**ORIGINAL ARTICLE**

# Problems of conceptual amelioration: The question of rape myths

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## 1 | INTRODUCTION

The concept of *rape* has evolved significantly over the past few decades both in law and common usage.[1] But, despite decades of work to dispel rape myths, they persist and interfere with the proper application of the concept both in social and legal interactions. For example, jurors who accept rape myths are more likely to find the defendant not guilty in rape case trials, and police officers are more likely to stop investigations into rape cases where they accept rape myths as well. In 2013, the BPP School of Health and Professional Development issued an investigation into whether jurors on rape cases are influenced by rape myths, and more than half of the studies conducted fully supported the hypothesis that juror judgments are affected by rape myths (Burrowes 2013, 3–4). Hence, jurors likely judge a case on the basis of prior schemas instead of evidence or testimony; schemas such as rape myths.[2] Similar results were found with respect to police officers. Research conducted by Amy Dellinger Page (2011) found that 22.7% of police officers agreed or strongly agreed with the statement "Any victim can resist a rapist if he or she really wants to." Police officers who accept this myth are unlikely to proceed with the investigation or process rape charges. Furthermore, Schwartz (2010) found that many police officers thought a high percentage of rape reports are false, leading them to not investigate at all. 27.3% of 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.[3] In other words, many officers are either committed to the view that rape victims must have on some subconscious level agreed with being raped because otherwise they could have resisted and succeeded or that reports of rape are outright false to begin with. Amy Dellinger Page and Schwartz's studies are in line with a 2010 investigation of FBI data in the *Baltimore Sun* that found that more than 30% of investigated cases over the last 40 years were deemed unfounded and 40% of emergency calls about rape in Baltimore were not investigated at all (Fenton 2010; Harding 2015). And even when an investigation takes place, there is still only a 40% chance that the accused rapist is actually convicted.[4]

The law, both in the courtroom and at the hands of police officers, is composed from the interaction between legal definitions and the practical interpretations of those definitions by individuals who work in the criminal justice system. Thus, biases, false conceptions, and distorted background schemas (like rape myths) can sneak into legal outcomes. Legal outcomes are at least partly determined by the interpretation of individuals. Clearly, this is a problem for cases of rape. And, considering the statistics of the prevalence of rape and the devastating high number of acquittals, it is a seriously harmful problem that needs urgent attention.

In this paper, I use the example of rape myths to argue that certain real-life phenomena compel us to adjust our philosophical methods such that we explicitly endorse feminist commitments and strive for diverse democratic practices in our philosophical thinking. First, I consider three examples that show how rape myths and other problematic background schemas can distort our dominant working understanding of rape. All three examples are cases of grave and manifold injustices to the victims. I suggest that a revisionary project of conceptual amelioration can help counter injustices like these. In a second step, I argue that problematic schemas not only distort our working understanding or the accurate application of an existing concept, but can furthermore interfere with our philosophical analyses—even in cases of amelioration. As a solution, taking clues from theories of epistemologies of ignorance, I propose a more diverse and democratic method for engaging in conceptual amelioration. I proceed as follows: first, I illustrate how rape myths distort our dominant working understanding of rape with the help of Jenkins' argument that rape myths constitute hermeneutical injustices (Section 2); next, I introduce three examples that illustrate how our dominant working understanding can be distorted by rape myths and that this has deeply problematic consequences for victims of rape (Section 3); third, I consider conceptual amelioration as a fruitful way of countering these problematic cases (Section 4); finally, I argue that rape myths also raise important questions for our philosophical analyses in general, and I propose specific democratic practices for our philosophical endeavor of conceptual amelioration (Section 5).

I should note further, that women are not the only victims of rape; rather, transgender persons, persons who live outside the binary gender categories, and persons who live outside the dominant gender norms are also targeted by sexual violence. The reason why I focus on rape myths that concern women is that more research is available for these myths and their impact on violence against women. It should be our future task to provide research and explication also for rape myths that concern transgender persons, persons who live outside the binary gender categories, and persons who live outside the dominant gender norms. At this particular moment, I feel not qualified enough to say anything specific about how rape myths affect other social groups than women; yet, I am convinced that most of what I say in the following can also be applied to the relation between rape myths and sexual violence against transgender persons, persons who live outside the binary gender categories, and persons who live outside the dominant gender norms.

## 2 | RAPE MYTHS AS DISTORTED OPERATIVE CONCEPTS

Rape myths are false or distorted schemas of rape. Although rape myths vary depending on the context, 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). I suggest thinking of rape myths as schemas that legitimize male entitlement to another person's body.[5] Rape myths do this either by implying that the act in question was not an act of rape because it was implicitly wanted by the woman, and was therefore consensual ("she asked for it"), or by making it into something else ("it wasn't really rape").

Consider the following list of exemplary myths, which is not meant to be exhaustive but contains some of the most common and pernicious myths prevalent in Western societies:

A She asked for it, because she behaved or was dressed in a "provocative" or flirting manner or lived a "provocative lifestyle."

B It was not really rape, because rape always involves overwhelming physical force.

C It was not really rape, because only strangers rape.

Rape myths reflect societal attitudes. Research has shown that rape myths are widely accepted in more or less all social groups and that people rely on them in their understanding of what constitutes rape (cf. Edwards et al 2011, 761). Rape myths are thus related to the proclivity of sexual violence (cf. Desai et al 2008; Edwards et al 2011; Loh et al 2005; Lonsway and Fitzgerald 1994; Payne et al 1999). For example, if person P accepts rape myth (A), then, they are more likely to think that it is ok to force intercourse on someone dressed in a provocative way. This is doubly problematic: P is more likely to resort to violence against women to gain sexual access due to their acceptance of rape myths *and* P likely fails to understand their act for what it is, namely rape. Hence, rape myths have severe implications; they make it more likely that rape occurs and less likely that the perpetrator understands their action correctly. Furthermore, rape myths can render experiences of sexual violence unintelligible for victims. Peterson and Muehlenhard, whose research focuses on women who had been the victim of rape and their acceptance of rape myths, found that those women who accepted rape myths and had been raped in ways similar to the myths they accepted were unwilling to apply the term "rape" to their experience (Muehlenhard and Peterson 2004). For example, if person V accepts myth (B), and if person V has been raped by an acquaintance without aggravated physical violence, then, V will not only be hesitant to term their experience "rape," but will also likely fail to understand their experience as an experience of rape.

Katharine Jenkins (2016a) argues that rape myths constitute hermeneutical injustices. The idea is that the prevalence of rape myths hampers or makes it impossible for rape victims to apply the term "rape" to their experience and, thus, they fail to understand a significant experience of their own lives. This example of hermeneutical injustice is different to the examples that Fricker brings forward when she coined the notion of epistemic injustice. According to Fricker, hermeneutical injustice is "the injustice of having some significant area of one's social experience obscured from collective understanding owing to hermeneutical marginalization" (2007, 158). And her paradigmatic and now well-known example concerns the experience of sexual harassment *before* there existed a term that victims of said harassment could apply to their experience. In this paradigmatic case, the victim fails to understand a significant aspect of her social experience because the concept of *sexual harassment* did not exist due to the social organization of power, which prevented women from contributing to the hermeneutical resources at hand. Jenkins proposes extending the domain of hermeneutical injustice to cases in which an adequate concept exists, but the victims nevertheless fail to recognize their experience due to existing working understandings which distort the existing concept. To argue for this claim, she uses Haslanger's distinction between manifest and operative concepts.

