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Abstract

Interest in evidence-based policy making in the UK and elsewhere has been documented over many years. There has also been much attention given to the issue of sexual violence from policy makers. Virtually all of this attention has been gendered in the sense that it has focused on female victims and male perpetrators. Given the gendered nature of rape, this is hardly surprising; however, to say that sexual violence and victimisation is a gendered phenomenon is not to suggest that males are invulnerable to sexual violation. Indeed, the empirical data makes clear that 'each and every body is permeable and appropriable'. While the inclusion of males within the legal definition of rape under English law occurred more than twenty years ago, policy development has not been similarly re-framed. It is the contention of this chapter that policy makers have failed to appropriately consider the experience of adult male victim-survivors as part of the UK government's Violence Against Women and Girls (VAWG) strategy and what is needed is an examination of female and male sexual victimisation at the policy level. This chapter will use findings from an empirical study of attitudes towards adult male rape, along with other data to examine the way in which myths and assumptions shape understandings of adult male rape and the credibility of complainants. It will be argued that given one of the objectives of the VAWG strategy is to change attitudes and behaviours in the context of female victim-survivors, a similar approach is needed for males. This chapter points to the various ways in which this neglect of male victim-survivors causes harm and why awareness raising and challenging problematic attitudes is important. It concludes by arguing for gender inclusive policy making in the context of sexual violence.

Keywords

policy, inclusive, making, evidence-based, perceptions, rape:, male, adult, consent

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CHAPTER NINE

PERCEPTIONS OF CONSENT IN ADULT MALE RAPE: EVIDENCE-BASED AND INCLUSIVE POLICY MAKING

NATALIA HANLEY AND PHILIP N.S. RUMNEY

Introduction

Interest in evidence-based policy making in the UK and elsewhere has been documented over many years.¹ There has also been much attention given to the issue of sexual violence from policy makers. Virtually all of this attention has been gendered in the sense that it has focused on female victims and male perpetrators. Given the gendered nature of rape, this is hardly surprising; however, to say that sexual violence and victimisation is a gendered phenomenon is not to suggest that males are invulnerable to sexual violation. Indeed, the empirical data makes clear that ‘each and every body is permeable and appropriable’.² While the inclusion of males within the legal definition of rape under English law occurred more than twenty years ago,³ policy development has not been similarly re-framed. It is the contention of this chapter that policy makers have failed to appropriately consider the experience of adult male victim-survivors as part of the UK government’s Violence Against Women and Girls (VAWG) strategy and what is needed is an examination of female *and* male sexual victimisation at the policy level. This chapter will use findings from an empirical study of attitudes towards adult male rape, along with other data to examine the way in which myths and assumptions shape

¹ Ken Young et al, ‘Social Science and the Evidence-based Policy Movement’ [2002] 1 Social Policy and Society 215.

² Joanna Bourke, *Rape: A history from 1860 to the present* (Virago 2007) 247.

³ Youth Justice and Criminal Evidence Act 1994, s142 amending s1 Sexual Offences Act 1956.

understandings of adult male rape and the credibility of complainants. It will be argued that given one of the objectives of the VAWG strategy is to change attitudes and behaviours in the context of female victim-survivors, a similar approach is needed for males. This chapter points to the various ways in which this neglect of male victim-survivors causes harm and why awareness raising and challenging problematic attitudes is important. It concludes by arguing for gender inclusive policy making in the context of sexual violence.

Evidence-based Policy Making and Male Sexual Victimization

Interest in the use of evidence as an explicit element of policy making in the United Kingdom can be located within the context of a political commitment by successive governments to improve policy quality,⁴ and help to ‘better understand the problems we are trying to address.’⁵ Such an approach places emphasis on the use of reliable, robust knowledge in making policy decisions, as opposed to relying on ‘opinion-based policy’ which may involve conjecture or ignorance.⁶ Evidence-based policy making suggests a more careful approach to decision making compared with policy development driven by media pressure or public outrage – forces that are not uncommon in the context of sexual offending.⁷ Evidence-based policy making requires careful and intelligent use of evidence, including a consideration of its strength and reliability.⁸ This is particularly important for complex social and criminal justice issues which do not easily sit within a positivist approach to evidence production,

⁴ Katherine E Smith and Kerry E Joyce, ‘Capturing Complex Realities: Understanding efforts to achieve evidence based policy and practice in public health’ (2012) 8 *Evidence and Policy* 57.

⁵ Cabinet Office, *Modernising Government* Cm 4310 (1999) ch 2 [6].

⁶ Marco Segone and Nicholas Pron, ‘The Role of Statistics in Evidence-Based Policy Making’ UNECEWork Session on Statistical Dissemination and Communication (2008)[3].

⁷ See (n 17-18) and accompanying text.

⁸ Paul Jensen, ‘What is Evidence Based Policy?’ Melbourne Institute Policy Brief No. 4/13 (2013). Available from https://www.melbourneinstitute.com/downloads/policy_briefs_series/pb2013n04.pdf accessed 22nd April 2015.

typically regarded as the ‘gold standard’ of research evidence.⁹ A wide variety of research methods are used to better understand the impact of policy/legal change,¹⁰ but the lessons from this research may not be equally impactful on policy development.¹¹ There can be little doubt that policy makers ‘need to be sophisticated in applying research’,¹² but problems occur when policy makers ignore important evidence, rely on unreliable data or take account of a partial or selective reading of evidence.¹³ The influence of civil servants, advisors, media, pressure groups and public opinion may also produce decisions that run counter to the best evidence available. Rosenstock and Lee have noted that evidence-based policy making can be deleteriously impacted by vested interests:

A wide array of vested interests—and here we mean those who, for whatever reason, are committed to a predetermined outcome independent of the evidence ... These interests, which are often financial but may also be emotional, ideologic and political, may be acting alone or in combination.¹⁴

Domestic criminal justice policy makers have been criticised for being heavily influenced by political considerations at the cost of evidence-based perspectives.¹⁵ This concern has been echoed by research participants working within and alongside law reform processes in Australia. Research has identified various barriers to making effective use of evidence in reforming responses to crime:

Almost all of the participants highlighted the political nature of law reform as limiting the use and influence of social science research. In particular, it was noted that once election promises were made, reforms were often implemented regardless of expert advice or research-based evidence. Similarly, reforms responding to controversial or high-profile cases that

⁹ Natalia Hanley et al, ‘Improving the Law Reform Process: Opportunities for Empirical Qualitative Research’ *Australian and New Zealand Journal of Criminology* [in press].

¹⁰ Ian Sanderson, ‘Evaluation, Policy Learning and Evidence-Based Policy Making Public’ (2002) 80 *Public Administration* 1, 1.

¹¹ Natalia Hanley et al (n 9).

¹² National Audit Office, *Getting the Evidence: Using Research in Policy Making* (London: TSO, 2003) [4.1].

¹³ *ibid.*

¹⁴ Linda Rosenstock and Lore J Lee, ‘Attacks on science: The risks to evidence-based policy’ (2002) 92 *American Journal of Public Health* 14, 14

¹⁵ Michael Tonry, *Punishment and Politics: Evidence and Emulation in the Making of English Crime Control Policy* (Willan 2004) 1.

sparked community outrage were cited as instances where empirical research could play little to no role in informing the expedited reform process.¹⁶

Indeed, in sexual offending policy making, high profile cases and external pressure on the political process undoubtedly influence policy development. Failures associated with high profile cases may, of course, point to problems that require intervention,¹⁷ but politicians may advocate reforms that turn out to be either ineffective or counter-productive.¹⁸ Further, where evidence does influence law and policy development, it will not necessarily address the institutional, social, and gendered factors that may impede progress in addressing the problem of sexual violence. Indeed, the limitations of criminal legal reform have long been recognised and has led to alternative interventions, including educational initiatives and professional training in order to address rape myths and stereotypes.¹⁹

Despite these limitations, the use of evidence in guiding state and agency responses to sexual violence can improve the quality of policy decisions in several ways. First, it provides a means of identifying data which serves to challenge misconceptions or ignorance. This is a relevant issue in the context of adult male rape because, as with rape generally, perceptions of victim-survivors can be influenced by a wide range of mistaken assumptions and beliefs.²⁰ Second, evidence-based policy making can assist in highlighting victim groups that have been previously neglected. Male victims-survivors undoubtedly fall within this category, as will be discussed below. Third, assuming that reliable data is identified and used in a responsible manner, then the use of evidence may lead to the avoidance of error, or negative unintended consequences upon policy implementation. Of course, such a rationalist approach to policy development can be seen as naïve in the face of forces that serve to

¹⁶ Natalia Hanley et al (n 9).

¹⁷ Kristine Coulter and David S Meyer, 'High profile rape trials and policy advocacy' (2015) 35 *Journal of Public Policy* 35.

¹⁸ Of course, policy effect can only be accurately measured after implementation and disappointing or counter-productive results are an inherent part of the policy and law reform process. R. Corrigan, 'The New Trial by Ordeal: Rape Kits, Police Practices, and the Unintended Effects of Policy Innovation' (2013) 38 *Law & Soc. Inquiry* 920.

¹⁹ Jennifer Temkin and Barbara Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing 2008).

²⁰ Noreen Abdullah-Khan, *Male Rape: The Emergence of a Social and Legal Issue* (Palgrave Macmillan 2008).

undermine a commitment to tackling problems in an informed way. But that does not undermine the utility of evidence; it re-emphasises the importance of sound policy making.

