NEW DIRECTIONS IN SEXUAL VIOLENCE SCHOLARSHIP

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ABSTRACTS

Carline, Anna and Clare Gunby, University of Leicester

Sexual Violence, New Materialism and ‘Affective’ Interventions

This paper explores New Materialism and the ‘affective turn’ in order to develop novel insights into the development and implementation of interventions which aim to reduce and respond to sexual violence. While New Materialism and affect theory are becoming increasingly popular and utilised in social sciences and humanities (such as Coole & Frost, 2010; Gregg & Siegworth, 2010), to date there has been little engagement by scholars in criminology and law (notable exceptions include Milovanovic, 2007 Philippoulos-Mihalopoulou 2015). To this end, the paper will map out the key elements of New Materialism and affects and draw upon this theoretical framework to consider the development and implementation of interventions at two different levels. The first relates to an ‘artful intervention’: a primary prevention intervention which aimed to raise awareness, dispel misconceptions, improve rates of reporting and ultimately reduce incidents. The second focuses upon the criminal justice system’s response to sexual violence and the ongoing policy and reform implementation gap. The overall premise of the paper is that a move beyond representational theory and towards New Materialism and affects, which emphasizes the importance of embodiment and the intensive ontological regime, is necessary in order to generate radical new approaches for understanding the problem of sexual violence and moving forward to the production of more effective solutions.

Conaghan, Joanne, University of Bristol

The History of Sexual History: The Emergence of a ‘Common Sense’ Conception of Evidentiary Relevance.

The decision in the Ched Evans case to allow the use of evidence of the complainant’s sexual history with other men provoked a storm of controversy about the proper scope and limits of such evidence in the context of a rape trial. Debate on the issue in England and Wales echoes debate in other jurisdiction with different legal and policy approaches been adopted to address the perceived mischief of the ‘abuse’ of sexual history evidence. But why is a complainant’s sexual history ever regarded as relevant to the question of whether or not she consented to sex with a particular person at a particular time and place? What are the epistemological assumptions which underpin
knowledge claims about relevance here? And where do they come from, socially, culturally and historically?

This paper takes the use of complainant sexual history evidence as a focal point for exploring wider questions about the materialisation of gendered norms in criminal law discourse, drawing in particular on insights gleaned from historical and epistemological enquiry. The object is to shed new light on a problem which has stubbornly resisted satisfactory legal and policy resolution by excavating its deeply embedded roots, while at the same time demonstrating the wider benefits to be gained from historical-philosophical engagement with criminal law norms and concepts.

**Cooper, Chiara, University of Edinburgh**

**As Simple as a Yes or a No? The Need to Evolve the Binary Focus on Sexual Consent**

The narrative is well-defined within the discussion around sexual consent, in that communication for or against sex to take place, is to be negotiated by a freely and clearly given no or yes to sex in order to avoid miscommunication between individuals. However, much of the “no means no” approach to sexual consent has been replaced and renewed by a more-current, more positively regarded dialogue of “yes means yes”. By both these standards still, the onus is on women to act as gatekeepers to give their consent to sexual activity with men. Men, meanwhile, are the takers of consent, understood as being in a constant state of wantedness when it comes to sex. Considering this, does this consent rhetoric - where a no to sex has been replaced with yes but consent is still conceptualised as a binary – allow for a nuanced understanding of the sexual harms that individuals face? Influenced by the phenomenon of heterosexual women consenting to unwanted sex, this paper advocates for the need to move beyond these consent benchmarks to adopt ones which recognise the erotic potential of heterosexual interactions, promoting a sexual integrity that focuses on the negotiation of pleasures and desires of individuals. An inclusive sexual politics of this kind will offer a shift from the mechanical, binary understanding of consent to one which acknowledges how gendered power relations, cultural and societal structures impact the ability for individuals to meaningfully negotiate consent in positive environments.

**Doherty, Sophie, Durham University**

‘Where language fails, art can break through’: visual art practice on the theme of sexual violence as a way of reimag(in)ing justice.

Victim-survivors of sexual violence are turning towards visual art practice as a way of expressing their experience of sexual violence (Yxta Maya Murray 2011). In fact, this is a practice that has been ongoing from the 1970s, yet, there remains a gap in understanding why victim-survivors turn to visual art practice and how this move towards visual art practice can help inform and shape legal debates. This paper addresses the gap.

