

Attacks on the mind and the legal limits of the seduction industry

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The seduction industry aims to teach men how to be more successful at attracting women. It is global and highly lucrative. The ultimate aims of its clients vary. Some wish to find a partner for a long term and monogamous relationship, others simply wish to have sex with as many women as possible. A wide variety of products are available to assist in these goals. A range of handbooks exist; some are bestselling and a part of mainstream culture. It is not at all unusual to see the authors of these books interviewed on daytime or primetime television. One even had his own reality television show in which contestants were coached in ‘the art of the pick-up’ on VH-1¹. For the more serious aspiring Casanovas, one could attend a seminar, pursue an online course, or even sign up for one-to-one ‘in-field training’ from a self-styled ‘Pick-Up Artist’ or PUA: Ross Jeffries, discussed below, charges \$24,997 for seven days of private tuition.

In such a competitive market and with so much at stake, it is unsurprising that there should be a plethora of different approaches to seduction on offer. In addition, each of these approaches tackles the issue in minute detail, addressing different parts of social interaction. For our purposes, we can divide seduction training into two components.

The first component might be best described as focusing on *what women want*. This aspect teaches men how to dress, groom, behave and speak in a way that is considered desirable. Lists of ice-breakers, or ‘openers’, are provided as a way of approaching women for the first time. There are detailed strategies provided for how to deal with common obstacles such as a rival suitor or an overprotective friend. There are also step-by-step instructions on how to tell if a woman is interested, what to do if she is, and even how to exit with good grace if she is not.

A second component to the seduction industry might be best described as *making women want*. Our focus in this chapter will be this, second, aspect, and how it relates to programmed consent. By this we mean ‘consent’ to sexual activity gained through techniques

* We would like to thank Robin Pickard for his research assistance. We would also like to thank Dr Tanya Palmer, Professor Jo Bridgeman and Dr Hans Crombag for their helpful comments. The usual disclaimer applies.

¹ *The Pick Up Artist* (3Ball Productions) was hosted by Erik Von Markovic, aka ‘Mystery’. It ran for two seasons from 2007 to 2008.

such as neuro-linguistic programming (NLP) and hypnosis. Such techniques have been developed (in the context of seduction) and marketed by PUAs such as Ross Jefferies,² as a means to control the sexual desires of women and to program their sexual consent.³ In this way, such techniques have the potential to undermine (or at least attempt to undermine) a woman's mental and sexual autonomy.

In spite of the prevalence of the seduction industry in mainstream culture, and despite the potential gravity of the harms risked, these issues are yet to receive extensive legal attention. In this chapter, we analyse techniques of programmed consent over three parts. In Part A we discuss attacks on the mind in general terms, exploring the extent to which the law protects against mental manipulations. In Part B we focus on the seduction industry, and the detail of the claims made about their techniques. Finally, in Part C, we discuss how the current law (in the sexual context at least) could be used to protect victims' mental integrity, whether the techniques attempted for programming consent are successful or not.

Part A. Attacks on the mind

The most well-known (and, arguably, the most serious) subset of sexual offences depend in very large part upon demonstrating the non-consent of a victim (V) to sexual activity with (or under the control of) a defendant (D).⁴ The central role of V's non-consent in such cases has been described as a form of 'moral-magic',⁵ transforming the individual and social good of consensual sexual activity into a serious criminal wrong.⁶ However, despite the vital role of consent within such offences, the legal problems encountered within its definition and application are depressingly familiar. Thus, it is important to place our current discussion of programmed consent within this literature.

The focus of this chapter, programmed consent, engages with the potential for an apparent communication of consent to be deemed legally ineffective. Within the current

² Ross Jefferies, *Secrets of Speed Seduction® Mastery: How to Master the Art and Science of Getting Any Woman into Bed in 20 Minutes or Less* (Ghita Services, Inc., Culver City, CA, 2010); Ross Jeffries *How to Get the Women You Desire into Bed* (Jefferies Publishing, Van Alstyn, TX, 1992).

³ Almost all sexual offences are gender neutral, both in terms of defendant and victim. The seduction industry is aimed squarely at a male audience, so this chapter employs male pronouns for defendants and female pronouns for victims.

⁴ The Sexual Offences Act 2003 (SOA 2003), s1-4.

⁵ Hurd, 'The moral magic of consent' (1996) *Legal Theory* 121.

⁶ For an alternative view, contending that all sexual penetration is prima-facie wrongful, see Dempsey and Herring, 'Why sexual penetration requires justification' (2007) *Oxford Journal of Legal Studies* 467.

literature, this has been explored in relation to two main areas. First, we have cases where V lacks the capacity to consent because she is unable to make a reasoned decision (eg, due to mental illness⁷). Secondly, we have cases where V has capacity to consent, but her apparent consent is invalid because it is the product of fraud or duress.⁸ Both of these areas have been highly contested academically and in the courts.⁹ However, although there is some overlap between our current investigation and both of these areas, the potential for programmed consent does not fit neatly into either category: a programmed V *may* lack capacity to consent, but this is not due to any mental illness or naturally occurring infliction; she *may* have been unduly manipulated, but this will not necessarily involve fraud or duress. It is therefore important to analyse the legal position of programmed consent on its own merits.

Attacks on the mind and the criminal law

There has been a long history of extreme claims being made about the power of techniques such as NLP, subliminal or non-conscious priming and persuasion, hypnotism, and so on. However, in almost every case such claims have been discredited as outright hoaxes and/or by failures to replicate their (ostensibly) supportive experimental evidence under controlled laboratory conditions.¹⁰ Notwithstanding, a lot of money has been spent by people who want to believe that techniques of this kind can help them quit smoking or to be more successful in their lives.

The law has shown a clear scepticism whether there is a genuine need for protection in this area. There has been civil regulation, but an absence of criminal law.¹¹ However, there

⁷ Where D lacks the capacity to choose to consent, any expression of consent will be legally ineffective and will be caught within the actus reus of sections 1-4 of the SOA 2003. In practice however, sections 30-37 are more likely to be charged.