Sally Haslanger (2012) argues that concepts help us draw distinctions between things. That is, we group certain things under one concept in order to distinguish between different things in the world. Furthermore, she argues that even if we already have a concept that we can use to group or distinguish things, we might not explicitly apply the concept correctly in each specific case. We do not always make sure that each thing we group under the concept actually meets the conditions for applying the concept; rather, we often rely on assumptions which help us link easily accessible criteria with the conditions for membership of the concept (Haslanger 2012, 387–8). In these cases, we think we are guided by a concept when we actually are not. Haslanger calls the concept we *think* we are guided

by the "manifest concept" and the concept that can be extrapolated from our actual usage in a given context the "operative concept" (2012, 388).

Jenkins interprets the explicit concept (the manifest one) and the implicit concept (the operative one) as such: the manifest concept represents our legal definitions and the operative concept reflects our actual usage in a given community, in this case, one distorted by rape myths.[6] Hence, while a manifest concept of rape exists in the form of a legal definition, many victims hold operative concepts which are distorted by rape myths and are thus much narrower than the legal definition. Jenkins writes,

> [g]iven that myths about rape […] are widely accepted and can be discerned in widespread practices (such as the practice of taking a dismissive attitude towards victims of these forms of violence), it seems that many of the current operative concepts do incorporate distorting factors stemming from myths. At the same time, the manifest concepts, though they are well-suited to capturing experiences of violence, exist in the realm of policy and law but will not always be readily available in everyday discourse. (Jenkins 2016a, 6)

The problem, therefore, is that some individuals hold distorted operative concepts which represent a too narrow account of rape, such that many instances of rape are excluded from the definition and cannot be accounted for. Hence, a victim of rape might fail to understand her own experience due to having a faulty operative concept of rape. In other words, Jenkins points at a mismatch between the formal, legal definition and a given practice in a community. Obviously, it is not only victims of rape who hold such faulty operative concepts. Since rape myths are known to be prevalent and widespread, *many* people hold distorted operative concepts of rape that do not match the legal definition.[7]

In line with Jenkins analysis, let us say that the manifest concept is the so-called legal definition—the understanding that is institutionally set up and documented—while the operative concept can be extrapolated from the actual usage in a given community. If the practices in said community do not match the legal definition, then, a gap exists between the operative concept and the manifest concept. To illustrate this, consider the following example. Assume that a 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 the biological fact that my half-eaten apple will quickly start rotting and decompose into the earth—literally vanishing—I do not take my act of disposal to be an act of littering. Furthermore, 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). While this mismatch between manifest and operative concepts is widespread and sometimes relatively harmless, I focus here exclusively on the problems of such a mismatch for legal procedures of rape cases. In a first step, I attempt to widen Jenkins' analysis such that it can be used for understanding the problematic effects that the gap between operative and manifest concepts have on victims of rape both in cases in which victims rely on distorted working understandings as well as cases in which others do so. I am particularly interested in cases, in which such distortion hampers with legal proceedings such as rape trials and police investigations.

## 3 | THREE CASES

Let us now turn back to the concept of *rape*. The conceptual gap between the manifest and the operative concept—that is, between the formal definition and the actual usage in a given community[8]—can

have deeply problematic consequences for victims of rape. This is true when the mismatch is of the following nature: the dominant operative concept, extrapolated from the usage in a given community, is affected by so-called rape myths and hence, does not adequately track the legal definition. In what follows, I present three examples that illustrate the problematic consequences that can arise from such a mismatch.

## 3.1 | Jenkins' case

According to Jenkins (2016a), the prevalence of rape myths makes it likely that victims of rape are also affected and that their working understanding of rape is distorted. This being the case makes it at best harder and at worst impossible for them to render their experience sufficiently intelligible and to articulate it adequately to others. Thus, victims of rape are sometimes—due to rape myths—lacking the necessary conceptual resources to understand what happened to them. This argument is supported by empirical research showing the deeply problematic relation between rape myths and our ability to adequately understand our lived experiences. In a 2004 study, Peterson and Muehlenhard interviewed a group of women who had been raped in ways that matched the current legal definitions of rape. They found that some of the women were victims of "unacknowledged rape"; they were unwilling to apply the term "rape" to what happened to them. Furthermore, Peterson and Muehlenhard found that the women who were unwilling to apply the accurate term to their experience were also holding rape myths and had been raped in ways that matched the myths they accepted. For example, they found that women who accepted the myths that rape always involves overwhelming physical force (rape myth (B) above) and that victims always physically resist their attacker were less likely to understand their experience of rape *as* rape if they were raped without physical force and had not physically resisted their attacker. The conclusion that Jenkins correctly draws is that "one effect of rape myths is to prevent some victims of rape from conceptualising their experience *as* one of rape" (2016a, 3).

While the consequences that Jenkins discusses are first and foremost epistemic consequences—the failure of understanding one's experience and the failure to articulate said experience adequately—they nevertheless have other practical consequences, some of which arise from the epistemic failings. For example, victims of rape who fail to understand their experience adequately or who fail to articulate their experiences adequately are less likely to seek professional help, to report the incident to the police or other institutions, to protest the injustice that stems from these epistemic failures. Jenkins draws our attention to this last consequence and writes that hermeneutical injustice "pre-emptively silences protests against other injustices" (2016, 11); being unable to understand and articulate our experiences makes it near impossible to protest the moral injury we suffered.

## 3.2 | The Kirkland 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. 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), yet, 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 contrary, reported waking 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. Importantly, they did not doubt the testimony of the victim being woken up by penetration, *they doubted that this constituted rape*. According to Kirkland, this jury decision was based on his own intervention when another juror, juror Number Four, expressed doubt against the decision. It was this intervention that convinced the rest of the jury, including juror Number Four, that waking up to being penetrated is not necessarily rape. This is how Kirkland 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?"
> She stares down at her notepad. "She said … she felt the penetration."
>
> (Kirkland 2011, 208)

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 under New York State law, rape means non-consensual sexual intercourse, and that the alleged victim could not have given consent if she was sleeping while the penetration started as is exactly what *She said she woke up to being penetrated* implies.[9] If the jury believes that the victim was telling the truth when she reported waking up to being penetrated, and in this case they did believe her, then, according to New York State law, they should have judged the incident to be an act of rape, because a sleeping person cannot consent to having sex (cf. Harding 2015, 115–17). The working understanding of rape at work here—pointedly described by Juror Kirkland—either fails to include nonconsensual sex at all or fails to understand that passivity (to the point of unconsciousness) does not equal consent and is therewith not in line with the legal definition. Thus, it does not match the New York State law of rape.

