

Ken Clarke chose to frame rape in terms of the 'blaming the victim' rhetoric which so many have challenged and resisted

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Last week's comments by the Justice Secretary, Ken Clarke, on the reform of rape law for 'different types' of rape ignited fury across the political spectrum and in the blogosphere.

[Mary Evans](#) argues that by setting them in the context of judges and sentencing, Ken Clarke's comments largely ignore the victims of rape, reinforcing existing privilege and power.



It is said of academics that, like cats, they are impossible to herd. David Cameron might be thinking the same of his Cabinet. No sooner do you let them out of your sight than they are saying things that cause endless complication and disrupt fluent political control, not least of those sections of the Conservative Party who regard any talk of shorter sentences (for any crime) as tantamount to the end of all justice.

In a different part of the political spectrum, many feminist voices – and scores of others – have condemned Kenneth Clarke's [recent remarks](#) on the rape law reform and “different types” of rape. But there are other aspects of the discussion that deserve emphasis, aspects that involve privilege and power.

Credit: Conservative Party (Creative Commons)

First, it is striking that both in Clarke's initial and his [subsequent remarks](#) he made little reference to the people he should be talking to about rape: the subjects of rape themselves and those who have made the question a subject of study and attempted intervention. Kenneth Clarke has spoken recently about studies of the effect of imprisonment and rates of recidivism; he clearly knows that in the Home Office and many other contexts there are individuals who have made it their business to study the working of the criminal justice system. If he knows this, he must know that within these same contexts there are also numerous individuals who have considered the general issue of sexual assault and the problems of the [2003 Sexual Offences Act](#). Yet knowing this, Clarke chooses to frame public statements about rape in terms that implicitly encourage that rhetoric of 'blaming the victim' which so many people have challenged and resisted.



It is here that the references to privilege and power become important; in his comments Clarke demonstrates the kind of privilege and power that merits discussion: namely, the *knowing* refusal of information that is central to the subject being debated. It is a form of the use of power that bypasses democracy and can be brutal in its results. One of the tenets of democracy should be that just as much as all individual voices in that society have a part in decisions, so too should collective voices, particularly when decisions are being made that affect that group. In the case of Clarke's remarks there are two groups to consider: those raped and those who rape. Yet Clarke gave a place to only one of these groups: the latter. In refusing the place of the former he seemed to abandon one of the very principles that English law makes so much of: that accused and accuser should be treated equally.

In Clarke's account of the two parties in rape there is, however, another aspect of the implicit assumptions of power that need to be noted: that Clarke's remarks appeared to be derived very much from the position of the sentencing judge, a position of complexity but also of manifest power, not just in sentencing but also in the direction of the jury, an occasion where a particular case meets a set of complex cultural values and expectations. That fusion is precisely where Clarke could have recognised not just sentencing in rape cases but the problems of the process of the law. Instead of this, he appeared to turn his back on the possibilities that now exist and return, as other members of his party have done, to mythical accounts of the social world that refuse the narratives of those most centrally involved.

