

The Epistemic Significance of Rape Victim Testimony

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For my parents.

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Chapter 1

Introduction

1.1 The Problem of Rape

Violence against women is pandemic, with intimate partner and sexual violence comprising a large portion of violence that women suffer. Statistics indicate that one in three women will be victims of intimate partner violence at some point in their lives; specifically, the World Health Organization estimates that “35% of women worldwide have experienced either physical and/or sexual intimate partner violence¹ or non-partner sexual violence”² Additionally, “most of this violence is intimate partner violence. Worldwide, almost one third (30%) of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner. In some regions, as many as 38% of women have experienced intimate partner violence.”³

Rape, an especially pernicious form of sexual violence, is also extremely common. Statistics concerning rape prevalence are notoriously difficult to obtain,⁴ but prevailing studies suggest that approximately one in five women will be victims of rape or attempted

1. In this instance, the World Health Organization includes physical and sexual violence in its definition of “intimate partner violence.” Physical violence is defined as “being slapped or having something thrown at you that could hurt you, being pushed or shoved, being hit with a fist or something else that could hurt, being kicked, dragged or beaten up, being choked or burnt on purpose, and/or being threatened with, or actually, having a gun, knife or other weapon used on you.” Sexual violence is defined as “being physically forced to have sexual intercourse when you did not want to, having sexual intercourse because you were afraid of what your partner might do, and/or being forced to do something sexual that you found humiliating or degrading.” Note that the scope of these definitions are highly subjective and severely limiting: intimate partner violence statistics gathered for this report consist of the “self-reported experience of one or more acts of physical and/or sexual violence by a current or former partner since the age of 15 years.” This reporting stipulation thus limits responses to women of 15 years or older who self-report being in an intimate dating or marital relationship of some kind. See: World Health Organization/London School of Hygiene & Tropical Medicine and South African Medical Research Council, *Global and Regional Estimates of Violence Against Women* (World Health Organization, 2013), 6.

2. Ibid., 2.

3. Ibid.

4. Dean Kilpatrick and Jenna McCauley, *Understanding National Rape Statistics* (National Resource Center on Domestic Violence (NRC DV), 2009).

rape in their lifetime.⁵ Rape statistics are difficult to acquire in part because they suffer from definitional limitations and inconsistencies. As a result, current rape prevalence statistics are almost certainly conservative estimates.⁶ Some studies—those that rely on victim reporting for their data⁷ and not victimization surveys—“will grossly underestimate the total occurrence of rape.”⁸ From the available data, then, we know that sexual violence against women—including rape—is extremely common and that the prevalence of sexual violence is almost certainly more widespread than the data suggests.

According to the World Health Organization, “violence against women is a significant public health problem, as well as a fundamental violation of women’s human rights.”⁹ Intimate partner violence and sexual violence “profoundly damage the physical, sexual, reproductive, emotional, mental and social well-being of individuals and families.”¹⁰ Research also indicates that sexual violence harms society more broadly.¹¹ At the individual and family level, sexual violence is responsible for a number of health issues including physical injury, unwanted pregnancy, abortion, gynaecological complications, and sexually transmitted infections (including HIV/AIDS).¹² Individual psychological effects include: anxiety, low self esteem, self-blame, guilt, shock, confusion, denial, self-harm, suicidal ideations, attempted suicide, and post-traumatic stress disorder (PTSD).¹³ Sexual assault

5. M. C. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report* (Atlanta, GA: National Center for Injury Prevention & Control, Centers for Disease Control & Prevention, 2011).

6. Kilpatrick and McCauley, *Understanding National Rape Statistics*.

7. Cf., for example, fn. 1.

8. Kilpatrick and McCauley, *Understanding National Rape Statistics*, 11.

9. World Health Organization/London School of Hygiene & Tropical Medicine and Council, *Global and Regional Estimates of Violence Against Women*, 2.

10. World Health Organization/London School of Hygiene & Tropical Medicine, *Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence* (Geneva: World Health Organization, 2010), 3.

11. See Z. Morrison, A. Quadara, and C. Boyd, *Ripple Affects of Sexual Assault* (Melbourne: Australian Centre for the Study of Sexual Assault, 2007) and VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence. A Summary of Findings* (Carlton South: Victorian Health Promotion Foundation, 2004).

12. World Health Organization/London School of Hygiene & Tropical Medicine, *Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence*, 3.

13. See J. Petrak, “The Psychological Impact of Sexual Assault,” in *The Trauma of Sexual Assault: Treatment, Prevention and Practice*, ed. J. Petrak and B. Hedge (West Sussex: John Wiley & Sons, 2002); S. Stepakoff, “Effects of Sexual Victimization on Suicidal Ideation and Behavior in U.S. College Women,”

also affects victims financially: victims can suffer from loss of earnings, loss of earnings capacity, medical expenses, counselling expenses and other intangible costs.¹⁴ A recent study in the United States estimates that the lifetime cost of rape was \$122,461 per victim.¹⁵ In terms of costs to the general population, this translates to:

a population economic burden of nearly \$3.1 trillion (2014 U.S. dollars) over victims' lifetimes. This estimate included \$1.2 trillion (39% of total) in medical costs; \$1.6 trillion (52%) in lost work productivity among victims and perpetrators; \$234 billion (8%) in criminal justice activities; and \$36 billion (1%) in other costs, including victim property loss or damage. Government sources pay an estimated \$1 trillion (32%) of the lifetime economic burden.¹⁶

In addition to these financial burdens, sexual assault can have profound effects on the victim's relationships and social life, negatively impacting intimate partner, friendship, and family relationships.¹⁷

Despite the prevalence and significant harm sexual violence imposes upon individuals and society more broadly, it is difficult to sustain conversations and scholarship involving trauma. Susan Brison explains that one of the most difficult aspects of her recovery was "the seeming inability of others to remember what has happened, accompanied by their habit of exhorting me, too, to forget."¹⁸ In many ways, this typical response to trauma makes sense. Brison explains that this sentiment stems "not merely from ignorance or indifference, but also from an active fear of identifying with those whose terrifying fate forces us to acknowledge that we are not in control of our own."¹⁹ Judith Herman also comments upon

Suicide and Life-Threatening Behavior 28, no. 1 (1998): 107–26; and J. Astbury, *Services for Victim/Survivors of Sexual Assault: Identifying Needs, Interventions and Provision of Services in Australia* (Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2006) as cited in Morrison, Quadara, and Boyd, *Ripple Affects of Sexual Assault*.

14. P. Mayhew and G. Adkins, *Counting the Costs of Crime in Australia* (Canberra, 2003).

15. Cora Peterson et al., "Lifetime Economic Burden of Rape Among U.S. Adults," *American Journal of Preventive Medicine* 52, no. 6 (2017): 691.

16. *Ibid.*

17. S. Crome and M. McCabe, "The Impact of Rape on Individual, Interpersonal, and Family Functioning," *Journal of Family Studies* 1, no. 1 (1995): 58–70 as cited in Morrison, Quadara, and Boyd, *Ripple Affects of Sexual Assault*.

18. Susan Brison, *Aftermath: Violence and the Remaking of a Self* (Princeton University Press, 2002), x.

19. *Ibid.*

the ways trauma scholarship is not consistently sustained. Trauma scholarship, she notes, comes in and out of scholarly vision in part because it is so difficult to attend to trauma and trauma victims. When it comes to individual traumatic testimony, Herman acknowledges that, for many, “it is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil. The victim asks the bystander to share the burden of the pain. The victim demands action, engagement, and remembering.”²⁰

Brison and Herman offer various reasons rape victims can find it difficult to share their trauma with others. In this dissertation, I will not address all of the reasons Brison and Herman articulate, but the general sense that it is difficult for bystanders—including testimony recipients—to face trauma serves as an important backdrop for the issues of testimony and belief that I will take up here. While I will not delve into some of the psychological obstacles like the testimony recipient’s desire to not identify with the trauma victim, I will address issues like ignorance and the temptation to take the side of the perpetrator. I will take up these issues with a uniquely epistemic lens.

1.2 Rape and Testimony

There are two main problems at the intersection of women’s testimony and sexual assault that I will address in this dissertation. The first I address in the next chapter (Chapter Two) and has to do with difficulties women face regarding their own consent to sexual relations. In Chapter Two, there are two instances in which I will examine testimony as it pertains to consent: (1) a woman’s communication of her consent during a sexual encounter can be seen as a kind of testimony wherein a woman testifies to her consent or non-consent to sexual relations and (2) a woman’s testimony regarding whether or not she consented to a sexual encounter after the encounter occurred. The main problem I will address has to do with the realization that women’s testimony regarding consent in both cases is not always

20. Judith Lewis Herman, *Trauma and Recovery* (New York: BasicBooks, 1997), 7.

taken seriously or at face value. In short, women's testimony regarding their consent is often discounted. This is a problem, I argue, because when women's testimony regarding consent is not taken seriously, it undermines women's epistemic agency in such a way that it can result in epistemic injustice. These epistemic problems inform and contribute to the ways discrediting women's consent testimony during and after a sexual interaction undermine women's agency more generally and can result in physical, sexual, and emotional violence against women.

The second main problem that I will address in this dissertation (Chapters Three, Four, and Five) is that women tend to be disbelieved when they report rape. That women are disbelieved is a problem because there are significant societal impediments to coming forward, and studies show that reporting—and being believed when they report—positively influences a victim's ability to heal. In Chapter Three I explain why prevalent epistemic norms erroneously suggest disbelief in rape victims. In Chapter Four I argue that the epistemic norms that dictate disbelief are misguided. Together, the third and fourth chapters begin a substantive critique of certain epistemic norms surrounding testimonial justification. Chapter Five continues the work of Chapter Four by addressing and refuting popular claims made by rape skeptics. Chapter Six concludes with a summary and suggestions for further study.

1.3 Preliminaries

This dissertation is limited in a number of ways. I will, for example, focus on sexual violence perpetrated by men against women. I focus on this particular dynamic because most victims of sexual violence are women, and most perpetrators are men.²¹ It is, however, important to note that individuals who do not identify as women (men and people who do not conform to sex or gender binaries) face different and highly problematic obstacles in their own right. It will be important to remember that that sexual violence

21. World Health Organization/London School of Hygiene & Tropical Medicine, *Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence*.

does not only occur heteronormatively or even in any unilateral direction across sex and gender lines. While women are the focus of this dissertation, I hope that this dissertation can provide a basis for future nuanced studies of other populations.

This dissertation is also limited with respect to race. While many of the statistics I cite are not defined by race, it is crucial to note that some claims I will make break down across racial lines. For example, when I claim that women are generally disbelieved when they report rape, I make this claim because it is generally true. There are, however, important historical and contemporary debates that suggest counterexamples to this general claim. That is, credibility might increase or decrease depending upon one's race and the race of the accused. Again, I hope that this dissertation can be a starting point for further inquiry into the unique obstacles individuals from marginalized and vulnerable populations face.

Similar limiting concerns arise for other marginalized identities as well: "although women as a group suffer disadvantage, their experiences can vary considerably. Factors such as age, race, marital status, family responsibilities, cultural background, sexual orientation and disability have specific social and legal ramifications."²² Individuals who are native, from a non-English speaking background, who have a disability or mental illness, who work in the sex industry, who have a history of sexual assault, or who are from a disadvantaged economic background face unique challenges with regard to sexual assault, especially as they face the legal system. This dissertation is limited insofar as intersectional identities will bear upon the claims made here, and more work should be done to provide a comprehensive picture for these various marginalized and intersectional identities.

Finally, throughout this dissertation I will take it as a given that sexism and various sexist phenomena exist. I will not try to convince those who are skeptical of pervasive sexism that sexism or sexist behavioral patterns (e.g., gaslighting) exist—no matter how incredible they might seem to the casual reader. If I claim that a sexist dynamic exists or mention a sexist phenomenon, I do so because there are many well-documented instances

22. *Equality before the law: Justice for women (Report No. 69, Part 1)* (Sydney: Australian Law Reform Commission, 1994), 25.

of it. While I will, at some points, *explain* certain concepts for clarity, to argue for sexist patterns would then take up and derail the bulk of the dissertation.

Chapter 2

Sexual Violence and the Epistemic Injustice of Consent

With the rise of the #metoo movement, questions about consent are more visible than ever, and yet conceptual difficulties surrounding consent plague sexual interactions. Even minimal attention to news and media outlets reveals that individuals harbor widespread disagreement and misunderstandings regarding what constitutes a completely consensual sexual interaction.

Confusion about what constitutes a completely consensual sexual interaction is somewhat understandable given the way consent is articulated in various contexts. Popular media, for example, has a long history promoting the idea that when a woman explicitly says “no” in response to sexual advances, she really means “yes.”¹ Legally, there is no central definition of consent: states define consent for themselves, and these definitions vary.² Philosophical scholarship on consent similarly houses disagreement regarding whether consent is a purely internal act of will, a performative (i.e., communicative) behavior, or a combination of the two.³ According to Linda Alcoff, “this [confusion] is to be expected with so many new voices and advocacy groups as well as rapidly changing legal definitions that vary widely across nations but also states or provinces. Advocates, activists, and survivors ourselves do not always agree, and the general public are often more uncertain, I suspect, than some feel comfortable airing, certainly on college campuses.”⁴

While confusion surrounding questions of consent prevail, scholars critique popular consent-based discussions of sexual interactions. Susan Brison, for one, notes that among

1. See: Kelly Oliver, “Rape as Spectator Sport and Creepshot Entertainment: Social Media and the Valorization of Lack of Consent,” *American Studies Journal*, no. 61 (2016) and Kelly Oliver, *Hunting Girls: Sexual Violence from The Hunger Games to Campus Rape* (New York: Columbia University Press, 2016) for discussion and examples of “no” meaning “yes” in current pop culture.

2. The Rape, Abuse, & Incest National Network (RAINN) provides a useful database that details how consent is defined by state: <https://www.rainn.org/news/how-does-your-state-define-consent>.

3. See: Alan Wertheimer, “The Ontology of Consent,” in *Consent to Sexual Relations* (New York: Cambridge University Press, 2003).

4. L. M. Alcoff, *Rape and Resistance* (Polity Press, 2018), 12.

the first (and few) political philosophers writing about sexual consent “Ross Harrison wrote (in 1986) that ‘what principally distinguishes rape from normal sexual activity is the consent of the raped woman.’”⁵ Brison goes on to note that Harrison’s assertion is a vast departure from how we consider other crimes. We typically do not understand theft, for example, as gift-giving without consent. Rather, Brison notes, the violence of a theft is built into the very notion of the crime. To say that rape is simply sex without consent conceptually—and problematically—dismisses the violence inherent in rape. Thus Brison would rather characterize rape as a form of gender-based violence.⁶ Rebecca Kukla, another scholar who critiques consent-based discussions of sexual violence, argues that “discussions of consent have dominated the philosophical and legal discourse, as well as much of the public discourse around sexual negotiation, and this has seriously distorted and limited our understanding.”⁷ Rather than focus on consent, Kukla argues that it is useful to develop best practices for sexual communication that are more fine-grained than current consent models.

Instead of settling the question of what constitutes consent, my aim in this chapter is to highlight the epistemic difficulties women face when they attempt to communicate their consent or non-consent. Insofar as communication regarding consent can be seen as a kind of testimony,⁸ my aim is to highlight the epistemic difficulties women face when they testify their consent or non-consent both in their sexual encounters and when they report details of their sexual encounters to third parties. This chapter, then, will add to existing critiques regarding consent in sexual interactions insofar as it articulates specific epistemic harms of current consent models. This chapter will build upon Brison and Kukla’s work by showing that (in reference to Brison’s concerns) the epistemic burdens women face regarding consent are themselves instances of gendered violence and (in response to Kukla)

5. Susan Brison, “Sexual Violence, Social Meaning, and Narrative Selves” (April 2018).

6. *ibid.* In this short introduction, I only refer to one of many reasons Brison prefers to understand rape as gender-based violence.

7. Rebecca Kukla, “That’s What She Said: The Language of Sexual Negotiation,” *Ethics*, no. 129 (2018): 5.

8. In this paper I employ a broad definition of testimony that includes verbal and non-verbal communication.

conversations about sexual communication cannot be wholly divorced from notions of consent.

In this chapter, I will explore the extent to which the epistemic burdens women face regarding consent can rise to the level of epistemic injustice. I begin in Section 2.1, where I explain how popular public, legal, and philosophical notions of consent tend to involve a communicative element. In Section 2.2, I outline some ways that consent's communicative element is epistemically burdensome for women. In section 2.3, I suggest some ways women can suffer epistemic injustice as a result of current consent norms. Here I employ framework from Miranda Fricker's *Epistemic Injustice* as well as subsequent scholarship that builds upon Fricker's work. I conclude in Section 2.4 by suggesting that, in public and legal discourse, the subjective model of consent is the best model for circumventing the majority of epistemic injustices related to consent because it does not *require* communication.

2.1 Communicative Consent in Context

In this section, I will explain what I mean when I suggest that communication is a central aspect of consent in popular public, legal, and philosophical discourse. Before moving on, however, some preliminary remarks are in order. First, I do not intend to *argue* that communication is a central aspect of consent. That communication is a central aspect of consent on most models should become clear upon minimal reflection, and so I take this claim as a starting point. However, because I will later argue that communicative aspects of consent are unduly burdensome for women, it is important to take some time to highlight the precise ways communication has become an important component of consent. Second, when I refer to consent, I do not only refer to positive affirmations. That is, I do not bind the discussion with a notion of consent that is only concerned with how a woman freely and willfully agrees to sexual activity. Because affirmative consent is intricately bound to conversations of non-consent, I include both affirmative consent and non-consent in my

analysis. In what follows, will draw distinctions between affirmative consent and non-consent as needed.

Of the three main ways philosophers articulate consent, the subjective view⁹ is the only articulation that is purely psychological. On this view, no communicative act is required for consent.¹⁰ Rather, consent is defined as an internal mental act. An example of the subjective view in context can be illustrated by familiar medical contexts.¹¹ When patients are asked to sign a consent form for, say, an operation, it is possible to understand the form as a way to retroactively prove that the patient was consenting should there be a need. Supposing—as the subjective view does—that consent is a mental act, the form becomes a way to track the mental state of the patient. Because mental states are otherwise obscure, the patient’s signature is needed to prove that they were consenting.¹² Thinking about it this way, signing the form is not what constitutes consent, but rather the form is merely a record of the patient’s internal mental state at the time at which they gave consent.

Communication is not required for consent on the subjective view, but this does not entail the the subjective view leaves no room for communicating consent. Strictly speaking, the subjective view is merely trying to set parameters on what constitutes consent. The subjective view holds that a mental act of consent does not need to be communicated for it to be properly called consent, but note that this definition leaves room for scenarios where consent is communicated nonetheless. A proponent of the subjective view might have very good reasons to think that consent should be communicated in various contexts (e.g., in medical contexts or in sexual interactions). However, for the proponent of the

9. The subjective view is also referred to as the mentalist view in some literature.

10. See Heidi Hurd, “The Moral Magic of Consent,” *Legal Theory* 121 (1996); Larry Alexander, “The Moral Magic of Consent II,” *Legal Theory* 165 (1996); D. Husak, “The Complete Guide to Consent to Sex: Alan Wertheimer’s Consent to Sexual Relations,” *Law and Philosophy* 25, no. 2 (2006): 267–287; M. Dsouza, *The Power to Consent and The Criminal Law* (University of Cambridge Faculty of Law Research Paper No. 9, 2013); Larry Alexander, “The Ontology of Consent,” *Analytic Philosophy* 55, no. 1 (2014): 102–113.

11. I will not delve too deeply into the intricacies of medical consent here, although it is a rich area of study.

12. Of course, this is a gross oversimplification of consent even in medical contexts because effective consent requires that the patient be of sound mind, not coerced, etc. My point here is simply to highlight the descriptive nature of consent on this view.

subjective view, there can be important reasons to communicate one's consent without also thinking that the communication is a constitutive part of consent. Although consent and communication of that consent are often found together, proponents of the subjective view nonetheless retain a distinction between consent and its communication.

