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Feminist Jurisprudence, the Australian Legal System and Intimate Partner Sexual Violence: Fiction over Fact

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Abstract: In this paper we briefly focus on intimate partner sexual violence (IPSV) and the Australian legal response, using recent Court judgements and Heather Wishik's feminist jurisprudence framework for inquiry to guide investigation. The key questions being asked are: (1) What have been and what are now all women's experiences of IPSV addressed by the substance and process of rape law? (2) What assumptions, descriptions, assertions and/or definitions of consent, corroboration and reporting does the law make in IPSV matters? (3) What is the area of mismatch, distortion or denial created by the differences between women's life experiences of IPSV coercion and the law's assumptions or imposed structures? (4) What patriarchal interests are served by the mismatch? The paper concludes with consideration of the limitations and benefits of law reform by reflecting on the findings of the paper.

Keywords: partner rape mythology and law; IPSV myths and law

1. Introduction

According to the feminist jurisprudence framework of Heather Wishik: "...legal definitions, assumptions, or assertions—especially those which claim to be either gender specific or gender neutral—reveal what the law is saying about women and how the law operates politically and socially in relation to women's lives" ([1], p. 73). Borrowing that lens of inquiry, this paper focuses on a particular form of Intimate Partner Sexual Violence (IPSV)—rape—and how it is mythologised, extending to how this is reflected in the comments of the judiciary and the type of IPSV rapes that are prosecuted.

This paper operates from a default conceptual position attributing two key elements to the range of behaviours that constitute IPSV:

- (1) a sexual act without consent [which is]
- (2) perpetrated by a past or present intimate partner ([2], p. 17).

As the legal system has been intent on focusing on rape that occurs outside of the home, we believe feminist perspectives are essential to a holistic understanding of the substance and process of rape law, particularly with respect to rape where the offender is, or has been, an intimate partner as it brings the private into the public. Law is not reformed or even interpreted in a vacuum though which is why, regarding IPSV rape, a feminist legal theory lens is useful in deconstructing this particular cultural context ([3], pp. 1–20). Law, being indeterminate, equates, in our view, to being both subjective and open to interpretation. This, in turn, means the law is vulnerable to manipulation and/or the interpretation could be infected with bias ([4], pp. 484–86).

The shortcomings of the feminist jurisprudence project must be noted as a proverbial footnote to this discussion as there may not be one overarching conceptual approach to examining law that will encompass the experience of *all* women. In the words of Wishik, at its most general, feminist jurisprudential inquiry focuses “...on the law’s role in perpetuating patriarchal hegemony...it is grounded in women’s concrete experiences”, however, there is inherent risk as the assumption underpinning this assertion is that feminist jurisprudence has the ability to capture the *whole* of female experience ([1], p. 69). In fact, there is a very real diversity and plurality of female voices. When you drill down to the experience of IPSV, other differentiation becomes apparent ([5], p. 41). This is to say, the experience of IPSV rape is not homogenous for all women. This cannot be understated; however, it is also not an objective of this paper to canvas this plurality in great detail. What is important to note at this stage is that this differentiation of experience extends to who can actually be considered a victim of sexual violence:

Outside of those contexts where male property in female sexuality has been asserted, the law of rape has proved to be of limited application. The case of rape in marriage has been emblematic: how can a man be guilty of violating his own property in the eyes of the law (as compared with *her* eyes)? If a woman has no owner (husband/father), far from the law recognising her as a sexually autonomous being, often it has seen her as someone whose violation is virtually impossible, not to be recognised ([6], pp. 16–17).

Therefore, IPSV survivors arguably have their experience minimised by the criminal justice system because of its insidious nature and propensity to go un-named (let alone prosecuted) [7–11]; this is perhaps demonstrated by the judicial commentary drawn from the case sample for this paper. In asking how and why there is a difference in the same criminal act being treated differently dependent on its context, it is important to note that legislation has been largely written, interpreted and applied by and for men ([12], pp. 407–23). This makes it extremely personal and, consequently, political for the criminal justice system. Its actors—male parliamentary members, male policy-makers, male law enforcers—have drawn on their personal experience of society, consciously or subconsciously influencing their politics, and consequently law ([1], p. 73; [11], pp. 13–27). For this paper, the actors are the judges from the case sample. Using a feminist lens to examine the legal response to IPSV rape is necessary because the survivor is engaging with an essentially patriarchal system where gender biases are deeply embedded in the substance: survivor experience may be obscured and minimised by the perpetuation of fiction over fact to the extent that it might not even be heard ([1], p. 66; [13], p. 1287). Perhaps this is because rape of a past or current intimate partner is a policy quandary too difficult for a masculinist legal system to confront. Maybe it’s a vestige of spousal exemption fiction ([11], pp. 208–10; [14], pp. 763–65)? Or, perhaps IPSV rape continues to retain this unique status because it challenges too much of the stereotypical status quo (the fiction perpetuated by systemic influences and actors)—a predicament compounded by a cultural landscape that demonstrates a fundamental lack of understanding concerning the motivations behind all sexual offences generally (the facts; [2], pp. 48–49; [4], pp. 486–87; [11], pp. 13–40; [15], pp. 3–4). IPSV rape can be perceived as an ‘illegitimate’ rape because there may be no physical injuries, no resistance or witnesses, and reporting can be delayed. These characteristics directly contradict community attitudes concerning what constitutes “real” rape and directly *infect* the interpretation and application of the law—such as how consent is interpreted and applied. Criminal justice system actors are drawn from the community: consequently reflecting the symbiotic relationship between law and society [1–4,14–18].

2. Collection and Analysis of Rape/Sexual Assault Judgments

The case sample was obtained with the Australasian Legal Information Institute database, using the District Court of New South Wales and County Court of Victoria databases, and the search terms “rape” for the former and “sexual assault” for the latter, timeframe 30 June 2013 to 30 June 2015 [19].

This date range was selected because amendments to the statutory definition of consent came into effect in Victoria on 1 July 2015 and it also reduced the case sample to a workable size for our purposes.

We identified 11 County Court of Victoria and three District Court of New South Wales matters in which a person was tried or pled guilty to rape or sexual assault of a person with whom they had been or were currently in an intimate relationship. Of these, one procedural hearing was excluded. Two of the 13 defendants in our sample were found not guilty of the original charge of rape [20,21]. Of the remaining 11 guilty convictions, one was overturned on appeal to a higher court and returned to the lower court for sentencing on a lesser charge during the nominated date range. The sentencing remarks on the lesser charge are not one of the 13 [22,23].