Using the distinction between operative and manifest concepts, we can say that the New York State law of rape as nonconsensual sexual intercourse is the manifest concept of rape; it is the institutionalized, legal definition of rape in this context. On the contrary, Juror Kirkland's operative concept of rape is distorted; it fails to understand the penetration of a sleeping person as rape.[10] Not only does this mismatch between Kirkland's operative concept and the legal manifest concept of rape result in Kirkland's disrespectful attitude toward juror Number Four, but it also wrongly leads to the acquittal of Moreno and Mata and, thus, constitutes an injustice itself; the victim is denied institutional recognition of her moral and physical injury and her status as a victim; as a consequence, she is denied justice, compensation, restoration, and other help reserved for victims of rape and abuse.

## 3.3 | The Lynnwood case

On a Monday morning in August 2008, two Lynnwood police detectives—Sgt. Jeffrey Mason and Jerry Rittgarn—are called to a rape scene.[11] The victim, Marie, who had 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 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 (cf. Armstrong and Miller 2015).

Sgt. Jeffrey Mason and Jerry Rittgarn, however, doubted Marie's testimony despite existing evidence collaborating it. Why? While all reasons are purely speculative, it is likely that Mason and Rittgarn held certain schemas that prevented them from believing Marie. And, most likely, those schemas had to do with the overall rape as well as their stereotypical assumptions about Marie. For example, they might have held a rape myth such as the myth that "She asked for it, because she behaved or was dressed in a 'provocative' or flirting manner or lived a 'provocative lifestyle'" (rape myth (A) above). They might have believed that rape victims are supposed to be young, pretty, innocent, and are supposed to behave in a traumatized and hysterical way after being raped. And that, otherwise, the woman asked for it and, hence, what happened either was not rape or the report is a straightforward lie (which is exactly what Mason and Rittgarn believed and accused Marie of). Such false or distorted assumptions about rape victims often lead to victim blaming. Victim blaming refers to the attitude that women who behave flirtatiously, who are sexually teasing, or who are dressed provocatively are actually themselves to blame for being raped. This attitude often works hand in hand with rape myths and, thus, making either conclusion deeply problematic for the victim; either the woman had asked for it and what happened was not rape or the woman had provoked the rape herself and wanted it such that, again, what happened was not rape.[12] Whatever the exact schemas that Mason and Rittgarn believed in, it is likely that an interaction of false schemas about rape and false schemas about rape victim's behavior led to their disbelief in Marie's testimony.

One way to explain this is with the help of ideal victim theory. According to this legal theory, an ideal victim is a victim who is afforded the status of victimhood by most (if not all) due to the unavoidable circumstances in which the victim found herself. Hence, a person who could have avoided the attack (e.g., by not going to the location at which the attack occurred) or could have resisted the attack through their own behavior (e.g., by being physically stronger) is not an ideal victim, while a person who is attacked in unavoidable circumstances and, hence, could not have avoided the attack by their own doing is an ideal victim (cf. Christie 1986). While an ideal victim has a strong legal case for winning in court, the nonideal victim does not. Yet, this is not the case when it comes to rape. In rape cases, the threshold for counting as an ideal victim is impossibly high. The ideal victim is one who resists the attacker to the point of her own death, avoids any places where an attack could occur (this alone is impossible taking into consideration that most rapes occur in the victim's home or other places commonly regarded as safe), has no history of sexual activities, behaves and dresses appropriately (e.g., does not drink alcohol or takes other substances), and does not know the attacker (cf. Gotell 2009; Randall 2010). Hence, many people accept an incredibly narrow description of what a rape victim is supposedly like. They believe, for example, that victims are physically hurt, without sexual experience, appropriately dressed, and so on, or as Catherine MacKinnon argues, an ideal victim in a rape case is dead. Marie was not dead. She showed some physical marks of being tied down, but was not severely beaten, she was also not sexually inexperienced, and did not behave traumatized.

According to these false schemas, Marie simply did not appear as a rape victim.[13] The detectives' beliefs led them to distrust her despite the evidence found in her home and on her body: the rear sliding glass door was unlocked and slightly ajar in Marie's apartment, the railing of the back porch was covered with dirt, except for one part (as if someone recently climbed over), a knife from Marie's kitchen was found next to the bed, along with a shoestring on the bed, and a second shoestring tied to a pair of underwear (used for blindfolding and gagging Marie) in the apartment. The detectives sent Marie to the hospital for sexual assault examination. The medical report noted abrasions to Marie's wrists and vagina. However, the report also stated that Marie was in no acute distress. Despite all available

evidence, the detectives decided not to believe Marie, and ultimately, dismissed the case.[14] This false judgment in regard to Marie is not uncommon. Members of the police force commonly hold assumptions about what rape victims supposedly look like and how they behave (cf. Allison and Wrightsman 1993, Chapter 6; Harding 2015, Chapter 5). Such false assumptions are indeed so common that, by 2008, specialists had developed protocols to deal with the challenges often brought by rape cases: "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). Yet, despite the evidence and the protocols, Mason's and Rittgarn's working understanding of rape—their operative concept according to Jenkins' analysis—was distorted by some interplay of rape myths and other false schemas.

However, according to Marie's testimony, the overall evidence and, finally, the conclusion reached many years later by two other police detectives, Marie's attacker engaged in sexual intercourse 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 Washington State law. According to the manifest concept, Marie was raped. However, according to Mason and Rittgarn, she was not. This had serious consequences for Marie; not only was she suffering from the aftermath of the violence, the permanent threat of another break-in, the misrecognition by police, family and friends, the lack of support and help, the distrust even by those close to her, but she was also charged with filing a false report.

These three examples show that (a) our working understandings can be distorted by rape myths, (b) our operative concepts and the legal definitions do not necessarily match, and that (c) we might believe that the concept we apply is in line with the legal definition, when in fact it is not. First, in Jenkins' case the working understandings of victims of rape are distorted by rape myths such that they fail to adequately understand their own significant experience. Furthermore, by holding such distorted working understandings of rape, their understandings are not in line with the legal definition in their respective contexts; in fact, despite the legal definition being able to describe what happens to them as an instance of rape, they fail to view their own experience in such terms. And, finally, they are unaware that their own working understanding is not in line with the legal definition; more so, they think that they do not have a legal claim because they fail to understand the mismatch between the legal definition and their distorted working understanding. Second, in the Kirkland case, jury member Kirkland's working understanding of rape was distorted by rape myths (for example, (B) it was not really rape, because rape always involves overwhelming physical force, or a combination of some myths), such that it failed to match the legal definition. Furthermore, Kirkland was convinced that he did his job well as a juror; that is, he was convinced that his judgment of the case was based on the law at hand. Third, in the Lynnwood case, the police detectives' working understanding was distorted by rape myths (for example, (A) She asked for it, because she behaved in a provocative or flirting manner or lived a provocative lifestyle, or some other myths related to the victim's behavior as being unsuitable for a rape victim). Furthermore, their working understanding and the legal definition failed to match and, as police officers following the law, they failed to understand this mismatch. Many individuals' understandings of rape are distorted by rape myths, even by those who are supposed to represent the legal or institutional authority (e.g., police officers, jurors, etc.), concepts might be applied that do not match the legal definition. One way to account for this is by saying that people sometimes think they are applying the formal definition, when in fact they are not. That is, the concept they apply is not the actual legal one, which in fact would capture the phenomena at hand.