Other scholars disagree with the subjective view of consent,¹³ and instead argue that consent is inherently performative.¹⁴ On this view, consent is not at all a mental act of will. Rather, consent is not properly so-called until there is appropriate communication of one's willingness. Borrowing concepts from J. L. Austin, communication of one's consent is itself what constitutes consent. Using Austin's terms, consent is *performative*. Much like promises or wedding vows, when a speaker communicates consent under the right conditions, this communication is not a mere description of one's mental state, but is itself what constitutes consent. Consider again the medical context in which patients are asked to sign a consent form, but this time from a performative-consent perspective. Those who argue for performative consent would say that signing the form is itself what constitutes consent. It is not enough that the patient willfully consents mentally—on this view the mental state is irrelevant.¹⁵ For the scholar in favor of performative-consent, consent is realized when the patient officially communicates their consent under the right conditions.

A third articulation of consent—the hybrid view—brings the subjective view and the performative view together. The hybrid view of consent requires both the relevant mental state and performative communication. This view is appealing because it captures both the intuitive sense that consent is a mental act of will and the sense that consent is inherently relational and should thus involve communication of some kind. I will not critique hybrid view further in this chapter, but note that—because it requires performative communication—the hybrid view will be susceptible to the same critiques I level against the performative

13. N. C. Manson, *Philosophical Studies* 173 (2016): 3317–3334.

14. See, for example, Kukla, "That's What She Said: The Language of Sexual Negotiation"; Alan Wertheimer, *Consent to Sexual Relations* (Cambridge: Cambridge University Press, 2003); and G. den Hertogh, "Can Consent Be Presumed?," *Journal of Applied Philosophy* 28, no. 3 (2011): 295ffdfdfdfdf307.

15. Again, this is somewhat of an oversimplification for the reasons I note in footnote 12.

view.

What is important to notice about these three philosophical views is that they are differentiated from one another on communicative grounds. The performative view and the hybrid view both define consent in ways that require communication while the subjective view defines consent by its lack of communicative components. At least for this philosophical debate, communication is thus a central element of philosophical discourse on consent. Debate over which philosophical theory best captures the ontology of consent prevails, and public discourse echos this philosophical disagreement.

To understand how communication is important for consent in public discourse, it will be helpful to examine a case study: In January 2018, a woman publicly known as Grace accused actor and comedian Aziz Ansari of sexual assault. Grace reports going on a date with Ansari: a rushed meal before accompanying Ansari to his apartment. The media outlet that publicized Grace's story describes what happened next: "within moments, he was kissing her. 'In a second, his hand was on my breast' [Grace said]. Then he was undressing her, then he undressed himself. She remembers feeling uncomfortable at how quickly things escalated."¹⁶

Throughout their sexual encounter, Grace gave nonverbal indications of non-consent while Ansari made repeated sexual advances. Grace would pull away from Ansari's sexual attempts, she would get up and move, she would move her hand away from his penis despite his effort to keep it there, her lips would stop moving, and she would "turn cold."¹⁷

Grace also gave verbal indications of non-consent while Ansari continued his advances. Verbally, Grace said that she was uncomfortable with their sexual activity. In response to Ansari's declaration that he would go get a condom, "[Grace] said something like, 'Whoa, let's relax for a sec, let's chill.'" When Ansari asked "Where do you want me to fuck you?," Grace found the question difficult to answer because she did not want to have intercourse

16. Katie Way, "I Went on a Date with Aziz Ansari, It Turned into the Worst Night of My Life," 2018, <https://babe.net/2018/01/13/aziz-ansari-28355>.

17. Ibid.

with him. She put off the question, saying “next time.” Ansari then poured Grace more wine as he asked if another glass constituted a second date. Ansari “brought [Grace] to a large mirror, bent her over and asked her again, ‘Where do you want me to fuck you? Do you want me to fuck you right here?’ He rammed his penis against her ass while he said it, pantomiming intercourse.” Grace “stood up and said ‘no, I don’t think I’m ready to do this, I really don’t think I’m going to do this.’” Ansari then suggested that they “chill” on the couch, this time with their clothes on. Grace reports feeling relieved—until he motioned that she should perform oral sex on him. She did, and reports feeling very pressured to do so. Grace remembers saying, “You guys are all the same, you guys are all the fucking same.” When Ansari asked what she meant, Grace turned to answer. “He met her with ‘gross, forceful kisses.’” Grace felt pressured throughout the encounter, she felt violated by Ansari, and she cried the whole way home.¹⁸

Shortly after Grace’s story was published, Ansari issued a public statement in which he denies assaulting Grace. In his statement, Ansari says “everything did seem okay to me, so when I heard that it was not the case for her, I was surprised and concerned.” He admits engaging in sexual activity with Grace, but adds that “*by all indications [the sexual activity] was completely consensual.*”¹⁹

This case study is useful, in part, because it is an archetypal example of the difficulties with communicating consent in current sexual negotiations. Women who reacted positively to Grace’s account did so in part because her description of events resonated with their own sexual experiences.²⁰ Feminist author Jessica Valenti, for one, responded by noting that “a lot of men will read that post about Aziz Ansari and see an everyday, reasonable sexual interaction. But part of what women are saying right now is that what the culture con-

18. Way, “I Went on a Date with Aziz Ansari, It Turned into the Worst Night of My Life.”

19. Lizzie Plaugic, “Aziz Ansari Responds to Allegations of Sexual Misconduct,” 2018, <https://www.theverge.com/2018/1/15/16892498/aziz-ansari-sexual-misconduct-response-me-too-movement>. My emphasis.

20. See, for example, Anna North, 2018, <https://www.vox.com/identities/2018/1/16/16894722/aziz-ansari-grace-babe-me-too> and Carly Cassella, 2018, <https://medium.com/athena-talks/chers-response-to-the-aziz-ansari-story-is-the-best-yet-28ca5217ae1f>.

siders ‘normal’ sexual encounters are not working for us, and oftentimes harmful [sic].”²¹ Specifically, many responses to Grace’s story show that women are familiar with sexual interactions wherein men repeatedly, if not aggressively, make sexual advances despite the woman’s attempt to communicate non-consent verbally and non-verbally. Women are similarly familiar with sexual encounters wherein men repeatedly, if not aggressively, interpret verbal and nonverbal behaviors as indications of consent when they are not meant to indicate consent.

Although this case captures the current climate of communication in sexual interactions, it is not a departure from sexual interactions in the past. Women who critiqued Grace’s choice to publicize her story nonetheless resonated with her account of sexual interactions. In fact, some authors have based their critiques on the commonalities. One reader who identifies herself as being from an older generation, for example, takes the commonalities between her experience and Grace’s story to critique the strength of modern women: “In so many ways, compared with today’s young women, we were weak; we were being prepared for being wives and mothers, not occupants of the C-Suite. But as far as getting away from a man who was trying to pressure us into sex we didn’t want, we were strong.”²² This critic does not take issue with Grace’s account on the grounds that it is a unique experience. Rather, this critic bases her critique on the realization that these experiences are common across generations. Additionally, this author only points out what historical accounts already illustrate: that whether or not a woman was successful on any particular occasion, women in past generations have had long and harrowing experiences dealing with men’s sexual aggression.

As an archetypal example of many sexual interactions, this case study points to the ways public discourse pairs consent with communication. Grace, like many women who find themselves assaulted, mentally knew that she was not consenting. Yet Ansari, like

21. Jessica Valenti, *Twitter Post*, January 2018, <https://twitter.com/JessicaValenti/status/952568652066443264>.

22. Caitlin Flanagan, “The Humiliation of Aziz Ansari,” 2018, <https://www.theatlantic.com/entertainment/archive/2018/01/the-humiliation-of-aziz-ansari/550541/>.

many men who find themselves accused of assault, cite communication in defense. Third parties, too, center their responses on communication. Everyday discussions of consent are rarely, if ever, only about the woman's mental state. People want to know what a woman was wearing, what she did or did not do, and what she did or did not say. Her communications—including the very way she presents herself in the world—are dissected and from there bystanders decide if she effectively performed consent or non-consent. In Grace's case, critics took issue with Grace's communication and paid little attention to the reported fact of her non-consenting mental state.

This case study is also useful because Ansari's response is common, and it can help shed light upon how communication is required for consent in legal contexts. Marcia W. Baron, a legal scholar who writes about issues of consent, notes that "in criminal law, a mistake of fact is often an adequate defense. That is, it is recognized as a decisive reason for acquittal."²³ In rape cases, the usual defense of this sort is for the defendant to claim "I thought she was consenting." The law thus creates space for genuine misunderstandings in sexual encounters; in many states the accused can defend themselves by declaring that they had an honest and sincere belief that the accuser was consenting. If the accused genuinely thought the accuser was consenting—even if she had not willfully consented—the court can grant an acquittal. The law employs a notion of consent that is inherently performative. When "I thought she consented" is a legitimate legal defense, consent is defined by the accuser's ability to communicate her non-consent. Ansari's response, then, is not merely a description of his side of the story—it is a response that overtly references a typical legal defense.

2.2 The Burden of Consent

In this section, I will argue that the communicative element that is crucial to everyday, legal, and philosophical conceptions of consent places epistemic burdens on women. Here

23. Marcia W. Baron, "I Thought She Consented," *Philosophical Issues*, no. 11 (2001): 1–32.

I highlight burdens that are broadly construed as difficulties women face in exercising their epistemic agency. In the next section I offer a more precise articulation of the specific types of burdens women face when I argue that these burdens can rise to the level of epistemic injustice.

Consent on the subjective view poses fewer epistemic burdens for women than performative or hybrid models of consent. For this reason, I will later conclude that a subjective view of consent is the best model for circumventing epistemic injustices imposed by consent norms. The subjective model of consent is less burdensome for women because consent is internally defined. Women need only refer to their mental state to know if they are consenting or not, and in ideal circumstances a woman's sense of her own mental state is not subject to external debate.

Epistemic burdens on the performative view are many and varied. Different assumptions underlying consent models are partially to blame for the inconsistent ways women are required to perform both affirmative consent and non-consent. Take, for example, how conversations about consent commonly employ the phrase "no means no." This phrase was coined in order to help clarify notions of consent. The idea is that if a woman literally says the word 'no' in response to sexual advances, she has communicated her non-consent. This clarifies consent for both men and women—just as "no" signals to men that a woman is not consenting, it is also a clear directive for women. If a woman wants to communicate non-consent, all she has to do (according to this slogan) is say "no."

Consent models that favor a "no means no" slogan have been critiqued for various reasons. One reason is that when we, as a society, tell women that "no means no," we implicitly endorse a model of sexual interaction that assumes consent. Under this model, one can assume that sexual advances are permissible until the woman literally says the word 'no.' This is a problem because consent should not be assumed. This model also narrows the scope of what counts as adequate indications of non-consent. Non-verbal cues and verbal cues that do not literally include the word 'no' tend to not count as adequate

refusals. Put another way, this model renders non-consent performative—something that must be taken up (i.e. accepted) by another, and it narrows the scope of what behaviors count as performing non-consent (i.e. literally saying the word 'no' arguably becomes the only clear way to definitively signal non-consent).

Consequently, advocates coined a new phrase: “yes means yes.” This new slogan shifts from the “no means no” model that assumes consent unless otherwise—and specifically—uses the word ‘no.’ Instead, the “yes means yes” model assumes non-consent and requires clear communication that a woman is consenting before sexual activity can appropriately (and legally) occur. Specifically, this slogan suggests that sexual encounters are permissible *only* if the partners utter the word “yes.” This model employs a performative affirmative consent model, and many believe that this model is an improvement over “no means no,” although it, too, is not without its flaws.

These two slogans are helpful in some ways, but the mere existence of two opposing slogans points to the difficulty with assumptions surrounding consent. When individuals and communities (as indicated by their legal statutes and public discourse) assume consent, it seems that a woman’s task is to perform non-consent. If individuals and communities assume non-consent, a woman’s task is to perform consent. But because women are sometimes required to perform consent and other times required to perform non-consent, women can find themselves in situations where they simply might not know what to do.

A second problem with performative consent is that even with signals ‘no’ and ‘yes,’ social dynamics render even these ostensibly clear signs obscure. In 2015’s film *Pitch Perfect 2*, for example, a male character makes sexual advances while a woman, Amy, repeatedly says “no” in response, but with a wink. Her wink, social and cinematic context tells us, is meant to signal that her “no” really means “yes.” The man in the scene is visibly confused. She is saying “no” (and “no means no”), but her wink sends a different message. Amy’s behavior also confuses the yes means yes model. The new slogan tells us that “yes

means yes,” but Amy doesn’t say “yes.” Amy says “no” but (apparently) means “yes.”²⁴

The difficulty navigating consent by using language as clear as ‘no’ and ‘yes’ is a burden for women, because even though it seems like it should be easy to say “no” or “yes,” these verbal indicators that women have at their disposal in other contexts do not always work when it comes to sexual consent. Women can, of course, do their best to navigate the use of mixed messages, but insofar as popular media informs sexual encounters, even the simplest ways to communicate consent or non-consent are difficult to navigate.

Further, if even the clearest signals are obscured, other less explicit signals are even more obscure. When consent is understood to be inherently communicative, and when it is difficult for women to know how to communicate consent or non-consent, women are inordinately burdened. Grace’s story is one example of this: Grace thought she was signalling her non-consent verbally and non-verbally, and she attempted to communicate her non-consent in a wide variety of ways. And yet Grace largely failed at communicating her non-consent, and it is not obvious that other techniques would have worked better. Critics responded to Grace’s article with suggestions for what she should have done—as if leaving earlier or literally saying “no” earlier would have settled the issue. But Grace was signalling non-consent in various ways while critics (and Ansari) paid little attention to her many efforts.

The critical response to Grace’s story wherein third parties suggest ways Grace should have performed her non-consent paired with Grace’s account of her many efforts to communicate non-consent highlight a major epistemic burden women encounter when consent is performative. Namely, performative consent is burdensome for women when signals of non-consent are not taken up by their partner. Grace physically removed herself, she pulled away, she verbally indicated that she would not have intercourse with him that evening. Ansari showed no signs of picking up these signals of non-consent. Ansari himself publicly declared that he picked up on *literally no indications* that their sexual activity might

24. See also Kelly Oliver, *Hunting Girls: Sexual Violence From The Hunger Games to Campus Rape* (New York: Columbia University Press, 2016) for additional discussion of this phenomenon in popular culture.

have been non-consensual.

Similarly, it appears that signals that could be taken as consent are too quickly taken up. There are at least two main ways consent signals are too quickly taken up. Sometimes a woman will consent to a particular sexual activity, and this consent will be taken as consent for all subsequent sexual acts. Other times a woman will not intend to signal consent at all, but her behaviors will be taken as consent indications nonetheless. For example, the fact that Grace did not leave Ansari's apartment sooner has been implicitly cited as a signal of consent. That is, the sentiment coming from some critics is the idea that if Grace really didn't want to engage in sexual activity with Ansari, she would have left. Further, according to Ansari, everything did seem okay. In addition to him picking up on no signals of non-consent, presumably (supposing that Ansari is being truthful) Ansari found reasons to think that she was consenting.

When consent is performative—i.e. when sexual interactions require a woman to communicate her consent or non-consent—women are burdened not just because it is conceptually difficult to know how to effectively consent or not consent, but women must also navigate a space where their consent is not wholly up to them. Performative consent models require uptake—they require that the social rituals surrounding consent and the individuals who are (socially) tasked with witnessing consent and non-consent recognize it as such. But when consent is defined this way, women can be doing all they can to perform non-consent with no uptake.

When consent is defined performatively, then, women can legitimately not know whether or not they are consenting. They can, of course, have the first-personal knowledge that they are or are not consenting. But recall that mental consent is only constitutive of consent on the subjective view. On the performative view and hybrid view—where consent is constituted by communication, and where this communication only succeeds if there is uptake—all it takes for non-consent to fail is for their sexual partner to pick up on no indications of non-consent. All it takes for an acquittal is for a legal defendant to claim that they honestly

thought their accuser was consenting.

2.3 From Burden to Injustice

So far I have suggested that the current ways consent is understood in society at the very least places epistemic burdens on women, but some readers might think that this is not in itself a unique or interesting problem. That is, it is reasonable to think that epistemic agents of all sexes and genders come across epistemic burdens in their daily lives all the time. Epistemic agents often find themselves in situations where they do not know what to do or how to communicate effectively, and so the mere fact that women are burdened by consent norms is not novel or perhaps simply not worthy of focused attention. Critics might also point out that men are similarly burdened by consent norms, and so the ways in which women are burdened is not a unique problem.

I do not deny that men and women alike face epistemic burdens, and I grant that men are also epistemically burdened by consent norms. Just as it is difficult for women to navigate the social norms governing consent and non-consent, it is also difficult for men. Amy's admirer in *Pitch Perfect 2*, for example, was right to act confused. When women say "no" when they really mean "yes," it runs counter to the typical use of those words. Even though popular media suggests that "no" is an acceptable way to signal "yes" in sexual encounters, the mixed messages can be confusing to both parties.

However, if we look at the communicative burdens of consent alongside Miranda Fricker's notion of epistemic injustice, we will see not only that the communicative difficulties women face with consent are burdensome, but also that these burdens can satisfy the criteria for epistemic injustice. Further, we will see that the epistemic burdens women face fit the criteria for injustice in ways that do not similarly apply to the epistemic burdens men might face with consent.²⁵ In what follows, I will first suggest that women can suffer

25. To reiterate: I do think that men can also suffer epistemic injustice as a result of consent norms, but that is an examination for a different paper. At present, I intend to focus only on the injustices that women might suffer.

testimonial injustice when prejudicial stereotypes cause bystanders to grant less credibility to a woman's signals of non-consent. I will then suggest that women can suffer interpretive injustice—a form of injustice newly articulated by Andrew Peet—when prejudicial stereotypes cause bystanders to erroneously interpret a woman's behavior as consensual. I end this discussion with the suggestion that the aporia women can experience when they are mentally not consenting, but when their behaviors are taken as consensual act is a version of hermeneutical injustice.

In her innovative book *Epistemic Injustice*, Miranda Fricker characterizes testimonial injustice as a kind of epistemic injustice. Testimonial injustice occurs, Fricker argues, when systematic and persistent credibility deficit caused by identity prejudices harms the victim as a knower.²⁶ Speakers suffer testimonial injustice when hearers grant the speaker less credibility than they would otherwise if not for the hearer's identity prejudice. Typically, such credibility deficit is the result of the hearer harboring specific identity-prejudicial stereotypes.

Earlier I claimed that the subjective view is less burdensome for women because on the subjective model consent is internal, and in ideal circumstances a woman's internal mental state is not subject to external debate. Before moving on to problems with performative consent, I want to point out that women can still suffer epistemic injustice on the subjective view.

Women can suffer epistemic injustice on the subjective view when third parties behave as if a woman's mental state is up for debate. As incredible as it might sound, the phenomenon where third parties attempt to dictate women's experiences and internal knowledge is alarmingly common. This phenomenon is so common that psychologists have coined the term "gaslighting" to describe one version of it. Based on Patrick Hamilton's 1938 play, *Gas Light*, gaslighting as a term began as a way to describe situations of psychological abuse designed to make the victim question their own sanity. A kind of coercive

26. Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (New York: Oxford University Press, 2007), 27-29.

control, gaslighting is accomplished by denying the victim her sense of reality. In recent scholarship, gaslighting is no longer limited to scenarios wherein the victim begins to question her own sanity, but is used to describe cases where a gaslighter attempts to deny the experience of the victim. Gaslighting is epistemically interesting because denying one's experience through gaslighting often takes the form of denying the victim access to her own knowledge. This in turn reduces her ability to exercise her epistemic agency and inhibits her autonomy.

Although she never uses the explicit term, Fricker makes clear that gaslighting is a form of testimonial injustice. In her description of testimonial injustice she uses the example of an interaction between Marge Sherwood and Herbert Greenleaf in *The Talented Mr. Ripley*. In the film, Marge expresses suspicion about the perpetrator of a murder, to which Herbert replies: 'Marge, there's female intuition, and then there are facts.'²⁷ In this scene Herbert discredits Marge's testimony—and thus also her sense of knowledge—on the basis of an identity prejudice against women. This exchange, for Fricker, is an archetypal example of an instance of testimonial injustice.

Gaslighting occurs in sexual situations whenever hearers discredit testimony of non-consent on the basis of prejudicial stereotypes. For example, a woman could be testifying her non-consent and be met with the reply "I know you want it" or the slight variation "you know you want it"—where "it" refers to sexual activity. Rape victims report that rapists commonly use this phrase during assault.²⁸ Lest we think that gaslighting is limited to rapists, it is worth noting that this phrase has been extremely popular in pop culture as well. Released in 2013, for example, Robin Thicke's *Blurred Lines* secured the United States' music industry standard as the number one spot on US *Billboard* Hot 100. *Blurred Lines*, includes the lyrics: "I hate these blurred lines/I know you want it/I hate them lines/I know you want it." Thicke also sings: "I know you want it/But you're a good girl/The way

27. Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, 9.