Tackling Problematic Attitudes towards Male Rape and the UK Government's VAWG Strategy

In the United Kingdom, successive governments have pursued a strategy to address the complex and important problem of violence against women and girls (VAWG) in its many forms. In November 2010, Home Secretary, Theresa May MP stated: 'The Government's ambition is nothing less than ending all forms of violence against women and girls'.²¹ The strategy does not exclude male victim-survivors, but focuses most attention on where the problem is greatest – on male violence against women and girls. However, the policy has developed in a manner that focuses almost exclusively on women and girls, with little attention given to males²² and the focus on VAWG has sometimes been used to explicitly justify the exclusion of males.²³ The VAWG strategy has influenced criminal justice

²¹ The Rt. Hon Theresa May MP, 'Call to end violence against women and girls: strategic narrative' 25 November 2010.

²² In a recent strategy document, for example, men and boys are repeatedly mentioned, but largely in the context of how they can help prevent VAWG. For example, 'Starting from the premise that men can be a powerful force in challenging negative behaviours, we will engage men and boys in challenging VAWG by working with organisations to support widespread awareness about VAWG and how men can be involved as an integral part of approaches to prevention': HM Government, *Ending Violence against Women and Girls: Strategy 2016-2020* (2016) 17. For similar comments, see: 25, 26, 52.

²³ For example, in a report on VAWG, the Department for International Development, states: 'DFID acknowledges the importance of preventing and responding to the sexual and gender-based violence suffered by women, men, boys and girls. However, the focus of this *How to Note* is on women and girls, given that this is the focus of UK Government policy' (emphasis added). Emma Bell and Kate Butcher, *Addressing Violence against Women and Girls in Health Programming* DFID Guidance Note: Part A Rationale and Approach (2015) 22 n 50 (emphasis added). The only other reference to men or boys in the report concerns working with males in order to address 'social norms that underpin violence' in the context of VAWG (at 13). See also: E. Bell and K. Butcher, *DFID Guidance Note: Part B: Practical Guidance* (2015) 13. A May 2014, *Addressing Violence against Women and Girls in Education Programming* DFID Guidance Note did give greater attention to boys as victims of abuse. This makes for a puzzling inconsistency between policy documents.

agencies and policy development in various government departments, resulting in the production of over 200 reports, updates, evidence summaries and strategy documents.²⁴ There is one specific aspect to the VAWG strategy that is of particular relevance to this chapter. The strategy includes a focus on attitudes towards sexual violence and awareness-raising. For example, one document discussing the VAWG prevention strategy set out a strategic vision, including: ‘To prevent violence against women and girls from happening in the first place, by challenging the attitudes and behaviours which foster it and intervening early to prevent it’.²⁵ In its 2013 Action Plan, the government set out an objective for 2015 in which ‘[a] greater proportion of society believes violence against women and girls is unacceptable and is empowered to challenge violent behaviour’.²⁶ Other documents contain similar comments.²⁷ The most recent strategy document continues to emphasise the importance of changing attitudes towards VAWG,²⁸ with one objective to be pursued by the Foreign and Commonwealth Office: ‘Challenge traditional attitudes to sexual violence in conflict and work to end the stigma suffered by many survivors, including men and boys, which leaves them ostracised from society’.²⁹ This objective is illustrative of a welcome, but rare reference to adult male victims in the voluminous VAWG documentation. It is also an indication of the strategy’s poorly developed response to male victim-survivors that the issue of stigma is seen in the context of conflict, but is not mentioned in a domestic context or outside of conflict situations. This

²⁴ These can be found on the Home Office’s VAWG policy web page: <https://www.gov.uk/government/policies/violence-against-women-and-girls> accessed 22nd April 2016.

²⁵ HM Government, *Call to End Violence Against Women and Girls* (2010) 5. See also: HM Government, *Violence Against Women and Girls Newsletter* Summer 2015.

²⁶ HM Government, *A Call to End Violence Against Women and Girls: Action Plan 2013* (2013) 13.

²⁷ An evidence digest made reference to measures that *inter alia* ‘provided participants with tools to question and challenge negative behaviour and attitudes’: *Violence against women and girls: Evidence digest* (2015) 1.

²⁸ The recent 2016-2020 strategy document refers to a number of strategic outcomes by 2020, including changing social norms, beliefs and attitudes. For example, ‘Increased awareness across all sections of society that VAWG is unacceptable in all circumstances with individuals, communities and frontline agencies empowered to confidently challenge negative attitudes to VAWG’: HM Government, *Ending Violence against Women and Girls: Strategy 2016-2020* (2016) 15.

²⁹ *Id.* 53.

lack of detailed thinking manifests itself in many ways, including the presentation of crime data by the Crown Prosecution Service (CPS).³⁰ Other CPS documents show some limited evidence of being more inclusive,³¹ while others continue to refer to a number of criminal offences including rape as ‘VAWG crimes’.³² Implicitly including men and boys within the category of women and girls shows no understanding of why labeling males as females is problematic for male victim-survivors who

³⁰ In 2015, the Crown Prosecution Service published a crime data report on VAWG entitled: *Violence Against Women and Girls Crime Data 2014-15* (2015). The report did such a poor job of discussing male victim-survivors that it was removed from the CPS web pages and a revised version was published in September 2015. This followed public criticism of the way in which males were treated in the original report. See, for example, Ally Fogg, ‘Why is the CPS erasing the experience of thousands of abuse victims?’ (2015)

<<http://freethoughtblogs.com/hetpat/2015/06/26/why-is-the-cps-erasing-the-experience-of-thousands-of-abuse-victims/#ixzz3jIeRWX72>> accessed 22nd April 2016. The retracted report makes reference to 16 case studies that illustrate the response of the CPS to rape, other sexual offences and child abuse. Of the 16, not a single one makes explicit reference to a male victim. 15 make explicit reference to a female victim or victims of various ages and one refers to ‘children’. In this case study, the report states: ‘A cancer treatment doctor in Cambridgeshire took advantage of 18 of his young patients who were battling serious illness by systematically sexually abusing them’ (at 67). The consultant in question was Myles Bradbury who pleaded guilty to multiple sexual offences involving boys. The Crown Prosecution Service will have been well aware of the identity of his victims at the time the report was drafted. When Bradbury appealed against his sentence, the Court of Appeal made clear who they were: ‘The offences charged against him on the indictment involved 18 boys who at the material time were aged between ten and 16’: *R v Bradbury* [2015] EWCA Crim 1176 at [4]. The Director of Public Prosecutions, Alison Saunders denied males were being neglected by the CPS, but acknowledged: ‘I fully accept the concerns raised by some, however, that we need to be clearer in our annual VAWG report about the inclusion of men and boys, which is why I have arranged for amendments to be made to the current, and all future, reports’: Alison Saunders, ‘Some violence is targeted at women and girls – we can’t ignore that’ *The Guardian* 28 July 2015. Despite the use of the VAWG tag, some other CPS documents are drafted in somewhat more inclusive language. See for example, CPS, Toolkit for Prosecutors on Violence Against Women and Girls: Cases Involving a Vulnerable Victim.

<http://www.cps.gov.uk/publications/equality/vaw/toolkit_for_prosecutors_on_vawg_cases_involving_vulnerable_victims.pdf> accessed 22nd April 2016.

³¹ CPS Toolkit *ibid.* (noting issues of sexuality).

³² See: CPS, *Violence Against Women and Girls Crime Report 2014-15* Rev. version (September 2015).

may struggle with their own sense of self-image as men or boys, as well as their sense of masculinity and sexuality.

While the VAWG strategy neglects males, men and boys have often been neglected or treated as an afterthought in policy development.³³ This neglect allows problematic practices or beliefs to remain unchallenged and contributes to the failure of agencies to identify males as potential victims of sexual abuse.³⁴ Cohen has noted that policy documents, strategies and service provision often neglect male victim-survivors.³⁵ The lack of visibility of males and associated misconceptions may also impact the ability of victims to ‘name’ their experiences and identify pathways to reporting and support.³⁶ Mutchler argues: ‘[G]ay men are rarely thought to be the victims of date rape, for instance, and are scarcely ever prepared to deal with this situation as men in our society ... [with] few or no institutionalised ways of responding’.³⁷ While there are multiple reasons for such problems, one common element is poor understanding and negative attitudes towards male victim-survivors. Given that social attitudes are a specific target of the VAWG strategy, this chapter will explore some of the problematic attitudes that exist towards adult male victim-survivors and why these understandings should be included more explicitly within policy making.

A Brief Overview of Evidence on Attitudes towards Male Rape and Sexual Assault

Echoing the policy environment, the overwhelming majority of research literature on sexual violence and related-attitudes since the 1970s concerns

³³ A spokesman for a male victim support service made the point, thus: ‘The Government still treats this as an add-on, and men and boys as secondary’: Theo Merz, ‘Male Victims of Sexual Abuse are Treated as Secondary’ *The Telegraph* 24 March 2015.

³⁴ Children’s Commissioner for England, *Protecting Children from Harm: A critical assessment of child sexual abuse in the family network in England and Priorities for Action* (2015) 48

³⁵ Claire Cohen, *Male Rape is a Feminist Issue: Feminism, Governmentality and Male Rape* (Palgrave Macmillan, 2014) 135.