The following criteria were recorded for each case: citation, charges and convictions, previous consensual sex, whether the victim was injured, whether the victim physically or verbally expressed non-consent, whether the assault was severe (involved some level of threat or force, weapon use including actual use of force) and whether there was additional evidence linking the defendant to the assault. Relationship status and living circumstances were also recorded: six offenders were living in the same property as the person they offended against [20,22,24–27]. Where the accused and complainant were still living together and offending occurred, the relationship had ceased in three matters [20,22,27]. Of the remaining though in only one matter was the relationship current/ongoing and two had very recently reconciled after periods apart [24–26]. This is not surprising in light of what has been found about women's disinclination to report whilst still cohabitating [9].

Although our sample was too small to collect sociodemographic data, we do recognise that "...legal systems may be insensitive not just to differences based on sex but also to variations in race, disability, ethnicity, sexual affinity and 'others'..." ([11], pp. 230–50). Again, the plurality of female experience is important to bear in mind throughout as the intersectional woman is often not acknowledged. Of the case sample, two of the most violent matters involved relationships where one or both parties are Indigenous [24,25].

The judicial material was thematically analysed to identify the persistence of rape mythology, such as expression of non-consent, presence of physical injury and violence.

3. Holistic Context of IPSV: The Fiction of "Real Rape"

Wishik's framework for feminist inquiry starts by asking about the context of the law to be analysed ([1], pp. 72–73). Why does mythology persist? The feminist perspective sees it as intertwined holistically with the ideational and structural components of the culture. Picture a daisy.

The flower is...connected to its roots—its antecedents, the agrarian-level society of England and the early industrial revolution. When we look at that historical legacy, we find marked sexual stratification, the seclusion of females within the private sphere, high incidences of violence against women, male dominated political and legal organisations, division of labour by gender with male activities more valued and male control of resources, separation between the public and private which underlies the universal cultural devaluation of women, religious systems that reflect male dominance and certain views of sexuality, and many other cultural attributes which have been found to correlate with the low status of women ([28], pp. 1–2).

Rape law—both the legislation and its implementation—must be seen within this context.

The law does not adjudicate impartially on the question of rape but rather participates in social constructions of what counts as sex, what counts as rape, who will be recognised as a rapist and whose violation amounts to rape. These constructions run deep in legal history and legal culture. They both form and are formed by the wider context of Australian colonial history and culture in which the shape and meaning of sexuality and sexual coercion continue to be intensely debated ([28], pp. 1–2, 24–25).

Not surprisingly then, both the substance and process of Australian rape law have ignored IPSV [10]. For example, in a recent High Court of Australia case, the experience of women raped within the private domain of marriage was effectively erased and decades of suffering dismissed on paper [10,29]. The collision of the public with the private sphere seems to have influenced the development of legal responses to rape in Australia, culminating today in a cultural hangover linked to a time almost a thousand years ago:

A licence to rape—the “alleged” spousal exemption from sexual assault charges—evolved from at least the days of William the Conqueror, when rules allowed victims to “forgive” their “seducer” by consenting to marriage. This immunity went on to be officially sanctioned in medieval England with marriage rights and duties directed by Church law and rape laws existing solely to protect virginity ([1], p. 67; [11], pp. 208–10).

This is despite the reality that rather than a stranger in a dark alley, Australian women are more likely to experience sexual violence perpetrated by somebody they know [6,9]. IPSV is “a significant social problem” [8,30–32]. However, we can observe the persistence of nuanced fiction permeating the criminal justice system that significantly affects rape law and the naming of the act as an offence and its reporting ([33], pp. 121–23). This impacts on how a complainant experiences the law; for example:

Changes to the law relating to corroboration, recent complaint, along with introducing and/or amending definitions of consent, mens rea and rules pertaining to the vitiation of consent, have all taken place in order to update the law and challenge mistaken assumptions and myths regarding rape and sexual assault. Despite such reforms...the number of cases reported to the police remains very low and the overall attrition rate for rape is exceedingly high ([11], p. 155).

Mythology operating in the criminal justice system cannot be understood without an understanding of the broader relationship between laws, myth and society—an example: community attitudes and jury biases. In 2014, VicHealth released its National Community Attitudes towards Violence against Women 2013 Survey which had a sample size of 17,500 people [34]. The findings were troubling and reflect damaging attitudes towards violence against women, including an increase in Australians believing rape is the result of men “not being able to control their need for sex” [34]. Consider correlates with attitudes identified years ago:

In part due to the mythology about female sexuality, and in part due to the erroneous beliefs about male sexuality and the nature of rape, perceptions of rape are not usually congruent with the victims’ experience. Instead, myths about sexual violence are generated. Male sexual activity is seen not only as admirable and a reflection of virility, but sexual violence is also understood as an effect or consequence of a libido which is seen as uncontrollable if aroused. Rape, by this account, is about sex (not power) ([28], p. 9).

The work by VicHealth also found that “nearly 8 in 10 agree that it’s hard to understand why women stay in a violent relationship” and “nearly 2 in 5 believe that a lot of times women who say they were raped led the man on and later had regrets” [34]. Of interest is the differentiation between attitudes based on the circumstances of the respondent. Those “most likely to endorse violence supportive attitudes and who have the poorest understanding of what constitutes violence against women” include “men, especially young men and those experiencing multiple forms of disadvantage”, “younger people (16–25)”, and those from non-English speaking countries of origin (especially new arrivals) [34].

Given what is known of community attitudes towards violence against women, it becomes little wonder how these perceptions could affect juror attitudes and biases in rape cases.

[m]yths and stereotypes about rape and sexual violence are common within the general community. Since jurors are members of the general public and are randomly drawn

in order to represent the views of the community, attitudes they bring with them into the courtroom will, to a large degree, reflect the attitudes and beliefs of the wider community ([35], p. 2).

The jury is often, by its very presence, the linkage between what is taking place in the courtroom to the society outside its doors: a reflection of the symbiotic relationship between law and society.

This symbiosis also extends to other criminal justice system actors—including judges and prosecutors—because it would be illogical to assume that any of the players perform their functions disconnected from the community in which they belong. Regarding sexual assault matters generally, a matter might be more likely to proceed to trial where: the victim was injured; the victim physically or verbally expressed non-consent; the assault was severe (involved some level of threat or force, weapon use); there was additional evidence linking the defendant to the assault; the defendant used force; and the defendant was a stranger ([35], p. 2). Heath puts it this way:

In the law's rather fictional account, the "victim" that the rape law recognises is a woman, preferably a clean, chaste, white, respectable, woman. The "real rape" involves her being overpowered, in spite of her loud and consistent protests, by the rapist, a stranger who is preferably neither clean, respectable, nor white. In the final act, the legal system ensures that justice is done. The apparent completeness of the script and the justice of the ending ensure that no further inquiries into the human costs of this fiction, or the lives of those whose stories were written out of the script, will be contemplated or entered into ([6], p. 18).

