

Hilkje Charlotte Hänel
What is Rape? Social Theory and Conceptual Analysis
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Reviewed by Joanne Conaghan, 2019

Joanne Conaghan is a Professor of Law at the University of Bristol and author of the monograph, *Law and Gender* (Oxford: Clarendon Press, 2013). Her article "The Essence of Rape" was recently published in *Oxford Journal of Legal Studies* (2019)

Quote:

“Notwithstanding that the issue of rape has long been a focus of feminist analysis, Hänel argues that surprisingly limited attention has been paid to analyzing, in philosophical terms, ‘the phenomenon of rape in the real world.’”

This book combines analytical philosophy and social theory to investigate the concept of rape. The stated object is to advance a concept of rape that "systematically map[s] out and explicate[s] the phenomenon of rape in the world" (10). The project has a descriptive and normative dimension: it purports both to describe what rape is while simultaneously disrupting (and replacing) the "dominant working understanding of rape as physically aggravated stranger rape" (24). This dominant understanding, the author argues, is the product of a "sexist ideology" that "masks" manifestations of rape that fail to correspond with the dominant understanding, thereby reinforcing social and structural injustice (12-13). Drawing on a Wittgensteinian approach to the analysis of words and their meanings, particularly his theory of family resemblances, Hänel characterizes rape as a cluster concept (chapters 2 and 5), identifying ten distinct properties (considered further below) that can be mobilized to assess whether or not a particular act constitutes rape. The application of a cluster approach--in which each element is equally relevant albeit manifest to different degrees in a single instance--enables Hänel to identify rape and distinguish among the various forms rape may take. Rejecting any notion of rape as an "all-or-nothing" category, Hänel contends that we should approach rape not only as diverse in its manifestations but as overlapping with other categories with which it is typically opposed, for example, sex (12). Hänel's conceptual interrogation of rape is further enhanced by her deployment of social theory to map rape as an embedded social practice, to account for the ideological privileging of a specific rape paradigm (aggravated stranger rape), and to expose the relationship between this privileging and the wider ideological framework governing sexual and social relations.

Notwithstanding that the issue of rape has long been a focus of feminist analysis, Hänel argues that surprisingly limited attention has been paid to analyzing, in philosophical terms, "the phenomenon of rape in the real world" (16). Too much scholarly effort has been directed toward explicating legal definitions and/or accounting for the moral wrongfulness of rape. Moreover, within the literature that does focus directly on the conceptual parameters of rape, dichotomous thinking abounds so that rape and/or its constituent features is invariably framed in oppositional terms, for example "rape versus sex, consensual versus non-consensual sex, forced sex versus sex without force" (11). Such binary-based analyses, Hänel argues, encourage a singular understanding of rape as clearly distinguishable from everything that is not rape. Consequently, rape theory struggles with ambiguity: It cannot easily account for sex taking place "in the gray area" (22), that is, sexual encounters that straddle or blur the

dichotomizations upon which the category of rape traditionally relies. Hänel's cluster model offers a way to navigate the gray area, mapping the phenomenon of rape as a social practice taking a variety of forms in socially embedded settings. It also promises, if not to resolve, certainly to reduce the conceptual contestedness of rape. This is in part because, as Hänel seeks to show, this contestedness is exacerbated by an ideologically constituted gap between the "manifest" concept of rape (rape as it is legally defined and/or externally manifested) and the dominant, "operative" concept (what people in fact understand to be rape). Hänel goes on to explain how this gap has arisen, explaining it as a consequence of the prevalence of a widely held belief in rape myths expressive of sexism in our society. Such myths, she contends, distort understandings of rape and promote the dominant usage. We can address the "gap" problem, Hänel argues, by ameliorating the dominant operative concept, a process that involves explicating a more accurate and ultimately emancipatory account of rape as a social practice.

