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Book Review

Jennifer Temkin & Barbara Krahe *Sexual Assault and the Justice Gap: A Question of Attitude*

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In a climate of increasing political and legal attention to the issue of rape, this book offers a fresh opportunity to revisit some of the prevailing and tenacious problems that beset the criminal justice processing of sexual offences.¹ The first two chapters review the current literature on the criminal justice treatment of rape, reminding us of the all too obvious ‘justice gap’ (or ‘chasm’, as Kelly et al, 2005, have described it) between the amount of rape that is reported and the number of cases that result in conviction.² Chapter three documents the available psychological research from Europe and North America on the ways in which juries in general, as well as in rape trials, respond to judges’ directions and to certain kinds of evidence, including expert evidence. As the title suggests, the authors then go on to argue in the remaining chapters that the troubling trend in rape statistics and the process of criminal justice attrition so clearly documented in recent studies (COPFS, 2006; Office for Criminal Justice Reform, 2006), is really a problem of *attitude*.

To demonstrate this, Temkin and Krahe present the findings of several new empirical studies which they carried out in England and Wales, in order to examine the attitudes of prospective (i.e. student) and practising legal professionals (barristers and judges), as well as over 2000 members of the general public, as to questions of blame, responsibility and punishment for rape. The book, written by a psychologist and a lawyer, offers insights into the ways in which people form beliefs and attitudes about particular case scenarios involving rape, and the impact these attitudes may have on the legal treatment of rape. The authors found that schematic processing (reliance on stored beliefs and knowledge), rather than data-driven processing (reliance on information given about a problem), leads people to rely on their pre-conceived stereotypical intuitions about gender appropriate behaviour, lowers their propensity to

¹ The book focuses mainly on the criminal justice system of England and Wales.

² This of course ignores the vast number of rapes that are never reported. See for example the HMCPSI and HMIC report of 2007; Walby and Allen 2004.

blame and convict defendants, and increases their inclination to blame the complainant. Such schematic processing and complainant blaming behaviour is closely connected to the degree to which an individual believes in rape myths, such as women who drink or wear revealing clothing precipitate rape. They found that research participants were more likely to manifest complainant blame and negation of defendant responsibility in rape situations where complainant and defendant knew each other, i.e. those cases that do not resemble the perceived 'real' scenario of a violent attack by a stranger in an alley - which, as surveys and statistics show, is the least likely form of rape (Walby and Allen 2004; Coleman et al 2007). This blaming occurred, it seems, even where there was clear evidence of the use of force by the defendant and resistance from the complainant.

These new findings support recent research in England and Wales, e.g. by Finch and Munro (2005), demonstrating the tendency of mock jurors to blame women and neutralise the behaviour of sexually aggressive men, despite recent legislative attempts – by way of the Sexual Offences Act 2003 – to treat rape more seriously. Temkin and Krahé offer further evidence that law by itself does not solve the problem of rape. The authors do make proposals for specific changes in substantive law and procedural/evidential rules on rape in chapter eight. However, since the focus of this book is the problem of attitudes towards rape, and the question of how to shift them, the authors recommend that we focus our energy also on other changes that might improve the quality of courtroom decision-making.

Some suggestions are offered as to how we might go about this mammoth task, including improving training for legal professionals (particularly judges), the use of expert evidence in trials (subject to ongoing research as to its impact), education of people from school age as to sexual intimacy and communication, and public information campaigns about sex and consent. The book also highlights the urgent need for more research on the short and long-term impact of education campaigns about rape, as well as the proper piloting of posters used in such campaigns. The authors found in their own evaluation of the impact of posters used in an education campaign in England in Wales that one poster actually had the reverse effect from that intended – making participants *less* likely to hold the defendant responsible for rape. Most importantly from the point of view of the rape trial, the book reveals the need

for research on the differences displayed in reasoning and decision-making of judges as compared with that of juries. The hint given in the book (chapter nine) is that ultimately it might be preferable to train and give guidance to judges and abolish the jury trial for sexual offences; however, all things considered, the authors pragmatically accept that this is unlikely to occur in the near future. This is a possibility that could be explored further, particularly were there robust research findings to support it.

In short, this is a very interesting book that presents new evidence of the problem of stereotypical gendered attitudes about rape that prevail amongst legal professionals and the lay public - attitudes that make it extremely difficult for a defendant to be brought to, and convicted at, trial. The authors bring together legal and psychological expertise, offering compelling support for the growing body of work that argues that our failure to deal properly with the issue of rape is frequently a problem of attitude rather than law. The book tends in its empirical focus to highlight the end part of the criminal justice process – the jury trial – but it is clear from the findings of other studies in the field that previous stages of the criminal justice system (for example the police processing of cases) are just as, if not more important in terms of changing attitudes towards complainants and defendants, and slowing down the attrition rate (Kelly et al 2005). Temkin and Krahe's book is an important part of this emerging literature that decentres law as the main or sole convergence point for critical energy directed at transforming the criminal justice experiences of women who have been raped.

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