

## **„The ordinary recklessness of girls...“: Expert witnesses and the problem of rape in Poland**

In January 2008 the mayor of a Polish city was accused of rape by his female assistant. Other female office workers from the town hall filed charges against the same mayor for sexual harassment. The case received extensive media coverage, also because the assistant was pregnant (he was accused of raping a pregnant woman). The women pressed charges and a criminal investigation was opened as a result of which, the mayor was arrested and held in custody for 6 months. In November 2008, there was a referendum and the vast majority of votes (inhabitants of the town) decided that the mayor could no longer stay in office.

As a part of the preparatory proceedings, the prosecutor asked for the opinion of experts, specialists in psychology and sexology. The expertise stated that the mayor could not have raped his assistant because they were romantically involved with each other, they were linked by an erotic bond, and as he did not behave like a rapist and she did not behave like a victim. Thus, it concluded, she accused him because he left her<sup>1</sup>. As a result of comments in the media, the prosecutors asked for a second opinion. In the meantime, the mayor was freed from custody and in 2010 was almost re-elected to office. In February 2011, the prosecutor's office received the second opinion, which did not question the fact of rape. In effect, the former mayor has now been formally charged with rape. This case is one of many Polish cases in which the credibility of victims of sexual assault is challenged. But in this case – due to its political element – prosecutors relied on more than one expert opinion.

In many other rape cases victims are not so lucky: rapists are never charged, and women are presented as being responsible for what happened (they provoked the assailant; they say they were raped or molested because they wanted to take revenge on their partners or husbands who left them or cheated on them) and they are stigmatized. Provocation is an especially strong stereotype<sup>2</sup>. For

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<sup>1</sup> See for example: [http://wiadomosci.gazeta.pl/wiadomosci/1,114873,7027538,Biegli\\_byly\\_prezydent\\_Olsztyna\\_nie\\_jest\\_gwalcicielem.html](http://wiadomosci.gazeta.pl/wiadomosci/1,114873,7027538,Biegli_byly_prezydent_Olsztyna_nie_jest_gwalcicielem.html) (accessed 17.05.2014).

<sup>2</sup> This is also true in cases of domestic violence, see for example I. Marcus. “Wife Beating: Ideology and Practice under State Socialism in Hungary, Poland, and Romania.” In:

example, in 2002 a major Polish research agency conducted a public opinion survey regarding punishment for selected crimes, including stealing, robbery, performing euthanasia and abortion, not paying alimony or taxes, various forms of violence, and finally rape. There were two questions related to rape: one regarding just rape, and the other about rape resulting from women's provocative behavior. There were no distinctions of this kind in reference to other crimes (for instance no distinction was made between stealing from the rich and stealing from the poor). The idea of asking such a question shows how powerful this folk model is in expert knowledge. The answers to the survey demonstrate this even more: in the case of rape (without provocation) 72% of informants said that rapists should be in jail without the possibility of suspension, an additional 20% stated that they should receive life sentences. On the other hand, the provoked rape should not be punished so harshly. 18% of informants said it should not be punished at all or only by financial penalty; 14% suggested suspended sentence; 48% imprisonment without the possibility of suspension; 7% life sentence; 12% had no opinion<sup>3</sup>.

Stereotypes regarding rape exist also in expert knowledge including sexualogical publications. Scholars working on the process of the construction of scientific knowledge argue that scientific knowledge is the result of various factors including cultural representations<sup>4</sup>. In the case of the understanding of rape, gender stereotypes or folk models<sup>5</sup> inform how sexologists who serve as expert witnesses conceptualize sexuality and gender roles within the situation

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*Gender Politics and Everyday Life in State Socialist Eastern and Central Europe*, eds. Sh. Penn and J. Massimo, New York 2009, p. 125.

<sup>3</sup> TNS OBOP, *Jak karać przestępców*, Warszawa 2002, p. 9–10.