⁸ The most extreme cases in this category are covered by conclusive presumptions of non-consent (SOA 2003, s76) and evidential presumptions (SOA 2003, s75).

⁹ See, for example, the recent flurry of cases concerning consent gained by deception. Laird, 'Rapist or rogue? Deception, consent and the Sexual Offences Act 2003' (2014) *Criminal Law Review* 492.

¹⁰ See, for example, James Vicary's claims in 1957 to have increased food and drink sales in a local cinema through subliminal persuasion. Strahan et al, 'Subliminal priming and persuasion: Striking while the iron is hot' (2002) *Journal of Experimental Social Psychology* 556. More generally, see Doyen et al, 'Behavioural priming: It's all in the mind, but whose mind?' *PLOS ONE* 7(1); Lynott et al, 'Replication of "Experiencing physical warmth promotes interpersonal warmth" by Williams and Bargh' (2008) *Social Psychology* 216; Seth et al, 'Measuring consciousness: relating behavioural and neurophysiological approaches' (2008) *Trends in Cognitive Sciences* 314.

¹¹ The Hypnotism Act 1925, for example, simply deals with the licencing of venues for hypnotism performances. For the regulation of subliminal messages, see Morton, 'From the sublime to the ridiculous: hidden messages in computer games under English law' (1997) *Computer and Telecommunications Law Review* 49.

have been occasions, particularly in relation to hypnosis, where exaggerated claims have triggered a criminal law response. We see this, for example, in the current automatism rules where hypnotic suggestion or trance is almost universally included as a paradigm of involuntariness, allowing the drone-like subject of hypnosis to avoid liability for any crimes committed whilst under the power of the hypnotist.¹² The problem here is not the fact of a legal response, but rather the isolation of that response to deal exclusively with an exaggerated stereotype of hypnosis,¹³ leading to its lack of use in practice.¹⁴ Where a subject is hypnotised, but not rendered into a trance, their legal position is uncertain.

Criminal law's scepticism concerning claims about mind intervention and control is also shared within the psychology literature. However, crucially, the latter does not adopt the all or nothing approach we see in the law. Rather, despite recognising the unreliability of many of the more extreme claims,¹⁵ and despite difficulties in methodology¹⁶ (and ethics¹⁷) when it comes to testing those claims, there is a general consensus that various mind intervention techniques *do* have an impact upon the practical reasoning of a subject. The content of this consensus is rather modest. Subliminal priming can enhance or consolidate wants that are already apparent, but does not appear capable of controlling the actions of a subject;¹⁸ hypnosis shows effects on a subject's frontal lobe, impacting their capacity to engage in critical thinking, but does not lead to uncontrolled movement;¹⁹ and so on. Despite their relative modesty, where such techniques are employed without the authorisation of V, they still represent a threat to individual autonomy, a threat that warrants the attention of the criminal law.

Another common theme within the psychology and neuroscience literature is the understanding that techniques for mental intervention and control will become increasingly effective in the future, and a concern about where this might lead. The refinement of existing techniques and/or development of new techniques involving electronic, genetic and/or pharmacology induced stimulation of select regions of the brain at cellular or even molecular

¹² Coley [2013] EWCA Crim 223, [19-22]. See also the US Model Penal Code, 2.01(2)(c).

¹³ Wagstaff, 'Hypnosis and the law: Examining the stereotypes' (2008) *Criminal Justice and Behaviour* 1277.

¹⁴ In their recent review of automatism the Law Commission has maintained references to hypnotism as a paradigm of automatism, but their consultation reveals only a single case where hypnotism was raised in this way (and this was unsuccessful). Law Commission, *Insanity and Automatism: A Discussion Paper* (2013) [B.165].

¹⁵ See Wagstaff (n 13).

¹⁶ Seth et al, 'Measuring consciousness: relating behavioural and neurophysiological approaches' (2008) *Trends in Cognitive Sciences* 314.

¹⁷ Coe et al, 'Experimental and ethical problems of evaluating the influence of hypnosis in anti-social conduct' (1973) *Journal of Abnormal Psychology* 476.

¹⁸ Strahan et al, (n 10) 566.

¹⁹ Gruzelier, 'Redefining hypnosis: Theory, methods, and integration' (2000) *Contemporary Hypnosis* 51.

levels holds the potential for much more precise and complete control in the future.²⁰ There has also been (and is likely to be) similar progress in the testing used for understanding what type and degree of intervention has taken place.²¹ The progress in psychology in this area (both current and future) is often accompanied by concern, precisely because of the lack of legal protection. This includes the issue under discussion pertaining to programmed sexual consent, but extends to the potential for techniques of mental intervention and control to be used in unethical advertising, and even political brainwashing.²² In this way, the case for increased protection through the criminal law is even more apparent, and has been acted upon in some other jurisdictions.²³

It has been contended that the criminal law in this jurisdiction should recognise a specific right to mental self-determination, and create specific criminal offences to protect it. In a wide-ranging paper by Bublitz and Merkel in 2014, the case for offences of this kind is made convincingly.²⁴ The authors highlight a range of ways in which mental intervention is currently possible and/or is likely to become possible in the future, including the use of various drugs (eg, causing hunger or thirst outside a restaurant), subliminal priming, electronic brain stimulation, and so on. Stressing the fundamental need for protection, they state:

Mental self-determination is not just a right granted (or denied) by legal orders. It is among the basic assumptions on which liberal legal orders are built.²⁵

Beyond the general support within their paper for criminalising attacks on the minds of others, Bublitz and Merkel also highlight a useful distinction between direct and indirect brain intervention. Direct brain interventions are those which bypass V's thought processes entirely and work directly upon the physiology of the brain. Examples of this include the use of mind altering drugs, surgical or electronic stimulation of the brain, and so on. Where D directly attacks the mind of V in this manner, the case for criminalisation is relatively straightforward: although V *may* not have suffered physical injury, their mental self-determination has been

²⁰ Krasner, 'Behaviour control and social responsibility' (1962) *American Psychologist* 199, 201-2; Kelman, 'Manipulation of human behaviour: An ethical dilemma for the social scientist' (1965) *Journal of Social Issues* 31; Vincent, 'Neurolaw and direct brain interventions' (2014) *Criminal Law and Philosophy* 43.

