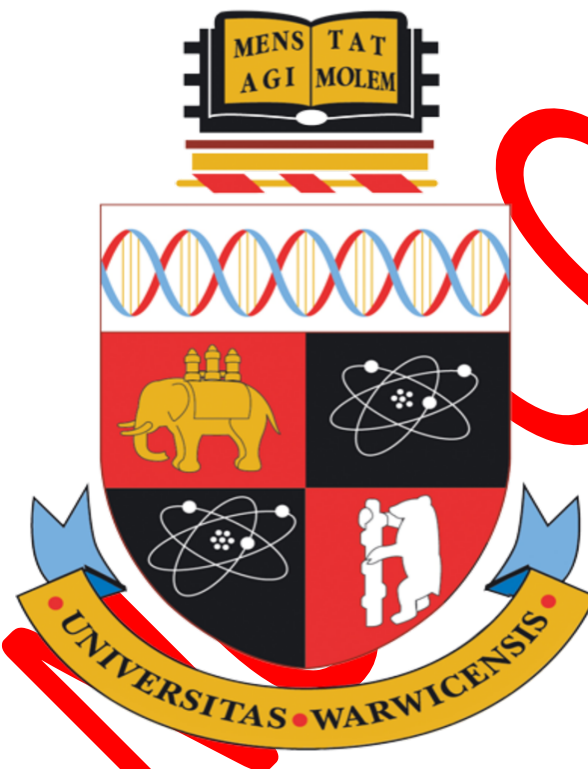


A Victim's Journey to Court: Exploring the Impact of Rape Culture and Myths on Attrition of RAOSO Cases

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## Abstract

The CJS is failing victim-survivors of sexual violence – with the disparity between the extent of sexual violence in the UK and the lack of prosecutions and convictions creating a ‘justice gap’. Acknowledging that only a small percentage of victim’s make it to court, this dissertation focuses on those women who fall out of the system, or never enter it. It follows a victim on her journey through the CJS starting with her decision to report her rape and ending with the decision to prosecute. It is argued that rape culture and myths are a powerful underlying force which don’t just act as the scaffolding for sexual violence, but that dictate attrition at every stage. It exposes the continuous and compounding barriers that survivors face on their journey to ‘justice’, which is likely to never materialise. Analysing the reporting (chapter 1), police (chapter 2), and CPS (chapter 3) stages reveals patterns of attrition align with societal perceptions, misconceptions, and accepted narratives about rape. This is exacerbated by intersectional discrimination, meaning minoritized and marginalised victims are disproportionately impacted by attrition. This dissertation submits that by allowing rape culture and myths to determine case progression, the CJS is contributing to very structures that allow sexual violence to thrive.

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## Abbreviations

BME	Black and Minority Ethnic
CJS	Criminal Justice System
CPS	Crown Prosecution Service
EVAW	End Violence Against Women
NFA	No Further Action
RAOSO	Rape and Other Sexual Offences
VAWG	Violence Against Women and Girls

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## Table of Cases

*R (End Violence Against Women Coalition) v The Director Of Public Prosecution*  
[2021] EWCA Civ 350

*R (B) v DPP* [2009] 1 EWHC 106 (Admin); [2009] 1 WLR 2072

## Table of Legislation

Youth Justice and Criminal Evidence Act 1999

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# Introduction

The extent of sexual violence in the UK is catastrophic; In the year ending March 2020, there were 773,000 recorded victims of sexual assault,<sup>1</sup> and approximately 1 in 4 women have been raped or sexually assaulted as an adult.<sup>2</sup> For victim-survivors this devastating experience can create deep, personal trauma with a lifelong impact. Yet there is a huge disparity between the extent of sexual violence and the 1.6% of cases that get charged (let alone convicted).<sup>3</sup> The sharp decrease in prosecutions of Rape and Other Sexual Offences (RAOSO) since 2016 has exacerbated this justice gap, with this level of impunity for perpetrators effectively decriminalising rape.<sup>4</sup> The majority of cases never reach the courtroom because they “drop out of the criminal justice system”.<sup>5</sup> This dissertation explores this attrition, which occurs at key stages along a victim’s journey – from the decision to report her experience, through the police investigation stage, and to the CPS decision to charge.

## **Focus: Rape Culture and Rape Myths**

The focus of this dissertation is on the powerful impact of rape culture and rape myths upon attrition at every stage of a victim’s journey. Evidential difficulties are often blamed for the poor criminal justice response to rape, but this offers a limited explanation for the extensive disparity. While there are many reasons behind attrition, rape culture is a significant factor, which doesn’t just act as the “cultural scaffolding”<sup>6</sup> upon which rape thrives but dictates case progression in a multitude of ways. This dissertation argues that the CJS are engaging with and thus reinforcing rape culture, myths, and misconceptions in a circular manner, upholding the broad social and cultural narratives which discriminate and work against survivors of RAOSO. It analyses how this dictates patterns of attrition, suggesting that more attention should be paid to what type of cases make it to court, and which experiences are obscured. By revealing the invasive and persisting nature of rape

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<sup>1</sup> Ministry of Justice, *The End-to-End Rape Review Report on Findings and Actions* (CP 437, 2021) iii (The End-to-End Rape Review) ; Office for National Statistics, ‘Sexual offences in England and Wales overview: year ending March 2020’ (2021) ONS 2

<sup>2</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023 ; Office for National Statistics, ‘Sexual offences prevalence and trends, England and Wales: year ending March 2020’ (March 2021) ONS Table 1

<sup>3</sup> Home Office, *Crime Outcomes in England and Wales, Year to December 2020: Data Tables* (Official Statistics 2021) Table 2.2

<sup>4</sup> Centre for Women’s Justice, The End Violence Against Women Coalition, Imkaan, and Rape Crisis England & Wales, ‘The Decriminalisation of Rape: Why the Justice System is Failing Rape Survivors and What Needs to Change’ (2020) 8 (The Decriminalisation of Rape)

<sup>5</sup> Clare McGlynn, ‘Feminist activism and Rape Law Reform in England and Wales A Sisyphean struggle?’ in Clare McGlynn, and Vanessa E. Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Taylor & Francis Group 2010) 141

<sup>6</sup> Nicola Gavey, *Just Sex?* (Routledge 2005)

culture, this dissertation argues that there is a need to tackle the broader social and cultural structures of rape culture to prevent reforms from being undermined or neutralised when put into practice.<sup>7</sup>

## The Journey

Exploring attrition by following a victim's journey to court exposes the continual and compounding impact of rape culture and myths, and subsequent revictimization and discrimination she faces. It demonstrates how, at every stage of her journey, a survivor's prospects of making it to court "diminish dramatically".<sup>8</sup> The journey encompasses a female perspective throughout because of the disproportionate impact of RAOSO on women; alongside which a feminist gaze is used to critique the gendered nature of sexual violence, but also the gender inequality that permeates the CJS.<sup>9</sup> The lens of intersectionality assists an understanding of the varying and unique experiences of discrimination that different women face, unveiling important patterns of attrition that disproportionately impact minority women. The journey represents the multitude of women who have experienced various forms of sexual violence, recognising how all these experiences are a product of the underlying structures of discrimination in which sexual violence is rooted. The victim-survivor is thus construed widely, not limited by offence or strict definition.

The terminology of 'victim', 'survivor', and 'victim-survivor' are used interchangeably, in an attempt to give agency to those who this journey represents, who may not uniformly identify as 'victim' or 'survivor' in a binary manner.<sup>10</sup> This recognises that these identities may not be static, or mutually exclusive,<sup>11</sup> but exist upon a "continuum".<sup>12</sup> Varying the terminology throughout the journey, represents the fluidity and non-linear nature of women's sense of self and identity after their victimisation.<sup>13</sup>

## Structure

Chapter 1 looks at the first, and often under addressed, stage of attrition: the reporting stage. It assesses the prevalence and persistence of rape culture to shape societal

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<sup>7</sup> Ibid 150

<sup>8</sup> The Decriminalisation of Rape (n 4) 4

<sup>9</sup> Office for National Statistics, 'Sexual offences in England and Wales overview: year ending March 2020' (2021) ONS 2

<sup>10</sup> Ellen Daly, *Rape, Gender and Class Intersections in Courtroom Narratives* (Palgrave Macmillan 2022) 4

<sup>11</sup> Ibid

<sup>12</sup> Liz Kelly, *Surviving Sexual Violence* (Polity Press 1988); Karen Boyle, 'What's in a Name? Theorising the Inter-relationships of Gender and Violence' (2018) 20(1) *Feminist Theory* 19

<sup>13</sup> Daly (n 10) 4



perceptions, before considering how this prevents survivors from reporting their rape. Next, Chapter 2 uses the lens of intersectionality to analyse two routes of attrition within the police stage that are impacted by a police culture of misogyny, corruption, and disbelief. Finally, Chapter 3 evaluates the CPS's risk-averse approach to prosecution, that bases decisions upon predictions of how rape myths will present in court. The conclusion brings these stages together, exploring their interconnectedness, before considering how reform to the CJS should proceed.

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# **Chapter 1 – Reporting Rape**

This chapter looks at the reporting stage of a victim's journey, analysing the barriers that survivors of sexual assault face even before entering the criminal justice system. This chapter first acknowledges the extent of attrition at this stage, which has been under addressed despite data showing that only a fraction of offences are reported.<sup>14</sup> While a variety of factors contribute to a victim's decision to report or remain silent, this chapter focuses on the significance of rape culture to impact this decision. It examines the development of rape culture from historically defined gender norms, patriarchal values, and heteronormative ideals and illustrates how these notions manifest in modern society. Analysing these manifestations reveals the prevalence of rape culture and the persistence of society to normalise, justify, and excuse sexual violence. The next section explains how a victim's decision to report is impacted by societal perceptions of what constitutes rape, which this chapter reveals are dominated by myths, misconceptions, and gender stereotypes. Overall, this chapter considers the deep-rooted pervasiveness of rape culture, and demonstrates its damaging impact on attrition at the reporting stage.

## **The Disparity Between Offences and Reporting**

Despite an increase in reporting, the vast majority of rape victims are not coming forward to the police and will never enter the criminal justice system. Reporting rates increased in the aftermath of the 2017 social movement #MeToo, which encouraged victims to speak up about their experiences of abuse and sexual harassment, bringing to light the extent of sexual violence and increasing discussion around its causes and prevention.<sup>15</sup> An increased confidence to report rape is suggested by the End-to-End Rape Review which shows a rise in adult rapes recorded by the police from 24,093 in 2015/16 to 43,187 in 2019/20.<sup>16</sup> Despite this, in 2021 the Office for National Statistics revealed that less than 20% of victims are reporting to the police.<sup>17</sup> The consideration of a dark figure – of rapes not even recorded in these statistics – heightens the disparity between offences and reports. Moreover, around 40% of victims don't tell anyone at all about their sexual assault,

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<sup>14</sup> Office for National Statistics, 'Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020' (March 2021) ONS 2

<sup>15</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, 'The Age of Consent: Understanding Consent' (December 2022) 6m50s <<https://open.spotify.com/episode/19XOCsPQyTvZZWliBuQwu>> accessed 20 April 2023

<sup>16</sup> The End-to-End Rape Review (n 1) 3 ; Office for National Statistics, 'Sexual offences prevalence and trends, England and Wales: year ending March 2020' (March 2021) ONS

<sup>17</sup> Office for National Statistics, 'Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020' (March 2021) ONS 2

such as friends or support services, who may empower victims to report.<sup>18</sup> The extent of attrition at this stage is indicative of a culture which accepts silence as the norm, and celebration of increasing numbers of reports must be contextualised within this reality.

The decision to report an experience of sexual violence is influenced by a variety of “personal, social, cultural, and institutional factors”,<sup>19</sup> including relationships, love, family pressures, distrust in the police and other complexities. One significant factor – underlying and interplaying with many other reasons – is rape culture. Rape culture looks “to the underlying cultural practices and narratives that act as cultural scaffolding for rape”<sup>20</sup> presenting a powerful, yet often hidden force by which societal attitudes are moulded and reconfirmed. The array of myths, misconceptions, and gender stereotypes that dominate and distort societal perceptions are a manifestation of the “master narrative”<sup>21</sup> of rape culture, which in turn confirms, promotes, and exacerbates rape myths and misconceptions. This circular loop of confirmation bias reinforces a narrow definition of rape and serves to “deny, downplay or justify sexual violence that men commit against women”.<sup>22</sup> Myths and misconceptions about rape are thus allowed to persist due to the pervasion and prevalence of rape culture.

## Rape Culture

‘Rape culture’ refers to the various societal attitudes and beliefs that condone, excuse, tolerate, and normalise sexual violence.<sup>23</sup> It is a “symptom of a patriarchal, heteronormative society”<sup>24</sup> which views women as less worthy of power and respect than men. Sexual violence itself is rooted in the deep gender inequality that the social construction of femininity and masculinity has created;<sup>25</sup> rape disproportionately affects women with 94% of adult rape victims are women and 98% of adults prosecuted for sexual offences being men.<sup>26</sup> Rape culture maintains damaging “views on gender, women, men,

<sup>18</sup> Sylvia Walby and Jonathan Allen, ‘Domestic Violence, Sexual Assault and Stalking: findings from the British Crime Survey’ (2004) 276 London: Home Office Research Study 94

<sup>19</sup> Aisha Gill, ‘Violence against women in South Asian communities in the UK’ in Clare McGlynn and Vanessa E. Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Taylor and Francis Group 2010) 312

<sup>20</sup> Daly (n 10) 73 ; Gavey (n 6)

<sup>21</sup> Daly (n 10) 73

<sup>22</sup> Gerd Bohner, *Vergewaltigungsmythen [Rape Myths]* (Landau, Germany: Verlag Empirische Paädagogik 1998) 14 cited in Heike Gerger, Hanna Kley, Gerd Bohner, and Frank Siebler ‘The Acceptance of Modern Myths About Sexual Aggression Scale: Development and Validation in German and English’ (2007) 33(5) *Aggressive Behavior* 422, 423

<sup>23</sup> Anastasia Powell, ‘Seeking rape justice: Formal and informal responses to sexual violence through technosocial counter-publics’ (2015) 19(4) *Theoretical Criminology* 571, 575

<sup>24</sup> Daly (n 10) 73

<sup>25</sup> Ann Oakley, *Sex, Gender and Society* (Maurice Temple Smith Ltd 1972) 16 ; Michael Flood and Stephen R. Burrell, ‘Engaging Men and Boys in the Primary Prevention of Sexual Violence’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 221

<sup>26</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023

and their respective statuses within society”,<sup>27</sup> by encouraging male sexual aggression and condoning violence against women.<sup>28</sup>

The structural conditions that tolerate sexual violence and allow its persistence include a patriarchal conception of the male gender role.<sup>29</sup> The social construction of ‘masculinity’ – following hegemonic and heteronormative notions – includes an “ideology of supremacy”,<sup>30</sup> and idealises conceptions of dominance over women, aggression, heterosexuality, and the pursuit of sexual gratification.<sup>31</sup> Fostering a “notion of entitlement”,<sup>32</sup> this rationalises and excuses sexual violence as natural or even desirable, playing into the cultural dynamics that justify and condone sexual aggression.<sup>33</sup> Rape culture maintains the theory of “aggressive male domination over women as a natural right”<sup>34</sup> which has become deeply embedded in societal behaviours and attitudes.