³⁶ Philip Rumney, ‘In Defence of Gender Neutrality within Rape’ (2007) 6 *Seattle Journal for Social Justice* 481, 484–486; Michael Scarce, *Male on Male Rape: The Hidden Toll of Stigma and Shame* (Basic Books 1 1997).

³⁷ Matt G Mutchler, ‘Young gay men’s stories in the States: Scripts, sex and safety in the time of AIDS’ (2000) 3 *Sexualities* 31.

female victim-survivors.³⁸ There also exists a significant body of work derived from mock juries,³⁹ focus groups and other techniques⁴⁰ which identifies the ways in which sexual encounters are ‘scripted’, the impact of these scripts on personal judgements and their possible role in sexual offending. In this context, scripting is used to refer to ‘cognitive schema that instruct[s] people how to understand and act in sexual encounters’.⁴¹ Scripts include elements that are descriptive and those that are normative, in the sense that they specify ‘behaviours [that] are expected or accepted in the situation’.⁴² Further, there are various levels at which scripts operate, and taken in combination, cultural, interpersonal and intrapsychic scripts shape an individual’s beliefs about sexual behaviours and encounters.⁴³ It has been argued that in the absence of direct experience of sexual violence, people may draw on cultural level scripts⁴⁴ which can draw on common misconceptions and stereotypes. Alongside scripts of consensual sexual encounters are rape scripts. These scripts direct the ‘nature and parameters of the sequences of events that are expected within a rape as well as the characteristics and conduct of the perpetrator and victim’.⁴⁵ Rape myths inform and become integrated within rape scripts,⁴⁶ and sexual scripts may also ‘contribute to judgments of sexual intent’⁴⁷ that

³⁸ For discussion of some of this research, see: Liz Kelly, *Surviving Sexual Violence* (Polity Press 1988) 141. For a recent review of evidence, see: Nicole Westmarland, *Violence Against Women: Criminological perspectives on men’s violences* (Routledge 2015).

³⁹ Louise Ellison and Vanessa E Munro, ‘Of “Normal Sex” and “Real Rape”’: Exploring The Use of Socio-Sexual Scripts in (Mock) Jury Deliberation’ (2009) 18 *Legal & Social Studies* 291.

⁴⁰ Barbara Krahé et al, ‘The role of sexual scripts in sexual aggression and victimisation’ (2007) 36 *Archives of Sexual Behavior* 687.

⁴¹ Tatiana Masters et al, ‘Sexual scripts among young heterosexually active men and women continuity and change’ (2013) 50 *Journal of Sex Research* 409, 409. See also: John H Gagnon and William Simon, *Sexual Conduct: The Social Sources of Human Sexuality* (Aldine Publishing Company 1973) 19.

⁴² Krahé et al (n 40) 687.

⁴³ Masters et al (n 41).

⁴⁴ M Diane Clark and Marjorie Carroll, ‘Acquaintance Rape Scripts of Men and Women: Similarities and Differences’ (2008) 58 *Sex Roles* 616, 617.

⁴⁵ Ibid citing: Sarah A. Crome and Marita. P. McCabe, ‘Adult rape scripting within a victimological perspective’ (2001) 6 *Aggression and Violent Behavior* 395.

⁴⁶ Katherine M Ryan, ‘The relationship between rape myths and sexual scripts: the social construction of rape’ (2011) 65 *Sex Roles* 774.

⁴⁷ Alison P Lenton and A. Bryan, ‘An affair to remember: the role of sexual scripts in perceptions of sexual intent’ (2005) 12 *Personal Relationships* 483, 484.

can be invoked when making decisions about whether a sexual encounter is within acceptable boundaries, which includes the issue of consent.⁴⁸

There is only limited evidence examining scripts in the context of male rape⁴⁹ and a larger body of evidence that examines attitudes towards male sexual victimisation.⁵⁰ This empirical evidence demonstrates that adult male sexual victimisation is understood, in part at least, by reference to myths, stereotypes and other problematic attitudes. A number of myths⁵¹ surrounding male rape have been identified by researchers. These include: that men cannot be raped because they are physically powerful, that men are able to resist or escape; that a man would not be affected by rape as significantly as a woman; that male victims of sexual violence must be gay and that a man would not be able to gain an erection or ejaculate while being raped or sexually assaulted.⁵² The literature suggests that there are

⁴⁸ Heather L Littleton and Danny Axsom, 'Rape and Seduction Scripts of University Students: Implications for Rape Attributions and Unacknowledged Rape' (2003) 49 *Sex Roles* 465.

⁴⁹ Michelle Davies et al, 'The scripting of male and female rape' (2013) 5 *Journal of Aggression, Conflict and Peace Research* 68.

⁵⁰ See for example, Cindy Struckman-Johnson and David Struckman-Johnson, 'Acceptance of male rape myths among college men and women' (1992) 27 *Sex Roles* 85; Kristine M Chapleau et al, 'Male Rape Myths: The Role of Gender, Violence and Sexism', (2008) 23 *Journal of Interpersonal Violence* 600; Emma Sleath and Ray Bull (2010) 'Male Rape Victim and Perpetrator Blaming', (2010) 25 *Journal of Interpersonal Violence* 969.

⁵¹ In this research, the authors tested *inter alia* whether three behaviour variables – lack of resistance, delay in reporting and the complainant experiencing an erection – would impact the perceptions of the complainant and alleged perpetrator in the vignettes. These behaviours are in fact, not unusual amongst male victim-survivors and the assumption that males do not behave in this way is clearly a myth in the sense that it is factually untrue:

Philip Rumney and Natalia Hanley, 'Gendering Rape: Social Attitudes Towards Male and Female Rape' in Jackie Jones et al, (eds.), *Gender, Sexualities and Law* (Routledge 2011); Philip Rumney and Natalia Hanley (2010) 'The Mythology of Male Rape' in Clare McGlynn and Vanessa Munro (eds.), *Rethinking Rape Law: International and Comparative Perspectives* (Routledge 2010). It is common for legal scholars to define 'myth' to mean any belief that they regard as problematic. However, in the context of the criminal justice system and related policy making, it is crucial to distinguish between true, factually untrue and claims based on assertion. No criminal justice system or policy initiative can operate effectively without such a distinction. .

⁵² For a concise overview see: Kristine M Chapleau *et al*, 'Male Rape Myths: The Role of Gender, Violence and Sexism' (2008) 23 *Journal of Interpersonal Violence* 600.

some similarities⁵³ but also important distinctions in attitudes between male and female sexual victimisation.⁵⁴ For instance, Davies *et al* concluded that sexuality was important in scripting male rape but was not mentioned by any respondents in connection with female rape.⁵⁵ The acceptance of female rape myths has also been positively related to the acceptance of male rape myths⁵⁶ and thus the acceptance of any rape myth appears to increase the likelihood of further myth acceptance.⁵⁷

Methodology

This research presents empirical data from seven focus groups investigating student attitudes towards four vignettes depicting an alleged male rape.⁵⁸ The vignette featured Ian, the complainant, and David, the alleged assailant. It describes a situation in which Ian meets David at a party and agrees to go back to his flat to watch football DVDs. Ian claims that when he decided to leave the flat David restrained and raped him. David claims that ‘one thing led to another’ and they had consensual sex. The vignette was modified to test the impact of four variables on student assessments of the allegation: lack of resistance, delayed reporting to the police, Ian’s denial that he is gay and the complainant experiencing an erection during the alleged rape. The focus group research was conducted in a UK university over a 30-month period.⁵⁹ Convenience sampling⁶⁰ was utilised whereby undergraduate students from programmes including criminology and law were invited to participate in the research. A total of seven 50-minute focus group discussions were conducted, involving thirty

⁵³ Sleath and Bull (n 50).

⁵⁴ Davies *et al* (n 49). See also: Irina Anderson, ‘What is typical rape? Effects of victim and participant gender in female and male rape perception’ (2007) 46 *British Journal of Social Psychology* 225.

⁵⁵ Davies *et al* (n 49).

⁵⁶ Chapleau *et al* (n 52).

⁵⁷ Michelle Davies *et al*, ‘Examining the relationship between male rape myth acceptance, female rape myth acceptance, victim blame, homophobia, gender roles and ambivalent sexism’ (2012) 27 *Journal of Interpersonal Violence* 2807.

⁵⁸ The seven focus groups considered the three vignettes discussed earlier (n 51), plus a fourth variable, sexuality.

⁵⁹ There is no evidence of a significant difference of opinion between the earlier and later focus groups.

⁶⁰ Jane Ritchie *et al*, ‘Designing and Selecting Samples’ in Jane Ritchie and Jane Lewis (Eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Sage 2003).

five participants with an average age of 21.4 years.⁶¹ The groups consisted of male only, female only and mixed participants. Participants were presented with a fictional vignette, the legal definition of rape and whether the facts set out in the vignette suggested that a rape had occurred. There was no staff member present during the discussions and the research was conducted in compliance with institutional ethical standards and processes. The focus group transcripts were manually coded by the two researchers who then compared themes and any results that ran counter to those themes. Given the complexity of opinions and perceptions about sexual violence, and the contingent, context-driven nature around how and when particular attitudes are expressed, focus group discussions offer a useful window into the ways in which sexual violence is discussed, negotiated and understood in a group setting.⁶² There are also important limitations to this method and the research design in general. As an exploratory study, this project had a small sample size, and the sampling technique and age of participants may mean that the findings are representative of broader social attitudes.⁶³ For this reason, it is important to contemplate these data alongside established research evidence. Drawing on these data and existing research literature, the next section examines our findings.