One could object that what delivers the mismatch between operative and manifest concept and the problematic consequence in all three cases is not in fact a distorted operative concept but problematic schemas (for example, rape myths) that keep us from applying either one. In such cases, the operative and manifest concepts might very well be in line with each other *and* they might both be adequate in so far that they bring justice to victims of rape—and yet, one may still fail to apply the concept of rape at all because of interfering problematic schemas. The objection would go something like this: Whether or not Officers Mason and Rittgarn, Juror Kirkland, and the victims in the first example, are in fact holding distorted operative concepts is purely speculative. It is equally likely that their working understanding of rape is sufficiently accurate, but that they fail to use these concepts due to intervening schemas. Consider the following analogy. Charlie Crerar (2016) examines the impact of taboos on our hermeneutical resources. He argues that, in some cases, we are prevented from understanding an experience adequately because of the negative hermeneutical impact of taboos. Such taboos render us incapable of applying the existing adequate concept. His main example is menstruation: open discussion of menstruation is discouraged and, thus, the menstruating subject comes to consider the experience as something shameful, therefore, failing to understand it accurately despite the existing adequate concept.[15] Taboos render certain topics inappropriate for discussion and "elicit an adverse reaction" (Crerar 2016, 199) when brought up. Thus, menstruation is an experience that cannot be accurately understood by those affected by it despite the existence of an adequate concept for it. Here, I am interested in the case where we already have an adequate (operative and manifest) concept, but the application of that concept is blocked—not because of taboos but due to false or distorted background beliefs.[16] Background beliefs are roughly those mental states that allow a person P to think X to be the case with or without adequate empirical evidence for X. While we often have beliefs about things that are not essential for our understanding of the concept we employ, such as the belief that swans are white or ravens are black, some beliefs *can* affect our understanding of the concept by blocking our correct application of it. In these cases, beliefs can limit our application of the concept. This occurs for example when background beliefs of what rape victims are supposed to look like and how they are supposed to behave interfere with our concept of rape.[17] While I think that there are good reasons to think that rape myths are prevalent and many people hold them in ways that distort their operative concept of rape, I cannot prove this to be the case. Yet, I think that for the argument to follow, it is beside the point whether our operative and manifest concepts fail to match due to rape myths and other false schemas or whether we fail to apply our otherwise adequate concept due to the existence of rape myths and other false schemas. In either case, we are confronted with problematic consequences for victims of rape and deep injustices, such that our feminist commitments demand action, like educating people about rape myths or briefing juries about the respective legal definitions before trial.

## 4 | CONCEPTUAL AMELIORATION AND ITS PROBLEMS

The manifest concept—that is, the legal definition of rape here—is not necessarily better suited to capture the concept of rape more adequately. It is not always the case that our legal definitions provide just outcomes for victims; when they do, it is only because the legal definitions have been modified by the historical struggles of feminist movements. Often, the working understandings of rape among feminists are more adequate to the lived experience of rape than the actual legal definitions as can be seen by historical examples (e.g., the struggle against the marital rape exemption, the struggle against *mens rea*, the struggle against force as an adequate component of any legal definition of rape, and so on). In this case, we are contrasting a minority working understanding with the manifest concept. In fact, Haslanger considers three possible solutions to cases of problematic mismatch between operative

and manifest concepts that cry out for further reflection and possibly for change. First, cases in which our operative concept fails to match the more progressive manifest concept (as in the three examples above). The solution according to Haslanger is: "Bring our practice in line with the manifest concept" (2012, 390). Second, cases in which our manifest concept fails to match our more progressive operative concept (as in the historical examples briefly considered above). Here, the solution can either be: "Find a new manifest concept that better captures our practice" or: "Modify our understanding of the manifest concept […] to accord with our practice" (2012, 390); that is, the solution can either give up on the existing manifest concept and find a new one or, if possible, can modify the already existing manifest concept. Hence, both of these mismatches give rise to reflection upon which concept is the more progressive or more adequate one and suggest to change the status quo. But there is a third possibility in which neither the dominant working understanding nor the legal manifestation of the term capture adequately the social experiences of some people. Considering the prevalence of rape myths—despite the existence of more adequate minority working understandings as, for example, brought forward by feminists and rape crisis center volunteers—the *dominant* operative concept of rape is often distorted or false. However, by impacting our dominant working understanding, rape myths also affect legal definitions (and vice versa). Thus, in cases where neither the manifest concept nor the dominant working understanding produce just outcomes for victims, we face a problem.

Remember, Jenkins argues that rape myths have the problematic effect to produce hermeneutical injustices for victims of rape; they can neither understand their significant experience adequately nor articulate it to others due to the distorted working understanding of rape. This is an even greater problem if both operative concept and manifest concept are equally distorted by rape myths or are otherwise inaccurate.[18] In these cases, victims of rape have an even harder time to understand and articulate their experiences adequately, and thus, suffer from hermeneutical injustice. Furthermore, it is likely that they also suffer from testimonial injustice—both in their social as well as their legal interactions—should they come to understand and choose to talk about their experience. Testimonial injustice is the injustice that happens to us if we are granted less credibility than is reasonable. Victims of rape are granted less credibility when talking about their experience; particularly so, if the existing and false rape myths that play a role in the deficit of credibility are backed by laws and regulations. In such a context, it will also be harder for diverting voices, such as feminist voices, to be heard and to correct the existing and dominant operative and manifest concepts. In fact, it took centuries for women rights activists to change the law on marital rape and we are still facing its remnants in the form of particular rape myths today.

Contexts in which neither the manifest nor the dominant working understanding is accurate, victims of rape face manifold injustices; legally, socially, epistemically, and so forth. Fortunately, in these cases, we can turn to Haslanger's work on conceptual amelioration for a solution. In a different paper, Jenkins argues that conceptual amelioration is a fruitful project to arrive at a specific concept "that a particular group should aim to get people to use, given a particular set of goals that the group holds" (2016b, 395). And, furthermore, the ameliorated concept can be revisionary, which is exactly what we need here: a target concept that does not comply with intuitions distorted by rape myths. I consider this strategy in detail in the next section.

Haslanger argues for conceptual amelioration in cases with the following conditions: (a) speakers are confused in their very intuitions of the concept under consideration, (b) speakers are also confused in their language use of the correlating terms, and (c) how one understands these concepts has implications for the just treatment of those described (or not described) by the concept in question (Haslanger 2012, Chapter 14). All of these are in place with regard to the concept of rape and its distortion from rape myths. As we have seen, speakers are confused in their intuitions of the concept of rape; so much so, that they think they apply the legally manifested definition when in fact they are not.

