

Book Review: Luke Gittos. *Why Rape Culture is a Dangerous Myth: From Steubenville to Ched Evans*. Exeter, UK: Imprint Academic, 2015. ISBN: 978-1845408374 (Paperback). 140 Pages. \$28.96.

Reviewed by Rob Lyons¹

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When he told friends and colleagues that he was writing a book about rape culture, Luke Gittos was frequently asked ‘Why?’ After all, what would a man in his late twenties working as a criminal lawyer in London write about such a tricky subject, one where it is often considered verboten for men to offer any sort of view at all?

When it comes to questions of women’s oppression, and particularly an issue like rape, the views of women, particularly feminists and rape ‘survivors’, are today to be accepted unquestioningly. When it comes to the experience of rape, that makes sense. But when we look at how society approaches the issue of rape as a political and legal issue, it is legitimate for anyone to ask questions about official policies and the nature of public discussion today. And for Gittos, the implications of the rape culture discussion for important legal principles, freedom of speech, and even our ability to use our own judgement in our intimate lives are extremely troubling.

That discussion is dominated by the idea that we live in a ‘rape culture.’ Essentially, it is argued that society is accepting of rape as normal, something reinforced by a variety of means. Gittos quotes one definition by a campaign group calling itself Force:

Rape culture includes jokes, TV music, advertising, legal jargon, laws, words and imagery that make violence against women and sexual coercion seem so normal that people believe that rape is

¹ **Rob Lyons**, a regular contributor to the British publication *Spiked*, is the author of *Panic on a Plate: How Society Developed an Eating Disorder*. His blog is titled *Panic on a Plate* can be found on <http://www.paniconaplate.com>. Address correspondence to: Rob Lyons; e-mail: paniconaplate@robertlyons.co.uk.

inevitable. Rather than viewing the culture of rape as a problem to change, people in a rape culture think about the persistence of rape as ‘just the way things are.’²

While this may make perfect sense to many feminists, it jars with most people’s view of rape as a heinous crime. It was certainly true in the past that rape was often dealt with very badly by the police and prosecuting authorities. In many jurisdictions, the notion that a married woman could not be raped by her husband was only - shockingly - rejected recently. For example, it was in only in 1993 that all 50 US states had legislated against marital rape, though in South Carolina, there is still an offence of spousal rape that sets a higher bar in terms of the use of force compared to non-marital rape.

Women have had to fight hard to have rape taken seriously and to end their treatment as objects to be possessed by men, including the notion that rape cannot, by definition, take place in marriage. But in general, and certainly in the past two or three decades, society’s approach to rape has changed in step with the wider liberation of women. For most people, rape is regarded as an extremely serious crime, sometimes on a par with murder, which further begs to question: Where does the idea come from that we are living in a ‘rape culture’?

Gittos argues that it based on a very individualized subjectivity, one which focuses on and accentuates a feeling of extreme vulnerability. That sense of vulnerability isn’t helped by the abuse of statistics. For example, Gittos is critical of a claim made in 2013’s *Crime Survey for England and Wales* that ‘0.5 percent of females report being a victim of the most serious offences of rape or sexual assault by penetration in the previous 12 months, equivalent to around 85,000 victims on average per year.’ As Gittos points out, the survey did not ask women whether they had been raped. Rather, they were asked simply about physical acts of penetration when they had made it clear they did not agree or when they were not capable of giving consent.

However, the crime of rape is not simply based on a physical act to which someone did not consent. In order to be considered rape, prosecutors would have to show that the person (presumably a man) performing that act knew that there was no consent or that a reasonable person would have known there was no consent. Without further inquiry to understand the circumstances, it is wrong to assume that the offence of

² See Force website: <http://upsettingrapeculture.tumblr.com/>.

rape has been committed. More troubling is the fact that many of the women did not consider themselves to have been victims of a crime or did not regard the matter as serious enough to report to the police. Indeed, only 15% did so. Of those who did not, comparatively few (19%) failed to report the matter because of concerns about the criminal justice system. The headline figure of 85,000 hides a considerable amount of ambiguity and nuance.