<sup>4</sup> J. Fishman. "Manufacturing Desire: The Commodification of Female Sexual Dysfunction", *Social Studies of Science*, 2004, no. 34(2): 187–218; H. Oosterhuis. *Stepchildren of Nature. Krafft-Ebing, Psychiatry, and the Making of Sexual Identity*, Chicago 2000; L. Fleck. *Genesis and Development of a Scientific Fact*, translated by F. Bradley, Th.J. Trenn, Chicago 1979; N. Oudshoorn. *Beyond the natural body: An archeology of sex hormones*, New York 1994; B. Latour. *Science in Action*, Cambridge, MA 1987.

<sup>5</sup> I refer here to the famous essay by Sylvia Yangisako and Jane Collier ("Toward a Unified Analysis of Gender and Kinship." In: *Gender and Kinship: Essays Toward Unified Analysis*, eds. J. Collier and S. Junko Yanagisako, Stanford, pp. 14–50). In this paper, I also use the term 'stereotype' in the same sense. In Poland stereotypes or folk models of gender and sexuality link femininity with motherhood and the domestic. Women are also responsible for the family and marital life (see for instance: M. Marody and A. Giza-Poleszczuk. "Changing Images of Identity in Poland: From the Self-Sacrificing to the Self-Investing Woman?" In: *Reproducing Gender. Politics, Publics, and Everyday Life after Socialism*, eds. S. Gal, G. Kligman, Princeton N.J. 2000, pp. 151–175).

of sexual assault. In this paper, drawing on my ethnographic<sup>6</sup> and archival research<sup>7</sup> conducted in Poland in the period from 2008–2012, I point to gender stereotypes in expert knowledge of sexuality. What underlines expert statements, such as those that appeared in the case of the Polish mayor? How are expert witnesses educated? What are the sources of their knowledge? I locate my project in the tradition of engaged feminist anthropology<sup>8</sup>: I study the sources of discrimination of rape victims in courts in order to generate knowledge that will help to improve the situation of victims. Before I move to my analysis, I will discuss briefly the issue of rape in Poland and present basic information about the Polish court system.

## **Rape in Polish Law**

Contemporary legal understanding of rape in Polish law has in fact remained unchanged since 1932 (the date of the first Polish penal code, following the re-establishment of the Polish state after WWI). The 1932 code was very progressive. It defined rape regardless of the relationship of the rapist and the victim (in this way it enabled the penalization of marital rape) and their gender (men could be victims as well). However, it stated that rape was prosecuted only if the victim pressed charges<sup>9</sup>.

Basically, this definition has not changed since then. Poland had two legal reforms, in 1970 and 1997<sup>10</sup>. According to the 1997 penal code the maximum

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<sup>6</sup> Ethnographic research covered participant observation during classes for future sexologists, workshops and conferences as well as in-depth interviews with experts.

<sup>7</sup> I analyzed sexological publications, popular publications by experts as well as court files.

<sup>8</sup> See for example: H. Červinková. “Feminist Theory, Anthropology and Engagement”, *Zeszyty Etnologii Wrocławskiej*, 2012, pp. 25–36, <http://zew.info.pl/files/Cervinkova.pdf>; M. Grabowska, A. Kościńska. “Antropologia stosowana i zaangażowana wobec dyskryminacji ze względu na płeć i seksualność.” In: *Antropologia stosowana*, ed. M. Ząbek, Warszawa 2013, pp. 273–293, <http://www.cyfrowaetnografia.pl/dlibra/doc-content?id=5112&dirids=1>.

<sup>9</sup> See for example: M. Płatek. “Kryminologiczno-epistemologiczne i genderowe aspekty przestępstwa zgwałcenia”, *Archiwum kryminologii*, 2010, vol. 32, pp. 349–382.

<sup>10</sup> “According to Polish law, rape is an offence against the ‘sexual freedom of a person and morality.’ Article 197 of the Penal Code states that the minimum punishment for rape is three years’ imprisonment and five years for gang rape or rape of a particularly cruel nature. The maximum punishment in both cases is 12 years.” [http://stopvaw.org/List\\_of\\_Law\\_and\\_Policy\\_Documents8.html#Sexual+Assault](http://stopvaw.org/List_of_Law_and_Policy_Documents8.html#Sexual+Assault) (accessed 5.03.2011).

penalty for rape is 12 years of imprisonment. It is worth noting that according to the penal code most serious crimes are prosecuted *ex officio* – once the police or the prosecutor’s office knows about a crime (it was reported) they are obliged to investigate and prosecute (this refers to crimes such as murder, robbery, stealing, beating – excluding domestic violence – or even things like giving alcohol to a minor). But rape is an exception, it is only prosecuted “on the victim’s motion”<sup>11</sup>.

