

Oxford Journal of Legal Studies (GB)/2013, Volume 33/Issue 3, July/Articles/Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong? - Oxford J Legal Studies (2013) 33 (3): 445

Oxford Journal of Legal Studies

Oxford J Legal Studies (2013) 33 (3): 445

1 July 2013

Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?¹

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Abstract--England and Wales have recently experienced wide-ranging rape law reform and a galloping rape reporting rate but no comparable increase in rape convictions, leading many erstwhile law reformers to turn attention to attitudes. In essence, their argument is that reform has proved relatively ineffective because a range of agents hold 'rape myths'. Despite the broad consensus that this approach has attracted, I argue that the regressiveness of current public attitudes towards rape has been overstated. The claim that rape myths are widespread may be challenged on three grounds: first, some of the attitudes are not myths; secondly, not all the myths are about rape; thirdly, there is little evidence that the rape myths are widespread. To a troubling extent, we are in the process of creating myths about myths. This process functions to close down, not open up, the possibilities of a productive public conversation about important and at times vexed questions.

Keywords: rape, rape law reform, rape myths, rape supportive attitudes, Sexual Offences Act 2003

CONSTITUTIONAL LAW

1. Introduction

Rape law reform is a symbiosis of success and failure. England and Wales have experienced extensive rape law reform, to such an extent that some of the staunchest critics of the previous framework believe that the regulatory regime is acceptable, or that further statutory reform is futile, or both. Concurrently, and arguably relatedly,³ there has been a substantial rise in rape reporting. However, the number of rape convictions has not kept pace, leading to a

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galloping attrition rate. To the extent that rape law reform aimed at convicting more men of rape,⁴ it has not been an unqualified success.⁵

This paradox has led many erstwhile law reformers to turn their attention to attitudes to rape. In essence, the argument is that reform has proved relatively ineffective because a range of agents, from judges through to the general public, hold 'rape myths', or 'rape supportive attitudes', meaning that the number of rape convictions will not substantially increase until these agents are either educated out of their unhelpful attitudes or removed from the criminal justice process. The nub of this argument has achieved broad consensus, as a result of which the approach has achieved some success in shaping public policy.⁶

Without a shadow of a doubt, historically attitudes to rape both reinforced and reflected women's subordinate societal role.⁷ Nor is there any question that some people still have misogynistic attitudes while some others labour under misapprehensions about rape, and these attitudes and misapprehensions may impair assessment of rape trials and rape victims. However, in what follows I argue that the regressiveness of current public attitudes towards rape has been overstated.⁸ The claim that rape myths are widespread may be challenged on three grounds: first, some of the attitudes are not myths; secondly, not all the myths are about rape; thirdly, there is little evidence that the rape myths are widespread.⁹ To a troubling extent, we are in the process of creating myths about myths,¹⁰ or 'myth myths'.¹¹

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2. Rape Law Reform

Recent years have seen 'a raft of key action plans and legislation'¹² concerning rape. The modern era arguably dates back to the Sexual Offences (Amendment) Act 1976, which *inter alia* clarified that rape was based on non-consent not force and restricted the use of sexual history evidence. Further reforms followed over the next two decades. The legal definition of rape has steadily expanded, to include marital rape,¹³ as well as anal and oral rape and thereby male victims,¹⁴ and evidential reform has kept pace: notably, the Youth Justice and Criminal Evidence Act 1999 further restricted sexual history evidence.¹⁵

Reforms have been far from confined to the legislative arena: at the key stages of the criminal justice process, there has been significant specialization, alongside special training and detailed guidance. In addition, a range of more specialized services, notably Sexual Assault Referral Centres, have been developed.¹⁶ Although further proposals have been made,¹⁷ the Stern review concluded:

In the extensive literature about rape, most of the suggestions made for ways of increasing the number of rapes that are reported to the authorities and undertaking successful prosecutions have been adopted as policy The policies are the right ones and we have few changes to recommend to these.¹⁸

Moreover, the Sexual Offences Act 2003 (SOA) clarifies the parameters of consent by stating that 'a person consents if he agrees by choice, and has the freedom and capacity to make that choice'.¹⁹ Although not seen as beyond improvement,²⁰ this re-formulation has been generally welcomed as an 'affirmative and context-sensitive standard for consent'.²¹ It is context-sensitive because the requirement of freedom and capacity seems to direct attention to the context that may constrain choice,²² and it is affirmative because it appears to demand agreement, rather than the absence of dissent.²³

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Alongside the clarification of consent, the SOA introduced the widely welcomed stipulation that the defendant's belief in consent must be reasonable.²⁴ That the complainant consents only if she agrees is buttressed by the requirement that the circumstances determining whether or not the defendant's belief is reasonable include in particular any steps that he has taken to ascertain whether or not she is consenting.²⁵ Here too, the approach has not been seen as ideal: section 1(2) provides that the reasonableness of the belief is to be determined having regard to all the circumstances, suggesting that the defendant's characteristics are not irrelevant and thus that this test is insufficiently objective.²⁶

To be sure, some commentators propose further law reform:²⁷ notably, some wish to depart from a consent-centred model of rape.²⁸ However there is widespread agreement that the SOA is an 'enlightened regime',²⁹ and at the very least, the Act is seen as representing significant improvement,³⁰ pointing in the right direction.³¹

3. The Justice Gap

Two rape statistics stand in stark contrast: the rapid rise in rape reporting, and the relatively static number of rape convictions. In 2011-12 there were 14,767 recorded female rapes;³² with 1842 in 1985,³³ this represents an increase of eight times in the last 26 years. In 1985, there were 450 rape convictions;³⁴ as of 2011, despite all the efforts noted above, this number was a little more than double (235%), reaching 1058 convictions for rape of a female.³⁵ So there has been 'a virtually continuous year-on-year rise in reporting and only a nominal increase in prosecutions and convictions'.³⁶

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The proportion of recorded rapes that result in a conviction thus currently stands at about 7%. Although this statistic is often cited as proof that there is a particularly stark justice gap in relation to rape, a couple of points should be noted. First, the figure rises to about 12% when convictions for other sexual offences are included,³⁷ and convictions for lesser offences generally play a well-established role in the criminal justice system.³⁸ Secondly, deciding whether or not the attrition rate for rape is out of line with that of other crimes depends on the comparator: for example, the rate for burglary is similar, also standing at about 7% in 2011-12.³⁹

The conviction rate, taken as the proportion of completed Crown Court trials for female rape that ended in a conviction, was 51.1% in 2011,⁴⁰ a percentage which, like the attrition rate, is not out of line with other serious offences.⁴¹ However, it has been argued that this relatively high conviction rate is only a result of filtering out those cases in which juror attitudes would make a conviction improbable.⁴² There has accordingly been criticism of CPS targets that lead to difficult cases being abandoned.⁴³

Given that the attrition and conviction rates for rape are in line with those for some other serious crimes, what are the arguments for regarding rape as a particular blot on the criminal justice landscape? First, in rape, unlike many other crimes such as burglary, the perpetrator is generally identifiable, removing one of the main reasons for high attrition rates elsewhere.⁴⁴ However, some argue that the ease in finding the rape perpetrator is offset by the difficulty of proving states of mind rather than a sequence of events.⁴⁵

Secondly, despite the steep rise in rape reporting, rape is still viewed as an under-reported crime: based on the last three years of the Crime Survey for England and Wales self-completion questionnaires, the government has recently estimated that 52,000 women are raped every year.⁴⁶ Moreover, this method is itself generally believed to under-estimate the prevalence of rape.⁴⁷ The initial point at which rapes are seen as falling outside official estimates is

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that they remain unacknowledged by the victim: Myhill and Allen found that only 60% of those whose experience could legally be classified as rape self-classified it as rape.⁴⁸ The most recent estimate is that, of acknowledged rapes, about 15% are reported to the police.⁴⁹ Putting all this together, the inference is that a minuscule proportion of the true number of rapists is convicted.⁵⁰

As with the previous focus on attrition and conviction rates, a problem with this second argument for regarding rape as a particular blot on the criminal justice landscape is the dearth of comparisons with the extent to which other crimes go unacknowledged and unreported. This lack of comparative methodology is a general fault line running through rape research: where comparisons are made they tend to be speculatively based on 'common sense', rather than grounded in empirical data. For example, in relation to unacknowledged rape, Myhill and Allen speculate: 'Survivors of sexual attacks may be less likely to view themselves as victims of a "crime" than people who suffer, for example, property crimes.'⁵¹ This seems implausible in the light of all those times when a boyfriend 'borrows' a ten pound note from his girlfriend's purse, a son repeatedly 'forgets' to repay the loan he received from his mother, or a friend manoeuvres himself out of paying his share of the restaurant bill. To an extent, the unacknowledged nature of some such wrongs has begun to be highlighted by the inclusion of financial abuse within standard definitions of domestic violence,⁵² albeit that the wrongs are re-conceptualized as crimes against the person. When empirically based comparisons occur

sionally occur, in relation to reporting rates, they tend to confirm that here as well rape is not out of line with other crimes.⁵³

The third reason that attrition and conviction rates in rape are seen as particularly worrying--and also a response to the argument that acknowledgment and reporting of rape is in line with other crimes--is that rape should not be measured by the same yardstick as other crimes because rape is particularly harmful.⁵⁴ However, it has been suggested that an over-emphasis on the damaging nature of rape may be a significant reason that so many women do not realize that they have been raped. Accordingly, focusing on rape as intrinsically traumatic is contentious even among those who are concerned with the attrition rate.⁵⁵

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Alongside the high ratio of rape reports to rape convictions, another ratio is beyond dispute. Rape law has been overhauled, with a principal aim of increasing the number of convictions,⁵⁶ and this has not happened. Even though rape is in line with some other offences in relation to attrition and conviction rates, when we look at the ratio of reform effort to reform achievement in relation to convictions, rape has indeed fared badly.

