



Victims, Culture and Society

WOMEN, RAPE AND JUSTICE

UNRAVELLING THE RAPE CONUNDRUM

Jan Jordan



Fifty years of feminist critique, official reports and new policies, but minimal change in rape prevalence and stereotypes. Jan Jordan shows why sexual violence against women is sustained by deep-seated gender inequalities, patriarchal institutions and damaging cultures of masculinity. Yet this is an ultimately optimistic book: all these things can change. And should.

Raewyn Connell,

Author of Gender: In World Perspective

Jan has been thinking and writing about rape for three decades, and this book is a culmination and a challenge—that to create social justice we need deeper understanding of why and how sexual violence is a fault line in patriarchy.

Liz Kelly,

*Director: Child and Woman Abuse Studies Unit,
London Metropolitan University*

Jordan provides an essential history of the evolution of justice responses to rape and efforts towards change that end not far from where they started. Non-validating, silencing, and traumatizing treatment continue to emanate from the very systems sustained across the globe assigned the duty of norm enforcement. She embeds rape into patriarchy to shine light on the false beliefs and stereotypes, as well as the power to control, that stain both citizen response and “justice” decisions at all levels of the criminal legal system. In this age of empirically supported, multi-level explanations for why rape happens and then is disappeared, it is crucial that many years of scholarship elaborating the role of gender dynamics not be lost. The evocative words of victims and key players are powerful voices throughout and anchor timeless scholarship into lived experience.

Mary Koss,

*Regents' Professor, Mel and Enid Zuckerman College
of Public Health, University of Arizona*

This book should not be read as a counsel of despair as Jan Jordan describes the sustaining characteristics of gender inequalities leading to the ossification of reform attempts aimed at preventing sexual violence against women and girls. The ubiquity of rape across time and continents is documented by case examples, original research and international studies. But it is through her meticulous historical analysis and international comparisons that we come to a greater understanding of why men not only rape but are protected from sanction. Therein lies hope that with such knowledge society can do better.

Jennifer Brown,

*Visiting Professor, Mannheim Centre for the Study of Criminology and
Criminal Justice, London School of Economics and Political Science*



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Women, Rape and Justice

Is justice possible for a woman raped in contemporary patriarchal culture? This book explores one of the major conundrums of our time: given all the feminist activism and reforms of the last 50 years, why does rape remain so prevalent and justice so elusive? In exploring these questions, Jan Jordan takes us back into the patriarchal origins of our rape culture in order to trace the connections between past laws and current justice realities. Her examination covers developments in police and court processes and explores the connections between men, masculinity, and rape before considering the scope of rape prevention. She argues the need for urgent transformation of the rape-condoning cultures that currently make it impossible for rape prevalence to abate or for rape victims to receive justice.

Jan Jordan is Emerita Professor of Criminology at Te Herenga Waka - Victoria University of Wellington, Aotearoa New Zealand. She has spent more than three decades researching sexual violence, with the primary aim of making the voices of women silenced by rape heard by those positioned to facilitate their access to justice. Her books include *The word of a woman? Police, rape and belief* (2004) and *Serial survivors: Women's narratives of surviving rape* (2008). Dr Jordan has also spent much of her career working collaboratively with New Zealand Police to improve sexual assault investigation processes, involving various advisory and consultative roles as well as direct input presenting research-informed material on specialist sexual assault investigation courses. She is recognised internationally for her commitment to translating academic research into the advocacy and activism needed to end the gendered violence of patriarchy.

Victims, Culture and Society

Concerns about victimisation have multiplied over the last fifty years. *Victims, Culture and Society* explores the major concepts, debates and controversies that these concerns have generated across a range of disciplines, but particularly within criminology and victimology. As the impacts of globalisation, the movement of peoples and the divergences between the global North and global South have become ever more apparent, this series provides an authoritative space for original contributions in making sense of these far-reaching changes on individuals, localities and nationalities. These issues by their very nature demand an interdisciplinary approach and an interdisciplinary voice outside conventional conceptual boundaries. *Victims, Culture and Society* offers the space for that voice.

Each author adopts a strong personal view and offers a lively and agenda-setting treatment of their subject matter. The monographs encompass a transnational, global or comparative approach to the issues they address. Examining new areas of both empirical and theoretical enquiry, the series offers the opportunity for innovative and progressing thinking about the relationship between victims, culture and society. The books will be useful and thought-provoking resources for the international community of undergraduates, postgraduates, researchers and policymakers working within the broad field of victimisation.

*Edited by: Sandra Walklate, University of Liverpool, UK and
Monash University, Australia*

Kerry Carrington, Queensland University of Technology, Australia

Women, Rape and Justice: Unravelling the Rape Conundrum

Jan Jordan

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Unravelling the Rape Conundrum

Jan Jordan

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Finally, while this book acknowledges the impacts of patriarchal legacies on all of our lives, I also recognise the power of women's voices and resistance and our determination to keep on making a rape-free world.



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1 The rape conundrum

You don't know me, but you've been inside me, and that's why we're here today....

You said, Being drunk I just couldn't make the best decisions and neither could she.

Alcohol is not an excuse. Is it a factor? Yes. But alcohol was not the one who stripped me, fingered me, had my head dragging against the ground, with me almost fully naked.... We were both drunk, the difference is I did not take off your pants and underwear, touch you inappropriately, and run away. That's the difference.

You said, I stupidly thought it was okay for me to do what everyone around me was doing, which was drinking. I was wrong.

Again, you were not wrong for drinking. Everyone around you was not sexually assaulting me. You were wrong for doing what nobody else was doing, which was pushing your erect dick in your pants against my naked, defenseless body concealed in a dark area, where partygoers could no longer see or protect me, and my own sister could not find me. Sipping fireball is not your crime. Peeling off and discarding my underwear like a candy wrapper to insert your finger into my body, is where you went wrong....

Lastly you said, I want to show people that one night of drinking can ruin a life.

A life, one life, yours, you forgot about mine. Let me rephrase for you, I want to show people that one night of drinking can ruin two lives. You and me. You are the cause, I am the effect. You have dragged me through this hell with you, dipped me back into that night again and again. You knocked down both our towers, I collapsed at the same time you did. If you think I was spared, came out unscathed, that today I ride off into sunset, while you suffer the greatest blow, you are mistaken. Nobody wins. We have all been devastated, we have all been trying to find some meaning in all of this suffering. Your damage was concrete; stripped of titles, degrees,

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enrollment. My damage was internal, unseen, I carry it with me. You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence, my own voice, until today.

(Emily Doe, in Baker, 2016)

Brock Turner's rape of a young woman in 2015 now holds its place in the annals of scandalous cases of the 21st century (Sweeny, 2020). He was a Stanford University student famed for his athletic prowess; she was a recent California graduate who that night accompanied her younger sister to a Stanford fraternity party. Around midnight two Swedish foreign students cycling past a dumpster bin spotted a man "thrusting" on top of a woman who appeared "asleep or unconscious" (Levin, 2016). When they approached, Turner tried to run but they caught and detained him until police arrived. He was subsequently convicted by a jury of assault with intent to commit rape of an intoxicated woman, sexually penetrating an intoxicated person with a foreign object, and sexually penetrating an unconscious person with a foreign object (Koren, 2016).

The prosecution recommended a six-year custodial sentence, but Judge Aaron Persky sentenced Turner to six months jail, followed by three years of probation (Sweeny, 2020). Outrage erupted when news of the sentence broke, across a range of social and other media forms, with a petition calling for the judge's recall obtaining more than one million signatures (Kebodeaux, 2017). Also provoking anger was the open letter Turner's father, Dan Turner, wrote asserting that his son was not a rapist and should not be sent to jail for "20 minutes of action" (Clark, 2016).

This was in many respects not an unusual rape scenario—drunk and unconscious women are frequent targets for sexual assault (Bourke, 2007; Heyes, 2016). Several aspects brought this case to international prominence. The first concerned the responses of key males—Brock Turner's denial of wrongdoing, his father's staunch defence of his son, and the judge's leniency towards a prominent, white, Stanford athlete (Levin, 2016). These all provided windows into the complex relationship between masculinity and rape, linked to presumptions of male entitlement in a society where the scales of justice remain weighted to their advantage. The second involved the victim's response. Known only as Emily Doe, she read out in court a compelling victim statement (extract above) that, when published by BuzzFeed in June 2016 (Baker, 2016), was viewed over eight million times during the first 24 hours it was posted (Serisier, 2018). Three years later she took another brave step, choosing to discard the Emily Doe persona and reveal her own name and face to the world by publishing her memoir, *Know My Name* (Miller, 2019). Just as Emily Doe opted not to be voiceless, now Chanel Miller decided to be faceless no longer.

* * *

Introduction

I chose Chanel Miller's words to open this book because she has publicly and powerfully resisted the silencing and objectification of rape. As she said at the time, Chanel felt her identity had been reduced to that of a victim:

In newspapers my name was “unconscious intoxicated woman”, ten syllables, and nothing more than that. For a while, I believed that that was all I was. I had to force myself to relearn my real name, my identity. To relearn that this is not all that I am.

(Emily Doe, in Baker, 2016)

About her assailant, she wrote that when first interviewed by police, “Turner admitted to wanting to hook up with someone. I was the wounded antelope of the herd, completely alone and vulnerable, physically unable to fend for myself, and he chose me” (Ibid.). She was unable to protect herself because she was unconscious, a condition clearly preventing her being able to consent to sexual intercourse. She soon confronted the justice system's inherent bias.

I was warned, because he now knows you don't remember, he is going to get to write the script. He can say whatever he wants and no one can contest it. I had no power, I had no voice, I was defenseless. My memory loss would be used against me.

(Ibid.)

She described her experience of the trial:

I was pummeled with narrowed, pointed questions that dissected my personal life, love life, past life, family life, inane questions, accumulating trivial details to try and find an excuse for this guy who didn't even take the time to ask me for my name, who had me naked a handful of minutes after seeing me.

(Ibid.)

Chanel Miller resisted the treatment meted her by both Turner and the criminal justice system. Both acted in ways that denied her justice as well as her humanity. It was when Turner testified that she said she felt particularly “revictimised” while he spun the court a fictional account of a romantic encounter in which they danced before tumbling to the ground for consensual sex. His account presented her as a “seductive party animal.”

According to him, the only reason we were on the ground was because I fell down. Note; if a girl falls help her get back up. If she is too drunk to even walk and falls, do not mount her, hump her, take off her underwear, and insert your hand inside her vagina.

(Ibid.)

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What Chanel wanted most was for him to accept responsibility, and she had hoped that he would plead guilty and spare her “a year of anger, anguish and uncertainty.” All Turner would admit to doing that night was ingesting alcohol. All he was sentenced to was six months jail. As she observed:

The fact that Brock was a star athlete at a prestigious university should not be seen as an entitlement to leniency, but as an opportunity to send a strong cultural message that sexual assault is against the law regardless of social class.

(Ibid.)

The impacts of that “twenty minutes of action” turned her life upside down, erasing her independence such that she described herself becoming “a little barnacle always needing to be at someone’s side.” Chanel said she knew she needed to find ways to move beyond the devastation and “relearn that I am not fragile.” The choices she has made since that night demonstrate that she is a woman who has resolved not to be silenced, one committed to encouraging other victims to speak, to be seen, and to have all of themselves and their lives as survivors acknowledged.

* * *

This is Chanel’s story, but it is one of many.

More than a quarter of all women experience sexual assault in their lifetimes.

Only six percent tell the police.

Eighty-five percent do not consider what happened to them was a crime.

Being sexually assaulted is accepted as a ‘normal’ part of everyday life.

(Ministry of Justice, 2019a)

Feminists in the 1970s and 1980s sought to draw attention to statistics similar to these.

The ground-breaking research of Diana Russell and Mary Koss established high rates of sexual victimisation for women, prompting the following comment: “The findings transform rape from a heinous but rare event into a common experience in women’s lives” (Koss & Harvey, 1991, p. 29). For many feminists there was an optimism that breaking the shame and silence surrounding rape would be sufficient to trigger widespread horror followed by commitments to change. Their optimism was soon shattered. Reflecting on her pioneering involvement in the Aotearoa New Zealand

women's liberation movement, Sue Kedgley (2021, p. 13) made the following observation:

[L]acking an historical perspective, we naively imagined that once we had exposed the deep-seated discrimination women experienced in New Zealand, and had presented our manifesto for change, our battle would be all but won. I had no idea how difficult it would be to change attitudes and behaviours that have been entrenched in society for thousands of years. I had no idea, in fact, that we were up against 6000 years of patriarchy, and a deeply rooted patriarchal mindset that would take generations to dislodge.

Statistics revealing the high prevalence of men's sexual victimisation against women were quickly disputed, the findings rejected as statistical exaggerations or simply biased and unfactual (Gilbert, 1994; Roiphe, 1993). Women's stories recounting the sexual violence they were subjected to by boyfriends, partners, and other known men were particularly disbelieved (Paglia, 1992; Roiphe, 1993). These women were mistaken, they were lying and were crazy. The one-in-four figure was dismissed.

Fast forward to 2020. The statistics at the top are from the latest national Crime and Victims Survey released in Aotearoa New Zealand in May that year (Ministry of Justice, 2019a). Their release was heralded with newsflashes proclaiming these are "shocking" revelations, or as one seasoned television presenter proclaimed, "extraordinary" results (Jordan, 2020). A Government spokesperson announced that, while previously we had anecdotal stories about women being sexually assaulted, this survey finally provided the numbers to back them. Now we have the evidence, he asserted, we can do something about this travesty (Strang, 2020). Similar stories and numbers have existed for nearly half a century. Why are they being reacted to now as if spoken for the first time? Why is that which is not new now "news?"

This book seeks to unravel the rape conundrum. It asks why, more than 20 years into the 21st century, is the crime of rape still such a global phenomenon, and the criminal offence least likely to result in justice for its victims? This is the dilemma facing societies worldwide after half a century of feminist efforts to eradicate sexual violence. These have prompted numerous inquiries, reviews, reforms, prevention campaigns and awareness-raising initiatives, and fortunately these have not all been in vain. Indeed, a woman reporting rape today, in most Western nations at least, is likely to encounter a more supportive police response than her sisters 50 years ago. However, not all women stand to benefit equally from the advances made, and most remain unlikely to see those who offended against them convicted.

In the next sections I present a brief overview of the prevalence of sexual violence, attrition statistics, and governmental efforts to address these issues before outlining the approach and key concepts central to this book's argument.

Prevalence studies

Speaking about rape was, for centuries, both taboo and dangerous. Beliefs in female sexual submissiveness and men's sexual entitlement did little to empower women to claim sexual autonomy for themselves. The shame and blame routinely expressed towards most women who dared speak out served to silence others, resulting in a widely held view that rape was a rare and unusual crime. In 1977, within the context of feminist efforts to raise rape awareness, Edward Shorter maintained: "the average woman's chances of actually being raped in her lifetime are still minimal" (Shorter, 1977, p. 481). As growing numbers of women began speaking publicly about their experiences of sexual assault and violence, debate intensified regarding how extensive or not the risks of being raped might be.

Obtaining a reliable picture of prevalence rates remained elusive. Sexual violence statistics have a reputation for being notoriously unreliable. This view is somewhat justifiable when we consider how few rapes and sexual assaults are reported to police even in today's supposedly improved climate. Sexual violence is the most under-reported of all crimes, with estimates ranging from fewer than half of all sexual crimes being reported (Rennison & Rand, 2003) to only 2% being reported in the case of US college women (Fisher, Daigle, Cullen & Turner, 2003). The first US Sexual Experiences Survey (Koss, Gidycz & Wisniewski, 1987) found 5% of rapes were reported, a figure little different from the 6% found in Aotearoa New Zealand's victimisation survey (Ministry of Justice, 2019a).

There are many reasons why victims do not report such a serious and injurious offence. These include a raft of fears—fear of the perpetrator, fears of how family and friends will react, fears that the police will not believe them, and fears that any court case will crucify them (Sable, Danis, Mauzy & Gallagher, 2006; Temkin & Krahé, 2008; Zinzow & Thompson, 2011). Their reticence may also include a reluctance to define themselves as a victim of rape, understandable given the stigma attached to both the word "victim" and the word "rape." Adopting the identity of a rape victim can feel perilous, potentially even more so for male victims given how strongly this violates notions of masculine strength and sexual autonomy (Javaid, 2018). Many studies have suggested that a significant proportion of victims not only decide they will not report the crime, but decide not to tell anyone at all about their experience (Ahrens, 2006; Koss et al, 1987).

Such low levels of under-reporting can be viewed as forms of silencing and self-silencing. Some women may choose to self-silence in response to

their fears regarding how others might react, as well as in response to their own ambivalence about assuming the identity of a rape victim (Kelly, 1988; Koss & Oros, 1980). Others may confide in those close to them, or in professional services, then feel silenced as a result of the responses they encounter (Campbell & Raja, 1999; Jordan, 2012). Despite many years of campaigns and encouragement to speak up and name the violence, most victims never do, with many identifying high feelings of personal shame, often combined with self-blame (Starzynski, Ullman, Filipas & Townsend, 2005; Vidal & Petrak, 2007; Zinzow & Thompson, 2011). The fact that so few report their experiences to police means official statistics can provide only minimal insights into prevalence rates. It is factors such as these that prompted UK researcher Liz Kelly to conclude that “all estimates of rape are under-estimates” (Kelly, 1988, p. 158).

Victimisation studies understandably provide a closer approximation to the actual volume of sexual violence offences that occur but are also widely believed to under-estimate these (Myhill & Allen, 2002; Walby & Allen, 2004; Walklate, 2014). Such surveys may be administered by data collectors whom victims may not feel comfortable disclosing to, as has been found in large-scale victimisation studies such as the *British Crime Survey* (Kelly et al, 2005; Walby & Allen, 2004). Including questions about sexual violence victimisation amidst inquiries about car vandalism and milk bottle theft was never going to be a viable task. Additionally, as Sandra Walklate (2014) has so clearly articulated, the issue of what to count as violence is a complex task, one that brings feminist recognition of everyday sexual violence crashing into narrow, patriarchal definitions of what constitutes rape.

Significant efforts have been made to vary methodologies to enable greater disclosure of more sensitive offence types. In Aotearoa New Zealand, for example, as part of the new annual *Crime and Victims Survey* introduced in 2018, interviewers can hand participants laptops on which they can self-report any victimisation experiences they would prefer not to speak about. Such measures may not always prompt full participation when self-disclosing is difficult, and self-defining as a rape victim even harder, but the results provide comparable data to other prevalence studies. Of the total sample of 8,000 people interviewed, 35% of women and 12% of men reported experiencing sexual violence at least once in their lifetime. The two population groups with the highest rates of lifetime sexual violence victimisation were those identifying as bisexual (66%) or gay/lesbian (52%), and Māori participants also recorded significantly high rates (29%). These findings suggest the salience of an intersectional analysis that recognises how gender intersects with other social categories in ways that distribute risk and harm unevenly.

The most reliable indicators of prevalence we have come not from official crime statistics but from community-based self-report studies. The inadequacies of traditional survey methods for estimating rape prevalence

had been recognised early by feminist sociologist Diana Russell, who conducted a study of 930 adult women in San Francisco, selected using random sampling methods (Russell, 1982, 1984). She opted for an interview-based approach in the women's own homes, using open-ended questions that asked about sexual coercion in a range of relationship contexts, mostly without using the word "rape." These factors, combined with careful training of the interviewers, were identified as contributing to the high rates of rape and sexual victimisation disclosed in this study (see Gavey, 2019, [Chapter 2](#) for an excellent discussion of this and other prevalence research). The results from Russell's study indicated that 24% of the women had experienced rape, while 44% of the total sample had experienced either rape or attempted rape at some point in their lives (Russell, 1984). The material specifically detailing the women's experiences of marital rape became the first book published on rape in marriage (Russell, 1982). These findings were challenged and rejected by some as overly inflated, despite the methodological rigour of Russell's approach (Gavey, 2019). Rather than raising questions disputing prevalence rates, the findings should reinforce the critical need to adopt sensitive and appropriate methodologies when undertaking sexual violence research.

The *Sexual Experiences Survey* developed by American psychologist Mary Koss remains the most recognised and repeated survey. Like Russell, her approach involved participants being asked multiple, very specific questions about their experiences of sexual coercion which they could answer in their own words. The participants could describe what happened without having to decide to tick a box asking: "Have you ever been raped?" Trained researchers later assessed their responses against the legal definitions of rape and attempted rape. One significant methodological difference involved the use of a self-report questionnaire rather than interviews, making it considerably cheaper and able to be conducted on a larger scale. A paper presenting the results from the first time this survey was administered was published by Koss and colleagues in 1987, based on findings from a large sample of 6,159 American college students. Over half of the women who participated (53.7%) reported having experienced some form of sexual victimisation. The findings specified that 15.4% had experienced acts that corresponded to legal definitions of rape, and 27.5% had reported either rape or attempted rape—one in four women.

The results from Koss's initial study have since been replicated multiple times in various jurisdictions, producing essentially similar outcomes. For example, in Aotearoa New Zealand Nicola Gavey's study of 347 undergraduate university students also found that over half of the women reported having experienced at least one form of sexual victimisation (Gavey, 1991). Furthermore, similar proportions of women reported having experienced rape (14.1%) while 25.3% reported an experience consistent with legal

definitions of rape or attempted rape. Such similarities in the findings are notable considering Koss's survey was being replicated in a different country and also canvassed a considerably smaller population. Along with the reluctance noted by some victims to self-define themselves, Russell's and Koss's results demonstrate how the methodologies used can vary in ways that affect disclosure decisions, a topic Koss later directly addressed (Koss, 1992).

The findings of these prevalence studies contradicted the more popular view held previously that rape was a rare and unusual event, one mostly perpetrated by violent strangers and which came to be termed the "real rape" myth (Brown & Horvath, 2009; Estrich, 1987). When research using more sensitive methodologies was conducted, the results repeatedly indicated not only how common experiences of sexual assault were, but that they were primarily perpetrated by men whom the victim knew personally (Bennice & Resick, 2003; Parrot & Bechhofer, 1991). Moreover, the most likely perpetrators were the typically ordinary men whom they were, or had been, intimately involved with, such as boyfriends, partners and husbands (Easteal, 1994; Koss, 1993; Warshaw, 1988; Weis & Borges, 1973). Diana Russell's (1982) book on marital rape opened a window into previously private sexual violence within the home, while Koss's studies illuminated what became widely referred to as "date rape." Russell's research on marital rape was viewed by some as particularly problematic given that, at this point in history, there were no legal prohibitions against rape in marriage. Husbands, some argued, had a "licence to rape" (Stuart, 1993, p. 97).

A further significant finding from the early prevalence studies was that they highlighted discrepancies between *legal* definitions of rape and *women's* definitions of rape. Numerous women in Koss's sample described experiencing forced sexual intercourse against their will yet answered negatively when asked if they had ever experienced rape. This prompted Koss to refer to such women as "unacknowledged rape victims" (Koss & Oros, 1980; Koss, 1985). When the *Sexual Experiences Survey* was first conducted (Koss et al, 1987), only 27% of the women who reported having an experience meeting legal definitions of rape described themselves as rape victims.

What also emerged from the *Sexual Experiences Survey* findings was that the majority of women did not report their experiences of rape to the police, and in fact 42% did not tell anyone at all about what had happened to them (Koss et al, 1987). This latter finding indicates how shamed many victims felt about their experience, and how fearful they were of how others might react should they know. Such fears are not unreasonable. The widespread existence of myths and negative beliefs about rape has historically deterred many victims from reporting, and these continue to influence public attitudes (Amnesty International, 2005). An Australian community-based study of attitudes towards violence against women found, for example,

that one in three Australians are unaware that women are more likely to be raped by someone they know than by a stranger, with the additional concern noted that this lack of awareness has not improved since a similar previous survey conducted in 2013 (Webster et al, 2018). Furthermore, 16% believed many sexual assault allegations made by women were false, and nearly one in five Australians did not know rape in marriage was illegal (7%) or believed it was not illegal (12%) (Ibid.). Similar beliefs justifying the use of sexual coercion by men are evident elsewhere. For example, a British study surveying 2,039 young people's attitudes concluded that young men often thought it was acceptable to force a woman to have sex in any of the specified circumstances (if she was his wife, his long-term girlfriend, if he was "so turned on he could not stop," if nobody would find out, if he had spent lots of money on her, or if she had slept with many men) (Burton, Kitzinger, Kelly & Regan, 1998). These findings echoed others from a study conducted with men convicted for rape (Scully, 1990). It is little surprise, then, that rape victims often respond with self-blame and that this can translate into self-silencing.

