

Between a rock and a hard place

Miranda Horvath and Jennifer Brown look at the vicious cycle for rape victims

What is it about rape that makes it so difficult to report, investigate and successfully prosecute? This article proposes that a psychological analysis of the criminal justice system is needed to understand its apparent resistance to decades of attempts at reforming rape law, and to develop procedures that are not inhibitory to people reporting offences or authorities' investigation and prosecution of them.

In particular, an understanding of rape stereotypes and the attrition problem are needed if we are to restore faith in the criminal justice system.

question

If the criminal justice process finds such difficulty in successfully prosecuting rape, should we try alternatives such as restorative justice options?

resources

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In early 2009 the Metropolitan Police hit the headlines in the wake of the John Worboys and Kirk Reid rape cases. Worboys was convicted of 19 charges of drugging and sexually assaulting 12 women, although he is estimated to have attacked at least 100. Kirk Reid was eventually found guilty of two counts of rape, three of assault by penetration and 21 indecent assaults, but is believed to have raped and sexually assaulted more than 70 women.

The extent of these men's offending is shocking and certainly contributed to the media attention, but it was the series of investigative failures in both cases that put the British justice system's appalling record on sexual violence under the spotlight. John Yates, an assistant commissioner in the Metropolitan Police and the national police spokesman on rape, said 'nothing can adequately excuse the failure to follow up straightforward lines of inquiry that should have seen Reid arrested [in 2004]'.

The Metropolitan Police are not alone in failing rape victims and allowing perpetrators to continue with their attacks. In 2007 the 'Without Consent' report, published by HM Crown Prosecution Service Inspectorate (HMCPSP) identified numerous issues that were contributing to victims being denied justice. They reviewed rape investigations and prosecutions nationally. Although problems were highlighted throughout the system, the initial handling of complaints by the police was identified as one of the most serious shortcomings. They found that many officers had 'very little training in responding to rape cases', victims

frequently experienced delays, inappropriate behaviour by professionals and 'judgmental or disbelieving attitudes' when making their complaint. The latest Inspectorate of Constabulary report indicates that the 'under-reporting of sexual violence and high attrition rate [are still causes] for concern and forces must continue with efforts to enhance performance in this area.' (HM Inspectorate of Constabularies, 2009, p.7)

Yet this is not a new area of concern. There have been at least 20 years of reviews and policy initiatives addressed at the police's performance failures in rape investigations. Amongst the latest batch of recommendations are those arising from the Stern Review (2010: see <http://bit.ly/di3xK2>); the Commission on Women and the Criminal Justice System (2009); the Tackling Violence Action Plan (Home Office, 2008) and the Cross Government Action Plan on Sexual Violence and Abuse (HM Government, 2007). All 43 police forces in England and Wales have been asked to draw up sexual violence action plans and have been allocated a 'rape champion' to oversee the roll-out of these plans, help instil good practice and challenge 'negative mindsets'. The British government wants a Sexual Assault Referral Centre in each police force area in England and Wales by 2011. These centres provide gold-standard forensic science examination, medical services and Independent Sexual Violence Advisers. There are again calls for specially trained police officers and prosecutors. In March of last year HM Inspectorate of Constabularies was asked to look at the investigation of rape as a priority. Furthermore, in August 2009 a review into the operation of rape laws was postponed because Harriet Harman (then deputy Labour leader) vetoed it, complaining that the proposals failed to address the concerns of women (Elliot et al., 2009).

So what is it about rape that makes it so difficult to report, investigate and successfully prosecute? We propose that a psychological analysis of the criminal justice system is needed to understand its

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apparent resistance to decades of attempts at reforming rape law, and to develop procedures that are not inhibitory to people reporting offences or authorities' investigation and prosecution of them.

We were able to explore this after successfully securing funding from the British Psychological Society's Research Seminar Competition in 2005. We set up a network of researchers that evolved into the Sexual Offences Research Initiative (SORI). We held four meetings to discuss concepts, theories, methods and practical application of research. (The discussions focused on women as the victims of rape: a further seminar series would have been needed to do justice to the overlapping but distinctive issues involved in male rape.) Several important insights emerged through these discussions, which are elaborated in an edited collection (Horvath & Brown, 2009). We give a flavour of these in the remainder of this article by referencing the ideas expounded in various chapters of that book.