4. The Turn towards Attitudes

While increasing the number of rape convictions has without doubt been a primary aim of rape law reform,⁵⁷ some have stressed other, broader, aims.⁵⁸ Notably, Wendy Larcombe suggests that 'increasing conviction rates is not itself a valid objective of reform',⁵⁹ and identifies alternative legitimate aims of rape reform that centre on treating the rape complaint as an 'occasion of respect'.⁶⁰ These broader aims have been more successfully achieved than the aim of increasing convictions: for example, it is commonly suggested that the burgeoning rate of rape reporting, even as it worsens the attrition rate, is itself the achievement of one aim of rape law reform.⁶¹

Those who stress broader aims of reform still have plenty of reason to be concerned about attitudes towards rape: as Larcombe terms it, such attitudes determine whether reporting rape will be an occasion of respect or an occasion of oppression.⁶² However, those who believe that the number of rape convictions can be significantly increased have an additional reason to be concerned about attitudes, for they are univocal that attitudes are 'holding back advances'.⁶³ Starkly put, 'Even when reforms have put strong laws in place prohibiting sexual offenses, they cannot successfully compete with a citizenry that condones sexual violence.'⁶⁴ While many emulate this directness,⁶⁵ once we appreciate how many superficially different arguments boil down to the same point, we see the hegemony of this argument. The suggestion that judicial interpretation has undermined progressive legislation

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amounts to a complaint about judges' attitudes,⁶⁶ a concern with the vagueness of legislation comes down to worries about jurors' attitudes;⁶⁷ and criticism of failures in implementation and enforcement equates to dismay at the attitudes of criminal justice system agents, principally the police.⁶⁸ When we note that even those who believe that rape *law* has 'swung too far' against the defendant nonetheless join issue on *attitudes*,⁶⁹ we appreciate how little dissent there is from the view that 'there is an attitude problem in this area.... it is this attitude problem which needs to be addressed if the justice gap is to be reduced'.⁷⁰

At the most abstract level, it is trite that reform relies on popular support: policies depend on people, and jury nullification is an ultimate brake. But in relation to recent rape reform in particular, attitudes play a more subtle role, potentially influencing the success of law reform even without conscious disaffection. In relation to the statutory definition of consent, the point has frequently been made that since the new terms--agreement, choice, freedom and capacity--are vague and undefined, and since there is no doubt that unconstrained choice in conditions of absolute freedom is not required, 'all the questions about how much liberty of action satisfies the "definition" remain at large',⁷¹ and jurors thus fill these terms with their own understandings.⁷² Similarly, it is clear that determining whether the defendant's belief in consent is 'reasonable in all the cir-

cumstances' rests on societal attitudes.⁷³ Equally, if jurors believe that the complainant's sexual history will help them decide whether she was raped but find such evidence excluded, then they will look for subtle signs, such as her behaviour at the time of the incident, or even in court.⁷⁴ Accordingly, part of the reason that rape law reform has not been more successful in increasing the conviction rate is that reforms have at times attempted to side-step the influence of public attitudes on the operation of the law.⁷⁵ To recall Sutherland and Cressey, the law is only necessary because of the attitudes, but because of the attitudes the law will not work.⁷⁶

But are public attitudes accurately labelled as those of a 'citizenry that *condones sexual violence*'? Do such attitudes, admittedly out of step at times with

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some of those who motivated and pioneered rape law reform, deserve to be described as 'rape supportive attitudes', or 'rape myths'?

5. Rape Myth Methodology

To answer this question, we need to untangle what rape myths are. In the years since Susan Brownmiller laid the framework,⁷⁷ and Martha Burt first formally defined rape myths,⁷⁸ rape myths have been defined and categorized in various ways.⁷⁹ However, much current rape myth attitude (RMA) questionnaire research relies on Gerger and others' recent re-working, in their Acceptance of Modern Myths about Sexual Aggression (AMMSA) Scale.⁸⁰ In devising this scale, Gerger and others begin with the standard definition that rape myths are 'descriptive or prescriptive beliefs about rape ... that serve to deny, downplay or justify sexual violence that men commit against women'.⁸¹

In rape myth methodology prior to AMMSA, a minimum stipulation was that rape myths needed to be demonstrably false. Significantly however, Gerger and others move away from this: for their purposes, 'it would be more expedient to define rape myths not as false, but rather as "wrong" in an ethical sense'.⁸² The weight of this admission is not always acknowledged, with some describing the attitudes reported by using the AMMSA scale as inaccurate or subjective, when these attitudes are by the devisers' own definition not necessarily either:⁸³ indeed, these attitudes may on occasions be accurate and objective.⁸⁴

This blurring of the unethical and the inaccurate carries over into the jury research. According to Temkin and Krahé, where juries believe *inaccurate* rape myths, they will not make decisions based on the case in hand.⁸⁵ Finch and

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Munro refer to 'objectively acceptable standards of behaviour',⁸⁶ where 'objective' seems to mean their favoured standards. They disapprove of jurors' 'dubious' chains of reasoning, where dubious does seem to convey the idea of ethically unacceptable, but still with a strong implication of inaccuracy: why the reasoning is dubious is left unspecified.⁸⁷ Temkin and Krahé are more ambitious in aiming to expel from jurors' reasoning *all* background generalizations, not just the 'dubious' ones:⁸⁸ they suggest that in sex cases the judge should always remind the jury to 'focus on the facts and the law and to try to leave all preconceptions at the door of the courtroom',⁸⁹ and they recommend that legal decision-making be *purely* data driven.⁹⁰ But this extreme positivistic view runs counter to the way in which jurors generally decide cases.⁹¹

The admission into the category of rape myths of beliefs that are not demonstrably false and may on occasions be true sets the stage for my core argument. There are undoubtedly a range of attitudes on which the general public and rape myth researchers--and for that matter diverse rape myth researchers--do not see eye to eye. One crucial attitude is the boundary between rape and sex, well illustrated by number 17 on the AMMSA rape myth list, which reads: 'When a man urges his female partner to have sex, this cannot be called rape.' But where what we have is a difference of opinion on a normative question, as with number 17,

this needs to be discussed and debated, rather than stigmatized in, or still worse excluded from, the discussion as a rape myth.

Even with rape myths re-defined as unethical rather than inaccurate, for Gerger and others there is still a problem, namely that researchers have not been finding much RMA about: 'in recent studies, participants' responses have often been close to the low endpoint of the response scale which has resulted in severely positively skewed RMA distributions.'⁹² These researchers worry that

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the positive skew is not necessarily because rape myths are in abeyance but may instead reflect the fact that 'respondents nowadays may have become more aware of the politically correct answers to the mostly explicit and obvious items used in typical RMA scales'.⁹³ The content and expression of common myths about sexual aggression may have changed over the last three decades.⁹⁴

If our assumption regarding ... the content of rape myths is true, then it should be useful to develop a scale measuring myths about sexual aggression with more subtle and less obvious item wording ... This should produce higher acceptance rates than the blatant item content of classic RMA scales.... This is why we decided to develop a new scale assessing the *acceptance of modern myths about sexual aggression*.⁹⁵

They find that 'given more subtle item wording, a higher proportion of participants appear to endorse rape myths'.⁹⁶

Gerger and others are no doubt right that some participants have wised up to the hoarier expressions of myths in traditional scales; accordingly updating the terminology is only sensible. But Gerger and others go further than this in specifically designing their scale to catch people (out). They manipulate the AMMSA questions to produce not only higher acceptance rates but even a bell curve, as indicated by their conclusion: 'One of the central aims of our research, namely to create a scale with symmetrical, close to normal distribution, was thus achieved.'⁹⁷

To a large extent, Gerger and others are concerned with the correlation that they find between RMA and rape proclivity.⁹⁸ Analysis of this is beyond the scope of this article,⁹⁹ but if there is solid evidence that those men more prone to rape can be predicted by their answers to AMMSA then this could be useful information in a range of contexts. While they have their dangers,¹⁰⁰ there is certainly a legitimate role for bell curves.¹⁰¹

But what we definitely cannot do with a scale specifically designed to produce a bell curve is demonstrate the awfulness of people's attitudes. And this is exactly what some try to do with their AMMSA results:

In chapter five we demonstrated that some members of the public are heavily biased against rape victims and that their biases are brought to bear on the assessments they make about situations where a rape occurs. In the Study 3 sample comprising over 2000 participants, it was found that while the majority did not score high on rape

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myth acceptance, a substantial minority did ... on the modern rape myth measure, 44.4% had scores above the midpoint of the scale.¹⁰²

This is as fallacious as making the driving test practically impossible to pass, then treating the resulting failure rate as evidence of appalling driving.¹⁰³

Before turning to investigation of particular rape myths in the light of these general methodological points about AMMSA, it is important to recognize that 'rape myth' is a broad category, within which some myths are relatively unproblematic, for example a belief that a rape victim never delays before reporting, or always suffers extraneous physical injuries.¹⁰⁴ I bracket off this sub-category of rape myth, to which my subsequent comments do not apply. What follows is not a comprehensive survey, but rather a discussion of some of the most prominent and significant, and also problematic and contentious, of the rape myths.

6. 'Real Rape' Myth

'The stereotype of the "real rape" continues to dominate perceptions about what is a genuine rape allegation', according to Temkin and Krahe.¹⁰⁵ The real rape myth is said to narrow down the conception of rape to a 'very violent'¹⁰⁶ attack in 'a dark alleyway'¹⁰⁷ by an armed stranger on a woman who physically resists and is physically injured.¹⁰⁸ What does this mean? 'The 'real rape' myth could be interpreted in definitional terms, that is, the belief that any incident that does not meet these criteria is not rape. While the edges of rape are in dispute, it would be hard to find anyone who excluded from rape everything except 'real rape' so defined, and accordingly a definitional dispute is rarely if ever what is signified by the real rape myth.

More realistically, the myth could be understood as representing the belief that 'real rape' is the norm.¹⁰⁹ Interpreted in this way, there seems to be solid evidence that this is a myth.¹¹⁰ But there is little current evidence of widespread belief in this myth. The Stern review and the British Crime Survey special module report both *assert* that this is a popular stereotype, and the

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Home Office report *Rape: The Victim Experience Review* finds evidence for belief in the myth, but none provides evidence for belief in the myth.¹¹¹ Specifically with regard to the relationship between perpetrator and victim, there is evidence in the opposite direction: Ellison and Munro suggest that in this respect the 'real rape' myth has fallen out of favour: many of their mock jurors were 'willing to accept that many (indeed most) rapes do not involve a "stranger in the bushes",¹¹² and most 'appeared to be receptive to the idea that a woman could be raped by a man that she knew and, moreover, trusted'.¹¹³

Sometimes, the 'real rape' myth signifies that rapes conforming to this stereotype are generally regarded as more serious than other rapes.¹¹⁴ There does seem to be public support for this proposition:¹¹⁵ notably, the Sentencing Advisory Panel report into attitudes to date rape and relationship rape found that roughly half their respondents regarded stranger rape as slightly more serious than relationship rape.¹¹⁶ Does this deserve to be designated a *myth*?

In answering this question, it is helpful to look a little more closely at the methodology employed by the Sentencing Advisory Panel report. Like other studies,¹¹⁷ this research presented participants with rape scenarios identical except for varied relationships between perpetrator and victim, and invited participants to rate the seriousness of each scenario.¹¹⁸ But quite unusually, this study allowed participants to comment and reflect upon their decisions, thus giving insight into the discomfort that such ranking caused the respondents:

As noted previously, a commonly expressed view was that 'rape is rape' no matter what the circumstances. Given the perceived seriousness with which rape *per se* was viewed, many individuals found it difficult to attempt to provide objective assessments of the relative seriousness of stranger rape, date rape and marital rape. Even when individuals found it possible to identify and comment on aggravating factors they still experienced considerable unease when asked to estimate levels of relative seriousness. This was particularly the case when group members were asked to identify what situations and circumstances make the offence of rape 'more serious' or 'less serious'.

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There was a sense in which they were unhappy with the term 'less serious' when referring to what they perceived to be, by definition, a very serious crime.¹¹⁹

Despite the fact that these respondents were allowed to rate the rapes as all equally serious, and despite their uneasiness about ranking, most opted to rank.¹²⁰ The fact that they opted to rank in spite of their discomfort in doing so suggests that refusing to rank was experienced as refusing to answer the question. This illustrates the more general point that research subjects may feel compelled to make a choice when presented with a binary: note the tendency to wrong-foot people even with a question as clear-cut as 'Which weighs more, a pound of stones or a pound of feathers?'