Heath's account of rape fiction is important to bear in mind as we examine IPSV rape. Gender is essentially a cultural construct—an illusion that is attributed with values and often aligned with stereotypes—and in no other area of law is this more omnipresent than sexual violence ([3], p. 36). Consider that, despite attempts at reform:

[c]oncerns remain with regards to the extent to which notions of "real rape" and false allegations continue to pervade the public and legal imagination, impacting upon all of those who are involved in or come into contact with the law—from legislators and judges, to complainants to jurors ([11], p. 155).

Let us look at judges as an example. Previous research has identified judicial officers using phrases like "little short of rape" and "special relationship" to describe violent marriages and sexual assault [28,36]. Additionally, a study of Victorian sentencing language illustrated some judges' perception of the greater harm of rape by a stranger [37]. Consider the following judicial commentary:

...the facts in this case are most serious. They are disturbing in that they occurred in circumstances where you did not know the victim prior to this assault. It is also disturbing that this offending occurred in her bedroom at the university premises, and that she was entitled to feel safe. Your behaviour was totally unacceptable [38].

It was a horrific experience for your victim to return to her home to be confronted by you, a complete stranger armed with a bread knife, and then be subjected to your degrading and humiliating behaviour for a sustained period. It was every woman's worst nightmare [39].

...an extremely serious example of the offence of rape...Such conduct was craven and despicable...She was unknown to you, taken from the street where she had the right to feel safe. She was attacked without explanation and suffered extremely serious injuries [40].

At the other end of the socially constructed continuum are the more common assaults, which occur at the hands of a person known to the victim. These are generally seen to be "less severe" or even acceptable. For instance Hulme J, in his decision in regards to a case of sexual assault against a woman who was once in a consensual sexual relationship with the defendant, stated:

Although fearful of the Appellant the Complainant at least knew him and no doubt was capable of making some assessment of the situation. Also relevant is the fact that while the Appellant gave the Complainant cause to fear him, the situation was not one where she had to endure the terror of an unknown kidnapper. The case was not one where a victim walking through a lonely street or park at night is seized by a complete stranger about whom she knows nothing and who, for all the victim knows, may well kill her when the intercourse is over. There is nothing to suggest that the consequences of the Appellant's conduct included in an unwanted pregnancy or AIDS or other potentially life damaging illness or left the Complainant with any fear of these matters ([41], para. 106).

Let us now see if such judicial comments continue to be articulated as we also verify the presence of "real" rape attributes in the case sample reflecting an alignment between the IPSV rape cases prosecuted and their parallels with rape mythology. Based on the findings of research conducted concerning community and jury attitudes, it is not surprising that IPSV rapes are not the "good" rapes to prosecute in the criminal justice system. Those IPSV rapes that are actually reported, run by the prosecutor and culminate in a judicial determination, represent a minority of IPSV survivors. We will contrast these "good" IPSV rapes with what is known of IPSV survivor experience, the nature of IPSV coercion, and how this collides with legal system assumptions and imposed structures ([2], p. 4; [15], p. 9; [31], pp. 25–39; [42–44]). We start with consent.

4. The "Good" Rape: Consent and Coercion

A victim physically or verbally expressing their non-consent is a key piece of the fiction jigsaw ([35], p. 2). However, IPSV "is usually perpetrated by an individual as part of a pattern of violence and control" ([11], p. 207). Herein lies the first falsehood. At the core of the coercion that negates the IPSV victim's consent are issues of power, control and shaming ([2], pp. 54–64; [7–9]; [11], pp. 182–86). Consider:

[i]t would seem that the potential for misunderstanding consent and its negation in rape case in general...is magnified with partner rape. Negation of consent is further problematised by the victims' experience of at least four categories of coercion: social coercion; interpersonal coercion; threat of physical force; and physical force...

Other sources of duress include the woman trying to keep the peace, and the man's threat to leave, withdraw his love or to cut off money...Survivors may experience multiple types of coercion both concurrently and over time, in the context of changing abuse patterns ([11], p. 213).

The legal interpretation of consent and negation, however, focuses far more upon physical force. Legally, the construction of consent has objective and subjective fault elements; the latter is integral to proving the charge and not only does it speak to what was in the mind of the offender but what was in the mind of the complainant ([17], pp. 100–3). With IPSV,

...the centrality of consent to both the physical and fault elements of the offence of sexual assault is problematic, and these problems seem to be magnified in the context of partner rape. Unsurprisingly in a partner context, proving that the woman did not consent (a physical element) or an absence of consent that the defendant knew of, but chose to ignore (the fault element) is difficult, because of the history of consensual intercourse ([11], p. 212).

As a prosecutor in one study stated:

As a prosecutor I have a low expectation of conviction on partner rapes. If they're separated but seeing each other, even when they haven't had sex, he'll still claim it was a romantic consensual event [45].

Accordingly, in a 2009 judgment Simpson J concluded:

It would hardly be surprising in an allegation of sexual intercourse without consent in the context of a marriage, and particularly where there has been explicit evidence of a history of consensual sexual intercourse (and of the kind the subject of one of the charges), if the jury regarded the issue of the state of mind of the accused person as a primary one. That is more particularly so where, as is here the case, the evidence that the complainant did not consent is rather weak. Even weaker is the evidence that the complainant did anything to convey to the appellant that she was not consenting ([46], para. 326).

To illustrate from the current sample: In *Bennett*, the accused was found not guilty. It was not disputed that the sexual intercourse took place but whether the complainant consented. In this trial by judge, a key consideration by Berman DCJ regarding whether the complainant had consented was the timing of a text message and the impact of its contents on the complainant's state of mind:

The importance of this dramatic change of behaviour towards both the accused and her husband is this: what apparently prompts the change is the accused's confession of infidelity. This tends to suggest that the complainant did not have a belief in the accused's infidelity beforehand. This, in turn is, as I have mentioned numerous times before in this judgement, highly relevant to the likelihood that the complainant would have consented to sexual activity with the accused... ([21], para. 98).