'Real' rape

Our network was a multinational and interdisciplinary group of forensic psychologists, academic lawyers, feminist criminologists and critical sociologists. Coming from different intellectual traditions and histories meant we were not just retreading trusted and tried concepts and formulations but grappling with language and meanings of terms. For example, we argued over the term 'real' rape. Estrich (1987) articulated this idea as the 'jump from the bushes' stereotype in which an unsuspecting woman (who has not been drinking) is forced to have sex without her consent with a man she does not know and who has a weapon which he threatens her with or uses to overcome her resistance. Estrich also observes that a stereotypical 'real' rape victim reports her attack directly to the police without washing away any of the forensic traces of her attacker. Estrich points out, as have other scholars more recently (e.g. Temkin & Krahé, 2008), that the presence of all

these elements in rape is relatively rare, but that to this day rape allegations that conform to the stereotype are more likely to result in prosecution (Brown et al., 2007). The stereotype is in direct contradiction to the research evidence, which highlights that women are far more likely to be assaulted by people they know under circumstances that may involve socialising and probably drinking (Kelly et al., 2005). Sexual intercourse without consent under these circumstances may also be rape but does not have the features of the notional 'real' rape.

Using the term 'real' rape as shorthand for the stereotype can lead to the possibility of relegating other assault experiences as either made up or not serious. Here we must consider the use of language and transmission of terms in the 'taken-for-granted' vocabulary of rape. Critical to this is the notion that rape happens in a variety of circumstances to all manner of women. Whilst there may be outrage at the rape of the vulnerable (such as children or the elderly) which bear the hallmark of the 'real' rape stereotype, not all vulnerable victims are accorded sympathy or attention; for example, women involved in prostitution or those with learning difficulties (see for example Anderson, 2004; McCarthy, 1999).

The justice gap

Women who have been sexually assaulted experience a 'justice gap': the dramatic difference between the number of offences recorded by police officers and

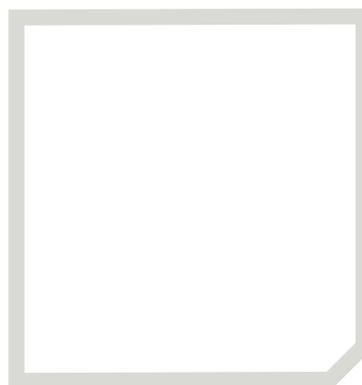
the securing of convictions in court (Temkin & Krahé, 2008). This is also referred to as the attrition problem: the identification of instances within the sequencing of reporting, recording, prosecuting and trying of rape where cases are dropped. Estimates suggest that as many as 95 per cent of rapes are unreported. Given that about 12,000 rapes are reported annually this could mean in the region of 200,000 do not even enter the criminal justice system. Of those that are reported, a half to two-thirds are dropped by the police. Of the remaining cases that are considered by the Crown Prosecution Service a further third to a half of cases are dropped. Once in court about half the cases result in a guilty verdict although this only

represents about six per cent of the original number of cases coming to police attention (HMCPSI, 2007).

Stereotypic beliefs and attitudes are key to understanding the problem of attrition. Two areas of research are particularly pertinent: rape myths and just world beliefs. Rape myths are beliefs that deny, downplay or justify sexual violence; for example, victim blaming exemplified by the belief that women unconsciously desire rough sex or dress provocatively to invite sex

(Burt, 1980). Other rape myths include presumptions that seek to exonerate or excuse the perpetrator: for example, what does a woman expect if she is wearing skimpy clothing; or, once a man is aroused sexually, biology sets off an irreversible sequence of physiological responses over which he has no control. Beliefs in a just world hold that bad things do not happen to good people (Lerner, 1980). When applied to rape, 'good' women are not raped, leading to the assumption that rape victims are somehow undeserving, except in the special cases of child molestation or particularly violent attacks.

