



“Are women really so helpless that men must take full blame for their foolishness?”

ANDREW BOLT AUSTRALIA'S HARDEST HITTING COLUMNIST

KNEW Judge David Smith was in strife the moment he said “technical rape”. What a free kick for the victim industry. Didn't this horse-haired, old goat know that even a woman's “yes” could today mean “no”?

So, poor Judge Smith has endured a too-predictable monstrosity around the country since he admitted last week he was “troubled” by the case of a man who had kept performing a sexual act on a drunk woman who had nodded off.

In fact, the South Australian judge was so troubled, he said, he needed more time to consider if he even should sentence the man for a rape to which even he had confessed.

Which student of human frailty would not be troubled, too?

Here are the key facts of yet another case - like that involving rugby league great Matthew Johns - where a man is pilloried for taking a woman's “yes” for an answer.

And in which a woman seemingly begs to be excused responsibility for her decisions.

Matthew James Sloan, 29, was boozing at a pub last year with a woman he had met there and, the times being as they now urgently are, he naturally thought enough minutes had passed after several drinks to seal their wonderful relationship with sex.

So, he asked, how about a quick rut in the park down the road?

The woman, charmed by the kind of proposal Jane Austen unaccountably failed to document, agreed and off the happy couple staggered to the bushes.

Safe in the privacy of their own shrubbery, they touched each other where people do when they're preparing to mate. The woman then took off her pants, and, Mr Sloan's barrister says, allowed Mr Sloan to perform a sex act on her with his hands.

Even the prosecutor agreed the woman had gone “willingly” to the park and had engaged in this activity. Then came the cloud that has soured this promising romance.

I don't mean to be rude but Mr Sloan's skills at rutting may need work, because he soon noticed the woman had fallen asleep, or passed out from the booze.

A gentleman at that stage would have stopped immediately - presuming, that is, any gentleman would have found himself in a public park drunk, with his trousers akimbo and fondling some sloshed and pantless woman he'd just met.

It is, after all, ungentlemanly to continue to have sex with an unconscious lady but Mr Sloan, already disqualified as a gentleman, just kept doing what he believed he had been allowed.

Bad, I most certainly agree. In fact, that's rape, technically, even if the woman, also technically, had agreed to what later was continued in her sleep. While it is legally rape - since the woman was denied the ability to keep consenting to the sex to which she'd said yes - is this really a rape of the kind we imagine when using that word?

Is it really so stupid for Judge Smith to have said that while “rape is a horrible offence” - amen to that - this was actually more “a technical rape”?

As he pointed out, the sex act “began as a consensual one before the victim passed out” and “there is an inference that she might have consented (to more sex) had she been awake”.



To put it mildly. Given this tangle of limbs, clothes, booze, panting and yes-yes-zzzzz, I'm not surprised at all the judge wondered if it was really fair to Mr Sloan “to mark this man with the grave offence of rape for the rest of his days”?

I'd even like to know if this is more a case of morning-after regret, which very senior police who have investigated claims of rape tell me is much more common than you might think.

That is just my speculation, no doubt uninformed.

The real question is just how

such as it was, must be deemed as bad as any no-butts rape.

Hear it from Anne Cossins, of the NSW Sexual Assault Task Force, who huffed that this was “the sort of thing judges should be censured for”.

Or from Karen Willis, of the NSW Rape Crisis Centre, who called the judge's comments unbelievable, adding: “This idea that someone can continue to be consenting when they're unconscious, it's a bit of a no-brainer really.”

Or even from Sydney's *Daily Telegraph*, which sniffed that “the

shame. And that was all Mr Johns' fault, it was agreed, for no other reason I could see than that he was the man in this mating.

Again, I agree that Mr Johns indeed sinned. Not only was he married, but wise adults know that group sex is likely to wind up with people getting bruised - which is precisely why almost every culture and faith considers it taboo.

But if Mr Johns was a sinner, did that then make the woman simply a victim - or isn't she a sinner, too?

Hmm. It seems we may need to think again where this recent moralising is now leading us.

Are women really so helpless that men must take the full blame for their foolishness? Are we really to return to that patriarchal notion that no woman can say “yes”, unless a man first judges her fitness to say it?

Being conservative, I won't object too much if that's indeed what we conclude. I never bought the argument that what two or more adults did to each other in bed (or bushes, now) was fine if they'd all consented.

A morality that says consent makes everything legit is just another way of saying it's every man for himself - that you're free to do whatever you can force some silly or intimidated woman (or man) to agree to, however much it will probably hurt them.

But now it seems that consent is no longer enough, after all. A woman's “yes” should no longer mean “yes”.

The only problem now is, should a “yes” actually mean rape instead? That seems to be winding the clock back a few centuries too far, even for me.

 **Blog with Andrew Bolt**
adelaidenow.com.au

much a man should be punished and vilified for taking a woman's “yes” as her final answer. And perhaps whether a woman isn't responsible, at least in part, for what almost inevitably happens next.

As the judge again said: “This is not a situation where an offender perpetrated a sex act on an unconscious victim which she would not have consented to had she been conscious.”

Or as I'd sum up: This is, instead, a sex act on an unconscious woman who'd said “yes”.

At the very least, I'd have thought all could agree that for a rape this was one of the least bad. Indeed, I might even expect feminists to insist that a modern woman should be assumed to have the savvy and sense of responsibility to blame herself most if, after beerily agreeing to sex and removing her pants, sex then takes place.

But no. A woman even in those circumstances must still be deemed a victim, we're told. And the sex,

phrase ‘technical rape’ will likely haunt Judge David Smith for the rest of his days”, adding: “Reason sometimes appears to be in short supply.”

I should clarify that last criticism: The paper meant that reason among judges was in short supply, not that reason was clearly missing from drunken strangers having it off in parks across the road from pubs.

Of course, this is not the first time this year that we've seen women hailed as victims after having agreed to sex. Mr Johns was pilloried in the media and lost his work with Channel 9 and Melbourne Storm after the ABC named and shamed him for having had group sex with a 19-year-old fan, shared with at least four team-mates.

The woman had said “yes”, but Mr Johns' crime - it turned out - was that he should have heard “no”.

His “victim” may have later boasted to her workmates about the encounter, to which she'd freely agreed, but she had in time become distraught and almost suicidal with