

Rape and Sexual Assault in Japan: Potential Gender Bias in Pre-Trial Procedures

by Harriet Gray, School of East Asian Studies, University of Sheffield [\[1\]](#)

ABSTRACT

The legal systems surrounding sexual assault are contentious in many societies. However, this paper argues that specific social conditions in Japan reinforce and perpetuate a gender bias in its legal systems, which has far-reaching implications for a sexual assault victim's experience in attempting to obtain justice. The paper contends that male and female interpretations of a given situation can be opposing because differential socialisation leads to 'perceptual fault lines' (Scheppelle, 1989) or different understandings of the same situation. Given this, gender bias is conceptualised as a prioritising of the male point of view over the female, and an assumption that the male experience is objective and universal even though it is often limited to one gender group. This paper illustrates how this gender-biased view of sexuality, reinforced by the sex industry and prevalence of violent pornography in Japan, affects how different types of victims and attacks are understood, and the way in which they are treated in the pre-trial stages of the legal system.

KEYWORDS: Gender bias, objectivity, social construction, perceptual fault lines, *tsūjō* rape, *fushizen* rape, rape myths.

INTRODUCTION

Sexual assault is a notoriously difficult crime to prove in any legal system. It is often perpetrated without any witnesses other than the victim and aggressor, and (especially in the case of rape committed by someone known to the victim) it is necessary to prove something which does not need to be proved in any other crime: lack of consent. Objective evidence, except in the case of serious physical injury, is often absent, so it is necessary to rely on the testimonies of accuser and defendant. However, further problems arise in legal systems worldwide from the fact that they are often fraught with systematic gender bias.

This paper does not argue that men or women are homogenous groups with identical beliefs, or that male norms consciously disregard women's suffering. Rather, I conceptualise gender bias as difference in understanding based on different socialisation, as in Scheppelle's (1989: 2083) explanation of 'perceptual fault-lines', misunderstandings caused by 'different descriptions of events that grow from different experiences and perceptions'. Scheppelle (1987: 1103-9) argues that there is often no such thing as a universal truth, but a number of descriptions of a given event which, while not corresponding with one another, are nonetheless all true. This is because differentially socialised groups, including men and women, interpret events in different ways. For example, men are more likely than women to have sexualised perceptions of a given situation, such as believing that a woman is behaving seductively when she thinks she is just being friendly.

Although male and female understandings of sex and violence may differ, Burns (2005: 9) argues that because of historical male privilege, the male perspective has come to be considered objective; that is, the male point of view is considered to be an objective universal understanding, even though it is specific to one gender group. Because legal systems (as well as conventional definitions of sexuality and gender) were overwhelmingly constructed by men, they are typically based on a male understanding of the world. When female views are seen as specifically feminine, subjective, and often irrational and overly emotional – a view which can be held by both men and women – they are unable to be generalised to wider human experience. Female views, when they do not fit in with dominant opinion, are thus seen as separate from the objective norm. This sidelining of female experience in favour of a male understanding cast as objectivity is what this paper considers as 'gender bias'.

In the UK, of the rape cases reaching court in 2001-2002 (including those with guilty pleas), 57% resulted in convictions (Kelly *et al.*, 2005: 92). For a number of reasons, including the powerful and discretionary role of prosecutors, the negative view of acquittals, and a judicial focus on apology, compensation and reconciliation, the acquittal rate in Japanese courts is exceptionally low: just 0.21% in 1984 (Johnson, 2002: 45-46; 68; 242-46). This also affects rape and sexual assault cases: 95% of rape trials ended in conviction in the 1990s (Diamond and Uchiyama, 1999). The highest hurdles to getting justice in a rape case, then, occur in the pre-trial stages, which is why this paper focuses on the early stages of the legal systems relating to rape and sexual assault.

This paper distinguishes between two kinds of rape: what Burns (2005: 4) calls *tsūjō* rape, the stereotypical crime perpetrated violently by an offender with no previous relationship to the victim, who cannot herself be blamed for provoking the attack; and *fushizen* rape, which complicates the stereotype in ways such as the offender already being known to the victim, or lack of overt physical violence. I argue that gender bias leads to these two types of rape being treated very differently by the legal system.