Given that participants may feel they have to distinguish the scenarios, do they hold a rape myth when they plump for stranger rape? This is a harsh judgment once we appreciate that interviewees' judgments about seriousness are multi-dimensional, encompassing such diverse factors as the offender's motivation, the victim's trauma, and the public interest.¹²¹ Moreover, the Sentencing Advisory Panel report reveals that participants use stranger rape as a proxy, albeit not always accurately, for other aggravating features such as pre-meditation, extraneous physical injury, additional degradation and clearer coercion. Once these features are held constant, the ranking effect disappears.¹²²

Support for the 'real rape' myth is commonly found in the fact that cases that conform to this paradigm are more likely to result in prosecution and conviction¹²³ (although this effect is in some respects becoming less pronounced).¹²⁴ As Ian Dennis points out, this line of reasoning conflates the 'real rape' myth with the ability of 'real rape' to modify the credibility conflict.¹²⁵ This is clearest to illustrate with regard to injuries from weapons. While injuries from a weapon are unlikely to follow a rape, they are even less likely to follow consensual sex or no incident at all, so in the typical case where the complainant alleges rape and the defendant claims consensual sex, rape is made more probable by the presence of extraneous injuries: we would surely be surprised if the presence of such injuries made a conviction *less* likely in a rape trial.¹²⁶ The premise that jurors are more likely to convict in 'real rape' is certainly consistent with but by no means implies the conclusion that jurors believe the 'real rape' myth.

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7. 'Women Cry Rape' Myth

According to the extensive research on attrition, that 'women cry rape' is not only a myth, but one with the most detrimental consequences, particularly when held by the police. In *A Gap or a Chasm*, Kelly and others found that once a rape allegation had been reported, by far the most significant point of attrition was the police investigation, predominantly as a result of a police 'culture of suspicion'.¹²⁷ Their most important recommendation is accordingly a shift from an exercise in scepticism to evidence-gathering and casebuilding.¹²⁸

To a large extent, Kelly and others are making the readily endorsable recommendation that the police should be as sympathetic as possible to rape complainants. However, the 'culture of suspicion' also stems from two important police functions: first, that of investigating the complaint against the backdrop that it might not be true; secondly, evidence-gathering and case-building against the backdrop that the complaint might well be probed by others to find out whether or not it is true.¹²⁹ In this regard it is important to note that although the implication in the attrition research is that the police are particularly suspicious of rape complainants, the comparison with police treatment of other complainants is seldom if ever made. We do not know whether the police are any less sceptical when quizzing someone who claims to have been glassed in a pub on a Friday night.¹³⁰ Such a comparison is important because it might help clarify that the balance between sympathy and scepticism requires judgment and discretion, rather than having an easily discernible right position.

In relation to rape complainants, the difficulty of balancing sympathy and scepticism is not just a theoretical issue. The research certainly reveals examples of police officers with a surfeit of scepticism,¹³¹ but others with a

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shortfall also cause concern: *Without Consent* notes that the specially trained officers responsible for obtaining victim statements were sometimes reluctant to explore inconsistencies in a complainant's account too deeply for fear of alienating the complainant. As a result, ambiguities in a victim statement were not always fully addressed, in some cases undermining the complainant's credibility at a later stage in the investigation.¹³²

More generally, for there to be popular belief in a 'women cry rape' myth, there needs to be a discrepancy between the proportion of women who people believe 'cry rape' and the proportion of women who in fact 'cry rape'. A problem is the lack of precision in the data on both these proportions.¹³³

Turning first to the proportion of women who people believe cry rape, the AMMSA scale measures this by asking people whether they agree that women 'often' do so,¹³⁴ but the frequency indicated by 'often' is contextual and subjective: participants who agree with the AMMSA statements may mean any proportion ranging from 'almost always', through 'more often than not', to 'too often for their testimony to prove the matter beyond reasonable doubt'.¹³⁵

Moving to the rate at which women in fact 'cry rape', unfortunately 'there has been little detailed attention given to the reliability of the evidence on the prevalence of false allegations'.¹³⁶ At the end of a thorough review of the research on false allegations, Rumney concludes:

The literature on false allegations requires careful analysis, yet such an approach is often absent from discussions within legal and other scholarship in the last three decades there has been a lack of critical analysis by those who claim a low false reporting rate and the uncritical adoption of unreliable research findings. There has also been a failure to acknowledge the methodological limitations of much of the existing research and the state of our current understanding of the rate of false allegations. As a consequence of such deficiencies within legal scholarship, factual claims have been repeatedly made that have only limited empirical support. This suggests a widespread analytical failure on the part of legal scholarship and requires an acknowledgment of the weakness of assumptions that have been constructed upon unreliable research evidence. Ultimately, the criminal justice system and those writing about the issue of rape have dealt poorly with the issue of false allegations. Given the legal and societal prominence of this subject, it is a failure that should be addressed.¹³⁷

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It is hard to say that 'women cry rape' is a myth when we do not know the rate of false allegations of rape. Westmarland and Graham unwittingly sum this up:

The myth that women frequently lie about rape continues, with posters [on an internet forum] even stating that it was increasing.... It is a myth that can be particularly difficult to rebut ... because of disagreement between academics about what proportion of rape reports are 'false'.¹³⁸

8. 'Coffee' Myth

This myth, popularly known as the myth that some women are 'asking for it', is that people wrongly believe that some particular feature of women's behaviour indicates their consent to sex. In the AMMSA scale, belief in the 'coffee myth' is represented by agreement with the following propositions among others: '9. If a woman invites a man to her home for a cup of coffee after a night out this means that she wants to have sex' and '15. Women like to play coy. This does not mean that they do not want sex'.¹³⁹ In what follows I generally use 'asking back for coffee' as the illustration, but most of the points can of course be extended to other examples.

We need to disentangle the different messages a person might be sending when he responds to news of a rape complaint with 'Did she invite him back for coffee?': (1) he might believe that 'asking back for coffee' is consent to sex; (2) he might mean that in 'asking back for coffee', the woman sent a signal of consent; (3) he might be suggesting that 'asking back for coffee' provides evidence of consent for him as an outsider faced with competing claims, from the accused of consensual sex and from the complainant of rape; (4) he might be implying that a woman who 'asks a man back for coffee' is to blame for being raped; (5) he might be indicating that 'asking a man back for coffee' is unwise, as it increases the woman's vulnerability towards being raped.

It is not always easy to distinguish these messages because people may mean a mixture of them, for example that 'inviting back for coffee' is unwise just because it sends 'the wrong message'. In disentangling them, it is important to distinguish empirical from normative beliefs: someone might believe that women tend to indicate consent to sex by inviting men back for coffee at the same time as hoping for a change in sexual mores. By abstracting from the backdrop of a rape complaint, numbers 9 and 15 and the other 'coffee myths' on

the AMMSA scale measure only empirical belief about how women consent to sex: that is, agreement with these statements can indicate (1) to (3) but not

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(4) or (5), as the 'coffee myths' such as numbers 9 and 15 do not ask about blame or vulnerability.

A. Coffee as Consent

In the AMMSA scale, probably the strongest statement of the 'coffee myth' is number 9. Understood as logic, this statement represents a deduction from coffee to sex--coffee *means* sex; we can contrast the double negative in number 15. In strict logic, a participant could agree with number 9 only if he believes: (i) the statement that coffee means sex is a tautology, because inviting a man back for coffee *is* consent to sex; (ii) the statement that coffee means sex is empirically reliable, because asking back for coffee is such a strong signal of consent that an invitation for coffee always means sex.

There are many reasons to doubt that more than a handful of participants who agree with number 9 intend to indicate such strong beliefs. First of all, it is implausible that anybody outside 'the most perverse and underground of circles'¹⁴⁰ believes that 'inviting a man back for coffee' *equals* consent to sex:¹⁴¹ even those who believe that an invitation for coffee after a date is the strongest possible sign of sexual willingness could countenance cold feet, for example.¹⁴² Secondly, while in logic 'means' represents a deduction from premise to conclusion, in conversation 'means' is used when the premise suggests the conclusion, as in the assertion 'If a man doesn't contact a woman after a date this means he doesn't want to see her again', where the word 'generally' can be both implied and heard. Thirdly, this interpretation is even more plausible given that AMMSA participants are given a binary choice: although they probably do not think that coffee *means* sex, they may regard this statement as more true than false. In a different context, Ross and Allgeier have demonstrated that 'the latitude of interpretative freedom leaves it very much in doubt what a "yes" or "no" response really represents'.¹⁴³

Instead, when they agree with number 9, most participants probably mean that an invitation for coffee is by convention a signal of consent and/or that women tend to signal consent in this way.¹⁴⁴ Interestingly, rather than providing evidence of the prevalence of rape myths, those who agree with this statement are providing evidence of its truth. There are many questions that rape myth researchers are more qualified to answer than the general public, the rate of false allegations and the character of typical rapes among them, but the ways in which the general public negotiate sex is not one of them. There is very little research about what consent looks like when things go right, as opposed

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to what an absence of consent looks like when things go wrong,¹⁴⁵ and even if there were solid research, such norms would be quintessentially contingent and contextual.¹⁴⁶ Under such circumstances, participants' answers should be treated with respect: the best evidence we have of how women show consent to sex is how people say women show consent to sex.

It could be objected that men's answers contaminate any such evidence, because only women are a reliable guide to how women indicate consent. But in asking AMMSA participants about a convention and/or the generic woman rather than themselves, AMMSA asks a question that is almost as difficult for a particular woman to answer as it is for a particular man. Faced with the question of what 'a woman' means when she invites a man back for coffee, AMMSA participants could decline to answer on the grounds of epistemological impossibility, but that would be refusing to play the game. Or they could retreat to formal logic: none of us knows for certain what the generic woman means by offering coffee, so we cannot say that she means sex, therefore number 9 is false. But this is not really playing the game either, and retreating to logic means agreeing with statements phrased like number 15, thus leaving one's RMA level dependent on the ways in

which the researchers have structured the questions. Taking number 9 seriously means doing one's best to make up the epistemological shortfall, asking oneself such questions as: 'How do I show consent to sex? How do I think my sexual partners indicate consent? What do my friends tell me about the signs they give and receive?'. These are questions to which both men and women can give fallible yet informative answers.

Still, it would be troubling if statements like number 9 were prompting very different answers from men than women. There is some evidence that men score a little higher on AMMSA than women,¹⁴⁷ although the analysis does not indicate to what extent this is due to answers to the 'coffee myth' questions.¹⁴⁸ Moreover, the Sentencing Advisory Panel report found that men were more likely than women to believe that the word 'no' was not always to be taken at face value, thus suggesting a gender difference in responses to number 15 at the very least.¹⁴⁹ On the other hand, the supposedly RMA-steeped answers

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given to the 'coffee myth' questions in AMMSA converge with a not insubstantial body of research that asks women how they themselves signal consent to sex:¹⁵⁰

Compelled by the message that 'good girls don't,' many women felt they needed to find seemingly passive ways to assert their sexual desires. Wanting to express their sexualities, and yet feeling unentitled to do so directly, many women chose to put themselves in situations where sex could 'just happen'. *Letting* it just happen became a strategy for *making* it happen without facing the psychological and social consequences of appearing 'too willing'.... Although many of the women who used this strategy said they wanted very much to engage in the sexual relationships they were describing, they felt unable, or unwilling, to describe themselves as active agents initiating, or even willingly consenting to, sexual encounters with men.¹⁵¹

The belief that coffee after a date is code for sex is thus not necessarily a myth, as *evidenced* by participants' responses to AMMSA as well as some research evidence.