If the victim does not press charges, the police and prosecutor’s office will not investigate. As rape is highly stigmatized, and often perceived as a result of women’s provocation and happens frequently in the domestic setting, victims rarely report to the police or press charges. Women’s centers and NGOs providing help to victims of violence estimate that around 90% of rapes remain unreported<sup>12</sup>. According to official statistics, there are 1 600 – 2 000 rapes annually<sup>13</sup>, which, taking into consideration these estimates, would amount to approximately 20 000 rapes annually. According to other estimates, 2 out of every 5 women in Poland have been raped. Even when the rapist goes on trial, sentences are rather light. The maximum penalty for rape is 12 years of imprisonment, but this hardly ever happens.

Polish criminologist, Andrzej Siemaszko, shows that the average penalty for rape was 3 years and 4 months in prison (in 1999), however only one third of rapists spent their entire time in prison. Due to probation, the average time of punishment was in fact 2 years and 8 months of imprisonment<sup>14</sup>. Yet the fact that rapists are punished at all constitutes a rather new phenomenon. Research conducted by Piotr Perkowski shows that in the 1940s, 1950s and 1960s there were very few trials of rape cases, and hardly anyone was ever sentenced<sup>15</sup>.

Stereotypical thinking about rape and provoking behavior on the part of the victim is very common in Polish courts, and it is expressed by both lawyers and

<sup>11</sup> *Introduction to Polish law*, ed. S. Frankowski and A. Bodnar, The Hague: Kluwer Law International 2005, p. 386. It was only in January 2014 when the rape article was modified as a result of heated debates and currently rape is prosecuted *ex officio*. See for example: <http://www.lex.pl/czytaj/-/artykul/gwalt-scigany-z-urzedu-1>, <http://www.feminoteka.pl/news.php?readmore=9120> (accessed 10.11.2013).

<sup>12</sup> J. Polanowski. “Przemoc seksualna”, *Niebieska Linia*, 2002, no. 1.

<sup>13</sup> M. Filar. “Przestępstwa przeciwko wolności seksualnej i obyczajowości.” In: *Postawy seksuologii*, eds. Z. Lew-Starowicz, V. Skrzypulec, Warszawa 2010, p. 351.

<sup>14</sup> [http://www.bezpiecznapanstwo.pl/?a=articles\\_get&id=38&c=2](http://www.bezpiecznapanstwo.pl/?a=articles_get&id=38&c=2) (accessed 5.03.2011).

<sup>15</sup> P. Perkowski. “Przemoc seksualna i niuanse wrażliwości społecznej względem kobiet w świetle źródeł okresu PRL.” In: *Zapisy cierpienia*, ed. K. Stańczak-Wislicz, Wrocław 2001, pp. 283–301.

experts<sup>16</sup>. These kinds of folk models appear not only in Polish courts. Similar situations occur in other cultural contexts, for instance in the United States, where members of the jury often employ stereotypes and it becomes a job of the attorney to challenge their thinking and explain to members of the jury the nature of rape<sup>17</sup>. Nevertheless, the Polish system is different. There is no jury. In Poland the prosecutor (on the level of preparatory proceedings) and the judge (on the level of judicial proceedings) can ask for expert opinion. After preparing their opinions, experts present them during the trial, and all parties can ask them questions. Experts receive special training and are paid by the court. The judge is supposed to evaluate the opinion and decide whether or not to take it into consideration<sup>18</sup>. However, the expert opinion is often crucial for the court’s understanding of the crime<sup>19</sup>. Experts cannot be hired by any of the parties during

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<sup>16</sup> P.P. Reszka. “Wszystkie ofiary gwałtu”. An interview with M. Płatek, *Gazeta Wyborcza*, 22.02.2010; A. Kościańska. *Płeć, przyjemność i przemoc. Kształtowanie wiedzy eksperckiej o seksualności w Polsce*, Warszawa 2014.