²¹ Seth et al, 'Measuring consciousness: relating behavioural and neurophysiological approaches' (2008) *Trends in Cognitive Sciences* 314.

²² Kelman, (n 20); Bublitz & Merkel, 'Crimes against minds: On mental manipulations, harms and a human right to mental self-determination' (2014) *Criminal Law and Philosophy* 51.

²³ For example, the French offence of abuse of ignorance or weakness: Art. 223-15-2.

²⁴ See Bublitz & Merkel, (n 22) This article was published within a special issue of *Criminal Law and Philosophy* exploring the legal implications of mental interventions. The other papers are not directly relevant to the current discussion, but provide an interesting view of the (potential) future in this area.

²⁵ *ibid* 62.

totally bypassed.²⁶ Direct interventions of this kind are peripheral to the focus of this chapter (ie, the methods of programmed consent employed by PUAs), but we would certainly echo Bublitz and Merkel's conclusions that criminal offences should be put in place to protect victims from this form of intervention.

More relevant to our discussion is the potential criminalisation of indirect (or socially reinforced²⁷) interventions. This category includes NLP, subliminal priming and hypnosis. Indirect attacks aim to impact V's thought processes, but without physical or chemical intervention on the brain itself. In many ways indirect attacks of this kind are indistinguishable from direct attacks: their engagement with V's critical faculties may be minimal (eg, with V's unconscious mind only), and the outcome impacts upon V may be exactly the same.²⁸ Moreover, unless one takes a dualist stance on mind-brain relations, indirect interventions are also expected to alter biological processes, blurring the line between direct and indirect interventions even further. However, as Bublitz and Merkel highlight,²⁹ the criminalisation of indirect mind interventions would require additional elements within the construction of a crime. This is because, once we accept that interventions of this kind are not likely to result in automatism in V, and once we instead focus on more limited forms of control or manipulation, our indirect attack offence risks the criminalisation of 'legitimate' forms of manipulation such as advertising, and even political or religious discourse. Indeed, any interaction between human beings is capable of impacting their future behaviour and choices. Any new offence would therefore have to include an additional normative filter, requiring *undue* or *improper* intervention for example.³⁰

Programmed seduction

Having discussed mental interventions and criminalisation in general terms, it is now useful to focus in upon the subset of attacks most relevant to this chapter: programmed consent. Whilst this area is not discussed within Bublitz and Merkel's paper, we believe that it warrants particular attention for three main reasons. First, unlike many of the more theoretical attacks discussed above, the seduction industry shows us that men are *currently* attempting techniques

²⁶ *ibid* 69 and 73.

²⁷ Term employed in Krasner (n 20) 199.

²⁸ Vincent (n 20) 46.

²⁹ Bublitz & Merkel (n 22) 69-70.

³⁰ *Ibid* 70-75.

for manipulating and programming consent. We discuss the specifics of this in Part B below. Secondly, although psychology literature challenges the stereotype that hypnosis leads to a subject's automatic (entranced) obedience, it does support the idea that such techniques can disrupt V's reasoning processes. Thus, the particular dynamics between a PUA and his so-called 'target', combining hypnosis and other intervention techniques with assertive and sexually confident interaction, provides the ideal setting for such techniques to be most effective.³¹ Thirdly, whereas Bublitz and Merkel lament the lack of criminal law protection and criticise the criminal law's focus on body rather than brain, the sexual offences are notable for not conforming to this general rule. This final point requires some unpacking.

Unlike most other non-fatal offences against the person, sexual offences are not defined in relation to physical harms suffered by V. Rather, as we highlighted above, the central wrong within offences of rape (section 1, SOA 2003), assault by penetration (section 2, SOA 2003), sexual assault (section 3, SOA 2003), and causing a person to engage in sexual activity (section 4, SOA 2003), is the fact that D's conduct is not consented to by V. Our focus for these offences, therefore, is the *mind* of the victim. Of course this has not always been true, and older cases have tended to conflate questions of non-consent with physical displays of resistance, but the focus of the current law on V's mental state is now clear.³² Consent is defined in section 74 SOA 2003:

... a person consents if [s]he agrees by choice, and has the freedom and capacity to make that choice.

The focus within this definition on 'choice', 'freedom', and 'capacity', provides a potential for legal protection of the mind, a potential that is absent from almost all other areas of criminal law.³³ Where V's choice to consent is programmed by another, it is important to ask whether such intervention undermines V's freedom and capacity to choose, even where this control is not complete.³⁴

³¹ Wagstaff (n 13) 1280.

³² *McFall* [1994] CrimLR 226; *Malone* [1998] All ER 176. Leader-Elliott & Naffine, 'Wittgenstein, rape law and the language games of consent' (2000) *Monash University Law Review* 48.

³³ In fact, this area has attracted feminist critiques that it is *too* concerned with the mental and not with the body. For example, Lacey 'Unspeakable subjects, impossible rights: Sexuality, integrity and criminal law' (1997) *Women: A Cultural Review* 143.

³⁴ Despite a number of conclusive and evidential presumptions of non-consent within the SOA 2003, and despite the focus of consent on the mind of V, none of these presumptions apply straightforwardly to attacks on V's mind. The closest we have is an evidential presumption set out in section 75(2)(f) relating to the non-consensual drugging of V. However, this presumption is not based on the drugs impact on V's mind, but rather on its potential for stupefying V or enabling D to overpower her. It is unclear why this presumption was isolated to the physical

We return to the discussion of sexual offences and consent in Part C. It is in this part that we explore the potential application of these offences to PUAs who attack (or attempt to attack) V's freedom and capacity to choose.