Not surprisingly then, in the *Bennett* judgment, the judge mentioned previous consensual sex on the day the alleged rape occurred ([21], paras. 28, 48, 91). Consensual oral sex earlier that day was suggested by the defence as a motive to lie about the rape ([21], para. 28). Deliberations were made on the complainant's *mens rea* based on whether the defendant had cheated:

I regard the complainant's well-established...phobia about disease coupled with her obvious belief that the accused was unfaithful to her whilst overseas, as being particularly significant. That she would voluntarily perform unprotected fellatio upon the accused (he says twice) on the very day he returned to Australia is not a version of events that I consider to be reasonably plausible unless the complainant has for some reason changed her mind about whether the accused was unfaithful to her ([21], paras. 91–92).

4.1. The Victim Physically or Verbally Expressed Non-Consent

Given the preceding discussion regarding rape mythology, it is not surprising that a "good" complainant is expected to have expressed non-consent either physically or verbally ([35], p. 2). The way that the judges in our case sample highlighted the issue of consent then largely aligns with the expectation that a typical rape victim will do so. That the complainant explicitly conveyed her non-consent was reflected in the judge's comments present in 9 of the 13 cases in the sample [22,24,25,47–52]. We do know that such expression is not the norm with the reality of IPSV experience of duress and coercion:

If represented from the victim's perspective, we can identify many forms of covert intimidation and force used in rape; the range of coercion reflects the nature and the omnipresence of gender stratification. It may be her feelings of powerlessness, her fear of the assault and its outcome that render her passive, but not compliant and consenting ([28], p. 7).

The fact that ten of the 13 cases involved high levels of physical violence may be indicative of who reports their rapes and the legal system actors' failure to recognise that coercion has different guises and filters, affecting which cases are actually prosecuted ([11], p. 213; [20,22,24–27,49–52]). The case of *Cunningham* included the victim physically and verbally communicating their non-consent. Douglas J observed:

During this time he continued to hold her tightly and she continued to scream at him to get off. She was screaming so loudly her voice became croaky. Further, she managed to get one arm free from his hold and was hitting him with that hand ([22], para. 14).

Thus, not only did that victim protest verbally, but she did all that she could physically to resist. In the same case, two children were witnesses to the rape and could attest to their mother's protestations ([22], paras. 15–18).

In *Gallagher*, physical resistance was again described by Patrick J:

You then pushed her and threw her onto the bed. The complainant was crying and screaming. You were calling her names. You got on top of her. You had removed her clothes...You held her arms to the bed. She was still kicking and struggling. The physical struggle continued for some time. The complainant was scared and eventually let you have sex with her ([52], para. 6).

4.2. High Degree of Physical Force and Injuries

Rape mythology generally prescribes that the crime involved threat of force, weapon use, or actual use of force and this in turn influences the chance that the matter will be prosecuted ([35], p. 2). This contrasts with forms of IPSV that may meet legal definitions of criminality—for example, calling a partner degrading names such as “slut” or “whore” is also a form of sexual violence aimed at degrading or controlling the victim [11]. Also given that in many IPSV matters, the rape is part of a dynamic of other types of control, the fear of being hurt may act to negate consent.

That antecedent violence does not seem to be recognised. On the contrary, rape mythology that supports the requirement that a victim was non-consenting is the belief that she must have sustained some sort of injury during the crime ([35], p. 2). Not surprisingly, of the 13 cases, additional injuries accompanying the rape were mentioned in six [20,22,25,27,29,51]. For example, in *Marrah*, Hampel J describes a “sustained attack”:

You punched her, picked up by the hair and threw her onto the ground. You stood and kicked her to the head while she was on the ground and stomped on her. You grabbed her legs and tried to open them, saying “open your cunt, you open it up for everyone else”. As she twisted to get away from you, you continued to kick her. While she was on her stomach trying to avoid your blows, you got on top of her, prised her legs open, and forcibly and repeatedly showed your fingers into her vagina, all the while continuing to accuse her of allowing other people to touch her there ([25], para. 4).

Hampel J went on to detail the nature of the physical injuries inflicted on the complainant:

You remained on top of her, restraining her from moving or getting away from you. She was having trouble breathing. You grabbed her by the back of the neck and banged her head into the ground. You grabbed her neck and choked her. She was kicking her feet, trying to indicate that she couldn't breathe. In her statement to the police she said she thought she was going to die because she did not think that you were going to let go. By then she was bleeding from her nose and mouth and spitting blood out of her mouth ... ([25], para. 5).

The offender did plead guilty to recklessly causing serious injury, rape and threat to kill:

...you threatened to kill her if she called the police. You said that by killing her it would only take five years of your life, but would take hers forever. You told her to choose the knife for you to use to kill her ([25], para. 6).

Additionally, he had a previous conviction for assaulting a pregnant partner but a conviction for manslaughter ([25], paras. 30, 54):

The threat to kill was made in particularly cruel and chilling terms. You told her it would only take five years off your life, whilst taking hers forever...You have been previously convicted of manslaughter and served five years in prison before being released on parole. There could be little doubting your meaning or the seriousness of your threat ([25], para. 19).

In *Ferguson*, the offender not only pleaded guilty to two charges of rape, but also to contravening a family violence intervention order, intentionally causing injury, recklessly causing serious injury, false imprisonment, and recklessly causing injury [24]. Wilmoth J discussed extensive disturbing acts of violence:

the complainant ran to a neighbour's house to get help. Her eyes were so swollen she could not see and she used her fingers to pry open one of her eyes. The neighbours noted that...she was hysterical and appeared to be totally horrified.

By this time, her ordeal had continued for more than 24 hours and her injuries had remained untreated. The neighbours called the police and an ambulance took her to hospital. Her injuries included a fractured rib, a fractured and displaced mandible which required surgery, nasal bone fractures and extensive facial swelling with a left parietal scalp haematoma. Further injuries were noted upon examination the following day, including facial bruising and swelling, multiple dental injuries, bruising to the chest, arms and back and incised wounds to the fingers and thumb. The doctor noted that significant force would have been used to cause the fractures and that there was potential for severe head injury or death ([24], paras. 26–30).

Cases just described and *O'Connor*, in which a jury found the offender guilty of rape and also of two counts of attempting to choke, a "course of conduct during which AF was subject to significant violence and terror and justifiably fought for her life" ([51], para. 18) are indicative of the very high levels of physical force present in those matters that are not victim to the process of attrition from crime to Court. However, as already discussed, we do know that the negation of consent in many IPSV rapes does not mirror this type of vitiating.

