

Hilkje Charlotte Hänel

# What is Rape?

Social Theory and  
Conceptual Analysis

[transcript]

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**Hilkje Charlotte Hänel**, born in 1987, holds a PhD in philosophy from the Humboldt University of Berlin. She is an executive board member of the Society for Women in Philosophy (SWIP) Germany and a founding member of the Network of Analytic Philosophy and Social Critique. Hilkje Hänel has held a fellowship at the Carl and Max Schneider Foundation and at the Friedrich Ebert Foundation and works on questions of feminism and social justice.

HILKJE CHARLOTTE HÄNEL

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## Introduction

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Rape is not a new phenomenon. In fact, it is probably as old as the first human beings who walked the earth. Neither is it a new topic to investigate. As long as humans have taken an interest in property, rape has been theorized. And, at least since the first women voiced resistance to being seen as property, the critique of rape was part of the feminist struggle. When the phenomenon of rape became an issue in the feminist struggle for equality and justice, it cast a divide between those who oppose the so-called 'rape culture' and those who think that rape culture is a figment of the imagination, an illusion made up by men-hating-feminists. But what is meant by rape culture? It is fraternity brothers chanting "Y is for your sister. O is for oh-so-tight. U is for underage. N is for no consent. G is for grab that ass." It is teaching girls not to be sexy instead of boys not to rape. It is supporting athletes and celebrities who are charged with rape. It is people who believe that women want to be raped. It is the media substituting the word 'sex' for 'rape'. It is the ubiquity of street harassment. It is the belief that most women lie about being raped. It is rape jokes. It is the fact that committing rape and not serving even a day in prison is a real possibility. It is when women do not feel safe walking the streets alone at night. Or drinking with a friend. Or being at home with their husbands. The list could go on. While very few would actually defend rape, many would not think of this list as particularly problematic. And, while many believe they condone the crime of rape, what they in fact condone are specific forms of rape and not rape per se. What they condone is rape in the form of physically aggravated stranger rape. Not date rape, or marital rape, or drug facilitated acquaintance rape.

But the athlete who tries to rape an unconscious girl behind a dumpster, is a very real phenomenon. Or his father who excuses the act as "twenty minutes of action". Or the Facebook page run by a fraternity that contains pictures of nude and unconscious girls in sexually compromising positions. Or the Steubenville rape victim who was referred to as "dead girl" on social media. Or the girl on a beach in Panama City who was raped while being recorded by by-standers. Or the father who drugged a girl during orientation at Illinois State University so that his son could rape her. Or the girl at St. Paul boarding school who consents

while crying. All these are very real phenomenon. They are forms of rape that are far too often not acknowledged as forms of rape. However, the radical feminist stance of categorizing all acts of bad sexual encounters as rape ignores the complexity of rape and sexualized violence<sup>1</sup>. It ignores cases in which a “Jane Doe” got drunk during her college orientation and texted a friend that she was going to have sex tonight, but the next day felt that she did not want to have sex—in Kelly Oliver’s words, “at least her virgin sober self didn’t want to have sex.” (Oliver 2017) And it ignores the phenomenon that while victims feel violated and morally wronged, the perpetrators are “just having fun”. Rape is not a black-and-white issue and it is far more complex than both sides—those who fight rape culture in every instance and those who think it is an illusion—make it out to be.

This book is an investigation into the phenomenon of rape and its conceptualization. It is an attempt to systematically map out and explicate the phenomenon of rape in the world. Part of this investigation shows how the dominant conceptualization of rape and the usage of the term are distorted by so-called rape myths. To counter this problematic conceptualization, the book develops a method that analyzes rape in the social world and proposes a conceptual amelioration of the concept of rape that tracks the phenomenon better. The book attempts to fill a striking gap in the literature on rape. Most of the literature focuses on the moral or legal questions that the phenomenon raises, e.g., what is morally wrong about rape, what is the best legal understanding for it, and so on. However, these are odd questions when the matter of the question—rape—is conceptually and theoretically underspecified. I contend that we have to know what rape is and how to conceptually understand it before we can focus our attention on the moral and legal issues. Furthermore, we have to understand how rape is embedded in the social world, to be able to adequately answer the moral and legal issues that surround it. My aim in this book is to give a rich theory of rape. I propose a method that can resolve conceptual difficulties and account for the ideological embeddedness of the phenomenon of rape. I argue that rape is part of a sexist ideology and thus helps to reinforce social and structural injustice. Furthermore, I claim that a cluster model can track the phenomenon of rape in the world as explicated by the theory. This book not only accounts for how the term is actually used

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**1** | In the following, I use the term ‘sexualized violence’ to refer to acts of sexual violence—acts in which violence is used to obtain sex—and sexualized violence—acts in which violence and sex are used to obtain, for example, power. When I speak of sexualized violence, I do not attempt to include cases in which sex *and* violence happen, such as acts of BDSM, but acts in which someone *is violated* either for the sake of sex or by means of sex. Furthermore, sex should here be understood in the broadest possible sense, e.g., it includes penetrative sex as well as other forms of sexual interaction.

and speaker's intuitions about the concept, but also argues for how we should understand it and the implications this has for our treatment of acts of rape.

The existing debate on rape is often marked by an “all or nothing” approach. Something either is rape or it is not rape and thus unproblematic.<sup>2</sup> In other words, everything that is not properly rape is unproblematic. Most conceptual analyses of rape rely on some dichotomy: rape versus sex, non-consensual versus consensual sex, forced sex versus sex without force, etc. For example, according to most of the sexual consent-literature, consent marks the boundary or dividing line between acts of rape and acts of unproblematic sex. (cf. Beres 2007: 95) Alan Wertheimer argues that sexual consent differentiates good sex from bad sex. He distinguishes between bad, wrong, and illegal actions and, accordingly, between unworthy sex, impermissible sex, and illegal sex. While consent might not turn impermissible or illegal sex into permissible or legal sex, it does turn unworthy sex into worthy sex—bad sex into good sex. (Wertheimer 2003) Heidi Hurd and Larry Alexander argue that consent differentiates morally unproblematic sex from morally problematic sex. According to this view, consent has a moral magic that turns impermissible acts into permissible acts. (Alexander 1996; Hurd 1996) And, David Archard claims that consent marks the difference between making love and criminal acts. In other words, since rape is a crime, consent marks the difference between making love and rape. (Archard 1998) What these accounts have in common is that they rely on a dichotomy between good and bad acts. Wertheimer relies on a dichotomy of bad sex and good sex. Alexander and Hurd rely on a dichotomy of impermissible and permissible acts. And, Archard relies on a dichotomy of making love and rape.<sup>3</sup> These theories are exemplary for the debate about the meaning of ‘rape’ that is orientated towards understanding rape as a phenomenon that has no overlap with other phenomena, such as other forms of sexualized violence or forms of unproblematic sex. The central idea behind this book is to challenge

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**2** | Throughout the book, I make a distinction between rape (or sexualized violence) and unproblematic sex. This should not imply that rape or sexualized violence are not about sex. But while rape and sexualized violence include sexual acts in problematic ways, unproblematic sex does not. I use the term ‘unproblematic’ instead of ‘consensual’ or ‘normal’ because I do not think that all consensual sex is unproblematic (this really depends on the underlying theory of consent) or that all “normal” sex is unproblematic—at least not if “normal” means most salient in the sexist culture we live in. Furthermore, I do not mean to imply that all unproblematic sex is non-violent, I think that there is violent sex that is unproblematic.

**3** | It should be noted that this does not tell us anything about these authors’ conceptions of *consent*. For an overview of how consent is defined, see Beres (2007). They do in fact all agree that consent—in whatever way it is defined—turns sex into rape, unproblematic sex into problematic sex, and so on.

this assumption, and stress the interrelatedness of the category of rape with other categories in order to adequately track the complex phenomenon of rape in the world.

What is the main problem that this book engages with? Different speakers have different understandings of the concept of rape. And, furthermore, the actual dominant usage of the term 'rape' is distorted by rape myths. (This is what I describe in the following as dominant working understanding or dominant operative concept.) The distorted dominant working understanding is such that it understands rape merely as physically aggravated stranger rape. Hence, the dominant working understanding is not in line with the various forms the phenomenon of rape takes in the real world. This is why we cannot rely on speaker's intuitions or usage of the term in a conceptual analysis of rape, but have to aim at a prescriptive analysis. And this prescriptive analysis has to be normatively adequate; it has to be accurate about the phenomenon in the world as well as about the distorted working understanding. The aim of this book is to arrive at a concept of rape that tracks adequately the phenomenon of rape and has emancipatory force such that it is fruitful for overcoming the de facto distorted conceptions of the concept and the equally problematic usage of the term. The account which I develop in this book attempts a realist approach: the target concept aims at tracking the pre-existing phenomenon of rape in the world. This is especially important because linguistic usage can (and, in the case of 'rape', often does) get things wrong.

I approach the phenomenon of rape from a distinctly feminist perspective that nevertheless acknowledges the complex character of the phenomenon of rape and withholds from collapsing all forms of sexualized violence into the same category. And in doing so, I argue for a paradigm shift away from most accounts of rape that group all forms of rape in one category, and instead propose to highlight the interrelatedness between forms of rape and other categories, such as other forms of sexualized violence. I contend that only by acknowledging the interrelatedness of these categories and their social embeddedness in a sexist ideology can we track the phenomenon of rape adequately and develop fruitful strategies against rape and sexism in general. I now turn to briefly summarize the main themes of the book. The order I choose here, is the order in which the themes are addressed in the book.

## **SOCIAL THEORY**

What is the dominant understanding of the concept of rape? How is it that the dominant understanding of rape does not actually track the diverse forms of rape? How is the phenomenon of rape realized and embedded in the social world? Can we think of the phenomenon of rape separately from other sexist

instances? The book starts by showing how the concept is contested and how most theories of rape fail to track all the forms of rape that exist in the world. In fact, the thesis identifies a dominant working understanding, which only takes acts of physically aggravated stranger rape as rape. This understanding fails to track most forms of rape such as acquaintance rape, marital rape, drug-induced rape, and so on. It is only by understanding the gap between the narrow dominant working understanding and the external reality of sexualized violence and rape, that we start gaining knowledge into the social embeddedness of rape. Hence, the book takes the dominant working understanding as a point of departure to investigate the striking gap between the dominant working understanding and the external reality of the phenomenon of rape. It takes up the task of systematically mapping the phenomenon of rape and explicating its social embeddedness.

I argue that rape is a social practice which is part of a broader sexist ideology. The ideological framework masks all forms of rape that do not match the dominant working understanding and the ideological structure tolerates and accepts all forms of rape that are not physically aggravated stranger rape. Within this structure, rape and other sexist instances condition each other and are made intelligible by a sexist framework that is constituted by rape myths and other ideological beliefs and attitudes. Furthermore, the argument that rape is part of a broader sexist ideology sheds light on what is wrong about it. Besides the obvious interpersonal harms and moral injury of rape, rape perpetuates social and structural injustice, particularly, gender inequality. The proposed social theory fulfills the following desiderata: (1) it adequately maps the phenomenon in a way that emphasizes its structural embeddedness; (2) it explicates speaker's intuitions, (distorted) understandings, and the actual usage of the term; (3) it is normatively adequate and explains the gap between false or misguided understandings and the existing phenomenon as well as provides an explanation of how such misguided or false understandings come about and enjoy popularity; and (4) it explains the injustice of rape. Furthermore, (5) the social theory grounds a prescriptive conceptual analysis that adequately tracks the phenomenon of rape and strives for conceptual change. In other words, this conceptual analysis is based on the social theory of the phenomenon of rape.

## CONCEPTUAL ANALYSIS

How should we understand the concept of rape such that it adequately tracks the phenomenon? Taking the social theory of the phenomenon of rape as a background, we can aim at a conceptual analysis that tracks the various interrelated forms of rape and sexualized violence adequately. One way to do so is by theorizing rape on a cluster model. The proposed cluster lists ten properties

that each act of rape must have: sexual activity, violence, means of physical coercion, means of psychological coercion, ability of resistance, lack of consent, capacity to consent, interpersonal relationality, context, gender inequality and heteronormativity. Each property can be realized in different ways, e.g., there can be full consent or no consent or something in between, there can be sexual penetration or no touching or something in between, and so on. Each act of rape that is tracked by the cluster model has to have each property realized, however, it is left open to which degree the properties are realized. An act in which most properties are realized in high degrees (no consent, full sexual penetration, etc.) is definitely an act of rape, while an act in which most properties are realized in low degrees (some consent, some touching, etc.) is in the gray area between the category of rape and other neighboring categories. For example, a case in which a woman is sexually penetrated while unconscious has most properties realized to a high degree, while a case in which a woman goes along with the sexual activity to please her husband has most properties realized to a low degree and is in the gray area between the category of rape and the category of, in this case, unproblematic sex.

Besides adequately tracking the phenomenon, the prescriptive conceptual analysis (a) is flexible in a way that allows for changes as we gain further information about the phenomenon, (b) is constrained enough to allow for proper judgements, (c) accounts for different degrees, (d) acknowledges the concept's contestability, gray area, and neighboring categories, (e) is non-paternalistic, and (f) has heuristic utility. The cluster model of rape is prescriptive or, in Sally Haslanger's terms, ameliorative. It aims at an emancipatory conceptual change in order to correct the distorted dominant working understanding of rape. If someone applies the model to a given case—even someone who assumes that the dominant working understanding of physically aggravated stranger rape is the proper understanding of rape—that person would be forced to consider other aspects in their evaluation of the case in question. All aspects of the model need to be considered equally. Thus, the person would need to consider aspects that scratch against their false beliefs, such as gender inequality. The proposed model of the concept of rape aims at an emancipatory conceptual change.

## **CONCEPTUAL AND SOCIAL CHANGE**

I believe in the power of ideas and words as well as in the power of action. Roughly, the idea is that we use words in line with our understanding of certain concepts. Competent language speakers use the term 'rape' for what they understand rape to be; language functions as (accurate or inaccurate) descriptions of the world. And speakers can be competent in using a term and can communicate without being able to specify conditions for determining the

referent across possible worlds. For example, we can mean the same thing and communicate about ‘water’ even if we disagree about the chemical disposition of it. Our understandings of rape can diverge (despite the fact that the working understanding is always distorted by some rape myths to the effect that only physically aggravated stranger rape is understood as rape—as I argue below). This is why we should not rely on speaker’s intuitions or actual usage in our aim to arrive at a concept of rape that tracks the actual phenomenon in the world. Rather, we need to engage in prescriptive conceptual analysis because (1) we want to get things right by gaining knowledge of the phenomenon, and (2) we want to use the right concept (that is, frame the topic in the right way) once we got knowledge about the phenomenon. This includes to examine everyday usage of terms and dominant working understandings (and to replace them if needed!) as well as the phenomenon in the world. The underlying model of concepts and language use that I resort to in this book latches on to Wittgenstein’s view of the meaning of words as dependent on our language use and externalist views, where language is used primarily to refer to things in the world and having latched onto the world we can find multiple ways to describe it—some of which are accurate, some of which are not.

Rape is a normative concept. Briefly, normative concepts are concepts that are evaluatively loaded. Rape is evaluatively loaded: “To call a sexual act ‘rape’ is to attach it to the harshest sort of condemnation.” (Reitan 2001: 43) But we can attach the harshest sort of condemnation to the concept of rape even when we have only a vague descriptive understanding of what that concept amounts to. Nevertheless, what we understand rape to be has implications for what we think is condemned. Thus, if the dominant understanding of rape is merely physically aggravated stranger rape, then raping a stranger in a physically aggravated way is condemned—and nothing else. This is where things go wrong: the dominant understanding, as I will argue in detail in this book—does not actually track the real phenomenon of rape; it misses acts such as date rape, acquaintance rape, drug induced rape, marital rape, and so on. Hence, we need a descriptive theory of what rape is. But such a theory is distinct from a theory of why rape is morally wrong. This book is not an investigation of what is morally wrong with rape—although, I say some words about this as well. It takes rape to be a normative concept, but it does not attempt to answer why acts of rape are morally wrong. This is because we should first have an adequate understanding of what rape is before we investigate what is morally wrong with it. In other words, the theory that I bring forward in this book is prior to a moral theory of rape.

When we analyze concepts, we do more than just reporting how individual speakers understand a concept. A proper conceptual analysis should come to a reflective equilibrium between competent speaker’s intuitions and the external reality. Yet, sometimes competent speaker’s intuitions are misguided,

distorted, or completely false. Hence, sometimes our conceptual analysis gets things wrong when we strive for a reflective equilibrium between intuition and reality. Nevertheless, the distorted and false intuitions can be useful. The distorted actual usage of a term or the false working understandings of a concept suggest that the concept is embedded in a broader (and, often, unjust) framework. If that is the case, then we can choose to engage in a prescriptive conceptual analysis instead of a descriptive one. We can choose to correct the distorted and, often, unjust understandings. We do so, we want to track the phenomenon adequately as well as provide an emancipatory revision of the concept. In other words, analyzing the distorted working understandings and acknowledging how these understandings fail to track the actual phenomenon can be helpful to the project of conceptual change.

I contend that both, describing and prescribing are legitimate in a conceptual analysis as long as we are transparent about which one we choose. I am a feminist and this work is a feminist endeavor: it explores ways of conceptual as well as social change with respect to the phenomenon of rape and gender injustice. The book focuses mainly on conceptual change. It brings forward a prescriptive conceptual analysis. However, I am well aware that for effective change, we need to have social and material change alongside conceptual change. We will not achieve social justice or even get close to it without changing both our beliefs and our social practices and material conditions. Hence, to fight for social justice, we need to grasp how concepts are understood and terms are used as well as how our social structures and material conditions work. The social theory that I bring forward prepares us for both: conceptual change and social change. I now turn to a brief overview of the existing literature and describe what is, on my view, missing from the debate.

## **THE PHILOSOPHICAL DEBATE**

The book attempts to argue for a conceptual and social change with respect to the phenomenon of rape. It is relevant for our fight against social injustice. Additionally, it can also fruitfully contribute to the philosophical debate on rape. What is missing in the philosophical debate is a thorough investigation of the phenomenon of rape and how to conceptually track it. In other words, what is missing is a conceptual debate that takes seriously the phenomenon of rape in the world. The existing debates over the topic of rape have in the last few decades been influenced to a large extent by feminist philosophy and legal theory. It was due to feminist scholars that the traditional understanding of rape as a property crime against the woman's husband or father was finally overcome. According to the traditional view, a woman's legal status was determined by her marital relationship or, if unmarried, by her father. What is wrong about rape

is thus that the rights of the man are infringed. In the case of an unmarried woman, her father has an interest in her virginity, which is a condition for marrying her off, and thus her rape would jeopardize his business. In the case of a married woman, her husband has the right to exclusive sexual access to her and thus rape infringes on that right. This explains why, under the traditional view, prostitutes cannot be morally wronged by rape and rapists marrying their victims restore what they have taken. Furthermore, according to the traditional view, men rape while women are raped. This correlates to the understanding of sexuality in general, where women are passively seduced or conquered and men actively pursue their sexuality. Even when women were granted the right to their own body and rape was understood as morally wronging the woman herself, remnants of the traditional view survived. Proving rape in a legal system was and is not easy for women, because unwillingness and passiveness on the part of the woman are taken for granted. It is due to feminist scholars that our understanding of rape now slowly takes into account the woman's perspective and thus includes instances of rape that were for a long time not considered rape. However, feminist contributions to the topic of rape have concentrated on mainly two questions: (1) the legal definition of rape, and (2) the moral wrongness of rape. Let me give a brief introduction into the existing debates on the topic of rape.

For some time, feminist critiques have focused on the remnants of the traditional view in the legal discussion of rape.<sup>4</sup> They were particularly concerned with the gendered nature of rape which, they argued, comes from the spurious dichotomy between sexually submissive women and sexually dominating men, an image that influences legal understandings of rape. Griffin (1971) and Shafer and Frye (1978) have argued that the fear of rape is part of everyday life for women and girls and that most of what we know about rape is based on rape myths and contradictions that guaranteed male access to female bodies. Brownmiller (1975) has argued that rape is a weapon that men employ to keep all women in place. Peterson (1978) has focused on the state as a male protection racket—the way the legal system works ensures that women fear the violent stranger and have to submit to a man to avoid being alone and being targeted. The fear of rape—by a violent stranger—guarantees sexual access to women by men who are considered to be “good men”. Warshaw (1994) has documented that the statistically common form of rape is acquaintance rape and not rape by a stranger. This is why some scholars have then argued for expanding the understanding of rape in the law to include non-stranger rape. (cf. Cairney 1995; Estrich 1986, 1987, 1992) Others have focused on the

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4 | Berger et al. (1988) identifies different dimensions of rape legislation and to which degree feminist understandings of rape have achieved social legitimacy. According to Berger, rape law reform is a symbolic indicator of women's contemporary social status.

exclusion of marital rape from the law as a further remnant of the traditional view of rape. (cf. Hasday 2000)

The legal debate has then developed into two main strains: the claim to understand rape in terms of consent instead of force and the critique of *mens rea* in regard to rape. The first strain criticizes the remnant of the traditional view that believes rape is defined in terms of force instead of consent or in terms of both, force and consent. Scholars have shown that the current legal conceptions, which are based on physically forceful stranger rape, are inadequate to the lived experiences of most victims of acquaintance rape. (cf. Anderson 2005a; Archard 1998; Ehrlich 2001; Flowe et al. 2007; Schulhofer 1998; West 1996) Some scholars have argued that legislature should replace the crime of rape with a variety of statutory offenses that define criminal liability for culpable conduct in terms of consent. (cf. Dripps 1992). Or that the rape law should be replaced by two laws, one for non-consensual acts (with the burden of proof for consent on the accused) and one for forceful acts. (cf. McGregor 1996, 2005) Others have focused on what kind of consent should be required. Wertheimer (1996, 2003) has concentrated on whether “yes” really means “yes” and what sexually motivated behavior should be prohibited by the law. Anderson (2004b) has argued that both the no-model (“no” means “no”) and yes-model (“yes” means “yes”) are inadequate when it comes to most forms of acquaintance rape; thus, she proposed a new model based on negotiation. B. Baker (1999a), on the other hand, has argued that both the no-model and the yes-model are adequate but that more needs to be done to educate people about them. Similarly, K. Baker (1999b) has argued that men and women see sex and non-violent date rape alike, and that we need to change the social meaning of sex which involves more than just criminal sanction of non-consensual sex.

The other main strain is concerned with the *mens rea* requirement. *Mens rea* is the mental element that needs to be satisfied for someone to be guilty of rape; i.e., it refers to the intention to commit a crime or the knowledge that one’s action is criminal. In the case of non-consensual sex, someone fails to satisfy the *mens rea* requirement if that person believed that consent was given. And, according to the law, his belief must be reasonable.<sup>5</sup> Many scholars have argued that the notion of reasonable that is used in the law is only reasonable from a man’s point of view but ignores what is reasonable from a woman’s point of view, e.g., consenting to “forced” sex is unreasonable for women. (cf. Archard 1997, 1999; Pineau 1989) Some scholars have taken these critiques a step further and argued that the notion of consent of women under gender inequality is questionable. Gauthier (1999) has proposed a model that requires those asking for consent to provide contexts in which consent can be valid.

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**5** | Throughout the book, I refer to perpetrators as male since this is in line with research estimating that 98 % of rapes are committed by men. (cf. re.ACTion 2007)

Morgan (1980) has argued that consent by women under gender inequality is not consent unless the act is initiated by them. In a more radical way, MacKinnon (1987b,c, 1989a) has argued that sexuality is defined by men and that what men experience as sex, women experience as rape. According to this view, all heterosexual sex is rape to some degree. A similar point is made by Foa (1978) when she argues that the special wrongness of rape is due to—and an exaggeration of—the wrongness of our sexual interactions in general which lack the important component of mutual respect. LeMoncheck (1999), on the other hand, has proposed a new model of sexualized violence that recognizes women's sexual oppression as well as women's capacity to resist that oppression.

Similar to Foa, some scholars have expanded the legal discussion of rape to include the question of the moral wrongness of rape. Hampton (1999) has argued that rape is morally wrongful sex and legally forbidden, but that there is also morally wrongful sex that is not legally forbidden. Likewise, Wertheimer (1996, 2003) has argued that there can be consent-compromising behaviors that are indecent but not criminal. Others have focused exclusively on the question of what is specifically morally wrong with rape, or how the absence of consent can constitute the moral wrongness of rape. (cf. Alexander 1996; Anderson 2013; Archard 2007; Gardner and Shute 2000; Hurd 1996) Part of the moral debate on rape also focuses on other forms of rape (besides stranger or acquaintance rape) and whether these can teach us something about rape in general. Buss (2009) and Seifert (1996) have argued that most (moral) theories of rape fail to account for rape in war. Scholz (2006) and Russell-Brown (2003) focused on rape as an instrument for war and genocide. Card (1991, 1996) has argued that rape as a martial weapon shows continuities with torture and terrorism in that it forces all women into compliance. Miller (2009), Bernstein (2015), and Mikkola (2016) have shown that rape and particularly rape as an instrument in war reveals its moral wrongness, with Miller and Bernstein arguing for moral injury and Mikkola arguing for dehumanization as the moral wrong.

Even though the debate on rape has developed in rich and interesting ways, it is exclusively concerned with the question of the legal definition and the moral wrongness of rape. What is missing is a conceptual debate, not on consent but on rape itself. Some scholars have proposed that we should think of rape as part of a spectrum. (cf. Cowling 2001; Foa 1978; MacKinnon 1987c, 1989a) Or, that we should give more than one definition for the various forms of rape. (cf. Archard 1998; Dripps 1992; Hampton 1999; McGregor 2005; Wertheimer 2003) However, all of these have focused on consent as a legal criterion or moral wrongness.<sup>6</sup> Notable exceptions are Cahill (2001, 2000), Reitan (2001), and Burgess-Jackson (1995, 1999, 2000), all of whom have

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**6** | MacKinnon is an exception. Her view of rape is tightly connected to her understanding of women and men defined as those who are sexually submissive and those who are

written on the conceptual issues of the topic. However, Cahill (2001, 2000) has focused exclusively on feminine bodies in her discussion of rape—which considering the high numbers of male prison rape or the sexual attacks on trans\*persons, is not in line with recent research. According to her view, rape is not merely an act of violence, since it is instrumental in the construction of the feminine body. Rape is thus an embodied and sexually marked experience that violates feminine bodily integrity and is a threat to female identity. Reitan (2001) and Burgess-Jackson (1995, 1999, 2000) have focused on the question of how to conceptually understand rape with Reitan claiming that rape is an essentially contested concept and Burgess-Jackson claiming that it is vague. I come back to these two theories in Chapter 1. This book fills the gap that the current debate on rape leaves open and investigates the phenomenon of rape as well as the conceptual issues that surround it. This is particularly important as questions of legal strategies and moral wrongness should be subsequent to the question of how to understand rape. In some ways, the existing debates skip over what should be their point of departure. This book contributes to the philosophical debate of rape by providing a rich social theory of rape that functions as a background for a thorough conceptual analysis.

Before I give an overview of the structure of the book, let me raise three issues that are important background commitments for this project. First, I contend that the exclusive focus on women as rape victims<sup>7</sup> is outdated. Many theories of rape focus exclusively on rape of women. In doing so, they either consider how rape harms, wrongs, and violates the individual woman, or how it harms, wrongs, and violates women as a social group. For example, they focus on how the rape of some women functions as a threat to all other women (cf. Brownmiller 1975; Card 1991), how the experience of rape is part of women's embodiment (cf. Cahill 2001), how being rapable is what defines the social group of women (cf. MacKinnon 1987a, 1989b). However, recent research shows that women are by far not the only social group that experiences the threat of rape or "is rapable". In 2016, 80,600 inmates in the American prison system were sexually assaulted or raped. (RAINN 2016c) Transgender students are at a higher risk of sexual assault or rape than other students: 21 % of transgender or gender nonconforming students experience rape or sexual assault (in comparison to 18 % of female students and 4 % of male students). (RAINN

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sexually dominant and, thus, falls outside the two main questions that concerns most of the debate. I say more about her view in Chapter 4.

**7** | I use the term 'victim' throughout the book even though it might not be perfect for various reasons, e.g., it assumes a passive stance. This is mainly because I think that the term 'survivor', often favored by feminist activists, misrepresents most experiences of rape—they are not literally about surviving—and should be reserved, for example, for Holocaust survivors or survivors of genocidal rape.

2016d) Native Americans are twice as likely to experience rape or sexual assault compared to all other races in the States. (RAINN 2016d). In general, we can say that the gendered character of rape amounts to two things. First, women and gender non-conforming persons<sup>8</sup> are more likely to experience rape, and, second, most rapists are male. (re.ACTion 2007: 70) Hence, while we should acknowledge that 1 out of every 6 American women—and the numbers do not look much better in other countries—has been the victim of an attempted or completed rape in her lifetime (RAINN 2016c,d), we should also acknowledge that other social groups are in great danger of being raped.<sup>9</sup>

Second, an investigation of rape needs to acknowledge intersectionality. Different people—depending on their various social group memberships—are differently equipped to avoid rape, to get out of the situation, in what they can do when they are raped, in how much help they get, who they can turn to, how well others understand what happened, and how well they understand what happened themselves. This, of course, has to do with the specifics of what happened; victims of physically aggravated stranger rape often get more help than victims of acquaintance rape, and victims of marital rape have a harder time leaving the overall situation of abuse, than victims of acquaintance rape. But, it also has to do with the culture and community the victims are situated in; someone from a poor black community or Native American community gets less support than someone from a middle class white community. And, finally, it has to do with their social position and their privilege; a trans\*person

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**8** | When I speak of gender non-conforming people, I mean this to include trans\*persons as well as everyone who falls outside the binary gender category (e.g., inter\*people, people with a gender identity other than their biological sex, gender variance people, gender non-conformity people, gender fluidity people, genderqueer persons) or outside the dominant gender norms (e.g., people with a gender expression other than their biological sex or a sexual orientation other than heterosexuality).

**9** | I do not discuss the sexual abuse and rape of children or minors, but instead concentrate on adults who are, at least theoretically, able to consent and engage in sexual relations by their own will. It should nevertheless be noted, that far more men have experienced acts of sexual abuse or rape in their childhood than it is often assumed. RAINN (2016a) reports that one in 9 girls and 1 in 53 boys under the age of 18 experience sexual abuse or rape. While a girl is still more likely to experience sexual abuse than a boy, boys suffer from it too in numbers that should not be ignored. The older the children get, the higher is the risk for girls though: girls ages 16-19 are four times more likely to experience sexual abuse or rape than the general population. Finally, even in cases of child sexual abuse and rape, the majority of perpetrators are male: out of the sexual abuse cases in 2013, 47,000 were committed by men in comparison to 5,000 by women. And, in 88 % of sexual abuse cases against children and minors, there is evidence that the perpetrator is male. (RAINN 2016a)

gets less support from the social institutions than a white college student, but the trans\*person might get more support from their own community than the white college student from theirs. When we speak of the experience of rape, we need to take into account these vastly different positions from which victims experience rape. Furthermore, we have to consider intersectionality when it comes to our discussion of perpetrators of rape; some people are punished harder because of their social group membership, incarceration means different things for different people and communities, whether one comes from a middle class background or a poor background, and in the most drastic cases, to be charged with rape can mean being deported for undocumented people. Finally, different people are differently equipped with understanding the harm they committed and getting help in changing their behavior. Hence, blame and punishment can have different consequences depending on someone's social position, community, etc.

Third, and finally, rape and sex are not a mutually exclusive dichotomy. While rape is not sex, it employs sexual means and it is situated on a spectrum<sup>10</sup> that ranges from unproblematic sex to rape—which is part of why it is such a complex issue. Roughly, I propose that, first, rape is one of many forms of sexualized violence, and, second, there is no sharp dividing line between sexualized violence (including rape) and unproblematic sex. The latter case is fairly obvious: there is a gray area between sexualized violence and unproblematic sex. Things are more difficult in respect to the former case, when rape is part of sexualized violence. In this case, sexualized violence is clearly the genus of rape, but at the same time there is no sharp dividing line between what definitely counts as rape and what counts as less extreme forms of sexualized violence. And, furthermore, there is not even a sharp dividing line between each category and each gray area. Both gray areas are no-man's lands of philosophical analysis—neither accounts of rape nor accounts of sex attempt to investigate there. In theorizing rape, we should keep this in mind.

The wording of 'gray area' can be misleading and it is important to note that I do not argue that gray area cases are all those cases of rape that are accomplished without the use of physical violence or force. Colloquially 'gray rape' is sometimes used to describe cases in which force or violence are absent, for example, most cases of date rape or acquaintance rape. Or cases that are non-consensual but still somehow not rape. For example, Laura Sessions Stepp describes 'gray rape' as a new kind of date rape. According to her, it is "sex that falls somewhere between consent and denial." (Sessions Stepp 2007) However, the examples that Sessions Stepp uses are clear cases of non-consensual sex

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**10** | While spectrum is not the best way to picture it—as it assumes two-dimensionality—for lack of a better word, I use it here. But I propose a more three-dimensional model at the end of the book.

that would and should be recognized as rape according to most legal definitions. While I use the explanation of gray area to show that rape cannot be clearly defined in opposition to (unproblematic) acts of sex and cannot always be neatly distinguished from other forms of sexualized violence, Stepp is concerned with cases in which those harmed have clear feelings of being morally wronged but mixed feelings about what happened because they fear that other's might not believe them. This account of gray rape is problematic because it purports victim blaming without trying to make sense of why victims tend to put the blame on themselves in cases of date rape, for example.<sup>11</sup> (cf. Harding 2015: 149)

## STRUCTURE OF THE BOOK

This book systematically maps out and elucidates the phenomenon of rape in the world. In order to elucidate what rape is and how it is situated in the social world, including its relation to social injustice, I argue that we have to understand how the concept of rape is understood in everyday contexts. By seeing the gap between the dominant working understanding—that sees rape solely as physically aggravated stranger rape—and the many diverse forms of rape in the external world, we can gain an understanding of the social embeddedness of rape. This book takes the gap between the dominant working understanding and the external reality as a starting point for a rich social theory of rape. Briefly, while Chapter 1-3 lay the theoretical and conceptual groundwork and develop a method that yields an adequate understanding of the phenomenon of rape, Chapter 4 and 5 see the application of the developed method and show how to best understand the concept of rape. The last chapter rounds up the discussion of how to understand the phenomenon of rape and notes some practical consequences that result from the proposed theory.

In Chapter 1, I provide insight into the dominant working understanding of the concept and its problematic consequences. I argue that the concept of rape is contested—hardly anyone is in agreement as how to best understand the concept. Furthermore, I claim that its most salient understanding is distorted by so-called rape myths, which is deeply problematic. In Chapter 2, I argue that the contestedness of the concept of rape and the various forms that the phenomenon takes in the world has implications for how to best understand it.

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**11** | The Urban Dictionary provides a further explanation of gray rape, which is equally problematic (if not more so). It states that gray rape is the most common form of (date) rape and that it “[c]ommonly occurs when a woman gives consent, but then withdraws it during or after sex” and that it “[a]so happens when the woman is a little nervous, but the guy is more confident.” See the entry by wangjiahua on September 23, 2014: <http://www.urbandictionary.com/define.php?term=gray%20rape>; accessed June 14, 2017.

I propose to theorize the concept on a cluster account, yet a de facto conceptual analysis fails to explain its distorted usage as outlined before. Thus, I contend that a conceptual analysis of rape has to be grounded in a social theory of rape and I specify five desiderata which a theory of rape needs to fulfill: It needs to (1) adequately map the phenomenon, (2) explicate speaker's intuitions, (3) be normatively adequate, (4) explain the injustice of rape, and (5) be able to ground a prescriptive conceptual analysis. In Chapter 3, I take up the task of developing a method that can yield a rich social theory of rape, one which fulfills the aforementioned desiderata and can ameliorate the concept. The proposed method—the method of emancipatory amelioration—is informed greatly by Haslanger's project of amelioration. This method consists of two steps: first, a systematic theory that maps out and elucidates the phenomenon of rape, and, second, amelioration of the concept. I outline both steps in detail. In Chapter 4, I apply the first step of the method to the phenomenon of rape and argue that rape is a social practice and part of a sexist ideological framework, and as such, contributes to social and structural injustice. In Chapter 5, I apply the second step of the method of emancipatory amelioration and develop a normative cluster model of rape that is grounded in both the social theory of rape as well as the aim of ameliorating the concept accordingly. Finally, in Chapter 6, I look at the implications that understanding rape as part of a sexist ideology has for our treatment of perpetrators and our solidarity with victims of rape. I argue for holding perpetrators accountable instead of punishing them (at least in some cases of rape) and I argue for what I call 'emancipatory solidarity'.

My main substantive arguments are the following: (1) The dominant working understanding of rape as physically aggravated stranger rape does not track the various forms of the phenomenon of rape as they happen in the social world; such as acquaintance rape, marital rape, drug induced rape, and so on. (2) To explicate the gap between the dominant working understanding of rape as physically aggravated stranger rape and its external reality, we need a rich social theory that can map the phenomenon of rape adequately and illuminate its conceptual distortions. (3) This theory maps the phenomenon of rape as a social practice, which is part of a broader sexist ideology with interdependent sexist practices and sexist ideological beliefs and attitudes. And, (4) to change the distorted dominant working understanding we need to engage in a prescriptive conceptual analysis that tracks the phenomenon (as mapped by the theory) adequately and aims at an emancipatory understanding of rape. Hence, my aim in this book is to arrive at a concept that tracks adequately the phenomenon of rape and has emancipatory force such that it is fruitful for overcoming the de facto distorted conceptions of the concept and the equally problematic usage of the term.

# Chapter 1:

## Contested Rape

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The first chapter argues that the concept of rape is contested and that dominant accounts are contaminated by so-called rape myths. The chapter relies on a distinction between manifest and operative concepts of rape and—drawing on a number of cases—shows that widely accepted rape myths distort the operative understanding of rape, thus giving rise to an institutional mismatch with adverse consequences for rape victims. Furthermore, the chapter discusses attempts to apply the idea of essential contestability to the concept of rape and argues that even though a contested concept, rape should not be seen as in the standard sense essentially contested.

### 1.1 INTRODUCTION

In order to elucidate what rape is and how it is situated in the social world, including its relation to social injustice, we have to map out the various forms of rape and see how the concept of rape is understood in everyday contexts. The way competent language speakers use the term can give us some insight into how rape is conceptualized. And knowing how it is conceptualized is one part of providing a rich theory of rape.<sup>1</sup> Part of the task of systematically mapping out and elucidating the phenomenon of rape in the world, is to analyze how the concept is de facto understood by competent language users. I argue (1) that the concept is contested, but that (2) despite its contestedness, the everyday dominant usage of the term and underlying conceptions of rape are distorted

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**1** | Note that this does not imply that what individuals think determines the meaning of the term 'rape'. Rather, what I argue is that there is a mismatch between the dominant understanding of rape—the way it is conceptualized by most individuals—and the forms it takes in the world. We have to explicate this mismatch to get to the bottom of how we *should* understand the concept, which is the aim of this book.

by so-called rape myths and therefore fail to track the various forms of rape in the world. It is the task of this chapter to provide insight into how rape is conceptualized and to foster a philosophical discussion on how to theorize these insights.

What is the problem with the concept of rape? Several philosophers have written about rape as a philosophical topic and it is covered rather well in more recent debates (philosophical as well as non-philosophical). However, an interesting phenomenon transpires in understandings of the concept of rape and in the philosophical and non-philosophical debates: the concept of rape is highly contested. Neither scholars nor competent language speakers are in agreement at all on what it means or should mean. And, furthermore, everyone assumes that their understanding of the concept is better than the understanding of others. This, as such, is not problematic. However, the most salient understandings of rape are distorted by so-called rape myths and thus fail to track the various forms of rape as they exist in the world. This has deeply problematic implications for rape victims. The claim of contestation and its problematic consequences guide the discussion of this chapter.

The first half of the chapter is concerned with how the concept is understood in the social world and how our use of the term matters because of its problematic consequences. In the first section (Section 1.2), I argue that the concept is contested. However, despite the fact that it is contested, the most dominant understandings of rape are distorted by so-called rape myths and therefore do not track the various forms of rape that exist in the world. I illustrate this phenomenon with the help of Sally Haslanger's proposed distinction between manifest and operative concepts—the first describing the concept as it is institutionalized, the second describing its dominant understanding. (Section 1.2.1) I then discuss how—in the context of a sexist social structure—the operative concept is distorted by so-called rape myths. In other words, the dominant social practice of using the term 'rape' is affected by myths about the sexual behavior of women and gender non-conforming people and about sex in general as well as our (implicit) assumptions of male entitlement. (Section 1.2.2) If this is true, then the operative concept—the one distorted by rape myths—is not in line with the legal definitions, i.e., with the manifest concepts. I call this an 'institutional mismatch'. Institutional mismatches can have deeply problematic consequences for victims of rape and I illustrate this with the help of three examples in which victims are not believed due to the distorted operative concept. (Section 1.2.3)

In the second half, I focus on the *differentia specifica* of the concept of rape. I suggest that the contestation of the concept shows that there is something about the concept itself that invites disputes. I then have a look at two theories that take these thoughts into account: Keith Burgess-Jackson's theory of 'rape' as a vague term and Eric Reitan's theory of rape as an essentially contested

concept. (Section 1.3) In Section 1.3.1, I concentrate in detail on Eric Reitan's theory of rape as an essentially contested concept. The general idea is that different groups and individuals assign different understandings to the concept and that disclosing these understandings results in disputes rather than a common understanding. Finally, in Section 1.3.2, I show that Reitan's theory faces several problems. Nevertheless, he brings forward important insights into the character of the concept of rape that will provide part of the basis for a cluster account of rape that I develop in the next chapter.

## 1.2 CONTESTATION AND CONCEPTUAL PROBLEMS

When it comes to the concept of rape, neither philosophers nor everyday competent language users are in agreement as to how to understand the concept properly. And, furthermore, they compete about which understanding is the best. In other words, they not only disagree about which acts fall into the category of rape and which do not, they also disagree on how to understand the category best. Let us describe this by saying that the concept is contested. I start my explanation with the following three newspaper articles on incidents of rape:

(1) In 2007, Laura Sessions Stepp wrote an article for *Cosmopolitan* titled "A New Kind of Date Rape". Telling the story of college student, Alice, she writes:

"No. Stop," she said softly—to softly, she later told herself. When he ignored her and entered her anyway, she tensed up and tried to go numb until it was over. He fell asleep afterward, and she left for her dorm, "having this dirty feeling of not knowing what to do or who to tell or whether it was my fault." While it felt like rape to her—she had not wanted to have sex with Kevin—she was not sure if that's what anyone else would call it.

"It fell into a gray area," she said recently. "Maybe I wasn't forceful enough in saying I didn't want it." Even today, she is reluctant to call it rape because she thinks of herself as a strong and sexually independent woman, not a victim.

Alice's "gray area" experience is something that is becoming so common, it has earned its own moniker: *gray rape*. It refers to sex that falls somewhere between consent and denial and is even more confusing than date rape because often both parties are unsure of who wanted what. (Sessions Stepp 2007)

According to Sessions Stepp, non-consensual sexual activity is not always rape. To reserve the deep moral condemnation against the crime of rape, but not against forms of rape that are not physically aggravated, she makes

a distinction between ‘rape’ and ‘gray rape’. Gray rape are forms of rape that do not deserve the same moral condemnation (and should maybe also not be legally sanctioned) but are non-consensual.<sup>2</sup>

(2) In a recent case a former Stanford University athlete, Brock Turner, was sentenced to imprisonment and probation for the sexual penetration of an unconscious woman. He was convicted of three felonies—one of which was assault with intent to rape—and faced up to 14 years in prison. However, despite the prosecution’s demand of six years in state prison, the judge gave a six-months sentence. He stated: “A prison sentence would have a severe impact on him.” (Hunt 2016) Part of the reasoning of the judge was motivated by the following personal character statement given by Turner’s father, Dan A. Turner, that is reprinted in an article by Gray (2016: my emphasis):

[...] Living under the same roof with Brock since this incident, I can tell you firsthand the devastating impact that it has had on my son. [...] As it stands now, Brock’s life has been deeply altered forever by the events of Jan 17th and 18th. He will never be his happy go lucky self with that easy going personality and welcoming smile. His every waking minute is consumed with worry, anxiety, fear, and depression. [...] These verdicts have broken and shattered him and our family in so many ways. His life will never be the one that he dreamed about and worked so hard to achieve. That is a steep price to pay for 20 minutes of action out of his 20 plus years of life. [...] What I know as his father is that incarceration is not the appropriate punishment for Brock. He has no prior criminal history and has never been violent to anyone including his actions on the night of Jan 17th 2015. Brock can do so many positive things as a contributor to society and is totally committed to educating other college age students about the dangers of alcohol consumption and sexual promiscuity. [...]

Even though Dan A. Turner does not provide a theory of what rape is, he clearly states what is not. Non-consensual penetration of an unknown and unconscious woman, according to Turner, is not rape but an act of sexual promiscuity. It should thus not be morally condemned or legally punished—as these actions are reserved for proper acts of rape.

(3) In an article titled “Being Too Scared to Say No Is a Very Clear Way of Saying No”, Laura Bennett writes:

We all know what fear looks like. [...] Wide eyes, shaking, frozen still, unable to speak, skin getting paler. Fear may not always look identical but it is always recognisable. Your

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**2** | I do not critique the views presented here even though some are deeply problematic. This overview is merely to show that there is contestation over the concept of *rape*.

body enters a state when you're scared; you enter fight or flight as your brain detects an external threat which you must be prepared to fight or flee from. [...] And therefore, this is not an excuse: "But they didn't say no". Yes, they did. With every fibre of their being. [...] There are countless other ways to clearly not give consent to something, and fear is only one of these. But, when it comes to fear, don't be the person who wilfully ignores the clear signs they are getting. [...] (Bennett 2017)

According to Bennett, rape is not merely non-consensual sex, rather it is non-affirmative non-consensual sex. Non-consensual sex is often taken to imply that being passive counts as consent; that is, everything short of verbal or physical refusal implies consent. However, Bennett clearly holds that passivity (e.g., out of fear) is a sign of refusal and thus for a sexual activity not to count as rape the consent needs to be affirmative.

It is not the case that the three writers—Sessions Stepp, Turner, and Bennett—are confused about how to apply the concept of rape or how to understand it. Instead, they each hold a different view of how to best understand the concept. That is, they each have an underlying theory of rape that they think most adequately captures the phenomenon of rape. However, each of these underlying theories differs significantly from the others. Hence, the three examples can be understood as being engaged in a debate over the best understanding of rape. Insofar as the concept is prone to debate over its best understanding, it is contested. Keith Burgess-Jackson argues that everyone, who uses the term 'rape' has a theory of what rape is. Such a theory need not be spelled out. Instead, he claims, "I may be unaware of and unable to articulate my theory, but I necessarily have one." (1995: 441) Respectively, we all have an understanding of rape that correlates with a theory which we express when we use the term 'rape'. And, in line with Burgess-Jackson, such a theory need not necessarily be well articulated or explicitly formulated; it might amount to nothing but a cluster of vague intuitions that we have regarding rape. This implies that we can have the following scenarios of interpersonal agreement and disagreement with regard to concepts:

**full agreement:** "S and T agree on what rape is (that is, they share a conception/theory of rape) and agree that X is (or is not) rape."

**factual disagreement:** "S and T agree on what rape is, but disagree that X is rape."

**conceptual disagreement:** "S and T agree that X is (or is not) rape, but disagree about what rape is. (In this case S and T are using 'rape' in different senses, or giving the term different theoretical definitions. [...])"

**full disagreement:** “S and T disagree about what rape is and about whether X is rape.”<sup>3</sup>  
(Burgess-Jackson 1995: 441-2, emphasis in original)

According to this explanation, the aforementioned writers are in full disagreement. Each of them has an underlying theory of rape that they believe best captures the phenomenon and each of the theories differ significantly from the others. Thus, they disagree on how to conceptualize rape. Because they employ drastically different theories, they would also be in disagreement of whether a given case is a case of rape if they all talked about the same case. For example, according to Dan A. Turner’s theory of rape, penetration of an unconscious woman is not rape, while according to both Sessions Stepp’s and Bennett’s theory it is. Thus, they disagree about what rape is and which cases are cases of rape and which are not.

This alone is not a problem. After all, there are many concepts that spark debates about how to properly understand them which have no problematic consequences for our communication or our everyday lives. Yet, I contend that the contestedness of a concept such as rape can lead to problematic consequences. For example, if I were to experience an act of rape, but my theory of it is significantly different from yours, then you might be unable to acknowledge my experiences, my harm, or draw the same consequences from it that I legitimately hope for. This has drastic implications in the legal system, but also in our day-to-day lives. I might be unable to report what happened to the police or the police might be unable to investigate due to differences in theories. I might lose my friends for lack of hoped support or be unable to make myself intelligible to anyone else. This is particularly true if the social structure brings it about that the most salient understandings of a concept are distorted in such a way that they fail to capture most instances of that concept. In the following, I argue that despite the contested character of rape, its most salient understandings are affected by so-called rape myths. This has deeply problematic consequences for rape victims. Thus, it is in our interest, as feminists, to elucidate the problems of the de facto understandings of the concept of rape and to overcome the distorted understandings. Before I show how other theories have navigated their way through these difficult issues, I illustrate how the most dominant understandings are distorted and their problematic consequences. I thus explain why it is important to tackle these issues in ways that neither overlook the contestedness nor give rise to

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**3** | Burgess-Jackson uses various terms for the factual and conceptual disagreement that, for reasons of simplicity, I have narrowed down. For instance, he calls the factual disagreement ‘epistemological/factual’ and the conceptual disagreement ‘conceptual/theoretical/explanatory’.

problematic uses. To do so, I employ Sally Haslanger's distinction between operative and manifest concepts.

### 1.2.1 Manifest and Operative Concepts

Haslanger argues that concepts help us to draw distinctions between things. They help us to structure our world. Nevertheless, even if we have a concept in mind which we can use to group certain things into the same category, we might not explicitly apply the concept in each specific case. We do not always ensure that each thing we group does actually meet the conditions for applying the concept. Rather, we often rely on assumptions that help us link easily accessible criteria with the conditions of membership for the concept. (Haslanger 2012: 388) Our "rough-and-ready responsiveness" to things, to borrow a phrase from Haslanger, is not in line with all the conditions for applying the concept in question.<sup>4</sup> The concept that we attempt to apply does not match the way that it is

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4 | One could object by saying that we do not actually need to know the applicability conditions of a concept for applying it correctly but instead only its reference-fixing conditions. Semantic externalism claims that we do not always grasp exactly what it means for something to fall under the concept's intention, but that we can nevertheless refer to it in the correct way. In other words, I can refer to the liquid in my glass as 'water' without precisely grasping what it takes for something to be water. According to Schroeter, applicability conditions tell us "what it takes for a concept to apply to an object", they "specify the concept's intension by means of certain semantically basic features" (2004: 429). Reference-fixing conditions, on the other hand, "single out the reference of a concept [...] by citing some inessential but epistemically accessible features of the reference" (2004: 430) In short, we do not need to specify what it takes for something to count as *X*, in order to grasp the reference-fixing conditions. Mikkola has provided a similar distinction: that between extensional and semantic functions. (2016: 106) If this is true, then the fact that we sometimes fail to apply a concept in line with all its conditions for application is no problem at all; we would still be able to refer to the thing in question. However, Schroeter further claims that we neither have *a priori* access to the applicability conditions of our concept nor do we have *a priori* access to the reference-fixing conditions of our concept either. (2004: 439) Instead, which aspects of our conceptual practice are important is a matter of normative assessment and *a posteriori* considerations "about how that practice actually manages to hook up with things in the world." (2004: 442) I take it that this is precisely why the distinction Haslanger draws between operative and manifest concepts is important: it tracks the (sometimes misguided) intuitions speakers have about the concept in question as well as the formal definitions.

systematically applied.<sup>5</sup> Hence, Haslanger distinguishes between two different concepts: the manifest concept, which is the one we attempt to apply, and the operative concept, which is the one that would be extrapolated from our actual usage in a given community. (2012: 388)

Distinguishing between operative and manifest concepts in this way, can give rise to the following scenarios. First, as competent language users, we can have a mismatch between two different manifest concepts. Let us for the sake of illustration assume that the manifest concept is the formal or legal definition of a given community. In a conversation, two speakers from two different communities use the same term, ‘rape’, yet they assume different formal definitions. Let us say, the first speaker is from England, while the second is from Germany. When the first speaker utters the word ‘rape’, she assumes the intentional penetration with the penis of the vagina, anus or mouth, without consent and without reasonable belief in consent.<sup>6</sup> When the second speaker utters the word ‘rape’, she assumes the penetration of the body of another person accomplished by force, the threat of force, the exploitation of circumstances in which the other person is helpless, or against the will of the other person.<sup>7</sup> Imagine further that the English speaker and the German speaker talk about a third person, who the German speaker knows to have been the victim of rape. After a few minutes into the conversation, the German speaker remarks that the rape in question was committed by a woman. At that

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**5** | A different and more familiar way to make the distinction between manifest and operative concepts is to say that, in some cases, a speaker’s conceptions are not in line with the concept. That is, although there is only one concept of *rape*, there is more than one conception. On this view, one person’s conception can differ from another person’s conception. (cf. Higginbotham 1998) Sometimes they can be drastically different, for example, if we compare a feminist’s conception of rape and Todd Akin’s conception of rape. If there is one concept and several different conceptions, it is possible that some conceptions are congruent with the concept and others are not. The mismatching conceptions are either straightforwardly false or slightly mistaken. However, first, the concept-conception distinction begs the question of what the meaning of the “one” concept is. Second, while the concept-conception distinction tracks individual speakers’ intuitions and understandings, the Haslangerian distinction tracks the difference between the formal (or institutionalized) definition and the dominant usage that can be extrapolated from a given community. And, third, the Haslangerian distinction not only explains how it can happen that the manifest and operative concept do *not* match, but how individual speakers can be ignorant of this. I say more about this in what follows.

**6** | See UK Government, Sexual Offences Act 2003, Chapter 42, Part 1: [www.legislation.gov.uk/ukpga/2003/42/section/1](http://www.legislation.gov.uk/ukpga/2003/42/section/1); accessed September 7, 2017.

**7** | See Strafgesetzbuch: Straftaten gegen die sexuelle Selbstbestimmung, §§177: <https://dejure.org/gesetze/StGB/177.html>; accessed September 7, 2017.

point, the English speaker replies: “If that is the case, then it was not an act of rape.” The formal definition assumed by the English speaker narrows rape to the act of penetration with a penis. Unless they start comparing the different legal definitions of their communities, they have a misunderstanding.

Second, sometimes our formal definition (our manifest concept) is not in line with the actual language practice in a given community. Imagine a police officer talking to a woman about her complaint of being raped by her husband. And imagine that the police officer is a member of a community in which the formal definition of rape is one that includes marital rape, but the actual usage of the term within that community is one that excludes marital rape. Because the police officer is part of a community in which the operative concept excludes marital rape, when he utters the term he assumes the penetration of the body of another person by a stranger, accomplished by force, the threat of force, the exploitation of circumstances in which the other person is helpless, or against the will of the other person. According to the operative concept, rape is an act that can only be committed by strangers and cannot occur within marriage. The woman, thus, fails to make intelligible to him that she was raped. Furthermore, the police officer is ignorant of the fact that the actual usage of the term ‘rape’ is not in line with the formal definition. When he fails to make intelligible that the woman was raped, he falsely believes that this is because she was not raped according to the formal or legal definition. And, finally, the mismatch between the operative concept and the manifest concept has unjust consequences for the woman. The police officer does not process her complaint since in his eyes she has no grounds for making a rape charge.<sup>8</sup>

And, third, because communities are fragmented, the actual usage within a given community can differ from one group of speakers to the next; both groups can fail to match the manifest concept or one can fail and one can succeed to match it. Assume for example two communities within Germany, in which the actual usage of the term ‘rape’ is not in line with the German legal definition of rape. And, furthermore, the actual usage of each community is not in line with the other. In one community, the feminist one, the operative

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**8** | Note that it could be the case that both the woman and the police officer are part of the same community and, thus, both assume that marital rape is not part of rape—despite the formal or legal definition stating otherwise—and fail to make intelligible what happened as an act of rape. See Jenkins (2016) for an explication of how victims of rape can hold a problematic operative concept or, as she calls it, “working understanding”. It could also be the case—as I described above—that the woman and the police officer come from different communities such that the operative concept of the woman’s community matches the manifest concept, while the operative concept of the police officer’s community does not. In this case, it is only the police officer who fails to make intelligible what happened to the woman as an act of rape.

concept refers to non-consensual sex. In the other community, the mainstream one, the operative concept refers to physically aggravated stranger rape. In this case, multiple operative concepts are at work; and neither one needs to be in line with the manifest concept.

In what follows, I focus on scenarios in which the legal definition is the manifest concept in each jurisdiction, e.g., the German legal definition of rape is the manifest concept within Germany. And despite there being multiple operative concepts—as, for example, the contestedness of the concept shows—there is one dominant operative concept.<sup>9</sup> In other words, there is a widely shared informal and implicit working definition that does not match the manifest concept for reasons I explicate below. Roughly, the multiple operative concepts are each distorted by one or more specific rape myths. For example, one operative concept relies on the myths that rape is always stranger rape, another operative concept relies on the myths that rape is always physically aggravated, and so on. When I speak of the ‘dominant operative concept’ what I mean to track is all of these multiple operative concepts. Hence, the dominant operative concept is the concept that is extrapolated from various communities and that is distorted by rape myths in general. The mismatch between the legal definition and the dominant usage is an indicator of a deeper mismatch—that between the various forms of rape in the world and the dominant usage of the term ‘rape’. In so far as the legal definition aims at representing the world accurately, it can be seen as an attempt to encompass the various forms of rape as they exist in the real world. Hence, by showing the mismatch between the legal definition and the dominant usage, I want to draw attention to this deeper mismatch.

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**9** | A mismatch between the legal definition and the dominant usage in a given community is what I call the ‘institutional reading’ in the following. The institutional reading is only one possible way of understanding the distinction between operative and manifest concepts. It follows Haslanger’s own distinction between institutional and so-called “local” uses, which she illustrates with the example of tardiness, e.g., the school’s rules about being tardy (the manifest concept) can be similar or different to the specific rule employed by each teacher (the operative concept). (Haslanger 2012: 368-9) Other possibilities where the operative and manifest concepts are distinct are: public uses versus more idiosyncratic uses, what is explicit versus what is implicit in the minds of users, what is thought (what we take ourselves to be doing with the concept) versus what is practiced (what we’re actually doing with it), and appropriate versus inappropriate uses. (Haslanger 2012: 369)

### 1.2.2 Rape Myths and Operative Concepts

I ended the last section by suggesting that one way in which things can go wrong is when a community has a dominant operative concept<sup>10</sup> that is not in line with the community's manifest concept. In the following, I show that despite the fact that the concept of rape is contested and more than one operative concept exists in a given society, there is a dominant operative concept that is influenced by so-called rape myths. This dominant operative concept is shared more widely as the working definition of rape than any other given operative concept.<sup>11</sup> If this is the case, then this has deeply problematic consequences for victims of rape. Let me start by providing some background information on rape myths. Rape myths are prevailing myths about sexual conduct between men and women that shape our understandings of sexual activities and sexualized violence. The concept of rape myths was introduced in the 1970s by feminist sociologists and philosophers to explain false cultural beliefs that enabled sexualized violence against women. (cf. Brownmiller 1975; Schwendinger and Schwendinger 1974) Rape myths vary depending on the context, however, they generally “follow a pattern whereby, they blame the victim for their rape, express a disbelief in claims of rape, exonerate the perpetrator, and allude that only certain types of women are raped” (Grubb and Turner 2012: 10, emphasis in original). For example, if the belief is that women mean “yes” when they say “no,” then a man who ignores a woman’s “no” does not do her wrong. On the contrary, according to the myth, he fulfills the woman’s desire that she failed to articulate. This is how rape myths legitimize sexualized violence or make it appear as something that it is not. On the basis of this research, Lonsway and Fitzgerald propose the following definition for rape myths:

[A]ttitudes and beliefs that are generally false, but are widely and persistently held, and that serve to deny and justify male aggression against women. (Lonsway and Fitzgerald 1994: 134, my emphasis)

We can think of rape myths as myths that legitimize male entitlement to a female body.<sup>12</sup> (cf. Edwards et al. 2011) Rape myths do this either by implying

**10** | I use the expression ‘dominant operative concept’—the dominant usage of a term in a given community—interchangeably with the notion of ‘dominant working understanding’.

**11** | Similar ideas are brought forward in Jenkins (2016).

**12** | In this sense, rape myths can be said to also apply to gender non-conforming people. For example, a myth might exist to the extent that gender non-conforming people are promiscuous and so cannot be raped. Or that trans\*persons in transition cannot be raped, because only women can be raped. I here concentrate on rape myths

that the act in question was not an act of rape, because it was implicitly wanted by the woman and therefore consensual (“she asked for it”) or by making it into something else (“it wasn’t really rape”). This false assumption of consent is expressed in various ways: either because the woman acted in ways that show her implicit consent, or because external factors are such that any woman would automatically consent. Research about rape myths often group together all attitudes and beliefs that lead to male aggression against women. It is, however, conceptually relevant to make a distinction between rape myths that are based on the woman’s behavior and those that are based on the external circumstances; this is a distinction in content. Hence, let us distinguish the following two categories of rape myths:

**“She asked for it”-myths:**

- She asked for it, because if a woman verbally resists, she secretly desires to be overpowered.
- She asked for it, because it is reasonable to assume that she consents to sex if she acts or dresses in a way that is “sexually teasing” or “sexually provocative.”
- She asked for it, because otherwise she would not have gotten intoxicated around men.
- She asked for it, because she did not physically resist the act.
- She asked for it, because otherwise she would have been emotionally devastated after the act and in need of psychological help.
- She asked for it, because otherwise her body would not have been lubricated.

**“It wasn’t really rape”-myths:**

- It wasn’t really rape, because once consent is given, it cannot be withdrawn part-way through the sexual act.
- It wasn’t really rape, because rape always involves overwhelming physical force and no force was used in this act.
- It wasn’t really rape, because perpetrators of rape are people of color or foreigners.
- It wasn’t really rape, because perpetrators of rape are psychologically unstable or aggressive.
- It wasn’t really rape, because rape is an interracial crime.
- It wasn’t really rape, because rape is only committed by strangers and cannot occur within marriage or a relationship.

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about women’s sexuality, because these are researched to a far greater extent than other rape myths. However, I contend that similar myths exist for gender non-conforming people and thus more empirical research should be done to gain a better understanding of them.

- It wasn't really rape, because consent is automatically present if a prior consensual sexual act between the same parties recently took place.<sup>13</sup>

## Two Distinct Functions of Rape Myths

Rape myths can serve two distinct functions. They can either be used as a purely descriptive explanation of the act or as a normative justification of the act. Let us therefore make a further distinction between their explanatory function and their justificatory function. While in the first case, myths are used to make sense of what happened, in the second case they are used to justify what happened. This distinction often goes hand in hand with another distinction: rape myths can be explicitly as well as implicitly held. Consider first myths that are explicitly held. Susan Estrich, for example, remarks that in most cases, the man is negligent of the harm he inflicts on the woman. She says, “common is the case of the man who could have done better but did not; could have paid attention, but did not; heard her refusal or saw her tears, but decided to ignore them.” (1987: 97) In the cases in which someone holds the myths explicitly, he understands the harm he inflicts, but believes that he is entitled to the act.<sup>14</sup> He ignores the passiveness or pain of the woman. This person is likely to use rape myths in a justificatory way, i.e., as a justification that what he did, was either not “really” rape or that the woman “asked for it.”<sup>15</sup>

Consider next cases in which rape myths are implicitly held. In such cases the myths of entitlement is not weighed stronger than the pain of the woman, but the pain of the woman cannot be made intelligible by the person who holds the myths. The implicit myths result in an epistemic lack or distortion such that the perpetrator lacks the capacity to understand the act in question as an act of sexualized violence.<sup>16</sup> While in the explicit case the belief of entitlement trumps the harm inflicted, in the implicit case the epistemic lack brings about an unintelligibility of the act in question. A person who holds rape myths implicitly cannot use them in a justificatory way—he is not aware of their justificatory potential—rather, he uses them in an explanatory way, as part of

**13** | Neither list should be understood as exhaustive.

**14** | Note that there are cases in which the line between explicitly and implicitly held rape myths is blurred. For example, a strong belief in male entitlement can lead to the belief that the woman “really wants it”.

**15** | Using myths as a justification serves to legitimate the act in question and “explains away” the fact that the act is rape. Importantly, the myths are sometimes used as justification even in cases in which the perpetrator does not believe in the myth, but uses it knowing that it is dominant and often seen as an excuse. For instance, lawyers sometimes advise their clients to say that they believe in one of the myths listed above knowing that they are false, but also knowing that they can serve as an excuse.

**16** | I say more about these cases in the last chapter of the book.

his narrative of what happened. Hence, he takes it as a descriptive fact that when she said “no,” she actually meant “yes.”

Rape myths are not only commonly held by perpetrators (and men in general), but often victims (and women in general) believe in these myths as much as men. If they are held by victims or women, they can also have two functions. They can, on the one hand, serve as an explanation of what happened (“it wasn’t really rape”) or, they can, on the other hand, serve as a justification for the perpetrator’s behavior by placing the blame on the woman herself (“I asked for it.”). In both functions they can work as psychological comfort, e.g., “if women bring rape upon themselves, then as long as I dress and behave in a way that is not ‘sexually teasing’ nothing like that will happen to me.” This allows women to act in ways that would otherwise feel too “risky”, e.g., to walk home alone in the dark, get wasted in the company of men, etc. Often, women do this consciously or unconsciously to restore their sense of feeling safe. If rape has to do with their own behavior or the specific context they brought themselves into, then avoiding this behavior or that context will keep them safe. Otherwise, they would need to acknowledge the devastating fact that rape can happen to them even if they take all the precautions against it. This is also a strategic move that victims of rape employ to regain a sense of trust in the world and others. In this sense, rape myths can serve healing processes. (cf. Freedman 2014: Chapter 3) But rape myths can also hinder a woman’s understanding of what happened. Peterson and Muehlenhard interviewed a group of women who had been raped and found that some of them were victims of what Peterson and Muehlenhard called ‘unacknowledged rape.’ They described the event that happened to them in ways that fit the legal definition of rape but were unwilling to apply the term ‘rape’ to what they experienced. Peterson and Muehlenhard found that women who were victims of rape but did not apply the term ‘rape’ to what happened, were more likely to accept rape myths and were raped in ways that matched the rape myths they accepted. They were unable to conceptualize their own experience as one of rape. (Peterson and Muehlenhard 2004)

### **Rape Myths: Their Prevalance and their Implications**

Rape myths reflect societal attitudes—a sexist society creates and maintains rape myths. Research has shown that rape myths are widely accepted in more or less all social groups in the Western world and that they are related to the proclivity of sexualized violence.<sup>17</sup> (cf. Desai et al. 2008; Edwards et al. 2011; Loh

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**17** | Rape myths acceptance is measured with the following scales: the Rape Myths Acceptance Scale (RMAS) is one of the widely used scales measuring rape myths, attitudes towards adversarial sex, and acceptance or interpersonal violence. Scores for self-reporting likelihood of committing rape correlate with RMAS scores. (cf. Burt 1980) The Rape Empathy Scale (RES) measures empathy towards rape victims and

et al. 2005; Lonsway and Fitzgerald 1994; Payne et al. 1999) People rely on such myths in their understanding of what constitutes rape. (cf. Edwards et al. 2011: 761) Lonsway and Fitzgerald (1994) hold that between 25 % and 35 % of male and female respondents agree with the majority of rape myths.<sup>18</sup> Buddie and Miller (2001) hold that 66 % of college men and women endorse rape myths. Iconis (2008) found similar results in her literature review concerning the acceptance of rape myths in college students. Basile (2002), Payne et al. (1999) and Feild (1978) also made comparable conclusions when using non-college samples.