<sup>17</sup> Talks on sexual assault by Kate B. MacDougall and Marian T. Ryan, Harvard Law School, 8.11.2010.

<sup>18</sup> S. Frankowski and A. Bodnar, *op. cit.*, p. 135.

<sup>19</sup> A court case I analyzed as a part of my research is a good example of the power of expert witness opinion: At the beginning of April 1983 a 16-year-old girl was dragged into a car by four young men (17–18 years old) and taken to the forest. One by one, they forced her to have oral and vaginal sex. She experienced psychological trauma after the rape. She sought council from a therapist, and the therapist sent her to a psychiatric facility. During the trial, the offenders tried to convince the court that the sex was consensual and that the victim was a slut. The victim while testifying was very stressed, cried. Her doctor was called to testify as an expert and describe her condition. The guilt seemed to be obvious, especially that the investigators found proof (a letter) that the offenders had prepared their defense based on the assumption that she wanted to have sex. The court found the offenders guilty and sentenced them to 2 to 5 years in prison. The offenders appealed. Their lawyers claimed in their appeals that the victim suffered from sexual and psychological dysfunctions, and that sex was consensual because she did not defend herself: she only said “no” but she had a reputation, they argued, that made the boys think that she really wanted to have sex with them; they read her behavior as an invitation to sex. Moreover, the lawyers argued that she might suffer from psychological dysfunctions that made her testimony unreliable. As a result of the appeal there was a second trial in which an expert witness sexologist said that the victim indeed had a sexual dysfunction: hyperlibidemia (Hypersexual disorder). His opinion was based on the victim’s statements during sexological examination that she had several partners in the past and that she did not feel any guilt while masturbating. Furthermore, a group of experts (psychiatrists) said that she had been mentally ill and therefore hospitalized. They tended to forget that she had been placed in a psychiatric facility after the rape, and,

the trial. Therefore, they are perceived as representing a neutral, objective and scientific viewpoint. However, based on my research I argue that experts' opinions are frequently based on folk models, which become significantly more powerful when they are presented in a medical/scientific fashion.

In both Polish and international writings on Poland, gender and sexuality discrimination is usually explained as an influence of the Catholic Church. The Church, Catholicism, or more generally the Christian tradition are perceived as the exclusive source of discrimination of women and LGBTQ people: this refers to both Polish and international feminist scholarship and activism as well as works in gender studies, anthropology, sociology and so on. For instance, Monika Płatek, a prominent feminist lawyer, links the Polish legal approach to a Biblical understanding of rape as a crime against the woman's owner (father or husband) and the Biblical concept of "decent, respected woman" who cries for help so loudly that the help comes<sup>20</sup>. She argues that the concept of decent woman is a very important stereotype in today's court practice. The decent woman does not provoke<sup>21</sup>. Furthermore, as rape happens very often in the context of marriage or intimate relationship, feminist scholars and activists stress that the problem of rape (and domestic violence) is related to the status of the family within Catholicism. Family is the highest value, divorce is not permitted in any circumstance and Catholicism – in general – makes individual rights claims very difficult<sup>22</sup>.

The Church certainly plays an important role in constructing gender and sexuality in Poland and is responsible for various forms of discrimination. However, I would argue that the Church is not the only factor involved in constructing the cultural, social and legal setting in which victims have little chance to seek justice and retribution in the courts and to avoid stigmatization in their everyday life. I argue that feminist preoccupation with the Church

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as medical documentation shows clearly, as a result of the rape. Because of this expert material – the offenders were found not guilty. Her being sexually active, or hyperactive to use the sexologist's term was crucial evidence for the court. See also: A. Kościańska, *op. cit.*, pp. 201–225.

<sup>20</sup> If the help does not come, it means she did not scream loud enough, i.e. she is not decent and she should be stoned, Book of Deuteronomy, chapter 22.

<sup>21</sup> M. Płatek. "Zgwałcenie." In: *Płeć w kulturze. Encyklopedia*, in press.