5. Corroboration

Corroboration is of course another important element in the effective prosecution of any crime, including rape. For most women raped by a partner though, there are no witnesses to what takes place in the privacy of the home. It may be particularly important in IPSV rape matters because it speaks to a key rape myth, namely that women lie about being raped ([14], pp. 767–68). Rape complainants have been traditionally known as "unreliable as a class of witness" ([35], p. 2) and this fiction has had procedural implications for the legal system ([11], p. 170). The issue of corroboration is significant because it underpins an essential patriarchal bias in the Australian legal system, that is "women (and children) testifying about sexual assault were and still are regarded by judges as especially unreliable and dishonest witnesses" ([53], p. 59). This makes corroboration important because there must be other evidence in existence aside from testimony to prove the crime occurred ([53], p. 65; [54], pp. 179–80). Consequently, in our sample, when the complainant's account can be corroborated, an offender appears more likely to be prosecuted. Additional evidence ties the perpetrator to the crime ([35], p. 2).

Issues of corroboration were considered at length in the only matter in the case sample where the offender was found not guilty by a judge, with Berman DCJ observing:

It is notorious that offences such as the one alleged in this trial are usually committed in private and so it is commonly the case that the Crown is forced to rely on the evidence of a single witness...offences such as these usually occur in circumstances where no one is present to corroborate the complainant's version ([21], para. 35).

Thus, it seems to become the victim's fault that the crime occurred in private.

Not surprisingly then, the 11 cases that resulted in conviction of rape or sexual assault each had some sort of additional corroborating evidence. For example, in *Ferguson*, the complainant escaped at the first opportunity and raised the alarm with the neighbours [24]. In addition, in *O'Connor*, Haesler J stated:

AF's evidence was compelling. It was supported by recent and consistent complaint. It was corroborated by medical evidence and crime scene evidence ([51], para. 6).

In *Cunningham*, there was evidence from a child witness that Douglas J highlighted:

The prisoner's explanation which involved laying blame on [his son] Jake Cunningham and taking no responsibility is erroneous. Jake Cunningham was an 11 year old boy who contacted police because he saw the prisoner naked on top of his mother in circumstances where she presented as being distressed, and in the context that for some time that morning he had heard the prisoner's aggressive conduct and his mother's yelling for help. At that stage he asked her if he should ring the police and she said to do so ([22], para. 29).

6. No Delay in Reporting

The criminal justice system often places a great deal of importance on when a complainant reports a rape but why is this? Is it because the mythology in operation here is related to the perpetrator as stranger? Consequently the fictional rape victim—a reasonable woman—will disclose the crime to police at the earliest possible convenience ([35], p. 2). Disclosing and reporting rape attaches value to the complaint that is made as early as possible, harking back to seemingly objective standards about reasonableness:

The law attaches different weight to complaints made at the first reasonable opportunity after the alleged incident and those which are delayed...the common law embodies a notion of how a "reasonable victim" should report sexual abuse; and conversely, how delays or a failure to report abuse promptly impacts negatively on the apparent truthfulness of the victim as a witness ([55], p. 43).

However, the reality is that rape and sexual assault are notoriously under reported and those who fall at the 'genuine end' of the covert but omnipresent rape continuum are more likely to report ([11], p. 170). As survivors of IPSV rape do not generally disclose or report the crime promptly, they may end up being put on trial ([11], p. 216). This is reflected in the matter of *Bennett* (in which the offender was found not guilty) where a significant section of the judgment was focused on the actions of the complainant: her credibility as a witness [21].

The issue of disclosing or reporting the crime was mentioned in the majority of the case sample, with emphasis on when and how. Seemingly, this added value to the survivor's account of events [47,51]. Of the 11 matters in the case sample where the perpetrator was found or pleaded guilty to IPSV rape, eight involved the complainant disclosing or reporting the crime promptly [20,22,24,25,48–51]. In one, the police were called because one of the children witnessed the rape occurring [22]. In another matter, despite physical injury not being present (or not mentioned in the judicial commentary), it was noted that the complainant contacted police as soon as possible [48].

There does not seem to be an alternative narrative in the case sample. This is despite what is known about the trauma experienced by complainants:

The law of recent complaint embodies a paradigmatic experience of sexual abuse in which victims, notwithstanding their trauma, are presumed to be physically and emotionally capable of reporting their abuse to others at the first available opportunity. Failure to conform to this norm renders the complaint suspect ([55], p. 49).

Accordingly, in *Bennett* (in which the offender was found not guilty), the complainant had disclosed to different parties, including to a rape crisis service. However, she did not report the offence to police until a period of time had elapsed ([21], paras. 50–61).

7. In the Service of the Patriarchy?

Wishik also suggests we ask what patriarchal interests are being served by perpetuating the status quo—in this instance a persistent distortion between systemic assumptions and IPSV survivor reality ([1], pp. 74–75; [3], pp. 1–20). Like the rape in marriage High Court of Australia decision mentioned earlier [29], this puts IPSV in a social, political, economic and cultural context:

...the High Court had the opportunity to offer long overdue recognition of marital rape...it is a cruel irony that the legal acknowledgement of the offensiveness of the immunity has been delivered in a form that implicitly denies the law's part in leaving married women for so long without protection, recognition or recourse ([10], p. 807).

This perspective really brings home the message that because of the very “connections between law and society...law is non-autonomous” ([1], p. 67). This harpoons a major theme that has been alluded to earlier: despite the black letter law appearing [gender] neutral, its interpretation and application is far from that:

...the words that we use can have a powerful effect on how we construct the world around us. That creation of reality is a part of our learning process in culture, our socialisation. It derives from, and contributes to all of the other parts—the structures and beliefs—that form the culture ([28], p. 4).

Despite the black letter law appearing [gender] neutral, its interpretation and application is far from that.

...the many myths about sexual assault are made from building belief blocks of male sexuality, females as a sex and certain ideas about how the reasonable woman is supposed to respond to sexual aggression. Thus, the mythology is not a cultural aberration, but beliefs that fit into the patriarchal fabric of the culture; and they seem to persist despite empirical evidence to the contrary ([33], p. 120).

What judges choose to emphasize and their comments may perpetuate distortion and denial of the victims' reality of rape. A striking aspect to some of the sentencing remarks is what could be interpreted as their relaxed attitude toward the offenders. An example is *Cunningham*: Craig Cunningham was found guilty of rape and acquitted on charges including intentionally causing serious injury, recklessly causing injury and making a threat to kill ([22], para. 1). There was a history of the offender perpetrating violence against his wife ([22], para. 8). The incident of which he was convicted happened on Mother's Day and he continued to rape his wife even when his 11 year old son had come to the aid of his mother ([22], paras. 15–19, 34). The issue that seemed to bother Craig Cunningham the most however was that attending the police interview caused him to miss out on a family meal for Mother's Day and that this was the fault of his 11 year old son ([22], paras. 28–29). After devoting a few paragraphs to community deterrence of domestic violence ([22], paras. 32–33), the judge went on to say:

I accept that he has a reputation as a reliable and honest man amongst those in his local community with whom he associates and with whom he works ([22], para. 41).

