

Institution: Durham University
Unit of Assessment: 20. Law
Title of case study: Shaping Law Reform and NGO Campaigns on Extreme Pornography and Pornographic Images of Rape [CS1]
<p>1. SUMMARY OF THE IMPACT</p> <p>Research conducted by the research group 'Gender and Law at Durham' (GLAD) has had a significant effect on the enactment and reform of the criminal law relating to the possession of extreme pornography, and on the activities of NGOs lobbying for change in this area. In particular, the research has generated the following impacts:</p> <p>(1) In Scotland, it has shaped the campaigns of NGOs, recommendations of the Parliamentary Justice Committee, and new legislation by the Scottish Parliament to criminalise the possession of pornographic images of rape.</p> <p>(2) In England, it was used by Rape Crisis (South London) and the End Violence Against Women Coalition for their campaign to 'close the rape porn "loophole"'. This led to a change in Government policy in England and Wales, and a public commitment by the Prime Minister to amend existing English legislation criminalising the possession of extreme pornography to include rape pornography.</p> <p>2. UNDERPINNING RESEARCH</p> <p>In 2005-06, the UK Government and Scottish Executive undertook a joint public consultation exercise on a proposed new law for England and Wales to criminalise the possession of 'extreme pornography'. Though initially the definition of 'extreme pornography' was sufficiently broad to encompass pornographic images of rape, in response to criticisms during the consultation process, the UK government subsequently narrowed the definition of extreme pornography to exclude the majority of such images. This narrow definition was enacted in the Criminal Justice and Immigration Act 2008 (CJIA) for England and Wales accompanied by a further specification that material must be 'obscene' in order to constitute 'extreme pornography'. The Scottish Executive did not publish its response to the consultation until 2008, after the enactment of the CJIA.</p> <p>An analysis of the initial proposals by McGlynn and Rackley in 2007 (output 1) criticised the UK government's decision to narrow the definition of 'extreme pornography' on the basis that it would not cover pornographic images of rape unless they were accompanied by serious or life-threatening violence. Following the introduction of the CJIA McGlynn and Rackley published a detailed criticism of the legislation (output 2), which included recommendations that the law be reformed to (1) remove the criterion of 'obscenity', as this focuses on moral harm and offence, and (2) extend the definition of extreme pornography to encompass images of rape. They proposed a justification for the criminalisation of pornographic images of rape on the basis of the 'cultural harm' of forms of extreme pornography which sexualise violence against women. Justifications for criminal law have tended to focus on a requirement for evidence of direct, physical harm to specific individuals before legislation is adopted. In contrast, McGlynn and Rackley's research argued that the prevalence and easy availability of rape pornography generates a form of 'cultural harm' against many women, sufficient to justify criminalisation. It is a paradigmatic example of sexualised violence against women, which contributes to the normalisation and prevalence of such violence and its marginalisation in the criminal justice system. In an article co-authored with Ward, McGlynn developed the argument that the law should not be based on obscenity standards, but instead justified on the basis of 'cultural harm' (output 3).</p> <p>The value of the 'cultural harm' argument is that it provides an additional justification for criminal regulation in the absence of direct evidence of a causal link between extreme pornography and sexual violence. This is a particularly useful argument in policy debates that are generally polarised between conservative morality-based justifications (which do not focus on violence against women but the immorality of pornography) and liberal free speech concerns (about the absence of a direct causal link between pornography and physical harm). In addition, the focus on rape pornography directs debate towards the potential adverse impacts of pornography on women, rather than on the traditional focus on morality and freedom of expression.</p> <p>The research was carried out from 2007 to 2009 when McGlynn was a Professor in Durham and Rackley a lecturer, then senior lecturer. Ian Ward is Professor of Law at Newcastle University,</p>

and was responsible for one half of output 3. He did not contribute to the dissemination activities.