From the 1980s research a picture emerged showing that, despite rape appearing to be a clear, black and white issue in law, women's experiences of sexual intercourse reflected greyer and more complex realities. Feminist researchers such as Martha Burt (1980) began depicting women's sexual experiences as existing on a continuum with varying degrees of coercion, with this concept most significantly developed by Liz Kelly (1988). Her qualitative research asking women in a London community about their everyday sexual experiences found many women described experiences of pressured and unwanted sex. These may not have met legal definitions of rape, yet nor could they be interpreted as consensual. Furthermore, they impacted on women in ways that were typically harmful and injurious. The majority of such cases would never reach a court of law. Moreover, for those few cases that did proceed to trial, concern was being expressed over how few resulted in conviction, as the next section examines.

Attrition rates

Criminal justice system responses to rape have attracted harsh criticism for decades. In the 1980s research internationally revealed every stage of the system was experienced negatively by victims reporting rape (Adler, 1987; LaFree, 1989; Young, 1983). Many in the feminist anti-rape movement of the 1970s expressed horror at the high levels of police disbelief encountered by victims of rape and their reluctance to investigate such crimes (Brownmiller, 1975; Weis & Borges, 1973; Wood, 1973). Such attitudes were reflected in police training manuals (Rose, 1977), with police questioning of victims often described as akin to interrogation (Firth, 1975; Gilmore, Baker & Pittman, 1993; Gregory & Lees, 1999).

Subsequent research revealed police treatment of rape victims varied in ways that saw some receiving better treatment than others (Burgess & Hazelwood, 1999; Jordan, 2004; Temkin, 1999), but the experiences of women in court were almost universally condemned. It was rare for rape cases to proceed to trial *and* even rarer for them to result in an offender being found guilty (Chambers & Millar, 1983; Gregory & Lees, 1999; Harris & Grace, 1999; Kelly, 2002; Lees, 1997). The fact that so few offenders were held accountable for such a serious offence perturbed many researchers. In the 1970s, for example, Quenneville noted that convictions were obtained in only 7% of the forcible rapes reported in California, and observed: “The phenomenal number of rapes committed each year gains further significance in light of the grim likelihood that the rapist will be neither apprehended nor convicted” (Quenneville, 1978–1979, p. 583). Attitudes to rape were further reflected in the lenient punishments accorded to those few who were convicted of rape, with offenders being fined or placed on probation until 1978 when prison terms were mandated. After that, plea bargains and pleading guilty to lesser charges enabled offenders to circumvent prison sentences (Quenneville, 1978–1979).

Twenty years later, writing within the UK context, Jeanne Gregory and Sue Lees commented:

It was clear from earlier research that the sexual assaults that are reported, whether to a rape crisis centre, a doctor or a police officer, are the mere tip of an iceberg of staggering proportions. It is all the more puzzling to discover that a large proportion of these reports fall away at later stages in the criminal justice process.

(Gregory & Lees, 1999, p. 59)

More recently, a US study conducted in a large Midwestern police department found that even when a vast majority of cases were founded by police (90.5%), only just over one-third of these (35.2%) resulted in an offender being arrested (Alderden & Ullman, 2012). The overall attrition rate noted for this study was 9.7%, with the authors observing: “The extremely low number of cases that resulted in felony charges highlights the fact that many victims never get justice for their victimizations and that many offenders are not held accountable for their behaviors” (Alderden & Ullman, 2012, p. 40).

One of the largest attrition studies conducted in recent years was a Home Office analysis that concluded there was not merely a justice gap but a justice “chasm,” so low were a victim’s chances of seeing the perpetrator convicted (Kelly et al, 2005). An attrition study conducted in Aotearoa New Zealand similarly found the rates very low, with 13% of all sexual violence cases reported proceeding to trial and conviction, mostly when the accused pleaded guilty (Triggs, Mossman, Jordan & Kingi, 2009). A subsequent study ten years later found only 11% of all reported sexual victimisations resulted in a conviction (Ministry of Justice, 2019b). When low initial

reporting rates are taken into account, the picture is even grimmer: “[I]f only 10% of sexual violence is reported to Police, for every 100 victimisations only three results in a perpetrator being charged, and only one results in a conviction” (Ibid., p. 2). Clearly the likelihood of rape trials resulting in an offender’s conviction remains remote.

It was not only the outcomes of cases that caused concern but also the processes to which victims of rape were subjected. The women routinely described court processes as inhumane and barbaric, and rape trials began to be frequently referred to as a “second victimisation” (Adler, 1987; Epstein & Langenbahn, 1994; Koss, 2000; Madigan & Gamble, 1991; Orth, 2002). In Australia a researcher who sat through 150 rape trials ended up concluding of court processes that they amounted to “state-sanctioned victimisation” (van de Zandt, 1998). The repeated questioning complainants were subjected to regarding the sex act and sexual organs prompted her to proclaim: “A sexual assault trial is ritualised degradation dressed up as court process” (van de Zandt, 1998, p. 125)

More recently, widespread criticisms of police and court processes have prompted repeated inquiries and reviews, each typically producing a series of recommendations designed to reform some of the worst elements identified in these systems. These are briefly discussed in the next section.

Governmental responses

State inquiries into the criminal justice system’s management of rape cases have become a feature of many Western democracies. In Aotearoa New Zealand it was the public outcry that followed the acquittal of three police officers for historical rapes committed against a young woman, Louise Nicholas (for detail see [Chapter 3](#)) that prompted a Commission of Inquiry into Police Conduct (Bazley, 2007) as well as the establishment of a Taskforce for Action on Sexual Violence. The latter drew together government and community groups in a partnership approach that resulted in recommendations targeting three key areas: developing effective specialist frontline services for both victims and offenders; criminal justice system reforms; and prevention initiatives. More recently an “Improving the Justice Response to Sexual Violence Victims” initiative has been introduced that aims to reduce the risk of sexual violence victims experiencing further trauma due to their participation in the justice system as well as a Ministry of Justice review of the attrition process (Ministry of Justice, 2019b).

In England and Wales, as well as multiple reports on the investigation and prosecution of rape offences undertaken by the HM Crown Prosecution Service Inspectorate and/or HM Inspectorate of Constabulary (e.g. 2007; 2012; 2017; 2019), there have also been large-scale reviews such as the Stern Review (2010) and the Angiolini Report (2015). As in Aotearoa New

Zealand, the numerous reviews conducted have often been triggered by a high-profile case raising public concerns about the adequacies of the justice system in responding to rape allegations. The Stern Review, for example, arose following extensive public criticism when cases involving predatory rapists John Worboys (also known as the Black Cab Rapist) and Kirk Reid both revealed that multiple victims had reported them before police finally acted on the information. The aims included determining ways of encouraging more victims to report and ensuring their better treatment, as well as reducing the attrition rate (Stern, 2010).

Such a high prevalence of government reviews and inquiries could indicate a prioritising of sexual violence or could prompt two, admittedly cynical, conclusions. Firstly, that such reviews seemingly achieve little, given the frequency with which they are repeated and the repetition often evident in the recommendations made. Secondly, that the fact they are instigated so frequently indicates they hold some other utility. While they may not result in substantive changes within our justice systems, they perform a symbolic role through attempting to demonstrate that the state is responsive to public concerns and criticisms (Brown, 2011; Jordan, 2011).

The examples listed above illustrate the frequent pattern that emerges when a scandalous rape case prompts high levels of public outrage and criticism. Unable to deny or ignore such injustices, the state responds by ordering an investigation. Such a process typically takes some months or years to conduct, and results in a series of recommendations being made that are designed to remedy some of the worst excesses of the system. The extent to which accountability mechanisms and processes exist to ensure compliance with these recommendations varies, and often few are implemented before another scandal occurs prompting another inquiry process. The very existence of the inquiries themselves is expected to allay public concerns and outrage, and to demonstrate state responsiveness. The strong assertion that “Yes, we are doing something – we are holding an inquiry” is used to silence challenges and criticism. In reality there may be more positive outcomes than this cynical view reflects. An example of an exception may be Aotearoa New Zealand’s Commission of Inquiry into Police Conduct (2007), the subject of further discussion in [Chapter 3](#).

The picture today

Despite the many reviews, reforms, and rhetoric suggesting improvements in responses to sexual violence, the current situation continues to raise high levels of concern. Research evidence from international studies presents a compelling picture of the shockingly high prevalence of violence against women. The United Nations estimates 35% of women globally have experienced either physical and/or sexual violence by a non-partner

at some point in their lives, with this figure doubling in some national studies when the violence is perpetrated by an intimate partner (UN Women, 2020). Results recently released from the largest ever study of the prevalence of violence against women similarly showed that across their lifetime one in three women are subjected to physical or sexual violence by an intimate partner or sexual violence from a non-partner (WHO, 2021). While the rates varied across regions, those areas with the lowest rates still featured prevalence rates of approximately 20% (WHO, 2021). The data reveal that the violence starts early with 25% of young women (aged 15–24 years) having already experienced violence by an intimate partner by the time they reach their mid-twenties (WHO, 2021). While staggering, these statistics are accepted as under-estimates due to the methodological difficulties outlined earlier. In commenting on prevalence statistics, Ward said:

The data expose a global reality in which females are harmed by men repeatedly and in multiple ways because they are females, sexual subordinates in the gender relationship, with less power, less participation, less education, less livelihood, less money, less property, less recourse, less justice than males.

(Ward, 2016, p. 297)

The earlier disputing of high sexual violence prevalence rates has eased, apart from the opposition voiced by Men's Rights Activists and other social groups threatened by perceived feminist gains. The proliferation of online misogyny and attacks on feminists indicates that opposition to calls for gender equality remains strong (Ging & Siapera, 2018; Ringrose, 2018; Vickery & Everbach, 2018).

While pressure on police organisations has seen encouraging improvements in victim satisfaction levels, any victories gained have made relatively little impact on attrition rates. Reported rates of sexual violence are increasing while prosecution and conviction rates are decreasing, widening what is commonly referred to as the justice gap (Kelly et al, 2005). The Chief Inspector's foreword to the HM Crown Prosecution Service Inspectorate's 2019 review began by stating: "If 58,657 allegations of rape were made in the year ending March 2019 but only 1,925 successful prosecutions for the offence followed, something must be wrong" (HMCPSI, 2019, p. 7). Despite reforms made within court processes, such as restricting material on the victim's previous sexual history, rape victims still overwhelmingly experience trials as revictimisation (Gravitas, 2018; Smith, 2018; Spohn, 2020). Any earlier optimism that legal reforms might usher in a new age of justice have faded, with growing recognition of the importance of social attitudes towards rape, the impacts of pornography and debates about the influence of rape culture (Boyle, 2019; Gavey, 2019; Mendes, Ringrose & Keller, 2019). Lest this be all doom and gloom, positive signs do exist, as

evidenced by the holding to account of men like Harvey Weinstein and Jeffrey Epstein who traded on their victims' silence for years, as well as in the recent, global #MeToo movement. How likely is it that these signs of progress will produce lasting change? This is the platform from which I begin my investigation.

This book's approach

I take as my starting point the breaking of the silence surrounding violence against women in the 1970s, and the enormity of what this unleashed (Brownmiller, 1975; Dobash & Dobash, 1979; Feild, 1978; Griffin, 1971; Meyer, 1973–1974; Rose, 1977; Weis & Borges, 1973). Consciousness raising groups, speak-outs, reclaim the night marches—even some early radical feminists were surprised by the numbers of women who seized the opportunity to speak about the unspeakable (Brownmiller, 1999). In this book I ask firstly why, more than half a century of feminist action later, does the prevalence of sexual violence show few signs of abating? Secondly, despite multiple reviews and reforms, why do so many women still fear speaking out, as evidenced in continuing low reporting rates for rape (Carretta, Burgess & DeMarco, 2015; Johnson, 2017; Ministry of Justice, 2019b)? My third dilemma concerns why those who do speak out still risk being blamed or disbelieved (McMillan, 2018; O'Neal, 2019), and why, for those who report rape to the police, the chances of seeing an attacker convicted appear even less likely now than earlier (Brown, 2011; Hohl & Stanko, 2015; Kelly et al, 2005; Ministry of Justice, 2019b)?

My approach in exploring these questions builds on the belief that we cannot make sense of the present without accounting for the legacy of the past. Accordingly, this book begins by considering early rape laws, locating these within the historical context of the gendered beliefs and attitudes that shaped them.

In the remainder of this first chapter I clarify the terms and concepts used in my account before providing a brief outline to each chapter's contents.

Definitions

Defining any form of sexual violence is a complex task. Internationally, there is no consistent legal definition of rape, which in Aotearoa New Zealand is equated in terms of seriousness with acts of “sexual violation,” the latter including the non-consensual penetration of any orifice by any object. Liz Kelly's continuum-based concept of sexual violence continues to provide one of the most useful definitions available. Sexual violence is understood as including “any physical, visual, verbal or sexual act that is experienced... at the time or later, as threat invasion or assault, that has the effect of hurting her or degrading her and/or takes away her

ability to control intimate contact” (Kelly, 1988, p. 41). This encompasses a broad range of specific behaviours from inappropriate comments and touches through to violent sexual assaults, and exposes the limitations of legal definitions. Experientially, acts that meet less serious legal definitions may nevertheless impact equally seriously on victims—a reality I observed when interviewing women who were recognised as victims of attempted rape by an attacker who was also charged with raping other women (Jordan, 2008).

In this book my usage of specific terms will vary with context. Mostly I will use the word “rape” synonymously with “sexual violence” to refer to the intentional sexual victimisation of one person by another or others. The term “rape” will be emphasised when discussing such issues as the changing history of rape laws, with “sexual assault” used to refer to sexual offences that may not always fit legal definitions of rape, but nevertheless are experienced as sexually harmful behaviours. These include indecent assault, sexual harassment, and digital forms of sexual violence. None of these terms is intended to convey lesser or higher degrees of harm or seriousness.

When it comes to describing those who have been victimised, the language options become more fraught. These are not simply semantic realities, since different labels can impact on the identities and outcomes of women experiencing rape (Hockett & Saucier, 2015). Recognising this, Latina feminist philosopher, Maria Lugones (2003), suggested that theorising based solely on the recognition of oppression fails to provide any indication of possibilities for escaping or overcoming it. Within criminology traditionally, the word “victim” has been used to denote someone who experiences a crime, yet case study research involving rape victims in the 1980s revealed attaching the label “victim” to a woman could mean “the sexual incident becomes the controlling and dominating event in her life” (McCarthy, 1986, pp. 323–324). Accordingly, feminist debates have often rejected the passivity of the word “victim” in preference for the term “survivor” (Boyle, 2019; Rock, 2007; Walklate, 2007). This debate is by no means resolved. A 2020 *Guardian* piece about Michelle Bowdler’s rape memoir was entitled “Should we stop calling rape victims ‘survivors’?” and included the writer’s realisation:

that there are cultural narratives about rape that I had unthinkingly accepted: that a woman should either be permanently and irreparably damaged by an attack, in order to have the seriousness of what was done to her underscored, or completely emotionally triumphant, so as to have her dignity restored. Bowdler refuses to be either meek victim or feelgood survivor. She insists on having the gravity of rape and the fullness of her self acknowledged.

(Donegan, 2020)

To dichotomise the two terms establishes a tension I have typically preferred to resolve through using the concept of “victim/survivors.” While somewhat clumsy, nevertheless this term captures the dual realities that often characterise rape victims’ own responses—they can be, simultaneously, both victims *and* survivors. My comprehension of this complexity was informed primarily by the interviews I conducted with the women mentioned above who were all raped or sexually assaulted by the same serial rapist. These women’s narratives revealed that, during the very moments that their attacker was victimising them, they were finding ways to survive (Jordan, 2008). Victim and survivor can be positions simultaneously held as well as points on a sequential journey. As a result, throughout this book I will predominantly use the term victim/survivor except where specific usage of one or other descriptor is warranted.

A gendered focus

This book has an explicit focus on the rape of women by men. It is only very recently in our history that legal definitions have changed to recognise the possibilities of men being victims of rape and women being perpetrators. Prevalence statistics, however, continue to depict rape as *the* most highly gendered crime. For example, the Crime Survey for England and Wales found, for the year ending March 2017, females accounted for 88% of victims and males 12% (Office for National Statistics, 2017). Similarly, Australian statistics show that of all victims of sexual assault in Australia in 2020, 84% were female (Australian Bureau of Statistics, 2020). While there is growing awareness of the realities and impacts of male rape, the perpetrators of such offending are also considerably more likely, although not exclusively, to be male than female. The US *National Intimate Partner and Sexual Violence Survey 2010*, for example, based on a sample of 16,500 adults, found men were identified as the offenders in 98% of female and 93% of male rapes (Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011).

In reviewing prevention initiatives involving men and boys, one of the critical questions posed by authors Jewkes, Flood and Lang (2015) asks why violence is not equally perpetrated between men and women. The answer, they say, depends on our understanding of the association between masculinity and violence, adding:

This association is not simply Y-chromosome determined; prevalence and patterns of violence differ greatly worldwide, and individual differences exist between men in any one setting. The connection instead lies in gender; that is, the social values, roles, behaviours, and attributes thought to be appropriate and expected for men and women.

(p. 1581)

I acknowledge there are those who would argue in support of greater gender symmetry in sexual offending (e.g. Stemple & Meyer, 2014). While I consider it important to recognise female perpetration of sexual violence and to refrain from denials of its occurrence, nevertheless the vast body of empirical data attesting to male dominance in sexual offending cannot be ignored. This predominance is, I would argue, a logical outcome given our patriarchal history and the legacies it has bestowed.

My stance in this book emphasises these gendered differences in socialisation within the larger context of gender inequalities emanating from this history. While most of the content focuses on women's experiences, I have included a chapter in which men's sexual victimisation is addressed that demonstrates additional ways in which our patriarchal legacies remain evident. This reflects my analysis of how patriarchy constitutes a harmful and oppressive system for men as well as women and why its overthrow is essential for transformative social and liberatory politics.

The increasing attention given to male victims of sexual violence has been viewed by some as righting a previous gender inequality that almost exclusively emphasised women's sexual victimisation (Javaid, 2016). Evidence suggests that, in ways that parallel female rape, perceptions of male rape victims have been skewed by stereotypes and misconceptions that have often minimised the impacts and left male victims sidelined outside of support services (Cohen, 2014). Being both male *and* a victim contradicts dominant constructs of hegemonic masculinity in ways that encourage many men to self-blame and self-silence, a topic explored further in [Chapter 5](#) (Javaid, 2016; Lowe & Balfour, 2015).

A major difference, however, stems from men, unlike women, not being targeted *as* a gender class but *within* a gender class. Particular groups of men may target other men who are seen as different or as posing a threat, but it is usually not the gender of these men as an entire, subordinated category that is considered problematic. Such a distinction has been explained by former UN Special Rapporteur Rashida Manjoo as follows:

... violence against men does not occur as a result of pervasive inequality and discrimination, and ... it is neither systemic nor pandemic in the way that violence against women indisputably is. ... Attempts to combine or synthesize all forms of violence into a "gender neutral framework" tend to result in a depoliticized or diluted discourse, which abandons the transformative agenda.

(Manjoo, 2014, p. 17)

Men may individually experience sexual violence perpetrated as a result of discriminatory homophobic prejudices, but it is not *masculinity* per se that is being attacked in such contexts. The hostility towards them is more

likely to stem from the perception that they are failed, inadequate, gender-threatening men, while normative, or hegemonic, masculinity remains dominant.

A significant political development this century lies in the increased recognition given to the existence of multiple gender identities. Recognition of gender diversity potentially removes the stigma associated with those whose sexual identities placed them outside the patriarchal gender binary. The most vocal and influential to date have been those identifying as transgender, with growing recognition of the high risks of sexual victimisation faced by such persons (Boza & Perry, 2014; Stotzer, 2009).

This book's emphasis on the sexual victimisation of women by men pertains most directly to those who within this political landscape are termed cisgendered women, referencing the socialisation experiences of those born and raised female in societies shaped by patriarchal legacies. My approach is built on the underlying premise that our history has produced societies divided by both binary and hierarchical systems that shape rape behaviour and responses to it. My adoption of such a perspective is in no way intended to minimise or deny the impacts of sexual violence on any other persons, and nor do I wish to deny that some women are themselves perpetrators of sexual violence.

A central plank of the argument running through this book, however, is that rape fundamentally remains a highly gendered crime that must be understood predominantly using a gendered theoretical lens. In maintaining a deliberately gendered focus, I am asserting the critical importance of resisting current attempts to degender social realities. Politically this is controversial terrain. For me the tension lies in wanting to reject binary thinking and support moves towards gender diversity and inclusivity, while being careful not to erase recognition of the ways our histories and cultures have been, and still are, shaped fundamentally by gender inequalities. Thus I fully agree with Mortimer, Powell and Sandy (2019) that it is important to promote the rights and needs of men, boys, and LGBTQI+ victims of sexual violence, but am also cautious of the political risks associated with championing an ethos of gender inclusivity independently from an analysis of the broader structural context that historically has privileged masculine identities. I will use the abbreviation LGBTQI+ for convenience and in recognition of common usage, but recognise the conflation here of what were historically two different concepts: sexual orientation and gender identity. To identify as gay, lesbian or bisexual was an indicator of same sex sexual preference, a choice often rejected, despised and punished throughout a patriarchal history built around heteronormativity. To identify as transgender or queer indicates a position of gender identity, one not automatically associated with any specific sexual preference.

The individualistic values of neoliberalism sit comfortably with the current emphasis on diverse and fluid sexual identities, in ways that obscure the systemic and political realities still present. These include the fundamental hierarchy between men and women which continues to run like a fault-line through our society, with the impacts of privileging the masculine still evident. Violence against women and girls is driven by this gender imbalance of power which in turn shapes the personal and socio-political impacts of this violence. Furthermore, the rejection and hatred of the feminine is what drives in part the violence perpetrated against those viewed as having rejected their masculinity—gay men and trans women in particular. Misogyny functions, then, as a driver of not only violence against women but against all deemed insufficiently masculine to be entitled to the protection that comes with male privilege.

Violence against those of all gender identities needs greater recognition but a recognition informed as much by an analysis of patriarchy as that applied to violence against women. While there may be commonalities and areas of intersectionality between male, female, gay, lesbian and trans victims, there is also variation in the motives, experiences and consequences of violence for each group (Ward, 2016). For example, men are most likely to be victimised by male strangers or acquaintances, typically when young, and are seldom exposed to the systemic and sustained forms of violence and control experienced by women. Women, however, are most likely to be victimised by men they know and to experience violence multiple times through the life course, including the sustained relationship forms referred to as “intimate terrorism” (Johnson, 2008). An individual woman’s experience of sexual violence is linked to the subjugation of women as an entire gender category (Ward, 2016). Men are unlikely to be sexually assaulted by other men to remind them that their gender makes them inferior and exploitable, but because within their gender grouping competition, conquest, and male honour are defining features. Nor do men rape other men because they feel a sense of ownership and entitlement. Raping a woman puts her in her place as a woman; raping a man puts him in a woman’s place, and in our masculinist and patriarchal society that is no place for a “real” man to be.

Gender demands greater recognition, not less, if we are to continue inching towards increased gender equality. While an intersectional approach is also vital, as I acknowledge below, globally it is gender that remains the key determining variable. This much is evident:

Almost every girl born today will face more constraints and restrictions than will be encountered by a boy who is born today into the same social circumstances as that girl. The disadvantages that women today face vary considerably, especially by class, race, religion, sexuality, and world region, yet, despite these variations, the general characteristic of female disadvantage remains.

(Bennett, 2006, p. 10. Emphasis in original)

A Western and intersectional focus

While the issues explored here have global relevance, this one book cannot adequately address all of the relevant factors on a global scale. The focus I adopt reflects my own position as a cisgendered, white, older, long-term partnered lesbian woman living in a Western nation with an exploitative and racist colonial heritage. As well as including Aotearoa New Zealand material, most of the research on which this book is based emanates from the United Kingdom, Australia, Canada and the United States. These countries share similarities in terms of all being highly ranked OECD nations characterised by histories of feminist challenges to the treatment of rape victims within adversarial justice systems.