This was despite not having shown any remorse or insight regarding “the seriousness of his conduct” ([22], para. 47).

By the time Craig Cunningham had appealed his rape conviction and was returned to the County Court of Victoria for sentencing (a matter excluded from the case sample as it related to a lesser charge),

this pillar of the community was advised that of the terms of his new Community Correction Order “the most important one is to stay out of trouble” ([23], para. 13).

A similar theme emerged in *Johns*, when the judge described the offender’s “character” outside of the home ([27], para. 6). Additionally, in *Warne*, the judge observed:

Insofar as the circumstances of the summary offences, although a number of the matters which I have perused involve threats, many also indicate an intent or a desire by him to try and get the family together despite what happened ([26], para. 16).

This was the same offender who blamed the rapes, charged as one offence, on his jealousy. He claimed “he loved his wife and that he was very possessive of her” ([26], para. 10). The judge described the rape like this:

Mr Warne said he had sex with her as part of a—what one might describe—a jealous inquiry process. That is, when he was inquiring about the relationship with this mutual friend he was acting out his questions in the sense of, as he would for example, have fellatio with her he was asking “Did he do that too”? His wife subsequently fled the house. He tried to locate her and indeed waited outside the mutual friend’s house, Peter, who they call “Abo”, because that’s where he thought his wife has gone. He, thereafter, during this period, slashed her tyres, which he had threatened to do earlier ([26], paras. 11–12).

To reduce the rape of a partner’s mouth, vagina and anus to these words—a form of inquiry—does minimise the victim’s trauma of IPSV. This judge also offered the presence of a past or present relationship with the offender as a mitigating factor:

...it is uncharacteristic of his prior relationship with his wife. I find that the culpability in regard to Charges 1 and 2 is mitigated by such circumstances and, indeed, by the relationship ([26], para. 24).

8. Melting the Gender Iceberg

Not all of the judicial commentary in the case sample distorted the experience of women who have experienced IPSV rape. For example, consider the comments of Mullaly J in the matter of *Cook*:

[r]ape is an expression of power by a violent man over a woman. That plainly was the case here. Ms R was entitled to feel safe in her house with you, her partner. You put any sense of decency well behind your desire to dominate and degrade her, by raping her ([49], para. 23).

There were also some key messages about equality in intimate partnerships, such as in *Johns*: “the position of a husband in a marriage should be that of equal partners, not of domination and inflicting your way on your wife” ([27], para. 9) and in *Cook*:

It needs to be said publicly that men, like you, who seek to suborn women by rape, will themselves be punished with lengthy terms of imprisonment. Our society values equality, dignity, personal autonomy, and this court will reassert those values when dealing with a violence man who, with cruelty, sexually violate and mentally and physically hurt, another person. Also men with cowardly self-important views need to be deterred from turning on women to degrade and control them. Deterrence will be in the form of lengthy terms of imprisonment. This also validates or vindicates the victim who takes a stand, goes to the police, and comes to court. No easy thing ([49], paras. 56–59).

In the same matter, offending was also referred to as “misogynous” ([49], para. 20). Additionally, the “impeccable character” mentioned above, Sam Johns, was dressed down too:

You were a member of the Latter Day Saints Christian community here in Melbourne. However, as I remarked during the plea, I very much doubt whether it is within the principles of the Latter Day Saints that a person espouse the principles of Christianity on a Sunday and rapes his wife on other days ([27], para. 6).

Running counter to the mythology concerning rape being about libido, some judges seemed to understand the dynamics of IPSV rape:

No woman should be subjected to violence at the hands of her partner. No woman deserves to be subjected to violence meted out in jealous rage, or to be subjected to what, on the materials before me, were baseless allegations of engaging in sex with other people used to justify the violence. The rape is properly characterised as a sexualised act of violence, a retaliatory act of gratuitous sexual violence for your baseless belief that your partner had other sexual partners. Such conduct is absolutely unacceptable in a civilised society ([25], para. 19).

The sexual assault was demeaning and brutal. To inflict such violence and sexual violence on anyone let alone someone who invites you into their life as a lover is inexcusable ([51], para. 23).

Ms Charleston, can I say to you, that I commend you for your courage in acting as you did in appreciating that this was not something you should just let happen, but having the courage to report it, to understand that you have rights and that you have properly protected and enforced those rights. I appreciate that the whole process must have been very distressing to you, and it must be a really difficult day for you here in court, but to have the courage to come and sit through it, and to see it through and to express yourself the way you did in your victim impact statement, I hope has given you some sense of being able to properly participate in the proceeding and some sense that you have control over your life. You may not have felt in control at the time the rape was happening, but you have shown your courage to take control from the time after that, and I hope that gives you real strength on your path to recovery from now on. I know nothing can turn the clock back, but I hope this has helped a little bit to make your path forward, a little bit easier for you ([50], paras. 47–49).

9. Conclusions

This project has looked at why and how there is such an expansive disconnect between law and society in this particular area of law. This is notwithstanding that there have been many varied attempts at trying to reform the attitudes of criminal justice system actors, procedure and legislation ([6], p. 13; [56,57]). There is value in identifying structural inequalities and whose interests these perpetuations serve. Wishik notes that “...in the act of discovering what we share because of the patriarchal oppression within which all women live, we begin to change our world and ourselves” ([1], p. 75). Thus, the inquiry itself has value as it shines a light on one particular dimension of the female experience of law and society. Ideally, responses to IPSV survivor reality would be multidisciplinary: legal system actors could be truly objective and recognise their own biases.

The nature of the matters prosecuted in the case sample reinforces social constructions about what constitutes “real” rape in the eyes of criminal justice system actors and is demonstrative of the broader relationship between law and society ([14], pp. 762–63; [35], pp. 1–2). One of the most troubling aspects of the case sample is its lack of heterogeneity in consent, corroboration and reporting. It is apparent that “good” victims are more apt to report and that the “good” IPSV cases are more likely to get through the police and prosecutors. Not only do myths about sexual violence against women still occur but rape that occurs within the context of a past or current intimate relationship is often considered “less serious” in the substantive and process of rape law, always qualified by the context although the criminal act remains the same. The IPSV rape cases that are being prosecuted closely align with the mythology.