3. REFERENCES TO THE RESEARCH

1. Clare McGlynn and Erika Rackley, 'Striking a balance: arguments for the criminal regulation of extreme pornography' (2007) *Criminal Law Review* 677-690 [Can be supplied on request]. The *Criminal Law Review* is the leading criminal law journal in the UK and is internationally recognised as being among the best criminal law periodicals.
2. Clare McGlynn and Erika Rackley, 'Criminalising extreme pornography: a lost opportunity' (2009) *Criminal Law Review* 245-260 [Listed in REF2]. A peer reviewer commented that this "is one of the best articles I have read for some time. ... The legal analysis is crisp and intelligent. The critique is thoughtful and sharp. ... I wish more authors could write with this degree of clarity and insight. So, to state the obvious: we must publish it.' This article is widely cited in the legal literature on extreme pornography, and extracted and cited in leading textbooks (eg: Ormerod, *Smith and Hogan's Criminal Law*, 13th ed, p 1075).
3. Clare McGlynn and Ian Ward, 'Pornography, pragmatism and proscription' (2009) 36 *Journal of Law and Society* 327-351 [DOI: 10.1111/j.1467-6478.2009.00470.x]. The *Journal of Law and Society* is a world-leading journal, rated A* by the Australian Research Council.

4. DETAILS OF THE IMPACT

1. Directly Influencing Scots law on Extreme Pornography to Include Rape Images

Durham University's research has influenced NGO activities, public and policy discussions, the recommendations of the Scottish Justice Committee and Ministry of Justice, and has consequently shaped Scots law on extreme pornography. The effect is that, in contrast to the law in England and Wales, Scottish legislation specifically includes rape within its definition of what constitutes 'extreme pornography' (Scottish Criminal Justice and Licensing (Scotland) Act 2010 s42).

Shaping NGO activities and policy debate in Scotland

McGlynn and Rackley's research was a large influence on the arguments used by women's organisations in Scotland to campaign for measures against extreme pornography, and specifically on (a) arguments used to justify criminal sanctions and (b) the need to include rape pornography within the remit of the proposed legislation.

Rape Crisis Scotland state that McGlynn and Rackley's research was 'particularly useful' in directing their campaign away from 'the cul-de-sac of causal harm' and was 'really, really helpful in terms of how we ... approach[ed] it [the campaign]'. As a result, 'we framed it [our campaigning] very much in terms of the cultural harm'. This 'had a big impact': 'we got the legislation we wanted in Scotland' because 'we managed to avoid what you have in England which is a distinction in terms of forcible rape [with violence] and I think that is quite an achievement'. The effect has been that the new law, 'gives us a really important tool to try to address what we think is a major area of concern, but also because the law has an educative function as well' (**source 1**).

The 'cultural harm' argument, and examples from a Factsheet on Rape Pornography, produced by McGlynn and Rackley which gave contextual information about the existence and nature of 'rape pornography' (see <https://www.dur.ac.uk/resources/glad/GLADFactsheet.pdf>) were also widely cited in the Scottish media (**sources 1-2**). *The Scotsman* invited McGlynn to submit an opinion piece, arguing for inclusion of pornographic images of rape in legislation on the basis of 'cultural harm' ('Is this Big Brother in the Bedroom: No', 18 January 2009, <http://www.scotsman.com/news/jail-for-downloading-extreme-sex-images-1-754571>), and the newspaper gave support and emphasis with a front-page article.

This discussion of 'cultural harm', and the omission of rape from the new English law ensured that, in contrast to debates in England and Wales prior to the enactment of the CJIA, public debate focused on violence against women. This created the policy context in which the Scottish law on extreme pornography was more likely to include pornographic rape images.

Shaping the Recommendations of Scottish Parliament Justice Committee and Ministry of Justice

In December 2008, in order to influence the Scottish consultation and legislative processes,

McGlynn and Rackley disseminated the research findings of **outputs 1-3** through letters to a large number of Scottish MSPs, government ministers and departments (see, eg, <https://www.dur.ac.uk/resources/glad/GLADLetter.pdf>). These letters presented the key lessons from analysis of the English legislation (**drawing on outputs 1-3**), emphasising the failure of the English legislation to criminalise the possession of all rape pornography, as well as outlining the 'cultural harm' justification for the introduction of a law criminalising the possession of extreme pornography. In January 2009, McGlynn drew on **outputs 1-3** to deliver a plenary lecture at a conference organised by Rape Crisis Scotland, and attended by the Scottish press, the Scottish Justice Minister, members of the Scottish Procurator Fiscal's Office and women's rights campaigners and activists.

