Autonomy and the Sexual Offences Act 2003: Abstract

According to Setting the Boundaries, the government’s 2000 consultation paper on sexual offences, “rape and sexual assault are primarily crimes against the sexual autonomy of others.” As a result the offences of rape, assault by penetration, sexual assault and causing sexual activity without consent, contained in ss 1-4 of the Act are dependent on the absence of consent. Other offences throughout the Act are designed to protect victims who cannot consent or whose consent is deemed invalid for some reason, for example their age or (lack of) mental capacity. The emphasis on consent in the Act itself and the explicit championing of autonomy in government literature on sexual offences suggests a clear rationale for sexual offending.

Based on a detailed examination of the Sexual Offences Act 2003 and the accompanying Sentencing Guideline, this paper argues that the rationale of sexual offences post 2003 is more complex and confused than the rhetoric of autonomy would suggest. It explores some of the competing rationales – such as physical health/injury, moral offense and heteronormativity – with reference to specific offences within the Act. It links the practice of delimiting offences based on the mechanics of the physical acts involved to these competing rationales, and questions whether sexual autonomy is now any better protected than in the law prior to 2003.