potential abuse and legislation and case law tends to favour fathers gaining contact (p 96). Scutt suggests that the deep-seated ideology of women and children as chattels underlies the problem of legislating about child sexual abuse (p 86). Similarly, although there continues to be a high incidence of men killing their spouses or threatening to do so with a gun (p 117), these killings and threats are forgotten in comparison to serial deaths or mass killings (p 123). The private/public divide is echoed again in the essay on surrogacy (p 263).

In chapter 10, Scutt examines the idea of insanity and suggests that the insanity of women is likely to be attributed to the very nature of her being a woman whereas male criminality and insanity are likely to be attributable to the 'external world of men' (p 218). Examples are cited where pre-menstrual tension, menopause and pregnancy have been taken into account to reduce the criminality of women accused of committing crimes. Situations where a battered wife has killed her husband have led to the development of the defence of 'Battered Women's Syndrome', when the killing should perhaps be seen as self defence and a normal response in such circumstances. Scutt argues that the law's constructions in these cases are wrong, for these are normal human functions and responses which are seen as abnormal by the legal system (p 222). The legal system has not traditionally recognised women's experiences, so special measures have been developed, ostensibly to protect women. These very special measures tend to perpetuate the lack of recognition of women's experiences by the legal system.

Many of the essays suggest that as women become apparently more independent from men, men have started to exercise control over women through children (p 247). This has occurred through family law contact and residence applications including applications for control over fetuses (p

237). Scutt argues there is also a growing trend of male control over the foetus in surrogacy and IVF arrangements (p 268) and that the legal separation of the foetus from the mother in some personal injury cases of mother against child may enhance this trend (p 233). This may lead to greater recognition of the potential legal rights of the foetus at the expense of the recognition of the actual legal rights of the mother.

The major drawback of this collection is the repetition of examples and illustrations. For example, the *Hakopian* case comes up in several chapters. This is hard to avoid; given that the papers collected in this volume were originally presented and published in a diverse range of circumstances and their original audiences would have been quite distinct.⁴

In any event, this first volume of Scutt's collected writings provides an impressive and persuasive analysis of a range of topical issues and is part of a stimulating overview of one woman's contribution to feminist debate. In her introduction to this volume (perhaps in a utopian frame of mind), Scutt argues that:

There will come a time when woman are recognised for what we all are — both credible and 'incredible' in a very real sense of the word, for our courage, our longevity, our persistence and resilience in the face of vilification and attack. No longer will women be deemed 'incredible' through masculinised or medicalised assessments of what makes a woman. (p xiv)

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⁴ From a librarians' conference in Darwin, Australia in 1986 (p 185) to a 1992 *At Issue* column in *Reproductive and Genetic Engineering: Journal of International Feminist Analysis* (p 293).