

THOUGHTS ON RECIDIVISM AND REHABILITATION OF RAPISTS

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The notion that sex crimes are perpetrated by a small number of habitual, sexually deviant offenders, usually strangers, conflicts with the fact that most victims are sexually assaulted by someone they know. As sex offenders often target one type of victim and because there are somewhat different processes operating for the various subgroups of sex offenders, this discussion focuses primarily on rapists, that is, men who perpetrate sexual assault predominantly against adults and, specifically, women. While persistent sex offenders are thought to comprise a small proportion of the total sex offender population, they have a substantial impact on public attitudes and policy decisions, since the more severe and highly publicised sexual assaults are often associated with stranger or gang rapists, offenders who are commonly regarded as more dangerous, less treatable and constituting a greater risk to the community.

Given the hidden nature of sex offending, it is difficult to ascertain the prevalence of sex offenders in the community, let alone recidivism rates. The international research literature shows that rates of sexual recidivism are low relative to other offence types. However, official figures are known to underestimate the prevalence and incidence of repeat offending, largely because they are based on the recidivistic activities of visible (ie, convicted or incarcerated) sex offenders and due to a range of methodological issues. Most sex offenders are not reconvicted for sexual offences: while a small group specialises in sex crime, a larger group continues a general criminal career and can be described as versatile offenders.¹ Among rapists, there is considerable continuity between sexual, general and violent offending. Many have extensive general criminal histories and some are more likely to be reconvicted for violent rather than sexual offences. Australian studies have found that rates of sexual recidivism range from as low as two per cent in some samples to as high as 16

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1 See, eg, Keith Soothill et al, 'Sex Offenders: Specialists, Generalists – Or Both? A 32-year Criminological Study' (2000) 40 *British Journal of Criminology* 56.

per cent in others, with rates of violent recidivism ranging from 11 per cent to 31 per cent, and for any type of offence from 41 per cent to 61 per cent.²

It is not clear whether low rates of sexual recidivism point to rehabilitation, lack of opportunity to reoffend, or non-detection of subsequent sex crimes. Visible sex offenders often admit to committing multiple offences over long periods of time³ and, because there is a strong relationship between the frequency of offending and the likelihood of being reconvicted at some point, it is not possible to assume that most released sex offenders who are not reconvicted are undetected repeat offenders. The available evidence suggests that most sex offenders are not at risk of sexual recidivism, but it is necessary to identify those who are and, in addition, risk assessment of sex offenders ought to be a core practice within correctional systems.

I RISK FACTORS FOR RECIDIVISM

The propensity to reoffend sexually is mediated by a broad range of developmental, psychosocial, environmental and physiological influences which are viewed as functionally interdependent processes. There is no single cause of sex offending but there are a number of static and dynamic risk factors that are associated with recidivism.⁴ Static risk factors are relatively fixed and include variables such as the offender's sex, race or ethnicity, age, criminal history and relationship to the victim. Dynamic risk factors are open to change with treatment and are also known as criminogenic needs. They include variables as diverse as substance abuse, general social skills, sexual arousal patterns and the quality of relationships.

Sex offenders are similar to the general offender population in terms of demographic, psychosocial and criminal history variables. Most are young, single, white males, although men from Indigenous and ethnic minority groups are over-represented among visible sex offenders. Rapists come from all socio-economic backgrounds but are often socially, economically, educationally and occupationally disadvantaged. The fact that some risk factors are common for general, violent and sexual offending has led to the view that rapists are

2 Roderic Broadhurst and Nini Loh, 'Careers of Sex Offenders: The Probabilities of Re-arrest' (Paper presented at Second National Outlook Symposium: Violent Crime, Property Crime and Public Policy, Canberra, 3-4 March 1997) <<http://www.aic.gov.au.conferences/outlook97.broad.html>> at 8 January 2003; Peter H Burgoyne, *Recidivism Among Rapists: A Study of Men Released from Custody After Having Served Sentences for Rape or Attempted Rape* (1979); David M Greenberg, Julie-Ann Da Silva and Nini Loh, *Evaluation of the Western Australian Sex Offender Treatment Unit (1987-1999): A Quantitative Analysis* (2002).

3 See, eg, Robert Curnow, Peter Streker and Emma Williams, *Juvenile Justice Evaluation Report: Male Adolescent Program for Positive Sexuality* (1998).

4 See, eg, William L Marshall and Howard E Barbaree, 'An Integrated Theory of the Etiology of Sexual Offending' in William L Marshall, Richard D Laws and Howard E Barbaree (eds), *Handbook of Sexual Assault: Issues, Theories, and Treatment of the Offender* (1990) 257.

predominantly violent offenders who also offend sexually,⁵ but current knowledge indicates that a somewhat different set of processes contributes to sexual recidivism.