28. "Project Unbreakable," 2018, <http://projectunbreakable.tumblr.com/> houses a vast array of gaslighting examples as told by assault victims, including the phrase "I know you want it."

you grab me/Must wanna get nasty.” In this song, Thicke draws upon a stereotype where women who appear to be proper “good girls” nonetheless “want to get nasty” and want sexual attention. Critics have taken the reference to blurred lines to mean the blurred lines of consent, and then Thicke’s claim “I know you want it” to indicate that, despite signals of non-consent the imaginary object of the song might be giving, he nonetheless “knows” that she wants to participate in sexual activity. Telling a woman that she wants sexual activity in the presence of no evidence or counter-evidence is a clear example of gaslighting. These are just two examples among many, but they show how gaslighting a woman regarding her consent is not only a worrisome phenomenon, but is also widely implicitly endorsed by pop culture consumers.

Supposing now that the performative view of consent most accurately represents the ontology of consent, women can also suffer testimonial injustice. Testimonial injustice on the performative view can occur whenever prejudicial stereotypes cause hearers to think that a woman’s signals of non-consent are not true indications of her non-consent. One stereotype is the notion that women will often “play hard to get.” If a man believes that women tend to play hard to get, her indications that she is not sexually interested in him can be read as indications that she *is* interested, but that she simply wants him to continue his pursuit of her. Another stereotype is the notion that women will indicate non-interest because they wish to preserve their modesty. If a man believes that women will say “no” so that they do not appear too eager or immodest, they can think that her “no” does not really mean “no.” Further, stereotypes disseminated through certain types of pornography can also influence perception of women’s non-consent. If men believe, for example, that women enjoy sexual encounters where their non-consent signals are explicitly violated—that it gives women sexual pleasure when men violate explicit consent—they can read non-consent as a kind of foreplay and would thus grant less credibility to a woman’s claim that she is, in fact, not consenting. Beyond pornography, Linda Alcoff notes that mainstream media contributes to this vision of women as well: “upmarket as well as mass-market

movies play with the idea that women's sexual bliss involves being the target of predation, whether vampiric or merely mortal."²⁹ Kelly Oliver also notes that a prevalent rape myth—pervasive among college campuses—is the notion that women enjoy being raped.³⁰

Women can also suffer testimonial injustice in the form of gaslighting on the performative model. Grace's insistence that she communicated her non-consent was met with Ansari denying that she offered any indications of non-consent. In this scenario, Grace is testifying to the reality of her experience communicating her non-consent and Ansari is denying her testimony and thus her experience. Further, when consent is performative, denying Grace's attempts to communicate non-consent is equivalent to denying her report of non-consent on in subjective view.

The performative model of consent also gives rise to a new kind of epistemic injustice: interpretive injustice. As an amendment to Fricker's account, Andrew Peet defines interpretive injustice as "the phenomenon whereby a hearer's employment of prejudicial stereotypes results in the hearer attributing a message to the speaker when the speaker never intended to convey that message."³¹

In his analysis, Peet describes a situation like the one in *Pitch Perfect 2* where a women says "no" when she really means "yes" in a sexual encounter as a form of interpretive injustice. A more pernicious example of interpretive injustice in sexual interactions are scenarios where a woman's behaviors are interpreted as indications of consent when they are not meant to be. Supposing that a woman is open to sexual activity simply because of the clothes she is wearing, for example, is one kind of interpretive injustice. If the bystander assumes that said woman is consenting to sexual activity because of prejudicial stereotype, say, that women who wear skimpy clothing are sexually promiscuous, this would be an instance of interpretive injustice.

Finally, women can suffer a kind of hermeneutical injustice given the ways public and

29. Alcoff, *Rape and Resistance*, 11.

30. Oliver, *Hunting Girls: Sexual Violence from The Hunger Games to Campus Rape*, 10.

31. Andrew Peet, "Epistemic Injustice in Utterance Interpretation," *Synthese*, 2017,

legal discourse handle the relationship between subjective and performative consent models. Hermeneutical injustice occurs, on Fricker's account, when members of subjugated groups do not have access to societal interpretive resources to understand or articulate their experiences. For Fricker, hermeneutical injustice occurs when there is a gap in collective interpretive resources such that member of subjugated groups cannot understand their experiences. This results in members of these groups unable to exercise their full epistemic agency.

Critics have rightly pointed out that Fricker's initial description of this phenomenon is too stringent. Gaile Pohlhaus notes that interpretive resources are not uniformly distributed.³² Some hermeneutical resources can be available to some members of the population and not others. So when, for example, women have the first-personal knowledge of their consent, but do not have the resources to understand that some social dynamics and consent models render consent not wholly up to them, women can experience aporia without the resources to fully understand or articulate their experience.

2.4 Beyond Consent?

In this chapter, I've suggested that consent and communication are intimately related, that this pairing burdens women, and I've offered some examples of how communicative consent can result in various forms of epistemic injustice. Because epistemic injustice arises as the result of identity-prejudicial stereotypes, I have not attempted to give an exhaustive list of possible stereotypes. Instead, I gave some examples to illustrate a few ways prejudicial stereotypes can result in epistemic injustice when women attempt to communicate consent or non-consent.

I began this chapter noting that there is widespread disagreement and misunderstandings regarding consent in sexual interactions. This is, in part, because there are competing

32. Gaile Pohlhaus, "Relational Knowing and Epistemic Injustice: Toward a Theory of Willful Hermeneutical Ignorance," *Hypatia* 27, no. 4 (2012): 715–735.

notions of consent and these competing notions are found in everyday and legal discourse. I noted earlier that I did not set out in this chapter to settle the ontology of consent, and so the question of which model of consent best tracks reality is still up for debate.

However, this chapter shows that whichever model of consent one adopts, there are serious epistemic and moral consequences. As I noted earlier, the subjective view is the best model to adopt if one is concerned about circumventing epistemic injustices. Many epistemic injustices regarding consent are tied to the communicative element, and insofar as the subjective view distances communication, it also distances epistemic injustice. When consent is constituted by communication—in whole or in part—identity prejudicial stereotypes are able to intrude upon sexual interactions.

Critics of consent-based conversations do not typically outright say that we should jettison all conversations about consent. But because critics offer compelling reasons to move beyond consent-based conversations, it can be tempting to read into critiques the claim that we should move on from consent focused conversations. But because current consent norms rise to the level of epistemic injustice, it would be a mistake to move on too quickly. It is true that conversations about sexual negotiation tend to focus on consent and refusal (as Kukla claims) and it is true that there are good reasons to advance these conversations (as Kukla and Brison claim). But advancement must be balanced with a clear and detailed understanding of what we are advancing from—we must clarify the epistemic harms that are both instances of gendered violence in themselves and gateways to other forms of gendered violence.

Kukla, for example, might critique this chapter for its narrow scope. As Kukla prepares for her supplemental discussion of the language of sexual negotiation, she writes that within current scholarship on consent “we see here a sad and revealing narrowing of our vision: from sexual negotiation in general, to just saying ‘yes’ or ‘no’ to a request for sex, to just attempts to say ‘no’ to sex, to just *women’s* attempts to say ‘no’ to *men*, to women’s *failures*

to say no effectively.”³³ Kukla argues that this narrow scope distorts our understanding of sexual negotiations.

Certainly this chapter has been mostly concerned with women’s failures to say no effectively, and I agree that philosophical theorizing should include more fine-grained discussions of sexual negotiations. But the epistemic harms women suffer regarding consent are too serious to ignore. Susan Brison offers a helpful redefinition of rape, that can aid us here. Brison argues that rape is better understood as “sexualized gender based violence.”³⁴ Brison’s redefinition is compelling because the conversation about sexual violence is not *just* a matter of figuring out whether or not the victim consented, but it points out a larger and more accurate description of the problem.

That communicative consent involves gender based violence is clear when we see the many ways in which communicative consent can result in epistemic injustices. Epistemic injustices occur with the presence of problematic identity-prejudicial stereotypes, and we have now seen that in the case of consent, there are many ways that women are victims of prejudicial stereotypes regarding consent. These epistemic injustices are thus gendered in particular ways, and—as injustices—are instances of harm. Communicative consent, then, can not only lead to gender-based sexual violence, but is itself a form of gender based epistemic violence that is intricately linked to gender-based sexual violence. As such, we should take special care to adopt notions of consent that minimize the harms inflicted upon women as they attempt to exercise their epistemic and sexual agency.

33. Kukla, “That’s What She Said: The Language of Sexual Negotiation,” 9.

34. Brison, “Sexual Violence, Social Meaning, and Narrative Selves.”

Chapter 3

The Normative Argument Against Believing Rape Victims

There is an argument—what I will call the Normative Argument Against Believing Rape Victims (NA)—that, at least upon first glance, I believe many readers would be inclined to endorse. NA's basic idea is that when a rape victim reports that she was raped, the details of her testimony are typically fragmented and incomprehensible. Because failure to provide a comprehensible narrative is often taken as a sign that testimony is false, responsible epistemic agents should not believe rape victims when they report that rape occurred.

My aim in this chapter is to explain why most readers—at least those who care about being responsible epistemic agents—would endorse NA. In other words, I will argue that common epistemic practices regarding reliable testimony encourage responsible epistemic agents to disbelieve rape victims.

Now for some nuance: in this chapter I will suggest that the Normative Argument Against Believing Rape Victims *appears* to be a cogent argument, but in subsequent chapters I will reject NA on both epistemic and moral grounds. Crucially: although my goal in this chapter is to convince you that there are ostensibly good epistemic reasons to disbelieve rape victims, my ultimate goal is not to convince you that you should disbelieve rape victims. In this chapter I am not arguing that NA is a good argument; I am arguing that NA will understandably appear cogent to many readers.

Why bother presenting an argument that only appears true? That is, if NA is indeed faulty, why not just critique NA from the start? There are three main reasons it is important to take a close look at NA before refuting it. First, the version of NA in this chapter is important to examine in detail because it lays groundwork for a substantive critique of certain standards for testimonial justification. In Chapter 4, I will argue that rape testimony is unique because the characteristics that would cause us to correctly reject testimony in

other contexts point to the truth of rape victim testimony. Because rape victim testimony is a powerful counterexample to current ways epistemic agents assess testimonial reliability, I will argue that we should amend our epistemic norms for testimonial justification. Before I argue that rape victim testimony undermines current standards, however, it will be useful to explore the extent to which current standards appear to dictate disbelief in rape testimony.

Further, the argument I present in this chapter (i.e., that NA will appear cogent) is also important to investigate because of its explanatory power. When we understand the ways in which current epistemic standards suggest disbelief in rape victim testimony, we can better understand a dilemma many bystanders find themselves in when they face rape victim testimony. From various moral standpoints, bystanders can think that believing rape victims is the “right” thing to do. And yet, when epistemic and moral commitments are in conflict, it is not always easy to know how to proceed. Choosing to believe rape victims can feel like a betrayal of one’s epistemic sensibilities, while favoring one’s understanding of reliable testimony can feel morally counter-intuitive. In the event bystanders prioritize epistemic concerns over moral ones, this essay also serves to explain, in part, why rape victims are so frequently disbelieved when they report rape.

Finally, the importance of examining NA in detail before refuting it has implications for rape victims and advocates who work to mitigate sexual violence. Scholars have already identified a myriad of reasons that bystanders and testimonial recipients disbelieve rape victims. However, attention to how epistemic norms also contribute to disbelief is noticeably absent from current scholarship seeking to explain why victims are disbelieved. This chapter will add to existing literature by identifying some epistemic norms that contribute to disbelief, and will consequently provide a fuller picture of the difficulties rape victims face when they report.

This chapter proceeds in three parts. In 3.1 I lay out the Normative Argument Against Believing Rape Victims, and I define some key terms. In Part 3.2, I comment upon the structure of the argument, I assess the truth of NA’s premises, and I contend with objections

to each premise. Part 3.3 concludes by sketching, roughly, some of the moral and epistemic implications of my argument.

3.1 Epistemic Obstacles to Belief

It is important to note at the outset that the argument I present in this section is purely epistemic. By “epistemic,” I mean of, or related to, knowledge and knowledge-related goals. The epistemic focus is intentional even though some readers would certainly reject aspects of NA on moral grounds. I will not here discuss the moral reasons one might reject, e.g., the notion that responsible epistemic agents should disbelieve rape victims (although there are many). Nor will I discuss any pragmatic reasons one might reject NA. Instead, I set aside moral and pragmatic concerns at the start to show how certain epistemic commitments encourage disbelief in rape victim testimony.

With these introductory points in mind, let’s turn to the details of The Normative Argument Against Believing Rape Victims. NA can be expressed as follows:

- (1) If someone has incoherent testimony, then their testimony is unreliable.
- (2) If someone has unreliable testimony, then a responsible epistemic agent should not believe the testimony.
- (3) Person A claims to have been raped, but their testimony is incoherent.
- (4) Therefore, A’s testimony is unreliable, and it should not be believed.

It will be helpful to begin with some clarifying remarks about the terminology I use in this argument, beginning with what it means for testimony to be incoherent. When I refer to incoherent testimony in premise (1), I refer to testimony that does not conform to an intelligible narrative structure. Because “narratives are functionally coherent representations of sequences of events,”¹ intelligible narratives are typically those that have an understandable chronology, where claims are consistent with one another, where there are little to no

1. Ismay Barwell, “Understanding Narratives and Narrative Understanding,” *The Journal of Aesthetics and Art Criticism* 1, no. 67 (2009): 49–59.

obviously problematic gaps in the story or the timeline. Testimony with disordered events, inconsistent claims, or significant gaps signal incoherent testimony.

Regarding reliable testimony: scholars routinely refer to ‘reliable testimony,’ but very few define their use of the term. There are at least two ways scholars use the term ‘reliable’ in reference to testimony. In its most straightforward usage, reliable testimony refers to testimony that is true. In this sense, reliable testimony is so-called because it accurately tracks reality. A similar, but importantly different, use of the term ‘reliable testimony’ occurs when scholars refer to testimony that is likely true. In this usage, scholars refer to reliable testimony when they want to indicate that certain testimony is probably true or that it is otherwise truth conducive. That is, sometimes the term ‘reliable testimony’ is meant to indicate testimony that—if a hearer takes said testimony as true—the hearer would then likely have true beliefs on the basis of that testimony. In some cases, then, reliable testimony is meant to convey the extent to which testimony is true or truth conducive, without making the explicit claim that the testimony is, in fact, true. This reading accounts for instances when scholars refer to testimony as being more or less reliable—treating testimony as if it can be assessed according to a spectrum of reliability.

With these definitions in mind, there are two ways to read premise (1). The first way is to say that if someone offers testimony that does not conform to an intelligible narrative structure, then their testimony is false. A second way to read premise (1) is to say that if someone offers testimony that does not conform to an intelligible narrative structure, then it is very likely false. The former claim is stricter than the latter, and I will address both possible readings in the following section.

NA is only forceful for those who care about being responsible epistemic agents. As such, I should say something about what it means to be epistemically responsible. Regarding what it means to be a responsible epistemic agent: responsible epistemic agents are those whose behaviors and cognitive practices are aimed at acquiring knowledge through justified true belief. Of epistemic responsibility, epistemologist L. Bonjour writes:

One's cognitive endeavours are epistemically justified only if and to the extent that they are aimed at [truth], which means very roughly that one accepts all and only those beliefs which one has good reason to think are true. To accept a belief in the absence of such a reason, however appealing or even mandatory such acceptance might be from some other standpoint, is to neglect the pursuit of truth; such acceptance is, one might say, epistemically irresponsible.²

In this quote Bonjour appears committed to a non-reductionist view of testimonial justification, which requires positive reasons to accept testimony (more on this later). His testimonial justification views aside, Bonjour makes clear that epistemic responsibility is intricately related to truth. Pursuing truth is epistemically responsible, neglecting truth is not.

Michael Bishop explains epistemic responsibility nicely when he delineates two central features of epistemic responsibility as it has been articulated in analytic philosophy. The first criteria is:

(V) To be epistemically responsible is to display in one's reasoning the virtue (or virtues) epistemic internalists take to be central to warrant or justification, e.g., coherence, having good reasons, fitting the evidence.³

Scholars disagree on which virtues properly constitute epistemic responsibility. Like Bishop, I will not take a stance on this issue. What matters for my purposes is simply to note that epistemic responsibility is intricately related to epistemic justification and the pursuit of truth. That is, what matters for my argument is that epistemically responsible agents generally seek knowledge (i.e. justified true beliefs). This brings us to Bishop's second feature of epistemic responsibility.

The second criteria for epistemic responsibility is:

(C) In normal (non-skeptical) circumstances and in the long run, being more epistemically responsible tends to lead to more reliable judgments. The more

2. L. Bonjour, *The Structure of Empirical Knowledge* (Cambridge, MA: Harvard University Press, 1985), 8.

3. Michael Bishop, "In Praise of Epistemic Irresponsibility: How Lazy and Ignorant Can You Be?," *Synthese* 122 (2000): 180.

responsible a reasoning strategy, the more reliable it will tend to be, and the most responsible reasoning strategy will typically be the most reliable.⁴

Bishop refers to the above criteria (C) loosely as the “consilience assumption.” According to Bishop, “the *consilience assumption* says that epistemic responsibility has a special connection to truth.”

Bishop points out that epistemologists are well aware that reliability does not always track epistemic responsibility. General skepticism, coherence failures, and thought experiments with reliable clairvoyants are all examples where the consilience assumption goes awry. However, Bishop undermines the force of these examples by noting that they are hypothetical. He writes, “even though the philosophical literature is full of examples of *possible* consilience failures, the assumption that there is *as a matter of fact* an intimate connection between reliability and responsibility survives.”⁵ Consilience survives, Bishop notes, because “except for the village skeptic, no one *really* believes that we live in a world in which consilience systematically fails.”

To be epistemically responsible, then, means that one’s epistemic endeavors generally seek to obtain justified true beliefs and an epistemically responsible agent believes (or behaves in ways that assume) that epistemic responsibility positively tracks reliability.

3.2 Analysis

Support for premise (1), “if someone has incoherent testimony, then their testimony is unreliable,” can be found in many of our practices. There are many cases in which we might reasonably expect to hear incoherent testimony. When an interlocutor is drunk, on certain medications (e.g. certain painkillers or anesthetics), or even times when someone is recalling an event that took place in the distant past. In these scenarios, memory or other intellectual capacities can be impaired in such a way that we can reasonably expect

4. Bishop, “In Praise of Epistemic Irresponsibility: How Lazy and Ignorant Can You Be?,” 182.

5. *Ibid.*, 181.

elements of incoherent testimony. When stories are disordered, contradictory, or missing key details, they give us pause.

I take incoherence, in the sense described above, to be a relatively uncontroversial indication that testimony is probably unreliable. It could be that the claims made through unreliable testimony are in fact true, but the characteristics of incoherence give hearers enough reason to be suspicious of the truth of the testimony that—at the very least—further investigation is needed. In short, to say that “if testimony is incoherent, it is unreliable,” as premise (1) states, is to say that it is not safe to accept the testimony as true without further investigation or additional evidence.

Incoherence, then, is what philosopher of testimony Matthew Weiner would call a positive reason to reject testimony.⁶ We might end up believing the testimony after further investigation, but in terms of the testimony itself, we would call it unreliable in the sense that we are not justified in believing it precisely because it does not conform to an intelligible narrative structure. That is, we would call testimony unreliable in the sense that we are not justified in believing it precisely because it is disordered, inconsistent, etc.

Premise (2) is also relatively uncontroversial from an epistemic perspective. If testimony is unreliable in the sense that it is false, responsible epistemic agents should not believe the testimony. Likewise, if testimony is unreliable in the sense that it is likely false, responsible epistemic agents should not believe the testimony. This is because, as noted earlier, responsible epistemic agents are concerned with practices that will result in true beliefs. In the presence of incoherence, i.e., a positive reason to reject testimony as reliable, an epistemic agent who accepted said testimony would betray responsible epistemic practices. Put another way, if a hearer rejects inductive experiential evidence wherein incoherent testimony tends to result in false testimony, she would not be exercising best epistemic practices. She would not be acting in ways that would likely lead her to true belief. Of course, if one did not care about being a responsible epistemic agent, then premise (2)

6. Matthew Weiner, “Accepting Testimony,” *The Philosophical Quarterly* 53, no. 211 (2003): 256–64.

is not forceful, but most individuals—even those who are imperfectly responsible agents—generally aim their cognitive practices at acquiring true beliefs. As such, premise (2) is generally uncontroversial.