That those IPSV victims who report are only the tip of the iceberg must be considered against the backdrop of Wishik’s inquiry into a woman’s actual life experience ([1], pp. 72–73). The focus on

the physical element of consent is troubling and speaks to rape mythology about a defendant's use of force ([35], p. 2). This preoccupation in rape prosecutions with physical force obscures the lived experience of IPSV survivors. The case sample demonstrates that a successful conviction is secured when the complainant has fulfilled her duties as the stereotypical rape victim: she obviously conveyed her lack of consent either physically and/or verbally. To this end, most IPSV rape survivors still remain invisible. Areas of mismatch are created by the very existence of the assumptions and assertions identified—the foundations of the cultural stage—and exacerbated by legal interpretation, impacting how IPSV survivors actually experience the criminal justice system (or alternatively do not engage [with it] at all) ([2], pp. 108–15; [7], p. 3; [56–58]). The perspective that "...unless harm is concrete and visible, we tend to devalue it" continues unabated and directly contradicts the IPSV survivor's experience of trauma which can be multifaceted, such as the psychological impact, for example, where "...the psychological trauma of rape is an invisible harm" ([18], p. 5).

Another disturbing finding is the tendency to minimise the accompanying violence and also to minimise the offending itself, demonstrated by the judicial commentary about the character of different offenders. One wonders whether if those offenders committed the exact same crimes against strangers in the street, the judges would have framed their comments in a different manner.

This overview of a current sample of IPSV judgments has confirmed for us therefore that law reform is limited in what it can deliver. Rape law reform in particular highlights the dilemma inherent in engaging with legal constructs which claim to represent an objective universal truth, yet which continue to negate women's understandings of reality.

...the efficacy of reform is limited since the systemic gender partiality, which arises in a cultural maelstrom of intrinsic sexism, is not being confronted or challenged. The system "rewards sameness" with a standard of sameness that is structurally entrenched as masculine to the core. The need to recognise this social context is essential ([59], p. 209).

Cultural change is required to poke holes through the cloak of invisibility worn by the IPSV rape survivor. How realistic though is cultural change when the seemingly gender neutral norms of our criminal justice system are essentially patriarchal? The invisibility of IPSV rape victims should not be surprising. Our findings further the conclusion of Carline and Easteal:

...we have seen how the law frequently fails to provide justice, how old norms and stereotypical ways to thinking continue to inform and impact upon the law and work to exclude women's experiences, and how discretion—even when it appears to have been limited by parliament—is frequently read back into the law. More work is necessary. But this is not a failure; more work will always be necessary...No reform can fully anticipate nor encapsulate the future, and neither is it possible to predict in advance how provisions will be interpreted and work in practice, how they will affect the lives of others, and how a range of social and cultural factors will impede their implementation and effectiveness ([11], p. 263).

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Appendix

Citation	Corroboration	Recent Consensual Sex	Not Guilty of Rape Charge	Living Apart, Separated	Living Apart, in Relationship	Living Together but Separated	Living Together, Relationship Ongoing	High Level Physical Violence	Additional Injury Accompanying Rape	Non-Consent Conveyed
<i>R v O'Connor also known as Coble</i> [2013] NSWDC 272	X	X			X			X	X	X
<i>R v Bennett</i> [2014] NSWDC 61	X	X	X		X					
<i>DPP (Vic) v Charleston</i> [2014] VCC 1856				X				X		X
<i>DPP (Vic) v Cook</i> [2015] VCC 895	X				X			X	X	X
<i>DPP (Vic) v Cunningham</i> [2013] VCC 960	X					X		X	X	X
<i>DPP (Vic) v Darmanin</i> [2014] VCC 489			X		X	X		X	X	
<i>DPP (Vic) v Dart</i> [2015] VCC 167	X	X								X
<i>DPP (Vic) v Ferguson</i> [2014] VCC 1993	X				X		X	X	X	X
<i>DPP (Vic) v Gallagher</i> [2015] VCC 761	X							X		X
<i>DPP (Vic) v Johns</i> [2015] VCC 840	X			X	X	X		X	X	
<i>DPP (Vic) v Marrah</i> [2013] VCC 1335	X				X		X	x	X	X
<i>DPP (Vic) v Vacek</i> [2015] VCC 484	X			X						X
<i>DPP (Vic) v Warne</i> [2014] VCC 733					X		X	X		

References

1. Heather Wishik. "To Question Everything: The Inquiries of Feminist Jurisprudence." *Berkeley Journal of Gender, Law & Justice* 64 (1985): 64–77.
2. Patricia Easteal, and Louise McOrmond-Plummer. *Real Rape, Real Pain*. Melbourne: Hybrid, 2006.
3. Patricia Easteal. "Setting the Stage: The 'Iceberg' Jigsaw Puzzle." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 1–20.
4. Patricia Easteal. "Tips: The Iceberg and Global Warming Metaphor." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 482–98.
5. Louise McOrmond-Plummer. "Considering the Differences: Intimate Partner Sexual Violence in Sexual Assault and Domestic Violence Discourse." In *Intimate Partner Sexual Violence: A Multidisciplinary Guide to Improving Services and Support for Survivors of Rape and Abuse*. Edited by Louise McOrmond Plummer, Patricia Easteal and Jennifer Y. Levy-Peck. London: Jessica Kingsley Publishers, 2014, pp. 41–53.
6. Mary Heath. "Disputed truths: Australian reform of the sexual conduct elements of common law rape." In *Balancing the Scales: Rape, Law Reform and Australian Culture*. Edited by Patricia Easteal. Sydney: Federation Press, 1998, pp. 13–25.
7. Liz Wall. *The Many Facets of Shame in Intimate Partner Sexual Violence*. Canberra: Australian Centre for the Study of Sexual Assault, 2012. Available online: <http://www3.aifs.gov.au/acssa/pubs/researchsummary/ressum1/> (accessed on 4 April 2015).
8. Australian Bureau of Statistics. *Personal Safety Survey Australia*. Canberra: Australian Bureau of Statistics, 2006. Available online: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20\(Reissue\)](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02005%20(Reissue)) (accessed on 4 April 2015).
9. Australian Bureau of Statistics. *Personal Safety Survey Australia*. Canberra: Australian Bureau of Statistics, 2012. Available online: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4906.0> (accessed on 4 April 2015).
10. Heather Larcombe, and Mary Heath. "Case note—Developing the Common Law and Rewriting the History of Rape in Marriage in Australia: *PGA V The Queen*." *Sydney Law Review* 34 (2012): 785–807.
11. Anna Carline, and Patricia Easteal. *Shades of Grey—Domestic and Sexual Violence against Women*. London: Routledge, 2014.
12. Susan Priest, and George Williams. "Women and Public Law." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 407–23.
13. M. D. A. Freeman. *Lloyd's Introduction to Jurisprudence*, 8th ed. London: Sweet and Maxwell, 2008.
14. Katie M. Edwards, Jessica A. Turchik, Christina M. Dardis, Nicole Reynolds, and Christine A. Gidycz. "Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change." *Sex Roles* 65 (2011): 761–73. [CrossRef]
15. Patricia Easteal. *Voices of the Survivors*. Melbourne: Spinifex Press, 1994.
16. Fiona Hum. "Women Complainants and the Evidential Process." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 174–91.
17. Mary Heath. "Women and Criminal Law: Rape." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 88–108.
18. Francis X. Shen. "How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform." *Columbia Journal of Gender and Law* 22 (2011): 1–80.
19. Australasian Legal Information Institute. *Austlii Database*. Sydney: University of Technology, 2015. Available online: <http://www.austlii.edu.au/> (accessed on 4 April 2015).
20. *DPP (Vic) v Darmanin* [2014] VCC 489.
21. *R v Bennett* [2014] NSWDC 61.
22. *DPP (Vic) v Cunningham* [2013] VCC 960.
23. *DPP (Vic) v Cunningham* [2014] VCC 1488.
24. *DPP (Vic) v Ferguson* [2014] VCC 1993.
25. *DPP (Vic) v Marrah* [2013] VCC 1335.
26. *DPP (Vic) v Warne* [2014] VCC 733.
27. *DPP (Vic) v Johns* [2015] VCC 840.
28. Patricia Easteal. "The cultural context of rape and reform." In *Balancing the Scales: Rape, Law Reform and Australian Culture*. Edited by Patricia Easteal. Sydney: Federation Press, 1998, pp. 1–12.