Part B. The seduction industry

The part of the seduction industry relevant to this chapter suggests that it is possible to manipulate (and thus program) a woman's emotions and desires, through a variety of techniques, with the explicit and sole aim that she will 'want' to have intercourse with the practitioner of these techniques. These aspects are based upon NLP in particular, which is heavily influenced by Milton Erickson's pioneering work in the use of hypnosis in therapy. As the name suggests, Neuro-linguistic programming purports to program (or control) thought processes, via speech. It is described as a form of 'hypnopsychology', and it was first popularized as a means of self-help in the 1970s. NLP claims that it is possible to make a person more assertive, confident and better at communication by programming one's own brain (or that of a subject in therapy) to respond in positive ways emotionally to various words.

When NLP became popularised, industry was quick to pounce. If it is possible to program a desired emotional response into one's audience, there are clear advantages in sales, marketing, customer service, and contract negotiation. Even if the term itself has not been used, or has largely died out, many leading brands and industries have coached versions of these techniques as part of staff training.³⁵ NLP itself is a multi-billion dollar industry, in spite of persistent academic and popular scepticism. The NLP academy claims to have trained over 50,000 people worldwide in these techniques and a core skills diploma can be yours for £1,999. So-called 'life-coaching' and a plethora of guides and techniques to self-improvement, from quitting smoking to conquering phobias, have their roots in NLP.

The modern seduction industry was born when Ross Jeffries first saw the possibilities in NLP for becoming more successful with women. A central idea in seduction techniques that are based on NLP is that a man can program 'any woman' to wish to have sex with him, simply through the power of his voice and words, within 'twenty minutes or less' of meeting her.³⁶ It

impacts of the drug rather than its mental impacts, but this is certainly an area that could be usefully reformed in the future to increase the protection of V's freedom to choose.

³⁵ BMW, Diners Club, American Express and Fiat have each used NLP as part of staff training.

³⁶ This claim comes from the subtitle in Jeffries *Secrets of Speed Seduction* (n 2). A huge caveat must be applied; the seduction industry is rife with outlandish claims about what various techniques can do. It is beyond the scope of this paper to address whether NLP actually works.

is claimed that one can use NLP to bypass the part of a woman's brain that deals with rational decision-making, logic and resistance to suggestion, and directly appeal to the subconscious, emotional parts of the brain. One can thereby program the responses that one wishes to elicit. It is said that by putting a woman into a 'trance' state in this way, '[i]nstead of dates that end up with a polite peck on the cheek, you'll end up taking it as far as you want to go, regardless of how the woman felt about you before you used these techniques on her'.³⁷

Ross Jeffries and Neuro-Linguistic Programming

If it really is possible to by-pass conscious decision making on the part of a woman, this sounds a lot like by-passing consent itself. Indeed, in a chapter titled 'How to use hypnosis to get your date into the sack' Jeffries wrote the following in 1988:

One last caution before I lay out this technology. In some states, rape is defined as "intercourse of a woman, by a man, by force, threat of force, or OTHERWISE WITHOUT CONSENT". In some states, if you get the date drunk, and fuck her while she's passed out, you could find yourself facing a rape rap. Likewise for hypnosis. I am not an attorney, and am not giving you legal advice, but I warn you here and now of the possible consequences and am not about to be held responsible if you get slapped with charges. YOU USE THESE METHODS AT YOUR OWN RISK (And I wouldn't have to give this disclaimer/warning if these methods did not work as well as they do).³⁸ (*emphasis in the original*)

Later in the same chapter, he talks of how to 'bypass all of a woman's conscious resistance to screwing you'.³⁹ In the following chapter he opens with the claim that 'we have all heard the nonsense about how "no means no"'.⁴⁰

It should be noted at this point that Jeffries has distanced himself from that particular publication on the basis that it does not reflect 'who he is now'. He has even attempted to prevent further publication. Jeffries' personal rejection of this early, slender volume is irrelevant to our investigation for two reasons. First, the 'technology' referred to, above, is still at the very core of his Speed Seduction® technique, which he continues to teach and which has spawned hundreds of imitators. He has no qualms with using testimonials as to the successful application of his earlier work in order to promote later publications. The more recently published *Secrets*

³⁷ Jeffries (n 2) 59.

³⁸ *ibid.*

³⁹ *ibid* 60.

⁴⁰ *ibid* 71.

of *Speed Seduction® Mastery* contains a watered down, more vague disclaimer at the start for any actions by those that have learned this method.⁴¹ Jeffries' recantation appears to be limited to some of the coarse vocabulary used; he no longer refers to himself as 'the guru of gash' and his website encourages 'respect for yourself and the women you enjoy', though there remains plenty of unfortunate language when one delves deeper.⁴² Secondly, and much more importantly, we are not targeting Jeffries individually. Jeffries is 'the undisputed father of modern seduction'.⁴³ Many have earned more money or become more famous, but no Pick-Up Artist has been anything like as influential. The self-published *How To Get The Women You Desire Into Bed* has been referred to as the Bible of the seduction industry. Every modern course in the industry borrows at least some of these techniques and our concern is with this element of the broader industry, rather than a witch-hunt of its pioneer.

Not all NLP-based aspects of the seduction industry are part of our investigation. Much of this approach focuses on self-improvement in order to portray confidence, communicate more effectively and overcome common anxieties involved in approaching women or asking someone out on a date. Instead we will focus on those techniques that are said to use hypnosis as a means of by-passing conscious decision-making and generating sexual arousal. In this regard, there are three key steps. These are likely to each be used more than once in the course of a 'seduction', and their order might vary depending on the circumstances. In what follows we provide the basics, while trying to avoid some of the nuances and more complicated jargon.

1. Eliciting the preferred representational system

A fundamental notion in NLP is that we each have different 'maps' for understanding and experiencing the 'terrain' of the real world that we encounter. Each person's map is different, but we each have a preferred representational system. Some prefer to experience and remember things visually, some orally, some aurally and others kinetically (through touch). In NLP-based seduction techniques, it is vital to identify the preferred representational system of the woman in question, in order to unlock her sub-conscious mind. One way of doing this is to engage the woman in a conversation about some pleasant, ideally 'exciting', memory. Jeffries claimed at one point that 'nine times out of ten', if you ask a woman to tell you about something exciting that has happened to her and use the correct tone of voice, the story will be an erotic one. This

⁴¹ Jeffries *Secrets of Speed Seduction* (n 2) i.