Premise (3) serves as an instance of incoherent testimony. Suppose that someone offers testimony that rape occurred, but in so telling offers incoherent testimony related to this claim. Simple substitution and inductive experience lead us to the conclusion that incoherent rape testimony should not be believed. This conclusion is plausible because in situations where testimony is incoherent, it is not just that we should disbelieve the ancillary details, but we should reject the central claim as well. That is, when a friend who was drunk the night before tells you that, say, they left their car keys at another friend's house but cannot give a coherent account of how that happened, hearers are right to question whether or not the keys are really where the inebriated friend says they are.

Applying this practice to rape testimony: in scenarios where victims report rape, then, the coherency of the testimony with regard to the details of the attack bear upon whether or not we should accept that rape really occurred. The practice of requiring a coherent narrative is common not only in everyday scenarios, but in legal contexts as well. Since rape testimony typically appears incoherent in ways that speak to its unreliability, even the careful epistemic agent could easily decide rape victim testimony is unreliable, and therefore should not be believed on the basis of the victim's testimony alone. This conclusion, however, is faulty—in the next chapter I will explain why NA's conclusion should not be accepted in many cases involving rape testimony.

3.3 Implications

Individuals who reject rape victim testimony on epistemic grounds typically do not argue for their rejection in premise and conclusion form. Part of the reason articulating NA as I have done is useful is because NA clearly teases out the epistemic norms at work that are otherwise glossed over or left implicit. However, individuals can behave in ways that

showcase their implicit commitment to NA.

Epistemologists who study testimony, for example, are in agreement that certain testimonial characteristics provide reasons for accepting or rejecting testimony. That narrative coherence is a reason to accept testimony is taken for granted and few argue for this claim. Jennifer Lackey, for example, asserts that contextual factors like confusion and narrative voice⁷ count among the contextual factors a responsible agent would consider when assessing testimony.⁸

Individuals involved in the criminal justice system also appear to take coherence as a given, and they assume that coherence tracks reliability. Lawyers train themselves⁹ and their witnesses to provide coherent testimony that is orderly and consistent. Coherency is one way lawyers decide if their witness is competent enough to take the stand.¹⁰ Coherent testimony, they think, will be more persuasive to juries who might view incoherence with suspicion.¹¹ Defendants and their legal representatives are likewise quick to point out incoherence in the accuser's testimony, suggesting that incoherence implies untruthfulness.

So, while very few rape testimony recipients formulate their epistemically-motivated rejection in premise and conclusion form, it is reasonable to think that many testimony recipients are beholden to NA's premises in such a way that they would endorse NA (at least upon cursory reflection). To reject NA would mean to reject normative standards for assessing testimony, or, as I will argue in the next chapter rejecting NA will involve revising the usefulness of epistemic norms in particular contexts. Before moving on, it is worth noting some of the moral issues at stake.

7. Jennifer Lackey, "It Takes Two to Tango: Beyond Reductionism and Non-Reductionism in the Epistemology of Testimony," in *The Epistemology of Testimony*, ed. Jennifer Lackey and Ernest Sosa (United Kingdom: Oxford University Press, 2006), 173.

8. I take Lackey's reference to confusion to indicate incoherence in testimony. I include her reference to narrative voice to make this point as well because the kind of incoherency I am primarily interested in is narrative coherence.

9. Evan Slavitt, "Telling the Story: Integrating Witnesses, Experts, and Documents into a Cohesive Narrative in Arbitration," *Dispute Resolution Journal* 69, no. 4 (2014): 81–90.

10. Lilly Jacobson and Douglas Barnett, *Psychological Predictors of Children's Competency as Witnesses in Sexual Abuse Trials* (2002).

11. See: Bianca Klettke and Martine Powell, "The Effects of Evidence, Coherence and Credentials on Jury Decision-Making in Child Sexual Abuse Trials," *Psychiatry, Psychology and Law* 18, no. 2 (2011): 263–269

The most salient moral implication of my argument has to do with the tension between conflicting moral and epistemic commitments. It's no secret that, in many cases, the epistemic bleeds into the moral. That is, the scenario I presented in this chapter is one case among many where one's epistemic commitments have moral implications. In this chapter, I set out to lay groundwork to expose another way that our epistemic commitments can have morally counter-intuitive consequences. That is, I will next illuminate how the usual ways we discern unreliable testimony lead us to the infelicitous conclusion that we should not believe rape victims.

When tensions like the one between the epistemic and the moral emerge—when theory encourages us to override certain practical concerns—a dilemma arises: Should we, as responsible epistemic agents, recommit ourselves to theories that we believe are well-reasoned and well-conceptualized? Or should we take the unhappy moral implications of our epistemic standards as reason to reexamine and perhaps revise our normative concepts?

Often, we are blissfully distanced from those who would be harmed by our well-reasoned normative standards. White male philosophers, for example, dominate the history of philosophy and philosophers have long excluded the experiences of women¹² and racial and ethnic minorities from their philosophical thinking.¹³ To date, women and racial and ethnic minorities are severely underrepresented. Medical researchers have also privileged white men, ignoring sexual and racial differences when developing studies and treatments. People have literally died because their identities were excluded from normative considerations. The distance between (historically white and male) researchers and the woman who dies of an undiagnosed heart attack is significant.¹⁴

Yet sometimes, the individuals who are affected by our beliefs stare us in the face.

12. Katrina Hutchinson and Fiona Jenkins, eds., *Women in Philosophy: What Needs to Change?* (Oxford: Oxford University Press, 2013).

13. Leonard Harris, "The Status of Blacks in Academic Philosophy," *Journal of Blacks in Higher Education* 6 (1995): 116.

14. Institute of Medicine, *Women's Health Research: Progress, Pitfalls, and Promise* (Washington, DC: The National Academies Press, 2010).

Statistics estimate that one in five women will be raped in her lifetime.¹⁵ The chances that we encounter someone who has been raped is extremely high. As women increasingly speak out against sexual violence, confrontation is increasingly likely. The pressing question is: when faced with rape victim testimony, what will we do? Will we politely explain our epistemic commitments, and—though it pains us!—tell the victim that we cannot believe her, that our epistemic norms dictate our disbelief? Or, might we reconsider the norms themselves—if nothing else than to be certain that they are norms worth commitment?

Nearly all researchers agree that healing from rape has something to do with telling one's story,¹⁶ where the retelling includes the victim's feelings. One challenge for rape victims is, as we have seen, that their experiences don't lend themselves to a coherent narrative, if it is possible to articulate the experience at all. Another grave obstacle is that rape victims need sympathetic interlocutors. "The core experiences of psychological trauma are disempowerment and disconnection from others. [...] Recovery can only take place within the context of relationships; it cannot occur in isolation."¹⁷

Trauma victims need to be able to tell their story, and they need to be believed when they tell it. But believing is not an easy task; "survivors challenge us to reconnect fragments, to reconstruct history, to make meaning of their present symptoms in the light of past events."¹⁸ Our current epistemic norms, insofar as they encourage disbelief, impede the healing process for rape victims and compound the harms. This chapter shows us that victims also ask us to battle with our epistemic commitment to reliable testimony.

So far, I have shown that the Normative Argument Against Believing Rape Victims appears true; although there are certain counterexamples, NA presents itself as a cogent inductive argument consistent with the epistemically responsible agent's search for truth. I set aside moral and pragmatic objections at the start because there are distinct and powerful

15. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*.

16. Sandra Paivio and Lynne E. Angus, *Narrative Processes in Emotion-Focused Therapy for Trauma* (Washington, DC: American Psychological Association, 2017).

17. Herman, *Trauma and Recovery*, 134.

18. *Ibid.*, 3.

epistemic reasons for concluding that rape victims should not be believed on the basis of their testimony when they report rape. One implication of my argument is that in order to argue that one should believe rape victims when they report rape, one must deal with the distinctly epistemic argument against believing rape victims. I take up this challenge in the next chapter.

Chapter 4

What's Wrong with Testimonial Justification?

This chapter defends the view that rape victim testimony undermines current conceptions of testimonial justification. I argue that the very features causing rape victim testimony to appear unreliable according to current popular theories of testimonial justification are the same features that point to its reliability. That is, I claim that it is precisely when rape victim testimony appears unreliable that hearers should trust the victim that rape occurred. Thus, I will argue that—in at least some real-world circumstances—some testimony is reliable precisely when it does not seem reliable. I suspect some, perhaps many, readers will initially balk at this idea. But I hope to show it to be a coherent possibility with significant epistemic and moral implications.

Criteria for testimonial justification vary. In this essay, I limit my argument to three mainstream theories of testimonial justification: reductionism, non-reductionism, and dualism. Specifically, I locate my critique in the way each theory employs the use of either positive reasons to accept testimony as reliable (reductionism and dualism) or negative reasons¹ to reject testimony as unreliable (non-reductionism). Like two sides of the same coin, I will suggest that negative reasons elide with positive ones. I will then show how assessing reliable testimony according to normative positive or negative reasons fails in cases involving rape testimony.

The phenomenon I argue for—that rape victim testimony can be reliable precisely when it appears unreliable—is worth investigating because testimony is an indelible feature of our daily lives. That we secure knowledge from testimony is commonsensical,² and yet rich philosophical questions remain as scholars debate precisely when (i.e., under what

1. Negative reasons are also referred to as defeaters in the relevant literature. I will use these terms interchangeably in this chapter.

2. See Weiner, “Accepting Testimony” and Christopher Insole, “Seeing Off the Local Threat to Irreducible Knowledge by Testimony,” *The Philosophical Quarterly* 50 (2000): 44–56.

circumstances) and why (i.e., according to which principles) a hearer is justified in taking a speaker's testimony as a reliable source of knowledge. Any revelations that indicate flaws in the popular ways scholars understand testimonial justification should thus be of special interest.

A second reason for thinking about flaws in what we take to be reliable testimony involves a moral dimension. Rape is pervasive, and studies show that the effects of rape are some of the most devastating for victims of violent crimes.³ Nonetheless, our current social environment is one in which victims are typically disbelieved when they report details of their rape. From an epistemic perspective, disbelieving rape victims whose memories, for example, lead to fragmented or incoherent testimony appears to be the epistemically responsible option. The epistemic environment victims find themselves in is one where they are understandably disbelieved when hearers follow prevailing epistemic practices. However, if our current conception of testimony erroneously reinforces a survivor's victimhood, we should take special care to reexamine epistemic standards.

This chapter proceeds in four parts. In 4.1, I show how each mainstream theory of epistemic justification employs either positive or negative reasons to determine testimonial justification. In 4.2, I revisit the Normative Argument Against Believing Rape Victims that I present in the previous chapter, and I amend the argument in the context of rape testimony. I pair mainstream reliability standards with common features of rape victim testimony to show that, from a mainstream epistemic standpoint, it seems that hearers should reject victim testimony that rape occurred. In 4.3, where I argue that the Normative Argument I presented in 4.2 appears cogent, its involvement with trauma leaves it (strong, but) not cogent after all. Finally, in 4.4, I then show how rape victim testimony undermines all three popular theories of testimonial justification.

3. Center for Substance Abuse Treatment, "Understanding the Impact of Trauma," in *Trauma-informed Care in Behavioral Health Services* (Rockville, MD: Substance Abuse & Mental Health Services Administration, 2014).

4.1 Testimonial Justification: Three Views

Reductionists argue that the justification for taking testimony as a source of knowledge must reduce to something other than testimony. Put another way, reductionists argue that a hearer must have positive reasons to accept testimony and that these positive reasons cannot themselves rely on testimony. Typically, reductionists cite sense perception, memory, and inference as examples of positive reasons to accept testimony. Reductionists get their name because testimonial justification reduces to other justificatory methods.

Scholars distinguish two different senses of reductionism: global reduction⁴ and local reduction.⁵ Global reductionism is the notion that testimony *as a source of belief* reduces to justifications like sense perception, memory, and reason. Proponents of this view argue that in order to be justified in accepting testimony, one must have a positive reason for thinking that testimony is generally reliable. Local reductionism, on the other hand, is the notion that a speaker must have positive reasons (e.g. memory, sense perception, reason) for accepting any *particular piece of testimony*.

Non-reductionists, on the other hand, do not agree that testimony reduces to sense perception, memory, or inference. Non-reductionists eschew positive reasons for justification—they assert that positive reasons are neither sufficient nor necessary conditions for justified belief. Instead, non-reductionists argue that testimonial justification is just as basic as other justificatory methods; for non-reductionists, one is justified in believing testimony so long as (1) the testimony is reliably produced and (2) the hearer does not have any relevant defeaters—e.g. counter-beliefs or counter-evidence for the testimony.

Finding fault with both reductionism and non-reductionism, Jennifer Lackey champions a third option—what she calls Dualism:

For every speaker A and hearer B, B justifiedly believes that p on the basis of

4. David Hume, *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*, ed. P. H. Nidditch (Oxford University Press, 1975).

5. Elizabeth Fricker, “Against Gullibility,” in *Knowing from Words*, ed. B. K. Matilal and A. Chakrabarti (Springer Science+Business Media Dordrecht, 1994).

A's testimony that p only if: (1) B believes that p on the basis of the content of A's testimony that p, (2) A's testimony that p is reliable or otherwise truth conducive, and (3) B has appropriate positive reasons for accepting A's testimony that p.⁶

Lackey's first condition is simply to ensure that the root of the belief is in the actual testimony and not some other non-testimonial source. Lackey uses the example of someone reporting that their voice is soprano. For (1) to be satisfied in that case, the hearer must believe that the speaker's voice is soprano because the speaker said so, not because, for example, the speaker spoke with a voice in the soprano range.

Lackey's second condition, she thinks, is fairly uncontroversial—in order to be justified in believing testimony, the testimony itself has to be reliable or otherwise truth conducive. If not, then the hearer's belief would not be justified, because the content of the belief would be false.

Dualism's third condition is the most controversial. Indeed, most critiques leveled against reductionism pertain to the positive reasons component. Thankfully, Lackey gives us some insight into what counts as positive reasons. The most relevant description for the purposes of this paper refers to positive clues about the context of the testimony.

Lackey asks us to consider the different attitudes that may be taken toward a calm and coherent stranger reporting a robbery a few blocks away versus an apparently confused person who is smelling of alcohol reporting the same information. Again, the difference in responses may be explained by both positive reasons and defeaters: previous inductive evidence indicates that the contextual features in the first scenario suggest a reliable testifier while the contextual features in the second scenario suggest an unreliable testifier. Similar remarks can be made about countless other contextual factors, such as facial expressions, eye contact, mannerisms, narrative voice, and so on.⁷

Lackey's description of positive reasons and defeaters is helpful for discerning what

6. Lackey, "It Takes Two to Tango: Beyond Reductionism and Non-Reductionism in the Epistemology of Testimony," 170.

7. *Ibid.*, 173.

factors count as positive reasons for accepting testimony as reliable. Her description is also illustrative of the way defeaters and positive reasons can lose conceptual distinction. A positive reason to accept testimony is the speaker's calm affect and coherent report because inductive reason tells the hearer that calm and coherent testimony tends to be true testimony. Conversely, a reason to reject testimony is someone who smells of alcohol. Lackey refers to this context clue as a defeater, but the decision to reject testimony in this case still relies on inductive inference. It is not that someone smelling of alcohol is a defeater for reliable testimony in itself. Rather, the testimony from the speaker who smells like alcohol is deemed unreliable because (presumably) inductive inference indicates to the hearer that testimony from speakers who smell like alcohol tend to be unreliable.

4.2 The Normative Argument Against Believing Rape Victims in Context

To understand how rape testimony undermines prevalent theories of testimonial justification, it will be useful to reformulate NA in the context of rape testimony. Let's call this context-based argument the "Normative Argument in Context" (NAC). NAC can be expressed as follows:

- (1) If someone has incoherent testimony, then their testimony is unreliable.
- (2) If someone has unreliable testimony, then a responsible epistemic agent should not believe the testimony.
- (3) If someone has been raped, they will be traumatized.
- (4) If someone has been traumatized, they will have incoherent memories regarding their trauma.
- (5) If someone has incoherent memories regarding their trauma, they will have correspondingly incoherent testimony regarding their trauma.
- (6) Person A claims to have been raped, but their testimony is incoherent.
- (7) Therefore, person A's testimony is unreliable and therefore should not be believed.

By "trauma" I defer to the American Psychological Association's Diagnostic and Statistical Manual for Mental Disorders (DSM). In its most recent edition, the DSM moved

trauma from beneath the heading of anxiety disorders into its own category: Trauma and Stressor-Related Disorders. In the past, “established diagnostic concepts, especially the severe personality disorders commonly diagnosed in women, have generally failed to recognize the impact of victimization.”⁸ No doubt diagnostic definitions still have a long way to go before they fully attend to women’s unique experiences, but the current DSM’s entry for trauma shows promising evolution. In its most recent articulation of trauma, the DSM recognizes the link between sexual violence and trauma—an experience pertaining overwhelmingly to women.

The DSM defines psychological trauma as follows:

Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: directly experiencing the traumatic event(s); witnessing, in person, the traumatic event(s) as it occurred to others; learning that the traumatic event(s) occurred to a close family member or close friend (in case of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental); or experiencing repeated or extreme exposure to aversive details of the traumatic event(s).⁹

What’s novel about this definition is that it explicitly recognizes what many women have long known: sexual violence is itself traumatic. It is not only traumatic by proxy, when it is life threatening or when it involves a serious physical injury. When sexual violence could only be identified as traumatic when the victim was threatened with death or was able to provide demonstrable physical injury, many cases of sexual violence would go undiagnosed as traumatic.

With the support of new research, the DSM’s definition of trauma is also novel because it recognizes that it can be traumatic to witness death, serious injury, or sexual violence. To be traumatized one must witness the traumatic event in person, or someone can be traumatized in certain circumstances when they learn of a traumatic event. In other cases, individuals can be traumatized when they live in exposure to the effects of traumatic events.

8. Herman, *Trauma and Recovery*, 3.

9. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-V* (Washington DC: American Psychiatric Association, 2013), 271.

The limitations embedded in this definition are an attempt to limit the scope of trauma. It is not traumatic, for example, when a family member dies of natural causes. This is not to say that natural death is not sad, upsetting, or difficult, it just means that natural death is not enough to result in trauma; for trauma, death of a family member must be violent or accidental. Something about the unusual nature of the death typically results in trauma, where other cases typically do not rise to the level of trauma. Thus, the DSM offers a broad definition of trauma, but nonetheless retains definitional boundaries in order to differentiate traumatic experiences from other legitimately bad experiences.

When I say that victims' memories are incoherent, I mean that victims typically have memories about their trauma that do not readily conform to an intelligible narrative. As "functionally coherent representations of sequences of events,"¹⁰ intelligible narratives have an understandable chronology, where claims are consistent with one another, where there are little to no obvious and problematic gaps in the story or the timeline. If memories of normal events are analogous to movies, traumatic memories emerge as snapshots. Traumatic memories can be missing, as in cases of partial amnesia.¹¹ They can also be partial.¹² As snapshots, traumatic memories can be disordered, and details can even be contradictory. I use "incoherent" to denote the array of characteristics which indicate that traumatic memory's failure to conform to a cohesive and intelligible narrative structure.

My claim that victim testimony is incoherent invokes the same definition of incoherency as incoherent memories. Incoherent testimony is testimony that does not cohere to an intelligible narrative structure. Like memories, traumatic testimony can be partial, missing key details, and contain contradictions. It might also be disordered. Without additional, external corroborating information, traumatic testimony will reflect the extent to which a victim's memories are incoherent.

Finally, a word on what it means for testimony to be unreliable: The debate regard-

10. Barwell, "Understanding Narratives and Narrative Understanding," 49.

11. Cheryl Malmø and Toni Suzuki Laidlaw, "Symptoms of Trauma and Traumatic Memory Retrieval in Adult Survivors of Childhood Sexual Abuse," *Journal of Trauma and Dissociation* 11 (2010): 24.