This research emphasis does not limit the book's relevance to other international contexts. The global pandemic of sexual violence noted earlier indicates its wider applicability, and there are specific instances where I reference comparable examples from nations outside Western frameworks. While many nations are working to close the gender gaps that still exist in areas such as literacy, earning capacity, and bodily autonomy, the gaps and hierarchies remain. Also increasingly realised are the intersectional elements evident in the ways other social factors interact with gender to compound the disadvantages faced by particular groups of women.

A key factor is ethnicity, compounded further by the discrimination and injustices perpetrated against indigenous populations in countries, like Aotearoa New Zealand, that have a colonial heritage. (The use here of the term Aotearoa New Zealand recognises the original Māori name for the country as well as that imposed by later colonisers). While there is some debate regarding the extent to which pre-European contact Māori society was gender-equal, greater consensus exists regarding the ways in which Western religious and cultural beliefs were imposed on a people increasingly alienated from the land they once possessed (Cavino, 2016). The impacts of colonisation have left a legacy of racism and discrimination that intersects with gender to disadvantage Māori women in particular (Pihama, Te Nana, Cameron, Smith, Reid & Southey, 2016). Today Māori women experience significantly higher rates of interpersonal violence than non-Māori, including in relation to sexual victimisation (Lievore, Mayhew & Mossman, 2007; Mayhew & Reilly, 2009). This finding is reflected in the high prevalence rates experienced by indigenous and ethnic minority women in other nations, with Black feminists in the USA still fighting to counter the destructive impacts of slavery and the rape dynamics it incorporated (Crenshaw, 1991; Davis, 1981; Roach, 2020). More broadly, gender and ethnicity interact also with class and economic factors to form a triumvirate of inequalities, with these potentially heightened further by issues related to disability, sexuality, and gender identity. White, heterosexual men have perpetuated their sovereignty in this way for centuries, with such

processes leaving particularly long legacies of oppression in countries with histories of colonisation. This intersectional patterning of social and economic inequalities across nations is no accident; rather, it reflects the historical and patriarchal privileging of an elite group intent on reproducing its own power and position. In my approach I recognise such intersectional elements and complexities while emphasising the centrality of gender. Given my position that gender inequality is a direct output emerging from the logic of patriarchal thinking, in the next section I sketch a brief definition of patriarchy.

Patriarchy

A popular view asserts patriarchy is dead, a redundant concept in the now gender-equal world in which we live, despite little tangible evidence existing to support this proposition (Boyle, 2019; Gill, 2017; McRobbie, 2009; Mendes et al, 2019). Within sociological and criminological theorising, the ascendancy of liberal feminism has resulted in the dominance of an “equal opportunities” focus content with securing women’s “integration into what has been the world of men” (Ehrenreich & English, 1979, p. 19). This has been well described by Ken Pease (2019, p. 5), asserting that:

In the context of a backlash against feminism, liberal feminist ideas have gained dominance. Social movement politics against men’s violence informed by radical, socialist and multicultural feminism have been supplanted by liberal feminist, public health and professionalized approaches to violence prevention. Consequently, we have witnessed a deradicalization of feminism and gender analyses, strategies for engaging men that overemphasize reconstructing masculinity rather than challenging patriarchy, “a not all men” refrain from so-called “good men,” and a greater acceptance of anti-feminist politics within the mainstream.

The “deradicalization of feminism and gender analyses” is evident in how, as recently argued by Walter DeKeseredy (2021), the last decade or more of research on violence against women has been dominated by individualistic accounts shaped by psychological and medical perspectives. Reasserting the connection between patriarchy and violence against women is essential to understanding its prevalence as well as working towards its elimination.

Sociologist Sylvia Walby (1990, p. 20) defined patriarchy as “a system of social structures and practices in which men dominate, oppress, and exploit women.” Referencing male oppression so directly often provokes angry outcries asserting “not all men” in ways that defensively obscure recognition of its fundamentally systemic and structural nature. Such cultural

“scaffolding,” to borrow a term from Nicola Gavey (2019), is predisposing but not deterministic, allowing the possibility of critical reflection of, and resistance to, its precepts. Despite the far reach of patriarchy’s governance, room for individual autonomy and expression remains viable—no advances towards gender equality would otherwise be possible.

As will become clear in the course of this book’s unfolding, my interpretation of patriarchy recognises its profound impacts over time on every aspect of our lives. Approached in this way, I argue that patriarchy has shaped not only the development of our social, cultural and political institutions but also the conceptual apparatus that shapes the inner thinking of our minds. The concept of a gendered binary of males and females, hierarchically ordered to privilege males, has shaped and infused our culture for at least several thousand years. This approach is not a simplistic formulation of male power over women, however, but recognises the complexities of intersectionalities and the ways these interact to establish differences of status and privilege. This translates into the gendered foundation of society being shaped and patterned further by other social characteristics, including ethnicity, sexuality, socio-economic status, disability, and religion.

It is impossible to ignore the ways our society has been impacted by the patriarchal thinking that infused all of our social institutions. Hierarchies of male power, for instance, ensured male access to education and literacy while these were considered unnecessary, or dangerous, for females. Accordingly,

While women brought up their children and ran their households, men were free to run the world. Men wrote the philosophy and history books, the scientific texts, the poems, the religious books, the medical treatises and the law books, which embedded their patriarchal belief systems in law.

(Kedgley, 2021, p. 15)

In seeking to conceptualise what is meant by patriarchy, I gravitate towards an early definition advanced by Heidi Hartmann (1981, pp. 14–15) in which she articulated:

a set of social relations between men, which have a material base, and which, though hierarchical, establish or create interdependence and solidarity among men that enable them to dominate women. Though patriarchy is hierarchical and men of different classes, races, or ethnic groups have different places in the patriarchy, they also are united in their shared relationship of dominance over their women.... In the hierarchy of patriarchy, all men, whatever their rank in the patriarchy, are bought off by being able to control at least some women.

Our socialisation into patriarchy's key precepts works akin to colonisation as we internalise binary thinking as normative and hierarchies as inevitable. Man/woman; master/slave; active/passive; reason/emotion—both are oppositional, and one is always better than the other. Such dichotomous thinking, I argue, is a key enabler of the “othering” processes that encourage division and violence, whether it is between nation states and ethnic groups, or within communities and intimate relationships. It has, for centuries, fuelled misogynistic attitudes and practices to men's advantage and women's detriment (Manne, 2018).

This book focuses specifically on how patriarchal thinking contributes to the crime of rape. Its impacts are examined in relation to laws on rape, sexual violence perpetration, and criminal justice system responses to victim/survivors.

Shifting perceptions of rape victims

When criminology emerged as a discipline in the late 19th century, its focus was on the criminal offender and explaining the causes of “his” offending. Writing in 1973, Weis and Borges suggested that from Lombroso onwards the discipline might better be termed “victorology” due to its recognition of those who were the winners of crime. A focus on victims of crime emerged primarily in the years following the Second World War (Walklate, 2016), with a common assumption held that criminal offending resulted from a co-production between the victim and offender.

In some of the earliest criminological writings about rape, Menachem Amir reflected this view when he maintained: “If the victim is not solely responsible for what becomes the unfortunate event, at least she is often a complementary factor” (Amir, 1967, p. 493), later adding even more bluntly, “In a way, the victim is always the cause of the crime” (Amir, 1971, p. 258). The notion of victim-precipitated rape became widely popular, feeding directly into beliefs about women “asking” to be raped or secretly wanting to be ravished by forceful men (Gavey, 2019). One consequence of this belief was evident in the ways it diminished men's responsibility for rape; another was in the minimising of harms to the victim. In fact, trauma in rape was initially discussed in leading rape studies in relation not to the victim but the offender. It was posited that he may have had “an early traumatic experience with a seductive female” (Weis & Borges, 1973, p. 98) and in Amir's study, *Patterns in Forcible Rape*, the only mention of a victim possibly experiencing any kind of trauma was relegated to brief mention in a footnote (Amir, 1971, p. 254).

These prevailing attitudes illustrate the dominance of men's subjectivities in contrast to women's object-status and extend logically from patriarchal beliefs that privilege men's experiences and perspectives over those of women. Second-wave feminists sought to counter such beliefs and asserted

the necessity of recognising and validating the harms to victims resulting from rape and all forms of sexual violence. Growing evidence was presented through the 1970s of rape trauma, resulting in recognition of “rape trauma syndrome” as a health outcome (Burgess & Holmström, 1974). This concept subsequently developed into the term “post-traumatic stress disorder” (PTSD) being applied to describe a cluster of impacts resulting from rape that included hypervigilance, increased startle response, and high anxiety (Chivers-Wilson, 2006).

Such efforts in identifying victim impacts were useful in challenging previous notions of rape being little more than unwanted or regrettable sex. Accounts by feminist theorists emphasising the invasion and violation experienced by victims resulted in bids to fund medical and support services for victim/survivors. An American study of female suicide attempters, for example, found their despair often emerged in the aftermath of a rape experience (Borges, cited in Weis & Borges, 1973). The tenor of public discourse around rape began to change, and by the 1990s rape was no longer being so widely denied but increasingly identified as a social problem (Best, 1999; Chasteen, 2001). The suffering experienced by victims was increasingly acknowledged and the language used shifted into its more recent and recognisable terms where rape trauma is often described as capable of “ruining” the victim forever. In implying there is no coming back after rape, those victimised are effectively dealt a living death sentence.

This view was reflected in research undertaken with women in an American community in the 1990s that included questions designed to understand what images of rape they held (Chasteen, 2001). The most common theme emerging, evident in nearly one-third of responses, conceived of rape resulting in “personal destruction” (p. 124) and in the “devastation of who you are” (p. 125). Descriptions from the women included:

[Rape is like being] run over by a TANK and ground into the pavement. Skinned alive and left. Having your tongue cut out—you want to scream but you can’t.

You know what drawing and quartering is, don’t you? Where they split you open and then they tie your, your insides, your intestines, to four different horses, then they slap the horses and they pull you into four pieces. That’s what I think of when I think of rape.

(quoted in Chasteen, 2001, pp. 125–126)

These women’s views reflect the notion that rape brings ruination and destroys the self. This mantra could be viewed as an indicator of the victims’ movement’s success—from starting with a position that rape was too easily dismissed and minimised, efforts to recognise its impacts and

seriousness have clearly been successful. Rape victims, it is sometimes decreed, will be forever blighted. Accordingly, PTSD can be presented as a debilitating and lifelong condition that will leave victims at constant risk of being triggered into panics and flashbacks. In their review of rape trauma discourse, Gavey and Schmidt (2011, p. 452) highlight the paradox arising from its clear acknowledgement of the many harms of rape alongside the risk of a rigid set of impacts being prescribed as “a particular set of predictable psychological consequences.” While the very real impacts of rape must be acknowledged, inferring that it is a non-recoverable from experience is also damaging, and can confirm those victimised in a victim identity. This inference can contribute to the silencing of rape also, with some survivors not wanting others to bestow them with a victim identity, or resisting bestowing such a label on themselves. The act of self-defining as a victim of rape is one of the major hurdles women face, and one which many understandably refrain from tackling.

Chasteen’s research provided additional insights in that the women most likely to conceive of rape resulting in personal destruction were those women who had themselves *not* experienced rape—36% of respondents. By way of contrast, only 13% of those actually victimised by rape described it in such terms. As she concluded: “For women who experience rape, the event becomes part of who they are and something they survived... For women who have not been assaulted, rape remains a horrifying specter...” (Chasteen, 2001, p. 134).

This reinforces notions of the intense effects arising from the fear of rape and the social costs this wreaks on women’s lives (Gordon & Riger, 1989). Since it was young women in particular in Chasteen’s study who imagined rape would be unsurvivable, she observed that *survivors of rape indeed have an important and powerful lesson to teach* (Chasteen, 2001, p. 134). This contributes to the importance of survivor narratives that portray the horrors of rape victimisation alongside the insights and strengths that so often accompany surviving (e.g. see Brison, 2001; Miller, 2019; Raine, 1998; Sebold, 1999).

Sex offenders’ own voices describing their rape behaviour tend to reference their desires for dominance and boosts to their masculine ego rather than any procreative ambitions (Jewkes, Sikweyiya, Morrell & Dunkle, 2011; Scully, 1990; Scully & Marolla, 1985). Evolutionary explanations may suggest rape for reproductive purposes is an unconscious drive but, as recognised by Ward and Durrant (2011), any such drive is shaped and honed within sociocultural contexts.

The final section of this introduction briefly sketches the content of the chapters that follow throughout the remainder of this book.

Book outline

This book is designed to take the reader on a journey that begins by traversing past, historical terrain in order to identify how patriarchal

legacies continue to be manifest today in our criminal justice system. In my own journey I discovered that the material and terrain covered were too vast in scope to be contained within one book's parameters. This book focuses on rape as a crime, its history, the difficulties faced by victim/survivors in achieving justice, and the ways in which men are involved and impacted as offenders, victims and partners of women who are raped. It considers both the progress made in achieving increased rape awareness and prevention efforts as well as the barriers preventing substantive change. A second, sister book, *Tackling Rape Culture: Ending Patriarchy*, begins where this book finishes, extending the realm of inquiry further into the very origins of patriarchy and rape culture. It explores in particular the roles played by the twin mechanisms of silencing and objectification in perpetuating this culture, and identifies the transformative changes needed to make a rape-free society possible.

In [Chapter 2](#), the crime of rape is examined historically to ascertain how it has been defined and responded to within societies with a patriarchal legacy. My argument is that understanding contemporary laws on rape necessarily involves engaging with the history of women as possessions of men and presumptions of male sexual entitlement.

In [Chapters 3](#) and [4](#) this history is applied to an examination of rape laws and their enforcement within the context of Western criminal justice systems. The principal focus in [Chapter 3](#) seeks to reflect victim/survivors' perceptions and experiences of both police and court processes. It explores why so few victims decide to report and how, for those who do, their experiences very rarely result in the offender's conviction. [Chapter 4](#) examines the cycle of reviews, recommendations and reforms characterising organisational responses internationally. The limitations of adversarial systems are examined along with consideration of suggested alternatives aiming to be more victim-centred in approach. Together these two chapters analyse how criminal justice processes contribute to rape being the most difficult offence to hold an offender accountable for, a reality that effectively maintains a collusion between rapists and the patriarchal state.

Having earlier introduced issues concerning masculinity, [Chapter 5](#) tackles these directly by engaging with three key ways men are linked to rape: as perpetrators of rape; as partners of women who have been raped; and as victims of sexual violence themselves. The aim here is to identify and explore the commonalities linking all three groups of men, acknowledging also the possibilities of crossovers between them.

[Chapter 6](#) turns to issues of prevention, examining the development of key rape prevention programmes while also addressing the limitations of these. The analysis broadens to assess current barriers to effective rape prevention and posits the necessity of ending gender inequalities to reduce significantly rates of sexual violence.

The final chapter, **Chapter 7**, brings us back to the rape conundrum identified earlier. It ends with the critical question as to why, despite so much feminist activism, justice reforms, and prevention efforts, does sexual violence remain both so prevalent and so characterised by high attrition rates? In suggesting the centrality of the role played by rape culture, the conclusion points to the need to unravel the mechanisms that hold contemporary systems and attitudes in place. This paves the way to the previously mentioned companion book, *Tackling Rape Culture: Ending Patriarchy*, which unpacks how patriarchy has objectified women's bodies and silenced their voices in ways that sustain a culture within which rape is both normative and effectively condoned.

* * *

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2 Rape laws; rape lore

In November 2013, an Aotearoa New Zealand television station reported that for two years it had been investigating a group of young males in Auckland who had been regularly boasting on Facebook about their success in getting younger girls drunk before raping them (Rutherford, 2013). Calling themselves the Roast Busters, they expressed no guilt or remorse about their actions, instead regarding these rapes as accomplishments earning them male status and peer recognition. One boy, for example, bragged: “My first actual roast for the Roast Busters was bad, it was fun, I felt like the man” (Rutherford, 2013). Further evidence of how they viewed their actions as masculine bravado came from another’s insistence that they did not need to pursue these girls—the girls chose them: “We have girls hitting us up to ‘hang out with us.’ They know what we’re like; they know what they’re in for” (Rutherford, 2013). The boys involved were 16–17 years old; the girls mostly around ages 13–14, below the age of consent which is 16 in Aotearoa New Zealand.

The Roast Busters became a major media case dominating radio, television, and internet sites for a week and fostering vigorous debate and talk-show battles. One common perspective focused on the girls, asking why they were out at night, dressed like that, drinking with boys—what did they think would happen? (Sunday Star Times, 2013, p. 15). A second line of argument was encouraging in asking questions about how and why the boys considered rape behaviour acceptable, and sought to absolve the girls of responsibility:

To describe the activities of the Auckland teenagers who allegedly had group sex with drunk underage girls and then bragged about it online as ‘mischief’ is to perpetuate the myth that the victims of sexual assault are to blame for what befalls them.

(Dominion Post, 2013, p. 10)

What the Roast Boasters case also triggered was an inquiry into police responses, or rather, the seeming lack of response taken. It transpired the New Zealand Police had been aware of the group’s engagement in rape

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behaviour for two years but maintained they lacked evidence to progress with any action against them. Moreover, their assertion that no girl had been “brave enough” to make a formal complaint was revealed to be false, prompting extensive criticism:

It is the actions of the police in this case that worries me. They need to take a long hard look at how they treat those reporting sexual assaults. It’s not good enough to say, after declaring no victims have come forward, ‘sorry, that’s not quite correct, four girls did speak with us but we didn’t have enough evidence to go on’. What do they want? To be there on the spot when the girls are getting raped.

(The Daily Post, 2013, p. 9)

Following a year-long investigation, amidst increasing revelations of the numbers of girls sexually targeted and raped, police announced there would be no prosecution of any of the boys involved (Steward, 2014). The police report on this case suggests that, despite five formal complaints and evidence of sexual offending occurring against at least 25 additional girls, the case did not pass the evidentiary threshold required for prosecution action to proceed (New Zealand Police, 2014). The messages many took from this included a sense of the futility of reporting such incidents and the inability of the law to deliver justice for most rape cases. Green Party MP Jan Logie was quoted as saying:

Many people will be disappointed that there is no justice for the victims in this case. The current system is not working. Too many victims are going without justice because of a systemic failure of our laws to provide for victims of sexual violence.

(in Ryan, 2014)

Seven years later, charges were finally brought against three of the young men involved in this offending (Weekes, 2021).

* * *

Introduction

Our first laws on rape were born deep within the core of patriarchy. From what early records we have, rape emerges as a not uncommon act and one to which women traditionally had little hope of legal redress (Brownmiller, 1975). For centuries they rendered the victim of rape invisible, her voice unheard. A logical extension of patriarchal beliefs determined that the woman who was raped was not recognised as the victim. Nowhere is women’s subordinate status so abundantly clear.

Viewed with 21st century, victim-centred awareness, our earliest laws seem incomprehensible in failing to recognise the harm done to the woman who was raped. The victim was instead the man who was viewed as her rightful owner: her father if she was unmarried; her husband if she was (Brownmiller, 1975). The male reasoning underlying this belief considered one man had violated another man's property, so it was the wronged man who needed recognition and redress. If the woman was young and a virgin, a daughter's value to her father was reduced by this offence. Her potential dowry price was impacted, maybe even her marriageability, such was the damage done to her reputation. If she was married then her husband expected exclusive sexual access to her body, determined by his will alone. The woman who had been violated had no legal existence in her own right, and no voice to complain; she was in effect a silenced object.

Rape scholars in the 1970s were aware that early rape laws had been designed to protect men's interests rather than women's safety (Rose, 1977), observing that:

...rape laws bolster, and in turn are bolstered by, 'a masculine pride in the exclusive possession of a sexual object'; they focus a male's aggression, based on fear of losing his sexual partner, against rapists rather than against innocent competitors; rape laws help prevent the male from any 'decrease in the "value" of his sexual "possession", which results from forcible violation.

(LeGrand, 1973, p. 924)

This chapter charts legal responses to the crime of rape. In so doing it provides a context for us to better understand why criminal justice systems today continue to operate in a biased way against those victimised by rape, a topic explored further later. The focus in this chapter is on the early laws and how they operated, with a specific focus on the thorny issue of rape in marriage. Historical context is provided to illustrate how traditional beliefs about men, women, and rape developed into the rape myths identified repeatedly since the 1970s, including beliefs about false allegations and the "impossibility of rape." This chapter's overall aim is to document how the history of our laws on rape epitomise patriarchy in action, and are essential to understanding the rape conundrum.

Early laws and perspectives on rape

One of the earliest references we have to rape comes from the Code of Hammurabi, circa 1780 BC, which defined the rape of a virgin as property damage against her father (Smith, 1974). If a married woman was raped, however, she was considered an adulteress and thrown in the river (Eichelberger, 2012). This distinction provides an ancient microcosm within which we

continue to see contemporary realities. The history of rape can only be understood within the context of patriarchally determined relationships that have for centuries reflected women's subjugation to men. Defining a woman's worth through reference to male ownership of her body has shaped our rape laws through to the present day, where it is only comparatively recently that these norms have even begun to be seriously challenged. As items of property, possessed by men, any concept of women's sexual rights was meaningless.

The word rape is derived from the Latin *raptus*, literally meaning "to seize," and within the context of Roman law this term covered a range of property crimes including robbery, abduction, and bride kidnapping (<https://www.definitions.net/definition/raptus>). The victim's consent was not legally considered since the violation was against the right held by the head of the household (*paterfamilias*) to give or withhold his consent. Accordingly, when a woman was raped, it was her "owner" who could choose between receiving payments or seeking criminal penalties for the harm accorded *him* (Gardner, 1991).

Willingness to acknowledge the impacts on the actual victim has been a long time coming. Writing within the context of American history, Dworkin identified the influence of misogynistic beliefs on attitudes towards violence against women:

In the United States, legitimized woman-hating has its origins in European and Anglo-Saxon institutions of ownership: married women were defined as chattel, or property, of their husbands, with no rights to independent civil existence; the majority of the African American population was held in captivity as slaves, and women were worth half the price of men and subjected to forced sexual intercourse by white owners.

(Dworkin, 1998).

Rape went from being viewed as a crime against the man who owned the woman to being seen as an offence against the state. When the Roman Empire first became Christianised, Emperor Constantine redefined the crime of rape as a public offence rather than a private wrong. Now, in cases of abduction, or in instances of elopement to which the female had consented, she was deemed punishable along with her male "abductor" by being burned alive. Where she had not consented, she was still considered blameworthy for not saving herself by screaming for help and was disinherited from her family (Gardner, 1991). As the impact of Christianity grew, rape was defined as a crime against "the temple of God," another version that ignored the act's violation of the woman herself. Married women risked accusations of adultery if raped by a man other than their husband; if their husband was the rapist, however, they were not recognised as victims or recognised as having sexual autonomy until the late 20th century in most Western nations.

The earliest records existing that list penalties for rape come from England's King Alfred, issued approximately 892 AD:

If a man "seizes by the breast a young woman belonging to the commons, ... throws her down ... [and] lies with her, he shall pay [her] 60 shillings compensation."

"If another man has previously lain with her, then the compensation shall be half this [amount]."

(quoted in Smith, 1974, p. 190)

In his historical analysis of changing attitudes towards rape in France, Georges Vigarello observed that it was not until the late 18th century that laws began acknowledging the harms experienced by the actual victim of rape. One way this was evident was in how the French Penal Code of 1791 replaced the previously used word, "abduction," with "rape." This signified a shift towards "treating the injury to the victim as more important than the damage to her 'owners'" (Vigarello, 2001, p. 242). This move came in the wake of the French Revolution and reflected a slowly growing awareness that liberty, equality, and fraternity should not be the prerogative of men alone. The possibility of marriage resulting from romance was becoming more common, although notions of conquest remained pervasive. The next section traces this development historically.

