

Wrongful Conviction in Sexual Assault: Stranger rape, acquaintance rape, and intra-familial child sexual assaults

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I must confess that I took on this book review with a degree of trepidation. My concerns were twofold; on the one hand, I was concerned that the text would be part of a growing quantity of scholarship critically responding to the tide of historic sexual assault allegations aimed at celebrities and authority figures, which mobilises the traditional rape myth that women and children lie. The argument, I imagined, would present various case studies demonstrating the ways that suspects were wrongly accused by women and children known to them; against a contemporary background where convictions for rape and sexual assault (in England and Wales) are at an all-time low (Topping and Barr 2020), these kinds of arguments make for difficult reading. My second concern related to my own geographical location and appreciation of the context and culture (criminal justice and otherwise) in which the book had been written. Johnson's book is about the United States context, where questions about law enforcement response to ethnic minorities, especially Black males, are far more problematic and deeper-rooted than in the United Kingdom (although that is not to say that we do not have our own significant problems with law enforcement-ethnic minority relations). I was concerned that my ability to appreciate critically and understand the arguments in this book would be limited by my being situated outside that geographical and cultural milieu.

It was with these two concerns that I started to read Johnson's work, and I was delighted to discover from the outset that this book was not as I had imagined. Johnson is very careful to express sympathy to the arguments around the reporting of sexual assault and makes an important distinction, common amongst attrition rate literatures, between acquaintance rape (where there is some form of pre-existing relationship – no matter how short – between the perpetrator and the victim) and stranger rape (where there is no relationship). These different types of offences are likely to produce different outcomes, with Johnson arguing, "The risk of wrongful conviction is higher among stranger rapes, and the risk of the perpetrator escaping conviction is higher among date and acquaintance rape." (10) The majority of the book then sets out why wrongful convictions are more likely in stranger assaults.

The main argument is that the public anxiety around an unidentified perpetrator following a stranger assault produces a desire amongst the public, including law enforcement, to identify and punish those responsible. Responding to this need for “moral correction”, law enforcement manufacture cases around suspects (often known recidivists in the community), regardless of evidence to the contrary. Drawing on concepts such as “tunnel vision”, Johnson notes how the case construction process, enabled by lack of transparency around the interviewing of suspects and witnesses (to which the author refers as the “black box” of evidence manufacture), produces false confessions and false identifications. Law enforcement mobilise a variety of tactics, sometimes coercive (in the case of interrogations of suspects) and at other times manipulative (for instance including only one non-white person in an identity parade), in order to produce unreliable evidence. This evidence gains weight when coupled with other forms of unreliable evidence, in particular non-DNA based forensic and expert evidence, and so, when it is presented to prosecutors and juries (who have the same desire for moral correction as the law enforcement staff), they are likely to convict.

My other concern about the text was that I would not fully be able to appreciate the context of the United States’ history of slavery and racism. Again, my concerns quickly dissolved due to Johnson’s careful and detailed historical account of the punishment of Black men before the Civil War, between the Civil War and the Civil Rights movement and then after the Civil Rights movement. In a well-evidenced, though admittedly disturbing chapter, Johnson sets out the history of conspicuous racist punishments meted out to Black men under the belief that they had raped white women. As Johnson clearly identifies, prior to the Civil Rights movement, the imaginary of the innocent white woman assaulted by the Black man was powerful and justified many lynchings, whether legal or otherwise. The same imaginary continues to hold sway in the contemporary period, and powers law enforcement’s necessity to identify and prosecute in stranger rape cases. While Johnson does also include cases where Black women were victims, it is clear that the majority of wrongful convictions fit the model of white victim, Black perpetrator. Again, the black box manufacture of unreliable evidence is demonstrated to be the product of cross-racial identification and law enforcement’s construction of a case around an incorrectly identified perpetrator. Johnson is at pains throughout this chapter not to fall into the trap of stating that women lie, but rather shows the processes by which an inaccurate identification, especially in the context of cross-racial identification, can be made. The author concludes that the victims often undergo further trauma when they discover that they identified an innocent person.