Speakers are also often confused in their language use of the correlating terms; as, for example, with rape victim, but also with sexual violence, consent, and other related terms. And, how one understands these concepts has implications for the just treatment of victims of rape. I gave three examples that heartbreakingly showed just these problematic implications. Thus, rape is a good target for a project of conceptual amelioration. Conceptual amelioration starts by asking: What do we want the concept of rape to mean in light of goals guiding the analysis? Amelioration is guided by the question of what we need the concept for and which concept would do the work best regarding our particular aims; it is a kind of *normative* and *pragmatic* conceptual analysis. It is pragmatic because it considers which concept could do the work best, for example, which concept of rape treats victims of rape justly. And it is normative because it is directed at a legitimate purpose. Thus, we can schematize the project of conceptual amelioration in the following way:

(A) A conceptual analysis is ameliorative if it satisfies the following two conditions:

1. Normative Condition: it is directed at a legitimate purpose;
2. Pragmatic Condition: it pursues the question of which concept could do the work best in regard to the given purpose.[19]

The normative condition states that amelioration is conceptual analysis directed at a specific goal or, in Haslanger's words, by "legitimate purposes" (2012, 366). What are these specific goals? What makes our purposes legitimate? For now, I have assumed that our feminist commitments are *legitimate* purposes. Haslanger does not in fact spell out which purposes are legitimate and which are not. However, her own examples are guided by a particular impetus: a commitment to feminism and anti-racism; or, more generally, to justice. We can gain more insight into this question by looking at the specific cases where she advocates ameliorative analysis, that is, *race* and *gender*. For example, Haslanger's proposed analysis of the concept *woman* serves the purpose of acknowledging and fighting the oppression of women (Haslanger 2012, 226–7). Thus, it is not far-fetched to argue that conceptual amelioration in the case of rape is in line with Haslanger's original intentions. First, we need to modify our concept of rape because of false intuitions and problematic usage (distorted by rape myths), and second, how we understand the concept of rape has implications for the just treatment of rape victim. In fact, the need for a new or modified concept first arises because of the unjust consequences produced by the distorted working understanding and manifest concept due to rape myths.

Let us not be too quick to think that all our problems are solved for now. Unfortunately, rape myths (or other problematic schemas) can not only distort our concepts or our concept application of existing and adequate concepts, but can also distort our ameliorative process. In the process of conceptual amelioration, we either assume a standpoint outside of the conceptual and terminological confusions—and it is far from clear how we can actually have this standpoint—or we use our particular embeddedness (as victim, friend, or rape crisis center volunteer) to gain better access to knowledge about the phenomenon in question—and it is not quite clear how we can make sure that we are not ourselves affected by rape myths. I now turn to discuss each problem respectively and, finally, sketch a solution that makes use of democratic knowledge practices.

## 5 | DEMOCRATIC PRACTICES OF AMELIORATION

Conceptual amelioration is a valuable tool for confronting the problem of distorted concepts. Unfortunately, conceptual amelioration in the case of rape faces the following problem: rape myths do

not merely distort our concepts but can also distort our ameliorative process. After all, every process of conceptual amelioration is done by particular individuals in particular social positions. At least in feminist epistemology, it is by now standard to claim that individual agents, including philosophers, are socially situated. What we can know and how we can know what we know reflects the social position and the perspective of the particular knower. This has consequences for our social interaction and our knowledge practices; what we know and how we interact with others and the world is influenced by many factors, including our schemas and background beliefs. It is in virtue of our schemas and background beliefs that we form beliefs about a phenomenon, for example, my belief that I am a good philosopher is in virtue of my background belief that women and men do equally well in philosophy. As I argued above, sometimes our schemas and background beliefs, for example in the form of rape myths, can distort our concepts. Furthermore, I have shown that our background beliefs can interfere with our operative concepts or our concept application, such that we fail to apply an existing adequate concept. And if this is the case, it is not too far-fetched to assume that we cannot position ourselves outside of the social world and in a god-like manner come to the process of conceptual amelioration with a neutral and objective standpoint that prevents us from making any errors. In fact, as many have shown, it is precisely the assumption of such a neutral standpoint that is most at risk to being distorted and biased. But if it is correct that we cannot leave our social embeddedness behind, it seems preposterous to think that we are not biased and our process of conceptual amelioration is not distorted by our background schemas.

Hence, there are far bigger problems ahead. Our schemas and background beliefs may not only distort our concepts, but also our engagement with a project of conceptual amelioration. In fact, it is not at all clear that we necessarily succeed in our intention to improve concepts as we engage in conceptual amelioration. On the one hand, we can simply fail to achieve what we are intending to achieve; we could aim at a more just concept but end up with a concept that reproduces injustices. On the other hand, because our knowledge practices are shaped by our schemas and background beliefs, our project of amelioration can be affected by false or distorted schemas and background beliefs. Let me tackle each problem respectively. First, according to Haslanger, a critical project such as amelioration must be judged by its "practical pay-off" (Haslanger 2012, 26). Hence, while it might very well be the case that we fail in our well-meant intentions (after all, we are only human), we need to judge the success of conceptual amelioration according to whether the outcome is emancipatory or not. And if we failed, then we have to start from the beginning. The project of amelioration that Haslanger proposes, as we have seen, has two decisive moments: it is necessarily *normative* as well as *pragmatic*. We could now say that it is in fact doubly pragmatic; it pursues the question of which concept could do the work best in regard to the given purpose *and* it judges the benefit of the modified concept according to its outcome. Hence, we can know only retrospective whether we have succeeded in bringing about a more just (and more feminist and anti-racist) concept. The outcome of our endeavor is judged in practice; we actually have to look at whether another Marie is treated more justly and whether more rape victims are well capable of understanding their experiences and articulate their experiences to others. While it might not be guaranteed from the noble task of engaging in conceptual amelioration that we succeed, the test for whether we do or not is already implied in the method.

Second, what happens when we fail to ameliorate the concept—making it better—in question because of interfering false beliefs or distorted schemas? Say I believe that global warming is primarily an issue of methane emission and, furthermore, that most of said emission is the result of cows' flatulence.[20] Hence, I propose to ameliorate the concept of global warming in such a way that it allows us to account for this specific factor. Instead of understanding global warming as it is commonly understood ("Global warming is a long-term rise in the average temperature of the Earth's climate system […]. The term commonly refers to the mainly human-caused observed warming since pre-industrial times

and its projected continuation […]" (Wikipedia)), I propose understanding it as *a long-term rise in the average temperature of the Earth's climate system due to cow-caused observed warming*. While my intentions are emancipatory in the sense that I advocate for an ameliorated concept to direct our attention to specific ways of countering global warming—by reducing the number of cows on the planet or by inventing food that results in cows passing less wind—my amelioration fails due to false interfering background beliefs. Hence, successful amelioration is at least partly dependent on the accuracy of our background beliefs. Of course, we could argue that this problem should be treated similarly to the first problem of failed intentions. After all, in my amelioration of global warming, I *do* fail in my intentions to raise awareness of the real causes of global warming, and thus, in my contribution to ending it. And it is without question that any project of amelioration needs to be judged by its practical pay-off. However, I contend that the interference of false background beliefs or distorted schemas within conceptual amelioration should be considered separately and can teach us a valuable lesson about our philosophical analyses.