Of course, people will sometimes misread the signs (no doubt most of us have at some point done so). But if someone who misinterprets sexual cues is best described as believing a myth rather than making a mistake then he holds a myth that relates primarily to sex, not rape.¹⁵² This point is illustrated by the Rape Crisis Scotland Campaign, which featured a series of pictures of women variously scantily clad, on their wedding day or locked in a passionate embrace, accompanied by the slogan 'This is not an invitation to rape me'. This slogan is, presumably deliberately, oxymoronic -- as has often been pointed out, there can be no such thing as an invitation to rape.¹⁵³ The Stern review claimed that this campaign was 'designed to encourage discussion and challenge attitudes',¹⁵⁴ but it would have more successfully encouraged discussion and challenged attitudes if the slogan had less oxymoronically proclaimed: 'This is not an invitation to have sex with me.' This was the real claim, and this claim might have been disputed and therefore debated, by some people in relation to some of the images.

The rape myth researcher's rejoinder is that sex and rape are intertwined, so that to hold a sex myth is to hold a rape myth. Despite the fact that rape myth research commonly makes one component of RMA this very attitude that rape

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and sex are inter-connected,¹⁵⁵ there is much force in this rejoinder. Put simply, a man who takes coffee as a strong sign of sexual willingness and who believes that 'women like to play coy' may miss the 'elegantly crafted interactional activity'¹⁵⁶ that is the woman's refusal. The 'everyday taken-for-granted normative forms of heterosexuality work as a *cultural scaffolding* for rape':¹⁵⁷

... that is the discourses of sex and gender that produce forms of heterosex that set up the preconditions for rape -- women's passive, acquiescing (a)sexuality and men's forthright, urgent pursuit of sexual 'release.' These script a relational dynamic that arguably authorizes sexual encounters that are not always clearly distinguishable from rape.¹⁵⁸

Sex conceived of as the man pushing and the woman yielding 'provides too tidy an alibi for rape'.¹⁵⁹ This is most perilous when the woman does not have the freedom or capacity to emphasize her absence of agreement, for example because she is scared, or drunk to the point of being incapacitated.

The potency in these points has its essence in the construction of heterosex as men's pursuit of women. It is unclear to what extent this construction is unsettled by substituting a different mode of communication for 'coffee'. Take the statement 'If a man asks a woman whether she wants to have sex and she says "yes" this means that she wants to have sex': to what extent is this less of a myth than the 'coffee myth'? Gruber succinctly makes this point, that even inserting an explicit yes into the 'botched sex equation' would make little difference: 'Men would continue to pressure women in order to procure a "yes," and women would say "yes" out of fear or aversion to confrontation'.¹⁶⁰ Perhaps unfortunately, there is no failsafe formula for 'the awesome complexity of human interaction':¹⁶¹ a woman's explicit yes, her responsiveness to or initiation of sexual intercourse may all be erroneous indications of her consent, depending on the circumstances.¹⁶² Put simply, there is *nothing* that *equals*

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consent to sex: context is all. If an AMMSA participant really did believe that coffee *meant* sex, then he would hold a myth, but his myth would not centre on coffee as consent, but rather on the misconception that there is *any* foolproof code cracker.

In claiming that 'coffee means sex' is a myth, rape myth discourse proceeds as if it is pointing out a clear-cut and well-defined factual error that men make about how women indicate consent. But in gaining its potency from a dynamic based around male as predator and female as prey,¹⁶³ rape myth discourse is far more demanding in requiring that 'the meeting of active aggressive masculinity and passive responsive femininity ... must itself be the object of change'.¹⁶⁴ Rejecting the 'coffee myth' involves rejecting 'the very gendered binary nature of (hetero)sexuality',¹⁶⁵ as is on occasions frankly acknowledged:

We need to take seriously therefore the challenge that we're actually making. This isn't just about myths, this is actually about challenging the foundational principle and set of practices that maintain a particular kind of masculinity and maintain certain relations between men and women. That's why they're so tenacious, that's why the beliefs and constructions are so tenacious, because they are at the foundation of intimate relations between men and women.... For us, it isn't just about rape law, it's about what kind of sexuality we are interested in creating¹⁶⁶

There is nothing wrong with having a sexual vision, and there is nothing wrong with openly trying to persuade others to this vision: quite possibly it would be a better world if we eradicated the gendered hunter/hunted binary.¹⁶⁷ But there is something wrong with smuggling in this vision, under the guise of tackling clear-cut and well-defined rape myths.¹⁶⁸ It is disingenuous to 'obscure the critical work needed in changing heterosexuality',¹⁶⁹ by presenting this 'work' as nothing more than the rooting out of rape supportive attitudes.¹⁷⁰

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B. Coffee as Context

Since context is all-important in establishing consent, it is paramount to scrutinize context. A man who receives an explicit yes needs to be sensitive to incongruities, while one who receives a series of coffee-type signals may be justified in concluding consent to sex, depending on the context.¹⁷¹

This then makes some commentators' (selective) distaste of context a tightrope walk.¹⁷² On the one hand, Munro welcomes the SOA as context-sensitive, in the sense that the definition of consent directs attention to the context that may constrain choice;¹⁷³ on the other hand, she deplores 'a disproportionate focus on the will and behaviour of the complainant'.¹⁷⁴ Writing with Ellison, Munro criticizes jurors' reliance on traditional or normal 'sexual scripts' as a means of distinguishing sex from rape,¹⁷⁵ but this seems to be what jurors *should* do. Faced with the same account from a defendant claiming sex and a complainant alleging rape, how could the jury arbitrate except by determining whether this 'looks like' rape, or 'looks like' sex, and how could they answer this question except against the backdrop of what they think sex looks like? Furthermore, Ellison's

and Munro's research reveals instances of the jurors' giving these questions subtle treatment: consider those jurors who distinguished the rape trial scenario from the typical seduction script on the basis that intercourse in the *hall* of the woman's house pointed away from consensual sex with a new partner and therefore towards rape.¹⁷⁶ Jurors may of course at times be inaccurate in their background generalisations, but two points need noting: first, the generalizations that Ellison and Munro are criticizing are primarily about sex, not rape, and jurors are right to strive to eliminate sex in order to identify rape as not-sex; secondly, on the question of typical sexual scripts, jurors deserve a respectful hearing.

Munro elaborates that jurors place 'a disproportionate focus upon the will and behaviour of the complainant rather than upon the conduct and intentions of the perpetrator'.¹⁷⁷ It is true that section 1(2) SOA 2003 stipulates scrutiny of the defendant's behaviour, in that determining the reasonableness of the defendant's belief includes any steps that he has taken to ascertain the complainant's consent, signalling the relevance of any positive measures the defendant took to ensure consent.¹⁷⁸ But the defendant plays second fiddle, with the jury invited to scrutinize his scrutiny: whether or not the defendant's steps were reasonable could only ever be measured against the backdrop of the

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complainant's behaviour. To the large extent that rape law is centred on the woman's state of mind, the gaze needs to be on the complainant:

Under English law the boundaries of rape are primarily established by reference to the complainant's consent (or lack of consent) to sexual intercourse. As such, the state of mind of the complainant, her demeanour, words and actions before, during and after rape are of central importance to the criminal justice process.¹⁷⁹

C. Coffee as Culpability

'Blaming the victim for sexual assault is a robust phenomenon',¹⁸⁰ Krahé and Temkin claim. What is a 'robust phenomenon' is the *belief* that people blame the rape victim,¹⁸¹ a belief for which there is less evidence than is often supposed. Two opinion surveys are commonly cited in support of this proposition.¹⁸² The first, carried out by Amnesty International UK in 2005, involved telephone interviews with a random sample of 1095 adults across the UK.¹⁸³ The second, *Wake up to Rape*, undertaken by The Havens Sexual Assault Referral Centre in 2010, consisted of an online survey of a random 1061 people in London aged between 18 and 50.¹⁸⁴ Despite frequent implications to the contrary,¹⁸⁵ including from Amnesty representatives themselves,¹⁸⁶ the word 'blame' was never uttered in either survey. This absence of the word blame is at first sight puzzling, as it could have been useful, when investigating whether people blame women for being raped, to ask people whether they blame women for being raped.¹⁸⁷

Instead, throughout both surveys the word 'responsible' was used. In the Amnesty telephone interview, the relevant question was:

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I am now going to read out a series of scenarios which a woman may find herself in. In each could you please indicate whether you believe a woman is totally responsible, partially responsible or not at all responsible for being raped if ...

In *Wake up to Rape*, respondents were similarly presented with a list of different circumstances and asked whether in each of these circumstances the victim should accept responsibility for being raped. Sure enough, both surveys found that significant proportions of the public believed that women were at least partly responsible in most of the circumstances. 'Responsible' is a word with a number of connotations, among the principal of which are: accountable; in control; causally implicated; and of course blameworthy.¹⁸⁸ Nor are stand-ins for 'blame' the sole prerogative of the public survey research.¹⁸⁹ For example, two of the four ways in which Temkin's and Krahé's studies¹⁹⁰ assess attribution of blame are: (i) control--'How much do you think

C had control over the situation?';¹⁹¹ (ii) causal role--'How likely do you think it is that C could have avoided the incident?'¹⁹²

So the 30% of respondents to the Amnesty survey who thought that being drunk made the woman to some extent responsible for being raped *may* have meant that she was in some way culpable, but they may have meant that her drunkenness was causally implicated in the rape, in the sense that she might not have been raped if she had been sober, that being drunk increased the risk of being raped.¹⁹³ Not only is this a far more benign belief than victim-blaming, but the rape research provides solid evidence that it is also an accurate belief--with one proviso: most rape researchers prefer to talk in terms of women 'enhancing their vulnerability' to rape, rather than in terms of any causal connection.

Again, I think this is one of the paradoxes that we are having to encounter, that women are claiming the right to drink, be drunk -- and I'm not saying they shouldn't -- but the paradox of it is that it then can leave you vulnerable in that you are not as in control of yourself. You may not be reading cues that you would do if you weren't affected by alcohol and men can decide that they're going to take advantage of that situation.¹⁹⁴

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The rape research is univocal that 'enhanced vulnerability' does not equate to 'causal connection', presumably because of the slippery slope from there to 'responsibility', but researchers struggle to explain the difference:

This strong association with alcohol reflects findings from other studies but, equally importantly, it does not demonstrate a causal relationship between consuming alcohol and subsequent victimisation. Rather, it indicates that victim intoxication is one of a number of vulnerabilities that can be identified and exploited to facilitate sexual assault by predatory men ...¹⁹⁵

Despite fear of the slippery slope, there are also dangers in denying that some aspects of women's behaviour increase the risk of rape. One paradoxical consequence is to increase the likelihood that the defendant's version is true in the typical rape trial. Imagine the scenario where the complainant alleges rape and the defendant claims consensual sex, with undisputed evidence that the complainant was flirting with the defendant earlier on. Rejection of any correlation between flirting and being raped increases the probability that what happened was consensual sex, since it is surely hard to deny a correlation between flirting and consensual sex.¹⁹⁶

Nor is a uni-dimensional view of responsibility necessarily helpful to rape victims' self-image. Lynne Phillips discovered that the victimized women whom she interviewed found 'moments when they might have made different choices', thereby perhaps avoiding their victimization.¹⁹⁷ This realization on their part did not always mesh with the rape research literature,¹⁹⁸ their naming of their own victimization hampered not only by conservative discourses but also by a popularized version of rape reform discourse that insisted that the perpetrator was the agent and the victim the powerless object.¹⁹⁹

Back in 1994, Lonsway and Fitzgerald recognized this difficulty that many of the 'victim-blaming myths' are in fact true,²⁰⁰ but suggested that 'their status as myths rest on their emphasis, exaggeration, and most importantly, possible function'.²⁰¹ This dance around the truth is reminiscent of the parlour game 'I say, you say, he says', in this instance 'I say "vulnerable", you say "responsible", 'he says "*blame*". There is more than a whiff of élitism in the notion that there are some truths that rape researchers can, but the public cannot, be trusted with.²⁰² These truths are only to be voiced by rape researchers, and then only with use of the preferred terminology.