Consent and Credibility

One of the challenges of creating and implementing effective social or legal policy in this area is in understanding how people are informed by the various levels at which sexual scripts operate. Masters *et al*, for instance notes a distinction between participants' accounts of cultural norms in heterosexual sexual encounters and the participants' individual, and enacted desires.⁶⁴ Similarly, Krahé *et al* observes that 'the fact that people can state what the prevalent gender stereotypes are in their society does not allow one to infer what they personally hold to be the typical attributes of men and women'.⁶⁵ Indeed, the expression of problematic social attitudes towards male and female victims of sexual violence does not mean we can infer that they would apply these attitudes in social, criminal justice, policy or wider agency settings. However, given the risk

⁶¹ Twenty-three of the thirty-five participants were female and twelve were male.

⁶² Rumney and Hanley (n 51).

⁶³ Ritchie *et al* (n 60).

⁶⁴ N. Tatiana Masters *et al*, 'Sexual Scripts Among Young Heterosexually Active Men and Women: Continuity and Change', (2013) 50 *The Journal of Sex Research* 409.

⁶⁵ Krahé (n 40) 688.

of this it does indicate that greater attention to social attitudes towards female *and* male victims would be a positive policy step. The distinction between personally-held views and broader social interpretations of a sexual encounter was noted across several of our focus groups:

It's certain things like what he was wearing and whether or not he went back to his house, I don't think should be relevant, but I think that I worry that they are. (Stephanie, FG 6)

I don't think that he is in any way consenting to the intercourse. I don't think that, but that could be how it was interpreted, like the fact that he agreed to go to someone's house that he had just met that night after a party to talk about football. (Barbara, FG 5)

The focus group discussions indicated that group-based processes for working through an account of a sexual or sexually violent encounter represented a complex interplay between vignette characteristics and associated scripts. What is more, this interplay is a useful discursive device for contemplating the meaning of an encounter. Research which considers the content and outcome of group discussions is therefore well placed to offer evidence-based insight into the ways in which multi-level scripts play out in group settings. However, further evidence is needed to untangle how these scripts operate to inform the outcomes of discussion. Below, Phoebe and Morag move between discussion of the shared cultural meanings attached to an encounter and their own individual intentions and interpretations:

Phoebe As a woman, would you expect that would be expected of you?
If you went back to, like, would you think 'if I go back to somebody's house, I am definitely going to have sex with them'?

Morag I wouldn't.

Phoebe *You* wouldn't, but ... (emphasis in original)

Morag If I went back to a guy's house, yeah I would think, yeah I'd think they were going to try it on.

Phoebe But would your intentions of going to the house be, 'I am going to be going back because I am probably going to be sleeping with him'?

Morag No, not always! (FG 6)

Although the vignette given to participants described an alleged sexually violent encounter between two men, the participants drew upon a heteronormative framing of the scenario in the first instance. This is perhaps unsurprising given that heterosexuality is culturally dominant and embedded in sexual scripts. Locating this in an historical context, Mutchler argues that the historic cultural scripting of sexual encounters and relationships is grounded in a heterosexual ‘marriage for procreation’ script.⁶⁶ In a contemporary context, however, Mutchler argues that this manifests itself as a ‘romantic love’ script for women and an ‘adventure script’ for men.⁶⁷ Perhaps reflecting this contemporary context, the overwhelming majority of participants in our research found the vignettes challenging to interpret because the characters were both male and therefore they did not have an immediately available alternative script through which to frame this scenario. Indeed, there was a general consensus in the groups that it would be unusual for a man to accept another man’s invitation to watch football at home if they were previously unknown to each other,⁶⁸ as the two extracts below demonstrate:

No, I don’t know, it sounds a bit odd if two men who didn’t know each other after drinking at a party...were going to one of their flats. Do you like, really talk about football, after a party? I think it’s hard to believe that they probably both didn’t think that something was going to happen when they went to the house. (Alan, FG 1)

But that’s the thing, you don’t generally talk to other guys, you talk to girls. You wouldn’t spend the whole night talking to one bloke would you? That seems a bit contributing [sic] to it. If Ian’s not gay then I can’t really see a straight person doing that, and then going back to their... [home]. (Mike, FG4)

⁶⁶ Mutchler argues that:

[T]he traditional, 19th-century procreative scripts for sex mandates that sex be done for the purpose of procreation between one man and one woman who are married. Though this model presumes the heterosexuality of sexual actors (since lesbians and gay men cannot legally marry or procreate when engaging *solely* in same sex encounters), traditional scripts are available at the level of culture for heterosexuals and non-heterosexuals to draw upon’ Mutchler (n 37) 35.

⁶⁷ *ibid.*

⁶⁸ Indeed, Ian’s acceptance of an invitation to go to another man’s flat was characterised pejoratively by some participants. See the ‘Blaming the victim’ section below.

At issue here was the ‘real meaning’ of Ian going from a party to the home of someone he had just met. Through the course of the group discussions (and at varying points), the participants applied a romantic script which was necessarily premised on the assumed homosexuality of one or both of the characters. Consequently, a significant part of all the group discussions involved participants reading the vignette as involving two gay men or as indicating that David was gay and Ian was interested in some kind of ‘experimental’ sexual encounter. In the words of one participant: ‘I don’t get this “one thing led to another” if they’re not gay’ (Laura, FG3). This latter view, which was expressed in several other groups, fails to acknowledge that when David claimed that ‘one thing led to another’ he could have been lying as part of a consent defence.

With the exception of one vignette where participants were told that Ian denied being gay, no further information was provided about the sexuality of Ian or David.⁶⁹ Research on sexually violent encounters has noted that in the absence of information, participants may be ‘filling in the gaps’ with scripts in order to better understand the vignette under consideration.⁷⁰ As noted above, participants were not able to easily read the scenario as one of platonic friendship, as the following exchange between Harry and Andy illustrates:

- Harry If, say, like, David was gay and Ian was straight, it could be that David had the wrong idea about Ian. And it might have been totally innocent on Ian’s part that he just wanted to watch a DVD and talk about football.
- Andy The thing is if you were thinking that you’ve just met someone at a party and it was, say it was a girl, say she just came back to your house and you had been drinking, one thing led to another ... and I don’t know it’s kind of ... from David’s point of view, he’s consented already by just coming back to his house. From his point of view because he’s drunk, well he’s come back he’s obviously willing. ‘I’m in’, basically. (FG 4)

Stuck on the application of heteronormative sexual/romantic scripts, participants initially and periodically compared the scenario to one in

⁶⁹ Ian’s denial appeared to have had no impact on group discussions compared to the groups where the vignette made no explicit reference to sexuality.

⁷⁰ Emily Finch and Vanessa E Munro, ‘Lifting the Veil: the Use of Focus Groups and Trial Simulations in Legal Research’ (2008) 35 *Journal of Law and Society* 30, 51.

which a character was female, a point we have discussed in detail in previously published work.⁷¹ The result of some discussions was a broad agreement that there would be at least some degree of implied consent by agreeing to return to a near-stranger's house after a party. However, these discussions did not reach full consensus with several focus groups containing one or more critical or challenging participant, as the exchange below indicates:

Fiona I'd need hard evidence but I do think that Ian led him on, yeah; I do think Ian led him on.

Charlotte I think he's stupid for going back in the first place still, so therefore David felt Ian had half consented anyway.

Anna Really?

Charlotte You just put yourself in a stupid position, to change your mind. (FG2)⁷²

In another group discussion, participants also considered the vignettes through a heteronormative framework, assuming that Ian was heterosexual and therefore would not reasonably know nor would assume that David identified as gay. A minority of participants positioned themselves in the vignette suggesting that the invitation was not sexual in nature:

Des But I wouldn't actually think this guy is going to try it on...you would have no idea.

Eric If this guy invited you back, the first thing you wouldn't think of 'is he gay? I shouldn't go back with him'. You would think 'PlayStation.' (FG3)

Working with the idea that Ian and David were heterosexual precluded the possibility of rape for some participants. In this way, sexuality was constructed as binary and fixed at points in the focus group discussion. This can be contrasted with research evidence suggesting that sexual orientation and behaviour can, for at least some people, change over

⁷¹ 'Gendering Rape' (n 51).

⁷² This group also demonstrated another aspect to group discussions; that is, victim blaming by references to 'stupidity' and Ian 'leading on' David. This is an issue that will be discussed in the 'Blaming the victim' section below.

time.⁷³ This binary construction also warranted a search for an alternative plausible explanation for what was interpreted as Ian's false allegation of rape. Participants in one group imagined a revenge narrative based on an alleged argument between Ian and David: 'But that's only Ian's point of view. Ian could be lying, he could be trying to get David put away because they had an argument' (Shelly, FG3).

More commonly, group discussions canvassed the possibility that the complainant may have consented to a sexual encounter and the resultant embarrassment, shame or confusion led to feelings of anger. In this narrative, the rape allegation was understood as an act of revenge or a means to take control of the way the encounter was presented to others:

There is no proof that David physically restrained him and used force on him. There is nothing. That is why he waited three days [to report to the police]. So, to be honest (...) I think he consented to it and he is just ashamed of it and just wanted to get payback somehow. Because maybe David is just a likeable (...) David could basically be someone that he has fancied for ages or had been in love with (Erin, FG7).