12. *Ibid.*, 25.

ing what makes testimony reliable is ongoing. Scholars want to know on what basis one is justified in taking another's word as justification for knowledge claims. Reductionists argue that testimony is not itself enough to warrant justification, while anti-reductionists argue that testimony in itself warrants justification. On both accounts, however, external evidence bears upon the ongoing justification for taking someone's word as true. It might be warranted, for example, on the anti-reductionist's view to take testimony at face value initially in virtue of it being testimony, but in the presence of indicators that the testimony is unreliable, the hearer should revise her assessment. I take incoherence, in the sense described above, to be a relatively uncontroversial indication that testimony is unreliable. It could very well be that the claims made through unreliable testimony are in fact true, but the characteristics of incoherency give hearers enough reason to be suspicious of the truth of the testimony that—at the very least—further investigation is needed. In short, to say that “if testimony is incoherent, it is unreliable” is to say that it is not safe to accept incoherent testimony without further investigation.

4.3 Analysis

The amended argument I present in this chapter (NAC) adds additional premises to the argument I presented in the previous chapter (NA). As such, I will supplement NA's previous analysis by assessing the truth of the new premises (i.e., premises 3, 4, and 5) here.

There are two main way to support premise (3), first by recognizing its tautological structure. Rape is a particularly egregious form of sexual violence, and so when the DSM defines trauma as having experienced sexual violence, rape experiences count as traumatic ones. Appealing to the DSM, then, another way to say that “if someone is raped, they will be traumatized” is to say that if someone is traumatized, they will be traumatized. By definition premise (3) is true.

The most obvious objection to this premise is to reject the DSM's definition of trauma.

If the DSM is the standard for practicing psychologists, why would someone want to reject the DSM's definition? A preliminary answer has to do with how difficult it is to define trauma. The effects of trauma manifest differently in different people, and some scholars note that an event perceived as traumatic by one person, might not be traumatic for another.¹³ A major question in psychological literature is what, if anything, accounts for this difference: "Survivors' immediate reactions in the aftermath of trauma are quite complicated and are affected by their own experiences, the accessibility of natural supports and healers, their coping and life skills and those of immediate family, and the responses of the larger community in which they live."¹⁴ Other studies show that the victim's level of "mastery" over life is predictive of the extent to which they will exhibit trauma symptoms or not. Where mastery is their sense of how much control they have over life's circumstances.¹⁵ Trauma, it seems, has a subjective component. Yet although subjective factors influence how trauma is received, one's trauma experience does not seem to be completely subjective; "People who have endured horrible events suffer predictable psychological harm."¹⁶ While there are a variety of traumatic disorders, these "traumatic syndromes have basic features in common."¹⁷ The difficulty in defining trauma centrally involves the difficulty of squaring the predictable effects of trauma with the unique experiences of each victim.

Because it is difficult to define trauma, and because mental health research is ongoing, the DSM routinely changes its conception of trauma.¹⁸ The DSM serves the psychological community as a disciplinary standard, but this doesn't mean that it always gets it right. The DSM's penultimate edition, for example, made a distinction between subjective and

13. Substance Abuse and Mental Health Services Administration, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach* (Rockville, MD: SAMHSA's Trauma / Justice Strategic Initiative, 2012), 8.

14. Center for Substance Abuse Treatment, "Understanding the Impact of Trauma."

15. S. Gil and M. Weinberg, "Coping Strategies and Internal Resources of Dispositional Optimism and Mastery as Predictors of Traumatic Exposure and of PTSD Symptoms: A Prospective Study," *Psychological Trauma: Theory, Research, Practice and Policy* 7, no. 4 (2015): 405–411.

16. Herman, *Trauma and Recovery*, 3.

17. *Ibid.*

18. C. S. North et al., "The Evolution of PTSD Criteria Across Editions of DSM," *Annals of Clinical Psychiatry* 28 (2016): 197–208.

objective elements of trauma—attempting to balance the common components of trauma with the subjective experiences of individuals. It was thought that the differences in trauma manifestation could be accounted for by including subjective elements of “intense fear, horror, or helplessness,” and that the definition of trauma retained boundaries with some objective criteria. Unfortunately, further studies showed that the subjective criteria, as the DSM explicated them, were not predictive of objective trauma.¹⁹ In particular, researchers found that “the requirement of a subjective response as part of the trauma criterion created a serious conceptual error by conflating the subjective experience of trauma with objective exposure to the traumatic event.”²⁰ The DSM subsequently removed the subjective/objective distinction from its definition of trauma, but conceptual remnants remain in scholarly literature. These conceptual changes suggest one reason one might reject the DSM definition; the DSM has been admittedly wrong in the past.

Perhaps the most forceful objection to using the DSM’s definition is that it is too narrow. There are some scholars who think that limiting trauma to the few events listed fails to account for all of the traumatic experiences. Brier and Scott,²¹ e.g., argue that the DSM’s current definition of trauma is too limiting because death, serious injury, or sexual violence need not occur for someone to find an event traumatic. The idea that the DSM’s definitions are too narrow is important to take seriously, because there are legitimate concerns regarding mental health gatekeeping—there are lots of documented barriers to mental healthcare,²² and if we only take accepted established diagnostic criteria as legitimate, it is likely that some individuals go undiagnosed. Since biases in mental health diagnoses are well-established, we should question the legitimacy of the DSM.

19. See A. B. Adler et al., “A2 Diagnostic Criterion for Combat-Related Posttraumatic Stress Disorder,” *Journal of Traumatic Stress* 21 (2008): 301–308 and M. Bedard-Gilligan and L.A. Zoellner, “The Utility of the A1 and A2 Criteria in the Diagnosis of PTSD,” *Behavioral, Research and Therapy* 46 (2008): 1062–1069.

20. Pai Anushka, Suris M. Alina, and Carol S. North, “Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations,” *Behavioral, Sciences* 7, no. 1 (2017): 3.

21. J. N. Briere and C. Scott, *Principles of Trauma Therapy: A Guide to Symptoms, Evaluation, and Treatment* (Thousand Oaks, CA: Sage Publications, 2006).

22. Graham Thornicroft, Diana Rose, and Aliya Kassam, “Discrimination in Health Care Against People with Mental Illness,” *International Review of Psychiatry* 19, no. 2 (2007): 113–122.

In response, I will not deny that there are serious problems taking the DSM as the definitive voice on what constitutes trauma. What I'd like to suggest is that for the purposes of this paper we take the DSM's definition as a useful definition—rather than the standard definition. Understood this way, the definition can reasonably change over time. It can be expanded as needed to include additional research and it can be amended to include other instances of trauma. As a working definition, it retains enough structure to offer some guidelines on the difference between trauma and merely having a bad experience.

This brings us back to premise (3). Is it true that if someone is raped, they will be traumatized? One way to answer affirmatively is to provisionally accept the DSM's definition. Another way is to simply appeal to statistical evidence. Studies estimate that 94% of women who are raped exhibit symptoms of PTSD in the first two weeks following the attack.²³ Even though not all victims experience PTSD for very long (30% continue to exhibit symptoms of PTSD nine months after the rape),²⁴ 94% is an extremely high percentage of victims with consistent and relatively uncontroversial markers for trauma. Of course, there are counterexamples to these statistics, but for an inductive argument, I only need to show that it is very likely true that women who are raped are also traumatized. Prevailing statistics overwhelmingly support this premise.

Support for premise (4) can be found in various scientific studies that investigate the way trauma affects memory processing. In short: studies find that traumatic experiences are processed by the brain differently than ordinary experiences. Usually, “when people receive sensory input they generally automatically synthesize this incoming information into the large store of pre-existing information. If the event is personally significant they generally will transcribe these sensations into a narrative, without conscious awareness of the processes that translate sensory impressions into a personal story.”²⁵ On the other hand,

23. Barbara Olasov Rothbaum et al., “A Prospective Examination of Post-Traumatic Stress Disorder in Rape Victims,” *Journal of Traumatic Stress* 5, no. 3 (1992): 445–475.

24. Barbara Olasov Rothbaum and Edna B. Foa, “Subtypes of Posttraumatic Stress Disorder and Duration of Symptoms,” in *Posttraumatic Stress Disorder: DSM-IV and Beyond*, ed. R.T. Davidson and E.B. Foa (Washington, DC: American Psychiatric Press, 1993), 25.

25. Bessel A. Van der Kolk, “Trauma and Memory,” *Psychiatry and Clinical Neurosciences* 52 (1998).

“traumatic experiences initially are imprinted as sensations or feeling states, and are not collated and transcribed into personal narratives. [...] traumatic memories come back as emotional and sensory states, with little capacity for verbal representation.”²⁶ While this kind of memory processing is a core feature of PTSD, the notion that “traumatic events are almost impossible to put into words [...] is true for all of us, not just for people who suffer from PTSD.”²⁷ Due to the nature of how traumatic memories are processed, then, it is difficult—sometimes impossible—for victims to put words to their memories, let alone construct them according to a coherent narrative. Insofar as traumatic memories are processed in such a way that render the victim unable express them narratively, it seems that premise (4) is likely true.

An obvious—although misguided—objection to this picture of traumatic memory would cite the research that appears to contradict the description of traumatic memory processing I just articulated. Those who are skeptical of the above picture of traumatic memory might object by citing the studies showing that traumatic memories are not at all incoherent but largely accurate and retained for long periods of time. Emily Yoffe is one such critic. Yoffe argues that the science behind the notion that memories are incoherent is “junk science,”²⁸ because other studies show that traumatic memories are extremely clear and lucid. To make her case, Yoffe cites psychologist Richard McNally. In his *Remembering Trauma*, McNally writes that “neuroscience research does not support van der Kolk’s claim that high levels of stress hormones impair memory for traumatic experience. (In fact, research on human subjects shows that extreme stress enhances memory for the central aspects of an overwhelming emotional experience [...]).”²⁹

Yoffe, citing McNally, is partially correct. She is right that studies show that certain

26. Van der Kolk, “Trauma and Memory.”

27. Bessel A. Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* (New York: Penguin Books, 2015), 233.

28. Emily Yoffe, “The Bad Science Behind Campus Response to Sexual Assault,” *The Atlantic*, 2017, <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/>.

29. Richard J. McNally, *Remembering Trauma* (Cambridge, MA: Harvard University Press, 2005), 180.

traumatic memories are lucid and extremely accurate. Trauma psychologist Bessel van der Kolk admits this: “when something terrifying happens, like seeing a child of a friend get hurt in an accident, we will retain an intense and largely accurate memory of the event for a long time.”³⁰ Additionally, van der Kolk cites studies which show that traumatic memories are less likely to erode over time than ordinary memories.³¹ Yoffe is right when she points out—with McNally’s help—that some traumatic memories are clear, lucid, and accurate. What Yoffe gets wrong is thinking that all traumatic memories are clear, lucid, and accurate. In so assuming, Yoffe presents a false dichotomy: either, she says, traumatic memories are disordered and incoherent or they are recalled in vivid detail with great accuracy. Her misstep lies in either a misunderstanding or a misarticulation of traumatic memories. As van der Kolk goes on to say: “[Trauma survivors] remembered some details all too clearly (the smell of the rapist, the gash in the forehead of a dead child) but could not recall the sequence of events or other vital details (the first person who arrived to help, whether an ambulance or a police car took them to the hospital).”³² It is consistent with the notion that some aspects of traumatic memories are clear, lucid, and accurate that these same memories might be disordered or inconsistent in certain ways. It is also consistent to have clear, lucid, and accurate memories that do not lend themselves to narrative structure. So an objection like Yoffe’s is faulty because it appeals to a subset of research on traumatic memory and in so doing, misconstrues traumatic memory research and traumatic memory processing; Yoffe presents an only apparent contradiction, and ignores the complexity of traumatic memory wherein “on the one hand, traumatized people remember too much; on the other hand, they remember too little.”³³

Support for premise (5) is fairly straightforward. It is commonsense that if testimony is solely reliant upon one’s memories, the testimony is going to be dependent upon the coherency of those memories. I cannot give a description of my 10th birthday party, for

30. Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*.

31. Van der Kolk, “Trauma and Memory.”

32. Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*, 195.

33. Herman, *Trauma and Recovery*, 7.

example, beyond my memories of it, unless I can appeal to outside sources like other witnesses or a video. It's unusual for there to be witnesses to rape, and although the rise of technology makes it more likely that external sources can help a victim fill in the details of their trauma,³⁴ rape occurs largely behind closed doors without any witnesses. Further, given that witnesses can also be traumatized and thus have incoherent memories, we can also rightly question the extent to which witness corroboration meaningfully helps victims construct a coherent narrative.

A pressing objection to premise (5) is simply that there many examples of rape victims telling the story of their rape in a coherent fashion. We might think that the existence of coherent rape testimony calls into question the extent to which it is true that if someone has incoherent memories, they will provide incoherent testimony.

In response, it's worth noticing that there are a number of reasons why coherent rape narratives exist. Sometimes victims have external evidence that helps them construct a narrative. This is a good objection, and so we should amend our understanding of premise three to include a caveat that premise (5) is true if a survivor's traumatic memories are the only (or primary) means she has to construct a narrative. Other times victims can construct a coherent narrative because they have gone through therapy aimed at memory reconstruction. Studies also show that the passage of time also helps victims construct coherent trauma narratives.³⁵ It might also be the case that a victim can construct a narrative to the best of her ability, and this narrative will appear coherent but it will not include all the details. With the rise of the #metoo movement, more and more women are coming forward with their experiences of sexual assault—and are largely able to share coherent testimonies. Susan Brison also notes that repeated retelling—and having one's story validated—can contribute to a process of “mastering the trauma.”³⁶ According to Brison, “one can control of the narrative and that control, repeatedly exercised, leads to greater control over the

34. Kelly Oliver, “Rape as Spectator Sport and Creepshot Entertainment: Social Media and the Valorization of Lack of Consent,” *American Studies Journal* 10 (2015): 1–16.

35. Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*, 196.

36. Brison, *Aftermath: Violence and the Remaking of a Self*, 54.

memories themselves.”³⁷ Still, if pressed, it is possible that survivors would not be able to construct a wholly coherent narrative. That coherent narratives are possible “is not to say that the narrator is not subject to the constraints of memory.”³⁸ I could coherently detail my own trauma,³⁹ e.g., but, if pressed there are many details I cannot produce. I can tell you where I was raped, but I cannot tell you how I got there, or what happened afterwards.

It is uncontroversial that coherent rape narratives exist, but the point of premise (5) is not to say that no coherent rape narratives are possible. The point is merely to suggest that there is a correlation between memory and testimony. Strictly speaking, the fact that coherent narratives exist does not in itself call into question the connection between memory and testimony. As memories gain coherency over time, with corroborating evidence, with professional help, or with repeated retelling, so too would the victim’s testimony. And, as mentioned, a story can appear coherent if the narrative stays on a level general enough to leave out missing or inconsistent details. Premise (5) is true, then, so long as the survivor must rely on her own incoherent memories of the trauma, which is—unfortunately—in most cases.

4.4 What’s Wrong with the Normative Argument Against Believing Rape Victims?

So far I’ve suggested that there is an argument involving rape victims that—when initiated by the fact that rape occurs—concludes that hearers should not believe rape victims that they were raped. For many, this conclusion will be an unhappy one. Indeed, we might think that there is something odd about an argument wherein the fact of an event results in the epistemic stipulation that the victim should not be believed. In the last chapter I claimed that NA is only apparently cogent, so where do NA and NAC go wrong?

The key insight for dismantling NA (and NAC) rests in premise 1:

37. Brison, *Aftermath: Violence and the Remaking of a Self*, 54.

38. *Ibid.*

39. Amber Rose Carlson, “Is There a ‘Rational’ Punishment for My Rapist?,” *The New York Times*, 2017, <https://www.nytimes.com/2017/10/23/opinion/rape-punishment-rational.html>.

(1) If someone has incoherent testimony, then their testimony is unreliable.

Support for this premise comes from inductive reasoning; given the observation that incoherent testimony often leads to false beliefs. It seems reasonable to apply the correlation between incoherence and false belief to new cases where the hearer encounters incoherent testimony. It seems reasonable to think that if a rape victim's testimony is incoherent, she is mistaken or even lying. However, premise 1 is false when traumatic context is taken into consideration. Traumatic events typically lead to traumatic memory processing. This in turn affects the quality of testimony. In cases involving trauma, incoherent testimony is not just unsurprising if the event actually occurred, it is expected. Incoherent testimony about a traumatic event, then, is linked to the truth of the testimony rather than its falsehood. This correlation is precisely the opposite of the normative standards that epistemic agents typically employ when assessing testimony. In rape cases, context clues betray the search for truth. Insofar as reductionism, non-reductionism, and dualism all employ context clues to infer reliability, these theories lead the responsible epistemic agent astray.

So, what's wrong with epistemic justification? A short answer is to say that what is wrong is the way our epistemic norms inform the way in which we assess which pieces of testimony are reliable and which ones are not. Put another way, true reliable testimony is—by definition—truth conducive. The problem, then, is that not all reliable (truth-conducive) testimony is marked as such by hearers. The problem resides in the way hearers tend to use inductive inference on context markers to make an initial assessment of testimonial reliability. Hearers are taught, through many experiences, that calm and coherent people point to true testimony while confused and incoherent people point to false testimony. What's wrong, then, is not with the rape testimony, nor the rape victim, but rather with the epistemic norms that dictate disbelief in the rape victim's testimony.

A longer answer takes each of the three main theories of testimonial justification into consideration. Recall that non-reductionists believe that testimony is justified in virtue of it being testimony. But reductionists assert that testimony is only justified in the absence

of defeaters. So, in cases of rape testimony, incoherency would be a likely defeater—based on inductive inference—to disbelieve the speaker. However, the unique aspects of traumatic testimony render incoherency an indication that the testimony is true, rather than false. A non-reductionist, then, is left in a position wherein applying usual defeaters to rape testimony can lead to a false belief, rather than a true belief. Reductionists and dualists encounter a similar problem because they both rely on the use of positive reasons to justify testimony. Reductionists who view defeaters as positive reasons to reject testimony are similarly lead astray by the incoherency of traumatic testimony. Reductionists who might reject the use of defeaters must yet contend with the ways in which positive reasons and defeaters lose conceptual distinction. The absence of positive reasons to accept testimony on the reductionist or dualist view, for example, becomes itself a kind of defeater. As long as reductionists are similarly beholden to defeaters, they can also be lead astray.

At this point, you might be convinced that rape victim and other testimony born out of trauma do cause problems for epistemic norms, but you might not yet be convinced that it matters. One possibility—although one I will reject—is that we take the observation that our usual epistemic practices will lead us astray in trauma cases, but that we can note trauma as an exception to the rule.

There are a few reasons why I think it would be misplaced to simply name traumatic testimony an anomaly. First, the way in which traumatic testimony undermines reliable standards has significant consequences for the way in which we should continue to think about epistemic justification. The central question in the epistemology of testimony is when, precisely, we are justified in taking another's word as a source of knowledge. At present, there are only three main theories. These theories are often critiqued and rejected because they fail to account for some broad subset of assertions. In this paper, I have suggested that traumatic testimony would fail all three justificatory tests when it should—given an adequate account of testimonial justification—pass. Because traumatic testimony is a widespread phenomenon, occurring not just in cases involving sexual violence, traumatic

testimony stands as a powerful counterexample to prevalent theories of justification.

Second, it's mostly uncontroversial that the point of acting in accordance with epistemic norms is so that we can reliably hold true beliefs. Insofar as an epistemic agent is committed to holding true beliefs (I think it's reasonable to say that most, if not all people, are generally committed to this), then the possibility that an epistemic norm might lead them astray should be of alarming concern. Since rape testimony and other traumatic testimonies can easily lead to false belief (i.e. that the rape did not occur), the nuances of traumatic testimony should not be jettisoned off as an anomalous case.

Finally, insofar as a hearer has any moral commitment to supporting friends, relatives, and acquaintances who have been victims of trauma, the arguments I present in this chapter should be of special import. It can be difficult to think that in order to believe a rape victim, one must betray one's epistemic sensibilities. Rather than betray epistemic sensibilities, this chapter suggests that with revision, epistemic norms can support the moral pull to believe rape victims.

