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Penal Issues

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Rape Cases Brought to Assizes Courts: Typology and Geographical Variations

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While homicides have declined steadily in France since the mid 1980s¹, convictions for rape tripled between the second half of the 1980s and the close of the 1990s, then stagnated in the 2000s (see **figure 1**). This makes rape by far the crime most frequently tried by Assizes Courts². It is also an increasingly severely punished crime³. Whereas in 1984 only 18% of prison sentences punishing this crime exceeded 10 years, in 2008 the figure had risen to 43%. Last, there is not only increased severity, but an increasing tendency to report this crime, one which victims rarely reported in earlier times. Rape cases therefore exemplify the trend toward criminalisation so characteristic of present-day society, with its increasing intolerance and denunciation of interpersonal violence (especially when committed on women or children)⁴. According to two major victimisation surveys conducted in 2000 and 2006, the number of rapes reported to pollsters did not increase in the meanwhile, whereas the number of rapes reported to the police did⁵. But only 5 to 10% of victims, depending on the study, lodged a complaint with the police or the gendarmerie. The reality of the courts is a far throw from the social reality, then. The object of the present paper, based on the analysis of 425 rape cases heard by Assizes courts (see below), is to explore the variety of behaviour coming under the legal category of rape as defined by article 222-23 of the French Criminal Code and the following three articles describing specific aggravating circumstances.

Methodology

Using a method previously applied to homicide⁶ and juvenile delinquency⁷ criminal record files, we studied, transcribed and analysed 406 criminal files for rape cases tried by three Assizes courts in the 2000s, including 123 cases tried in Paris between 2003 and 2007, 150 cases in Versailles between 2001 and 2007, and 133 cases in Nîmes between 1998 and 2008. Some of these files included several different types of rapes heard during a same trial, so that we actually studied 425 rape cases involving 488 rapists and 566 victims⁸.

Diversity of Rape Cases : a Relationship-Based Typology

Rape cases brought to court actually represent a wide variety of acts, physically speaking (rape may range from digital penetration to full intercourse), time-wise (from a single act to repeated raping over several years), and circumstance-wise (ranging from an act with no vio-

¹ MUCCHIELLI L., 2008, Homicides in France Since the 1970s: Statistical Analysis and Overall Trend, *Penal Issues*, 4, 1-4.

² In 2008 (latest data available), courts pronounced 1,684 persons guilty of rape, including 1,182 in Assizes courts for adults and 176 in Assizes courts for juveniles, 305 in juvenile courts and 21 in appeal courts for juveniles. Rape cases represent close to half (46%) of all crimes tried in Assizes courts, ahead of homicides, armed robbery, violence causing unintended death and various other less frequent crimes.

³ The definition of rape has not been changed since the December 1980 Act: « Any act of sexual penetration, irrespective of its nature, committed on another person, using violence, force, threat or surprise ». However, in 2003 and 2006, aggravating circumstances were introduced (marital rape, homophobic rape), the effects of which cannot be measured here. Last, the notion of incest entered the criminal code with the recent February 8, 2010 Act (which is outside the purview of the present study).

⁴ MUCCHIELLI L., 2008, Une société plus violente ? Analyse socio-historique des violences interpersonnelles en France, des années 1970 à nos jours, *Déviante et Société*, 2, 115-147.

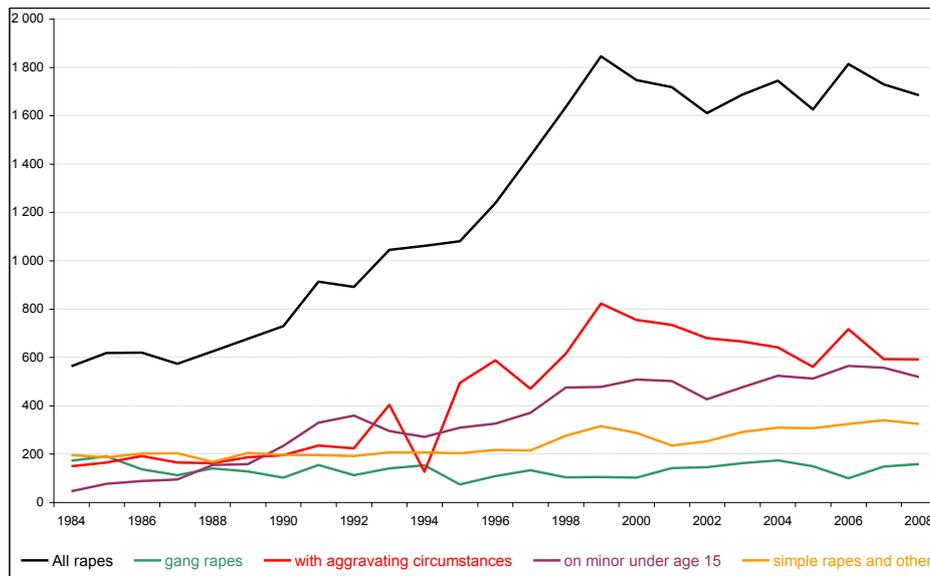
⁵ BAJOS N., BOZON M., 2008, Les agressions sexuelles en France : résignation, réprobation, révolte, in BAJOS N., BOZON M., (dir.), *La sexualité en France. Pratiques, genre et santé*, Paris, La Découverte, 381-407.