McGlynn and Rackley also submitted written evidence (with copies of **outputs 1-2**) to the Scottish Parliament's Justice Committee during its consultation on the proposed legislation. In addition, eight women's organisations, comprising one third of respondents and including Rape Crisis Scotland and the Women's Support Project (a Glasgow-based women's organisation funded by local and national government), deployed the 'cultural harm' argument in their submissions to the Justice Committee and/or quoted directly from the Factsheet on Rape Pornography, produced by McGlynn and Rackley (**source 3**). During their deliberations, after the initial consultation process, the Committee received supplementary evidence from a third party which highlighted and responded to McGlynn and Rackley's submission (**source 4, p. 13**). McGlynn and Rackley's submission had a direct influence on the Committee's recommendations. In its Report, the Committee endorsed their argument that the use of the term 'obscenity' should be reviewed, and that greater consideration should be given to the 'cultural harm' of extreme pornography (**source 5, [292-4], [315]**).

In 2010, the Scottish Parliament adopted a new criminal law on extreme pornography which was broader than the English legislation and which specifically covered rape pornography. In 2011, the Scottish Justice Directorate responded to a Freedom of Information request from the organisation 'Consenting Adult Action Network' which had objected to the legislation, and which sought information on how the decision had been made to include rape. In response, the Justice Directorate referred directly to the letter received by the Minister of Justice from McGlynn and Rackley as advocating for this and attached a copy of the letter to its response (**source 6**).

2. Changing Government Policy in England & Wales and Influencing NGO Campaigns

In May 2013, the Ministry of Justice stated that it did not 'feel it appropriate or necessary' to extend the law to cover pornographic images of rape (**source 7**). Following this announcement, Rape Crisis (South London) and the End Violence Against Women Coalition (EVAW) launched their successful 'Stop Rape Porn' campaign (**source 1**). McGlynn and Rackley advised this campaign, and shaped the arguments it presented. EVAW state that Durham University's research is 'incredibly powerful and is really important ... [it] helps us to make the case to government, and it improves the way that we influence and the work that we do as it brings something very solid to our campaigns' (**source 1**).

McGlynn's and Rackley's work included: attending meetings at the Ministry of Justice and with Government and Opposition MPs; producing briefing documents, drawing on **outputs 1 and 2**, making comparisons between English and Scottish law, and making recommendations for reform (https://www.dur.ac.uk/resources/glad/McGlynnRackleyRapeP_rnBriefingJuly2013.pdf). They also assisted EVAW in drafting an open letter to the Prime Minister, which was signed by over 100 women's groups, campaigners and academics, including Sue Berelowitz, Deputy Children's Commissioner and Mumsnet (**source 7**). The campaign attracted considerable public support. A Change.org petition, which referred to the Durham University research, secured over 72,000 signatories in a month, and the issue was raised by three MPs during an Opposition Day debate in Parliament. During the debate, Diana Johnson MP quoted McGlynn's statement, drawing on the arguments of **output 2**, stating that "It is undeniable that the proliferation and tolerance of such images and the messages they convey contributes to a cultural climate where sexual violence is condoned" (**source 8**). The campaign also shaped wider public debate. During June and July 2013, McGlynn and Rackley were quoted or referred to over 45 times in international media (France, New Zealand, India) and in national media (including *Guardian*, *Daily Mail*, *Independent*,

Times, *Observer*, BBC news and Sky News). There were over 210 further media discussions of the campaign, including the front page of the *Daily Telegraph* ('Porn loophole "gives animals more rights than women"', 18.6.13) (**source 9**). McGlynn was also interviewed on BBC Radio 4's *Woman's Hour* and 'Law in Action' about rape pornography and the key findings of the research (<http://www.bbc.co.uk/programmes/p018rdr5> (8.5.13); <http://www.bbc.co.uk/programmes/b0213yg9> (6.6.13)).