There is a lot to admire in Hänel's careful and thoughtful analysis. I particularly welcome her analysis of rape as a phenomenon that takes a variety of forms, enabling her to isolate not just one but three rape paradigms-- aggravated stranger rape, acquaintance rape, and "genocidal rape," that is, rape as weapon of war (83-84)--from which to draw her "properties." Hänel's efforts to marry analytical philosophical approaches with social theory in order to probe the content and operation of concepts is generally well done. She is clearly strongly influenced by the scholarship of her supervisor, Sally Haslanger (see, in particular, Haslanger 2012 and 2017), drawing on Haslanger's distinction between "manifest" and "operative" understandings of a concept, while developing her own method of conceptual analysis. This Hänel characterizes as "emancipatory amelioration," a technique that "combines social theory and prescriptive conceptual analysis to fully explain the phenomenon of rape while at the same time aiming at an altered and emancipation-enabling conceptual understanding" (95, and see generally chapters 3 and 5). As an approach to the critical *and* constructive analysis of concepts of importance to emancipatory projects, Hänel's method deserves close attention.

Her account is further aided by the clarity and accessibility of the writing and the excellent signposting of the arguments throughout. Hänel also manages to be attentive to the intersectional dimensions of rape without losing sight of the key role that gender and heteronormativity play in constituting, operationalizing, and justifying rape as a social practice. It is difficult not to become absorbed, challenged, and enlightened by this work. Some aspects of the analysis are less convincing. Hänel's account of rape as a social practice "embedded in social structures that produce and reproduce it" (131) broadly follows Haslanger's theory of social structures as networks of social relations, in turn constituted by social practices that "come into being through the interplay of resources and schema" (132, and see Haslanger 2017). This works well to "map" the social spatially but is less able (at least in Hänel's presentation) to grasp the temporal dimension of social practices, the particular ways in which such practices rely upon, transmit, and transmogrify the concerns and apprehensions of the past. The history of rape is strikingly absent from Hänel's account; thus, although she captures the diversity of rape conceptually and phenomenologically, she fails to do so temporally. Is it really possible to offer an account that promises to track the phenomenon of rape in the real world without being attentive to these temporal dimensions? There is a flatness to the analysis, notwithstanding Hänel's use of the visual metaphor of an oak tree in a forest as a way of capturing the three-dimensionality of rape (192). We are viewing rape in place but not in motion.

Similarly, although Hänel acknowledges the insufficiency of conceptual change alone to bring about emancipatory social change, emphasizing the need for "changes in all levels, that is, material changes, legal changes, social changes and conceptual changes" (104), her analysis does not offer or draw upon any theoretical account that *connects* the social, legal, and conceptual with the material. How do social structures, relations, and practices relate to the material conditions in which they operate? How is the social practice/phenomenon of rape materially embedded and with what consequences? These are important questions that go directly to the issues Hänel is addressing and to the solutions she is prescribing. To take a simple example, in the closing pages, Hänel suggests that children should be educated from an early age to respect the physical and emotional boundaries of others (251-52). Yet the very notion of the self as physically and emotionally bounded is historically inflected, shaped by the concrete materiality of people's lives in different historical periods--how they work, sleep, eat, live, and die. The idea of training children to respect the boundaries of others is intelligible in a society in which domestic and working spaces are organized accordingly but less so in a society in which they are not. To put it another way, the contemporary concern with individual, physical boundaries in particular reflects a society in which separateness is highly valued and to a varied extent (depending on the material conditions in operation in a particular social, geographical, or cultural sphere) realized. In terms of Hänel's overall argument, it would be unfair to place undue weight on a minor recommendation introduced at the end of a careful, and for the most part persuasively elaborated, analysis, but the broader point deserves highlighting: the relations, practices, and structures with which Hänel is rightly concerned are materially as well as socially embedded, and this goes directly to the question of why and how such relations, practices, and structures are rendered real and intelligible and with what ideological and distributive effects.

This raises the related question of what conception of "the real" Hänel is deploying. Hänel repeatedly asserts her ambition to offer an account of rape "in the real world" (12), an account in which the "is" of rape precedes the "ought" rather than, as is often the case in rape debate, the "ought" determines the "is" (15). Throughout her analysis, Hänel highlights the lack of fit between a manifest understanding of rape, corresponding with the reality of rape in the world, and "dominant operative" understandings that reflect how rape is perceived, socially and culturally. In other words, rape is posited as a phenomenon that exists independent of the meanings attributed to it by law, culture or society. Hänel illustrates this claim by drawing on the example of marital rape:

Think of it this way: previously we might have lacked the hermeneutical resources to conceive of an act of forced sex in marriage as an act of rape. The schemas needed for marital rape did not exist. The act in question was still an act of rape, but it was masked by the existing hermeneutical schemas and resources. The act was not intelligible as an act of rape. (136)