We also draw on the pioneering work of Janoff-Bulman (1988), about 'assumptive' worlds. These provide people with a stable conceptual system that protects their psychological



The term 'real' rape can reduce sympathy and attention for victims for whom stereotype does not fit

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equilibrium in a constantly changing world. Janoff-Bulman's premise is that being a victim cannot readily be assimilated into a person's conceptual system, as they find it difficult to accept the malevolence and arbitrariness of victimisation.

Sexual scripts

The 'just world' beliefs and rape myths we have described come together to operate at societal, organisational and individual levels. Societally, there is, if not a rape-supporting culture, certainly a rape-condoning culture developed through socialisation and promoted via media reporting that contributes to the construction of sexual scripts.

Such culturally prescribed scripts lay out expectations about men and women's roles when negotiating sex. Typically the role of sexual initiator and pursuer is assigned to men and sexual gatekeeper to women (i.e. women are responsible for saying no during sexual interactions). Hannah Frith (Horvath & Brown, 2009, Chapter 5) reports on focus groups with young women in which they discussed the stages and sequencing of sex. The young women reported that this is commonly available knowledge that is consensually agreed, and they draw on general instances about the kinds of things men do or say to confirm the nature of sexual encounters. This leads to the idea that it becomes difficult for women to say no, and shifts blame on to women who don't then know how or when to say no clearly. Men are 'let off' since they claim to be confused by this apparent ambivalence of women towards saying no clearly, and because refusal deviates from the generally accepted sexual script.

There are cultural rules that attribute undesirable qualities to women if they attempt to renegotiate sex and say no once they indicate their consent to having sex by being cast as a tease, flirt or tart. In negotiating 'no' it seems young women offered justifications for their inability rather than unwillingness to say no. In other words, they seek excuses or justifications, rather than being able to be clear that they do not want sex with this man on this occasion. Thus the miscommunication notion, within this formulation, is another rape myth.

Structurally, within the police and prosecuting authorities, there is an agenda to test the strength of a case when considering the public interest and public purse in deciding to prosecute a case. If cases do not match up to the 'real rape' stereotype they are less likely to be proceeded with (Brown et al., 2007).

Individual susceptibility to rape myths predicts that information about the circumstances of a rape, such as the woman has been drinking, will be construed as laying greater responsibility towards her and excusing of the perpetrator (Temkin & Krahé, 2008).

Arising from this argument, Vanessa Munro and Liz Kelly (Horvath & Brown, 2009, Chapter 12) suggest a 'vicious cycle' as characterising much that happens within the current criminal justice system in its response to rape. We set out our version of this 'vicious cycle' in Figure 1, which shows that stereotypic thinking about rape (influenced by acceptance of rape myths) continues to inform decision making throughout the criminal justice process.

Rape myths may inhibit women from reporting rape, police officers confirm their beliefs in high rates of false reporting when there is an insufficiency of evidence or women withdraw their allegations, prosecutors anticipate jurors' response to cases in which the evidence deviates from the 'real' rape scenario and juries continue to acquit, which reinforces rape myths and discourages women from reporting. We suggest that this vicious cycle creates a self-perpetuating feedback loop in which the prejudicial disbelief of women's experience is confirmed by the attrition process within the criminal justice system.

Some of our book makes for very uncomfortable reading. Data presented reveals that the more vulnerable victims – women involved in prostitution, or those having consumed alcohol or drugs, or who are young (under 16) – who might reasonably expect the protection of the law, actually fare worst and are least likely to have their cases presented in court. Whilst these victims may experience a 'real' rape scenario their perceived 'flaky' status means that they lack credibility as witnesses. Conversely, women who are seen as more credible witnesses may be more likely to present a scenario that does not mirror the 'real' rape criteria.