⁴² Success story videos on the site include titles such as 'From rock bottom to moist pink abundance' and '51 Year Old Man Bangs over 90 Chicks', see <http://www.seduction.com/wallofproof/> accessed 2nd August 2015.

⁴³ Neil Strauss *The Game: Penetrating the Secret Society of Pick Up Artists* (Regan Books, New York, 2005) 38.

claim may seem dubious, but it need not be true. Something as simple and innocuous as an enjoyable vacation would work. As the woman recounts this story, her preferred representational system should become clear, but the man should ask questions that will help in its discovery. So if a woman describes a beach holiday, for example, the man should ask questions about which feelings or sensations she particularly enjoyed. If she responds by talking about the feeling of warmth on her skin and the sand beneath her feet, her preferred representational system is kinetic. On the other hand, if she talks about the sight of sunshine glistening on the ocean and clear blue sky, her preferred system is visual. If she responds by talking about the sound of the swash and backwash of the ocean, it is aural, and so on. More daringly and more directly, one might even enter into a conversation about how the woman has felt in the past when she met a boyfriend for the first time or when she looks at a movie star upon whom she has a crush, and to key into how she expresses those feelings.

2. Patterns

Eliciting the preferred representation system will take place early on in the conversation, while the woman is talking. When the man talks he must use a number of 'patterns'. This may happen before, after, or preferably both before and after the preferred system has been determined. The purpose of a pattern is to induce a trance like state in the woman, via specifically designed storytelling. It is important that this is done subliminally. A cardinal rule for Jeffries is that one must never tell a woman that one is capable of inducing such a state. Instead of talking about oneself, it is better to present the story (i.e. pattern) as though recounting something that has happened to a friend or that one has read or seen on television. In this way, it is said, one can bypass the parts of the mind that generate suspicion and resistance. The normal guards are lowered if the story is at a distance, so one might introduce it as something that happened to 'my friend, Tim' or in a television documentary that one has seen. The story should be very sensually rich so as to arouse a sensory response in the woman. It should also involve various, subliminal words that are really little more than double-entendres, but appear perfectly innocent in context.

A favourite of Jeffries (and through his influence, PUAs worldwide) is 'The Discovery Channel Pattern'. This involves claiming that one has seen a documentary on what makes the ideal rollercoaster ride at funfair attractions. As a pattern, it affords the opportunity to the man to talk in rich, sensual terms, perhaps with the knowledge in advance of the woman's preferred representational system. So if the woman is kinetic, one can emphasize the feeling of anticipation and excitement aroused when one feels the rollercoaster in its ascent, the sense of

wild abandon when it reaches its climax, and the rush as it speeds onwards to more and more fun later on. If the story is told well, with the correct use of the voice, the woman will be emotionally transported to those sensations; she will actually imagine being on a rollercoaster and the feelings that it evokes. It also allows one to mention terms like ‘attraction’, ‘feeling’, ‘excitement’, ‘arousal’, ‘climax’ and even ‘getting off’, in an apparently innocent context. While the conscious mind might have put up resistance to discussion of such things in a sexual context during a conversation with a recent acquaintance, it will not do so in a discussion of rollercoasters. The subconscious mind, Jeffries and others suggest, will still make the connection. So even if the woman is only conscious of idle, relaxed chit-chat, the notion of sexual intercourse has been planted into her subconscious mind. The idea is that she is already being sexually aroused without knowing it.

3. Anchoring

During steps one and two, the man should use ‘anchoring’. An ‘anchor’ is some physical marker, which is introduced during the creation of a desired response in the woman. These anchors are to be repeated throughout the conversation. So if the man were to rub his chin, during the sensual parts of the story when a woman is (unwittingly) revealing her representational system, he should perform the same gesture, at the relevant time, during the various patterns that he uses over the course of their conversation. If a trance state is correctly induced, the woman will experience the same sensual pleasure as she remembered in her story and imagined in his, any time the gesture is used thereafter. So by simply rubbing his chin, the man can put the woman in this aroused state at his will.

Once these three steps have been followed, there is a wide variety of ways to proceed to intercourse using this mind-manipulation. Space prohibits a full explanation of the various other techniques that can be employed. These include methods to get around ‘last minute resistance’ by ‘freezing out’ a woman who refuses sex, thus associating negative emotions with that refusal. It also includes subliminal ‘command words’. One could link the rollercoaster story to arousal by saying something innocuous such as ‘when you are really attracted to someone, you feel the same way’; the idea being that the subconscious will hear the command ‘feel the same way’ and thereby respond with a flood of those sensations and emotions. This even extends to using deliberate mispronunciation to issue a command – a crude, but well known example from Jefferies is to use what appears to be the phrase ‘below me’, but actually issue the command

‘blow me’. In a trance state, it is claimed, the unconscious mind will make the woman respond to this command.⁴⁴

All of the literature, online courses and youtube seminars in this area are, of course, directed squarely at men. There are thus virtually no accounts of these interactions from the perspective of a woman who has been manipulated into sexual intercourse in these ways. It seems clear, however, that the woman in question will not feel so ‘out of it’ as to be unaware of what is happening or unable to remember the incident; this system does not produce a dissociative state. Popular stereotypes about hypnosis, highlighted in Part A, do not apply here; the woman in question does not stare at a pendulum then ‘do her master’s bidding’. Instead, the notion is that these techniques will enable a man to implant the desire to have sex with him into the mind of a woman. As Jeffries puts it, ‘whatever you can get a woman to imagine for herself, is going to be perceived as her own thought...you are throwing your own thoughts into her head’.⁴⁵ The woman’s conscious mind will feel that she has made a deliberate decision, while in fact the man has programmed her to have that desire in the first place, and then programmed and commanded her to act on it.