The revenge or false accusation narrative is in evidence within the female victim-survivor literature.⁷⁴ Most commonly, this takes the form of fear of reputational repercussions after a sexual encounter.⁷⁵ In our vignettes depicting a male complainant, reputational repercussions commonly featured and this involved issues of regret and sexuality. Here, the experimenting complainant struggling to come to terms with the implications of his sexual encounter with another man reacts by making an allegation of rape. As Cheryl suggested: 'I think, because he strongly denies he is gay, if he did consent to it he might feel ashamed and now he has decided "Oh my god, I am ashamed of what I have done. I am not

⁷³ See, for example, Ritch C Savin-Williams et al, 'Prevalence and Stability of Self-Reported Sexual Orientation Identity During Young Adulthood' (2012) 41 *Archives of Sexual Behavior* 103; Margaret Rosario et al, 'Sexual identity development among lesbian, gay, and bisexual youths: Consistency and change over time' (2006) 43 *Journal of Sex Research* 46.

⁷⁴ M. Diane Clark and Marjorie H. Carroll, 'Acquaintance Rape Scripts of Men and Women: Similarities and Differences' (2008) 58 *Sex Roles* 616; Clare Gunby et al, 'Regretting it after? Focus group perspectives on alcohol consumption, nonconsensual sex and false allegations of rape' (2012) 22 *Social and Legal Studies* 87, 96; Louise Ellison and Vanessa E Munro, 'A stranger in the bushes, or an elephant in the room? Critical reflections upon received rape myth wisdom in the context of a mock jury study' (2010) 13 *New Criminal Law Review* 781.

⁷⁵ Gunby et al, *ibid.*

gay, so it must have been like, rape''' (FG 5). This also points to a counter-intuitive proposition that the strength of the complainant's denial about his presumed homosexuality indicates the complainant's *lack* of credibility. The denial/shame/revenge narrative was countered by a minority of participants:

Charlotte I reckon he is in denial. He's gay, and he had sex, and was like 'oh no, that shouldn't have happened'.

Bella But why does he go to the police and tell people?

Charlotte Because he's mad at this man because he realises he is gay.

Gill Where have you got this from? Why? (FG2)

In the second exchange below, participants extend the vignette. For some of the participants in group seven, after the encounter described in the vignette, David continues to make unwelcome advances towards Ian which limits his capacity to move on from the shame he is assumed to feel:

Martin [H]e could be ashamed that he gave in to gay sex, first time or something, and now basically he feels ashamed that he has done it, because maybe he has got a girlfriend, maybe he has got family and he doesn't want anyone to find out.

Erin Actually that is a really good point. I didn't really think of that. It could be that he wanted it.

Martin Yeah, and now he is ashamed of it basically, and maybe that David just wants to tell people, he doesn't leave him [Ian] alone, so he basically has to stop this, so he makes an allegation of rape. (FG7)

For a minority of participants shame and embarrassment enhanced the likelihood that the complainant was telling the truth, as Stephanie stated '(...) but if you experiment, at the end of the day, and you don't like it, you would kind of keep it a secret' (FG6). In this narrative, the complainant's willingness to make public his shame becomes an indicator of truth-telling:

[I]f you were that ashamed of what you did though, and that is why he didn't want everyone to find out, why would he go and do that allegation? Because that is just going to blow that up ... is obviously going to get more

talk about it and more attention about it, which obviously if he consented to it, he does not want that, does he? (Erin FG7).

The overwhelming majority of participants drew clear boundaries around the possibility of a rape occurring in the vignette and the sexuality of the complainant and defendant. With only an occasional exception all participants 'read' the vignette as involving one of two broad scripts: David was gay and had successfully enticed Ian, who was confused about his sexuality and possibly intoxicated, into a sexual encounter. Second, both men were gay and responsibility was largely attributed to Ian to clearly communicate non-consent through verbal or physical resistance. This expectation was reinforced by participants' use of the 'script' in a way that suggested to them that Ian was sexually interested and available to David. Both scripts involved an element in which Ian fabricated the allegation of rape and this involved various motives, including: revenge, embarrassment or shame for engaging in sexual activity with another male.

Blaming the Victim

There is a long history of placing blame on the victims of crime,⁷⁶ and debates over whether blaming or holding a victim partly or wholly responsible for rape are in essence the same thing have recently played out in the legal literature.⁷⁷ For the sake of simplicity, this chapter will make reference to blame. There is only limited evidence that has examined victim blame in the context of adult male rape, but the existing evidence suggests that factors including sexuality⁷⁸ and behaviour before, during

⁷⁶ There is voluminous literature in this area that has accrued over a number of decades. See, for example, Leo Montada and Malvin J Lerner (eds), *Responses to Victimization and Belief in a Just World* (Plenum Press, 2010). This literature makes clear that while victim blaming occurs in the context of rape, it also occurs in the context of many types of criminal victimisation and other life events.

⁷⁷ Helen Reece, 'Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?' (2013) 33 *Oxford Journal of Legal Studies* 445; Joanne Conaghan and Yvette Russell, 'Rape Myths, Law, and Feminist Research: "Myths about Myths?"' (2014) 22 *Feminist Legal Studies* 2; Helen Reece, 'Debating Rape Myths' LSE Law, Society and Economy Working Papers 21/2014.

⁷⁸ Edwin E Ayala et al, 'Blame Attributions of Victims and Perpetrators: Effects of Victim Gender, Perpetrator Gender, and Relationship' (2015) *Journal of Interpersonal Violence* 1; Michelle Davies and Samantha McCartney, 'Effects of gender and sexuality on judgements of victim blame and rape myth acceptance in a

and after an alleged rape, increase attributions of blame.⁷⁹ The role of Ian's behaviour as a way of explaining his own alleged victimisation was raised by participants in several ways. At its most crude, some participants, often with the agreement of other group members, commented negatively on Ian's decision to go to David's flat, thus: '[he's] very stupid or very innocent', '[Ian] could have led [David] on', 'I think he's stupid for going back [to the flat] in the first place', 'There is a lot of stupidity on Ian's part to go back', 'In a way, it's kind of like he led him on a bit by going back to his flat'. More common were somewhat subtler forms of victim blaming. There was some limited discussion within the focus group discussions regarding the steps David might have taken to ascertain Ian's consent. This is of course, an important element in the legal definition of rape,⁸⁰ with which all participants were provided.⁸¹ Interestingly, while there was relatively little focus on David's efforts to actively seek consent, most, though not all, participants focused on the steps Ian took to communicate his *non*-consent, which is not legally required.⁸² Alice and Matt illustrate this approach:

If you put yourself into David's shoes and you liked Ian... they went to watch a DVD and talk and then when he was getting ready to leave, David restrained him, pulled down his trousers and anally penetrated him. But it does not say anything at any point that he said for him to stop. He doesn't, like, say that he struggled or anything, so from David's point of view, how did he know that he didn't consent if Ian didn't say any of this or struggle? (Alice, FG6).

[I]f he's not putting up any sort of struggle against it, then you would assume that he's agreeing to it by choice, he's not voicing anything against it. (Matt, FG1)

In a number of the groups, a clear, verbal 'no' was deemed necessary for sex to be non-consensual. In focus group 1, Alan stated: 'Well, I don't

depicted male rape' (2003) 13 *Journal of Community and Applied Social Psychology* 391.

⁷⁹ Davies and McCartney *ibid*.

⁸⁰ Section 1(2) of the Sexual Offences Act 2003 provides that in determining whether or not the defendant possessed a reasonable belief in the complainant's consent, the jury can take into account *inter alia* 'any steps A has taken to ascertain whether B consents'.

⁸¹ The vast majority of participants were law students or those who had done law as part of a joint honours degree. These students had studied the law of rape as part of a criminal law module.

⁸² *R v H* [2007] EWCA Crim 2056 [31].

think he said “yes” I want to have sex, but I don’t think he said “no”. So by not saying “no”, then I would have to say he did consent to having sex with David’. In focus group 7, Erin stated: ‘If he had carried on with it, that was in my view consenting to it, because he didn’t say he didn’t want to do it’. A similar view was taken if Ian changed his mind and did not wish to have sex: ‘Then he needs to say that though, doesn’t he?’ (Yvette, FG6)

In their research using focus group discussions, Gunby *et al* similarly noted an expectation that consent would be clearly and verbally communicated by the female victim.⁸³ Moreover, they noted that ‘the dissonance between the law, which does not require consent to be verbally expressed ... and lay assumption is again apparent’.⁸⁴ In our own research the presumption that non-consent should involve a clear and verbally communicated ‘no’ was also questioned by some participants: In focus group 6, Alice stated: ‘I am playing devil’s advocate here: why should we wait to hear if somebody says “no” as opposed to waiting for him to say “yes”? Why is there a question?’ One of the participants, Morag, responded to this question by focusing on naturalistic notions of victim physical and verbal resistance:

[If] you take control of your life then, it is then you say ‘No’ I don’t want this. Step away from me, it is you protecting yourself and that is a human instinct ... go along with it, stopping it is saying ‘No’. It is everybody’s instinct to say ‘no’ or to physically force.