Male conquest

A strong theme evident since antiquity depicts men seeking to capture and conquer women, with the use of force condoned when necessary (Scholz, 2005). Brownmiller (1975) noted that forcible seizure through the process of "bride capture" (discussed later in this chapter) was viewed for centuries as a legitimate means of acquiring a wife, enduring in parts of England as late as the 15th century. Centuries earlier, the Roman poet, Ovid, described men serving as hunters seeking down women and girls as their prey. While he did not overtly condone rape as it was defined then, in AD 2, his writing encouraged men to use force in seduction, as the following extract demonstrates:

Some force is permissible—women are often pleased
By force, and like what they're giving to be seized.
The girl whose citadel is stormed
By sheer audacity feels warmed,
Complimented; the one who could have been attacked
And taken by force but escapes intact,
Although she affects to look glad,
Feels let down, a little sad.

(Ovid, trans. Michie, 2002, 16)

One of his most enduring treatises he titled *Ars Amatoria* (trans, The Art of Love), a work that was still attracting controversy up until the 20th century. Its publication attracted Roman controversy for its encouragement and advice to men over how to successfully seduce married women. Since then the book has been the subject of various orders to burn and destroy all copies, including in Elizabethan England in 1599, while as recently as 1928 it was seized as an obscene publication by US Customs (Felix, 2020).

Ovid's writing shows us there is nothing new about the belief that women secretly desire to be raped. This myth neatly dilutes responsibility for rape, attempting to transform the act from one of violation to one of beneficence. Recent research suggests notions of women's rape fantasies reveal more about men than they do about women, which is unsurprising given this myth was a male invention in the first place. It plays into the fiction of the hunter and the hunted, the glory of the chase, the climax of the conquest—all highly desirable from the position of the hunter while terrifying for his prey.

Attitudes condoning rape were evident also in ancient Greece. Writing about Athens, classics professor Eva Keuls terms it a "phallocracy" where the penis was so revered by men that it effectively ruled the empire (Keuls, 1985). Within this environment, women's primary value lay in their status as male possessions, the binary distinction evident in the following description:

The ancient Greek social system produced a community where men were sexually free as partakers in the public life, while women faced strict social and sexual limits as keepers of the domestic life. They were early married, without being asked, they were accompanied in public places and their principal duty was related to their reproductive capacity, namely, to produce legitimate heirs.

(Koutsopetrou, 2019, p. 2)

Women's sexuality was perceived as a potential threat to the social order, justifying the controls to which they were subjected.

In this social context, men perceived female sexuality through the lens of family honor and shame. The male honor was associated with the chastity of the women to whom they were related and the female honor was defined through the spectrum of sexual purity. Under these conditions, women's sexuality was conceptualized as a threat to the social order, a potentially destructive force, which Greek men had to tame and, then, channel through the institution of family to reproduction.

(Koutsopetrou, 2019, pp. 2–3)

The story of Medusa is a case in point. In Greek mythology she is a monstrous creature with snake heads who preys on men, and few question the origins of her appearance. Silence conceals how her original beauty caught the attention of Poseidon, the sea-god, but she rejected his advances and

sought refuge in the temple of Athena (Orth, Andipatin & van Wyk, 2020). It was Medusa, however, who provoked Athena's anger and retaliated by turning her into the monster we now recognise. This example of victim-blaming resonates still today with contemporary rape culture and the normalisation of male sexual aggression (Orth et al, 2020). Rape in the context of warfare dates back to antiquity also, with conquering armies raping the women of the defeated, treating them as spoils of war (Phang, 2008).

Men's fears of being ruled by women were also evident. The ancient Greeks, for example, had a mythology built around Amazon women that generated vast arrays of pottery and sculptures as they sought to reassure themselves of male supremacy over even the strongest of women (Franklin, 2010). The Amazons were "other" in two senses—they were women and they lived outside Greece's boundaries. Myths and depictions of them being slain by Greek troops became important ways "to shred the notion that women could be equals to men in any manner" (Lamb, 2016, p. 5).

This is what makes the recent public conversations around rape both so significant *and* so precarious. They step over a line held in place for all the centuries of patriarchy's reign, and not everyone welcomes this threat to the status quo. The social order established by male conquest determined the shape not only of marital relations but of male dominance over women generally, and sustaining it has been a constant challenge.

A woman's worth?

Conquering women through sex, and using the rape of their bodies to indirectly conquer men, speaks to the objectification of women. In a world oriented around male subject status, women were prized not as beings but as male property. The property status of women raises questions regarding their worth to their owners. As noted, the two most critical distinctions revolved around the issues of virginity and marriage (Anderson, 2002). The book of Deuteronomy, dating from the 7th century BC, illustrated how virgin-status carried the greatest benefits. A father could demand the highest bride-price for a daughter whose virginity was intact. If a husband accused his bride of not being a virgin on their wedding day, her parents were required to bring her to the elders accompanied by the sheet bearing blood stains from her first experience of sexual intercourse (Anderson, 2002). If her virginity was unable to be proven, then "the men of her city shall stone her with stones that she die: because she has wrought folly in Israel, to play the whore in her father's house" (Deuteronomy, 22: 20–21). In cases where an unbetrothed virgin was raped, the father could require the rapist to pay him a bride price of 50 shekels and immediately marry his daughter (Anderson, 2002). Should she be already promised or betrothed to another man, the rapist's penalty was death.

Similar pronouncements were made in the Mishnah, a book of legal rules compiled by Jewish elders. The victim counted for little since "Everything

follows the social standing of the man who inflicts the disgrace and the man who suffers it” (quoted in Anderson, 2002, p. 62). Assumptions of unchastity in former captives, or slave girls aged more than three, meant no fine was required should they be raped.

The value of virginity determined rape laws through the centuries. For example, under English Saxon law in the 13th century AD, the severity of punishment varied according to the victim’s social, and chastity, status. If she was a virgin, the rapist could have his eyes as well as his testicles removed, such losses viewed as reasonable given the woman’s loss of her hymen (Anderson, 2002). If she was married, a widow, nun, or prostitute, the punishment was left to the discretion of the courts. A husband raping his own wife, as we will consider further later, attracted no censure.

Concerns about the sexual penetration of young girls destroying their virginity led to the introduction of statutory rape provisions alongside those in common law. Statutory rape is one of the oldest crimes in Anglo-American law, and was defined by *Law Dictionary* (Black, 4th ed 1951, cited in Prevost, 1966, p. 254) as the offence of having sexual intercourse with a female under statutory age, with or without the female’s consent. The first statutory mention, known as the Statute of Westminster, dates back to King Edward I’s reign in 1275 when it was declared a crime to ravish, with or without her consent, a maiden under 12 years of age, the age at which a girl could legally consent to wedlock (Prevost, 1966). During Queen Elizabeth I’s reign the age of consent became fixed at 10 years in 1576, and then returned again to 12 years in 1736 under Hale’s influence.

The theory of protection of girls’ virginity was termed the “Treasure Theory” in recognition of its social, economic, and personal value. Writing in 1966, Prevost observed:

...at an early age, a girl is incapable of properly dispensing this treasure for she is ignorant as to the nature and implications of the sexual act. Consequently, to protect her, the law imposes a penalty for any “trespasser who seeks to take advantage of her.”

(Prevost, 1966, p. 257)

In cases where a virgin was gang raped, the first offender was punished more severely than those after him in recognition of his having been the first to “deflower” her (Anderson, 2002).

In England the Criminal Law Amendment Act 1885 made it unlawful to have or attempt carnal knowledge with girl under 16 even with consent. If the girl was aged between 13 and 16 and did consent then the crime was considered a “misdemeanour” whereas if she was under 13 then it was deemed to be a “felony” ranking in seriousness to rape (Smith, 1951, p. 1455). The Act also made it offence for any person knowing a female was an idiot or imbecile to have carnal knowledge even with her alleged consent.

The importance of a victim's chastity continued to be emphasised in law throughout the centuries. In America, where English settlers developed a legal system based on English common law, any woman alleging she had been raped was suspected of being too independent. "The man in charge of the woman's sexuality, either her father or husband, was expected to raise the accusation for her because women should 'not be so bold'" (Anderson, 2002, p. 64).

By the late 18th century, a culture of masculinity prevailed that condoned widespread sexual licence for men while requiring modesty in women (Sanday, 1996). White women became revered for their purity and morality to such an extent that historian Nancy Cott termed them "passionless" (Cott, 1978, p. 226). By the 19th century the Protestant churches were no longer emphasising women as the inheritors of Eve's destructive legacy, instead praising Christian women as "exalted above human nature, raised to that of angels" (Cott, 1978, p. 227). Any previous emphases on women's dangerous sexual powers disappeared beneath a rhetoric emphasising moral and domestic virtues, apart from the extreme opposites evident in "fallen" women. Black women in particular became stereotyped as "jezebels" and "temptresses" (Anderson, 2002, p. 68), viewed as "sexual savages" who "cannot be raped" (hooks, 2015, p. 52). As bell hooks (2015) explains so powerfully in her book, *Ain't I a Woman*:

black women have always been seen by the white public as sexually permissive, as available and eager for the sexual assaults of any man, black or white. The designation of all black women as sexually depraved, immoral, and loose had its roots in the slave system.

(hooks, 2015, p. 52)

Commentary on statutory rape provisions in US states in the 1960s included references to the risks of young men being unjustifiably arrested on such charges when the "victim" may have been young in age but by no means "innocent" (Prevost, 1966). In this early rendition of the "she asked for it" myth, we see further strands of victim-blaming emerging. Some states, such as South Carolina, decreed that evidence of previous unchastity on the part of the victim could be presented in court when the complainant was over 14 and the defendant under 18, with Prevost (1966, p. 259) noting:

The requirement strikes to the very heart of the statutory rape problem by protecting only the innocent. It requires no great imagination to picture a situation in which a relatively inexperienced male becomes sexually involved with an underage female who is actually little better than a prostitute. Justice would seem to cry out against the 'protection of the defiled.'

Prevost notes an article had been written recommending changes to South Carolina law that would protect defendants from unfair prosecution and

introduce, as in Florida, a “chaste character” requirement in the statute to allow “a defense against ensnarement by a prostitute of tender years” and, secondly, to allow as a defense “mistake of fact” when the girl was past puberty, that is, to allow a defendant to use as a defense his belief that she was over the age of consent (Prevost, 1966, p. 266). Such proposals reflect again male bias and a presumptive sense of entitlement. With respect to married women, chastity considerations translated into notions of sexual fidelity, as the following section explores.

Rape in marriage

A man’s act of raping a woman’s body was for a long time perceived as a legitimate practice in some circumstances. As noted earlier, bride capture became a recognised form of marriage with this act viewed as his laying claim to her, the forced sex interpreted as the consummation of their union (Brownmiller, 1975). The condoning of bride capture is consistent with patriarchal definitions of manhood and womanhood. Women’s subordinate status made them dependent on men for survival and deprived them of personal autonomy and agency (Millett, 1971). The reproductive abilities of women were viewed as their most significant attribute, and as men acquired property over time they increasingly emphasised the chastity of their wives in order to be assured of paternity and the inheritance of their sons (Eisenstein, 1979). The favouring of boys in societies that were both patriarchal *and* patrilineal devalued girls and was sometimes associated with the infanticide of female babies. This practice continues today in countries where the extreme privileging of male children remains paramount (Candib, 1999).

Bride kidnapping remains a current practice in cultures that are typically agricultural and strongly patriarchal. The expectation of the woman moving to the man’s family means her parents expect a bride price, with younger or poorer men resorting to bride capture (Steiner & Becker, 2019). Evidence of this practice can be found in many countries throughout the world still, including parts of Africa, Central Asia, South-East Asia as well as in Romani communities through some European countries where girls as young as 12 may be kidnapped for marriage (McDonald, 2007). Figures from the Central Asian state of Kyrgyzstan, for example, show that around one in four females are kidnapped for marriage each year; of 12,000 cases of forced abduction in 2013, at least 2,000 involved the rape of the woman (news.com.au, 2017). In relation to young girls being forced into marriage, a recent State of World Population report noted: “An estimated 650 million girls and women alive today were married as children, and by 2030, another 150 million girls under the age of 18 will be married” (UNFPA, 2020, p. 96).

The notion of women being men’s property was reflected also in early laws regarding marital rape. Biblical verses such as the following were used to

support the view that husbands cannot rape their wives: “The wife does not have authority over her own body, but the husband does” (1 Corinthians 7: 4, New King James Version). The conviction that rape was a crime against the man who owned her was particularly evident in the legal impossibility of a husband raping his wife until the late 20th century; “a man cannot steal what he already ‘owns’” (Rose, 1977, p. 80). This meant that wives had no legal redress available should their husbands rape them, since rape within marriage was impossible. The wife had given herself up—in that act she forfeited any “right” to withdraw her consent for the duration of her life or the marriage.

Within the confines of marriage the law also countenanced the use of reasonable force by a husband to keep his wife in order. Physical chastisement was even specified as legitimate as long as the rod or stick a husband used was no thicker than his thumb (Naffine, 1994). In fact, the common law virtually required husbands to chastise and correct their wives as they would their children or servants (Hasday, 2000). Naffine has noted how in marriage, “More than one violence was done to her: one was physical, another was economic, a third was explicitly sexual” (Naffine, 1994, p. 19). All three operated implicitly within the law of primogeniture ensuring property passed to the eldest son of the marriage upon the death of her husband/his father. For this to work, the law had to recognise the husband’s right of control over his wife’s fertility and ensure his access to her reproductive body was guaranteed and all other men excluded. She was *his* sexual possession.

The woman’s wifely duty to obey and be submissive to her husband extended to her speech—in early England a wife who scolded her husband committed a common-law offence, for which she could be tried in court by a jury, a practice persisting to the mid-18th century (Faith, 1993).

The woman who criticized her husband, who bossed him, who insulted him, or who in any way showed her rejection of his authority, was a shrew, or a scold, subject to public humiliation. She could be locked into the pillory, or run through town while being lashed. She could also be chained and whipped in a public square, demonstrating to other women the penalty for betrayal of the gendered role. She could be made to wear the ‘brank’ (or ‘scold’s bridle’), a metal apparatus which fit over the head and into the mouth, with sharp points that cut into the woman’s tongue if she attempted to speak.

(Faith, 1993, pp. 29–30)

A wife’s words could be silenced, her speech cut from her mouth. Even a woman’s tongue was not her own.

In European and American history husbands who raped their wives were completely exempt from punishment, a stipulation given legal authority in

English law by Sir Matthew Hale, who in an oft-quoted pronouncement decreed that:

“the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.”

(1736, as cited in Martin, Taft & Resick, 2007, p. 331)

From Hale’s perspective the woman’s consent could be obtained after rape, when she became the assenting “ravished” woman (Naffine, 1994, p. 20). The man, however, was always the primary actor and definer; he was the knower and she the known, or as Naffine expressed it:

“She is necessarily the object of his knowledge, he the knowing subject” (Naffine, 1994, p. 20).

This position was further reinforced by Blackstone’s unities theory from 1765 that asserted

Husband and wife are legally one person. The legal existence of the wife is suspended during marriage, incorporated into that of the husband... If a wife is injured, she cannot take action without her husband’s concurrence.

(Blackstone, 1765, as quoted in Bennice & Resick, 2003, p. 229)

The notion that husband and wife legally constituted one person, and that person was the husband, had far-reaching consequences. It reinforced how rape was considered a crime against another man’s property rather than a crime against a woman’s body and integrity (Bennice & Resick, 2003). Being property herself, a wife had no right to own property in her own right or have any say over its dispersal. It was not until the Married Women’s Property Acts of the late 19th century that women began securing the right to own property in their own name (Combs, 2005).

While some rights were successfully fought for and obtained earlier, others had to be battled for much longer. Writing within the context of the 19th century US feminist movement, Hasday (2000) has charted how, contrary to popular understanding, the fight for the vote was not early feminists’ primary preoccupation. It was not long after the Seneca Falls Convention in 1848 that leading feminists began arguing for a wife to have “the right to her own person” (Hasday, 2000, p. 1413). Despite a societal reluctance to speak about sex, they openly campaigned for women to have the right to control the terms of marital intercourse, recognising this as essential for regulating the time they would need to devote to childcare. Economic and political equality lacked substance unless accompanied by marital equality.

“Convinced that women’s subordination was ultimately rooted in the structure of marital relations, feminists demanded both the right to refuse and viable socioeconomic alternatives to submission” (Hasday, 2000, p. 1379).

Women who felt forced to acquiesce to unwanted marital intercourse because of their economic and social dependency on their husband were, they said, engaging in legalised prostitution. As Elizabeth Cady Stanton expressed it,

“It is in vain to look for the elevation of woman so long as she is degraded in marriage ... Man in his lust has regulated long enough this whole question of sexual intercourse.”

(quoted in Hasday, 2000, p. 1418)

Nineteenth century feminist efforts to have marital rape recognised and prosecuted were strongly resisted, however, despite concessions made in other areas such as property rights and suffrage. There is evidence suggesting the desire for mutuality in marital sex was not solely a feminist goal but held more widely. Writing in 1859, philosopher John Stuart Mill maintained a wife was in effect a “legal slave,” condemning the fact that no matter how

“brutal a tyrant she may unfortunately be chained to, though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him – he can claim from her and enforce the lowest degradation of a human being.”

(in Bourke, 2007, p. 308)

Mill and feminists opposed to women’s subjugation in marriage called for marriage to become characterised by a mutuality of respect. In the earliest known study of women’s sexual practices in the US, a compilation of data from 1892 to 1920 undertaken by Stanford University physician Clelia Mosher, women repeatedly stressed the ideal of mutuality determining sexual intercourse while also signaling awareness that currently their husbands were ultimately in control (in Hasday, 2000). Some gave accounts detailing the pain and dissatisfaction often felt, one woman emphatically pointing to marital intercourse as the “[s]hock and destruction of all ideals: When a pure woman is treated by her husband as he has treated the prostitute he has been to before marriage, it becomes loathsome” (in Hasday, 2000, p. 1411).

The possibility of pregnancy was a complicating factor, particularly given the lack of contraceptive measures available and the risks of childbirth. Should a woman become pregnant outside of marriage, silencing interventions were often invoked. The woman risked being widely condemned for her “immorality,” a factor contributing to high levels of risky, illegal abortions, concealed pregnancies and possible infanticides, confinement in shelters for “fallen women,” and often unscrupulous practices such as baby-farming (Hunt, 2006). Writing within the Irish context, while recognising similarities throughout nineteenth century Europe, historian Luddy observed:

Representing possible immorality, a drain on public finances and someone in need not only of rescue, but also of institutionalisation,

the unmarried mother had become, by the foundation of the Irish Free State in 1922, a symbol of unacceptable sexual activity and a problem that had the potential to blight the reputation not only of the family but of the nation.

(Luddy, 2011, p. 110)

Asserting that the pregnancy arose from rape fell on deaf ears. In 1814 an English physician, Samuel Farr, asserted the impossibility of such an outcome, maintaining that a woman could not conceive without “the enjoyment of pleasure in the venereal act” (Eichelberger, 2012). Therefore, he maintained, “if an absolute rape were to be perpetrated, it is not likely she would become pregnant.” Fast forward to this century when, in 2012, Republican Representative Todd Akin stated during an interview about abortion that he believed pregnancy could not result from rape: “If it’s a legitimate rape, the female body has ways to try to shut the whole thing down” (Moore, 2012).

It was not until the last quarter of the 20th century that from one country to the next wives began obtaining the right to sexual autonomy within marriage. Until then, as Naffine pointed out, for women:

Consent to marriage also meant ongoing consent to sex – for the life of that marriage. Once married, the wife was therefore presumed to have consented to every act of intercourse with her husband: a married woman had no right to refuse the proposal to be possessed.

(Naffine, 1994, p. 19)

Many wives internalised the “real rape” myth of stranger attacks, and were unable to define themselves as rape victims or blamed themselves for being provoking or withholding with their husbands (Barshis, 1983; Gelles, 1977). During the years when the possibility of rape in marriage was being hotly debated, commentators noted of the existing legal prescriptions that:

The law is a reflection of what behavior ought to be, not what behavior actually is. The fact that the criminal justice system is largely populated by males partially explains the fact that legal statutes reflect a “male dominant” view of family behavior.... The fact that the courts do not accept the concept of marital rape does not, in our opinion, mean that wives are not being raped by their husbands.

(Gelles, 1977, p. 340)

State recognition of the possibility of rape within marriage is a very recent development. Wife beating was acknowledged as a crime earlier, and was largely illegal by the late 19th century (Pleck, 1979, p. 60); however, as noted, the marital rape exemption was not overturned until 100 years later. This reflects the multiple ways in which sexual violence has lagged behind other

forms of violence in terms of legal recognition, funding priorities, and service provision. It is the Cinderella of the violence against women arena, always last to the party. Domestic/family violence has been internationally acknowledged as a critical area for state action and funding for several decades while the sexual violence component of such violence has often been invisible (Maier, 2011). Speaking about rape remains a more difficult and potentially shame-filled task than speaking about physical violence, with the latter still a taboo subject within many community and individual contexts. The legacy of misogyny and victim-blaming remains all too widespread, silencing still the majority of victims from speaking out. This is what contributes to making sexual violence the most under-reported of all crimes (Kelly, 2002).

While rape in marriage has recently been legally outlawed, this should not be interpreted as meaning it no longer occurs, nor that its silencing has ended. As Edwards, Turchik, Dardis, Reynolds and Gidycz (2011) observed, women continue to hold socially subordinate and marginalised positions and rape myths persist in legitimising sexual violence. As they noted:

legal exemptions and religious doctrines support the notion that marital rape is not as serious as other types of sexual violence, that men, still today, possess a degree of ownership over their wives' bodies, and that marriage is equated with unconditional sexual consent.

(Edwards et al, 2011, p. 764)

The United States Women's Movement drew attention to marital rape as an issue, with South Dakota becoming the first state to criminalise it in 1975 (Edwards et al, 2011). All US states now legally forbid marital rape, although many have partial or qualified exemptions that stipulate, for example, marital rape is prosecutable only if the parties are living apart, divorced, physical force is used, or the wife is incapacitated (National Center for the Prosecution of Violence Against Women, 2009).

When the marital rape laws changed and spousal immunity was abolished, not all in the legal community agreed with the changes. Glanville Williams, for example, questioned why it should be a crime for a husband to exercise his right in the face of his wife's refusal. After all, he maintained, sex is 'a biological activity, strongly baited by nature.'

(Naffine, 1994, p. 22)

The marital law changes were usually part of a suite of reforms aimed at equalising the laws on rape. Other changes introduced included broadening the definition of rape to include penetration by objects other than a penis, such as fingers or bottles, as well as extending the orifices that could be forcefully penetrated to include the anus and the mouth (Koss, 1996;

Naffine, 1994). The previously gendered definition of rape was replaced with acknowledgement that both men and women could be victims of rape or offenders of rape, the implicit suggestion being that the law now recognised two equal, subjective beings. The façade of equality remains undercut by the reality that rape is predominantly perpetrated by men against women, prompting Australian legal academic Ngaire Naffine to maintain: “Rape laws may now be gender neutral, but the behaviour is not” (Naffine, 1994, p. 24). Legal reforms cannot determine social realities. As Naffine further asserted, the fact that the social conditions shaping consent remain unequal will continue to influence outcomes more than the so-called equality of husbands and wives before the law. “The gender neutrality of the new laws only mystifies the profoundly sexed nature of the crime of rape and the unequal nature of the society which allows it to occur” (Naffine, 1994, p. 25).

The reach of legal reform will remain limited while possessive forms of sex continue to be upheld within contexts of on-going social and economic disadvantages for women. The persistence of patriarchal notions of ownership is evident in research conducted this century indicating both the high prevalence of marital rape as well as social attitudes that continue to condone it. For instance, US research indicates that 10–14% of women will be raped by their husbands in their lifetime with this rate rising to 40–50% among women experiencing physical battery (Martin et al, 2007). In terms of attitudes,

Research with college students suggests that 9% of men and 5% of women believe that a husband’s use of physical force to have sex with his wife does not constitute rape, and in the same sample 31% of men and 19% of women indicated that a husband having sex without his wife’s consent does not constitute rape (Kirkwood and Cecil, 2001). Moreover, in a national telephone survey, Basile (2002) found that only 15% of the sample believed that boyfriends and husbands could rape their partners.

(Edwards et al, 2011, p. 763)

Today, despite greater recognition of the realities of rape in marriage, it is still rarely depicted within the media. While date and acquaintance rapes are now represented more frequently, the media emphasis, particularly in film and television dramas, remains focused on stranger rape scenarios (Edwards et al, 2011; Merken & James, 2020).