Part C. Legal responses to programmed seduction

Having discussed the potential for legal protection against unauthorised mental interventions in general, and having discussed a particular set of techniques within the seduction industry, this Part of the chapter brings the two areas together. It is here that we discuss the potential application of the law on sexual offences. In doing so, we split our discussion between two potential avenues. First, we explore the potential for liability where the techniques of the PUA work as intended, where D gains ‘consent’ through mental manipulation and programming. Secondly, we explore the potential for liability where these techniques are not successful, or where their impact on V cannot be proven.

Successfully programmed consent

Where D successfully gains ‘consent’ to sexual activity through the use of techniques such as those discussed in Part B, we ask whether this consent is legally valid, and whether D should

⁴⁴ For a good, eye-witness account of Jefferies successfully using these techniques, see Strauss *The Game* (n 43) 45-47.

⁴⁵ Jefferies *Secrets of Speed Seduction* (n 2) 16.

be liable for sexual offences under sections 1-4 SOA 2003. There are two questions of consent within these offences. First, we must ask if the successfully manipulated V is consenting in fact (part of the actus reus of the offences). Secondly, we must ask if it is possible in these circumstances for D to have a reasonable belief that V is consenting (part of the mens rea of the offences). We explore each in turn.

On the first question (ie, whether V consents), it is important that we focus on the mind of V and the wording of section 74 SOA 2003: does D's successful mind intervention undermine V's 'freedom' and/or 'capacity' to 'choose' to engage in sexual activity? The answer, we contend, is yes. This is because freedom to choose, at its minimum, must include the uncontrolled use of one's practical reasoning. Genuine choices about sexual consent will include a variety of factors (eg, pleasure, financial gain, family, etc), and some of these may influence V to make unwise decisions that she might later regret, but at least this is a choice that *she* has made. Where V's mental processes are compromised to even a limited (but appreciable) extent, and where such compromise was not authorised by V, we are not dealing with choices that V has made. Interestingly, even those writers advocating that hypnotised movement should be described as action (ie, not automatic) have still expressed support for this more limited position. We see this in William's example of Cesare, a fictional character who is mentally controlled by Dr Caligari and used by him to commit murder:⁴⁶

... suppose Caligari had said, "You agree to do it?" and Cesare, in his somnambulistic state, had said "Yes, I agree to do it." Cesare would not have actually agreed to do it: that is not an act that in this state he can perform. The explanation is to be found in his dissociation from considerations that essentially bear on his doing so. In this state, he cannot summon up, for instance, thoughts that would relate the killing to the rest of his life.⁴⁷

Of course, the ultimate question about the validity of V's consent (as with Cesare's intention to kill) will have to consider the *degree* of D's intervention; the more minor the intervention, the more responsible V will be for her choices. Thus, if we consider the techniques summarised in Part B, the relevant question is not the number of 'patterns' or 'anchors' used, but rather the impact of these on the mind of V. Inevitably, this becomes a question of fact for a jury.

⁴⁶ Williams, 'The actus reus of Dr Caligari' (1994) *University of Pennsylvania Law Review* 1661. The example is taken from Robert Wiene's 1919 film *The Cabinet of Dr Caligari*.

⁴⁷ *ibid* 1671.

The second mens rea question is more straightforward. This is partly because of the extremely wide drafting of the relevant provisions in the SOA 2003 on mens rea as to consent, requiring only for D to have lacked an objectively reasonable belief that V was consenting.⁴⁸ In this way, even where D believes that V was consenting (ie, where he believed that she expressed a free and competent choice to consent), D will not avoid liability unless that belief was reasonably held. Where D's deliberate aim is to program (or at least disrupt the normal mental processing) of V's mind, then his aim is in direct opposition to V's ability to make a free and competent choice to consent. There is clearly such a deliberate aim (to programme V) on the part of anyone employing the highly specific NLP-based seduction techniques discussed in Part B. Thus, D is very unlikely to believe that V is consenting in the relevant way, and even where he claims to have had such a belief, that belief could scarcely be described as a reasonable one.

Having established the likelihood for D to have committed a sexual offence in these circumstances, it is also appropriate to consider associative liability. Our question here is whether those teaching and/or publicising these techniques within the seduction industry may be prosecuted for the same offences as D, but as secondary parties?⁴⁹ The answer in most cases, again, is surely yes. Complicity liability does not require the aider or abettor (X) to have had a significant or causal impact on the actions of D. Rather, it is sufficient for X to have provided some assistance or encouragement, for that conduct to have been intentional, and for X to have at least foreseen the chance that D might go on to complete the relevant offence.⁵⁰ Crucially, this last element does not require X to recognise that D's conduct will amount to a sexual offence (ignorance of the law is no excuse). It merely requires that X had foreseen that D might employ the techniques, and that they might impact V's consent. Where promoters and PUA authors are making money from teaching about these techniques, one would assume that they at least foresee the chance that they might work. As noted in Part B, we even see explicit awareness of this via the use of disclaimers of liability. Of course, such disclaimers have no legal force.

⁴⁸ For rape, see SOA 2003, s1(1)(c).

⁴⁹ Secondary liability is provided by the Accessories and Abettors Act 1861, s8.

⁵⁰ *Carter v Richardson* [1974] RTR 314.

Set out in these terms, the case for liability under the current law appears to be a strong one. However, it is useful to highlight two factors that will potentially make prosecutions problematic. Both relate to the question of whether V's consent is legally effective.

The first potential problem originates in the psychology literature, and the claim within certain studies that hypnosis cannot cause (or even influence) people to act against their will. In a series of studies by Coe, Kobayashi and Howard for example,⁵¹ hypnotised and non-hypnotised participants were asked to sell heroin as a favour for the lead investigator (not knowing that the request was part of the study). The study found that hypnotism had no effect on a participant's willingness to engage in the illegal conduct (ie, could not cause participants to act against their will), with the study even showing a slightly increased acceptance among the non-hypnotised group.⁵² Similar doubts have also been raised as to NLP and subliminal persuasion.⁵³ If the techniques discussed in Part B could be shown to have no scientific basis whatsoever, then clearly those techniques will not have undermined V's consent. As discussed in Part A, it is likely that such techniques will be developed further in the future, and effects may (at that stage) be found,⁵⁴ but the current psychology literature remains problematic for prosecution purposes.