Similarly, there are frequent concerns about the low conviction rate for rape, often cited at 6% in the UK. That sounds shocking, but as a 2010 official report by Baroness Vivien Stern noted, that confuses the ‘attrition rate,’ i.e. the ratio of reported offences to subsequent convictions, with the ‘conviction rate’ read here as the ratio of cases that actually reach court and result in a conviction. In cases of rape, over half the cases that reach court result in a conviction. Stern concluded that neither the attrition rate nor the conviction rate for rape is unusually low. However, the misinformation around these statistics can be very unhelpful. These claims could lead many women to be overly fearful about their risk of rape and also lead some victims to conclude that there is no point in reporting an attack because there is little prospect of a conviction.

The other side of the coin is the drive to increase conviction rates by tweaking the law in favour of the prosecution. So, for example, it is now the case in England that a complainant’s uncorroborated evidence can be enough to obtain a conviction. In a famous case from the 1970s, *R v Morgan*, judges ruled that an honest belief in consent, even one that no reasonable person could hold, would be a sufficient defence to rape. That law has now been set aside. More generally, prosecuting authorities are pursuing weaker cases in an attempt to raise the number of convictions. But the result is that more cases fail in court, leading to concerns about falling conviction rates. In reality, cases that would not have been pursued in the past due to lack of evidence have been brought to court, and, as a result, defendants are more likely to be acquitted.

Worst of all is the tendency to criminalize children and various forms of ambiguous sexual activity. Two legal changes made in the 1990s in England and Wales speak specifically to these matters:

- 1) the removal of the assumption that boys aged 10 to 13 are incapable of sexual intercourse
- 2) the abolition of *doli incapax*, the assumption that children are incapable of forming criminal intent

These reinterpretations of traditional British law quickly led to rape charges being brought against two 10-year-old boys for raping an eight-year-old girl. Indeed, Gittos's book begins with the case of 'M,' a 16-year-old boy with a very low IQ who was convicted of raping a 14-year-old boy. Gittos sums up the case as:

A clinically depressed child with an educationally sub-normal IQ being prosecuted for non-violent sexual offending against another child two years his junior. Here were two vulnerable children, who had engaged in what some around the case described as 'youthful sexual experimentation,' and who were both being dragged into the criminal courts to live their experiments out in public, for the judgement of the adults around them... Did we have no way of dealing with this case which avoided prosecuting? Was slapping the label 'rape' on it the only way we could understand what had happened between these two boys?

The result was that 'M' was placed on the sex offenders' register and will have a rape conviction on his record for the rest of his life. In the rush to be seen to be dealing strongly with sexual offences, the ability to use adult judgement seems to have been lost.

The high-profile case of a sexual assault in Steubenville, Ohio is another reflection of this swatting away of adult judgement thanks to a lynch mob mentality. The victim was a 16-year-old who was drunk and unconscious who was sexually assaulted by two 16-year-old high-school football players. Pictures of the assault were shared via mobile phones. Of course, this is a serious matter involving not just a physical assault but the undermining of the victim's privacy and dignity. The perpetrators, Trent Mays and Ma'lik Richmond, were convicted and sentenced to at least two years and one year respectively in the Ohio's juvenile system, with the potential to be held until they were 21 years old.

There is no doubt that these two boys should be punished in some form. The assault was a serious matter. But commentators were roundly criticised for describing the case as 'tragic' because it was a youthful misjudgement that all the parties would have to live with it for the rest of their lives. Some claimed this was an example of 'rape culture' because it minimized the suffering of the victim or because it highlighted the macho and sexually aggressive nature of all-male groups, particularly in relation to sport. As Gittos points out, Mays and Richmond were still children at the time of the offence, yet their case was being turned into a *cause célèbre* to serve the political interests of others.