Some rape myths are more widespread than others. 40.2 % of 3210 random participants of a telephone interview believed that accusations of rape are false. (McGee et al. 2011) Data, however, suggests that the number of false reporting is between 8 % and 0.2 %. (Kelly et al. 2005) 40 % of the participants believed that rape happens because of overwhelming sexual desire, even though the overwhelming motivation for rape is a desire for power. 29.2 % believed that victims hold some responsibility (e.g., they invited the rape with a short skirt). (McGee et al. 2011) Warshaw (1994: 120) cites research on the proportion of college boys agreeing to the statement that it was ‘okay’ to force a date to engage in sex if she either ‘gets him sexually excited,’ ‘has led him on,’ or ‘is going to have sex with him and changes her mind.’ 51 percent agreed to the first statement and 54 percent agreed to the second and third. (cf. Goodchilds et al. 1988) Sociologist Amy Dellinger Page (2011) evaluated seven police and sheriff’s departments in the United States on rape myth acceptance:

The “rape myth acceptance” scale measured agreement with statements like “Any victim can resist a rapist if he or she really wants to,” “Women who dress provocatively are inviting sex,” “Many women secretly wish to be raped,” “A woman is responsible for preventing her own rape,” “Any man can be raped,” and the like, on a five-point scale: strongly disagree, disagree, neither disagree nor agree, agree, and strongly agree. For the most part, the officers responding didn’t fall for the most egregious rape myths. [But] 16.6 percent agreed and 6.1 percent strongly agreed with the statement “Any

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perpetrators in heterosexual rape scenarios. (cf. Deitz et al. 1982, 1984) The Illinois Rape Myth Acceptance Scale (IRMAS) scores Sex-Role Stereotyping Scale, Sexism Scale, Adversarial Sexual Belief Scale, Adversarial Heterosexual Beliefs Scale, Hostility Towards Women Scale, Acceptance of Interpersonal Violence Scale, Attitudes Toward Violence Scale. (cf. Payne et al. 1999)

**18** | Suarez and Gadalla (2010) found that in general men are more likely to endorse rape myths than women. (cf. Anderson 2004a; Anderson et al. 1997; Earnshaw et al. 2011) And, individuals who hold negative attitudes towards women (or other groups, e.g., other races, sexual orientation, class, age) are more accepting of rape myths. (Anderson et al. 1997; Suarez and Gadalla 2010)

victim can resist a rapist if he or she really wants to.” So that’s 22.7 percent of cops who apparently think victims just didn’t want not to be raped badly enough? That they could have gotten away if they’d really tried? (Harding 2015: 85-6, emphasis in original)

And those are the people trained in investigating crimes like rape. Because police officers rely on certain myths, they are unable to investigate or process rape charges if the case reflected a mismatch with what they believed rape to be. Even more disturbing, Schwartz (2010) found that many police officers thought a high percentage of rape reports are false—leading them to not investigate further. 27.3 % of the officers reported that their gut estimate is that between 0 % and 10 % of rape reports were false. A similar number of police officers, 28.8 %, said that up to 50 % of rape reports are false, and some police officers even believed 95 %-100 % of reports to be false. This is in line with a 2010 investigation of FBI data in the Baltimore Sun that found that over the last 40 years, more than 30 % of investigated cases were deemed unfounded and 40 % of emergency calls about rape in Baltimore were not investigated at all. (Fenton 2010; Harding 2015) In other words, in at least 30 % of rape cases the false beliefs of police officers bring it about that investigations do not even continue because the cases are “unfounded.” And in about 40 % of emergency cases the victims do not get any help, because the police officers cannot even bring themselves to believe that a person is actually in need. The false beliefs also lead to uninvestigated rape kits, e.g., rape kits that are taken from the victims but never tested as part of the investigation.<sup>19</sup> (cf. Atassi and Dissell 2013; CBS 2015; Reilly 2016; Sainz 2014; Werner 2015)

Rape myths have severe implications for those harmed by acts of sexualized violence. Jurors in rape case trials are more likely to find the defendant innocent when they accept rape myths, police officers are more likely to stop investigations in rape cases when they accept rape myths, and rape victims are more likely to blame themselves for the rape or are unable to acknowledge the act as an act of rape when they accept rape myths (to name just a few). The BPP School of Health and Professional Development issued an investigation into whether rape case jurors are influenced by rape myths. Rape case jurors have the task of deciding whether a defendant is innocent or guilty. In 2011 and 2012 the conviction rate for rape cases was 62.5 %, in 2007 it was 58 %. However, for drug offences the conviction rate is 91.6 % and the overall rate is 83.5 %. This is far higher than the overall conviction rate for sex offences (60.4 %). Why? The lack of physical or objective evidence in cases of rape means that the jurors have to assess whether they believe the defendant or the complainant. Research has shown that judgement of credibility is overwhelmingly based on

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**19** | Rape kits are used by medical personnel to gather and preserve physical evidence off the body of rape victims.

personal biases and attitudes rather than on the testimony of the witnesses. For example, beliefs about how a “real” rape victim looks and behaves greatly influences judgements of credibility. Hence, most rape cases are not judged on the basis of evidence or testimony but on the basis of beliefs shaped by rape myths. (cf. Burrowes 2012: 3-4)

### **Acceptance of Rape Myths**

Rape myths can be especially problematic in two ways: (1) In cases when other evidence or information is sparse, we are more likely to use so-called indicator properties to help with our evaluations. And, (2) in cases when rape myths are the most salient explanation, we ignore other explanations. Consider (1) first. To navigate social practices and the social world in general, we rely on broad schemas. Schemas help us to group things into categories and enable us to quickly respond to things in the world. For example, the schema that tigers are dangerous stops me from climbing over the fence into the tiger pit in the zoo. While some schemas are helpful, others are problematic and guide us according to racist, sexist, or ableist (to name only a few) beliefs and attitudes. The less schemas about something are available for us to make a judgement, the more we resort to indicator properties that are not directly linked to the object under scrutiny. For example, if I do not have a schema according to which tigers are dangerous, I might resort to the fact that the fence is very high in the zoo to conclude that they are dangerous. Sometimes we fare well with this strategy, other times we do not. Indicator properties allow us to make judgements in situations where further information is lacking. The less access I have to indicator properties that actually concern the object or situation at hand, the more likely it is that I resort to broader schemas and indicators to evaluate the situation. Indicator properties can be influenced by prejudicial stereotypes (cf. Fricker 2007; Hutchison 2013) or rape myths that implicitly convey false ideas of what rape is or about women’s sexuality and men’s entitlement. For example, in a case where proper consent of the woman is absent, a man might resort to indicator properties that are influenced by rape myths to judge whether the woman consents or not. He might then falsely judge her smile or her short skirt to convey sexual interest.

Consider (2) next. Often, we can give several different explanations for a single case. For example, a toddler might be screaming in the garden in front of my window either because she is hungry, or she hurt herself, or maybe she realized her father went inside, or for any other reason. Which of these is the correct explanation can be tested—even though in some cases we might never know for sure. Obviously, some explanations are more salient than others. For example, that I am writing these words because I have a deadline is a more salient explanation than the one that there is nothing I like to do better. Some explanations are the most salient ones but nevertheless false. In some contexts,

rape myths can function as the most salient explanations. The man who treats the woman's refusal as "sexual foreplay" takes the explanation that women say "no" when they mean "yes" as the most salient explanation for the situation at hand. Or rape myths can block certain explanations as unthinkable. The wife who believes that rape cannot occur in marriage will treat the explanation that her husband is stressed or overly loving as more salient than the explanation that her husband raped her. That her husband raped her is unthinkable because it is blocked by the myths that rape does not occur in marriage. In both cases, rape myths can be used according to the justificatory and descriptive function. They can justify the fact that no other explanation was available or that this was the most salient explanation and they can function as a description of what was available and most salient.

Rape myths as salient explanations boil down to an understanding of rape exclusively along the lines of physically aggravated stranger rape. Most people consistently judge an act to be an act of rape when it closely resembles the following prevailing image of rape: rape as the vicious act of a male stranger waiting in the dark to physically overpower and penetrate a young female victim against her will and her physical resistance.<sup>20</sup> For example, a case like the one that happened to Susan Brison. She writes:

On July 4, 1990, at 10:30 in the morning, I went for a walk along a peaceful-looking country road in a village outside Grenoble, France. [...] About an hour and a half later, I was lying face down in a muddy creek bed at the bottom of a dark ravine, struggling to stay alive. I had been grabbed from behind, pulled into the bushes, beaten, and sexually assaulted. (2002: 2)

The same people who do not hesitate one moment to judge Brison's case to be a case of rape find it much harder to judge cases in which the victim and the perpetrator know each other, or are in a relationship of some sort, or cases in which force and resistance are not physically aggravated.<sup>21</sup> For example, a case like this:

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**20** | Research shows that most acts of rape do not resemble this prevailing image of rape, rather most acts of rape happen in private and are committed by someone known to the victim without overwhelming force. (cf. Allison and Wrightsman 1993; Harding 2015; Warshaw 1994) Yet, the stranger rape image continues to be the most prevailing image of rape. I address this issue in Section 1.2.2.

**21** | Brison herself writes that she was believed to be a victim of rape, because of the type of assault: "Since I was assaulted by a stranger, in a 'safe' place, and was so visibly injured when I encountered the police and medical personnel, I was, throughout my hospitalization and my dealings with the police, spared the insult, suffered by so many

Adrienne had just turned thirteen. [...] Adrienne walked three miles to Mike's house, where she found him waiting in his front yard. He signaled for her to come into the house. "Don't make any noise because my parents are asleep," he said. "They'd kill me if they found us in here." So throughout the night, Adrienne remained silent.

Mike led her downstairs into the family room. Now that she was inside his house, a deep fear set in, and Adrienne panicked. In her words, "I just completely left my body." She does not know how her clothes came off. All she remembers is coming back to the intense pain of Mike ramming inside her. He was ripping her apart. She blacked out. (Anderson 2004b: 1401-2)

Because Mike and Adrienne knew each other, Mike did not use any aggravated physical violence, and Adrienne entered his house willingly, most people find this case harder to judge than a case of physically aggravated stranger rape. In other words, even though the physically aggravated stranger rape is by far the least likely to occur, it is this case that people identify quickly as an instance of rape, while other less aggravated cases give rise to doubts. (cf. Allison and Wrightsman 1993; Harding 2015; Warshaw 1994) This corresponds to research that shows that men will admit to sexually coercive behaviors and women will self-report victimization when the researchers give behavioral descriptions of acts of rape and sexual abuse instead of using the labels of 'rape' or 'sexual abuse'. (Edwards et al. 2014) By many, rape is only understood in terms of physically aggravated stranger rape.

Note that the prevailing image of rape (especially for the U.S. context) is often tinted with racist beliefs. The prevailing image of rape is physically aggravated rape by a black stranger (or by a man from another minority group). (cf. Bar On 1999; Dines 1998) America has a long history of using the image of the black rapist, who attacks white women, to legitimize lynchings and convictions.<sup>22</sup> Research, for example, shows that scenarios of date rape are more often judged as acts of rape when the man involved is black than when

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rape victims, of not being believed or of being said to have asked for the attack." (Brisson 2002: 7) This corresponds to what Henderson (1992) reports.

**22** | The Equal Justice Initiative writes in 2015: "Nearly 25 percent of the lynchings of African Americans in the South [between 1888 and 1950] were based on charges of sexual assault. The mere accusation of rape, even without the identification by the alleged victim, could arouse a lynch mob. The definition of black-on-white 'rape' in the South required no allegation of force because white institutions, laws, and most white people rejected the idea that a white woman would willingly consent to sex with an African American man." (Initiative 2015: 10) See also Harding (2015: 68-9). Note that rape is mostly an interracial crime— with the only exception being Native American women; they are targeted more often by white men than by Native American men.

he is white.<sup>23</sup> (Foley et al.1995) The most famous case being the Central Park Five in 1989, where five black and Latino teenagers were arrested for the rape of a white woman jogger in New York's Central Park despite the complete lack of evidence. The twenty-eight-year-old jogger had been raped and beaten and was left for dead with a fractured skull, a swollen brain, and three-quarters of blood less than when she entered the park that evening. She did not remember anything, including her name. Five black and Latino teenagers were found nearby, arrested and convicted despite the lack of any evidence. All of them served time in prison. In 2002, a convicted serial rapist and killer confessed to the rape and his confession was backed up by DNA evidence—unlike the forced confessions of the five young men arrested in 1989.

We can now say that the salient operative concept of rape is physically aggravated stranger rape. This is problematic because it fails to capture most forms of rape. Rape myths can thus distort our understanding of what rape is in ways that are deeply problematic. In cases where rape myths are salient explanations—where they serve an explanatory function—we often adopt them unconsciously. There are many ways in which we come to adopt rape myths, here are two. First, rape myths circulate by means of everyday depictions and symbols. Rape myths are widespread in the media. We are confronted with false statements about rape on a daily basis and it is hard not to adopt these views. For example, Dolce & Gabbana as well as Calvin Klein ran billboard ads glamorizing gang rape. Suit maker Duncan Quinn directly portrays sexualized violence in his ads, as do Belvedere Vodka and the Italian fashion company Relish. Even Peta suggests in its media campaigns that it is better to be vegan and sexually violate your girlfriend (because she will enjoy it!) than not to be vegan.<sup>24</sup> T-shirt retailers make money by selling tops that read “No means no, well, maybe if I’m drunk” or less subtly “No means yes.” In 2013, Robin Thicke’s song “Blurred Lines” got played on nearly every radio station and in nearly every club; the chorus includes “I know you want it / But you’re a good girl.” (cf. Harding 2015: 12) Basically, we all grow up and live in a social world where rape myths are used for entertainment. How can we not fall for them? Drawing on work by Barkey and Koplín, Rae Langton argues that there are rapists who copy what they see in pornography. If pornography portrays a woman resisting being raped who later “comes to a shuddering orgasm” (Langton 2009: 184), then some men might be inclined to believe that women mean “yes” when they

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**23** | Research also shows that scenarios are less often judged to be cases of rape when the attacked woman is black. (cf. Foley et al. 1995) This corresponds with psychological research that shows that black rape victims are blamed more and are less likely to disclose their experiences because of particular stereotypes against black women. (cf. George and Martinez 2002)

**24** | For pictures of all of these see Green (2013).

say “no.” The same holds for general media representation of rape myths. It is through media representations such as the above, that we—unconsciously—adopt rape myths.

Second, rape myths can be adopted through our everyday language practices. Robert Stalnaker claims that the general reason for talking is to exchange information. This, Stalnaker argues, assumes a common ground.<sup>25</sup> It assumes that everyone in the conversation recognizes that information is shared and that they are in a situation of communication. The common ground then is a set of shared beliefs and the presupposition that certain beliefs are common amongst all speakers. But, according to Stalnaker, shared presuppositions are not the only thing that can be part of the common ground, certain assumptions may become a part of it as well, at least temporarily. (2002: 704) The common ground can involve more than just belief. We can accept a proposition without really believing it. We can treat it as true in a certain context (at least temporarily) and ignore the possibility that it might be false. In other words, we can have a successful conversation because we accept things in the common ground we know to be false.

Sometimes our conversations take place in a non-defective context, where all the beliefs about the common ground of the participants in the conversation are correct. Everyone presupposes the same things. However, just as we have conversations in non-defective contexts, we have them in defective contexts. In other words, not everyone’s beliefs about the common ground in the conversation are correct. Sometimes those defective contexts are not noticed by the participants of the conversation and they go on having the conversation as if the context was non-defective. Other times, someone in the conversation notices the defective context. In these cases, the participant of the conversation has two options: she can go along with the defective context for the sake of conversation or she can try to correct it. Consider Stalnaker’s example: Alice meets Bob, who is holding his baby daughter. And Alice says: “How old is he?” If Bob notices the defective context, he can now correct her. He might answer: “She is ten months old.” (Stalnaker 2002: 717-8) But if Bob just does not care whether people take his daughter to be a daughter or a son, if he simply does not care about sex differences, then he might very well just go with the defective context and say “Ten months.” This way, Alice keeps believing that Bob’s daughter is a son. Indeed, Bob’s daughter taken as a son is now part of the common ground between Bob and Alice.

What I am interested in here is similar to what Sally Haslanger picked out in her “Ideology, Generics, and Common Ground” (2011): the way in which the common ground can help us understand certain phenomena of our everyday language practices that have problematic outcomes. Let us say that someone

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25 | Compare to Grice’s *common ground status*. (1989: 65 and 274)

introduces the following rape myth into the common ground: “When women say ‘no,’ they mean ‘yes’.” He does so by way of an example: “A friend of mine, who is a girl (!), told me that women often say ‘no’ even though they want to have sex, to not appear as sluts. Thus, when women say ‘no,’ they actually mean ‘yes’”. Listening to this story, we know that there are women who might do this, but we also know that in this universal form the statement is wrong. However, for the sake of the conversation (and because we are very tired of refuting sexist beliefs constantly), we go along with it. Imagine further, that the group of conversing people does not just consist of us and the storyteller, but of two more persons who do not know anything about rape myths. They do not question what is said because once the statement is introduced into the common ground and no one refutes it, they believe it to be true. They just adopted a rape myth. How we get new information into the common ground of course depends on the specific conversation. However, there is social pressure to stick to the general conventions that we have for successful communication. (Haslanger 2012: 457) That is, there is pressure to conform to the common ground of those with whom we are in conversation, as seen in our hypothetical example. This is only one piece of the puzzle. But it shows how seemingly insignificant statements that are not blocked from entering the common ground of the conversation, can produce and reproduce rape myths.

Larry May and Robert Strikwerda provide an honest description of the way in which many male teenagers behave in groups. They write:

As teenagers, we ran in a crowd that incessantly talked about sex. [...] we would tell each other stories about our sexual exploits, stories we all secretly believed to be pure fictions. We drew strength from the camaraderie we felt during these experiences. [...] Over time, conversation turned more and more to group sex, especially forced sex with women we passed on the road. To give it its proper name, our conversation turned increasingly to rape. [...] Only much later in life did we think that there was anything wrong, morally, socially, or politically, with what went on in that group of adolescents who seemed so ready to engage in rape. Only later still did we wonder whether we shared in responsibility for the rapes that are perpetrated by those men who had similar experiences to ours. (1994: 134)

Besides other arguments, May and Strikwerda argue that “[i]nsofar as some men, by the way they interact with other (especially younger) men, contribute to a climate in our society where rape is made more prevalent, then they are collaborators in the rape culture and for this reason share in responsibility for rapes committed in that culture.” (1994: 146) The idea is that by not blocking these stories, by not pointing out that rape is not ok, by not reminding other men that rape jokes are not funny, men contribute to a culture in which rape becomes more and more acceptable. In other words, by not blocking certain rape

stories or myths from becoming part of the common ground of a conversation, those men who failed to speak up share responsibility when someone in the group goes away thinking that rape is legitimate, tolerated, wanted, or simply “not really rape”. And while it is often not possible for women to block certain utterances from becoming part of the common ground in settings where men are dominant, the same holds for women in women only groups. To allow rape myths to enter the common ground, means to share responsibility when another woman fails to make her own experience intelligible as an experience of rape.

However, rape myths need not socially circulate in a way that makes them unquestionable.<sup>26</sup> In the aforementioned conversation, two listeners adopted rape myths because they could not make them out to be false, but we were part of the conversation as well and we knew them to be false yet did not question them in this particular case. Imagine that there was another person present who also knew them to be false but decided not to say anything because they serve a useful function for him. He can use them to excuse his sexist behavior towards women. This person knows better but actively chooses to accept rape myths. In cases where rape myths are accessible explanations but other explanations are also available—that is, in cases where they serve a justificatory function—we have to explain their adoption in different ways. Part of the reason why they are accepted is because they serve as an excuse. We can then say that they are adopted knowingly. Yet, once they enter our ways of seeing the world, the calculated acceptance of rape myths can become blurred such that we forget they are not the most salient explanation but only one false explanation of many.

### 1.2.3 Institutional Mismatches

To briefly recap, rape myths reflect societal attitudes.<sup>27</sup> They contribute to sexualized violence being (re-)produced, perpetuated and justified, and they permeate current social institutions. (cf. Edwards et al. 2011) And rape myths have problematic consequences. We can now say that the dominant operative concept of rape is distorted by rape myths—it is indeed because of rape myths in these cases that there is a mismatch between the manifest concept (the legal

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**26** | Whether we adopt rape myths because they are the most salient explanations available or because we choose to accept them depends on how deep we are embedded in the sexist structure of our society and whether there exist ways in which we can break out of the sexist framework. In the following (especially in Chapter 4), I argue that rape myths are ideologically salient beliefs within a sexist ideology.

**27** | I say more about how rape myths function as part of a sexist ideological system in Chapter 4.

definition) and the dominant operative concept, or, accordingly, between the forms of rape in the world and the dominant usage of the term 'rape'. Most individuals' usage is distorted by rape myths.<sup>28</sup> Let us call a mismatch between the manifest concept (as the legal or formal definition) and the dominant operative concept an 'institutional mismatch'. To illustrate, assume that the city's regulation for littering is the following: the disposal of any physical object on city grounds and outside the designated areas of disposal is an act of littering and therewith forbidden. However, every Sunday on my way home from the market I dispose a half-eaten apple in the bushes next to the bus stop. Knowing about the biological fact that my half-eaten apple will quickly start rotting and then decompose into the earth—literally vanishing—I do not take my act of disposal to be an act of littering. And, I contend that many people make similar assumptions. The operative concept of littering (say, an act is an act of littering only if I dispose of objects on city grounds that do not decompose into nature and have a lasting effect on the cleanliness of the city) therefore diverges from the manifest concept (the city's regulation for littering). This example follows the—my words—institutional reading of Haslanger's manifest concepts.

I have claimed that institutional mismatches arise when the dominant operative concept and individuals' usage of the respective term is affected by rape myths. I have then shown why it is indeed plausible to think that rape myths can have said impacts. And I have briefly suggested that institutional mismatches can have deeply problematic consequences. Let me now turn to consider how the institutional mismatch can be especially devastating in these cases. To make this more amenable, consider the following three examples of such mismatches in regard to rape. In each example, individuals of a given

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**28** | It need not necessarily be the case that the operative concept is the one that is distorted. There are lots of cases in which our manifest concepts rely on sexist, racist, or other discriminating beliefs and assumptions, and in which our actual usage has developed progressively. Think, for example, of feminist struggles to include marital rape in the legal definition of rape. This is why I argued above that there can be more than one operative concept in a given community. However, taking into account the research on rape myths, we can say that the most dominant operative concept is distorted by rape myths. In this section, I focus solely on distorted operative concepts. Of course, rape myths have for a long time (and in some cases still do) influenced our legal definitions (and *vice versa*). Operative concepts and manifest concepts can and do influence each other. Thus, if research shows that operative concepts are defective, then it is plausible to assume that manifest concepts are defective too (at least in some ways).

community apply the dominant operative concept, which is distorted by rape myths, without being aware of the institutional mismatch.<sup>29</sup>

### The Court Case

In 2011, juror Patrick Kirkland published a long essay about the decision to acquit New York City police officers Kenneth Moreno and Franklin L. Mata of rape charges. Kirkland was a juror for the following case: New York City police officers Moreno and Mata were called to the home of the alleged victim, because she was too intoxicated to exit a taxi. They returned to her apartment twice that night (proven by security camera footage). They tried to cover this up by placing a false 911 call to the area of the apartment in order to have a justification to go back there. Three years later in court, Moreno admitted to cuddling with the alleged victim and singing to her, while she was wearing only a bra. According to testimony, Mata waited in another room at that time. The alleged victim, on the other hand, reported that she was woken up to being penetrated by one of the police officers. In his essay, Kirkland explains how he and the other jurors came to the decision that neither one of the police officers had committed an act of rape with certainty. Their decision was based on the view that the prosecution was unable to demonstrate that the scenario in question was an act of rape instead of an act of sex. Interestingly, in his essay, Kirkland explains how he convinced another juror, juror Number Four, that there is not enough evidence that the act in question was really an act of rape. This is how he reports the scene:

“She said she woke up to being penetrated,” Four repeats.

I turn directly to Four. Hours have passed. We’ve gone in circles, and Four has seemingly made the penetration line her new mantra.

My elbows hit my knees and I speak slowly. “You do know that penetration can mean sex, right?” I ask.

I can hear her mind racing, speeding toward the light of reason. “Yes.”  
“And you know that sex does not equal rape?”

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**29** | As I have said, one could make more fine grained distinctions between the different rape myths that affect the dominant operative concept. This would result in multiple operative concepts that are all—in one way or another—distorted by rape myths. However, I speak here of just one dominant operative concept for the sake of illustrating the problematic consequences that institutional mismatches can bring about, especially since the above discussed rape myths all essentially center around similar false assumptions.

She stares down at her notepad. “She said ... she felt the penetration.”  
(Kirkland 2011: 208-10)

Juror Number Four was right in feeling uneasy about this, but failed to express it clearly. What is beyond reach for Kirkland is the fact that rape is non-consensual sexual intercourse under New York State law and that the alleged victim could not have given consent if she was sleeping while the penetration started.<sup>30</sup> A sleeping person cannot consent to having sex. Kirkland is right that sex does not equal rape, but the dominant operative concept he relies on fails to include non-consensual sex and is therefore not in line with the legal concept. Rape according to New York State law is roughly non-consensual sexual intercourse; it is the manifest concept of rape, the institutionalized, legally manifested concept in the legal context of New York State. Juror Kirkland, on the other hand, assumed the dominant operative concept distorted by rape myths. According to the operative concept, the case of a sleeping woman being penetrated is not rape, while according to the manifest concept it is. Not only does this mismatch between the dominant operative concept and the legal manifest concept of rape result in a disrespectful attitude of Kirkland towards juror Number Four, it also falsely leads to the acquittal of Moreno and Mata.

### **The Rapist Case**

Naomi Wolf suggests that some rapists fail to understand that they have committed an act of rape; in other words, their understanding of rape is defective.<sup>31</sup> They rely on a distorted operative concept that misrepresents what rape is. Wolf says:

boys rape and girls get raped as a normal cause of events. The boys may even be unaware that what they are doing is wrong; violent sexual imagery may well have raised a generation of young men who can rape women without even knowing it. (1991: 167, emphasis in original)

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**30** | To be more precise, under New York State law, someone is guilty of first-degree rape, if “he or she engages in sexual intercourse with another person who is incapable of consent by reason of being physically helpless.” Furthermore, “physically helpless” is defined as when “a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.” (New York Penal Code Article 130, Sex Offenses)

**31** | Some anti-pornography scholars suggest a similar line of thought. Langton, for example, argues that a person who learns the rules of sex from a certain kind of pornography (namely, pornography that depicts cases of rape which magically “turn” consensual half-way through the act) “might not even recognize an attempted refusal” of a woman in real life. (Langton 2009: 58)

In David Goldie's Australian Broadcasting Commission's documentary *Without Consent* (1992), an anonymous and young rapist is interviewed who reports that the gang rapes he took part in were not rapes. The acts were committed for the sake of male camaraderie, for overpowering a woman together with mates. His view is that rape concerns only those acts in which the lack of consent is essential to the experience of the rapist. Since the lack of consent was less important than the male camaraderie in what he did, he did not participate in acts of rape. (cf. Langton 2009: 58, footnote 54)

Under Australia's common law, rape is defined as carnal knowledge of a woman against her will.<sup>32</sup> The manifest concept of rape in the legal context of Australia can roughly be described as sexual intercourse against the will of the woman. The way the respective term is used by the anonymous rapist, however, relies on the dominant operative concept and assumes that rape is sexual intercourse against the will of the woman and in which the lack of consent is essential to the experience of the rapist. This, again, amounts to a mismatch between the legal manifest concept and the usage of the term by the rapist interviewed. Furthermore, relying on the dominant operative concept makes it impossible for the rapist to judge his own acts as acts of rape.

Last but not least, sometimes problematic consequences do not result from the institutional mismatch directly, but from a distorted neighboring concept. In these cases, the dominant operative concept of rape does not result in a mismatch between the usage and the manifest concept and thus lead to highly problematic outcomes. Rather, the defective neighboring category prevents the correct application of the manifest concept. While we often have beliefs about certain things that are not essential for our understanding of the concept we employ, some beliefs nevertheless affect our understanding of the concept by blocking our correct application of that concept. In these cases, background beliefs can limit our application of the concept. They block us from applying the manifest concept at all. Rape victim is such a neighboring operative concept, as shown in the following example:

### **The Police Case**

On a Monday morning in August 2008, two Lynnwood police detectives—Sgt. Jeffrey Mason and Jerry Rittgarn—are called to a rape scene. The victim, Marie, who just turned 18, told the detectives that she was asleep in her apartment when she was awoken by a man with a knife. He tied her up, blindfolded her, gagged her, and then raped her. After he left, she managed to untie herself and

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**32** | Statutory extensions and modifications to the common law crime of rape have been made in all jurisdictions to varying degrees since this definition, see <https://www.alrc.gov.au/publications/25>. Sexual Offences/'rape'-penetrative-sexual-offence; accessed September 7, 2017.

call for help. She could not offer many details, but believed that the man wore a condom when he raped her, was white, and wore a gray sweater. She could not say how long the attack had lasted. Throughout her testimony and the police's inspection of her apartment, Marie appeared calm and focused. (Armstrong and Miller 2015) For someone, like Sgt. Jeffrey Mason and Jerry Rittgarn, who relies on a concept of rape victim as being hysterical or showing clear signs of physical abuse, Marie simply did not appear to be a rape victim.

Members of the police force commonly hold assumptions about what rape victims look like and how they behave. (cf. Allison and Wrightsman 1993; Harding 2015) They are indeed so common that by 2008 specialists had developed protocols to deal with the challenges rape cases often brought: "These guidelines, available to all police departments, detailed common missteps. Investigators, one guide advised, should not assume that a true victim will be hysterical rather than calm; able to show clear signs of physical injury; and certain of every detail. Some victims confuse fine points or even recant. Nor should the police get lost in stereotypes—believing, for example, that an adult victim will be more believable than an adolescent." (Armstrong and Miller 2015) Sgt. Jeffrey Mason and Jerry Rittgarn had certain assumptions of what rape victims are like, assumptions that were not in line with Marie's behavior. These assumptions led them to distrust her—despite the evidence that was found in her home and on her body. Detectives found the rear sliding glass door unlocked and slightly ajar in Marie's apartment. They discovered that the railing of the back porch was covered with dirt, except for one part (as if someone recently climbed over), they also found a knife from Marie's kitchen next to the bed, a shoestring on the bed, and a second shoestring tied to a pair of underwear (used for blindfolding and gagging Marie) in the apartment. They sent Marie to the hospital for sexual assault examination. The medical report noted abrasions to Marie's wrists and her vagina. However, the report also stated that Marie was in no acute distress. (Armstrong and Miller 2015) Besides all available evidence, the detectives decided not to believe Marie and dismissed the case.<sup>33</sup>

Marie was attacked in the jurisdiction of Washington. Under Washington State Legislature, rape in the first degree is defined as:

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**33** | See Armstrong and Miller (2015) for the whole story: The detectives not only disbelieved Marie and dismissed the case, they pressured her to admit that she was lying to seek attention and charged her with filing a false report, punishable by up to a year in prison. The rapist who had attacked Marie was a serial rapist, who attacked at least 28 women in total. Had Mason and Rittgarn believed Marie, it is likely that they could have caught him earlier and could have prevented the rapes of the five victims that came after Marie's attack.

A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory: (a) uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or (b) kidnaps the victim; or (c) inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or (d) feloniously enters into the building or vehicle where the victim is situated.<sup>34</sup>

Marie's attacker engaged in sexual intercourse with her by forcible compulsion (she was blindfolded, gagged, and tied up), he used a deadly weapon (a knife from Marie's kitchen), and he entered her apartment feloniously. Only one of these features must be in place to define the act as rape in the first degree. According to the manifest concept, Marie was raped. However, Mason's and Rittgar's operative concept of rape victim deviated from Marie. It affected their thinking insofar as they failed to apply the legal concept of rape, but instead judged that someone like Marie could not have been raped because she did not act like a rape victim, according to their understanding of how a rape victim is supposed to act. Their operative concept of rape might have been in line with the manifest concept, yet they never even applied their concept of rape to the scene at hand, because the neighboring concept of rape victim blocked them from doing so. This had serious consequences for Marie.

The examples show that the dominant operative concept—the dominant usage of the concept within a community affected by rape myths—and the manifest concepts do not necessarily match.<sup>35</sup> To be more precise, they show that even when we think that the concept we apply is in line with the legal or institutional concept in the specific context, this is not always the case. And the dominant operative concept—the actual usage of the concept—is distorted by rape myths. As we have seen, this results in problematic consequences; individuals who rely on the dominant operative concept are more likely to commit acts of rape, are less likely to see what happens to them or others as

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**34** | See <http://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.040>; accessed July 13, 2016.

**35** | One could argue that while rape myths are problematic beliefs, they are not *part* of the concept in the way I describe it here. That is, they are not essential to the concept and can be discarded, for example, when we pay closer attention to the phenomenon. According to this explanation, the officers, jurors, and the rapist are merely careless in their application of the manifest concept. However, I think this does not fit well with the research that police officers—despite the education about the law they have—use ‘rape’ drastically different than what the legal definition states. Hence, I think that it is not exaggerated to say that rape myths can affect our usage in ways that block the application of the manifest concept and leave us with an operative concept that is different to the manifest one without us being aware of this difference.

acts of rape, and in the case of officials, are less likely to process or judge the act in question as one of rape.

I have shown that the concept of rape is contested, but that despite the contestation—the multiple operative concepts in one community—the dominant operative concept of rape is distorted by rape myths and not in line with the formal or legal definition. I have furthermore argued that this can have problematic consequences. The dominant operative concept exclusively tracks physically aggravated stranger rape and thus fails to track the various forms of rape that exist in the world. In the following section, I have a look at how other philosophers account for the concept of rape while at the same time acknowledging that it is contested. I focus in particular on the following question: Given that rape is contested, should we take one step further and say that it is essentially contested, and if so, does this imply that there is no use in cleaning up the concept and providing a theory of rape? In the end of Section 1.3, I argue that this would be a rash decision and that, instead, we need to ameliorate the concept such that it captures more adequately the phenomenon of rape as it occurs in the world and thus counter the distorted dominant operative concept—which I turn to in Chapter 2 and 3.

### **1.3 ESSENTIALLY CONTESTED CONCEPTS**

A theory of rape needs to account for the contestation of the concept and the dominant but distorted operative concept. At the same time, it needs to do justice to the experiences of rape victims. Leaving things as they are is deeply problematic for the reasons sketched above, and, hence, in our theorizing we have to account for the ways in which the concept of rape is understood and for the problems this brings with it, while, at the same time, overcoming them. In the following, I focus on two theories that use the insights of contestation as a starting point to account for the concept of rape and to show its emancipatory potential, i.e., show how the contestedness of the concept can bring about a theory of rape that tracks more adequately the-real-life-phenomenon of rape.

I start with a more detailed look at a theory by Keith Burgess-Jackson and then advance to a theory by Eric Reitan. I ended the above discussion on contestation by suggesting that there is a plausible explanation why the concept of rape is prone to such debates—more so than some other concepts. The explanation is that—and this is a thought also expressed by Burgess-Jackson (1995)—different people endorse different understandings of what rape is. And each person takes their definition to be better and more adequate in describing acts of rape. This can lead to the dominant operative concept, according to which only some forms of rape are tracked, or it can—at least theoretically—lead to an operative concept such that more forms of rape are tracked than

either the manifest or the dominant operative concept or both. The latter case would be a case that has emancipatory potential in so far as it does justice to the experiences of rape victims.

Burgess-Jackson has a similar idea and provides a good starting point for a conceptual discussion about the specific character of the concept. He argues that while there are clear cases of rape and of not-rape, there is a whole range of cases between these two ends in which it is hard to judge whether an act clearly belongs to one side or the other. In other words, he thinks that the term ‘rape’ is vague because competent language users disagree on the word’s application over a range of cases. This happens because, and here Burgess-Jackson advances a claim by Robinson, “Disagreement in the use of a word by competent language users signals, or constitutes evidence of, absence of clear meaning, or what we are here understanding as vagueness.”<sup>36</sup> (Burgess-Jackson 1995: 434, emphasis in original) Thus, Burgess-Jackson submits, people disagree over the term because it is vague.<sup>37</sup> But, he also argues that the vagueness of the concept should not stop us from trying to make it more precise—in fact it can be beneficial for feminist aims. Hence, he thinks that the concept of rape is epistemically vague; the more we come to know and the better we come to know the phenomenon of rape, the more precise our definitions will be.

Burgess-Jackson makes an interesting observation: there are cases in which most competent language speakers disagree about whether they should be considered rape or unproblematic sex.<sup>38</sup> However, this alone is not a problem. We could simply say that the concept is vague in Burgess-Jackson’s sense and so we have to stipulate better definitions that capture more adequately the phenomenon of rape—a strategy which he actually seems to suggest. While this might dissolve the disagreement, it is only useful insofar as people acknowledge the gray area of rape, include cases from the gray area in the category of rape and come to a new definition. However, if, as I have argued, each person thinks that their definition is better than others, and if the dominant operative concept of rape is distorted by rape myths and thus does not expand into the gray area but assumes only physically aggravated stranger rape, then Burgess-Jackson’s

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**36** | For the original argument on general agreement of competent language users and the meaning of a word, see Robinson (1965: 113).

**37** | Note that Burgess-Jackson’s understanding of vagueness as disagreement is drastically different to most theories of vagueness. According to these, a term is vague iff it fulfills the following conditions: (a) it has borderline cases; i.e., cases where it is unclear whether the predicate applies or not; (b) it lacks well-defined extensions (or, according to Graff (2000), has fuzzy boundaries); and (c) it is susceptible to the sorites paradox. (Keefe 2000: 6-8)

**38** | And, in this sense, what Burgess-Jackson argues for is much closer to my claim of contestedness than a claim about vagueness.

strategy fails. As I show in the next section, Reitan (2001) offers a different and more radical theory. He argues that rape is an essentially contested concept.

### 1.3.1 Rape as an Essentially Contested Concept

What if the concept of rape is an “essentially contested concept”? Walter Bryce Gallie first put forward the idea of essentially contested concepts.<sup>39</sup> According to Gallie, different groups of people assign different understandings to the concept in question. Yet disclosing these different understandings and underlying theories does not end the disputes between different groups. Instead, every group in the dispute thinks of their use as the proper interpretation of the concept. And they bring forward arguments and other forms of justification to argue for their understanding. But even after hours of dispute, the different groups of people will still be convinced of their specific arguments and their understanding of the concept in question. (Gallie 1956: 168) Therefore, in Gallie’s words, essentially contested concepts are concepts “the proper use of which inevitably involves endless disputes about their proper uses on the part of their users” (1956: 169).

Eric Reitan applies the theory of essentially contested concepts to the concept of rape. Similar to Burgess-Jackson, his project is motivated by the public controversy over the definition of rape between advocates of its traditional understanding and their feminist critics. And, again, similar to Burgess-Jackson, he starts from the assumption that “[r]ape is a [...] word laden with emotive and evaluative significance” (Reitan 2001: 43). To Reitan, whenever we name a sexual act ‘rape’ we “attach to it the harshest sort of condemnation” (2001: 43). However, while Burgess-Jackson is concerned with feminist re-definitions of rape as a vague concept, that is, the extension of the concept of rape to cases that fall in the borderline area, Reitan makes a stronger claim. He argues that feminists do not extend the meaning of ‘rape’ to capture cases that previously fell into the borderline area so much as they create the very idea that there is a borderline area. (2001: 45) He is thus not concerned with the re-definition of what already fell into the borderline area of a vague concept, but with a new definition such that it includes acts that lie outside of the borderline area. And, according to Reitan, to provide such a new definition is acceptable

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**39** | Note that MacIntyre holds a slightly different theory about essentially contested concepts. He argues that for some concepts we cannot give conditions that determine the application of the concept in question but that we can nevertheless behave as *if* there were such conditions. However, there are a few cases in which we cannot even apply the concept in the *as if* sense, i.e., there are cases in which we even debate the paradigmatic cases of the concept. According to MacIntyre, these concepts are essentially contested. (1973: 2)

because the concept of rape is not merely vague but essentially contested in the sense Gallie argues for. In short, Reitan's argument is: the term 'rape' has powerful appraisive meaning, and because of this, any definition of rape has normative significance.<sup>40</sup> Rigid definitions of rape exclude some contemporary understandings, e.g., those of feminists. Excluding those understandings silences some moral perspectives by definition; this is problematic. Thus, we need to understand the concept of rape not in terms of rigid definitions, but in other ways. Understanding rape as an essentially contested concept allows sufficient flexibility (for open moral discourse), but preserves the core meaning which frames the discourse. (Reitan 2001: 53-4)

Let me spell out in more detail how Gallie's account of essentially contested concepts works and how it is used by Reitan for the concept of rape. Gallie argues that some concepts are intensionally complex. It is not worthwhile to try to capture them by one general definition, but rather they are adequately captured by a number of competing characterizations. Further, these competing characterizations are unified by a common appraisive meaning and a shared set of complex paradigms. A paradigm is an exemplar of the case in question such that everyone agrees that it falls within the concept. For example, football is a paradigm case of the concept of sport simply because everyone agrees that it is a kind of sport. Nobody would contest that football is a sport, in comparison to ping-pong; some people might think that ping-pong is a leisure activity but not a sport. The intentional complexity originates from the fact that the concepts are taken to differ according to whatever elements of the paradigms are considered most fundamental for determining the term's extension. (Gallie 1956)

Reitan's argument that rape is an essentially contested concept relies on the following conditions<sup>41</sup>: (a) all of the objects falling within the concept's extension have a common value judgement attached to them; (b) this appraisal (common value judgement) results from the complex set of characteristics that the object

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**40** | Similar arguments are brought forward for the term 'racism'. Blum (2002) argues that racism is a term of moral appraisal—it has an expressive content that includes condemnation—and that the more insight we gain about the morality of racial wrongdoing, the more we shift the object of the concept. A good summary of this view and an insightful critique of it is given by Shelby (2014). Indeed, much of what Shelby argues for in regard to racism is similar to the approach that I take in this book. I similarly argue that political philosophy and structural analysis of the social institutions have primacy over the moral debates in normative analyses of rape and that conceptualizing rape as part of an ideology helps to see what is problematic about it. See my Chapters 3 and 4.

**41** | These conditions broadly mirror the necessary conditions that Gallie (1956: 172 and 180) specifies for essentially contested concepts.

in question has (these characteristics appear to varying degrees); (c) not any characteristic is legitimate (the characteristics are taken from the paradigm cases); (d) the appraisal does not have to be positive, but can be of a negative nature. (Reitan 2001: 48-51) According to these criteria, the concept of rape is an essentially contested concept. First, the concept of rape has a strong appraisive character. People react with moral disgust and general condemnation towards the crime of rape.<sup>42</sup> Second, there are clear paradigm cases. And paradigm cases are understood here (in line with Gallie) as cases that everyone agrees to fall under the concept in question. Reitan takes the following to be the strongest paradigm: “a stranger using physical force to overpower and vaginally penetrate a resisting woman” (2001: 49). In other words, no one would suggest that the case of physically aggravated stranger rape is not a case of rape. Third, the paradigms have a complex array of characteristics. They display a whole range of characteristics. In the case of the physically aggravated stranger rape, possible features are physical violence, penetration, control, lack of consent, coercion, resistance, and so on. Fourth and finally, disputes about the nature of the concept of rape result because different theorists emphasize different aspects of the paradigm as essential conditions for something to fall within the scope of the concept. Although there is agreement about the paradigm belonging to the concept, there is disagreement about why that is the case. (Reitan 2001: 48) For example, while traditionalists stress the importance of physical violence, force, and penetration as essential features of acts of rape, feminists stress the importance of lack of consent and control as essential features. Thus, while both feminists and traditionalists agree that the paradigm case of physically aggravated stranger rape is an instance of rape, they disagree why this is the case. Since different groups regard different characteristics as essential, they take different acts to fall under the concept. In other words, while they agree that physically aggravated stranger rape is an instance of rape, feminists—by stressing consent as an essential feature—take it that non-coercive forms of date rape are also rape, while traditionalists disagree on this. Furthermore, Reitan argues that the (feminist) debate determines the borderline area by highlighting characteristics of the paradigm case that extend the concept of rape to include non-coercive forms of rape. If the borderline area is indeed determined by feminist accounts, then a rigid definition excludes these borderline areas and therewith excludes contemporary understandings. Thus, according to Reitan, mapping the concept of rape in the form of essentially contested concepts allows us to include borderline cases that would otherwise be excluded. (Reitan 2001: 51-7)

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**42** | According to Reitan, the first to suggest so was Garver (1988). Yet I have argued that often people only do so when it comes to physically aggravated stranger rape and not when it comes to other forms of rape. I say more about this in Chapter 4.

### 1.3.2 Contesting Essentially Contested Concepts

Understanding the concept of rape as essentially contested allows us to include instances that were previously disregarded. However, accounting for rape in these ways faces at least the following three problems: (1) The view rests on the specific paradigm case of physically aggravated stranger rape. This is by itself problematic for the concept of rape and, furthermore, excludes certain instances from the concept of rape that we, as feminists, would want to include. (2) Not everyone has the same power or social standing that allows for their claims to be taken seriously. However, in order to claim that certain contested characteristics are essential and to have one's word count as valid assumes a certain social standing. (3) Reitan (as well as Gallie) rely on a view of semantic internalism when it comes to essentially contested concepts. That is, according to them, a concept is either contested or its meaning is "in the head". However, taking seriously the insights of semantic externalism suggests otherwise and it is, I claim, the more useful semantic theory to endorse. I will now take a more detailed look at each one of these problems.<sup>43</sup>

First, understanding rape as an essentially contested concept rests on the specific paradigm case of physically aggravated stranger rape. This is by itself problematic. Even though it is empirically true that physically aggravated stranger rape is the instance of rape accepted by nearly everyone, continuing to focus on physically aggravated stranger rape as the paradigm of rape masks much more common and subtle forms of rape. Susan Estrich writes the following about her own rape by a stranger who threatened to kill her with an ice pick:

In many respects I am a very lucky rape victim, if there can be such a thing. [...] I am lucky because everyone agrees that I was "really" raped. When I tell my story, no one doubts my status as a victim. No one suggests that I was "asking for it." No one wonders, at least out loud, if it was really my fault. No one seems to identify with the rapist. (Estrich 1987: 3)

She was believed because her attacker was a stranger with a weapon.<sup>44</sup> Endorsing physically aggravated stranger rape as the paradigm example of rape—even if

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**43** | I will here not address critiques that are brought forward against the theory of essentially contested concepts in general, but instead narrow the critiques to what is important for the specific concept of *rape*.

**44** | It would be wrong not to note that part of the reason why Susan Estrich was believed without doubt was the fact that she was white while her attacker was black. As argued before, racism is a strong factor in rape convictions and in whether we believe a victim or not.

this is the most uncontested example—strengthens the dominant operative concept of rape. Thus, the problem is not that it is false to take physically aggravated stranger rape as the paradigm in dominant meaning—in fact this is what I have argued for above. The problem is that by constructing a theory around this paradigm, we fall prey to reproducing the paradigm, even if this is not in our interest. It again becomes the focus point of analyses of rape, although it is far from actually capturing most cases of rape.

Furthermore, this view excludes certain instances from the concept of rape that we, as feminist, would want to include. Reitan's paradigm is: the stranger who uses physical force to overpower his victim and sexually penetrates her. This paradigm example displays different characteristics, e.g., physical force, sexual penetration, lack of consent, etc. While most people agree that this is an instance of rape, they disagree on why. That is, they stress different characteristics as essential for the act. Someone might, for example, say that physical force is the most essential characteristic, while another person holds that lack of consent is the most essential. Taking, for example, lack of consent as the key characteristic means that other acts with the same characteristic can be categorized as acts of rape. Thus, even though the paradigm case is rather narrow, according to Reitan, this view makes it possible to categorize acts as acts of rape on the basis of certain characteristics and therefore create a broader spectrum for what falls under the concept. However, consider the following case:

In Oregon the supervisor at a U.S. Postal Service facility called one of his subordinates into the copy-room and demanded oral sex. The woman refused at first, but she eventually complied because she feared she would be fired. Over the next several months the supervisor repeatedly summoned her to his office, discussed her work, and then demanded sex in a way that left no doubt that her performance evaluations would depend on her willingness to meet his sexual demands. (Schulhofer 1998: 12)

This case is radically different to the paradigm example of physically aggravated stranger rape—the threat is not against her life or physical well-being but leaves her a choice: submit or lose her job. However, considering that many people cannot afford to lose their job as it would mean losing housing, health care, or being unable to provide the necessary means for her kids and family, the choice she faces is not a real choice. Thus, we should be committed to the view that what happens to the U.S. Postal Service worker is rape; she submits out of fear for losing what she needs to live her life.<sup>45</sup> However, her case has not much in

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**45** | We should, of course, also be committed to the view that even if she did not fear for her job and thus what she needs to live her life, the fact that she submits under

common with the paradigm case; it hardly shares any of the characteristics.<sup>46</sup> Reitan argues that picking out certain characteristics of the paradigm case can widen the scope of what rape is in fruitful ways. However, unless one characteristic of the complex array of characteristics from the paradigm case can be found in the case at hand, the case at hand would not classify as a case of rape. One could now argue that we should define consent in a way that the U.S. Postal Service worker does not consent. Although our theory of consent should show that this case does not count as valid consent, a lot of work needs to be done to successfully make this point on the basis of the physically aggravated stranger case paradigm. The characteristic of consent that plays a role in the paradigm example is of a very different sort than the one that we should employ in the U.S. Postal Service case. But unless the kinds of consent are similar, it is hard to see how the U.S. Postal Service case exhibits the same characteristic as the paradigm case. Thus, even though Reitan is correct in arguing that his account widens the scope of what counts as rape and what does not, it still excludes acts that should not be excluded and is therefore not good enough. And while the vagueness of the concept counts as an extension from the paradigm case, according to Reitan, it is questionable whether this can really extend the scope of what counts as rape. The fact that everyone agrees on the paradigm of stranger rape shows that there is hesitation to understand rape differently. Why then should anyone who is convinced of the dominant understanding suddenly extend this understanding in the way Reitan hopes for?

Second, to be able to endorse contested characteristics like consent, as essential and to have one's word count assumes a certain social standing—a social standing in which one is taken as epistemically credible. However, not everyone is in the same social position of power and of epistemic credibility. Alcoff and Gray-Rosendale (1996: Section 1) argue that a speech act situation

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pressure is enough to make the case a case of rape. But for now, let us stick with the less controversial example.

**46** | One could reply that both cases, the physically aggravated stranger rape and the postal service facility case, are essentially about coercion and thus we can abstract from the stranger rape paradigm to other cases that involve coercion—even if to a lesser degree. While I agree that both cases are about coercion, I disagree that we can easily abstract from the way coercion is used in cases of physically aggravated stranger rape to the way it is used in a case like the one above. In fact, the problem with the dominant view of rape as exclusively about stranger rape seems to be that people fail to see that a case like the Postal service facility one is about coercion. And, even if we, as feminist philosophers, can abstract in these ways and clearly see both cases as coerced, it is questionable how this can solve the problem that many cases of rape—those that divert from the stranger rape paradigm—are unintelligible as cases of rape to the dominant understanding.

is always a normative arrangement, in which some individuals are assumed to have the authoritative status of conveying knowledge while others do not. Miranda Fricker's account of testimonial injustice expresses a similar thought: "Testimonial injustice occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word." (2007: 1) Some individuals occupy social positions that give them a credibility deficit, while others occupy positions that give them credibility excess. Fricker argues that there is a specific form of social power—identity power—which leads to a specific form of injustice. Identity power is at work when someone makes (intended or unintended) use of their specific social identity to influence the actions of someone with a different social identity. For example, in the case of gender identity power, "a man makes [...] use of his identity as a man to influence a woman's actions—for example, to make her defer to his word." (Fricker 2007: 14) Instances of testimonial injustice with respect to gender identity power are *inter alia* gaslighting or mansplaining. (cf. McKinnon 2017; Solnit 2014)

Jeremy Waldron argues that there must be a way for critical argument between the advocates of the different characteristics of the concept in question. (1985: 337) Everyone has to try to convince the others that her picked characteristic is more important than the others' characteristics and everyone has to acknowledge that everyone does this. In other words, there has to be a proper competition over the best characteristic. Unfortunately, as we have seen, some persons are better positioned to make their words count—the participants of the debate are therefore never equal. In other words, while Reitan can agree that some social positions can better shape the debate of what should count as rape—how far the extension from the paradigm should advance—he must also claim that some definitions of rape will not get uptake, will not be part of the contestation of meaning, and so on. But since Reitan explicitly proposes his theory for feminist purposes, so that we, as feminists, can widen the scope of what counts as rape, it is problematic if those feminist suggestions will not achieve uptake.

Third, Reitan relies on a view of semantic internalism when it comes to essentially contested concepts. Reitan argues that because different people have different understandings of how to define rape, it must be essentially contested. He thus ignores the view that meanings are fixed (at least partly) by something external to our mind, i.e., a view known as semantic externalism. Why does this matter? Let us have a look at Hilary Putnam's account of semantic externalism. Putnam's ideas result from a critique of the traditional theory of meaning. He thinks that the traditional theory of meaning rests on the following two unchallenged assumptions:

- Knowing the meaning of a term 'T' is just a matter of being in a certain psychological state.

- The meaning (intension) of 'T' determines its extension in the sense that sameness of intension entails sameness of extension. (Putnam 1975: 219-21)

It follows that if two speakers have the same set of descriptions in mind when they think of rape, then the term used by them must have the same meaning and the same extension. However, Putnam argues that the descriptions of natural kind terms associated by ordinary speakers fail to determine meaning because they fail to provide necessary and sufficient conditions for the application of the term in question.<sup>47</sup> This shows that the psychological state of the speaker by itself does not determine the extension of the term 'rape.' Putnam rejects (i) and instead proposes the thesis of foundational externalism:

(FE) For all natural kind terms 'T', and all meaning M, the totality of facts that determine that 'T' expresses M include external facts. (cf. Wikforss 2008: 161)

This is problematic for Reitan. If we believe that meaning is indeed internal to our minds, then Reitan is right in stating that whenever we cannot give a proper a priori conceptual analysis that results in a universal concept we must be confronted with an essentially contested concept. However, if we think that the external world contributes to meaning, then there are more alternatives to meaning in terms of a priori conceptual analysis or essential contestability. If we rely on semantic internalism for giving an a priori analysis of rape, then the fact that 'rape' means rape is determined entirely by internal facts.<sup>48</sup> Two persons, who are in the same state of mind have a specific set of descriptions that they associate with the term 'rape.' These descriptions function individually as necessary and jointly as sufficient conditions for an act to be an act of rape. Therefore, all people who are in the same state of mind must have the same meaning and extension for the term in question. Whenever this is not the case and the meaning and extension differ—although the people use the same term—Reitan is correct in assuming that the concept is essentially contested. If, however, we rely on semantic externalism for giving a conceptual analysis of rape, then it can very well be the case that two individuals have a different set of descriptions that they associate with the term 'rape', without it being the case that rape is essentially contested.

A related point is made by John Gray. According to him, marking a concept as essentially contested can only be possible on the basis of exact knowledge

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**47** | I will here not provide an argument for whether what is here said for natural kind terms fits the phenomenon of 'rape' but instead refer to Haslanger's discussion of natural and social kind terms and semantic externalism. (Haslanger 2012: 394-8)

**48** | I follow Wikforss (2008) and assume that internal factors are the underlying physical nature (the microphysical structure of the object in question).

of the sociological and/or historical context in which the concept was and is used. (1977: 336) Without such knowledge we cannot distinguish between essentially contested concepts and confused uses of concepts. Further, if rational arguments show the inadequacy of certain views about the concept in question, we should not judge the concept to be essentially contested. Rather, rival uses then “express conflicting moral and political commitments” (Gray 1977: 334) but reason can arbitrate between them. Nevertheless, I think that there are some valuable insights to be found in Reitan’s ideas of contestability of the concept of rape. On a descriptive level, it is (as shown before) indeed the case that the concept is contested. And on a normative level, it should be the case that the concept can be open for changes and critiques. Since, following Reitan, if it is not open for changes, it excludes valuable normative insights of feminists, for example. Guided by the idea of contestability, I propose my own theory of how to understand the concept of rape in the next chapter.

The first half of the chapter was concerned with the dominant working understanding of the concept of rape and how our use of the term matters, since it can have problematic consequences. With the help of examples, I have argued that the concept is contested. Hardly anyone is in agreement as to how to understand the concept best. I have then shown how the actual usage of ‘rape’ can differ from its formal definition—and the various forms that rape can take in the world. I have illustrated this phenomenon with the help of the institutionalized reading of Haslanger’s distinction between operative and manifest concepts. Furthermore, I have shown that the dominant operative concept that many individuals rely on is distorted by so-called rape myths and that this has deeply problematic consequences for victims of rape. In the second half of the chapter, I have focused on the specific characteristic of the concept. I have argued against Reitan’s view that the concept is essentially contested but concluded that there are fruitful insights in Reitan’s account: *de facto* the concept is contested. And this could—at least theoretically—be fruitful for feminist endeavors to change the dominant understanding of the concept.

# Chapter 2:

## Rape as a Cluster Concept

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Chapter 2 develops the type of conceptual analysis that promises to capture all relevant forms of rape: a conceptual cluster-model. The cluster-model is developed through a critical discussion of multiple-realizability, which is dismissed, and a discussion of Wittgensteinian family resemblance, for which problems are identified but which is eventually embraced. In the final sections of the chapter, it is argued that even the cluster model version of conceptual analysis stands in need of a more complex social theory of rape as a supplement, and proposes five desiderata that such a theory would have to satisfy.

### 2.1 INTRODUCTION

In the last chapter, I analyzed the use of the term ‘rape’ and its problematic consequences. I argued that the concept of rape is contested and that despite the several distinct working understandings of it, the dominant operative concept is influenced by so-called rape myths. Thus, while the concept’s contestedness can be fruitful for an emancipatory understanding of the concept, we need to be attentive to how it can also lead to deeply problematic consequences. This chapter starts from the insight that the dominant working understanding of rape does not capture most forms of rape as they exist in the world. I therefore propose a conceptual analysis that better tracks the various forms of rape and can thus bring about a conceptual change of the working understanding of rape. My modest aim in this chapter is to provide a broader understanding of the concept.<sup>1</sup> The proper work of this chapter is to lay out the necessary conditions for a more adequate theory of rape that can ultimately ground a conceptual analysis. First, in Section 2.2, I briefly consider whether we can solve the con-

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**1** | I do not claim that my proposal is the only way we can come to a broader understanding. I aim to show that it is *one* way of doing so.

ceptual problems that the concept of rape faces with the help of an account of multiple realizability. I argue that we cannot. I then turn to an obvious choice: cluster theories. After giving a short introduction to cluster theories, I focus on probably the most famous example of a cluster theory: Ludwig Wittgenstein's family resemblance. However, Wittgenstein's family resemblance account faces at least two problems: what I call, (1) the universal resemblance problem, and (2) the identification problem. (Section 2.2.2) I argue that an idea from Berys Gaut can solve the aforementioned problems of Wittgenstein's theory—at least when it comes to the concept of rape. (Section 2.3) Furthermore, I contend that the idea of family resemblance has *prima facie* plausibility since it has been used effectively for other feminist analyses. I take a closer look at two of these analyses that both concern the concept of woman: the first account is by Marilyn Frye (Section 2.3.1) and the second by Natalie Stoljar (Section 2.3.2). I then propose a way to use these models for a cluster account of rape that tracks the various existing forms of rape and can, thus, enrich our understanding of it. However, in the final section, I raise some challenges that the proposed cluster account faces: (1) it lacks practicability (Section 2.4.1), and (2) it is not normatively adequate (Section 2.4.2). I conclude that a conceptual analysis of rape has to be grounded in a complex social theory of rape in order to adequately track the phenomenon of rape. I end by stipulating five desiderata that a theory of rape needs to fulfill in order to function as a basis for a conceptual analysis. (Section 2.4.3) These desiderata guide the discussion in the chapters to follow.

## 2.2 CLUSTER THEORY

I have argued that there are several distinct working understandings of the concept of rape—the concept is contested—and that the dominant operative concept is distorted by rape myths. Furthermore, I have shown that the dominant operative concept fails to track most forms of rape and that this has deeply problematic consequences. A proper conceptual analysis should be able to track all forms of rape as they appear in the world. In the following, I propose one strategy for analyzing the concept that looks promising in this regard: understanding the concept of rape as a cluster concept. Before I do so, I briefly turn to another obvious alternative: if the aim of the analysis is to account for rape in a way that it tracks the various ways it is realized in the world, then a definition that is multiply realizable suggests itself.

### 2.2.1 On Multiple Realizability

One way to conceptually analyze rape would be to give a unified account of rape that is multiply realizable. In its most basic form, the idea of multiple realizability stems from Hilary Putnam; it is the idea that high-level properties can be “multiply realizable” at the lower level. (Putnam 1967) Take Brian Epstein’s discussion of the legal fact of murder as an illustration:

Consider, for instance, the fact Whitey Bulger is a first-degree murderer. (In case you’re not from Boston, Whitey Bulger is the famed local mobster who was recently captured and convicted, after a sixteen-year manhunt.) This legal fact is the case because of things Whitey Bulger actually did. [...] Massachusetts law contains specific conditions for having the property being a first-degree murderer: if someone kills a person with deliberately premeditated malice aforethought, the killer is a first-degree murderer. All it takes for someone to be a first-degree murderer is that the person satisfies those conditions. Since Whitey murdered several people, there are many facts that make it the case that Whitey Bulger is a first-degree murderer. Among them, for instance, is the fact Whitey Bulger killed Bucky Barrett with deliberately premeditated malice aforethought. The connection between these facts is, of course, not just happenstance. The fact that Whitey killed Bucky grounds the legal fact about Whitey: it is the metaphysical reason for Whitey being a murderer. (Epstein 2015: 31, emphasis in original)

The fact that Whitey killed Bucky grounds the legal fact that Whitey is a first-degree murderer does not tell us anything about how Whitey killed Bucky—except that he did so with deliberate premeditated malice aforethought. But this does not say whether Whitey stabbed Bucky, or shot him, or poisoned him, or strangled him, or whatever other ways there are to murder someone. Thus, the conditions for being a first-degree murderer are multiply realizable.

Now, a similar view could be taken for the concept of rape. Consider the common definition of rape as non-consensual penetrative intercourse (and let us say, for the sake of the argument, that consent is defined as verbal and affirmative). The fact that someone had sex with another person without obtaining consent would then ground the fact that it was rape. Yet, the definition of rape would be multiply realizable because any act of non-consensual sex would fall under it, such as, someone overpowers another person physically and forces her to intercourse, or someone has sex with another person who engages enthusiastically in the act, but does not verbally affirm the act, and so on.

However, while a multiply realizable unified approach to rape does account for the various instantiations in which rape as non-consensual sex can be realized, it does not account for the various degrees in which acts of rape can be realized. In the Introduction I suggested that rape is not a black-and-white phenomenon, but rather that acts can be realized in different degrees. For example,

the non-consensual act of penetration of an unconscious woman admits of a higher degree of non-consent, than the act of penetration for which affirmative consent is given but not verbally. According to a unified account that is multiply realizable (as, for example, specified above) both these acts would count as rape in the same way, that is, they are both non-consensual penetrative intercourse as long as consent is defined as verbal and affirmative. But this seems counterintuitive. One could now argue that such an unsatisfying result is due to the specific definition given. That is, if we define rape as something else than non-consensual penetrative intercourse where consent has to be verbal and affirmative, then we would not encounter the problem that both, the case of the unconscious woman and the case of the physically consenting woman, are cases of rape. While this is of course correct, it does not change the fact that any unified approach that is multiply realizable—whatever the particular definition—does not account for the degrees that forms of rape can take.<sup>2</sup> What we thus need is not only a model that can account for the various forms that rape can take, but also one that can account for the various degrees in which acts of rape can be instantiated. In the following, I propose a cluster account along the lines of resemblance. As David Armstrong writes: “resemblance admits of degrees, thus allowing for loosely held together classes, involving different degrees of resemblance and with uncertain boundaries.” (1989: 48)

### **2.2.2 Wittgenstein’s Cluster Theory**

To have a less constrained definition—one that admits of degrees—I propose that we could understand rape as a cluster concept. This way we can account for the various instances of the phenomenon of rape as well as capture the various degrees to which an act can be instantiated. However, to be able to use a cluster model as a tool to account for the phenomenon of rape, we need to understand how cluster theories work. First, I give a brief overview of what cluster theories are and then, in Section 2.2.2, consider Wittgenstein as a main representative of cluster theories. Next, I raise some general problems that Wittgenstein’s theory faces (what I call the ‘identification problem’ and the ‘universal resemblance problem’), but argue for possible solutions with respect to the concept of rape by using insights from Berys Gaut. (Section 2.3) Furthermore, a Wittgensteinian theory is *prima facie* plausible as other feminist scholars have resorted to

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**2** | Furthermore, while the lack of consent is an accurate description of cases of acquaintance rape or marital rape and intuitively captures well what goes wrong in these cases, it is less accurate when it comes to rape in war or genocidal rape. Intuitively, these cases are problematic for different reasons than for their lack of consent. In this way, a unified account that is multiply realizable is still too constrained to track the phenomenon of rape accurately.

Wittgenstein's family resemblance theory to account for conceptual problems in feminist philosophy. I present two of these views: Frye's and Stoljar's account of the concept of woman and explicate how they counter the aforementioned problems. (Section 2.3.1 and 2.3.2) In Section 2.3.3, I propose a cluster model for the concept of rape, influenced by the aforementioned approaches, which can account for various forms of rape in various degrees.