<sup>22</sup> M. Środa. "Kobiety, Kościół, katolicyzm." In: *Czarna księga kobiet*, ed. Ch. Ockrant, Warszawa 2007, pp. 654–662. Other example of this argumentation: E. Zielinska. "Between Ideology, Politics and Common Sense: The Discourse of Reproductive Rights in Poland." In: *Reproducing Gender. Politics, Publics, and Everyday Life after Socialism*, eds. S. Gal, G. Kligman, pp. 23–57, Princeton N.J. 2000.

makes feminist activists blind to other sources of authority that are harmful to women. In the case of rape, I will argue, a very important source of knowledge is science, in particular sexology<sup>23</sup>.

## ***Rape and Gender Stereotypes in Polish Sexology***

The official standpoint of sexologists presented during trainings for future sexologists and in recent publications<sup>24</sup> is that sexual contact that happens against the will of one of the parties involved is a crime. At the same time more or less explicit statements based on stereotypes regarding rape, and sex and gender in general, are frequently presented and portrayed in a biomedical fashion during courses for future sexologists and at educational conferences. The examination of this educational process brings insights into the sources of expert opinions in which sexual violence is denied because victim's behavior is presented as leading to sexual intercourse.

During the academic year 2008–2009 I participated in a series of courses for sexologists who also serve as expert witnesses in a state sponsored center for postgraduate medical education. Physicians who want to become specialists in sexology and therapists who are interested in being certified by the Polish Sexological Association have to take courses offered by the center. Courses usually take 3 full days of classes (7 hours a day). Classes cover topics such as: female sexual dysfunctions, male sexual dysfunctions, criminal and forensic issues in sexology, sexuality of the disabled, sexology for therapists and so on.

Classes are taught by the leading Polish sexologist and sex therapist, together with his team of teaching assistants: his former students and current co-workers. The professor and his team constitute mainstream Polish sexology. The professor controls the exam for specialists (there are cases in which he postpones or even blocks certificates for those who question his opinions). Furthermore, his publicly expressed opinions are often sexist and heteronormative. At the same

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<sup>23</sup> Sexology is very often depicted as being progressive, offering the worldview alternative to the Church and being focused on freeing sexuality. However, as Michel Foucault showed, sexology is a rather disciplining discourse. In Poland, like in other European countries, science and biomedicine have been gradually becoming sources of norms in spheres earlier dominated by religion, as Foucault among others argued (M. Foucault. *The History of Sexuality*, vol. 1: *The Will to Knowledge*, translated by R. Hurley, New York 1978, see also C. Waters. “Sexology.” In: *Palgrave Advances in the Modern History of Sexuality*, eds. H.G. Cocks, M. Houlbrook, New York 2006).

<sup>24</sup> Z. Lew-Starowicz. *O kobiecie. Rozmawia Barbara Kasprzycka*, Kraków 2011, p. 56.

time the professor and other therapists and physicians who serve as lecturers appear to be really dedicated to their patients and to solving health problems; they are also engaged in many other activities – often *pro publico bono* – such as sex education, or promotion of knowledge of contraceptives.

The students of the classes consist of physicians (usually gynecologists and psychiatrists) and therapists, mostly women in their 30s. The atmosphere during the classes is very relaxed, filled with jokes and anecdotes. The professor makes frequent references to the personal sexual life of students (especially female students). He likes to look deeply into women's eyes and say: 'imagine your partner doing this, doing that...' 'If you want to please your partner...' The lecturers (mostly the professor) recite jokes or "funny" stories about sex – he also has some jokes in cartoon format, which he displays using a projector, and various undocumented knowledge of sexuality and gender (for instance on the relationship between the level of testosterone and driving skills). The jokes are often sexist, nevertheless everyone seems to find them funny, and nobody publicly expresses protests against them.

How is the problem of rape presented in this context? Rape is discussed during the class on forensic sexology. The lecturers were every explicit: rape is a crime, sex against somebody's will is rape. They stressed that serious health problems might appear as a result of rape and they deconstructed various myths relating to rape, such as the myth that it was easy for women to escape the rapist or that they wanted to be raped.