Chapter 5

On Believing Rape Victims

Although rape is pervasive—statistics indicate that one in five women will be raped in her lifetime¹—rape victims are often disbelieved when they report that rape occurred. Disbelief is so rampant, some victims report that the fear of not being believed is an impediment to coming forward.² Victims' reticence to report their experience is problematic in part because psychologists have determined that sharing one's trauma is a crucial component for healing³ and that expressing belief in victim testimony is essential to their healing process.⁴ If testimony is received poorly, however, reporting sexual violence can not only hinder healing, but can also re-victimize women.⁵

Frequently, through word and action, rape testimony recipients suggest victim testimony is not sufficient for them to responsibly form the belief that rape did in fact occur. They suggest that when there is no evidence corroborating the alleged victim's testimony, the appropriate action from an epistemic perspective is to either disbelieve the alleged victim or to abstain from making a judgment one way or the other.

This chapter investigates and rejects prominent skeptical claims against believing rape victims. Skeptics who reject rape victim testimony allege that it is, for various reasons, epistemically irresponsible to believe rape victims. Their key arguments are that because

1. Black et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*.

2. See: D. Patterson, M. Greeson, and R. Campbell, "Understanding rape survivors' decisions not to seek help from formal social systems," *Health and Social Work* 34, no. 2 (2009): 127–136 and H. S. Resnick et al., "Predictors of post-rape medical care in a national sample of women," *American Journal of Preventive Medicine* 19, no. 4 (2000): 214–219.

3. Herman, *Trauma and Recovery*.

4. See: R. Campbell, "Rape Survivors' Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?," *Violence Against Women* 12, no. 1 (2006): 30–45; M. Flood and B. Pease, *The Factors Influencing Community Attitudes in Relation to Violence Against Women: A critical Review of the Literature* (Melbourne: Victorian Health Promotion Foundation, 2006); D. Lievore, *Non-reporting and Hidden Recording of Sexual Assault: An International Literature Review* (Canberra: Office of the Status of Women, 2003); and J. Temkin, "Reporting Rape in London: Qualitative Study," *The Howard Journal* 38 (1999): 17–41.

5. Vania Ranjbar, M. Res, and Susan A. Speer, "Revictimization and Recovery from Sexual Assault: Implications for Health Professionals," *Violence and Victims* 28, no. 2 (2013): 274–87.

rape testimony can be (1) a false allegation; (2) subject to delayed reporting; (3) not reported with the “appropriate” affect; (4) motivated by unsavory desires to ruin men’s lives; and (5) reducible to a he-said/she-said scenario, rape victims should not be believed when they report that rape occurred. But who makes claims (1)–(5)?

Rape skeptics emerge at many societal levels. In a 2018 campaign rally, President Donald Trump addressed a rape accusation leveled against newly confirmed Justice Brett Kavanaugh. Referring to a woman who admits fabricating an allegation against Kavanaugh, Trump said, “This woman came out and said she made up the story.”⁶ Trump then implied that, on the basis of this false claim, other allegations against Kavanaugh were suspicious. Trump continued, “And they gotta look at the other ones also, folks, because...take a look at the other [allegations],⁷ folks!”⁸ Is Trump’s implicature right? Should false rape accusations cast doubt upon other allegations of sexual violence? Likewise, is senior White House official Kellyanne Conway right when she publicly asserted that those who believed Kavanaugh’s accuser “share her shame” because the accuser was “trying to destroy a decent man”?⁹ When faced with rape reports, many legislators, law enforcement officers,¹⁰ juries,¹¹ university officials,¹² and journalists¹³ seem to think so. They question the legitimacy of rape reports when the report was delayed and when the accuser did not display—what they consider—appropriate emotions. They worry that rape reports are false and motivated by the desire to ruin the life of the accused, and some argue that belief in the allegation is impossible because testimony is insufficient evidence. Lay people also take

6. Donald Trump, *Campaign Speech* (Fort Wayne, November 2018), <https://www.c-span.org/video/?453851-1/president-trump-campaigns-republicans-indiana>.

7. By “other [allegations]” Trump is referring to allegations of sexual assault leveled against Justice Kavanaugh by Christine Blasey Ford and Deborah Ramirez.

8. Trump, *Campaign Speech*.

9. Kellyanne Conway, *Twitter Post*, November 2018, <https://twitter.com/KellyannePolls/status/1058715647507660800>.

10. Kayleigh A. Parratt and Afroditi Pina, “From ‘Real Rape’ to Real Justice: A Systematic Review of Police Officers’ Rape Myth Beliefs,” *Aggression and Violent Behavior* 34 (2017): 68–83.

11. P. Tetreault, “Rape Myth Acceptance: A Case for Providing Educational Expert Testimony in Rape Jury Trials,” *Behavioral Sciences & the Law* 7, no. 2 (1989).

12. Regina Kulik Scully et al., *The Hunting Ground* (2015).

13. Claire R. Gravelin, *Assessing the Impact of Media on Blaming the Victim of Acquaintance Rape* (University of Kansas, 2016).

issue with rape reports; the hashtag #protectourboys, for example, is a trending way for individuals to critique and discredit accusers by suggesting that young men need protection from over-zealous false accusers.

This chapter shows why rape skeptics are misguided and why their allegations and objections do not block the epistemic imperative to believe rape victims. This chapter will first examine each of the five main skeptical claims outlined above. This chapter concludes with the argument that, in addition to being beneficial for victims, believing rape victims upon encountering rape victim testimony is the epistemically responsible choice.

5.1 False Allegations

It is epistemically uncontroversial to claim that any particular piece of testimony might be false. In the abstract, i.e., without any specific contextual considerations, this healthy dose of testimonial skepticism is generally warranted—primarily from experience. That is, although epistemic agents rely upon others’ testimony for a wide range of knowledge claims—and even if we think that most testimony turns out to be true—it is a commonplace notion that testimony could be false. The speaker could be, e.g., lying or simply mistaken. Philosopher Jennifer Lackey confirms this notion, arguing that even if testimony is generally reliable, individual pieces of testimony could be false. According to Lackey:

[E]ven if it turned out that the majority of testimonial reports are, as a matter of fact, both true and properly formed, this information would *not have much epistemic significance*. For concealed in this percentage are all sorts of epistemically salient facts: some people offer mostly false reports, some kinds of reports are mostly false, many true reports are about very mundane facts, and so on. Because of this, the mere fact that testimony is *generally* reliable has very little epistemic bearing on any *particular* instance of testimony.¹⁴

Legal perspectives also take it as a commonplace that testimony could be false. In legal contexts, it is not just permissible to respond to allegations of unlawful conduct with a dose

14. Lackey, “It Takes Two to Tango: Beyond Reductionism and Non-Reductionism in the Epistemology of Testimony,” 162.

of healthy skepticism, but it is mandated; the phrase “innocent until proven guilty” is a central component of the United States’ criminal justice system.

In the abstract, then, it is epistemically uncontroversial to claim that any allegation of sexual assault might be false. The accuser could be lying, or she could, e.g., be mistaken regarding what constitutes consent in such a way that renders her claim inaccurate.¹⁵ Similarly, it is uncontroversial in a legal context to presume innocence until the allegation can be proved true. So, even though his call did not occur within a legal framework, when Trump encouraged his supporters to “look into” the allegations of sexual misconduct leveled against Kavanaugh,¹⁶ we might think that this call to action is innocuous insofar as the call to investigate any piece of testimony is uncontroversial. Similarly, when a lay person decides to wait for more evidence before making a judgment, we might view that testimony recipient as being epistemically responsible—after all the allegation *could be* false.

However, in Trump’s case, employing the uncontroversial notion that any piece of testimony could be false—while pointing to an admitted false allegation—becomes pernicious when it is used to discredit otherwise credible allegations. The allegations brought against Justice Kavanaugh by Dr. Christine Blasey Ford, for example, are characterized by many as being credible allegations. This is, in part, because Dr. Ford has records of reporting the traumatic experience to her therapist and reporting the incident to her husband years prior to testifying before congress. Generally speaking, incidents reported to therapists are categorized as being credible because the private and confidential nature of therapy sessions make the likelihood of someone lying in a therapy session extremely low. That she reported the assault to others years prior also assuages the worry that Ford might be opportunistic or disingenuous with her allegations. When Donald Trump suggested that one false allegation against Kavanaugh called into question the others, he was ignoring the extent to which there were already other considerations corroborating the truth of Dr. Ford’s claims. In short, Trump problematically employed a claim that is uncontroversial in the abstract to

15. Cf. Chapter 2.

16. Trump, *Campaign Speech*.

override specific contextual considerations. Further, Trump problematically suggested that a case that was only nominally related (i.e., only related in the sense that the accusation was made against the same person) somehow bears upon the truth of Dr. Ford's accusation.

Citing false allegations to render other allegations suspicious is also problematic when citing them gives the impression that false allegations are more prevalent than they are in reality. It is common for hearers to overestimate the number of false rape allegations. Police officers, for example, tend to overestimate the prevalence of false rape reports. In one study police officers admitted that "they tend to remember being lied to, and they recall false reports more easily and frequently than those perceived as legitimate."¹⁷ Police officers also reported striking variability in their impressions of how many reports they deem false: officers reported that, while some believed false reports to be as low as two percent, others believed that roughly ninety percent of rape allegations they encountered were false.¹⁸ It is also common for news and media outlets to report when false rape allegations emerge, but this can give the erroneous impression that false accusations are rampant when it comes to sexual assault. For police officers, the erroneous impression that many rape accusations are false helps explain why an inordinately few number of rape allegations result in conviction or imprisonment.¹⁹ The low conviction rate can, in turn, give lay people the false impression that rape allegations are false. That is, if rape accusations were generally true, the lay person might reasonably think that more rapists would be convicted or serve jail time.

In reality, most sexual assaults (approximately 63%) are never reported to police, rendering rape the most under-reported crime.²⁰ False accusations for sexual assault occur at the same rate as false accusations as other crimes: between two and ten percent.²¹ Any

17. R. Venema, *Police Officer Decision Making in Reported Sexual Assault Cases* (2013), 96.

18. *Ibid.*

19. *National Crime Victimization Survey, 2010-2016* (Department of Justice/Bureau of Justice Statistics, 2017).

20. C. M. Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000* (U.S. Department of Justice/Bureau of Justice Statistics, 2002).

21. D. Lisak et al., "False allegations of sexual assault: An analysis of ten years of reported cases," *Violence Against Women* 16 (2010): 1318–1334.

call to discredit allegations that stems from the erroneous belief that an inordinate number of sexual assault allegations are false, is problematic. Additionally, these statistics suggest that low conviction rates do not indicate high numbers of false allegations, but, rather, point to flaws in the criminal justice system.

So while it is, in the abstract, uncontroversial and commonsense to claim that any particular piece of testimony might be false, there are compelling reasons to resist using this claim to reject rape victim testimony. From an epistemic perspective, the number of false reports are so low, that to disbelieve testimony on the basis of it potentially being a false report would more often than not lead the hearer to a false belief. Using one false report to undermine another is not only epistemically flawed (unless the cases are connected in some epistemically meaningful way), but it also ignores the reality that false accusations are uncommon. Because responsible epistemic agents are concerned with acquiring true beliefs, it is in their best interest to believe rape testimony unless there are other compelling reasons to reject the testimony; rape testimony should not be rejected merely on the basis of its potential falsity.

5.2 Delayed Reports

Memories—as well as our ability to recall and report those memories—erode over time. This common feature of daily life might be why some people mistakenly believe that delayed rape reports are less credible than reports made immediately after the assault. Experience tells us that events that took place long ago are difficult to remember with great detail and accuracy. It is also consistent with experience to think that the more time since an event took place, the weaker and less accurate the memory. So cases where victims report rape months or years after the alleged event can seem less credible than cases reported within hours or days after the assault.

In the last chapter I cited research that acts as counter-evidence to the notion that rape

reports erode over time.²² While it is true that rape testimony can be incoherent, certain memories will be retained with great accuracy and will not erode over time. Additional research shows that negative emotions in particular can result in more precise long term memory recall than memories formed under neutral or positive conditions.²³ The notion that memories of rape erode like all other types of memories is faulty, and hearers should not use their experience with normal (i.e., non-traumatic) memories as a guide when assessing the truth of rape testimony when the report was delayed.

Skeptics who worry about delayed reports might also take issue with the timing if they expect rape victims to want to report immediately. To circumvent this concern, it is important to note that victims who report rape can be hesitant to report for various reasons. Studies show that victims rarely report rape to formal agencies, e.g., police or mental health services.²⁴ Delayed reports are so common that researchers are now beginning to identify markers predictive of when a victim might delay her report. Researchers have found that various factors pertaining to the rape and the victim bear upon the likelihood that a victim will not report immediately. Most notably, studies found that victims were more likely to delay a report when victims had a close relationship with their assailant,²⁵ when victims had previously experienced sexual trauma,²⁶ and when victims were young (in one study, for example, pre-adolescents were less likely to report than adolescents).²⁷ In contrast, victims

22. Van der Kolk, "Trauma and Memory"; Van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*

23. W. Xie and W. Zhang, "Negative Emotion Enhances Mnemonic Precision and Subjective Feelings of Remembering in Visual Long-term Memory," *Cognition* 166 (2017).

24. B. S. Fisher, F. T. Cullen, and M. G. Turner, *The Sexual Victimization of College Women* (Washington, DC: U.S. Department of Justice, National Institute of Justice & Bureau of Justice Statistics, 2000).

25. Iva Bicanic et al., "Predictors of Delayed Disclosure of Rape in Female Adolescents and Young Adults," *European Journal of Psychotraumatology* 6, no. 1 (2015); S. M. Kogan, "Disclosing Unwanted Sexual Experiences: Results from a National Sample of Adolescent Women," *Child Abuse and Neglect* 28 (2004): 147ffdfdfdfdf165; V. I. Rickert, C. M. Wiemann, and R. D. Vaughan, "Disclosure of Date/acquaintance Rape: Who Reports and When," *Journal of Pediatric and Adolescent Gynecology* 18, no. 1 (2005): 17ffdfdfdfdf24 and M. P. Koss, *Criminal Victimization among Women: Impact on Health Status and Medical Service Usage* (Washington, DC: National Institute of Justice, 1988).

26. Bicanic et al., "Predictors of Delayed Disclosure of Rape in Female Adolescents and Young Adults"; D. W. Smith et al., "Delay in Disclosure of Childhood Rape: Results from a National Survey," *Child Abuse Neglect* 24, no. 2 (2000): 273ffdfdfdfdf287; S. E. Ullman, "Correlates and Consequences of Adult Sexual Assault Disclosure," *Journal of Interpersonal Violence* 11, no. 4 (1996): 554ffdfdfdfdf571.

27. Bicanic et al., "Predictors of Delayed Disclosure of Rape in Female Adolescents and Young Adults";

whose rape experience conformed to stereotypes (i.e., rape by a stranger, rape involving weapons, or rape resulting in physical injury) were more likely to report right away.²⁸

These studies are important because they normalize women's response to sexual trauma. Most women do not report at all, and if they do report, a large number of the reports are delayed. The predictive characteristics for delayed reports helps explain why delayed reports are so common. The skeptic, then, should not view delayed reports with suspicion, but should recognize that nonreporting and delayed reporting are understandable and common features of rape trauma. Paired with the research indicating that traumatic memories retain accuracy over time, skeptics should not view delayed reports as indication that the rape report is false.

5.3 "Appropriate" Affect

Why do some people mistakenly believe that rape victims should report with particular affect? Research shows that when rape does not conform to certain stereotypes, victims are disbelieved at higher rates than when the report does conform to various stereotypes. This is true, for example, regarding the way police officers respond to rape: "Stereotypes appeared to be highly influential in officers' beliefs of rape, where in most, but not all, officers had pre-conceived ideas of what a genuine victim presents as, and when victims do not fit such stereotypes, they are believed to be less credible than those that do."²⁹ Police officers believed, for example, that a raped woman should be emotional, and thus victims who were not shocked or emotional were believed less frequently than those who displayed

Kogan, "Disclosing Unwanted Sexual Experiences: Results from a National Sample of Adolescent Women"; V. Schfffdffdnbucher et al., "Disclosure of Child Sexual Abuse by Adolescents: A Qualitative In-depth Study," *Journal of Interpersonal Violence* 27 (2012): 3486fffdfffd3513; Terri Messman-Moore and Amy Brown, "Risk Perception, Rape, and Sexual Revictimization: A Prospective Study of College Women," *Psychology of Women Quarterly* 30, no. 2 (2006): 159.

28. Bicanic et al., "Predictors of Delayed Disclosure of Rape in Female Adolescents and Young Adults"; and Smith et al., "Delay in Disclosure of Childhood Rape: Results from a National Survey."

29. Parratt and Pina, "From 'Real Rape' to Real Justice: A Systematic Review of Police Officers' Rape Myth Beliefs."

stereotypical emotions.³⁰ Research shows that lay people, juries, and prosecutors also tend to assess victim credibility according to these same stereotypes.³¹

The question, then, is to what extent does affect suggest that a rape victim is lying? Research indicates rape victims tend to fall into one of two main response categories: “The ‘controlled’ victim is outwardly calm, without obvious observable signs of her emotional distress. The ‘expressed’ victim, on the other hand, clearly exhibits her emotional distress about the rape.”³² Again, this research serves to normalize victim response to rape. It is possible that victims will respond emotively to assault, but it is just as plausible that victims will appear calm and controlled. Because either response category is normal, skeptics should not assess victim credibility based on the victim’s affect.

Further, skeptics should be aware that efforts to dictate appropriate or stereotypical responses to rape are fraught with biases. If the testimony recipient assumes, for example, that victims should respond emotionally to rape, the victim who expresses her emotions displays the expected reaction. On the other hand, the victim who does not effectively communicate distress can lead testimony recipients to view her as “unexpectedly calm.”³³ Two other stereotypical myths that can influence a testimony recipient’s credibility judgment are (1) that women enjoy being raped and (2) that women might be lying about the rape. A victim’s calm affect can lead testimony recipients to think that “she did not find the rape as unpleasant as the expressed victim, and they may also be more likely to assume she is not telling the complete truth about the accident.”³⁴ That woman should be properly emotional, that women enjoy being raped, and that women tend to lie about being raped

30. A. C. Baldry, “Rape Victims’ Risk of Secondary Victimization by Police Officers,” *Issues in Criminological & Legal Psychology* 25 (1996): 65–68; A. D. Page, “Gateway to Reform? Policy Implications of Police Officers’ Attitudes Toward Rape,” *American Journal of Criminal Justice* 33, no. 1 (2008): 44–58.

31. Karl Ask and Sara Landstrfddfffdm, “Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect,” *Law and Human Behavior* 34, no. 5 (2010): 392fffdfffdfffd401; G. Kaufmann et al., “The Importance of Being Earnest: Displayed Emotions and Witness Credibility,” *Applied Cognitive Psychology* 17 (2003): 21fffdfffdfffd34.

32. Lawrence G. Calhoun et al., “Victim Emotional Response: Effects on Social Reaction to Victims of Rape,” *British Journal of Social Psychology* 20, no. 1 (1981): 17.

33. *Ibid.*

34. *Ibid.*

are well-established rape myths, and epistemically responsible agents should not employ them in their credibility assessments.

Current research suggests additional stereotypes related to the victim's affect that can influence credibility. Scholars found not only that testimony recipients were more likely to believe women who were outwardly emotional, but also that they were more likely to believe victims whose emotional affect stayed consistent over time.³⁵ If a victim, for example, reported rape to authorities within hours of the assault, testimony recipients regarded her as more credible if her affect was the same, say, months or years later during trial. Even when the victim first appeared outwardly calm, she was deemed more credible if she was similarly calm in later reports.

From a coherency perspective, it might seem like changing one's emotional affect amounts to changing one's story. This could be one reason why testimony recipients favor victims who are consistent in their affect. But, given the psychological impact of sexual trauma, it is unrealistic to expect consistent emotional responses across time.

The normal variation in victim response to rape in addition to the known biases that testimony recipients project into victims are good reasons for the rape skeptic to reject the notion that victim's emotional presentation corresponds to the truth of her testimony. Further, skeptics should note that a victim's affect over time need not be consistent for the veracity of her claim.

5.4 Unsavory Motives

Why do some people think that one's motives are reason to discredit testimony? One answer is because, as in the case of Kellyanne Conway's remark, unsavory motives suggest that accusers are lying. In Kavanaugh's case, he and others have suggested that the allegations are nothing more than a "smear campaign." To suggest that a victim's

35. M. A. Klippenstine, *Perceptions of Sexual Assault: Expectations Regarding the Emotional Response of a Rape Victim* (2010).

accusations are motivated by something other than the truth of those allegations serves to discredit the victim.