I claimed that what we can know and how we can know what we know depends *inter alia* on our background beliefs and schemas. However, the background beliefs we form depend on our social position, our social situation, our social role, and our specific relations to others. Background beliefs mirror at least to some extent our social situatedness. Thus, the specific background beliefs that interfere with our projects of amelioration depend upon our particular situatedness. We can neither get rid of our social embeddedness nor guarantee that we are not affected by false or distorting schemas, but I suggest that we can use our embeddedness in a fruitful and productive way. We can counteract the impact of said beliefs and schemas on our conceptual amelioration by introducing more democratic conceptual practices.[21] When I speak of democratic practices here, I do not mean to imply that we should vote on which understanding is better or which concept is more progressive or that we should elect a group of expert leaders that do the amelioration for us. Instead, what I have in mind I borrow from other social epistemologists who draw our attention to the procedural ways in which we engage with epistemic projects such that they include different and particularly marginalized viewpoints. I contend the same is useful for our conceptual projects. Let me flesh out how democratic conceptual practices can work against interfering background beliefs.

First, the more diverse the ameliorators, the more diverse the background beliefs (and schemas in general) that might interfere with our emancipatory intentions, and the harder it is for them to distort our ameliorative practices. It is quite easy for a false or distorted belief to influence my doing when said doing is being exercised from one social position only; that is, conceptual projects are more easily influenced in problematic ways when only one person is working on the project or when it is only practitioners from the same social position working together. This is, first, because every distinct social position comes with its own experiences and experiential boundaries; hence, individuals that occupy roughly the same social position have roughly the same social experiences through which they see, navigate, and interpret the world. And, second, because a team of practitioners who all occupy roughly the same social position are limited in what they experienced and their access to other meaningful experiences such that they are more unlikely to detect false or distorted assumptions about other areas of life; in other words, they are not set up to see the false or distorted background beliefs that stem from their own limited social position. However, the more diverse the group of practitioners, the more likely it is that they not only share the same meaningful experiences but are diverse in how they see, experience, and interpret the social world. They do not hold the same background beliefs and can thus challenge each other when they come to see how false or distorted beliefs that stem from the limited social position of another sneak into the ameliorative process. Yet, some groups are better equipped than others to navigate between false or distorted and merely different background schemas stemming from diverse experiences.

Feminist epistemologists and critical race theorists such as Linda Alcoff, Kristie Dotson, Alison Bailey, Charles Mills, and many others have pointed to the fact that the production of ignorance is as important to investigate as the production of knowledge. What is known as epistemologies of ignorance are closely related to work on epistemic injustice in particular and epistemic violence in general; one could go so far to say that both hermeneutical injustice and testimonial injustice stem from and are ways to produce and reproduce systems of ignorance. The main idea is that ignorance is not a mere and innocent side product of our knowledge seeking activities—the assumption often being that as human beings we are necessarily ignorant about some facts in life because of the vast amount of knowledge there is and the rather short time span we have for gaining it—but can be actively construed for the purpose of social power (cf. Alcoff 2007; Tuana and Sullivan 2006 and 2007). For example, Charles Mills argues that whites have an interest in cultivating racial ignorance such that they misrepresent the world in ways that obscure and, by the same token, reproduce their powerful and dominant position. Racial ignorance is a cognitive dysfunction that prevents whites from seeing the social relations of power for what they are, making it easier to live in positions of privilege, power, and domination (Mills 2007 and 1997). This is not to say, that such cognitive dysfunction is always actively pursued. Our social positions come with distinct experiences, ways to see and interpret the world, and ways in which we can access particular knowledge. What we are interested in often matches our experiences and our interest. But, due to the pattern of power, the experiences of the powerful and privileged are interpreted as the status quo and their interests are better accommodated. Ignorance of our epistemic limits and the social relations responsible for them is a result of our social and epistemic practices. And, at the same time, our privilege and power provides an important explanation for the lack of motivation to correct such ignorance (Alcoff 2007; Townley 2011). Furthermore, Alison Bailey (2007), Nancy Tuana (2004 and 2006), Lorraine Code (1991 and 2006), and Heidi Grasswick (2011) have all pointed to the ways in which socially embedded ignorances track the interests of marginalized groups. For example, patriarchal relations have produced and reproduced an active ignorance about the female body. Not only because the medical understanding of the female body was actively considered less important to the understanding of the male body, but also because the white male body historically already counted as the ideal body, in comparison to which all other bodies are secondary. Biases about other bodies resulted from this status quo and, at the same time, helped to reproduce the status quo of the white male body. And, Elizabeth Anderson (1995) argues that what kind of questions we ask already depends on the social relations of power and the interests of some versus the interests of others. Roughly speaking, we do not ask questions without holding particular interests and, thus, which questions get asked has to do with which questions deem important enough to be asked—important because the relate to interests of those in power. Hence, the lesson is: Even a diverse set of practitioners might not do the trick and sufficiently shake the deeply problematic practices of ignorance. What we need is the idea to start thinking from the viewpoint of the marginalized; their experiences and interests have to be put first. I suggest that we can also use Helen Longino's and Sandra Harding's insightful views on objectivity and extend them beyond the immediate realm of scientific inquiry.

Longino and Harding both argue for a new vision of objectivity, and how such a vision can be achieved. Longino argues that scientific objectivity is "a function of the communal structure of scientific inquiry rather than [as] a property of individual scientists" (Longino 1987, 56; cf. Longino 1981 and 1983). Traditionally, the scientific inquirer is taken as a passive observer of the objective world, with science itself denoting a value-free endeavor (cf. Longino 1990, 62). Both ideas are rejected here. We can hold on to the idea that scientific knowledge and the scientific method are objective, while rejecting the individualist and value-free view of science precisely by thinking of science "as something practiced not primarily by individuals but by social groups" (Longino 1990, 66), groups that bring values and commitments to the table. Longino stresses that science is objective not despite

the fact that it is communal but because of it. According to her, objectivity is a matter of degree. In her words: "A method of inquiry is objective to the degree that it permits *transformative* criticism. Its objectivity consists not just in the inclusion of intersubjective criticism but in the degree to which both its procedures and its results are responsive to the kinds of criticism described" (Longino 1990, 73). In other words, transformative criticism is possible precisely because of the communal character of scientific inquiry.

Harding similarly argues for a broader understanding of objectivity that can be reached by considering those viewpoints that were previously ignored. To do so, we have to take a lesson from standpoint theory. Starting off one's thinking from the position of marginalized groups provides richer scientific problems and deeper critical questions about the social world; these questions would otherwise be left unexamined if one starts off from the position of dominant groups.

For example, "[s]tarting off research from women's lives will generate less partial and distorted accounts not only of women's lives but also of men's lives and of the whole social order" (Harding 1993, 56). Here, Harding points to a similar aspect as Longino, namely, that starting off thinking from the lives of marginalized groups is indeed "starting off thought from a contradictory social position" (Harding 1993, 66). This method incorporates modes of thought from multiple lives that are in conflict with each other, and can thus reach, in Longino's words, transformative criticism. Or, in Harding's words, strong objectivity requires *strong reflexivity*.