Patriarchal ambivalence in penalties for rape

While recent legal reforms have been passed ostensibly to increase women’s sexual rights and protection, ambivalence remains regarding how far these should extend in practice. This is evident particularly in relation to attitudes

towards punishment for rape and in the sentencing of offenders. There is evidence that the offence was considered serious enough to require severe penalties, yet the scarcity with which these were imposed implies societal tolerance for rape (Spohn, 2020). Forced sex can still be heralded as a desirable practice, consistent with masculine norms of strength and dominance. Self-report studies with college men in the US have shown a sizeable minority admitting to perpetrating sexually coercive acts against women, including 24.4% of men in Koss, Gidycz and Wisniewski's study (1987) and a rate of 34.5% in a later study conducted over a four-year follow-up period (White & Smith, 2004).

The patriarchal ambivalence to rape has been evident since antiquity. From the days of ancient Greece and Rome through to the 15th century AD, punishments for rape often appeared brutally harsh. In actuality, however, men were seldom charged and punishments, if executed, were typically far less severe. For example, in late Medieval Europe few rapes were brought forward; if they were, these might result in a small monetary fine or an order for the victim and the rapist to marry (Eckman, 2009). Where fines were the punishment imposed, these were paid not to the victim but to her father or husband as the head of the household, reinforcing the woman's lack of independent status (Sedney, 2006). In the early 14th century in England it was the victim herself who might be expected to sever the offender's testicles or gouge out his eyes (Olson, 2006).

Accordingly, despite severe penalties being defined in law, patriarchal ambivalence characterised legal responses to rape. The protection of chastity often lay at the centre of rape law considerations. The rape of a virgin was viewed as more serious than that of a non-virgin, and the rape of a prostitute was sometimes not even deemed a crime because her chastity had already been lost and could not be further harmed (Orenstein, 2002). Medieval theologian, Thomas Aquinas, maintained rape to be less sinful than masturbation or coitus interruptus because it might still fulfil the procreative function and purpose of sex which the other two acts did not (Soble, 1996). Vigarello's study of sexual violence in France from the 16th to 20th centuries also demonstrates the disjunction that arose between the legal penalties for rape and the lack of prosecutions and convictions for the crime. He notes the tolerance for violence that existed, and the acceptance of the high risks of rape faced particularly by poor women and servant girls. While various texts railed against the perils of rape, the act was seldom prosecuted: "Silence prevailed" (Vigarello, 2001, p. 241).

Historically, then, there is evidence of profound ambivalence surrounding how to respond to crimes of rape. Enduring links across time are evident. Our current laws indicate rape to be the most serious offence on the statute books after homicide, with severe maximum penalties possible. Consideration of these on their own suggests a society highly disapproving of rape behaviour. Yet we are also confronted with rape being the offence least likely to result in offenders being convicted, and where attrition rates

remain excessively high (Hohl & Stanko, 2015; Spohn, 2020). Evidence exists indicating that views such as Ovid's are, centuries later, consistent with the thoughts and practices of many men today. This is attested to by the high prevalence of forced sex reported by women, as well as that admitted to by men in self-report surveys on rape behaviour (Godenzi, Schwartz & DeKeseredy, 2001; Koss, Gidycz and Wisniewski, 1987; White & Smith, 2004). Contemporary norms of masculinity continue to emphasise strength, authority, leadership, and other traits consistent with holding a hierarchical position of dominance in heterosexual relationships. [Chapter 5](#) explores more fully issues arising from the dominance of particular forms of hegemonic masculinity.

As well as evident in penalties for rape, patriarchal ambivalence is apparent in how court trials ostensibly existing to examine and adjudicate offending actions become in practice an assaultive review of the victim's actions and character. The discussion here now turns to considerations of key myths and beliefs that historically have impacted on the ways in which rape trials have been adjudicated.

Influential myths in rape trials

Early feminist analyses of societal responses to rape identified a curious phenomenon. Instead of reflecting research findings and the emerging evidence base, popular beliefs remained steeped in myths, some of which were shaped within ancient mythology. Such thinking inevitably permeated justice system responses, and this section addresses five key rape myths evident in court trials:

- i the requirement that the victim display evidence of resistance;
- ii stipulations that reporting be done immediately and without delay;
- iii beliefs in women's disposition for making false rape complaints;
- iv beliefs in women's rape fantasies; and
- v notions of uncontrollable male urges.

The requirement that the victim display evidence of resistance—“She must fight back”

Historically there was an expectation that a woman would physically fight to the point of injury, if not death, to protect her honour from a man intent on raping her, such was the value placed on female chastity (Histed, 2004). In line with Roman law, a rape was only recognised if the victim's shrieks were heard and a huge commotion was made (Vigarello, 2001). Witnesses had to be able to say they heard sounds and saw actions, with rape historian Vigarello (2001, p. 39) observing: “The abused woman existed only as projected in her impact on other people. Her wishes had to be ‘seen’; her

defence had to be described.” The woman’s protests also had to persist for the duration of the rape:

They even needed to be extreme and continuous; the briefest silence compromised the proof to the point of excluding ‘the very idea of rape.’ The victim had to show that she had physically resisted from beginning to end.
(Vigarello, 2001, p. 39)

Popular stories of rape resistance from the 18th century depicted women defending themselves “like a lioness” (Vigarello, 2001), such was the level of ferocity required to protect female chastity.

Demanding evidence of resistance also translated into expectations that genuine victims of rape would be able to display injuries sustained during the attack (Quilter, 2015). These would include genital injuries as well as bruises and marks on other parts of her body sustained in the course of her struggles (Edwards, 1981). As Susan Edwards remarked within the context of 19th century medical jurisprudence, “Even the chaste woman had very often to be severely beaten in order to prove her resistance” (Edwards, 1981, p. 123). An absence of any such injuries raised doubts regarding the woman’s veracity, particularly in relation to her lack of consent (Estrich, 1987). The inference was that, if she did not want to be raped, why did she allow it to happen?

Linked to this is an enduring belief in what has been termed “the impossibility of rape” (Edwards, 1981; Schwendinger & Schwendinger, 1974). This view maintains rape can easily be resisted and avoided, with some commentators going so far as to say that it is impossible for a man to rape a non-consenting woman. Rousseau, for example, asserted: “Nature... has given the weaker party strength enough to resist if she chooses” (quoted in Vigarello, 2001, p. 43). The belief in the impossibility of rape contributed to the very low numbers of men charged with the offence. In the late 18th century in France, for example, rape cases accounted for little more than 1% of criminal court trials (Vigarello, 2001). While Voltaire sought penal reforms in the justice arena, he upheld the traditional view that, given the impossibility of a man on his own being able to rape an adult woman, any alleged victims must be lying to conceal their consent (Vigarello, 2001).

In the early 20th century we still find widespread belief in the impossibility of rape and the crime itself rarely condemned or prosecuted. In 1911, Charles Vibert, a legal doctor at the University of Paris Medical Faculty, said: “When the woman concerned is one who knows what sexual relations are, and is physically fit, it is impossible to believe that one man acting on his own can succeed in performing rape on her” (quoted in Vigarello, 2001, p. 201). Similarly, and even more recently, medico-legal expert, Morris Ploscowe, maintained in 1962 that “rape cannot be perpetrated by one man alone on an adult woman of good health and vigor” (Ploscowe, 1962, p. 160). The corollary of such thinking was that any genuine rape victim

would be left with visible injuries that demonstrated the strength of her resistance. Criticisms have been made of the requirement of such evidence:

Businessmen may forcibly resist theft of their property. But no law demands this kind of personal resistance as a condition for the lawful protection of his property rights. Women's rights, on the other hand, seem to be another matter.

(Schwendinger & Schwendinger, 1974, p. 21)

A clinical paper published by Gurney Williams in 1913, based on the "Personal Investigation of Several Hundred Cases of Rape and of Over Fourteen Thousand Vaginal Examinations" (Bourke, 2007, pp. 25–26), asserted that the power of women's pelvic and thigh muscles meant that "a man must struggle desperately to penetrate the vagina of a vigorous, virtue-protecting girl!" (Bourke, 2007, p. 26).

The resistance requirement, however, came to contradict police safety advice. If a woman was attacked, the police often cautioned her against fighting back for fear that the rapist would seriously injure or even kill her (Cohen, 1984; Radford & Stanko, 1996). Women were even advised to play dead and allow the rape to proceed, with this used as a deliberate survival strategy by some women (e.g. see Jordan's (2008) study of the survival strategies of women attacked by a serial rapist). However, should such a rape case proceed to court, evidence of the victim's *lack* of resistance would be used against her (Randall, 2010). Did the fact that she had not fought back indicate her consent? Had she decided afterwards to accuse this poor man of rape? Was she attempting to conceal her own sexual indiscretion?

The resistance requirement was strongly rebutted as early as the 1970s. Schwendinger and Schwendinger (1974, p. 20) referred to the many ways force or the threat of force can be used to obtain the unwilling consent of a woman, describing rape as "a power trip – an act of aggression and an act of contempt – and in most cases is only secondarily sexual." They stressed the importance of distinguishing between rape and making love sexually, emphasising the removal of choice and the ways in which physical force was "*always* present or implied" (ibid, emphasis in original). In the act of rape,

The woman is converted into an object who is issued a command: 'Take off your clothes!' 'Lie down and don't make a sound!' 'Be quiet and you won't get hurt!'... Mutual love-making is not on the rapist's schedule! The perceived authority, shock and surprise in the command, the weapon, and the force ordinarily reduces the balance of power to very unequal proportions.

(Schwendinger & Schwendinger, 1974, p. 20)

In such a context the ability for intentional and considered action by the victim should be understood as negligible while fear responses reduce the

capacity for resistance. The advice to submit also reflects a distorted view of what rape actually is, a point well-made by Betsy Stanko (1990). As she pointed out, a woman is not being asked to submit to sex but to rape, an act that violates her total being. "The very essence of rape makes it impossible to 'submit' to; rape by definition implies being taken against one's will" (Jordan, 2005, p. 533). Any presumption that submitting equates to consenting also needs to be robustly countered, since victims may often evaluate the situation they are facing and determine that physical resistance may not be the best, or safest, strategy to adopt (Jordan, 2005, 2008). Bodily compliance can be accompanied by mental resistance, with victims often adept at finding ways to protect their inner selves during a rape attack (Jordan, 2008). One woman I interviewed, for example, recounted how she pretended to be unconscious when jumped by an attacker, an act that did not prevent her being raped but did give her a real sense of having "fooled" him and a means of resisting being totally under his control (Jordan, 2008).

A growing body of research evidence exists on evolutionary survival strategies, highlighting how responding to an external threat by fighting is only one of the basic responses available (Moor, Ben-Meir, Golan-Shapira & Farchi, 2013; Roelofs, 1718). Yet while flight and freeze are recognised as equally valid stress responses, women exhibiting these defences face elevated risks of blame and accountability for not preventing rape from occurring. The psychological response of freezing in the face of terror is one of the most commonly misunderstood defences, yet also one of the most frequently exhibited. Many research studies have demonstrated how fearful victims become in situations where they face a male's power and sense his intent to control them (Gordon & Riger, 1989; Moor et al, 2013). My own research with rape victims, for example, revealed that the levels of fear experienced by some were so strong that they felt as if they were confronting their own imminent death (Jordan, 2008).

In such a context it makes perfect sense for victims to comply with an attacker's demands, to do whatever they think might be necessary to keep him from killing them. Our courts of law, however, seldom reveal such understanding. Compliance is mistakenly interpreted as consent, and the victim finds herself placed on trial. As Karen Weiss observed: "...even 'good girls' who comply with traditional codes of femininity are sometimes held responsible for sexual assault by their very use of rather feminine, or passive, resistance methods during an attack, such as staying still or 'giving in'" (Weiss, 2009, p. 813). A further example of such thinking was provided by an Italian court that, in what came to be called the "denim defense" or the "jeans alibi," maintained that a woman's jeans were so skin-tight that no offender could remove them without her co-operation, an action interpreted as automatically disproving her rape allegation (Stanley, 1999). Cases depicted in a recent study of police rape files in Aotearoa New Zealand also showed some officers considered such actions as the victim agreeing to see the accused again after the rape, or accepting a lift with him,

as diluting the evidence against him (Jordan & Mossman, 2019). Training in counter-intuitive evidence has been introduced for crime investigators in an effort to increase awareness of the ways fear and trauma may affect victims' decision-making processes (Seymour, Blackwell, Calvert & McLean, 2014).

While writers such as Schwendinger and Schwendinger (1974) demonstrated back in the 1970s how a victim's compliance might be obtained, the onus on alleged victims proving the strength of their resistance persisted as "the sexist imprint of the mythical impossibility of rape" (p. 21). It became a favoured strand in defence lawyers' arguments over their clients' innocence. Mimicking the ancient tale of the sword and the scabbard (Bourke, 2007; Vigarello, 2001), some lawyers have handed a jury member a pencil and asked them to insert it in a Coke bottle as it is moved in circles in front of them (Shapcott, 1988). The inability to insert the pencil until the bottle stops moving becomes a parallel proving the impossibility of rape. This masculinist definition of rape denies and invalidates the realities of women's experiences. Reduced to a physical act of insertion, the act of rape is stripped from the fear that surrounds women's existence within patriarchal structures of gender inequality. The realities of male privilege and entitlement underscore women's experiences of both consensual and non-consensual sex in ways that point more to the impossibility of consent than to the impossibility of rape.

Reporting be done immediately and without delay—"She must yell out"

The requirements placed on victims of rape included the swift and immediate reporting of any such offence (Bronitt & Henning, 1998; Brownmiller, 1975; Jordan, 2004a, 2004b). The law of recent complaint, also known as the fresh complaint rule, governed the evidential significance of when a victim told others, particularly the police, about a rape attack. Preferential weighting was attached in practice to recent complaints over delayed complaints. The underlying assumption was that any genuine victim would report rape immediately; to delay was to arouse suspicion (LaFree, 1989; Peters, 1975; Temkin, 2002; Torrey, 1991). This requirement dates as far back as the Book of Deuteronomy, which specified that rape victims were expected to cry out unless they were in a field and beyond earshot. Medieval common law similarly ruled that victims of violent crime (including rape) were expected to make a "hue and cry" immediately upon violation (Bronitt & Henning, 1998; Brownmiller, 1975; Freckelton, 1998; Temkin, 2002; Wolfthal, 1999). In England, Henry de Bracton's 13th century law code decreed that a victim of rape "must go at once and while the deed is newly done with the hue and cry... show the injury done to her" (quoted in Wolfthal, 1999, pp. 42–43)

The requirement of "hue and cry" developed into a rule of evidence relating to the truthfulness of women who complained of rape. Blackstone's Commentary in 1769 clarifies the legal position:

[I]f the witness be of good fame; if she presently discovered the offence and made search of the offender; if the party accused fled for it; these and the like are concurring circumstances which give greater probability to her evidence. But on the other side, if she be of evil fame, and stand unsupported by others; if she concealed the injury for any considerable time after she had opportunity to complain; if the place, where the fact was alleged to be committed, was where it was possible she might have been heard, and she made no outcry; these and the like circumstances carry a strong but not conclusive, presumption that her testimony is false or feigned.

(quoted in Bronitt & Henning, 1998, p. 45)

This asserts the “naturalness” of prompt reporting, a finding in stark contrast to empirical research demonstrating that the more typical, “normal” response is for women not to report rape at all (Kelly, 1988; Russell, 1984; Torrey, 1991). A senior Aotearoa New Zealand detective interviewed in 1976 expressed it this way:

If a girl complains very soon after the event this shows consistency of behaviour – that’s how you’d expect a woman who’d been raped to act. If she doesn’t complain for several weeks, perhaps until she’s discovered she’s pregnant, then that’s less convincing. It could look as if she’s complaining about being pregnant rather than about being raped.

(quoted in Lloyd, 1976, p. 35)

Doubts regarding women’s veracity are further addressed in the next theme.

Women are prone to making false rape complaints—“She’s a liar”

So far we have seen how any woman alleging rape had to display visible injuries to prove she had resisted and report any such attack immediately. Compliance with both these conditions did not necessarily mean her allegation would be believed. A long tradition of mistrusting women’s words dates back to the Garden of Eden, with women portrayed throughout history as liars and deceivers (Jordan, 2004b). The bias against the truthfulness of women’s words has been at its most pronounced within the context of rape.

Fears of men being wrongly accused or convicted have dominated the rape landscape for centuries. Rose observed in 1977 that: “The fear of the conviction of innocent men has served as the basis of rape legislation since the pronouncement of a 17th-Century British jurist, Sir Matthew Hale...” (Rose, 1977, p. 79). What became known as “Hale’s dictum” stated that rape was an easy charge for a woman to make yet difficult for her to prove, so the courts needed to be very cautious about convicting any man on such a charge. This was referred to as the corroboration warning and was repeated

by judges to juries during rape trials until comparatively recently (Kennedy, 1992, 2018; Lees, 1996; Scutt, 1998). Its sentiments were strongly challenged by 1970s commentators, with Schwendinger and Schwendinger (1974) declaring:

As far as we know, this cautionary instruction is not expressed in other types of criminal cases. Furthermore, it is patently false: as a rule, the charge of rape is not easily made by women and it is not difficult to defend against by the defense attorneys. There can be no doubt of this because prosecutors do not usually win in forcible rape cases!

(Schwendinger & Schwendinger, 1974, p. 24)

The inference within Hale's dictum suggests women are likely to lie about rape so high levels of corroborative evidence are necessary if any allegations are to be believed. As Schwendinger and Schwendinger observed, no such requirement is made in other offences, such as robbery (Bargen & Fishwick, 1995) and insistence on it here ignores the realities of how most rapes occur. Typically these will involve no witnesses and victims are unlikely to sustain visible physical injuries so cases invariably come down to "he said, she said." The latter sounds like a mutually equal playing field until we recall the context of patriarchy. Centuries of gender inequality in a cultural environment where women's words have consistently been denied, undermined, or dismissed as outright lies make the playing field anything but equal. Add to these assumptions of male sexual entitlement and possessiveness, combined with masculine quests for peer approval, and what "she says" fades beneath the demands of what "he wants." It should be no surprise that attrition rates in rape cases remain notoriously high in the 21st century, with rape victims' prospects of securing the offender's conviction still despairingly remote (Spohn, 2020).

The corroboration warning exemplifies how our legislation is based on traditional and sexist understandings of sex roles and sexual standards, as well as myths concerning rape (Rose, 1977). Its primary emphasis on protecting the defendant's rights reflects a profound suspicion of women and their testimony while confirming men's words as inherently more believable. Carol Smart aptly described the corroboration warning as an example of the "disqualification of women and women's sexuality" (Smart, 1989, p. 26). Judges would warn juries against convicting on a woman's testimony alone, as this statement from an Australian judge indicates:

"[I]n cases of alleged sexual offences, it is really dangerous to convict on the evidence of the woman or girl alone... because human experience has shown that girls and women in these courts do sometimes tell an entirely false story which is very easy to fabricate but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all."

(L.J. Salmon (1968) quoted in Mack, 1998, p. 61)

The basis of the corroboration warning emanated less from the private nature of most rapes than from patriarchal beliefs in women's deceitfulness. Research on false allegations prove the belief that most women lie about rape to be no more than a myth; unfortunately, as observed by Brown and Horvath (2009, p. 332), myths such as these "become part of a self-supporting system whereby the absence of convictions supports the belief that women falsify claims or men's behaviour does not justify the charge."

Women's rape fantasies—"She really wants it"

A further justification for men raping women took the form of a belief that secretly women wanted to be raped. This view was built on the notion that women harboured fantasies of being overpowered by strong, virile men (Brownmiller, 1975). The kind of scenario reflected here featured a powerful, alpha male swooping in on his white charger to abduct and forcibly "seduce" a woman who would swoon at being ravished so forcefully. A 1930s representation was seen in the film, *Gone with the Wind*, when Scarlett tried fighting Rhett off but he persisted in carrying her up to the bedroom against her will. The next shot shows her face the following morning, radiant in the afterglow of sex. Rhett proved his manliness, and she was smitten. Similar depictions are frequently featured in historical romance novels targeting a female readership, with one review finding over half the novels reviewed included the rape of the lead female character (Thurston, 1987). Subsequent analyses have yielded descriptions of the male hero in romance novels as "sexually bold," "dangerous," and "cruel," summarising them as "men with the physical and temperamental qualities of warriors" (Critelli & Bivona, 2008, p. 66).

Such a belief has a long history. Writing in 500 BC, Herodotus, known as the Father of History, declared:

"Abducting young women is not, indeed a lawful act; but it is stupid after the event to make a fuss about it. The only sensible thing is to take no notice; for it is obvious that no young woman allows herself to be abducted if she does not want to be."

(As quoted by Dworkin, 1982, p. 28)

Likewise, Ovid wrote: "Women often wish to give unwillingly what they really like to give" (quoted *ibid.* p. 28). The basis of this rape myth presumes that "all women secretly want to be raped and are available when any man comes along, anywhere and anytime" (Meyer, 1973–1974, p. 39)—a myth more likely reflective of men's sexual fantasies than women's. An early psychoanalytic position of women's rape fantasies suggested they should be interpreted as indicators of female masochism (Deutsch, 1944). More recent studies indicate that while rape fantasies are a reality for some women, multiple factors may be associated with their occurrence, including past sexual

experiences, avoiding blame for seeking sexual gratification, and attempts to gain a sense of control over future feared rape attacks (Critelli & Bivona, 2008; Gold & Clegg, 1990). A critical difference between rape fantasies and actual rape needs not to be overlooked—the fantasy is the woman’s fantasy and under her control in ways real rape will never be.

Recourse to fantasies about women’s rape reveries has taken a sinister new turn recently. The popularity of rough sex in pornography has encouraged its uptake through particular population sectors, with young men often saying that from what they have viewed on-screen, they believe this is what women want (Palmer, 2018). Some women also internalise these views and may think displaying an interest in rough sex serves as a sign of their sexual empowerment and commitment to sex positivity. A *Women’s Health* magazine, for example, introduced its “Beginner’s Guide to Rough Sex” by stating:

Sure, it might not be for everyone. But more women are in favor of rough, dominating, and submissive sex than against it. According to a study by the University of North Texas, 57 percent of sexually active ladies are turned on by the idea of forceful sex.

(Sinrich, 2016)

This sexual practice, however, can have dangerous, even fatal, consequences. Research on intimate partner violence indicates that a partner engaging in choking and strangling behaviours should be viewed as a red flag for possibly lethal violence (Edwards, 2015). This has led several countries to introduce legislation on non-fatal strangulation or suffocation, which in Aotearoa New Zealand resulted in almost five arrests per day in the first three months following the legislation being introduced in December 2018 (Leask, 2019).

Recent court cases for murder in both the UK and NZ have seen defence lawyers arguing that the woman’s death resulted from accidental strangling in the context of rough sex (e.g. the killing of Grace Millane) (Keene, 2020). This has resulted in nearly 30 cases in England where the defence has maintained the woman’s death was accidental and her participation in rough sex consensual—implying she consented to her own death. The “rough sex defence” also

positions men as hapless victims of women’s sexual demands. After all, how can it be his fault if he was just doing what she wanted? It argues men don’t know that, for example, strangling, beating and cutting a woman’s neck isn’t dangerous, and so they cannot be blamed.

(Norris, 2020)

In the case against Grace Millane’s killer, expert testimony from the forensic pathologist suggested it appeared far from “accidental.” In order

for her to die, the accused needed to have kept his hands around her throat for four–five minutes until she passed out, then maintain the pressure for at least a further four–five minutes as he starved her brain of oxygen. “It’s not going to happen through a gentle touch of the neck,” he explained (Dr Stables, quoted in Hurley, 2019). Such behaviour, decided the jury, was more deliberate than accidental and could not be interpreted as the accused trying to increase this young woman’s sexual pleasure once her body was clearly comatose (North, 2019). However, as the UK website *Wecantconsenttothis* details, there are many cases where the “rough sex defence” has been successfully argued as a means to reduce the charge to manslaughter or acquit. One example refers to teenager, Hannah Pearson, who in 2016, aged 16, was strangled to death by her boyfriend’s friend, James Morton, 24, the day she met him. He waited for 20 minutes after she stopped breathing to dial 999, having previously smashed her phone when it started ringing. He was an avid viewer of porn strangulation and admitted to lightly strangling Hannah when she was very intoxicated. The jury cleared him of murder and convicted him of manslaughter (<https://wecantconsenttothis.uk>).