Simultaneously, these values subordinate women, justifying violence as a method of coercion or control. Women’s position in society was historically dictated by their conceptualisation as property “first of their fathers and then of their husbands”.<sup>35</sup> Although feminist activism has improved women’s societal status, patriarchy is far from deconstructed and women’s behaviour continues to be judged against historical “notions of appropriate female sexuality”.<sup>36</sup> Patriarchal conceptions and misogynistic attitudes continue to objectify, degrade, and devalue women, who are treated as less deserving of respect and autonomy than men. The extent of sexual violence – with 1 in 4 women affected – reveals that disrespect for female autonomy is endemic.<sup>37</sup> Sexual violence itself “must be understood as a control against the freedom, mobility and aspirations of all women”,<sup>38</sup> by keeping them in a state of fear and reinforcing the power relations that the construction of gender has inflicted.

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<sup>27</sup> Merken Stacie and James Veronyka, ‘Perpetrating the Myth: Exploring Media Accounts of Rape Myths on “Women’s” Networks.’ (2020) 41(9) *Deviant Behavior* 1176, 1176

<sup>28</sup> Emilie Buchwald, Pamela Fletcher and Martha Roth, *Transforming a Rape Culture* (2nd ed. Milkweed Editions 2005) 11

<sup>29</sup> Lidia Salvatori and Kaitlynn Mendes, ‘Online Anti-Rape Activism. Fighting Back Against Rape Culture’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (2<sup>nd</sup> edn, Routledge 2023) 255

<sup>30</sup> Raewyn Connell, *Masculinities* (Cambridge: Polity 1995) 83

<sup>31</sup> Connell (n 30); Gavey (n 6)

<sup>32</sup> Nickie D Phillips, *Beyond Blurred Lines: Rape Culture in Popular Media* (Rowman and Littlefield Publishers 2017) 47

<sup>33</sup> Ibid; Michael S Kimmel, *Guyland: The Perilous World Where Boys Become Men* (Harper 2009)

<sup>34</sup> Susan Brownmiller, *Against Our Will: Men, Women and Rape* (first published 1975, MysteriousPress.com/Open Road Integrated Media 2013) 827

<sup>35</sup> Clare McGlynn and Vanessa E. Munro, ‘Rethinking Rape Law: An Introduction’ in Clare McGlynn, and Vanessa E. Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Taylor & Francis Group 2010) 1

<sup>36</sup> Yvonne Russell, ‘Thinking Sexual Difference Through the Law of Rape’ (2013) 24 *Law Critique* 255, 261

<sup>37</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023; Office for National Statistics, ‘Sexual offences prevalence and trends, England and Wales: year ending March 2020’ (March 2021) ONS Table 1

<sup>38</sup> Brownmiller (n 34) 542

## Manifestations

Rape culture is “perpetuated at every level of our society”,<sup>39</sup> manifesting in a variety of ways that function to normalise sexual violence and disseminate patriarchal, heteronormative, and misogynistic ideologies. Rape culture is deeply embedded in social and cultural practices, allowing sexual violence to be “accepted, excused, laughed off or not challenged enough by society as a whole”.<sup>40</sup> This section explores some different manifestations of rape culture, revealing its prevalence, as well as its discrete nature. Rape culture has a powerful, compounded impact on the construction and reconfirmation of societal attitudes about rape, allowing them to become deep-rooted and systematic.

### Media

Media plays a significant role in “constructing, maintaining, or challenging a rape-supportive culture”,<sup>41</sup> and the reliance on media for information, rather than official reports, means it has a wide-reaching, substantial impact.<sup>42</sup> As a means of mass communication, media has a powerful influence “in shaping public attitudes towards sex, consent, and sexual violence”.<sup>43</sup> For example, the ‘real rape’<sup>44</sup> stereotype frequently employed by the media presents rape as “perpetrated by a stranger in an outdoor or public place using physical force and violence that the victim-survivor actively attempts to resist”.<sup>45</sup> This narrative influences societal understandings of what constitutes rape by generating myths that silence realities of sexual assault. Production of the ‘stranger rape’ myth obscures acquaintance rapes where the perpetrator is known to the victim, and damagingly portrays rapists as deviant ‘others’, or ‘monsters’, circulating the idea that rape is not committed by ‘normal’ people.<sup>46</sup> The requirement of a violent attack minimises the importance of consent, while disregarding elements of coercion and power to impact autonomy to consent. Subsequently, while the most “newsworthy” cases are the most unusual – “stranger assaults, interracial assaults, sexual murder, serial rape, and assaults resulting

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<sup>39</sup> Ibid 827

<sup>40</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023

<sup>41</sup> Karen Boyle, Brenna Jessie, and Megan Strickland, ‘Rape in the News Contemporary Challenges’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (2<sup>nd</sup> edn, Routledge 2023) 113

<sup>42</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, ‘The Age of Consent: Understanding Consent’ (December 2022) 19m45s (Dr Hannah Bows) <<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>> accessed 20 April 2023

<sup>43</sup> Sophie Hindes and Bianca Fileborn, “‘Girl power gone wrong’: # MeToo, Aziz Ansari, and media reporting of (grey area) sexual violence. *Feminist Media Studies*’ (2020) 20(5) *Feminist Media Studies* 639 cited in Jennifer M. Brown and Miranda A. H. Horvath, ‘Conclusions: What’s It Going to Take?’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (2<sup>nd</sup> edn, Routledge 2023) 289

<sup>44</sup> Susan Estrich, *Real Rape* (Harvard University Press 1987)

<sup>45</sup> Daly (n 10) 16

<sup>46</sup> Ibid 92 ; Kristen N. Jozkowski, ‘Why does rape seem like a myth?’ In Carey M. Noland and Jimmie Manning (Eds.) *Contemporary studies of sexuality & communication: Theoretical and applied perspectives* (Kendall/Hunt Publishing 2016) 239-262

in serious physical injury”<sup>47</sup>– the most common circumstances fail to be understood as ‘rape’.

News-media, and more prominently social media, TV, films, books, and music can also neutralise, or even romanticise sexual assault or predatory behaviour.<sup>48</sup> The common ‘no’ meaning ‘yes’ or ‘chase’ storyline – where a man “harasses or stalks”<sup>49</sup> a woman who has declined his sexual or romantic advances “until she gives in”<sup>50</sup> – trivialises abuse and idealises disrespect for women’s boundaries and autonomy, while exonerating predatory behaviour. Despite more media sensitivity post #MeToo and the emergence of feminist resistance in modern TV, even subtle engagements with these kinds of narratives have the power to reinforce rape culture by (re)producing rape myths and patriarchal ideologies.<sup>51</sup>

Increased digitalisation and use of social media has led to some “new and extremely concerning manifestations of rape culture”,<sup>52</sup> including rape threats and cyber-flashing as modern, adapted forms of abuse.<sup>53</sup> Technology-facilitated violence is more likely to inflict harmful impacts on female victims, with women experiencing fears for their safety compared to men who may describe the abuse as “funny” or “annoying”.<sup>54</sup> The continued weaponization of rape in these new media “by which all men keep all women in a state of fear”,<sup>55</sup> maintains a gendered process of intimidation.

Increased digitalisation has also increased access to pornography. Although debated, feminist literature criticises the damaging effect of pornography due to its correlation with sexism and increased levels of sexual violence.<sup>56</sup> Andrea Dworkin provides a radical feminist view, recognising pornography as the systematic degradation of women, energised, and justified by “the ideology of biological inferiority”.<sup>57</sup> Other perspectives consider the possibility of ethical porn and porn that could reflect feminist politics and

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<sup>47</sup> Boyle, Jessie, and Strickland (n 41) 114; Karen Boyle, *Media and violence: Gendering the debates* (Sage 2005) 68-69

<sup>48</sup> Brownmiller (n 34) 665 (Ayn Rand, *The Fountainhead* (Bobbs Merrill 1943); Some modern examples include: Robin Thicke *Blurred Lines* 2013 (song) and E. L James, *Fifty Shades of Grey* (Vintage Books 2011)

<sup>49</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023

<sup>50</sup> Ibid

<sup>51</sup> Lisa Funnell and Ralph Beliveau, *Screening #MeToo: Rape Culture in Hollywood* (State University of New York Press 2022) ; Daly (n 10) 73

<sup>52</sup> Salvatori and Mendes (n 29) 263

<sup>53</sup> Ibid

<sup>54</sup> Anastasia Powell, ‘Technology-Facilitated Sexual Violence. Reflections on the Concept’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (2<sup>nd</sup> edn, Routledge 2023) 147; Nicola Henry, Clare McGlynn, Asher Flynn, Kelly Johnson, Anastasia Powell and Adrian J. Scott, *Image-based sexual abuse: A Study on the Causes and Consequences of Non-consensual Nude or Sexual Imagery* (Routledge, 2020) 46-47

<sup>55</sup> Brownmiller (n 34) 33

<sup>56</sup> Andrea Dworkin, *Pornography: Men possessing women* (The Women’s Press 1981) ; Catharine MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979) ;Brownmiller (n 34)

<sup>57</sup> Andrea Dworkin, ‘Pornography: The New Terrorism’ (1987-89) 8(2) *New York University Review of Law and Social Change* 215, 216



values.<sup>58</sup> Regardless, porn has a powerful influence over societal perceptions and attitudes; Studies show a link between porn consumption and gendered attitudes as well as sexual expectation.<sup>59</sup> The feminist porn agenda has failed to overhaul the porn industry and mainstream pornography continues to portray women as passive sex objects, by depicting aggression against women, and domination by men, alongside damaging racist stereotypes.<sup>60</sup> Brownmiller contended that pornography institutionalised “the concept that it is man’s monetary right, if not his divine right, to gain access to the female body”,<sup>61</sup> recognising its part in the ideology and mass psychology of rape.<sup>62</sup> The societal attitudes that porn nurtures can influence the way women are treated and this impact is heightened by an increased normalisation and accessibility to porn as a result of digitalisation.

The increased legitimisation of pornography in the Global North, known as “pornographication”,<sup>63</sup> has fundamentally impacted the “contours of consumption”<sup>64</sup> as well as the reach and impact of rape culture. Firstly, the normalisation of general consumption has been mirrored by a normalisation of “specifically abusive content”,<sup>65</sup> with a “renewed interest in the concurrent trend towards extreme, “hard core” or “gonzo” pornography”.<sup>66</sup> By presenting women as enjoying “various forms of aggression, abuse, and violence”,<sup>67</sup> hardcore pornography constructs and reinforces the “narrative that women want, welcome, or enjoy sexual violation”,<sup>68</sup> whilst encouraging male sexual aggression as rewarded masculine behaviour. Increased access and normalisation has also resulted in younger people, especially boys, being exposed to pornographic content, which can influence “sexual expectations and abusive, invasive behaviours”.<sup>69</sup> Research illustrates a clear “gendered impact on young people’s sexual beliefs”<sup>70</sup> that links pornographic consumption to endorsement of patriarchal and misogynistic concepts.<sup>71</sup> With often violent pornography

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<sup>58</sup> Alan McKee, Kath Albury, and Catharine Lumby, *The Porn Report* (Melbourne University Publishing 2008) Chapter 5

<sup>59</sup> Miranda A.H. Horvath, Llian Alys, Kristina Massey, Afroditi Pina, Mia Scally and Joanna R. Adler, ‘Basically... porn is everywhere: A rapid evidence assessment on the effects that access and exposure to pornography has on children and young people’ (2013) Office of The Children’s Commissioner for England 7 (Finding 6)

<sup>60</sup> Maddy Coy and Meagan Tyler ‘Pornography and Sexual Violence Reflection on Policy Debates Around Age, Gender, and Harm’ Harm’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 138

<sup>61</sup> Brownmiller (n 34) 833

<sup>62</sup> Ibid 834

<sup>63</sup> Megan Tyler and Kaye Quek, ‘Conceptualizing pornographication: A Lack of Clarity and Problems for Feminist Analysis.’ (2016) 2(2) *Sexualization, Media, & Society* 1

<sup>64</sup> Coy and Tyler (n 60) 130

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Ibid

<sup>68</sup> Ibid

<sup>69</sup> Ibid, 129; Louise Perry, ‘Why the Porn Industry Must Be Called to Answer On Rape Culture in Schools’ *New Statesman* (7 April 2021)

<sup>70</sup> Coy and Tyler (n 60) 133

<sup>71</sup> Ibid, 128 ; Horvath, Alys, Massey, Pina, Scally, and Adler (n 59)

becoming “de facto sex education for young people”,<sup>72</sup> pornography may be entrenching rape culture on a near-indelible and wide scale.