To do so, this paper uses feminist artist Suzanne Lacy’s performance pieces Ablutions 1972 and She Who Would Fly 1977 as case studies from which analyses can be developed that speak to the why and how aforementioned. The paper theorises that the movement away from traditional justice processes towards visual art practice can be understood as achieving a sense of justice for victim survivors, and thus terms this process ‘justice through expression.’
Research has demonstrated that victim-survivors of sexual violence do not always frame their justice interests within conventional constructs (McGlynn et al 2017). As such, McGlynn and Westmarland (2018) have put forward a theory of kaleidoscopic justice, that deepens understandings of justice interests of victim-survivors. This paper also extends this model of kaleidoscopic justice to apply to justice processes.

This research builds on the methods and approaches used by Yxta Maya Murray (2011) and will explore how an analysis of visual art practice on the theme of sexual violence that is created by victim-survivors, can reconceptualise, and help develop the discussions on, justice for victim-survivors of sexual violence. In engaging with visual methods, this research acknowledges the visual turn within legal scholarship (Mulcahy 2017; Goodrich 2017; Boehme-Neßer 2010).

**Dowds, Eithne, Queen’s University Belfast**

*Responding to Sexual Violence: A Norm Transfer Perspective*

Crimes of sexual violence have received unprecedented global attention in the recent past. In the domestic context, there has been mass mobilisation against such violence and abuse in the form of #MeToo and legislative reforms, most notably in the area of sexual consent, across numerous jurisdictions. At the international level, sexual crimes have been recognised in international criminal courts and governments such as the United Kingdom and Luxemburg have committed to eliminating rape as a weapon of war. These parallels, in recognition and activism, are matched by parallels in the continuing prevalence of such violence in both contexts, despite apparent condemnation, and inadequate legal treatment.

While there is an emerging literature exploring these parallel challenges, there is still resistance to what Kelly has described as ‘a continuum approach...looking at the benefits of connecting work on sexual violence across contexts’. To counter this, this paper introduces the ‘feminist strategy of norm transfer’ which is evident in early feminist literature on international criminal law. According to this strategy, a key feminist motivation for entering the international criminal legal arena was to influence this developing body of law and bring progressive developments back to domestic contexts. This paper argues that rather than transposing legal development from one forum to the other, the significance of the feminist strategy of norm transfer lies in the conversations and dialogue it has the potential to provoke, the boundaries it challenges and the alliances between international and domestic activists it can create.

**Du Toit, Louise, University of Stellenbosch**

*Reading Rape Law from the South*

In this lecture I argue that in spite of the strong promise contained in the ICTR and ICTY verdicts on war rape, there are also important shortcomings. I link the set of shortcomings to be identified with two main issues, namely one, in terms of structure, the moments within the verdicts when the productive interpretative tension between human rights aspirations and lived narratives broke down and two, in terms of content, the verdicts’ internationalization of the notion of ‘stranger rape’. Thus, although we have in these verdicts important new acknowledgements of (war) rapes as crimes against humanity, at the same time the conditions under which these crimes are acknowledged as such, are narrowly circumscribed. The ways in which they are so narrowly circumscribed are
moreover telling, and on my reading, an indication of colonial and racist roots of both international criminal and rape law. Thus, reading rape law ‘from the South’ may assist all of us in better resisting all the problematic ways in which it became possible for a new paradigm for the criminalisation of (war) rape to open up within the dominant legal order.

