

Introduction

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 violence¹. 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

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.² 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.³ 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

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.⁴ 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

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.⁵ 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.

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.⁶ Notable exceptions are Cahill (2001, 2000), Reitan (2001), and Burgess-Jackson (1995, 1999, 2000), all of whom have

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 victims⁷ 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

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 persons⁸ 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.⁹

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

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 spectrum¹⁰ 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

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.¹¹ (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.

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]lso 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.