This paper focuses on rapes committed against adult females by adult males. However, because of the narrow Japanese definition of what constitutes rape (which, I argue, is in itself based in a specifically male understanding), I include indecent assault in my focus. In order to consider the issue of the gender bias against women innate in the system, I focus exclusively on attacks committed by males against females. I exclude attacks committed against minors because the relevant legal systems are different, and because consent is not an issue. I also exclude gang rape, as the societal norms associated with this are different from rape by a lone attacker, as is the law. I focus my research around rapes that happen in peacetime, as war changes both the conditions of rape, and the legal systems relating to it. [2]

Bearing in mind the ways in which law exists within its given cultural context, I first consider the ways in which sexuality is constructed in Japanese society. My analysis then shifts to the influence of rape myths on narrative and truth, and then to the ways in which Japan's laws conceptualise sexual assault based society's conception of sexuality. The following section explores the legal processes by which a sexual assault case proceeds from reporting to trial. Finally, I bring together the various strands of my analysis and consider the impact of gender bias on the pre-trial stages of Japan's legal processes surrounding rape and sexual assault.

HOW DOES JAPANESE SOCIETY CONSTRUCT SEXUALITY?

In any culture, sexual crimes are defined in terms of whatever falls outside what society perceives as normal sexual relations. When considering how a society punishes sexual crimes, therefore, it is important to understand how that society understands 'normal' sexual relations; and as Burns (2005: 9) argues, we must bear in mind that the dominant understandings used to define what is normal tend to be masculine ones.

Male and female sexualities are socially constructed as different in many countries of the world. However, in Japan there are specific conditions – particularly the prevalent sex industry and the widespread availability of violent pornography – which have an important impact on the understanding of male and female sexuality.

Although the establishments of the highly visible sex industry, or *mizu shōbai*, are widely varied in terms of price and services on offer, in the vast majority of them men are waited on by women and sexuality, if not full sex, is for sale. Using prostitutes is less stigmatised in Japan than in some other countries, reflecting the social construction of male sexuality as well as Japan's non-Christian religious history (Allison, 1994). The availability of sex for sale makes female sexuality into a commodity; as MacKinnon (1989: 172) puts it, 'women's sexuality is, usually, a thing to be stolen, sold, bought, bartered, or exchanged by others.' This changes the perception of rape, from a violent and humiliating attack on a person's autonomy, to theft of a possession. Furthermore, this concept robs women of sexual autonomy; they are mere objects, passive recipients of male desire. This is a gender-biased view: women's sexuality is constructed not from women's point of view, but from a (heterosexual) male point of view. This has far-reaching implications for the conceptualisation of sexual assault.

There is a huge amount of pornography available in Japan, much of which depicts violence and degradation against females; rape-themed videos account for about 20% of the pornography at chain video-rental stores (Associated Press, 2003). Rape-centred pornography is also widely available in *manga* (cartoon) form. Pornography is considered so normal that men will often read violent *manga* pornography, or men's weekly magazines with high pornographic content, openly on the train, even when sitting next to female passengers.

In pornographic *manga*, sex, even when consensual, is generally something which is done to women rather than something in which they are active players. In fact, when female characters do express sexual desires of their own they are often rewarded with disinterest or anger from male characters (Allison, 1996: 62, 67). Furthermore, female characters are often shown as coming to enjoy their pain and degradation (Ōbuchi, 1991: 121). The message this gives out to readers is that women should not express their own sexual autonomy, but should enjoy being the mere objects of aggressive male desire. Again, this is a gender-biased take on female sexuality, seen from the point of view of the male obtaining pleasure from the female rather than the female defining her own pleasure.

As MacKinnon (2005: 130) explains, violent pornography eroticises the domination, violation and degradation of women. Reading violent pornography also alters the reader's expectations of levels of aggression in normal sex, and how much women enjoy that aggression. Studies have shown that if a person perceives higher levels of enjoyment at rape for a victim, they are more likely to attribute more blame to the victim

(Allison and Wrightsman, 1993: 137). It follows that someone who reads rape pornography in which the victim enjoys her abuse is more likely to blame victims.

As part of the social construction of sexuality, pornography and the prevalence of the sex industry play a role in socialising men and women into the idea that men have innately active and aggressive sexuality, whereas women are merely the passive objects of male desire; as the saying goes, 'a man's character should not be judged from below the bellybutton' (Yunomae, 1996: 103-4). There is clear bias in this view, which is conceptualised exclusively from the male standpoint and denies women's sexual autonomy.