What is the meaning and status of Hänel's claim that the "act in question was still an act of rape"? It is obviously not a legal claim; nor is it (formally at least) prescriptive: Hänel is not saying that forced sex within marriage is not rape but ought to be recognized as such. Essentially, Hänel is saying that marital rape is rape because it meets the requirements laid out in her cluster model. This is regardless of whether Hänel's cluster model is formally mobilized by law, society, or other rape commentators. Indeed, insofar as we fail to recognize rape in accordance with her scheme, we are engaged in "systematic hermeneutic misfiring" (203), a term she deploys to account for "non-intended" rape, that is rape in which the

perpetrator, relying upon the dominant operative understanding of rape, fails to realize that the act in which he is engaging is in fact rape (203, and generally chapter 6).

Let's look more closely at the manifest concept of rape that Hänel articulates. As already mentioned, Hänel posits ten "properties" or "aspects" (she appears to use these terms interchangeably) relevant to an assessment of whether a particular act constitutes rape. These are: "sexual activity, violence, means of physical coercion, means of psychological coercion, ability of resistance, lack of consent, capacity to consent, interpersonal relationality, context, and gender inequality and heteronormativity" (188). Hänel is not saying that each of these aspects must be present for an act to count as rape, but rather that each should be considered. Nor is she saying that each aspect should be present to the same degree, or even that a minimum number of aspects or levels thereof must be formally specified to meet the threshold for rape. This, indeed, is Hänel's point. The boundaries of rape as a category are blurred and may overlap with other categories. Thus, we are never offered a clearly delineated account of rape as an abstract concept; what Hänel proposes is a method or approach to identifying rape (or perhaps "rapeness"?) in individual instances.

It is not entirely clear to me whence Hänel derives her ten properties. At various points they are said to be phenomenological, legal, and "externally real" (12-13), but the circumstances of their excavation are never explicitly detailed other than in relation to the three paradigmatic examples of rape she identified early in her analysis. This is not to say the properties are not useful, particularly when used as she prescribes, that is, as part of a broad cluster of indicators none of which is individually necessary and sufficient but all of which are equally relevant to the question of what counts as rape. Hänel urges us to use her cluster to counter the effects of the flawed hermeneutic schemas (themselves a product of sexist ideology) from which we are encouraged to draw. In this way we can avoid making epistemic errors when assessing whether a particular act constitutes rape. What does Hänel mean by an epistemic error? Essentially, it is an error resulting from a lack of correspondence between what we know about rape and what is real: it is a failure of alignment between reality and representation.

The notion that popular understandings of rape are out of sync with the reality of rape as it is experienced, defined, or properly constituted is not new. Linda Alcoff makes a not dissimilar claim when she argues for "a new epistemology for rape . . . a new understanding of the way in which our collective knowledge of the problem has been informed and might be improved" (Alcoff 2018, 2). Like Hänel, Alcoff stresses the complexity of rape, the need to "complexify our understanding of what constitutes sexual violence and move away from simplistic binary categories" (12). Where Hänel and Alcoff part company is in their conception of the real, Alcoff aligning with a position in which representation and reality are inextricably entangled, and Hänel taking the view that although our perceptions can distort our view of reality, they do not formally constitute it. For this reason, whereas Alcoff focuses on subjectivity as a key site of interrogation in relation to understandings and experiences of rape, Hänel's concern is with social relations and practices and the way in which they contribute to structural frameworks of disadvantage or injustice. Ultimately both analyses generate fruitful analyses of the current state of rape theory, though as a lawyer, I feel bound to cast doubt on Hänel's suggestion that her cluster approach might be usefully operationalized in law (197-200). It is not that law does not make use of multifactorial approaches to determine the application of certain concepts, but that, in a criminal law context, where lives and liberties are at stake, the degree of uncertainty delivered by Hänel's cluster model (although undoubtedly offering a

richer, more complex understanding of rape from which we can all learn) would be regarded as problematically indeterminate.

Hänel's book is a thoroughly engaging, carefully and rigorously executed, and infinitely thought-provoking analysis of rape as a concept and a social practice. I would strongly recommend it to anyone interested in rape theory and indeed, more broadly, to anyone seeking to straddle the boundaries of analytical philosophy and social theory. I found the method as intriguing as the substance and will be ruminating on both for some time to come.

References

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