⁶ MUCCHIELLI L., 2004, Les caractéristiques démographiques et sociales des meurtriers et de leurs victimes. Une enquête sur un département de la région parisienne dans les années 1990, *Population*, 59, 2, 203-232.

⁷ LE GOAZIOU V., MUCCHIELLI L., NÉVANEN S., 2007-2008, *Les évolutions des faits de violence et des mineurs impliqués (1991-2005)*, Guyancourt-Paris, CESDIP-Mission de Recherche « Droit & Justice » (3 volumes).

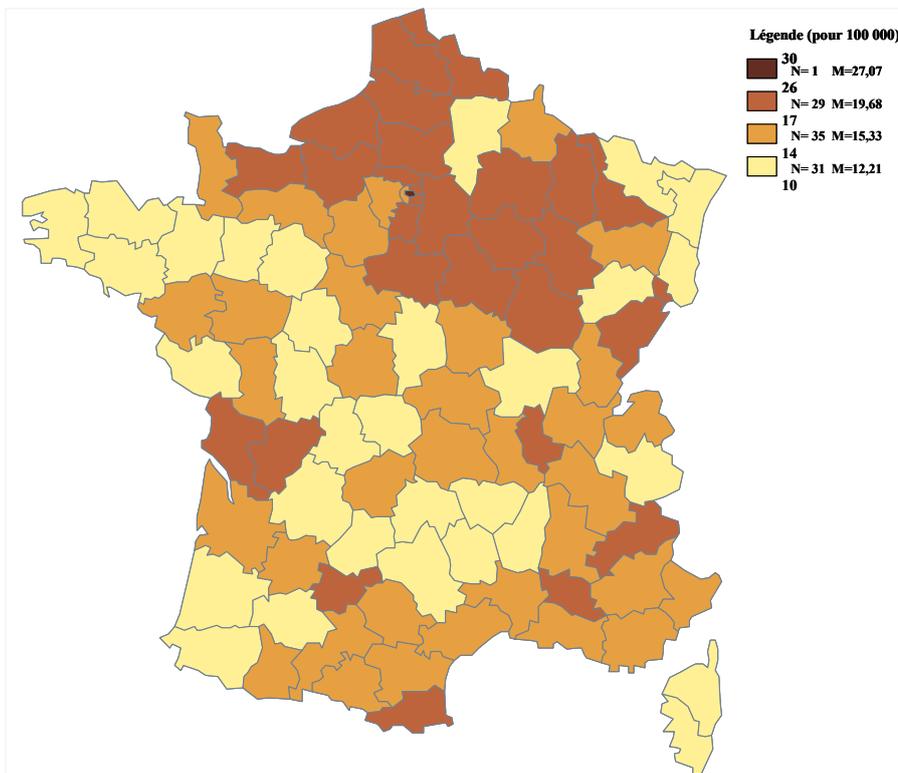
⁸ The authors extend their thanks to all those who participated in the research team, and especially to Patricia Bénec'h-Le Roux, associate researcher at the CESDIP, as well as Feres Belguth, Jennifer Boiro, Alexandre Fabrer and Pierre Laurent, all students at the University of Versailles-Saint Quentin at the time.

Figure 1. Trends in the number of rape convictions (1984-2008)



Source: French Ministry of Justice, serie « Les condamnations ».

Figure 2. Distribution of rape cases recorded by the police and the gendarmerie, by départements in 2004-2008 (rate per 100,000 inhabitants)



Source : French Ministry of the Interior, calculations by the authors.