Allison (1994: 130-31) discusses the tendency of both men and women in Japanese society to divide women into two very distinct groups: the sexualised and the non-sexualised. Use of the term 'sexualised' to describe the former group does not imply that these women are supposed to act on their own sexuality irrespective of the desires of men; rather that certain women, for example those who become prostitutes, are sacrificed for the protection of non-sexualised women, in that they are given over to satisfy men's lust so that men will not feel the urge to attack more respectable women. Women within the sexualised group are demeaned and degraded, while those within the non-sexualised group are denied any sexuality at all.

These constructions of male and female sexuality place women in a sexually subservient position to men. Men have sexual autonomy, women are merely passive objects of male desire. 'Men initiate, women consent' (MacKinnon, 1987: 90). Men buy, women are bought. It is crucial to bear in mind this hierarchy, and the bias contained within it, when we consider the phenomenon of sexual assault.

THE INFLUENCE OF RAPE MYTHS ON THE PROBLEM OF NARRATIVE AND TRUTH

Rape myths are 'myths that serve to enhance male dominance and female passivity, and alternatively, to explain and perhaps justify the occurrence of rape' (Allison and Wrightsman, 1993: 26). Rape myths are gender-biased stories, which falsely assert that being a victim is more traumatic for chaste than promiscuous women, and that rape is a sexual act caused when a woman provokes a man into losing control of his powerful innate sexuality. Such so-called provocation can consist of walking alone at night, wearing revealing clothing, or being promiscuous (Burns, 2005: 2). Rape myths rationalise sexual assault by claiming that women secretly desire to be raped (Ōbuchi, 1991: 122). They tell the story of *tsūjō* rape, a story where a stranger violently attacks an innocent young woman in the street, and imply that this is the only genuine type of rape. Such myths are biased because they are based in a masculine angle on rape and sex rather than the experiences of victims. This paper asks how widely rape myths are accepted in Japan, and considers how they determine which kinds of rapes, against which kinds of victims, constitute 'real' rapes and are therefore deserving of justice.

According to Nosaka (2004: 6-7), rape myths are deeply entrenched in the ideas Japanese people have about sexual assault. Furthermore, experiments have indicated a positive link between exposure to violent pornography and acceptance of rape myths (Ōbuchi, 1991: 123).

Rape myths dictate who qualifies as a true victim. Victims who do not fit into the stereotype of a 'Little Red Riding Hood fairy tale victim: a young, innocent female out doing good deeds who is attacked by an unknown stranger' (Walklate, 2007: 28) may be seen as undeserving or may not earn the title 'victim' at all, impairing their chances of obtaining justice through the legal system, and their ability properly to understand what happened to them (Walklate, 2007: 44). The relationship between victim and offender also influences whether someone is considered a true victim; although the wording of current Japanese law makes no mention of the relationship between victim and attacker, judges tend not to convict husbands of raping their wives as the belief persists that a husband has a right to sex with his wife (Burns, 2005: 7, 51, 129; Kainō, 1997: 299; Kinjo, 1986: 203). Tsunoda (2001: 186-91) argues that in order to secure a rape conviction in Japan it is important to prove that the victim holds the ideal of chastity. The focus on the character and actions of the victim shifts attention from the question of why some people offend to the question of why some people are attacked. This has the effect of placing blame on the victim, because if they had not been the person that they were, then they would not have become victims (Walklate, 2007: 51).

Furthermore, in the context of the division of women into sexualised and non-sexualised groups, a victim of sexual assault must be from the group of non-sexualised women to be perceived as a true victim; rape of sexualised women is commonly trivialised (Burns, 2005: 31). Paradoxically, however, by admitting to the rape, women are admitting to sexual contact and therefore placing themselves within the devalued group of sexualised women (Burns, 2005: 19). If a woman has been the target for a sexual assault, she is assumed to be part of the group sacrificed for the protection of more deserving women, and therefore less deserving of protection.