In the UK, there has been a furore just as intense as the one mentioned above over the case of a Welsh international soccer player, Ched Evans, who was convicted of rape and sentenced to five years' imprisonment after having sex with a woman who was deemed to have been too drunk to consent. In his discussion of the case, Gittos is not concerned with the fact that Evans was convicted, inasmuch as it was an understandable judgement given the current legal climate. But Gittos does turn a critical eye to the saga as it pertains to Evan's release when he was attempting to restart his career until it was apparent that any club expressing an interest in signing him was going to face broad if not resolute hounding from a disapproving public until they gave up on the idea. For Gittos, the case's aftermath, informed as it was by a political campaign around rape culture and underscored by campaigners demanding that Evans should lose his livelihood and be made an example of forever, marked a departure from normal legal principles while suggesting that this sort of perpetual offender status growing out of the new rape culture consciousness shows the potential to undermine everyone's fundamental legal rights and protections.³

But perhaps the most interesting parts of the book are those that tentatively discuss the deterioration of intimacy more broadly. Our own judgement and experience is increasingly being questioned by a state-approved version of how sexual relations should be conducted. In the UK, children are frequently taught about what is appropriate and inappropriate sexual behaviour. Rape campaigners produce guides to help women answer the question 'Was I raped?' This can even lead to the bizarre situation where an awkward sexual encounter can be reinterpreted years after the fact as rape.

Gittos uses the example of a claim by the writer and actress Lena Dunham that she had been raped as a 19-year-old student:

In Dunham's own story, she had invited her 'attacker' back to the apartment, initially engaged him in sexual activity and had even 'convinced herself that she was consenting' to sex. Nonetheless, when Dunham explained the facts of the story to a friend, that friend 'informed' Dunham that she had been raped. Dunham described this story as a rape despite not giving any indication to the man she was sleeping with that she was not consenting.

³ Since the book was published, Evans's conviction has been set aside and he faces a retrial in the fall of 2016.

In effect, Dunham allowed her own understanding of her experience to be replaced by an interpretation placed upon it by a friend, no doubt informed by the current campaign around rape culture. If Dunham consented to sex, even perhaps with some reservations about whether it was the right thing to do, it was not rape. She may have regretted the incident afterwards, but that is not the same as being the victim of a serious crime.

Yet such encounters are part and parcel of a modern age of sexual liberation. We can engage in casual or spontaneous sex without receiving the condemnation of wider society. And while that's a good thing, it also brings with it the possibility of messy encounters that may be regretted afterwards. As we mature as adults, we learn from such experiences to understand what we do and do not want from our relationships. But by being the subject of official 'rules' about what sex should and should not be, those experiences are interpreted for us. As a result, true intimacy becomes harder to achieve.

In this regard, Gittos points to Jürgen Habermas and Hannah Arendt in order to draw out how our private, intimate lives have become invaluable places where we can experiment away from public gaze in the trusted company of someone we love and respect. Constant state interference in our personal lives, often at the behest of feminist campaigners, actually destroys this protected space. This is not merely in the sphere of sexual relations, but is even more evident in relation to raising children, where from the moment of birth, state officials like midwives, community nurses, and social workers can demand the right to second-guess what we do. In Scotland, this has led to the creation of 'named persons,' which means in actuality state officials who will be responsible for every child from birth to adulthood in an astonishingly creepy and Orwellian development that destabilizes parental authority and judgement. In essence, Gittos argues that this undermining of intimacy, exemplified by but by no means exclusive to the discussion around rape culture, deprives us of a humanizing element within mass society.

Why Rape Culture is a Dangerous Myth will no doubt be a controversial book as it questions many new orthodoxies and claims. The recent discussion around 'safe spaces' and the rise of identity-based pleading centered around claims of one kind of oppression or another will make it difficult for Gittos's arguments to get a fair hearing. But it is also undoubtedly dangerous if we fail to question such novel ideas regarding state involvement in the most personal aspects of our lives; such ideas should not get a free pass simply because critical analysis might offend someone's sense of victimhood. If this book encourages a

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more thoughtful and honest debate about the notion of rape culture, that must surely be a good thing, which is why I find it absolutely essential reading for these times.

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