Note: Since reported rapes per département remain relatively infrequent, we have pooled data for five years to obtain sufficiently reliable rates. The caption should be read as follows: the lightest color represents the group of 31 départements with a rate comprised between 10 and 14 per 100,000 inhabitants, with an average of 12.21.

lence other than the rape itself to rape accompanied by « torture or acts of barbarity ». This also translates into the list of associated offences and aggravating circumstances, both of which vary considerably (see table 1). Last, while rape is clearly gendered violence (98% of offenders are men), there is also great variety in the types of relationship between offenders and victims. Ties include kinship, love affairs, friendship, care-giving, neighbours, weak or recent ties, and none at all.

The latter point is essential. As opposed to the stereotypes sustaining social fears as well as security-oriented discourse, rape, li-

ke murder, usually does not involve people who are complete strangers to each other. In our sample of court cases, offenders and victims were acquainted in 83% of cases. In about 70% we can even say they had strong, close relations. We therefore concluded that these relations between offenders and victims are the most relevant factor for understanding the rape cases brought to court, and it is on those relations that we based our typology. We divide rapes into five types.

Rape Within the « Extended » Family Circle (196 cases, 47% of all cases)

Close to half of the rape cases brought to Assizes courts actually involve rape within the family. We have excluded marital rape, which constitutes the second type. Conversely, we call this type rape within the « extended » family to indicate that the family circle in which these crimes occur is not confined to blood ties. In 9% of all cases, rapists were « friends of the family », completely accepted within the family circle, to the point of frequently being left alone with children⁹. This is almost as high as the figure for rapes committed by fathers (10% of cases) and those committed by other relatives of earlier generations such as uncles or grandfathers (10%), but lower than the figure for stepfather rapists, the most frequent case (13%) and higher than that of rapes by brothers and collateral relatives (half-brothers, cousins), the smallest group (5% of cases).

Rape within the family has several peculiar features. First, offenders are usually not criminals, or delinquents, in the usual sense of the terms, as opposed to rapes committed by strangers (who generally have well-filled criminal records) and marital rape, committed by brutal, violent men (see below). Next, whereas rape generally consists of violence exerted by a man on a woman, rape within the family is the only instance involving a relatively high proportion of male victims (20%). Logically, it is within the family that victims are youngest (average age, 9). Because of the longstanding ties and youthfulness of the victims here, rape is set in a continuum of sexual violence, with fondling usually preceding rape itself. Last, the ties and their long history also explain why rape within the family is often repeated over a few years (1 to 5) or even in the long term (over 5 years).

For all of these reasons, we suggest deeming a « serial rapist » a type of person who may be described as a « serial, intimate abuser/rapist », to account for the fact that one third of these incestuous men had raped the same victim repeatedly and that over half of them had raped another victim at least once (for instance, a father had not only raped his daughter several times, but also one of the daughter's friends, while another had raped his daughter, and several years later, his step-daughter...). Possible explanatory factors for the behaviour of this type of rapist include forensic findings on the particularly high frequency of dysfunctional family relations in their own childhood (parental deprivation in their

⁹ Close to half (47%) of raped women claimed to have been assailed by their present or past spouse (JASPARD M., et al., (dir.), 2002, *Les violences envers les femmes en France. Une enquête nationale*, Paris, La Documentation Française, 216).

¹¹ BAJOS N., BOZON M., 2008, *Les agressions sexuelles en France : résignation, réprobation, révolte*, in BAJOS N., BOZON M., (dir.), *La sexualité en France. Pratiques, genre et santé*, Paris, La Découverte, 381-407.

Table 1. Offences associated to the principal offence of rape in the case files

Associated offences	Rapes within the family (n=196)	Marital rapes (n=19)	Other rapes by intimates (n=72)	Gang rapes (n=23)	Rapist remote acquaintance or stanger (n=115)
Pornography	3	0	2	0	0
Deterioration of private property	0	0	0	0	1
Unlawful penetration of residence	0	0	0	0	1
Theft or extortion	0	0	0	4	26
Fraudulent obtaining, breach of trust	0	0	1	0	3
Threat	1	1	0	1	3
Corruption of juvenile	9	0	1	0	0
Sexual violence or abuse	138	1	22	1	13
Kidnapping, sequestering	0	1	0	2	10
Procuring	1	0	1	0	0
Administration of harmful substance	0	0	1	0	2
Assault and battery with work disability	10	12	1	2	15
Torture or acts of barbarity	2	1	2	1	2
Attempted homicide	0	1	1	0	0
Homicide	0	0	1	0	1

Table 2. Victims having suffered physical violence associated to the raping

	Rapes within the family (n=268)	Marital rapes (n=21)	Other rapes by intimates (n=100)	Gang rapes (n=24)	Rapist remote acquaintance or stanger (n=153)
N	32	20	33	5	64
%	12%	95%	33%	21%	42%

Table 3. Part of various categories of rape according to court location (in %)

	Versailles	Paris	Nimes
Family and marital rapes	56%	33%	60%
Rapes by well known perpetrators	20%	17%	13%
Rapes by remote acquaintances	18%	44%	22%
Gang Rapes	6%	6%	5%

Note: For the sake of simplification, incest and marital rape cases have been merged (the latter being too infrequent to allow for geographic comparison). In spite of their differences, these are the two types of rape in which mutual ties are strongest.

early years, being abandoned, abused, or the object of physical and/or sexual violence).