29. *PGA v The Queen* (2012) CLR 355.
30. Liz Wall. *Asking Women about Intimate Partner Sexual Violence*. Canberra: Australian Centre for the Study of Sexual Assault, 2012. Available online: <http://www3.aifs.gov.au/acssa/pubs/sheets/rs4/> (accessed on 4 April 2015).
31. Denise Lievore. *Non-Reporting and Hidden Recording of Sexual Assault: An International Review*. Canberra: Office for the Status of Women, 2003.
32. Jenny Mouzos, and Toni Makkai. *Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence against Women Survey*. Canberra: Australian Institute of Criminology, 2004. Available online: http://www.aic.gov.au/media_library/publications/rpp/56/rpp056.pdf (accessed on 4 April 2015).
33. Patricia Easteal. *Less Than Equal—Women and the Australian Legal System*. Sydney: Butterworths, 2001.
34. VicHealth. *National Community Attitudes towards Violence against Women*. Melbourne: VicHealth, 2013. Available online: <http://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey> (accessed on 4 April 2015).
35. Natalie Taylor. *Juror Attitudes and Biases in Sexual Assault Cases*. Canberra: Australian Institute of Criminology, 2007. Available online: http://www.aic.gov.au/media_library/publications/rpp/56/rpp056.pdf (accessed on 4 April 2015).
36. Miriam Gani, and Patricia L. Easteal. "Sexual Assault by Male Partners: A Study of Sentencing Variables." *Southern Cross University Law Review* 9 (2005): 39–72.
37. Jessica Kennedy, and Patricia L. Easteal. "Rape Mythology and the Criminal Justice System: A Pilot Study of Sexual Assault Sentencing in Victoria." *ACSSA Aware* 23 (2009): 13–22.
38. *R v Ipia* (2008) VCC 0355.
39. *R v Lancaster* (2008) VCC 0043.
40. *R v Gill* (2008) VCC 0027.
41. *Boney v R* [2008] NSWCCA 165.
42. Kathleen C. Basile. "Histories of violent victimisation among women who reported unwanted sex in marriages and intimate relationships: Findings from a qualitative study." *Violence against Women* 14 (2008): 29–52. [[CrossRef](#)] [[PubMed](#)]
43. Jennifer A. Bennice, and Patricia A. Resick. "Marital rape: History, research and practice." *Trauma, Violence and Abuse* 4 (2003): 228–46. [[CrossRef](#)] [[PubMed](#)]
44. Louise McOrmond-Plummer, Patricia Easteal, and Jennifer Peck. *Intimate Partner Sexual Violence—A multidisciplinary Guide to Improving Services and Support for Survivors of Rapes and Abuse*. London: Jessica Kingsley Publishers, 2014.
45. Patricia Easteal, and Christine Feerick. "Sexual Assault by Male Partners: Is the License Still Valid?" *Flinders Journal of Law Reform* 8 (2005): 185–207.
46. *TK v R* (2009) 74 NSWLR 299.
47. *DPP (Vic) v Dart* [2015] VCC 167.
48. *DPP (Vic) v Vacek* [2015] VCC 484.
49. *DPP (Vic) v Cook* [2015] VCC 895.
50. *DPP (Vic) v Charleston* [2014] VCC 1856.
51. *R v O'Connor aka Coble* [2013] NSWDC 272.
52. *DPP (Vic) v Gallagher* [2015] VCC 761.
53. Kathy Mack. "'You should scrutinise her evidence with great care': Corroboration of women's testimony about sexual assault." In *Balancing the Scales: Rape, Law Reform and Australian Culture*. Edited by Patricia Easteal. Sydney: Federation Press, 1998, pp. 59–75.
54. Fiona Hum. "The Evidential Process and the Complainant." In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, 2010, pp. 174–191.
55. Simon Bronitt. "The rules of recent complaint: Rape myths and the legal construction of the 'reasonable' rape victim." In *Balancing the Scales: Rape, Law Reform and Australian Culture*. Edited by Patricia Easteal. Sydney: Federation Press, 1998, pp. 41–58.
56. Department of Attorney General and Justice. *Review of the Consent Provisions for Sexual Assault Offences in the Crimes Act 1900*. Sydney: Department of Attorney General and Justice, 2013.

57. Department of Justice and Regulation, Victorian Government. *Victoria's New Sexual Offence Law—An Introduction*. Melbourne: Department of Justice and Regulation, 2015. Available online: <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/victorias+new+sexual+offence+laws+an+introduction> (accessed on 1 August 2015).
58. Australian Law Reform Commission. *Family Violence—A National Legal Response: Report 114*. Canberra: Australian Law Reform Commission, 2010. Available online: <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114> (accessed on 1 August 2015).
59. Patricia Eastal. "Beyond Balancing." In *Balancing the Scales: Rape, Law Reform and Australian Culture*. Edited by Patricia Eastal. Sydney: Federation Press, 1998, pp. 203–11.



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