In general, cluster theories oppose the form of definition that gives individually necessary and jointly sufficient conditions to uniquely specify a concept. As David Cooper claims, the essential characteristic of a cluster theory is the possibility "to list sufficient conditions for the applicability of a cluster concept term, [and the impossibility] to list any necessary conditions for its applicability." (1972: 496) Normal definitions usually take the following form:

$$x \text{ is } F \text{ iff}_{df} x \text{ is } G, H, \text{ and } I$$

X counts as an F if and only if x has the properties G, H, and I. Cluster theories, on the other hand, can take various forms. Consider the following two examples:

$$x \text{ is } F \text{ iff}_{df} x \text{ has a sufficient number of the properties } G, H, I$$

$$x \text{ is } F \text{ iff}_{df} x \text{ has any one (or more) of the properties } G, H, I$$

In both cases, there are no necessary conditions, but each of the conditions is sufficient. In the former case, something counts as F just in case it has enough of the properties specified. In this case, one would need to further specify how many properties are sufficient for something to count as F. In the latter, only one property has to be realized for something to count as F. For example, Martha Nussbaum writes that objectification is a cluster concept insofar as "we sometimes treat any one of these features as sufficient, though more often a plurality of features is present when the term is applied." (1995: 258) Thus, any one of the seven features that she introduces (i.e., instrumentality, denial of autonomy, inertness, fungibility, violability, ownership, and denial of subjectivity) is sufficient for categorizing a behavior as objectifying, but none of them are necessary.

Berys Gaut (2000: 26-7) specifies the following criteria that concepts need in order to count as cluster concepts:

1. If all the criteria of the object are instantiated, then the object falls under the concept; the criteria are jointly sufficient for the application of the concept, but even if fewer criteria are instantiated, the object can still fall under the concept.

2. None of the criteria of the object are individually necessary for the object to fall under the concept; there is no criteria that all objects that fall under the concept must possess.

If we take (1) and (2) together, it implies that even though there are conditions that are sufficient for the application of a cluster concept, “there are no individually necessary and jointly sufficient conditions.” (Gaut 2000: 26, emphasis in original) Instead:

3. There are disjunctively necessary conditions: some of the criteria apply if an object is said to fall under the concept.

Having given a rough overview of two possible ways to think about cluster concepts and having shown some general criteria that any cluster theory has to fulfill, I now turn to Wittgenstein’s theory of family resemblance as the classical example of cluster theory. The theory of family resemblance makes use of a particular class of cluster theories, that of resemblance theories. Roughly, the idea of a resemblance theory is that all the members of a given set resemble each other along some dimension more than they resemble the things not in the set. For example, red things resemble each other along the dimension of color more than they resemble blue or yellow things. (cf. Armstrong 1989: Chapter 3) Resemblance theories are one way to use cluster theories. After giving a brief overview of Wittgenstein’s theory, I raise two general problems that his theory faces: (1) the universal resemblance problem, and (2) the identification problem.

The general thrust of Wittgenstein’s family resemblance ideas is to reject any notion of essentialism. He introduces the notion of family resemblances for the first time in *The Blue Book* when he observes “our craving for generality” (Wittgenstein 1997[1965]: 17), which can be found in more than one philosophical confusion. (cf. Pompa 1967: 63) The notion is then reintroduced and described in more detail in his *Philosophical Investigations* (2009[1953]). Here Wittgenstein criticizes common philosophical views about meaning and the nature of concepts (to mention just a few) as based on a wrong understanding of how language works. He argues “that predicates do not denote sharply circumscribed concepts, but mark family resemblances between the things labeled with the predicate” (Sluga and Stern 1996: 21). Family resemblances should here be understood as an analogy or metaphor for how particular uses of the same word are connected. Instead of dogmatically looking for one essential core of a word that determines its meaning and is common to all uses of the word, we should regard the uses of a word as “a complicated network of similarities overlapping and criss-crossing.” (Wittgenstein 2009[1953]: §66) In other words, family resemblance shows the lack of boundaries of words and

distances itself from any exactness of words. Furthermore, Wittgenstein asks us to take a non-ideal stance in regard to the question of what is common to the different uses of a word: “look and see whether there is anything common to all” (2009[1953]: §66, emphasis in original) and we will find “similarities, relationships, and whole series of them at that.” (2009[1953]: §66)

Probably the most popular defence of the notion of family resemblances is given by Renford Bambrough.<sup>3</sup> He provides the following formal understanding of the analogy: Imagine a set of objects classified by having or lacking the features ABCDE. And imagine further that there are five objects edcba “such that each of them has four of these properties and lacks the fifth, and that the missing feature is different in each of the five cases.” (Bambrough 1960: 210)

e	d	c	b	a
ABCD	ABCE	ABDE	ACDE	BCDE

If we focus on, say, edca, we see that they all have B in common, yet it is not in virtue of B that they are called by the same name. And “[e]ven if the actual instances were indefinitely numerous, and they all happened to have one or more of the features in common, it would not be in virtue of the presence of the common feature or features that they would all be rightly called by the same name, since the name also applies to possible instances that lack the feature or features.” (Bambrough 1960: 210)

Bambrough here formally illustrates Wittgenstein’s idea that when we look at how we actually use words, we find that a word is used in many different ways with “many common features overlapping.” (Wittgenstein 1997[1965]: 20) And these different ways form a family; that is, “they have family likenesses which are not clearly defined.” (1997[1965]: 20) Or as José Medina expresses the very same thought: “the actual use of language cannot be encapsulated in clear-cut definitions and exact rules.” (2002: 134) There are cases in which the application of the rule of how to use a word is clear and cases in which the application is undetermined; what underlies the rule-governed use of a word can therefore not be a definition in the traditional sense. Actual usage does not have a sharp boundary, rather the meaning of some words is made of overlapping similarities.

However, Wittgenstein’s proposal is not without problems. Many philosophers find Wittgenstein’s family resemblances attractive because there are plenty of cases in which we have a hard time finding a single and definite common

**3** | Bambrough (1960) brings forward an argument that defends the notion of family resemblances as a solution to the problem of universals. For a critique of this, see Manser (1967).

property, but in which we nevertheless want to give the same name to the set of things in question. The idea of family resemblances suggests an elegant way out of that dilemma. But the idea of family resemblance faces at least two problems: (1) the universal resemblance problem, and (2) the identification problem. I will now have a look at each, respectively. First is what I call the 'universal resemblance problem'. In his critique of the notion of family resemblances, Richard Beardsmore emphasizes the lack of context in Wittgenstein's account. When Wittgenstein asks us what games have in common, he fails to provide a "context from which the common factor was to be identified." (Beardsmore 1992: 137) Yet, what is common to a set of cases must be common to them from a specific viewpoint. In the absence of a context that specifies the interlocutor's interest in, say, games (or what he would count as possessing the same characteristic), Wittgenstein's quest "to discover something that all games have in common will simply lack sense." (Beardsmore 1992: 141) Beardsmore illustrates this line of thought with the following example:

if you wonder whether modern warfare is a game, I may point to the resemblances between clay pigeon shooting and shooting at enemy soldiers, between the rules of warfare and the rules of association football, and to the fact that in both there is winning and losing. (1992: 142)

This problem can also be expressed in the following way: resemblance is a three-fold relation. Two members of a set resemble each other along some dimension and they do so more than they resemble the things outside the set. What needs to be specified is the dimension according to which the things under investigation resemble each other—thus, if we lack that dimension, then all things resemble each other in some way (inside and outside of the set). Of course, what Wittgenstein has in mind are resemblances between more than two things in ways that are not transitive. As Armstrong says: "If you resemble your sister quite closely and your sister resembles your mother quite closely, it is perfectly possible that you have no close resemblance to your mother." (1989: 40) You and your sister resemble each other in different respects than your sister and your mother do. One must build a whole network of resemblances for the things in the set. Nevertheless, each resemblance relation need to specify in what respect the things resemble each other and even within a complex network, not all resemblances can be equally relevant. Otherwise, all concepts show some resemblance with others inside and outside the set, which would not be helpful. Yet, if some resemblances are more important than others to the meaning of 'games', for example, then we end up with another problem: the identification problem.

Second what I call the 'identification problem'. Anthony Manser argues that if we decide to list characteristics of, say, the activity of being a game, then only

those characteristics that are relevant to the activity should be listed as  $C_1$  to  $C_n$ . We do not list all the properties. By listing ‘the set of properties  $C_n$  which apply to all games’, we presuppose “that games are already identified by some means or other, so that their properties or characteristics can be determined by inspection.” (Manser 1967: 213-4) Leon Pompa makes a similar point when he argues that “in general the relevant resemblances which are to explain the application of the general term cannot be established without reference to some limiting criterion which again must be logically prior to those resemblances it is to help specify.” (Pompa 1967: 66) Take the example of resemblances between family members: the concept of a family is necessarily independent and logically prior to that of the resemblances between its members. We cannot establish that  $x$  and  $y$  resemble the same family unless we know what family that is. Similarly, with concepts: we cannot say that something falls under this or that concept, unless we know what concept that is. Thus, it seems that the proposal to define concepts in terms of family resemblance does not work. (Pompa 1967: 65) The idea is that we already presuppose what  $x$  is in our quest to find criteria that describe  $x$ , and thus those criteria cannot tell us anything about  $x$ .

These problems have been addressed in a rich metaphysical literature on Wittgenstein’s family resemblance in particular (cf. Cavell 1979, 2000; Munro 2006) and resemblance nominalism in general (cf. Armstrong 1989; Bird 2003; Rodriguez-Pereyra 2002). I do not attempt to answer these issues here, but instead suggest that while they might pose problems in general, they do not do so for a cluster account of rape. Furthermore, I do not take sides in the metaphysical debate on realism and nominalism. The cluster account that I propose below should not be understood as a general argument for nominalism. Instead, for the particular question at hand—what concept tracks the various forms of rape in the world—a cluster account is attractive. Sometimes, nominalism implies the rejection of the existence of social categories, but this is not what I attempt. Instead, I here follow Stoljar and use nominalism as “the rejection of a universal” (2011: 28), that is, I deny that there is an universal that explains how the category of rape is unified. Finally, the fact that insights from Wittgenstein’s family resemblance theories have again and again proved fruitful for feminist philosophy grants *prima facie* plausibility to the use of a cluster theory for our conceptual analysis of rape. I now show why the concept of rape does not face the aforementioned problems and I look at two feminist scholars—Marilyn Frye and Natalie Stoljar—who have used Wittgensteinian accounts to explicate the concept of woman. They have found Wittgenstein’s view attractive since it can balance the following tension: on the one hand, we need a category of woman to criticize the oppression of women, but, on the other hand, we want to steer clear of essentializing categories that would exclude some women (e.g., trans\*women) from the category.

## 2.3 RECONSIDERING FAMILY RESEMBLANCES AND CLUSTERS

Both, the account given by Frye and by Stoljar seem helpful for the task at hand—conceptually analyzing rape—because both deal with similar aspects: the concept of woman is similarly contested, includes a wide range of features, and needs to account for a whole spectrum of diverse phenomena that should fall under the concept. Both Frye and Stoljar stay close to the idea of family resemblance in their cluster accounts of the concept of woman; Frye in terms of resemblance to prototypicality and Stoljar in terms of resemblance to paradigms.<sup>4</sup> Before I show in more detail how both of these accounts work, let me say a few words about why the aforementioned problems do not arise for the concept of rape.

Consider the second problem, what I have called the ‘identification problem’, first. The idea is that we cannot say that something falls under this or that concept, unless we identify what that concept is. In other words, we already presuppose what *x* is in our quest to find criteria that describe *x*, and thus those criteria cannot tell us anything about *x*. I contend that the identification problem does not pose a problem for the endeavor of conceptually analyzing rape. When we use the idea of resemblances (or any other cluster account) to shed light on the concept of rape, we do not start from zero. There already is a historically shaped debate on what ‘rape’ means or should mean, and this proposed conceptual analysis is not independent of this debate. We can therefore draw on the arguments, experiences, knowledge, and intuitions that we all have about

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**4** | Note that understanding cluster theories in terms of resemblance to paradigms or prototypes is not uncontroversial. For example, Gaut (2000, 2005) argues for an alternative view of cluster concepts in regard to the concept of *art*. He argues that any cluster account that is based on resemblance to paradigms (or prototypes, we might add) faces the identification and universal resemblance problem. To avoid these problems, according to Gaut, we should consider the meaning of proper names as part of Wittgenstein’s family resemblance notion and understand resemblance in terms of general properties (see Wittgenstein [2009 [1953]: §79]; for an explication see Searle [1967]). For critical responses to Gaut, see Adajian (2003, 2005); Davies (2004); Stecker (2000). For a defense, see Meskin (2007) and for a further account, see Weitz (1956). Furthermore, there is an interesting insight to be gained from the aforementioned problems. Consider again, Beardmore’s example of comparing warfare and football: pointing out resemblances between warfare and games works because there are such resemblances. The notion of family resemblance shows that there are indeed many neighboring categories that share features with the specific category we are interested in. This, however, should not make us withdraw from the notion of family resemblances, rather it should teach us something about the concepts we use and the way we use them.

the concept of rape; those are what comes prior to the analysis of rape as a cluster. We thus have a rough understanding of what rape is and can resort to that understanding when stipulating criteria or paradigms for the concept.

Next, consider the first problem, what I have called the ‘universal resemblance problem’. What needs to be specified is the dimension according to which the things under investigation resemble each other; because if we lack that dimension, then all things resemble each other in some way (inside and outside of the set). Since we do not start from zero in the conceptual analysis of rape, but instead can draw on debates, experiences, etc., we can use these debates to specify a dimension according to which all acts resemble each other. However, similarity along one dimension is not good enough for the task at hand. For example, if all things in the set resemble each other with respect to violence, then the set includes many cases that, intuitively, we do not want to include in the set of rape, e.g., cases of BDSM or cases of battery. In other words, not all cases of violence are cases of rape. On the other hand, if all things in the set resemble each other with respect to non-consensual penetrative sex, then the set fails to include some cases that, intuitively, we want to include, e.g., non-consensual acts that do not amount to penetrative sex. Hence, specifying the resemblance-relation with respect to one dimension is either too constrained or not constrained enough. Of course, Wittgenstein speaks of a whole network of resemblances. We can easily specify more than one dimension according to which the cases in the set are acts of rape. And, according to Armstrong (1989), the resemblances are not in a transitive relation. Not each act in the set needs to resemble all other acts along the same dimension, rather, some acts in the set resemble each other according to one dimension, while other acts resemble each other along another dimension, thus building a complex network of resemblance relations. We could, therefore specify more than one dimension, e.g., lack of consent, violence, penetration, etc., with different acts resembling each other in different ways. Cluster accounts are marked by having (a) multiple criteria for the application of the concept in question, although none of those criteria are individually necessary, and (b) by allowing a great deal of indeterminacy in how the criteria must apply if the object in question is to fall under the concept. Even though this answers the universal resemblance problem—not all resemblance relations specify the set—it still faces the problem that it is not constrained enough. That is, it still might include acts that intuitively we do not want to have included. I come back to this problem at the end of the chapter. Before I propose a cluster account that more accurately presents the different forms of rape, I will take a more detailed look at the theories of Frye and Stoljar to see how they cope with the aforementioned problem.

### 2.3.1 Frye, Family Resemblance, and Rape

I start with an account by Marilyn Frye and consider a second account by Natalie Stoljar in the next section.<sup>5</sup> Frye uses the notion of family resemblance for the concept of woman. Frye's account of what it is to be a woman follows the metaphor of resemblances between family members. Not only does Frye take Wittgenstein to have provided us with a metaphor that raises doubt about the importance of universal categories, she also transforms Wittgenstein's diagnosis of the craving for generality into another metaphor: the metaphor of a container.

The metaphor in the background is that of a set, figured as a container: the individual is "in" the category, like peas are in the can; the criteria of membership in a category are the walls of the container that sharply separate what is inside (the  $\phi$ s) and everything else (the undifferentiated universe of the not- $\phi$ ). In this picture, if one is in a category one is exactly like everything else that is in it, in some specific respect; and one is thereby constrained and limited by that "definition" of what one is, as though that likeness foreclosed all difference among the members and all differentiation among the things that are not members. (Frye 2011: 86)

While some have endorsed the view that if there is no definable set (or container), then gender as a category does not exist—that is, women and men do not exist—Frye argues that the fact that there is no definable set should be taken to mean that social categories (or at least some of them) are not sets (or containers) in the way that it is often assumed.<sup>6</sup>

She then turns to the Wittgensteinian metaphor of family resemblance in order to shed some light on the question of what it means to be a woman. Wittgenstein thinks of the resemblances between family members as "a complicated network of similarities overlapping and criss-crossing: sometimes overall similarities, sometimes similarities of detail" (Wittgenstein 2009[1953]: §66).

**5** | Frye and Stoljar are not the only ones to notice the attraction of Wittgenstein's ideas for feminist theorizing. Munro builds on family resemblances in her account of gender and argues that this "permits collective action under the banner of a women's movement" (2006: 159) without drifting into essentialism of what women are. Other scholars that have used Wittgenstein's family resemblance for an elucidation of gender are Heyes (2000) and Nicholson (1994). See also Scheman and O'Connor (2002) for some connections between feminist philosophy and Wittgensteinian theories.

**6** | A similar conclusion is drawn by Young (1994), who argues for a new meaning of social groups according to the phenomenon of serial collectivity. According to her, this can account for women as a collective without assuming that women have a common identity.

Frye takes the metaphor of such a network of similarities between family members and fills out the details with the help of a theory by Dupré and an account given by Rosch and Mervis. According to Dupré, “the observable world of living things is not homogeneous.” (Frye 2011: 93) Yet, there are patterns of correlations in it. For example, there is a strong correlation between having fur and being quadruped and a similarly strong correlation between having feathers and having wings. In this sense, living kinds can be understood as densities of observable correlations. Following Frye, some of these correlations allow for predictions about behavior, hierarchies, timidity, etc., but they do not allow for predictions about essences. She then goes on to argue that according to these correlations, we can think of genders as artificial natural kinds (or artificial living kinds)<sup>7</sup>: the cultural training that makes women and men creates patterns of behavior, posture, desire, etc., that

imitate the distinctive shape, density, and structure of those correlational densities that are the living kinds. The image emerges of genders, and many other social categories, as artificial natural kinds, or more specifically artificial living kinds. (Frye 2011: 93-4, emphasis in original)

And, according to Frye, we can turn to Rosch and Mervis’ understanding of the notion of family resemblance to spell out the particular kind of density at work in Dupré’s account. Rosch and Mervis in their (1975) have argued for a prototype reading of the notion of family resemblances. Many categories have what is called a “prototype structure”:

This means that there are items in the category that are “best examples” and others that are less good, or not good examples of the category. For example, for the non-specialist North American robins are very good examples of birds, but penguins are not, though that same non-specialist does affirm that penguins are birds. (Frye 2011: 89)

Rosch and Mervis use the idea of family resemblance to construct an operational notion of degree of prototypicality. Those things that have the most widely shared attributes have a high degree of family resemblance with other things in

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**7** | One way to think of the multidimensional nature of social categories is as a homeostatic property cluster. The theory of homeostatic property clusters stems from Boyd (1999a,b). He thinks of natural kinds as groups of entities that share similarities that are stable. Thus, the species so defined need not have essential properties. Even though the theory is originally about natural kinds and the feminist project of giving a unified account of the concept of *woman* is about social kinds, the homeostatic property cluster theory can still shed some light on social kinds as well. For such an account, see Hauswald (2014).

the same category, while those with lesser shared attributes have a lower degree of family resemblance. Furthermore, empirically speaking, Rosch and Mervis found that those things with a high degree of family resemblance are the most prototypical things in the category, i.e., the “best” examples of the category. And, comparing things of one category with things of another neighboring category, the most prototypical things of one category have low degrees of family resemblance with the things of a neighboring category. The non-prototypical things, on the other hand, have higher degrees of family resemblance with things in a neighboring category. This makes family resemblance “not simply a matter of strung-out pair-wise similarities such as: Uncle Jack and Cousin Ethyl have similar noses, Cousin Ethyl and Grandpa have similar eyebrows, Grandpa and brother Charles have similar gaits ... etc.” (Frye 2011: 90, emphasis in original) The relations in Rosch and Mervis’ analysis are relations between the thing with the whole set of things in the category. Finally, Rosch and Mervis have developed a solution for what I described earlier as the universal resemblance problem. If everything is similar to everything else in various ways, then we need a condition that specifies how things show resemblance in relevant ways. Resemblance (or similarity, as Frye says) can only do the work here if we have a condition that identifies some resemblances as salient and other resemblances as non-salient. Rosch and Mervis provide a salience-condition, when they ask the subjects who take part in the research to list those features of the things that they regard as “typical and characteristic.”

While Rosch and Mervis’ salience condition works well for some concepts, such as bird, it poses problems for an account of rape. As I have argued in the last chapter, the dominant working understanding of rape is such that it fails to track most forms of rape in the world. Asking subjects to list features of rape that they regard as typical and characteristic will likely track only a small portion of the various acts of rape—namely, acts of physically aggravated stranger rape. And even if we would gather a group of subjects diverse enough to counter the narrow working understanding, the concept would nevertheless be contested. Therefore what is taken as typical might not align in the same way as Rosch and Mervis’ example of birds. That is, in regard to rape, some might take characteristic A, B, and C as typical, while others take D, E, and F as typical—how should we then proceed to decide? In other words, according to Frye’s account, we would either fail to account for a broad range of acts of rape, or we would have contested criteria. Let us now turn to see if Stoljar’s use of family resemblance for an account of woman is more plausible as a model for a conceptual analysis of rape.

### 2.3.2 Stoljar, Clusters, and Rape

In her defense of gender nominalism, Stoljar brings forward a view that she calls “resemblance nominalism” which is influenced by theories of cluster concepts. She understands “nominalism” as the rejection of universals; that is, according to her, resemblance nominalism rejects the view that there is a universal womanness that explains the unified concept of woman. This rejection is based on the assumption that there are (at least) two different kind of groups, those that are genuine classes and those that are gerrymandered classes. (Stoljar 2011) Armstrong calls the genuine classes ‘types’. (cf. Armstrong 1978a,b, 1989) They are groups of individuals that are similar to each other and “share a property that is attributed to them based on qualitative resemblances” (Stoljar 2011: 28). For example, if the group of women are a genuine class then they share the property of “being a woman”. Classes of gerrymandered objects, on the other hand, are heterogeneous classes; they might have a property in common but it is not based on qualitative resemblances. (cf. Lewis 1986) Genuine classes (or types) can be candidates for universals, gerrymandered classes cannot. While nominalists often assume that there are no universals and thus no gender universals, Stoljar argues that some classes are candidates for universals but there are differences of degree between these classes. And, further, the class of woman is moderately heterogeneous.

Stoljar’s proposal for gender nominalism is guided by the idea that

womanness is something complex, not something simple, and the ingredients in the complex structure of womanness are not always the same ingredients from one woman to another. The same ingredients make up the components in our concept of woman but are not always instantiated in the individuals to whom the concept applies. (Stoljar 2011: 40, emphasis in original)

Thus, Stoljar argues that resemblance, not sameness, is important for the class of woman; “womanness” is not the same for each woman, but is rather a “cluster of overlapping sets of properties or parts.” (2011: 41) According to Stoljar, to conceptually analyze the concept of woman, we must first identify paradigm cases. She takes the following cases to be paradigmatic for the concept of woman:

- (i) “a person who has an XX chromosome and female sex characteristics, additional bodily features such as a characteristic female gait, and responsibility for child-rearing and other family-oriented tasks”;
- (ii) “a transgender person who attributes womanness to herself and dresses ‘as a woman,’ has female secondary sex characteristics and many of the elements of

- female phenomenology though she lacks an XX chromosome and does not have responsibility for child-rearing or other domestic tasks”;
- (iii) “a person whose biological sex is ‘indeterminate’ (hermaphrodite) who has been brought up ‘as a girl’ and as a result satisfies typical female roles, has many of the aspects of female phenomenology and bodily features, and dresses and lives as a female though she lacks female sex characteristics.” (Stoljar 2011: 41)

These cases are paradigmatic for the concept of woman because they include properties of a complex and intersecting set of properties such as the following: having particular biological and bodily characteristics, having particular phenomenological features or lived experiences, taking on particular social roles, calling oneself a woman and being called a woman because of the identified features. (Stoljar 2011: 41) To be more precise, according to Stoljar, to count as paradigms they must possess features from at least three of the four sets of features. (1995: 284) However, there is no feature or set of features that all the paradigms share, instead the paradigms have family resemblances to each other. Thus, the concept of woman is a cluster concept:

there is a cluster of different features in our concept of woman and in order for an individual to satisfy the concept, it is sufficient (and necessary) to satisfy enough of, rather than all and only, the features in the cluster. The type “woman” is a type in virtue of the resemblance structure that obtains among individual members of the type. (Stoljar 2011: 42, emphasis in original)

To sum up, Stoljar proposes that the concept of woman should be analyzed according to resemblance nominalism in the following way: certain paradigmatic cases of what it is to be a woman provide a cluster of different (sets of) features and for an individual case to fall under the concept, it has to satisfy enough of the given features. Therefore, all individuals who satisfy enough of the features resemble each other in some ways, although they are still particular and diverse. Note, that Stoljar’s proposed cluster concept does not argue against necessary and sufficient conditions. In comparison to Cooper (1972), who argued that a cluster concept has to have a sufficient number of the given properties but does not require necessary conditions, Stoljar claims that specifying that the object in question needs enough of the features listed is indeed equivalent to specifying necessary and sufficient conditions. (Stoljar 2011: 42) However, she does not subscribe to a view of resemblance nominalism in which the relation of resemblance is egalitarian such that to be a member of a type X means to resemble all other entities that are X. (cf. Rodriguez-Pereyra 2002) Instead, her proposal is some version of an aristocratic resemblance relation: to be a member of X means to resemble a paradigm of X. (cf. Price 1953)

Is the account that Stoljar proposes an attractive model for the concept of rape?<sup>8</sup> Most of the work in Stoljar's account of resemblance nominalism is done by the idea of "enough resemblance" and the paradigm cases—individuals count as being part of the concept of woman if they show sufficient resemblance to the paradigm cases. While the general notion of resemblance faces the aforementioned identification problem, I have argued that this problem does not arise with respect to the concept of rape. Using the idea of resemblance (or any other cluster account) to shed light on the concept of rape does not start from zero. As already argued, there is a historically shaped debate on what 'rape' means or should mean, and the proposed conceptual analysis is not independent of this debate. We can therefore draw on the arguments, experiences, knowledge, and intuitions that we all have about the concept of rape; those come prior to the analysis of rape as a cluster. We thus have a rough understanding of what rape is and can resort to that understanding when stipulating criteria or paradigms for the concept.

Consider next the idea of resemblance at work in Stoljar's account. As I have shown before (Chapter 1), using the notion of paradigms is not without problems when it comes to the concept of rape. The dominant working understanding of rape is physically aggravated stranger rape. This, however, fails to account for a vast range of acts of rape in the world. Using physically aggravated stranger rape as the paradigm of rape, as Reitan (2001: 49) proposes, is problematic. Not because it is wrong—this is exactly what most individuals understand rape to be—but because it reproduces this distorted understanding of rape. As I have shown in Chapter 1, what we as social agents think of rape and how we understand the concept is highly influenced by rape myths and the relations of gender inequality that shape our social world. This means that the paradigm of rape we can all easily agree on misrepresents the social reality of rape, e.g., most of the time, rape is not stranger rape, but acquaintance rape, which does not involve physical violence from a stranger, but psychological pressure from an acquaintance.<sup>9</sup> Furthermore, according to Stoljar, what falls

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**8** | I do not attempt to provide an argument for or against her view that gender nominalism is preferable to gender realism because it can account better for women's diversity. For the whole account and its motivations, see Stoljar (1995, 2000, 2011). For a critique, see Mikkola (2016: Chapter 3.4).

**9** | One could argue that we can have a prototype account based on statistics; so there might be (and quite possibly are) some types of rapes that are more prevalent statistically speaking than others, e.g., date rape is probably much more common than stranger rape. We could then appeal to prototypical cases by using frequency rather than something evaluative like "proper" type of rape. While employing frequency instead of evaluative use of prototype would solve some problems, it fails to capture aspects that are not yet recognized as rape (even if very prevalent). For instance, most papers on

under the concept needs to sufficiently resemble the paradigm case. But having our concept built around a misguided paradigm means that we fail to account for most cases of rape. A case where a girl is psychologically pressured by her boyfriend to have penetrative sex only shares one common feature with the paradigm case: the feature of sexual penetration. However, this would either imply that this case does not fall under the concept of rape because sexual penetration is not enough for sufficient resemblance, or it implies that sexual penetration is sufficient for resemblance and the case falls under the concept but so would consensual sex. Both results are problematic. However, Stoljar does not argue that we can make use of only one paradigm. In fact, in her own theory she proposes three different paradigms of individuals that fall under the category of woman. We can make use of a similar strategy when it comes to a cluster account of rape and specify multiple paradigms that delineate the cluster such that it tracks a range of forms of rape. Stoljar's theory, thus, looks promising for a cluster theory of rape.

### 2.3.3 Rape as a Cluster

I have argued that we can make use of a multiple paradigm theory, according to what Stoljar proposes, in our quest to conceptually analyze rape. Understanding cluster accounts—at least with respect to the concept of rape—in this way, raises a further question: How do we decide which paradigms are part of the cluster? Wittgenstein says, “Don't think, but look!” (Wittgenstein 2009[1953]: §66) It is, according to Gaut, “a plea to see how the concept in question is used in the language.” (Gaut 2000: 28) I suggest we understand this plea differently, not as the question of how the concept is used in language, but instead how the phenomenon is actually realized in the world. As we have seen in the last chapter, an investigation into how language users understand the concept not only shows that the concept is contested but also that its dominant working understanding fails to track most forms of rape in the world. Being guided by the usage of ordinary people would thus be misleading and not result in an adequate cluster concept of rape. Rather, our paradigms should be able to track the various forms of rape that exist in the world. Consider the following three paradigms. These paradigms track distinct examples of forms of rape in the world and therewith aim at a broader understanding of rape.

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date rape (see, e.g., Anderson [2004b]) are written against the background that date rape was not recognized as rape and, thus, statistics of rape would not have accounted for date rape. In other words, similarly to evaluative uses, frequency-prototypicality can be distorted too. I am grateful to Nora Kreft for bringing up the question of frequency-prototypicality.

### Paradigm I

“On July 4, 1990, at 10.30 in the morning, I went for a walk along a peaceful-looking country road in a village outside Grenoble, France. [...] I sang to myself as I set out, stopping to pet a goat and pick a few wild strawberries along the way. About an hour and a half later, I was lying face down in a muddy creek bed at the bottom of a dark ravine, struggling to stay alive. I had been grabbed from behind, pulled into the bushes, beaten, and sexually assaulted. [...] Although I had said I’d do whatever he wanted, as the sexual assault began I instinctively fought back, which so enraged my attacker that he strangled me until I lost consciousness. When I awoke, I was being dragged by my feet down into the ravine. [...] I wish I could convey the horror of losing consciousness while my animal instincts desperately fought the effects of strangulation. This time I was sure I was dying. But I revived, just in time to see him lunging toward me with a rock. He smashed it into my forehead, knocking me out, and eventually, after another strangulation attempt, he left me for dead.” (Brison 2002: 2)

### Paradigm II

“When Jodie told her college boyfriend that she had been raped by his best friend, he was quiet for a long time. When she got up to leave, he told her she should spend the night in his room, that he wouldn’t touch her: ‘During the night, I woke up to find him on top of me. At first I thought [the rapist] was back and I panicked. My boyfriend said that he was just trying to get me “used to things” again, so that I wouldn’t be frigid for the rest of my life. I was too drained to fight or argue, so I let him. My mind was completely blank during it. I felt nothing.’” (Warshaw 1994: 76)

### Paradigm III

Excerpts from interviews with Ifeta, Kadira, and Ziba about the women’s camp in Dobo, Bosnia, 1992: “It was a camp of abuses, humiliations, rapes ... I don’t know how to put it into words. [...] They pushed bottle necks into our sex, they even stuck shattered, broken bottles into some women... Guns too. And then you don’t know if he’s going to fire, you’re scared to death, everything else, the rape, becomes less important, even the rape doesn’t seem so terrible to you anymore. [...] They beat the women who didn’t get pregnant, especially the younger women; they were supposed to confess what contraceptives they were using. [...] I saw about seven or eight little girls who died after they were raped. I saw how they took them away to be raped and then brought them back unconscious. [...] If it was in the morning they’d leave them lying there the whole day; if they threw them in in the evening they’d stay till the next morning. Then they’d come and collect the bodies. (Stiglmeier 1994: 118-20)

The first example is stranger rape committed with extreme physical violence (to the point of attempted murder). The second is an example of acquaintance rape between romantic partners that does not involve aggravating physical force but misuse of trust and sorrow. The third is an example of genocidal rape in which women are targeted for sexual abuse in many humiliating and torturing ways (to the point of forced impregnation) because they are part of the enemy. These diverse paradigms include multiple dimensions according to which acts of rape resemble each other, such as violence, lack of (affirmative) consent, psychological pressure, physical force and resistance, coercion, threat, etc. Thus, the three paradigms exhibit a range of features that acts of rape can include and that can guide our understanding of which acts fall within the set and which do not. Furthermore, describing rape in terms of the aforementioned paradigms makes it possible to extract features according to which different acts resemble each other. But, again, not each act of rape shares all features with one (or all) of the paradigms, rather, the different features build a complex network of resemblance relations.

Let me now turn to an explication of what the cluster of rape looks like. Imagine a cluster with different branches. Think of a big oak tree. These branches symbolize the different features that acts of rape can exhibit such as violence, lack of (affirmative) consent, psychological pressure, physical force and resistance, coercion, threat, and so on—whatever features are included in the paradigm examples above. The branches represent the many different features that acts of rape include as they take place in the social world and thus track the diverse forms of acts of rape. For example, acquaintance rape (e.g., date rape, partner rape, spousal rape), campus rape, war rape, prison rape, status rape (e.g., statutory rape, custodial rape), gang rape, punitive and revenge rape, exchange rape, ceremonial rape, theft rape, corrective rape, rape by deception, and genocidal rape. The cluster does not specify necessary or sufficient conditions of what each act includes or of what all of the acts together include. Yet, it includes all criteria that each of these specific forms of rape can include. Obviously an act can involve several criteria. And, I suggest, the more features an act exhibits—the closer it resembles one of the paradigms—the more certain we can be that the act in question is an act of rape. This broadens the understanding of rape such that not only physically aggravated stranger rape is “proper” rape, but that all acts which resemble the aforementioned paradigms are considered rape. Hence, the cluster tracks the various forms of rape in the world.<sup>10</sup>

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**10** | I am not arguing that a cluster account is the only way to conceptually analyze *rape* in a way that tracks the various forms of rape. Rather, I attempt to show *one* way to make this work. One could very likely have a similar kind of variation even if one provides necessary and sufficient conditions. For example, if one gives a functional definition

Furthermore, in line with what I have mentioned before, Gaut argues that we have no problems judging an object to fall under the concept in one extreme and no problem to judge it not to fall under the concept in the other extreme. (2000: 26) We can similarly say that some acts are definitely acts of rape and some are definitely not. Between these extremes are cases that are acts of rape even though they are not extreme examples and there are acts that border the cluster of rape in which we are undecided if they should be considered rape or not. Gaut suggests that what makes it possible to judge if objects fall under the concept or not is the fact that we have extreme examples in which such a judgement is uncontested. According to the proposed cluster, every act that closely resembles the paradigms, or, in other words, that exhibits a vast range of the features of one (or more) of the paradigms, is an extreme case of rape. Roughly, the more features are fulfilled, the better we can know that an act is an act of rape. Obviously, we would not judge an act to be an act of rape, that involves only one of the features and, thus, shows hardly any resemblance to any of the paradigms. For example, sexual penetration is not sufficient for an act to count as an act of rape. Again, remember that (Gaut 2000: 26-7) argues for the following three conditions that any cluster concept needs to fulfill:

1. If all the criteria of the object are instantiated, then the object falls under the concept; the criteria are jointly sufficient for the application of the object, but even if fewer criteria are instantiated, the object can still fall under the concept.
2. None of the criteria of the object are individually necessary for the object to fall under the concept; there is no criteria that all objects that fall under the concept must possess.
3. There are disjunctively necessary conditions: some of the criteria apply if an object is said to fall under the concept.

Regarding the second condition, we have seen how the proposed cluster of rape lists a vast range of features, but no individually necessary ones; thus, it can account for a whole range of different acts of rape. Similarly, with the third condition: since the proposed cluster lists many possible criteria, an act of rape needs to fulfill some of them to count as rape. Finally, the first condition can help with the question of how many features need to be instantiated for an act to count as an act of rape: if all the criteria are instantiated, then the act is an act of rape definitely, i.e., the criteria are jointly sufficient. The less criteria are instantiated, the less we can judge an act to be an act of rape definitely. In other words, the more tree branches we need to describe an act in question, the high-

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of a kind, then some things will fulfill the function better than others. And there will be cases in which it is unclear whether the cases fulfill the function or not.

er the chance that it is an act of rape. And the less branches are included, the lower the chance; the act in question is then more likely to fall in the gray area of rape than to be an exact case of rape. Having proposed a way in which we can conceptually analyze the concept such that it tracks various instances of rape, instead of being narrowly defined as physically aggravated stranger rape, I now raise some possible objections against the proposed cluster account of rape.

## 2.4 PROBLEMS

The cluster account is a good philosophical tool to understand the diverse forms of rape as they exist in the world instead of succumbing to the (distorted) working understanding of it. However, there are at least two problems with the proposed cluster account. First, it faces problems of practicability. It is not constrained enough and encompasses acts that, intuitively, we do not want to have included in the set of rape. Hence, it does not function fully as a practical guide to decide whether an act falls under the concept or not. Instead, it merely provides rough parameters, i.e., the more an act resembles one or more of the paradigms, the better we can judge it to be an act of rape. The cluster therewith does not adequately capture the phenomenon of rape and, further, these practicability questions can create problems for legal application procedures. Second, the proposed cluster fails to be normatively adequate. While it can account for a broad range of forms of rape (which is consistent with the overall contestedness of the concept), it fails to explain why the dominant working understanding assumes that only one form of rape—physically aggravated stranger rape—is “proper” rape. That is, it fails to explain the prevalence of false or misguided understandings and speaker’s usage of the term. Thus, the cluster account falls short in two ways: in adequately tracking the phenomenon of rape and in explaining speaker’s intuitions and usage of the concept and term. After I tackle both problems in the next two sections, I conclude that the cluster account is nevertheless attractive and has the potential to account for the phenomenon of rape, but needs to be refined in a way that solves the outlined problems. I suggest that a conceptual analysis of rape needs to be grounded in a social theory of rape in order to track the phenomenon adequately as well as overcome misguided understandings. Thus, at the end of the chapter, I propose some *desiderata* that a theory of rape needs to fulfill as well as constraints that a conceptual analysis of rape must confront. (Section 2.4.3) I then propose a method in Chapter 3 that, I argue, can yield a satisfactory social theory of the phenomenon and that can ultimately ground a conceptual analysis of the concept.

### 2.4.1 Practicability

I have proposed a cluster account of rape along the lines of a big oak tree, the branches of which symbolize the features that acts of rape can exhibit: the more features are realized, the closer the act in question resembles one (or more) of the three paradigms and the more it can definitively be judged an act of rape. Furthermore, I have suggested that an act that merely exhibits one feature does not count as an act of rape. However, I have not specified how many features need to be satisfied for an act to count as an act of rape. For example, an act that shares only the features of sexual penetration cannot satisfyingly be judged as an act of rape. What about an act of BDSM that satisfied the features of sexual penetration and violence? Intuitively, of course, an act of BDSM should not count as an act of rape, but that implies that two features are not enough for something to count as rape either. However, in the case of coercion and sexual penetration, we might very well want to say that this qualifies as an act of rape. If that is the case, then in some cases two features are enough for something to count as an act of rape. We could now argue that some features are more important than other features. But if this is the case, we need to figure out which features are more relevant than others. In any case, more work needs to be done to constrain the cluster in a way that tracks adequately the phenomenon of rape without tracking acts that are not rape.

Furthermore, I contend that there is a close connection between our conceptual analysis of rape and legal definitions. While, of course, we should not assume that the ordinary meaning of ‘rape’ and the legal meaning of it are the same, I take it that one constraint of the legal meaning is to adequately describe the phenomenon in the world. Hence, one way to narrow down on the legal meaning is to engage in a conceptual analysis that aims at tracking the phenomenon adequately. In this way, our philosophical endeavors to grasp the concept can have an impact on the law, which has happened before in a couple of other cases. Consider, for example, MacKinnon’s and Dworkin’s definition of pornography, which they drafted as an attempt to change pornography legislation; or consider the ways in which the Wolfenden Committee in 1954 referred to the writings of both John Stuart Mill and Jeremy Bentham to decriminalize homosexuality. This close relation is also evident in many current writings on rape, in which philosophical arguments are used to change the legal meaning of ‘rape’. (cf. Anderson 2004b; Pineau 1989) However, the thus far proposed cluster account of rape is unfit for legal practice. Consider the following case:

A widely reported 1996 trial involved an upstate New York woman who went to a restaurant with her date. Both were drinking heavily. The woman passed out in the bathroom. Her date, waiting for her to join him outside, fell asleep in his pickup truck. Meanwhile, four men carried the woman from the bathroom to a booth, where they undressed her.

All four then allegedly raped her, left her in the booth, and returned to their beer and sandwiches. (Schulhofer 1998: 7)

Say that according to the legal definition<sup>11</sup>, a person is guilty of rape in the first degree when they engage in sexual intercourse with another person:

By “forcible compulsion”—compelling the victim through the use of physical force or the threat of immediate death, physical injury or kidnapping;

- (a) Who is incapable of consent by reason of being physically helpless;
- (b) Who is less than 11 years old; or
- (c) Who is less than 13 years old and the defendant is 18 years old or more.

In the best and ideal outcome, the jurors would apply the definition to the case at hand and conclude—based on the facts available—that the act was indeed an act of rape and that the defendants are thus guilty of rape in the first degree. Such a conclusion would be reached by investigating whether all (or enough) conditions of the definition are fulfilled in the case at hand. Because the men used physical force to carry the unconscious woman to a booth (first condition) and she was incapable of consent (second condition) the act in question falls under the definition of rape in the first degree. However, let us assume that the jurors were influenced by rape myths and were just unable to apply the definition to the case at hand unbiased. Instead they believed— as they actually did—that the drunk state of the woman makes it that we cannot be sure if she consented or not to the act in question. Let us thus say that they—as they actually did—acquitted the three men of the charges of rape. But on the basis of of the legal definition, we can justifiably criticize the biased decision to acquit the defendants. In other words, we could argue that intoxication entails the incapacity for consent, or that an intoxicated woman facing four men is physically helpless, or that carrying an unconscious woman into a booth is an act of kidnapping, and so on. The definition gives us grounds to repeal the acquittal, as was indeed the case; only after a political uproar were the defendants brought to trial again. Legal definitions are thus grounds for judgement or critique.

Without the legal definition, things are more complicated. First, without a definition we have no criteria to decide whether a case is correctly described as rape or not. And, second, without a definition we do not have grounds to contest the outcome of a legal process; how could we argue that jurors are biased if there is no definition that counters such biases. This suggests that the looser a definition is, the more likely our biases and false beliefs could affect the legal

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**11** | This is according to the New York Penal Code Section 130.25; see: <http://statelaws.findlaw.com/new-york-law/new-york-rape-laws.html>, accessed: December 19, 2016.

outcome. For example, black men are often found guilty for the same charges that white men are found innocent, especially in rape cases. (cf. Freedman 2013) A recent exemplary case is the aforementioned one against Brock Turner. In 2016, Brock Turner, who at the time was a student at Stanford University and part of the swim team, was convicted and sentenced to six months in jail for sexually assaulting an unconscious girl. He was found guilty on three felony counts: assault with intent to commit rape of an intoxicated or unconscious person, sexual penetration of an intoxicated person, and sexual penetration of an unconscious person. In total, these charges can carry a maximum sentence of 14 years. Brock Turner got six months. In a similar case, Raul Ramirez, a 32-year old immigrant from El Salvador, was sentenced to three years. The cases of Brock Turner and Raul Ramirez have similar charges of sexual assault, both include admittance of the defendants, and most importantly, both were ruled by the same judge. (cf. Bess 2016; Blay 2017; Levin 2016; Palumbo-Liu 2016) This suggests that the more loose our definition of the concept, the more likely that we judge acts in question according to our biased beliefs. Indeed, Katrina Hutchison argues that in cases where we do not have access to further evidence, we are likely to take other indicator properties into account to make a judgement about whether or not something falls under the concept in question. (2013: 108-9) Indicator properties allow us to make judgements in situations where further information is lacking. But the less access we have to indicator properties that actually concern the situation at hand, the more likely we resort to broader schemas and indicators to evaluate the situation. Prejudicial stereotypes influence which indicator properties we deem relevant. Thus, in the case above, the judge believed a white man to be less deserving of a prison sentence than a person with an immigrant status. Even though the properties of being white or being an immigrant should not play a role in a judgement of rape, they did and thus influenced the outcome of the judgement. The less defined a concept, the more a judgement of what falls under it is susceptible to prejudicial stereotypes that should not play a role in the evaluation of the case in question.<sup>12</sup> Thus, the openness of the descriptive cluster makes it possible to account for a vast range of cases and their contestedness, but it also means that the cluster is more susceptible to false beliefs—something that we should work hard to avoid when it comes to the concept of rape because of its serious and problematic consequences.

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**12** | Of course, even clearly defined concepts can be judged prejudicially (I come back to this point in Chapter 5).

### 2.4.2 Normative Adequacy

Gaut concludes his paper by setting some constraints on the adequacy of any cluster account. (2000: 30-1) One constraint is that the account must be normatively adequate:

It needs to be normatively adequate: our linguistic intuitions may be flawed in resting on confusions, ignorance, etc. Some intuitions that do not fit the proposed account may be rejected, there will be a reflective equilibrium between the account and intuitions. This must include a theory of error: some account must be offered of why people have the mistaken intuitions they have; ideally this account can also explain why rival theories enjoyed great popularity. (Gaut 2000: 30)

According to Gaut, a normatively adequate account is sometimes not in line with ordinary speaker's linguistic intuitions. This is the case, because sometimes our linguistic intuitions are false or misguided. And, if that is the case, a normatively adequate account rejects the false and misguided intuitions and explicates why certain intuitions are misguided and why individuals endorse them nevertheless. Because the proposed cluster account tracks a broad range of forms of rape, it is not in line with the dominant working understanding of rape, i.e., it is not adequate to most speaker's intuitions about the concept. However, my account does not take into account the distorted understandings. While a normatively adequate conceptual analysis might not do that itself, it should be based on a theory of the phenomenon that does. Only if we have a theory of the phenomenon of rape that explains speaker's misguided intuitions can we strive for changing the working understanding. We thus have to understand why and how individuals are misguided so as to propose a strategy that counteracts the misguided understandings. A normatively adequate cluster account should be prescriptive: it should provide a better understanding of rape that adequately tracks the phenomenon and aims at changing the misguided intuitions about it. Hence, the proposed account fails to be normatively adequate and should be revised.

The normative inadequacy is partly due to the fact that the descriptive cluster account is not based on a social theory of rape that maps the underlying structural dimension of rape. It does not mention or counter the gap between existing forms of rape and the dominant working understanding— and therefore fails to account for the fact that some individuals are in more danger to be raped than others. And, for some individuals, raping (and getting away with it) is an actual choice, while for others it is not. According to RAINN, 9 out of 10 victims of rape are female and 1 out of every 6 American women has been the victim of an attempted or completed rape in her lifetime. (2016c,d) We fail to account for the concept of rape adequately if we do not give an explanation of

the gendered character of rape. Brison, for example, writes that rape is a “gender-motivated violence against women, which is perpetrated against women collectively, albeit not all at once and in the same place.” (2002: 98) And Burgess-Jackson argues that it is an act that “subjugates an entire class of individuals (women) to another (men)” and that “every woman, qua, woman, is wronged by it.” (2000: 289) Even though I contend that some individuals fall victim to rape while others do not, it is not (anymore) the case that only the social group of women are a target of rape. Other social groups experience rape as well.

In 2016, 80,600 inmates in the American prison system were sexually assaulted or raped (RAINN 2016c) and 60 % of those violated were violated by the institution’s staff and not by other inmates (RAINN 2016b); transgender students are at higher risk of rape or sexual assault than other students, 21 % of transgender or nonconforming students experienced rape or sexual assault (in comparison to 18 % female students and 4 % male students) (RAINN 2016d); Native Americans are twice as likely to experience rape or sexual assault compared to all races in the States (RAINN 2016d); male college students are 5 times more likely to experience rape or sexual assault than non-students (RAINN 2016d). The gendered character of rape should not be explained with a focus on the victims of rape, but rather with a focus on the perpetrators of rape. Most rapists are men; 98 % of perpetrators are male. (re.ACTion 2007: 70)

To map rape adequately, we have to explain why it is a violent act that is overwhelmingly committed by men. And we have to show that acts of rape do not stand alone. It is not accidental that rape is mostly committed by men, it is rather in line with the general inequality between genders. Men as a social group are socially (and often physically) more powerful than, for example, women and gender non-confirming people, and it is only when they lose this hierarchical position (e.g., in prison) that they become a target of rape as well. Furthermore, this conforms to ideals of masculinity which portray violence as an attractive feature and weakness as an unattractive feature of men. And because men are more powerful, they feel entitled to be more powerful, to have unrestricted access to women and their bodies, and so on. And, they turn dangerous when such access is denied or when they fail to prove the masculinity they think they deserve. (cf. Manne 2016) We do not have to go as far as the example of Elliot Rodger, who killed six people and injured fourteen because he wanted to punish women for rejecting him and other men for having what he was entitled to but could not get. Thus, rape is part of a broader sexist framework of gender inequality and it is due to this “system” that there are false and misguided conceptions of rape.

A conceptual analysis of rape must be grounded in a theory that systematically maps the phenomenon of rape to be normatively adequate and it must provide an explanation why rival accounts (e.g., rape myths) are popular. I therefore suggest that a conceptual analysis should do more than descriptively

accounting for the external reality. It should be grounded in a rich social theory of rape that systematically maps rape as part of a broader system of gender injustice and it should aim at a conceptual change to counter the distorted working understanding of rape. I now suggest the relevant desiderata that a theory of rape needs to fulfill in order to be useful and I lay out the constraints that a conceptual analysis has to satisfy in order to be normatively adequate.

### 2.4.3 Desiderata

We have seen that the proposed cluster account of rape falls short in two ways: First, it lacks practicability, and second, it is normatively inadequate. It is not grounded in a social theory of rape and, thus, fails to counter the divergence between the reality of rape and the distorted intuitions about it. I propose that we use these shortcomings to specify desiderata that a theory of rape has to fulfill in order to be useful as the background for conceptual analysis. Remember, we can only provide a fruitful conceptual analysis that can counter the distorted understandings of rape and aim at conceptual change, if we have a social theory of rape that not only explains the existing forms of rape and their embeddedness in the social world, but also explicates how distorted understandings come about, how they do not track the phenomenon of rape, and why they enjoy popularity. This is not to say that conceptual change is the only change that is needed. Far from it. If we want to counter the prevalence and moral wrong of rape, we need to strive for conceptual change as well as material changes. However, as philosophers, we are much better equipped to do the former than the latter. This does not imply that, as social activists, we should not also work for this. I come back to the latter in the last chapter, but let us for now say that, as philosophers, we should work on providing more just understandings of concepts that traditionally reproduce inequalities between different social groups, such as misguided or false understandings of the concept of rape. Taking these thoughts into account, I stipulate the following desiderata that a theory of rape needs to fulfill. It needs to

**Desideratum 1:** adequately map the phenomenon in a way that explicates its structural embeddedness;

**Desideratum 2:** explicate speaker's intuitions, (distorted) understandings, and actual usage of the concept;

**Desideratum 3:** be normatively adequate and explain the gap between false or misguided understandings and the existing phenomenon as well as provide explanations of how such misguided or false understandings come about and enjoy popularity;

**Desideratum 4:** explain the injustice of it; and

**Desideratum 5:** be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change.

This conceptual analysis should be flexible in a way that allows for changes when we gain further information about the phenomenon; be constrained enough to allow for proper judgements; account for different degrees; acknowledge the concept's contestability, gray area, and neighboring categories; be non-paternalistic<sup>13</sup>; and have heuristic utility.<sup>14</sup>

As the attentive reader will have noticed, I have not taken on board a desideratum that holds that the account needs to be adequate to intuitions. For example, in the way Gaut does: "it must agree with our intuitions about what we would say about actual or counterfactual cases." (2000: 30) Instead, I will propose a new variant of conceptual analysis in the next chapter (Chapter 3) that is informed by Sally Haslanger's ideas of amelioration. This variant of conceptual analysis is not necessarily based on intuition, instead it can be revisionary or, in other words, prescriptive.

I have discussed several cluster theories—from Wittgenstein's family resemblance ideas to specific feminist theories—and argued that even though most of the theories face problems, what I have called the 'universal resemblance problem' and the 'identification problem', these problems do not arise with regard to the concept of rape. I then proposed a way to use the cluster model for an analysis of rape such that it tracks the various forms of rape as they exist in the world. However, I have argued that the proposed cluster account faces at least two serious challenges: it lacks practicability, and it is normatively inadequate. I have concluded that a conceptual analysis of rape needs to be based on a rich social theory of the phenomenon of rape to be able to adequately track the phenomenon as well as counter the distorted working understanding of the concept. I have ended by stipulating five desiderata that a rich theory of rape needs to fulfill to be useful as a background for a conceptual analysis of rape. These desiderata guide the discussion in the chapters to follow.

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**13** | I understand paternalism roughly as interference with another person that seeks to benefit that person in some way yet is against that person's will. (cf. Cholbi 2017: 123) Thus, to define an act that benefits certain persons without being granted the authority to do so by these persons is in danger of being paternalistic. See also Coons and Weber (2013); De Marneffe (2006); Grill (2007); Groll (2012); Kleinig (1983) for the notion of paternalism.

**14** | When I speak of heuristic utility what I mean is that the concept should fit into the larger social theory of rape. This is because rape cannot be made intelligible outside a broader framework of gender inequality. What I do not mean is that the analysis should be simplistic and only account for the phenomenon itself without considering its social embeddedness.



# Chapter 3:

## Emancipatory Amelioration

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Chapter 3 puts forward the method of “emancipatory amelioration”, which combines social theory and prescriptive conceptual analysis to fully explain the phenomenon of rape, while at the same time aiming at an altered and emancipation-enabling conceptual understanding. The chapter presents Haslanger’s idea of conceptual amelioration and develops it into its own version of emancipatory amelioration, which identifies emancipation as the purpose of amelioration. It defends the proposal against two objections, namely the problem of asymmetry (How to be a critic of a structure if at the same time subject to the structure?) and the problem of emancipation (How to know whether what one is doing is in fact emancipatory?).

### 3.1 INTRODUCTION

So far, I have argued that the concept of rape should be treated as a cluster concept and I have provided an analysis that tracks the various existing forms of rape in the world. But the proposed conceptual analysis does not result in a reflective equilibrium between the external reality of rape and the intuitions that speakers have about the concept. Instead, the dominant working understanding of rape is not at all in line with the various existing forms of rape in the world. I have therefore suggested that we do not need a conceptual analysis by way of a reflective equilibrium but a prescriptive analysis of the concept based on a more inclusive social theory of rape. To do so, I have specified five desiderata that a theory of rape needs to fulfill. I suggest, and argue accordingly in the following, that part of what is wrong about rape (the normative question)—besides its immediate harm to the individual raped—is that it contributes to structural injustice. Not only is it the case that the overwhelming majority of perpetrators are men, but also that most victims of rape are women and gender non-conforming people. The normative dimension cannot be adequately explained

without a social theory of how rape is located in the social context. And part of that theory is to explicate the distorted understandings that individuals have and why they enjoy popularity.

As feminists, we have an obligation to dismantle the social and unjust workings of rape and to develop an understanding of the concept that has emancipatory potential.<sup>1</sup> For example, if rape contributes to social and structural injustice, then it has direct and unjust consequences for some persons that go beyond the obvious harm and moral wrong inflicted on victims of rape per se. A theory of rape should thus also aim at unmasking and putting an end to such injustices. In this chapter, I propose a method that is itself emancipatory and can yield an emancipatory understanding of the concept. Therefore, I attempt to undergird the proposed cluster account of rape given so far with normative insights. The method will then be put to use (Chapter 4 and 5) and will result in a unified model of rape—an inclusive social theory of the phenomenon of rape and a prescriptive conceptual analysis that aims for an understanding of rape in line with the social theory.

Before I propose said method, let me raise some points of why the choice of method is important. After all, I will spend a whole chapter on developing a particular method and one might think that this is a waste of time. However, rape is a complex phenomenon and the way we go about investigating it is not at all obvious or self-explanatory. First, theories try answer specific questions. A social theory of rape—like every social theory—is guided by specific questions and aims at specific purposes. I have already argued that a conceptual analysis tracking speaker's intuitions is distorted because of rape myths. Furthermore, I have shown that a conceptual analysis which aims at a reflective equilibrium between speaker's intuitions and the phenomenon of rape in the world is doomed to fail because the dominant working understanding tracks only a small portion of existing forms of rape. For that reason, we need a social theory of rape that not only maps the diverse forms of rape but can also explain the mismatch between the phenomenon and the dominant working understanding of the phenomenon. It should explain the social embeddedness of rape, its relations to injustice, and its entanglement with other (sexist) phenomena. And, it should do so from a feminist point of view. Its main purpose is to unmask forms of rape that are not tracked by the dominant working understandings and to explain why this happens. A feminist social theory of rape should illustrate how this failure to track experiences reproduces deeply problematic social practices against victims of rape. A theory that does this can then be used

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**1** | For now, I understand *emancipation* roughly as exposing and correcting defects in the status quo that are due to moral bias and confusion. Compare to Anderson's pragmatic theory of moral progress: Anderson (2014).

as the framework for a prescriptive conceptual analysis that aims at countering the dominant working understanding and does justice to victims of rape.

Second, I proposed five desiderata at the end of the last chapter which a social theory of rape needs to fulfill. It should (a) adequately map the phenomenon in a way that explicates its structural embeddedness, (b) explicate speaker's intuitions, (distorted) understandings, and actual usage of the concept, (c) be normatively adequate and explain the gap between false or misguided understandings and the existing phenomenon as well as provide explanations of how such misguided or false understandings come about and enjoy popularity, (d) explain the injustice of it, and (e) be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change. The adequacy of the theory is, thus, not merely about mapping the phenomenon accurately, but about drawing connections between the phenomenon and the social structure we live in by its responsiveness to our experience, and its usefulness for our purposes.

Third, the method should yield a social theory that maps the morally complex experience in all its different facets. This is mainly an empirical endeavor and so we have to consult victims of rape as well as others, e.g., psychologists, social workers, medical professionals, social scientists, historians, legal scholars, etc. However, the main purpose of the theory is to shed light on the injustice of rape and to give insights into the deeply complex phenomena that surround rape. We should avoid being paternalistic, for example, by explaining to victims how they "should" feel or how they "should" understand their own experience. (cf. Alcoff 1991) It is far from obvious that every victim can access their epistemic privilege without being influenced by the dominant schemas of rape and sexist practices in a given society. Since victims of rape are themselves social agents situated in social practices that contribute to sexist injustices, not all victims understand their experiences as experiences of rape (even if according to our theory that would be an adequate description of what happened) and it is not always beneficial for them to do so. Victims of rape are not a homogenous group; they have different and opposing viewpoints on what rape is. When we engage in a social theory of rape, we have to keep this in mind. And, of course, we have to avoid asking victims of rape to "explain" their experiences to others without them offering to do so<sup>2</sup>, but nevertheless not ignore their perspectives.

Furthermore, as philosophers, we are not outside of the social practices that we aim to understand and change. Rather, we are situated within these practices and we are influenced by them. Our endeavor to better understand

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**2** | Doing so can be described as epistemic exploitation. Epistemic exploitation is the problematic practice of privileged individuals asking marginalized persons to educate them about the nature of their oppression. (cf. Berenstain 2016) I contend that a similar claim could be made about asking rape victims to define the meaning of 'rape'.

them is always also an endeavor to better understand what we are doing, and to make it possible to change these practices. This change is not merely a conceptual one, but it also includes material changes, legal changes, political changes, and so on. However, as I have remarked before what we can and cannot do as philosophers is limited. While as activists, we can work towards material changes, as social philosophers we are mainly in the business of advocating conceptual change. By better grasping the phenomenon and its social embeddedness, we can see how other understandings are misguided and we can formulate a better concept ourselves. How we understand things influences our social practices and vice versa. Hence, one part of changing the unjust practices surrounding the phenomenon of rape is to change our understandings of the phenomenon.

This chapter develops a method that is partly social theory and partly prescriptive conceptual analysis. I proceed in the following way. First, I develop Haslanger's idea that we should concentrate not on how a concept is understood, but on how it ought to be understood—that is on a prescriptive conceptual analysis. (Section 3.2) I then propose a form of conceptual amelioration that highlights the emancipatory force that the project of amelioration can take: emancipatory amelioration. When applied, the method of emancipatory amelioration yields a social theory of the phenomenon of rape as well as a prescriptive conceptual analysis that aims towards conceptual change. (Section 3.3) I then argue in detail for the two main aspects involved in the method of emancipatory amelioration: social theory (Section 3.3.2) and conceptual amelioration (Section 3.3.3). Finally, I present two possible objections against the method of emancipatory amelioration (Section 3.4): the problem of asymmetry (Section 3.4.1) and the problem of emancipation (3.4.2). I argue that the method of emancipatory amelioration can counter both objections and, therefore, it is an attractive tool for a prescriptive conceptual analysis of rape that is based on an inclusive social theory of the phenomenon.

## 3.2 CONCEPTUAL AMELIORATION

In Chapter 1, I illustrated how Sally Haslanger distinguishes between manifests and operative concepts. This is a distinction between the formal definition of a concept (the manifest concept) and the working understanding of it (the operative concept). Furthermore, I argued that the formal definition (the manifest concepts) and the working understanding of the concept (the operative concepts) do not necessarily match and that this is of particular relevance for the concept of rape, e.g., it can lead to the failure of the legal system to prosecute cases of rape adequately, it can lead to epistemic failures of perpetrators, and so on. In addition to the manifest and operative concepts, we

can further distinguish the concept we should be employing, that is, the target concept. To arrive at a target concept, we have to engage in, what Haslanger calls, ‘ameliorative’ analysis. Ameliorative analysis aims at elucidating “‘our’ legitimate purposes and what concept of F-ness (if any) would serve them best (the target concept).” (2012: 376) The motivation for engaging in ameliorative analysis stems from a dissatisfaction of the descriptive inquiry and the conceptual analysis; in other words, it arises when we are satisfied neither with the manifest concept nor the operative one.

Dissatisfaction with something and how it is understood can trigger a critique of a given concept and an impulse for ameliorating it, i.e., for finding a new understanding of a given concept. To criticize a concept does not mean to reject it. On the contrary, it can open up space for alternative understandings. Understanding a concept anew or introducing a new understanding exposes the limits of the old.<sup>3</sup> Although the new concept has a different content, it is not arbitrary—it still is applicable in similar ways to the old. In Elizabeth Anderson’s words:

A critique of a concept is not a rejection of that concept, but an exploration of its various meanings and limitations. One way to expose the limitations of a concept is by introducing new concepts that have different meanings but can plausibly contend for some of the same uses to which the criticized concept is typically put. The introduction of such new concepts gives us choices about how to think that we did not clearly envision before. Before envisioning these alternatives, our use of the concept under question is dogmatic. We employ it automatically, unquestioningly, because it seems as if it is the inevitable conceptual framework within which inquiry must proceed. But envisioning alternatives, we convert dogmas into tools; ideas that we can choose to use or not, depending on how well the use of these ideas suits our investigative purposes. (2001: 22, emphasis in original)

As social agents, we are part of a social structure, which can affect the actual usage and formal definition of a term or concept. Thus, the use of the term ‘rape’ and its definition are influenced by false or distorted schemas of what rape is (e.g., by rape myths, as I have shown in Chapter 1). Accordingly, our actual usage and / or the formal definition might fail to adequately track the phenomenon of rape as it exists in the world, e.g., it might track instances of physically forced sexual penetration, but not instances of non-consensual sex. Concepts can fail us in many ways. They can, for example, be misguided, distorted, non-existent, or false. For lack of a better word, let us call this set of

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**3** | While Anderson talks about “introducing new concepts” (2001: 22), Haslanger adds that it suffices to introduce a revision of a concept or a new understanding of a concept. (2012: 18)

failures ‘dysfunctions’. Dysfunctions of concepts have practical consequences; they can produce or reproduce inequalities, they can silence, discriminate, and so on. When a concept dysfunctions, it calls for replacing, rejecting, or ameliorating the concept in question.

One way to detect dysfunctions of concepts is to see whether our actual usage tracks the phenomenon adequately or whether different analyses of a concept in question line up. As we have seen in Chapter 1, our operative and our manifest concept of rape do not match up. The actual usage is neither in line with the phenomenon of rape nor with the formal definition of rape. Dysfunctions can occur with regard to the actual usage or the concept in general. Haslanger (2012: 390) argues that we have at least three options to bring our manifest and operative concept in line with each other:

1. We can bring our actual usage in line with our manifest concepts;
2. we can replace our manifest concepts with our operative concepts; or
3. we can modify our manifest concepts in light of new cases that have emerged in the real world and change our (manifest and operative) understandings of rape.

In all of these cases, we have to contemplate what we want the concept to track in the world. However, the last case (3) makes this most explicit and requires a deeper conceptual engagement.

Let us consider each of these solutions in light of the examples given in Chapter 1: the police case, the court case, and the rapist case. First, bringing our actual usage (our operative concept) in line with the formal definitions (our manifest concepts) would result in preferable outcomes in these cases. If Sgt. Jeffrey Mason and Jerry Rittgarn’s assumptions had not blocked them from applying the formal definition of rape to the case at hand, Marie would have been treated fairly. If Juror Kirkland had applied the formal definition instead of the dominant working understanding, he would not have favored officer Moreno’s acquittal. And, if the Australian rapist had judged his acts according to the formal definition of rape, he would have seen them for what they are and might not have committed them (although, this is purely speculative). In these cases, the fallible character of the dominant working understanding is resolved by bringing the operative concept in line with the manifest concept.

However, what happens when not only the dominant working understanding fails to track the phenomenon adequately, but neither does the formal definition? Consider again the case of the alleged rape described in Kirkland’s essay, but imagine that this time officer Moreno is not employed by the New York State police force, but instead somewhere, where the formal definition of rape is in terms of force instead of consent. Nothing changes in the course of events from what was described already; the alleged victim is escorted home

by officer Moreno and officer Mata, they come back to her apartment twice that night, and at one of these visits the alleged victim wakes up to being penetrated by officer Moreno. The formal definition for rape however reads: Whoever with physical violence or with threat of grave and direct danger forces another to intercourse or to tolerance or action of an indecent act, commits an act of rape. In this example, neither according to the dominant working understanding nor the formal definition would officer Moreno be charged guilty. The manifest concept does not capture what happened as an act of rape because no physical violence was used and no threat of grave and direct danger forced the victim to submit (she was sleeping). Hence, bringing our language practices in line with our manifest concept does not always mean that we track the phenomenon more adequately. A better outcome depends on the fairness of the manifest concepts in question.<sup>4</sup> But replacing our formal definition with our dominant language practice can obviously not be the solution in the cases in question, since the actual usage was equally defective in the examples considered above. In a case where both, the operative and the manifest concept, are insufficient or flawed (in the sense that they do not track the actual phenomenon adequately), neither one can be made better by using the other. Thus, what we are left with as a solution is option (3): to modify our manifest concepts in light of the new cases that have emerged in practice and change our (manifest and operative) understanding of rape.