Marital Violence (19 cases, 4% of all cases)

There were few marital rape cases in our files, as opposed to the findings produced by victimisation surveys, and especially by the *Enquête nationale sur les violences envers les femmes en France* (ENVEFF, a national survey on violence against women in France), which found it the most frequent type of rape¹⁰. This type of rape continues to be brought to court rarely; reporting is still less frequent and progresses more slowly than for incest cases¹¹. The picture yielded by our sample of case files mostly involves young couples. As opposed to incest cases, the act usually only occurs once, but is much more violent. In every case but one, rape was attended by physical violence (see **table 2**). In half of these cases the offender was actually accused of two offences: rape and violent assault and battery. Moreover, as opposed to the raping, violence was often repeated. The context here is actually more one of battered women.

Other Types of Rape by a Well-Known Person (72 cases, 17% of all cases)

This category includes cases where victims and offenders were friends (8% of cases), in a work or service relationship (6%) or neighbours (3%). As in the previous group, offenders were mostly young adults

(average age 28), and most victims were also adult women. However, about 40% were underage girls, essentially teenagers. Rapes between « friends » are single occurrences, which mostly took place in private places (the offender's or the victim's home, or at a mutual friend's place). Often the offender and the victim had been lovers in the past. Parenthetically, most cases involve violence, or at least threatened violence, as in marital rape. There is also one case of rape followed by homicide.

When the protagonists entertained a work or service relationship, they were less well acquainted. The motor of their relationship was not emotional. The relationship may have evolved toward a friendship, as in the case of people who met on vacation or at sports courses, etc. Victims (42% of whom were male, mostly young boys victims of paedophiles) are often particularly vulnerable, either owing to a disability or because they are under hierarchical or symbolical domination by the offender. This type includes one serial rapist (a gynecologist who raped his patients).

Gang Rapes (23 cases, 5% of all cases)

Gang rape cases, which received enormous media attention at the turn of the century as an allegedly new, soaring phenomenon¹², represented only about 5% of our sample of tried cases. The basis for characterisation of this particular type is

¹² MUCCHIELLI L., 2006, *Research on Collective Rape Cases: Legal Data and Sociological Analysis, Penal Issues*, 3-6 (http://www.cesdip.fr/IMG/pdf/PI_01_2005.pdf).

not the nature (highly variable) of relations between offenders and victims taken individually, but a specific kind of relationship pattern: the collective nature of the offenders' behaviour. It is in gang rape, like rape by siblings and collateral relatives, that offenders are youngest. Most are aged 16 to 25, with an average age of 19. The same is true of victims. Gang rape is not usually attended by physical violence: group strength and psychological pressure suffice. As shown in a previous research¹³, gang rape victims are often vulnerable in a variety of ways: they are runaways or vagabonds, have family problems or are emotionally deprived. They are therefore « easy prey » for rapists, who are in fact those who tend most to deny having committed a rape and to claim it was the victim's fault.

Rape Committed by a Slight Acquaintance or a Stranger (115 cases, 27% of all cases)

The last group includes cases of rape in which offender and victim are barely acquainted (10%) or complete strangers (17%).

In the former case, offender and victim had met recently (a few days, sometimes several hours earlier) and felt sympathy and attraction, or had even begun to flirt or made advances. In two out of three cases the rape took place at the home of one of the two protagonists, indicating that some contact had developed. For instance, the victim may have agreed to « have a last drink » at the offender's home. The average age of rapists was 30, of victims, 25. Physical violence existed in about half of cases, especially those closest to the « pal/friend » rape situation. Rape usually occurred only once, or occasionally was repeated during a same night. As in gang rape cases, the offenders often deny the fact, claiming that the victim had consented, or showed herself easygoing and seductive.

Rapes committed by complete strangers are extremely varied but most occur in public places or in the public areas of housing projects, usually in the evening or at night. These are single instances, usually very brief since the offender is afraid of being caught in the act. The age range of victims

¹³ *Ibid.*

is also broader. In this type of case, judges and forensic psychiatrists refer to the offender as « driven ». This is also a violent, brutal kind of rape. Most offenders strike their victim, while some threaten them with a weapon. In two cases the court accepted the aggravating charge of torture and acts of barbarity. It is here, too, that we find the second (and last) homicide in our sample, as well as the only cases of theft or extortion prior to or following the rape.