### *Prevalence, persistence, and deep roots*

Rape culture saturates all aspects of social life, embedding patriarchal, heteronormative, and misogynistic ideals.<sup>73</sup> Expressions of rape culture are commonplace throughout the media, but also in work environments, university campuses and other social settings, revealing the prevalence of sexist attitudes across society. One apt demonstration of rape culture manifesting is the ‘Warwick Group Chat’ scandal. The ‘lads’ in this group exchanged multiple derogatory messages about their female flatmates, one message reading “Rape the whole flat to teach them a lesson”.<sup>74</sup> This demonstrates the neutralisation of sexual violence via comic discourse and shows how homosocial bonding can rely on the sexualisation and subordination of women to perpetuate hegemonic masculinity and establish male heterosexual identity.<sup>75</sup> This group chat is not an isolated event, but reflective of homosocial environments within wider society, which can be conducive to aggression towards women.<sup>76</sup>

Oftentimes, rape culture is expressed in a more casual manner, via “rape jokes, sexual harassment, catcalling [and] sexualized ‘banter’”,<sup>77</sup> which diminish the seriousness of sexual violence, whilst normalising disrespectful attitudes towards women. In 2021, 44 percent of women aged 16 to 34 experienced catcalls, whistles, unwanted sexual comments, or jokes.<sup>78</sup> This is exacerbated by the increasing use of social media which provides a wide reaching platform for dissemination. Casual sexism is easily disregarded as ‘not serious’, but the extent and normalisation of it means it possesses innate power to reinforce patriarchal ideologies. The reiteration of female objectification and degradation over and over again reveals a culture which upholds these ideals.<sup>79</sup>

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<sup>72</sup> Coy and Tyler (n 60) 131

<sup>73</sup> Alexandra Fanghanel, *Disrupting Rape Culture: Public Space, Sexuality and Revolt* (Bristol University Press 2019) 9

<sup>74</sup> Rohini Jaswal and Claudia Aoraha, ‘Named and pictured: The Warwick boys who made rape jokes in their group chat’ *The Warwick Tab* (2018) <<https://thetab.com/uk/warwick/2018/05/09/named-and-pictured-the-warwick-boys-who-made-rape-jokes-in-their-group-chat-28615>> accessed 16 April 2023

<sup>75</sup> Steven Roberts, Signe Ravn, Marcus Maloney, and Brittany Ralph, ‘Navigating the Tensions of Normative Masculinity: Homosocial Dynamics in Australian Young Men’s Discussions of Sexting Practices’ (2021) 15(1) *Cultural Sociology* 22, 24

<sup>76</sup> **Including within the police force, where group chat messages among male officers have exposed misogynistic, sexist, and racist attitudes. This is explored further in Chapter 2.**

<sup>77</sup> Jessalynn Keller, Kaitlynn Mendes and Jessica Ringrose, ‘Speaking ‘unspeakable things’: documenting digital feminist responses to rape culture’ (2018) 27(1) *Journal of Gender Studies* 22, 24

<sup>78</sup> Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), ‘Police response to violence against women and girls’ (Final inspection report 2021) 27

<sup>79</sup> ‘What Is Rape Culture’ (*Rape Crisis England and Wales*) <<https://rapecrisis.org.uk/get-informed/about-sexual-violence/what-is-rape-culture/>> accessed 14 April 2023



One recent government initiative – the ‘Enough’ campaign – attempts to challenge the attitudes that drive and normalise abuse. The campaign includes “television adverts, billboards, social media, and radio advertising”<sup>80</sup> which highlight different forms of violence against women and girls including “street harassment, coercive control, unwanted touching, workplace harassment, revenge-porn and cyber-flashing”.<sup>81</sup> The End Violence Against Women Coalition praise the campaign’s prevention focus, as well as its engagement with men and boys about the active role they can play in challenging perpetrators of abuse.<sup>82</sup> Despite this, ‘Enough’ alongside other campaigns do not go far enough to disturb the roots of rape culture which has deeply entrenched perceptions of rape and gender stereotypes. Its simultaneous prevalence and subtlety means that attitudes appear more socially acceptable, are harder to recognise, and are more resistant to change.<sup>83</sup>

## **Infiltrating Perceptions: Causing Attrition at the Reporting Stage**

Rape culture is “the thread with which the fabric of meaning about sexual and social life is woven”,<sup>84</sup> thus undeniably guiding societal perceptions and influencing the extent of offending. Rape culture also has a profound impact upon the victim’s own perception of their experience, their response to sexual violence, and consequently their decision to report. This section explores some of the ways in which societal understandings of what constitutes rape, and attitudes towards sexual violence – moulded by rape culture and myths – shape a victim’s own beliefs and behaviour.

### *‘Real Rape’*

One of the main reasons why women and girls choose not to report sexual violence is because they “didn’t think that the incident was serious enough”.<sup>85</sup> Many victims are prevented from labelling their experience as ‘rape’, as a result of interpreting it in terms of

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<sup>80</sup> Home Office and The Rt Hon Priti Patel MP, ‘Home Secretary says ‘Enough’ to violence against women and girls’ (GOV.UK 2022) <<https://www.gov.uk/government/news/home-secretary-says-enough-to-violence-against-women-and-girls>>

<sup>81</sup> Ibid

<sup>82</sup> ‘EVAW welcomes national campaign to shift attitudes and behaviours’ (*End Violence Against Women*, 25 October 2022) <<https://www.endviolenceagainstwomen.org.uk/evaw-welcomes-national-campaign-to-shift-attitudes-and-behaviours/>>

<sup>83</sup> Daly (n 10) 16

<sup>84</sup> Fanghanel (n 73) 13

<sup>85</sup> HMICFRS (n 78) 29

wider societal understandings and rape myths.<sup>86</sup> This includes the concept of ‘real rape’,<sup>87</sup> perpetuated by rape culture, which requires an aspect of physical violence or attack. The ‘attack rape myth’ contributes to the obscuration of “all forms of non-consensual sexual activity as violence”,<sup>88</sup> constraining understandings of rape to ignore “more subtle pressures or coercive tactics”.<sup>89</sup> This notion is prevalent, with a third of people thinking it is not rape if sex is pressured but there is no physical violence.<sup>90</sup> When elements of physical violence are missing, victims may not recognise their experience as constituting sexual violence, or as ‘violent enough’.<sup>91</sup> Victims may also normalise or downplay what happened, because rape culture presents pressure and coercion as a normal part of (hetero)sexual relations. Some victims distance their own experiences from ‘real rape’ as a coping mechanism.<sup>92</sup> Even if victims label their experience as rape, most are “hyper-aware of the perceived judgements”<sup>93</sup> of others, meaning a lack of violence or physical injury may still deter reporting.

### *Complexities of Victim-Perpetrator Relationships*

The ‘real rape’ narrative also perpetuates the ‘stranger rape’ myth meaning survivors of acquaintance rape may also struggle to view their experience as rape. Despite approximately 5 in 6 rapes being committed by someone known to the victim,<sup>94</sup> there is still scepticism over the extent and harm of marital or acquaintance rapes.<sup>95</sup> For example, almost a quarter of people didn’t think that sex without consent in a long-term relationship

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<sup>86</sup> Gerd Bohner, Friederike Eyssel, Afroditi Pina, Frank Siebler and G.Tendayi Viki, ‘Rape myth acceptance: cognitive, affective and behavioural effects of beliefs that blame the victim and exonerate the perpetrator’ in Miranda A. H. Horvath and Jennifer M. Brown (eds), *Rape: Challenging Contemporary Thinking* (Willan Publishing 2011) 24

<sup>87</sup> Estrich (n 44)

<sup>88</sup> McGlynn and Munro (n 35) 1

<sup>89</sup> Eithne Dowds and Elizabeth Agnew, ‘Rape Law and Policy. Persistent Challenges and Future Direction’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 177 ; Anna Carline and Clare Gunby, ‘How an ordinary jury makes sense of it is a mystery: Barristers’ perspectives on rape, consent and the Sexual Offences Act 2003’ (2011) 32(3) *Liverpool Law Review* 237

<sup>90</sup> End Violence Against Women, ‘Public’s attitudes to sexual consent’ (YouGov, 2018)

<<https://yougov.co.uk/topics/society/articles-reports/2018/12/01/publics-attitudes-sexual-consent>> accessed 10 April 2023

<sup>91</sup> Gill (n 19) 312

<sup>92</sup> Gerd Bohner, Friederike Eyssel, and Philipp Süssenbach, ‘Modern Myths About Sexual Aggression. New Methods and Findings’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 159

<sup>93</sup> Jennifer Huemmer, Bryan McLaughlin, and Lindsey E Blumell, ‘Leaving the Past (Self) Behind: Non-Reporting Rape Survivors’ Narratives of Self and Action’ (2019) 53(3) *Sociology* (Oxford) 435,445

<sup>94</sup> Office for National Statistics, ‘Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020’ (March 2021) ONS (Appendix Table 1)

<sup>95</sup> McGlynn (n 5) 140

was rape.<sup>96</sup> Rape culture indulges attitudes that lead victims to perceive their rape as a “personal matter”,<sup>97</sup> or not view themselves as a legitimate crime victim.<sup>98</sup>

The recognition of acquaintance rape as ‘rape’ has improved, but modern sexism still minimizes sexual assault between partners by focusing on the requirement of ‘violence’. Within abusive contexts specifically, violence may manifest as a “terrifying language that develops slowly and is only spoken by the people involved”,<sup>99</sup> but the nuances and complexities of victim-perpetrator relationships and intricate power dynamics are ignored. This is particularly damaging in light of the Soteria report which shows around a third of rapes are linked with domestic violence issues.<sup>100</sup> Rape culture has retained beliefs that male coercion is a natural, desirable part of sexual relationships, projecting the modern sexist perception that within relationships, women “must be aware that the man will assert his right to have sex”.<sup>101</sup> Rape culture retains expectations of sexual intercourse as a female “duty”, often “enforced by the permissible threat of bodily harm or of economic sanctions”,<sup>102</sup> or more subtle pressures and coercions.

A victim’s decision to report is impacted by their own construction of the meaning of ‘rape’, which can be influenced by the perpetrators interpretation of the event.<sup>103</sup> Rape culture produces a behavioural function specifically for men, enabling them to justify their own tendencies towards sexual violence, and rationalise their behaviour – to themselves but also to their victim.<sup>104</sup> Brownmiller recognised the influence of porn, for example, in encouraging men to “commit their acts of aggression without awareness, for the most part, that they have committed a punishable crime, let alone a moral wrong”.<sup>105</sup> Within intimate relationships, sexual aggression can become normalised, and women in these situations are not likely to report to the police, even if there is serious threats, injury, or force involved.

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<sup>96</sup> End Violence Against Women, ‘Public’s attitudes to sexual consent’ (YouGov, 2018)

<<https://yougov.co.uk/topics/society/articles-reports/2018/12/01/publics-attitudes-sexual-consent>> accessed 10 April 2023

<sup>97</sup> Stacie and Veronyka (n 27) 1177

<sup>98</sup> Estrich (n 44) 12

<sup>99</sup> Jess Hill, *See What You Made Me Do: Power, Control and Domestic Violence* (C. Hurst and Company (Publishers) Limited 2020) 5

<sup>100</sup> Home Office, Professor Betsy Stanko (OBE), *Operation Soteria Bluestone Year One Report* (CP 769, 2022) 52 (Soteria Report)

<sup>101</sup> Heike Gerger, Hanna Kley, Gerd Bohner, and Frank Siebler, ‘The Acceptance of Modern Myths About Sexual Aggression (AMMSA) scale: Development and validation in German and English’ (2007) 33(5) *Aggressive Behaviour* 422, 425

<sup>102</sup> Brownmiller (n 34) 811

<sup>103</sup> Huemmer, McLaughlin and Blumell (n 93) 442

<sup>104</sup> Bohner, Eyssel, and Süssenbach, (n 92) 159

<sup>105</sup> Brownmiller (n 34) 832

## Self-Blame

Victim-blaming links to the “continued tendency of our patriarchal society to police women’s behaviour”,<sup>106</sup> and mitigates the harm of sexual violence by painting the victim as ‘deserving’, ‘blameworthy’, or ‘asking for it’. The hyper-sexualisation and objectification of women is accompanied by slut-shaming and sexual stigma, creating sexual double standards that make women feel culpable.<sup>107</sup> This encourages a denial of problematic male behaviour and its prevalence and redirects responsibility for the rape “from the perpetrator in an assault to the victim”.<sup>108</sup> This notion can become entwined with a victim’s own sense of self.<sup>109</sup> Rape culture promotes “internalized feelings of shame, self-blame and self-loathing”,<sup>110</sup> which can be intensified for victims from certain cultural or religious backgrounds, heightening the reporting barrier for many BME victims.<sup>111</sup>

Rape culture leads to a strong presence of self-blame due to toxic gender stereotypes that place women “as bearing the onus of gatekeeping sexual experiences”.<sup>112</sup> The persisting sexist societal perception that sex is more for men than women affords entitlement to men and creates an illusion of female ability to prevent rape.<sup>113</sup> This inflicts an expectation of resistance – misaligned from trauma-informed responses to sexual pressure and rape – meaning that many victims will not report because they “ended up ‘giving in’ to the sexual pressure without a ‘fight’”.<sup>114</sup> Engagement with self-blame is common, and is even used as a coping mechanism for many victims who attribute blame to their past self in order to regain control and agency by establishing a new self, separate from the person who was victimised.<sup>115</sup> This can lead to an active choice not to report.

## Male Victims

Heteronormativity and patriarchal values disadvantage women, who are disproportionately affected by rape and sexual assault, but rape culture also subjects boys and men to

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<sup>106</sup> Daly (n 10) 148

<sup>107</sup> Emily Setty, Jessica Ringrose, and Kaitlyn Regehr, ‘Digital Sexual Violence and the Gendered Constraints of Consent in Youth Image Sharing’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 46

<sup>108</sup> Keller, Mendes and Ringrose (n 77) 24

<sup>109</sup> Huemmer, McLaughlin and Blumell (n 93) 447

<sup>110</sup> Ibid 445

<sup>111</sup> Gill (n 19) 312 ; Narrative Matters, Amrita Ahluwalia-McMeddes, ‘The Age of Consent: Understanding Consent’ (December 2022) 15m52s (Amrita Dash) <<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>>accessed 20 April 2023

<sup>112</sup> Jennifer M. Brown and Miranda A. H. Horvath, ‘Conclusions: What’s It Going to Take?’ In Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (Routledge 2023) 289

<sup>113</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, ‘The Age of Consent: Understanding Consent’ (December 2022) 10m20s (Andrea Simon) <<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>>accessed 20 April 2023

<sup>114</sup> Susan Estrich, ‘Rape’ (1986) 95(6) *The Yale Law Journal* 1087, 1166

<sup>115</sup> Huemmer, McLaughlin and Blumell (n 93) 440, 444

“gendered and homophobic policing”.<sup>116</sup> Male victims of sexual assault can be viewed more harshly for “not fulfilling their masculine duty to be assertive, stick up for themselves, initiate (hetero)sexual encounters, and be in control”.<sup>117</sup> Rape culture inflicts pressure on boys and men to conform with heteronormative, masculine traits to demonstrate ‘manhood’. This creates a nuanced type of stigma for male victims, intensifying feelings of humiliation and shame, including the “added stigma of it having been ‘gay’ sex”,<sup>118</sup> decreasing the likelihood that they will access support services or report to the police. LGBTQ+ men can be targeted for violence as a result of not adhering to gendered norms of masculinity and femininity. Gay male victims are often “attributed more blame than heterosexual male survivors”,<sup>119</sup> and more likely to stay silent about their rape.<sup>120</sup> One reason for this is that gay male victims may engage with hegemonic masculinity – by concealing their vulnerability, pain, and suffering – in an attempt to regain a sense of control and power after their rape.<sup>121</sup> This is particularly relevant where men associate their victimisation to their sexuality, as they may choose not to report to prevent others from questioning or deconstructing their masculinity.<sup>122</sup>

## Conclusion

This chapter illustrates the prevalence and persistence of rape culture, which is deep-rooted and manifests in a multitude of ways and how it functions to normalise sexual aggression and place blame with the victim. The interrelation between rape culture and rape myths show a circular reinforcement of patriarchal and misogynistic ideologies via a narrow construction of rape. This leads to confined socially accepted narratives of rape, to the exclusion of more common experiences, having a profound impact upon societal perceptions which influence a victim-survivors decision to report. This chapter illustrates the power of rape culture and myths as an underlying force behind various reasons for non-reporting, providing some explanation for the majority of cases that never enter the CJS. What is not explored here is how victims’ perceptions of the CJS, which is infiltrated by the rape culture and myths discussed here, may also dictate victims decision to report.