Of course, the participants in the opinion surveys did not have the option of distinguishing responsibility from vulnerability: they had to do their best with

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the binary as posed.²⁰³ Moreover, these polls presented another instance of the 'Which weighs more?' trap:²⁰⁴ given a list of different circumstances and asked repeatedly whether they thought the woman was responsible, respondents would have divined that there was meant to be some variation in their answers. In

the Amnesty survey where the option was open to respondents, answering 'partially responsible' far more often than 'totally responsible' in relation to every scenario--26% compared with 4% in relation to drunkenness--may have been participants' vain attempt to bring nuance and context to the survey.

This is not to suggest that *nobody* blames the rape victim; of course some do,²⁰⁵ although even once we cross the threshold from responsibility to blame, there are degrees of harshness, from 'that was a very foolhardy way to behave, given how dangerous men can be' through to the notorious 'she was begging for it'. But there is very little reason to believe that people blame rape victims more than they blame other crime victims, bringing into question the focus on culpability as a problem for rape victims in particular. As we have already noted, scholarly comparisons with other crimes are few and far between,²⁰⁶ but such research as there is tends to show that people to some extent scrutinize and castigate the behaviour of crime victims in general.²⁰⁷ Much more frequent than scholarly comparisons however are commonsense assertions such as 'well, nobody would blame a victim who left his door unlocked',²⁰⁸ unconvincing as well as more than a little poignant in the wake of the vitriol heaped on the McCanns for doing just that.²⁰⁹

There is even reason to believe that people tend to blame rape victims less than they blame other crime victims.²¹⁰ An interesting example is Jennifer Temkin's citing of the Criminal Injuries Compensation Scheme reduction of compensation to rape victims who had been drinking as evidence of the degree to which *rape* victims are blamed.²¹¹ This was in fact the application to rape victims of a more general rule, to which an exception for rape victims was

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swiftly introduced after adverse media attention.²¹² Currently, rape victims may not, but other crime victims may, have their compensation reduced on the basis that they have been drinking.²¹³ The contemporaneous *Guardian* editorial sums up the current approach: 'Cuts may be justified when a victim's drinking precipitates certain violent attacks -- but rape is not one of them.'²¹⁴

9. Rape Myth Reform

Once the population has been stigmatized as dripping with RMA, there are two solutions: to remove either rape-supportive people from process or rape-supportive attitudes from people. Donald Draper is unusually unapologetic about recommending the former. Making explicit the élitism that is implicit in much of the rape myth discourse, he sees rape law as representing a tension between élite opinion, which is right, and popular opinion, which is wrong.²¹⁵ 'Elite opinion has controlled the law-on-the-books', he states, but 'popular opinion has had more influence on the law-in-action.'²¹⁶ Accordingly, he is quite matter-of-fact about his proposal to abolish the jury in rape trials, as a 'direct bypass of popular prejudice'.²¹⁷ Proposals to screen criminal justice personnel for RMA, or ensure more female representatives, are less extreme points along this spectrum.²¹⁸

It might have been assumed that the more optimistic recommendations would be those based on education. It is true that part of Draper's reasoning for abolishing the jury is his pessimism about the prospects of attitudinal change²¹⁹ (although this is in large part because he recognizes that educating people out of rape myths means the wholesale transformation of public attitudes towards gender roles and stereotypes).²²⁰ But in reality, ambivalence towards abolishing jury trial is rarely based on the importance of popular participation in the criminal justice system, and rarely because reformers are 'bright-eyed optimist[s] [expecting] a sudden sea-change in popular attitudes'.²²¹ Rather, RMA is seen as too rampant for this remedy to work. Specifically, Temkin and Krahe are tentative about abolishing the jury because 'reliance on judges and barristers effectively to challenge stereotypes seems rather like pie in the sky'.²²²

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Nor does this problem extend only so far as judges and barristers. Before conducting their research, Stewart and others had expected rape supportive attitudes to differ across social positions, but they 'became fascinated by the consistency with which cultural myths and stereotypes about rape were embraced at all levels

of the justice system and by all parties involved';²²³ for Temkin and Krahé, during discussion of the SOA 2003 adherence to rape myths extended as far up the echelons as the then Home Secretary.²²⁴ In sum, rape myths influence the 'judgments and decisions made by police officers, crown prosecutors, forensic medical examiners (FMEs), juries, and judges'.²²⁵ According to these rape myth researchers, only *super élite* opinion is right. RMA having such a hold within the body politic, quarantine clearly cannot hold. Those few who are clean of RMA would not have time to process all the rape claims.

Accordingly, the more common reform proposals involve managing, not excluding, people with rape-supportive attitudes. One important strategy is to give them rules to follow, as discretion involves trusting decision-makers' instincts.²²⁶ The other strategy is education. In itself, educating people is of course a good idea. But education needs to involve an educator who is better informed imparting *knowledge* to others who are worse informed. In relation to some small segments of rape myth education, these stipulations may be met. If jurors mistakenly believe that physical injuries must accompany rape, or that a woman's delayed complaint means that she was not raped, then certainly information will help their decision-making.²²⁷ However, this is not true of the training programmes aimed at dispelling stereotypes,²²⁸ let alone the 'wider educational initiatives designed to target social attitudes'.²²⁹ As we have seen, these involve persuading people to believe that they believe the most perverse rape myths, by labelling as myths what are actually a mixture of fact and opinion, depicting the occasionally held sex myth as rampant rape myth, and putting the worst possible interpretation on ambiguous and complex statements. The message of these initiatives--that those attitudes that are disapproved of are rape-supportive, and those views that are not shared are rape myths--functions to close down, not open up, the possibilities of a productive public conversation about these important and at times vexed questions.

¹ I am grateful to Jennie Bristow, Daniel Monk, John Gillott, Peter Ramsay, Mike Redmayne and the anonymous referees for helpful comments on earlier drafts of this article.

² D Draper, 'After Rape Law: Will the Turn to Consent Normalize the Prosecution of Sexual Assault?' (2008) 41 *Akron L Rev* 957, 958.

³ See K Daly and B Bourhous, 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries' (2010) 39 *Crime Just* 565, 581.

⁴ See eg J Temkin and A Ashworth, 'The Sexual Offences Act 2003: (1) Rape, Sexual Assaults and the Problem of Consent' [2004] *Crim L Rev* 328, 328; E Finch and VE Munro, 'Breaking Boundaries? Sexual Consent in the Jury Room' (2006) 26 *LS* 303, 305; J Temkin and B Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing 2008) 9; B Krahé and A Berger, 'A Social-Cognitive Perspective on Attrition Rates in Sexual Assault Cases' in ME Oswald, S Bieneck and J Hupfeld-Heinemann (eds), *Social Psychology of Punishment and Crime* (Wiley-Blackwell 2009) 336; L Ellison, 'Commentary on *R v A (No 2)*' in R Hunter, C McGlynn and E Rackley (eds), *Feminist Judgments: From Theory to Practice* (Hart Publishing 2010) 205. For discussion, see W Larcombe, 'Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law' (2011) 19 *Fem L Stud* 27.

⁵ See Larcombe (n 3) 27.

⁶ See eg Office for Criminal Justice Reform, *Convicting Rapists and Protecting Victims -- Justice for Victims of Rape* (2006).

⁷ See eg J Bourke, *Rape: A History from 1860 to the Present* (Virago 2007).

⁸ Accordingly, when assessing current attitudes to rape, I concentrate on studies conducted post-2000. For recognition that there has been significant abatement of rape myths, see N Gavey, *Just Sex? The Cultural Scaffolding of Rape* (Routledge 2005) 23-25, 44; F Eyssel and G Bohner, 'Modern Rape Myths: The Acceptance of Modern Myths about Sexual Aggression (AMMSA) Scale 2008' in MA Morrison and TG Morrison (eds), *The Psychology of Modern Prejudice* (Nova Science Publishers 2008) 267; N Westmarland and L Graham, 'The Promotion and Resistance of Rape Myths in an Internet Discussion Forum' (2010) 1 *J Soc Criminol* 80. But for the contrasting view that there has been little progress in attitudes, see Draper (n 1) 973 and J Jordan, 'Silencing Rape, Silencing Women' in JM Brown and SL Walklate (eds), *Handbook on Sexual Violence* (Routledge 2012) 258, 276.

- ⁹ See RB Felson, *Violence and Gender Reexamined* (American Psychological Association 2002) 170.
- ¹⁰ *ibid.*
- ¹¹ M Redmayne, 'Myths, Relationships and Coincidences: The New Problems of Sexual History' (2003) 7 E&P 75.
- ¹² MAH Horvath and JM Brown, 'Setting the Scene: Introduction to Understanding Rape' in M Horvath and J Brown (eds), *Rape: Challenging Contemporary Thinking* (Willan 2009) 3.
- ¹³ *R v R* [1992] 1 AC 599, confirmed by Criminal Justice and Public Order Act 1994.
- ¹⁴ Sexual Offences Act 2003. Although rape law now includes male victims but not female perpetrators, I follow the bulk of the literature in predominantly referring to and focusing on female victims.
- ¹⁵ On evidential reform, see also Criminal Justice and Public Order Act 1994.
- ¹⁶ Baroness Stern, *The Stern Review* (Government Equalities Office 2010).
- ¹⁷ See below.
- ¹⁸ Stern (n 15). See also Sara Payne, *Rape: The Victim Experience Review* (Home Office 2009) 17.
- ¹⁹ SOA 2003, s 74.
- ²⁰ See eg Temkin and Ashworth (n 3); J Brown and others, *Has Anything Changed? Results of a Comparative Study (1977-2010) on Opinions on Rape* (Government Equalities Office 2010) 43; VE Munro, 'An Unholy Trinity? Non-consent, Coercion and Exploitation in Contemporary Legal Responses to Sexual Violence in England and Wales' (2010) 63 CLP 2010 45, 53.
- ²¹ V Munro, 'Constructing Consent: Legislating Freedom and Legitimizing Constraint in the Expression of Sexual Autonomy' (2008) 41 Akron L Rev 923, 935.
- ²² *ibid* 925, 944. See also Finch and Munro (n 3) 306.
- ²³ Finch and Munro (n 3) 304; S Cowan, "'Freedom and Capacity to Make a Choice": A Feminist Analysis of Consent in the Criminal Law of Rape' in VE Munro and CF Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge-Cavendish 2007) 62.
- ²⁴ SOA 2003, s 1(1)(c).
- ²⁵ *ibid* s 1(2).
- ²⁶ Cowan (n 22) 62; Temkin and Krahé (n 3) 69; C McGlynn, 'Feminist Activism and Rape Law Reform in England and Wales: A Sisyphean Struggle?' in C McGlynn and VE Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Routledge-Cavendish 2010) 143.
- ²⁷ See VE Munro, 'From Consent to Coercion: Evaluating International and Domestic Frameworks for the Criminalization of Rape' in McGlynn and Munro (*ibid*).
- ²⁸ See V Tadros, 'Rape Without Consent' (2006) 26 OJLS 515; Cowan (n 22).