This idea can help deal with interfering background beliefs (and other false schemas) in our ameliorative practices. Multiple lives in conflict with each other bring along multiple background beliefs. They thus have to reflect and discuss these beliefs in order to agree on how to proceed with their project of amelioration. In so doing, false or distorted background beliefs become more transparent and have a harder time sneaking into our conceptual practices undetected. As Anderson states about Longino's work, "the social structure of science, provided that it ensures diversity, equality, openness, and responsiveness to criticism, functions as an *essential corrective to individual error and bias*" (1995, 36, my emphasis). In other words, the diversity of the practitioners as well as the centering of marginalized voices work as stumbling blocks for false or distorted background beliefs.

Second, the vast research on implicit biases suggest some procedures for reducing false schemas and concepts from entering our epistemic practices. Roughly, implicit biases are "unconscious biases that affect the way we perceive, evaluate, or interact with people from the groups that our biases 'target'" (Saul 2013, 40). It is not unreasonable to consider such biases here. Similarly to Marie's case, implicit biases affect how we interpret and judge certain people or phenomena. The discovery of these biases have sparked a vast amount of empirical and psychological research that can help us here. Such research has shown that most people—even those who hold conscious and genuine egalitarian beliefs—"have implicit biases and that those biases impact social behavior in many unsettling ways" (Brownstein and Saul 2016, 2). Surprisingly, it is not only individuals outside the target group who hold biases against members of the target group, but also individuals *inside* the target group. The empirical and psychological research has also suggested ways to combat biases or at least combat their effects on our social behavior. One way has particular relevance to the problem discussed above: implicit biases manifest themselves stronger when a decision is made rapidly (Saul 2012, 259; Women in Science and Engineering Leadership Institute 2006). Had the police detectives taken more time to assess the case and Marie's behavior, then, they would have likely judged differently, or at least considered other possibilities than the false view that Marie lied to seek attention. However, while procedures like this help reduce biases from entering our epistemic practices, they do not eradicate them. Hence, we need an interplay of methods that reduce biases and democratic practices that stem from putting marginalized voices first.

Democratic practices of amelioration take the following shape:

1. Once a problematic concept is found, a group of diverse practitioners come together to engage in the project of conceptual amelioration (as outlined above)[22];
2. the project of conceptual amelioration is shaped by the open discussion among the diverse practitioners, such that
3. marginalized voices are centered in the discussion,
4. they challenge each other when they detect problematic background beliefs,
5. they strive to find a reflective equilibrium among their diverse background beliefs.

Democratic practices can thus counter the problematic interference of false or distorted background beliefs in our ameliorative projects. This suggests a productive way to solve some of the problems arising from the three examples above. Remember, the rape victim example addresses the ways in which even victims of rape can fail to understand and articulate their own experiences adequately. And, both the jury and the police officers example address the problem that our dominant working understanding of the concept of rape is distorted by rape myths and fails to be in line with the manifest concept. Furthermore, it suggests that even in more complicated cases, in which neither our operative nor our manifest concept are adequate, we can find progressive ways to engage in conceptual amelioration and correct our concepts without interfering false and distorted schemas.

One could object to these procedures by pointing out that the collective deliberation does not necessarily come to a unanimous result. In fact, it is very likely that because of the diversity and the different social positions, the practitioners do not come to any satisfying result. However, this need not be the worst result. Even without a new concept that the practitioners can unanimously decide on, the process of conceptual amelioration achieves three important goals: (1) It raises awareness about the distorted character of the existing concepts and the necessity of correcting said concepts, (2) it brings marginalized voices to the center, and (3) it brings to the surface the different experiences and interests of the practitioners involved and therewith uncovers the social positions they occupy within the social relations of power. Often, change starts with a radical critique of the status quo and not with a new and agreed upon concept or practice. Changing the status quo and its concepts is a long and exhausting process.

Finally, the democratic practices that I have now presented are developed for conceptual amelioration; conceptual engineering work due to the unjust consequences of the existing distorted concepts. However, a further benefit might be that they also point to ways in which both the jury system as well as the police force could benefit from—implementing a form of democratic practices in the way outlined above could seriously reduce the risk of rape myths entering the legal system. First, analogously to the democratic practices of amelioration, we can say that the more diverse the police force[23] and the more diverse the jury members—centering the marginalized voices—the less likely it is that false working understandings or distorted background beliefs can interfere in the ways exemplified. Second, jury members and police detectives have to be accountable to the broader community they are functioning in and have to be open to transformative criticism. In other words, they should be open to being challenged for holding problematic background beliefs or working understandings, and not only by their colleagues but also by the wider community. The two aspects of a democratic practice—the diversity of its practitioners and the necessity for open discussion—are useful not merely for conceptual amelioration, but also for our legal and social practices.

## Notes

[1] The paper does not aim to provide a new or modified understanding of the concept of rape, but rather seeks to raise attention to the problems that distorted concepts can bring and to suggest philosophical strategies to remedy these problems. On the concept of rape in particular, see Hänel (2018a).

[2] See also Quilter (2011) for an insightful analysis of rape myths as schemas that have problematic effects on jury decisions and the law in general.

[3] According to the FBI (1997), the actual number of unfounded reports is said to be 8%. A report is unfounded if it is "determined through investigation to be false or baseless." (Lonsway et al. 2009). But, according to other research, "many law enforcement officers are skipping over the 'determined through investigation' part and basing their official statements that no crime occurred on either a *gut feeling* that the victim is lying of the (probably accurate) sense that prosecution will be futile." (Harding 2015, 63) More accurate studies find that 2%-8% of rape reports are actually unfounded. (Lisak et al. 2010) Furthermore, two out of three cases of sexual assault go unreported to police. (RAINN 2016).

[4] According to RAINN (2016), out of every 1000 rapes, 994 perpetrators will not go to jail or prison. About 310 out of every 1000 cases of rape are reported to police. About 57 of those reported lead to arrest; 11 cases get referred to prosecutors and 7 cases will lead to a felony conviction. Out of the 1000 rapes of which 310 are reported, only 6 rapists will be incarcerated.

[5] Note, that I understand rape myths as schemas instead of beliefs. Schemas include beliefs, attitudes, and other dispositions. In a psychological sense, a schema is a pattern of thought that is used to organize information such that they guide us in our everyday practices and behavior; while some schemas are helpful, rape myths are problematic schemas. My understanding of rape myths according to "she asked for it"-schemas and "it wasn't really rape"-schemas is of course only a suggestion and other scholars have proposed different definitions and ways to conceptualize rape myths. I contend that, for the argument of the paper, it does not matter which definition is endorsed as long as it understands rape myths as false mental schemas that perpetuate rape. For an explication of the suggestion above, see Hänel (2018a, 2018b).

[6] There are more ways than one of spelling out the difference between manifest and operative concepts. Haslanger lists the following possibilities: 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. (cf. Haslanger 2012, 369).