In the Japanese legal system, more than many other legal systems, there is a belief that, among all the partial narratives, there is one objective truth about what happened in a given situation (Foote, 2002: 34-35). However, Scheppele (1989: 2082) argues that legal decisions are made largely not on the basis of hard facts, but on the narratives told by those involved, based on their own interpretations of events. As explained by the concept of perceptual fault-lines (Scheppele, 1987: 1103-9), differences between multiple narratives of the same event may not mean that one is based on lies, but that the event has been honestly interpreted differently by the different parties involved. When different narratives of the same event are offered for consideration, the legal system must decide which ones are accepted as fact and which ones are dismissed as fiction (Scheppele, 1989: 2082-88).

As Burns (2005: 10) points out, when a subjective opinion fits in with dominant ideology and beliefs, it is likely to be considered an objective truth. Narratives which conflict with dominant understandings are marginalised. Therefore, narratives of sexual attack which correspond to dominant rape myths and masculine understandings of sexuality are likely to be believed, but those which go against these dominant narratives are discounted. Under these circumstances, the *tsūjō* rape victim is likely to be believed and the crime taken seriously, but in *fushizen* rape cases the defendant's narrative is often given more credence than the victim's, allowing the attack to be viewed as romance (Burns, 2000: 19; 25-31).

HOW IS SEXUAL ASSAULT CONCEPTUALISED IN JAPAN'S LAWS?

The legal understanding of sexual assault is based in prevailing social constructions of sexuality. This paper considers the specific law dealing with rape in Japan, and argues that the endemic gender bias within it leads to a number of problems.

According to Japanese law (see Appendix 1a), the fundamental characteristics to establish the crime of rape against a person over the age of thirteen are: the use of violence or threat; the victim being female; and that fornication takes place, meaning that the attacker must be male. As Burns (2002: 21) shows, the law requires that there be penetration of the vagina by the penis, without the consent of the victim, achieved by the use of violence or threat, and *mens rea* (criminal intent) i.e. the rapist intended to have sex with the victim against her will.

The definition of rape in Japan is limited to vaginal penetration by a penis, therefore excluding forced oral and anal penetration and penetration by any other object, as well as rape of men. Forced penetration of these kinds is downgraded to indecent assault (see Appendix 1b). These laws have remained basically unchanged apart from a few minor changes since they were promulgated in 1907 (Shiraishi, 2006: 242). This is despite the fact that many Western nations, and also Taiwan, have changed their definitions to include other forms of penetration (Yatagawa, 2003: 28-30); e.g. oral and anal penetration have been included in the British definition of rape since 2003 (see Appendix 4).

The focus on vaginal penetration by a penis can be explained by what it is that, historically at least, rape laws aim to protect. It is not because different forms of forced penetration cause more or less harm to a victim, but because only vaginal penetration by a penis carries the risk of impregnation, which risks the contamination of the patriarchal bloodline (Yatagawa, 2003: 30). This focus on biological reproduction as the purpose of sex prioritises and legitimises one kind of sexuality (heterosexual male) over others, with the effect of sidelining many experiences of both pleasure and violation.

As we have seen, the non-consent of the victim, and the use of threat or violence, are both considered characteristics of rape in Japanese law. Because evidence of violence is considered an objective measure, the level of violence, rather than the question of consent, is often used as evidence that a rape did or did not take place. In a case of an assault on a train, one prosecutor questioned by Johnson (2002: 208) said that the woman should have resisted more forcefully, because without physical evidence of a struggle, conviction was more difficult. This was despite the fact that no-one was suggesting that the victim had consented to this assault. Burns (2005: 84) explains this phenomenon: 'She has no voice to express non-consent because she is reduced to a sexualised body, always already presumed to be consenting.' Physical struggle is the only way she can express non-consent.

However, the idea of violence as an objective measure is questionable, as men and women interpret and respond to threat in different ways. Tsunoda (2001: 182) argues that what 'violence' means depends on whose standpoint you are viewing it from; specifically, the levels of violence judged acceptable in 'normal' sex vary vastly depending on who is judging. An act which men understand as intense caressing can be perceived as violence by women (Scheppelle, 1987: 1103-5). Furthermore, women do not see violence as exclusively physical, as Scheppelle (1989: 2091) explains: 'women see force as starting much earlier than men do, before it turns to physical and

observable violence'. A woman can therefore be forced into doing something against her will in ways other than overt physical violence. Acquaintance rapes, for example, tend to involve much less physical violence than stranger rapes, although the victims involved are no less forced against their will. Excessive focus on physical violence is therefore one of the many factors which sideline acquaintance rapes (Allison and Wrightsman, 1993: 65). Because legal systems are gender biased, they expect to find acts which men would view as force, often overlooking the force which the female victim experienced. Furthermore, because of gender bias this thinking fails to understand that due to socialisation, some women respond to fear by freezing rather than actively fighting back (Burns, 2005: 75, 104).