In this third case, we have to ask ourselves not only why there is a mismatch and how to fix it, but also: What do we want the concept of rape to track in light of the cases in question? According to Haslanger, that concept—the concept we should be employing, all things considered—is the target concept. (2012: 388-9) And we can come to find such a target concept through the project of amelioration:

Ameliorative projects, in contrast [to other conceptual projects], begin by asking: What is the point of having the concept in question; [...]? What concept (if any) would do the work best? In the limit case a theoretical concept is introduced by stipulating the meaning of a new term, and its content is determined entirely by the role it plays in the theory. If we allow that our everyday vocabularies serve both cognitive and practical purposes that might be well served by our theorizing, then those pursuing an ameliorative approach might reasonably represent themselves as providing an account of our concept—or perhaps the concept we are reaching for—by enhancing our

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4 | As I have explained in Chapter 1, our operative concepts can influence our manifest concepts and *vice versa*. The actual usage of a term and its respective understanding have implications for the laws we make and the laws we have influence what we understand rape to be.

conceptual resources to serve our (critically examined) purposes. (Haslanger 2012: 386)

Amelioration is guided by the question of what we need the concept for and which concept would do the work best regarding our legitimate aims. I contend that Haslanger's method of amelioration is a conceptual analysis that is both normative and pragmatic. It is pragmatic because it considers which concept could do the work best, e.g., which concept of rape actually tracks the phenomenon adequately and acknowledges its social embeddedness. And it is normative because it is directed at a (morally and politically) legitimate aim.

- A. A conceptual analysis is ameliorative iff it satisfies the following two conditions
1. Normative Condition: it is directed at a legitimate goal;
  2. Pragmatic Condition: it pursues the question of which concept could do the work best in regard to the given goal?<sup>5</sup>

Remember again the three aforementioned cases. As I have argued, what is especially problematic about the dominant working understanding failing to track the phenomenon of rape adequately is that it leads to unfair treatment of the victims, i.e., they are raped, disbelieved, and hindered in their attempts to get justice. Hence, regarding these three cases, a legitimate goal to have would be the feminist aim to stop the unfair treatment of rape victims. Ameliorating the concept of rape in light of this specific and legitimate feminist aim could (ideally) result in the following favorable outcomes: Marie would no longer be disbelieved and charged with filing a false report, Juror Kirkland would not argue for the acquittal of officer Moreno, and the Australian rapist would be able to make his experience intelligible as what it is: an act of rape.<sup>6</sup> However, Haslanger's project of amelioration is deliberately broad and does not specify what counts as a legitimate purpose. For the task at hand—conceptually

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**5** | Speaker's intuitions as to which condition is better described as normative or pragmatic differ. After all, one could argue that an 'ought-condition' should be called normative instead of pragmatic. I have here decided to specify the first as normative for the reason that it asks for 'legitimate' aims and concerns our normative commitments, and the second as pragmatic in line with traditional pragmatists who focus on the notion of 'what works for us'.

**6** | Of course, as I have said before, a conceptual change does not immediately and by itself result in better outcomes. The material, legal, institutional, etc., settings would need to change accordingly. However, assuming that our dominant working understandings influence our law- and policy-making (and *vice versa*), a conceptual change could start a process that ideally ends in the necessary conceptual *and* material changes.

ameliorating rape—I propose that we should develop a specific form of amelioration concerned with ‘emancipatory purposes’. I explain what I intend in the next section and develop this specific form of amelioration—emancipatory amelioration—in Section 3.3.

### 3.2.1 Reconsidering Amelioration

I have argued that the proposed cluster of rape fails to account for the mismatch between the phenomenon of rape and the dominant working understanding. It does not explain why the dominant working understanding is misguided and why it enjoys popularity. Since it cannot explain these issues, it cannot be useful for finding a strategy that can counter the distorted working understanding. What we need is a method that offers both: a social theory that maps the phenomenon and explicates the distorted actual usage of the term ‘rape’ as well as an ameliorative conceptual analysis that can counter the distorted working understanding. The specific purpose of ameliorative analysis with regard to rape is to counter distorted understandings that lead to deeply problematic practices. What I intend to do is offer a form of amelioration that specifies the legitimate purposes as emancipatory ones. Furthermore, different to Haslanger’s ameliorative project that is strictly conceptual analysis, the method of emancipatory amelioration that I develop in the next section, yields a social theory as well as a prescriptive conceptual analysis.

The term ‘amelioration’ describes an improvement, the act of making something better. The idea is to change the understanding of concepts and the way we think about the world. The form of amelioration that would be fruitful for the concept of rape needs to take into account the broader framework of social practices and the possibility that we, as social agents, are distorted about our understandings of the concept. The impact of unjust social relations is twofold. We, as social actors, are not only living within an unjust state of affairs, but also that we have a false understanding of this condition—we do not see it as unjust.<sup>7</sup> This implies the following for a method of amelioration that is adequately equipped to track phenomena such as rape: (1) In order to have emancipatory potential, it needs to be grounded in a social theory of the phenomenon in question and the unjust status quo, and (2) it needs to take seriously the problem that social agents have a distorted working understanding of the concept in question.

Before I develop an adequate method to analyze the phenomenon of rape, let me briefly raise the following question. The idea put forth is to develop a method that can yield a social theory and a conceptual amelioration that

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7 | Compare to Althusser (1970), who famously argued that ideology should be understood as “lived conditions.”

has emancipatory force. Emancipation requires structural change. But why would we assume that we can arrive at structural change by ameliorating a concept? After all, this is what the method of emancipatory amelioration aims at: to conceptually ameliorate the concept of rape on the grounds of a given social theory. I do not take it that conceptual change is structural change or that conceptual change is enough for proper emancipation. However, for emancipation to be successful, we need changes on all levels, i.e., material changes, legal changes, social changes, and conceptual changes. And all of these are interdependent. Material or social change can lead to conceptual changes when we realize that our social practices are not in line with our understandings of the object in question, and conceptual changes can lead to material or social change when we see that our understanding of certain concepts is not in line with our practices or material conditions. While it is therefore not enough to advocate for one kind of change, it is pragmatically required to start somewhere. As activists, we are much better equipped to fight for social or material changes and we should continue doing so, but as philosophers we are much better equipped to start by changing our distorted dominant working understandings of particular phenomena. As philosophers, we can determine how we need a conceptual change so that our concept in question tracks the phenomena under investigation. However, this implies that we acknowledge that conceptual change has to be adequate to the phenomenon and has to track the embeddedness of the phenomenon in the social structure.

### **3.3 DEVELOPING EMANCIPATORY AMELIORATION**

A project of amelioration (A), as we have seen, has two decisive moments: it is necessarily normative as well as pragmatic. In this sense, it is a specific way of engaging in conceptual analysis; it does not simply ask for stipulating a concept in line with our intuitions or our language practices, but rather asks us to consider the reasons why we need such a concept. It therewith includes our specific purposes, our commitments, and our aims. However, as I have argued above, we need a different form of amelioration for the concept of rape, one based on an inclusive social theory which is explicitly emancipatory. Hence, in the following, I propose the project of emancipatory amelioration (EA). Roughly, emancipatory amelioration consists of two different but interdependent endeavors: embedding the concept within a social theory and the task of amelioration. Furthermore, the amelioration-part of the method includes emancipatory purposes. Before I start developing the method, I explain in detail what I understand emancipation to be.

### 3.3.1 Emancipation and Emancipatory Amelioration

Conceptual ameliorative analysis in Haslanger's sense, is governed by two main underlying ideas: it is necessarily normative and pragmatic. The pragmatic-condition of amelioration (A) holds that the resulting analysis of the concept in question is judged by how well it works in regard to our specific purposes. This is a classically pragmatist endeavor. The explanatory priority lies with what "works for us" or, in other words, what sheds the most light on the phenomenon in question. Furthermore, as Robert Brandom argues, this pragmatic endeavor is already normative. In its focus of "what works best", pragmatism brings certain norms to the table according to which we can evaluate what works best. (2002: 50) While classical pragmatism focuses on instrumental norms—better or worse methods, correct or incorrect assessments, achieving aims or failing to achieve them—the idea of an emancipatory project needs to specify the relevant commitment in terms of emancipation. What is best will depend on our purposes since we cannot take a neutral stance towards the social world, but already bring certain commitments and attitudes to the table.<sup>8</sup> (cf. Brandom 2002; Fraser 1995)

While, according to Haslanger's conceptual amelioration (A), the normative condition is specified as legitimate purposes, in the emancipatory version of conceptual analysis, it should be specified as emancipatory purposes or aims. What we thus need to develop is a form of amelioration that strives towards emancipation. To do so, we need to first understand what emancipation is. Although many theorists (including advocates of Critical Theory as well as

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**8** | Note that Charles Taylor distinguishes between the core meaning of pragmatism and the radical sense of pragmatism. The former is the idea that our knowledge of the world is not made of neutral facts but of evaluative attitudes of those facts, thus, we should give primacy to practical reason and acknowledge our goals and purposes. In his words, "our entire understanding of things comes to be framed only within this committed and active perspective." (2004: 74) The latter consists of the insight that truth is not about "characterizing things according to the way they are" either understood in terms of the notion of correspondance or in terms of ridding ourselves of illusion, but "what we call truth is what works for us, in the sense of what lets our crucial activities go forward in the most successful and unimpeded way." (2004: 75-6) The insight that I want to take on board lies somewhere in the middle. I think that Taylor is right in saying that our understanding is always necessarily shaped by our perspective—this is the claim of situated knowledge. I also want to adopt a stance where we make explicit our commitments and analyze our concept of *rape* according to what works best in regard to our emancipative commitments. However, I do not adopt the idea that this is necessarily the case, rather, I here (for various reasons) choose to take on emancipative commitments.

critical race scholars and feminist philosophers) use the notion of emancipation, very few actually specify what it is. Among the Frankfurt School's theorists, it is often understood in opposition to oppression or domination. Thus, to overcome oppression or domination, we need emancipation. In fact, the specific practical purpose of Critical Theory is to seek human emancipation, meaning "to liberate human beings from the circumstances that enslave them" (Horkheimer 1982: 244). Or, in Raymond Geuss' words, "critical theories have special standing as guides for human action in that: [...] they are inherently emancipatory." (1981: 1-2, my emphasis) The underlying idea is that a critique of the oppressive or dominating structures can lead to human emancipation. Emancipation is thus specified as the overcoming of oppression and domination. This suggests that it has to do with the procurement of certain economic, political and/or social rights or, in general, equality for those who were oppressed or dominated. However, this is very vague.

I propose that we can gain some insights by considering historical paradigms of emancipation. The following are all cases in which social groups are emancipated from oppression and domination in specific ways: emancipation from slavery, women's emancipation, and Jewish emancipation. I will consider each case respectively. First, emancipation from slavery: Slaves fought for their own emancipation by revolts, escaping, etc., and the social movement of abolitionism helped to fight for the emancipation from slavery. (cf. Anderson 2014) In the U.S., the Emancipation Proclamation, signed and issued by President Lincoln on January 1, 1863, was an executive order of the U.S. government that changed the legal status of three million slaves to free persons.<sup>9</sup> Slaves became actually free by escaping to federal lines or by advances of federal troops during the American Civil War. By June 19, 1865, the Union Army controlled the land of the Confederacy and liberated its slaves. The 13th Amendment to the U.S. Constitution finally ended slavery throughout the U.S. in December 1865.<sup>10</sup> However, the fight for emancipation of the abolitionist movement was not over when they reached legal emancipation. In fact, the struggle for social emancipation continued (and, we should say, still continues today).

Second, women's emancipation: The women's suffrage movement was a movement for the emancipation of women in terms of the right to vote in

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**9** | In comparison, the abolitionist civil movement in the British Empire began in 1783 and on March 25, 1807, the British Parliament passed the Slave Trade Act, which made the slave trade illegal throughout the British Empire.

**10** | See the following Encyclopaedia entries on 'emancipation': Ahrens, T. and Finkelman, P. 2008, in the Online Encyclopaedia of African American History, 1619-1895: <http://www.oxfordaasc.com/article/opr/t0004/e0184>, accessed June 26, 2017; and Walvin (2008).

elections. Later, it developed into the struggle for equal civil rights for women. Women gained limited voting rights first in Finland, Iceland, Sweden, some Australian colonies and some western U.S. states in the late 19th century. Women's suffrage organizations formed around the world to coordinate the social movement, e.g., the International Woman Suffrage Alliance which was founded in 1904 in Berlin. The suffrage movement included suffragists as well as suffragettes; the former wanted to create change constitutionally, the latter were the more militant branch of the movement and, led by activist Emmeline Pankhurst, formed the Women's Social and Political Union in 1903. In the United Kingdom, women were enfranchised in 1918. The Representation of the People Act 1918 was passed on February 6 and granted the vote to 8.4 million women over the age of 30 who met minimum property qualifications. In November the same year, the right to be elected followed. In Germany, women were given the right to vote and be elected on November 12, 1918. Switzerland was the last Western country to grant the right to vote and be elected to women in 1971. However, it took until 1991 before women were allowed to vote on local issues in each Swiss canton. Starting in the 1890s, African American women in the U.S. started their own clubs and societies and, thus, their own suffrage movement for political rights. The Nineteenth Amendment, prohibiting state or federal sex-based restrictions on voting was decided on June 4, 1919. However, only with the Voting Rights Act of 1965 were women of color (including African American women and Native American women) enfranchised. (cf. Bolt 1993; DuBois 1998; Sneider 2010)

Third, Jewish emancipation: For a long time, Jews were subject to restrictions in Europe. For example, Jewish quotas, separated communities, requirement to wear special clothing, restriction to practice Jewish religion, disenfranchisement, prohibition of entry into some countries, and so on. Jewish emancipation fought against these restrictions and for equality and citizenship rights. Depending on the historical context and the location, the struggle for emancipation took different forms. As a result, during the late 19th century and the early 20th century, communities started to make an effort to integrate Jewish individuals into their communities, and nations started to repeal previous discriminatory laws against Jewish residents. The first countries to grant freedom and rights to its Jewish residents were Poland in 1264 (!) and France 500 years later in 1791. The last country to do so was Romania in 1923. However, Germany reversed the emancipation of Jews in 1933 (through World War II) and some countries (e.g., Yemen, Iraq, Libya, Egypt) have still not granted equal rights to Jews. (cf. Barnavi 2003; Ben-Sasson 1985; Sharfman 2005)

All three are cases of historical (and, unfortunately, ongoing) struggle, in which specific social groups are emancipated from conditions of oppression or domination. In the case of emancipation from slavery, the aim was to be granted

equality and the change in legal status from unfree to free persons, in the case of women's emancipation the aim was the legal right to vote and full equality, in the case of the Jewish emancipation the aim was social and legal equality. The struggle for full legal equality included social respect as well as demands for material things like land and housing. They all share the following features: the fight for social and legal equality. Often the voiced aims of the social movements focused on the legal rights that had been denied to the marginalized group so far. However, in all cases, the struggle exceeded the granting of legal rights and demanded further social equality—to take part in the social life of the communities without being shunned or having to fear discrimination and violence. Thus, we can say that the struggle of emancipation is about being granted equality and justice in legal and social terms. Being granted equality and / or justice requires structural changes. The struggle for emancipation is necessarily about the social structure. Certain individuals occupy specific social positions due to their social group membership. And depending on which social position individuals occupy, their behavior is governed by constraints that are defined by the overall structure and the structure's internal relations. (cf. Haslanger 2015; Young 1990) Being constrained in certain respects—and more so than others—calls for emancipation of the social group and the social structure in general. As Robin Celikates argues, emancipation is twofold: it is emancipation from the unjust and unequal status quo and emancipation of a social group (and its individuals) in the sense that they can take part in political and social life. (2012: 105) Unless emancipation is about social structures, it falls short of being useful in the case of rape (as well as the cases of emancipation from slavery, women's emancipation, and the Jewish emancipation). Thus, when we speak of emancipation we are speaking about structural change and not individual change. On the basis of the paradigm cases, I propose the following definition for emancipation:

Emancipation is a social and legal transformation to a more equal and just social structure.

Understanding emancipation in terms of structural change implies the following. There might be a case of emancipation in which the social structure is socially and legally transformed to be more equal and just, but a single individual loses some rights because of it. Consider the case of the rapist who feels that he is entitled to use women's and gender non-conforming people's bodies as he pleases and has so far not experienced any legal and social sanctions for doing so. After the social structure is changed towards being more equal and just in regard to women and gender non-conforming people's rights over their own bodies, he is sanctioned for his acts of rape. Thus, his state of being worsens because the social structure is more equal and just. I do not think that

this is a relevant counterexample to the proposed definition. Indeed, it is often the case that some individuals (or social groups) lose power that they enjoyed primarily because of an unequal and unjust social structure once the social structure (and the marginalized groups) are emancipated.

Taking the project of amelioration (A) as a starting point and the aforementioned insights (spelled out in the form of emancipation above), I propose the following method:

(EA) Emancipatory Amelioration yields a social theory and a conceptual analysis that each satisfies one of the following two conditions:

1. Normative Condition: it is directed at exposing defects in the status quo (social theory);
2. Pragmatic Condition: it pursues the question of which concept works best to bring about emancipatory transformation (in the sense of a social and legal transformation to a more equal and just social structure) taking into account the structural analysis of the status quo (conceptual analysis).

The proposed method of emancipatory amelioration (EA) works in two steps: (1) social theory, and (2) conceptual amelioration. While the first step brings about the satisfaction of the normative condition, the second brings about the satisfaction of the pragmatic condition. However, the second step cannot stand on its own, it is necessarily dependent on the first step—as much as any pragmatic endeavor is dependent on a purpose or function.<sup>11</sup> The first step is guided by the insight of explanatory potential—it provides a rich social theory of the phenomenon of rape as it exists in the world. It explains the workings of the status quo. The second step is guided by the insight of the acknowledgement of our commitments. It spells out the normative element as emancipatory transformation in the way defined above. Furthermore, it brings in the issue of practicability. While conceptual change needs to be paired with material changes, it provides a starting point for philosophical action. Finally, the success of emancipatory amelioration—including both steps—can only be known retrospectively. I say more about the method's retrospectivity in Section 3.4.

Before I turn to analyze the phenomenon of rape (Chapter 4) and ameliorate the concept of rape (Chapter 5), I explicate in more detail the two-step structure that any project of emancipatory amelioration (EA) takes. To systematically map the phenomenon of rape, the first step of the method of emancipatory amelioration is to engage in a social theory of the phenomenon. This social theory is a structural analysis and critique such that it not only

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**11** | The idea that the second step follows only after the first step closely mirrors Critical Theory's immanent critique, as I show in more detail below.

maps the phenomenon adequately but also exposes the defects in the status quo. This step takes its guidance from the normative condition: it works to map the phenomenon and expose defects in the status quo with the aim of correcting these defects. In a second step, it can conceptually ameliorate the concept of rape on the basis of the social theory and aim at an emancipatory understanding of the concept—one that conceptually counters the problematic dominant working understanding. This second step takes its clues from the pragmatic condition: taking into account the social theory of the first step, it pursues the question of which concept could do the work best. I explicate the first step in the next section. To do so, I take into account insights from Critical Theory, pragmatism, and non-ideal theorizing.<sup>12</sup> In Section 3.3.3, I turn to explain how the method of emancipatory amelioration (EA) proceeds from the step of social theory.

### 3.3.2 Step 1: Social Theory

The first step of emancipatory amelioration (EA) is to systematically map the phenomenon of rape and expose the defects in the status quo by engaging in a structural analysis and critique of the given situation. This step takes its clues from the normative condition: it works to expose defects in the status quo with the idea that these defects need to be corrected. In Chapter 2, I proposed the following desiderata for such a social theory. A social theory of rape has to:

**Desideratum 1:** adequately map the phenomenon in a way that explicates its structural embeddedness;

**Desideratum 2:** explicate speaker's intuitions, (distorted) understandings, and actual usage of the concept;

**Desideratum 3:** be normatively adequate and explain the gap between false or misguided understandings and the existing phenomenon as well as provide explanations of how such misguided or false understandings come about and enjoy popularity;

**Desideratum 4:** explain the injustice of it; and

**Desideratum 5:** be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change.

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**12** | Naturally, the insights of the three schools of thought overlap profoundly. By treating the insights from the different schools as partly overlapping, we can—for the purpose of developing a new variant of conceptual analysis—bring on board the following central ideas: the method needs to be practical (in so far as it needs to be concerned with actual real-life phenomena, e.g., social practices, conflicts, and their interdependent social agents), it needs to be explanatory, it needs to acknowledge our commitments (and identify ideological commitments), it needs to be normative (e.g., emancipatory), and its consequences need to be tested retrospectively.

Note that while desiderata (1)-(4) specify the social theory of rape, desideratum (5) is concerned with the second step of the method of emancipatory amelioration (EA); it specifies what a conceptual analysis of rape needs to fulfill. I come to this in the next section.

Remember that I have argued that despite the contestedness of the concept of rape, its dominant working understanding is distorted by rape myths. And, furthermore, we have seen that to counter such distorted understandings effectively, we need to strive for a structural change—it is not enough to change one individual’s misguided understanding, we need to change the material and conceptual conditions. For emancipatory amelioration (EA) to be a useful method in contexts where structural conditions promote misguided practices, the social theory needs to be free from said distortions itself. For many, immanent critique is the tool of choice for investigating social conditions that are (prone to be) distorted. According to Rahel Jaeggi (2009), Critical Theory’s immanent critique is a methodological tool whose purpose it is to strip meanings of their ideological input. But what does immanent critique stand for? Celikates (2012) argues that Marx’s project of immanent critique exhibits the following elements: it is a critique of forms of knowledge as well as social practices, it is practical and emancipatory in explicating social reality and aiming at a transformation of it. It is neither internal nor external critique. According to Jaeggi, internal critique is a form of critique that “holds that certain ideals and norms may be part of a particular community but are not de facto realized in this community” (Jaeggi 2009: 74). For example, a feminist community might have the ideal of gender equality, but their everyday practices are more beneficial for men than for women and gender non-conforming people. Such a community could be internally criticized by showing that their social practices do not live up to their ideal of equality. External critique, on the other hand, is a form of critique that evaluates a given context by reference to an external theory, for example, a theory of justice. Immanent critique is an alternative to both—internal and external—forms of critique. As such, it neither follows the view that the criteria of critique are external to a given context (a claim that is also made by non-ideal theorists) nor the view that takes a community’s own normative standards as tools to criticize said community. Instead, immanent critique focuses on the contradictions and crises of social reality. (Celikates 2012: 101)

In general, all forms of immanent critique share the assumption that a critique of the social structures of the modern world has to amount to more than merely moral condemnation. In other words, the social structure can not be approached by a normative standard that is justified independently of the social practices within said structure. (cf. Stahl 2013a) Karl Marx famously rejected such a normative standard, stating:

This does not mean that we shall confront the world with new doctrinaire principles and proclaim: Here is the truth, on your knees before it! It means that we shall develop for the world new principles from the existing principles of the world. We shall not say: Abandon your struggles, they are mere folly; let us provide you with true campaign slogans. Instead, we shall simply show the world why it is struggling, and consciousness of this is a thing it must acquire whether it wishes or not. (1992: 208-9)

We do not have to turn to Marx or Marxist theory to find forms of immanent critique. In fact, many other scholars have taken to some form of immanent critique in a stance against so-called ideal theories. A common ideal theory is brought forward in *The Theory of Justice* (1971) in which John Rawls assumes that we can critique social structures by basic principles of justice without taking into account the particular norms of the social practice in question. Walzer (1987, 1988, 1994), Taylor (1985a,c, 1993), and Honneth (2000, 2001) (to name only a few) have distanced themselves from this approach and argued for a form of immanent critique instead. They argue that a normative critique has to be attentive to existing social practices. The general idea is that a critique should not merely say that certain structures or practices are not what we want them to be, but that they fail on their own terms. This is why, most forms of immanent critique take it that we can criticize social practices once they turn into crises or contradictions. Titus Stahl proposes the following general understanding of immanent critique:

[A]n immanent critique of society is a critique which derives the standards it employs from the object criticized, that is, the society in question, rather than approaching that society with independently justified standards. (Stahl 2013b: 2, emphasis in original)

Let us for now say that immanent critique is a social theory of the given status quo that reveals existing problems as they appear in the world. Max Horkheimer stipulates that a critical theory has the following adequacy conditions: it must be explanatory, practical, and normative at the same time. Explanatory in the sense of being able to explain what is wrong with the status quo of social reality, practical in the sense that it must identify the actors to change it, and normative in the sense that it needs to provide norms and goals for social transformation. (Horkheimer 1982: 21) Similar to non-ideal theorizing, this is only possible by taking empirical research into account. And, in aiming at a transformation of the problematic status quo with the help of immanent standards, it has a “straightforwardly political character” (Fraser 2013: 19). Thus, roughly, immanent critique analyzes the wrong state of a given social structure that makes oppression and injustice possible.

In the following, I understand immanent critique according to Jaeggi's pragmatist take on it (in comparison to a more Hegelian understanding).<sup>13</sup> (Jaeggi 2009, 2013) This pragmatic understanding of immanent critique presupposes a specific relation between analysis and critique. Jaeggi (2013: 269-70) identifies four aspects that constitute an immanent critique in this sense:

1. It is based on a "hermeneutics of suspicion" (cf. Ricoeur 1970);
2. it is a critique of the internal contradictions of a given context;
3. it criticizes certain mechanisms that make domination, oppression, and injustice possible;
4. it draws a strong link between analysis and critique.

An immanent critique, first, uses the hermeneutics of suspicion to, second, observe distortions and internal contradictions and in doing so, third, analyzes the mechanisms that make domination in a given context possible. Fourth, this reveals how the norms and schemas of the social structure are not what they seem; it therefore provides a way to criticize a given context by analyzing it. Following the structure of immanent critique, a social theory can systematically map the phenomenon in question as well as explicate and critique what is problematic about it.<sup>14</sup>

When we engage in a social theory of a phenomenon, how do we know what is presumably problematic and worth analyzing? The important insight from immanent critique seems to be that a social theory of the status quo results from practical contradictions. Problematic states often show themselves by using contradicting norms or by facing a crisis. These contradictions and crises can then give rise to an analysis and critique; they are like a red flashing light that draws our attention. While the notion of internal crises and contradictions works well when we theorize phenomena that encompass all social practices and experiences in some ways, such as capitalism, it works less well when

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**13** | Note that, according to Jaeggi, the pragmatist understanding of immanent critique that I present is different to Haslanger's view. According to Haslanger, the point of immanent critique is to embed the critic in the social context and by doing so, the critic can draw upon the shared commitments of the different parties of the debate. (2016: 6) However, this view comes closer to what I have explicated as internal critique drawing on Jaeggi (2009): the idea that a community can be criticized on the basis of not fulfilling its own ideals.

**14** | Interestingly, as Celikates points out, according to this view, immanent critique becomes a social practice as well. It is embedded in the social structure in a similar way to the social practices. Immanent critique is effective because it does not locate itself outside of the given situation or the epistemic standpoint. (2006: 33)

we attempt to theorize more limited phenomena. Hence, I propose to widen the idea of internal contradictions in a way that allows us to fruitfully apply the method to other phenomena. Let us say that a social theory of the given phenomenon is required because of internal contradictions (for example, in the case of capitalism) or because of fragmented experiences in a given context.

While many societies have some unified norms (the norms of capitalism are only one example), they are also fragmented. Not all communities and / or social groups within them follow the same norms or have the same experiences when they do. We can, thus, have experiences that are not in line with the given norms of our own community or that question the norms of our community or other communities. Hence, I propose that we speak of practical contradictions to make intelligible the various ways in which contradictions can arise. Consider an example from Elizabeth Anderson: “Three hundred years ago, few people claimed that slavery was wrong. [...] Slavery stands today as a paradigmatic moral wrong. The transformation of moral consciousness that underwrote the abolition of slavery represents perhaps the most profound instance of moral progress the world has ever seen.” (2014: 2) Anderson shows how our moral consciousness—what we perceive as morally permissible or morally false—is influenced by the social norms of the time and place we live in. And while the norms that made slavery acceptable were indeed far reaching, we should add that, whether we accept these norms or not depends on our social position in said culture or society. For instance, even though three hundred years ago, most people who owned slaves, were involved in the slave trade, or benefitted from it did not think that slavery was wrong, the slaves surely did. In other words, while the slaver owners did not see the practical contradictions of the social structure, the slaves did—indeed, they experienced them first-hand. Thus, different social positions can create tension between different norms, practices, and structures, which have to be navigated in the given society.

One way then to think about practical contradictions is that they arise in the confrontation between our normative frameworks and our experiences of failure or limitation of those frameworks. The potential of social theory stems from a moment of practical contradiction, a moment in which we fail to make intelligible our lived experiences, i.e., a rupture of intelligibility. On this reading, what we aim at is making intelligible our experiences in contexts of crisis.<sup>15</sup> The moment of practical contradiction is like “banging our head against a wall”. We cannot go further. When we come to a moment of rupture in which we fail to make intelligible our lived experiences, we can come to a point of suspicion, where we think of the unintelligibility of our lived experiences not as an individual problem but as a motivation to analyze what restricts us. For example, think of the case of a young girl who is psychologically pressured to

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**15** | A moment that Honneth calls “moral experiences of disrespect.” (1995: 133)

engage in sex by her boyfriend. While the dominant working understanding assumes this to be a case of unproblematic sex, she feels morally wronged. Her experience is a practical contradiction in so far as she is torn between the dominant understanding and her feeling of being wronged.<sup>16</sup>

We have now seen how practical contradictions can motivate us to engage in a social theory of the phenomenon that sparked the contradiction. One way a practical contradiction in a person's life can become fruitful is by seeing the structural component of that experience. If a person gains the insight that what masked her experience also masks other person's experiences in similar ways, then this can trigger an analysis. Catharine MacKinnon (1989b) raises a similar point in her discussion of feminist awareness groups on sexual harassment. She provides an interesting account of how we can come to the point of theorizing by arguing for consciousness raising groups as moments in which we can come to realize our shared consciousness. Consciousness raising groups transform our individual dissatisfaction or anger into shared collective knowledge. They can help us see that our individual experience is not individual in character, but rather a collective experience of members of a certain group. On this view, gaining knowledge through different experiences (and sharing such knowledge) can provide a starting point for emancipatory amelioration.

The dominant working understanding of rape can give rise to practical contradictions because it does not track most forms of rape in the world. By experiencing an act of rape—either first-hand or second-hand by hearing or reading about it—that cannot be made intelligible by the working understanding, we are challenged to distance ourselves from this understanding and find ways to make intelligible what happened to us. When we find others who share our experience, we can come to understand its structural character. This also highlights that a social theory is necessarily a theory of social structures and not of individuals. The shared experience is not shared in the sense that the perpetrator is the same person (even though this might of course be possible), but in the sense that it is masked by the same social practices, norms, and understandings and made possible by the same structures and social positions. This is the difference between a social theory and a critique of an individual or a moral critique.<sup>17</sup> The idea is not to criticize the perpetrator for what he did, but to map and critique the social practices, understandings, collective actions, etc., that enabled him. The social theory could come to the conclusion that

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**16** | I come back to examples like this one in the last chapter (Chapter 6).

**17** | According to Stahl (2013b: 4), a moral critique is “directed at both individual actions and social processes”.

the perpetrator's wrongful act was part of a social practice or conditioned by a social practice.<sup>18</sup>

Similar insights have been brought forward by pragmatism. Pragmatism is guided by the idea that we are relational beings and that our social and moral norms come into existence through shared practices. Interpersonal conflicts or changed conditions can then give rise to uncertainty or disagreement about our social and moral norms. Social actors can point to objectionable features of a given norm which can then lead to moral theorizing about how to proceed. This highlights the flexible character of our social and moral norms. As Elizabeth Anderson writes:

Whatever the occasion for moral reflection or moral theorizing, it arises from something that causes uncertainty or disagreement as to how to proceed. The reflective resolution of uncertainty or disagreement typically involves investigation into the point of the moral norm or principle at issue, whether it is justified, and whether revised principles could fulfill the original point better, or whether people's conduct should be coordinated around some different point. In other words, uncertainty and disagreement prompt an investigation into the justification of disputed norms. It is possible for people to conform to a social or moral norm from habit or custom alone, without any idea of its point, as in the case of taboos, where people conform to a norm, the original reason for which was forgotten. However, when doubts arise as to how or whether to continue to conform, some reflective decision is needed to move forward. (2014: 4)

What I want to take on board is that, first, social (and moral) norms are part of our social practices, and, second, conflicts or doubts can give rise to reflection and investigation into the problematic aspects of given norms. These claims are based on the idea that knowledge arises from distinctive experiences. As relational social actors, our knowledge is always situated in at least two ways: we have limited access to knowledge because what we know depends on our social position and lived experience, and what we know is tinted by our view of the world, our commitments, and our aims. In Anderson's words, "knowledge of the right arises from certain distinctive experiences" (2014: 7). But because we are relational beings, we can be held responsible or accountable for our theorizing, which can work as a corrective on our theories.

Furthermore, Anderson implies that we come to the point of conflict quicker when we are in marginalized social positions and can use that particular knowledge to reflect upon our theories. People in powerful positions, on the other hand, lack the experience of conflict and, thus, fail to see what might be wrong with certain practices or theories: "People in powerful positions tend to insulate themselves from the claims of those over whom they exercise power,

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**18** | I say more about this in Chapter 4 and the last chapter (Chapter 6).

to censor, discount, or misunderstand the claims of those beneath them, and to construct systems of law and moral accountability filled with loopholes through which they but not others can escape. So they rarely have the characteristic experiences through which they would learn that what they are doing to social inferiors is wrong.” (Anderson 2014: 8) The general idea of situated knowledge and the more radical assumption that some social positions give rise to conflict with existing practices, norms, or theories sooner than others is a recurring theme in pragmatism, Critical Theory, and in non-ideal philosophy in general. And it is in line with what I am arguing: experiencing practical contradictions can give rise to social theorizing and we are far more likely to experience and acknowledge such contradictions when harm is done to us than when we are the ones doing the harm.

Of course, experiencing such a practical contradiction does not necessarily lead to a critical social theory. A person might not have the epistemic tools or the material resources to engage in analysis. Furthermore, a person might deliberately or unconsciously choose to not pursue the problem further. For example, to work through the trauma of what they experienced, it can sometimes help rape victims to mask what happened to them as a different experience or to blame themselves. As Brison (2002) recounts, it can be an essential part of the healing process to blame oneself for what happened instead of holding the perpetrator responsible and analyzing the structures that make rape a real option for some persons. Blaming oneself for the rape implies that what happened can be stopped from happening again if one changes one’s own behavior and takes more care in the future. Acknowledging that rape is never the fault of the victim, on the other hand, means acknowledging that there are no ways (or very few, if self-defense counts as a tool against rape) to prevent future attacks.

We are now in a position to see that the first step of the method of emancipatory amelioration (EA)—the step of social theory—consists of several small steps or rules:

1. Experiencing a moment of rupture or practical contradiction;
2. failing to make intelligible said moment of rupture in our lived experiences;
3. coming to realize the structural dimension (as argued above, by shared experiences, for example);
4. engaging in a social theory of the phenomenon that brought about the practical contradiction and made it unintelligible in our given frameworks.

By systematically mapping the phenomenon in question, the first step of emancipatory amelioration (EA) criticizes the social practices and schemas that bring about the phenomena. It shows what is problematic and—besides analyzing and criticizing the status quo—thus it opens up the possibility for

emancipatory change. Emancipatory amelioration (EA) is a critique of the social practices and their respective understandings that strives for an emancipatory change of the given context; it opens up possibilities for new schemas and new social practices.

One could question whether the social theory I advance really is a theory in the traditional sense of the word. Commonly, a theory is taken to be a system of ideas, intended to explain something, based on general principles and rules independent of the thing to be explained. Hence, a social theory of rape requires a system of self-standing or independent principles that are formulated in order to explain the social reality of rape. I agree with the idea that a theory is a system of ideas intended to explain something. I do not agree with the idea that a theory is necessarily based on general principles and rules independent of the thing to be explained. In this book I am guided by thoughts from pragmatism, Critical Theory, and non-ideal theorizing and neither one of these schools thinks of theories as based on general principles and rules independent of the thing to be explained. For example, pragmatism—similarly to the rules of the theory that I bring forward—argues that we begin in a situation where we do not know our way around and theoretical inquiry comes to an end when we do. Theoretical inquiries are simply problem solving processes that work with the help of empirical studies and arguments. Such an inquiry is an explanation of the thing under investigation. Strictly speaking, merely the last rule above concerns the part of investigation. The other rules pave the way for a social theory, such that the theory is not based solely on our prior commitments, attitudes, or beliefs. Furthermore, pragmatism relies on the idea that whether something is a good theory or not is defined retrospectively by the outcome—for example, does it explain the subject matter well and does it fulfill the stipulated desiderata? I now turn to the second step of the method of emancipatory amelioration (EA): emancipatory conceptual transformation and amelioration.

### 3.3.3 Step 2: Amelioration

The last desideratum of the social theory specified that the theory has to be accompanied by a conceptual analysis that adequately tracks the phenomenon in question. I wrote:

**Desideratum 5:** The social theory has to be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change; and this conceptual analysis should be flexible in a way that allows for changes when we gain further information about the phenomenon; be constrained enough to allow for proper judgements; account for different degrees; acknowledge the concept's contestability, gray area, and neighboring categories; be non-paternalistic; and have heuristic utility.

In the second step, the method of emancipatory amelioration (EA) ameliorates a given concept on the basis of the social theory of the phenomenon (as outlined in the last section) and aims at an emancipatory understanding of the concept such that it adequately tracks the phenomenon. This second step takes its clues from the pragmatic condition: it pursues the question of which concept could work best, taking into account the social theory that was done in the first step. This second step of the method of emancipatory amelioration (EA) closely mirrors Haslanger's project of amelioration.

The second step begins by asking: what concept would work best regarding our emancipatory aims? It takes as a starting point the social theory that resulted from the first step, to then ameliorate the concept in question. The first step has systematically mapped the phenomenon and revealed what is problematic about the working understanding of the concept as well as the specific social practices of which the phenomenon is a part. Acknowledging the practical contradictions, both in the sense of experiences and in the sense of gaps between the phenomenon and the dominant working understanding, opens the possibility not only for critique, but also for a transformation of the given state of affairs—in the case of amelioration, this transformation is a conceptual one. The emancipatory potential arises from transforming a concept. Remember that, for example, knowledge of shared experiences can yield the desire for a social theory and a transformation of the concept. MacKinnon's discussion of consciousness raising groups explained how the phenomenon of sexual harassment became intelligible only when women shared their experiences and gained a new understanding of certain forms of sexual conduct. This change of perspective meant seeing sexual harassment against the backdrop of gender inequality which makes women more vulnerable financially and socially; some forms of unwanted sexual attention target women by reinforcing and exploiting their already vulnerable status. (MacKinnon 1989b: 83–90) We can come to a social understanding of sexual harassment only by exploring the structural injustice underlying it. By acknowledging such injustice, we open up the possibility for new schemas and practices. The first step—the social theory—not only opens the space for a new concept, but it also provides a glimpse of the emancipatory potential. It is only by seeing what is going wrong, that we can successfully engage in analysis and follow the question that amelioration asks: What concept would do the work best?

The overall structure of the method of emancipatory amelioration (EA) is the following. First, either by having our experiences misrepresented or by explicating the gap between the phenomenon and the dominant working understanding, we can experience a moment of rupture or practical contradiction. Second, the moment of rupture makes our experience and / or our social practices unintelligible. Third, this can bring us to the point in which we question the structural constraints that we or specific social groups

encounter. Fourth, with the right epistemic and material resources, we can then use this practical contradiction and systematically map the phenomenon. The social theory—the first step of emancipatory amelioration (EA)—is strongly influenced by the insights of immanent critique and pragmatism. It, indeed, follows a similar structure to the hermeneutics of suspicion and the critique of the given status quo. And, finally, from the social theory of the given phenomenon, we can develop an emancipatory understanding of the concept in question that is necessarily grounded in said social theory, but, at the same time, is motivated by our emancipatory aim of making intelligible our experience and overcoming the practical contradictions. I now turn to raise two possible objections against the method of emancipatory amelioration (EA) and show that they can already be faced by the insights from immanent critique and pragmatism, both of which are embedded in the project of emancipatory amelioration (EA).

### **3.4 POSSIBLE OBJECTIONS**

In the first two chapters, I gave an overview of the distorted working understanding of the concept of rape. I argued that it is deeply problematic because it fails to track the various forms of rape that exist in the world. I then argued that we need to provide a social theory of the phenomenon of rape that adequately captures its diverse forms and that explains why the actual usage is distorted. In this chapter, I proposed a method that can not only yield a rich social theory of rape, but one that also includes a prescriptive conceptual analysis with the aim of countering the distorted understandings of rape. In other words, part of the task of mapping the phenomenon adequately is to contribute to structural and conceptual change. I have already argued that both are needed in the long run. As a philosophical work, this book contributes to conceptual change by pointing out a way to shift the dominant working understanding of the concept. To do so, the proposed method has to be able to navigate through the wrong social practices as well as the distorted understandings of the phenomenon. This is a complex task considering that we, as theorists and ameliorators, are part of the social practices and understandings we want to change. And, it raises questions about whether we can be successful in our endeavor by using the proposed method.

I now consider some of these questions—some of which I have already mentioned above—and, ultimately, argue that we can be successful using the method of emancipatory amelioration. (1) If we, as social agents and theorists, are part of the social practices and distorted understandings, then how can we come to a standpoint from which to see the masked character of the social practices? And, (2) how do we, as theorists, know whether the social theory and

amelioration is in fact emancipatory? The first question concerns what Jaeggi (2013: 293-4) calls the ‘problem of asymmetry’: the relation between being subjected to a social structure and taking a critical standpoint of this structure is asymmetric. The second concerns the general thrust of the method: is it bound to fail because we are part of the problem? I now address both questions, starting with the first question in the next section (Section 3.4.1).

### 3.4.1 The Problem of Asymmetry

The problem of asymmetry, according to Jaeggi, describes the relation between being subject to a particular social structure and taking the standpoint of a critic of said social structure. (2013: 293-4) It is a relation of asymmetry.<sup>19</sup> We can identify two questions within the problem of asymmetry: (1) How can we come to a point from which to see the masked character of the social structure; and (2) how are we, as embedded in the structure, not subject to the same epistemic distortions in our social theory? A related question concerns the motivation for engaging in the method of emancipatory amelioration (EA): What motivates us, as philosophers, to ask critical questions? Furthermore, I briefly consider how the method of emancipatory amelioration (EA) can fail even though it provides adequate answers to the questions considered. I consider the question of motivation first, before turning to the two questions of the problem of asymmetry.

I have described emancipatory amelioration (EA) as a two-step method: it takes the hermeneutics of suspicion as a starting point for a social theory of

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**19** | While these questions arise naturally when it comes to holistic ideological structures such as capitalism—which is Jaeggi’s point of departure—I contend, that they are also important for fragmented social structures. They do not presuppose a conception of culture as a mind- controlling machine that manages our thinking accordingly. Instead, we can assume that the social structure is fragmented; it is a complex system of intersecting understandings, norms, scripts, communities, practices, etc. However, some understandings are more salient than others and some social practices are more routinely enacted than others. Even in a fragmented structure some norms run deeper than others. Consider the example of the binary gender system: gender norms that confirm this system are hard to shake. Not only the dominant understanding of the system but also its social practices constantly work against those social groups, communities, and individuals who try to contest it. This is not to say that diverging viewpoints, scripts, and practices do not exist, but rather that even someone who actively criticizes the binary gender system might find themselves sliding back into it from time to time simply because it is a very pervasive system. Thus, questions of asymmetry between the structure and the critic are relevant even in cases in which the structure is not deeply holistic but fragmented.

the unjust status quo and by doing so points to an emancipatory conceptual transformation. How can we explain the motivation of the philosopher to engage in the method of emancipatory amelioration (EA)? I have argued that the motivation comes from a practical contradiction or moment of rupture. This suggests that the philosopher is motivated by such a practical contradiction or moment of rupture as well. Indeed, I take it that the philosopher is motivated to engage in the method of emancipatory amelioration (EA) primarily by being a social agent who experiences or witnesses these moments of rupture or practical contradictions. In that sense, the motivation of the philosopher is no different than the motivation of any other social agent. And the philosopher, as well as any other social agent, can fail to experience a moment of rupture and thus can lack the motivation to engage in the method of emancipatory amelioration (EA). The moments of rupture of the philosopher can come from the inability to make their own experience intelligible as well as from witnessing that others are experiencing moments of rupture. Philosophers who are trained to investigate other people's lives have an advantage: they will witness moments of rupture quicker than philosophers who are not trained to be concerned with lived experiences. And, furthermore, the philosopher who experiences a moment of rupture—either first-hand or second-hand—is far better equipped to start the project of emancipatory amelioration than other social agents. Finally, even the philosopher who fails to experience a moment of rupture can still come to see practical contradictions in the social structure—indeed, the philosopher is trained to see these contradictions better than others. A philosopher schooled in analysis and critique with sufficient time and resources is, thus, far better equipped to use the moments of rupture fruitfully.<sup>20</sup>

The question about the motivation of philosophers to engage in the method of emancipatory amelioration (EA) is related to the problem of asymmetry. The first step of emancipatory amelioration (EA)—the social theory of the phenomenon—is influenced by insights from immanent critique. Hence, it is taken for granted that the philosopher is part of the problematic structure in which the phenomenon is embedded and does not stand outside of it. In fact, philosophers do not and cannot stand outside of it: they are situated in the social structure in the same way other social agents are. In fact, there are probably many philosophers who fail to see what is problematic about the rape cases discussed or fail to see the embeddedness of rape in the social structure. Philosophers, as well as others, cannot simply step out of the structure. And, while philosophers in general might be better skilled than others to see

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**20** | Of course, this implies that in a possible world in which the ideology takes on such dramatic scales that there is no moment of rupture or practical contradiction within the given injustices, no one—not even the philosopher—would be able to engage in a social theory. However, I think it is very unlikely that ideologies take such a dramatic scale.

practical contradictions, they often need a moment of rupture as well to be motivated and probe further. Hence, we should not assume that philosophers are completely free from the problematic understandings and practices, but instead we should rely on philosophers' training to question existing norms, stereotypes, and social practices.

As an explanation, consider current research on implicit biases, which shows that the process of criticizing biases is a long and ongoing struggle. Jenny Saul writes:

Psychological research over the last decades has shown that most people—even those who explicitly and sincerely avow egalitarian views—hold what have been described as implicit biases against such groups as blacks, women, gay people, and so on. This is true even of members of the 'targeted' group.<sup>21</sup> (2013: 40)

In other words, independent of our social group membership, our training, or our values, we are likely epistemically distorted by the social structure in which we live. This can include problematic stereotypes and assumptions about some social groups. However, as I have argued above, some social positions foster moments of rupture and critique of the social structure and its elements.<sup>22</sup> Thus, to counteract our epistemic distortions, the methods we develop need to be equipped in a way that filters our problematic distortions. This is why it can be fruitful to proceed in terms of a social theory only after noticing practical contradictions and moments of rupture that lay open the unintelligibility of

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**21** | For more info on this, see Moss-Racusin et al. (cf. 2012); Steinpreis et al. (cf. 1999); Vedantam (cf. 2005). For an overview of the debate on implicit bias, see Saul and Brownstein (2016).

**22** | One could argue that the example of implicit bias deflects the issue. Some theorists of implicit bias have emphasized the difference between quick methods of mental processing and slow (or deliberative) methods and argued, that while individuals resort to implicit biases when using the quick methods, they do not when using deliberative methods. While this is correct, implicit bias research also highlights the fact that my own awareness of the existing implicit biases does not necessarily help me to be less biased. Saul, for example, writes that even when we are aware of our bias, we might not be able to instantly change it. (2013: 55) This is because we are affected by stereotypes that are hard to remedy—even when aware of them. Consider the problem known to many women: while many women know that the beauty and body standards that our society demands are sexist and unhealthy, we cannot help that we often feel bad if we do not conform to them. We worry about being fat, even though we know that the category of fatness is there to bodyshame us into conformation to sexist norms. Our socialization runs deep and is hard to shake even in cases where we are aware of it and want to change it.

certain experiences, practices, and schemas. Instead of stipulating when the philosopher needs to engage in the method of emancipatory amelioration, this comes from the philosopher's social position itself.

I briefly mentioned that some social positions are better positioned for experiencing moments of rupture or for seeing practical contradictions. Does this imply that some social positions have epistemic privilege? Epistemic privilege describes the notion according to which knowers are not only differently situated, but have better or worse access to knowledge depending on their social position. In the case of rape then, knowledge claims of those who have experienced rape (or of those social groups that are disproportionately more likely to be harmed by rape) are more accurate than other knowers' claims about the phenomenon of rape. Feminist standpoint theorists, for example, argue for the epistemic privilege of women in regard to gender relations and other social phenomena in which gender plays a determinant role. (cf. Collins 1990; Harding 1991; Hartsock 1987, 1998) In this sense, knowledge is not only situated, but specific social positions grant privileged access to knowledge. Women have epistemic privilege over, for example, the injustice of sexist ideology. However, women do not have such epistemic privilege necessarily. Standpoint theorists have argued that belonging to a certain social group, say the group of women, gives one the possibility of having access to more accurate knowledge. But women can fail to gain such knowledge, or they can fail to use the knowledge they have in a particular situation because of their embeddedness in the specific social structure. Women do not necessarily have a privileged standpoint, rather, they can attain it by gaining collective consciousness of their role and position. (cf. Lukacs 1971; Marx 1964)

Remember that I argued that the first step of the method of emancipatory amelioration (EA) consists of several small steps or rules: experiencing a moment of rupture or practical contradiction; failing to make intelligible said moment of rupture in our lived experiences; coming to realize the structural dimension; and engaging in a social theory of the given phenomenon. In other words, the method of emancipatory amelioration (EA) is a process that starts off from a specific social position and can end in a rich social theory of the phenomenon in question and its embeddedness in the social structure. To illustrate, let me walk through these steps, first, as a philosopher, and second, as a woman. As a philosopher who is interested in social phenomena, I come to notice the contradiction between the capitalist slogan that "everyone can become what they want if they work hard enough"—better known as the 'dishwasher-story'—and the social fact that the income and social status of one's parents greatly determines one's own income and social status—better known as the 'birth lottery'. The dishwasher-story is in fact in contradiction to the 'birth lottery', e.g., coming from a poor and working class household, then despite working hard, one might still fail to become what one wants due to one's

parents income or social status. Having noted that contradiction, I can now investigate the social conditions behind it: Is it indeed true that one's parents income and social status greatly determines one's own? How often do people break out of this relation? Is the 'dishwasher-story' something people believe? Why does this story exist? What is the function of it in the overall (capitalist) system? And so on. Having asked these questions, I have already started my social theory and I can now widen my interest or narrow it. That is, I can be motivated to theorize the capitalist system in general or the specifics of the relation between social background and, for example, employment chances. In other words, the realization of a contradiction does not give me structural knowledge, but it can raise questions that start a process to get me there.

This is similar to the experience of moments of rupture. As a woman, the experience of cat-calling can mean a moment of rupture. I can fail to make intelligible that I grew up equal to other boys in school, but that some boys and some men, at the same time, are entitled to (comments over) women's bodies. I can then come to see that cat-calling is an experience that I share with most other women. I come to realize that not only do some men feel entitled to some women's bodies, but that all men are taught to be entitled to all women's bodies (some men, of course, opt out of this framework). And I can use this as a starting point for a social theory. Once I have such a theory, I can start my project of amelioration or fight for social change in general. While my social position does not give epistemic privilege per se, it can provide a starting point for theorizing.

Sandra Harding makes a similar point when she argues that some social positions can give us a better starting point for aiming at specific and more accurate knowledge claims. (2004: 128) One way that we can understand this is in relation to what I have said before. The impulse for a two-step emancipatory amelioration (EA) comes from a disruptive moment or a practical contradiction in our social structure. For example, failing to understand experiences of being wronged accurately can bring it about that we question the status quo of the dominant schemas and understandings of our experience. Questioning such a moment can deepen when we come to realize that the unintelligibility of the wrong is not due to an individual failure but has structural roots. Thus, this suggests that those social agents who are in social positions of oppression have a better starting point for more accurate knowledge claims. They are the ones who are more likely to have their experience misrepresented by the dominant schemas—they are more likely to “bang their heads.” Being more prone to moments of crisis gives them an advantage to engage in a structural analysis and critique of the given system. However, as I explained above, it is likely that they lack the epistemic and material resources to engage in analysis and critique. In other words, the social position of oppression, on the one hand, provides the advantage to encounter disruptive moments, while, on the other

hand, prevents the person from being able to use the necessary tools to analyze the oppressive system.

### **3.4.2 The Problem of Emancipation**

The second question is: how do we, as theorists, know whether the social theory and amelioration is in fact emancipatory? After all, we are all entangled in an unjust social structure and are likely influenced by it. And while the method of emancipatory amelioration (EA) might result in a rich social theory and, respectively, in an amelioration of the given concept, this does not necessarily mean that the outcome is emancipatory. We can fail in our theory, for example, because we employ distorted schemas that make it so that our social theory does not map adequately the phenomenon in question. Let us say that I analyze the social conditions of childbearing and caring adequately, but I believe that women have a natural tendency to caring while men do not. Instead of advocating for similar access to careers and caring options for both mothers and fathers, I instead advocate for a change that would pay mothers to stay at home. On the other hand, the amelioration can go wrong not because our social theory is inadequate, but because resulting consequences are. For example, imagine that I have a social theory of the problematic consequences of large-scale livestock farming. But while I advocate for a change away from large-scale livestock farming and towards a vegetarian and vegan lifestyle, my social theory is taken over by others who use it to argue for feeding algae to cows to reduce the emission of methane. In other words, the method as such does not guarantee that the resulting amelioration (or the social change in general) is truly emancipatory and brings about outcomes that are more just. As Elizabeth Anderson argues, we need to test the resulting outcome in practice; that is, we engage in a test of our resulting concept.

To test a moral principle or norm, we act in accordance with it and consider whether we can live with the consequences. Because moral principles aim to solve recurring problems in our relationships, we can test them by considering whether they actually manage to solve the problems they are supposed to solve, whether they generate other problems, and whether alternative principles do a better job. In the course of testing our principles in practice, we may come to change our view of the problems it is meant to solve, in light of our experiences living with it. (Anderson 2014: 6)

And as much as this is true for our moral principles and norms, it is also true for our ameliorated concepts (or our conceptual and social changes in general).

In other words, whether the resulting concept actually brings about emancipatory change has to be seen *ex post*. However, by aiming at emancipatory transformation and by being grounded in a social theory of the phenomenon

and the unjust social structure, the method of emancipatory amelioration (EA) is equipped well to result in conceptual—and, ultimately—structural change for the better. Finally, whether the conceptual change also results in emancipatory change in our social practices and institutions is a different question. As I have said before, I am well aware that conceptual change is only one bit and that most social problems demand social, legal, and material changes. However, I contend that our concepts influence our norms, policies, and practices and vice versa. Conceptual change can thus be one step towards a general change. As philosophers, we are much better equipped to advocate conceptual changes than social or legal changes. In Chapter 5, I not only bring forward a conceptual amelioration of the concept of rape but also consider how this can be useful to change our legal practices. We can say, for now, that the method of emancipatory amelioration (EA) is fit for dealing with unjust social structures and has emancipatory potential for our theoretical concepts as well as our lived experiences. Next, I apply the method of emancipatory amelioration (EA) to the phenomenon of rape: first, by providing an inclusive social theory of rape (Chapter 4) and, second, by ameliorating the concept (Chapter 5).

In this chapter, I provided a method by which we can map the phenomenon of rape adequately—which is the task for the next two chapters (Chapter 4 and 5). I argued that a method to analyze rape accurately needs to, first, include tools that help to develop an account that can fulfill the aforementioned desiderata and yield an adequate theory of rape, and, second, include a variant of conceptual analysis in order to ameliorate the concept such that it adequately tracks the phenomenon. I then proposed the following two-step method of emancipatory amelioration (EA) best equipped to do this. First, by having our experiences misrepresented, we can come to experience a moment of rupture or practical contradiction. Second, the moment of rupture makes our experience unintelligible. Third, this can bring us to a point in which we question the structural constraints we encounter. Fourth, with the right epistemic and material resources, we can then take this vague understanding of unintelligible experience and engage in social theory. The first step of the method of emancipatory amelioration (EA) is strongly influenced by the insights of immanent critique. It, indeed, follows a similar structure to the hermeneutics of suspicion and the critique of the given status quo. And, finally, based on the critical analysis of the status quo, we can develop an emancipatory understanding of the concept in question that is necessarily grounded in said social theory, but, at the same time, is motivated by our emancipatory aim of making intelligible the ruptured experiences and overcoming the contradictions.



## **Chapter 4:**

# **Rape and Ideology**

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Corresponding to the first element of the method of emancipatory amelioration (EA), Chapter 4 offers a social theory of rape. The first step of the argument establishes rape as an accepted social practice and shows that it is best understood as part of a sexist ideology. In a second step, the chapter turns to the normative dimension and argues that rape is not just an individual wrong but that it gives rise to and perpetuates structural injustice.

### **4.1 INTRODUCTION**

In the first and second chapters, I argued that rape is a contested concept and that its dominant working understanding is distorted by rape myths. I argued that we can better understand rape as a cluster concept. I then sketched such a cluster account of rape and presented possible problems, one of which was the following: despite the fact that the proposed cluster theory can account for the various forms of rape in the world, it does not explain the gap between the phenomenon of rape and its main working understanding. In the last chapter, I sketched a method—emancipatory amelioration (EA)—that can yield a social theory of rape and a prescriptive conceptual analysis. The following two chapters pursue the application of the method of emancipatory amelioration (EA): Chapter 4 engages in the first step, Chapter 5 in the second step of the method. This chapter presents a social theory of the phenomenon of rape and systematically maps how rape is embedded in the social world. Once we have a theory of rape and its social role, we can start disentangling the faulty conceptions and attitudes of rape from its standing in the real world. This chapter and the next (Chapter 5) use the method of emancipatory amelioration (EA) to 1) develop a theory that accounts for rape as a social phenomenon adequately and 2) articulate a normative cluster theory of rape that adequately tracks the phenomenon as laid out by the social theory.

I show that we fail to understand the phenomenon of rape adequately—that is, we fail to explicate the striking gap between the existence of rape and the distorted dominant working understanding—if we do not take into account its social embeddedness. In Section 4.2, I bring forward two main arguments: (1) that rape is a social practice (Section 4.2.1), and, (2) that it is, in most cases, an accepted practice (Section 4.2.2). I use Haslanger’s framework of social structures to make these points. I next locate rape as a social and mostly accepted practice within a broader framework of a sexist ideology. (Section 4.3) To do so, I give a brief summary of existing theories that locate rape within a broader social system (Section 4.3.1), and then use the framework of social practices to give an account of sexist ideology (Section 4.3.2). The idea of sexist ideology takes its reference from Haslanger’s social structure framework and from Barbara Fields’ account of ideology as an everyday form of life. A sexist ideology, I argue, has two fundamental features: (1) it is a holistic system (the holism claim), and (2) it has gained a life of its own (the self-operative claim).<sup>1</sup> Finally, I explicate the role of rape myths as ideological beliefs. (Section 4.3.3) In the last section, 4.4, I argue that locating rape as a social practice within a broader ideological framework has implications for the kind of wrong that rape is. It is not only an individual wrong (Section 4.4.2), but as a social practice it also helps to sustain social and structural injustices (Section 4.4.1). I make three claims: (1) that the sexist ideological framework contributes to, reproduces, and maintains social and structural injustice, (2) that it masks the structural character of the injustice, and (3) that rape as part of sexist ideology helps to sustain and perpetuate social and structural injustice. Understanding rape as part of an ideological framework and clarifying the injustice perpetuated and masked by the structure provides a more plausible account than those that view rape merely as an individual wrong.

## 4.2 LOCATING RAPE

In this section, I bring forward two main arguments: (1) that rape is not just an act but a social practice, and, (2) that it is, in most cases, what I call, an ‘accepted practice’. Roughly, the idea is that the more a case of rape diverges from the dominant (and false) paradigmatic case of physically aggravated stranger rape, the more it is accepted and legitimized in the social world. This acceptance is caused by an epistemic distortion about the act in question; by masking the act

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**1** | This seems to contradict my statements about the social structure being fragmented and not a unified structure. As I explain in this chapter, the holism claim is about the coherence of the system and its prevalence. This does not mean that there are no counterpoints to the dominant understandings and practices.

as an act of non-rape, it becomes accepted. To argue for claims (1)-(2), I use Sally Haslanger's framework of social structures. Unless we understand the ways in which rape is embedded in social structures that produce and reproduce it, we fail to explain how sexualized violence structures our lives. Locating rape as a social and accepted practice within a broader framework of social structures means engaging in a critical analysis of rape and its place in the given social structures. In other words, it means applying the first step of the method of emancipatory amelioration (EA) that I proposed in Chapter 3 and systematically mapping the phenomenon of rape as it exists in the world.

#### 4.2.1 Rape as a Social Practice

Obviously, rape is some sort of act; one (or more) person(s) perform(s) an act on another person or subject that person to an act. Yet, rape is more than that. First, it is not one act, but a cumulation of diverse acts (e.g., undressing, fixating, overpowering, penetrating, and / or many more). Second, it has a specific social meaning. It is made intelligible by specific schemas that we apply to the acts. The fact that rape is only intelligible within a social structure that imposes a specific meaning onto the cumulated actions suggests that rape is not merely an act, but rather a social practice. To gain a more detailed understanding of rape as a social practice, I utilize Haslanger's framework of social structures and social practices.<sup>2</sup>

According to Haslanger, a social structure is constituted by interlocking social relations, i.e., social structures are networks of social relations. Those social relations are the result of various social practices. Social relations can be relations between people (e.g., being a parent of) or relations to things (e.g., cooking). Social relations are constituted through social practices.<sup>3</sup> And a social

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**2** | Similar to Haslanger's account, Sewell thinks of social practices as an essential brick in the construction of social structures. (Sewell 1996, 1992) And, Giddens famously argued for a "dual" account of social practices according to which they are governed by the social structure but, simultaneously, constitute the structure. (Giddens 1981) I come back to this interdependence.

**3** | Consider, for example, the act of cooking rice. Haslanger says: "Cooking rice is an instance of a more general practice of cooking, and regular engagement in the practice is constitutive of a social role: cook. Being a cook relates one in specific ways to other persons (not only the customer or family, but also the farmer, grocer, garbage collector, sources of recipes, including traditions, cookbooks, etc.), and also relates one in specific ways to things (foodstuffs, sources of heat, water, utensils). Cooking is only possible within a social structure that provides the ingredients, skills, tools; the norms for taste, texture and ingredients; the distribution of labor of cooks and consumers, etc." (Haslanger 2017: 20)

practice comes into being through the interplay of resources and schemas. Social practices are (mostly) “collective solutions to coordination or access problems with respect to a resource” (Haslanger 2017: 20, emphasis in original). For example, the rules and norms of traffic management provide guidance in regard to traffic. In other words, according to an Haslangerian account:

Practices consist of interdependent schemas and resources ‘when they mutually imply and sustain each other over time.’ Sets of interdependent practices constitute social structures.<sup>4</sup> (Haslanger 2017: 21, emphasis in original)

What are resources and schemas according to this account? Schemas “are clusters of culturally shared mental states and processes, including concepts, attitudes, dispositions, and such, that enable us to interpret and organize information and coordinate action, thought, and affect.” (Haslanger 2017: 21) Concepts are here meant in a psychological sense. In contrast to concepts in philosophy of mind and language, where they are a constituent of thought or of a term, according to a psychological perspective they are simply a mechanism for storing default information.<sup>5</sup> In other words, schemas “are abstract entities that are instantiated (or tokened) in particular psychological states of individuals.” (Haslanger 2017: 21) There are two different schemas that work hand in hand: cultural schemas and psychological schemas. Cultural schemas are those that have public standing because they are shared and include social meanings. In order for those “social meanings to function, they must be recognized, but they need not be endorsed.” (Haslanger 2017: 21) Cultural schemas are mostly internalized by individuals and help them think and act fluently in social contexts. Psychological schemas, on the other hand, are those schemas that “process and store information that is the basis for various behavioral and emotional dispositions.” (Haslanger 2017: 21) Of course, cultural schemas

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**4** | See also Sewell (1992: 13). Note that there are certain differences between Haslanger’s and Sewell’s account of social structures. Sewell defines resources as a source of power *per se*, while Haslanger thinks that something is a resource only by having positive or negative value and the resources that are taken to have positive value are a source of power. Further, for Sewell, interdependent resources and schemas constitute social structures, while, according to Haslanger, they constitute social practices that then taken together constitute social structures. Finally, it is unclear whether Sewell thinks of the interdependence between schemas and resources as causal *and* constitutive, as Haslanger does. Sewell’s account of schemas and resources draws on Giddens, who takes social structures to be constituted by rules and resources (or “rule-resource sets”). (Sewell 1992: 4-13) See also Giddens (1976, 1979, 1981, 1984).

**5** | For a detailed account, see, for example, Machery (2009).

influence our psychological schemas. And even though they vary and can be changed over time and context, they are nevertheless “sticky and resist epistemic updating.” (Haslanger 2017: 21) Cultural schemas constitute our social practices.

Resources, on the other hand, are not just economic stocks or material objects, but everything that has positive or negative value in any sense (practical, moral, religious, etc.). Resources with positive value are a source of power. According to Haslanger, resources and schemas are interdependent and they create so-called looping effects. (2017: 22) Sewell has illustrated the same thought with the following image:

A factory is not an inert pile of bricks, wood, and metal. It incorporates or actualizes schemas, and this means that the schemas can be inferred from the material form of the factory. The factory gate, the punching-in station, the design of the assembly line: all of these features of the factory teach and validate the rules of the capitalist labor contract. [...] In short, if resources are instantiations or embodiments of schemas, they therefore inculcate and justify the schemas as well. (1992: 13)

A factory is not just a material object, but is constituted by interdependent schemas and resources. Working in a factory is a complex network of social practices, e.g., punching-in, working the assembly line, taking lunch breaks, etc.