The second and related problem, also emanating from psychology, relates to the difficulty of measuring the effects of techniques such as NLP and hypnosis. Even where individuals are hypnotised under controlled conditions, different behavioural or neurophysiological measures designed to assess a subject's level and state of consciousness are not entirely reliable, and can often yield contradictory findings.⁵⁵ In the context of a criminal trial, which examines past (non-clinical) events, the lack of a reliable measure will be particularly troublesome. This is because the prosecution must prove beyond reasonable doubt that D successfully manipulated and/or programmed V's consent on the specific previous encounter. This problem is exacerbated in the context of the scenarios outlined in Part B. Patterns are deliberately constructed so as to take the form of normal social interaction. Even evidence of standard pattern use will not be conclusive of their impact on V's mind. These

⁵¹ Coe et al, 'Experimental and ethical problems of evaluating the influence of hypnosis in anti-social conduct' (1973) *Journal of Abnormal Psychology* 476.

⁵² The study took account of variables such as the participant's individual moral stance in relation to drugs.

⁵³ Pratkanis & Aronson, *Age of Propaganda: The Everyday Use and Abuse of Persuasion* (1992).

⁵⁴ Current research does not support effects beyond chance level.

⁵⁵ Seth et al, 'Measuring consciousness: relating behavioural and neurophysiological approaches' (2008) *Trends in Cognitive Sciences* 314.

problems may be overcome (or at least mitigated) over time as our ability to measure the effects of hypnosis and NLP improves. Currently it provides a significant obstacle to prosecution.

The problems identified in the previous paragraphs do not justify or mitigate the actions of men within the PUA community who attempt to use techniques such as NLP and hypnosis to undermine the sexual choices of women. Therefore, although they represent obstacles to prosecution, the case for criminal law intervention remains a strong one. With this in mind, a more promising route to prosecution may lie within the inchoate offences: offences which focus on the criminal intentions of D, as opposed to the impacts of their conduct. Bubnitz and Merkel have also highlighted this in relation to potential general offences of mental manipulation.⁵⁶

Attempted programmed consent

In addition to the substantive sexual offences discussed above (sections 1-4 SOA 2003), each offence can also be committed in an inchoate form. Inchoate offences, such as attempt,⁵⁷ may be particularly useful in this context. Where D's efforts to program the consent of V are unsuccessful, attempts liability provides one of the only routes to potential liability. And even where D's efforts are successful, charging D with an attempt offence avoids the problems of proof highlighted at the end of the last section. Essentially, attempts liability focuses on (and blames) D's conduct in trying to program the consent of V, avoiding psychologically controversial questions about the impacts of that attempt on V's mind. In other words, if D were to go through the steps outlined in Part B, culminating in a subliminal 'command' for V to sleep with him, D could still be liable even if V is unaffected (or the effects on V cannot be proved).

So does D commit an attempted sexual offence when he tries to program V's consent? First, to satisfy the actus reus, it must be proven that D's conduct went beyond mere preparation towards the commission of the substantive offence,⁵⁸ or did so on the facts as D believed them to be.⁵⁹ In this regard, it might be argued that a conversation between D and V would not be sufficiently proximate to the forms of sexual activity proscribed within the substantive offences to be 'more than merely preparatory'. Eliciting a preferred referential system, delivering a

⁵⁶ Bubnitz & Merkel, (n 22) 74.

⁵⁷ Criminal Attempts Act 1981, s1 (CAA 1981).

⁵⁸ CAA 1981, s1(1).

⁵⁹ CAA 1981, s1(2).

pattern and even anchoring do not necessarily involve any sexual activity. Indeed, patterns are often designed to appear entirely innocuous and devoid of sexual content. This argument, however, does not work. There is a strong line of precedent in relation to sexual offences which allows for attempts liability from the moment of confrontation.⁶⁰ For example, this would be the case where D physically restrains V prior to sexual contact. As noted in Part A, attacks on the mind should be treated no differently. D physically confronts and restrains V in order to prevent resistance. D runs patterns, anchors and programs V in order to prevent resistance. Indeed, ‘overcoming’ various forms of ‘resistance’, in the form of conscious decision-making, are recurring themes in the literature. D’s conduct satisfies the actus reus of attempt through confrontation by way of attack on V’s mind. Of course, in a case in which sexual activity ensues, the requirement of moving beyond mere preparation is clearly satisfied.⁶¹

The next question is whether, at the moment of confrontation, D has gone beyond mere preparation towards *non-consensual* sexual activity. This need not, however, lead us back to the problems of proof discussed in the previous section. Rather, even if D’s attempts at NLP and/or hypnosis will have no impact on V’s mind, as long as D intends and/or believes that they will, his conduct will satisfy the actus reus on the facts as he believes them to be (ie, as an impossible attempt). Thus, as long as D performs the sort of techniques discussed in Part B, and does so in the belief that these techniques have some prospect of success, the actus reus of the attempt offence will be satisfied.

Beyond the conduct requirements for attempts liability, D must also hold the required mens rea. This is satisfied where D acts with the intention to complete the relevant sexual activity (ie, within sections 1-4 SOA 2003), and intends/knows that V will not consent to that activity.⁶² Where D is using techniques of NLP and/or hypnosis to seduce V, an intention to gain sexual contact is likely to be straightforward to prove. Demonstrating intention or knowledge as to V’s non-consent should also be relatively easy. V’s consent requires freedom and capacity to choose. D is specifically aiming to by-pass conscious decision-making in order

⁶⁰ *MH* [2004] WLR 713; *Dagnall* [2003] EWCA Crim 2441; *Painnaik* [2000] 3 Arch News 2; *AG’s Reference (No 1 of 1992)* 96 Cr App R 298. For discussion, see Clarkson, ‘Attempt: The conduct requirement’ (2009) *Oxford Journal of Legal Studies* 25.