When the rapist was a slight acquaintance or a stranger he tended to have more social and psychological problems: at least 85% mentioned at least one major problem during childhood (basic parental deprivation, alcoholic parents, family violence, custodial care), 40% were alcohol and/or drug-dependent, 60% were unemployed and in a precarious situation at the time of the facts, 35% had no diploma and over 20% were considered illiterate. Furthermore, about 20% were homeless at the time, and this group (slight acquaintances or strangers) contains the most foreigners or offenders of foreign origin, living in poor neighbourhoods usually in the *Zones Urbaines Sensibles* (« ZUS, problem ridden neighbourhood ») category. People who may definitely be called « outcasts » are over-represented in this type of rape. Unsurprisingly, these outcasts are also often regular customers of the criminal justice system: about 80% of this exclusively male group already had a criminal record and in close to 40% of cases that record included at least one previous sexual assault.

Geographical Differences between the Three Courts

The Northern and Eastern parts of France are reputed, in gendarmerie, police and judicial circles, to have more rape cases (especially rapes within the family). This is more or less corroborated by the distribution of rape cases reported by the police and gendarmerie in different *départements* in recent years (see **figure 2**).

However, aside from the fact, mentioned above, that we are only talking about the 5 to 10% of cases of which police forces were cognizant, this geographic analysis remains quite superficial inasmuch as it continues to consider rape cases as a single category. Our study, comparing three courts corresponding to three different parts of France, took the analysis some steps further (see **table 3**).

Table 3 points to one important lesson: Paris, as a very large city, is a specific case. In point of fact, Versailles and Nîmes show a quite comparable distribution of types of rape. In both instances the vast majority are cases of rape within the family and marital rape, and acquaintance was the

rule. In Paris, on the other hand, the figures for rapes in the conjugal and family contexts brought to court were almost halved in comparison to Nîmes, whereas there were twice as many rapes with slight or no acquaintance (almost half of all cases brought to court). So the big city itself is definitely a specific case. It is tempting to consider the extensive anonymity as the main explanation, but as will be shown in our conclusion, the problem may well be more complex.

Table 3 also shows equivalent numbers of gang rapes in all three courts. In itself, the fact is interesting, too, given the prevailing stereotype according to which this type of rape is linked to youths « of immigrant origin » and to the large suburban housing projects so often in the headlines. Actually, gang rapes also occur in the least urban of the three *départements* (Gard), but the young men involved reside either in the working class neighbourhoods of the two largest towns (Nîmes and Alès) or in small villages.

Conclusion: from Social Reality to the Assizes Court and Back

In France, as in the rest of the Western world, there is a growing tendency since the late 1970s to report rape as well as sexual violence in general. This is probably only the beginning of the trend toward reporting and prosecution, now sanctioned by criminal law: in 90 to 95% of the facts reported in victimisation surveys no complaints were filed, so there is tremendous room for increases in litigation.

Last, comparison of our court data with victimisation surveys contributes one other major insight for sociological analysis. It shows an uneven tendency to resort to criminal justice. The different types of rape cases evidenced here are not reported in the same way, or at the same pace. Whereas incest is increasingly reported, marital rape is far less apt to be reported. Prosecution actually varies enormously with social background. One major finding of victimisation surveys, second only to the considerable frequency of rape cases, is certainly that this violence between intimates exists in every social milieu, and in comparable proportions. Now, one major discovery in our study of court dossiers is also that about 90% of the people indicted for rape came from working-class backgrounds. In other words, it is mostly in the upper classes that rapes are concealed. This calls into question all of the conclusions we might over-hastily draw from judicial dossiers. Even Paris may not be all that much of an exception. If rapes by complete strangers definitely represent a larger proportion of all rape cases tried there, it may be because they are more frequent, but it may also be

that other types of rape are much less often reported by the more affluent, who are over-represented in the capital. This finding suggests many avenues for reflection and research; at the same time it corroborates the shallowness of the idea, so widely expressed in public discourse, that the people who fall into the hands of the law are representative of the crime and delinquency scene as a whole.

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Further reading:

LE GOAZIOU V., MUCCHIELLI L. 2010, *Les déterminants de la criminalité sexuelle (étude du viol)*, Guyancourt-Paris, CESDIP-Mission de Recherche « Droit et Justice ».