The effect of the campaigns influenced by McGlynn and Rackley is that in July 2013, the Prime Minister announced that the Government would 'clos[e] the loophole' in the legislation, 'making it a criminal offence to possess internet pornography that depicts rape' (**source 10**). In announcing this change of policy, the Prime Minister recognised that possession of such material was already a criminal offence in Scotland, and that such 'images normalise sexual violence against women' repeating the arguments made during the campaign and in Durham University's research. EVAW state that Durham's 'research on extreme pornography was absolutely fundamental to securing the high profile commitment by the Prime Minister' and that 'without the research and the expertise of the legal academics ...there is no clear way that that would have been such a success, and it was a success in a very very short period of time because it was so evidenced and so strong' (**source 10**).

5. SOURCES TO CORROBORATE THE IMPACT

1. Rape Crisis (South London), Rape Crisis Scotland & End Violence Against Women Coalition, testimony transcript evidence, 8 May 2013 and 9 September 2013.
2. Annie Brown, 'Shock of the sick websites which seek to glorify rape', *Daily Record*, 19 January 2009 (<http://www.dailyrecord.co.uk/news/uk-world-news/shock-of-the-sick-websites-which-seek-to-glorify-1005931>). Rebecca McQuillan, 'Do extreme images put women's lives at risk?' *The Herald*, 20 January 2009 (<http://www.heraldscotland.com/do-extreme-images-put-women-s-safety-at-risk-1.900262>); Linda Thompson, 'Pornography is just another form of violence', *The Scotsman*, 21 January 2009 (<http://www.scotsman.com/news/linda-thompson-pornography-is-just-another-form-of-violence-1-1189668>)
3. Scottish Parliament Justice Committee, Criminal Justice and Licensing (Scotland) Bill, collated written submissions: CJL13; CJL 17; CJL 22; CJL 29; CJL 46; CJL54; CJL 75; CJL79: <http://archive.scottish.parliament.uk/s3/committees/justice/inquiries/CriminalJusticeandLicensing/ju-criminaljustice-evid.htm>.
4. Scottish Parliament Justice Committee, 19th meeting, (9 June 2009), papers 19: <http://archive.scottish.parliament.uk/s3/committees/justice/papers-09/jup09-19.pdf>.
5. Scottish Parliament Justice Committee Report, SP334, 18th Report (2009) [292-294] and [315]: <http://archive.scottish.parliament.uk/s3/committees/justice/reports-09/jur09-18-02.htm#16>.
6. Scottish Justice Directorate, Freedom of Information Response, 17 October 2011: <http://caan.org.uk/wp-content/uploads/2012/05/FOI-Reply-17-October.pdf>.
7. End Violence Against Women, Campaign to ban 'rape porn', including copies of: Ministry of Justice letter of May 2013 stating policy of no change to the law; text of open letter to the Prime Minister; legal briefing by McGlynn and Rackley; and link to change.org 'close rape pornography loophole' petition: <http://www.endviolenceagainstwomen.org.uk/media-sexism>
8. Protecting Children Online: Opposition Day Debate, HC Deb 12 June 2013, Cols 366; 401 (Geraint Davies), Col 366 (Stella Creasy), Col 396 (Susan Elan Jones) Col 405 (Diana Johnson): <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130618/debindx/130618-x.htm>
9. See, eg, "Call to close 'rape pornography website loophole'", *BBC News*, <http://www.bbc.co.uk/news/uk-22803502>; "Criminalise possession of 'rape porn', campaigners urge David Cameron", *Guardian*, <http://www.guardian.co.uk/uk/2013/jun/07/criminalise-rape-porn-campaigners-cameron>; "Extreme Porn Loophole Must Be Closed, PM Told", *Sky News*, <http://news.sky.com/story/1100493/extreme-porn-loophole-must-be-closed-pm-told> and table of other citations.
10. Speech: The internet and pornography: Prime Minister calls for action, 22 July 2013: <https://www.gov.uk/government/speeches/the-internet-and-pornography-prime-minister-calls-for-action>