- ²⁹ J Temkin, "'And Always Keep A-hold of Nurse, For Fear of Finding Something Worse": Challenging Rape Myths in the Courtroom' (2010) 13 *New Crim L Rev* 710, 711. See also L Kelly, 'Contradictions and Paradoxes: International Patterns of, and Responses to, Reported Rape Cases' in G Letherby and others (eds), *Sex as Crime?* (Willan 2008) 268; Munro (n 19).
- ³⁰ Munro (n 19) 925.
- ³¹ N Lacey, 'Beset by Boundaries: The Home Office Review of Sex Offences' [2001] *Crim L Rev* 3, 12; McGlynn (n 25) 150; Brown and others (n 19) 43.
- ³² Ministry of Justice, Home Office and the Office for National Statistics, *An Overview of Sexual Offending in England and Wales* (2013) 20.
- ³³ See L Kelly, J Lovett and L Regan, *A Gap or a Chasm? Attrition in Reported Rape Cases* (Home Office Research Study 293, 2005) 25.
- ³⁴ *ibid* 25.
- ³⁵ Ministry of Justice and others (n 31) 33.
- ³⁶ J Lovett and L Kelly, *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases across Europe* (Child and Women Abuse Studies Unit 2009) 45.
- ³⁷ Stern (n 15) 43.
- ³⁸ For discussion in relation to crimes of violence, see A Cretney and G Davis, *Punishing Violence* (Routledge 1995) ch 7.
- ³⁹ Ministry of Justice, *Criminal Justice Statistics Quarterly Update to June 2012 Ministry of Justice Statistics Bulletin* (2012) 15.
- ⁴⁰ Ministry of Justice and others (n 31) 34. See also Stern (n 15) 10.
- ⁴¹ Stern (n 15) 94; C Thomas, *Are Juries Fair?* (Ministry of Justice 2010).
- ⁴² Kelly and others (n 32) 67, 80; VE Munro and L Kelly, 'A Vicious Cycle? Attrition and Conviction Patterns in Contemporary Rape Cases in England and Wales' in Horvath and Brown (n 11).
- ⁴³ Temkin and Krahe (n 3) 19; Stern (n 15) 15, 81.
- ⁴⁴ Brown and others (n 19) 29. See also Ministry of Justice and others (n 31) 6.
- ⁴⁵ Stern (n 15) 94.
- ⁴⁶ This estimate excludes attempted rape: Ministry of Justice and others (n 31) 13. See also A Myhill and J Allen, *Rape and Sexual Assault of Women: The Extent and Nature of the Problem* (Home Office Research Study 237, 2002) 18.
- ⁴⁷ Myhill and Allen (n 45) 60; Brown and others (n 19) 10. But for a different view, see M Cowling, *Date Rape and Consent* (Ashgate Publishing 1998). For discussion of the British Crime Survey methodology, see S Walby and A Myhill, 'New Survey Methodologies In Researching Violence against Women' (2001) 41 *Brit J Criminol* 502.
- ⁴⁸ Myhill and Allen (n 45) 53.

⁴⁹ Ministry of Justice and others (n 31) 6. See further Myhill and Allen (n 45) 49; Kelly and others (n 32) 30-31; Stern (n 15) 32; Daly and Bourhous (n 2) 574;

⁵⁰ See eg Nigel Morris and Sarah Cassidy, 'The Rape of Justice' *The Independent* (London, 11 January 2013) 1.

⁵¹ Myhill and Allen (n 45) 7.

⁵² See *Yemshaw v London Borough of Hounslow* [2011] UKSC 3, [2011] 1 All ER 912.

⁵³ See eg Stern (n 15) 12.

⁵⁴ See eg Kelly (n 28) 256.

⁵⁵ C Atmore, 'Victims, Backlash, and Radical Feminist Theory (or, The Morning after They Stole Feminism's Fire)' in S Lamb (ed), *New Versions of Victims: Feminists Struggle with the Concept* (New York University Press 1999); Gavey (n 7); Kelly (n 28) 274.

⁵⁶ See text to n 3.

⁵⁷ *ibid.*

⁵⁸ Munro (n 20) 954; Stern (n 15).

⁵⁹ Larcombe (n 3) 29.

⁶⁰ *ibid* 41, citing AC Scales, 'The Emergence of Feminist Jurisprudence: An Essay' (1986) 95 Yale LJ 1373.

⁶¹ Kelly (n 28) 273. See also Finch and Munro (n 3) 305; Brown and others (n 19) 9.

⁶² See also Brown and others (n 19) 47, 49; Temkin (n 28) 714.

⁶³ Temkin (n 28) 714.

⁶⁴ M Koss, 'Restoring Rape Survivors: Justice, Advocacy, and a Call to Action' (2006) 1087 Ann NY Acad Sci 206, 221.

⁶⁵ PNS Rumney, 'The Review of Sex Offences and Rape Law Reform: Another False Dawn?' (2001) 64 MLR 890, 893; Finch and Munro (n 3) 320; Draper (n 1) 971; Kelly (n 28) 271-74; Temkin and Krahe (n 3); Krahe and Berger (n 3); G Bohner and others, 'Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator' in Brown and Horvarth (n 11) 18; Brown and others (n 19) 47.

⁶⁶ Rumney (n 64) 890, 910; L Kelly, J Temkin and S Griffiths, *Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trials* (Home Office Online Report 20/06, 2006) 77; Finch and Munro (n 3) 309; Temkin and Krahe (n 3) 24; Brown and others (n 19) 43.

⁶⁷ See Finch and Munro (n 3).

⁶⁸ See Payne (n 17) 17; Brown and others (n 19) 48; Stern (n 15) esp 48-49, 115. See further below.

⁶⁹ R Klein, 'An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness' (2008) 41 Akron L Rev 981, 1050, writing about North American rape law.

- ⁷⁰ Temkin and Krahe (n 3) 1.
- ⁷¹ Temkin and Ashworth (n 3) 336.
- ⁷² See *ibid* 346; Finch and Munro (n 3).
- ⁷³ Finch and Munro (n 3) 308; Cowan (n 22) 62, 65.
- ⁷⁴ DD Koski, 'Jury Decisionmaking in Rape Trials: A Review and Empirical Assessment' (2002) 38 Crim LB 21, 136; Klein (n 68) 993; A Gruber, 'Rape, Feminism, and the War on Crime' (2009) 84 Wash L Rev 581, 647.
- ⁷⁵ See Kelly and others (n 65) 77; Finch and Munro (n 3) 309; L Gotell, 'Canadian Sexual Assault Law: Neoliberalism and the Erosion of Feminist-inspired Law Reform' in McGlynn and Munro (n 25) 210.
- ⁷⁶ EH Sutherland and DR Cressey, *Principles of Criminology* (Lippincott 1960) 11.
- ⁷⁷ S Brownmiller, *Against Our Will: Men, Women and Rape* (Bantam Books 1975).
- ⁷⁸ MR Burt, 'Cultural Myths and Supports for Rape' (1980) J Personality and Soc Psych 217. See Bohner and others (n 64) 18; A Pauna and Z Pleszewski, 'Clinical and Methodological Issues in the Research on the Rape Myth' (2012) 66 WASET 1201, 1202.
- ⁷⁹ See KA Lonsway and LF Fitzgerald, 'Rape Myths: In Review' (1994) Psych Women Q 133, 136; Kelly and others (n 65) 2, 3; Temkin and Krahe (n 3) 38, 42; Eyssel and Bohner (n 7) 263; Crown Prosecution Service, *CPS Policy for Prosecuting Cases of Rape* (CPS 2012) <www.cps.gov.uk/publications/prosecution/rape.html> accessed 7 February 2013, Section 5.
- ⁸⁰ H Gerger and others, 'The Acceptance of Modern Myths About Sexual Aggression Scale: Development and Validation in German and English' (2007) 33 Aggressive Behav 422. See eg Temkin and Krahe (n 3); L Ellison and VE Munro, 'A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections upon Received Rape Myth Wisdom in the Context of a Mock Jury Study' (2010) 13 New Crim L Rev 781, 782; Pauna and Pleszewski (n 77). But for recent use of other scales, see for example I Anderson and H Bissell, 'Blame and Fault Attributions in Sexual Violence: Are these Distinct?' (2011) 3 J Aggress Confl Peace Res 222; M Davies, J Gilston and P Rogers, 'Examining the Relationship Between Male Rape Myth Acceptance, Female Rape Myth Acceptance, Victim Blame, Homophobia, Gender Roles, and Ambivalent Sexism' (2012) 27 J Interpers Violence 2807; T Aronowitz, CA Lambert and S Davidoff, 'The Role of Rape Myth Acceptance in the Social Norms Regarding Sexual Behavior Among College Students' (2012) 29 J Commun Health Nurs 173.
- ⁸¹ Gerger and others (n 79) 423.
- ⁸² *ibid* 423.
- ⁸³ Temkin and Krahe (n 3) 51.
- ⁸⁴ See below. For recognition of this point see Koski (n 73) 70.
- ⁸⁵ Temkin and Krahe (n 3) 51.
- ⁸⁶ Finch and Munro (n 3) 319.
- ⁸⁷ *ibid* 318, 319; E Finch and VE Munro, 'The Demon Drink and the Demonized Woman: Socio-Sexual Stereotypes and Responsibility Attribution in Rape Trials Involving Intoxicants' (2007) 16 Soc Leg Stud 591, 595. See also L Ellison and VE Munro, 'Of "Normal Sex" and "Real Rape": Exploring the Use of Socio-sexual Scripts in (Mock) Jury Deliberation' (2009) 18 Soc Leg Stud 291, 296. See further below.

⁸⁸ Temkin and Krahé (n 3) 42, 177-78.

⁸⁹ *ibid* 184. See also S Bieneck and B Krahé, 'Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is there a Double Standard?' (2011) 25 *J Interpers Violence* 1785, 1786.

⁹⁰ B Krahé, J Temkin and S Bieneck, 'Schema-driven Information Processing in Judgements about Rape' (2007) 21 *Applied Cognitive Psych* 601, 602. See also Munro and Kelly (n 41) 295; Krahé and Berger (n 3) 336.