In keeping with the way in which opinions expressed in focus groups can be quickly revised, Morag states: ‘I don’t necessarily believe that you would fight back’. Alice’s ‘devil’s advocate’ question also led to a response that re-emphasised the onus on Ian to communicate without reciprocal behaviour from David. Yvette stated: ‘I think it is difficult but if Ian didn’t shout, flinch away or try and get away or say ‘No’ or struggle, David couldn’t have known without him saying anything. He couldn’t have known that he didn’t consent if he was not showing any resistance’.

Interestingly, however, in some discussions even when a ‘yes’ was seen as necessary it did not prevent sex from being viewed as consensual in the

⁸³ Gunby (n 74)100.

⁸⁴ *ibid* 94.

absence of a 'no' – a point noted by Alan above.⁸⁵ A similar point was noted by Clark and Carroll in their research comparing the rape scripts that male and female students drew upon. In that study, and consistent with the gendered 'romantic' and 'adventurous' contemporary sexual scripts noted earlier, participants drew upon a traditional sexual script in which women are the gatekeepers for sexual encounters and men the initiators.⁸⁶ When applying this sexual script to a vignette, some of Clark and Carroll's participants suggested that in a 'normal' sexual encounter, a woman would perform some resistance and therefore resistance could not be reliably understood as non-consent.⁸⁷ Instead, a woman was expected to escalate her resistance verbally or physically in order to unambiguously perform non-consent.⁸⁸

While the question of consent represents one potential barrier to understanding male sexual coercion as rape, another barrier for men is physicality. In the focus groups, this was connected to Ian's ability to successfully resist an attacker. This represents both a point of similarity and departure from the ways in which female resistance was conceptualised. Davies *et al* found that there was some expectation of resistance in both male and female rape scripts, although depictions of male physical resistance was less than expected and inconsistent with previous studies.⁸⁹ While our research did not use a vignette involving a female victim, there was significant discussion of female rape which was used as a comparator. In our research, the threshold for female resistance was an *attempt* to resist an attacker. This can be contrasted with the tacit naturalistic assumption amongst our participants that a man *could* resist and explicitly *should* resist:

⁸⁵ Elsewhere, in focus group 2, some participants focused on a mixture of verbal communication and behaviour in order to determine the issue of consent:

Fiona: I reckon not, I reckon...some may say, he could have said 'yes' then decided half way through 'no, shit, what am I doing?'

Bella: But then he still should have been able to stop.

Fiona: But it didn't say he said 'stop'.

Gill: He tried to leave.

⁸⁶ Clark and Carroll (n 44) 623.

⁸⁷ *ibid* 624.

⁸⁸ In this research, the possibility of self-inflicted injury was occasionally raised. In group 2, Diane made reference to Ian's delay in reporting and went on to say: '[I]f he wanted it, make it up as something else, give yourself a whack'.

⁸⁹ Davies *et al* (n 49) 73.

Martin Yeah. I mean some people's perception of like, especially men, it is like, and they should be able to, you know, defend themselves.

Erin Yeah, exactly ... Ian should be like a man. (FG7)

Here, we see the cross-over of assumptions about men being strong and invulnerable to harm and how male victim-survivors see themselves. In her interviews with male victims, Allen found they were less likely to blame themselves for the rape where 'excessive' force was used by the perpetrator,⁹⁰ or where drugged or otherwise vulnerable males were exploited.⁹¹ In this way, males were able 'to justify to themselves and others why they had failed to behave in an appropriate "masculine" manner, and prevent the assault from occurring.'⁹² In the focus group discussions, intoxication was rarely seen as a potential source of Ian's vulnerability, lessening his ability to give consent. Instead, it was seen more as a source of potential memory failure;⁹³ a reason for engaging in consensual sex, which Ian then regretted;⁹⁴ and a cause of unfairness to David;⁹⁵ because he may not have been able to ascertain lack of consent unless Ian was unconscious or unable to physically 'function'.⁹⁶

⁹⁰ Stephanie Allen, 'Male Victims of Rape: Responses to a Perceived Threat to Masculinity' in Carolyn Hoyle and Richard Young (eds.), *New Visions of Crime Victims* (Hart Publishing 2002) 41.

⁹¹ *ibid* 44.

⁹² *ibid* 45.

⁹³ 'He could have consented and just forgot that he had consented, if he was drinking, maybe' (Cheryl FG 5).

⁹⁴ In focus group 6, Yvette suggested consent on the basis that: 'Ian is drinking, he has gone back to his flat (...)' But this was challenged by Alice: 'They are just drinking, why does drinking mean that it is indicative to consenting?'

⁹⁵ In focus group 7, Erin stated: '[S]o maybe he was (...) really drunk in the mind, but then I think to be fair it is not fair to blame David (...) If [Ian] obviously consented, even if he was drunk, everyone does make mistakes when they are drunk. They wake up the next day and "Oh, what did I do?"'

⁹⁶ In focus group 7, Erin and Martin stated:

But it's not really fair on David, is it, because obviously David might have thought he wasn't that drunk, it was just normal drunk because obviously he has got enough to function during sex and obviously David thought that he was not that too drunk.

I mean some people, you know drink a lot, but they are fine (...) they can physically function (...).

In this sense, the potential target for sexual violence is required to actively resist an attacker and to be *seen* to be ‘performing’ non-consent, as one participant put it: ‘[Y]ou know women are seen to be physically inferior, so of course they can get raped by a man, but two men? Then surely he would fight it, wouldn’t he?’ (FG5). Such performances become written on the body through injury. While expectations of male resistance are relevant to understanding social constructions of male *and* female rape, they have a unique consequence for adult male victims whereby attaining victimhood denigrates hegemonic masculinity.⁹⁷ Yet, empirical evidence indicates that many male victim-survivors do not physically resist their assailant(s).⁹⁸ Indeed, the attribution of blame to male victims has been previously noted: ‘Men are blamed more when they are judged not to have fought back sufficiently, or failed to escape’.⁹⁹ The existence of resistance and injury scripts in the context of rape are well supported by empirical studies of attitudes to female rape.¹⁰⁰ Physical injury, for many of the participants in the current research, represented a way to move beyond the vignette featuring ‘one person’s word against another’ and in this way represented strong corroboration that a rape occurred.¹⁰¹ However, counter-narratives were also posed in relation to evidence of physical injury. A minority of participants raised the issue that injury was suggestive, but not decisive evidence of non-consent,¹⁰² and for others,

⁹⁷ Kathy Doherty and Irina Anderson, ‘Making sense of male rape: Constructions of gender, sexuality and experience of rape victims’ (2004) 14 *Journal of Community & Applied Social Psychology* 85.

⁹⁸ Adrian W Coxell and Michael B King, ‘Adult male rape and sexual assault: prevalence, re-victimisation and the tonic immobility response’ (2010) 25 *Sexual and Relationship Therapy* 372, 376.

⁹⁹ Davies et al (n 57) 2808.

¹⁰⁰ Louise Ellison and Vanessa E Munro, ‘Turning Mirrors into Windows: Assessing the Impact of (Mock) Juror Education in Rape Trials’ (2009) 49 *British Journal of Criminology* 363, 371-373.

¹⁰¹ The assumption that injury would result from non-consensual sex is evident in the following examples: ‘Surely there would be some physical [injury] (...) It was two men, men are quite strong anyway’, ‘There would have had to have been some sort of physical trauma to Ian’s body’, ‘If someone was about to get raped, they [are] obviously not going to take it lightly as they are going to right back, and there would be some sort of marks whether it be scratches or bruises’, ‘Surely there would be some physical [injury]’, ‘Obviously if someone is physically restrained and held down, like they are going to have bruises on them’, ‘If it is like forced, it can, there are loads of signs that can be shown that he has been forced and his body would be bruised’, ‘Obviously there would be some bruising’.

¹⁰² See, for example, ‘I don’t think it is indicative but I would certainly want to see whether or not he had any like bruises or anything on him’.

that injury might be unrelated to non-consensual sex but might be evidence of physicality and ‘rough sex’ which was consensual (Mike FG 4). In focus group 5, Barbara made similar comments: ‘If Ian happens to be a gay man and he enjoys it quite rough, then you are not really going to see any marks from a new episode ... if someone is physically restrained and held down, like they are going to have bruises on them’. In this way, injury was a powerful, but problematic way of corroborating Ian’s account – even when there was injury, it did not necessarily mean the sex was non-consensual as it could be explained by other means.

The attribution of blame in sexually violent encounters has been connected to hostile sexism towards both men and women. Hostile sexism is used to refer to negative and denigrating attitudes towards people who do not conform to anticipated gender roles.¹⁰³ For instance, women who are perceived as promiscuous may be more likely to be subject to hostile sexism, and, as a result be considered more blameworthy in their own sexual victimisation.¹⁰⁴ Hostile sexism can also operate alongside homophobic attitudes in the context of attitudes towards male rape.¹⁰⁵ Kassing *et al* have reported that the acceptance of male rape myths is positively correlated to negative attitudes towards gay men.¹⁰⁶ The view of a male who alleges rape as either experimenting, confused or gay (he was not raped, consented and is lying as a cover for his sexuality), or he resisted and is injured (he physically demonstrated his lack of consent and was raped) restricts the circumstances when rape can be perceived to have occurred.¹⁰⁷ The emergence of these limiting narratives perpetuate the

¹⁰³ Davies *et al* (n 57) 2809.