However, in the course of the classes (on criminal issues and other topics) there were many both explicit and implicit statements, which were contradictory to this understanding of rape. These statements are related to definitions of femininity and masculinity: because of testosterone, violence is a defining feature of masculinity, and thus women desire violence (this is also present in the professor's writings); the nature of femininity is passive, and women want to be conquered by men; sustaining "traditional" (based on hormonal differences) sex roles is a way to good sex; women who are on equal terms with their partners and whose partners are gentle (i.e. feminized) dream about violence, of being raped or imagine being raped. This issue appears also in the professor's writings. Honesty, equality and changes in so-called traditional gender roles are perceived as causes of sexual problems, violence appears as part of sex games, and it is not serious.

"Jokes" also touch on problems of violence, for example: "A female therapist would not like to have a pedophile as a patient, but a handsome rapist... why not." Lack of male domination and aggression as well as "untraditional"

gender roles might lead the woman to seek another, more masculine partner and also lead to various dysfunctions (e.g. erectile dysfunctions and orgasm related dysfunctions, among others, so-called premature female orgasm). (Also the theory of “sperm wars” was discussed<sup>25</sup> to prove that violence is essential in the evolution of human kind.)

In the meetings, stereotypical thinking about sexuality is biomedicalized and linked to testosterone and other hormones. At the same time, results of international research are displayed in the background. This is combined with a relaxed atmosphere and body language of lecturers that carry sexual connotations. Therefore, future expert witnesses are given a somewhat contradictory message: rape is an evil crime, but in many cases rape is presented as a form of brutal sex resulting from particular models of femininity and masculinity.

This understating of rape is deeply rooted in the Polish sexological literature of the 1970s. In this period, sexology developed in the country as a vivid discipline discussing issues such as sexual pleasure, contraceptives, sexual dysfunctions. It played an extraordinary educational role. At the same time, it perceived sexual violence in a very stereotypical way. An older, but extremely influential book *Sztuka kochania* (The art of love) by Michalina Wisłocka provides a good example of this approach. First published in 1978 by an author who was a gynecologist and sexologist, this book was the first publication in post-World-War II Poland to openly discuss sexual pleasure and women’s pleasure in particular. It presented detailed, illustrated descriptions of sexual positions and techniques. It also discussed sexuality-related topics such as the hormonal system, sex differences and contraceptives. Published in a Catholic country under the rule of an “asexual” communist regime, the book became extremely controversial and popular (the author claims that 7 million copies were sold in a country of 38-million people<sup>26</sup>) and is perceived as being revolutionary. Contemporary experts in the field of sexuality (including expert witnesses I interviewed) consider this book as highly progressive and perceived it in an uncritical way<sup>27</sup>. Nevertheless, the first edition’s cover had a drawing of a newlywed couple. In an interview<sup>28</sup>, the author says that this was done because of the requirements of censorship. But in reality the entire

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<sup>25</sup> In this view, sperm from the aggressive alpha male has more chance to conceive an egg than sperm from a loving and gentle male.

<sup>26</sup> D. Zaborek. “Seksualistka. Rozmowa z dr Michaliną Wisłocką”, *Gazeta Wyborcza*, 20.10.2004.

<sup>27</sup> A. Kościańska, *op. cit.*, p. 58.

<sup>28</sup> *Ibidem*.

book (not changed by the censorship officials) is addressed to married couples, mostly to wives as the author believes that happiness in marriage is women's responsibility.

In the book the author refers to her own research on hormones as well as her medical practice, and explains human sexuality in the language of hormones. She draws on stereotypical (omnipresent in other analyzed publications) understandings of gender, sexuality and relationships, and medicalizes them. Women are associated with the domestic sphere and passivity; men with the public sphere and activity. It is because of hormones that men are not able to control their desires, something that women should know and try not to provoke to avoid sexual violence. The author medicalizes these stereotypes, shows them in the context of functions of the hormonal system, and argues that only traditional gender roles can lead to sexual satisfaction.

What are the concepts of femininity and masculinity on which the author draws? She explicitly criticizes the idea of similarities between men and women (present in North American sexology in the 1970s, e.g. in the work of William Masters and Virginia Johnson<sup>29</sup>). Instead, Wisłocka writes that men and women are profoundly different and this difference is related to their hormonal systems. Men, especially young, cannot control their sexuality. This is the duty of women who should be responsible for all sexual affairs in the relationship and for the well being of their families.