Uncontrollable male urges—“Men can’t help it”

The beliefs we have examined regarding women and rape served to prevent most women from reporting while discrediting those who did. These impacts were extended further by the belief that even if it could be proved that a man had raped, it was through no real fault of his own. Men, it was often asserted, simply could not control themselves. Whether dressed up as an evolutionary and procreative imperative (Thornhill & Palmer, 2000) or presented merely as uncontrollable libido, the implication suggests it is testosterone that rapes, not men. This view was also reflected in arguments around the importance of maintaining balanced sex ratios to avoid outbreaks of rape (Von Hentig, 1948). Too few women placed men at risk of aggressive competition while too few men did the same.

Beliefs in uncontrollable male passions were often paired with notions of victim precipitation to reduce men’s accountability (Amir, 1971). According to this view, the male justifiably assumed the woman was inviting sex when she wore a dress he liked or accepted the offer of a drink, and his libido rose to the occasion: “Like a source of energy, all that is needed is a flame to ignite it and the uncontrollable act is initiated!” (Schwendinger & Schwendinger, p. 22). The so-called “Liberation of Women” (Bourke, 2007, p. 75) was identified by some commentators as increasing rape by encouraging women and girls to place themselves in “dangerous positions” by being out unchaperoned and dressing “provocatively” (Haymen, in Bourke, 2007, p. 75). Thornhill and Palmer (2000, p. 179) maintained that young women needed

to understand how they can be put at risk by how they dress, while young men need to learn:

that past Darwinian selection... [explains] why a young man can get an erection just by looking at a photo of a naked woman, why he may be tempted to demand sex even if he knows that his date truly doesn't want it, and why he may mistake a woman's friendly comment or her tight blouse as an invitation to have sex when in fact sex is practically the last thing on her mind.

Accounts of early American history have included descriptions of:

a set of ideas grounded in Puritanism that set rape alongside other sexual misdeeds such as adultery, incest, and sodomy, framing them all as sins of lust borne of ungoverned passions. This allowed aggressors to worry more about their own moral failings rather than the issue of violating a woman, effectively erasing victims from the whole equation. Women appeared chiefly as scapegoats or instruments that should have helped to regulate men's baser impulses.

(Haulman, 2007, p. 484)

The belief that men could not reasonably be held responsible increased the blame placed on women. Historically this has been apparent in the emphasis on female modesty being necessary to avoid "igniting" male passions. Displays of ankles or cleavages by women might propel men into acts of rape for which the woman then becomes accountable. As Schwendinger and Schwendinger expressed it, "the 'overwhelming passion' idea often assumes that men are basically animals who are to some degree driven by innate passions" (p. 22). Other feminist commentators from the 1970s also questioned the basis of such thinking, contrasting it with emerging research evidence. Rather than being spontaneous outbursts of uncontrollable libido, most rape attacks, they argued, were planned and intentional (Meyer, 1974; Scully, 1990; Scully & Marolla, 1985). Furthermore, victims of rape did not describe their attacker's sexual pleasure but instead recounted the ways he sought to degrade, dominate, and humiliate them (Meyer, 1974). It was not lust but the power of sex, the force and control that could be exerted, that characterised men's sexual assaults. Interestingly, behaviour that could be defined as victim precipitative was found in only 4% of rapes surveyed by the President's Commission on Crimes of Violence (Mulvihill & Tumin, 1969, cited in Rose, 1977).

All of the themes addressed here have contributed to an environment in which high rates of sexual violence have been routinely minimised, seemingly condoned. The toleration of rape was interpreted by some feminists as indicative of a fundamental misogyny that pitted men and women in competition against each other. Andrea Dworkin, for example, noted how

German philosopher Friedrich Nietzsche referred to the “deathly hatred of the sexes,” adding:

This ‘deathly hatred’ included the convictions that women are filthy (especially genitally), sluttish, and whore-like; and that physical love is a war in which the woman must be vanquished by physical force, not excluding beating, rape, and murder.

(Dworkin, 1998, n.p.)

The patriarchal ambivalence about rape remained evident in laws indicating its seriousness while the justice system continued to hold very few men responsible for the crime. The themes addressed above served to limit the number of cases progressing through the justice system as well as how they were perceived and adjudicated. Those rapes most likely to come before the court were few in number and atypical in nature, typically involving stranger attacks and rapes resulting in serious injury (Lovett & Kelly, 2009; Waterhouse, Reynolds & Egan, 2016).

The justice system held out little hope of “justice” to most victims, however. This illustrates once again the logic of patriarchy. Why would one expect a system developed solely by men, reflecting male perspectives, to represent women’s interests? In reality it operated precisely as one would assume an institution informed by rape myths to operate—blaming and doubting women’s allegations while seeking to exonerate men for committing acts perceived as understandably and predictably male. As Kaspiew observed:

[Women] are the outsiders because rape law has for centuries reflected the patriarchal view of human relationships and sexuality which defines woman as ‘other’, and that which is possessed. Rape law reflects a construction of sexuality which discounts women’s subjectivity and privileges the male perspective.

(Kaspiew, 1995, p. 355)

The importance of language, discussed in previous chapters, re-emerges here. In relation to this, Gary Barker (2016) agrees with feminist theorists such as bell hooks (2013) who have criticised the way in which terms such as “domestic violence” serve to soften and mask the male dominance inherent within it. He accordingly rejects the use of such terms as “domestic violence,” “male violence,” and “gender-based violence” in favour of applying the analytical framework of “patriarchal violence.” Patriarchy is evident not only in what he describes as the greater aggregate power of men over women but also in the various power hierarchies between groups of men. This enables an intersectional approach allowing recognition of the abuse of less powerful and socially marginalised men by those who are more powerful. Barker argues for the importance of rejecting notions of male violence being

“natural,” maintaining that what is more natural is men’s, and women’s, resistance to violence.

Turning young men into lethal combatants, whether in standing militaries, insurgency groups or violent gangs, or as lone killers, is extremely time- and resource-intensive. It generally takes months if not years of constant breaking and rupturing of basic human connections; it requires systematic cruelty and brutality.

(Barker, 2016, p. 327)

In arguing that men and women survive and thrive in environments based around caring and connection, Barker points to the importance of dismantling patriarchy because it is injurious not only to women but also to socially excluded men. Income equality needs tackling as well as gender inequality, but state force is often used to subdue specific groups of “threatening” (p. 329) young men in order to keep the lower class in place, in ways similar to women. Globally 21st century trends depict growing income disparities. For example: “In 2017, 42 people owned as much wealth as the poorer HALF of the world’s population – 3.7 billion people. In 2016, it was 61 people. In 2009, 380” (Seager, 2018, p. 180). As will be discussed in the sister book to this, *Tackling Rape Culture: Ending Patriarchy*, the patriarchal structures that create both violence and poverty need first, to be recognised, and second, dismantled, in order to enable equitable, caring societies of kindness to emerge.

Many 1970s feminists recognised that extensive structural changes were essential if rape victims were to be responded to with justice and fairness. The next section considers the growing resistance to rape laws and institutions that effectively protected men who committed sexual violence while blaming and shaming their victims.

Pushing back against patriarchy in the 1970s

The social movements that became so widely influential in the 1970s developed from the growing unrest manifest during the previous decade. The 1960s may have celebrated the Beatles and man walking on the moon, but it also witnessed the assassinations of powerful men such as John F. Kennedy and Martin Luther King. One of the historically most influential events was the Vietnam War. This was no glorious war producing heroes; instead it became synonymous with American shame and failure, and exposed an internationally expressed racism that paralleled the domestic racism evident throughout the US, but especially in the southern states. Liberation movements emerged condemning racism, sexism, and homophobia, and by the 1970s calls for human rights to be protected were being made on behalf of women, children, ethnic minorities, gays and lesbians, and persons with disabilities. For women in particular, the 1970s was a time of turmoil and change.

Liberation was needed on a range of fronts, a result of patriarchy's pervasive impact across all sectors of life. In public spaces women demanded safety to walk without fear of harassment or attack (Meyer, 1974). In their working lives attention was drawn to the gender pay gap (Berger, 1971). Later, issues of gender equity were debated, given how apparent it was that jobs perceived as "women's work," such as nursing, social work, and teaching, were routinely paid substantially less than occupations deemed more masculine, such as policing (Waring, 1988). Issues of equality within workplaces arose as women protested the lack of females in leadership positions and the barriers that existed to women in a range of occupations and professions. On the health front there was widespread confronting of the lack of information provided to women about their own bodies, ensuring reliance on predominantly male doctors. Books like *Our Bodies, Ourselves* invited women to self-examine to gain greater knowledge of their own anatomy, including how it functioned sexually; women had always been born with clitorises but most did not know it until then, unless possibly they were lesbians. This revelation challenged the typically one-sided nature of heterosexual sexual intercourse that had solely privileged male sexual pleasure. The rights many women were demanding included the right to orgasm.

One of the biggest battles for women concerned their reproductive rights, particularly the issue of legal access to abortion (Roberts & Millar, 1978). Possibly the most impactful development, however, was *The Pill*, available to women from the 1960s (Fleming, 1993; Greer, 1976). The opportunity for women to have sex without fear of pregnancy revolutionised sexual practices and ushered in what some called an era of "free love." After centuries of reproductive anxiety, and often dangerous interventions to manage fertility, finally there was a means to separate contraception from sexual intercourse—all it took was swallowing one pill a day (Silies, 2015). A sexual revolution had begun. One Englishwoman expressed it this way: "Our generation was growing up with the knowledge that somewhere out there existed a contraceptive which promised you would be able to get away with it, in the way only men had been able before" (quoted in Ingham, 1981, p. 89).

The side-effects and complications associated with taking the Pill soon problematised its usage and divided opinions, and Women's Liberation Movements in Germany and England began questioning its benefits later in the 1970s (Silies, 2015). As well as concerns about pharmaceutical profiteering and compromised medical responsibility, feminists quickly realised that in reality it simply increased men's sexual freedom and "the argument that the Pill is an instrument of sexual liberation was turned upside down" (Silies, 2015, p. 55).

Men expected women to become more willing and available for casual sexual encounters (Fleming, 1993), but while some women did enjoy a new freedom, many still had long-term relationships in mind (Silies, 2015). Patriarchy's legacy were still in the persistence of the double standard of morality that meant women engaging in sex out of wedlock remained

significantly more at risk of being judged as sluts than their male counterparts. “Free love” was an illusion for women. It has been noted, “For radical feminists, heterosexual casual sex was no more ‘free’ than obligatory sex within marriage, since it had as much potential to reinforce unequal power between men and women” (Albury, 2017, n.p.). More recent research is clear that it was not only radical feminists who began viewing the Pill more sceptically, with many women generally no longer seeing “the Pill as a symbol of emancipation of their sexuality, but as an instrument of the on-going male domination” (Silies, 2015, p. 42).

Debates over the Pill were occurring within a context of rapidly growing feminist awareness that the personal was political. The scale of the breaking of women’s silence was immense. Post-World War II societies in the West were characterised by an emphasis on family-building and domestic conservatism, with the development of large suburbs often accompanied by social isolation. Notions ran strong of needing to “keep up appearances” and project a happy families’ façade, resulting in the masking and silencing of what life was really like for many in the suburbs. In the 1970s resistance grew against the gendered sex roles that many women believed trapped them in suburban baby farms servicing their husbands’ careers (Friedan, 1976). As feminists began meeting and sharing their experiences during consciousness-raising sessions, previously taboo subjects such as violence against women began to be discussed (Brownmiller, 1999). The scale of what was about to be unleashed remained a mystery, however, until the first speak outs were held, leading to recognition of the existence and impacts of rape culture.

In her memoir, Susan Brownmiller (1999) described the personal shift in attitudes towards rape she experienced during the 1970s. She had grown up believing the popular account that rape was a rare and unusual crime. When her New York consciousness-raising group began considering the prospect of organising a speak-out on rape for women in the community, she admits to initial reticence. She was concerned no-one would turn up, let alone be willing to speak out. The events of that day proved her wrong. The church was packed, mostly by women (for whom the event was free) but with also a handful of men (the latter were permitted to attend as long as they were accompanied by a woman and paid an admission price of \$2 each). As 30 different women related their personal experiences of rape, anger gripped the room. It is not difficult to understand why these early feminists became militant, with many touting for women-only spaces and separatist events. The silence surrounding the sheer scale and horror of rape was being broken, and the impact was devastating.

First wave feminists during the 19th century, as noted earlier, had sought legal changes to improve the status of women, some of the most significant victories being the passing of the various Married Women’s Property Acts in England, United States, Canada, Aotearoa New Zealand and Australia. These were essential to counter the “civil death”

that befell women on marriage, that Kate Millett described as “forfeiting what amounted to every human right, as felons do now upon entering prison” (Millett, 1971, p. 67). Her analogy reflects John Stuart Mill’s account of marriage for women being akin to domestic slavery in all but one respect—slaves had greater rights under the law (Mill, 1989). These included female slaves sometimes being able to avoid their master’s sexual coercion in ways that wives could never do with their husbands—a wife was completely owned, or as Mill expressed it: “a woman is denied any lot in life but that of being the personal body-servant of a despot” (Mill, 1989, p. 464). The differential status between the two parties was apparent in the punishment bestowed upon a woman who murdered her husband—since he was her sovereign, she was accused of treason and subject to death by burning (Millett, 1971).

First-wave feminists had to focus on securing the most basic of human rights for women generally and wives in particular. The object-status of women had ensured little scope existed for them to influence legal and political life, and the victory of gaining female suffrage should not be underestimated. By the 1970s most women globally had secured the vote, although some countries only very recently, such as Switzerland where it was 1971 before women were fully enfranchised (Markoff, 2003). The reproductive changes occurring during the social change movements of the protest era placed a new light on sexual relations, and the breaking of the silence around rape fuelled debates regarding legal responses.

Not only was the magnitude of the rape problem becoming realised, but also the complete inadequacies of the justice system to respond fairly and respectfully to women’s allegations. In her book, *Rape: The Ultimate Violation*, US attorney Judith Rowland (1985) observes how “invisible to legal analysis” women’s perspectives were at this time:

Historically and traditionally, the law and the legal profession have defined rights, responsibilities, duties, and privileges in terms of the needs of men. Only as they were the subjects or objects of the laws did women figure into the system; only as property did they attain any status of their own. Nowhere was this more evident than in the treatment of rape....

(Rowland, 1985, p. xv)

The unjustness of rape laws was increasingly focused on by feminists, with particular attention given to how these effectively blamed victims for their own victimisation. Considerable weight was placed initially on seeking reforms to laws that were viewed as posing barriers to justice for women. Many successes were achieved, such as restricting the questioning of rape victims about their previous sexual history, broadening definitions and penalties to recognise the seriousness of all forms of sexual violence, and criminalising rape within marriage (Heath & Naffine, 1994). Despite these gains,

confidence in the ability of the criminal justice system to deliver justice remained low and the high attrition rates still evident today mean in practice very few women will ever see the men who sexually victimised them held to account (Johnson, 2017; Kennedy, 2018; Ministry of Justice, 2019). This should come as little surprise when we remember the logic of patriarchy, a sentiment reflected well in Carol Smart's observation that, "We should not make the mistake that law can provide the solution to the oppression that it celebrates and sustains" (Smart, 1989, p. 49).

This scepticism about the ability of an oppressive system to deliver justice was reflected in the reluctance expressed by many women over recommending to sexual violence victims that they report their victimisation to the police (Heath & Naffine, 1994). Feminist lack of confidence in the system is easy to understand, since

the main dilemma for any feminist engagement with law is the certain knowledge that, once enacted, legislation is in the hands of individuals and agencies far removed from the values and politics of the women's movement.

(Smart, 1989, p. 164)

What is even more interesting, however, is the widespread reluctance of many criminal justice system practitioners themselves to recommend putting a case of rape before the law. At a 1996 rape conference in Aotearoa New Zealand, a defence lawyer was adamant in asserting that he would not recommend any woman he knew and cared about to report rape to the system in which he worked (Dacre, 1996). More recently, a similar lack of confidence in the system has been expressed by police and lawyers, those whose own experiences caused them to doubt its fairness or ability to treat women respectfully (Mossman, MacGibbon, Kingi & Jordan, 2009). Two of the most insightful commentaries, however, come from English barrister Helena Kennedy. In 1992 she wrote the book, *Eve was Framed*, in which she shattered any myths about the law's inability to deliver justice to women. Somewhat despondently, in 2018 she published a damning investigation of how the justice system is still continuing to fail women. As she expresses it, "So here I am again, 25 years on, deeply frustrated that a new book on gender equality and the law appears to be so urgently needed" (Kennedy, 2018, p. 11). In exploring how the law reflects women's lesser status and ongoing subordination, she argues that law reforms and appointing more women will never be sufficient to make the substantive changes required given how deeply embedded the problems are, and how fundamentally unequal and biased the law is.

These issues are unpacked further in the next chapter, which focuses particularly on the role of the police as gatekeepers to the justice system as well as considering how court processes impact on women victimised by sexual violence.

Conclusion

The overview of rape in history presented here demonstrates not the impossibility of rape but its inevitability. The latter does not derive from evolutionary imperatives but exists as a logical extension of patriarchal beliefs concerning both the nature of rape and the nature of women. Women's object status within the arrays of men's possessions essentially precluded recognition of their equal humanity and could then justify their lack of human rights.

With notions of male supremacy passed down the generations, century after century, until men's "natural" superiority was accepted as an obvious truth, it is no surprise that women rejecting this belief were perceived and treated as insurgents. A woman accusing a man of rape was challenging not one individual male but a conquering army within an occupied zone—and she was the occupied territory. The logic of patriarchy is manifest in both the crime of rape and in the toleration, even approval, accorded it within contemporary rape culture. As the brief history covered here shows, legal statutes have long been used to signal disapproval while the rarity with which they have been successfully invoked against perpetrators tells a different story.

This story is one that, through multiple iterations, tells women they will not be believed, that they have only themselves to blame, and that men cannot help themselves. The women who still dared to speak out about rape were often revictimised, whether by men or by the legal system the men invented. The next chapter begins an examination of criminal justice system responses to rape, focusing on the adversarial system within Western nations such as Australia, Aotearoa New Zealand, United Kingdom, Canada, and the United States. [Chapter 3](#) focuses on policing in particular, given the critical role played by police as gatekeepers to the justice system.

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3 Seeking rape justice

A major policing scandal surfaced in Aotearoa New Zealand in 2004 when a journalist broke a story of historic rapes perpetrated by serving police officers that had previously been covered up. Although these involved multiple victims, few dared to report such offending. Nothing was likely to eventuate if they did; it later “became apparent that many in the local community were silent even though they knew of police sexual violence” (Rowe & Macauley, 2019, p. 397). It took approximately 20 years before details of these sexual offences went public, enabled by the courage of one woman, Louise Nicholas, supported by other brave complainants, her family, a tenacious journalist, and some dedicated police officers willing to break the code of silence (Nicholas, 2007). It emerged that she had first been raped by an officer when aged 13, then later, while still a teenager, subjected to sexual violence by packs of drunken police, including with a baton. Following the eventual breaking of her story in 2004, other victims came forward, after which Prime Minister Helen Clark launched a Commission of Inquiry into police conduct surrounding rape and sexual violence offences (Bazley, 2007). The latter’s brief included not only the historic cases but also how to improve current police sexual assault investigations and conduct towards women more widely, including within the police organisation itself (Rowe, 2009).

When the three men charged with Louise’s rapes went to trial in 2007, one of the accused, Clint Rickards, was not only still a serving police officer but one of the most senior in the land, tipped by some as a future Commissioner of Police (Aotearoa New Zealand has a nationwide police service headed by a single Commissioner). The trial displayed many of the worst features of the adversarial justice system. Character witnesses lauded the best features of the great men while the defence team portrayed Louise as a drunken lying slut and “police groupie” (Cook, 2007). She was effectively tried and found wanting, with the jury acquitting all three accused in what was widely recognised as a major travesty of justice (Jordan, 2011a; Rowe, 2009). It was another year and another rape trial later, involving a different woman, before the public could finally be told what the jury never was—that during

the hearing of Louise's case, two of the accused, Bob Schollum and Brad Shipton, were being secretly transported to court from prison each day, where both were serving sentences for rapes committed in very similar circumstances against yet another woman (Jordan, 2011a). Nor could the jury be told of other women who had initially complained but shrunk from the implications of making it formal.

Louise Nicholas never doubted that the men who raped her as police officers would be found guilty (Nicholas, 2007). She even wrote a Victim Impact Statement to be read at the sentencing of the men that she was sure would eventuate. It included the following:

Twenty years is a long time to be incarcerated in your own prison cell, but that is where I have been, unable to move on from my fears, unable to live a normal life.... You may have stripped the clothing from my body, burnt the very essence of my soul, stagnated my love of life, but you will never again take away the dignity I have fought so hard to regain over the last few years so that I can once again look at myself in the mirror and love the person looking back at me.

(Nicholas, 2007, p. 174)

When the jury acquitted the men, she wondered if the police using their batons to engage in "deviant sex" (p. 202) had been the sticking point, given that accepting officers' involvement in pack rape had not seemed unbelievable to the jury that convicted Schollum and Shipton. Many in the country were shocked at so blatant an example of the adversarial system's failure to deliver justice. Some also struggled to believe that police officers, appointed to enforce the laws against bad men, could themselves be rapists. Once the full details came to light, there was little doubt in most people's minds that these men should have been convicted, including among the majority of serving police officers. Public marches expressing anger at the verdicts were held in Aotearoa New Zealand's major cities. Since then Louise Nicholas has been regularly invited to assist New Zealand Police with police inquiries and training, and maintains a close working relationship with them despite the travesties of the past.

* * *

Introduction

Police responses to women as rape complainants represents one arena within which we can see the impacts of the patriarchal legacy on institutional practices (Hunnicut, 2009; Jordan, 2001, 2004, 2011). Contemporary criminal justice systems emerged from the dominant mindsets of their time, and were structured in accordance with these. As noted earlier, the fact that no women were even allowed to obtain law degrees until the late 19th

century, let alone be appointed as judges, ensured a male dominance within the courtroom that shaped the very structure of legal procedures. Our laws themselves, crafted as they were with masculine input and informed by male assumptions, reflected men's views of the nature of men, women, and social relationships (Smart, 1990). Women were not erased from legal considerations; they were simply never present.

The book Helena Kennedy wrote, from her position inside the British legal system, deftly illustrated the system's anti-woman bias in demonstrating that, "Law was male because it was made by men, or with a male template, and only when law-making was reconsidered could law become just" (Kennedy, 2018, p. 15). The application of these laws was even more likely to reflect dominant, gendered assumptions. This is particularly obvious in relation to sexual violence offences, where men's beliefs in women's inherent deceitfulness ensured barriers, such as the corroboration warning (discussed in [Chapter 2](#)), were created to guard against what they saw as the risks of easy conviction. The reality that very few cases ever reached court also reflected male bias, with police procedures and decision-making resulting in most reported rapes not proceeding through investigative processes. Even until recently, the practice of "no criming" reported rapes was rampant and effectively ensured only a minority of cases was ever prosecuted (Hohl & Stanko, 2015).

This chapter draws on the ideas presented earlier in this book to assess how our criminal justice systems developed in ways that serve patriarchal interests. It is informed by the understanding that police occupy a pivotal role as gatekeepers to justice (Jordan, 2004; Spohn & Tellis, 2012) and emphasises research in this area given the salience of police actions and attitudes as critical determiners of early case attrition. It begins by identifying key issues emerging from the opening case study that illustrate major difficulties women victimised by sexual violence face in seeking justice. The legacy of patriarchal thinking is explored in relation to the shaping of police culture, before stereotypes concerning the nature of women are considered in relation to their impacts on both police and court responses to rape allegations. The chapter concludes by summarising the major barriers to justice for those victimised by sexual violence.