Gleeson, Kate, Macquarie University and Neil Cobb, University of Manchester

Concealment of Crime and Sexual Violence: Lessons from New South Wales

In New South Wales (NSW) Australia, Section 316 (s.316) of the Crimes Act – concealing a serious indictable offence – has been used to prosecute individuals for failing to report child sexual offences, including the Archbishop of Adelaide. The parliament has also recently created the new offence of s.316a - concealment of child sexual abuse - on the recommendation of the Australian Royal Commission into Institutional Responses to Child Sexual Abuse. These developments are being watched closely in comparable jurisdictions. This paper reflects on the lessons that feminists might now draw from the growing role of concealment offences in NSW to respond to institutional failure to disclose allegations of sexual violence. s.316a places NSW at the fore of international efforts to protect children through concealment liability. However, the paper questions the retainment of the more general concealment offence in s.316. The paper argues that s.316 is little more than a replica of the English common law crime of ‘misprision of felony’ abolished in the 1960s. While criticised traditionally as a basic violation of civil liberties, misprision of felony may also pose particular risks to adult victim-survivors of sexual violence. This is because the offence permits the state to intervene in complex webs of trust within modern institutional settings on which effective responses to sexual violence may rely. The case-study used to demonstrate these concerns is the modern university, where calls by student and feminist campaigners to address sexual violence experienced by (adult) students, and to improve reporting, has been predicated on the need for universities to respect the wishes of victim-survivors who may not wish to report such incidents to the police. This means permitting victim-survivors to have the incident handled internally, and potentially without any police involvement at all. s.316 ostensibly criminalises a NSW university’s failure to disclose, regardless of motive. Similar problems for universities may follow in other jurisdictions, like Northern Ireland, where concealment liability has been retained. The offence may therefore pose a direct threat to feminist strategy, and can be seen as an overreaching of the state with important and underestimated implications for the feminist politics of sexual violence.

Johnson, Freya, University of Bristol

Sexual Violence: A Crisis Most Ordinary.

Crisis, Lauren Berlant argues, operates in the everyday. In this paper I turn to her concept of crisis ordinariness to upset the bottom-line logic that positions sexual violence as catastrophic, and “out there” at arm’s length. I argue that, actually, sexual violence happens here, on the comfortable sofa of the ordinary, and that it doesn’t always look or feel how you might expect. Admitting this is difficult, however, because it involves admitting an intimate proximity to violence as an insidious symptom of oppression.

In conversation, or in the courtroom, victims are subjected to an overdetermined context based on this model of violence as exceptional, and are expected to display concomitant traumatic responses. “If it was so bad, why didn’t you bite and scream?” “You still slept in the bed with him?” Arguments
tighten. There’s no room for perceiving violence as incoherent, or uneven in its unfolding amongst the usual activity of life. Gendered blaming, here, becomes a technique of turning away from that which is difficult to look at, and difficult to understand.

Effectively theorising sexual violence necessitates dissolving its frequent oversimplifications. Trauma is a style of responding to a happening, but it might be encountered as flatness, ambivalence, or apathy. Attention, then, must be paid to affective attachments as complex without presuming their status as dramatic. It is only at this point that we can become sensitive to tracking the nuances of sexual violence as something that is textured, and woven into the thick fabric of the social.

Leahy, Susan, University of Limerick

Reflecting Women’s Lived Experience of Rape within Relationships in the Irish Criminal Justice System

Ireland is currently in a unique position in terms of feminist law reform. After a significant period of stagnation, in the past couple of years, a flurry of legislative activity has led to significant changes in the laws relating to violence against women. For example, largely as a result of lobbying by women’s groups, a statutory definition of consent was introduced in the latter stages of the passage of the Criminal Law (Sexual Offences) Act 2017, representing the first time the State providing a clear statement on what constitutes a legally valid consent to sexual activity and introducing the feminist concept of ‘communicative sexuality’ into Irish law. Further, motivated by their desire to ratify the Istanbul Convention, the Irish legislature passed the Domestic Violence Act 2018 which also includes some important changes such as the introduction of the offence of coercive control and new rules for sentencing in cases of violence and sexual abuse in intimate relationships. However, while symbolic, these reforms have been introduced in an ad hoc manner without any forward-looking plan on how ‘real-life’ change will be delivered for Irish victims of sexual violence.

Focusing on a particularly pernicious challenge for the criminal justice system, rape within relationships, this paper will consider how the recent reform efforts should be used to recognise and respond to women’s lived experiences of intimate partner sexual violence. This focus is chosen as it relates directly to my primary research interest (i.e. proving an absence of consent in rape trials) and builds upon specific research I have conducted on the history of the abolition of the marital rape exemption in Irish law. The latter showed very few convictions for this offence and controversial sentencing decisions. Drawing on this previous research (which clearly show the criminal justice system’s heretofore failure to understand and acknowledge women’s experiences of rape within relationships) this paper considers how a feminist-inspired application of the new Irish sexual and domestic violence laws may hold the potential to successfully prosecute and punish rape within relationships, whilst still appropriately recognising and naming women’s lived experiences.