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<sup>116</sup> Flood and Burrell (n 25) 226 ; Christopher S. Reigeluth and Michael E. Addis, ‘Policing of Masculinity Scale (POMS) and pressures boys experience to prove and defend their “manhood”’ (2021) 22(2) *Psychology of Men & Masculinities* 306

<sup>117</sup> Stacie and Veronyka, (n 27) 1180

<sup>118</sup> Aliraza Javaid, ‘In The Shadows: Making Sense of Gay Male Rape Victims’ Silence, Suffering, and Invisibility’ (2017) 29(4) *International journal of sexual health* 279, 285

<sup>119</sup> Daly (n 10) 158 ; Phil Rumney, ‘Gay male rape victims: Law enforcement, social attitudes and barriers to recognition’ (2009) 13(2–3) *The International Journal of Human Rights* 233

<sup>120</sup> Javaid (n 118) 279

<sup>121</sup> *Ibid* 283

<sup>122</sup> *Ibid* 288

The following chapters will shine a light on this by analysing the impact of myths and misconceptions upon the police and CPS stages of a victim's journey. The 20% of victim-survivors who do decide to report their rape go on to face an array of continuing barriers to justice, that stem from the prevalence and persistence of rape culture. The next step in their journey is the police station.

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## **Chapter 2 – Police Investigation**

The police investigation stage is a fundamental steppingstone between reporting and prosecution, but attrition is extensive. This chapter argues that attrition during police investigation is substantially impacted by a police culture riddled with disbelief, misogyny, sexism, racism, corruption, and infiltrated by rape culture and myths. The first part explores this police culture, analysing the onus placed upon victim credibility, and using the concept of intersectionality to facilitate a deeper understanding of police discrimination. A series of failures in rape and sexual assault investigations is accompanied by serious issues of officer sexual offending that reveal the deep-rooted and institutional nature of the culture issues.<sup>123</sup> Next, this culture is linked to the attrition of rape cases at the police stage, that occurs via two routes: police decisions to No Further Action (NFA) a report, or victim withdrawal. NFA decisions are impacted by factors such as gender, class, race, and sexuality which can compound to create distinct experiences of discrimination for certain victims. This discrimination has a powerful ability to revictimize and retraumatise survivors of sexual assault, which can lead to victim withdrawal, which is also guided by a severe distrust in the police and their ability to help. Exploring attrition at the police stage through the lens of intersectionality reveals a disproportionate effect on marginalised and minoritized victims. Those who are at a heightened risk of sexual violence are “less likely to access support, report, and be believed when they do”,<sup>124</sup> contributing to the obscuration of these experiences which reinforces rather than challenges rape culture.

### **Culture Within the Police**

#### *Rape Culture and Myths*

The police are not immune from rape culture; patriarchal and heteronormative ideologies infiltrate police perceptions and practices. Historically, as a predominantly male profession, police mentality has been “often identical to the stereotypic views of rape that are shared by the rest of the male culture”.<sup>125</sup> The Soteria report, as part of the government’s End-to-End Rape Review, highlighted enduring and serious flaws within police attitudes, and institutionally.<sup>126</sup> Rape myth acceptance amongst police officers persists, with a “significant

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<sup>123</sup> Katrin Hohl, Kelly Johnson and Sarah Molisso, ‘A Procedural Justice Theory Approach to Police Engagement with Victim-Survivors of Rape and Sexual Assault: Initial Findings of the ‘Project Bluestone’ Pilot Study’ (2022) 2 Int Criminol 253, 253

<sup>124</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, ‘The Age of Consent: Understanding Consent’ (December 2022) 17m35s (Amrita Dash) <<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>> accessed 20 April 2023

<sup>125</sup> Brownmiller (n 34) 777

<sup>126</sup> Soteria Report (n 100)



minority of officers”<sup>127</sup> openly making “statements rooted in myths”,<sup>128</sup> and a more subtle reliance upon myths and stereotypes weaved into the fabric of police investigation. Restricted funding and limited training, means police officers lack sufficient specialist knowledge about sexual offending that could combat myth acceptance and rape culture endorsement.<sup>129</sup> With no standardised training, there is “great variability within police forces in terms of officer attitudes, beliefs, customs, and social behaviour (“culture”) towards RAOSO”.<sup>130</sup> Many officers do not consider rape as a ‘real’ issue, and sexist attitudes lead to a lingering sense that police officers are less responsive to crimes typically suffered by women.<sup>131</sup> There is a real fear that “patriarchal beliefs, rape myth acceptance, and rape culture endorsement”<sup>132</sup> impact police decision making and influence how victims of rape are treated within the police organisation.<sup>133</sup>

Within investigation an intrusive and “disproportionate”<sup>134</sup> examination of victim credibility often results in victim-blaming, which is present throughout the CJS.<sup>135</sup> Placing the onus on the victim, rather than examining the perpetrators behaviour reconstructs and reinforces rape culture. One key example is where intoxication plays a role in rape. Wider societal attitudes reveal a damaging misconception that intoxication mitigates sexual violence, with 1 in 10 thinking it is not normally rape if the victim is drunk or asleep.<sup>136</sup> This is reflected in the station mentality, with many officers perceiving rape complaints which include alcohol or substance misuse as the “victim’s problem”,<sup>137</sup> because intoxication is seen as “risk-taking”<sup>138</sup> behaviour, and thus “the legal system was not obligated to safeguard them”.<sup>139</sup> Officers may also believe that “alcohol use results in regrettable sex

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<sup>127</sup> Ibid 131

<sup>128</sup> Ibid

<sup>129</sup> Ibid 23

<sup>130</sup> Ibid 27

<sup>131</sup> Ibid

<sup>132</sup> Brittany L Acquaviva, Katherine A Meeker and Eryn Nicole O’Neal, ‘Blameworthy Suspects and “Real Rape”’: Assessing the Effects of Rape Culture-Specific Suspect Culpability Factors on the Police Decision to Arrest’ (2022) 28(15-16) *Violence against women* 3865, 3866

<sup>133</sup> Anonymous, ‘The toxic culture of the Metropolitan Police Service’ *The Economist* (London, 18 January 2023); Jessica Shaw, Rebecca Campbell, Debi Cain and Hannah Feeney, ‘Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records’ (2017) 7(4) *Psychology of Violence* 602

<sup>134</sup> Soteria Report (n 100) 25

<sup>135</sup> Charlotte T. Dalton, Sophie Barrett, Miranda A. H. Horvath and Kari Davies, “A Systematic Literature Review of Specialist Policing of Rape and Serious Sexual Offences” (2022) 2 *Int Criminol* 230, 231; Criminal Justice Joint Inspection, (CJJI) “A joint thematic inspection of the police and Crown Prosecution Service’s response to rape: Phase one: From report to police or CPS decision to take no further action’ (2021); HMICFRS (n 78)

<sup>136</sup> End Violence Against Women, ‘Public’s attitudes to sexual consent’ (YouGov, 2018)

<<https://yougov.co.uk/topics/society/articles-reports/2018/12/01/publics-attitudes-sexual-consent>> accessed 10 April 2023

<sup>137</sup> Soteria Report (n 100) 27

<sup>138</sup> Emma Sleath and Ray Bull, ‘Police Perceptions of Rape Victims and the Impact on Case Decision Making: A Systematic Review’ (2017) 34 *Aggression and Violent Behavior* 102, 110

<sup>139</sup> Soteria Report (n 100) 27



instead of sexual victimization”,<sup>140</sup> illustrating the culture of disbelief that aligns with credibility judgements. Police understandings of victim ‘credibility’ and ‘respectability’ are embedded within a structural disbelief, linked to systems of “patriarchy, heteronormativity, racism, classism, and ableism”,<sup>141</sup> that continue to define police culture.

### *Intersectional Discrimination*

Narratives of respectability and victim credibility are not constructed along a single categorical axis, but are “formulated at the intersection of gender, class, and age”,<sup>142</sup> alongside many other factors including race, ethnicity, language ability, sexual orientation, (dis)ability, and religious beliefs. A victim’s experience of discrimination – whether she is deemed ‘credible’ – will be impacted by her individual identity markers and circumstances, as well as the social influences and structural discrimination that works against her. Women who are multiply-burdened face a compounded impact from multiple overlapping systems of discrimination, leading to distinct experiences.<sup>143</sup> Intersectionality, as coined by Crenshaw, recognises that a multitude of possible contributing factors, systems of discrimination and power relations contribute to a “complex web of structures surrounding the individual represent the myriad, but interconnecting, ways”<sup>144</sup> in which any one victim is oppressed. Intersectionality is not just significant in understanding why certain people are victimised, but also in understanding disadvantage within the criminal justice system.

Sexism and racism within police culture intersect to create distinct disadvantages for black women, who are likely to encounter “institutional racism and intersectional discrimination”.<sup>145</sup> Police conceptions of a credible, respectable victim discriminate against black and other minority ethnic women (BME), because they are based on white, middle-class ideals. These ideals interplay with cultural and racial narratives that create damaging stereotypes and assumptions about BME women. Some examples include myths of black promiscuity, “racialised forms of hyper-sexualisation”,<sup>146</sup> and cultural associations with particular forms of violence. These narratives and stereotypes work against BME victims, painting them as uncredible, blameworthy, or excusing and minimising the harm they have experienced. As a result, BME women are distanced from ideals of respectability and

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<sup>140</sup> Acquaviva, Meeker and O’Neal (n 132) 3869 ; Regina A. Schuller and Anna Stewart, ‘Police responses to sexual assault complaints: The role of perpetrator/complainant intoxication’ (2000) 24(5) *Law and Human Behavior* 535

<sup>141</sup> Salvatori and Mendes (n 29) 254

<sup>142</sup> Daly (n 10) 74

<sup>143</sup> Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1(8) *University of Chicago Legal Forum* 139

<sup>144</sup> Gill (n 19) 309

<sup>145</sup> *The Decriminalisation of Rape* (n 4) 63

<sup>146</sup> *Ibid* 53

credibility.<sup>147</sup> For example, “middle-class ideals [that] characterise calmness and congeniality as appropriate emotional behaviour”<sup>148</sup> contrast with racialised stereotypes that pathologize black victims as angry black women.<sup>149</sup> Sexist and racist ideals of credibility and respectability thus intersect to create heightened disadvantage for BME victims.

The impact of intersectionality is that marginalised and minoritized victims, who are at the greatest risk of being subjected to sexual violence, are the most likely to not be believed, and to be subjected to heightened scrutiny by the police.<sup>150</sup> The context of police investigation is inherently underpinned by power inequalities,<sup>151</sup> but privilege, power, dominant standards, stereotypes, and prejudice all play a part in constructing relationships of power “which interact to create synergistic disadvantage”.<sup>152</sup> With the capacity to validate a victim’s experience, and to progress or drop her case, police officers are placed in a position of unique power as “gatekeepers”<sup>153</sup> to justice, but marginalised and minoritized victims are being excluded.

### *Corruption and Protection*

This police position of power is increasingly being exploited, with recent reports revealing a culture of misogyny and racism that plagues the police force.<sup>154</sup> Parallel to this, a string of revelations of officer sexual offending has unveiled significant concerns about the MET, and by analogy, the police force more generally. The notorious cases of Wayne Couzens – who kidnapped, raped, and murdered Sarah Everard in 2021 – and David Carrick – who in 2023 pleaded guilty to 48 rapes against 12 women – are a product of a “toxic work culture which encourages the attitudes that lead to misogynistic violence”.<sup>155</sup> These offences did not occur in isolation; it is not a few ‘bad apples’. Instead, Baroness Casey’s interim report<sup>156</sup> shows “just how deep-rooted misogyny, sexist and racist discrimination within

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<sup>147</sup> Daly (n 10) 78

<sup>148</sup> Ibid 87 ; Adia Harvey Wingfield, ‘Are some emotions marked ‘whites only’? Racialized feeling rules in professional workplaces’ (2010) 57(2) *Social Problems* 251

<sup>149</sup> The Decriminalisation of Rape (n 4) 59

<sup>150</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, ‘The Age of Consent: Understanding Consent’ (December 2022) 17m35s (Amrita Dash) <<https://open.spotify.com/episode/19XOCsPQyTvFZZWliBuQwu>> accessed 20 April 2023

<sup>151</sup> Hohl, Johnson and Molisso (n 123) 258

<sup>152</sup> European Commission, Directorate-General for Justice and Consumers, Sandra Fredman, ‘Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law’ (2016) 38

<sup>153</sup> Acquaviva, Meeker and O’Neal (n 132) 3866

<sup>154</sup> Independent Office for Police Conduct, *Operation Hotton* (Learning Report 2022) (Operation Hotton) ; Baroness Casey of Blackstock DBE CB, *Baroness Casey Review: Final Report* (2023) (Baroness Casey Review) ; Soteria Report (n 100)

<sup>155</sup> Rachel Cunliffe, ‘Out of the Ordinary: The Metropolitan Police, has proved yet again that it is a haven for sex offenders’ *New Statesman* (20-26 January 2023) 37

<sup>156</sup> Baroness Casey of Blackstock DBE CB, *Baroness Casey’s Report on Misconduct* (2022) (Baroness Casey Interim Report)

policing is”.<sup>157</sup> Operation Hotton also found a range of concerning behavioural themes permeating police attitudes and behaviour, including “‘discrimination’...‘banter’ used to excuse oppressive and offensive behaviours’...‘toxic masculinity, misogyny and sexual harassment’”.<sup>158</sup> The report illustrates the cultivation of an environment where officers can “make light of raping colleagues and partners [and] physical violence against women”,<sup>159</sup> and where their position of power is used to engage in “coercive and manipulative behaviour with women they come into contact with”.<sup>160</sup>

The horror of police offending is that “it is an abuse of power committed by those whose job is to control such abuses of power”.<sup>161</sup> Those who are privileged with the handling of sensitive cases of sexual violence, and who have immense power to support or retraumatise victim-survivors, are operating within a value system that “tolerates the policeman who does not believe that the crime of rape exists”,<sup>162</sup> and that enables the “policeman who rapes”.<sup>163</sup> David Carrick was part of a force that enabled him to commit his crimes, “by handing him a warrant card and a firearm”,<sup>164</sup> which he used to gain his victims trust, “by ignoring complaints, and by nurturing a toxic work culture”.<sup>165</sup> This damaging police culture attracts power-hungry individuals, then gives them power and facilitates them to abuse it.<sup>166</sup>

Furthermore, officer abuse and the culture of misogyny and racism is not taken seriously. Data in the Baroness Casey interim report shows that allegations related to racism, sexual misconduct, or other discriminatory behaviour are less likely to receive a ‘case to answer decision’ compared to other issues.<sup>167</sup> It also found that misconduct action is discouraged, “highlighting the ways the force both enables and empowers officers to abuse their power with impunity”.<sup>168</sup> Despite hundreds of allegations against officers, dismissal or misconduct