* * *

Increasing recognition of rape victims

What many of the public saw in the media coverage given to Louise Nicholas's historic case was evidence of how justice system processes could result in manifest injustice for rape victims. She was still a teenager; they were ten years or so older. She was slight in appearance; they were much larger, stronger men, *police* men. She had already been raped as a 13-year old by a different officer whose children she babysat. She was fearful so

compliant. From the outside it may have looked like she allowed them into her flat for convivial drinking sessions; in reality they were priming her for rape. When she finally tried the first time to report them, she trusted one of their senior colleagues only to discover years later that he suppressed evidence and stuck by his colleagues, the only slight piece of justice she received being his eventual conviction for obstructing the course of justice. But this was not before her case had been put before the court and become one of the biggest scandals in Aotearoa New Zealand's criminal history.

The defence attacked Louise in numerous ways designed to discredit her. She was accused of being immoral, a liar, a woman out to ruin good men, including one of the current most senior police in the country. The latter, Clint Rickards, ignored regulations and presented on the first day of the trial in full police uniform, a move designed to intimidate Louise and impress the court. As noted, the jury was not told the other two accused were already serving time in prison for a similar pack-rape of another woman. Nor were the prosecution permitted to put these men on trial for other similar fact cases at the same time. Both the process and the outcome favoured the men; both the process and the outcome reinforced for the woman the shame and powerlessness experienced in the sexual assaults.

Louise Nicholas was not unusual in her initial decisions not to disclose or report the rapes she experienced. Research findings repeatedly demonstrate how the vast majority of rape and sexual assaults are never reported, often not disclosed to anyone, and frequently minimised or unrecognised as sexual violence by victims (Johnson, 2017; Kelly, 1988, 2002; Temkin & Krahé, 2008). The under-recognition of the extent of victimisation is matched by the under-recognition of the prevalence of offenders in ways that enhance the invisibility of sexual violence. The latest New Zealand Crime Victims Survey, for instance, revealed that 92% of those sexually victimised did not report the offending (Ministry of Justice, 2020). There remains a deep and abiding silence around rape that continues to keep most of it hidden and protected from view. While some argue this is changing in a 21st century #MeToo world, globally the silencing mechanisms remain evident.

Scandalous rape cases attracting nationwide attention and media coverage are relatively common occurrences, and can lead to changes in laws and proceedings designed to ensure improved treatment for victim-survivors (Brown, 2011; Cook, 2011; IPCC, 2010; Jordan, 2011a). In 1983, a now legendary incident prompting UK reforms occurred when television footage screened showing Thames Valley Police officers interviewing a rape victim (Adler, 1987; Brown & King, 1998; Temkin, 2002). Police had expected praise for the rigour of their investigative questioning; instead they received condemnation for their sustained and aggressive interrogation of the woman (Gregory & Lees, 1999). Public awareness was enhanced about what feminist advocates working with rape victims had long known regarding the urgent need for improvements in police responses. Home Office circulars soon followed (Home Office, 1983, 1986) urging police revision of the procedures

used when responding to rape allegations (Brown & King, 1998). As well as more sensitive and informed police responses to rape victims, calls were made to change recording practices that would distinguish clearly between unsubstantiated and false complaints, since these were often conflated within a no-crime code (Horvath, Tong & Williams, 2011).

From the 1980s onwards, as more victims spoke out, there was growing recognition that the police's position as the gatekeepers to the criminal justice system made their roles and responses critical (Adler, 1987; Gregory & Lees, 1999; Harris & Grace, 1999; Jordan, 2004; Kelly, 2002; Kerstetter & Van Winkle, 1990; LaFree, 1980; Radford, 1987). Goodstein and Lutze, writing in the Australian context, observed:

Police response to rape may be the most crucial link in the chain to ensure fair treatment for rape victims. The police officer is the first representative of the criminal justice system the reporting victim encounters; the quality of her contact with the police officer may color her perception of the entire prosecution process.

(Goodstein & Lutze, 1992, p. 169)

The research on how rape victims experienced police and criminal justice system processes, however, revealed a mockery of the term "justice." Police services internationally were criticised for failing to believe and investigate fully the allegations made by rape complainants (Jordan, 2004; Kelly, 2002; Lonsway, 2010; O'Keeffe, Brown & Lyons, 2009; Stanko & Williams, 2009). Many victims experienced police as dismissive, and few reported rapes progressed to trial, even fewer to conviction. Historically there was a greater emphasis on court and trial processes since these were conducted more visibly and often attracted media attention, whereas police practices were relatively hidden and harder to observe.

In Britain significant legal changes were made in the 1990s, including recognising marital rape as a criminal offence from 1991 and acknowledging male rape in law from 1994 (Ibid.). Research studies undertaken with victims suggested some increased levels of satisfaction with police responses, although notions of "real rape" meant women who knew their attacker often struggled to feel believed (Gregory & Lees, 1999; Harris & Grace, 1999; Temkin, 1999). In 2003, the passing of the Sexual Offences Act saw the definition of rape expanded to include oral penetration and changes were made around the laws on consent, including the stipulation that no child under 13 years old can legally consent to sexual activity (Finch & Munro, 2004). Changes in law, however, do not always translate into changes in substantive practice.

International studies documented how victims typically felt re-victimised by the system overall, with the phrase "secondary victimisation" regularly used to describe their treatment (Koss, 2000; Madigan & Gamble, 1991; Orth, 2002; Shaw, Campbell, Cain & Feeney, 2017). Feminist commentators

in particular noted how victims often experienced rape trials as a brutal and degrading violation paralleling that of the rape itself (Adler, 1987; Hall, 1985; Kennedy, 1992; Krahe, 2016; Lees, 1996; Madigan & Gamble, 1991; Matoesian, 1993; McDonald, 1997). The alleged victim, rather than the alleged offender, routinely experienced the most arduous and undermining assaults on her character and behaviour (Adler, 1987; Heenan, 1997; Lees, 1996; Smart, 1989; Taslitz, 1999; van de Zandt, 1998). Historically, as we saw earlier, rape laws were drafted in common with men's definitions of sexuality and how they perceived their relationships with women. How women themselves might experience men, sex, and relationships was not reflected in the formulation of such laws (Easteal, 1994; Lees, 1997; Smart, 1989; Young, 1998). Additionally, the status and importance attached to men helped to ensure that male definitions of "reality" not only dominated but were subscribed to across the genders. Males were said to have a biological need and imperative for sex that women, through their roles as both wives and prostitutes, were expected to fulfil. Within such a context, what women themselves might want not only faded from view but was simply irrelevant. The male view presided, its maleness seldom acknowledged. As Australian academic Jocelyne Scutt commented: "It is a truism that objectivity is the name given to men's subjectivities. 'Objectivity' operates generally against women's interests" (Scutt, 1998, p. 166).

The so-called impartiality and objectivity of the law was increasingly questioned in the light of growing evidence from research and reviews indicating how scant a rape victim's chances were of seeing her attacker convicted (Daly & Bouhours, 2010; Horvath et al, 2011; Munro & Kelly, 2009; Stanko & Williams, 2009). Considerable attention was given to the influence of rape myths on attitudes towards women reporting rape, with studies not always yielding consistent results (Sleath & Bull, 2017). Some research findings suggested police were no more negative towards rape victims than the general population (Brown & King, 1998; Feild, 1978), although a systematic review by Sleath and Bull (2017) found at least some level of victim blaming in all studies included. Hence in relation to specific behaviours and judgments made, some studies found victims were attributed greater responsibility for rape when dressed in ways deemed provocative (Goodman-Delahunty & Graham, 2011). Also evident was that the higher the level of alcohol intoxication perceived on the part of the victim, the more blame was attributed to her (Goodman-Delahunty & Graham, 2011; Schuller & Stewart, 2000), yet significantly less to the perpetrator (Schuller & Stewart, 2000). Some of this research has examined the extent to which officer demographics, such as gender and educational attainment, can play a contributing factor (Page, 2007; Rich & Seffrin, 2012; Sleath & Bull, 2017). For example, Rich and Seffrin (2012) found moderate levels of rape myth endorsement overall in police from agencies in the north-eastern US, but endorsement was comparatively lower in women officers, those of higher rank, and those with more years of experience.

More recent studies have confirmed higher levels of rape myth endorsement are often associated with ideal victim judgments that can impact on perceptions of victim credibility and case progression (Garza & Franklin, 2021; Kaiser, O'Neal & Spohn, 2017; O'Neal, 2019; Page, 2010). Findings from a UK study that sought to identify attitudinal predictors that could be associated with rape myth endorsement by police initially confirmed existing research showing higher overall endorsement in men than women, and lower endorsement in those who had received specialist training (Murphy & Hine, 2019). What also emerged was that a considerable proportion of the variance was attributable to such attitudes as hostility towards women, ambivalent sexism, and beliefs about the relationship between sex and power. Together these findings underscore how attitudes and beliefs about women, sex, and rape are significant influences on rape myth endorsement, with US researchers Garza and Franklin (2021, p. 14) recently concluding that “*any* endorsement of rape mythology is problematic for survivors who formally report, given the unique position of police personnel who make decisions about how to formally proceed with a case.”

Victim credibility has been identified as critically important in affecting police decisions concerning the amount of investigative effort to expend on a particular case as well as subsequent decisions regarding case progression (Campbell, Menaker & King, 2015; Sleath & Bull, 2017). Victim credibility and rape myth adherence overlap in reality, with Goodman-Delahunty and Graham (2011) finding that police officers holding higher levels of rape myth acceptance were significantly less likely to perceive rape allegations as credible. Credibility issues may become apparent immediately upon reporting when assessments of a case's characteristics are made in relation to what historically became known as “real rape” stereotypes. These are explored next in relation to how they may affect police perceptions.

Real rape

Police responses when women report sexual violence have historically been mixed and at times hostile and disbelieving. Feminist advocates in the 1970s expressed horror and outrage at how women were treated and the ways they were blamed as well as degraded afterwards (Cooper & Weinberg, 1978; Meyer, 1974; Weis & Borges, 1973). Defining rape as a sexual offence rather than a violent act was linked to common victim complaints of police often “leering” at victims and asking if they enjoyed the sex or orgasmed, prompting the observation being made by Canadian mental health personnel that, “Often the police appear more interested in the sex than in catching the criminal” (Cooper & Weinberg, 1978, p. 171).

Throughout the 1970s and 1980s, research on women who had been raped revealed clear inconsistencies in how they were treated by the police (Estrich, 1987; Holmstrom & Burgess, 1978; Medea & Thompson, 1974; O'Reilly, 1984; Smith, 1989) with many women reporting feeling disbelieved

and unsupported (Chambers & Millar, 1983; Hall, 1985; Wright, 1984). Women's chances of receiving a sympathetic police response were most commonly linked to stranger attacks and appeared to increase according to the extent of physical injuries suffered in the attack (Feldman-Summers & Norris, 1984; Koss, Dinero, Seibel & Cox, 1988; Williams, 1984). Such an emphasis harks back to the medieval requirements discussed in [Chapter 2](#) requiring genuine victims to make a "hue and cry" as they displayed injuries sustained while fighting to protect their honour.

This led researchers in the sexual violence arena to identify a "real rape" stereotype dominating police and public perceptions (Brown & Horvath, 2009; Jordan, 2004; Kelly, Lovett & Regan, 2005; Temkin & Krahe, 2008). The latter emphasised the legitimacy of a sudden, violent stranger attack perpetrated against an innocently attired, sober young woman as she walked home alone. She would fight back but be overcome by the strength of her attacker, who would leave her with visible physical injuries that proved her efforts at resisting. As international research has repeatedly shown since then, stranger rapes are relatively rare yet still perceived as consistent with the real rape stereotype and likely to attract fuller and less querulous police attention than those perpetrated by partners and acquaintances (Brown & Horvath, 2009; Kelly et al, 2005). Cases conforming to the real rape stereotype were perceived as more serious and credible than rape attacks where the offender was already known to the victim, despite these being the most common (Du Mont, Miller & Myhr, 2003; Estrich, 1987; Parratt & Pina, 2017; Venema, 2016). Not surprisingly, the majority of victims felt they did not fit the stereotype and chose to self-silence rather than disclose and report the offence (Adler, 1987; Hall, 1985; London Rape Crisis Centre, 1984).

The real rape stereotype impacted not only on police attitudes but also affected victims and the wider community. Women often hesitated to define themselves as genuine victims or feared being blamed or disbelieved, making the high under-reporting of rape understandable. Most rape cases fell out of the system at this stage (Krahe & Temkin, 2009), then if women did decide to report, police responses did not always match the seriousness accorded the crime of in law. Writing within the Australian policing context, Christine Nixon (later to become the first female chief commissioner in any Australian state police force) suggested:

The hidden issue may well be that police see little harm in most rapes. Statements such as 'she had no physical injuries' to describe someone violated by unwanted sexual intercourse confirms such suspicions. This view allows police to define many rapes as 'false complaints' and underplay the effect on the victims. In this sense, police culture has merely reflected the attitudes of a wider society, which also relies on mythology as the basis for understanding rape and sexual assault.

(Nixon, 1992, p. 42)

While today it is better recognised that most rapes are perpetrated by men already known to the victim, often within the context of intimate partner violence, beliefs still persist in many quarters that such incidents equate more to unwilling or “regretful” sex than rape, resulting in the impacts being minimised, even trivialised (Gavey, 2019; Rowe & Macauley, 2019; Temkin et al, 2018). Recent analysis of police rape files in Aotearoa New Zealand suggested some detectives failed to comprehend the harms of rape, as reflected in case descriptions referring to incidents as “sex” rather than rape. For example, after a serious incident involving assault with intent to commit rape, threats to kill and an 18cm knife, a detective sergeant observed: “The victim has experienced this behaviour from the defendant in the past where he has successfully had sex with her against her will” (Jordan & Mossman, 2019, p. 88). Such descriptions fail to appreciate the impact of such behaviours from the victim’s perspective, reflect their normalisation within rape culture, and could silence victim-survivor testimony.

A further strand of this argument perceives “real rapists” as men who are obviously aberrant, deviating from norms of male sexual etiquette and decency. Instead they are depicted often as monstrous, with inferences of total depravity or absolute insanity (Boyle, 2019). Holding such perspectives keeps ordinary masculinity out of the spotlight and preserves a strong sense of the abnormality of rape that compounds the difficulties for women struggling to define their own experiences of sexual victimisation. When their partner/priest/professor/physician, or any other person fails to fit real rapist stereotypes, women can often be reluctant to recognise and name them as such. Karen Boyle has argued:

When a hierarchy, rather than a continuum, is in operation, men’s violence can be more easily normalised and excused. Monsters work to (re)define the norm: instead of seeing different kinds of male violence as connected, the figure of the monstrous other allows “normal” male behaviour to go unremarked.

(Boyle, 2019, p. 118)

The impact of real rape stereotypes is evident in the extremely high attrition rates for rape cases, resulting in most cases not progressing beyond the police investigation stage. As noted, researchers have identified that the attitudes and stereotypes held by police, jurors, and other criminal justice agents are a critical factor affecting rape case progression (Sleath & Bull, 2017; Temkin & Krahe, 2008). Some have argued, drawing on evidence-based research findings, that despite appearing data-driven and fact-focused, these agencies rely on “schematic processing” that allows their decisions and judgments to be influenced by commonly held beliefs and stereotypical thinking (Temkin & Krahe, 2008). This translates into the norms and attitudes characterising rape culture being able to affect police judgments and decision-making through the evaluation of cases according to “real rape” stereotypes. Those

making rape allegations are, in the case of women, typically assessed in relation to the extent to which their presentation and actions/inaction conform to dominant notions of femininity. Only “real” women can experience “real” rape. This potentially precludes the majority of reported rape cases from being considered genuine, or the complainants deemed credible. Since most rapes do not concur with the real rape stereotype, such requirements result in few cases likely to progress to further investigation and even fewer to prosecution. Organisational constraints such as performance targets and resourcing priorities result in only those cases being advanced that police and prosecutors believe carry strong chances of resulting in conviction (Jordan & Mossman, 2019; Munro & Kelly, 2009). These will typically be cases considered “winnable” in relation to how juries are likely to assess the complainant and the evidence. As Munro and Kelly (2009) observe, this creates a self-perpetuating cycle that continually reinforces the gender stereotypes and rape myths that gave rise to it.

Police are likely to be influenced by wider societal rape-supportive beliefs, and so also are victims. The latter grow up internalising rape culture myths and messages, aware of how the lens of judgment will often be turned towards them in the aftermath of any rape they risk disclosing. While Sleath and Bull (2017) noted the difficulties associated with determining the role played by police attitudes in decision-making, the impacts of attitudes on victim behaviour are more apparent, particularly in relation to silencing victims’ voices. The shame and blame many feel characterises the first arena in which we see silencing at work, the self-silencing that prevents many from defining themselves as victims of rape (Gavey, 2019; Jordan, 2011b; Kelly, 1988; Koss, Gidycz & Wisniewski, 1987). Judith Herman has described how in the crime of rape:

[t]he perpetrator seeks to establish his dominance not only by terrorizing the victim but also, often most effectively, by shaming her. Crimes of dominance have a ritualized element designed to isolate the victim and to degrade her in the eyes of others.

(Herman, 2005, pp. 572–573)

The stigma of rape makes self-definition as a victim difficult, associated with which is the reluctance to define the person who did this as a rapist. The implications of allowing oneself to name rape behaviour in someone loved, and/or feared, are sizable, while there is also the shame associated with having made a wrong decision about whom to trust.

The isolation and shame of rape feeds secondly into victim decision-making around disclosing. Apprehensions about how the police may respond are a key factor silencing many women from reporting sexual violence victimisation, as noted in research from a wide range of jurisdictions (Du Mont et al, 2003; Epstein & Langenbahn, 1994; Freckelton 1998; Jordan, 2011; Koss et al, 1987; Myhill & Allen, 2002; Temkin & Krahé, 2008). Rape is the

most under-reported of all serious criminal offences, with the factors affecting victims' decision-making including fears of how police and others may respond and the nature of their relationship with the offender (Gilmore & Pittman, 1993; Kelly, 2002; Myhill & Allen, 2002; Sable, Danis, Mauzy & Gallagher, 2006).

Thirdly, for those who do report, how police respond is critical given the gatekeeper role they hold determining access to other criminal justice processes (Spohn & Tellis, 2012). Decisions over which cases should proceed to further investigation and possible prosecution have typically been governed by police assessments of victim credibility and responsibility. These have translated into two main paths filtering the majority of cases away from justice processes. Firstly, deciding there was no rape and the complainant is lying. If her allegation cannot be refuted, the second major option concedes the rape/sexual assault may have occurred but the woman was responsible for its occurrence. These two options are now considered separately, although in reality such considerations may overlap.

There was no rape—The complainant is lying

In most criminal offending, the character and honesty of the offender are questioned and scrutinised and his credibility typically found to be lacking; in rape it is the victim who is routinely subjected to such scrutiny. The societal legacy of beliefs about the nature of women has been influential in shaping rape culture which is then reflected within criminal justice agencies. Nowhere is this more evident than in the enduring belief that women routinely lie about rape. If they do, then the evidence suggests this is most likely to occur in terms of them underestimating the severity of what has happened, concealing the violation from those close to them, refusing to inform police of its occurrence, and colluding to protect the identity of the offender. In other words, the desire to minimise or deny they have been raped is uppermost in many victims' minds following a rape attack (Gavey, 1999; Kelly, 1988). This is the complete opposite of what women are accused of doing, prompting one writer to proclaim: "The myth is false claims of rape; the reality is severe underreporting of rape" (Torrey, 1991, pp. 1030–1031).

Declaring women as liars appears to need little motive in some cases, reflecting historical beliefs in women's natural deceitfulness. Even as recently as 1950, criminologist Otto Pollak maintained in all seriousness that women performed well at crimes of concealment, such as shoplifting, because concealment was in their nature. His evidence was twofold: how women's bodies are capable of faking orgasm, and how adept they are at concealing menstruation. While women's natural and biological proneness to deceitfulness may seldom be overtly referenced today, there remains an underlying suspicion that women often lie about sex. This may be a hangover from earlier times when higher stakes were typically attached to women having sex outside of wedlock.

The double standard condoned men's involvement in pre- or extra-marital sex while condemning the same behaviours in women, historically providing an understandable motive for some women to lie about having sex in the interests of personal safety. Changes in sexual mores, access to contraception, developments in forensic evidence and improved investigative methods all contribute to an environment in which the chances of a panicked initial lie resulting in wrongful conviction would be incredibly rare, if not impossible. Curiously, the anxieties expressed about the risks of wrongful conviction are seldom matched by equal concerns for the risk of wrongful acquittal, despite the harm such a verdict may do to the victim-survivor, as well as any other women subsequently victimised by the perpetrator.

Responding to a rape disclosure by suspecting or accusing the woman of lying speaks to centuries of assumptions stemming from beliefs in women's duplicitous nature. This accusation itself silences, while fears of encountering such an accusatory response keep others from speaking out. This is evident from the under-reporting of rape through police responses and in the context of any resulting court trial, as the next sections explore.

REPORTING TO POLICE

Police scepticism regarding rape allegations emerges from the intersection of police organisational factors with the prevailing rape culture. The *New Zealand Police Manual for Detectives 1964* illustrates the attitudes prominent in this regard, stating categorically:

False complaints in respect to offences of rape are not uncommon. Women often consent in the heat of passion and later make false complaints due to:

- 1 Fear of pregnancy
- 2 Shame
- 3 Revenge
- 4 Notoriety
- 5 After finding of seminal stains—allegation made in response to questioning to cover the indiscretion. (Complaints made under duress of parents or friends.)
- 6 Excuse by young women for arriving home late and in a dishevelled condition. (Complaints made under duress of parents or friends.)

If through lack of corroboration by failing to find any evidence at scene, or through medical examination, and the complainant's conduct and demeanour is not impressive, you are of the opinion the complaint may not be genuine you must closely interrogate her on this point before taking a written statement. Endeavour to speak to her alone as the influence of parents or friends may continue if present.

(New Zealand Police, 1964, pp. 3–4)

Such a sceptical attitude was pervasive, with police officers in the 1970s and 1980s expected to show skills in victim “interrogation” (e.g. Firth, 1975; Wagstaff, 1982), while rape complainants graphically described feeling as if they were being interrogated (Chambers & Millar, 1983; Hall, 1985; Holmstrom & Burgess, 1978; Medea & Thompson, 1974; Toner, 1982). That police viewed such an approach as not merely defensible but laudable was evident in the example given earlier about the televised screening of Thames Valley officers harshly interviewing a victim. The disbelieving and sceptical attitude adopted towards rape allegations prompted the following observation:

If a woman alleges assault other than rape, she is generally believed, examined medically and treated if necessary. Police and court response is direct and usually according to law. However, if the assault is sexual, that is, if she is alleging rape, the response may be quite different. No one wants to believe her.

(Peters, 1975, p. 34)

Exaggerated levels of belief in the prevalence of false rape allegations have raised concern in a plethora of international studies (Blair, 1985; Chambers & Millar, 1983; Fairstein, 1993; Feldman-Summers & Palmer, 1980; Gilmore, Baker & Pittman, 1993; Gregory & Lees, 1999; Jordan, 2004; Kanin, 1994; Kelly, 2002, 2010; London Rape Crisis Centre, 1984; McMillan, 2018; Mintz, 1973; National Center for Women in Policing, 2001; O’Neal, 2019; O’Reilly, 1984; Scutt, 1998; Sleath & Bull, 2017; Temkin, 2002; Wheatcroft & Walklate, 2014). The belief that false rape complaints were regular occurrences was an established aspect of police culture, with a Scottish study by Chambers and Millar (1983) finding that junior detectives often said that while they personally had never encountered a false complaint, they still ‘knew’ they were common. In his research conducted in England, Ian Blair noted:

...there is considerable evidence that investigators...seem prepared to give serious consideration to the proposition that between 50 per cent and 70 per cent of all allegations of rape are false.

(Blair, 1985, pp. 53–54)

Elsewhere a cynical detective maintained in relation to rape complainants: “After six years on the force, I don’t believe any of them” (quoted in Burgess & Hazelwood, 1999, p. 9). This sentiment has also been voiced informally to me while presenting material in a detectives’ adult sexual assault training course, where participants’ estimates of the proportion of complaints likely to be false have ranged from 5% to 100%. The good news, however, is that in the last six years or so, estimates have dropped considerably in response to focused reforms within the New Zealand Police that are outlined later in [Chapter 4](#).