⁶¹ In such a case the prosecution may nonetheless elect to charge D with an attempted sexual offence to avoid the issues of proof discussed above, for example the difficulty of measuring the impact on V’s mind after the event.

⁶² CAA 1981, s1(1).

to program V to make the choices that he desires. On this basis, D must (in law⁶³) be intending to undermine V's consent. Attempts liability appears to be satisfied.

Aside from those who put these techniques into practice (D), issues arise relating to those who teach, promote or publicise these techniques (X). In relation to such individuals, in cases where D is not straightforwardly liable for a substantive offence, the most appropriate charge would be inchoate assisting or encouraging under section 46 of the Serious Crime Act 2007 (SCA 2007). This offence does not require D to have committed a substantive sexual offence, or even to have completed an attempt. In this sense, X's liability here does not rely on the conduct of D at all, unlike complicity liability discussed in the previous section.

The actus reus of section 46 SCA 2007 requires X to have completed an act capable of assisting or encouraging D to commit one or more offences (ie, in this case, one or more sexual offences).⁶⁴ The drafting here casts the net of liability very widely. X's act need not assist or encourage D in fact, as long as it is *capable* of doing so: thus, there is no need to show that anyone was actually influenced by X. Equally, there is no need to tie X's conduct to the assistance or encouragement of any one offence: as long as X's conduct is capable of assisting or encouraging one of a number of sexual offences (eg, sections 1-4 SOA 2003), the actus reus is satisfied. In terms of mens rea, X must believe that his conduct will assist or encourage D to complete the act element of one or more of the substantive offences (ie, believe that his conduct will assist or encourage D to engage in sexual activity with V);⁶⁵ X must believe that D will complete the act element of one or more of the substantive offences (ie, believe that D will engage in sexual activity with V);⁶⁶ and X must be at least reckless as to whether D, when engaging in that sexual activity, will do so without V's consent and with the mens rea required for liability.⁶⁷ Although section 46 is (overly) complex in its construction, none of these elements would appear problematic for a prosecution to prove in the current context.⁶⁸ Ironically, Ross Jeffries' attempts to avoid liability may have the converse effect: his disclaimers demonstrate sufficient belief and appreciation of each element listed.

⁶³ D may not categorise his own conduct as attempting to undermine V's consent, but by trying to control her ability to choose this is exactly what is happening.

⁶⁴ SCA 2007, s46(1)(a).

⁶⁵ SCA 2007, s46(1)(b)(ii) and 47(4)(b).

⁶⁶ SCA 2007, s46(1)(b)(i) and 47(4)(a).

⁶⁷ SCA 2007, s47(5).

⁶⁸ For an overview of the mens rea requirements, see Child and Ormerod, *Smith and Hogan's Essentials of Criminal Law* (2015) Chapter 11.4. For discussion, see Child, 'Exploring the mens rea requirements of the Serious Crime Act 2007 assisting and encouraging offences' (2012) *Journal of Criminal Law* 220.

For those people making money from advertising and teaching PUA techniques such as NLP and hypnosis, there are very few routes available for avoiding liability under section 46 SCA 2007. One option for X would be to deny that techniques such as NLP and hypnosis are capable of having any impact on V's mind (ability to choose freely) whatsoever. This could be presented as a denial of actus reus (ie, X does not assist or encourage non-consensual sexual activity because the techniques discussed do not facilitate such activity), or as a denial of mens rea (ie, X is not even reckless as to D acting in the absence of V's consent because X does not foresee the possibility of the techniques working). Such denials would be problematic for X. Particularly where X is making money on the basis that he or she is teaching or advertising valid techniques, public denial that the techniques work and that X ever believed that they could work would be very bad for business. Indeed, such a denial could potentially lead to liability for fraud by (previous) false representation. The only other option open to X would be to rely on the defence of 'acting reasonably' set out in section 50 SCA 2007. However, this defence would require X to convince a jury that helping or encouraging men to program the sexual consent of women is reasonable. This would be (and should be) extremely difficult.

Conclusion

The criminal law generally should pay more attention to the potential for mental as well as physical attacks against the person. The potential for mental interventions and manipulations, both direct and indirect, are present dangers, and ones that are only likely to increase over time. Thus, it is important to have criminal law protection in place to protect victim's mental integrity as the science develops.

Nevertheless, as this chapter demonstrates, the law is already well equipped to protect the mental integrity of the potential victims of sexual offences. Crucially, this protection extends to attacks that use NLP and hypnosis. A host of further important issues are now raised. Prominent among these is the question of enforcement. Even if the criminal law is capable of finding liability in this area, should this be taken forward by public prosecution? We believe that it should, though a full exploration of this issue is not possible in the current chapter. Where the wrong of a criminal offence is located in a defendant's willingness to use another person against their will, and where the law is designed to protect a victim's right and freedom to choose, we believe that all conduct engaging this wrong should be treated equally. The law on sexual offences has already made great strides in this regard over the last few decades. Just as

the law has come to dismiss rape myths and to recognise that non-violent submission still falls short of positive consent, the full (and practically enforced) protection of a victim's mind cannot (and should not) be far away.

Equally importantly, we have also set out the potential for prosecution of defendants who assist or encourage others to attempt such techniques. Whether this prosecution takes the form of complicity or inchoate assisting or encouraging, there is a clear case to be made that these activities are criminally wrongful. Taken at its very best, this limb of the seduction industry is simply a lie to make men more confident when talking to women, making genuine consent more likely. However, even here, teaching men that confidence comes through attempted manipulation that removes choice from woman is dangerous, and its promulgation should be carefully managed.

If we take sexual offences seriously as violations of sexual autonomy as opposed to the simple infliction of harm, then mental manipulations (or attempts at such manipulations) are just as serious as physical manipulations. This is not the time to be sentimental about traditional ideas of seduction and masculinity. Techniques such as NLP and hypnosis are not displays of charm; they are attacks on mental and sexual integrity.