⁹¹ W Lance Bennett and MS Feldman, *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture* (Rutgers University Press 1981); S Marcus, 'Fighting Bodies, Fighting Words: A Theory and Politics of Rape Prevention' in J Butler and JW Scott (eds), *Feminists Theorize the Political* (Routledge 1992); N Kibble, 'Uncovering Judicial Perspectives on Questions of Relevance and Admissibility in Sexual Offence Cases' (2008) 35 *JLS* 91, 92; Kelly (n 28) 267; S O'Keeffe, JM Brown and E Lyons, 'Seeking Proof or Truth: Naturalistic Decision-Making by Police Officers when Considering Rape Allegations' in Horvath and Brown (n 11) 232; I Dennis, *The Law of Evidence* (4th edn, Sweet & Maxwell 2010) 119-42. At times this is recognized by Temkin and Krahé: see Temkin and Krahé (n 3) 50, 71; Temkin (n 28) 729; and by Munro: see L Ellison and VE Munro, 'Getting to (Not) Guilty: Examining Jurors' Deliberative Processes in, and Beyond, the Context of a Mock Rape Trial' (2010) 30 *LS* 74, 79-80.

⁹² Eyssel and Bohner (n 7) 263. See also Gerger and others (n 79) 424.

⁹³ Gerger and others (n 79) 424. See also Pauna and Pleszewski (n 77) 1205.

⁹⁴ *ibid* 424; Eyssel and Bohner (n 7) 262.

⁹⁵ Gerger and others (n 79) 425.

⁹⁶ Eyssel and Bohner (n 7) 271.

⁹⁷ Gerger and others (n 79) 432.

⁹⁸ *ibid* 423-24.

⁹⁹ See Temkin and Krahé (n 3) 38.

¹⁰⁰ See E Janus, *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* (Cornell University Press 2006).

¹⁰¹ See Lonsway and Fitzgerald (n 78) for their related point about the importance of behavioural variables.

¹⁰² Temkin and Krahé (n 3) 177. See also *ibid* 118.

¹⁰³ For a recent small-scale survey that found low RMA even using AMMSA, see Pauna and Pleszewski (n 77) 1204-05.

¹⁰⁴ See *R v D* [2008] EWCA Crim 2557, [2009] Crim LR 591; N Kibble, '*R. v D*: Rape: Rape Within a Relationship -- Delayed Allegations -- Summing Up' [2009] Crim L Rev 590, 596.

¹⁰⁵ Temkin and Krahé (n 3) 2. See also Myhill and Allen (n 45) 63; Stern (n 15) 12.

¹⁰⁶ Stern (n 15) 12.

¹⁰⁷ Krahé and Berger (n 3) 335.

- 108 Myhill and Allen (n 45) 30; Temkin and Krahe (n 3) 31; Krahe and Berger (n 3) 335; Payne (n 17) 10; Stern (n 15) 12.
- 109 See eg Krahe and Berger (n 3) 335.
- 110 Myhill and Allen (n 45); A Feist and others, *Investigating and Detecting Recorded Offences of Rape* (Home Office Online Report 18/07, 2007); Ministry of Justice and others (n 31) 16.
- 111 Myhill and Allen (n 45) 63; Payne (n 17) 10; Stern (n 15) 12.
- 112 Ellison and Munro (n 79) 784.
- 113 *ibid* 789. See also S Ben-David and O Schneider, 'Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance' (2005) 53 *Sex Roles* 385, 394; Munro and Kelly (n 41) 292.
- 114 See eg Bieneck and Krahe (n 88) 1793-94.
- 115 See Temkin and Krahe (n 3) 45-48; Bieneck and Krahe (n 88). But see in contrast Temkin and Krahe (n 3) 95.
- 116 A Clarke, J Moran-Ellis and J Slaney, *Attitudes to Date Rape and Relationship Rape: A Qualitative Study* (Sentencing Advisory Panel 2002) 41, 46, 61. See also *ibid* 48, 54; J Jordan, *The Word of a Woman: Police, Rape and Belief* (Palgrave Macmillan 2004) 140; Temkin and Krahe (n 3) chs 4, 5.
- 117 Ben-David and Schneider (n 112); Temkin and Krahe (n 3) ch 4; Bieneck and Krahe (n 88). But for a different methodology, see CM Monson, J Langhinrichsen-Rohling and T Binderup, 'Does "No" Really Mean "No" After You Say "Yes"? Attributions About Date and Marital Rape' (2000) 15 *J Interpers Violence* 1156.
- 118 Clarke and others (n 115) 17.
- 119 *ibid* 30-31. See also *ibid* 37.
- 120 *ibid* 37.
- 121 See *ibid* 43, 46, 48, 54.
- 122 *ibid* 33, 34, 38, 61. See also Ellison and Munro, 'A Stranger' (n 79).
- 123 See Temkin and Krahe (n 3) 40; Brown and others (n 19) 30; Bieneck and Krahe (n 88) 1795.
- 124 Cross-nationally, Daly and Bourhous (n 2) found that the relationship between victim and offender as well as the victim's character and credibility had less impact on criminal justice outcomes as we move towards the present day: 615, 621. See also Munro and Kelly (n 41); Larcombe (n 3).
- 125 Dennis (n 90) 624. See Ellison and Munro (n 79).
- 126 See Daly and Bourhous (n 2) for evidence that the prospect of a conviction continues to be enhanced cross-nationally where there are extraneous physical injuries and/or the presence of a weapon.
- 127 Kelly and others (n 32). See also Myhill and others (n 45) 50; Jordan (n 115); Feist and others (n 109); Brown and others (n 19) 26; Ministry of Justice and others (n 31) 25.

¹²⁸ Kelly and others (n 32) 89. See also Jordan (n 115) 82; L Ellison, 'Promoting Effective Case-building in Rape Cases: A Comparative Perspective' [2007] Crim L Rev 691.

¹²⁹ Kelly and others (n 32) 67.

¹³⁰ See D Brereton, 'How Different are Rape Trials? A Comparison of the Cross-Examination of Complainants in Rape and Assault Trials' (1997) 37 Brit J Criminol 242, 249, where he argues that a physical injury 'obviously gives some credibility to an assault complainant's claim that she/he was struck by someone, but it does not necessarily legitimate his or her explanation of how or why the attack occurred'. Accordingly, the police might well disbelieve the glassing victim's account of an unprovoked attack, and quiz him as to whether there was instead a drunken confrontation. For further support, see Cretney and Davis (n 37) 65, 86, 124-30. Relatedly, when Brereton studied cross-examination in assault trials, he found that cross-examination as to whether injuries were self-inflicted or accidental, rather than caused by another person, occurred in relation to several assault complainants, although he does not specify a number: *ibid* 249. See also Cretney and Davis (n 37) 143-44.

¹³¹ See Kelly and others (n 32) 51; Independent Police Complaints Commission, *Commissioner's Report: IPCC Independent Investigation into the Metropolitan Police Service's Inquiry into Allegations against John Worboys* (January 2010). But see CL Saunders, 'The Truth, the Half-Truth, and Nothing Like the Truth: Reconceptualizing False Allegations of Rape' (2012) 52 Brit J Criminol 1152 for the argument that police officers' apparent scepticism may be because they are using a different definition of false allegation from researchers.

¹³² Her Majesty's Crown Prosecution Service Inspectorate, *Without Consent: A Report on the Joint Review of the Investigation and Prosecution of Rape Offences* (Central Office of Information 2007) 65. See Ellison (n 127) 699.

¹³³ There may also be a lack of precision about the meaning of 'cry rape': see Saunders (n 130).

¹³⁴ Gerger and others (n 79) 439-40. Although it would be useful to know the proportion of participants who believe women often cry rape, Gerger and others do not break down the AMMSA results question by question.

¹³⁵ cf Redmayne (n 10).

¹³⁶ PNS Rumney, 'False Allegations of Rape' (2006) 65 CLJ 128, 129.

¹³⁷ *ibid* 157. See Stern (n 15) 13; Saunders (n 130) 1153, 1169; PNS Rumney and RA Fenton, 'Rape, Defendant Anonymity and Evidence-Based Policy Making' (2013) 76 MLR 109, 115-25.

¹³⁸ Westmarland and Graham (n 7) 100.

¹³⁹ Gerger and others (n 79) 439-40.

¹⁴⁰ Gavey (n 7) 203.

¹⁴¹ See further below.

¹⁴² For support, see Clarke and others (n 115) 11, 27-30.

¹⁴³ RR Ross and E Rice Allgeier, 'Behind the Pencil / Paper Measurement of Sexual Coercion' (1996) 26 J Applied Soc Psych 1587, 1608.

¹⁴⁴ See Pauna and Pleszewski (n 77) 1205.

¹⁴⁵ Cowling (n 46) 130; C Kitinger and H Frith, 'Just Say No? The Use of Conversational Analysis in Developing a Feminist Perspective on Sexual Refusal' (1999) 10 Discourse Soc 293, 300.

- ¹⁴⁶ M Cowling, 'Should Communicative Sexuality be Written into English Law on Rape?' (2002-03) 6 Contemp Issues L 47, 61; P Reynolds, 'Rape, Law and Consent: the Scope and Limits to Sexual Regulation by Law' (2002-03) 6 Contemp Issues L 92, 95.
- ¹⁴⁷ Temkin and Krahe (n 3) 36-38.
- ¹⁴⁸ See (n 133).
- ¹⁴⁹ Clarke and others (n 115) 11, 27-30. See also A Grubb and E Turner, 'Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming' (2012) 17 Aggress Violent Beh 443, 446. See further Davies and others (n 79) 2817-18; Aronowitz and others (n 79) 179. I am grateful to one of the anonymous referees for the point that, for male participants, hope may also play a role in their responses to the 'coffee myths'.
- ¹⁵⁰ C Muehlenhard and L Hollabaugh, 'Do Women Sometimes Say No when they Mean Yes? The Prevalence and Correlates of Women's Token Resistance to Sex' (1988) 54 J Personality Soc Psych 872; Kitzinger and Frith (n 144) 310; LM Phillips, *Flirting with Danger: Young Women's Reflections on Sexuality and Domination* (New York University Press 2000). See Gruber (n 73) 632-33.
- ¹⁵¹ Phillips (n 149) 116. Although Phillips' young interviewees may have been particularly passive in showing their sexual consent, see (n 149) for further support.
- ¹⁵² See Gavey (n 7) 176.
- ¹⁵³ See Temkin and Krahe (n 3) 204.
- ¹⁵⁴ Stern (n 15) 51.
- ¹⁵⁵ See M White Stewart, SA Dobbin and SI Gatowski, "'Real Rapes" and "Real Victims": The Shared Reliance on Common Cultural Definitions of Rape' (1996) 4 Fem LS 159, 160; G Cowan and WJ Quinton, 'Cognitive Style and Attitudinal Correlates of the Perceived Causes of Rape Scale' (1997) 21 Psych Women Q 227, 229; Temkin and Krahe (n 3) 77, drawing on Cowan and Quinton. For discussion, see E Rice Allgeier and J Lamping, 'Theories, Politics, and Sexual Coercion' in PB Anderson and C Struckman-Johnson (eds), *Sexually Aggressive Women: Current Perspectives and Controversies* (Guilford Press 1998) 56-57.
- ¹⁵⁶ Kitzinger and Frith (n 144) 310.
- ¹⁵⁷ Gavey (n 7) 2 (emphasis added).
- ¹⁵⁸ *ibid* 3.
- ¹⁵⁹ *ibid* 71. See also ES Byers and LF O'Sullivan, 'Similar but Different: Men's and Women's Experiences of Sexual Coercion' in Anderson and Struckman-Johnson (n 154); Phillips (n 149); Gruber (n 72) 631-33; Ellison and Munro (n 79) 792.
- ¹⁶⁰ Gruber (n 73) 648. For development, see Kitzinger and Frith (n 144) 310; Cowling (n 145) 52, 61; Reynolds (n 145) 95; Gotell (n 74); Munro (n 19) 53. For the opposite view, see eg SJ Schulhofer, 'Taking Sexual Autonomy Seriously: Rape Law and Beyond' (1992) 11 L & Phil 35; D Archard, "'A Nod's as Good as a Wink": Consent, Convention and Reasonable Belief' (1997) 3 Legal Theory 273, 290.
- ¹⁶¹ N Gilbert, 'The Phantom Epidemic of Sexual Assault' (1991) 103 Public Interest 54, 61.
- ¹⁶² For development, see Cowling (n 46) 59; Kitzinger and Frith (n 144) 310; Phillips (n 149) 14; Munro (n 19) 53.
- ¹⁶³ Munro (n 19) 71.