Emotions in rape judgments

Emotions, particularly anger and disgust, play a role when making judgments about rape. Giner-Sorolla and Russell offer an

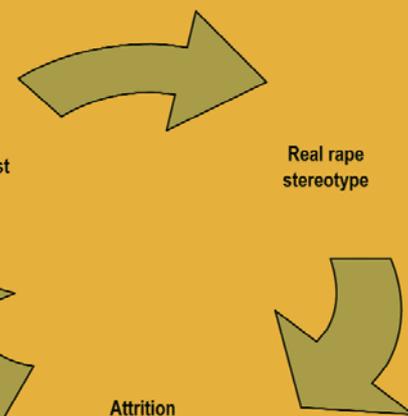


Figure 1: The vicious cycle of rape myth perpetuation

elegant and persuasive analysis that these particular emotions are aroused by rape (Horvath & Brown, 2009, Chapter 3). They argue that rape presents threats to the integrity of a person (i.e. their autonomy), to community cohesion and to cultural or theological values in the form of purity or chastity violations. Threats to autonomy invite anger and a wish to punish or rebuke the offender. Threats to sexual norms in the form of violation evince disgust and evoke aversion or avoidance. Threats to the community (or organisations) provoke contempt or a combination of anger and disgust. Giner-Sorolla and Russell propose that individuals engage in an evaluative process to judge whether behaviour is acceptable or not, such as the presence of coercive force, an act committed by a stranger and resistance by the victim. It is these that trigger anger, directed at the perpetrator and sympathy, expressed for the victim. However, the operation of culturally embedded myths about rape such as women dressing provocatively and so 'gagging' for sex, attenuate the harm experienced by her. Such beliefs minimise the autonomy threat, and maximise the blame attributed to the woman, thereby creating a reversal in which the man becomes the victim of an unstable, vindictive or sick woman.

This process is encapsulated in a newspaper article by Melanie Phillips in June 2005 when she was commenting on the Metropolitan Police's Commissioner, Sir Ian Blair, ordering of an inquiry to look into the high attrition rate in rape cases. Phillips stated: 'it is... Sir Ian's approach that should cause concern. For the evidence suggests that, far from the police failing to deal appropriately with an epidemic of rape, they are having to cope with an epidemic of spurious accusations.' Her righteous indignation was addressed at the 'disturbingly long list' of women who she claims make false accusations. This is

an example of redirected anger towards women, with the consequence of wishing to humiliate and punish them for their falsely accusing men of rape. Such a position preserves men's autonomy at the expense of women's and defines sexual norms in male terms, which then serves to limit threats to community cohesion. This is most extreme in the concept of honour explained by Aisha Gill (Horvath & Brown, 2009, Chapter 7). Honour is achieved through 'the conduct, actions and social performance of women'. 'Misbehaviour' by women (i.e. the exercise of their sexual autonomy) is defiling and 'brings shame and dishonour to the male members of the entire community'. Rape in Urdu is referred to as *meri izzat looti gayi/meri izzat lut gayi*, which literally translated means 'I could not prevent them from stealing my honour'. This justifies retributive honour-based violence, thereby restoring community cohesion.

The challenge

Sir Ian Blair (1982) wrote at the end of his pioneering book on investigating rape: 'it is police officers to whom many rape victims turn at the moment of their

greatest distress. This is a grave responsibility. I believe that it can most appropriately be discharged by the creation and maintenance of a whole approach a "new approach".' Yet almost three decades on, the Commission on Women and the Criminal Justice System (2009) expressed its concern that women do not have confidence in a criminal justice system that fails to provide support and safety or that it is one likely to give them justice. In this article, we have reflected on different stages of the criminal justice system and developed explanations arising from attitudes and beliefs for why women

"stereotypic thinking about rape continues to inform decision making"

might not report the rape, why police investigators or prosecutors decide to drop cases and what influences jurors when deliberating the guilt or innocence of defendants.

Mary Koss from the University of Arizona, a leading researcher into rape, wrote about an encounter she had with Joseph R. Biden Jr (currently Vice President of the United States) in the early 1990s (Horvath & Brown, 2009, Foreword). He had commented that 'if there were a disease that affected one in five women, a bell would ring to mobilize a massive public response, but in the case of violence against women, the bell tolls very softly'. As Professor Koss concludes, 'it is indeed time for the bell to ring louder'.



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