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**The final report was released after this chapter had been drafted but does not deviate from the claims made here.**

<sup>157</sup> ‘Baroness Casey’s interim report into misconduct in the Metropolitan Police Service’ (*Rape Crisis England and Wales*, 17 October 2022) <<https://rapecrisis.org.uk/news/baroness-caseys-interim-report-into-misconduct-in-the-metropolitan-police-service/>> accessed 17 April 2023

<sup>158</sup> Operation Hotton (n 154) 5, para 6

<sup>159</sup> ‘IOPC finds cultural issues of misogyny and racism in the Met Police’ (*End Violence Against Women*, 1 February 2022) <<https://www.endviolenceagainstwomen.org.uk/iopc-cultural-issues-misogyny-racism-met-police/>> accessed 13 April 2023

<sup>160</sup> Ibid

<sup>161</sup> Brownmiller (n 34) 576

<sup>162</sup> Ibid

<sup>163</sup> Ibid<

<sup>164</sup> Cunliffe (n 155)

<sup>165</sup> Ibid

<sup>166</sup> Ibid

<sup>167</sup> Baroness Casey Interim Report (n156) 8-9

<sup>168</sup> ‘Casey Review highlights how the Met enables and empowers officers to abuse power with impunity’ (*End Violence Against Women*, 17 October 2022) <<https://www.endviolenceagainstwomen.org.uk/casey-review-finds-misogyny-met-police/>> accessed 13 April 2023 ; Baroness Casey Interim Report (n156)

action is rare. For officers involved in two or more cases of misconduct, only 0.71% had been sacked and a serious time delay means misconduct cases take on average 400 days to resolve.<sup>169</sup> There is a high threshold for determining gross misconduct, and a “tolerance of serious breaches”.<sup>170</sup> This all points towards an underlying culture of protection among officers and a continuation of the “solidarity of the police brotherhood”,<sup>171</sup> which allows behavioural problems – and the endorsement of rape culture - to go unchallenged, and conduct issues to endure.<sup>172</sup>

## Two Routes to Attrition

In reconstructing rape culture through engagement with myths and stereotypes, and endorsing misogynistic and racist attitudes, police culture has a measurable impact on attrition at the police stage. Only 1.6% of rapes that are reported result in someone being charged, meaning that the majority of cases that enter the criminal justice system are lost during the course of police engagement.<sup>173</sup> Attrition occurs via two routes at the police stage: by police decisions to ‘no crime’ or more commonly to NFA, or by victim withdrawal; both are influenced by police culture. Intersectional discrimination means that attrition disproportionately affects minoritized and marginalised victims, contributing to further obscuration of minority experiences; attrition at the police stage thus reinforces the narrative of rape that society accepts.

### *Police NFA Decisions*

Police NFA decisions are the first route to attrition and must be contextualised within a “long history of disbelief, disrespect, blaming the victim, not seeing rape as a serious violation, and therefore deciding not to record it as a crime”.<sup>174</sup> Evidential difficulties are cited as the reason that “half of all sexual offences recorded by the police don’t proceed further”.<sup>175</sup> While there is truth to these difficulties, this ignores the impact of rape culture to afford weight to what ‘he said’, while enforcing doubt and disbelief to what ‘she said’. Police culture and perceptions of rape contribute to the high number of NFA decisions, because of the continuing “tendency of the police to treat reports of rape with scepticism”,<sup>176</sup> which can even lead to a lack of thorough investigation and collection of

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<sup>169</sup> Baroness Casey Interim Report (n156) 3

<sup>170</sup> Ibid 14

<sup>171</sup> Brownmiller (n 34) 575

<sup>172</sup> Operation Hotton (n 154) 5, para 8

<sup>173</sup> Home Office, *Crime Outcomes In England and Wales, Year to December 2020: Data Tables* (Official Statistics 2021) Table 2.2

<sup>174</sup> Home Office, Government Equalities Office, Baroness Stern, *Stern Review* (Independent Review, 2010) 58

<sup>175</sup> HMICFRS (n 78) 30

<sup>176</sup> McGlynn (n 5) 142

evidence.<sup>177</sup> The strong focus on victim credibility means a reliance on socially accepted narratives of rape, gender stereotypes and myths, and socio-cultural scripts of appropriate female behaviour is inevitable.<sup>178</sup> At the very least, there is a real risk that they “will be applied to prioritise caseloads”,<sup>179</sup> even among officers with more training and awareness. Police discretion to progress a case, or NFA it leads to an “(unintentional) organizational endorsement of rape myths”,<sup>180</sup> which reinforces, rather than challenges rape culture.

An enduring culture of disbelief increases the likelihood of a NFA decision. One of the most common myth engagements is “the ‘she lied’ factor, a myth that suggests that rape victims lie about being raped”,<sup>181</sup> because of regret, revenge, or attention.<sup>182</sup> This concept of the female tendency to lie has “been built into male logic since the days when men first allowed a limited concept of criminal rape into their law”,<sup>183</sup> and forms the first line of male defence.<sup>184</sup> Despite evidence showing that false allegations of RASSO are no higher than any other crime,<sup>185</sup> the narrative persists, with heightened rhetoric in 2018.<sup>186</sup> The disproportionate male fear of false allegations led the Henrique Report to recommend “police forces abandon the presumption of belief in victims/survivors of serious sexual offences, and abolish the use of the term ‘victim’”.<sup>187</sup> Scepticism over rape complaints is affected by an institutional culture of disbelief, rather than just the perceptions of individual officers.<sup>188</sup> Sir Stephen House, the acting commissioner of the Metropolitan Police and former deputy commissioner has been accused of labelling the ‘bulk’ or rape complaints as “regretful sex”,<sup>189</sup> and the Soteria report reveals that this trope is common, with a culture of disbelieving victims present across all the pathfinder forces.<sup>190</sup>

For victims who do not “fit the ‘mould’ of a credible victim – because of their age, their outward presentation, their social skills, a disadvantaged background, or a learning/mental

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<sup>177</sup> Ibid

<sup>178</sup> Russell (n 36) 261

<sup>179</sup> Soteria Report (n 100) 150

<sup>180</sup> Acquaviva, Meeker and O’Neal (n 132) 3866

<sup>181</sup> Sleath and Bull (n 138) 108

<sup>182</sup> Daly (n 10) 17

<sup>183</sup> Brownmiller (n 34) 488

<sup>184</sup> Ibid, 822

<sup>185</sup> Soteria Report (n 100) 86

<sup>186</sup> Daly (n 10) 110

<sup>187</sup> The Decriminalisation of Rape (n 4) 26 ; Sir Richard Henriques, *The Independent Review of the Metropolitan Police Service’s handling of non-recent sexual offence investigations alleged against persons of public prominence* (Independent Review 2019) (Henriques report)

<sup>188</sup> The Decriminalisation of Rape (n 4) 26

<sup>189</sup> Cathy Newman, ‘Exclusive: Former Acting Met Commissioner facing investigation over alleged comments that many rape complaints were “regretful sex”’ *Channel 4 News* (1 March 2023) <<https://www.channel4.com/news/exclusive-former-acting-met-commissioner-facing-investigation-over-alleged-comments-that-many-rape-complaints-were-were-regretful-sex>> accessed 14 April 2023

<sup>190</sup> Soteria Report (n 100) 27

health disability”<sup>191</sup> – officer disbelief and discrimination is more likely. For example, the ‘she-lied’ myth is amplified for working-class women. Gendered and classed conceptions of respectability mean that class, socio-economic status, and sex intersect to disadvantage victims, because “traditional heterosexual femininity was constructed based on middle-class ideals”.<sup>192</sup> Women from lower-class neighbourhoods and socio-economic backgrounds are “coded as the sexual and deviant other against which femininity was defined”<sup>193</sup> meaning they are more likely to be categorised by the police as ‘uncredible’ and thus ‘lying’.

Classed conceptions of respectability intersect with gendered notions of women’s sexuality to disadvantage working class women. With historical protection of chastity, honour, and virtue afforded only to women with higher status, working-class femininities are associated with a much freer sexual morality. Classed narratives construct working class women as “unchaste and thus unrapeable”.<sup>194</sup> Stereotypes of ‘promiscuity’ and excessiveness, including drunkenness are labelled as “risk taking behaviour”<sup>195</sup> by police, leading to increased victim-blaming of lower-class victims. Despite a prohibition of using survivors’ sexual history evidence except in exceptional circumstances, victim-survivors continue to be “questioned about irrelevant aspects of their sexual history”,<sup>196</sup> revealing the continued impact of classed narratives upon police perceptions and thus their NFA decisions.

The overlap between socio-economic status and race – with a disproportionate level of BME women making up lower-class neighbourhoods – adds another layer to the discrimination victims face, illustrating the compounded effect of intersectionality. During investigation, BME women face “sexist expectations of chastity and racist assumptions of sexual promiscuity combined”.<sup>197</sup> The interaction between these identity markers, and social influences means that “the black woman, and not the white, is generally the object of debasement”,<sup>198</sup> both in the risk of violence she is subjected to and the minimisation of this violence within the CJS.

The interaction of racism and sexism within the police leads to a minimised perception of harm and seriousness when a report concerns a BME woman. While rape is seen as a

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<sup>191</sup>The Decriminalisation of Rape (n 4) 24

<sup>192</sup> Daly (n 10) 78

<sup>193</sup> Beverley Skeggs, *Formations of class & gender* (Sage 1997) 99

<sup>194</sup> Daly (n 10) 78 ; Anna Clark, *Women’s silence, men’s violence: Sexual assault in England, 1770–1845* (Pandora 1987)

<sup>195</sup> Daly (n 10) 78

<sup>196</sup> Daly (n 10) 152 ; Youth Justice and Criminal Evidence Act 1999, s 41

<sup>197</sup> Crenshaw (n 143) 159

<sup>198</sup> Brownmiller (n 34) 504



“personal, individual crime when it affects Western women”,<sup>199</sup> blame is placed on ‘culture’ where BME victims are concerned.<sup>200</sup> Police responses that follow “misguided assumptions of cultural or religious acceptance”,<sup>201</sup> create problematic narratives that excuse sexual violence against these women.<sup>202</sup> Racialised and gendered stereotypes also lead to an assumption that in certain (particularly South Asian) communities, sexual violence only occurs in a familial/interpersonal context leading to a particular institutional scrutiny of Muslim women’s behaviours where rape occurs outside this context.<sup>203</sup>

Police officers may also perceive victims from minority backgrounds as ‘weak victims’, rather than adequately accounting for the often “strong codes of ‘honour’ and shame”<sup>204</sup> that might make it difficult for some minority women to talk about their experience, or provide linear and coherent narratives.<sup>205</sup> This fails to acknowledge the wider, gendered context in which rape and sexual assault occur and doesn’t adequately address the impact of culture, alongside factors such as “poverty, health status (both mental health and physical well-being), race, class, language ability, sexual orientation, religious beliefs, disabilities and even place of residence (whether urban or rural)”<sup>206</sup> in impacting experiences of violence and accessibility to support and criminal justice.<sup>207</sup> The police should be “scrutinizing and contesting cultural values, especially in terms of how they convey or deny power to members of the relevant group”,<sup>208</sup> but instead are reinforcing the silencing that many BME victims experience from their families.<sup>209</sup> Police culture enables racialised and gendered assumptions to have a substantial impact upon police perceptions, and inevitably their discretion to NFA a rape investigation.

### *Victim Withdrawals*

Alongside police decisions, attrition at this stage is also determined by victim withdrawals, with “one in two victims withdraw from rape investigations”.<sup>210</sup> In 44.3% of cases where ‘evidential difficulties’ were cited, this was as a result of the victim not supporting

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<sup>199</sup> Gill (n 19) 309

<sup>200</sup> Ibid

<sup>201</sup> Daly (n 10) 157

<sup>202</sup> Ibid

<sup>203</sup> The Decriminalisation of Rape (n 4) 58

<sup>204</sup> Gill (n 19) 314

<sup>205</sup> Ibid

<sup>206</sup> Gill (n 19) 317-318 ; Crenshaw (n 143)

<sup>207</sup> Ibid

<sup>208</sup> Gill (n 19) 311

<sup>209</sup> Dr. Ravi Thiara (University of Warwick) and Sumanta Roy (Imkaan), *Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings* (Imkaan, E-book, 2020) 30

<sup>210</sup> End-to-End Rape Review (n 1) i

prosecution.<sup>211</sup> Proceeding without victim testimony is difficult in rape cases (although not always impossible) so keeping victims engaged with the process is vital for preventing attrition. The number of victims not supporting prosecution or withdrawing “increased from 5,773 in 2014/15 to 18,584 in 2019/20”.<sup>212</sup> There is a lack of data on the reasoning behind these decisions, but a logical link can be made to the discrimination that victims experience and perceive during the gruelling process of police investigation. The culture of misogyny and racism that pervades the force increases the likelihood of revictimization and the increasing exposure of police failings and corruption creates a powerful distrust, with both affecting victim decisions to withdraw their case.