¹⁰⁴ Sabrian Koepke *et al*, ‘“She Deserved It”: Effects of Sexism Norms, Type of Violence, and Victim’s Pre-Assault Behavior on Blame Attributions Toward Female Victims and Approval of the Aggressor’s Behavior’ (2014) 20 *Violence Against Women* 446.

¹⁰⁵ Davies *et al* (n 57); Sandy White and Nikawo Yamawaki, ‘The moderating influence of homophobia and gender-role traditionality on perceptions of male rape victims’ (2009) 39 *Journal of Applied Social Psychology* 1116; Irina Anderson, ‘What is typical rape? Effects of victim and participant gender in female and male rape perception’ (2007) 46 *British Journal of Social Psychology* 225.

¹⁰⁶ Leslee R Kassing *et al*, ‘Gender role conflict, Homophobia, Age and Education as Predictors of Male Rape Myth Acceptance’ (2005) 27 *Journal of Mental Health Counselling* 311. For similar findings, see Davies *et al* (n 57) 2817.

¹⁰⁷ For discussion, see: Karen G. Weiss, ‘Male Sexual Victimization: Examining Men’s Experiences of Rape and Sexual Assault’ (2010) 12 *Men and Masculinities* 275, 291-292.

constructed rarity of male victimhood and the notion that only certain kinds of males can be raped.¹⁰⁸

Finally, while it is customary in attitudinal research for scholars to argue that discussion of injury or resistance involves an element of victim blame and the power of the so-called ‘real rape’ stereotype,¹⁰⁹ there is an alternative explanation. The study participants were searching for evidence in order to address the question of whether a rape had occurred. It is undoubtedly the case that signs of resistance and injury can provide corroborative evidence in support of an allegation of rape and may boost complainant credibility. This is not to doubt that judgements are also influenced by rape scripts pertaining to masculinity and an expectation that a raped adult male would be injured. However, scripts cannot be viewed as the *only* explanation for why participants viewed the vignettes in the way they did.¹¹⁰

Sexuality and Credibility

The perceived sexuality of Ian and David impacted on the ways in which participants made sense of the vignettes. After initially reading the scenario through a heteronormative lens which precluded rape, most participants questioned the complainant’s claim in one vignette that he was heterosexual. In the remaining vignettes, the ‘discovery’ of Ian and David’s sexuality was regarded as the most relevant piece of missing information.

- | | |
|------|---|
| Mike | Obviously I think that his sexual orientation would count a lot, would make things a lot easier to ... get an answer out. |
| Andy | If Ian was gay and he’s gone back to a guy’s house, if they’re both gay it might happen. (FG 4) |

¹⁰⁸ *ibid* 291.

¹⁰⁹ ‘Real rape’ is the idea that rape commonly or normally involves characteristics such as injury, victim resistance or an attack by a stranger: Kimberley A Lonsway and Louise F Fitzgerald, ‘Rape myths: In review’ (1994) 18 *Psychology of Women Quarterly* 133. Janice Dumont et al, ‘The Role of “Real Rape” and “Real Victim” Stereotypes in the Police Reporting Practices of Sexually Assaulted Women’ (2003) 9 *Violence Against Women* 466.

¹¹⁰ There is no doubt that data can be read in different ways and competing interpretations should be acknowledged: David Gurnham, ‘Debating rape: to whom does the uncanny “myth” metaphor belong?’ (2016) 43 *Journal of Law and Society* 1.

- Alice 'One thing led to another', if he is straight, how did anything lead to anything?
- Phoebe Very unlikely that he would have consented if he is not gay, I would have thought. I don't know. (FG 6)

For some participants, Ian's behaviour, including going back to David's home, was suggestive that he consented to sex,¹¹¹ and this also led some participants to project upon him a gay identity, despite there being no direct evidence of this.¹¹² By the end of the group discussions, there was no agreement about how to make sense of sexuality in the vignettes. Indeed, the certainty that sexuality was relevant, but uncertainty about how to interpret it, was common across most of the group discussions. Here, Stephanie questions the connection between sexuality and consent that had been raised earlier in the discussion:

- Stephanie Why is it more reasonable to assume he would consent, just on the basis that the person is of the same sexual orientation as you?
- Stuart If he was straight, he is more likely to say 'no, I'm sorry mate', whereas if he was gay then he might of being going along with the stuff.
- Phoebe You kind of assume where it would lead, if he did consent, whereas if he was straight (...) (FG 6)

Research on perceptions of male rape victims suggests that gay victims of rape are considered more blameworthy for their own victimisation than heterosexual victims and that all male victims are considered more blameworthy than female victims.¹¹³ The greater attribution of blame noted for gay victims is echoed in the sexual victimisation of transgender men and women. Davies and Hudson found that heterosexual men in particular reported negative judgements about male or transgendered victims of rape, and these judgements resulted in greater victim-

¹¹¹ For example, in response to the vignette featuring Ian going to David's flat after the party, Anna stated: 'I don't see why you would leave a house party to watch a film' (FG 1).

¹¹² Sexuality was not mentioned except for one vignette in which David was explicitly described as heterosexual.

¹¹³ White and Yamawaki (n 105) 1117.

blaming.¹¹⁴ This lends further support to the argument that perceived deviation from hegemonic gender performances affects the availability of victimhood. After consideration of the impact of gender and sexuality on blame and rape myth acceptance, Davies and McCartney concluded that heterosexual men were most likely (compared to gay men and heterosexual women) to apply myths and attribute blame to gay male rape victims.¹¹⁵ The prevalence of homophobic attitudes has been cited as one explanation for this observation. Alden and Parker, for instance, state that ‘men who do not maintain the necessary gender performance to support the ideals of masculinity are stigmatized as not “real” men, or, even worse, as gay’.¹¹⁶ The lack of attention given to the reality of sexual violence for diverse groups of people by policy makers enables such problematic attitudes to remain unchallenged.

Across the focus groups, discussion about consent centred on three key issues. First, participants drew on heteronormative sexual scripts to determine what the characters in our vignettes ‘really meant’ as the scenario unfolded. Second, the participants considered steps taken by the complainant to communicate *non*-consent. Here the discussion focussed on evidence of verbal and physical resistance, including signs of injury. Third, participants considered sexuality to make determinations about motivation for reporting and for the discrepancies in the conflicting accounts of Ian and David. In this way, credibility and truthfulness for both the complainant and defendant was tied to discussions about sexuality, although sexuality was not necessarily determinative, given the interaction of other script elements.

Implications for Policy Making

Simply acknowledging, as this study and wider research evidence suggests, that there are problematic attitudes towards adult male rape is not enough to facilitate recognition and improvement in the treatment of victim-survivors. That is why the inclusion of male sexual victimisation in the policy making process is important - the neglect of male victim-survivors will leave unchallenged the misunderstandings, myths and stereotypes discussed in this chapter. Addressing the problem of sexual

¹¹⁴ Michelle Davies and Jennifer Hudson, ‘Judgments towards Male and Transgendered Victims in a Depicted Stranger Rape’ (2011) 58 *Journal of Homosexuality* 237, 243.

¹¹⁵ Davies and McCartney (n 78).

¹¹⁶ White and Yamawaki (n 105) 1119 (quoting Alden and Parker).

violence is a difficult task, not least because of the existence of these ill-informed attitudes.¹¹⁷ It is evident that the rape scripts found in this study are problematic, not least because they are shaped by myths, stereotypes and assumptions about how an adult male-on-male rape should occur and how victims should behave in order to be seen as credible. The scripts contain elements that are gendered or counter-intuitive. This includes specific rape scripts relating to victim resistance or injury, false allegations, sexuality and blame which impact perceptions of complainant credibility.¹¹⁸ Some of the assumptions underpinning these scripts have been recognised as impacting on criminal justice decision-making and are the subject of specific judicial directions which warn jurors in sexual offence cases about the danger of making assumptions.¹¹⁹ These beliefs may be particularly problematic if they combine with other poorly informed attitudes and assumptions about victim credibility,¹²⁰ and may also impact on men's willingness to seek help,¹²¹ along with limiting or misdirecting agency responses.¹²²

¹¹⁷ Temkin and Krahé (n 19).

¹¹⁸ Some problematic attitudes identified in this research have been discussed elsewhere. This includes delayed reporting and involuntary physical reactions to rape. For discussion, see our work (n 51).

¹¹⁹ Judicial College, *The Crown Court Compendium* (May 2016).ch 20.

¹²⁰ Victim Support, *At Risk, Yet Dismissed: The Criminal Victimization of People with Mental Health Problems* (2013). This report found that male and female victims of crime who suffer serious mental health problems may not be seen as credible witnesses for a range of reasons, some of which pertain to negative attitudes and lack of awareness. The report also found that males who suffered from serious mental health problems were significantly more likely to be victims of sexual abuse compared to males who did not suffer severe mental illness.

¹²¹ Weiss suggests that men's reluctance to report rape to the authorities 'may be exacerbated by a sense of shame for not fulfilling their masculine roles that dictate they be in control and take care of matters themselves': Weiss (n 107), 285; Siegmund F Fuchs, 'Male Sexual Assault: Issues of Arousal and Consent' (2004) 51 *Cleveland State Law Review* 93. In a recent report, the Children's Commissioner for England found a similar problem involving young males:

[B]oys and young men are less likely to tell someone that they have been sexually abused. Experts who participated in oral evidence sessions stated that there are additional pressures on boys not to tell, as male victims of sexual abuse may be stigmatised by the perceived impact of abuse on their masculinity. This has been noted particularly for some BME groups, and more generally. This is an issue that has been identified for all groups from all backgrounds (n 34) 48.