The interdependence between schemas and resources is constitutive as well as causal. According to Haslanger, without schemas we would be unable to interpret something as a resource. For example, a particular schema enables us to make something intelligible as food, that is, as a resource to be eaten: “What it is to be food is not just a matter of what is edible, since not all edible things are known to be or count as food; food is what is intelligible to us as to be eaten.” (Haslanger 2017: 22) To think of something as food is to locate it within a framework of reasons. We eat certain types of things because they are taken to be food and we feel disgusted by other (sometimes edible) things because they are not. We can therefore say that schemas and resources are constitutively interdependent. There is also a causal relation between schemas and resources. Identifying something as a specific resource (for example, food) creates schemas that guide us through questions of gathering, producing, or cooking food. And these schemas then affect how we think of certain resources. That is, when schemas evolve they can highlight new resources and when resources change, they can make it so we need new or modified schemas. Since this is a highly complex process that often happens without awareness, the resulting social practices can be “congealed and dissociated from the interests and functions that were their original impetus.” (Haslanger 2017: 23)

I claim that rape is a social practice. In arguing for this claim I follow the Haslangerian account of social practices sketched above. First, rape is constituted by schemas and resources. Remember that following Sewell, Haslanger takes resources to be anything that “can be used to enhance or maintain power” (Sewell 1992: 9). For example, human resources can be physical strength, dexterity, emotional commitments, and knowledge, or animate and inanimate materials. (Haslanger 2012: 415, 463) A simple understanding of rape might be that rape is a resource itself, it can be used to enhance or maintain power over the victim and over women in general. (cf. Brownmiller 1975: 15) Yet, I claim that this explanation fails to capture the underlying dynamics of acts of rape. Part of the reason for why acts of rape are used to maintain or enhance power is that rape has specific social meanings. It is not a resource but a social practice that is constituted by interdependent resources and schemas. Take the following example:

After his friends left, we’re sitting on the couch and he leans over and he kisses me and I’m thinking, “It’s a date, it’s no big deal.” So then we started kissing a little bit more and I’m thinking, “I’m starting to enjoy this, maybe this isn’t so bad.” Then the phone rang and when he came back I was standing up. He grabbed me from behind and picked me up. He had his hands over my eyes and we were walking through his house. It was really dark and I didn’t know where on earth he was taking me. I had never actually walked through his house.

He laid me down [on a bed] and kissed me. ... He starts taking off my clothes and I said, “Wait—time out! This is not what I want, you know,” and he said to me something like this is what I owed him because he made me dinner.

I said, “This is wrong, don’t do this. I didn’t go out with you with this intent.”

He said, “What do you call that on the couch?” I said, “I call it a kiss, period.”

And he said, “Well, I don’t.” [...]

The whole time I’m thinking, “I don’t believe this is happening to me.” [...] he grabbed me and threw me on the bed and started taking my clothes off. I’m yelling and hitting and pushing on him and he just liked that. He says, “I know you must like this because a lot of women like this kind of thing.” Then he says, “This is the adult world. Maybe you ought to grow up some.”

I finally got to the point where there was nothing I could do. (Warshaw 1994: 16)

Some of the resources at work here are the man’s superior physical strength (he can easily lift her up), the empty house (she is in his house alone with him), the woman’s emotional commitment (she does not want to mistrust someone she knows), the date situation, and so on. Those resources stand in relation to schemas that make them intelligible. At the same time, the resources guide the schemas they both—the woman and the man—apply to the situation at hand.

According to Haslanger, schemas “are clusters of culturally shared mental states and processes, including concepts, attitudes, dispositions, and such, that enable us to interpret and organize information and coordinate action, thought, and affect.” (2017: 21) The schemas at work in this example and in the social practice of rape in general are mostly rape myths. As I have shown in Section 1.2.2, a ‘rape myth’ “is an inaccurate assumption about rape” (Burrowes 2012: 2). In the case above, the man likely holds the belief that once sexual interaction like kissing has started, there is consent to sex and / or that women like to be overpowered sexually. Additionally, he also holds certain attitudes towards women that grant them less sexual respect than men are granted. The woman, on the other hand, is not necessarily free of these false beliefs and attitudes. She might not want to hurt his feelings. She might think that she led him on by kissing him, which hinders her from reacting quickly and judging the situation correctly in the beginning. Often, rape myths are myths about male entitlement: what men are entitled to and what they can legitimately expect from another person. Both the man and the woman are socialized into believing that men are entitled to a woman’s body in some contexts.

As I have shown before, rape myths reflect societal attitudes. A sexist society therefore creates and maintains rape myths. But rape myths or schemas in general also maintain a sexist society. Schemas and resources are constitutively and causally related. Without the schemas, we fail to make something intelligible as a resource; without the myth that women want to be overpowered sexually, the man would fail to understand his physical strength as a resource. The myth affects how he thinks of certain resources. And knowing about the resource of physical strength creates schemas of how and whom to overpower. Haslanger writes that reality “‘pushes back’ when we come to it with the wrong or an incomplete schema” (2012: 415). But reality does not push back in cases like the one above. Interpreting the given resources the way the man does in the example, is tolerated and accepted by the given social system.<sup>6</sup> It is the dominant schema at work.

Second, acts of sexualized violence constitute specific social relations. The act of rape is one instance of maintaining or establishing power over another person. The act is also constitutive of the social role of the rapist and the victim. Being a victim of rape relates one in specific ways to other persons, e.g., the rapist, the police, the medical personnel, psychological personnel, other persons involved, etc. It also relates one in specific ways to things, e.g., one’s own body, medical tools, one’s mattress, etc. The act of rape is only intelligible

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**6** | I say more about this in Section 4.2.2 below. And, in Section 4.3, I show how the social practice of rape is masked by a dominant schema. But remember also what I argued in Chapter 1: the dominant working understanding of *rape* is distorted by rape myths.

within a social structure that involves certain schemas and certain resources (including other social practices, e.g., few or no institutional punishment for certain acts of rape). Think of it this way: previously, we might have lacked the hermeneutical resources to conceive of an act of forced sex in marriage as an act of rape. The schemas needed for marital rape did not exist. The act in question was still an act of rape, but it was masked by the existing hermeneutical schemas and resources; the act was not intelligible as an act of rape. Furthermore, the social practice of rape does not only constitute social relations between specific individuals, but also between members of different social groups. The threat of rape that women and gender non-conforming people fear brings about specific social relations to those that can potentially commit rape and institutions that do not prosecute rape charges. And, finally, the social practices and resulting network of social relations create a specific social structure that makes it possible for certain individuals to rape (and get away with it) and for others to be raped or live in fear of being raped. This social structure is fed and kept in place by an interplay of schemas, resources, practices, and relations.

I have argued that rape is one of many social practices that constitute the social structure. As a social practice, rape is constituted by interdependent schemas (e.g., rape myths) and resources. Further, it works together with other social practices to build social relations and, finally, the social structure.<sup>7</sup> However, rape is not just any social practice, but, what I call, an ‘accepted practice’. Some forms of rape, mostly those that mirror the prevailing image of stranger rape, are deemed unacceptable, while most forms of rape are deemed acceptable because they are masked by dominant (and false) views of what constitutes rape and what does not. I argue for this claim in detail next.

#### **4.2.2 Rape as an Accepted Practice**

Rape is a social practice and as such, it is part of a framework of social structures. I now ask whether rape is tolerated, accepted, and / or justified by the social structures of which it is a part. I claim that most forms of rape—all those diverging from the physically aggravated stranger rape case—are, what I call, ‘accepted social practices’. Roughly, this claim has two elements. First, something is an accepted practice if it is recognized as condemnable, but is only rarely sanctioned (or if it is only weakly sanctioned), and, second, if most of its instances are reinterpreted and therewith made acceptable. In the case of rape, it is not that people genuinely think that raping another person is blameless, but that cases which do not mirror stereotypical stranger rape are not taken to be rape. Thus, by making them intelligible as something else, they become

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7 | I say more about this in Section 4.3.2.

accepted.<sup>8</sup> Furthermore, in the cases that are taken to be cases of rape, the sanction is very weak—in other words, raping and getting away with it, is a real option for many. Therefore, since it is de facto accepted in the social structure, rape as a social practice is reproduced.

Consider the following case. On the night of August 11, 2012, a high-school girl was raped by two high school football players in Steubenville, Ohio. The intoxicated girl left a party that night with four football players. While she was passed out in the backseat of the car, her breasts were exposed and one of the football players, Trent Mays, penetrated the victim's vagina with his fingers (a so-called 'digital penetration' that is an act defined as rape according to Ohio law). His friends filmed and photographed the abuse. The four football players later brought the unconscious victim to the basement of a house, where Mays attempted to rape the victim orally by forcing his penis into her mouth. She was stripped naked and another of the football players, Ma'lik Richmond, digitally penetrated her vagina. Their friends again took photos and shared them with friends that were not present. The abusive acts were documented on Facebook, Twitter and via text messages—none of the friends present and none of the people who received text messages or read about the crime on social media reported the abuse to the authorities. (cf. Harding 2015; Macur and Schweber 2013; Oppel 2013)

The case became well known for the following two aspects: the general misrepresentation of the incident and the institutional failures of justice. Let us consider each aspect in turn. (1) The general misrepresentation can be seen in the following two ways: the attitude of the perpetrators and friends, who failed (or wanted to fail) to see the incident as one of rape, and the general victim blaming that occurred in the aftermath of the incident. First, the

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**8** | As discussed in Chapter 1 and 2, the paradigmatic instance of rape is that of stranger rape, i.e., a stranger lurking behind a bush in the middle of the night waiting for a woman to physically overpower and sexually penetrate. This story is not new, as Estrich (1987: 4) reports, Harry Kalven and Hans Zeisel of the University of Chicago have made a distinction between aggravated and simple rapes in the mid-1960s. For more on their distinction and its application in a study of American juries, see Kalven and Zeisel (1966). Aggravated rapes include extrinsic violence (e.g., guns, knives or physical violence) or one or more perpetrators who are strangers to the victim. Simple rapes, on the other hand, do not include any of these features: they are cases in which a perpetrator acts alone, is known to the victim, and does not use any extrinsic violence. Most would agree that the act of an aggravated rape or a stranger rape is morally wrong, that the victim could not have prevented the act, and that the perpetrator(s) should be punished for the act. Not so when it comes to other forms of rape (or, in Estrich's words, "simple rapes"). (cf. Harding 2015; Warshaw 1994) And this is because those other acts are not taken to constitute acts of rape.

perpetrators seemed to have failed to understand what they were doing as an act of rape. Trent Mays sent a text message after the crime was revealed that said: “I shoulda raped her now that everybody thinks I did,” but “she wasn’t awake enough”. What hinders May from understanding the act as rape are the prevalent schemas about rape, e.g., that unconscious individuals cannot resist, and that they therefore consent, and / or, that sexual acts short of the penile penetration of the vagina are not acts of rape, and that rape is only committed by strangers but not between acquaintances.

Second, the general misrepresentation of the incident can also be seen in the fact that none of the friends reported the rape to the authorities, neither during the night nor afterwards, although many knew of it. Ohio investigators confiscated 15 cellphones and two tablets with photos and hundreds of messages from more than 20 students. One explanation for why they did not report it, is that they failed to make the incident intelligible as an act of rape and therefore a crime that ought to be reported to the authorities and a wrong against a woman that should be prevented. Instead, they, likely, believed in rape myths that turned the incident in question into an accepted “prank”. Furthermore, some of them held attitudes along the lines of “some girls deserve to be raped.” The underlying myth is that some women—those labelled ‘bad’ women—deserve to be abused, and when this happens, it is not actually rape because she “asked” for it. A Steubenville baseball player, Michael Nodianos, tweeted the following about the unconscious girl: “Some people deserve to be peed on”, which was then retweeted by others. He and his friends also made an online video in which they joke about the incident. In the video, Nodianos says: “They peed on her. That’s how you know she’s dead, because someone pissed on her.” (McCormack 2013; Oliver 2016)

Third, and lastly, the general misrepresentation of the incident can be seen in the victim blaming of the abused girl. The massive evidence in forms of text messages and photos shared between friends and on social media and the discussions on social media in the aftermath—in which the girl is blamed for ruining the lives of promising high school football players—tells a devastating story of the prevalent attitudes of victim blaming. Not only individuals on social media blamed the victim, but the media reaction in general took to victim blaming. On March 17, 2013, CNN’s Poppy Harlow said that it was “incredibly difficult, even for an outsider like me, to watch what happened as these two young men that had such promising futures, star football players, very good students, literally watched as they believed their lives fell apart.” And, further, CNN, Fox News and MSNBC revealed the victim’s name in their broadcasts, which resulted in direct attacks on the victim; this is, for good reasons, against journalistic “good behavior.” (cf. Davidson 2013; Edwards 2013; Fung 2013; Knowles 2013; Wemple 2013)

(2) The case also involved the institutional obstruction of justice. In the beginning, police refused to investigate the case, despite the overwhelming photographic evidence. Only because of media coverage and individual calls to investigate, did they take up a full investigation. Further, when the police investigation was finally on its way, it was hindered and the case was allegedly covered up by school officials and local authorities to protect the athletes and the school, e.g., text messages were shown as evidence that coach Reno Saccoccia tried to cover for his players. Finally, both perpetrators served sentences of not much more than one year in juvenile detention only. They were released in 2014 and 2015. None of the adults charged with obstructing justice were sentenced, although Steubenville City Schools superintendent Michael McVey resigned his post (he was later hired as an elementary school principle in the Ohio Local School District). In comparison, most of the individuals who tried to bring attention to this case were later either harassed by the parents of those involved and other adults on social media or sentenced for leaking documents. (cf. Ferenstein 2013; Harding 2015; Opper 2013; Preston 2013; Reisenwitz 2014) The whole institutional system worked against understanding this incident as rape. It is not that all these people involved genuinely think that raping another person is ok, rather they hold rape myths and rely on hermeneutical resources that reinterpret what happened not as an act of rape but as an act in which the victim is to blame. Taking into account this case and its aspects suggests that a majority of rape cases (excluding the stereotypical ones) are accepted social practices that are sustained by other (and partly institutionalized) social practices and rape myths.

Furthermore, even in cases that are taken to be cases of rape by those involved, the sanction is often very weak. In the Steubenville case, even when the court finally acknowledged the nature of the incident as rape, they sentenced the perpetrators to ridiculously short sentences. Young says, about group violence in general, “[g]roup violence approaches legitimacy, moreover, in the sense that it is tolerated. Often third parties find it unsurprising because it happens frequently and lies as a constant possibility at the horizon of the social imagination. Even when they are caught, those who perpetrate acts of group-directed violence or harrassment often receive light or no punishment. To that extent society renders their acts acceptable.” (1990: 62) I hold that the same can be said about acts of rape. Even in the rare cases of physically aggravated stranger rape (which are widely considered to be instances of rape), society renders the acts tolerable by institutionally dismissing them or by sanctioning them mildly. Sometimes this is done by showing sympathy for the perpetrators through handing out short sentences (as in the Steubenville case or the aforementioned case of Brock A. Turner), sometimes by institutional rules that reinterpret instances of rape.

An example of such institutional rules is the following. In most states in the USA the minimum marriage age is 18. However, states allow exceptions in which children younger than 18 can wed. One exception is that children aged 16 and 17 can marry with parental consent, even though it is rarely investigated whether the child is willing to marry or not. Indeed, even in cases where the child is crying while being married, the clerk has no authority to intervene. The second exception for children aged below 16 to marry is with judicial approval. Many states do not specify any minimum age in these cases. In New Jersey between 1995 and 2012, 3,481 children were married. Most of them were age 16 and 17 and married with parental consent, but 163 of them were between age 13 and 15 and married with judicial approval.<sup>9</sup> 91 % of the children were married to adults and 90 % of the children married were girls.<sup>10</sup> In most cases, the age difference between the child and the person she is married to is more than 4 years, which is the age difference beyond which sexual relations fall under statutory rape; that is, in most cases, young girls are being married to much older men. (cf. Reiss 2015) One such story is Sherry Johnson's. She was 11 years old when she got pregnant from being raped by a man in her church. Her marriage with her rapist, who was 9 years older, was arranged partly to cover up the rape. (cf. Kristof 2017) In these cases, marriage makes the statutory rape legal. The institutions work directly towards making rape acceptable.

In line with the Steubenville case, I claim that rape as a social practice is accepted if it has the following features: (1) A general misrepresentation of the act over different contexts and a long period of time; (2) institutional support for the practice of rape (e.g., in the form of short or no sentencing, the lack of investigations, failure to provide care for the victim, and so on); and (3) the existence of social structures that provide a coherent narrative for the general misrepresentation and institutional failures.<sup>11</sup> The perpetrators in the Steubenville case made individual decisions to take part in assaulting an unconscious girl, however, their decisions only become intelligible when we take into account the background schemas (e.g., that assaulting unconscious girls is a prank and not rape), resources (e.g., that they could get away with it

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**9** | For more numbers, see Kristof (2017). Surveys found that child marriages in the United States take place in immigrant communities from countries in Africa, Asia, Europe, and the Americas as well as in "American" families. Often they take place in religious communities including Muslim, Christian (especially Catholic), Hindu, Buddhist, Sikh, the Orthodox Jewish community, Mormon, and Unification Church. (Reiss 2015)

**10** | This is consistent with global results; i.e., child marriage and forced marriage disproportionately affect girls and women. (Reiss 2015; UNICEF 2017)

**11** | Similar claims have been brought forward by other feminist theorists; see, for example, Card (1991).

without much sanction), and their social position as privileged football players. The schemas at work legitimized the acts, placed the blame on the victim, and re-defined the assault as appropriate sexual behavior. They brought it about that the media did not condemn the act and that the involved institutions (the school and the police) actively refrained from investigation. The fact that these resources were in place reproduced the underlying schemas. It is because of this specific social structure that the general misrepresentation of the act and the institutional support became part of a coherent story instead of leading to resistance by the bystanders, the police, or others.

Other paradigmatic instances of rape as an accepted practice can be found at colleges and in the military. A Pentagon study showed that there were three sexual assaults every hour in the military in 2012. (Brook and Zoroya 2013; Whitlock 2012, 2013) The cases that became known in the military had the following features: victim blaming attitudes, discouragement of victims to come forward, abuse of positions of power. Kelly Oliver (2016), for example, reports two cases in which those in charge to prevent sexualized violence in fact perpetrated it.<sup>12</sup> This not only shows the general attitude towards sexualized violence in the military but it also sends a message to those who are victimized. The military response to those incidents is marked by a general misrepresentation of the act in question and a victim blaming attitude, e.g., the advice of one military chaplain to an army sergeant who was raped by another soldier was that “the rape must have been God’s will and that she should go to church more often” (Mulrine 2012). Furthermore, military culture and military institutions discourage victims from reporting sexual assaults and rape. Military culture is the culture of a boot-camp in which you have to be strong to survive; snitching on your fellow soldiers is a sign of weakness. Reporting rape can also (and often does) ruin military careers.<sup>13</sup> Very few reports lead to charges and convictions, meaning that the victim has to deal with her rapist even after a report. (cf. Lawrence and Penalzoa 2013) Rape in the military context goes hand in hand with misrepresentations of rape, a victim-blaming culture, and its institutional mishandling.<sup>14</sup>

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**12** | Oliver reports that in 2013, Lieutenant Colonel Jeffrey Krusinski, who was in charge of sexual assault prevention programs for the Air Force, was himself charged with sexual battery, and two weeks later a sexual abuse educator at Fort Hood (Texas) was charged with sexual assault and running a prostitution ring. (2016: 82-3)

**13** | Myla Haider, a former employee in the Army’s Criminal Investigation Command, who was expelled for reporting her own rape, states: “I’ve never met one victim who was able to report the crime and still retain their military career. Not one” (Lawrence and Penalzoa 2013).

**14** | See also the documentary *The Invisible War*: Dick (2012).

This is similar in cases of rape on college campuses.<sup>15</sup> More than 16 percent of college women are sexually assaulted while in college in the United States. (cf. DiJulio et al. 2015; Fisher et al. 2000; Krebs et al. 2007) Most victims say that the questions they were asked by university officials when reporting their rapes expressed attitudes of victim blaming and the reinterpretation of the rape. For example: What would you do differently to prevent the rape? Were you drunk? What were you wearing? Did you say “no”? (Dick 2015: 10:25-11:35) They also say that reporting rape is made difficult by the universities and that university officials try to discourage people from reporting. Some victims got advised to “drop out till it blows over” or were told that there is not enough evidence; others got no response from the university at all or had their cases not processed, and some university officials expressed more concern about the perpetrator’s needs than the victim’s. All this “advice” has silencing effects on those victimized. (Dick 2015: 11:38-12:00) And it partly explains why 88 percent of women sexually assaulted on campus do not report the crime. (cf. DiJulio et al. 2015; Fisher et al. 2000) Not acting on reports of rape (or acting on it only with very little consequences) means that the perpetrators can get away with it and that they can repeatedly commit rapes and other assaults. Faculty and university administration report that they regularly hear about perpetrators accused of rape by more than one student. A study by Lisak and Miller shows that less than 8 percent of men in college commit more than 90 percent of sexual assaults and that repeat offenders commit an average of six or more acts of sexual assault. (Lisak and Miller 2002) Furthermore, not acting on the reports, sends a signal to victims and perpetrators (including potential perpetrators).

I conclude that rape is an accepted social practice in the sense that (1) it is rendered into something else and thus accepted, and (2) it is institutionally protected. This sends a particular signal to (potential) perpetrators in two ways. First, it is more likely that they fail to understand acts of rape as acts of rape; and, second, it is more likely that those who do understand this exploit the system that masks the nature of rape. This is not to say that there are no critical views against the general misrepresentation of rape, the victim blaming attitudes that go along with it, and the institutional failure to achieve justice for victims of rape. Rather it is to say that the dominant structure is one in which critical

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**15** | Note that in studies on rape at college campuses, the focus is on aggravated cases of rape—cases that involve beatings or physical violence beyond the bodily transgression or rape drugs. They are cases of deliberate rape, in which the perpetrator knows exactly what he is doing. In Chapter 6, I introduce a distinction between these deliberate cases and cases that are due to internalized rape myths in which the perpetrator cannot necessarily grasp that he commits violence against another person; as in the Steubenville case, for example.

views are seldom and hard to fight for. The systematic, ideological masking of rape is determined by 1) how much effort it takes to be critical of the prevalent view or to have views counter to these attitudes, and by 2) how little blame is put on those exploiting and / or reproducing the system. I take up the question of ideology in the next section and the question of responsibility within the sexist system in Chapter 6.

### 4.3 RAPE AND SEXIST IDEOLOGY

Understanding rape as an accepted social practice embedded in a social structure allows us to think of it in terms of a theory of ideology. If rape is part of a sexist ideology, this can explain its pervasive and constraining character even further and it can make sense of the ways in which some perpetrators fail to understand their acts for what they are. In the first section, Section 4.3.1, I have a brief glance at existing theories that place rape within a social system of sexism, patriarchy, or gender inequality. From these, I take on board two valuable ideas: (1) that such a social system is holistic (brought forward by MacKinnon)—I call this the holism claim—and (2) that such a system has a life of its own (brought forward by Card)—I call this the self-operative claim. These ideas essentially run against the classic feminist view that all men use rape as a tool to keep all women in a state of fear. In other words the idea that rape has a particular function: that men consciously use rape to oppress women and maintain their powerful status quo. If the ideological system is indeed holistic, as I will argue, then the story is more complex. First, not every man uses rape and is conscious about its function, and, second, men are not the only key-players of the ideological framework. If the system gained a life of its own, then it is not just one social group that actively brings it about. It thus becomes harder to pin down who is responsible and who is suffering from the system. In the second section, Section 4.3.2, I argue that we should understand rape as a social practice within a sexist ideology. I bring forward an account of a sexist ideology with the help of Haslanger's framework of cultural techné and Barbara Fields' account of ideology as a day-to-day framework. Understanding the sexist system as an ideological system has at least three benefits: (1) it can explain the pervasive character of sexualized violence; (2) it explains how all social groups are situated within the ideology; and (3) it shows how the system as such is marked by contradictions and therewith provides a way to break free of the system—a prerequisite for a social theory and critical analysis, as I argued in Chapter 3. Finally, I end the section on sexist ideology by showing how this understanding allows us to think of rape myths as ideological beliefs. To do so, I use a theory by Tommie Shelby. (Section 4.3.3)

### 4.3.1 What Is a Sexist Ideology? A First Approach

Before I bring forward an account of a sexist ideology of which the social practice of rape is a part, I briefly have a look at existing accounts that claim that rape is part of some social system. The idea that rape is more than a single act, but is instead a system, ideology, or institution is not a new thought. Wilhelm Reich speaks of a “rape ideology” as the once prevalent attitude to have sexual intercourse that was not mutually desired. (1974: 27) However, while he lingers on the idea of a “sexual ideology” as the framework of sexual repression within authoritarian societies (1974: 40), he does not specify what a “rape ideology” is. Let us therefore briefly turn to some feminist scholars that have entertained the idea of a patriarchal system or a system of male supremacy.

Susan Brownmiller argues that the system of rape is based on the physiological features of human bodies. While men are structurally capable of raping, women are structurally vulnerable to being raped. (Brownmiller 1975: 13-4) After the first accomplished rape, it became men’s weapon with which he could show his superior strength. According to Brownmiller then, rape is structural in the sense that men are capable of doing it and women are vulnerable to have it done to them. Furthermore, it is used systematically to keep all women in place, i.e., it forces them into a deal with men to be protected on the condition that they grant sexual access to the one man that protects them from all the other men. Rape is thus used to establish a protectorate first and patriarchy second. (Brownmiller 1975: 17)

Susan Griffin expresses a similar thought, when she writes that women are never without the fear of rape. (1971: 26) She explains that there are two contradicting myths—the one of the abnormal rapist and the one of rape being a natural behavior. She then shows (1) that not merely abnormal but normal men rape too, but that acts of rape by “normal” men are unintelligible. Rather, in these cases another myth comes into play: that all women want to be raped and that they therefore provoke being raped. According to Griffin, the sexual heteronormative system divides men into two categories: those that rape and those that protect vulnerable women from rape. It creates a protection racket against the myth of the abnormal rapist. But women do not get protection for free, they have to earn it through chastity, virginity, or monogamy. Women who are raped are thus not worthy of the protection and therefore brought the rape on themselves. And, (2) rape is not a natural behavior but must be learned. Furthermore, even though rape is theoretically against the law, this should not lead us to suspect that it “is not in fact encouraged as part of our culture.” (Griffin 1971: 27) Culture teaches men to be aggressive and woman to be passive; it links male sexuality to violence. (Griffin 1971: 28-9) In other words, heteronormativity is inextricably linked to male dominance and female submission. Culture and society teach men to rape and encourage rape as a

practice when it is committed; “rape is not an isolated act that can be rooted out from patriarchy without ending patriarchy itself.” (Griffin 1971: 35)

In a similar vein, Catharine MacKinnon argues that rape is a problem of the inequality between women and men. She makes two distinct but interdependent claims to support her account of a system of inequality: first, the distinction drawn by feminists between rape as violence and non-rape as sex is as mistaken as the distinction drawn by the male point of view between rape and sex. And, second, rape is part of a holistic system of gender inequality. Let us consider each claim respectively. First, the male point of view makes sharp distinctions between rape and sexual intercourse, between acts of sex and acts of sexualized violence. However, according to the experience of women, these distinctions are not as sharp as they might seem. The “normal” acts that women experience daily are not so easily distinguished from the abuses they suffer; women are also violated by the “normal” forms of sex. (MacKinnon 1987c: 86-7) While feminist movements labelled acts of rape ‘acts of violence’ (instead of sex), MacKinnon highlighted the fact that sexualized violence does not center around sexual gratification but power. In this sense, MacKinnon also brings into focus the social institution of heterosexuality: the sharp distinction—from the male point of view—between rape and sex results in most acts of rape being defined as “normal” sex; as long as there is not enough violence, it is sex. This not only leads to low reporting and conviction rates of rape, but also to women who believe that what happened to them was not rape, even though they were forced. (MacKinnon 1987c: 88) According to MacKinnon then, the social institution of inequality between women and men is *inter alia* (re)produced by the unfair treatment of women, the retaliation against women who report sexualized violence and the failing legal system. (1987b: 82)

Second, the social institution of inequality makes it not only the case that acts of rape are unintelligible as acts of rape, but that they are considered “normal” sex. The social institution defines every aspect of sexual behavior. MacKinnon concludes that we have to broaden the concept of rape for the pragmatic reason of tackling the systematic character of sexualized violence. (1987b: 82) She takes a holistic stance: by arguing for a broader understanding of rape, she shows how the (false) definitions of rape cannot be understood without understanding what it means for sexuality and our social lives in general. By defining sexuality via male power, sexuality becomes the tool that makes rape unintelligible and our social lives unequal. (MacKinnon 1989b: 130) Accordingly, rape is the necessary outcome of a system in which heterosexuality means male dominance and female submission; to “be rapable” (MacKinnon 1989b: 178), therefore, is the social position of a woman.

Claudia Card claims that rape is an institution and a form of terrorism, in other words, that rape is a terrorist institution. She argues that rape is a kind

of historical practice (similar to war or punishment).<sup>16</sup> According to Card, a practice is “a form of social activity structured by rules that define roles and positions, powers and opportunities, thereby distributing responsibility for consequences.” (1991: 297-8) Practices that are well established can be called an ‘institution’. According to Card, rape is a well established practice and therefore an institution. (1991: 297-8) This should not imply that those participating in the institution of rape do so knowingly; rather, they think of what they are doing as natural behavior caused by the provocation of women. Once a practice is institutionalized, it does not need to be supervised because the individual actors who reproduce it find their own reasons and excuses for what they do. (Card 1991: 298) Card argues, thus, that rape as an institution is not the plan of a couple of individuals who impose it on others, but takes on a life of its own. The task of rape (subordination and subservience of women to men) and the rules of rape (conferring consent upon a woman’s status, her appearance, or the situation) become the second nature of its participants: “the rules become ‘second nature,’ like the rules of grammar, and those guided need not be aware of the rules as learned norms.” (Card 1991: 299) Therefore, first, not all who follow the rules (or norms) and impose the threat of rape on others, actually commit any acts of rape. Second, those who do commit rapes do not consciously follow the rules or even support them, they might instead have their own individual reasons.

Card argues further that rape is a form of terrorism. In support of this claim, Card addresses the following points. First, even though it is officially prohibited, “governments have been better at protecting men from accusations of rape than at protecting women from rape.” (Card 1991: 300) Rape is terrorism only from the viewpoint of the woman. Second, it plays a major role in shaping sexual politics by imposing a constant danger to women, making it so that women need to find protection in the form of another man and therewith adapt their sexual (and non-sexual) life accordingly. Third, it has two targets: the “bad girls“ who suffer from it and the “good girls” to whom the “message is sent by way of the treatment of the former.” (Card 1991: 302) The “good girls” might not feel the threat, but they nevertheless receive the message: comply with men’s demands, otherwise you will be next. Similar to Brownmiller and Griffin, Card here focuses on the male-protection racket as a central piece

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**16** | I previously argued that rape is a social practice and a part of a social structure. While Card uses ‘practices’ and ‘institutions’ interchangeably, according to the Haslangerian framework that I have taken up, an institution involves more processes than just schemas and resources and should therefore not be used interchangeably with ‘practice’. I say more in the next section (Section 4.3.2).

in the sexual structure.<sup>17</sup> The institution of rape brings it about that women succumb to men's will in general. It does so by distinguishing between the man who protects and the man who rapes and between the "good girl" and the "bad girl". Even in cases in which the state penalizes those who rape, it supports the protection racket by not doing anything against the continued threat of rape and the benefit of that threat for men. Thus, for Card, rape is an instrument that shapes sexual politics.

To summarize quickly, Brownmiller argues that rape is "a conscious process by which all men keep all women in a state of fear." (1975: 15, emphasis in original) For her, the use and threat of rape creates a system in which women succumb to men out of fear. Men consciously bring this system about. While Griffin also argues that men benefit from the patriarchal system of a male-protection racket, she abstracts from the idea that men bring this process about intentionally. Rather, she indicates that the patriarchal system works through various myths. MacKinnon and Card follow this line of thought by arguing that rape is not a conscious tool by which a sexist social system is brought about. Rather, for MacKinnon, rape is one extreme part of a system of inequality; this system is produced by rape and helps reproduce rape at the same time. Similarly, Card regards rape as an instrument that shapes sexual politics. Yet, Card seems to place more weight on rape (re-)producing sexual politics, while MacKinnon shows the holism in which rape, sexualized violence, sex, gender, and inequality work together to create a heteronormative system.

I agree with Griffin, MacKinnon, and Card—contra Brownmiller—that rape (in itself or as part of a system) is not a conscious tool for keeping women in place. Rather, via myths and practices it (re)produces a system that takes on a life of its own. Not everyone who rapes or benefits from it is aware of the rules and norms that govern the practice. And it is far from the case, that everyone who commits rape, does so with the intention of keeping all women submissive.<sup>18</sup> Furthermore, I agree with Card and especially MacKinnon that rape is the most extreme part of a holistic system of inequality, a system that shapes sexuality and social lives.<sup>19</sup> And it does so through myths, practices, concepts, etc.; it is, in Marilyn Frye's words, "an attitudinal-conceptual-cognitive-orientational complex" (1983: 41).

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**17** | A similar point is also made by Peterson (1978) when she argues that rape is a practice specified by a system of rules. These rules include roles, moves, penalties, etc., that give rape its structure as a practice.

**18** | Nevertheless, a man might still use rape to keep his victim in place in any particular case.

**19** | Not all feminist scholars of rape agree with this claim. Baber (1987), e.g., argues that while rape is indeed bad, most of the work that women are doing outside of the home is more seriously harmful than rape.

However, contra Card, I think that rape does not have one function (to bring about the male protection racket and its patriarchal structure) and contra MacKinnon and Card, I do not think that all men benefit from the system of male dominance and female submission. Card's argument mostly hangs on the specific social structure to which rape contributes. The patriarchal structure comes into place by the terrorist institution of rape that "gives an incentive" for women to succumb to men under the male protection racket. However, I contend, rape has more functions than one—not only on the individual level, but also on the institutional and social level. While Card (similarly to Brownmiller and Griffin) is right to argue that rape brought about a specific patriarchal structure of chastity, virginity, and monogamy, this might not be the case anymore or at least not the only outcome. The patriarchal structure changed over the last centuries, husbands and fathers are not necessarily in control of the family anymore and there are other ways to conform to the sexist structure besides adopting patriarchal relations.

Furthermore, rape is not only used to structure patriarchal relations. Consider the following contexts. First, it is used in war to destabilize the opposing communities. As Mari Mikkola argues, "[w]omen in [...] conflict areas are sexually violated (among other reasons) because they are seen as the representatives of their communities and the facilitators of the communities' continuation." (2016: 157) By targeting women, they seek to destroy the communities of the enemy. And, second, at the time of writing, rape is used as a tool in South Africa to "correct" gay men and lesbian women. Carter reports the story of a woman, Simphiwe Thandeka, who was "correctively" raped more than once. She was raped at 13 years old by an uncle "who didn't approve of her 'boyish' ways." (Carter 2013) And some years later, her uncle arranged a marriage for her to "cure" her of her sexuality. Both examples have to do with the structure of sexuality and social lives, but not in the narrow way of conforming to patriarchal relations. Rape in war acknowledges the role women play for their communities, which is why they are targeted. However, they are not targeted only to break up their marriages or the prospect of marriage, but also for dismantling their ties to the communities in general. Corrective rapes target a person's assumed sexuality and sexual preferences, but not simply to have them marry. Rather, it is to have them conform to the general sexist structure, that is, the heteronormative structure.

Finally, Card and MacKinnon argue that the patriarchal structure and male dominance is beneficial for men. It gives them access to women and gives them the power to shape the world according to their view.<sup>20</sup> However, not all men benefit from the system of male dominance. Toxic masculinity is

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**20** | See MacKinnon (1989b: 118) for this point. For an explanation of MacKinnon's metaphysics and an illuminating critique see Mikkola (2016).

often described as “the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia, and wanton violence.” (Kupers 2005: 714) Toxic masculinity, then, is both problematic for men who conform to it and for those who do not. It is, obviously problematic for those who do not conform to it because they become a target for sexualized violence, physical abuse, and hate crimes. And it is problematic for those who do conform to it, as it restricts them from seeking help (physically and mentally), expressing their feelings, and experiencing love or friendship. (Sattel 1976; Strikwerda and May 1992) And, further, toxic masculinity is problematic because it brings men to prison and bears the risk of being infected with, e.g., HIV. (Tschaepe 2015)

From the above discussed literature, I take on board, first, the idea that rape is part of a holistic sexist system that gives meaning to rape itself and sexuality and gender in general. Rape is not simply a tool that results in a specific outcome (i.e., sexist relations), rather it is part of a holistic system that has an interdependent structure. A social practice such as rape keeps the sexist system alive and affirms it, but at the same time, the system also reproduces rape as a social practice. One way this can be seen is by looking at the practice of date rape. While some acts of date rape are performed intentionally by the perpetrator insofar as he is willingly negligent of the feelings and sexual boundaries of his date, other acts are committed with the belief, that the date does enjoy what is happening. Being taught by a sexist system that women want to be overpowered and enjoy being overpowered can de facto result in the belief that a woman means “yes” when she says “no.”<sup>21</sup> This is related to, second, the insight that rape is not the intentional power of all men over all women, but that the system, in which the practice of rape is situated, has taken on a life of its own (beyond the control of individual agents) and is damaging for everyone—women, men, and gender non-confirming people. This implies that rape as a social practice should be made intelligible not in a restricted way of patriarchal relations, but as part of a sexist structure. Not every rape necessarily has a particular function, rather the possibility of being raped (of being rapable) works to control choices of women and gender non-confirming people. By acknowledging that the social structure undergoes changes (and moving from a patriarchal framework to a sexist framework is one of those), the social group that is in danger of rape changes accordingly; e.g., women, some male prisoners, trans persons, gay persons, persons with disabilities, undocumented persons, etc., are all disproportionately targeted as rape victims. The sexist social structure is in two respects not just about women being oppressed: (1) because of intersectionality (race, class, etc., are important, interlocking components

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21 | I say more about this in Chapter 6.

in the analysis of gender relations), and (2) because members of other social groups are affected too (e.g., gender non-conforming people).

In what follows I show how rape as a social practice plays a role in reproducing a sexist structure in line with Haslanger's above sketched account of social practices. This alternative account acknowledges the interdependent structure of practices and schemas, on the one hand, and the interdependent character of said structures and the system, on the other hand. Furthermore, I argue that we should understand this specific social structure as a sexist ideology by using Haslanger's framework and Fields' account of day-to-day ideologies to adequately capture the holism of the sexist system and the way in which it takes on a life of its own.

### **4.3.2 What Is a Sexist Ideology? A Second Look**

In the following account of sexist ideology, I take on board two insights from the discussion above: (1) Rape is part of a holistic structure that gives it meaning and gives meaning to sexuality in general. And, (2) rape is part of a self-operative structure.<sup>22</sup> A structure is self-operative if it is constituted by interdependent schemas and social practices. This interdependence makes it the case that the structure takes a life of its own. MacKinnon and Card, besides their insightful views on a sexist system as holistic and having a life of its own, exclusively focus on the dichotomy of men versus women and the idea that all men benefit (in MacKinnon's case per definitionem) from the sexist system.<sup>23</sup> I instead suggest an account of a sexist ideology that takes seriously the claim of holism and the claim that the ideological structure is self-operative. By doing so, I can account for the fact that not only women are subjected to acts of rape and that not only men help to reproduce the sexist structure. Furthermore, I take on board the already established claims from Section 4.2.1 and 4.2.2 that rape is an accepted, social practice. It is accepted in two respects. First, in the sense that many acts of rape are reinterpreted as not rape and are therefore deemed permissible. And, second, in the sense that the act of rape is not sanctioned (or at least not strongly) and is therefore made acceptable.

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**22** | I use social structure and social system interchangeably in thinking of a social structure as a holistic system.

**23** | According to MacKinnon, being a man or being a woman is defined in terms of being sexually submissive or being sexually dominant. A man, therefore, cannot be sexually submissive by definition: rather, a male person who is sexually submissive would count as a woman. Note also that there is a difference between the claim that all men benefit from the system and all men are structurally privileged. I say more about the first claim in this chapter and return to the latter claim in Chapter 6.

According to Haslanger (2017), the interplay of resources and schemas constitute a social practice. Many social practices in turn create social relations, i.e., relations between people (e.g., being a parent) and relations to things (e.g., cooking). And, finally, networks of social relations constitute a social structure.<sup>24</sup> Using Haslanger's framework, I make two interrelated claims: (1) The social practice of rape is made intelligible by the social structure of which it is a part and, at the same time, helps to perpetuate that structure. (2) The social structure is best described as a sexist ideology that is pejorative, holistic, and self-operative. I, first, spell out Haslanger's framework for social structures and explicate what she understands ideologies (or, in her words, 'cultural technés') to be. I then show how this framework leaves out the holism and the self-operative claim. I therefore use insights from Barbara Fields' account of ideology to undergird Haslanger's framework and show how rape as a social practice fits into the picture. Finally, I explicate how this broader understanding of rape as part of a specific sexist ideology can account for the fact that rape is an accepted practice and that social actors within this ideology act against their own interests. This is an important insight because it shows how not only men but also those targeted by acts of rape help to reproduce it—and therefore provides a more accurate account of sexualized violence in the social world than either Card or MacKinnon.

Roughly, according to Haslanger's theory, a social structure (and its social practices) consist in many interdependent cultural schemas—schemas that are shared in public. Taking all these cultural schemas together is what Haslanger calls a cultural techné. It is because of the cultural techné that we know how to act and behave in the social structure.<sup>25</sup> The cultural techné gives meaning to social practices such as rape or other sexualized acts. Haslanger's notion of ideology can be explained in more detail with help from her account of social practices and social structures. As a reminder, social structures are networks of social relations, and these social relations are the result of various social practices. Social practices are constituted by interdependent resources and schemas that mutually sustain and imply each other over time; they are "collective solutions to coordination or access problems with respect to a resource." (Haslanger 2017: 20) A social structure is a structure in which individuals communicate and act together, engage with the world, and so on. We can understand a social structure as the framework in which life happens. The social structure as well as its constituting social practices consist inter alia in cultural schemas. Cultural schemas have public standing. They include social meanings and have the following two features: (1) in order to

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**24** | For a detailed explanation, see Section 4.2.1.

**25** | For reasons of simplicity, I sometimes simply talk of (cultural) schemas and social practices (including institutions) as the main constituents of a social structure.

function, they must be recognized (but not necessarily endorsed), and (2) they are often internalized by individuals and play a crucial part in their thought process. Cultural schemas allow “individuals to act fluently in social contexts.” (Haslanger 2017: 21) Cultural schemas give meaning to the framework of the social structure. In short, the social structure consists in particular social relations, social practices, and resources. What then is an ideology according to this view? The two available candidates are: the social structure or cultural schemas. Haslanger argues that:

Social structures and the practices that constitute them consist partly in cultural schemas—the public meanings and such that enable us to interpret each other and coordinate. Call a set of interdependent schemas governing a social structure a cultural techné. A cultural techné provides us with the know-how to be part of a social group. An ideology is a cultural techné that organizes us (a) in relations of domination and subordination (either through the production and distribution of goods, or in the constitution of selves), or (b) to resources whose value is misconceived or not recognized. (2017: 23, emphasis in original)

According to Haslanger, then, an ideology is both: a social structure and cultural schemas. A set of interdependent cultural schemas—schemas with public standing—is a cultural techné. A cultural techné is what gives meaning to the social structure. A social structure does not function without a cultural techné that governs it. How does a cultural techné turn into a pejorative ideology? The cultural techné turns into an ideological techné, or simply an ideology, if it reproduces relations of domination and subordination, or if the value of resources is misconceived or not recognized.<sup>26</sup> Thus, let us say, a cultural techné is ideological if it is inherently unjust.<sup>27</sup> Because the ideology, accordingly, is made of both a social structure and the cultural techné that governs it, it

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**26** | Even though Haslanger places explanatory weight on the social practices that form part of an ideology, she focuses on the epistemological organization of these practices.

**27** | According to Geuss, pejorative ideologies are forms of consciousness. Forms of consciousness are particular constellation of beliefs, attitudes, dispositions, etc. Haslanger’s cultural techné, on the other hand, are the sets of interdependent schemas that govern a social structure. These schemas include beliefs, attitudes, dispositions, etc. In both cases, then, the terms describe a set or constellation of beliefs, attitudes, dispositions, and so on, that form or govern a social structure. Geuss argues that pejorative ideologies are false in virtue of certain properties: (a) a form of consciousness is ideologically false in virtue of some *epistemic* properties of the beliefs which are its constituents; (b) a form of consciousness is ideologically false in virtue of its *functional* properties; (c) a form of consciousness is ideologically false in virtue of some of its *genetic* properties. (Geuss 1981: 13, emphasis in original)

includes mental states (or, in Geuss' words, forms of consciousness) as well as social practices.

However, this account of ideology leaves to be desired the holism claim and the self-operative claim—two claims that I have taken on board from the section before.<sup>28</sup> Let us turn to Barbara Fields' account of ideology for a solution. According to Fields,

[i]deology is best understood as the descriptive vocabulary of day-to-day existence, through which people make rough sense of the social reality that they live and create from day to day. It is the language of consciousness that suits the particular way in which people deal with their fellows. It is the interpretation in thought of the social relations through which they constantly create and re-create their collective being, in all the varied forms their collective being may assume [...]. As such, ideologies are not delusions but real, as real as the social practices for which they stand. (1990: 110)

Similarly to Haslanger's account, Fields argues for an entanglement of social structures and their cultural technés. Ideology is everyday life (including its social relations and practices) made intelligible by a framework of interpretation. In fact, Fields describes the social terrain that social agents negotiate in a way congruent to Haslanger's use of a cultural techné. Fields argues that ideology is not a set of attitudes or beliefs, that social agents can endorse or throw away, but that it is a negotiated social terrain "whose map they keep alive in their minds by the collective, ritual repetition of the activities they must carry out in order to negotiate the terrain." (1990: 113) And, similarly to the way that schemas and resources can change according to Haslanger, Fields argues that the social terrain can change and if it does, social agents need to change their activities and their map. Being able to change the social terrain—the material world—is what it means to have power. Thus, let us say both Fields and Haslanger subscribe to a roughly similar claim: ideologies are real day-to-day experiences within a certain framework of interpretation that makes them intelligible.

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**28** | This becomes particularly obvious in the following example. Haslanger asks us to consider an oligarchy as one example of ideology. In said oligarchy, the ruling elite are themselves invested in a particular ideology and structure society accordingly. The masses then live in an ideological social milieu, but themselves reject the ideas behind it. (Haslanger 2016: 8) Even though I agree with Haslanger that whether a system is ideological should not hang solely on the beliefs of the people living in it, I disagree that oligarchy is an ideological structure. It misses the essential insights that ideologies take on a life of their own: there is no single ruling elite that controls everyone else according to their ideas. And it misses the fact the ideologies are holistic: they creep into every aspect of society, unconsciously shaping those living within the system, and thereby making it hard to reject.

How can Fields' understanding of ideology account for the holism and the self-operative claim in ways that Haslanger's account could not? Haslanger argues that "[a]n ideology is a cultural techné that organizes us (a) in relations of domination and subordination (either through the production and distribution of goods, or in the constitution of selves), or (b) to resources whose value is misconceived or not recognized." (2017: 23, emphasis in original) According to this view, how widespread the cultural techné is and how it is governed is left open. According to Fields, on the other hand, ideologies are coherent and based on lived experiences. They are coherent in the sense that they are plausible to those within the ideology: "they help insiders make sense of the things they do and see—ritually, repetitively—on a daily basis." (Fields 1990: 110) This, Fields specifies, does not imply that they are coherent or plausible to anyone outside the given ideology. They are based on lived experiences in two ways. First, they make sense of our lived experiences, and, second, they bring it about that we—ritually and repetitively—experience the same social practices. Indeed, it is through the experienced rituals that ideology is (re)created and verified. And the ritual character of the experiences is twofold: it is based on the rationalization of a social practice and the constant re-enactment of it, e.g., we stop at a red traffic light because it is an advantage to do so and because of the constant re-enactment of that advantage. Thus, ideology is holistic insofar as it is a coherent framework that governs our lived experiences—not just in a particular context but within the whole social structure. And, it is self-operative insofar as the rituals and social practices that we engage in over and over again change their meaning according to the overall framework—without us being conscious of this process. As Fields argues, ideology is not a material entity that can be passed on like an object, it is not a collection of dissociated beliefs and attitudes, a "Frankenstein's monster" that is created and then takes a life of its own, or a doctrine or dogma—it is not governed but reproduced by social practices and the framework of interpretation. (1990: 110-1)

While Fields' account can provide a coherent image of the holism and self-operative aspect of ideology, the falseness of ideology is not necessary but potential. Ideology can potentially have functional properties (e.g., it can mask social contradictions or it can legitimize certain social institutions or social practices that are unjust) or it can have epistemic properties (e.g., the ideology can depend on the mistaken epistemic status of its constituent schemas or it can depend on the false belief that a particular interest of a powerful group is the general interest) that make it false.<sup>29</sup> That is, according to Fields' account, we could have an ideology in which our lived experiences are governed and made intelligible by a specific framework of interpretation without this being

**29** | Geuss lists several epistemic, functional, and genetic properties that render a form of consciousness—or, in Haslanger's words, a cultural techné—false. (Geuss 1981)

based on inaccurate beliefs or it being unjust for anyone subject to it. Haslanger, on the other hand, specifies that an ideology is unjust due to the fact that its cultural *techné* organizes the social structure in relations of domination and subordination or to resources whose value is misconceived or not recognized. (2017: 23) What we therefore need is to pair Haslanger's and Fields' accounts:

An ideology is a social structure, constituted by ritualized social practices, governed and made intelligible by a coherent cultural *techné* that organizes us in relations of domination and subordination.

Rape as a social practice is part of a sexist ideology. What is a sexist ideology according to the account of ideology I have spelled out above? A sexist ideology is a sexist social structure, constituted by ritualized social practices, governed and made intelligible by a coherent cultural *techné* that organizes us in relations of domination and subordination. Some social practices that constitute the ideological sexist social structure are, for instance, rape, domestic abuse, sexualized violence, forced marriage, forced surgery of intersexed persons, and many more. The coherent cultural *techné* relies on binary gender relations, in which men who conform to the ideals of (toxic) masculinity have power over others, and in which challenging the given binary gender relations leads to sanctions. To be coherent, the cultural *techné* works with a range of schemas (including rape myths) that make intelligible the (broadly speaking) sexual social practices. The sexist ideology underwent a long development from a more classical patriarchal structure to the modern social form we have today—however, its core of sexism was not interrupted. Thus, when I speak of the sexist ideology, I have in mind a whole range of social practices (rape being only one) and public schemas, such as sexualized violence, domestic abuse, homo- and transphobia, gender division of labor, male networks (e.g., fraternities), glass ceilings, unequal payment, that are often described by terms like 'sex/gender system', 'gender inequality', 'gender norm structure', 'heteronormativity', 'patriarchy', 'male supremacy', etc.<sup>30</sup> (cf. Kerner 2009)

When I speak of a sexist ideology, I have in mind the state of gender and sexual inequality that exists in most societies. Consider the UK as an example. In the UK, gender inequality manifests as a gender pay gap for full-time employment of 9.4 % (Wild 2015); 27 % of women (in comparison to 16 % of men) earned less than the living wage (Helm 2013). Furthermore, 90 % of

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**30** | Well known analyses of the phenomenon "without a name", as Marilyn Frye calls it, concern the sexual exploitation of women, the mechanism of the division of labor, the workings of social reproduction, and the dichotomy of gender relations and heteronormativity brought forward by Butler (1990, 1993, 2004); Fraser (2013); Haug (1996, 2001); MacKinnon (1987a, 1989b, 1995).

single parents are women and 42 % of single parents live in poverty. (Bennett 2015) Single parent poverty overwhelmingly burdens women. And one out of nine pregnant women or new mothers are treated so poorly when it comes to maternity leave that they quit their jobs. (Topping 2015) Women also suffer from more domestic abuse and sexualized violence. On average, 100 women each year are killed by their intimate male partners (by contrast, around 30 men are killed in domestic contexts each year—and in one out of every three cases the killer is another man). (London 2016) One in five women experiences at least one sexual offence since the age of 16, and one in twenty experiences rape, attempted rape, sexual assault, or attempted sexual assault. Conviction rates are very low; only 15 % of incidents are reported and roughly 7 % of the incidents reported to the police result in a conviction. This suggests that the percentage of actual rapes that result in a conviction is around 1 %. Not merely women suffer from higher rates of abuse, but also trans\*persons, people with sexual orientations other than heterosexuality, people who do not confirm to the binary gender system or the dominant gender norms, and so on. There were 1008 homophobic hate crimes reported in 2012 and 2013 in London alone and 50 transphobic crimes; yet, transphobic crimes are massively underreported and there is anecdotal evidence of individual trans people who are the target of over 50 transphobic crimes each year. (Antjoule 2013) A sexist ideology might not be realized in the exact same forms globally, but in most cultures and countries it exists in similarly realized ways.

Rape as a social practice within this sexist structure is supported by other social practices and by a cultural techné that make certain acts unintelligible or mask certain interpretations by providing alternative and false understandings. As I have argued before, the social practice of rape is (mostly) an accepted practice (Section 4.2.2). We can now say that the cultural techné includes public schemas that bring it about that some acts of rape are not intelligible as acts of rape and are therefore deemed permissible, e.g., acts of rape by acquaintances, acts of rape that lack physical violence, acts of rape within the prison system, or against trans\*persons are unintelligible as acts of rape. And, furthermore, even those acts that are intelligible as acts of rape enjoy an institutional structure that protects its perpetrators, e.g., victims of rape are not taken seriously and perpetrators are not sanctioned or, if they are, with only mild sentences. This twofold acceptance of rape is maintained by the cultural techné and other social practices and, at the same time, confirms and maintains these schemas and practices.

Note, again, that the holism-claim does not imply that we cannot critique the ideology. This would be implausible considering that any social structure is fragmented and includes counter-scripts, norms, and practices. Instead, it implies that once we are embedded in it, we are unlikely to break free of it immediately from one moment to the next. It is a process over time which

likely has set-backs. As I explained before, the fact that I know that female body norms are part of the sexist system does not mean that I can reject them with ease. In fact, they may make me feel better. The holism of the sexist ideology shows itself in the sense that it is hard work to go against it. It is nevertheless possible. To understand ideology as day-to-day experiences “must make room for contest and struggle” (Fields 1990: 111). Ideology is not a single experience that all social actors within the ideology share, rather it is a kaleidoscope of experiences that all gain meaning (in different ways) from the cultural techné. It thus allows for contradicting schemas within the same ideology.<sup>31</sup>

The theory of ideology given above accounts not only for the holism and self-operative claim but furthermore for two related claims. Ideology in this sense can account for (1) why social agents act against their self-interest and (2) why there are contradicting schemas within the cultural techné. Because of the ritual repetition of certain social practices, we lose sight of what the actual meaning behind them is and, at the same time, we lose sight of our own interests. We engage in certain social practices because conforming to them is often the easiest way to get around in the social world. As Simone de Beauvoir correctly argued a long time ago, it is often easier for women to be complicit with men than to be in solidarity with other women. (1968: 2nd book, 2nd part) This explains how women come to act against their own self-interest and be complicit in a sexist ideology that ultimately wrongs them.<sup>32</sup> This does not necessarily mean that women who are complicit with men do so consciously— often this is the only way they learned to behave. The sexist ideology of which rape is a part epistemically misguides social actors; it gives them reasons to act against their own interest. Suarez and Gadalla (2010) found that more men than women believe in rape myths.<sup>33</sup> And that individuals with negative attitudes towards women or other marginalized groups are more likely to adopt such myths. However, these studies show that not only men believe in false myths about rape. Furthermore, Peterson and Muehlenhard (2004) found that women who experienced rape often subscribe to rape myths and interpret their own experience along the lines of the false myths. There is psychological

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**31** | And, as I have argued in Chapter 3, these contradictions—when they become apparent in our lived experiences—can be the starting point for the method of emancipatory amelioration (EA), as was the case for this book when the gap between lived experiences and the dominant working understanding transpired.

**32** | Even though this is true for the social group of women, it can and should not be expanded to those social groups that are targeted as rape victims because they fall outside of the given gender norms, e.g., trans\*persons, gay persons, inter persons. These individuals often do not have the possibility to be complicit with a more privileged group.

**33** | See also Anderson (2004a); Anderson et al. (1997); Earnshaw et al. (2011).

support for these findings, i.e., believing that what happened was, at least partly my own fault, makes it possible to believe that if I behave well, it will not happen again. Not engaging in self-blame means acknowledging that I am not free of the threat of rape.

To summarize so far, rape is a social practice that gains its accepted character from being part of a sexist ideology. The sexist ideology is constituted by ritualized social practices, and is governed and made intelligible by a coherent cultural techné (that includes rape myths) that organizes us in gendered relations of domination and subordination. The sexist ideology is pejorative, holistic, and self-operative. Furthermore, it contributes, reproduces, and maintains social practices such as rape and masks the contradicting practices and schemas. Social agents within the ideological structure are therefore epistemically distorted and act against their self-interest. Thus, the sexist ideology explains the illusive, pervasive, and false character of sexualized violence (including rape). Before I turn to an explanation of the unjust character of a sexist ideology, I explicate how ideological beliefs play a role in the ideological structure outlined above. A central task is to explain the interplay of practices and rape myths, thus illuminating the epistemic situation of the actors within the system; rape myths can then be understood as ideological beliefs.<sup>34</sup>

### 4.3.3 Rape Myths as Ideological Beliefs

Having said that rape is part of a sexist ideology, we can now understand rape myths as ideological beliefs.<sup>35</sup> As a reminder, rape myths are “attitudes and beliefs that are generally false, but are widely and presently held, and that serve to deny and justify male aggression” (Lonsway and Fitzgerald 1994: 134). Rape myths “follow a pattern whereby, they blame the victim for their rape,

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**34** | So far, I have described rape myths as schemas—including not merely beliefs but also attitudes, dispositions, etc. Thus, it would be better to speak of ‘ideological schemas’ here instead of ‘ideological beliefs’. I think that rape myths are better described as schemas, they are not merely beliefs, but also attitudes, and so on. (And more needs to be said about psychological research about the exact character of schemas to elaborate on this claim.) Nevertheless, I use the term ‘ideological belief’ because it is an established term. I am convinced though that what I say about ideological beliefs in the following could be said about ideological schemas too. The important point of the discussion is not the technicality of schemas or beliefs, but rather the idea that beliefs (or, alternatively, schemas) can distort our understanding of the concept of *rape*.

**35** | While, for example, Jenkins (2016) focuses on the way rape myths can obscure the victims’ understanding of their own experiences, I contend that thinking of rape myths as ideological beliefs takes into account the way victims’ understanding *as well as* the perpetrator’s understanding is undermined.

express a disbelief in claims of rape, exonerate the perpetrator, and allude that only certain types of women are raped” (Grubb and Turner 2012, emphasis in original). I have distinguished what I call “She asked for it”-myths and “It wasn’t really rape”-myths above; the first are myths that blame the victim for what happened, the second are myths that define rape exclusively as physically aggravated stranger rape. I have, furthermore, argued that rape myths have two functions—an explanatory function and a justificatory function—and that they are widespread and prevalent.<sup>36</sup>

Rape myths are schemas in a sexist ideology. To show that rape myths in this structure are best understood as ideological beliefs, we first have to get a better grasp on what ideological beliefs are. Following Shelby, we can say that beliefs are ideological<sup>37</sup>, if

- a. “The beliefs in the subset are widely shared by members in the relevant group; and within the group, and sometimes outside it, the beliefs are generally known to be widely held.”
  - b. “The beliefs form, or are derived from, a prima facie coherent system of thought, which can be descriptive and/or normative.”
  - c. “The beliefs are a part of, or shape, the general outlook and self-conception of many in the relevant group.”
  - d. “The beliefs have a significant impact on social action and social institutions.”
- (Shelby 2003: 158)

Let us take each aspect in turn. First, the beliefs are widely shared by members in the relevant group. Since I have argued that the sexist ideology is a holistic system, the beliefs need to be widely shared by members in the social structure in general—but not by everyone. To recap some of the studies presented in Section 1.2.2: Burrowes (2012) found the following numbers of negative attitudes towards rape victims: 18.3 % (United Kingdom), 29.5 % (Canada), 32.9 % (Hong Kong), and 51.5 % (Malaysia).<sup>38</sup> McGee et al. (2011) found that 40.2 % (of 3,210 participants of the study) claimed that accusations of rape were often false.<sup>39</sup> Furthermore, McGee et al. (2011) found that over 29 % of participants believed that victims hold some responsibility for the rape, e.g.,

**36** | See Section 1.2.2.

**37** | Haslanger (2016), in my view, correctly criticizes Shelby for being too cognitivist about ideology. Instead, on her model, social practices play a distinct role in social structures and ideological structures. However, Shelby’s account of ideology can help in shedding light on the issue of ideological beliefs—as long as we do not ground our theory of ideology solely in those beliefs.

**38** | See also Ward (1995).

**39** | Similar results can be found in Anderson et al. (1997); Pollard (1992).

women wearing tight clothes invite rape. Studies by Edwards et al. (2011) and Lonsway and Fitzgerald (1994) broadly confirm these findings, i.e., between 25 % and 35 % of study participants agree with rape myths. However, when using open-ended questions, Buddie and Miller (2001) found that 66 % of college students endorsed rape myths. And Basile (2002) and Feild (1978) found similar numbers when conducting research with non-college students. Often individuals do not agree directly with victim-blaming statements but affirm them when asked indirectly. McMahon (2010) found that 53 % of college students agreed that a victim's dress or intoxication led to her assault. Rape myths are believed by 20 % to 60 % of individuals from all social backgrounds. Considering the fact that not many beliefs and attitudes in general are shared by members of all social groups, 20 % to 60 % can indeed be said to be widely shared. Rape myths are therefore widely shared by members of all kinds of social groups.

Second, the beliefs form, or are derived from, a *prima facie* coherent system of thought. Consider Griffin's argument that rape is part of a coherent system of heteronormativity. This system divides men and women into those individuals who sexually dominate and those who sexually submit. Furthermore, it creates a protection racket under which those who submit are protected by "good" men from "bad" men. (Griffin 1971) Yet, both "good" and "bad" men dominate sexually—the first do so in ways condemned by the system but necessary to reproduce the protection racket, the second do so in line with the system under the idea of the protection racket. As I have argued above, every seemingly coherent system includes contradictions and thus so does the sexist (or, heteronormative) system. Those contradictions are explained away, e.g., by the flawed distinction between "good" men and "bad" men as well as "good" women and "bad" women. The coherent system of thought referred to by Shelby can therefore only be purportedly coherent. Furthermore, the system of thought (and, we might add, materialist resources and practices), the sexist ideology, is descriptive and normative. For example, it tells us that women are submissive (e.g., advertisement that portrays women in submissive postures) and that they ought to be submissive (otherwise, they are "bad" women and risk being raped). Or, that there are only two sexes (e.g., operations of intersex persons) and that there ought to be only two sexes (hate crimes against persons, who do not confirm to the binary gender system).

Third, the beliefs are part of the general outlook and self-conception of many in the relevant group. As I have shown above, rape myths not only dictate understandings of sexual behavior but also align with broader conceptions of gender roles and their respective social position within the system. In the case of the sexist system, the coherent system of thought is necessarily embedded in a general outlook of sexuality and its gendered roles and positions. This is also suggested by empirical research: there is a correlation between rape myths

and traditional gender roles. Victim blaming attitudes were shown to be higher when the victim of a rape behaved in ways inconsistent with traditional gender norms. (cf. Acock and Ireland 1983) Furthermore, sexualized attacks on, for example, trans\*persons can be explained in these terms similar to corrective rapes—rapes that serve the misguided purpose of correcting a person’s sexual orientation or chosen gender.

Fourth, the beliefs have a significant impact on social action and social institutions. As I have argued before, rape myths as schemas are only one part of social structures: social practices (that is, social action) is the other. They are interdependent. Rape myths therefore have an impact on social action. Consider the notion of consent as an illustration of the impact of ideological beliefs. Taking seriously the way that we, as social agents, are part of a sexist ideology has implications for what we understand consent to be. Take, for example, Luis Pineau’s insightful discussion of when it is reasonable to assume that consent is indeed given. Pineau (1989) argues that, empirically speaking, women do not tend to enjoy the kind of sex that results from (psychological) pressure from a date. And if this is true, then it is unreasonable for a man in that situation to assume (given the absence of active participation) that his date consents, since people usually do not consent to things in which they have no interest. This is correct assuming that, first, even under ideological influence, we know what we want, and second, that we do not make choices against our best interest. However, this is questionable. The ideological system can bring it about that women’s consent (or lack of consent) does not matter in some situations. Remember, for example, the Australian rapist for whom the refusal of the woman did not even matter in his narrative of rape. Due to certain myths, the victim’s consent becomes irrelevant when the incident is not stranger rape. According to this view, one could argue, that the victim does not physically resist the sexual advances, because she believes that her lack of consent is irrelevant anyways.<sup>40</sup> This is compatible with Pineau’s theory: it is then still unreasonable for the perpetrator to assume that consent was given—even though he might not be able to understand this due to the sexist ideology in which he takes part.

Yet, one could also argue that the victim is unaware of the fact that her lack of consent would not count. After all, she is as much part of the ideology as he. Instead, she does not consent because she believes that, as a girl, it is her “duty” to have sex with her date (e.g., she thinks she has led him on, she owes him, etc.). This is problematic for Pineau’s theory because it assumes that neither the perpetrator nor the victim know what they want and are influenced by common rape myths. Thus, neither the perpetrator nor the victim might be able to reasonably judge the situation. Furthermore, it might be the case that

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40 | I am thankful to Katharine Jenkins for this interpretation of Pineau (1989).

the victim does believe that her consent counts, but chooses against her best interest. Growing up in a system that taught her that women are submissive (and that they sexually enjoy being submissive!) enables the victim to consent to an act that is clearly not in her best interest but is, instead, a false interest. She either chooses to have sex that she does not really desire or she is so deeply influenced by false beliefs of what is “sexy” that she actually does believe that a sexual act which does not fulfill her desire is in her interest. This is incompatible with Pineau’s claim that it is unreasonable for the perpetrator to assume that the victim consents because it is not in her interest—maybe it really is not in her interest, but she consents anyways. MacKinnon, thus, argues that because of the social structure (or in my words, the sexist ideology) of gender inequality, no woman can give real consent to a heterosexual act. (1989b: 178) Clearly, this is a hard pill to swallow (and maybe too hard). For now, let it suffice to say that consent becomes a questionable concept when the ideological context is taken seriously; it can, e.g., be rendered inapplicable by rape myths. If consent is rendered inapplicable by ideological beliefs, then this has direct consequences for our social action. Thus, rape myths have direct consequences for our social actions.

What is the impact on social institutions? In Section 1.2.2, I argued that rape myths have an impact on police investigations (and legal investigations in general) and on institutional proceedings. Edwards et al. (2011) lists the following ways in which rape myths can be endorsed by individuals and have an effect on social institutions: (1) Rape myths have an effect on legal institutions. For example, Gyls and McNamara (1996) found that 43 % of prosecuting attorneys from the research sample showed rape myth acceptance.<sup>41</sup> Harding (2015) reports the high acceptance of rape myths of police officers. Burrowes (2012) shows that jurors are influenced by rape myths in their decision making. Rape myths affect the investigative work, the trial, and the decision making during the trial and at the end. They also affect the way victims and perpetrators are treated.<sup>42</sup>

(2) Rape myths have an effect on religious institutions. Research suggests that a substantial number of clergy hold rape myths. (cf. Sheldon and Parent 2002) The study shows that clergy often base their judgements about responsibility for rape on the woman’s resistance, her behavior, and her marriage status. Furthermore, the study shows that the more fundamentalist and sexist the clergy were, the more they harbored victim blaming attitudes. As clergy are for many individuals the first persons of authority in whom they can confide and since clergy play an important part in shaping a community, these

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**41** | Krahe et al. (2008) came to similar conclusions about German students of law.