Specific risk factors for sexual recidivism include: age (youth); marital status (single); a prior generalist history of offending; and a specific history of sex offending, especially early onset of offending and engaging in a range of sexual crimes. Sexual offending is not a developmental stage that adolescents 'grow out of'. Instead, some 'grow into' recidivist sex offenders over their life span unless their behaviours and beliefs are corrected. Other risk factors include childhood sexual and physical victimisation, failure to complete a sex offender treatment program and indicators of psychological maladjustment, such as antisocial behaviour, substance use or abuse and anger problems. It should be noted, however, most rapists do not meet the diagnostic criteria of major mental disorders.⁶

Sexual deviance is a risk factor for sexual recidivism, but aggression is a more salient risk factor among rapists. While sex offending is undeniably socially deviant, most rapists do not exhibit sexually deviant preferences, although many show a propensity towards general criminality and violent behaviour that is more widespread than sexual violence towards women. These men have versatile criminal careers and their rates of violent and general recidivism are often considerably higher than sexual recidivism. Because sexual interests exist on a continuum, it is difficult to distinguish between sex offenders who find erotic pleasure in violence and those who force unwilling partners to comply with their sexual demands because of their beliefs in male sexual entitlement.

One of the most important risks for sexual recidivism, and a common pattern among sex offenders, is that they hold a set of self-serving beliefs, assumptions and attitudes known as cognitive distortions. These play an important role in maintaining the cycle of offending by influencing the offender's interpretation of the victim's behaviour, overcoming inhibitions to offending and minimising awareness of the seriousness and impact of the offending behaviour. Rapists' attitudes towards women tend to be conservative or hostile and are consistent with rape myths and notions about male sexual entitlement. Their beliefs centre on the victims' responsibility for the attack and are linked with an acceptance of interpersonal violence as a way of solving conflict. Rapists often justify their actions by blaming the victim or denying or rationalising the sexual assault in some way. This particular pathway to re-offending has been labeled 'hypermasculinity', but it is not necessarily confined to rapists, as non-offenders and non-sexual offenders may hold similar beliefs about male dominance or

5 Roderic Broadhurst, 'Criminal Careers, Sex Offending and Dangerousness' in Mark Brown and John Pratt (eds), *Dangerous Offenders: Punishment & Social Order* (2000) 109.

6 R Karl Hanson and Monique T Bussière, 'Predicting Relapse: A Meta-analysis of Sexual Offender Recidivism Studies' (1998) 66 *Journal of Consulting and Clinical Studies* 348; Hazel Kemshall, *Risk Assessment and Management of Known Sexual and Violent Offenders: A Review of Current Issues*, Police Research Series Paper No 140, Home Office (2001).

tolerance of interpersonal violence.⁷ Rapists reflect a set of negatively stereotypic and hostile views that condone violence against women and gratification through dominance; they use the same excuses as other men to justify violence but are simply more extreme in their views.

II SEX OFFENDER TREATMENT PROGRAMS

The function of the criminal justice system has been increasingly revised to include rehabilitation of sex offenders through the delivery of sex offender treatment programs during custodial sentences. Sex offending is regarded as a learned behaviour that is subject to control. One of the principles underlying therapeutic intervention is that offenders are competent adults who choose to offend and they can be helped to develop strategies to control illegal behaviours.

International best practice centres on cognitive behavioural therapy within a relapse prevention model which broadly focuses on changing sexual behaviours and interests, modifying cognitive distortions and addressing a range of criminogenic needs. Interventions aim to challenge beliefs that support offending, develop offenders' empathy for victims and understanding of the impact of sexual assault, and prevent relapse once they are released into the community. There have been few systematic evaluations of treatment programs internationally and there are no definitive results regarding treatment efficacy. A small number of evaluations and analyses point to an overall positive effect of treatment on both sexual and general recidivism, when appropriate candidates are selected for treatment and programs are delivered in optimal conditions.⁸ Incapacitation continues to be necessary for offenders who cannot be treated due to deviance or psychopathology, particularly for those with extensive criminal histories that include violent offences.

Despite inconsistent evidence, there are important reasons for continuing to provide and evaluate interventions, including the fact that even small reductions in recidivism rates result in enormous savings to communities and, importantly, to potential victims. However, it is not clear whether all sex offenders require treatment, which components of treatment programs are effective, or whether current interventions are appropriate for all subgroups of offenders. In particular, there is less evidence about treatment efficacy for rapists than for child molesters and there are indications that 'what works' for other sex offenders may not work for rapists.⁹ Many follow-up samples contain small numbers of rapists, whose

7 See, eg, Canton F Roberts, Dennis M Doren and David Thornton, 'Dimensions Associated with Assessments of Sex Offender Recidivism Risk' (2002) 29 *Criminal Justice and Behavior* 569; Tony Ward, 'Sexual Offenders' Cognitive Distortions as Implicit Theories' (2000) 5 *Aggression and Violent Behavior* 491.

8 See, eg, R Karl Hanson et al, 'First Report of the Collaborative Outcome Data Project on the Effectiveness of Psychological Treatment for Sex Offenders' (2002) 14 *Sexual Abuse: A Journal of Research and Treatment* 169.