Wisłocka writes that women are responsible for controlling male sexuality even in such extreme cases as rape:

While watching film accounts regarding gang rape, I was wondering if in many cases 'victims' of individual or gang rape are not in the same way guilty of what happened as the rapists, and at the end only more injured. Maybe the word guilty should not be used in reference to the girl, rather it should refer to her parents and educators<sup>30</sup>.

The author links the problem to changing morality and customs:

During the times of our mothers and grandmothers it was impossible for a young girl to go with a man she had only recently met for a walk, to a restaurant or to

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<sup>29</sup> W. Masters, V. Johnson. *Human Sexual Response*, Boston 1966; see also: J. Irvine. *Disorders of Desire. Sexuality and Gender in Modern American Sexology*, Philadelphia 2005.

<sup>30</sup> M. Wisłocka. *Sztuka kochania*, Warszawa 1978, p. 41.

a desolate place. The notorious chaperones of old times, sent by parents to accompany their daughter when she was going to meet a young man were meant to prevent unexpected physical aggression on the man's part.

Today we laugh at it. Girls go with boys they don't know very well for excursions, they allow for being picked up on the street by men they don't know, they agree to go with them to some unknown apartment or to the woods. They think these are the signs of progress and modernity, rather than reprehensible recklessness. Parents are unfortunately equally unaware of how dangerous is such behavior, and do not warn girls of possible consequences<sup>31</sup>.

Next, she continues saying that this is related to hormonal sex difference:

The boy cannot control his level of sexual arousal, but the girl should know that every situation mentioned above is for him an explicit invitation for 'rape,' and if she does not want to be raped, she should not allow for the opportunity... Unfortunately, when one analyzes court and press reports, one usually finds that the girls had agreed to going to an apartment, the woods or a desolate place with boys that they had only just met<sup>32</sup>.

The author suggests a solution to this problem: the popularization of scientific knowledge regarding sex difference:

I believe that the broad popularization of knowledge of the physiological processes accruing during the period of adolescence in girls' and boys' bodies should result in girls' more cautious use of their hard-fought for equality with boys. In the area of sex, progress and the equalization of rights of girls and boys have taken precedence to knowledge of the unchanged rights ruling physiological and psychological processes in the bodies of youth, and have left girls defenseless against sexual aggression<sup>33</sup>.

Wisłocka also writes that a woman is responsible not only for herself but also for men, and according to her, this includes rapists.

The ordinary recklessness of girls puts boys, carried away by sexual arousal, which is especially abrupt during this age, at risk of being compromised, subject

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<sup>31</sup> *Ibinem*, p. 41.

<sup>32</sup> *Ibinem*, p. 41–42.

<sup>33</sup> *Ibinem*, p. 42.

to legal punishment and frequent derailment from the path of proper development already in their early years<sup>34</sup>.

I suggest that these fragments should be seen in the context of how the author perceives femininity and masculinity. Young girls and women think in emotional terms and through maternal instinct. Women “nest”, take care of men, cook for them and see to their health. They are responsible and in control, but they have their own, “female” ways of controlling and exercising their agency. A woman should not be straightforward in telling her husband what she wants or in criticizing him, she should give him the opportunity to figure it out by himself, to guess. She should never initiate sex, because this could be the end of her relationship, she should let him conquer her (there is no open communication about sex or about any other matter). The author anticipates critique that her approach is against gender equality and women’s emancipation but in her opinion there is no space for equality in sexual relations.

This view of gender was typical for this period. Drawing on the analysis of a woman’s magazine from the 1970s, Anna Giza Poleszczuk and Mira Marody show the same concept of femininity, masculinity and agency, calling men ‘big children’ who need to be taken care of by their wives, but this should not be done in a straightforward way, women should allow their men to figure things out by themselves<sup>35</sup>. Therefore, one could suggest a straightforward interpretation: *Sztuka kochania* simply reinforces stereotypes and biomedicalizes them. I would argue, however, that this is not the whole story. The book provided women with much needed knowledge they did not have access to, for example concerning contraceptives and pleasure. Research by Małgorzata Szpakowska shows that lack of knowledge and fear of unwanted pregnancy were serious obstacles in women’s sexual satisfaction in the 1970s<sup>36</sup>. However, the methods Wisłocka suggested only reinforced stereotypes. As a result, the role of the book is very ambiguous. In the case of sexual violence it is even more problematic: although the penal code defined rape as a crime, victims