**42** | For a drastic example, see Armstrong and Miller (2015).

attitudes can affect the reporting rate, the self-blame of victims, and the general sexist atmosphere in the community.<sup>43</sup>

(3) Rape myths have an effect on media institutions. Advertisements, for example, use depictions of sexual violence against women to sell (unrelated) products (cf. Green 2013) and movies use the portrayal of sexualized violence against girls for excitement (cf. Oliver 2016). Edwards et al. write that “results from a content analysis of prime-time television dramas found that 42 % of storylines depicting a women “wanting” to be raped, 38 % depicted a victim lying about rape, and 46 % featured women “asking” to be raped” (2011: 763). Bryant and Oliver (2009) find that media has a notable impact on its consumers. It is therefore only reasonable to assume that rape myths in media also have an impact on the consumers. This is in line with other research: Franiuk et al. (2008) show the prevalence of rape myths in newspaper headlines and that men exposed to these headlines are more likely to endorse rape myths afterwards and to misjudge rape cases.<sup>44</sup>

And we can add to Edwards list: (4) Rape myths have an effect on educational institutions. Victims of rape who reported their experience to the college or university administration are often confronted with rape myths and victim blaming attitudes directly. For example, they are asked the following questions: what would you do differently in retrospect? were you drunk? what were you wearing? did you so no? (cf. Dick 2015) Not only did the administrators show a high degree of rape myths acceptance, but so did the college students themselves. Bleeker and Murnen (2005) found that members of fraternities showed a high degree of rape myths acceptance and, correlatively, valued images of women in degrading postures or situations. Sawyer (2002) found that male athletes, especially freshman and sophomore athletes involved in team-based sports, believed that half of all reported rapes are invented by the woman. In educational institutions, rape myths can lead to more rapes, to less reporting, and to a generally less sympathetic atmosphere for rape victims. This is similarly true for military institutions (cf. Oliver 2016) and the family as an institution. By questioning victims who had prior sexual relations with the perpetrator, rape myths make it harder for victims of marital rape to be believed, to report the incident, and to understand what happened to them as rape. In other words, (5) rape myths have an affect on military institutions. And (6) rape myths have an effect on the family as an institution. Rape myths therewith can be said to have an effect on social institutions or, better, they permeate the social system (including its institutions) and are reproduced by these institutions.

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**43** | For a personal account, see also Fortune (2005).

**44** | See also Malamuth and Briere (1986) for a general study on the impact of sexual violence in media.

Furthermore, and in line with common conceptions of ideology, we can characterize ideological beliefs in the way they present the world. Geuss writes that we can think of a form of consciousness (e.g., a system of thought) as “ideological if it contains an ‘objectification’ mistake,” in other words, “if it contains a false belief to the effect that some social phenomena is a natural phenomena” (1981: 14). In this sense, rape myths naturalize the sexual difference between women and men—women as submissive and men as dominant. By doing so, they distort the sexist injustice that exists between men and women by portraying it as natural and therewith just. And they portray the binary gender system in general as natural—despite research to the contrary. (cf. Voss 2010, 2011) In light of Shelby’s work on ideological beliefs (including the ‘objectification mistake’), we can conclude that rape myths are indeed ideological beliefs: (a.) they are widely shared, (b.) they help form and, at the same time, are derived from a *prima facie* coherent system of thought, and within that system they are descriptive as well as normative; (c.) they are part of the general outlook of gender roles, sexuality, and heteronormativity; (d.) they have significant impact on social action and social institutions; and—adding to Shelby—(e.) they contain an ‘objectification mistake’ by masking the gender injustice as a natural system. In short, rape myths are part of the set of public schemas that constitute the cultural *techné* of a sexist ideology. They are ideological beliefs.

## 4.4 THE INJUSTICE OF RAPE

I have argued that rape is a social practice which is part of a sexist ideology. Thus, rape as a social practice is made intelligible and is perpetuated by the sexist ideology, and at the same time, it helps perpetuate the sexist ideology. The sexist ideology is constituted by ritualized social practices, and is governed and made intelligible by a coherent cultural *techné* (including ideological beliefs such as rape myths) that organizes us, as social agents, in gender relations of domination and subordination. The sexist ideology is pejorative, holistic, and self-operative. What does it mean to say that the ideology is pejorative? One way to understand this is by saying that the ideology is false. Geuss argues that an ideology is false (or pejorative) if its epistemic, functional, and / or genetic properties are false. (1981: 12-22) For example, if the ideology masks the existing social contradictions, then it has epistemic properties in virtue of which it is false. However, in line with Haslanger, I have subscribed to the claim that the ideology is not pejorative by being false in virtue of some of its epistemic, functional, or genetic properties (even though that is true as well of the sexist ideology), but by sustaining injustice. I have said that: an ideology is a social structure, constituted by ritualized social practices, governed and

made intelligible by a coherent cultural techné that organizes us in relations of domination and subordination. Such relations sustain social and structural injustice. If rape is part of a sexist ideology that sustains injustice, then it is plausible to think that rape contributes to injustice as well.

In the following, I show what is wrong with rape. I analyze how sexist ideology sustains injustice and show what this means for the social practice of rape. One way to understand how the sexist ideology sustains injustice is by analyzing the relations of domination and subordination that constrain members of social groups. In regard to the social practice of rape, I bring forward three claims: (1) the sexist ideological framework contributes to, reproduces, and maintains social and structural injustice, (2) it masks the structural character of the injustice, and (3) rape as part of the sexist ideology helps to sustain and perpetuates social and structural injustice. (Section 4.4.1) Finally, I show how a theory of rape grounded in an analysis of ideology fares better than other accounts that treat rape merely as an individual wrong. To exemplify this, I have a closer look at two of these accounts and show that they treat the wrong of rape as an individual flaw. This approach lacks the structural dimension of rape, and hence, is insufficient. (Section 4.4.2)

#### 4.4.1 Rape and Structural Injustice

I have said that a sexist ideology organizes social agents in gender relations of domination and subordination. I will now claim that, by doing so, it sustains social and structural injustice. According to Mikkola (2016), the three paradigmatic forms of injustice are discrimination, domination, and oppression. Thus, if a sexist ideology organizes social agents in gender relations of domination and subordination, it thereby sustains injustice because domination is a paradigmatic form of injustice.<sup>45</sup> By organizing social agents in relations of domination and subordination, sexist ideology brings about a state in which some social groups are forced to follow rules that are set by others and that prevent them from determining the conditions for their own actions. (cf. Mikkola 2016: 223) Remember though, that I have argued that an ideology is holistic and self-operative. It can therefore not merely be the case that one dominant group sets rules for other dominated groups. Rather, the ideology is constituted by ritualized social practices that are not the result of a scheme of an elite but that gain a life of their own over time—it might therefore be the case that no one profits from the existing rules but that everyone follows them

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**45** | Mikkola is here loosely guided by Young, who defines injustice in terms of two social conditions: oppression and domination. (Young 1990: 38) For other accounts of injustice or limits of traditional theories of justice, see Benhabib (1986); Lovett (2010); Sandel (1982); Shklar (1990); Taylor (1985b).

and therewith everyone prevents themselves from determining the conditions for their own actions.

Being prevented from determining the conditions for one's own actions can then be spelled out in the following way. In a social structure, the possibility-spaces of social agents are constrained by their relations to each other as defined within the structure. For example, women and men are members of distinct social groups and they are constrained by their relations within the given structure; men occupy the role of power over women and women occupy the role of being submissive.<sup>46</sup> In regard to sexualized violence, this means that men are described as sexually aggressive, while women are taken to be sexually passive. Sexualized violence between men and women is the result of the understanding of the distinct behavior of these two social groups (men and women) when they interact. Women are constrained in their choice of resisting sexualized violence and men are constrained in their choice of how to interact with women sexually. The fact that a man overpowers a woman is not incidental to the social understandings in the structured whole.

Consider the following. Scott Anderson claims that whether psychologically pressuring someone to have sex is rape should acknowledge underlying gender dynamics. Pressure to have sex is distinct from other interpersonal pressures because sexual pressure helps to reinforce gender hierarchy. There is a difference between men pressuring women to have sex and vice versa: more men than women will actually use violence if they cannot achieve their goal with psychological pressure, and more men have the ability (in most cases) to resist such violence without being harmed. (Anderson 2005b: 366) This is not to imply that all men who psychologically pressure will resort to physical violence, but rather that a woman is justified in drawing that conclusion because it is a common experience for many women. Further, it is not to imply that all men use this technique knowingly. Yet even if a man is unaware of the physical backup of his pressure and may never touch the woman without her consent, he nevertheless makes it harder for the woman to tell whether he would actually use force as a last resort or not. (Anderson 2005b: 366-7) For Anderson, standing in the social position of a woman means having to fear sexualized violence, while standing in the social position of a man means having the option to use sexual pressure. When we, as social agents, consider how to act in a certain context, we are normally guided towards one choice or another by our personal attitudes, habits, and dispositions of those engaging with us. However, not every choice is open to us because we are set within a social structure in which we can only choose within our choice architecture—

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**46** | There are of course exceptions; some white women have power over black men, some economically privileged women have power over less privileged men, etc. My claim here is merely in regard to the structural system of sexuality.

that is, within the structure that defines which choices are open to us and which are not. The social structure defines our social positions and the relations between different social positions and therewith determines which choices are open to us and which are not.

In a sexist ideology, we are placed in positions of domination and subordination in which any behavior that does not conform with heteronormativity, the binary gender system, and the given gender norms is constrained. For example, male prisoners that do not behave in particularly masculine ways are judged to “invite” sexual activities. A Human Rights Watch report reads that “prisoners fitting any part of the following description are more likely to be targeted: young, small in size, physically weak, white, gay, first offender, possessing ‘feminine’ characteristics such as long hair or a high voice; being unassertive, unaggressive, shy, intellectual, not street-smart, or ‘passive’; or having been convicted of a sexual offense against a minor.” And, being a member of LGBTQ-communities invites violent and sexualized hate crimes. Particularly trans\*persons have to face violent acts of hate crime, in many cases leading to their death.<sup>47</sup>

Second, the cultural techné of the sexist ideology masks the structural character of injustice. The cultural techné presents a powerful script that masks the social and structural dimension of injustice at work; instead, it presents social practices such as rape as individual wrongs. For example, by blaming the individual behavior of the victim who got too drunk and was sexually violated, by finding fault in the individual who did not conform to his assigned gender, or by focusing on the psychological disability of the rapist (or, alternatively, his skin color or class), the acts become individualized. To illustrate this, consider the following example:

A young Illinois woman stopped to rest while biking along an isolated reservoir near the college town of Carbondale. A stranger approached and struck up a conversation. After chatting with him for a few minutes, she got on her bicycle and started to leave. At that point the man, Joel Warren, put his hand on her shoulder. When she said, “No, I have to go now,” he replied, “This will only take a minute. My girlfriend doesn’t meet my needs.” He added, “I don’t want to hurt you.”

Perhaps Warren only meant “We’ll both enjoy this.” But to the woman his comment sounded ominous, a hint of what he might do if she resisted him. In any event, she had

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**47** | See, for example, the statistics published online by the Office for Victims of Crime: [https://www.ovc.gov/pubs/forge/sexual\\_numbers.html](https://www.ovc.gov/pubs/forge/sexual_numbers.html), accessed: March 15, 2017. See also the 2010 report by the National Intimate Partner and Sexual Violence Survey: [www.cdc.gov/violenceprevention/nisvs/](http://www.cdc.gov/violenceprevention/nisvs/), accessed: March 15, 2017, and the report by the National Transgender Discrimination Survey: Grant et al. (2012).

little time to consider nuances. Warren quickly lifted her off the ground and carried her into the woods. He was six feet two inches tall and weighed 185 pounds. With no one else in sight, the young woman, who was only five feet two and weighed 100 pounds, did not attempt to scream or fight back, actions that she feared might prompt him to start choking or beating her. Once Warren had her hidden from view, he pulled off her pants, pushed up her shirt to expose her breasts, and subjected her to several acts of oral sex. (Schulhofer 1998: 1)

The fact that Warren, a man, targeted the young cyclist, a woman, is not random. The cyclist's (and arguably, the perpetrator's) decision of how to act is relationally constrained. The cyclist is socialized to be submissive, her experience of being a woman tells her that resistance can be even more dangerous than submission, her physical body is not trained to physically resist, a voice in her head tells her that she is (at least, partly) to blame. The cyclist's and the perpetrator's choices regarding sexual access are not independent—they are both socialized into believing that women's sexual behavior is passive and men's is active and aggressive. Even though the cyclist's choice is rational and autonomous, it is so only given the social context of gender relations, physical restrictions, a specific system of male entitlement, etc. The cyclist's choice is constrained by the available choice architecture.<sup>48</sup> However, the cultural techné presents a different story in which the young woman was at the wrong place at the wrong time and happened to come across a dangerous man. Or, alternatively, she waited for him to find her because she secretly desired to be physically overpowered by a stranger. Both explanations mask the social and structural dimension of the wrong that the woman endures.

Third, rape as a social practice is a constituent part of the sexist ideology and therewith helps to sustain and perpetuate social and structural injustice. If rape is a social practice and as such part of what constitutes the social structure of sexist ideology, and if the sexist ideology sustains social and structural injustice,

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**48** | Focusing on structural constraints provides insights into regularities that hold between individuals that occupy similar positions within the social structure. Individuals whose choices are similarly constrained tend to act in similar ways, even if their personal histories, identities, etc., differ. In other words, even if the cyclist and myself have different attitudes and characters, our choices to resist sexual attacks are similar given the social constraints we both experience. Note, that structuring causes are not only mediated by the cyclist's belief about what options of resistance are available, but the material world and the social structure of gender roles is also a factor in explaining the cyclist's beliefs and the overall pattern of her choices (and other women's choices). (cf. Haslanger 2015) In other words, individuals who are situated at similar nodes in the social structure show regularities in their available choices. This can also explain how specific men or trans\*persons can come to have their choice architecture constrained.

then rape as social practice helps sustain social and structural injustice. Sexist ideology sustains social and structural injustice insofar as the cultural techné of the sexist ideology organizes social agents in constrained gender relations of domination and subordination. The cultural techné, furthermore, masks the structural component of the injustice. As a constitutive part of the sexist ideology, rape helps to sustain social and structural injustice. Thus, part of what is wrong with rape is that it is a social practice which as such helps to sustain social and structural injustice.

#### 4.4.2 What Is Wrong with the Wrong of Rape?

In the last section, I argued that rape as a social practice is part of a sexist ideology and that it therefore helps to sustain social and structural injustice. I now show that understanding rape as part of an ideological framework accounts for injustice in ways that other views fail to do. To do so, I concentrate on two accounts that I take to be paradigmatic for the view that rape is a moral wrong. Most would agree that rape is a grievous wrong, although many disagree why this is the case. Gardner and Shute (2000) argue that what is wrong with rape is that it is morally unlicensed objectification: a rapist objectifies his victim by treating her as a mere instrument to be used. Their investigation is guided by the insight that the moral wrongness of rape must be found in the most basic instance of rape—that is, in an instance of rape that is completely stripped of distracting epiphenomena—and that this wrongness must be able to differentiate between rape and other instances of violence, i.e., what is the specific wrong about the most basic instance of rape? They bring forward the following example of a—in their words—“pure” case of rape:

It is possible, although unusual, for a rapist to do no harm. A victim may be forever oblivious to the fact that she was raped, if, say, she was drugged or drunk to the point of unconsciousness when the rape was committed, and the rapist wore a condom. [...] Then we have a victim of rape whose life is not changed for the worse, or at all, by the rape. [...] She has no feelings about the incident, since she knows nothing of it. [...] Remember: in our example the incident never comes to light at all. (Gardner and Shute 2000: 196)

What is wrong with rape in this basic example, is that the rapist objectifies the victim and he does so because he treats her as a mere means to his own ends.<sup>49</sup> Using a discussion of objectification by Nussbaum (1995), they argue

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**49** | This closely mirrors the Kantian view of denying someone’s personhood by using them as mere means to one’s end and not as ends in themselves. A similar view to the one by Gardner and Shute (2000) is brought forward by O’Neill (1985). She argues that

that the rapist objectifies the victim by instrumentalizing her, i.e., the rapist uses the victim as an instrument or tool for his own ends. (Gardner and Shute 2000: 204) And, as Mikkola correctly points out, Gardner and Shute need to be committed to saying that what is wrong is the sheer instrumental use of a person for some sexual ends. (2016: 154) Otherwise the wrong of rape becomes indistinguishable from the wrong of other violence. While the wrongness of rape must be basic and essential to rape (that is, rape must be wrong even in the absence of harm), a rape can be made worse by aggravating factors.<sup>50</sup>

Let us have a look at another, and in my view more plausible, account of what is wrong with rape. Archard argues that rape is wrong because it is “an indefensible harming of a legitimate interest in safeguarding what is central to our personhood” (2007: 390). Archard distinguishes between an act’s hurtfulness (the pain and discomfort of the act), harmfulness (the setback to one’s interests), and wrongfulness (the indefensible setback to one’s interests). While the wrongfulness is constitutive of rape, the hurtfulness and harmfulness are not. To make this claim, Archard distinguishes further between core and aggravating harms: core harms are those that are done by any act of rape, aggravating harms, on the other hand, are additional harms (such as violence, brutality, the context of the rape, etc.). Note that both harmfulness and wrongfulness are defined as the setback to one’s interests; however, wrongfulness is an indefensible setback while harmfulness is not. Thus, to see the wrongfulness of rape, we have to identify those setbacks that are indefensible. To do so, Archard uses a spatial model to understand interests.<sup>51</sup> According to this model, interests “occupy a space which helps to define the self

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rape is objectionable because no consent is given to the act by the person subjected to it. On this view, it is morally objectionable to treat others in ways to which they do not consent. To do so treats another as a thing or tool, which cannot consent to the ways in which it is used. Thus, it fails to treat others as persons who can choose and thus withhold consent from actions which affect them. (1985: 254)

**50** | See Mikkola (2016) for a critique of the view which Gardner and Shute bring forward.

**51** | This model is loosely guided by the network model of interests brought forward by Feinberg; everyone has goals in life and to work towards those goals, certain welfare interests need to be in place: “continuance of a foreseeable interval of one’s life, and the interests in one’s own physical health and vigor, the integrity and normal functioning of one’s body, the absence of absorbing pain and suffering or grotesque disfigurement, minimal intellectual acuity, emotional stability, the absence of groundless anxieties and resentments, the capacity to engage normally in social intercourse and to enjoy and maintain friendships, at least minimal income and financial security, a tolerable social and physical environment, a certain amount of freedom from interference and coercion.” (Feinberg 1984: 37)

or personhood, and the most important interests are those that are closest to, are at the core of, a person or self” (Archard 2007: 387)—they are the interests that define us as individuals. And, according to Archard, part of one’s core interests is sexuality. In other words, sexuality is one interest that defines who we are. Rape violates the self by violating the sexually embodied self; it murders the soul.<sup>52</sup> (Archard 2007: 390) And by doing so, it is an indefensible setback of one’s interests in sexual integrity. It is, according to Hampton (1999: 123), a moral injury insofar as it damages the value we have as ends in ourselves.<sup>53</sup>

According to these accounts, the wrongness of rape is framed purely in individualistic terms; it is about an individual’s interests or personhood and another individual’s transgressions. By focusing on the wrongs done to individuals, these theorists overlook the ways in which the individual is conditioned by her social contexts and her relations to, and dependencies on, others. The focus on individuals misses the structural aspect of rape: rape is not merely morally wrong in an individualistic sense, but also in the sense that it helps to sustain social and structural injustice. I contend that the accounts discussed above fail to account for an important aspect of rape—the fact that rape sustains social and structural injustice—and that my account fares better. Interestingly, Gardner and Shute acknowledge the structural dimension in regard to gender in the beginning of their text. They write that rape is mostly experienced by women and that it can thus be hard—especially for men—to dissect it philosophically. (Gardner and Shute 2000: 194) However, while this acknowledgement of the structural dimension of rape did not stop them, as men, from dissecting the moral wrongness of rape, it did get lost in their own account.

I have argued that rape is embedded in the social world, it is not simply an individual act but rather a social practice consisting of interdependent schemas and resources. As such, it is constitutive of the social structure and is, simultaneously, maintained by it. I have shown that we cannot understand the phenomenon of rape correctly, if we fail to grasp its role in the social world. Rape as a social practice is—in most forms—an accepted practice. It is (1) rendered legitimate by being reframed as something other than rape, and (2) accepted insofar as it is seldom sanctioned by the structure’s institutions. Furthermore, I have argued that rape is part of a specific social structure marked by sexist ideology. This ideology can be characterized as pejorative, holistic and self-operative, which thereby explains the pervasiveness of sexualized violence. Understanding rape as part of a sexist ideology makes it plausible to see rape

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**52** | For the assertion that rape is ‘a form of soul murder’, see also Henderson (1988: 225).

**53** | See Congdon (2016) and Bernstein (2006, 2015) for detailed accounts of moral injury. See Mikkola (2016) for a critical discussion of Archard’s account.

myths as ideological beliefs. Finally, I have shown that as part of the sexist ideology, rape helps sustain social and structural injustice. This analysis makes intelligible what individualistic accounts of the wrong of rape fail to bring to light: the fact that rape is not only a moral wrong done to an individual, but also part of a social structure and in this capacity helps to sustain social and structural injustice. Hence, in this chapter I have systematically mapped the phenomenon of rape and explained its social embeddedness.

Identifying rape as a social, structural, and systematic injustice helps to advance strategies against rape and sexist structures in general. It suggests that we cannot tackle the social practice of rape by merely punishing the individual perpetrator, rather we have to take into account the social structures that make it possible for him to rape (and get away with it). The normative judgement that simply refers to individual interaction in cases of rape focuses on the perpetrator and the victim as individuals and not as occupying certain social positions in a social structure. The position of the victim (and respectively of the perpetrator) becomes intelligible only when considering the broader picture of social structures, roles, relations, and practices. This can then also provide answers to the problems encountered before: it explicates the structural dimension of rape and it explains which beliefs about rape are false, how they are embedded in the social world, and why they are persistent. And this understanding is precisely needed for the second step of the method of emancipatory amelioration (EA): to conceptually ameliorate rape such that it tracks adequately the phenomenon as explicated by the social theory. In the next chapter (5), I bring forward an ameliorated understanding of the concept of rape that is guided by the following question: how should we understand the concept of rape on the grounds of the analysis given in this chapter?

## **Chapter 5:**

# **Ameliorating the Concept of Rape**

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Corresponding to the second element of the method of emancipatory amelioration (EA), Chapter 5 aims at improving our conceptual understanding of rape with a view to the emancipatory goal of improving upon the defective status quo. The chapter puts forward a revised cluster concept, according to which rape can be characterized by ten properties which particular instances of rape may exhibit to a greater or lesser degree, and argues that such an understanding satisfies the desiderata identified in Chapter 2.

### **5.1 INTRODUCTION**

In Chapter 2, I argued that one way to track the various forms of the phenomenon of rape is by developing the concept into a cluster account. However, I also argued that the proposed cluster fails as it does not adequately track the social embeddedness of rape. Thus, I proposed that a conceptual analysis of rape has to be based on a rich social theory of the phenomenon. I specified five desiderata that a social theory of rape has to fulfill. I then proposed that the conceptual analysis of rape has to be based on the social theory and has to be prescriptive. In Chapter 3, I developed a method that can yield the social theory as well as a prescriptive conceptual analysis. The last chapter and this chapter apply the method of emancipatory amelioration (EA) to the phenomenon of rape. In the last chapter, I presented an account of how rape is embedded in the social world. I argued that rape is a social practice which is either rendered acceptable by being re-interpreted or is *prima facie* accepted, and that rape as a social practice is part of a sexist ideology. Furthermore, I have shown that as part of a sexist ideology, rape is not merely an individual wrong, but helps sustain social and structural injustice. This social theory of rape maps the various forms of rape as well as disentangles the faulty conceptions and attitudes of rape from its standing in the real world and accounts for the persistence of misguided

beliefs. The main question that guides the work in this chapter is: What should the concept of rape be, given the context of the sexist ideology?

In this chapter, I turn to the second step of the method of emancipatory amelioration (EA) and ameliorate the concept of rape. This amelioration is grounded in the social theory provided in Chapter 4 and is guided mainly by the pragmatic condition of emancipatory amelioration (EA): it pursues the question of which concept could work best taking into account the critical analysis of the status quo and the aim of correcting the defects of the status quo. The first section, Section 5.2, collects the relevant insights that are needed for ameliorating the concept of rape. In Section 5.2.1, I give a brief overview of the last chapter and the insights of the cluster account discussed in Chapter 2. I then propose a revised cluster.<sup>1</sup> To do so, in Section 5.3.1, I turn to the specific aspects of the social theory in which the amelioration should be grounded and then I develop a revised cluster in Section 5.3. Finally, I consider whether the theory fulfills the specified desiderata (Section 2.4.3), present some objections and show the potential of the theory (Section 5.3.3 and 5.3.4).

## 5.2 EMANCIPATORY AMELIORATION AND RAPE

Let me start by giving a brief summary of the method of emancipatory amelioration (EA) as specified in Chapter 3:

(EA) Emancipatory Amelioration yields a social theory and a conceptual analysis that each satisfies one of the following two conditions:

1. Normative Condition: it is directed at exposing defects in the status quo (social theory);
2. Pragmatic Condition: it pursues the question of which concept works best to bring about emancipatory transformation (in the sense of a social and legal transformation to a more equal and just social structure) taking into account the structural analysis of the status quo (conceptual analysis).

Emancipatory amelioration (EA) is emancipatory because it aims at emancipatory transformation of the status quo; it is grounded in a social theory of the phenomenon in question, which reveals the (underlying) social structures and its defects that stand in the way of emancipation. The method of emancipatory amelioration (EA) has two steps: to expose the defects in the status quo, the first step of emancipatory amelioration (EA) is to engage in a social theory of the phenomenon. This step takes its clue from the normative condition: it works

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**1** | I am grateful to Lea Prix, Johanna Müller, Isette Schuhmacher, and Eva von Redecker for helping me think through the details presented here.

to expose defects in the status quo with the idea that these defects need to be corrected. In a second step, it can ameliorate a given concept on the basis of the social theory and aim at an emancipatory understanding of the concept. This second step takes its clue from the pragmatic condition: it pursues the question of which concept could work best taking into account the social theory of the first step. As a reminder, the first step consists of several small steps: (1) Experiencing a moment of rupture or practical contradiction; (2) failing to make intelligible said moment of rupture in our lived experiences; (3) coming to realize the structural dimension (by, e.g., shared experiences); and, (4) engaging in immanent critique, i.e., a critical analysis of the schemas and practices that brought the practical contradiction about and made it unintelligible. The second step of the method of emancipatory amelioration—the step of amelioration—ameliorates a given concept on the basis of the first step. It begins by asking: what concept would work best regarding our emancipatory aims? And it takes as a starting point the social theory that resulted from the first step. I have worked on the first step in the last chapter (Chapter 4) and provided a social theory of rape.<sup>2</sup> I now turn to ameliorate the concept such that it tracks adequately the phenomenon of rape as explicated by the social theory. I do so, first, by spelling out the contours of the cluster (Section 5.2.1 and 5.2.2) and then, in Section 5.3, turn to which insights from the social theory are important for ameliorating the concept.

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**2** | But why should we accept the underlying social theory for the project of amelioration? If the conceptual elucidation of rape hinges on an adequate social theory of rape, the ‘smaller’ parts of the picture hinge on the plausibility of the ‘bigger picture’. But what justifies the bigger picture? What grounds do we have to accept the suggested social theory of rape? First of all, the rules for the social theory are set up in a way to make it unlikely that we are influenced by our pre-existing commitments, attitudes, and beliefs. We start to engage in the process of theorizing only if we experience a moment of rupture and draw the necessary conclusions from this moment. Furthermore, the theory not only explains rape but a wider system of which rape is a part, it provides answers to the questions asked (e.g., why is the dominant working understanding popular?), it explains the matter without having to rely on external standards, and it is supported by empirical data. But, of course, whether the theory is a good theory or not can only be known retrospectively—by asking whether the outcomes of understanding rape in line with the target concept are better or worse.

### 5.2.1 Insights from the Proposed Cluster Account of Rape

As shown in Chapter 2, cluster accounts have the following structure:

1. If all the criteria are instantiated, then the object falls under the concept; the criteria are jointly sufficient for the application of the concept, but even if fewer criteria are instantiated, the object can still fall under the concept.
2. None of the criteria of the object are individually necessary for the object to fall under the concept; there is no criteria that all objects that fall under the concept must possess.
3. There are disjunctively necessary conditions: some of the criteria apply if an object is said to fall under the concept. (cf. Gaut 2000: 26-7)

One way to spell this out is with regard to resemblance. I then argued that we can make use of a multiple paradigm theory to conceptually analyze rape. I proposed three paradigms—stranger rape, acquaintance rape, genocidal rape—that track distinct examples of forms of rape in the world. I suggested thinking of a big oak tree to conceptualize the cluster. The branches of the tree represent the different aspects that an act of rape can have. The more aspects are realized—that is, the closer the act in question resembles one (or more) of the paradigms—the better we can judge an act to be an act of rape. This idea is influenced by Gaut (2000), who argues that we have no problems judging an object to fall under the concept in one extreme and no problem to judge it not to fall under the concept in the other extreme. High degrees of resemblance are one extreme, no resemblance is the other. Analyzing the concept of rape this way broadens the dominant working understanding insofar as it includes all cases that resemble any one of the paradigms. It can, thus, track various forms of rape. However, I discussed two problems that the proposed cluster faces: the problem of practicability and the problem of normative adequacy. And I argued that what we need is a revised model based on a social theory of the phenomenon of rape. This revised model has to adequately track the social reality of rape as provided in Chapter 4.

### 5.2.2 Cores, Prototypes, and Definitions

The second step of emancipatory amelioration (EA)—the actual amelioration—can be done in (at least) three different ways: (1) we could stipulate a definition of the concept in question, (2) we could provide prototypes or paradigms of the concept in question, or (3) we could outline a core of a cluster concept. In each of the three ways, the method applied is roughly the same; first, the social theory of the phenomenon of rape paints a broader picture of the social embeddedness of the phenomenon, and, second, the concept is ameliorated by

asking the following question: given the specific context (of sexist ideology), which concept would work best as an emancipatory concept? Obviously, this question can be answered in multiple ways. Let me quickly work through the three mentioned above.

First, the method of emancipatory amelioration (EA) could be used to stipulate a unified definition for the concept of rape. Whatever then is tracked by the definition falls under the concept in question. In this way, the project would be close to Haslanger's use of the method of amelioration. She uses the project of amelioration to stipulate a definition of, for example, woman, race, and parent that is in line with feminist and anti-racist purposes. Whatever is tracked by the definitions falls under the concept. For example, her definition of woman is:

S is a woman if

- (i) S is regularly and for the most part observed or imagined to have certain bodily features presumed to be evidence of a female's biological role in reproduction;
- (ii) that S has these features marks S within the dominant ideology of S's society as someone who ought to occupy certain kinds of social position that are in fact subordinate (and so motivates and justifies S's occupying such a position); and
- (iii) the fact that S satisfies (i) and (ii) plays a role in S's systematic subordination, that is, along some dimension, S's social position is oppressive, and S's satisfying (i) and (ii) plays a role in that dimension of subordination. (Haslanger 2012: 234, emphasis in original)

This definition is based on a particular social theory of the system of sexist oppression and gives priority to the structure of subordination and privilege that exists in regard to the social classes of men and women. It aims at changing our concept of woman such that the concept tracks the ways the phenomenon of woman is constrained by sexist oppression. Because this definition tracks the real life conditions of what it means to be a woman, it is open for revision if the real life conditions change. However, it is open to revision insofar as we have to stipulate a new definition if the social conditions change. Once the social conditions change, the definition fails to adequately track the phenomenon and, thus, demands revision. This is one way to provide a conceptual analysis informed by a social theory. There might be a way though to account for at least small changes in the social theory without having to stipulate a new definition or having to change the model every time. Let us see if the other alternatives can provide this. Furthermore, while Haslanger in her endeavor to ameliorate the concept of woman prioritizes the system of sexist oppression, I want to hold on to a view that can prioritize at least two aspects: the various forms of rape and the social embeddedness of rape in the sexist ideology. Hence, let us see

whether a cluster account—either with respect to paradigms or cores—can be helpful in this respect.<sup>3</sup>

Second, as I proposed in Chapter 2, the method of emancipatory amelioration (EA) could be used to provide paradigms (or prototypes) for the concept of rape. Roughly, things that have the most widely shared attributes have a high degree of family resemblance with other things in the same category, and things that have lesser shared attributes have a lower degree of family resemblance. And to broaden the account, one could stipulate more than one paradigm, as I have indeed done, such that a thing in question can resemble one or more paradigms. For example, an act that shares high degrees of resemblance with any one of the paradigms can be judged to fall under the concept, while an act that shares only low degrees of resemblance does not. This would account for all acts that show resemblance with any of the paradigms and the more paradigms we have, the broader the category. These paradigms, according to emancipatory amelioration (EA), would then be informed by the social theory. While a cluster of paradigms, as I have shown before, can account for a whole range of forms of rape, it does not account for the social embeddedness of the phenomenon, e.g., the gap between the dominant working understanding of the sexist ideology and the various forms of rape as explicated by the social theory. Hence, I suggest turning to a different kind of cluster theory.

Third, the method of emancipatory amelioration (EA) can be used to provide the core to a cluster model. This model can be realized in two different ways: (1) Roughly, the cluster itself could list various properties, of which an act of rape does not necessarily needs to have all, but it needs to have some. Said cluster of rape has a core: the middle part of the cluster. This core consists of the properties that are most essential to the concept of rape and from which an act needs to have a specific number to count as rape. The more properties an act in question has, the closer the act is located to the middle of the cluster and the clearer the act is one of rape; the lesser properties an act has, the more it is located on the boundaries of the cluster of rape. Or (2) the cluster could list various features, of which an act of rape needs to have all, but it is open to different degrees. This model also consists of a core that lists all of the properties of the cluster in their—for lack of a better word—most “extreme” form. The closer an act is located to the middle of the cluster, the most extreme

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**3** | This is, of course, not to say that a cluster account is better. Rather, whether we choose one or the other is a matter of what we prioritize in our theorizing. I expect that both—the cluster as well as the unified definition—could ameliorate the concept of *rape* adequately. However, the unified definition needs more work to do so, because, as Jenkins (2016b) correctly argues, by prioritizing the social embeddedness of the concept of *woman*, Haslanger’s definition fails to include various forms of the phenomena.

its properties are realized and the more definitely is it a case of rape. In my proposal below, I make use of the latter model.

Outlining the core of a cluster has the following benefits: (a) it is adaptable according to the given social theory; (b) it acknowledges that the act of rape is located on a map<sup>4</sup> (i.e., its properties are realized in degrees); (c) it acknowledges that the map of rape has fuzzy boundaries to other categories (e.g., between acts of unproblematic sex and acts of sexualized violence, or between acts of violence and acts of sexualized violence); (d) it highlights its conceptual closeness to neighboring categories such as violence, unproblematic sex, domestic violence, abuse, incest, etc.; and (e) it nevertheless provides the central aspects that each act of rape needs to have. On the basis of the social theory (given in Chapter 4), I now sketch a cluster model for the concept of rape.

### 5.3 A CLUSTER MODEL OF RAPE

In Chapter 2, I sketched a cluster account of rape. While the proposed cluster tracked various forms of rape, it faced the problem of practicability and normative adequacy. In Chapter 3, I outlined a new method—emancipatory amelioration (EA)—that is particularly useful for social phenomena embedded in a broader social structure. In Chapter 4, I argued that rape is a social practice and part of a sexist ideology. This also provides insight about which conceptions are accurate and which are based on false schemas. This analysis and the given critique of the underlying social structures of rape provide the grounds for ameliorating rape and constitutes the first step within the method of emancipatory amelioration (EA). In this chapter, I provide the second step: the ameliorative part. This part should fulfill the fifth desiderata as defined in Section 2.4.3:

**Desideratum 5:** The social theory has to be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change; whereby the conceptual analysis has to

- (a) be flexible in a way that allows for changes when we gain further information about the phenomenon;
- (b) be constrained enough to allow for proper judgements;

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**4** | I argued before that the act of rape is located along a spectrum in which some cases are realized in extreme and some in less extreme ways. I have also argued that the idea of a spectrum presupposes two-dimensionality and that we should move away from two-dimensionality. As I propose shortly, we can understand the cluster as a three-dimensional map, with many different properties that are realized in many different degrees.

- (c) account for different degrees;
- (d) acknowledge the concept's contestability, gray area, and neighboring categories;
- (e) be non-paternalistic; and
- (f) have heuristic utility.

In the following, I spell this part out with the help of a core of the cluster.

### **5.3.1 Insights from Rape and Ideology**

In Chapter 2, I argued that the proposed cluster is insufficient with regard to its content. It does not track the phenomenon of rape adequately because it lacks the background of a rich social theory. The cluster model that I propose in this chapter takes rape as a social phenomenon and explains the distorted beliefs about rape. It does so by taking seriously the insights of the last chapter. First, I argued that rape is not merely an individual act, but a social practice that— together with other social practices—constitutes a social structure. As a social practice, rape is constituted by interdependent schemas and resources. Second, rape is an accepted social practice. It can be justified by the social structure in two ways: (1) most forms of rape—those that diverge from the example of physically violent stranger rape—are reinterpreted and made intelligible as something other than rape and are thus rendered acceptable. Or, (2) in cases where the act is not reinterpreted as something else, it is *prima facie* acceptable in so far as sanctions (and other institutional consequences) are weak. In other words, raping and getting away with it is a real option for many. Third, the social structure is a pejorative, holistic and self-operative sexist ideology. The sexist ideology is constituted by ritualized social practices (such as rape) and is governed and made intelligible by a coherent cultural *techné* (that includes rape myths) which organizes us in gendered relations of domination and subordination. The sexist ideology explains the illusive, pervasive, and misguided character of sexualized violence (including rape). Fourth, rape is not merely an individual moral wrong, but—as part of a sexist ideology—it helps sustain social and structural injustice. These insights, as well as the insights gained in previous chapters, inform us in determining the properties important for accurately describing rape.

Let us now turn to the insights from the last chapters and see what features are relevant for an adequate analysis of rape. I propose that there are six insights that are directly relevant for the components that should be part of the cluster of rape: its various forms, its embeddedness in the social structure, the accepted character of rape, its ideological embeddedness, its link to heteronormativity (Chapter 4), and its contestedness (Chapter 1). These six insights are relevant for the content as well as for the structure of the cluster.

First, as part of a broader ideological structure, rape is a social practice that maintains (and is maintained by) the ideological framework. Other similar social practices are domestic abuse, sexualized violence in general, homophobic abuse, violence against trans\*persons, etc. Furthermore, rape as a social practice is not one clearly defined act, but a conglomerate of acts, e.g., sexual penetration, physical violence, resistance, undressing, rubbing, kissing, and many more. Finally, not each incident of rape has the same properties or at least not to the same degree, e.g., while one rape might involve physical violence and brutality, another does not or to different degrees. I contend that this highlights three aspects that the cluster model of rape should be able to make intelligible in its structure. The model has to be designed in a way that can accommodate that

- (i) all acts of rape lie on a map with the centre of the map representing those acts that include all properties of rape in their most extreme appearance—e.g., lots of violence and brutality, no consent, etc.—while the edges of the map represent acts that we feel hesitant to describe as rape at all;
- (ii) there are gray areas between the core of the map and the edges of the map, i.e., areas in which we are hesitant to describe the acts as rape or something else—for instance, sexualized violence, unproblematic sex, physical (but non-sexual) violence;
- (iii) there are neighboring categories starting at the edges of the map, with which the category of rape shares the gray areas, e.g., the category of unproblematic sex, physical violence, domestic abuse, prostitution, pornography, etc.

Second, rape is an accepted social practice in two ways: on the one hand, most forms of rape are reinterpreted and made intelligible as something other than rape and thus acceptable and, on the other hand, forms of rape that are made intelligible as rape are only weakly sanctioned, i.e., the institutional structure works to protect the perpetrator instead of the victim. For example, remember that in most states in the United States the minimum marriage age is 18, however, states allow exceptions in which children younger than 18 can wed. One exception is that children aged 16 and 17 can marry with parental consent and it is commonly not investigated whether the child is willing to marry or not. The second exception for children aged below 16 to marry is with judicial approval. Many states do not specify any minimum age in these cases.<sup>5</sup> In most cases, the age difference between the child and the person she is married to is more than 4 years, which is the age difference beyond which sexual relations fall under statutory rape; that is, in most cases, young girls are being married to much older men. (Reiss 2015) In these cases, marriage makes the statutory

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5 | For numbers of child marriages with parental or judicial approval, see Kristof (2017).

rape legal. We can say that the legal institutions help sustain gender inequality. Thus, we cannot fully understand rape without understanding the underlying inequality between perpetrators and victims that is produced and maintained by the social structure (including rape myths and social institutions). This makes questions of gender inequality a component of the cluster of rape.

Third, taking seriously the way that we, as social agents, are part of a sexist ideology has implications for what we understand as consent. Most scholars agree that rape should be defined as some variant of non-consensual sex. (cf. Archard 1997, 1998; Dripps 1992; Hurd 1996; Muehlenhard et al. 1996; Schulhofer 1998; Wertheimer 2003) This stipulates at least two features that any act of rape must have: lack of consent and sexual activity. But these are not enough to describe rape adequately. Remember, for example, Luis Pineau's insightful discussion of when it is reasonable to assume that consent is indeed given. Pineau argues that, empirically speaking, women do not tend to enjoy the kind of sex that results from (psychological) pressure from a date. And if this is true, then it is unreasonable for a man in that situation to assume (given the absence of active participation) that his date consents because people usually do not consent to something they find unpleasant. (Pineau 1989) Yet, one could argue that, being embedded in the sexist ideology, the victim consents because she believes that, as a girl, it is her "duty" to have sex with her date (e.g., she thinks she has led him on, she owes him, etc.). This is problematic for Pineau's theory, because it assumes that neither the perpetrator nor the victim know what they want and are influenced by common rape myths, thus, neither the perpetrator nor the victim might be able to reasonably judge the situation. The victim chooses against her best interest. Growing up in a system that taught her that women are submissive (and that they sexually enjoy being submissive!) brings it about that the victim consents to an act that is clearly not in her real interest but is, instead, a false interest. Thus, consent becomes a questionable concept when the ideological context is taken seriously; it can, therefore, be rendered inapplicable by rape myths. The notion of consent as a component of the cluster of rape can therefore only be informative when the ideological context is taken into account. One way to do so is by pairing questions of consent with questions of rape myths and (ability of) resistance.

Furthermore, understanding rape as part of a broader social structure highlights that it is not free from power relations. In a social structure, some individuals have more power than others (and some even have power over others). This depends on their social group membership and the nodes they occupy in the social network (e.g., in which relations they stand to others, their social roles, etc.). Differences in social power can have effects on whether we want to call an act rape or not. For example, social group membership (and other social positions) can make psychological pressure harmless in one situation and threatening in another. Remember the discussion of sexual pressure by Scott

Anderson (2005b). He claims that an argument about whether psychologically pressuring someone to have sex is rape should acknowledge underlying gender dynamics. Pressure to have sex is distinct from other interpersonal pressures because sexual pressure helps to reinforce gender hierarchy. There is a difference between men pressuring women to have sex and vice versa: more men than women will actually use violence if they cannot achieve their goal with psychological pressure, and more men have the ability (in most cases) to resist such violence without being harmed. (Anderson 2005b: 366) Of course, this is not only true for the social relation between men and women. A prison guard, for example, also occupies a social position of power and his pressuring an inmate to have sex is therefore equally problematic. These differences in power become especially problematic if the incident takes place in a deserted location or a context that is prone to misuse of power: the 14-year-old girl who is taken to a deserted road by her older sister's ex-husband is not in a position to refuse sex (cf. Schulhofer 1998: 4) and the street prostitute who happens to come across a violent customer in the middle of the night in a deserted area of town cannot refuse or call the police as her business is illegal. Similarly with contexts or relations of authority between the persons involved. The student who was pressured to have sex in order to graduate by her high school principle was not in a position to consent. (cf. Schulhofer 1998: 114) Mental and / or physical incapacity can also render consent impermissible: the woman who passed out drunk in a public bathroom and was then raped by four men was in no condition to refuse or consent (cf. Schulhofer 1998: 7) and the thirteen-year-old girl who saw a doctor for her learning disabilities was not informed enough to know how to consent when the doctor subjected her to intercourse (cf. Schulhofer 1998: 45). I contend that location and context, mental and/or physical incapacity, and the persons involved can render consent impossible. Thus, question about location and context, mental and/or physical incapacity, and the (power relations between) persons involved are all useful questions of any account of rape.

Fourth, as I argued in Chapter 1, rape is a contested concept. Taking seriously its contested character can provide an answer to the debate of whether rape is sex or violence. As Muehlenhard et al. (1996) argue, the question of whether rape is sex or violence is complex; it is not merely about the assumption that rape is about lust and sexual desire and the counter-argument (strongly brought forward by feminists) that rape is not about lust but about power over another person. An answer to this question can, for example, depend on whose perspective we are taking. The victim's perspective might yield different insights than the perpetrator's perspective, however, neither perspectives of victims nor perspectives of perpetrators are homogenous sets; neither is it the case that all victims share a perspective nor that all perpetrators do. And indeed, some victims clearly experience the act of rape as violence (often those are cases of stranger rape or cases in which a weapon or aggravating violence

is used), while others do not perceive it as rape at all because of its similarity to sex. Feminists have long argued that rape is about violence instead of sex in order to highlight the fact that men are not driven by uncontrollable sexual urges. However, as MacKinnon has stressed, this often leads to the problem that many victims of rape do not see what happens to them as an act of rape, because it did not involve physical violence. Rather, she argues, often rape is sex. (MacKinnon 1987c) I do not intend to answer the question of whether rape is sex or violence here, but instead suggest that both accounts—rape as sex and rape as violence—should be taken seriously by an account of rape. Thus, questions of sexual activity (including penetration), threat and force, and brutality and violence should all figure in the cluster of rape. So far, the following notions are important for the content of the cluster: sexual activity, violence, means of physical coercion, means of psychological coercion, ability to resistance, lack of consent, capacity to consent, interpersonal relationality, and context.

Finally, taking seriously the embeddedness of rape in a sexist ideology makes rape a problem of gender relations in the wider sense; gender relations should here imply more than just relations between men and women, but instead should include heteronormativity, homophobia, transphobia, and discrimination of those living outside of the binary gender system. Corrective rape—rape for homophobic or transphobic reasons—does not target one gender, but rather persons with specific sexual orientations or gender identities. Rape in prison targets individuals for their “female” characteristics, but it does not target—strictly speaking—women. And so on. This implies that the problem of rape cannot be countered by claiming that we should give up on heterosexual sex as, for example, Andrea Dworkin (1981, 1987) hints at and Jill Johnston (1973) argues. As we have seen above, understanding sexist ideology as a holistic system, implies that not only the members of one specific social group (say, men) are distorted in their beliefs about sex and consequently rape. Instead, all social groups are subject to sexist ideology. Remember the discussion of Pineau’s account of date rape above: I argued that it is not merely the man whose conception of reasonable consent is mistaken, but similarly the woman who consents against her best interests. Taking seriously the holistic character of the sexist ideology makes it equally implausible to argue that only heterosexual activities are affected by sexist beliefs, while homosexual (or other non-heteronormative relations) are not. Not only heterosexual individuals grow up in the ideological structure and are shaped by it. As MacKinnon, for example, argues in regard to homosexuality:

homosexuality [is not] without stake in this gendered sexual system. Putting to one side the obviously gendered content of expressly adopted roles, clothing, and sexual mimicry, to the extent the gender of a sexual object is crucial to arousal, the structure

of social power which stands behind and defines gender is hardly irrelevant, even if it is rearranged. (MacKinnon 1989b: 141)

Sexist ideology permeates every instance of our lives as social agents—whatever our specific identities—and it shapes our gender roles and positions (in the wider sense) even if they are in opposition to the sexist ideology. It can thus be hard to disentangle our real interests and desires from our distorted interests and desires. The structure of the cluster of rape should be broad enough to encompass these insights and should also include sexualized violence that happens outside of heteronormative relations. Rape should thus not be explained in terms of women versus men only. The cluster model should therefore include questions of heteronormativity.

### 5.3.2 A Normative Model of Rape

As we have seen in Chapter 2, a cluster account has multiple criteria for the application of a given concept, none of which are individually necessary. Even though there are conditions that are sufficient for the satisfaction of a cluster concept, there are no individually necessary and jointly sufficient conditions. In other words, a cluster account consists of criteria that are disjunctively necessary, i.e., for something to fall under the concept not all criteria need to be fulfilled. In the proposed cluster, I have specified the relevant criteria in terms of resemblance to three paradigms. However, for the revised cluster, I draw on specific properties that result from the social theory given in Chapter 4 and not on resemblances. This is mainly because I aim at a three-dimensional model. What needs to be specified for the revised cluster model of rape is the following: (1) the properties that an act must have in order to be tracked by the model, (2) how many and which of the properties are sufficient for an act to be tracked by the model, and (3) the structural aspect. I claimed that the cluster model must address the following aspects to adequately track rape: sexual activity, violence, means of physical coercion, means of psychological coercion, ability to resistance, lack of consent, capacity to consent, interpersonal relationality, context, gender inequality and heteronormativity. I also mentioned that each act tracked by the model has to have all of the properties specified, but that it can have each property to different degrees. Furthermore, as a reminder, the structural aspect is shown through the image of a map which includes all components, the gray areas, and the neighboring categories. Note that the conditions specified in the fifth desideratum concern the content as well as the structure of the model. If the model specifies the properties and the specific structure, it also fulfills the conditions of the fifth desideratum; by specifying the specific properties, the way they need to be satisfied, and the specific

structure of the model, it also fulfills the conditions of flexibility, practicality, intensity, contestability, non-paternalism, and heuristic utility.

In the following, I sketch a revised—let us say ‘normative’—cluster model of rape that is informed by the method of emancipatory amelioration (EA). In doing so, I bring together all of the strings of the project: the insight that rape is contested and has a dominant working understanding (Chapter 1), the different forms of rape and the cluster view (Chapter 2), the method that yields a social theory and a prescriptive conceptual analysis (Chapter 3), and the theory of rape as a social practice that helps sustain social and structural injustice (Chapter 4). Roughly, the normative cluster will have a core (the center of the cluster) that is informed by the social theory (as provided in Chapter 4) and the core then defines the relevant branches of the cluster. First, I identify the core and its branches and specify the precise structure of the cluster. Second, I show how the different properties of rape can be realized to different degrees. Third, I show how the branches represent a spectrum of which rape is one extreme form and how the different acts along the spectrum have fuzzy boundaries. Fourth, and finally, I sketch how such a cluster includes neighboring concepts and how they overlap with the category of rape. What I want to get at in the end is a rich conceptual analysis of rape that understands the phenomenon’s social embeddedness and that has the potential to change the way we understand the phenomenon of rape. According to the normative cluster that I propose here, to be able to judge an act as an act of rape (or not), many aspects need to be taken into account. Hence, even someone who assumes the distorted working understanding—that only physically aggravated stranger rape is rape—has to take into account each aspect that the cluster model specifies, some of which shake the narrow understanding of rape, such as gender inequality.

The core of the normative cluster model—the center of the map—presents the most extreme forms of the aspects of the model. The basic idea is that each aspect of the cluster model (e.g., lack of consent or sexual activity) is located on a spectrum. At the two ends of the spectrum, the aspect is either fully realized or not at all. For example, at one end there is complete lack of consent, at the other end there is full consent. Or, in other words, at the end of each spectrum are the aspect’s most extreme cases. Not in all cases is it appropriate to speak of “extreme” cases. For example, the aspect of sexual activity is either realized as penetration on one end of the spectrum and as no touching at the other. Neither one is accurately described as “extreme”, however, for now bear with my use of the word ‘extreme’. When I say ‘most extreme realization of sexual activity’ what I want to express is sexual penetration, when I say ‘least extreme realization of sexual touching’ what I want to express is no touching. Thus, with the example of consent, what I mean to express when I say ‘extreme’ is complete lack of consent, when I use ‘least extreme’ I mean full consent. Or full brutality (extreme) and no violence (least extreme). Note also that while

each component is located on a two-dimensional spectrum, the model with all aspects creates a three-dimensional map. I come back to this.

For an act to be tracked by the cluster model and to, thus, count as an act of rape, it has to include all aspects of the model. However, the degree to which each property is realized is left open.<sup>6</sup> If all properties are realized in their most extreme sense, then the act is located at the core of the cluster model and can be judged to be a case of rape with certainty. The more its properties are realized to lesser degrees, the further the act is located away from the core and the least likely is it an act of rape. Let me illustrate. Imagine a tree with several thick branches—like the aforementioned oak tree—that again and again split into smaller branches the further to the outside we get. All branches meet at the trunk and from there grow into different directions. Imagine the trunk as the core of the account. Here all branches come together, i.e., the trunk-core consists of all branch-properties. The trunk-core includes all branches of the concept. Now, imagine further that we are in a small forest; there is not just one tree, but many. The further we follow each branch growing away from the trunk, the closer it gets to the branches of other trees; sometimes some branches of one tree are entangled with branches from another tree. We have difficulties seeing where one branch ends and another begins. The branch that is close to the trunk represents the specific property in its most extreme aspect, while the branch that is furthest away from its own trunk represents the least extreme aspect of the property. However, when one branch is entangled with a branch from another tree, then this branch might represent the most extreme aspect for one tree (being very close to its trunk), but the least extreme aspect for another tree (being far away from this trunk).

The model is based on the social theory of the phenomenon of rape and it is realized in a way that prioritizes both rape as part of a sexist ideology as well as the diverse forms the phenomenon of rape can take. In other words, to conceptually track the phenomenon adequately, one must stress its social embeddedness and its diverse realizations. This is why the model is a cluster that includes components that highlight the social embeddedness of the

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**6** | It seems that instead of a realization in degrees, the properties are either fully realized or not realized. In other words, the degree of fulfillment ranges from 0-1, i.e., not at all exemplified or fully exemplified. For example, some acts of rape are not at all physically violent. They rate 0 on the violence metric. But they can still count as rape. So one could question in what sense the properties are *all* necessary? I think this is mostly a terminological issue, the reason why I argue that all properties have to be fulfilled to some degree for something to count as rape, is to highlight the various degrees that the properties can take. It is not the case, that we judge whether there is violence or not, but rather that we have to judge how much violence there is on a scale that reaches from fully violent to no violence.

phenomenon, such as gender inequality, rape myths, etc. The social theory of rape has identified the following main aspects: (1) Rape is not an individual act, but a social practice that is constituted by resources and schemas; (2) rape as a social practice is part of a sexist ideology. These two insights shape the core of the normative cluster in so far as the core does not only involve aspects of physical force or lack of consent, but also the interplay of rape myths and resistance, overall gender inequality, and the power difference between the persons involved. And, by shaping the core of the cluster, they necessarily also shape the rest of the cluster as the core defines the branches that stretch away from the trunk. The normative cluster-tree that explicates rape as a cluster concept includes the following branches:

- (b<sub>1</sub>) Sexual activity
- (b<sub>2</sub>) violence,
- (b<sub>3</sub>) means of physical coercion,
- (b<sub>4</sub>) means of psychological coercion,
- (b<sub>5</sub>) ability of resistance,
- (b<sub>6</sub>) lack of consent,
- (b<sub>7</sub>) capacity to consent,
- (b<sub>8</sub>) interpersonal relationality,
- (b<sub>9</sub>) context,
- (b<sub>10</sub>) gender inequality and heteronormativity.

Let me walk through the different aspects:

The lack of consent-branch, in its most extreme form, includes the complete lack of consent (verbal or otherwise) from the victim and the complete disregard of such lack of consent from the perpetrator. In its least extreme form, it includes the enthusiastic consent of one person and the complete respect of the will of a person by another. In the middle of the branch, it includes all the diverse forms in which (lack of) consent and (dis)respect for consent can be lived, e.g., hesitant consent (verbal or otherwise) from the victim and the will (but failure) to respect the other person's consent from the perpetrator. The further along we move on the consent-branch and further away we get from the rape-trunk, the closer we move to the unproblematic sex-trunk (that is, to the neighboring category of unproblematic sex). This can be spelled out similarly for the other branches.

The sexual activity-branch ranges from penetration on the one end to no physical touching on the other. To be more precise, it includes acts of penetration of any bodily orifice on the end of the spectrum closest to the trunk and, on the other end, it includes no touching. Between these two extremes are various acts, such as sexual touching of genital areas, touching of non-sexual body parts through clothing, and so on.

The violence-branch ranges from full brutality to no violence. In its most extreme forms, it includes full brutality, such as hate-crime, life threatening physical violence, sadism. And in its least extreme forms, it includes no violence with many acts of physical and psychological violence and brutality between these two ends.

The means of physical coercion-branch ranges from fully coerced on the one end to fully volitional on the other. Its most extreme forms include force with a weapon or the threat of someone's life. In its least extreme form, it includes the absence of force or threat, with the middle of the branch representing all the forms of threat and force between these ends.

Similarly the means of psychological coercion-branch ranges from fully coerced to fully volitional. In its most extreme forms, it includes material pressures (e.g., threat of being financially cut off or cut off from children, housing, etc.). In its least extreme form, it includes the soft begging of a respected partner.

The ability to resistance-branch ranges from full physical or psychological inability to consent to being in control. It includes ways in which resistance is shown (again from the extreme to the least extreme end), but also includes the reasons for why resistance is not forthcoming, i.e., rape myths, fear, etc. In its most extreme forms, then, this includes strong resistance, lack of resistance for fear of death or serious harm, lack of resistance because of the belief that it will not help or does not fit the social positioning (for example, if, as a girl in a sexist ideology, I come to believe that girls do not ever resist physically, then my capacity to resist is constrained in a way that forecloses the choice of resistance completely). In its least extreme form, this includes no resistance because no resistance is needed or willed in the situation (e.g., consensual sex), full critical capacity of the ideological schemas, or absence of ideological beliefs.

The capacity to consent-branch ranges from mental or physical incapacity to consent to full capacity to consent. In its most extreme forms, it includes physical and mental incapacity because of unconsciousness, drugging, sleeping, or physical constraints, or mental and physical disabilities. In its least extreme forms it includes no mental or physical constraints to consent.

The interpersonal relationality-branch ranges from fully dependent on one end to fully independent on the other. It includes the histories, experiences, motivations of the persons involved, the number of persons involved, the relations between these persons, and the power difference between them. In its most extreme forms, it includes acts in which one person is targeted by a group of persons (e.g., gang-rape), in which one person has a lot of power over another (e.g., rape of an inmate by a prison guard), etc. In its least extreme forms, it includes acts in which no power difference is in play, and in which none of the persons involved has a history of abuse.

The context-branch ranges from helpless contexts to supportive contexts. This branch concerns a person's specific situation. In its most extreme forms, this can include deserted areas in which no help is available or situations in which asking for help might increase the risk. In its least extreme forms, it includes contexts in which help is easily available and can actually lower the risk of the situation.

Finally, the gender inequality and heteronormativity-branch ranges from full inequality on the one end of the spectrum to full equality on the other. In its most extreme forms it means that the act takes place in a context in which no equality between genders is given and a heteronormative system is in place, in its least extreme forms, full equality between genders and no heteronormative system is given.

To schematize, each branch can be realized according to the following spectra:

- (b<sub>1</sub>) sexual penetration – absence of physical touch
- (b<sub>2</sub>) full brutality – no violence
- (b<sub>3</sub>) full physical coercion – full volition
- (b<sub>4</sub>) full psychological coercion – full volition
- (b<sub>5</sub>) full physical or psychological inability to consent – full control
- (b<sub>6</sub>) complete lack of consent – enthusiastic consent
- (b<sub>7</sub>) mental or physical incapacity to consent – full capacity to consent
- (b<sub>8</sub>) fully dependent – fully independent
- (b<sub>9</sub>) helpless context – supportive context
- (b<sub>10</sub>) full inequality – full equality

The tree consists of all properties that have to be fulfilled if an act is to count as rape. However, to which degree or intensity each property is realized is left open. If we had an adjuster, it would depend on the particular act in question where we put it. Consider, for example, the lack of consent-branch. If the act in question is one that involves complete lack of consent, the adjuster would be close to the trunk. If the act in question is one that involves affirmative nods, the adjuster would be somewhere in the middle of the branch. We can say that the lack of consent-branch is made of one big branch from which smaller arms branch off. The big branch represents the overall notion of consent and the smaller arms represent different ways in which consent can be absent or realized. Every act of rape includes all of the components of the cluster, but where the adjuster is located on the many branches depends on each specific act and, thus, on how the components of rape are realized. While the big branch arising from the trunk represents the general notion of the aspect, its growing into smaller and smaller branches represents the different ways this aspect can be realized. We have to adjust the adjuster for each branch.

Furthermore, while the branches work as a metaphor for the idea of a two-dimensional spectrum between rape and, for example, unproblematic sex, the tree-model works as a metaphor for the three-dimensionality of the phenomenon. The cluster model not only presents rape as an extreme form of sexualized violence, but also as located in the same model as unproblematic sex and other neighboring categories. The closer a case in question is located at the core of the cluster, the more extreme the case is. According to this account, there is no neat distinction between acts of rape and other acts of sexualized violence (like sexual abuse, domestic abuse, sexual harassment, etc.) and there is no neat distinction between acts of rape and acts of unproblematic sex or other neighboring categories. Rather, between all these cases there are fuzzy boundaries in which one concept leaks into the next. The branches symbolize the fuzzy boundaries of rape with the adjuster specifying where we are in the cluster. First, the further we move away from the trunk, the more borderline a case is. And, second, some branches touch with branches from other trees, e.g., the consent-branch of the rape tree touches the consent branch of the sex tree, and so on. Thus, we can move along a branch away from the rape tree and towards the unproblematic sex tree. Where one tree ends and another starts is unclear, between the trees are fuzzy boundaries.

Finally, thinking a spectrum and fuzzy boundaries suggests that the normative cluster model of rape includes categorically different but nevertheless neighboring categories. Imagine that the tree we have visualized is not a solitary tree in the middle of a town square, but is part of an overgrown forest. The tree that represents the category of rape is surrounded by other trees—those other trees are the neighboring categories of the concept of rape. For example, the tree that represents the category of unproblematic sex, of domestic abuse, of physical violence, of torture, and so on. Each concept is represented by a tree in the forest and concepts that share overlapping components are located next to each other in the forest. The cluster of rape and the cluster of unproblematic sex share, for example, the component of consent—even though this component is realized in drastically different ways. The tree that represents unproblematic sex is then surrounded by other trees, for example, the tree of romantic relationships and the tree of marriage. The closer the concepts are connected, the more entangled are the branches of the two trees. In some parts the forest is very wild and overgrown and it is hard to see where one tree ends and another starts; in other parts, the forest is planted in rows and the trees barely touch each other. Thus, the normative cluster account makes intelligible the idea that there is no neat distinction between acts of rape and other acts (for example, other acts of sexualized violence or acts of unproblematic sex). It follows the idea that the different branches cannot be chopped off at any particular place, rather the category of rape and other categories overlap. The rape tree should therefore never be looked at in isolation, but is necessarily part of a forest in

which the branches of the rape tree and other trees are interconnected. The other trees in the forest represent the neighboring categories of rape and the neighboring categories of the neighboring categories and so on.

To recap, each instance of rape is located in a three dimensional space on the nodes of different branches. Branches work together and create a complicated interconnected cluster. For example, the lack of consent-branch and the ability to resistance-branch together acknowledge acts in which the victim consents for false reasons (due to rape myths) or in which the perpetrator fails to understand the lack of consent (due to rape myths) but would be willing to respect the victim's will if he could. Furthermore, it is likely that the further away we move from the trunk on one branch, the further away we also move on another. For example, the less force is involved, the less brutality is involved; the less physical pressure is involved, the less violence is involved; the less brutality is involved, the less resistance is involved. However, this need not necessarily be the case, for example, the less mental constraint is involved, the more brutality might be in place.

For the sake of illustration, take the aforementioned example from Schulhofer:

A widely reported 1996 trial involved an upstate New York woman who went to a restaurant with her date. Both were drinking heavily. The woman passed out in the bathroom. Her date, waiting for her to join him outside, fell asleep in his pickup truck. Meanwhile, four men carried the woman from the bathroom to a booth, where they undressed her. All four then allegedly raped her, left her in the booth, and returned to their beer and sandwiches. (1998: 7)

The incident is located in the tree in the following way: (1) On the sexual activity-branch, the case lies close to the trunk as the woman is sexually penetrated (more than once). (2) On the violence-branch, the case lies somewhat close to the trunk. The four men do not use aggravated physical violence in the sense of beating or weapon use, but the woman is unconscious, they drag her over the floor, and leave her on the floor afterwards. (3) On the means of physical coercion-branch, the incident lies somewhere close to the trunk; the woman is carried to another location by four men when she cannot resist at all. (4) Because no psychological pressure is involved, the act is located far away from the trunk on the means to psychological coercion-branch. (5) The ability to resistance-branch is not realized in respect to the women, however, it is realized in respect to the alleged perpetrators as they seem to rely on certain rape myths that take unconscious women as objects to be used. (6) On the lack of consent-branch, it is right at the trunk; there is no consent at all as the woman is unconscious and the men clearly do not respect her inability to consent. (7) On the capacity to consent-branch, the incident lies close to the trunk again; the woman is in no mental

or physical capacity to consent or resist. (8) On the interpersonal relationality-branch, the case lies close to the trunk too; the perpetrators have no special position of authority over the woman, however, they are four, while she is alone. (9) On the context-branch, the act lies further away from the trunk as the location is public; however, the public location might still be a context in which available help is not forthcoming because of rape myths, etc. (10) On the gender inequality-branch, it is lying close to the trunk to; obviously, the men instrumentalize and consume women in similar ways in which they consume beer. Even though the case does not lie close to the trunk in all aspects, enough components are realized in ways that make it plausible to judge the case as one of rape and not one of a neighboring category. This is because it lies close to the trunk in most realized aspects, making it out to be a case of rape and not a neighboring one.

As we have seen, the normative cluster model of the concept of rape consists of all the properties that any act of rape must have in order to be tracked by the concept. However, it does not stipulate in which way these components are realized in a particular act of rape. It provides a whole range of features that acts of rape contain, but where an act is located on each branch is left open. The closer an act is to the core of the cluster, the better we can judge it as an act of rape. However, since the boundaries between the core and the rest of the cluster and the boundaries within the cluster are fuzzy, there is no specific node in the structure that we can designate as the border between acts of rape and acts of not-rape. Furthermore, because the structure of the tree is three-dimensional and any act in question is located at various nodes in the structure, it is unlikely that any act is like another, so that we can make out a distinct point at which all acts of one kind are acts of rape and not something else. Where an act is located depends on the various interlocking branches of the tree. In other words, even though I have specified the properties that each act of rape must have, I have not defined how those properties are realized. This accounts for the various and diverse forms of rape that I sketched in Chapter 2. Furthermore, it accounts for the different experiences individuals have; depending on where the act is located on the ability of resistance-branch, the gender inequality-branch, and the interpersonal relationality-branch, different individuals can take away different experiences from similar acts. For example, a situation might seem less threatening when experienced from a social position of authority or power, than when experienced while lacking such power. I say more about this in Chapter 6.