Palmer, Tanya, University of Sussex

New concepts for sexual violence scholarship: ‘Freedom to negotiate’ and ‘chronic sexual violation’

This paper introduces two original concepts which I have been developing in my work to date – ‘freedom to negotiate’ and ‘chronic sexual violation’ – as potential routes out of some of the seemingly intractable problems of sexual violence law and policy. In particular, I see these concepts as providing fresh insights for thinking about:
• sexual violence in ongoing abusive relationships, where coercion may not be explicit or immediate; and
• sexual violence towards children and mentally disordered adults, where legal responses have typically emphasised the victim’s lack of capacity and invisibilised their lack of freedom or power.

‘Freedom to negotiate’ is posited as a replacement for consent as the dividing line between sex and sexual violation. I argue that it emphasises the relationality, mutuality and fluidity of sexual encounters and allows for a more contextualised evaluation of those encounters than the concept of consent, which is bound up with overly individualistic, rational, disembodied constructions of subjection. Freedom to negotiate provides greater scope than consent for considering the social and interpersonal power imbalances that may constrain a person’s sexual autonomy.

The concept of ‘chronic sexual violation’ builds on understandings of coercive control (Stark, 2007) and constitutes a form of sexual violation in which the victim suffers a long term, gradual erosion of their sexual autonomy. This is contrasted with the ‘acute’ form of sexual violation currently recognised via the law of rape. In doing so it attempts to recognise the specificity of this form of violation without reproducing hierarchies that situate stranger rape as more serious than rape by a partner.

Russell, Yvette, University of Bristol

**Force of Sexual Difference: Law and Ontology in the Rape Trial**

In this paper I seek to uncover law’s ontological force as it reveals itself in the rape trial. It is common for survivors of sexual violence to refer to their interaction with the criminal justice system as a ‘second rape’. Returning to Heidegger’s contention that the ontology of modernity is characterised by a planetary technicity leading inexorably to a global death project, I argue that to understand the legal process as a ‘second rape’ we must return to the question of Being. Situating legal discourse within the realm of tools marshalled in the service of what Irigaray would call ‘technophallogocentrism’, and through a critical reading of a rape trial transcript, I attempt to listen to the force of law as it reveals itself during the iterative process of the giving and receiving of evidence. I counterpose the force of law against the force of sexual difference and consider what it might mean to orientate oneself towards an alternative genealogy of the common law and to adjudicate according to principles not fundamentally underpinned by the monistic imagination of sexual indifference and the technophallogocentric logic of positive law.

Seabourne, Gwen, University of Bristol

**Old paths and new directions? Some perspectives from the deep history of rape**

Using sources from medieval England and Wales, including newly discovered cases, this paper will explore the early development of legal responses to rape. It will highlight questions raised by my research as to:

(i) the interplay of impulses towards punishment and compensation;

(ii) problems with proof and procedure;
(iii) concepts of consent;

and will open up discussion as to the implications for modern sexual violence scholarship. Can such historical scholarship go beyond the correction of impressions about law’s distant past and contribute something to current debates?

Serisier, Tanya, Birkbeck, University of London

Speaking Out: Rape, Feminism and Narrative Politics

#MeToo is only the most recent, and most prominent example of survivors of sexual violence telling their stories online in recent years. While much commentary focuses on the novel elements of this online speech in this presentation I want to place it within a history of feminist political practice and belief. I argue that, since the early 1970s, feminist anti-rape politics have been characterised by a belief in the transformative potential of women’s personal narratives of sexual violence. The political mobilisation of these narratives has been extraordinarily successful in many ways, to the extent that a belief in the benefits of 'speaking out' has transcended its feminist origins and can be found across the political spectrum.

In my workshop talk, I present the historical research and political and narrative analysis contained in my recent book, Speaking Out: Rape, Feminism and Narrative Politics to explore the effects and consequences of feminist uses of personal stories as a primary weapon against rape, focusing particularly on the political possibilities, and the understandings of rape itself, that they enable and foreclose. I argue that while personal narratives can be politically powerful, the use of stories of rape as a political strategy has important political limitations and unresolved ethical questions, including the generic limits about what kinds of stories are tellable and in what ways, and the difficulty of basing an anti-rape politics on a genre of stories in which rape has always-already happened, and the ways in which this analysis might point to new modes of politics in which we move to a point where we no longer need to tell the same stories of sexual violence. This kind of narrative politics would insist that the story of a world without rape is possible, desirable and necessary, and that telling this story is an urgent task for feminist theoretical and activist work in this area.