¹⁶⁴ Gavey (n 7) 232.

¹⁶⁵ *ibid.*

¹⁶⁶ 'Chameleon', 'Intimate Intrusions: Interview with Professor Liz Kelly' (*Redemption Blues*, 4 May 2007) <www.redemptionblues.com/?p=256> accessed 23 July 2012. See also L Gotell, 'The Discursive Disappearance of Sexualized Violence: Feminist Law Reform, Judicial Resistance, and Neo-Liberal Sexual Citizenship' in DE Chunn, SB Boyd and H Lessard (eds), *Reaction and Resistance: Feminism, Law and Social Change* (UBC Press 2007) 131; Gruber (n 73) 643-44.

¹⁶⁷ For the contrasting argument that we should accept that sexual pleasure and desire are intertwined with power and control, surrender and objectification, see KM Franke, 'Theorizing Yes: An Essay on Feminism, Law, and Desire' (2001) 101 *Columbia L Rev* 181, 207; J Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press 2006) 302.

¹⁶⁸ See C Young, *Ceasefire: Why Women and Men Must Join Forces to Achieve True Equality* (The Free Press 1998) 144.

¹⁶⁹ Gavey (n 7) 189.

¹⁷⁰ See *ibid* for recognition of this.

¹⁷¹ See Rumney (n 64) 902; Cowling (n 145) 63.

¹⁷² See Cowan (n 22) 58.

¹⁷³ See above.

¹⁷⁴ Munro (n 19) 53. See also Cowan (n 22) 69; Munro (n 26) 20.

¹⁷⁵ Ellison and Munro (n 86). See also Finch and Munro (n 3) 318; Ellison and Munro (n 79) 792.

¹⁷⁶ Ellison and Munro (n 86) 299.

¹⁷⁷ Munro (n 26) 20. See also Munro (n 19) 53.

¹⁷⁸ Cowan (n 22) 62. See also Rumney (n 64) 899-900.

¹⁷⁹ Rumney (n 64) 898. See also Tadros (n 27) 517; Finch and Munro (n 3) 308; McGlynn (n 25) 144.

¹⁸⁰ Krahe and others (n 89) 601.

¹⁸¹ See eg Draper (n 1) 972; Temkin and Krahe (n 3) 3; Temkin (n 28) 715. For recognition of this distinction, see Koski (n 73) 29.

¹⁸² See eg Finch and Munro (n 86) 593; Krahe and others (n 89) 601; Eyssel and Bohner (n 7) 262; L Ellison and VE Munro, 'Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility' (2009) 49 *Brit J Criminol* 202, 203; Munro and Kelly (n 41) 284; Krahe and Berger (n 3) 336; O Brooks, "'Guys! Stop Doing it!': Young Women's Adoption and Rejection of Safety Advice when Socializing in Bars, Pubs and Clubs' (2011) 51 *Brit J Criminol* 635, 647.

¹⁸³ Amnesty International UK, *Sexual Assault Research Summary Report* (12 October 2005) available from <www.amnesty.org.uk/news_details.asp?NewsID=16618> accessed 23 July 2012.

¹⁸⁴ The Havens (Sexual Assault Referral Centres), 'Wake Up to Rape Research Summary Report' (2010). For similar methodology and findings, see also Home Office, 'Violence Against Women Opinion Polling' (Home Office, February 2009); Aronowitz and others (n 79) 179.

¹⁸⁵ See eg David Fickling, 'One in Three Blames Women for being Raped' *The Guardian* (London, 21 November 2005) <www.guardian.co.uk/uk/2005/nov/21/ukcrime.prisonsandprobation> accessed 23 July 2012; Ellison (n 127) 708; Krahe and others (n 89) 601; Temkin and Krahe (n 3) 33; Krahe and Berger (n 3) 336; Stern (n 15) 50.

¹⁸⁶ See eg *UK: New Poll finds a Third of People believe Women who Flirt Partially Responsible for being Raped* <www.amnesty.org.uk/news_details.asp?NewsID=16618> accessed 23 July 2012.

¹⁸⁷ See above. On the pitfalls of advocacy research, see N Gilbert, 'Miscounting Social Ills' [1994] *Society* 18.

¹⁸⁸ For recognition, see Finch and Munro, 'Demon Drink' (n 86) 597-98; Ellison and Munro, 'A Stranger' (n 79) 788. For development, see S Kanekar, NJ Pinto and D Mazumdar, 'Causal and Moral Responsibility of Victims of Rape and Robbery' (1985) 15 *J Applied Soc Psych* 622; Anderson and Bissell (n 79).

¹⁸⁹ See MA Whatley, 'The Effect of Participant Sex, Victim Dress, and Traditional Attitudes on Causal Judgments for Marital Rape Victims' (2005) 20 *J Family Violence* 191, 197.

¹⁹⁰ Temkin and Krahe (n 3) 79.

¹⁹¹ For use of this measure, see also Monson and others (n 116) 1162; Bieneck and Krahe (n 88) 1789.

¹⁹² For use of this measure, see also Bieneck and Krahe (n 88) 1789. But see Brown and others (n 19) for use of the word 'fault' (but see Anderson and Bissell (n 79) for the argument that 'blame' and 'fault' are conceptually distinct).

¹⁹³ See Felson (n 8) 211.

¹⁹⁴ 'Chameleon' (n 165). See also Feist and others (n 109) 18; J Lovett and MAH Horvath, 'Alcohol and Drugs in Rape and Sexual Assault' in Horvath and Brown (n 11) 128, 153.

¹⁹⁵ Lovett and Horvath (n 193) 152.

¹⁹⁶ cf Redmayne (n 10).

¹⁹⁷ Phillips (n 149) 158.

¹⁹⁸ *ibid* 3.

¹⁹⁹ *ibid* 158.

²⁰⁰ See Koski (n 73) 70; Pauna and Pleszewski (n 77) 1205 for recognition.

²⁰¹ Lonsway and Fitzgerald (n 78) 136.

²⁰² See text to n 214.

²⁰³ See Section 6; Koski (n 73) 70.

²⁰⁴ See Section 6.

²⁰⁵ See eg Brown and others (n 19) (but see Anderson and Bissell (n 79)). Blaming rape victims may be a coping and distancing mechanism for some women, enabling them to maintain their 'belief in a just world': see eg LA Foley and MA Pigott, 'Belief in a Just World and Jury Decisions in a Civil Rape Trial' (2000) 30 J Applied Soc Psych 935.

²⁰⁶ Kanekar and others (n 187) 623; Brereton (n 129) 243; Felson (n 8) 192, 199; Bieneck and Krahe (n 88) 1787.

²⁰⁷ Cretney and Davis (n 37) 65, 86, 124-30, 152-53; Brereton (n 129); EP Baumer, SF Messner and RB Felson, 'The Role of Victim Character and Victim Conduct in the Disposition of Murder Cases' (2000) 17 Justice Q 281, 297, 303, 304. But see Bieneck and Krahe (n 88).

²⁰⁸ See eg SJ Schulhofer, 'Rape in the Twilight Zone: When Sex is Unwanted but not Illegal' (2005) 38 Suffolk U L Rev 415, 423; Barbara Ellen, 'Rape: Let's Take More Care When We Talk About It' *The Observer* (London, 30 October 2011) <www.guardian.co.uk/commentisfree/2011/oct/30/barbara-ellen-rape-trivialised> accessed 23 July 2012.

²⁰⁹ See eg <www.mccannfiles.com> accessed 23 July 2012.

²¹⁰ Baumer and others (n 206) 297, 303, 304 in relation to other crimes; cf Daly and Bourhous (n 2) 615, 621 in relation to rape.

²¹¹ Temkin (n 28) 718.

²¹² See *ibid.*

²¹³ See Criminal Injuries Compensation Authority, 'Criminal Injuries Compensation Scheme 2012' (28 November 2012) 10-11.

²¹⁴ Editorial, 'Insult after Injury', *The Guardian* (London, 12 August 2008) <<http://www.guardian.co.uk/commentisfree/2008/aug/12/women.justice>> accessed 23 July 2012.

²¹⁵ Draper (n 1) 958.

²¹⁶ D Draper, 'Rape, Law and American Society' in McGlynn and Munro (n 25) 235-36.

²¹⁷ Draper (n 1) 976.

²¹⁸ Temkin and Krahe (n 3) 196, 210.

²¹⁹ Draper (n 1) 971, 973.

²²⁰ *ibid* 973.

²²¹ *ibid* 973.

²²² Temkin and Krahe (n 3) 165.

²²³ Stewart and others (n 154) 162.

²²⁴ Temkin and Krahe (n 3) 171-72.

²²⁵ Temkin (n 28) 714. See also Krahé and Berger (n 3) 339.

²²⁶ Finch and Munro (n 3) 307, 320; Temkin and Krahé (n 3) 165; Temkin (n 28). For discussion, see N Kibble, 'Judicial Perspectives on the Operation of s.41 and the Relevance and Admissibility of Prior Sexual History Evidence: Four Scenarios: Part 1' [2005] Crim L Rev 190, 190; N Kibble, 'Judicial Discretion and the Admissibility of Prior Sexual History Evidence under Section 41 of the Youth Justice and Criminal Evidence Act 1999: Sometimes Sticking to your Guns means Shooting Yourself in the Foot: Part 2' [2005] Crim L Rev 263.

²²⁷ See *R v D* (n 102); Kibble (n 103) 596; L Ellison and VE Munro, 'Turning Mirrors into Windows?: Assessing the Impact of (Mock) Juror Education in Rape Trials' (2009) 49 Brit J Criminol 363, 365; Stern (n 15) 16.

²²⁸ Kelly and others (n 32) 90; Temkin and Krahé (n 3) 196; Stern (n 15) 86.

²²⁹ Ellison and Munro (n 226) 379. See also Kelly and others (n 32) 90; Payne (n 17) 10, 26; Temkin and Krahé (n 3) 200; Krahé and Berger (n 3) 351; Brown and others (n 19) 49.