



## The law has failed: what's next?

One thing has become clear from following the @EVB\_Now Twitter feed and reading the fantastic submissions on their blog - the law regarding consent does not work.

Hardly a day goes by without us being treated to another horrific story of a rapist walking free because there is not enough evidence to prove conclusively that the victim did not consent. The problem here is that the burden of proof is not on the alleged rapist to prove that the victim did consent, it is on the victim to prove that she (or he) did not. Furthermore, even if she can prove that she said "no," if the rapist claims convincingly enough that he \*believed\* that the victim was consenting, then that is acceptable. This is where the "ah yes, she said 'no,' but she was wearing a short dress, so of course I thought that she really meant 'yes'" argument comes into play. Victim blaming is only possible because the phrasing of the law is the wrong way around.

Instead of needing to prove that the victim said "no," the law needs to be changed so that the alleged rapist is required to prove that she (or he) said "yes".

Consent is not enough - the standard needs to be enthusiasm.

There have been a lot of posts recently in blogs and on Twitter calling for enthusiasm to be the standard that should be looked for in sexual encounters. Certainly I can't imagine why anyone would want to have sex \*without\* enthusiasm from their partner. But clearly this is not enough. We need that standard to be enshrined in law. If the requirement was not that your partner must \*consent\* to sex, but that they must demonstrate \*enthusiasm\* for a sexual encounter, imagine the problems that would be solved.

There would be no more of the "blurred lines" that Robin Thicke is so puzzled by - men wouldn't need to worry over whether wearing a short dress, or allowing themselves to be bought drinks, or smiling were indications that sex was being allowed. They wouldn't need to worry over whether, once their intended partner had passed out or ceased to be coherent due to alcohol or drugs, they should continue with the sexual act. They would know: no. They would know they needed to get a clear indication that sex was not only permitted, but welcome.

Lawyers and judges wouldn't have to pour over the previous sexual history of the alleged victim or their previous relationship with the accused to decide whether their prior behaviour had been an indication of whether they would allow sex. They would know that this was not relevant. It would not be possible to say that the rapist carried no responsibility due to the level of intoxication of the victim or the fact that they had dared to leave their house after 6pm. None of this would matter. In fact, the victim being too intoxicated to demonstrate clear intent would be proof of rape, as it should be.

The only thing that would matter is the only thing that should matter: whether or not the alleged victim had \*wanted\* to have sex with the alleged perpetrator.

I can't see a downside to that. Most normal, rational men would be happy to (in fact, they



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already) look for enthusiasm in a partner. If enthusiasm was enshrined in law, boys and girls would grow up with a clear idea of what true consent looks like: showing clearly that you want to be intimate with someone and that you desire them. Not being cajoled, or intimidated, or intoxicated. Legal cases would be less complicated, making justice more efficient, simpler and more cost-effective! The media and legal system would learn not to hold the victim responsible for a crime committed against them.

It will never be a fool-proof system. Certainly we will still have problems proving whether that "enthusiasm" really was demonstrated or not. But we can then focus on the real issue - whether the accused wanted to have sex with the accuser - rather than irrelevant victim-blaming elements like the length of the victim's skirt.

It is offensive to men to suggest that the most that can be expected of them is for their intended partner not to say "no". Most men are perfectly capable, willing and, indeed, enthusiastic to look for a partner who wants them. Let's stop treating men like savage animals, stop setting the bar so tragically low, and stop tying ourselves in knots trying to answer a question that doesn't matter. Trying to ascertain whether or not there was a clear "no" has proved to be confusing and misleading. It hasn't worked. Let's spend our energies looking for a clear "yes".