9 Devon L L Polaschek and Lucy L King, 'Rehabilitating Rapists: Reconsidering the Issues' (2002) 37 *Australian Psychologist* 215.

violent recidivism rates are often higher than their sexual recidivism rates and are consistently higher than child molesters. As violent recidivism is likely to result in incarceration, rapists who are reconvicted for violent crimes have a reduced opportunity to offend sexually and reductions in sexual offending may be attributable either to treatment or to incapacitation.¹⁰

III VISIBLE AND HIDDEN SEX OFFENDERS: IMPLICATIONS FOR CRIMINAL JUSTICE

Given the overlap between violent and sexual reoffending, some authors argue that interventions should focus on preventing violent, rather than sexual, recidivism.¹¹ There is some validity to this view, but the causes of sexual recidivism may lie in factors that are both common to serious criminal behaviour and specific to sexual offending. Analysis of a range of structural and interpersonal variables strongly indicates that differences between violent and sexual offenders should not be minimised, either as conceptual categories or in treatment programs.

Current responses to sex offenders give inadequate consideration to the understanding that sexual assault is one way in which women are systematically subjugated. While the predominant theories underpinning treatment models recognise the multi-factorial causes of sexual offending, legal judgments individualise sexual offending and interventions focus on changing individual 'deviations' from normality, despite the fact that sexual violence against women is relatively commonplace. At this point, it is important to reiterate that current knowledge about sexual recidivism is based on mainly white, convicted and incarcerated sex offenders who may not be representative of the sex offender population.

Societal perceptions of sexual assault have resulted in some forms of sexual coercion being viewed as normative (particularly coercion within 'legitimate' relationships) and others as transgressive. Stranger or gang rapes, while the least common forms of sexual assault, have been the priority for policy-makers for a number of reasons. The apparently random nature of these crimes seems to present a greater danger to the community than violence between people known to each other. Some of the more persistent and visible sex offenders are found in these groups and it is assumed that they offend against many more victims than men who sexually assault partners, family members or acquaintances. Stranger or gang rapes may be more likely to result in injury, to be reported to police and to proceed to trial and conviction. They are also more likely to attract sensationalist media attention. In combination, these factors weigh heavily in public assessments of the seriousness of sex crimes, but they obscure the more widespread dynamics of sexual assault.

10 Bill Glaser, 'Therapeutic Jurisprudence: An Ethical Paradigm for Therapists in Sex Offender Treatment Programs' (2003) 4 *Western Criminology Review* 143.

11 Broadhurst, above n 5.

The public–private dichotomy positions men who sexually assault women they know as a special case, but large numbers of unreported sexual assaults are perpetrated by men whom women know and trust. These assaults are likely to be brutal, repeated and result in significant psychological harm to victims.¹² It is indefensible to argue that the community is not adversely affected by hidden sex offences. These harms are compounded when sexual assault is individualised before the law and the contribution of social processes to the maintenance of sexual violence is discounted. The incidence of sexual violence against women, and the extent to which men offend with impunity against women whom they know, reflects attitudes held by some sectors of society, which at the very least do not discourage male sexual aggression and, in some instances, condone it. These attitudes are most obvious in rape myths, rapists’ cognitive distortions, hypermasculinity and sexual offending, each of which is mediated by a range of social practices and has adverse psychological and interpersonal effects on men and on women’s collective rights.

IV CONCLUSION

Sexual violence is not perpetrated solely by individuals. It is supported by social practices on a continuum that spans the macro- and micro-levels of social life. Criminal justice and therapeutic efforts to prevent and reduce sexual offending must therefore take into consideration the range of social contexts and practices that legitimise sexual violence in ways that are often uncritically accepted as ‘natural’ or ‘normal’. Distinctions between private and public harms, extra-familial and intra-familial offenders, dangerous and non-dangerous offenders and the individual and society, disguise the complexity and extent of the problem. The conflation of sexual and non-sexual violence, along with other attempts to construct sexual assault as a gender-neutral crime, further injure women by obscuring the fact that these offences ‘happen to women because they are women. For that reason, they are group or social injuries’.¹³

While both sexual and non-sexual violence reflect the worst aspects of masculine culture, sexual violence is grounded in hierarchical relations of power and has unique consequences for victims. It is an institutionalised form of discrimination and oppression that has profound effects upon all women’s sense of safety. Women’s perceptions of vulnerability are reinforced by sensationalised coverage of sexual assault trials and by a sector of the media that turns sexual assault into a form of entertainment. The irony is that the dangerous sexual predators seen in courtrooms and on television screens may not typify the men of whom women most need to beware, or those most in need of rehabilitation.

12 Roxanne Lieb, Vernon Quinsey and Lucy Berliner, ‘Sexual Predators and Social Policy’, in Michael Tonry (ed), *Crime and Justice: A Review of Research* (1998) vol 25, 43.

13 Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (1990) 308.