Proving rape is made harder by the fact that society judges a certain level of violence to be part of normal consensual sex. Not only does a victim have to prove that threat or violence was used, and that she resisted to the best of her ability; she also has to prove that the violence which took place was greater than expected in normal sex (Burns, 2002: 22-25). Violent pornography, depicting women enjoying violence and degradation in sex, perpetuates this problem.

The concept of *mens rea* in Japanese rape law means that if, from the point of view of the attacker, no harm was meant, no harm was really done. As male and female sexuality are constructed differently, the fact that sexual advances were unwanted from the female point of view does not mean that the male attacker held criminal intentions. The requirement of *mens rea* prioritises the male perspective over the female; it means that although the harm of rape lies in its meaning to the victim, the standard by which it is judged to be criminal lies in the meaning of the act to its perpetrator (MacKinnon, 2005: 111-14). A gender-biased perception of the female victim's pleasure or pain is used to determine whether she has the right to feel violated. There are cases where an attacker, because of perceptual fault-lines, mistakenly but honestly believes that his victim wanted violent, forced sex. As MacKinnon (1989: 180-82) asks, 'from whose standpoint, and in whose interest, is a law that allows one person's conditioned subconscious to contraindicate another's violation?'

THE IMPACT OF GENDER BIAS ON REPORTING AND THE DECISION TO PROSECUTE

The above-outlined gender-biased views of sexuality and sexual assault, and the rape myths which reflect them, have a profound effect on the way in which sexual attack is treated in the legal process. In particular, the biggest hurdle to getting a conviction for sexual assault is getting the case to court. In 1990-1992 the rates of prosecution for reported rapes were lower than those for robbery, bodily injury, and violent acts (Dussich *et al.*, 1994: 38). [\[3\]](#) This paper analyses the effects of gender bias on the difficult process of getting a sexual assault case to trial, placing particular emphasis on the role of the Japanese prosecutor.

The first stage in the legal system is reporting. For obvious reasons, it is very difficult to say what proportion of actual rapes is reported. Such evidence as there is, however, indicates that it is a small proportion: a 1997 study found that only 13.9% of sexual assault victims and 9.5% of rape victims report their attacks to the police (Burns, 2005: 48). Because sexual assault is a crime which can only be prosecuted if there is a formal

complaint from the victim (Appendix 2), low levels of reporting have devastating effects on prosecution rates.

There are many reasons why victims do not report sexual crimes, not all of which can be attributed to the bias in the system (e.g. Dussich *et al.*, 1994: 37-38; Haley, 1991: 117-8 and Walklate 2007: 79). However, one reason is that women are aware of the bias present in the system; they realise they will face prejudice should they report their attack, discouraging many from reporting (Anon, 2004: 1). Many women fear that the courts will not see the attack from their viewpoint, especially in the case of *fushizen* rape. When the Tokyo Rape Crisis Centre compared its figures with official statistics, it found that that a far greater proportion of *tsūjō* rapes are reported and prosecuted than *fushizen* rape (Burns, 2005: 56), indicating that women are more likely to report when their attacks fit in with the gender-biased understanding of sexual attack, when they are most likely to be believed. Haley (1991: 118) says that 'the potential litigant must perceive that he or she has something to gain by litigation.' If a victim feels that, because of the bias in the system, she will have to undergo the trauma of a trial with little chance of getting justice, she will be discouraged from taking the case to court. Unfortunately, this perpetuates the bias: if unconventional cases are not brought before the courts, the courts are unlikely to change their stereotypical views of sexual assault.