During investigation, the police have immense power to either affirm and validate victimisation, or conversely to revictimize and further traumatise victims.<sup>213</sup> Police perceptions and understandings of rape determine officer engagement, dictating how the victim experiences the investigation process.<sup>214</sup> The culture of disbelief and victim blaming tendencies mean that officer behaviour “denies voice, does not acknowledge harm, is judgemental, uncaring, intimidating, or insensitive”,<sup>215</sup> which engenders secondary victimisation. Police culture cultivates and perpetuates “racism, classism, sexism, dis/ablism, homophobia, and transphobia”,<sup>216</sup> reproducing the “very violence it seeks to address”,<sup>217</sup> with a compounded impact of discrimination for minority women. When asked if police investigation was fair and proportionate, only 12% of victim-survivors agreed.<sup>218</sup> The power of the police to revictimize and cause negative or ‘anti-therapeutic’ effects should not be undermined, with many victims reporting the criminal justice response to be “bad, or worse than sexual violation itself”.<sup>219</sup> Fear of revictimization, and the risk of receiving negative reactions from police officers are well-established barriers to reporting sexual violence,<sup>220</sup> thus it is sensible that the realisation of these fears leads to victim withdrawal. Although greater analysis of victim attrition is required, it is evident that victims

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<sup>211</sup> Home Office, Crime outcomes in England and Wales, year to December 2020: data tables (Official Statistics 2021) Table 2.2

<sup>212</sup> HMICFRS (n 78) 72

<sup>213</sup> Hohl, Johnson and Molisso (n 123) 254

<sup>214</sup> Dalton, Barrett, Horvath and Davies (n 135) 231

<sup>215</sup> Hohl, Johnson and Molisso (n 123) 254

<sup>216</sup> The Decriminalisation of Rape (n 4) 59

<sup>217</sup> Ibid

<sup>218</sup> Ibid 53 ; Olivia Smith and Ellen Daly, ‘Final Report: Evaluation of the Sexual Violence Complainants’ Advocate Scheme’ (2020) Loughborough University

<sup>219</sup> Soteria Report (n 100) 13

<sup>220</sup> Huemmer, McLaughlin and Blumell (n 93) 438 ; Amy M Cohn, Heidi M Zinzow, Heidi S Resnick and Dean G Kilpatrick, ‘Correlates of reasons for not reporting rape to police: Results from a national telephone household probability sample of women with forcible or drug-or-alcohol facilitated/incapacitated rape’ (2013) 28(3) Journal of Interpersonal Violence 455, 463 Table 2



withdraw their cases to protect themselves from distress because they cannot persist in these harmful and discriminatory circumstances.<sup>221</sup>

Victim withdrawals are also impacted by an extensive and rising distrust in the police. As a result of a “series of police failings in rape and sexual assault investigations, officer sexual offending, and a police culture of misogyny”,<sup>222</sup> public trust in the police, and their ability to help has eroded.<sup>223</sup> One of the two main reasons that victims don’t report is because they “didn’t think that reporting would help”,<sup>224</sup> alluding to a lack of confidence and a conception that justice cannot be obtained by reporting to the police.<sup>225</sup> The continued participation of a victim is “directly impacted by their perceptions of officer belief”,<sup>226</sup> but women have been presented with enough evidence – of police misogyny and racism, alongside poor responses to rape – to reasonably conclude that the police should not be trusted.<sup>227</sup> Distrust in the police is heightened among minority groups due to “longstanding over-policing and under-protection”.<sup>228</sup> BME women in particular doubt the police’s ability to “handle the investigation in a culturally sensitive manner”,<sup>229</sup> due to entrenched racist attitudes that continue to present themselves in police behaviour and decisions.<sup>230</sup> Trust in the police is at an all-time low,<sup>231</sup> and an increasing number of victims are withdrawing their complaints because they feel so let down by the police process, and sceptical about its ability to help.<sup>232</sup>

## Conclusion

This chapter demonstrates the impact of police culture upon the attrition of rape cases via police decision and victim withdrawal at the police stage. Engagement with rape myths, intersectional discrimination and a culture of misogyny and racism plagues the police force. This leads to an investigation process which places an undue burden upon victim credibility, which disbelieves victim-survivors of rape, and which further traumatises rather

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<sup>221</sup> The Decriminalisation of Rape (n 4) 61

<sup>222</sup> Hohl, Johnson and Molisso (n 123) 253

<sup>223</sup> The End-to-End Rape Review (n 1) 6, para 17

<sup>224</sup> HMICFRS (n 78) 29 ; Office for National Statistics, ‘Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020’ (March 2021) Appendix Table 16 (40%)

<sup>225</sup> Soteria Report (n 100) 123

**Only 14% of 491 victim-survivors agreed that justice can be obtained by reporting to police**

<sup>226</sup> Hohl, Johnson and Molisso (n 123) 259

<sup>227</sup> Wording Inspired by Brownmiller (n 34) 823

<sup>228</sup> Hohl, Johnson and Molisso (n 123) 259

<sup>229</sup> HMICFRS (n 78) 32

<sup>230</sup> Gill (n 19) 311

<sup>231</sup> YouGov, ‘Are the police doing a good job?’ (Monthly Tracker) <<https://yougov.co.uk/topics/legal/trackers/are-the-police-doing-a-good-job>> accessed 15 April 2023

**47% saying ‘good job’ on 10 April 2023, compared to 77% on 1 December 2019**

<sup>232</sup> The Decriminalisation of Rape (n 4) 28

than helps victim-survivors. Police discrimination and revictimization, as well as distrust in the police is heightened by intersectionality, meaning that attrition excessively impacts minoritized and marginalised groups. The Crime Survey suggests that rape disproportionately affects those from a white background,<sup>233</sup> but this disregards that black and minoritized groups are most likely to be “lost at the first stage of attrition”.<sup>234</sup> Intersectional discrimination within attrition thus “imports a descriptive and normative view of society that reinforces the status quo”.<sup>235</sup> The police “wield significant symbolic power”<sup>236</sup> to promote ideals of right and wrong, including a confined ability to challenge rape myths and culture, by retaining cases that contradict socially accepted narratives. Instead, the police response to rape is reinforcing rape myths and culture by obscuring minority women’s experiences of sexual violence. Even officers with good intentions are still likely to prioritise ‘easier’ cases and are strongly guided by how “they think defence lawyers and juries will behave”.<sup>237</sup> This alludes to the interconnectedness of each stage of the journey, and to the need for a wide, whole-system response to “this deep-rooted societal problem”.<sup>238</sup> The small percentage of cases which survive police investigation are referred to the CPS – this is the next stage of a survivors journey.

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<sup>233</sup> HMICFRS (n 78) 32 ; ONS ‘Sexual offences in England and Wales overview: year ending March 2020’ (2021) Sexual offences prevalence and victim characteristics, England and Wales Table 4

<sup>234</sup> Sarah-Jane Lilley Walker, Marianne Hester, Duncan McPhee, Demi Patsios, Anneleise Williams, Lis Bates and Phil Rumney, ‘Rape, Inequality and the Criminal Justice Response in England: The Importance of Age and Gender’ (2019) 21(3) Criminology & Criminal Justice 297, 309

<sup>235</sup> Crenshaw (n 143) 167

<sup>236</sup> Soteria Report (n 100) 10, para 1

<sup>237</sup> The Decriminalisation of Rape (n 4) 76

<sup>238</sup> HMICFRS (n 78) 14

## **Chapter 3 – CPS**

Following police decisions, the CPS have significant power to dictate whether a case reaches court, or whether ‘no further action’ is taken. Since 2016, there has been a sharp decrease in the number of prosecutions, despite increased reporting rates.<sup>239</sup> This chapter explores one explanation for this: an active decision by the CPS to move to a more risk-averse approach on charging decisions for RAOSO.<sup>240</sup> This chapter argues that the CPS evidential standard is being misapplied. The example of mental health is used to illustrate the over-reliance on ‘weaknesses’ in evidence which are constructed on ideals of reliability and credibility. It is then argued that CPS decisions are following a ‘predictive’, ‘bookmakers’ approach based on well-founded fears of how the evidence will play out in the courtroom.<sup>241</sup> This analysis reveals that attrition is most likely for ‘challenging’ cases – those which contradict with socially accepted narratives of rape. The last section evaluates the impact of this risk-averse approach. By obscuring ‘challenging’ cases, the CPS contributes to the circular reinforcement and confirmation bias of rape myths and gender stereotypes, preventing any educational role the courts could play in confronting and dismantling myths and misconceptions. It also leads to a false sense of success in convictions, supported by the data, that does not take into account the dynamic interrelation with this pattern of attrition.<sup>242</sup>

### **A Risk-Averse Approach**

It is clear that the CPS are taking a risk-averse approach to charging decisions, even if this does not amount to a ‘change in approach’ as evaluated by the court in *R (End Violence Against Women Coalition) v The Director Of Public Prosecution*.<sup>243</sup> The sharp decline in the number of RAOSO cases progressing to court since 2016 prompted a judicial review against prosecutors by End Violence Against Women Coalition (EVAW), alleging an unlawful change in approach with regards to CPS charging decisions. EVAW claimed that the CPS had moved away from their ‘Merits-based approach’ – which acknowledged the

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<sup>239</sup> The End-to-End Rape Review (n 1) 3

<sup>240</sup> Vanessa E. Munro, ‘A Circle That Cannot Be Squared? Survivor Confidence in an Adversarial Justice System’ in Miranda Horvath, Jennifer Brown (eds), *Rape: Challenging Contemporary Thinking- 10 Years on* (2<sup>nd</sup> edn, Routledge 2023) 203; Ending Violence Against Women (EVAW), *Case Studies ‘dossier’* <<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2020/06/Case-Studies-for-JR-.pdf>> accessed 15 April 2023

<sup>241</sup> *R (End Violence Against Women Coalition) v The Director Of Public Prosecution*, Statement of Facts and Grounds Relied On (published 29 June 2020) 4 <<https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2020/06/Statement-of-Facts-Grounds-redacted.pdf>> accessed 15 April 2023 (EVAW Statement of Facts) ; *The Decriminalisation of Rape* (n 4) 35

<sup>242</sup> Munro (n 240) 203

<sup>243</sup> *R (End Violence Against Women Coalition) v The Director Of Public Prosecution* [2021] EWCA Civ 350.

prevalence of myths, and based decisions on an objective assessment of the evidence. They argued that the change in practice was implemented covertly through training events known as 'Roadshows'.<sup>244</sup> EVAW proposed that the CPS had returned to a 'bookmakers approach' based on the success of past similar cases,<sup>245</sup> which was to blame for the drastic fall in prosecution rates which discriminates against women as the primary victims of RAOSO.<sup>246</sup> EVAW "fell short of satisfying the Court of Appeal that there had been a change in policy",<sup>247</sup> but the evidence presented clearly indicates that jury predictions are playing a fundamental role in prosecutor decisions. The "sharp decline in the rate and volume of prosecutions – continuing over consecutive years",<sup>248</sup> alongside the EVAW evidence appears consistent with a radical adjustment in CPS practice, regardless of the judicial review decision.

The CPS are taking a risk-averse approach, whereby even cases with compelling evidence do not proceed to court. CPS decision letters within EVAW's case dossier reveal that a lack of event recollection, inconsistencies in stories, or delays in reporting were seen as suspicious despite other compelling evidence including video, or CCTV footage.<sup>249</sup> This signifies a lack of a trauma-informed response from the CPS, disregarding evidence that "victim-survivors often delay reporting to the police"<sup>250</sup> and that "traumatic experiences tend to impair memory",<sup>251</sup> and exposes the parallel application of myths within decision-making. The reluctance to take cases to court when myths and stereotypes might present is grounded in a predictive, rather than an evidence-based foundation.<sup>252</sup> The CPS are now also more often than not giving negative early investigative advice to the police at an early stage, based on forward looking assessments about how the trial will proceed.<sup>253</sup> Since the CPS have acknowledged that it is correct to ignore myths – by implementing their merits based approach in 2009 – the shift to a more risk-averse approach is not as a

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<sup>244</sup> EVAW Statement of Facts (n 241) 2

<sup>245</sup> Ibid 4

<sup>246</sup> 'EVAW Launches Legal Action Against CPS for Failure to Prosecute Rape' (*End Violence Against Women* 10 June 2019) < <https://www.endviolenceagainstwomen.org.uk/evaw-launches-legal-action-against-cps-for-failure-to-prosecute-rape/> > accessed 14 April 2023

<sup>247</sup> Daly (n 10) 19

<sup>248</sup> The Decriminalisation of Rape (n 4) 37

<sup>249</sup> EVAW Case 'dossier' (n 240)

<sup>250</sup> Daly (n 10) 17 ; Jennifer Temkin, "'And Always Keep a-Hold of Nurse, for Fear of Finding Something Worse": Challenging Rape Myths in the Courtroom' (2010) 13(4) *New Criminal Law Review* 710, 728-729

<sup>251</sup> Daly (n 10) 17 ; Katrin Hohl and Martin A Conway, 'Memory as Evidence: How Normal Features of Victim Memory Lead to the Attrition of Rape Complaints' (2016) 17(3) *Criminology & Criminal Justice* 248

<sup>252</sup> Munro (n 240) 203

<sup>253</sup> The Decriminalisation of Rape (n 4) 40

result of ignorance.<sup>254</sup> Rather, the “encouragement to prosecutors to drop ‘weak’ or ‘challenging’ cases”<sup>255</sup> is an active decision by the CPS to improve statistics.<sup>256</sup>

## A Realistic Prospect of Conviction

CPS charging decisions are guided by the code for crown prosecutors’ Full Code Test which involves an evidential test followed by a public interest test.<sup>257</sup> The shift away from the merits-based approach has led to a misguided application of the evidential standard, which requires a ‘realistic prospect of conviction’.<sup>258</sup> This is being engaged in a risk averse manner which firstly places victim credibility at the centre of investigation, overbearingly scrutinising the reliability and credibility of evidence in line with gender stereotypes, myths, and misconceptions. Secondly, this risk-averse approach focuses on forward-looking assessments of the courtroom, which consider the way barristers will utilise myths and how juries will apply them.

### *Reliability and Credibility of Evidence*

Victim credibility is placed at the centre of investigation, and prosecutors are “taking into account ‘myths and stereotypes’ about how ‘credible’ victims behave”.<sup>259</sup> The reliability, credibility, and sufficiency of evidence are not assessed by objective evidential standards but are structured along gendered and victim narratives that function to express disbelief. Broad cultural narratives about femininity and victimhood help to reproduce rape myths, and normally form around notions of trustworthiness and respectability.<sup>260</sup> Multiple, intersecting systems of oppression intertwine to dictate standards of victim-survivor credibility, meaning those most marginalised and minoritized are most likely to fail the CPS’ evidential test, revealing that the heightened scrutiny by the police continues into CPS investigation. Misconceptions about credibility, intertwined with stereotypes and prejudice define what the CPS perceive as evidential ‘weaknesses’, because of the distance from socially accepted narratives of ‘real rape’<sup>261</sup> and the ‘ideal victim’.<sup>262</sup>

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<sup>254</sup> EAW Statement of Facts (n 241) ; R (B) v DPP [2009] 1 EWHC 106 (Admin); [2009] 1 WLR 2072

<sup>255</sup> EAW Statement of Facts (n 241) 2

<sup>256</sup> Ibid

<sup>257</sup> Crown Prosecution Service, *The Code for Crown Prosecutors* (2018) 7

<sup>258</sup> Ibid

<sup>259</sup> *The Decriminalisation of Rape* (n 4) 39

<sup>260</sup> Daly (n 10) 10

<sup>261</sup> Estrich (n 44)

<sup>262</sup> Nils Christie, ‘The Ideal Victim’ In Ezzat A. Fattah (Ed.), *From Crime Policy to Victim Policy* (Palgrave Macmillan 1986)

The notion of the 'ideal victim' contributes to the construction of victim credibility because it presents a prototype for who society see as firstly 'rapeable', and secondly deserving victims.<sup>263</sup> Alongside the notion of 'real rape' explored in chapter 1, the concept of the 'ideal victim' acts as a foundation upon which myths and misconceptions are built, because it creates a "very narrow margin in which victim-survivors will be deemed honest and credible".<sup>264</sup> Christie defined the ideal victim as "virtuous, blameless, and weak in relation to the perpetrator",<sup>265</sup> playing into stereotypical conceptions of femininity and acceptable female behaviour. This tightly confines the eligibility for victimhood, encouraging victim-blaming, and disbelief towards those who contradict these terms, for example victim-survivors "who wore revealing clothing, had consumed alcohol, or had mental health problems".<sup>266</sup> The cultural narrative of who society perceives as a believable rape victim has not changed much, and interplays with gendered and classed notions of respectability and credibility.<sup>267</sup> Because "Legal credibility is enhanced by social 'believability'",<sup>268</sup> victims who do not fit the prototype of the 'ideal victim' are seen as uncredible, blamed, or not believed. This notion dictates who is 'rapeable', altering perceptions of harm depending upon who is bringing the allegation: for example there is a conception that sex workers cannot be raped, and the perception of harm is minimised when the victim is working class, or BME.<sup>269</sup> Chapter 2 illustrated that the police will engage in victim-blaming as a result of 'risk-taking' behaviour such as intoxication, because of an association with working class femininities that distance the victim-survivor from the 'ideal victim'.