Is it possible that some accusations are made with the intent to ruin men's lives? Of course, this is theoretically possible. However, the fear that accusers have unsavory motives is tempered by the low number of false reports. Even if some false reporters are motivated by wanting to ruin a man's life or are made in an effort to begin a smear campaign, the reality is that more reports are true than false. So, to discredit allegations with the claim of unsavory motives is suspect, at best.

The skeptical worry that women are out to ruin men's lives with false accusations assumes that men's lives are ruined by false accusations. Because this assumption underlies the skeptical worry, it is also worth considering that if a woman wanted to "ruin a man's life," accusing them of rape or sexual assault is a largely ineffective way to achieve that goal. Even knowing that most rape reports are true, individuals who are accused of rape are not often penalized in the criminal justice system. Many men not only get away with sexual assault, but go on to enjoy wildly successful careers even with rape accusations. Donald Trump, for example, was still elected president after admitting his willingness to grab women's genitals without their consent. Justice Kavanaugh overcame accusations to still be confirmed to the supreme court. Certainly, to be falsely accused of rape is distressing and material harm can come from the accusation. However, the inordinately low conviction rates of alleged rapists and the even lower rates of jail time provide additional reasons to think that accusing someone of rape is not an effective way to ruin a man's life.

Further, individuals who are found to be guilty of rape tend to receive extremely lenient sentences. Brock Turner, for example, was caught raping an unconscious woman. He was found guilty and received a lenient six month sentence despite the court's guilty verdict. "Although Turner was convicted by a unanimous jury, [Judge] Persky decided his punishment: six months in county jail and three years of probation—far less than the six years prosecutors had asked for, in line with the two-year minimum guideline for each of the

three felony counts.”³⁶ In the end, Turner was released from jail after serving three months of his six month sentence. This example illustrates that while guilty verdicts sometimes occur, the accompanying punishments can be lenient. Of course, people will disagree regarding what constitutes a “lenient sentence” or what effectively “ruins a man’s life.” But this example shows that even true rape allegations are not always going to result in significant punishment.

Leniency in rape allegations for men can be explained, in part, by appealing to Kate Manne’s notion of “himpathy.”³⁷ Himpathy describes the common phenomenon wherein testimony recipients display sympathy for the (male) accused, often to the detriment of the (female) accuser. This phenomenon is notably conspicuous in the media: “Journalists and editors are still fixated on the harasser’s fall from grace rather than the detrimental effect of sexual harassment on the victims and our society as a whole.”³⁸ Headlines reporting Francisco Ayala’s resignation following sexual harassment allegations refer to him as “prominent” and “eminent.”³⁹ Media frequently highlighted Brock Turner’s status as a student at Stanford and his swimming accomplishments. According to the judge presiding over Turner’s case, a lenient sentence was warranted because “a prison sentence would have a severe impact on him.”⁴⁰

The rape skeptic, then, should view references to the unsavory motives of victims with suspicion. Recalling that most accusations are true and that even most true accusations are rarely penalized should temper the rhetoric surrounding the worries that an accusation is made with unsavory motives. Pairing these facts with the realization that there are cases of men who are accused of rape who go on to be successful, it seems unlikely that a woman

36. Marina Koren, “Why the Stanford Judge Gave Brock Turner Six Months,” 2016, <https://www.theatlantic.com/news/archive/2016/06/stanford-rape-case-judge/487415/>.

37. Kate Manne, *Down Girl: The Logic of Misogyny* (New York, NY: Oxford University Press, 2018).

38. Jane Zelikova, Kelly Ramirez, and Jewel Lipps, “Harassment Charges: Enough Himpathy,” *Science*, 2018, 655.

39. Meredith Wadman, “Prominent Geneticist Out at UC Irvine after Harassment Finding,” *Science*, 2018, <https://www.sciencemag.org/news/2018/06/prominent-geneticist-out-uc-irvine-after-harassment-finding>.

40. Liam Stack, “Light Sentence for Brock Turner in Stanford Rape Case Draws Outrage,” *The New York Times*, 2016, <https://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html>.

out to ruin a man's life would find that accusing him of rape would have much, if anything, to gain by the allegation.

5.5 He-Said/She-Said

Rape is notoriously difficult to investigate and prosecute.⁴¹ Physical evidence and witnesses to the assault are typically absent, and even when witnesses are available, the criminal justice system already recognizes the rampant flaws with eyewitness testimony. Further, in typical rape cases “the issue of dispute is often not whether or not sexual intercourse occurred, but rather whether or not the act was consensual.”⁴² Consequently, those involved in criminal proceedings (prosecutors, judges, and jurors) “are frequently left with little more than two conflicting verbal accounts—that of the accuser and that of the accused—as a basis for their decisions.”⁴³ Typically, lay people have no more evidence to corroborate a victim's account, and so, it seems, testimony recipients must similarly rely upon two conflicting verbal accounts to arbitrate accusations.

That rape accusations come down to a he-said/she-said scenario is highly problematic because—as we have seen in the above sections—“The prevalence and content of rape myths are such that fact finders often question the credibility of a complainant in a rape trial.”⁴⁴ Additionally, research shows that “jurors' decisions, like those of the rest of society, are influenced by social and psychological information.”⁴⁵ As we have seen, the social and psychological information tends to be incredibly biased, problematic, and well-documented. That testimony recipients are subject to problematic biases regarding rape and sexual assault is a problem because, despite philosophical literature attempting to establish criteria for credibility, “credibility assessment is far from an exact and reliable pro-

41. Ask and Landstriff, “Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect.”

42. *Ibid.*

43. *Ibid.*

44. Tetreault, “Rape Myth Acceptance: A Case for Providing Educational Expert Testimony in Rape Jury Trials.”

45. *Ibid.*

cess.”⁴⁶ Specifically, in addition to the considerations already addressed in other sections, the way testimony is presented, the testimony recipient’s personality, and the witness’s ethnic membership are all factors that influence the testimony recipient’s perception of victim credibility.⁴⁷

The testimony recipient, then, who has only testimony to rely upon should temper their disbelief with the knowledge that implicit (and explicit) biases work in favor of the defendant and against the accuser. Given the vast documentation of these biases, the responsible epistemic agent should not generally rely upon a false sense of their own ability to be objective.

5.6 Epistemically Responsible Belief

Rape myths, like the five skeptical claims I have discussed here, were first articulated as cultural beliefs that support male sexual violence against women, trivializing rape and blaming women for their own victimization.⁴⁸ Rape myths have since been rearticulated as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists.”⁴⁹ Rape myths have also been conceptualized as “attitudes and beliefs that are generally false, but are widely and persistently held, and that serve to justify male sexual aggression against women.”⁵⁰ These beliefs “have a significant impact on: 1) how victims of rape are perceived, 2) how victims of rape are treated, and 3) the dissemination of a cultural acceptance of rape and a rape-supportive society.”⁵¹

Traditionally, and for good reason, discussions about the impact of rape myths have

46. Ask and Landstriffdffffdm, “Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect.”

47. Ibid.

48. Parratt and Pina, “From ‘Real Rape’ to Real Justice: A Systematic Review of Police Officers’ Rape Myth Beliefs.”

49. *ibid.*, 69; M. R. Burt, “Cultural Myths and Supports for Rape,” *Journal of Personality and Social Psychology* 38, no. 2 (1980): 217

50. K. A. Lonsway and L. F. Fitzgerald, “Rape Myths in Review,” *Psychology of Women Quarterly* 18, no. 2 (1994): 134; Parratt and Pina, “From ‘Real Rape’ to Real Justice: A Systematic Review of Police Officers’ Rape Myth Beliefs,” 69

51. Ibid.

focused on how rape myths affect victims. But I would like to suggest here that exploring the repercussions of rape myths for testimony recipients can benefit recipients themselves, as well as rape victims and victim advocates. Epistemic concerns are not wholly absent from discussions of rape myths, as we have seen above; epistemic concerns certainly bear upon how rape victims are viewed in terms of their credibility and their treatment, but more should be said regarding the epistemic implications for those who receive rape testimony.

Regarding the rape testimony recipient, then, the first obvious point risks sounding trite. As rape myths are defined, in part, as false beliefs, to say that epistemically responsible agents should not believe rape myths is tantamount to saying that epistemically responsible agents should not believe falsities. This is a given, and so from an epistemic perspective as well as from a victim advocacy perspective the difficulty is not convincing people that they should not believe falsities, but educating individuals as to the ways in which common beliefs about and responses to rape are, in fact, false. I have endeavored to point out the falsity of some of the central rape myths here, but there are, I think, more interesting conclusions to draw.

The accusations of Christine Blasey-Ford against Justice Kavanaugh reinvigorated the conversation about rape victim testimony in the public sphere. Kavanaugh and his supporters rejected Ford's testimony claiming that there was no corroborating evidence. Senator John Cornyn (R-TX), for example, said that Ford's allegations are "not credible without evidence." Meanwhile, "Kavanaugh himself pointed to a lack of corroboration as a key reason the allegations shouldn't be trusted." Senate Majority Leader Mitch McConnell likewise claimed that there was "No corroboration. No supporting evidence before us. Just Dr. Ford's allegation."⁵²

Ford gave her testimony before congress, which was then aired to the public. She was not in a courtroom, and she was not seeking justice within the legal system. In a

52. Li Zhou, "Christine Blasey Ford Shows the Lengths Women Have to Go to Be Believed," *Vox*, 2018, <https://www.vox.com/policy-and-politics/2018/9/27/17880490/supreme-court-nominee-christine-blasey-ford-kavanaugh>.

public congressional hearing, it is not clear what Kavanaugh and his supporters mean when they suggest that there is no corroborating evidence. It is even less clear what kind of evidence they would consider persuasive. Whatever they mean by corroborating evidence, it is clear that the kinds of evidence available to them were not persuasive; I've already noted, for example, that Ford reported the assault to her husband and therapist well before the hearing. But Kavanaugh and his supporters are not unique in this regard; it is often difficult to secure hard, scientific, forensic evidence for sexual assault and eyewitnesses are typically absent. This is why so many testimony recipients seek to make judgements on the basis of testimony alone.

One point of epistemic interest that I would like to focus on is the claim that testimony is often the only way to arbitrate upon hearing rape testimony. I would like to question the extent to which Kavanagugh and others are correct when they say there is no corroborating evidence. It is true that it can be difficult to secure traditional types of corroborating evidence (forensic evidence, e.g.), but careful epistemic reflections paired with rape statistics, as we have seen, can dispel the myth that testimony is not enough to secure an epistemically responsible belief that rape occurred. That is, one need not have forensic or eyewitness evidence to have corroborating evidence. For the epistemically responsible agent, i.e., for the agent who seeks to behave in ways that will secure true beliefs, a close look at these five central rape myths have shown that believing rape victims will more likely than not lead to true beliefs. Just as Jenifer Lackey pointed out that “some kinds of reports are mostly false,”⁵³ we have seen that rape reports are of a kind that are mostly true. What I would like to suggest here is that, until and unless unbiased arbitration can occur, it is in the responsible epistemic agent's best interest to believe rape victims upon—and *in virtue of*—receiving her testimony. Dispelling the particular skeptical claims in this paper have shown that when someone reports rape, it is more likely than not a truthful account. The recipient does not need further evidence to make a preliminary assessment that the victim is telling the truth.

53. Lackey, “It Takes Two to Tango: Beyond Reductionism and Non-Reductionism in the Epistemology of Testimony.”

In a sense, in the current state of rape reports, rape testimony works to corroborate itself.

Now, a common response to the call to believe rape victims is to cite legal statutes. What about the legal imperative to believe that someone is innocent until proven guilty? There are a few important points to consider in response. First, to act as if someone is innocent until proven guilty means that a person who is accused is not incarcerated without a fair trial. While we might want the phrase to additionally dictate the hearer's epistemic stance, i.e., while we might want the phrase to direct hearers to abstain from making a judgment about the guilt of the accused, this typically does not track reality within the courtroom. Police officers play a large role in determining victim credibility in court, and police officer's belief about the victim's credibility are documented to be highly biased. Studies also show that juries tend to be biased against rape victims as well. In practice, then, the phrase innocent until proven guilty does little to prevent individuals from forming judgments within the legal system. Second, outside of the courtroom, it is disingenuous to hold lay persons to legal epistemic standards. That is, it is fine to adopt the innocent until proven guilty stance in the courtroom, but most rape testimony arbitration does not occur within the legal system, and legal statutes for guilt are rarely the norm for assessing credibility outside of the courtroom. To suggest that testimony recipients should hold rape testimony to high court standards is inconsistent with how credibility assessment works—and how many believe it should work—outside of the courtroom. Third, as we have seen above, the criminal justice system routinely fails to convict or penalize rapists. The decision to trust the criminal justice system before deciding to believe a rape victim presumes a level of objectivity and competence that simply is not present in our current system.

The epistemically responsible agent, then, has a difficult task. She must sort through various rape myths—many of which are perpetuated by mainstream media and the criminal justice system itself. She must educate herself regarding the ways in which she is socialized to believe falsities about rape, and she must guard herself against her own stereotypes and implicit biases. Perhaps most difficult, she must act counter to seemingly well-considered

epistemic practices that break down when it comes to rape testimony. She must reject the notion that, e.g., in many rape cases, she will receive the kinds of evidence that she typically count as corroborating evidence. Instead, the responsible epistemic agent must acknowledge the nuances of rape testimony that make credibility assessment atypical. Most notably, the responsible epistemic agent must take into consideration that in order to reliably form justified beliefs in response to rape testimony, the best practice will be to believe the victim upon hearing her testimony. Like any belief, the agent can revise her assessment at a later time. But for the agent who is committed to forming justified true beliefs, the correct course of action will be to believe the victim.

Chapter 6

Conclusion

According to President Donald Trump, “It is a very scary time for young men in America.” Reflecting on allegations of sexual assault leveled against Justice Kavanaugh prior to his confirmation, President Donald Trump claimed that it is a scary time for young men because at any moment, a woman could accuse a young man of sexual assault. Trump explains, “You could be somebody that was perfect your entire life, and somebody could accuse you of something.”¹ The accusation is not the only scary aspect. Trump goes on, “When you are guilty until proven innocent, it’s just not supposed to be that way. That’s a very dangerous standard for the country.”²

Trump is not alone in holding these views. Journalist Emily Yoffe has build a large part of her career undermining allegations of sexual assault,³ and Professor Laura Kipnis enjoys publicity for her book *Unwanted Advances: Sexual Paranoia Comes to Campus* in which she refers to allegations of sexual assault on college campuses as “melodramatic.” A cursory internet search reveals that in response to calls to believe victims, many others—men and woman alike—worry about the men at the receiving end of these allegations.

Those who worry about men in the context of sexual assault are not wrong in at least three ways. First, it is possible that false accusations arise, and the men at the receiving end of such allegations need support. Second, it *is* a very scary time for young men in America, but not for the reasons Trump and others like him think. It is a scary time because when women speak out about their experiences with sexual assault, and when more people

1. John Wagner, 2018, https://www.washingtonpost.com/politics/trump-says-its-a-very-scary-time-for-young-men-who-can-be-falsely-accused-of-bad-behavior/2018/10/02/5c45af34-c629-11e8-9b1c-a90f1daae309_story.html?utm_term=.f7844cf16605.

2. David Jackson, “Donald Trump: Kavanaugh Allegations Show It’s A ‘Very Scary Time for Young Men in America’,” *USA Today*, 2018, <https://www.usatoday.com/story/news/politics/2018/10/02/donald-trump-says-very-scary-time-young-men-america/1498770002/>.

3. See: <https://www.theatlantic.com/author/emily-yoffe/> for various articles aimed at discrediting victims of sexual assault.

are inclined to believe their stories, those who are justly accused might actually face the consequences of their actions.⁴ It is also scary because men are more likely to be raped themselves⁵ than to be falsely accused.

The focus on men, however, does a disservice to women. Women are today victims of sexual violence at alarming rates, and have been throughout history. It might be a scary time for young men now, but it has always been a scary time for women. Those who seek to discredit the long and harrowing history of sexual violence and those who seek to undermine the current social conversation emerging about sexual violence against women not only disseminate rape myths, but they undermine responsible epistemic commitments.

This dissertation contributes to feminist studies by focusing on the obstacles women face as they live in a world where violence against women is the norm, and where sexual violence against women is expected. Much work has already been done to identify and explain the ways social norms influence and perpetuate sexual violence against women. My work adds to the existing literature by identifying and analyzing the uniquely epistemic norms that likewise perpetuate sexual violence. By focusing on women and the epistemic obstacles they face regarding sexual violence, my work contributes to feminist and sexual violence studies.

This dissertation can also be of special interest for epistemology of testimony. By analyzing the ways epistemic norms intersect with rape and other traumatic testimony, I have begun a critique of epistemic norms. I have not only shown how epistemic norms (e.g., how testimony is understood in reference to sexual consent) have dubious moral and epistemic consequences, but I have also suggested that certain epistemic norms themselves (e.g., norms governing testimonial justification) fail to account for a large portion of testimonial experiences (i.e., traumatic testimony).

4. Although, as I have mentioned elsewhere, it is still not likely that rapists, e.g., face serious consequences.

5. One in six men will be victims of rape or attempted rape in their lifetime. S. G. Smith et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report* (Atlanta, GA: National Center for Injury Prevention & Control, Centers for Disease Control & Prevention, 2017)

In Chapter One, I motivated the dissertation, noting that although rape is prevalent, rape victims are typically disbelieved when they report rape. I suggested that the reason women are disbelieved is, in part, having to do with epistemic norms and commitments. In Chapter Two, I argued that current notions of consent can result in epistemic injustice for women. This is problematic on all popular notions of consent, but is especially problematic when consent is understood to be inherently communicative. In Chapter Three, I set out to explain why epistemic norms appear to dictate disbelief in rape victim testimony. Here I articulated, what I call, The Normative Argument for Believing Rape Victims. In Chapter Four, I set the Normative Argument in the context of rape and explained why, in cases involving rape, the Normative Argument breaks down. Here I ultimately concluded that responsible epistemic agents should not reject rape testimony that appears incoherent. In Chapter Five, I addressed five popular claims made by rape skeptics, and I argued that the claims were faulty and should not be employed by responsible epistemic agents. Overall, I hoped to show that epistemic norms need thoughtful reconsideration in light of rape victim testimony and that the responsible epistemic agent has epistemic support for believing rape victims upon hearing their testimony.

Future work on this project related to feminism and sexual violence studies will endeavor to bring about a more nuanced and intersectional picture of the phenomenon I have described in this dissertation. There are some circumstances, for example, that will run counter to my claims—circumstances that hinge upon issues of race, class, heteronormativity, and so on. Much more work must be done to assess which classes of individuals under which circumstances are deemed more or less credible, for example. More work must also be done to assess the unique epistemic challenges rape victims face in virtue of their marginalized status.

Future work in epistemology will explore the ramifications for traumatic testimony on testimonial justification. To date, theories of testimonial justification are often assessed—and critiqued—according to their ability to account for large portions of epistemic experi-

ences. When a theory fails to account for a large subset of cases, it is discredited. Future work will need to assess the particular damage traumatic testimony inflicts upon theories of testimonial justification and suggest alternative or amendments to current theories. Revision will also be required for testimonial norms governing consent. Future work should further examine the pros and cons of conceptualizing consent as communicative given the material harms each conception might inflict upon sexual assault victims.

Finally, because rape myths and disbelief are rampant, and because believing rape victims is so beneficial, I focused this dissertation with the intent to offer epistemic justification for believing rape victims. This dissertation, then, will only be useful to certain individuals, namely those who care about being responsible epistemic agents, those who care about believing rape victims, and those who care about minimizing sexual violence. Some responses to rape victim testimony suggest that, in some ways and in some cases, we are already beyond the matter of belief. That is, not everyone will care about believing rape victims and some will believe rape victims but proceed with perpetuating violence against women. Still others will happily jettison their epistemic responsibility if it means circumventing the very real problem of sexual violence against women. Moving forward, then, sexual violence studies should work to understand the times when simply believing rape victims is not the pivotal point at which sexual violence might be mitigated.