Even if a victim does want to persevere with her case, there are still barriers which can stop her getting to court, and indeed in 2005 just 65.8% of reported rapes and 58.2% of indecent assault cases were prosecuted (Ministry of Justice (a)). One such barrier is Article 248 of the Code of Criminal Procedures (Appendix 3), which gives the prosecutor the right to judge a prosecution unnecessary, based on the character of the offender and the circumstances of the offence, even if there is enough evidence to convict. In other words, even when the authorities are confident that a defendant is guilty, they may, for a number of reasons outlined below, chose to suspend the case and not take it to court. In 2005, more than twice as many rape (6.8%) and indecent assault (6.6%) prosecutions were suspended as robbery prosecutions (3.0%) (Ministry of Justice (b): 323).

One reason for suspending rape prosecutions is, as Johnson (2002: 156) explains, that 'prosecutors often seem to discount the seriousness of the offence – on the basis, at least in part, of their reduced regard for the interests of female victims.' Gender-biased understandings of sexual assault minimise respect for the suffering of victims, and very few prosecutors are female: 10% in 2002 (Johnson 2002: 90-91). If prosecutors do not take a crime seriously, they will be more likely to suspend the case or advise potential litigants not to pursue it. As Johnson (2002: 207) found, this advice is often dispensed in an insistent manner which victims find difficult to refuse.

Additionally, prosecutors are further encouraged to drop cases by the negative view of acquittals. Acquittals are seen as a disgrace by prosecutors, the media, and the general public, and could damage a prosecutor's future career prospects. Prosecutors therefore screen cases before putting them forward to trial, and those which are more likely to end in acquittal (e.g. *fushizen* rape cases) are more likely to be dropped. Japan's current lack of jury trials makes it easier to predict the outcome of a given case; further encouraging prosecutors to drop those deemed too risky (Johnson 2002: 44-53; 106; 222-42).

Leaving aside the most serious crimes – a category which includes gun crime but not most sexual offences – a major concern of Japanese justice is rehabilitation of the

offender. Harsher punishment is seen as hindering the reintegration of the offender into society, and in the name of rehabilitation, offenders who confess and offer compensation and apologies to their victims can often expect a more lenient sentence than those who do not. Prosecutors can use their discretion, taking into account the offender's conduct and whether or not they have confessed and apologised, when recommending sentences, and prosecutor's recommended sentences are usually imposed (Johnson, 2002: 75, 182-3, 185-90, 202-3, 245-46). They can also use this discretion, of course, in deciding whether to suspend the prosecution all together.

Focus on rehabilitation of both offender and victim, known as restorative justice, assumes that victim and offender can come together on equal terms. This fails to take into account the structural inequalities to which the female victim is subject, often being unequal in terms of power to her male attackers (Walklate, 2007: 124-26). The strong influence of restorative justice in the Japanese legal system further marginalises the needs of female victims, as rehabilitation of the offender is prioritised over rehabilitation of the victim.

THE EFFECTS OF GENDER BIAS ON PRE-TRIAL PROCEDURES

Although Japan is clearly not the only country in which sexual assault law is problematic, this paper has argued that Japan's legal systems relating to rape and indecent assault remain rife with gender bias. As we have seen, male and female understandings of situations can differ. Because male privilege means that male understanding is believed to be objective, society has constructed an understanding of sexuality, and based on this an understanding of sexual assault, centred on male norms. Women's voices and experiences, when they differ from this male understanding, are marginalised. Although this differential construction of sexuality is not confined to Japan, the existence of the *mizu shōbai* and violent pornography heighten the problem by robbing women of their sexual autonomy and casting them as sexually subservient to men.

The gender-biased image of rape which society has created is a story of a *tsūjō* rape based on rape myths. This disregards women's true experiences; as Burns (2000: 10) puts it, 'women's subjectivity is essentially erased from the dominant image of rape'. As we have seen, narratives which conform to dominant understandings are far more likely to be taken seriously by society and by legal professionals than those which do not. However, as women's experiences of pleasure and violation are excluded from this definition, many attacks through which women experience all the harm of rape are not understood as 'real' rape by these dominant understandings. These attacks are trivialised. As MacKinnon (1987: 90) puts it, 'we criticise the idea that rape comes down to her word against his – but it really *is* her perspective against his perspective, and the law had been written from *his* perspective.'