Instead of attempting to build a prosecution case, the CPS are focusing on these 'weaknesses' in evidence that 'undermine' the case.<sup>270</sup> The example of mental health issues as a factor that 'undermines' evidence illustrates the excessive scrutiny of victim

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<sup>263</sup> Maja Brandt Andreasen 'Rapeable' and 'Unrapeable' women: the Portrayal of Sexual Violence in Internet Memes About #MeToo (2021) 30(1) *Journal of Gender Studies* 102, 106

<sup>264</sup> Daly (n 10) 51 ; Olivia Smith, *Rape trials in England and Wales: Observing Justice and Rethinking Rape Myths* (Palgrave Macmillan 2018)

<sup>265</sup> Daly (n 10) 16 ; Christie (n 262)

<sup>266</sup> Daly (n 10) 16

<sup>267</sup> Narrative Matters, Amrita Ahluwalia-McMeddes, 'The Age of Consent: Understanding Consent' (December 2022) 9m38s <<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>>accessed 20 April 2023

<sup>268</sup> Betsy Stanko and Emma Williams, 'Reviewing rape and rape allegations in London: What are the vulnerabilities of the victims who report to the police?' In Miranda A. H. Horvath and Jennifer M. Brown (Eds.), *Rape: Challenging contemporary thinking* (Willan Publishing 2011) 208

<sup>269</sup> Smith (n 264) 55 ; Kristin E. Silver, Gunnur Karakurt, Sarah Boysen, 'Predicting Prosocial Behavior Toward Sex-Trafficked Persons: The Roles of Empathy, Belief in a Just World, and Attitudes Toward Prostitution' (2015) 24(8)*Journal of Aggression, Maltreatment & Trauma* 932, 945-946 ; Narrative Matters, Amrita Ahluwalia-McMeddes, 'The Age of Consent: Understanding Consent' (December 2022) 9m27ss (Andrea Simon)

<<https://open.spotify.com/episode/19XOCsPQyTvfZZWliBuQwu>>accessed 20 April 2023

<sup>270</sup> McGlynn (n 5) 142 ; Jennifer Temkin and Barbara Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart 2008) 19



credibility, and the undue weight placed on these 'weaknesses'. Mental health issues distance victim-survivors from the 'ideal-victim' standard and interact with gender stereotypes that label females as crazy and unbalanced. Victim-survivors with mental health conditions and those with learning difficulties are statistically less likely to have their cases prosecuted, being more likely to be dropped as a result of police or CPS decisions.<sup>271</sup> The EAW case dossier shines a light on this. When the decision is made to drop a case, the CPS must explain the reasoning to victims, and in Nina and Zoe's cases there was an emphasis on medical history undermining the case.<sup>272</sup> In Nina's case, her medical records were said to undermine her account, despite proof that the suspect had completely lied about the nature of their relationship.<sup>273</sup> This clearly illustrates the weight placed on victim credibility rather than the suspect. For Zoe, the second decision not to charge relied on her medical history, including use of anti-depressants that "undermined the reliability of her recollection",<sup>274</sup> regardless of her violent, at gun point rape which would otherwise have fitted comfortably into the societal narrative of 'real rape'. This reveals the strength afforded to these 'weaknesses'. The negative stereotypes surrounding mental health damages victim credibility as a result of interaction with broad cultural narratives that draw on notions of respectability, trustworthiness, and thus credibility. This contributes to higher rates of attrition among victim-survivors with mental health issues.

The CPS are using the 'weakness' of mental health issues to paint evidence as unreliable, which is exaggerated by their extensive ability to access medical records. The end-to-end rape review recognised that "prosecutors are making disproportionate requests for confidential records relating to victims - including their therapy records".<sup>275</sup> CPS guidance on therapy notes appears to promote victim wellbeing, reassuring victims to "not worry their road to recovery will have an impact on court proceedings",<sup>276</sup> yet behind this façade, CPS guidance continues to encourage victim-blaming on an institutional level.<sup>277</sup> In May 2022 the strict legal approach governing access to therapy notes and medical records was

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<sup>271</sup> The Decriminalisation of Rape (n 4) 18 ; Daly (n 10) 2 ; Stanko and Williams (n 268) 215-216

<sup>272</sup> EAW Case 'dossier' (n 240)

<sup>273</sup> Ibid 915, Case Study 14: Nina

<sup>274</sup> Ibid 918, Case Study 17: Zoe

<sup>275</sup> 'New Crown Prosecution Service Guidance Will Block Rape Victims From Therapy' (*Rape Crisis England and Wales*, 26 May 2022) <<https://rapecrisis.org.uk/news/new-crown-prosecution-service-guidance-will-block-rape-victims-from-therapy/>> accessed 17 April 2023; The End-to-End Rape Review (n 1) 34, para 7

<sup>276</sup> Siobhan Blake, 'Rape victims should not delay seeking therapy, says updated CPS guidance' (*CPS*, 26 May 2022) <<https://www.cps.gov.uk/cps/news/rape-victims-should-not-delay-seeking-therapy-says-updated-cps-guidance>> accessed 12 April 2023

<sup>277</sup> 'New Crown Prosecution Service guidance will block rape victims from therapy' (*Rape Crisis England and Wales*, 26 May 2022) <<https://rapecrisis.org.uk/news/new-crown-prosecution-service-guidance-will-block-rape-victims-from-therapy/>> accessed 17 April 2023

removed and replaced by more lenient guidance.<sup>278</sup> This increases the likelihood that records will be requested, and that “personal therapy notes will be scrutinised by police and prosecutors”.<sup>279</sup> Intersectional discrimination means minoritized victims will be subjected to heightened scrutiny because “there may be more notes about them, it is more likely that notes contain prejudice and bias and they are more likely to be scrutinised in a prejudicial and biased way”.<sup>280</sup> There also appears to be substantial pressure upon victims to consent to access to mental health records, with refusal of this sort of personal information having potential to lead to a NFA decision.<sup>281</sup> This shows that evidential rules have failed to catch up with “changing attitudes about mental health and the right to privacy”,<sup>282</sup> allowing for stigma and stereotypes to continue to affect charging decisions. The unnecessary access to mental health records, and prosecutors reliance upon this information contributes to the systemic misogyny within the CPS that inappropriately places women and girls’ credibility at the centre of investigations.<sup>283</sup>

### *A Predictive Assessment*

The scrutiny of victim credibility and the structure of evidential ‘weaknesses’ that relies on myths and broader cultural narratives is not necessarily due to rape myth endorsement among individual prosecutors. Instead, an institutional endorsement of myths and scrutiny of victim-credibility occurs due to fears about how certain case facts will play out in the courtroom. It links to a forward-looking, predictive assessment about how barristers will engage myths into their defence and how jurors will perceive the case.

The CPS are being guided by apprehensions about how barristers will utilise ‘weaknesses’, such as health records, as a tool to undermine victim credibility, which evidence shows is not a misguided concern.<sup>284</sup> Rape myths are “deployed with frequency by barristers in sexual violence trials”,<sup>285</sup> who rely on and reproduce gendered narratives that women are untrustworthy. It is widely acknowledged among prosecutors that mental health records are regularly used at trial by defence barristers to portray the victim as an

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<sup>278</sup> Ibid

<sup>279</sup> Ending Violence Against Women, ‘One year on from the government’s rape review, little has changed for survivors EVAWG’ (EVAWG, 16 June 2022) < <https://www.endviolenceagainstwomen.org.uk/one-year-on-from-the-governments-rape-review-little-has-changed-for-survivors/> accessed 13 April 2023

<sup>280</sup> Ibid

<sup>281</sup> Smith and Daly (n 218) 19 ; HM Crown Prosecution Service Inspectorate (HMCPIS), *Rape Inspection* (CP001:1267, 2019) 160

<sup>282</sup> Smith (n 264) 134

<sup>283</sup> Hitchen (n 277)

<sup>284</sup> Daly (n 10) 126; Louise Ellison, ‘The Use And Abuse Of Psychiatric Evidence In Rape Trials’ (2009) 13(1) *The International Journal of Evidence & Proof* 28 ; Jennifer Temkin, ‘Digging the Dirt: Disclosure of Records in Sexual Assault Cases’ (2002) 61(1) *Cambridge Law Journal* 126

<sup>285</sup> Daly (n 10) 18



unreliable, untrustworthy, hysteric woman.<sup>286</sup> As explained by Brownmiller in the 70's, the standard defence to rape attempts to destroy the credibility of the victim by "smearing her as mentally unbalanced, or as sexually frustrated, or as an oversexed, promiscuous whore".<sup>287</sup> These 50 year old attitudes and perceptions are still utilised today, but rather than being referred to in "overt terms",<sup>288</sup> myths are subtly infused into the "overarching trial narratives at various points, helping to build an overall picture"<sup>289</sup> of the rape that does not conform to socially accepted narratives. Barristers continue to bolster their cases by using medical health records to "portray victim-survivors as 'crazy', damaged, disturbed, and untrustworthy",<sup>290</sup> reproducing the myth that women usually lie about rape.<sup>291</sup> Daly notes how defence barristers in her observation study drew on "gendered cultural narratives related to emotionality and mental health"<sup>292</sup> to enable them to "characterise victim-survivors as unstable and manipulative".<sup>293</sup> By focusing on how evidence will be utilised in the courtroom, the CPS are themselves being guided by myths, misconceptions, and stereotypes.

The CPS have reverted to a 'bookmakers' approach, whereby to satisfy the 'realistic prospect of conviction' test, cases must be of a type "which will find favour with a jury".<sup>294</sup> It is highlighted that jurors tend to lack "knowledge of victim behaviour, rape trauma and forensic science",<sup>295</sup> allowing for interpretations of events in line with myths and gendered stereotypes, for example interpreting "delayed reporting or inconsistencies in a survivor's evidence as signs of lying".<sup>296</sup> Thomas, however, doubts the actual effect of rape myth acceptance among jurors, with her research insisting that this widespread concern is misplaced.<sup>297</sup> But Thomas' research fails to understand the subtleties of rape myth influence, the nuances of barrister myth engagement, and the pervasiveness of rape culture to shape bias and prejudices. The majority of research points in the other direction, concluding that rape myths do impact juror-decision making;<sup>298</sup> many observation studies

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<sup>286</sup> Daly (n 10) 127

<sup>287</sup> Brownmiller (n 34) 507

<sup>288</sup> Daly (n 10) 59

<sup>289</sup> Ibid

<sup>290</sup> Ibid 126

<sup>291</sup> Ibid

<sup>292</sup> Ibid 140

<sup>293</sup> Ibid 141

<sup>294</sup> The Decriminalisation of Rape (n 4) 35

<sup>295</sup> Rachel George (Home Office) and Sophie Ferguson (Ministry of Justice), *Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales: Research Report* (HM GOV 2021) 62

<sup>296</sup> Smith (n 264) 56

**Smith notes here however that some mock juries penalise survivors for being too coherent, creating a narrow margin of 'appropriate' consistency (86)**

<sup>297</sup> Cheryl Thomas, 'Juries, rape and sexual offences in the Crown Court 2007-21' (2023) 3 Crim. L.R. 2023 200

<sup>298</sup> Fiona Leverick, 'What do we know about rape myths and juror decision making?' (2020) 24(3) *The international journal of evidence & proof* 255 ; Louise Ellision and Vanessa E. Munro, 'Turning mirrors into windows? Assessing

“make clear that rape myths persistently permeate sexual offences trials”.<sup>299</sup> The exploration of rape culture in chapter one of this paper proposes that myths, misconceptions, and misogynistic attitudes saturate all aspects of society. From this it can be gleaned that at the very least, it is convincing that the patriarchal structures and manifestations of rape culture have subtle influence over the majority of jurors, being randomly selected from society at large.

Regardless of the actual prevalence of rape myths amongst jurors, or the extent it effects their decisions, these fears are dictating the types of cases the CPS are willing to bring to trial. When assessing ‘a realistic prospect of conviction’, prosecutors act with the knowledge that myths will be deployed by determined defence barristers and make decisions on the basis of how they believe a jury will perceive the case. CPS decision letters and charging decisions are consistent with concerns about juror rape myth acceptance. While the End to End rape review has been criticised for focusing on what stakeholders and participants “think happens in the investigation and prosecution of rape cases”,<sup>300</sup> these perceptions are undoubtedly having a real impact upon CPS practice and consequently attrition before trial. The risk-averse approach itself results in a perception within the criminal justice system that “senior management at the CPS simply does not support the prosecution of challenging sexual offence cases”.<sup>301</sup> This results in ‘challenging’ cases – that challenge socially accepted narratives of rape such as ‘real rape’, and victims who do not look like the ‘ideal victim’ – being dropped by the CPS (and police officers) due to fear of failure in the courtroom.

## Impact

The attrition of ‘challenging’ cases as a result of the CPS’s risk-averse approach, contributes to the reconfirmation of myths, misconceptions, and stereotypes. Institutionally, the CPS are assisting the conformation bias of rape culture “by removing from view, and from censure, a range of experiences that challenge the narrow confines of professional and public perceptions of the rape paradigm”.<sup>302</sup> The caution taken by the CPS is having a detrimental effect on those who face multiple forms of oppression, who because of their

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the impact of (mock) juror education in rape trials’ (2009) 49(3) British Journal of Criminology 363 ; Ellen Daly, Olivia Smith, Hannah Bows, Jennifer Brown, James Chalmers, Sharon Cowan, Miranda Horvath, Fiona Leverick, Jo Lovett, Vanessa Munro, and Dominic Willmott, ‘Myths about myths? A commentary on Thomas (2020) and the question of jury rape myth acceptance’ (2021) 7(1) Journal of Gender-Based Violence 189

<sup>299</sup> Daly (n 10) 153

<sup>300</sup> Thomas (n 297) 224

<sup>301</sup> The Decriminalisation of Rape (n 4) 35

<sup>302</sup> Munro (n 240) 203

disadvantage are actually more likely to be victimised. Criminal justice is failing victims because those “very real, very common cases never make it to the courtroom”.<sup>303</sup> Instead, trials are representative of socially accepted narratives of rape; narratives that have engendered “the very reluctance to convict”;<sup>304</sup> leading to a “vicious circle”<sup>305</sup> that reconfirms and reinforces these narratives. This denies justice to ‘challenging’ victims as well as contributing to the structures and culture that supports their victimisation in the first place.