Bibliography

- Abuse, Substance, and Mental Health Services Administration. *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach*. Rockville, MD: SAMHSA's Trauma / Justice Strategic Initiative, 2012.
- Adler, A. B., K. M. Wright, P. D. Bliese, R. Eckford, and C. W. Hoge. "A2 Diagnostic Criterion for Combat-Related Posttraumatic Stress Disorder." *Journal of Traumatic Stress* 21 (2008): 301–308.
- Alcoff, L. M. *Rape and Resistance*. Polity Press, 2018.
- Alexander, Larry. "The Moral Magic of Consent II." *Legal Theory* 165 (1996).
- . "The Ontology of Consent." *Analytic Philosophy* 55, no. 1 (2014): 102fffdfffdfffd113.
- Anushka, Pai, Suris M. Alina, and Carol S. North. "Posttraumatic Stress Disorder in the DSM-5: Controversy, Change, and Conceptual Considerations." *Behavioral, Sciences* 7, no. 1 (2017): 7.
- Ask, Karl, and Sara Landstrfffdfffdm. "Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect." *Law and Human Behavior* 34, no. 5 (2010): 392fffdfffdfffd401.
- Association, American Psychiatric. *Diagnostic and Statistical Manual of Mental Disorders: DSM-V*. Washington DC: American Psychiatric Association, 2013.
- Astbury, J. *Services for Victim/Survivors of Sexual Assault: Identifying Needs, Interventions and Provision of Services in Australia*. Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2006.
- Baldry, A. C. "Rape Victims' Risk of Secondary Victimization by Police Officers." *Issues in Criminological & Legal Psychology* 25 (1996): 65–68.
- Baron, Marcia W. "I Thought She Consented'." *Philosophical Issues*, no. 11 (2001): 1–32.
- Barwell, Ismay. "Understanding Narratives and Narrative Understanding." *The Journal of Aesthetics and Art Criticism* 1, no. 67 (2009): 49–59.
- Bedard-Gilligan, M., and L.A. Zoellner. "The Utility of the A1 and A2 Criteria in the Diagnosis of PTSD." *Behavioral, Research and Therapy* 46 (2008): 1062–1069.
- Bicanic, Iva, Leive Hehenkamp, Elise van de Putte, Arjen Van Wijk, and Ad de Jongh. "Predictors of Delayed Disclosure of Rape in Female Adolescents and Young Adults." *European Journal of Psychotraumatology* 6, no. 1 (2015).
- Bishop, Michael. "In Praise of Epistemic Irresponsibility: How Lazy and Ignorant Can You Be?" *Synthese* 122 (2000): 179–208.

- Black, M. C., K. C. Basile, M. J. Breiding, S. G. Smith, M. L. Walters, M. T. Merrick, J. Chen, and M. R. Stevens. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention & Control, Centers for Disease Control & Prevention, 2011.
- BonJour, L. *The Structure of Empirical Knowledge*. Cambridge, MA: Harvard University Press, 1985.
- Briere, J. N., and C. Scott. *Principles of Trauma Therapy: A Guide to Symptoms, Evaluation, and Treatment*. Thousand Oaks, CA: Sage Publications, 2006.
- Brison, Susan. *Aftermath: Violence and the Remaking of a Self*. Princeton University Press, 2002.
- . “Sexual Violence, Social Meaning, and Narrative Selves.” April 2018.
- Burt, M. R. “Cultural Myths and Supports for Rape.” *Journal of Personality and Social Psychology* 38, no. 2 (1980).
- Calhoun, Lawrence G., Arnie Cann, James W. Selby, and David L. Magee. “Victim Emotional Response: Effects on Social Reaction to Victims of Rape.” *British Journal of Social Psychology* 20, no. 1 (1981): 17–22.
- Campbell, R. “Rape Survivors’ Experiences with the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?” *Violence Against Women* 12, no. 1 (2006): 30–45.
- Carlson, Amber Rose. “Is There a ‘Rational’ Punishment for My Rapist?” *The New York Times*, 2017. <https://www.nytimes.com/2017/10/23/opinion/rape-punishment-rational.html>.
- Cassella, Carly. 2018. <https://medium.com/athena-talks/chers-response-to-the-aziz-ansari-story-is-the-best-yet-28ca5217ae1f>.
- Center for Substance Abuse Treatment. “Understanding the Impact of Trauma.” In *Trauma-informed Care in Behavioral Health Services*. Rockville, MD: Substance Abuse & Mental Health Services Administration, 2014.
- Conway, Kellyanne. *Twitter Post*, November 2018. <https://twitter.com/KellyannePolls/status/1058715647507660800>.
- Crome, S., and M. McCabe. “The Impact of Rape on Individual, Interpersonal, and Family Functioning.” *Journal of Family Studies* 1, no. 1 (1995): 58–70.
- Dsouza, M. *The Power to Consent and The Criminal Law*. University of Cambridge Faculty of Law Research Paper No. 9, 2013.
- Equality before the law: Justice for women (Report No. 69, Part 1)*. Sydney: Australian Law Reform Commission, 1994.

- Fisher, B. S., F. T. Cullen, and M. G. Turner. *The Sexual Victimization of College Women*. Washington, DC: U.S. Department of Justice, National Institute of Justice & Bureau of Justice Statistics, 2000.
- Flanagan, Caitlin. "The Humiliation of Aziz Ansari," 2018. <https://www.theatlantic.com/entertainment/archive/2018/01/the-humiliation-of-aziz-ansari/550541/>.
- Flood, M., and B. Pease. *The Factors Influencing Community Attitudes in Relation to Violence Against Women: A critical Review of the Literature*. Melbourne: Victorian Health Promotion Foundation, 2006.
- Fricke, Elizabeth. "Against Gullibility." In *Knowing from Words*, edited by B. K. Matilal and A. Chakrabarti. Springer Science+Business Media Dordrecht, 1994.
- Fricke, Miranda. *Epistemic Injustice: Power and the Ethics of Knowing*. New York: Oxford University Press, 2007.
- Gil, S., and M. Weinberg. "Coping Strategies and Internal Resources of Dispositional Optimism and Mastery as Predictors of Traumatic Exposure and of PTSD Symptoms: A Prospective Study." *Psychological Trauma: Theory, Research, Practice and Policy* 7, no. 4 (2015): 405–411.
- Gravelin, Claire R. *Assessing the Impact of Media on Blaming the Victim of Acquaintance Rape*. University of Kansas, 2016.
- Harris, Leonard. "The Status of Blacks in Academic Philosophy." *Journal of Blacks in Higher Education* 6 (1995): 116.
- Herman, Judith Lewis. *Trauma and Recovery*. New York: BasicBooks, 1997.
- Hertogh, G. den. "Can Consent Be Presumed?" *Journal of Applied Philosophy* 28, no. 3 (2011): 295–307.
- Hume, David. *Enquiries Concerning Human Understanding and Concerning the Principles of Morals*. Edited by P. H. Niddich. Oxford University Press, 1975.
- Hurd, Heidi. "The Moral Magic of Consent." *Legal Theory* 121 (1996).
- Husak, D. "The Complete Guide to Consent to Sex: Alan Wertheimer's Consent to Sexual Relations." *Law and Philosophy* 25, no. 2 (2006): 267–287.
- Hutchinson, Katrina, and Fiona Jenkins, eds. *Women in Philosophy: What Needs to Change?* Oxford: Oxford University Press, 2013.
- Insole, Christopher. "Seeing Off the Local Threat to Irreducible Knowledge by Testimony." *The Philosophical Quarterly* 50 (2000): 44–56.
- Jackson, David. "Donald Trump: Kavanaugh Allegations Show It's A 'Very Scary Time for Young Men in America.'" *USA Today*, 2018. <https://www.usatoday.com/story/news/politics/2018/10/02/donald-trump-says-very-scary-time-young-men-america/1498770002/>.

- Jacobson, Lilly, and Douglas Barnett. *Psychological Predictors of Children's Competency as Witnesses in Sexual Abuse Trials*. 2002.
- Kaufmann, G., G. C. B. Drevland, E. Wessel, G. Overskeid, and S. Magnussen. "The Importance of Being Earnest: Displayed Emotions and Witness Credibility." *Applied Cognitive Psychology* 17 (2003): 211–234.
- Kilpatrick, Dean, and Jenna McCauley. *Understanding National Rape Statistics*. National Resource Center on Domestic Violence (NRC DV), 2009.
- Klettke, Bianca, and Martine Powell. "The Effects of Evidence, Coherence and Credentials on Jury Decision-Making in Child Sexual Abuse Trials." *Psychiatry, Psychology and Law* 18, no. 2 (2011): 263–269.
- Klippenstine, M. A. *Perceptions of Sexual Assault: Expectations Regarding the Emotional Response of a Rape Victim*. 2010.
- Kogan, S. M. "Disclosing Unwanted Sexual Experiences: Results from a National Sample of Adolescent Women." *Child Abuse and Neglect* 28 (2004): 147–165.
- Koren, Marina. "Why the Stanford Judge Gave Brock Turner Six Months," 2016. <https://www.theatlantic.com/news/archive/2016/06/stanford-rape-case-judge/487415/>.
- Koss, M. P. *Criminal Victimization among Women: Impact on Health Status and Medical Service Usage*. Washington, DC: National Institute of Justice, 1988.
- Kukla, Rebecca. "That's What She Said: The Language of Sexual Negotiation." *Ethics*, no. 129 (2018): 1–28.
- Lackey, Jennifer. "It Takes Two to Tango: Beyond Reductionism and Non-Reductionism in the Epistemology of Testimony." In *The Epistemology of Testimony*, edited by Jennifer Lackey and Ernest Sosa. United Kingdom: Oxford University Press, 2006.
- Lievore, D. *Non-reporting and Hidden Recording of Sexual Assault: An International Literature Review*. Canberra: Office of the Status of Women, 2003.
- Lisak, D., L. Gardinier, S. C. Nicksa, and A. M. Cote. "False allegations of sexual assault: An analysis of ten years of reported cases." *Violence Against Women* 16 (2010): 1318–1334.
- Lonsway, K. A., and L. F. Fitzgerald. "Rape Myths in Review." *Psychology of Women Quarterly* 18, no. 2 (1994).
- Malmo, Cheryl, and Toni Suzuki Laidlaw. "Symptoms of Trauma and Traumatic Memory Retrieval in Adult Survivors of Childhood Sexual Abuse." *Journal of Trauma and Dissociation* 11 (2010): 22–43.
- Manne, Kate. *Down Girl: The Logic of Misogyny*. New York, NY: Oxford University Press, 2018.
- Manson, N. C. *Philosophical Studies* 173 (2016): 3317–3334.
- Mayhew, P., and G. Adkins. *Counting the Costs of Crime in Australia*. Canberra, 2003.

- McNally, Richard J. *Remembering Trauma*. Cambridge, MA: Harvard University Press, 2005.
- Medicine, Institute of. *Women's Health Research: Progress, Pitfalls, and Promise*. Washington, DC: The National Academies Press, 2010.
- Messman-Moore, Terri, and Amy Brown. "Risk Perception, Rape, and Sexual Revictimization: A Prospective Study of College Women." *Psychology of Women Quarterly* 30, no. 2 (2006): 159.
- Morrison, Z., A. Quadara, and C. Boyd. *Ripple Affects of Sexual Assault*. Melbourne: Australian Centre for the Study of Sexual Assault, 2007.
- National Crime Victimization Survey, 2010-2016*. Department of Justice/Bureau of Justice Statistics, 2017.
- North, Anna. 2018. <https://www.vox.com/identities/2018/1/16/16894722/aziz-ansari-grace-babe-me-too>.
- North, C. S., A. M. Surfffdffds, R. P. Smith, and R. V. King. "The Evolution of PTSD Criteria Across Editions of DSM." *Annals of Clinical Psychiatry* 28 (2016): 197–208.
- Oliver, Kelly. *Hunting Girls: Sexual Violence from The Hunger Games to Campus Rape*. New York: Columbia University Press, 2016.
- . *Hunting Girls: Sexual Violence From The Hunger Games to Campus Rape*. New York: Columbia University Press, 2016.
- . "Rape as Spectator Sport and Creepshot Entertainment: Social Media and the Valorization of Lack of Consent." *American Studies Journal* 10 (2015): 1–16.
- . "Rape as Spectator Sport and Creepshot Entertainment: Social Media and the Valorization of Lack of Consent." *American Studies Journal*, no. 61 (2016).
- Page, A. D. "Gateway to Reform? Policy Implications of Police Officers' Attitudes Toward Rape." *American Journal of Criminal Justice* 33, no. 1 (2008): 44–58.
- Paivio, Sandra, and Lynne E. Angus. *Narrative Processes in Emotion-Focused Therapy for Trauma*. Washington, DC: American Psychological Association, 2017.
- Parratt, Kayleigh A., and Afroditi Pina. "From 'Real Rape' to Real Justice: A Systematic Review of Police Officers' Rape Myth Beliefs." *Aggression and Violent Behavior* 34 (2017): 68–83.
- Patterson, D., M. Greeson, and R. Campbell. "Understanding rape survivors' decisions not to seek help from formal social systems." *Health and Social Work* 34, no. 2 (2009): 127–136.
- Peet, Andrew. "Epistemic Injustice in Utterance Interpretation." *Synthese*, 2017.
- Peterson, Cora, S. DeGue, C. Florence, and C. N. Lokey. "Lifetime Economic Burden of Rape Among U.S. Adults." *American Journal of Preventive Medicine* 52, no. 6 (2017): 691–701.

- Petrak, J. "The Psychological Impact of Sexual Assault." In *The Trauma of Sexual Assault: Treatment, Prevention and Practice*, edited by J. Petrak and B. Hedge. West Sussex: John Wiley & Sons, 2002.
- Plaugic, Lizzie. "Aziz Ansari Responds to Allegations of Sexual Misconduct," 2018. <https://www.theverge.com/2018/1/15/16892498/aziz-ansari-sexual-misconduct-response-me-too-movement>.
- Pohlhaus, Gaile. "Relational Knowing and Epistemic Injustice: Toward a Theory of Willful Hermeneutical Ignorance." *Hypatia* 27, no. 4 (2012): 715–735.
- "Project Unbreakable," 2018. <http://projectunbreakable.tumblr.com/>.
- Ranjbar, Vania, M. Res, and Susan A. Speer. "Revictimization and Recovery from Sexual Assault: Implications for Health Professionals." *Violence and Victims* 28, no. 2 (2013): 274–87.
- Rennison, C. M. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*. U.S. Department of Justice/Bureau of Justice Statistics, 2002.
- Resnick, H. S., M. M. Holmes, D. G. Kilpatrick, G. Clum, R. Acierno, C. L. Best, and B. E. Saunders. "Predictors of post-rape medical care in a national sample of women." *American Journal of Preventive Medicine* 19, no. 4 (2000): 214–219.
- Rickert, V. I., C. M. Wiemann, and R. D. Vaughan. "Disclosure of Date/acquaintance Rape: Who Reports and When." *Journal of Pediatric and Adolescent Gynecology* 18, no. 1 (2005): 17–24.
- Rothbaum, Barbara Olasov, and Edna B. Foa. "Subtypes of Posttraumatic Stress Disorder and Duration of Symptoms." In *Posttraumatic Stress Disorder: DSM-IV and Beyond*, edited by R.T. Davidson and E.B. Foa, 23–36. Washington, DC: American Psychiatric Press, 1993.
- Rothbaum, Barbara Olasov, Edna B. Foa, David S. Riggs and Tamera Murdock, and William Walsh. "A Prospective Examination of Post-Traumatic Stress Disorder in Rape Victims." *Journal of Traumatic Stress* 5, no. 3 (1992): 445–475.
- Schiffman, V., T. Maier, M. Mohler-Kuo, U. Schnyder, and M. Landolt. "Disclosure of Child Sexual Abuse by Adolescents: A Qualitative In-depth Study." *Journal of Interpersonal Violence* 27 (2012): 3486–3513.
- Scully, Regina Kulik, Paul Blavin, Kirby Dick, Amy Ziering, Thaddeus Wadleigh, Aaron Kopp, and Miriam Cutler. *The Hunting Ground*. 2015.
- Slavitt, Evan. "Telling the Story: Integrating Witnesses, Experts, and Documents into a Cohesive Narrative in Arbitration." *Dispute Resolution Journal* 69, no. 4 (2014): 81–90.
- Smith, D. W., E. J. Letourneau, B. E. Saunders B. E., D. G. Kilpatrick, H. S. Resnick, and C. L. Best. "Delay in Disclosure of Childhood Rape: Results from a National Survey." *Child Abuse Neglect* 24, no. 2 (2000): 273–287.

- Smith, S. G., J. Chen, K. C. Basile, L. K. Gilbert, M. T. Merrick, N. Patel, M. Walling, and A. Jain. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*. Atlanta, GA: National Center for Injury Prevention & Control, Centers for Disease Control & Prevention, 2017.
- Stack, Liam. "Light Sentence for Brock Turner in Stanford Rape Case Draws Outrage." *The New York Times*, 2016. <https://www.nytimes.com/2016/06/07/us/outrage-in-stanford-rape-case-over-dueling-statements-of-victim-and-attackers-father.html>.
- Stepakoff, S. "Effects of Sexual Victimization on Suicidal Ideation and Behavior in U.S. College Women." *Suicide and Life-Threatening Behavior* 28, no. 1 (1998): 107–26.
- Temkin, J. "Reporting Rape in London: Qualitative Study." *The Howard Journal* 38 (1999): 17–41.
- Tetreault, P. "Rape Myth Acceptance: A Case for Providing Educational Expert Testimony in Rape Jury Trials." *Behavioral Sciences & the Law* 7, no. 2 (1989).
- Thornicroft, Graham, Diana Rose, and Aliya Kassam. "Discrimination in Health Care Against People with Mental Illness." *International Review of Psychiatry* 19, no. 2 (2007): 113–122.
- Trump, Donald. *Campaign Speech*. Fort Wayne, November 2018. <https://www.c-span.org/video/?453851-1/president-trump-campaigns-republicans-indiana>.
- Ullman, S. E. "Correlates and Consequences of Adult Sexual Assault Disclosure." *Journal of Interpersonal Violence* 11, no. 4 (1996): 554fffdfffdfffd571.
- Valenti, Jessica. *Twitter Post*, January 2018. <https://twitter.com/JessicaValenti/status/952568652066443264>.
- Van der Kolk, Bessel A. *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*. New York: Penguin Books, 2015.
- . "Trauma and Memory." *Psychiatry and Clinical Neurosciences* 52 (1998).
- Venema, R. *Police Officer Decision Making in Reported Sexual Assault Cases*. 2013.
- VicHealth. *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence. A Summary of Findings*. Carlton South: Victorian Health Promotion Foundation, 2004.
- Wadman, Meredith. "Prominent Geneticist Out at UC Irvine after Harassment Finding." *Science*, 2018. <https://www.sciencemag.org/news/2018/06/prominent-geneticist-out-uc-irvine-after-harassment-finding>.
- Wagner, John. 2018. https://www.washingtonpost.com/politics/trump-says-its-a-very-scary-time-for-young-men-who-can-be-falsely-accused-of-bad-behavior/2018/10/02/5c45af34-c629-11e8-9b1c-a90f1daae309_story.html?utm_term=.f7844cf16605.
- Way, Katie. "I Went on a Date with Aziz Ansari, It Turned into the Worst Night of My Life," 2018. <https://babe.net/2018/01/13/aziz-ansari-28355>.

- Weiner, Matthew. "Accepting Testimony." *The Philosophical Quarterly* 53, no. 211 (2003): 256–64.
- Wertheimer, Alan. *Consent to Sexual Relations*. Cambridge: Cambridge University Press, 2003.
- . "The Ontology of Consent." In *Consent to Sexual Relations*. New York: Cambridge University Press, 2003.
- World Health Organization/London School of Hygiene & Tropical Medicine. *Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence*. Geneva: World Health Organization, 2010.
- World Health Organization/London School of Hygiene & Tropical Medicine and South African Medical Research Council. *Global and Regional Estimates of Violence Against Women*. World Health Organization, 2013.
- Xie, W., and W. Zhang. "Negative Emotion Enhances Mnemonic Precision and Subjective Feelings of Remembering in Visual Long-term Memory." *Cognition* 166 (2017).
- Yoffe, Emily. "The Bad Science Behind Campus Response to Sexual Assault." *The Atlantic*, 2017. <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/>.
- Zelikova, Jane, Kelly Ramirez, and Jewel Lipps. "Harassment Charges: Enough Himpathy." *Science*, 2018, 655.
- Zhou, Li. "Christine Blasey Ford Shows the Lengths Women Have to Go to Be Believed." *Vox*, 2018. <https://www.vox.com/policy-and-politics/2018/9/27/17880490/supreme-court-nominee-christine-blasey-ford-kavanaugh>.