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<sup>34</sup> *Ibidem*, p. 42. I checked all editions of the book hoping that these paragraphs were changed or removed in subsequent editions. Unfortunately, they are still there (although the book itself was significantly changed, e.g. updated information on contraceptives, new pictures) and in some editions several sentences regarding girl’s guilt were in bold, including the 2000s’ editions by Wydawnictwo Jacek Santorski & Co – a prestigious publishing house, which specializes in psychology.

<sup>35</sup> M. Marody and A. Giza-Poleszczuk, *op. cit.*

<sup>36</sup> M. Szpakowska. *Chcieć i mieć. Samowiedza obyczajowa w Polsce czasu przemian*, Warszawa 2003.

were often treated as if it was their own fault that they were raped<sup>37</sup>. It is not surprising that prosecutors, judges, experts and police do not perceive rape as a serious crime since a progressive sexologist and gynecologist did not acknowledge this either.

### **Concluding remarks**

In this paper, I argue that stereotypes that influence the situation of rape victims are reinforced by scientific and medical knowledge. Polish classical sexological publications presented victims as responsible for rape. Although today sexologists distance themselves from this approach, during sexological trainings for future expert witnesses one can encounter jokes and unofficial statements that contradict official teachings and strengthen stereotypes on rape. Sexual assault is presented as a product of provocation or woman's will or as an unimportant incident. As a result, some expert witnesses in their opinions represent a stereotypical approach to rape just like in the case of the mayor described at the beginning of this paper.

This is a project in engaged feminist anthropology and I would like to conclude by commenting on certain practical aspects. I argue that science is based on folk models which are an important source of gender discrimination. Therefore, for feminist activism it might be more effective to focus, among others, on sex therapists and scientists to bring their attention to stereotypes in sexual science and problems related to training and publications, and to work with them on the production of new sex knowledge (non only of rape, but also other sexuality and gender related issues). This is especially important since sexologists see themselves as progressive and engaged in the deconstruction of stereotypes. This process has already begun. Starting in the early 1990s, a new group of experts gained voice in the rape debate: feminists and other women who worked with victims, psychologists, police officers and activists from women's NGOs. They also started the debate with sexologists on work on new knowledge that might be a source of women's empowerment. However, this process requires further steps, and detailed critique of works such as *Sztuka kochania* which constructs popular and expert understanding of rape.

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<sup>37</sup> A. Kościańska, *op. cit.*, part 3.

## Acknowledgments

This research was supported by a Marie Curie International Outgoing Fellowship within the 7th European Community Framework Programme.

An earlier version of this article was presented within Harvard Social Anthropology Program Seminar Series, 28.03.2011. I am grateful to Michael Herzfeld for inviting me to give this talk and to all participants for their remarks and questions. I also discuss selected issues presented in this paper in my book *Płeć, przyjemność i przemoc* (in Polish, 2014). I would like to thank: Monika Baer for her encouragement and editorial comments; two reviewers for their careful reading and useful suggestions; Marta Rozmysłowicz for proofreading this article.

## Streszczenie

**„Zwykła lekkomyślność dziewcząt...”  
Biegli sądowi i problem gwałtu w Polsce**

W artykule autorka zwraca uwagę na źródła wiedzy biegłych sądowych, przygotowujących ekspertyzy w procesach sądowych o przestępstwo zgwałcenia. Zwykle w literaturze feministycznej przyjmuje się, że u podłoża dyskryminacji kobiet w Polsce leży działanie Kościoła katolickiego. W wyniku analizy materiałów archiwalnych (m.in. polskich książek seksuologicznych) i przeprowadzanych badań etnograficznych (obserwacji procesu kształcenia przyszłych biegłych) autorka wskazuje, że stereotypy krzywdzące ofiary są obecne również w wiedzy eksperckiej i tą drogą trafiają na salę sądową.