¹²² Philip Rumney, 'Gay Victims of Male Rape: Law Enforcement, Social Attitudes and Barriers to Recognition,' (2009) 13 *International Journal of Human*

So how can policy making in the context of sexual offending be more inclusive? The gendered nature of rape¹²³ should not obscure the fact that any person can be sexually violated¹²⁴ and that negative social attitudes attach to and impact female *and* male rape. These basic insights are largely ignored in contemporary UK government policy making. One way of addressing the current neglect of male victim-survivors is to develop a parallel policy initiative alongside the VAWG strategy. Such a recommendation was recently made in a London Assembly Conservatives report, thus: ‘The Mayor of London should develop a Sexual Offences Against Men and Boys strategy to specifically assist male victims of sexual offences’.¹²⁵ This, of course, requires a comprehensive approach, of which tackling problematic attitudes, raising awareness and changing practice is a part. Another means of developing an inclusive policy approach is to examine male victim-survivors as a vulnerable group. Fineman argues that: ‘Vulnerability initially should be understood as arising from our embodiment, which carries with it the ever-present possibility of harm, injury ...’¹²⁶ This type of analysis is inclusive in that it recognises that any individual can be vulnerable without ignoring the specific disadvantages and vulnerabilities of particular groups. She goes on: ‘Vulnerability analysis demands that the state give equal regard to the shared vulnerability of all individuals, transcending the old identity categories as a limitation on the recognition that the state has a vital role to play in protecting against discrimination.’¹²⁷ A focus on vulnerability requires the state to look beyond traditional victim or ‘identity’ categories

Rights 233. Research suggests that ‘professionals have been said to have overlooked certain risky behaviours in boys that, it was argued, would have been more readily identified as child sexual exploitation-related in girls’: Ella Cockbain et al, *Not just a girl thing: A large-scale comparison of male and female users of child sexual exploitation services in the UK* (2014) 26. This can be found at <<http://assets.mesmac.co.uk/images/Not-just-a-girl-thing.pdf?mtime=20160108191711>> accessed 22nd April 2016.

¹²³ While this notion can take many differing forms, for the purpose of this chapter, we simply mean that rape is a crime predominantly committed by males on females.

¹²⁴ Bourke (n 2) 247.

¹²⁵ Kemi Badenoch, *Silent Suffering: Supporting Male Survivors off Sexual Assault* (2015) 6. Can be found at <<http://glaconservatives.co.uk/wp-content/uploads/2015/11/Silent-Suffering.pdf>> accessed 22nd April 2016.

¹²⁶ Martha Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20 *Yale Journal of Law & Feminism* 1, 20.

¹²⁷ *ibid.*

of male perpetrator/female victim¹²⁸ and requires the state and its policy makers to recognise a more nuanced understanding of sexual victimisation. This does not deny that most victim-survivors of sexual violence are female and that rape, as a social and legal phenomenon, is gendered. An inclusive approach is reflective of empirical reality and allows an acknowledgement that rape scripts and associated rape myths or victim blaming also transgress traditional victim categories.

Indeed, there are plenty of examples of inclusiveness outside of the VAWG strategy. In her review, Baroness Vivien Stern acknowledged vulnerability in an inclusive approach and discussed the experiences of young sex workers, including males who had ‘fallen through the cracks’ of the care system¹²⁹ and pointed to the importance of professionals being aware that males can be sexually victimised.¹³⁰ Similarly, a recent review of rape case treatment in London raised concerns regarding the treatment of male sex workers¹³¹ and the treatment of male victims by the police.¹³² Of particular relevance to this chapter is the way in which the VAWG strategy was seen in the review report as potentially having the ‘unintended consequence’ of adding to the ‘further alienation of male victims who cannot relate to the justice system and feel their needs are not accommodated’.¹³³

¹²⁸ Given the gendered nature of sexual offending, women and girls will be disproportionately represented in most vulnerability categories, but amongst males and females there are groups who appear to be particularly vulnerable to sexual violence, exploitation and abuse arising from such factors as age, mental health, status, homelessness and disability. See, for example (n 120).

¹²⁹ Home Office, *A report by Baroness Vivian Stern CBE of an independent review into how rape complaints are handled by Public Authorities in England and Wales* (2010) 113. The report also includes a number of other references to males: 12, 30-31, 35-36, 53, 56, 64, 66, 104, 128.

¹³⁰ *ibid* 113 ‘Those responsible for protecting the young need to be more aware than they sometimes are of the possibility of rape and sexual exploitation occurring, and need to form links with the police and local agencies to raise the level of protection that can be provided’.

¹³¹ Rt. Hon Dame Elish Angiolini DBE QC, *Report of the Independent Review into the Investigation and Prosecution of Rape in London* (2015) [216].

¹³² *ibid* [586]. The report author expressed concern about police specialist rape investigation units becoming ‘unofficial specialist Violence against Women and Girls Units’ and, given male and transgender underreporting, expressed ‘serious concerns at the repositioning of the Units’ and ‘whether it is a helpful response to the need to improve rape prosecutions’.

¹³³ *ibid* [215].

A failure to formulate a comprehensive policy of action against male sexual victimisation will hinder the identification of vulnerable males and compound the reluctance of males to come forward, disclose what has happened, and engage with support services and the criminal justice system. This leaves some of the most prolific sex offenders free to victimise males *and* females of any age.¹³⁴ Indeed, a truly gendered response to rape does not simply reinforce existing gender binary stereotypes of female victims and male perpetrators. It reflects the true nature of sexual victimisation. Stemple has argued that ‘female-specific approaches hinder[] advocacy for male victims and may also inhibit reporting because little effort is made to focus specifically on encouraging males to break their silence’.¹³⁵ She goes on to argue that:

[T]o continue this approach to sexual violence in light of evidence that males constitute a small but sizable percentage of victims has problematic theoretical implications: it reifies hierarchies that treat some victims as more sympathetic than others, perpetuates norms that essentialize women as victims, and imposes unhealthy expectations about masculinity on men and boys.¹³⁶

Indeed, the needs of male victim-survivors cannot be properly addressed as part of a policy agenda that neglects minority victim groups such as gay, heterosexual, bisexual and transgender males,¹³⁷ and women who have been sexually victimised by other women.¹³⁸ When relatively little

¹³⁴ Some research has suggested that it is category of offenders with a history of indecent assault against males which ‘contains the most serious *sexual* predators of the four groups [featured in the research], who care little about either the gender or age of their victims or the nature of their offending behaviour’: Keith Soothill et al, ‘Sex Offenders: Specialists, Generalists-or Both?’ (2000) 40 *British Journal of Crime* 56, 62-63. See also: Gene G. Abel et al, ‘Multiple Paraphilic Diagnoses among Sex Offenders’ (1988) 16 *Bulletin American Academy Psychiatry Law* 153, 158.

¹³⁵ Lara Stemple, ‘Male Rape and Human Rights’ (2009) 60 *Hastings Law Journal* 605, 637-639.

¹³⁶ *ibid* 606.

¹³⁷ Angiolini (n 131) [216].

¹³⁸ See for example, Lori B Girshick, *Woman-to-Woman Sexual Violence* (Northeastern University Press 2004) 57 Jessica Hatcher, ‘Congo’s Forgotten Curse: Epidemic of Female-on-Female Rape’ *Time* 3 December 2013 Found at <<http://world.time.com/2013/12/03/congos-forgotten-curse-epidemic-of-female-on-female-rape/>> accessed 22nd April 2016; Miriam L Walters, *National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation* (2013); Miriam Wijkman et al, ‘Juvenile female sex offenders:

explicit attention is given to minority victim groups in policy development, it is simply naïve to think that their needs will be adequately addressed.

Conclusion

This chapter has examined findings from an empirical study of attitudes towards adult male rape, including assessments of victim-survivor credibility. We found that sexual scripts, including rape scripts, are used to make sense of sexual encounters. Our own research, as well as extant empirical research demonstrates that people draw upon myths and assumptions when making judgements about rape.¹³⁹ What is more, this study suggests that rape scripts incorporate myths and assumptions that are gendered. As such, this analysis, which draws on a wide body of evidence, has several implications for public policy making. First, neglecting the experiences of adult male victim-survivors in policy making is likely to result in strategies and actions that fail to grasp their needs. While the UK government's VAWG strategy includes occasional references to adult males or boys, there is little evidence of the kind of comprehensive multi-agency strategy that is required to address problematic attitudes as demonstrated in this, and other studies. These efforts need to be part of a comprehensive approach to addressing male, as well as female sexual victimisation.¹⁴⁰ This does not have to equate to equal resources or time given to the issue. Instead, a truly gendered response takes account of the prevalence and dynamics of differing types of victimisation, but is inclusive in the sense that the needs of minority victim groups are considered as part of the policy making process. Without such an approach, sexually victimised males of whatever age will continue to have their needs misunderstood and problematic attitudes will go unchallenged.

Offender and offence Characteristics' (2014) 11 *European Journal of Criminology* 23; Cambridge University Student Union, *Cambridge Speaks Out* (2014) 16.

¹³⁹ Michael W Wiederman, 'The gendered nature of sexual scripts' (2005) 13 *Sex Therapy* 496.

¹⁴⁰ For discussion, see: Badenoch (n 125).