[7] Sometimes, our operative concepts are more progressive than our legal definitions. We often have faulty legal definitions, and because of the prevalence of more progressive operative concepts, we are able to fight for better legal concepts. For example, the legal definition of rape used to exclude acts of forced sex in marriage. Feminists then advocated for the inclusion of marital rape in the legal definition of rape, because many had working understandings of rape that already included marital rape. And it is only due to the real struggles of feminists that our legal definitions of rape are (in some respects) better suited to capture the experience of rape than the working understandings of the phenomena, which are often distorted by rape myths.

[8] In the spirit of academic thoroughness, I should say that many others since Fricker's first work on hermeneutical injustice have critiqued her view of hermeneutical resources. They have convincingly argued that it is not the case, that we only have collective hermeneutical resources, but instead depending on our social position we have different access to different communal resources. (cf. Dotson 2011; Medina 2012; Mason 2011) For example, within the queer movement, there exists manifold conceptual resources to describe various forms of sexual and sexualized violence; many of which have not (yet!) found access to the mainstream public. For these reasons, let us here speak of dominant hermeneutical resources instead of collective resources to highlight the fact that rape myths influence the mainstream understandings of rape but not necessarily other more subcultural or communal understandings.

[9] 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).

[10] Kirkland does not spell out what his working understanding of rape is and, thus, we can only guess. However, it is obvious from what he reports that his understanding is not based on affirmative consent: either he took the sleeping women to consent, and so his operative concept of rape is based on refusal instead of affirmative consent, or he took the sleeping women not to resist, and thus, his operative concept of rape is based on resistance and not on consent. His understanding therefore lacks at least one important component of the legal definition. It should be noted, that Kirkland's general understanding of rape law might not be the best; an average person should understand that if you enter an apartment uninvited, climb into bed with a sleeping woman, and proceed to have sex with her, then, this is as obvious an instance of rape as there can be. Interestingly though, despite his failure to understand this, Kirkland is convinced to be doing a good job as a juror.

[11] Marie's real story was heartbreakingly reported by Armstrong and Miller under the name *An Unbelievable Story of Rape* as part of The Marshall Project and ProPublica in 2015 and was the recipient of the Pulitzer Price in 2016 and the George-Polk-Price in 2015. In 2019, the story become the topic of the Netflix mini-series *Unbelievable*.

[12] There is a range of causes for victim blaming, including the acceptance of rape myths, the *just world hypothesis*, and the need to protect oneself. According to the just world hypothesis, the world is intrinsically fair and it is thus impossible that anyone could get hurt by another person without reason. Hence, the only way to explain the rape of another person is if that person behaved wrongly. The just world hypothesis can be held by anyone. The need to protect oneself, on the other hand, is most common among victims of rape or potential victims of rape, for example, women. The idea is that accepting that rape can happen to anyone at any time implies that one is constantly risking being attacked. This has huge negative effects on the psychological process of healing after an attack or on one's behavior in general, and it thus inspires the belief that the rape was due to the way the victim behaved (or in the case of healing from an attack, due to one's own behavior).

[13] I should note that it is very likely that Marie's background history as a foster child with psychological and social problems also had an impact on the judgments of the police detectives.

[14] See Armstrong and Miller (2015) for the whole story. The detectives not only disbelieved Marie and dismissed the case, but they also pressured her to admit that she was lying so as 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 prevented the rapes of the five victims that came after Marie's attack.

[15] One may question whether menstruation—at least in the Western context nowadays—is really a good example of the phenomenon of hermeneutical injustice that Crerar describes. One could, for example, point to the fact that there is widespread acceptance among men of having sexual intercourse with their female partners while they are menstruating, which shows that menstruation is less of a taboo than Crerar makes it out to be. A more pointing example might be pedophilia: it is widely accepted that acts of pedophilia are taboo. It is "a topic that [is] deemed inappropriate for discussion in many social contexts" and "[r]eaction to the mention of [it] can range from discomfort and awkwardness to outright shock and disgust" (Crerar 2016, 199). Hence, despite the fact that there is an adequate concept developed by psychologists and medical experts (highlighting the fact that the psychiatric disorder pedophilia is not to be confused with child sexual abuse *per se*, since not all child sexual abusers are pedophiles and many pedophiles never act on their problematic desires), it is near impossible to talk about pedophilic tendencies should they arise and, hence, near impossible to develop an adequate understanding of this significant experience.

[16] Remember that I have proposed to understand rape myths as problematic schemas and that I have argued that schemas are patterns of thought including beliefs, attitudes, and other dispositions. Background beliefs that interfere with our application of concepts can therefore also be thought of as (rape myths) schemas. It would be an interesting task to investigate the precise relation of rape myths schemas and problematic background beliefs, unfortunately this has to wait for another time. For now, it suffices to say that rape myths can affect our background beliefs and render them problematic. See also footnote 15.

[17] Sometimes our assumptions about rape victims stem from a distorted understanding of rape, for example, if we accept the myth that rape always involves aggravated physical violence, then, we will fail to recognize a victim without physical abuse signs. Other times it is due to our assumptions of what rape victims look like that we fail to consider

applying the concept of rape. While the first fits with the example given above, the latter needs a different explication, to which I now turn.

[18] I have briefly outlined above how rape myths have an effect both on our working understandings as well as our legal definitions and I think that this is quite plausibly so, unfortunately, I do not have the time or space to go into detail here.

[19] The second condition, the pragmatic condition, can only be answered in regard to the first condition, the normative condition. Note that 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."

[20] While it might be correct to believe that ranching is a major factor (if not the major factor) of climate change, this is not merely due to cow's passing wind. Rather, research shows that burning fuels to produce fertilizer to grow feed, producing meat and transporting it, and clearing vegetation for grazing produces nine per cent of all emissions of carbon dioxide, which is the most common greenhouse gas. Further, ranching—due to animals' flatulence and manure—produces methane, which leads to warming the world. And, finally, ranching produces most of the world's emissions of ammonia and other polluting gases that are bad for environment. (Cf. Lean 2006).

[21] Thank you to Christine Bratu for pressing me on these points.

[22] The necessity for diversity among practitioners has other fruitful consequences. Taking into account the problem that certain assumptions within academic philosophy lead to the marginalization of diverse practitioners due to the fact that they feel like their subjects and methods are not accepted in philosophy, democratic practices of amelioration can help recognize the need for diverse practitioners in philosophy and also re-shape what (subjects and methods) counts as philosophy. See Dotson (2012) for an insightful argument about why academic philosophy leads to the marginalization of diverse practitioners.

[23] One might argue that while the diversity of practitioners helps for our theoretical endeavors, the Black Lives Matter movement taught us that it cannot help us in regard to the police force; in fact, the police force in the United States is more diverse than other jobs, but nevertheless fails to do justice to Black communities. While this deserves more answers than I can give here, I wish to point out that while this might be true in regard to the general police force, it is not for detectives and my argument of diversifying and democratizing the police force should be limited for detectives and the district attorneys and judges. Thank you to Jacob Blumenfeld for these questions.

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