By obscuring these ‘challenging’, but very real, circumstances of rape the CPS is also preventing the ability of the courtroom and the trial to dismantle myths and misconceptions. Taking ‘challenging’ cases to court could present an opportunity to educate jurors, by presenting them with case facts that confront their biases.<sup>306</sup> By communicating to the world that rape occurs beyond the narrow confines of socially accepted narratives and paradigms, rape trials could contribute to the deconstruction of rape culture rather than its reconstruction. This could lead to incremental change that would see prosecution rates increase, but more importantly could aid a shift in the perceptions of society about what rape actually is and who is affected because clever and sensitive prosecuting has the ability to change attitudes.<sup>307</sup> However, rape culture is persistent and attitudes are “hard to combat in jurors”,<sup>308</sup> with judicial guidance having a “limited impact on adherence to specific rape myths”.<sup>309</sup> The CPS, by taking ‘challenging’ cases to court, cannot alone tackle the deeply embedded culture that supports myth acceptance. This difficulty does not mean that the CPS should retain their risk-averse approach but that a shift towards more liberal and inclusive approach that sees ‘challenging’ cases taken to court must be assisted by a wider, more holistic approach to combatting rape culture.

Another impact of the risk-averse approach is that it presents a false sense of success of the courts, which fails to acknowledge the “dynamic interrelation with earlier patterns of attrition and withdrawal”.<sup>310</sup> Conviction rates for rape, and other sexual offences have increased over the last 15 years, as shown by Thomas’s data research: “In 2021 the jury

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<sup>303</sup> Ibid

<sup>304</sup> Ibid

<sup>305</sup> Ibid 204 ; Criminal Justice Joint Inspection, “A joint thematic inspection of the police and Crown Prosecution Service’s response to rape: Phase one: From report to police or CPS decision to take no further action’ (2021) 3

<sup>306</sup> McGlynn and Munro (n 35) 8

<sup>307</sup> EVAW Statement of Facts (n 241) 11

<sup>308</sup> Dalton, Barrett, Horvath and Davies (n 135) 249 ; Leverick (n 298)

<sup>309</sup> Dalton, Barrett, Horvath and Davies (n 135) 249 ; Louise Ellision, ‘Credibility in context: Jury education and intimate partner rape’ (2018) 23(3) *The International Journal of Evidence & Proof* 263

<sup>310</sup> Munro (n 240) 203

conviction rate on rape charges was 75%, which is 20% higher than it was in 2007 (55%).<sup>311</sup> This presents an image of justice within the courts for rape trials, as Thomas posits that “contrary to popular belief juries are more likely to convict than acquit defendants on rape charges”.<sup>312</sup> This analysis fails to engage with the patterns of attrition within CPS charging decisions, but also within police decisions, victim withdrawals and decisions not to report – that this essay reveals to impact those most marginalised who do not conform to ‘real rape’ and ‘ideal victim’ standards. What Thomas’ data does not divulge is the ‘types’ of cases that are being convicted in the courtroom – whether these are ‘challenging’, or what is suggested as more likely in this dissertation that they are circumstances that align with socially accepted narratives. The steady increase in conviction rates from juries thus can be seen as a direct result of the CPS shift to a more risk-averse approach for charging decisions, that avoids presenting cases to juries that could trigger myth-engagement. This also reveals that this data is not necessarily inconsistent with the “widespread belief amongst serving jurors in false assumptions about rape and rape complainants”,<sup>313</sup> if juries aren’t being presented with cases that challenge their narrow conceptions of rape.

## Conclusion

This chapter reveals that the CPS are taking a risk-averse approach to charging decisions for rape cases that leads to attrition of challenging cases. The over reliance on ‘weaknesses’ in a case – which are grounded in myths and misconceptions rather than any evidential standard – means that those victims who do not fit conceptions of credibility are likely to be dropped. Assessments of victim credibility that follow gendered, raced, and classed narratives and that intersect with multiple other systems of oppression remain central to the CPS evidential standard of ‘a realistic prospect of conviction’. Charging decisions follow a predictive approach that bases the strength of a case upon fears of juror myth application and barrister myth engagement. This detrimentally impacts what types of rape cases arrive at the courtroom, with ‘challenging’ cases being most likely to fall out before trial. This is illustrative of the entire journey, meaning that the cases that make it to court reconfirm socially accepted narratives, leading to confirmation bias and a reconstruction of myths and stereotypes. This limits the court’s ability to challenge and dismantle these damaging misconceptions and change attitudes because “juries and

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<sup>311</sup> Thomas (n 297) 217

<sup>312</sup> Ibid 200

<sup>313</sup> Ibid 224

courtroom advocates can only construe truth from what is present and absent before them”.<sup>314</sup> It also leads to a false sense of success and justice for rape victims, by increasing conviction rates without considering the patterns of attrition. The CPS made a calculated decision to improve their statistics and Thomas’ data reveals that they have achieved this. The CPS are able to present the image of success, improvement, and justice for rape victims but behind this guise their risk-averse approach contributes to the very structures that support victimisation and detrimentally impacts those victims who face a heightened risk of victimisation.

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<sup>314</sup> The Decriminalisation of Rape (n 4) 35

# Conclusion

## Findings and Interconnectedness

This dissertation reveals how rape culture and rape myths plague every stage of a victim's journey to court. The subtle, but prevalent force of rape culture is reinforcing patriarchal, heteronormative, and misogynistic ideologies and constructing a narrow perception of what rape is and who is a 'legitimate' rape victim. This dictates societal attitudes, but also infiltrates the CJS on an institutional level, impacting attrition at the reporting, police, and CPS stages.

Chapter 1 demonstrated that societal perceptions about rape are dominated by myths, misconceptions, and gender stereotypes that stem from rape culture. Chapter 1 exposed how this has a significant influence over a survivor's decision to report her rape, due to misalignments of her experience with the 'real rape'<sup>315</sup> conception, or due to normalisations of male sexual aggression and feelings of self-blame. The majority of victims dropped out at this first stage. Chapter 2 found that rape culture also plagued the police force, not just among individual officer rape myth acceptance, misogynistic attitudes, and prejudices, but institutionally. The lens of intersectionality shone a light on the patterns of attrition – exposing how those most marginalised and minoritized are most likely to have their case given an NFA decision by police, or to withdraw their case. Chapter 3 found an institutional reliance upon myths and accepted narratives of rape within the CPS, who are taking a risk-averse approach to charging decisions, based on courtroom predictions. It found that the evidential standard relies upon gendered, classed, and racialised notions of respectability and credibility, including the 'ideal victim' prototype. This chapter draws upon the patterns of attrition at the reporting, police, and CPS stages to unveil that the cases that do make it to court conceptually align with what society accepts as a rape victim. The impact is that very real experiences of rape are obscured and a false sense of success in the courts is presented via improving conviction rates.

The power of rape culture and rape myths upon each stage does not occur in isolation. The underlying force of rape culture impacts each stage individually, but then "each step in the criminal justice system is directly related to the next".<sup>316</sup> Victim-survivors' decisions to report are also impacted by how they perceive the police, CPS, and trial stages; fear of

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<sup>315</sup> Estrich (n 44)

<sup>316</sup> Michelle M Dempsey, 'Rape in the United States: The chronic failure to report and investigate rape cases' (U.S. Government Publishing Office 2014) 1-2



disbelief, traumatisation, and discrimination within the CJS, which chapters 2 and 3 reveal are not unfounded, may prevent reporting. Furthermore, knowing that “rape myths may impact trial outcomes”,<sup>317</sup> may deter victim-survivors from seeking criminal justice in the first place.<sup>318</sup> At the police stage, decision making is influenced by the CPS risk-averse approach; there is a reluctance to refer “cases that they do not think the CPS will charge”.<sup>319</sup> Prosecutors are influenced by their perceptions of barrister and juror myth engagement, as displayed in Chapter 3. Rape culture infects the entire system, and correspondingly, the entire system reinforces rape culture, myths, and misconceptions.

Each chapter is limited in its focus: Chapter 1 focuses on ‘real rape’, Chapter 2 intersectionality, and Chapter 3 the ‘ideal victim’. When read alongside each other, it becomes apparent that these forces are not limited to the reporting, police, and CPS stages respectively, but permeate the entire journey, which is interlinked. For example, the discussion of intersectional discrimination in Chapter 2 deepens the understanding that barriers to reporting, in Chapter 1, may be exaggerated for certain minoritized victims. Exploring the whole journey reveals the continual push backs and continual influence of myths and compounding discrimination that makes up a victim-survivor’s gruelling journey to court. When viewed holistically, the journey reveals that attrition is most likely for cases that don’t fit with accepted narratives of rape – that are (re)constructed by the powerful force of rape culture that allows myths, misconceptions, and gendered attitudes to continue to pollute not just societal perceptions, but the CJS as an institution. The concept of intersectionality reveals how engagement with rape culture and rape myths can differ for different survivors dependent upon their interaction with “embedded cultural narratives that reflect structural inequalities and systems of oppression”.<sup>320</sup> Following this journey demonstrates the compounding effect of rape culture and myths at each consecutive stage and reveals that those most minoritized and marginalised face heightened barriers, and are thus the least likely to make it to the court.

## **Importance of Findings: What it Means For Reform**

### *The CJS Role in Reform*

This dissertation found that rape culture succeeds in promoting a narrow definition of rape and victimhood to the obscuration of very real, more common experiences which fail to be

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<sup>317</sup> Daly (n 10) 19

<sup>318</sup> Ibid

<sup>319</sup> The Decriminalisation of Rape (n 4) 40

<sup>320</sup> Daly (n 10) 155

understood or treated as 'rape'. This importantly demonstrates how the CJS assist the reconstruction and reinforcement of rape culture, by relying on, and maintaining, narratives of 'real rape', 'ideal victim', and gender stereotypes. In this sense, the CJS response doesn't just fail victims, but contributes to the very systems that support their victimisation.

Operation Soteria aims to transform the criminal justice response to rape and in theory means more 'challenging' cases will make it to court.<sup>321</sup> In preventing attrition and retaining 'difficult' cases the CJS could challenge, rather than support, myths and misconceptions about rape and has an inherent ability to send a "powerful signal to wider society about what is and is not morally acceptable".<sup>322</sup> Furthermore, the interconnectedness of the journey means that successful prosecution could have a knock on effect, meaning more victims are willing to report, and police are more likely to refer cases on.<sup>323</sup> However, CJS reform alone will have limited affect, as demonstrated by the "decades of reviews, recommendations, and reforms [that] have changed very little in practice".<sup>324</sup> Reformed in isolation the CJS will continue to operate within wider systems of gender inequality and rape culture, which this dissertation reveals are deep rooted, far spread, and difficult to challenge. The persistence and power of rape culture and the interlinking effect and impact of each stage upon another means that "Rape culture cannot be solved by simply prosecuting more people. It requires an analytical shift in the way we think and act and imagine and speak".<sup>325</sup> To truly effect change, rape culture needs to be attacked at the root. A retention of challenging cases by the CJS "should be one part of much wider, whole-system improvements in the response to VAWG".<sup>326</sup> Operation Soteria needs to be accompanied by a holistic, "frontal attack"<sup>327</sup> upon the underlying structures of rape culture.

### *An Intersectional Approach*

The findings demonstrate that marginalised and minoritized victim-survivors are the most likely to drop out of the system on their journey and be excluded from court. The social and cultural forces that work against victims including rape culture and gendered narratives,

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<sup>321</sup> Soteria Report (n 100)

**Soteria is promising in a number of ways, including its offender-centric approach, support for victims, and joint police and CPS initiatives. From a very low starting point, Soteria should improve the current state of a victim's journey to court, but the impact will not be seen for a few years.**

<sup>322</sup> Soteria Report (n 100) 10, para 2

<sup>323</sup> EAW Statement of Facts (n 241) 16, para 27

<sup>324</sup> Daly (n 10) 149

<sup>325</sup> Fanghanel (n 73) 13

<sup>326</sup> HMICFRS (n 78) 14

<sup>327</sup> Brownmiller (n 34) 827

but also racism, classism, ableism, and the compounding impact of intersecting discrimination significantly influence the patterns of attrition. To improve access to justice for minoritized victims, the accepted narratives of rape and victimhood need to be deconstructed. In order to retain 'challenging' cases, reform should take an intersectional approach to recognise the additional and compounding barriers to reporting (as the largest site of attrition), and to staying engaged with CJS process. Within the police, misogyny and racism needs to be addressed. Training should include "more in-depth equalities work, addressing unconscious bias, myths and stereotypes related to sex, race/ethnicity, social class, disability and other protected characteristics, concerning victims/survivors and offenders".<sup>328</sup> Specialist knowledge among officers is needed, not just addressing rape myths, but how these interact with other characteristics to determine experiences of discrimination. It is hoped that the introduction by Operation Soteria to review NFA decisions by reference to gender, race, class, age, disability, and other protected characteristics will expose patterns of discrimination and lead to change.<sup>329</sup> However, these characteristics should not be oversimplified, but should consider the nuances of intersectionality.

### *An Alternative View of 'Justice'*

Following a victim through the steps she has to take towards the courtroom demonstrated the continuous revictimization and trauma, through disbelief, invasive credibility assessments, and continuous judgement she faces at every stage. This unveils the reasoning behind withdrawal from the CJS and also highlights how a survivor's journey to court is fraught with injustice. This dissertation didn't focus on the courtroom, recognising that the majority of victim's never reach this stage. However it has been limited in focusing on the courtroom, and conviction, as the 'endpoint' of the journey and as synonymous with justice. Although beyond the scope of this paper, more thought is needed on how justice can be achieved outside the courtroom, and what it means to victim-survivors.<sup>330</sup>

The CJS also needs to consider how it can prevent re-traumatisation and discrimination throughout a victim's journey. Although punishment is the CJS's main role, a trauma-informed approach that treats victims with respect and belief could contribute towards the victim healing process even if the case never makes it to court, as well as preventing

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<sup>328</sup> The Decriminalisation of Rape (n 4) 76

<sup>329</sup> Soteria Report (n 100) 46, para 49

<sup>330</sup> Daly (n 10) 160

victim withdrawal. A “system and culture change”<sup>331</sup> throughout the CJS is needed to improve continued engagement, to fundamentally change not just levels, but patterns of attrition, and also to ensure that victims feel supported, and not retraumatised and degraded in their most vulnerable moment.

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<sup>331</sup> The End-to-End Rape Review (n 1) ii

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