The final chapter of case studies relates to child abuse hysteria and the ways that a moral panic around abuse necessarily produces allegations and evidence of abuse, even if none existed in the first place. Focusing on psychological evidence, especially recovered memories, Johnson shows how cases were manufactured around suspects when insufficient scepticism or scrutiny was applied to the alleged victims’ accusations. Johnson’s goal here is to set a clear example of “moral correction” in practice, where the anxiety, panic and disgust felt around child sex abuse reduces critical thinking and necessitates punishment. It is certainly a good example of the impacts of moral correction, but I could not help thinking that the chapter also runs counter to the careful way that Johnson has walked the line between lying accusers and innocent suspects. The author does not directly blame the children in this chapter, but rather the families, psychologists and law enforcement teams that develop the cases around the accused. Nevertheless, the situating of these cases is different to the others presented in the text, and even Johnson is aware of this, stating:

“While these cases are different in certain respects from the wrongful convictions in sexual assaults presented in previous chapters, they clearly are additional examples of wrongful conviction in sexual assault.” (121)

While I very much appreciated the argument of this book, there are a few things that I thought required a little more consideration, for instance the ways that forensic science and expert evidence are presented. Johnson does not take a symmetric approach to expert evidence; rather, the expertise presented by law enforcement and the prosecution is presented as flawed, weak and unreliable, while the exculpatory forensic science, often introduced by the Innocence Project, is constructed as reliable and objective. One reason for this is the chronology, where most of the prosecutorial evidence introduced is now considered to have low reliability or individuating power, compared to the exculpatory evidence, most notably DNA evidence, which is considered reliable and individuating. On the other hand, it is not necessarily accurate to represent one set of experts as biased and not others. Why, for instance, are experts working for the prosecution constructed as self-interested or biased practitioners, while those working for the Innocence Project are not? Could not the knowledge that a professional is working for Innocence present as much cognitive bias into an analysis as is the case with those working for law enforcement? A more symmetrical representation of the forensic sciences would have bolstered the argument in my opinion.

My most significant criticism, however, relates to the final conceptual analysis, and the concept of moral correction. While Johnson indeed does an excellent job of evidencing the emotional impact that panic, anxiety and outrage have on law enforcement and the public at large around stranger rape and sexual assault, he does an even better job, in my opinion, of demonstrating the cultural and structural determinants that result in Black men, in particular, being accused of rape in stranger cases. While in the introduction Johnson asserts that moral correction includes “the social, as well as the individual, psychology where law enforcement and prosecutors not only are responding to community, and often political pressures to make arrests and win convictions as well as career incentives but also have a personal investment (desire) in ‘correcting’ what they perceive to be moral violations and outrages”, the eventual conceptualisation of moral correction emphasises the individualistic-emotional response, rather than the collectivist accomplishment of, for instance, law enforcement in manufacturing a case against a suspect. We are left to understand each officer as performing their own acts of moral correction, rather than being part of a culture that not only enables but rewards the construction of successful cases, no matter how unreliable, for instance via clear-up rates.

This turn to the individual rather than the cultural is most notable due to the omission of almost any discussion of racism in the conceptual chapter. As noted earlier, Johnson has done an exemplary job providing a history of the racist policing of rape; however, this account is more or less ignored in the conceptualising of wrongful convictions, and its absence is startling. Again, working at the social or cultural level would have provided space to include the well-evidenced argument about racist practices within police case construction and resulted in a more satisfying conclusion. Of course, asking a psychologically trained scholar to focus on the social level rather than the individual is essentially asking a psychologist not to do psychology, but in this case, and given all the hard work that has gone into making the case around explicit and implicit racist practices, the absence of this discussion towards the end of the book feels like a significant omission.

This book will clearly appeal to criminal justice scholars, especially those interested in wrongful convictions. I would even strongly recommend it to feminist rape scholars who, if not put off by the title, will find a range of important case studies, sympathetically written, that draw important distinctions between the processing of stranger and acquaintance cases. In my opinion, however, the scholars who will most appreciate this work are those promoting the defunding, or even abolition, of law enforcement/criminal justice, especially in cases of rape and sexual assault. Johnson provides ample evidence of the structural barriers to justice for both victims (in terms of acquaintance cases) and suspects (in stranger cases), and this well-collated and well-martialled evidence could be successfully mobilised in abolitionist and transformative justice scholarship and practice. Overall, although I approached this text with trepidation, I found a well-evidenced, fascinating and important book, although its conceptualisation could be improved with a little more work at the social-cultural level.

Topping, A., Barr, C. (2020) "Rape Convictions Fall to Record Low in England and Wales" *The Guardian*. Accessed on 30 June 2021, online:
<https://www.theguardian.com/society/2020/jul/30/convictions-fall-record-low-england-wales-prosecutions>