To sum up, the normative cluster model of rape specifies the different aspects that any act of rape has without specifying how these aspects are realized. Furthermore it makes intelligible how rape is not neatly distinguishable from other acts of sexualized violence or other neighboring categories, rather it shows that the closer an act is located to the core of the cluster, the more extreme an example of rape it is without saying that acts further away from the core are not examples of rape. This way the cluster model tracks not only

acts of rape but also acts that have similarities with the phenomenon of rape without putting them into the same category as acts of rape. Each property of rape has a spectrum on which a specific act is located, and depending on each location within each spectrum, it gives a different image of the nodes on which the specific act is located within the cluster. Rape can be realized in many different ways as long as it consists of the specified properties. This, then, is also a solution to the feminist debate of whether rape is sex or violence or both; it can be either or and it can be both depending on the nodes at which a specific act is located.

### 5.3.3 The Desiderata Fulfilled

The normative cluster model of the concept of rape has to satisfy the fifth desideratum that I identified in Chapter 2. The social theory of the phenomenon of rape has to:

**Desideratum 5:** be able to ground a prescriptive conceptual analysis that adequately tracks the phenomenon and strives for conceptual change; whereby the conceptual analysis has to

- (a) be flexible in a way that it allows for changes when we gain further information about the phenomenon;
- (b) be constrained enough to allow for proper judgements;
- (c) account for different degrees;
- (d) acknowledge the concept's contestability, gray area, and neighboring categories;
- (e) be non-paternalistic; and
- (f) have heuristic utility.

The social theory systematically maps the phenomenon of rape in the world as well as explicates its embeddedness within the sexist ideology. Since it is based on the social theory, the cluster model can adequately track the phenomenon. The resulting cluster is grounded in the critical analysis of the given social structure, what I have analyzed as the sexist ideology, and therefore provides an explanation of the structural dimension of the concept; that is, it explicates a wide understanding of gender, sexuality, and heteronormativity as the central points of rape. Furthermore, the underlying social theory provides explanations of how misguided or false understandings come about and enjoy popularity. The cluster model includes components that track the gender inequality of the underlying system, and thus prevents the mere application of those components as distorted by rape myths. Hence, the model asks us to consider properties of rape that the dominant working understanding fails to track, such

as rape myths and gender inequality. I now turn to discuss each constraint of the conceptual analysis:

**Flexibility:** The theory is flexible enough to account for changes in the phenomenon it describes. The core and the components of the cluster are arrived at by means of a social theory yielded by the method of emancipatory amelioration (EA). Thus, the resulting cluster is influenced by the critical analysis of the status quo and the social embeddedness of the concept. Once the status quo or the social context in general change, the normative cluster model of the concept of rape changes too. It does so in two ways: (1) By locating acts of rape in different nodes within the cluster, it allows for flexibility within the cluster. For example, the context of gender equality might be very different from one case to the next or from one historical, global, or local context to the next. The cluster does not need to be changed for every change in the social context, rather the branches provide enough flexibility to allow for some changes. (2) Once the status quo changes completely, the critical analysis of the given situation can yield different results. Thus, in such a case, emancipatory amelioration (EA) is likely to yield another core of the cluster. For example, in a social world in which there is no gender inequality, the emancipatory amelioration (EA) would not yield the aspect of gender inequality and this particular branch could be cut off. Or, in a social world in which cyber rape becomes a real phenomenon, a branch that represents the aspect of “virtuality” needs to be added to allow the cluster concept to account for this new phenomenon.

**Intensity:** While the cluster model specifies the properties that an act of rape must have in order to be tracked by the concept, it does not specify to which degree these properties have to be realized. Instead, each property is a component of the cluster model in terms of a spectrum—that is, its most extreme and its least extreme part (and everything between these two extremes) is part of the model. Depending on the contours of the act in question, the adjuster can be moved along each spectrum. The more properties are realized in their most extreme ways, the closer the act lies at the core of the model and the more definite is it an act of rape. The more properties are realized in their least extreme ways, the further away is the act and the closer it moves to the neighboring categories of rape.

**Contestability, Gray Areas, and Neighboring Categories:** The theory accounts for the contestability and gray areas of the concept. Even though the normative cluster account that I developed here is based on a social theory and thus prioritizes understanding rape in terms of the sexist ideology and not, for example, in terms of the dominant working understanding, it nevertheless allows for contested opinions by including several aspects of rape. Remember from the discussion on contestability, that what is often contested are which features are supposed to be essential for an act to count as rape; different groups or individuals highlight different components as essential. The cluster

model takes them all to be essential, but not on their own. It, thus, includes the components that are debated, but asks to consider all of them when judging whether an act is rape or not. And, in being flexible enough to account for changes, the cluster allows new viewpoints to enter the cluster. Furthermore, as I have described above, the cluster highlights the spectrum of each component of the cluster as well as the fuzzy boundaries between acts of rape and other acts of sexualized violence or the neighboring categories such as domestic abuse.

Heuristic utility: The theory has heuristic utility—not in Gaut’s narrow sense, but in a wider sense in which the domain in question is not taken to merely encompass the concept itself, but the underlying framework. Thus, in our case, the heuristic utility stretches to the domain of the sexist ideology. Because the first step of emancipatory amelioration (EA) locates rape as a social practice within a sexist ideology, it provides a broader theory of sexist relations of which rape is only one part. This insight is also directly realized in the normative cluster model insofar as the cluster does not draw a neat dividing line between rape and other sexist practices. It is worth noting that the heuristic utility-constraint is motivated by one of Gaut’s adequacy constraints, but is adjusted according to the purposes at hand. Gaut’s constraints reads:

[The account] needs to have heuristic utility: the account should be such as to figure in true or at least promising theories about the object to which the concept applies; that is, any account of a concept should ideally fit into a larger heuristic package about the domain concerned. (2000: 31)

What Gaut seems to have in mind here is a more practical approach according to which the account needs to fare well in, for example, a trial and error kind of way. Taking into account the facts that we know, we can make educated guesses about the concept in question. Thus, the way we understand the concept fits into the broader context of facts that we know about the subject matter. In the way that I have formulated the desideratum, I think that the concept of rape should not merely match the facts about the subject matter, but the broader framework in which it is set. Thus, understanding rape as embedded in a sexist ideology, means it needs to track the underlying ideology.

Non-Paternalistic Judgement Guiding: Last but not least, the theory is shaped well enough so that it can evaluate cases without being paternalistic. Both of these constraints have their origin in the problem identified in Chapter 2: because the concept has legal (and everyday) importance, it should be able to give guidance in our legal decision making processes. At first glance, it might seem as if it does not fulfill this criterium—after all, we do not have necessary and sufficient conditions at hand that we can use to evaluate any given act. How then should we judge an act in question? I argue that the normative cluster account does satisfy this requirement. To do so, I draw on an aspect that I

outlined in Section 2.4.1: the law is not as determinate as we assume it to be. As Ronald Dworkin argues, the law “is an exercise in interpretation.” (1982: 179) The idea is that the law does not fully determine judicial decisions. It is not only a given legal definition that determines the judgement of an act, but also the ways in which it is interpreted. Furthermore, it is not true that the law only consists of legal definitions, rather, it consists of cases, regulations, statutes, constitutional provisions, and other legal materials, including various interpretations of existing definitions, regulations, and statutes. Thus, the law is not as determinate as we intuitively assume it to be. Lawrence Solum gives three possible answers to the question of whether “the law determine[s] the outcome of particular legal disputes?”

The simple, commonsense answer to this question might be, “Yes, the laws (the statutes, cases, and so forth) fix the way that judges decide cases.” A more sophisticated answer might go, “Yes and no, the laws have a big influence, but other things (politics, preferences, and so on) may also come into play.” A very cynical answer to the question could be, “No, the laws have nothing to do with how cases come out. They are just window dressing that skillful lawyers and judges can manipulate to justify any decision they please.” (Solum 2010: 479)

He then concentrates on a version of the last claim, the idea that law is indeed indeterminate. The indeterminacy thesis comes in various shades of which the strong claim above is only one. A weaker claim in the debate is the view that the law does not fully determine judicial decisions. However, various versions of the claim have been brought forward in the indeterminacy debate. Indeed, so many that Drucilla Cornell writes: “Perhaps no phrase has been more misunderstood by legal scholars than the ‘indeterminacy thesis’” (1993: 1196) Two schools of legal theory are of particular interest in the debate: critical legal studies and legal realism.<sup>7</sup> (cf. Solum 2010)

Contemporary uses of the indeterminacy thesis figure as part of a radical critique of liberal legal theory. While liberal theory advances the notion of the ideal of the rule of law, radical critiques postulate that “law is politics.” The ideal of the rule of law takes it as given that legal disputes can be settled by manifest and generalized rules and applied by courts in fair procedures. The rule of law therefore forbids arbitrary decisions, instead commanding that similar cases be treated similarly. (cf. Rawls 1971) The indeterminacy theory states that the

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**7** | This is not to say that all critical legal scholars ascribe to the indeterminacy thesis. Rather, critical legal scholars have used the indeterminacy thesis to argue for a relationship between law and society; legal language is indeterminate because the social context to which it refers is indeterminate. (cf. Binder 2010: 269)

actual and real-life law falls short of the ideal of the rule of law in, following Solum, three ways:

(1) judges will rule by arbitrary decision, because radically indeterminate law cannot constrain judicial decision; (2) the laws will not be public, in the sense that the indeterminate law that is publicized could not be the real basis for judicial decision; and (3) there will be no basis for concluding that like cases are treated alike, because the very idea of legal regularity is empty if law is radically indeterminate. (Solum 2010: 480)

Let us for the purpose at hand understand the indeterminacy thesis broadly conceived as:

The Indeterminacy Thesis: The laws (broadly defined to include cases, regulations, statutes, constitutional provisions, and other legal materials) do not determine legal outcomes. (cf. Solum 2010: 479-80)

So far, in line with the indeterminacy thesis, we have assumed that the legal outcomes are either determined by the law or they are not. However, this is incorrect: legal outcomes might also be constrained by the law (but short of being determined by it).<sup>8</sup> In Solum's words: "a case is underdetermined by the law if the outcome (including the formal mandate and the content of the opinion) can vary within limits that are defined by the legal materials." (2010: 480) Whether we say that the law is indeterminate or whether we say that legal outcomes are constrained by the law but not fully determined by it is irrelevant for what I want to argue. Our cases hinge on the fact that even though we often assume that the law determines legal outcomes and debates, that is, we often assume that legal definitions give us precise rules that can be applied in regard to specific cases, this is not the case. Rather, legal outcomes are either arbitrary outcomes or they are personal interpretations of the legal rule—I urge those who hesitate to adopt the radical claim of arbitrariness to consider the weaker claim that the law constraints legal outcomes but does not fully determine them. The law is then an interaction between rules and definitions and the

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**8** | This is often called the *underdeterminacy thesis* in comparison to the *indeterminacy thesis*. (cf. Solum 2010: 480) We can distinguish the following: (1) "[t]he law is *determinate* with respect to a given case if and only if the set of legally acceptable outcomes contains one and only one member" (Solum 2010: 480, emphasis in original), (2) "[t]he law is *underdeterminate* with respect to a given case if and only if the set of legally acceptable outcomes is a nonidentical subset of the set of all possible results" (2010: 481, emphasis in original), and, (3) "[t]he law is *indeterminate* with respect to a given case if the set of legally acceptable outcomes is identical with the set of all possible results." (2010: 481, emphasis in original)

personal interpretations of those in the business of the law. In both cases, the radical and the weaker claim, biases and false beliefs (like rape myths) can sneak into legal outcomes, because legal outcomes are either fully or partly determined by the interpretation of individuals. In either case, the practice of law falls short of its fair and equal ideals.

So, it is not the case that only legal definitions determine the outcomes of legal judgements, but precedents and interpretations help the process along. It is then clear, that a normative cluster account for rape can provide grounds for (legal) judgement. Depending on where the adjusters are located on each branch, our legal judgements will be different. Once a couple of cases have been judged, other judgements can relate to those. Further, the more a case of rape relates to other illegal acts specified by neighboring clusters, the more our judgement should take into account both given clusters—the one of rape and the other. For example, if a case fulfills the aspects of the cluster of rape and the cluster of murder, our judgement should take both grievous concepts into account. I therefore see no reason why a normative cluster should fail to provide grounds for evaluation and judgement. Of course, a given and established definition of rape, can help guide interpretation, can reduce biased outcomes, and can function as grounds for critique. And, this last point seems especially important for feminist struggles. If nothing else, having a legal and documented definition gives us grounds for calling out the injustice when the given definition is not followed in legal procedures. Nevertheless, given the fact that we have legal (and more or less progressive) definitions but still fail to do justice to victims of rape on a broad scale, we should not overburden the demand for a general legal definition of rape.

As mentioned already, I have dismissed Gaut's constraint of intuitive adequacy. He states that any cluster account needs to be adequate to a broad range of intuitions. (2000: 30-1) However, this is problematic when it comes to the cluster of rape and, particularly, when we assume that rape is embedded in a sexist ideology. If our conceptions are distorted by rape myths, then our intuitions are likely to be misleading. Specifying that the cluster should be intuitively adequate can give rise to false components within the cluster account of rape. Indeed, the method of emancipatory amelioration (EA) is—like Haslanger's project of amelioration—revisionary and, thus, not necessarily intuitively adequate. Amelioration (in both forms) does not necessarily comply with either our ordinary understanding of the concept in question or our use of the term in question, instead it asks us to consider what concept would be most useful for our purposes. It is therefore a revisionary alternative to the existing concept's understanding. Haslanger argues that intuitive adequacy is not as relevant as we often take it to be for the following two reasons. First, amelioration as a conceptual analysis asks us to consider which concept we should use instead of claiming to be an analysis of how concepts are actually

used. The fact that the resulting concept is counterintuitive does not speak against this project. (Haslanger 2000) Second, even when we engage in an analysis of how concepts are actually used, we might come to find that they are counterintuitive. Indeed, our language use is not always intuitive.<sup>9</sup> (Haslanger 2005, 2006) Because I have adopted a variant of ameliorative analysis as (part of) a method that can yield the cluster concept of rape, I have dismissed Gaut's constraints of adequacy to intuition. The normative cluster model of rape that I have proposed in this chapter fulfills all of the constraints for the fifth desideratum—the one concerned with prescriptive conceptual analysis—that I have stipulated in Chapter 2. However, before closing the chapter by saying that the normative cluster model tracks the phenomenon of rape adequately and, at the same time, yields a conceptual change of how to understand rape, I consider one possible objection in the last section.

### 5.3.4 A Possible Objection

The normative cluster of rape seems to be open to the following objection. Is not the talk of extreme realization of properties similarly as dangerous as talk of stranger rape paradigms when it comes to the concept of rape? In other words, should we not refrain from classifying some cases as extreme as this opens the door for arguments that take only physically forced sex by a stranger as rape (the extreme case) while less extreme cases are not taken as rape and thus more tolerated? However, the most extreme cases according to the normative cluster model are not cases of physically forced stranger rape, since in this case only some aspects are realized in their most extreme form. Other cases are at least as extreme—cases in which other aspects are realized in their most extreme form. Furthermore, an advantage of the normative cluster account is that not only those cases that lie close to the trunk in nearly all aspects are judged to be cases of rape. Clearly, the further we move away from the trunk in many aspects the less we can judge an act to be rape, however, there is a vast area surrounding the trunk that still falls under the judgement of rape. And, furthermore, with paradigms, we have only a couple of available paradigms that function as a template for all other cases: in the case of the normative cluster model, however, we allow for a vast amount of diverse cases. I, thus, contend that the normative cluster account is better suited to deal with the following: it highlights the diversity of cases of rape (and sexualized violence) and incorporates new phenomena that diverge from classic paradigms, such as corrective rape, prison rape, etc. It is therefore not restricted to the binary gender system in the sense that men are rapists and women are victims even

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9 | See Saul (2006) for a discussion of both these reasons and Mikkola (2009) for a critique in regard to the concept of *woman*.

though it includes the aspect of gender inequality. It provides a template for evaluating cases without restricting the category unnecessarily and it leaves room for acknowledging the gray area of the concept of rape.

Finally, reconsider the case mentioned earlier:

A widely reported 1996 trial involved an upstate New York woman who went to a restaurant with her date. Both were drinking heavily. The woman passed out in the bathroom. Her date, waiting for her to join him outside, fell asleep in his pickup truck. Meanwhile, four men carried the woman from the bathroom to a booth, where they undressed her. All four then allegedly raped her, left her in the booth, and returned to their beer and sandwiches. (Schulhofer 1998: 7)

According to the normative cluster model, the judgement was that the case is a clear case of rape (most aspects are realized in their least ideal forms). Speaking in terms of emancipation, this evaluation is better than existing legal definitions and their interpretations, because it involves more aspects than intercourse, force, and consent. This is what became of the case in real life:

The four men admitted the acts of intercourse, pleaded guilty to minor misdemeanor charges, and received sentences limited to fines of \$840 each. But after a political uproar over the leniency of the sentences, prosecutors managed to get the guilty pleas set aside and brought the first of the defendants to trial on felony rape charges. At trial the man's lawyer argued that "if the woman had consumed enough alcohol to be helpless, as she testified, then she could not be sure that she had not consented to sex." [...] The jury acquitted. (Schulhofer 1998: 7)

The legal definition was in terms of consent, the jury's interpretation solely focused on consent—with all the distorted ideological beliefs about women's consent that they brought to the table. According to the normative cluster model of rape, the jury could not rely solely on a false notion of consent, rather they would need to consider each branch separately—analyzing whether it is realized and how it is realized. Thus, even if they judge the act to lie far away from the trunk on the consent branch (as the woman "might" have consented while being unconscious), they would still need to consider other aspects than consent and also aspects that go against their false beliefs, such as gender inequality.<sup>10</sup>

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**10** | The normative cluster model of *rape* might then actually be superior to a more orthodox conceptual analysis: it is flexible, it accounts for different degrees and acknowledges the contestability, the gray area, and the neighboring categories, and it is non-paternalistic. Furthermore, someone in the business of judging an act according to the normative cluster model has to consider each branch separately (how is each property realized?) and cannot rely on one (and often faulty) property; e.g., consent as

I have thus engaged in the second step of the method of emancipatory amelioration (EA): I have ameliorated the concept of rape. I have argued for a normative cluster model that is grounded in the insights gained from the first step of emancipatory amelioration. This normative cluster works in the following way: It has a core that is specified by the given social theory. This core involves all properties that an act of rape must have in order to be tracked by the concept. And, it defines the spectrum of each property from its most extreme form (close to the core) to its least extreme form (far away from the core). Each act of rape lies in this cluster model and each property of the cluster is realized, but to which degree they are realized is left open. However, the more properties are realized that lie close to the core, the better we can judge a case to be a case of rape. The further away its properties are from the core, the closer they get to neighboring categories, making the case one of the gray area. This normative cluster model is arrived at with the help of the first and second step of the method of emancipatory amelioration (EA)—as argued for in Chapter 3—and it takes into account the view that the concept of rape is contested (Chapter 1) and subject to ideological distortions (Chapter 4). Finally, it fulfills the fifth desideratum specified for a social theory in Chapter 2.

In the next chapter, I show how the social theory of the phenomenon of rape maps and explicates a contemporary phenomenon of rape that other theories fail to account for. While most theories that place rape within a patriarchal structure can make intelligible acts of date or acquaintance rape as acts of rape, they can only do so according to one explanation: the structural power of men that structurally exploits all women sexually. However, the critical analysis of sexist ideology indicates that the problem is far greater than this. The sexist structure is not only holistic but has developed a life of its own and by doing so, it is less clear who suffers from the system. One contemporary phenomenon of rape is the situation in which a woman chooses against her interest and engages in, for example, dehumanizing acts of sex. Or the phenomenon where a man is epistemically incapable of distinguishing between unproblematic sex and date rape. I take a more detailed look at these phenomena and discuss the implications that these bring for our condemnation of perpetrators and our solidarity for victims. The proposed normative cluster model strives for a conceptual change that makes it possible to have a rich understanding of the concept that can yield strategies against rape in its most common forms. The next chapter focuses on social change.

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passive consent. Thus, the person also needs to take into account properties that go against his false beliefs, such as gender inequality or heteronormativity. Nevertheless, in this book I take a modest approach: the same good results might be achieved with functional or general definitions. In the end, the normative cluster was a theory choice that I made and developed.

## Chapter 6:

# Accountability and Solidarity

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Chapter 6 develops the implications that the proposed account of rape has for the treatment of both victims and perpetrators. Discussing Fricker's account of hermeneutical injustice, the chapter argues that victims of rape are often at the same time the victims of hermeneutical injustice, while perpetrators suffer from 'systematic hermeneutical misfiring'. It is argued that perpetrators ought to be held accountable for their actions if performed under conditions of hermeneutical misfiring, while victims are owed a particular kind of solidarity. This emancipatory solidarity aims at ending the injustice of rape in both its individual and structural dimension while avoiding claims of epistemic privilege characteristic of standard forms of epistemic solidarity.

### 6.1 INTRODUCTION

This chapter looks at the implications of my work for the treatment of victims and perpetrators. If we take seriously that rape is part of a broader ideological framework and if this implies (1) that some perpetrators can fail to make acts of rape intelligible as acts of rape, and (2) that different individuals can experience similar acts differently according to their social positioning, then my argument faces two problems for our feminist and emancipatory aims. One could argue that—unless we get rid of the ideological distortions—we can neither hold perpetrators responsible for their acts nor believe the testimony of victims. Let me explain. First, let us distinguish between three forms of rape here: rape that is committed in full knowledge, negligent rape, and non-intended rape. While the first describes cases that are committed in full knowledge of the fact that the act is an act of rape—e.g., cases that count as rape even in the sexist ideology and that are tracked by the dominant working understanding—the latter two are cases, in which the attacker should know better but does not and in which his embeddedness in the sexist ideology prevents him from doing so.

In the case of negligent rape, although there are indicators to the attacker that would reveal his act to be harmful to the other person (e.g., the other person is unconscious, sleeping, crying or refusing his activities), he chooses to ignore or re-interpret them; in the case of non-intended rapes, however, the attacker has no obvious indicators that could have convinced him that he is engaging in a harmful act (e.g., the victim is completely passive or half-heartedly engaged). The latter two are complex cases as they are in line with what rape myths teach as “normal” sex. Thus, one could say that in the latter two cases, the perpetrator was ignorant of his harmful actions and should thus not be punished. But this outcome is clearly problematic from a feminist perspective. In what follows, I exclusively discuss the latter two forms—negligent rape and non-intended rape. What I say should in no case be applied to cases that are committed in full knowledge, i.e., cases that are understood as rape even within a sexist ideology.

Furthermore, we should take seriously the ways in which ideology works—its schemas and social practices are not merely carried out by some violators, but expressed in various ways by nearly all agents in the social structure. Hence, if we are committed to ending rape and sexualized violence, we need to take seriously who is responsible for the sexist ideology and how much responsibility individuals can have in this structure. However, this can never be done without acknowledging that actual persons are harmed by acts of sexualized violence and by the sexist ideology, and, furthermore, that those harmed and those harming are often members of very specific social groups. Hence, part of the reason of why it is important to ask questions of responsibility is to find fruitful tools to dismantle the sexist ideology and to tackle sexualized violence mostly committed by men against women and gender non-conforming people.

Before looking at how we should treat victims and perpetrators, I discuss Fricker’s account of hermeneutical injustice. I propose that we can understand the issues that arise from taking rape and sexualized violence to be part of the sexist ideology with the help of the notion of hermeneutical injustice. I argue that victims of rape in a sexist ideology are often also victims of hermeneutical injustice, i.e., they are incapable of understanding their own experience adequately and they fail in making their experience intelligible to others. This is due to a clash between the ideological common interpretation of their experience and their vague feeling of being morally wronged—what I described as a practical contradiction or moment of rupture in Chapter 3. I introduce Fricker’s account of hermeneutical injustice in Section 6.2. I then discuss the harms that result from hermeneutical injustice and Fricker’s insight that because hermeneutical injustice is a structural injustice, no individual is directly culpable for it. (Section 6.2.1) However, this raises a problem for some cases of rape—those that I have specified as negligent rape and non-intended rape. While the perpetrator is culpable for the act as such, he is not culpable for the hermeneutical injustice which the victim experiences, despite the fact

that it results from the act itself. Furthermore, if we assume that we are all part of a sexist ideology, then it is plausible to say that not only the victim is affected by the distorted collective hermeneutical resource and cannot make her experience intelligible, but also the perpetrator. If that is the case—if the perpetrator acted in a harmful way without being able to understand his act correctly—can we still hold him culpable for the act in question? Thus, could it be that the perpetrator is neither culpable for the hermeneutical injustice nor for the individual harm he causes? To adequately illustrate the problem, I introduce and discuss a fictional case in Section 6.2.2 and then discuss in length the difference between the cognitive disadvantage of the victim and the perpetrator. I argue that while the victim suffers from hermeneutical injustice, the perpetrator suffers from, what I call, ‘systematic hermeneutical misfiring.’<sup>1</sup> (Section 6.2.3)

Having introduced this distinction, I tackle the following questions of responsibility. Can we hold the perpetrator culpable or responsible for his acts despite his hermeneutical misfire? (Section 6.3 and 6.3.1) And, who is responsible for structural injustice? (Section 6.3.3) In this discussion, I mostly draw on tools used by activists instead of philosophical debates. In Section 6.3.2, I argue that our best bet is to hold the perpetrator accountable but not culpable or morally responsible. This can adequately and productively confront ideological beliefs and result in a learning process. Finally, in Section 6.4, I focus on what this implies for victims of rape and sexualized violence and I bring forward a theory of emancipatory solidarity. Thus, I vehemently repudiate the view that we cannot be in solidarity with victims because we cannot know whether they are ideologically distorted. Instead I argue that we need to show a particular form of solidarity. In line with the non-ideal approach that I take in this chapter (and throughout the book)—the focus on real life examples and experiences and the specific ways in which to methodologically approach them—I draw more exclusively on activist tools of fighting sexist ideology and rape than on philosophical debates. While the last chapter exclusively focused on the conceptual change we can bring about as philosophers, this chapter focuses on the social change that we should aim at as feminist activists.

Let me say the following before turning to the notions of responsibility, accountability and solidarity. It is hard to feel any form of sympathy with a violator who committed an act of rape because of, what I call, ‘systematic

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**1** | The term ‘misfire’ originates in the speech act theory of Austin (1962: 16) and has become popular in the feminist debate on pornography. Langton (1993, 2009) as well as Hornsby and Langton (1998) argue that pornographic speech has the power to illocutionary silence women such that women’s refusal of unwanted sex—expressed by the locution “No!”—misfires because pornography brings it about that the refusal does not count as refusal; that is, the woman’s locution “No!” is taken to mean “Yes!”.

hermeneutical misfiring’—a gap in the collective resource that cannot be overcome (for example, due to social privileges). And it is good that our feeling of sympathy is not easily forecoming. We should hold on to that feeling. However, part of the reason why this happens is because we often think of cases of physically violent forms of rape when we think of rape. Indeed, as I have shown, it happens on a regular basis that other acts of rape are not seen as rape. Thus, in these other and less aggravated cases, sympathy for the violator appears in the form of questioning whether the act in question was really rape. Remember the Steubenville case that I discussed in Chapter 4: sympathy with the violators was expressed from all sides because it was doubted that the alleged rapists did indeed commit an act of rape. In other words, it is not because we want to excuse the behavior of violators that we have to think about questions of blameworthiness and responsibility, but because we have to confront a social reality in which most acts of rape are not acknowledged as rape. In terms of adequately handling violators, the task is to find solutions that do not offend most people (because if they do, they will not be used at all), and are in line with our feminist commitments. It is not that we should excuse perpetrators because they were unaware of their action but rather we should find ways that do justice to the various forms of rape and the reasons why they are committed. We should develop strategies that aim at social change. It should be clear by now that I do not think that being part of the sexist ideology excuses what we do, yet, it changes the way we should tackle sexualized violence.<sup>2</sup>

## 6.2 HERMENEUTICAL INJUSTICE

According to Miranda Fricker, systematic hermeneutical injustice is

the injustice of having some significant area of one’s social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resource. (Fricker 2007: 158)

In other words, specific social relations of power can constrain one’s ability to understand one’s own experiences or to make those experiences intelligible to others. Hermeneutical injustice results when someone has a cognitive disadvantage that results from a gap in the collective hermeneutical resource and when that person is significantly disadvantaged by this. Whether someone is significantly disadvantaged is determined by the background social

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**2** | My view is thus very different to, for example, the argument by Husak and Thomas (1992), who argue for social conventions as a factor of excuse and not, as I do, as an important factor to consider for our strategies against them.

conditions of power or powerlessness. A person suffers from hermeneutical injustice if she is hermeneutically marginalized—i.e., if she can only unequally hermeneutically participate in epistemic contexts. Being hermeneutically marginalized is bad for both epistemic and moral reasons.

The story of Carmita Wood illustrates how a person's ability to understand her own experiences can be constrained. Carmita Wood was sexually harassed by a colleague in her workplace, but since this took place before the concept of sexual harassment existed, she failed to make her experience intelligible to others. (Fricker 2007: 149-50) Carmita Wood suffered from a cognitive disadvantage that resulted from a gap in the collective hermeneutical resource, i.e., the concept of sexual harassment was not available when she needed it to be. Roughly speaking, a collective hermeneutical resource contains all interpretative resources available to the social groups in the context in question.<sup>3</sup>

However, this is not the whole story. As we can see in the definition above, hermeneutical injustice is not merely “the injustice of having some significant area of one's social experience obscured from collective understanding” but rather “the injustice of having some significant area of one's social experience obscured from collective understanding owing to hermeneutical marginalization.” (Fricker 2007: 155, my emphasis) This particular gap in the hermeneutical resource, the one that led to Carmita Wood's suffering and ultimately economic deprivation, was caused by the general powerlessness of those who experienced acts of sexual harassment but lacked the social position to contribute to the hermeneutical resource. In other words, if hermeneutical injustice was nothing more than a cognitive disadvantage, then Carmita Wood as well as her harasser would both suffer from hermeneutical injustice. Both of them suffer from a cognitive disadvantage, i.e., they are unable to make sense of their experiences as what they are, that is, sexual harassment. Yet in Carmita Wood's case, even though both the harassee and the harasser “are cognitively handicapped by the hermeneutical lacuna” (Fricker 2007: 151), the harasser is not significantly disadvantaged by his cognitive impairment. Quite the opposite, the cognitive impairment is in his interest—it allows him to treat women in a sexually objectifying way without having to feel guilty for it. Furthermore, because the hermeneutical gap results from the particular positions of power and powerlessness in the social structure, his acts of sexual harassment have no consequences for him; i.e., they are embedded in a whole system of sexism according to which they are understood as acceptable (or at

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**3** | The collective hermeneutical resource contains only those meanings that anyone in the community can draw upon and expect to be understood in the social space by others. (Fricker 2016a). For a critique of a unified collective hermeneutical resource, see Medina (2013: 103).

least tolerated) acts against women. Thus, hermeneutical injustice constitutes part of the social structure.

Let me linger on this relation a bit longer. The question is, when does a cognitive disadvantage turn into hermeneutical injustice? Fricker argues that we have to focus on the background social conditions “that were conducive to the relevant hermeneutical lacuna.” (2007: 152) In Carmita Wood’s case, this means focusing on the general powerlessness of women. Women’s social position is one of unequal hermeneutical participation.<sup>4</sup> It is due to this social position of powerlessness that women could not adequately participate in shaping the hermeneutical resources. Hence, the concepts that overwhelmingly describe experiences of women could not enter the resource. Thus, according to Fricker’s writings, there is a causal narrative at work. The social position of powerlessness brings it about that women (and, we should add, depending on the context, those who fall outside the binary gender system, or people of color, or immigrants, etc.) are unable to participate in shaping the hermeneutical resource in ways that matter. This causes a gap in the hermeneutical resource, which results in women being unable to make their experiences intelligible to others. Without hermeneutical marginalization, there would be no hermeneutical injustice—at least no systematic hermeneutical injustice. Hence, there is not only a causal relation between the elements outlined above, but a constitutive relation between being hermeneutically marginalized (being in a social position of powerlessness) and experiencing hermeneutical injustice. In other words, whether a cognitive disadvantage is a hermeneutical injustice depends on the background conditions of the very context in question. Fricker hereby brings forward a contextualist approach to hermeneutical injustices.<sup>5</sup> Different groups

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**4** | To be in a position of unequal hermeneutical participation means being hermeneutically marginalized. We mostly speak of ‘hermeneutical marginalization’ when someone is persistently denied full hermeneutical participation in communicative contexts and when such participation stretches over a wide range of social experiences. This is what Fricker calls ‘systematic hermeneutical injustice’. However, someone can also be hermeneutically marginalized fleetingly or locally. In other words, if a hermeneutically marginalized subject is prevented from generating meanings regarding one social experience, she can still have a fuller participation in regard to other areas of her social world. In Fricker’s words, she suffers from ‘incidental hermeneutical injustice.’ The above definition only captures systematic hermeneutical injustice; the generic definition that captures both forms of injustice— systematic and incidental—states that hermeneutical injustice is “the injustice of having some significant area of one’s social experience obscured from collective understanding owing to hermeneutical marginalization.” (Fricker 2007: 158)

**5** | See also Medina (2013: Chapter 3) on polyphonic contextualization, a modification of Fricker’s account.

are disadvantaged for different reasons and the social world constantly generates new experiences which we can only gradually come to understand; hence, the need for an open concept (as I argued in the last chapters). Since individuals can have many social identities and group memberships, the focus on specific contexts becomes necessary. It is no accident that Carmita Wood struggled to make sense of her experience. While she tried to render it intelligible, “the whole engine of collective social meaning was effectively geared to keeping these obscured experiences out of sight.” (Fricker 2007: 153)

Interpretations of social experiences are biased by the understandings of hermeneutically powerful groups, denying access to other interpretations. For example, sexual harassment is reinterpreted by hermeneutically powerful groups as flirting and sexualized violence or rape as “normal” sex or seduction. The epistemically bad character of hermeneutical marginalization focuses on the collective epistemic potential. It is bad because it renders the epistemic potential of the collective hermeneutical resource distorted and incomplete. Moreover, the fact that the hermeneutical resource is distorted or incomplete means that some (or all) social groups fail to make their experiences intelligible. In other words, those who suffer from being hermeneutically marginalized and who are thus unable to contribute adequately to the collective resource are hindered from bringing concepts to the resource that they (and others) would need to make their experiences intelligible. Furthermore, this means that those in socially powerful positions who can contribute to the hermeneutical resource fail to see the harm they inflict on others. Because they do not experience the harm and there is no concept for it, they fail to make acts of harm intelligible as acts of harm instead of “normal” behavior. The fact that Fricker develops her account of hermeneutical injustice as constitutively about the social positions of power and powerlessness brings forward interesting questions of who is culpable or responsible for the injustice.

### 6.2.1 Culpability and Harms

Interestingly, because hermeneutical injustice is a structural injustice, it has the following two consequences: (1) it does not involve a culprit, and (2) cases of cognitive disadvantage only turn into cases of hermeneutical injustice when the subject of the disadvantage wants to and fails to make her experience intelligible. Consider (1) first: according to Fricker, hermeneutical injustice does not involve a culprit; it is a purely structural notion. To involve a culprit, the injustice would need to stem from someone’s wrong act. However, the injustice of hermeneutical injustice stems from the subject’s hermeneutical marginalization. As we have seen above, the background social conditions “that were conducive to the relevant hermeneutical lacuna” (Fricker 2007: 152) render a hermeneutical disadvantage into hermeneutical injustice. Obviously, there

are two distinct layers here. While someone cannot be held culpable for the structural injustice, that same person is still liable for their behavior. However, I am interested in cases where these two layers relate, that is, cases in which because of a certain social structure, someone is incapable of understanding their behavior. I come back to this as it poses interesting questions for our normative account of rape. Consider (2) next: Fricker argues that

the moment of hermeneutical injustice comes only when the background condition is realized in a more or less doomed attempt on the part of the subject to render an experience intelligible, either to herself or to an interlocutor. (2007: 159)

In other words, as long as the subject of the hermeneutical disadvantage undertakes no attempt to understand her experiences or to make them intelligible to someone else and, in consequence, failing to do so, there is no hermeneutical injustice from which she suffers.<sup>6</sup> Thus, in the example above, only when Carmita Wood made an effort to make intelligible the harmful experiences, was she subject to hermeneutical injustice. This is not to say that Carmita Wood's harasser did not engage in morally wrong behavior when he was harassing her, but without her attempt to make the situation intelligible, it is merely a situation of moral wrong, but not one of hermeneutical injustice. This is especially interesting in the context of ideology. Common theories of ideology assume what is called a 'false consciousness'. The idea is that being an agent in the ideological structure implies not only that the social structure is unjust or wrong, but that its agents have a false understanding of said structure. (cf. Jaeggi 2009; Ng 2015) Thus, in such a structure, Carmita Wood might have a vague feeling of moral wrongness but would not necessarily come to a point in which she even tries to understand what it is that causes the feeling of being harmed. Instead, she might interpret her experiences in line with the sexist ideology without coming to doubt the ideological description of what is happening—despite her physical and emotional suffering. To be able to use the account of hermeneutical injustice fruitfully in line with the idea of a sexist ideology, let us here say that

the moment of hermeneutical injustice comes only when the background condition is realized in a moment of disassociation on the part of the subject between the ideological salient reading of her experience and her vague feeling of being morally wronged.

Coming back to the concept of rape, we can then ask the following two questions. (1) We have seen that for someone to suffer a hermeneutical injustice, she has

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**6** | This is a similar idea to what I have expressed as 'moments of rupture' that are necessary for the theoretical process of analyzing structural problems; see Chapter 3.

to have a cognitive disadvantage that stems from her being hermeneutically marginalized. Are there cases in which someone is cognitively disadvantaged but in a way that does not stem from being hermeneutically marginalized? For example, a case of rape in which both the attacker and the victim are suffering from hermeneutical injustice? I focus on a case of date rape to show that both the violator and the victim are suffering from a cognitive disadvantage and that both suffer from consequences, but that the consequences stem from different social phenomena (being socially privileged vs. being hermeneutically marginalized) and are of a distinct character. I thus argue that only the victim is subject to systematic hermeneutical injustice, while the violator is subject to a distinct phenomenon which I call 'systematic hermeneutical misfire'. (2) If there is no culprit for hermeneutical injustices and if, at least in some cases, perpetrators suffer from systematic hermeneutical misfire, do we still have grounds to hold someone responsible for acts of sexualized violence and rape? And, what should such responsibility look like? Both these questions hang on the issue of how strong the cognitive disadvantage is, or, in other words, how ideologically distorted the hermeneutical resource is. If there are ways for the violator to critically question the collective hermeneutical resource, then we have grounds to hold him responsible for his acts. But what if not? I will, first, introduce an example of date rape to help illustrate these questions, and, second, work through the questions in detail.

### 6.2.2 The Case of Date Rape

Let us have a look at an example of acquaintance rape to illustrate the importance of the aforementioned questions. In an eye-opening account, Pineau argued for the creation of the category of date rape. Date rape, in her words, is "nonaggravated sexual assault, nonconsensual sex that does not involve physical injury, or the explicit threat of physical injury." (1989: 217) While this is definitely not true for all cases of date or acquaintance rape, there are some cases in which we can assume that neither the victim nor the violator are capable of making intelligible the act as an act of rape instead of understanding it as "normal" sexual behavior. As I explained in Chapter 1 and 4, in a sexist ideology, most agents hold what are called 'rape myths', that is, ideological beliefs about rape and the sexual behavior of women and gender non-conforming people. These rape myths block the correct understanding of rape and instead suggest that only physically aggravated stranger rape is indeed rape, while an act such as date rape is "normal" sexual behavior. This is not to say that there are no critical views even within a sexist ideology of such myths, but that the dominant working understanding of rape is in terms of stranger rape. Thus, many acts of rape cannot be made intelligible as acts of rape by those who fall victim to them and by those committing them. Remember that

I made a distinction between rape with full knowledge, negligent rape, and non-intended rape. While, of course, all these cases are accurately described as cases of rape according to the normative cluster of rape, the second should give the perpetrator a (vague) idea that he is doing some harm, while the latter case might not.<sup>7</sup> Often, in a sexist ideology, even a vague idea is not enough for the perpetrator to critically reflect on the rape myths he is holding and therefore see the act he is committing as one of rape—but, nevertheless, the perpetrator is negligent of his victim's feelings (and knowingly so) in these case even though he might not be able to understand what he is doing as rape.

Many examples of such acts can be found in recent news (cf. Bidgood 2015; Dick 2015). Imagine, at a college, an 18-year old freshman girl accuses a then 20-year old boy of rape. According to her testimony, she had agreed to go to a party on campus with him. She then followed him back to his dorm room. When they started kissing, she did not object. However, when he tried to remove her underwear, she politely asked him to stop. But he did not stop. When he penetrated her with his hands and his penis, she froze. Not wanting to engage in sex but also not knowing what is expected of her, she felt at a loss about what to do. Pineau argues that in cases of so-called date rape, the victim is often confused about her feelings and about what is going on.

In short, the girl feels trapped in a paradox: she feels raped and, at the same time, thinks “she let herself be raped.” (Pineau 1989: 223) She feels that she was wronged, yet her feeling does not match the common cultural assessment of what happened; namely that she brought it on herself by going back to his dorm room. She cannot dissolve the paradox and render her experience intelligible. In Fricker's words, she has a cognitive disadvantage. She is trapped between her vague feeling of being wronged (after all, he did not respect her refusal) and the ideological assumptions of what she “owes” him. Let us say, she holds the following rape myths<sup>8</sup>:

- A. It wasn't really rape, because once consent is given, it cannot be withdrawn part-way through the sexual act;
- and
- B. it wasn't really rape, because rape always involves overwhelming physical force and no force was used in this act.

Believing at least these two rape myths renders her incapable of understanding the act in question, despite feeling morally wronged. In other words, the common cultural assessment of the incident above builds on these presumptions: as she

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**7** | I do not discuss here the case of rape under full knowledge, in which the perpetrator knows or should know (without any excuse) that he is committing a crime.

**8** | See my explication of rape myths in Chapter 1 and 4.

followed him into a room and engaged in kissing, she led him on and is at least partly to blame for what happens. However, at the same time, she cannot help but feeling that the boy should have stopped when she asked him, leading to contradictory assessments of what happened.

The boy's evaluation of the incident is at least as much influenced by rape myths as hers. Thus, he has a cognitive disadvantage too and is unable to assess the situation as rape. Instead, having grown up in a sexist ideology that preaches male entitlement to women's bodies, he is likely to hold at least the following myths:

- C. She asked for it, because if a woman verbally resists, she secretly desires to be overpowered;
- and
- D. she asked for it, because she did not physically resist the act.

When he engages in sexual behavior, her passiveness as well as her refusal match his understanding of sex. He is thus unable to make intelligible that he is committing an act of rape. Rape myths excuse sexualized violence by concealing the fact that the act in question is an act of sexualized violence. Thus, neither the girl nor the boy have "a proper understanding of how he is treating her" (Fricker 2007: 151).

### 6.2.3 Hermeneutical Injustice and Misfire?

I here argue that even though the cognitive disadvantage of the victim and the perpetrator are similar, the victim suffers from systematic hermeneutical injustice because of her hermeneutical marginalization in this context, while the perpetrator suffers from what I call 'systematic hermeneutical misfire' due to his social position of privilege. I claim that he suffers from hermeneutical misfire and not merely from a cognitive disadvantage precisely because of his privileges in this context. These make it impossible for him to see what is wrong with the sexist framework that he applies. We have seen that both the girl and the boy lack the interpretative tools to understand the experience as rape. However, having a cognitive disadvantage is not sufficient for a systematic hermeneutical injustice to occur. For something to count as a hermeneutical injustice, the background social conditions need to be such that a person is significantly disadvantaged by the cognitive impairment. Like Carmita Wood, the girl suffers a cognitive disadvantage while her social position is also one of hermeneutical powerlessness. She is hermeneutically marginalized. Her experience is not assessed from her point of view and she cannot participate in the collective resource. Instead, the available and salient collective resource is tinted by false presumptions of what women sexually want. We can now

say that the girl suffers from systematic hermeneutical injustice: she has a cognitive impairment and cannot render her experience intelligible (or even if she could, she would fail to communicate her experience of rape to others). She is subject to a system of beliefs in which women have less power to make their words count and participate in the discourse on sexualized violence and rape.

What about the boy? Is he suffering from hermeneutical injustice as well? While he is also cognitively disadvantaged by the hermeneutical lacuna, his social position is not one of hermeneutical marginalization, i.e., if he knew that he is doing her wrong, he could participate in the collective hermeneutical resource and make his words count. However, the sexist beliefs and his social privilege render him incapable of understanding that he is doing her wrong in the following way. First, the sexist ideology provides explanations for why the girl reacts in ways that are in line with what he (falsely) understands to be “normal” sex; that is, he believes that she asked for sex because she did not physically resist and therefore her passive behavior does not strike him as unusual. And, second, his male and heterosexual privilege prevents him from experiencing date rape and, hence, renders him incapable of understanding the difference between date rape and “normal” sex. His problematic act depends on widely and persistently held rape myths. If he did not hold the above stated rape myths or if he were not in the social position of privilege and understood that his beliefs are myths, he would not be rendered unable to make intelligible his experiences as experiences of rape.

Hence, the boy can be said to have a cognitive disadvantage, rendered incapable of questioning his false beliefs and overcoming his disadvantage. However, we have also seen that the background social conditions do not render him hermeneutically marginalized, but rather position him in a powerful place of male entitlement; in fact, he occupies a social position that brings about the position of powerlessness the girl has to endure. Because of this, we should feel reluctant to describe the boy as suffering from systematic hermeneutical injustice in the same or even similar ways to the girl. Even though he is suffering from a hermeneutical lack, his experience is very different to the one of the girl. But his hermeneutical lack is a specific hermeneutical lack that is caused by his position of privilege.<sup>9</sup> He is trapped in a social structure that enables him to harm others without being able to understand the harm he inflicts. This can (even if it seldom does) work against him in specific cases, e.g., he could be charged for rape or ostracized by his community. Furthermore,

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**9** | It is thus also different to the incidental hermeneutical injustice that Fricker describes. Incidental hermeneutical injustice captures cases “of hermeneutical injustice that are not part of the general pattern of social power, and are more of a one-off.” (Fricker 2007: 156) In our case, however, it is not incidental that the boy is unable to make intelligible what he did; rather it is due to his social position.

he cannot withdraw from the toxic masculinity, which he enacts on a daily basis and which denies him from experiencing and showing weakness. The girl, in contrast, through hermeneutical injustice also suffers from a cognitive disadvantage, but her cognitive disadvantage does not result from her privilege in that context. And, because of her powerlessness, she is in a better position to have experiences that counteract those false beliefs and give rise to questioning the collective resource. To acknowledge this contrast, let us say that the boy—because of his stance of privilege—has a systematic hermeneutical misfire.

In a critique of Fricker's account of hermeneutical injustice, Laura Beeby (2011) raises similar questions about the relation between social privilege and cognitive disadvantage—or, what I have now called 'systematic hermeneutical misfire'. She argues that there are cases in which we want to describe someone both as a perpetrator and as affected by a cognitive disadvantage. She asks us to consider the following questions in regard to Carmita Wood's case:

1. "[W]ould the harasser's behavior have been different if he had a sufficient understanding of gender roles in the workplace?"
2. "Was his social privilege responsible for putting him in an epistemic position of ignorance and false confidence?"
3. "Is he wronged because his lack of knowledge led him to become the perpetrator of an injustice, just as Carmita Wood is wronged because her lack of knowledge prevented her from understanding and protesting against her experience?" (Beeby 2011: 484)

This is not to excuse the clearly bad behavior of the harasser, or, in our case, the violator, but rather it suggests that the lack of knowledge not only affected the victim in significant ways but also the perpetrator. In other words, Beeby asks us to consider the violator's story as much as the victim's story. The violator's "bad behaviour could, under certain circumstances, be seen as a tragedy or injustice as well as an indication of undue privilege." (Beeby 2011: 485) This suggests that we should not rely on background social conditions when we frame hermeneutical injustice, but on the fact that individuals cannot understand their own experiences. If certain epistemic goods which help with self-understanding and communication are necessary parts of life in a just society, then epistemic injustice is also the loss of epistemic goods and skills. (Beeby 2011) This suggests that the difference in the experience of the girl and the boy should not be cashed out in terms of hermeneutical injustice, but in terms of a social injustice, which makes the girl vulnerable to sexualized violence. I propose that we should not back away from the existing social background conditions (as Beeby suggests), because without them we misrepresent the phenomenon of rape. But we should also not misunderstand the experience of

the boy merely as an epistemic lack.<sup>10</sup> Instead, we should understand it in terms of hermeneutical misfire. Certain ideological beliefs bring it about that the boy is misguided when it comes to sexual behavior and his position of privilege and power renders him incapable of avoiding the hermeneutical misfire.<sup>11</sup>

The systematic hermeneutical injustice that the girl suffers from stems from her unsuccessful attempts to make her experience intelligible as well as from her social position. This kind of injustice is causally dependent on the violation against her—if she had never become the victim of rape, she would not have tried and failed in her attempt to come to terms with such an incident!—but it does not result directly from the violation committed by the boy. As Fricker argues, systematic hermeneutical injustice is a form of structural discrimination. It does not involve a culprit. (2007: 159 and 161) But if there is no culprit for the hermeneutical injustice that the girl endures, do we have grounds for holding someone responsible for what happened to her? Saying that hermeneutical injustice does not involve a culprit does not excuse the behavior of the boy. He still is the perpetrator of an act of rape against her. She, however, has to endure a double suffering: being subject to hermeneutical injustice and being subject to a moral wrong. While we cannot hold him responsible for the hermeneutical injustice, we can hold him responsible for his act of rape.

But let us say for now that the boy might have acted differently if he had not been cognitively disadvantaged due to rape myths. His position of systematic hermeneutical misfire caused him to harm another person. If the lack of understanding of rape brought him to the point at which he becomes a perpetrator of a moral wrong, then does this not suggest that we have less grounds to blame him for the act? Often, we judge social agents who have committed criminal acts harsher when they are aware of what they have done and less harsh when they are suffering from cognitive disadvantage. Consider, for example, the difference between murder and manslaughter. While murder is an act of unlawful killing that involves a certain intention, knowledge or malice aforethought, manslaughter refers to the accidental (thus, unknowing) killing of another person. This distinction is often understood in terms of the

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**10** | This is a thin line and we have to go about it carefully. While I contend that we need to understand adequately the ways in which perpetrators can have systematic hermeneutical misfires to advance feminist strategies against rape, we risk centering his dominant working understanding and further marginalizing the experiences of victims.

**11** | This becomes even more problematic if we consider that teenagers participate in sexual activities in ever-younger ages—ages that render them even less able to critically question ideological myths. I come back to this in the very end.

actus reus and mens rea of an act.<sup>12</sup> Whether someone is guilty and to which degree depends upon whether the person committed the crime (actus reus) and whether he intended to commit it or was in full knowledge of what he was doing (mens rea). For something to count as murder, both elements have to be fulfilled; for something to count as manslaughter, only the element of actus reus has to be fulfilled.

Many feminist philosophers have brought forward powerful critiques of the element of mens rea in regard to rape. (cf. Anderson 2004b, 2005a; Archard 1997, 1999; Baron 2001; Estrich 1986, 1992; McGregor 1996, 2005; Pateman 1980) Some scholars argue that there should be an element of mens rea involved in our legal decision making—even in cases of rape—but that only reasonable belief that consent is given should count as decisive. Others, however, argue that because of the misguided standards of what is reasonable for a perpetrator to believe, no mens rea element should be part of the legal definition of rape. In other words, as long as it is taken as reasonable for a complete stranger to assume that a woman consents simply because she does not physically fight back, the standard of mens rea is problematic for any legal decision making in cases of rape. The examples of mens rea and the reasonable standard that are attacked by feminist philosophers center around individual cases. Consider the following, which is taken to be a paradigm example of why mens rea is misguided:

In the night of August 15, 1973, Morgan who was an officer in the Royal Airforce was drinking in Wolverhampton with three colleagues. In the course of the night, Morgan invited the three over to his house to have sex with his wife. When they arrived at the house, they dragged the woman away from her son's bed and each one of them forcibly penetrated her despite her resistance, while the others held her down. When she called her sons for help, the men choked her until she submitted. After they were done, she went to the police. The men were charged with rape and pleaded that they honestly believed that the woman was consenting because Morgan had told them that she was “kinky” and feigns resistance during sex. Morgan was charged with aiding and abetting the others to commit rape. Neither Morgan nor the men were found guilty and the House of Lords found that honest but mistaken belief in the victim's consent need not be reasonable for an excuse to the charge of rape.<sup>13</sup>

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**12** | Nowadays, instead of *mens rea* the law often refers to modes of culpability, which not only refer to the knowledge of the perpetrator but to the broader surrounding elements of the crime, e.g., conduct, circumstances, result. (cf. Dubber 2002)

**13** | See DPP v Morgan, DPP v McDonald, DPP v McLarthy, DPP v Parker; [1975] 2 WLR 913; [1976] AC 182, for example here: <http://www.bailii.org/uk/cases/UKHL/1975/3.html>, accessed: July 18, 2017.

The case centers around whether the men had a legitimate claim to honest belief on the grounds of what Morgan had told them. Thus, the question is about their individual state of mind.

While I agree that *mens rea* is misguided so long as unreasonable belief counts as an excuse, I think that things are more complicated in regard to reasonable belief.<sup>14</sup> If we take seriously that we all, as social agents, are part of a sexist ideology and can have a distorted understanding of sex and rape, then there might be cases in which reasonable belief is an “excuse”.<sup>15</sup> In the case of the boy and the girl above, taking into account the hermeneutical misfire from which the boy suffers should make a difference in how we judge the case. Note, again, that this is only the case in examples where the girl is completely passive. In examples with resistance or where she begs him to stop, we can plausibly say that he ignores the girl’s wishes even if he believes certain rape myths. Thus, in cases with resistance, for example, we can adequately describe the boy as reckless, willfully blind, or as negligent—all of which legitimize harsher consequences for the committed act. However, even in a case where the boy’s hermeneutical misfire should play a role in how we decide, he is not therefore unaccountable for the harm he caused. I raise questions of responsibility and accountability now.

### 6.3 QUESTIONS OF ACCOUNTABILITY

Having introduced the distinction between systematic hermeneutical injustice and hermeneutical misfire, I now turn to questions of responsibility and accountability. I have argued that there are two layers to liability: the individual act committed and the resulting structural injustice. But, I have also raised the question of the sexist ideology in this context: if someone fails to understand their individual act because of the ideological framework, is that person nevertheless liable for the individual act in question? Furthermore, who is responsible for structural injustice if not the perpetrator of the individual act?

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**14** | It is indeed the case that what counts as reasonable is often only reasonable from a male point of view, however, the dominant framework of intelligibility in the social structure is shaped by the viewpoint of the privileged. Hence, we cannot just demand to step out of it, but have to find ways to change it. For an overview of reason from a male point of view, see, for example, MacKinnon (1989b) and Haslanger (2012: Chapter 2, 12).

**15** | Pineau (1989) argues that the assumption that a woman consents to an act of sex that does not bring her any pleasure is unreasonable. As I have argued before, this charge does not hold if we take serious the ideological social structure in the way I have outlined it above.

Again, my discussion of these issues is not extensive and does not account for most of the philosophical literature, instead I draw on theoretical and practical tools used by activists.

### 6.3.1 Moral Responsibility and Blameworthiness

Moral responsibility is often theorized together with blameworthiness. For example, according to Peter Strawson (1982) and Gideon Rosen (2003), we can say that a person is responsible for an act, if the person is liable to be blamed for the act. In Rosen's words,

when A is bad, X is responsible for A iff X is liable to blame for A, where blame is a matter of certain emotional responses, typically including resentment (when the act is someone else's) and guilt (when it's one's own). (2003: 61)

For example, when person X does something wrong, we are entitled to blame X for what X has done unless we hear about "any fact that defeats the standing presumption of responsibility" (Rosen 2003: 61) Let us express this in the following form: we are entitled to blame X for what X has done unless we hear about any excuse. And, according to Rosen, ignorance can serve as an excuse in some contexts. Rosen states that there is a difference between cases in which X is ignorant and blameless—in the sense that he fails to know the wrong he is doing and there is no way that he should have known—and in which X is at fault for not knowing. The former are cases in which X has no obligation to know. The latter are cases in which X could and should have known and is therefore at fault for not knowing, that is, X is reckless, negligent, or engages in deliberate misconduct. In the latter cases, the ignorance is culpable and cannot serve as an excuse in the above sense. Thus, the claim that Rosen brings forward is that "[a]ction done from non-culpable ignorance is itself non-culpable" (2003: 64) and, accordingly, action done from culpable ignorance is itself culpable. In other words, the question of whether a social agent is responsible for an act or not depends on whether the action is done from culpable or non-culpable ignorance.

In line with this claim, Rosen, next, entertains the question of whether moral ignorance that is not blameworthy is possible or not. He considers the following example. A father, call him Smith, treats his daughters and sons differently:

Smith is the sort of complacent sexist who takes it for granted that his sons have legitimate expectations to which his daughters are not entitled (and perhaps vice versa). Let's assume, in other words—and this is hardly unrealistic—that Smith believes what he believes because he finds it obvious, and that he finds it obvious because he

was raised to find it obvious and because the people he takes seriously find it obvious. (Rosen 2003: 67)

According to Rosen, the example suggests that Smith is not culpable for holding such views. Indeed, even though philosophers tend to hold each other to high standards, social agents in general rely on views such as Smith's view constantly and this should not by itself amount to culpable ignorance. What if Smith heard about critical arguments against his views? It is indeed realistic to assume that he knows of objections to his views and perhaps he has also considered whether his views are right when he was confronted with such objections. However, awareness of counterarguments and even consideration of them "need not suffice to dislodge his own sense of what is evidently correct." (Rosen 2003: 67) In fact, the (ongoing) struggle for feminist emancipation is not achieved with a few arguments, but rather takes time and the work of many. Thus, Rosen concludes, "[t]hat Smith has failed to see through a pervasive and well-protected ideology need not be a sign of culpable negligence or recklessness on his part. It might just be a sign of ordinariness. And if that's right we should conclude that his ignorance is not his fault." (2003: 67) Of course, at a later point in his life he might come to see his ideological distortions and resents his actions, but for now, according to Rosen, he has an excuse for what he has done and is thus not responsible for it.

Consider again the story of date rape from above. According to what Rosen argues, the perpetrator might have an excuse for what he did and if he does, he is then not morally responsible for doing it. If he, similarly to Smith, grew up in a sexist ideology and has therefore adopted false views of male entitlement and the nature of women's sexual behavior, he is ignorant in ways that excuse what he does. And it is not enough to think that he could have known and should have known because there were counterarguments to his sexist views, as, for example, Fricker (2010, 2016a,b) argues. Rather, according to Rosen, if the ideology is pervasive, then we, as social agents, are not necessarily convinced of the distortions of our views by counterarguments. This is consistent with what I have argued before. Sexist ideology is pervasive and the interdependency of social practices and schemas makes it hard to dismantle one's own views or others.<sup>16</sup> However, Rosen's theory is problematic in regard to our example for two reasons. First, it excuses any perpetrators of rape whose acts are deemed

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**16** | Note that Rosen's view is not uncontested. Moody-Adams (1994) takes a different view. She argues against what she calls 'the inability thesis about cultural impediments'—the idea that "sometimes one's upbringing in a culture simply renders one unable to know that certain actions are wrong" (1994: 293). According to Moody-Adams, the link between culture and agency cannot fully undermine attributions of responsibility for one's actions and, thus, do not exempt from responsibility.

acceptable by the sexist ideology, stripping them of any responsibility. Clearly, this is not consistent with our feminist commitments. And, second, it builds on the notions of resentment and guilt, i.e., Rosen argues that X is responsible for A if he has no excuses (such as non-culpable ignorance) and is therefore liable to blame, where blame consists of emotional responses such as resentment and guilt. However, it is not at all clear whether guilt and resentment help people take responsibility or whether they stand in its way.

Recent psychological research suggests that shame and resentment have more negative outcomes than positive ones. (cf. Barrett et al. 1993; Peters et al. 2014; Stuewig et al. 2010; Tangney and Dearing 2002; Tangney et al. 1992; Thomaes et al. 2011; Wright et al. 2008) Being exposed to shame or resentment “leads to avoidance of scrutiny by concealing oneself and one’s transgressions, blaming other’s for one’s problems instead of taking responsibility for them, failing to manage anger productively, and having character issues including a propensity for aggression.” (Oakberg 2016: 756) This is especially important for the question of rape and sexualized violence since the defense mechanism of externalizing blame can lead to victim blaming. Tim Oakberg argues that theories of shared responsibility backfire. Contrary to the idea that by cultivating shame, people will improve shared responsibility, research shows that shame can interfere with our motivation to show responsibility. Instead, Oakberg advances an ethics of empathic care to bring about greater responsibility. (2016: 767)

I take on board the insight that shame, resentment, and blame can be counterproductive for taking responsibility. In the following, I sketch a proposal according to which a perpetrator can be held responsible even if he is ignorant of his act in a non-culpable way and in which responsibility does not refer to emotional responses such as resentment and guilt. It is a mistake to think that when we do not have reasons to blame someone, we also lose the possibility of holding someone responsible. Hanna Pickard argues that not all responsibility is moral responsibility, as it is commonly assumed within moral philosophy. As we have seen in Rosen’s theory, there is a tendency in philosophy to link responsibility to morality. The weak link suggests that all responsibility is moral responsibility by using the terms ‘responsibility’ and ‘moral responsibility’ interchangeably. The strong link proposes that we can only understand responsibility by appeal to our practice of holding others responsible via our moral emotions—responses we have to the good or ill will of others like forgiveness or gratitude. (Pickard 2011: 214)

Ronald Dworkin, in a similar quest, argues that there is a distinction between responsibility as a virtue and responsibility as a relation between people and events. Someone is responsible in the first sense, if he “behaved responsibly or irresponsibly in acting as he did on some occasion” (2011: 102). For example, we often say things like: “In general, he is a highly responsible person, I don’t know what was wrong with him in this situation.” And, someone

is responsible in the relational sense, if “someone is or is not responsible for some event or consequence” (Dworkin 2011: 102). Relational responsibility is not the same in every instance. Dworkin argues that there are at least the following distinctions: causal responsibility, assignment responsibility, liability responsibility, and judgemental responsibility. We can, for example, be causally responsible but not judgementally responsible, i.e., the different notions of relational responsibility are conceptually independent of each other.

When Pickard speaks of moral responsibility and responsibility simpliciter, she tracks this distinction. If we see moral responsibility and responsibility as two different phenomena, then we can hold someone responsible for an act without also blaming him for it.<sup>17</sup> This makes it possible to hold the perpetrator responsible for his act of rape despite his ignorance. The ignorance is non-culpable in the sense articulated by Rosen and, thus, does not allow for full blame, however, it does allow for responsibility. Holding someone responsible does not necessarily mean the same as holding someone morally responsible, which comes with the notion of moral fault. If we attribute moral fault to someone, we blame that person for a specific act. But we can hold someone responsible without blaming him. On this view, responsibility is linked to agency: we are responsible for all our actions regardless of whether they are morally wrong, right, or neutral. (cf. Pickard 2011)

Furthermore, Pickard argues that especially in contexts where we want to enable learning and change, “it is essential to maintain responsibility and accountability [but] to avoid blame.” (2014: 10) Creating blame can lead to “feelings of rejection, anger, shame, hopelessness, and desperation in offenders” (Pickard 2014: 15). Those feelings can undermine responsibility. The view of responsibility simpliciter has two benefits. First, it provides a chance for perpetrators to take responsibility for the harm they have caused once they learn about it. What often happens when perpetrators are confronted with blame is that they become defensive. It is likely that a perpetrator who is blamed would either not be able to make intelligible the evidently correct view and would, thus, reject what was asked of him, or he would understand what he did but not react well to being blamed for the act. Often it is easier to see that we have caused certain harm or brought about certain effects and that we have to take responsibility for them rather than accepting that we are morally responsible. Second, blaming the perpetrator despite his ignorance is not likely to result in any moral progress or learning. Being convinced of his ideological beliefs, he is

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**17** | Lamb (1999) argues for a weaker version of detaching responsibility from blame. She writes that avoiding blame seems problematic because it does not stop the perpetration of abuse. However, at the same time, societal response can facilitate patterns of excuse and blame. Hence, she proposes, the focus should be on responsibility for another person’s needs. I come back to this view in the next section.

simply unable to make intelligible that his view is false. Blaming him for an act that, according to his view, is not morally wrong will not trigger any motivation to consider counterarguments. Blame is therewith a bad advisor when it comes to rape myths. The problem with rape myths is that they are persistently held. It is more successful to tackle and change a system of beliefs by a learning process than by blaming those who hold them. Thus, giving violators a chance to take responsibility for the harm caused without being blamed can tackle rape myths and trigger a process of learning.

Alisa Bierria brings into focus another aspect of the problem of blame. Besides foreclosing the possibility of a learning process when blaming or condemning someone, she argues that it also puts the victim in a difficult position. Condemning her perpetrator carries the unspoken expectation that she should want the most severe punishment possible and that if she does not, she betrays the feminist cause and is as guilty as he. However, this leaves unacknowledged the problem that perpetrators are often people we know, we trust, we love—people that we cannot simply delete from our lives. Thus, in asking for severe punishment in all cases we ignore the particularity of the situation and we fail to acknowledge what the victim wants and needs to be able to gain control of her life and her experience again. According to Bierria, we should instead focus on the notion of community accountability. Community accountability is flexible and dynamic and acknowledges, first, the wants of the victims, and, second, the responsibilities we all have for others (including the perpetrator, the community, the victim, etc.). (Bierria 2010: 107-19) Hence, in the following, I have a look at different strategies of community accountability and bring forward a fruitful proposal of how to understand the notion of accountability.<sup>18</sup>

### 6.3.2 Community Accountability

Ideas of responsibility simpliciter—as I have sketched above—also figure in discussions under the concept of accountability. Robin Zheng, for example, discusses the notion of accountability for implicit biases.<sup>19</sup> I first briefly consider Zheng's work to then sketch a theory of accountability which draws on work from feminist activism. Zheng writes that we face a dilemma when we consider whether we are responsible for our implicit biases. We are not aware of our implicit biases and their influence on our actions, but, on the

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**18** | I am grateful to Melanie Brazzel who introduced me to the ideas of community accountability and who has influenced my thoughts on this topic greatly.