This gender bias affects the way that society understands sexual assault as well as all stages of the legal system. Some of these issues are visible worldwide, but the ability of Japanese prosecutors to suspend prosecutions allows gender-biased views more influence in preventing cases from getting to trial. Furthermore, as illustrated by the necessity of *mens rea* and the emphasis on offender rehabilitation, the viewpoint and experience of offenders is often prioritised over that of victims, preventing women from getting the justice and validation that they need to get on with their lives.

There is progress being made, for example the introduction of screens protecting victims while they give evidence, a step towards respecting the victim's pain from her point of view, and the increasing use of expert witnesses to challenge the judge's perceptions of how a victim should react (Burns, 2005: 143-47; 155). However, the fundamental problem – that sexual assault is conceptualised from the point of view of the male (including the attacker) rather than that of the female (including the victim) – does not seem to be changing. The legal profession needs to reconsider the ways in which it understands sexual assault, altering its perspective to place more emphasis on the victim's point of view. If this is done, it is reasonable to expect that more victims will feel supported and empowered by a legal system that takes their suffering seriously and prioritises their needs, and that they will therefore be more ready to report attacks. Without this fundamental change in perspective and a conscious effort to eradicate gender bias, legal reform will have a limited impact, as legal professionals and society in general will continue to underestimate the varied forms in which sexual assault occurs, as well as the seriousness of its harm.

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APPENDICES

Appendix 1a

刑法

第22章 わいせつ、姦淫及び重婚の罪

第177条

暴行または脅迫を用いて十三歳以上の女子を姦淫した者は、強姦の罪とし、三年以上の有期懲役に処する。十三未満の女子を姦淫した者も、同様とする。

(Hōko (a))

Criminal Code, Chapter 22: Crimes of Indecency, Fornication and Bigamy

Article 177

A person who, using violence or threats, has sexual intercourse with a female person over the age of thirteen shall be guilty of rape and shall be punished with imprisonment of at least three years. The same shall apply to a person who has sexual intercourse with a female person under the age of thirteen.

Appendix 1b

刑法

第22章 わいせつ、姦淫及び重婚の罪

第176条

十三歳以上の男女に対し、暴行又は脅迫を用いてわいせつな行為をした者は、六月以上十年以下の懲役に処する。十三未満の男女に対し、わいせつな行為をした者も、同様とする。

(Hōko (a))

Criminal Code, Chapter 22: Crimes of Indecency, Fornication and Bigamy

Article 176

A person who, using violence or threats, commits an indecent act against a male or female person over the age of thirteen shall be punished with imprisonment of six months to ten years. The same shall apply to a person who commits an indecent act against a male or female person under the age of thirteen.

Appendix 2

刑法

第22章 わいせつ、姦淫及び重婚の罪

第180条

第176条から第178条までの罪及びこれらの罪の未遂罪は、告訴がなければ公訴を提起することができない。

(Hōko (a))

Criminal Code, Chapter 22: Crimes of Indecency, Fornication and Bigamy

Article 180

Prosecution cannot be brought for the crimes of articles 176 to 178, or attempts to commit these crimes, without complaint from the victim.

Appendix 3

刑法訴訟法

第2章 公 訴

第248条

犯人の性格、年齢及び境遇、犯罪の軽重及び情状並びに犯罪後の状況により訴追を必要としないときは、公訴を提起しないことができる。

(Hōko (b))

Code of Criminal Procedure, Chapter 2: Prosecution

Article 248

When prosecution is considered unnecessary because of the offender's character, age and circumstances, the seriousness and circumstances of the crime itself, and the situation subsequent to the crime, prosecution does not have to be brought.

Appendix 4

UK Sexual Offences Act 2003: Chapter 42: Part 1: Sexual Offences

Rape:

(1) A person (A) commits an offence if –

- a. He intentionally penetrates the vagina, anus, or mouth of another person (B) with his penis,
- b. B does not consent to the penetration, and
- c. A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

(Sexual Offences Act, 2003)

NOTES

[1] Harriet Gray is now a full time MA Gender Studies student at the School of Oriental and African Studies, University of London.

[2] In Japan, rape in wartime is a particularly important issue due to the history of the so-called 'comfort women' of World War Two (see, for example, Stetz and Oh, 2001).

[3] Japan is not alone in this; in the UK, over two-thirds of reported rape cases do not reach court (Kelly *et al*, 2005, 92).

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