

OXFORD

RAPE AND THE LEGAL PROCESS

SECOND EDITION

JENNIFER TEMKIN

OXFORD MONOGRAPHS ON
CRIMINAL LAW AND JUSTICE

Rape and the Legal Process

Second Edition

Jennifer Temkin

OXFORD
UNIVERSITY PRESS

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
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Published in the United States
by Oxford University Press Inc., New York

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Second edition first published 2002

First edition published by Sweet & Maxwell, London, 1987

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British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
Data available

ISBN 0-19-876354-9 (hbk.)
ISBN 0-19-876355-7 (pbk.)

1 3 5 7 9 10 8 6 4 2

Typeset by Hope Services (Abingdon) Ltd
Printed in Great Britain
on acid-free paper by
T. J. International Ltd., Padstow, Cornwall

FOR ADAM AND FOR LARA

General Editor's Preface

It is a great pleasure to welcome to the Series a pathbreaking book in a new edition. Professor Temkin's writings on the response of the criminal justice system to rape have been widely acclaimed. The book deals both with the substantive criminal law and with the whole range of legal processes, from investigative practices through the rules of evidence to sentencing and other measures. Jennifer Temkin brings to the work not only her knowledge of English law and comparative law, but also the understanding derived from her extensive empirical research and the experience of membership of the External Reference Group for the Sexual Offences Review. That review's report, *Setting the Boundaries* (2000), initiated a debate that will be re-kindled by proposals from the government for reform of the law of sexual offences. The timing of the book is therefore propitious, and its contents are likely to influence discussions of the subject for years to come.

Andrew Ashworth

Preface

This is not a book about why men rape women or other men. It does not seek to defend or attack the notion that rape is the product of a patriarchal society or that it is an extreme manifestation of what Professor Terence Morris has described as our society's predatory attitude towards women.¹ It will not talk of other societies such as that of the Minangkabau of Western Sumatra where rape, we are told, scarcely ever occurs.² Nor does it discuss the implications of rape as a crime in international law.³ All this has been discussed cogently, and at times brilliantly, elsewhere. Indeed, it is discourse of this nature which has transformed our understanding of rape and ensured that those who experience and complain of it are no longer dismissed routinely as liars or fantasists, but are recognized increasingly as genuine victims.

Advances in thinking about rape have produced fundamental legal change in many countries. In England and Wales, however, law reform has proceeded at a measured pace. The purpose of this book is to examine some of the difficulties which rape presents for our criminal justice system and how these could and should be addressed. In Chapter 1, the plight of the rape victim and the response of the criminal justice system is discussed. Chapter 2 deals with the present law of rape in England and Wales and discusses law reform within the existing structure of sexual offences. Chapter 3 considers some of the more radical alternatives adopted in other common law jurisdictions. Chapter 4 examines aspects of the law of evidence as it applies to sexual offences. Finally, in Chapter 5, other methods of assisting rape victims are canvassed.

There are many people I should like to thank for the help they have given me in connection with this edition of the book. I am particularly indebted to Professor Andrew Ashworth who has been a source of great assistance and support. I am also very grateful to the following: Professors Barbara Krahe, Sally Lloyd-Bostock, Alan Saltzman, Annika Snare, Eva Smith and Graham Zellick, Mr Justice Robert Sharpe of the Ontario Court of Appeal, Judge Katarina Pahlsson, Dr Beth Grothe Nielsen, Janet Prescott, and the Danish

¹ See *The Times*, 20 Jan. 1982.

² See P. R. Sanday, 'Rape and the Silencing of the Feminine', in S. Tomaselli and R. Porter, eds., *Rape* (Oxford: Basil Blackwell, 1986) 84.

³ On which see e.g. K. Askin, 'Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status' (1999) 93 AJIL 97; C. Chinkin, 'Rape and Sexual Abuse of Women in International Law' (1994) 5 EJIL 326.

Ministry of Justice. To this list should be added my children, Adam and Lara, to whom this book is dedicated.

Jennifer Temkin

University of Sussex
May 2002

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