**19** | Other scholars have addressed the issue of responsibility for implicit biases differently. See, for example, Holroyd (2012) for the view that we should merge responsibility and blameworthiness. See Saul and Brownstein (2016) for other views.

other hand, we are committed to social equality and implicit biases stand in the way of that commitment.<sup>20</sup> Thus, “we cannot simply let people off the hook.” (2016: 62) According to Zheng, we can resolve this tension by distinguishing between responsibility as attributability and responsibility as accountability.<sup>21</sup> Responsibility as attributability sees actions as expressions of agency. A person X is then morally responsible for his actions only when his actions reflect who he is as a moral agent. In other words, for X to be morally responsible means that his actions are attributable to him as manifestations of his values, ends, or commitments. (Zheng 2016: 62) Responsibility as accountability, on the other hand, “depends on the social and institutional practices governing the distribution of duties and burdens across different roles and positions within a society.” (2016: 62) A person X is then morally responsible for his actions only when he can be held accountable for them; that is, when “it is appropriate for others to enforce certain expectations and demands on those actions” (2016: 63) A wide understanding of Zheng’s theory captures what we need. While in cases of rape or sexualized violence in the context of a sexist ideology, we cannot simply blame someone (for the reasons discussed), we nevertheless can expect certain actions that counter the harm done. In other words, we can expect actions of accountability. I now consider the ways in which feminist activists have used the idea of accountability in cases of sexualized violence.

Because women of color, indigenous women, and undocumented female immigrants in the U.S. (and elsewhere) were historically (and still are) unable to seek help from legal institutions (including the police) and because, both in U.S. society and in European societies, men of color and male immigrants are charged and convicted statistically to a higher percentage than white men (even in cases in which they are innocent), alternatives to the existing legal procedure to domestic and sexualized violence were sought by feminist activists.<sup>22</sup> In other

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**20** | This relies on the view that implicit biases are products and perpetrators at the same time; they are the result of unjust social structures and reproduce and manifest this structure.

**21** | Other philosophers have made similar distinctions: Scanlon (1998) distinguishes between responsibility as attributability and substantive responsibility, Watson (2004) distinguishes between responsibility as aretaic/attribution and accountability. See also Fischer and Tognazzini (2011); Oshana (1997); Shoemaker (2011); Smith (2012) about questions of responsibility and accountability.

**22** | In the U.S., 57 % of sexualized violence perpetrators are white, 27 % are black, 8 % have an unknown ethnicity, and 6 % have any other ethnicity. (RAINN 2016b) In 1995, law enforcement agencies arrested 34,650 persons for forcible rape and 94,500 persons for other sex offenses. However, 56 % of arrestees were white and 42 % were black. (Greenfield 1997: 8, 10) Hence, while roughly half of those committing sexualized violence are white and half of the arrestees are white, the numbers do not add up as

words, there are at least three motivations behind the search for alternative strategies: (1) Women of color and other women are denied legal recognition (cf. Estrich 1987); (2) their reporting of men from their own community can have disastrous consequences for the men, themselves, and the wider community (cf. Clemetson 2004; Crutchfield and Weeks 2015; Hoffmann 2015; Shrage 2016); and (3) sexualized violence is a crime that is used to legitimize racist beliefs (cf. Davis 1981; Freedman 2013).<sup>23</sup> Furthermore, these women often had to suffer from violent acts perpetrated by the state and, thus, were looking for a broader understanding of the violence that women suffer.<sup>24</sup>

nically when it comes to black perpetrators: Only 27 % of acts of sexualized violence are committed by black men, but 42 % of black men are arrested for it. For general data on race in the U.S. prison system, see also Puglise (2016). For arguments against the prison system, see Currie (1998); Davis (2003); Deer (2009); Donziger (1996). It should be noted that this is of particular importance in Germany (and probably similarly in the UK) at the moment. Since refugees from African countries, Syria, and the Middle East come to Germany in greater numbers than before, the charge of rape is often used to express racist and anti-islamic sentiments masked as a nationalistic worry for the safety of “our women”. Posters, flyers, and internet blog entries suggest that refugees rape “white” women in overwhelming numbers without being held accountable and the media produces one scandal after another of refugees attacking “white” women because of their patriarchal cultural upbringing, the biggest of which was the new years eve scandal at Cologne main station in 2016. See Amjahid et al. (2016).

**23** | For the last point, consider also the racist implications of the new rape law in Germany. The recent reform of the rape law in Germany changed the definition of rape from a principle of threat and force to the principle of “No means no” and added a new principle according to which groping against the will of another person is unlawful. However, the reform of the rape law came alongside a reform of the residence act, which now states that refugees and asylum seekers can be deported if they contravene against the rape law or are incriminated of unlawful groping. This is especially problematic as rape allegations are used as a smear campaign against refugees.

**24** | The Color of Violence Conference in 2000 at the University of California, Santa Cruz, brought women and feminist activists together and as a result an organization—INCITE! Women of Color Against Violence—was founded that “opened a portal for critique, analysis, and new visions for change, while contributing energy and resources to building on-the-ground alternative responses to violence” (Bierria et al. 2010: 3), which focused on re-imagining and rebuilding communities. (cf. Bierria et al. 2010: 3) Note that, in 2002, INCITE! joined forces with the prison-abolitionist organization Critical Resistance that was formed in 1999. INCITE! changed its name since then. See also Smith (2010) for an account of the focus on communities as a political strategy in Native American communities.

The general idea of community-based approaches, often called ‘community accountability’, is to address (intimate) violence without relying on the state or on notions of victimization, heteronormativity, sexism, and white supremacy. (cf. Bierria et al. 2010: 5) It is any strategy that addresses domestic or sexualized violence in a given community. According to Esteban Kelly, community accountability “popularizes the idea that when sexual violence takes place, everyone is affected. [...] All of us have a role to play in holding the person who triggered the harm accountable and in rebuilding the trust we lost in them due to their behavior.” (2010: 49) Taking accountability for harm that was caused has four substantive features: it asks perpetrators to recognize the harm they have caused (even if that harm was caused unintentionally); it asks perpetrators to acknowledge what the harm has done to the victim and the community; it asks the perpetrator to take restitutive steps to the victim and the community; and it helps the perpetrator to develop skills to prevent further harms. These features show that taking accountability is a process involving not only the perpetrator and the victim, but the broader community as well. It is the community’s responsibility to ask what can be done to prevent future harm, to help the victim regain power, and to help the perpetrator develop skills to prevent further harm. Community accountability focuses on the perpetrator as well as the community, taking primarily into account the needs of the victim without ignoring the needs of the perpetrator and the community. For now, let us define this strategy of accountability in the following way, drawing on the discussion above and the insights from Zheng (2016):

A person X can be held accountable for their actions when they harm another person Y and/or the community X and/or Y are part of and person X demonstrates acceptance of their accountability by engaging in a process with the community that responds to Y’s needs as well as their own needs and the needs of the community.

The strategy of accountability as defined above has the following benefits: (1) it aims at a learning process on the side of the perpetrator and the community<sup>25</sup>;

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**25** | This benefit of the accountability approach is also discussed by Lamb (1999). She writes that often we think of blame as a black-and-white issue, where we put all the blame on the perpetrator. This, according to Lamb, is unhelpful for victims in the following sense: when we put all the blame on the perpetrator, we assume a wholly innocent victim. Victims, however, who do not fall in the category of being wholly innocent, might then not be seen as victims and cannot understand themselves to be victims. She develops the following approach. While we should “work away at the odd self-destructive tendency of victims to assume more responsibility than they should” (1999: 180), we should, at the same time, acknowledge that—except for instances of extreme coercion or youth—most victims have some responsibility for their behavior

(2) it acknowledges the complexities of the social world marked by injustices and the complexities of the particular relationship and community affected; (3) it facilitates the perpetrator and the community to help restore the victim's strength and work towards long-term solutions for domestic and sexualized violence in the given community.<sup>26</sup>

### 6.3.3 Who Is Responsible for Structural Injustices?

I started the discussion about responsibility and accountability with the question of whether someone can be responsible despite being subject to a cognitive disadvantage. I have argued that we should distinguish two forms of responsibility, one of which—what I have called ‘accountability’—can, despite cognitive disadvantage, account for the harm that was caused. Furthermore, I have shown that thinking of responsibility in the sense of accountability defined above has several benefits, one of which is that it can start a learning process, which ultimately can help overcome systematic hermeneutical misfire. While my discussion so far has been about accountability for interpersonal harms, distorted by the ideological framework, I now turn to discuss responsibility for structural injustices. I argue that we can utilize the strategy of community accountability to say the following: while the individual perpetrator is accountable in the sense defined above, everyone is responsible for the existing structural injustices. However, some social groups are responsible in a stronger sense because they have better ways to counteract the injustices. Because the perpetrator and the victim can fall subject to hermeneutical injustice or

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and their reactions to the abuse. Acknowledging this responsibility also acknowledges that the abuse happened and, importantly, it does not take away the responsibility (or, as I have argued, accountability) of the perpetrator. Furthermore, we can add, that the approach of blame is problematic for the perpetrator, because it assumes that society or the smaller communities have no responsibility at all. This creates the image of the psychological unstable man who cannot control his urges, leaving the social relations that produces him off the hook. Clearly, as I have argued in Chapter 4, this is not the case.

**26** | As Smith (2010) accurately notes, first, any community accountability should be grounded in an understanding of the state, so that community accountability is not merely an add-on to the existing criminal justice system. And, second, the strategy only works when the community wants to make it work instead of taking, the often, simpler way of siding with the perpetrator. I cannot provide a broader argument against the prison system for lack of space. I have here focused solely on how the strategy of community accountability can work in regard to questions of sexist violence, hermeneutical injustice, and ideology, and how it can function as a solution in regard to cases of negligence and ignorance.

significant hermeneutical gaps, the perpetrator is not necessarily culpable for the act and he is not culpable for the hermeneutical injustice of the victim—although, as I have argued, he is accountable for his actions. Hence, the open question is: who is responsible for the structural hermeneutical injustice, i.e., who is responsible for the epistemically constrained action in proxy of the perpetrator?

Iris Marion Young (2011) understands structural injustice as a moral wrong distinct from wrongs traceable to specific individual actions or policies. Structural injustice means, first, that the person who falls victim to the injustice is not subject to it because of her own poor choices or actions, and, second, that the injustice is not the result of another individual's poor choices or actions.<sup>27</sup> Rather, the injustice exists because of the social-structural position that the subjected person occupies. And, “[p]ersons in this position differ from persons differently situated in the range of options available to them and in the nature of the constraints on their action.” (Young 2011: 45) In regard to hermeneutical injustice, both the perpetrator and the victim occupy a social-structural position from which they cannot make intelligible the wrong of rape. However, the consequences of the act differ significantly: the consequences (if any) for the perpetrator are nowhere near to the harm the victim endures. Furthermore, as I have argued before, being wronged puts the victim of sexualized violence in a better position to experience a moment of discontent, while the privilege of the perpetrator often forecloses this experience.

According to these structural injustices, Young (2006) develops a social connection model of responsibility. The basic idea is that obligations of justice arise between persons because of social processes that relate them to each other. Some of the social processes are structural in character; that is, some people suffer from structural social injustice. Hence, it follows from the social connection model of responsibility that “all agents who contribute by their actions to the structural processes that produce injustice have responsibilities to work to remedy these injustices.” (Young 2006: 103) At first glance, this sounds contradictory: while the cue of structural injustices is that they are not brought about by the individual action of individuals, the very same individuals should here take responsibility for the way in which their individual action brings about injustices. What Young has in mind is to focus on the cumulative actions of different agents. While it is true that no single individual is responsible for structural injustice, the cumulative actions of many individuals can bring about

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**27** | Note that in cases of sexualized violence, we are confronted with wrongs of individual interaction and wrongs of structural injustice. For individual wrongs, who is responsible and how has to do with the depth of ideological indoctrination—thus, the resilience of structural injustice.

structural injustice and, thus, many individuals have a responsibility to work against these injustices; in other words, they have a collective responsibility.

There are two ways we can think about collective responsibility—in a backward-looking way and in a future- or forward-looking way.<sup>28</sup> Roughly, the future-looking way of collective responsibility focuses on the responsibility to bring about a better future state, while the backward-looking way focuses on compensation for past damages. Both models—future-looking collective responsibility (FLCR) and backward-looking collective responsibility (BLCR)—are concerned with a group’s responsibility towards the world. However, while BLCR understands responsibility “as a matter of having caused an existing—morally problematic—state of affairs” (Smiley 2014: 1), FLCR understands responsibility as a matter of being responsible for bringing about a future state of affairs that is better than the present one. In other words, while BLCR works with the concept of moral blameworthiness in saying that a group is morally responsible for having caused harm, FLCR can work without the notion of blame. (cf. Smiley 2014) Young’s social connection model of responsibility endorses a future-looking collective responsibility: individuals have a collective responsibility to counteract their cumulative unjust actions. (cf. Neuhaeuser 2014) Furthermore, we can now understand the strategy of community accountability as both a forward-looking way of collective responsibility—in so far as the community works together with the perpetrator to prevent further harm—and a process of individual accountability—as the perpetrator engages in a learning process.

May and Strikwerda argue for a similar notion of collective responsibility when it comes to rape. They argue that in cultures prone to the rape of women by men, men are collectively responsible for rape. This is because in laughing about rape jokes and in benefitting from a rape culture where women are made to be afraid of aggressive men and seek the protection of other men, men neglect their impact to stop such behavior. (1994: 149) I take it that May and Strikwerda are claiming that while each perpetrator is still individually responsible for the harm caused, men as a group have a collective responsibility.<sup>29</sup> And, furthermore, I take it that what they have in mind is a future-looking collective responsibility, that is, each man is responsible for working towards a future without rape.

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**28** | For more on collective responsibility, see French (1972, 1992); Goodin (1985); Hechter (1987); Held (1970).

**29** | Similar arguments are brought forward by Henderson (1992), who thinks that full responsibility of rape lies with men, and Benecke (1982: 169-70), who states that men rape and men can stop rape by not blaming women for their rapes and, thus, responsibility for rape lies with all men.

However, in light of what we have said about sexist ideology, should we not endorse a claim that May and Strikwerda refute, namely that everyone is responsible for rape, because men and women contribute to so-called rape culture? And, to not be trapped in the false dichotomy between the sexes, should we not endorse the claim that simply everyone (regardless of gender or sex) is collectively responsible for the sexist ideology? On the basis of what I have said before in regard to the notion of accountability, I propose the following middle way: the individual perpetrator is accountable for the harm caused to the victim and the community. The community, on the other hand, is collectively responsible to help prevent further harm. Thus, the community (including all its members) is collectively responsible for counteracting the sexist ideology that leads to hermeneutical injustice and hermeneutical gaps and, consequently, acts of sexualized violence. However, not everyone can employ the same strategies to do so. I agree with May and Strikwerda that men are in a better position to actively counteract the sexist ideology in calling out other men's sexist behavior and other problematic acts. They can use their privileged standpoint within the sexist ideology better and more successfully to raise awareness for sexualized violence. Furthermore, they do not have to fear the repercussions that are so well known from women and gender non-conforming people when they make their voices heard. (cf. Crandall 2016; Thorpe and Rogers 2011; Trumble 2014) But women and gender non-conforming people are also collectively responsible for combating the sexist ideology in other ways; one of these ways could be to share counter-narratives and bring forward critical voices, another is to show solidarity with victims of domestic abuse or sexualized violence. I will now turn to the ways in which we should show solidarity with others.

## 6.4 EMANCIPATORY SOLIDARITY

I now turn to focus on questions of solidarity. These questions are relevant due to the embeddedness of rape in the sexist ideology. First, one could argue that because victims of rape are as influenced by the sexist ideology as others, their testimonies and experiences are likely to be similarly distorted and we should thus not give solidarity uncritically. I argue that this is wrong and that, instead, we should rely on a specific form of solidarity. And, second, women and gender non-conforming people can dismantle sexist ideology by showing solidarity with victims of rape—as I have suggested before. It is thus in our interest, as feminists, to provide an account of that solidarity. Similarly to the discussion of accountability, I draw on activist work more than on philosophical accounts in my endeavor to do so. That is, I propose a way to think about solidarity with victims of rape and sexualized violence that takes seriously their experiences and unjust treatment in sexist ideologies, but one that is also in line with my

account of accountability given above. To do so, first, I discuss the particular problems that victims of rape and sexualized violence face in the sexist ideology. Besides the interpersonal violence they suffer, their reports and testimonies are disbelieved due to contradicting ideological beliefs and an assumed objectivity. (Section 6.4.1) Second, I show one way that some feminist activists have proposed to counteract such disbelief. However, I argue that this particular tool is unhelpful because it encounters epistemic problems: it stands in contrast to the idea that experiences are subjective. I spell out what this means with the help of theories of situated knowledge and epistemic privilege. (Section 6.4.2) Third, and finally, I propose a way to show solidarity with victims of rape and sexualized violence that takes seriously that experiences are subjective while at the same time, acknowledges the structural injustice behind acts of rape and sexualized violence. Furthermore, my proposal of emancipatory solidarity is in line with the view of accountability that I have given above. (Section 6.4.3)

### 6.4.1 Myths, Beliefs, and False Objectivity

In the struggle against sexualized violence, feminists of the 70s and 80s often claimed that we should move away from an epistemologically objective standard for judging cases of sexualized violence and turn towards a more subjective theory. (cf. Brownmiller 1975; Estrich 1987; MacKinnon 1989b) As we have seen before, they argued that we have to take into account the complicated structures of patriarchal power that underlie acts of sexualized violence. The fact is, they argued, sexualized violence is commonplace. But the presence of feigned objective standpoints and pervasive rape myths causes the commonplace character of this violence to be dismissed and lends disbelief to those who suffer from it. In other words, the assumption that we can take a neutral standpoint from which to objectively judge what is rape and what is not is problematic for at least the following reason: because we, as social agents, are embedded in the sexist ideology, our judgement of what is rape and what is not, can be influenced by ideological distortions. Neither the sexist framework nor the feigned objectivity represent the experiences of women and gender non-conforming people with rape and sexualized violence. In Fricker's words, they are an hermeneutically marginalized group that is restricted from contributing to the collective resource when it comes to their own experiences of sexualized violence. Their testimony is rendered unbelievable, hysterical, or wishful-thinking—it contradicts the sexist social structure and is deemed irrational and thus not objective knowledge. The fact that women and gender non-conforming people often encounter doubt about their experiences is especially problematic for claims about rape as it adds to the harm of the incident. Furthermore, under conditions of the sexist ideology, it is impossible to criticize the disbelief as wrong. Instead, disbelief about rape is masked as a

rational disbelief of those who lie or exaggerate.<sup>30</sup> Thus, a key critique made by feminist activists and feminist philosophy has been that acts of sexualized violence are not recognized as such and that those who endure them are not believed in their testimonies. (cf. Estrich 1987: 8)

As argued in Chapter 1, ideologically distorted myths have an effect on whether we believe someone or not. Imagine a person A, who hears the testimony of rape of another person, B. Imagine further that A believes in rape myths. A might then be unable to make intelligible the report as one of rape and instead believes what happened to be “normal” sex, or she might blame B for what happened to her without placing any blame on the person who harmed her. In that sense, rape myths influence whether a story is believed. Our background beliefs can make it nearly impossible to believe the person harmed. Another aspect we have to consider is that some individuals enjoy less credibility than others because of their social role and position. As Alcoff and Gray-Rosendale argue, a speech act situation is always a normative arrangement, and in these arrangements some individuals are assumed to be speakers and some are assumed to be hearers. This means that only some speakers have the authoritative status of conveying knowledge. (Alcoff and Gray-Rosendale 1996: Section 1) As I have implied above, for example, women and gender non-conforming people are not taken to be epistemically trustworthy agents, but instead are deemed irrational. As many social scientists, philosophers, and psychologists have shown, it is harder for women and gender non-conforming people to be believed than it is for men. (cf. Hutchison and Jenkins 2013; Saul and Brownstein 2016) Women are subject to the epistemic injustice that Fricker calls ‘testimonial injustice’: “Testimonial injustice occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker’s word.” (2007: 1) Rape myths help perpetuate testimonial injustice in the cases dealt with here. Women are falsely portrayed as wanting to be sexually overpowered. The opposite stereotypes exist for men. Thus, men are given more credibility when they speak and women receive less credibility qua women. (Fricker 2007) Rape myths only strengthen the already existing image of the irrational and lying woman.

In cases where we do not have access to further evidence apart from the victim’s testimony, we are likely to take other indicator properties into account to make a judgment about whether or not to believe the harmed person. (cf. Fricker 2007; Hutchison 2013) Indicator properties allow us to make

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**30** | Remember that many people think that most rape accusations are lies even though research shows they are not. 40.2 % of 3210 random participants of a telephone interview believed that accusations of rape are false. (McGee et al. 2011) Data, however, suggests that the number of false reporting is between 8 % and 0.2 %. (Kelly et al. 2005)

judgments in situations where further information is lacking. The less access I have to indicator properties that actually concern the situation at hand, the more likely it is that I resort to broader schemas and indicators to evaluate the situation. But, indicator properties are influenced by prejudicial stereotypes that implicitly grant some people more credibility than others. According to MacKinnon (1989b), men are assumed to be rational and objective, and women are emotional and subjective—similarly for gender non-conforming people. We are more inclined to judge someone's testimony as accurate when that person fits the stereotypes of rationality and objectivity. Thus, in most cases of sexualized violence and rape, the perpetrator is deemed more trustworthy than the victim. The victim lacks epistemic credibility for at least two reasons: the victim has to work against the stereotype of being irrational as well as the specific rape myths that are at work (e.g., that she asked for it) in her report of rape. Hence, in cases in which the rape mirrors a physically violent stranger rape, her chances are better of being taken at her word. Furthermore, the more she acts in ways that we associate with rape victims, the stronger her credibility. As I have shown before, we are more inclined to judge someone's testimony of rape as accurate when that person fits our stereotypical image of what a "rape victim" looks like and when the described act resembles our stereotype of stranger rape.

We can now say that the following is a lethal cocktail for victims of rape: (1) because there often is no access to further evidence apart from the victim's testimony, rape cases are judged on the basis of (stereotypical) indicator properties, which are distorted by rape myths; (2) because the victim is a member of a (deemed) untrustworthy social group, her testimony does not count and because the perpetrator is a member of a (deemed) trustworthy social group, his testimony does.<sup>31</sup> This complex system prevents victims from being believed and has consequently sparked interventions from feminist activists. In the following, I have a look at these theoretical and practical interventions.

#### 6.4.2 Disbelief as a Case for Activism: Definitionsmacht

To challenge the reframing of rape as "normal" sex and the disbelief of those who are harmed, feminists have proposed that only the victim can determine whether what she experienced was an act of (sexualized) violence or not. This is grounded in the insight that experiences are subjective and that disbelief adds to the harm of victims and hinders their regaining of power and self-trust.

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**31** | Interestingly, men who are victims of rape are seen as weak (and/or gay) and thus are confronted with similar stereotypes of women and gender non-conforming people. Research shows that 34 % believe that male victims of rape must be gay or acting 'in a gay manner'. (Burrowes 2012: 2)

For example, if I am in a situation which allows me to escape or ask others for help, I am likely to experience an act of violence against me as less threatening than if I am in a situation where I cannot leave and have no one else to turn to. In that sense, what counts as threatening and what is experienced as violence can only be correctly assessed by the person faced with the situation. However, individuals—as members of specific social groups—can occupy similar positions in the social structure and thus have similar experiences when it comes to (sexualized) violence. In a social structure in which women and gender non-conforming people face sexualized violence in broader numbers than men, and where attackers are almost exclusively men, and where women are socialized into being submissive and men are socialized into being aggressive, what is experienced as threatening can differ significantly between men and women. For example, many women report that they submitted out of fear of aggravating violence. They react in ways that are in line with their female socialization; they are taught to not cause trouble, to not shout and scream and fight.<sup>32</sup> However, research shows that many cases of rape can be prevented if the victim resists physically. (cf. Atkeson et al. 1989; Kleck and Sayles 1990; Siegel et al. 1989) In other words, women who react in line with their socialization do not realize their potential of resistance. This is not to say that a woman who does not resist, is to blame for what happens (a woman should not need to resist, because she should not be attacked in the first place!) and it is also not to say that women's behavior is irrational. Instead, it is perfectly rational considering the choice architecture that women have. Think about it this way: each one of us has a certain amount of choices open in each situation, but which choices are open to us and which are not is influenced by the social position and the social relations we stand in. Other choices are open for women than for men. And for many women, the choice to physically resist is not a choice she can take.

Taking into account what victims of rape say means giving the power to define the act in question back to those who are most vulnerable. In Germany, these ideas have triggered a specific form of activism. This movement, called 'Definitionsmacht', focuses on the way in which victims are harmed by not being believed and on the fact that experiences are subjective.<sup>33</sup> (1) As I argued above, individuals who report cases of sexualized violence are often met with disbelief. Such disbelief can take different forms: shaming those who talk about

**32** | See Young (1980) and Anderson (2004b) for the particularities of women's socialized behavior in cases of rape.

**33** | In English: *power to define*. This movement advanced a form of activism to directly tackle sexualized violence in small (left) communities. (cf. Glahn 1998; ZIF 2016) However, this form of activism is not exclusive to Germany, in many other countries activists use similar tools. For example, the pink sari-gang in India employs similar ideas.

their experiences, dismissing women's accounts as emotional or exorbitant, reframing the experience as one of "bad sex," and so on. Besides the harm caused by the experience, the victim has to carry the burden of further harm by being confronted with disbelief. It adds to the already existing harm caused by the act of sexualized violence. And, (2) the movement of *Definitionsmacht* criticizes the idea of an objective standpoint. It challenges the claims that we can arrive at an objective account of what different individuals experience as threatening. As argued above, what counts as threatening cannot be generalized; it depends on our past experiences, the contexts we live in, our cultural and social backgrounds, our background beliefs, etc. *Definitionsmacht* claims that individuals should autonomously decide when their boundaries are crossed and when they feel threatened rather than be subject to a feigned standard of objectivity that paternalistically tells them where their boundaries are supposed to be. (re.ACTion 2007: 22) To not be believed in one's experience of violence can add to the harm a victim endures. The victim can feel a loss of power over her actions during and after the incident, resulting in her shattered epistemic confidence. Brison (2002) and Freedman (2014) give powerful accounts of how rape can lead to loss of control of one's bodily and mental reactions during and after the incident and, furthermore, how it can lead to a loss of trust in others and the world in general. Questioning someone's ability to define what happened to them can intensify these losses of power and trust and multiply the harms the person suffers. To regain trust and power and to counteract a possible trauma, *Definitionsmacht* argues that two main strategies are important when interacting with the victim:

1. Believe in the testimony of what happened by the victim and accept her definition of what happened unconditionally.
2. Acknowledge that the victim knows best how to cope in the aftermath and help her regain power of her own actions by accepting her demands placed on the perpetrator.<sup>34</sup> (cf. re.ACTion 2007)

With these two strategic principles in mind, *Definitionsmacht* gives back the power to define what happened and the power to be in control of one's life again. Advocates of *Definitionsmacht* argue that this is the best way to show solidarity with the victim.

To summarize, feminist scholars and *Definitionsmacht*-activists take the following two epistemological insights into account: (1) the feigned objective (or

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**34** | Those demands can differ in character, but common ones are: to not approach the victim, to apologize sincerely, to take responsibility for what happened, to abstain from certain places (e.g., the local bar, certain community activities, the university, the city), to abstain from relationships with other people, etc.

neutral) standpoint does not capture the experiences of victims of sexualized violence and rape; and (2) the subjective character of experiences becomes especially important within unjust social structures. I have already outlined the first insight in detail and will now say a bit more about the second insight. I then show that they both stand in a problematic relation to the strategies mentioned above and, therefore we should solve the problem of disbelief differently than activists of Definitionsmacht argue.

### **Situated Knowledge**

As we have seen above, victims of rape not only have to endure the incident but also the harms of being disbelieved in their reports, their experiences, and their status as rational persons. Furthermore, these harms are enabled by the assumption that there are objective and universal standards for determining when someone's boundaries are crossed and what counts as violence. This has led defenders of Definitionsmacht to advocate an unconditional form of solidarity with victims based on the principle that we should believe their accounts without question. Definitionsmacht tells us to accept a victim's account of her subjective experience; what she reports is what she experienced. Indeed, it is exactly this element that grounds the critique of the feigned objectivity of definitions of sexualized violence; it is the acknowledgement that experiences are not objective and that different individuals have different experiences when it comes to violence. However, we are now in a position to ask, first, whether the method of Definitionsmacht generates knowledge, and, second, if so, whether some individuals are in better positions to have their experience count. I argue that believing someone's report as a report of her subjective experiences does not give us sufficient grounds for granting her epistemic privilege. However, that is what Definitionsmacht does: it treats the victim's report as epistemically superior to the perpetrator's, who is assumed to be responsible and blameworthy for the experiences of the victim. But this is neither helpful (as I have argued in Section 6.3) nor consistent with the appeal to subjective experiences. Taking on board the insights that experiences are subjective and that their feigned objective character is problematic does not imply that some individuals have epistemic privilege.

What does it mean to say that experiences are subjective? Joan Scott (1991), Marianne Janack (2011), and Linda Alcoff (2011) all argue that experiences have traditionally been taken as a strong form of evidence for a claim; experience marks a claim as epistemically privileged. However, this approach has many flaws. Scott stresses the relevance of discursive practices that shape our subject positions and identities when we think about our experiences (1991: 797) Janack focuses on the fact that our perceptions open up possibilities for action: the world is not full of neutral objects, but objects to be interpreted and used by us. (2011: 174-5) Furthermore, since the victim in our case only reports the

experience in question later, she must rely heavily on her memory. This can make things even more problematic. Ian Hacking expresses a worry concerning the view that memories should be taken as reports of facts concerning the incident in question (1995: 5) A similar line of thought is brought forward by Sue Campbell (2003) when she argues that memory is more complex than being adequately understood as a report. These worries can be expressed more generally by the notion of ‘situated knowledge’ as articulated by many social epistemologists. The idea is that we should not only be interested in knowledge simpliciter but also in what we ought to know and how we know what we know. Our social relations shape our everyday knowledge practices. The problem with the traditional model is that the epistemic subjects are portrayed as generic, interchangeable, and self-sufficient individuals. (cf. Code 1991; Grasswick 2004; Scheman 1995) Feminist epistemologists, on the other hand, have proposed that the social relations of epistemic subjects are also relevant for epistemic assessments. In other words, knowledge is situated.

There are many different ways in which our social location can influence our knowledge and knowledge-seeking. Let us consider a few here. First, one way in which our knowledge is influenced is qua our background beliefs. People form different beliefs about an object, a person, a report, or a situation depending on their background beliefs. Never having been subjected to an act of sexualized violence or never having heard an account of it before can make one doubt statements of sexualized violence from others. For such a knower, sexualized violence is not known to happen, at least not to them or those close to them. Second, depending on their social identities, different individuals judge situations as threatening or violent differently. This means that how we experience a certain situation depends on our social identity. The idea of situated knowledge underpins this point. As knowing individuals, we are situated in a specific social relation to knowledge and to other knowers. What we can know and the way we can come to know differs accordingly. Our knowledge reflects our social situation; thus, it is deeply influenced by the background beliefs we have accumulated over time and our social position. MacKinnon (1989b), for example, raises interesting questions about what it means for sexualized violence and rape if different gender roles make different kinds of information more salient and if they lead to fundamentally different interpretations of given situations. While women are often socialized into being polite—even in situations they find annoying or threatening—men are socialized into reacting with aggression to hostile situations. When a woman smiles in reaction to a man’s sexual advances it can mean that she is interested or that she is politely trying to avoid the situation without having a confrontation. While the first interpretation is open to men, the second is not. Thus, our gender roles can influence how we interpret encounters with others. Third, different knowledge results when one has previous experiences with the object in question. Having

been subject to sexualized violence before can shape my knowledge about the specific situation in question. For example, having an abusive partner can make me more alert to signs of abuse and ways to dodge abusive situations. And, finally, knowledge about my physically inferior position can give me different knowledge about a situation. Remember that, Scott Anderson raises the interesting question of distinct gender positions in regard to sex under pressure. He argues that

men pressuring women into having sex takes place against a background in which men and women differ in their ability to use or resist violent attack. [...] Even if men and women were equally likely to resort to boorish behavior to achieve their sexual ends, men are known to turn sometimes to much more potent and dangerous techniques than women typically are, and men are generally able to fend off the relatively few women who might be inclined to use such techniques themselves. Hence the ability to apply pressure to have unwanted sex may differ markedly between men and women on average. (2005b: 366)

In other words, women often start encounters from the following epistemic position: the man engaging in (unwelcome) sexual advances has the physical abilities to overpower them. While men start from the opposite epistemic position.<sup>35</sup> This alone makes for a difference in what we experience as threatening or not.

Theories of situated knowledge account well for the problematic character of assumed objectivity when it comes to experiences of sexualized violence and rape. However, Definitionsmacht-activists not only take the experience of the victim to be a subjective experience but they take it to be a more accurate experience than the one by the perpetrator. Situated knowledge takes subjective experience seriously; the content of experience depends on our social role, location, identity, history, our background beliefs, our embodiment, our interests, values, emotions, and more. Thus, even if someone's report does not fit our own experiences or the (assumed) objective idea of what sexualized violence is—who commits these acts, what the victim looks like or how she behaves—we should still believe the victim's account of her own experiences. However, taking seriously the idea of situated knowledge and subjective experience, we have to assume that two individuals could encounter the same situation but experience it differently. If this is true, we should not only believe the victim's report of her experiences, but also the violator's report. Definitionsmacht faces a dilemma. To place the definition of the victim over the definition of the perpetrator, the subjective experience of the victim would have to reflect what

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**35** | This is powerfully illustrated in the novel *The Power* by Naomi Alderman.

actually happened more closely than the experience of the violator. That is, the victim has a claim to “objective” knowledge while the violator does not.

### **Epistemic Privilege**

To claim that victims of rape should be the only ones able to define what happened to them requires not only a theory of situated knowledge but also an argument for epistemic privilege. The idea is that knowledge claims of victims (or women and gender non-conforming people) are more accurate than other knowers’ claims about the same event. In other words, some knowledge claims are better or more accurate than other knowledge claims. We can thus say that theories of epistemic privilege (or standpoint) make a stronger claim than theories of situated knowledge; they make a claim about the accuracy of knowledge claims. Consider the problem that I raised for *Definitionsmacht*. To say that experiences are subjective and to advocate situated knowledge is not enough for arguing that the victim’s claims are more accurate than the perpetrator’s claims. Making a claim about the situatedness of knowledge means that the different individuals involved make different knowledge claims about the same situation. This is not to say which of these individuals has epistemic privilege.

Feminist standpoint theorists argue for the epistemic privilege of women (and similar claims have been brought forward for gender non-conforming people) in regard to gender relations and other social phenomena in which gender plays a determinant role. (cf. Bettcher 2009; Collins 1990; Harding 1991; Hartsock 1987, 1998; McKinnon 2014) In this sense, knowledge is not merely situated, but specific social positions give epistemic privilege. Women have epistemic privilege, for example, over the experience of feeling pressured or threatened to engage in sexual relations. As I have shown above, women are socialized into polite behavior even in situations in which they feel pressured or threatened. Thus, when a woman smiles in response to the sexual advances of a man, this smile can either mean that she is interested or that she is not. Other women, being socialized in similar ways, will be able to interpret the smiling women as either interested or as refusing. Men, however, will only be able to understand her smile as being interested because they are socialized differently and lack the experience of smiling as refusal. The idea is that being differently socially situated results not merely in different interpretations and experiences but it gives some individuals epistemic privilege on the basis of their social group membership. What they interpret or experience is more accurate. In the example mentioned, the interpretation of women is more accurate than the interpretation of men which is limited. In other words, women (and gender non-conforming people) can have epistemic privilege because of their specific situatedness. However, note the use of ‘can’ here. Standpoint theorists have argued that belonging to a certain social group, say the group of women, can

give one the possibility of having epistemic privilege. But women can fail to gain such adequate knowledge, or they can fail to use the knowledge they have in a particular situation. Consider the following case:

In 1997, a legally blind Madison, Wisconsin, woman named Patty was raped at knifepoint in her own bed. She called police and underwent a hospital examination but was unable to identify her attacker. [...] The Madison district attorney's office told journalist Bill Lueders [...] that she "behaved in a manner wholly incompatible with" their image of a rape victim. Perhaps that explains why Woodmansee and another detective, Linda Draeger, encouraged Patty to confess that she'd invented the rape story.<sup>36</sup> (Harding 2015: 92-3)

If women have—qua being women—epistemic privilege over sexualized violence and rape, then police detective, Linda Draeger, should have known better. But she did not. In fact, she believed like many other police detectives that women lie about being raped.<sup>37</sup> She believed that Patty lied. Granting epistemic privilege becomes especially problematic when all individuals are embedded in a sexist ideology. Hence, women do not necessarily have a privileged standpoint, they can rather attain it by gaining collective consciousness of their role and position. (cf. Lukacs 1971; Marx 1964)

Remember the problem *Definitionsmacht* faces: placing the victim's definition over the perpetrator's needs to be based on the fact that the victim's knowledge claims are more accurate than the perpetrator's. The argument that all knowledge is socially situated cannot establish such a claim. However, we have also now seen that members of (oppressed) social groups do not necessarily have epistemic privilege. They can gain it because of their specific social situatedness when they become aware of their social role and position within the social structure and start engaging in a critique of the sexist ideology. In other words, we need a stronger claim than merely situated knowledge, but epistemic privilege is still not a given. In line with what I have argued for in Chapter 3, I

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**36** | Patty was charged with filing a false report, she sued the city of Madison, but a judge dismissed her case. In 2001, the DNA that police took from her bed in 1997 was reexamined and a match was found on file. (Harding 2015: 93)

**37** | As a reminder, 17.6 % of police detectives agreed and 2.6 % strongly agreed to the statement "Women falsely report rape to call attention to themselves." in a survey of rape myths in police departments in the Southeast of the United States. (Dellinger Page 2011) 28.8 % of FBI detectives throughout several states responded with an estimate of 50 % and some even responded with an estimate of 95 % to 100 % to the following question: "What percentage of rape reports do you think (your gut feeling) never happened; they are false reports? We don't mean dismissed cases, but flat out never happened?" (Schwartz 2010)

propose the following. Theories of situated knowledge and epistemic privilege are useful in at least two respects. First, they stress the important insight that we cannot take neutral or objective standpoints but that we occupy different social positions in a social structure and that we are influenced by these. And, second, they highlight the idea that some social positions are better for making adequate knowledge claims. Let us take on board the first insight and spell out the second idea in the following way. Occupying an oppressed social position or being in a powerless position in the context in question makes it more likely to have experiences that are contrary to the culturally salient narrative. Hence, individuals from oppressed social positions are more likely to find themselves in a dilemma between the culturally salient interpretation of the situation and their own moral feeling of being wronged. The experience of such a dilemma can lead one to question the culturally salient interpretation and, by way of a process of consciousness raising, for example, can give rise to engaging in the method of emancipatory amelioration (EA). Thus, certain social positions are better positions to have a vague idea that something is not as it should be and this vague idea can provide access to epistemic privilege. Understanding the relation between situated knowledge and epistemic privilege in this way takes into account the structurally unjust relations in which we, as social agents, live and it accepts that suffering from injustice can give rise to epistemic privilege, but does not necessarily have to. As Harding said, standpoints do not necessarily equip us with epistemic privilege, yet they can provide grounds for getting there. (2004: 128)

However, this does not solve the problem that *Definitionsmacht* faces. How can we know whether a victim's report is a more accurate knowledge claim if she cannot necessarily have epistemic privilege qua her group membership or her social position? Hence, we should at least be wary about the possibility of epistemic privilege—especially in the context of ideological social structures. Yet, believing the victim's report for what it is, namely as a report of her subjective experiences, can hardly place it above the report of the perpetrator's subjective experiences. That possibility is foreclosed precisely because we acknowledge that experience is subjective. *Definitionsmacht* criticizes feigned objectivity in cases of sexualized violence by arguing that experiences are subjective, that what we experience as threatening or not depends on our social positions. The problem arises when it takes the victim's report as epistemically privileged—as more accurate—than the perpetrator's despite the fact that both, the victim's and the perpetrator's experience is subjective.<sup>38</sup>

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**38** | Note that the confrontational style and absolutist rhetoric used by *Definitionsmacht* is partly due to the difficulties of survivor support praxis and the real struggles of intense power asymmetries in specific contexts. What I say here is not that some victims lie and that, thus, *Definitionsmacht* should be more careful in what they say.

As we have seen, even though the structural injustice that most victims suffer makes it more likely that their testimony is in fact epistemically privileged, this is not necessarily the case. Furthermore, granting epistemic privilege on the basis of social group membership implies that only some groups are believed unconditionally while others are not. However, taking into account recent statistics on, for example, prison rape makes it problematic to not grant the social group of men such privilege—but doing so would lead the whole endeavor ad absurdum. It seems we have two options: (1) give up on *Definitionsmacht*—and the politics it stands for—as a tool for showing solidarity with victims of rape. Or (2) use *Definitionsmacht* despite the problems of claiming epistemic privilege. There are good reasons for taking the second claim, after all, structural injustice against women and gender non-conforming people is the reality and statistics of rape do show that most testimonies of rape are accurate. Maybe we should bite the bullet and rather believe one victim too many than one too few. However, because this would amount to another generalization—unconditionally believing the reports of victims and unconditionally disbelieving the reports of, say, men in these contexts—and because of what I argued before about hermeneutical misfire, I here propose a third alternative: give up on *Definitionsmacht*, but not on solidarity. Instead we should show a specific kind of solidarity that does not resort to claims of epistemic privilege.

### 6.4.3 Epistemic and Emancipatory Solidarity

Even though social positions of oppression and membership in oppressed social groups can bring one to access epistemic privilege in regard to specific questions, membership does not necessarily grant us such privilege. We do not necessarily have epistemic privilege, but rather we can gain it. Thus, we face a dilemma: on the one hand, we want to show solidarity with victims of sexualized violence and acknowledge their position as one of structural injustice and interpersonal wrong, and, on the other hand, we should take seriously questions of hermeneutical misfire and ideological embeddedness. In response to this dilemma, I propose a model of emancipatory solidarity that allows us to counteract false beliefs and show solidarity with victims of rape and sexualized violence without resorting to claims of epistemic privilege and therewith avoid the problems that *Definitionsmacht* encounters.

I take on board the idea that the best way to counteract a culture that blames victims is to show solidarity with them. By showing solidarity, we oppose the prevailing culture of victim-blaming, we affirm the victim's rational status, and

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Instead, what I say is that *Definitionsmacht* brings forward a valuable critique but fails to consider the ways in which victims and perpetrators can both be ideologically distorted.

we give her back her epistemic agency in believing what she says. As I have argued, one of the damaging effects of rape is the harm inflicted afterwards by disbelief. When the victim's experience is questioned, she cannot heal, cannot gain back a sense of self, or make intelligible what happened to her. Furthermore, she cannot help but feel alone in her experience. Advocates of *Definitionsmacht* show solidarity by unconditionally believing the harmed person's account as a report of what factually happened; they give epistemic privilege to the victim. I propose that we can show solidarity by believing the victim's account of what happened as a report of her experience; this reaffirms her experiences without granting epistemic privilege.

In the framework of solidarity favored by advocates of *Definitionsmacht*, I believe the victim because I sincerely believe that it is the truth of what happened; I believe that what she is telling me, objectively speaking, happened to her. In comparison, in my proposal, I believe the victim because I sincerely believe that this is what she subjectively experienced. I believe that what she tells me is true about her experiences. The (assumed) objective understanding of rape is radically different than the experience of women and gender non-conforming people who are harmed. Part of challenging this narrow objectivity is to acknowledge that someone's report of sexualized violence may not fit under the current legal understanding of rape and, at the same time, to believe the person's report that what she experienced was an act of sexualized violence to her. Furthermore, acknowledging that experiences are subjective and our knowledge about them is situated means recognizing that different individuals can have differing experiences of the same "objective" situation, and thus different knowledge claims about it. In such cases, searching for truth is a multifaceted endeavor that might not bring one conclusive, consistent statement—especially because our experiences take place against a backdrop of social power relations.

I can show solidarity by not questioning someone's account of her experience, that is, I can grant her credibility over her own experiences. Or I can show solidarity by believing her account of her experience as a fact of what objectively happened, that is, I can grant her epistemic privilege over the question of what happened. I call this latter form of solidarity 'epistemic,' as it amounts to acknowledging someone's privileged epistemic interpretation of a situation.<sup>39</sup> The former is a form of political solidarity: the purpose of this solidarity is to challenge the common disbelief of the testimony of victims and to help victims. Political solidarity allows us to recognize the social power structures which form the backdrop of our knowledge of experience. (cf. Bayertz 1999a) It is a form of solidarity that binds individuals together for a

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**39** | Note that my proposal for epistemic solidarity is different to the notion of epistemic solidarity proposed by Goodin and Spiekermann (2015).

specific project that aims at changing unjust or oppressive structures. This solidarity is oppositional. Sally Scholz argues:

Political solidarity involves the efforts and sacrifices of individuals who commit to a cause with those who suffer. A collective movement that simultaneously serves those in need while it challenges the social structure that created that need, political solidarity is a social movement that unites individuals because of their shared commitment to a cause or goal. (2007: 40)

Different individuals show solidarity for different reasons: because of a commitment to justice, an experience of injustice or maybe because someone close needs help. Importantly, though, they all become part of a group qua a shared interest. By looking at feminist solidarity movements, Scholz (2009) detects three moral relations: the relation to the cause, the relation among members within the solidarity group, and the relation between those within the solidarity group and the society around them. For our example, those opposing the assumed objectivity of the social and legal order in regard to sexualized violence are united by a cause (to end the injustice of sexualized violence); those within the group have certain relations with each other; and they oppose the broader society that holds on to ideas of assumed objectivity in cases of sexualized violence. The cause to unite is triggered by one specific incident involving a specific individual. Therefore, the relations within the group also involve relations with the victim. Ideally, the victim becomes part of the group.

In this way, solidarity is a tool to bring about social change.<sup>40</sup> But in our case, it is also a tool to bring about personal change; it aims to help those harmed and treated unjustly. To stress this moment of synthesis between social change and personal change, I propose to call the form of solidarity we are concerned with here ‘emancipatory solidarity.’ Remember the definition of emancipation given in Chapter 3 according to which it is a social and legal transformation to a more equal and just social structure. Thus, emancipatory solidarity highlights the emancipatory character towards the broader social environment as well as towards the victim.<sup>41</sup> Emancipatory solidarity is doubly emancipatory, for it not only opposes the assumed objective character of the legal and social system, the disbelief that victims have to endure and victim blaming, but it also helps

**40** | For more on solidarity in general, see Bayertz (1999b); Blum (2007); Dean (1996); Durkheim (1973); Fanon (1952, 1963); Harvey (2007); Huntington (1997); Mason (2000); Rorty (1989); Shelby (2005).

**41** | As directed at emancipation, emancipatory solidarity is close to Scholz’s political solidarity, which concerns social change. (2008: 54). However, while Scholz focuses on the transformation of society and the solidarity-group, emancipatory solidarity adds the transformation of the individual with whom the group is in solidarity.

the victim to understand her experiences better. It is thus concerned with the commitment to help those who suffer and towards emancipatory change of the social structure. We can now define emancipatory solidarity in the following way:

Emancipatory Solidarity unites individuals over an interest to end a form of structural injustice and aims at emancipation not just for the individual but for the social structure as a whole.

While epistemic solidarity—the solidarity to which *Definitionsmacht* advocates subscribe—is concerned with the content of our solidarity, emancipatory solidarity is motivated by our emancipatory purpose.<sup>42</sup> Epistemic solidarity transforms subjective experiences into factual statements. What is experienced by one person becomes the truth of experience, guiding the actions of others. This, unfortunately, is not compatible with acknowledging the subjectivity of experiences. And, furthermore, it is not compatible with the assumption that, as social actors, we occupy positions in the ideological social structure and can therefore not automatically access our epistemic privilege but have to gain it. Nevertheless, some social locations provide better starting points for thinking about and questioning specific social relations. However, these social locations only provide the starting point for a long process of critical analysis, a process not everyone engages in and that can fail at every step along the way.<sup>43</sup> We can learn a lot from valuing the experiences of women and gender non-conforming people in cases of sexualized violence, but we can do so without having to give them epistemic privilege qua being members of specific social groups.

Emancipatory solidarity provides a counter-narrative to rape myths and can strengthen the intelligibility of the experiences of victims. But at the same time, it acknowledges that experiences are subjective and that our feelings of harm or our moral feelings of being wronged need not be the result of intentional action. Emancipatory solidarity is compatible with a process of accountability as outlined before. Hence, emancipatory solidarity helps to shift our focus from punishment and blame to accountability. In cases of rape, we often ask what makes an act punishable or what makes someone culpable. In other words, when we engage in sexual activities, the question is “how to act so as not be culpable?” That is, how to ask for consent in a way that protects oneself from being

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**42** | Epistemic solidarity and emancipatory solidarity are not necessarily exclusive; there can be cases in which we have grounds to give both. I am thankful to Christine Bratu for pointing this out.

**43** | See my method of emancipatory amelioration (EA) in Chapter 3.

blamed.<sup>44</sup> Emancipatory solidarity combined with accountability acknowledges that our experiences can genuinely differ, and that not every person who harms someone is therefore culpable or blameworthy; rather, it shifts the focus from punishable and culpable acts to what and how we experience each other. Both, emancipatory solidarity and accountability, zero in on how we interact with each other. It asks us to respect each other as the persons we are, with our social locations, histories, and all our identities. Ideally, this shift makes it possible to ask instead, “what might harm someone as the specific person she is?” and “how can we take responsibility for harm that we have caused?” By making such a shift possible, emancipatory solidarity is not necessarily oppositional to the person who has done the harm, although it is opposed to the general attitude of assumed objectivity and sexist norms. Even though that person acts according to general social norms which perpetuate injustice, he might be unaware that he is acting so. As Jody Dean (1996) argues, solidarity should be able to encounter disagreement and transform it into mutual recognition and

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**44** | This can be illustrated by apps that monitor consent of the persons who want to engage in sexual activity. For example, We-Consent, Good2Go, or SaSie, to name just a few. The apps function as a legal, binding document of consent and intent, with the content being uploaded and then only accessible from police or disciplinary boards if needed. How does it work? We-Consent give the following directions: First, “Partner A uses the front camera to video record his/her own name and then the name of the person with whom they wish to have sexual relations.” Second, “the back camera then records Partner B first stating his/her name and then saying yes to sexual relations with Partner A.” Third, “an encrypted record of the video messages is created and stored for future retrieval through the proper channels (not available directly to user).” And, fourth, “if at a later time either partner needs to signal withdrawal of consent, they can use one of the companion apps (e.g. What-About-No, I’ve-Been-Violated). These apps create encrypted records of a “No” message being communicated.” For the instructions, see <http://we-consent.org/index.php/41-apps-abcd/101-we-consent-app>; accessed: July 21, 2017. Good2Go works without recording. Instead it gives three options from which one needs to be ticked: “No, Thanks”, “Yes, but... we need to talk”, and “I’m Good2Go”. If the first option is chosen, the participants have the option to send the info to their private phones to have evidence of refusal. In case the other options are chosen, it then asks whether the persons engaged are sober, mildly intoxicated, intoxicated but Good2Go, or pretty wasted. In case the last option, “pretty wasted”, is chosen, the app warns the participants that they are not in a state to consent. While all apps point to the educational benefits of the app—after all, to record or chose an option on your phone, some conversation has to take place—they see consent as a contract that guarantees that no one can be blamed or punished for the act that follows. They thus miss the highly complex character of sexual activity, including the possibility of consenting to one act but not another or of withdrawing consent.

responsibility for each other. Emancipatory solidarity in this sense is close to what Dean calls 'reflective solidarity.'

Neither the discussion of solidarity nor accountability are exclusive. Rather, my aim was to counter the assumption that because we, as social agents, are embedded in the sexist ideology, we can neither hold perpetrators accountable nor show solidarity with victims. Instead, I wanted to show a way in which we can acknowledge our embeddedness but at the same time acknowledge the very real experiences of rape and sexualized violence that ask us, as feminists, to take action. Emancipatory solidarity and accountability are two ways in which we can take action and they complement each other.

I have shown that we can understand the issue that arises from taking rape to be part of the sexist ideology with the help of the notion of hermeneutical injustice. I have argued that victims of rape in a sexist ideology are often also victims of hermeneutical injustice, i.e., they are incapable of understanding their own experience adequately and they fail in making their experience intelligible to others. This is due to a clash between the ideological common interpretation of their experience and their vague feeling of being morally wronged. I then raised the following problem. If we assume that we are all part of a sexist ideology, then it is plausible to say that not only is the victim affected by the distorted collective resource and unable to make her experience intelligible, but so is the perpetrator. If that is the case—if the perpetrator acted in a harmful way without being able to understand his act correctly—can we still hold him culpable for the act in question? In response, I have argued that while the victim suffers from systematic hermeneutical injustice, the perpetrator suffers from, what I call, 'systematic hermeneutical misfire'. I have accordingly dealt with questions of responsibility: can we hold the perpetrator culpable or responsible for his acts despite his hermeneutical misfire? And, who is responsible for structural injustice? I have argued that, in some cases of rape, our best bet is to hold the perpetrator accountable but not culpable or morally responsible. This can fruitfully tackle ideological beliefs and result in a learning process. Furthermore, it succeeds in carefully navigating the fine line of holding perpetrators accountable and not confine perpetrators on the grounds of stereotypical assumptions. In other words, holding them accountable cannot be misused for racist intentions. Furthermore, the context of the sexist ideology raises questions for the epistemic privilege that some claim victims of rape (or women and gender non-conforming people in general) have and for the kind of solidarity that we should have with victims. I have focused on what this implies for victims of rape and sexualized violence and brought forward a theory of emancipatory solidarity. This is a way to think about solidarity with victims of rape and sexualized violence that takes seriously their experiences and unjust treatment in sexist ideologies. It is also in line with our embeddedness in the sexist ideology and my presentation of accountability.



## Final Remarks: What to Do?

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My aim in this book has been twofold. First, I sought to give a social theory that systematically maps the phenomenon of rape and explicates the sexist ideology of which rape is a part, and, second, to provide a prescriptive conceptual analysis that tracks the phenomenon of rape adequately but at the same time aims at a conceptual change. To do so, I have proposed the method of emancipatory amelioration (EA) that yields a social theory of rape and a normative cluster model of the concept. More precisely, I have drawn upon the insight that rape is a contested concept and upon the apparatus of social structures to argue that rape is a social practice and, as such, is part of a sexist ideological framework. The wrong of rape is thus not only an individual wrong but lies in the fact that rape as a social practice helps to sustain and reproduce social and structural injustice. I have argued that the normative cluster model tracks adequately the insights of the social theory. I have also argued that these insights have implications for how we hold perpetrators of rape accountable and for how we show our solidarity with its victims.

Let me quickly recap what I have argued for in this book. In order to elucidate what rape is and how it is situated in the social world—including its relation to social injustice—I have argued that we have to understand how the concept of rape is used in everyday contexts. In the first chapter, I provided insight into the use of the concept and its problematic consequences. I have argued that the concept of rape is contested—hardly anyone is in agreement as to how to understand the concept best—and that its dominant working understanding fails to track most forms of rape. In the second chapter, I argued that we can track the various forms of rape with the help of a cluster account. However, this cluster failed to track the gap between the various forms of rape and the dominant working understanding. I have thus proposed that a conceptual analysis of rape has to be based on a social theory of rape and I have specified five desiderata that such a theory has to fulfill. In the third chapter, I began developing a method that can yield a social theory of rape as well as a prescriptive conceptual analysis. This method—the method of emancipatory amelioration (EA)—consists of two steps: first, a social theory

of the phenomenon and critical analysis of the status quo, and, second, the amelioration of the concept. In the fourth chapter, I applied the first step of the method and argued that rape is a social practice and part of a sexist ideological framework and as such contributes to social and structural injustice. In the fifth chapter, I applied the second step of the method of emancipatory amelioration (EA) and developed a normative cluster model of rape grounded in insights from the social theory of the first step. The account I proposed is a cluster model that includes ten properties, each of which has to be realized for an act to be tracked by the concept: sexual activity, violence, means of physical coercion, means of psychological coercion, ability of resistance, lack of consent, capacity to consent, interpersonal relationality, context, gender inequality and heteronormativity. However, according to my proposal, it is left open to which degree each property is realized—thus while some properties are realized in their most extreme way, others can be realized in less extreme ways. The most extreme realization of each property is located at the core of the cluster and the closer an act in all its properties is located at the core, the more definite it is an act of rape. The further away it is located, the more it falls within the gray area that stretches between the act of rape and its neighboring categories, such as domestic abuse, unproblematic sex, etc. Finally, in the sixth chapter, I looked at the implications that understanding rape as part of a sexist ideology has for our treatment of perpetrators and our solidarity with victims of rape. I have argued for holding perpetrators accountable instead of punishing them (at least in most cases of rape) and I have argued for what I have called emancipatory solidarity. In other words, this book not only provides answers to the use of the concept and a rich social theory of the phenomenon as well as a prescriptive conceptual analysis of the concept, but also tackles questions that result from the social embeddedness of the phenomenon.

In closing, let me, first, provide prospects of how to counter rape, and, second, note two limitations of the approach I have pursued in this book. First, locating rape as a social practice within a broader framework of sexist ideology informs our theory insofar as it suggests that in countering the sexist ideology we should focus on education instead of punishment. I now suggest some specific practical tools to counter the prevalence of rape in particular and the sexist ideology in general. (1) If part of the problem of rape is systematic hermeneutical misfire—if some perpetrators fail to make intelligible what they are doing as an act of harm and rape—then we need to aim for an educational process. What is needed to counteract the sexist ideology and its proneness to rape is education about what harms and what (should) count as rape. Education about what harms and about different forms of sexualized violence (including rape) can be done by talking about sex and consent in high schools, colleges, etc. This form of education is not about learning facts but about discussing what it means to engage in intimate contact with another person. The focus

should be on desires, communication, negotiation, and respect. This is also in line with the contestedness of the concept of rape—the concept invites talking and adolescents are eager to talk about it and discuss it. Furthermore, such education should also include training the ability for critical thinking. Individuals who are trained in critical thinking are more likely to question rape myths and other sexist beliefs. And it tackles systematic hermeneutical injustice as well as systematic hermeneutical misfire. Being trained in critical thinking opens ways to listen to our own feelings of being morally wronged and to engage in a discourse about our experiences.

(2) Another way to counteract the sexist ideology and its proneness to rape is to train how to communicate physical and emotional boundaries. Most people do not communicate their boundaries out of fear that the other person will be disappointed or sad. And this is not only true for sexual activities. For example, we often tell our children that they should hug or kiss relatives even when they do not want to. We might say: “Give your grandfather a hug, otherwise he’ll be sad.” Or: “Sit on your aunt’s lap, don’t you love her?” And we start doing this when children are very young and simply cannot communicate verbally whether they want to or not and we continue doing it throughout their childhoods. We, as adults, parents and teachers, also tend to trivialize childrens’ games even if they upset some children. For example, kiss chasey is a game in which boys chase girls and try to kiss them or tickle them. We might think that this is cute, because it is about children playing— but it also teaches boys to ignore the will of girls. (cf. Rodie 2017) Girls in particular are socialized in a way that is counterproductive in this respect. While we teach boys to “play rough”, we teach girls to be nice and gentle. (cf. Fine 2010: Chapter 17-21) This is a dangerous combination. While some feminists suggest that, as women, we should train in self-defence in order to be able to say “no” effectively (cf. Cahill 2001: 198-207), I contend that we should start much earlier to train our abilities to communicate our physical and emotional boundaries. Deanne Carson, a sexuality educator, argues that we can teach children about consent as young as three. She argues that while three-year-old children know very well what they want and how to say “stop”, 10-year-old children know that their bodies are their own, but do not feel able to say “stop” because they do not want to hurt another person’s feelings or learned not to make a fuss. (cf. Carson 2017)

Teaching children consent does not necessarily mean teaching them about sex. Instead, we can teach them to articulate whether they want to be hugged or not and that they might want to be hugged one day but not the next or by one person but not another. Or, we can teach them by communicating our own boundaries, as parents and educators. Schroeder et al. (2017) have collected a few ways in which children as young as one-year-old can learn about consent without having to sit them down for “the talk”: teach children to ask permission before touching someone; teach kids to help others who may be in trouble;

teach kids that “no” and “stop” are important words; never force a child to hug, touch or kiss anybody, for any reason; allow children to talk about their bodies in any way they want, without shame; encourage them to talk about what feels good and what doesn’t; teach kids to stop playing once in a while to check in with one another; build their self-esteem, etc. And the older they get, the more teenagers should be encouraged to talk about sexuality and consent. This is in line with what Pamela Foa (1978) points to about the wrong of rape. It is not so much about rape, but about our sexual activities in general: we are constantly failing to respect each other and each other’s boundaries. Thus, sex education should concentrate on respect and our abilities to communicate our desires as well as our boundaries.

(3) For teenagers, it is especially hard to learn about sex, consent, and desire in ways that are critical to the sexist ideology. Besides learning from parents, doctors, or teachers (and mostly sex education classes do a really bad job here), teenagers learn most of what they know from popular media. This is not to say, as some suggest, that teenagers learn all they know from pornography (cf. Paul 2005), but it is to say that they learn from a wide spectrum of media including but not limited to pornography. Other sources are: films, shows, books, magazines, advertisement, computer games, music videos, social media networks, and so on.<sup>1</sup> Michelle Anderson writes that the “amount of popular media children watch is massive. [...] Today, through multitasking, youth pack in almost eleven hours of media content into the seven and a half hours they spend consuming media each day” and, unsurprisingly, “popular media includes a high level of sexual content.” (2010: 88) In other words, if teenagers spend seven and a half hours consuming media each day, then there simply is not much time left to communicate with others and learn about sex in ways that are critical of the sexist ideology portrayed by media. Thus, an important part of counteracting the sexist ideology and the proneness to rape is about changing the popular media.

So far, in its best way, media mostly “celebrates uncommunicative (almost exclusively heterosexual) intercourse, in which two people do not practice safe sex or discuss their desires and boundaries” (Anderson 2010: 89). In a slightly less ideal way, it portrays sex “as a game or competition” (Kim 2006: 450), and in its least ideal way, it depicts rape scenarios as “normal sex”. (Langton 2009; Wolf 1991: 58) Thus, the best sex teenagers can learn is uncommunicative, unprotected, heterosexual intercourse, the worst is rape. See, for example, Sara’s encounters with Paul in *Orphan Black*. Despite the fact that Sara is a strong and self-confident woman, her sexual encounters with Paul alternate between

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**1** | And they not only learn about sex and gender norms this way, but also about body norms, which exclude disabled or fat bodies, and can lead to body shame and eating disorders.

using sex to distract him from something else or sex laden with fear. And while *Gossip Girl* rightly portrays Chuck again and again as overstepping young girl's sexual boundaries, and being scolded for it by his friends, the overwhelming majority of sexual encounters of all characters happen by surprise in the heat of the moment: uncommunicative, unprotected, heterosexual intercourse. And these are only two shows popular among teenagers. A lot needs to be done to portray more than heterosexual intercourse and to show that communication is an essential part of what makes a sexual encounter satisfying for all involved.

Furthermore, girls especially (but also boys) need to be taught about sexual desires and how experiencing sexual intimacy is about finding out one's own desires and the desires of the other person. This is a thin line, because images of what women desire (and what men desire)—there are hardly any images of what gender non-confirming persons desire—influences what women and men do desire. And even though these desires are false in the sense that they are installed by the sexist ideology, they become real when we adopt them—thus, what we truly desire and what we falsely desire is hard to navigate. If, as a girl, I grow up in a social world in which the sexual objectification of women is portrayed as desirable for both, the woman and her partner, then not only do I think of sexual objectification as a “normal” component of sexual activity, but I might also adopt my own sexual objectification as desirable and satisfying. In Anderson's words: “As a result of massive exposure to popular media, teens tend to ‘internalize the standards’ they are taught: that power for a female derives from her ability to present herself in a sexualized fashion.” (2010: 94) This leads to self-sexualization. But if teenagers are “trained” to desire what is sexist, we face a dilemma in our education attempts. On the one hand, we do want to arrive at a way of having sex that is mutually enjoyable and critical of sexist behavior, but, on the other hand, we want to encourage (especially young) teenagers to do what they desire. But under the sexist ideology, these two can be mutually exclusive. However, a first step is to talk about desires and come to acknowledge that we do not need to follow desires that leave us unsatisfied even though we have adopted them. And a second step is to critically engage with our own desires and to find ways in which to practice them that are neither harmful to another person or ourselves nor reproduce the sexist ideology even further.

Second, let me note two limitations of the normative cluster model that I have pursued in this book. The first limitation concerns my focus on adult relations. I have not considered sexual abuse of children and minors and, furthermore, I have not discussed acts of statutory rape. Both—sexual abuse of children and acts of statutory rape—pose different questions and problems than what I have been concerned with here. For example, sexual abuse of children poses questions of dependency (in stronger terms than between adults, even if the adults occupy different positions of power) and questions of when someone

is informed enough to engage in sexual relations. Acts of statutory rape pose similar questions and problems including a discussion of teenagers engaging in sexual acts in ever-younger ages. However, I am confident that sexual abuse of children and statutory rape can be accounted for either within the normative cluster account of rape or as a neighboring category. While statutory rape might be part of the normative cluster of rape—a branch might need to be grown at the tree accordingly—sexual abuse of children might need its own category that could be structurally similar to the rape category and occupy a neighboring place in the forest close to the rape tree. More research needs to be done to be able to account for both—sexual abuse of children and statutory rape—in adequate and rich ways.

The second limitation concerns my focus on cases, legal definitions, and uses of the term in the United States, the United Kingdom, and Germany. In other words, my focus is solely on so-called Western countries. This is partly because of lack of space and partly because I feel confident discussing rape myths, statistics, word usage, etc. in Western countries but not in others. However, I think that one benefit of the proposed normative cluster account of rape is that it is flexible enough to include other examples and conceptions. More time and energy would be needed to extend the scope of the project. Such an extended analysis should include philosophical and legal studies of countries other than Western countries.<sup>2</sup> And, in consequence of the ongoing “refugee crisis”—and here we should include not only refugees coming to Western countries but the bigger numbers of refugees who seek safety in other non-Western countries—such an extended analysis should include not merely war and genocidal rape, but also rape in detention camps and of refugees in general.<sup>3</sup> (cf. Chonghaile 2015; Farand 2017; Townsend 2017) Nevertheless, I remain confident that my proposed normative cluster account of rape can offer fruitful ways to encompass more cases and aspects.

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**2** | See Baxi (2014) for rape crimes and their silencing effects in India, and Bonthuys (2008) for legal debates in South Africa. Regarding other crimes of sexist ideologies, such as honor killings and human trafficking and prostitution, see Townsend (2011); Baxi et al. (2006); Romo (2015). Finally, see Westmarland and Gangoli (2011) for international approaches to rape legislation.

**3** | See Askin (2003) for an international approach to rape crimes in war.

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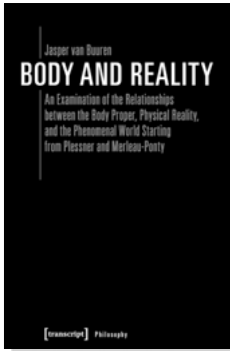
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