The legacy of centuries of doubting women's veracity translates within police culture into a filter of suspicion distorting the lens through which rape complainants are viewed. One way this manifests itself is in the interpretations made of how victims behave during questioning, reflecting the mindset or framework used to evaluate them. Studies by Mulder and Winkel (1996), for example, involved showing participants' reconstructions of an interview with a rape victim, minus the sound. Those holding a victim focused perspective interpreted the complainant's nervousness as indicative of trauma, while those viewing the scenario from a "police" or truth focused viewpoint decided the victim was deceptive and concealing. The authors concluded that this study clearly revealed the need to train police officers more fully in interpreting non-verbal behaviour and to appreciate the destructive potential of police attitudes to cause secondary victimisation in rape complainants (Mulder & Winkel, 1996, p. 318).

Women victimised by rape have been socialised within the same rape culture as police and other criminal justice practitioners and have internalised the same myths about rape. Anticipating being disbelieved serves as a major silencing mechanism dissuading many victims from reporting at all, while others may disclose selectively as they try to conceal any factors they worry might detract from perceptions of their credibility. This can result in their omitting to describe the extent of their alcohol and drug use prior to victimisation, or trying to hide evidence of contact they may have had with the offender before or after the rape/sexual assault (Jordan, 2004, 2011a). Such self-silencing can be damning, however, since when uncovered by investigators is likely to promote distrust in the women's testimony overall. Encountering, or fearing, disbelief can influence complainants to withdraw their allegations, decisions that can be erroneously interpreted by police as "proof" that she was lying from the outset.

Further evidence of continuing police officer adherence to real rape myths remains apparent in police being less likely to question a complainant's veracity if the suspect physically assaulted the victim during the attack (O'Neal, 2019). Other factors influencing how police view the credibility of complainants include higher levels of scepticism present in cases where the alleged victim had accepted an invitation to the suspect's residence or engaged in drug-taking immediately before or after the incident (O'Neal, 2019). These overlap with the real rape stereotypes examined in the previous section.

Obvious dangers can result from inflated police beliefs in false rape complaints. These include the risk of genuine victims being disbelieved or even charged with perjury. For example, although a woman raped by serial rapist Malcolm Rewa on New Year's Eve, 1987, was able to identify her offender to police, they made inferences that detracted from her credibility. These included her being a young, Māori woman with a history of drug use who was known to associate with gang members (Jordan, 2008). These factors apparently trumped those associated with the accused, despite these

including his conviction for a previous rape attack. Her word counted for less than his. Her allegation against him was silenced.

This case resurfaced in 2013 when it was publicly alleged that, had the police believed the 1987 complainant, Rewa may have been prevented from committing a further 24 rape attacks. Perceptions of police culpability increased when it was revealed that the man Rewa said could give him an alibi then, and whom the victim was told had provided one, was never in fact located or spoken to by police. As investigative journalists later revealed:

She told the police who he was, she even supplied them with his name. It took six months for the police to visit him, to ask about the attack, which he of course denied, saying he was on the booze that night with a mate. The police didn't even follow up with that mate to verify the story. The point being, if police had properly investigated Malcolm Rewa from the outset – a named offender with a sex attack record - all those women who came after wouldn't have been raped.

(Edwards, 2015)

By accepting the offender's word, this woman was disbelieved and multiple others left vulnerable to rape and, as recently determined in one case, murder (Gay, 2019).

Fears of being judged in similar ways can deter other victims from approaching the police, and result in some offenders avoiding detection and sexually victimising others. In a US study, an advocate who supported victims of rape expressed concern over the tendency for police in her area to view rape complainants as "guilty until proven innocent," adding:

You know how we have to be very careful with someone who is considered a perpetrator and we have to afford them their rights, and we can't assume that they are guilty. It seems like it's flip-flopped on our victims that they're lying until they can prove otherwise, and [police are] really getting in their faces, saying, "You know, you can go to jail for twenty years if you are perjuring yourself, if you are making a false report to law enforcement."

(Corrigan, 2013, p. 933)

In some jurisdictions police have responded to pressure from feminists and victim advocates, supported by research findings, and sought to address officer scepticism directly. This has resulted in directives being issued stipulating that all rape complaints are to be treated as genuine unless investigative evidence suggests otherwise. Within the Aotearoa New Zealand context this has been a factor producing changes within the attrition process, with a recent file analysis indicating that a significantly higher proportion of rape complaints are investigated more fully than they were

previously (Jordan & Mossman, 2019). While this is evident in the reduced numbers of cases dismissed early as “no offence disclosed” (no-crime/unfounded), overall case attrition remains high with no increase in the proportion of cases progressed to offender prosecution.

Instructing police to treat every rape complaint initially as genuine makes sense in that it reassures complainants as well as potentially ensuring any officer scepticism is contained or at least put on hold. However, recent research with a sample of UK police indicates the tension such training can provoke (McMillan, 2018). A female detective expressed this well in articulating how, on joining the police, officers are instructed to adopt an attitude of suspicion and mistrust everything they are told. The cynicism this leads to is later at odds with sexual assault training telling them to believe the complainant. As McMillan notes, this results in detectives struggling between competing discourses of cynicism and belief and developing an ambivalence towards sexual violence cases. If ambivalence or disbelief is communicated through “word, gesture or tone” (McMillan & White, 2015), this can impact the complainant and make it harder for her to disclose or co-operate. As other research has shown, not feeling believed can influence complainants to conceal facts they fear may be discrediting and/or withdraw or retract the rape allegation (Jordan, 2004).

Despite many reviews and changes, some studies suggest exaggerated levels of police belief in high frequencies of false rape complaints persist, spread across a wide continuum. For example, Lesley McMillan’s recent UK research found an extreme range from 5% to 90% in police officers’ estimates of the proportion of reported rapes likely to be false, with an overall mean response of 53% (McMillan, 2018). The reasons underlying high levels of police scepticism reflect the historical, patriarchal factors already canvassed regarding male sexual entitlement, gender inequality, and doubts about the veracity of women’s words. As Liz Kelly noted, “legacies remain sedimented into institutional cultures and practices, creating a risk of over-identification of false allegations by police and prosecutors” (Kelly, 2010, p. 1345). Research data on false reports suggests that in reality the numbers of these are far fewer than stereotypical beliefs imagine. For example, a comparative study across nine European nations found that rates of false allegations “ranged between 1% and 9% with the majority at 6%” (Kelly, 2010, p. 1352).

While much of the debate around false reports has questioned the over-inflated expectations of these, nevertheless it is important to acknowledge that such complaints are occasionally made, for a variety of complex reasons (Lonsway, Archambault & Lisak, 2009). Mental health issues emerge as a common underlying factor in situations where women may fabricate a complaint to provide an alibi or gain attention (Jordan, 2004; Kelly et al, 2005; Lonsway, 2010; Spohn & Tellis, 2014). Analysis of complaints determined to be actually false indicates that these may derive from situations where the complainant was the victim of previous sexual victimisation, as a child or

adult or both, for which she never received validation or support. In such cases, as a medical examiner commented in the context of Aotearoa New Zealand research, the rape complaint “might be a reactivation of an old thing” yet appear current to the victim/survivor (Jordan, 2019, p. 63). While options for prosecuting those making false complaints exist, such cases may more likely justify a compassionate response resulting in referrals for appropriate support.

The false allegations myth has made its presence felt mostly in police investigative processes, being one of the key factors affecting how few rape cases proceed to prosecution and trial. Throughout the criminal justice system, however, women’s allegations of rape are viewed and assessed through essentially the same credibility lens as that used to question and undermine women’s words for centuries (Jordan, 2004). While contexts and portrayals may differ across time, the systemic beliefs running vein-like through history depict women as inherently flawed and deceitful—Eve’s footprint traverses a long path from the Garden of Eden to the present day. Trying to refute the falsehood that false complaints are common remains a necessary truth within the context of challenging rape culture myths and beliefs, and such scepticism is manifest within the court for those cases that do proceed.

COURT AND TRIAL PROCESSES

As UK barrister Helena Kennedy (2018, p. 129) has observed, despite the evidence of false rape allegations being a rarity, “...the spectre of a woman willing to falsely accuse looms disproportionately large in the collective male psyche and receives similarly disproportionately prominent coverage in the media.” Kennedy noted, the frequency with which this view is aired, providing the example of a speaker from Fathers4Justice advising schoolboys to prepare defences now for when they would be accused of rape. The rationale provided was how skewed the current legal system was against men.

Defence lawyers became adept at raising doubts in jurors’ minds about the victim’s truthfulness, a practice that, despite legal reforms, still remains evident. In a recent Aotearoa New Zealand study, for example, several women felt they were relentlessly accused of being liars, with one describing how undermined she felt:

“[E]ven though you’re saying the truth, you almost feel like you’re not saying the truth, you know? Because these people don’t believe me, you know, because this defence lawyer doesn’t believe you. For a few hours he was just telling me that I’m a liar, telling me that all I wanted was attention. He kept trying to trip me up, he kept trying to trick me. He was like a bulldog with me. It is hard for a 17-year-old to go through that for hours. I was shaking and crying.”

(Gravitas, 2018, p. 79)

Similarly, recent UK research found instances of Counsel being “not above harking back to Lord Justice Hale’s discredited 17th-century dictum” (Temkin et al, 2018, p. 212), considered in [Chapter 2](#), observing that in her closing speech to a trial, a Defence Counsel stated:

“Unfortunately, the experience of the courts is that false allegations of this type are made, sadly regularly made, and are made for all sorts of reasons. Allegations are quite easy to make: You only have to say it and it has to be investigated.”

(Temkin et al, 2018, p. 212)

The judge in this particular case, rather than challenging the myth and providing judicial direction, reiterated that “sexual allegations are easy to make but difficult to refute” (Temkin et al, 2018, p. 212).

The realities indicated by attrition research, however, indicate that victims struggle to report sexual violence then find their allegations mostly result in outcomes ranging from disappointing to injurious. A common way of discrediting the complainant has been to emphasise her lack of physical resistance or efforts to flee her attacker, implying this lack could be interpreted as evidence of her consent (Larcombe, 2002; Randall, 2010; Schuller, McKimmie, Masser & Klippenstine, 2010; Temkin & Krahe, 2008). This harks back to the historical insistence on women displaying the injuries received during the rape as proof that they had fought back trying to protect their honour. Similarly, presumptions may be made that prompt disclosure and reporting by the victim signifies a greater likelihood of the complaint being genuine (Henning & Bronitt, 1998; McDonald, 1994; Temkin, 2002; Temkin et al, 2018). The belief that the genuineness of a rape allegation could be verified in this way has been difficult to challenge. An Australian judge during a rape trial commented:

A complaint is admissible if made at the earliest possible opportunity – if a man runs out of a house and doesn’t tell anyone the house is burning until the night following, it is not consistent with him believing that the house was on fire when he ran out of it.

(quoted in van de Zandt, 1998, p. 137)

Pronouncements such as these reveal judicial ignorance concerning the traumatic effects of rape, an ignorance capable of informing biased responses injurious to rape complainants. In a study of rape trials, Temkin et al (2018) gives the example of a woman who, while drunkenly walking home, met a man whom she allowed to accompany her into her flat. The Defence Counsel tried repeatedly to refute her allegation that he raped her by referencing her lack of yelling or resisting, and in their closing address to the jury reiterated, “Would a victim not at least scream or do something to show some kind of resistance? ... She did not offer any resistance whatsoever to get rid of him”

(quoted in Temkin et al, 2018, p. 211). The woman's explanation that she was afraid this man might retaliate and kill her was not given salience, yet concurs with the growing understanding of counter-intuitive evidence cited below.

Other expectations regarding how genuine victims are likely to behave include applying stereotypes of female passivity and emotionality, inferring that the absence of tears and other visible signs of distress detract from their credibility (Schuller et al, 2010). A meta-analysis of studies involving criminal justice professionals, community members, and mock jurors found complainants exhibiting a visibly emotional demeanour were perceived as more credible than their more contained counterparts, concluding:

As emotional demeanor is not a reliable indicator of honesty, and poor complainant credibility is associated with case attrition in the criminal justice system, preventing complainant distress from influencing credibility judgments should be a research and policy priority.

(Nitschke, McKimmie & Vanman, 2019, p. 953)

Assumptions can also be made by juries regarding the ways in which, from the outside, it appears a woman acted with the accused as if she was co-operating and being compliant when in reality these responses were fear-driven. Instances where this has occurred include situations where the victim has continued drinking with the offender or sexted him after the sexual assault, the inference being that a legitimate victim would cease all contact immediately. Such responses are increasingly being rejected as automatic indicators of falsehood yet risk being used as such by juries because they appear unlikely and counter-intuitive (Seymour, Blackwell, Calvert & McLean, 2014). In an Aotearoa New Zealand case, the Supreme Court defined counter-intuitive evidence as

“evidence admitted in cases involving allegations of sexual abuse of young persons for the purpose of correcting erroneous beliefs or assumptions that a judge or jury may intuitively hold and which, if uncorrected, may lead to illegitimate reasoning.”

(*DH v R* [2015] quoted in McDonald, Benton-Greig, Dickson & Souness, 2020, pp. 469–470)

This observation was reinforced in a Law Commission report noting that:

Judicial directions may be particularly important in sexual violence cases to counteract stereotyped thinking or misconceptions about violence which individual jurors may bring with them into trial. Hence in the literature they are often discussed in terms of their potential as a form of juror education; that is, a way of informing jurors about the stereotypes or misconceptions about sexual violence that they should avoid when making their decision.

(NZ Law Commission, 2015)

Despite such recognition, a recent analysis of 40 rape trials found none resulted in counter-intuitive evidence being admitted or related judicial directions being given (McDonald et al, 2020). The authors noted some preparedness to accept such evidence when child victims were involved but specified it could equally be valid in cases involving adult complainants.

Elaine Craig (2018), writing in the Canadian context, put sexual assault trials on trial and found them guilty for failing to deliver justice. She attributes this failure in large part to “a judicial process with a long and deep-seated history of discriminatory beliefs about women,” elaborating:

When a lawyer suggests to a complainant that the reason she did not tell anyone right away is because she is fabricating the allegation to cover up consensual sex she now regrets, or points to a lack of physical injury as evidence of consent, or intentionally introduces a trial judge to inadmissible evidence demonstrating a complainant’s so-called promiscuity, he or she deploys a powerful heuristic that risks triggering reasoning that is both difficult to displace and wrong at law.

The persuasiveness and intransigence of these entrenched stories about sexual violence divert reasoning from a process of legal findings based on relevant evidence. In other words, these stereotypes about rape jeopardize the possibility of a fair trial.

(Craig, 2018, p. 101)

It was, as we saw in [Chapter 2](#), doubts regarding women’s veracity that formed the basis of the corroboration warning given by judges to juries before they retired to consider their verdict. This in effect made the latter wary of what the woman might say, a factor contributing to the extremely high attrition rates for rape offences (Hohl & Stanko, 2015; Ministry of Justice, 2019), an issue discussed further later in this chapter. Doubting the truth of women’s words has clear overlaps with questioning their morality and integrity, as the next section on victim-blaming addresses.

If there was a rape, the victim is to blame

The historical emphasis on rape victims being required to demonstrate they were blameless has been evident in judgments made of women complainants. The latter were typically appraised in relation to scripts of moral conduct and appropriate feminine behaviour, with the recognition of victim harm mediated by such considerations (Adler, 1987; Estrich, 1987; Jordan, 2004; Kelly, 2002; McMillan & Thomas, 2009). In no other crime does the quest to determine who was responsible for its occurrence focus so determinedly on how the victim behaved. This emphasis reflects the normalising of men’s sexual pressure and coercion of women within rape culture. It is reflected in criticisms made by the Toronto Rape Crisis Centre of a police survey of reported rapes which described victims as showing “a great lack

of discretion” and noting “promiscuity was a predominant factor” (cited in Editor’s note, Cooper & Weinberg, 1978, p. 176). Fears of being blamed and shamed prevent many women from speaking out, while the judgments often delivered on those who do can force them back into silence.

REPORTING TO POLICE

It is curious that despite the major emphasis in policing overall on crime-fighting and catching “crooks,” this emphasis has generally not driven rape and sexual assault investigations. The latter have instead been characterised by an apparent reluctance to convict men of rape, especially when the complainant is a woman the accused knows and/or may have had previous consensual sex with; in other words, the majority of sexual violence cases. Apparent within policing have been attitudes emergent from patriarchy emphasising men’s rights of sexual entitlement to women’s bodies. Ensuring men’s sexual rights necessitated ignoring women’s whenever possible, resulting in very few instances where women were considered legitimate victims. They were more likely to be blamed for the risks they took and their rape-inviting behaviours.

Men’s historical ownership of their wives and daughters, charted in [Chapter 2](#), established legal norms that specified husbands would not be held liable for raping their wives while only the most chaste of women would be believed should they allege rape. As real rape stereotypes specified, the ideal victim was an abstemious virgin dressed in modest attire who was in public only during daylight hours, preferably for noble and altruistic pursuits. Alternatives existed, such as being innocently asleep in one’s own home with no male protector present. In no way could such women be accused of “asking for it,” yet the strength of rape culture beliefs has seen women raped in these circumstances having to manage accusatory questioning. For example, several women raped by a serial intruder rapist who broke in while they were alone and asleep had question marks raised by police about what they wore to bed that night and whether they had been caught out having an affair (Jordan, 2008).

These ideal norms effectively prevented most women from speaking out and contributed to the commonly held perspective that unwanted sexual experiences should be viewed as normative and accepted as “just sex” (Gavey, 2019). Reputation was typically linked to perceptions of moral character, which in practice meant particular groups of women might never be viewed as genuine victims because of their sexual history. One obvious example is women identified as prostitutes or sex workers, with it often presumed that the rape of such women was impossible. The latter inference was clearly based on the misogynist assumption that consent was not a meaningful concept for women who sold sexual access to their bodies (Pauw & Brener, 2003; Sanders, Vajzovic, Brooks-Gordon & Mulvihill, 2020). Criminal justice system agencies objectified these women’s bodies in ways

similar to their objectification by men and clients, leaving them at risk of both rape and secondary victimisation. Discussing the folly of this assumption, Roberts and Zuckerman (2010, p. 165) observed:

Over the years some strange notions of relevance became embedded in the common law. For example, it was assumed that evidence of prostitution diminishes the credibility of a rape complainant and increases the probability that the intercourse was consensual, when, on a dispassionate appraisal, one might expect prostitutes to be the last people to make false allegations of rape, since sending customers to gaol can hardly be good for business.

Thus, although sex workers face heightened occupational risks of sexual victimisation, they have typically struggled to be seen and heard as legitimate victims. There is some evidence of positive change in cases where sex workers have successfully prosecuted men for rape (Adopted citizen jailed for rapes of Auckland sex workers, *New Zealand Herald*, 2019; Teen jailed for raping a sex worker and fracturing her face, *Stuff*, 2018). Aotearoa New Zealand's legal context, which has decriminalised participation by adults in sex work, is a major factor contributing to improved access to justice for those working in the sex industry, although the historical stigma remains pervasive (Armstrong, 2019).

In the contemporary climate, recourse to arguments based around moral concerns hold considerably less salience than they did in previous centuries when religions held greater prominence. The 19th century spectre of the fallen woman holds little sway now in most circles, with high societal intolerance of sex outside of marriage and “illegitimate” or “bastard” babies largely relics of a bygone age. This does not translate, however, into a woman's reputation no longer being considered relevant in criminal justice system deliberations. Behaviour deemed questionable by many in the contemporary climate includes high levels of intoxication and perceptions of promiscuity, combined often with other actions deemed “risky” for young women. The latter can include being out alone at night, associating with men perceived as potentially dangerous, and consensually engaging in what are viewed as unsafe sexual practices. The reality is that many sexual assaults occur after nights out partying or clubbing in environments for which most victims will have sought to dress according to contemporary fashions and notions of sexiness (Hutton, 2004; O'Neal, 2019; Quigg, Bigland, Hughes, Duch & Juan, 2020; Weiss, 2010).

Nightlife environments such as bars, pubs, and night clubs have increasingly been recognised as “key settings for engagement in risky behaviours (e.g. excessive alcohol consumption; illicit drug use) and harms including sexual violence” (Quigg et al, 2020). A recent review article of 61 international studies on nightlife sexual violence found lifetime prevalence reached over 50% among numerous study samples (Quigg et al, 2020). Concern over

the high prevalence of sexual assaults, harassment, and rape perpetrated in such contexts has been increasing (Curry, 1998; Fileborn, 2014; Quigg et al, 2020), with growing awareness of the complexity of factors involved. These include not only high levels of intoxication and drug-taking, but also societal expectations resulting in highly sexualised behaviour, pressure to “hook up,” stereotypical perceptions of “easy” or “loose” women, and masculine notions of sexual entitlement (Graham, Bernards, Osgood & Wells, 2014; Tinkler, Becker & Clayton, 2018). Researchers in a Canadian study observed that while male sexual aggression could form part of the initial overture to a woman, it could also occur in response to rejection, and was often apparent in contexts where men appeared more concerned with maintaining a macho image in front of their peers than hooking up with the woman (Graham, Wells, Bernards & Dennison, 2010)—she functioned primarily as an object to be used in the gaining of male status points. Sexual assaults were normalised in these environments, with the authors observing that:

The explicit sexual behavior observed in many contemporary night-clubs and bars makes it especially easy for sexually invasive acts to be perpetrated with impunity, and for victims of such assaults to be reluctant to complain because of their perceived obligation to accept overtures and because of staff reluctance to intervene in these open social environments.

(Graham, Wells, Bernards & Dennison, 2010, pp. 220–221)

Contemporary liberal and permissive discourses portray women’s engagement in casual sex as acceptable, even empowering expressions, of their sexuality yet traditional notions of the double standard continue to hold salience (Farvid, Braun & Rowney, 2017). Despite assertions of increased sexual equality, a multiplicity of sexual partners is still perceived in more positive terms for men (“studs,” “players”) than for women (“skanks,” “sluts,” “ho’s,” “whores”). The madonna/whore binary used historically to control and divide women remains evident, as observed in an interview-based study with young heterosexual women that revealed clear assumptions regarding the “right” and “wrong” ways to engage in casual sex (Farvid et al, 2017). While those interviewed verbally critiqued the sexual double standard and rejected it for themselves, many considered other women risked being seen as “slutty” by engaging in “too much” casual sex.

Victim-blaming attitudes can be apparent in both police and court settings, but there is some evidence that, in particular jurisdictions at least, police are not always applying ideal victim stereotypes as rigorously as in the past. This likely reflects a combination of factors, including increased awareness of how alcohol can be intentionally used by perpetrators as a rape drug, as well as greater recognition of how women who are too drunk to consent constitute genuine victims. Improved police training and the

realities of involvement with multiple rape cases may contribute to a greater police willingness to recognise any woman, irrespective of her appearance, background, sexual history, or behaviour, as a potentially genuine victim. As a recent police rape file analysis in Aotearoa New Zealand revealed, this may result, although not inevitably, in an increased willingness to investigate the case and consider pursuing charges against the offender (Jordan & Mossman, 2019). However, awareness of the evidential threshold needed for a case to have any chance of the accused being convicted means very few of even those cases considered to be genuine rapes proceed to trial. Police and prosecutors anticipate the outcome, based on their expectations of the arguments the defence are likely to make in working to secure their client's acquittal, and these include efforts to discredit the victim and hold her responsible. Such predicting has been described as the "downstream orientation" (Frohmann, 1997), with evidence demonstrating these decisions can be determined by considerations of factors irrelevant to whether or not the suspect committed the offence (Alderden & Ullman, 2012).

COURT AND TRIAL PROCESSES

For those rape cases that do make it to court, defence lawyers routinely seek to discredit the complainant by making insinuations based on the woman's dress, behaviour, alcohol and drugs consumption, as well as her relationship to the alleged offender (Adler, 1987; Brown, Hamilton & O'Neill, 2007; Ehrlich, 2001; Jordan, 2011; Kennedy, 1992, 2018; Lees, 1997; Schuller & Stewart, 2000; Scutt, 1998; Shapcott, 1988; Temkin, 2002). Rape trials function as a process of discreditation, but more so in relation to the complainant than the accused. Whatever can be used to discredit the victim is highlighted in contrast to the often extreme efforts taken to conceal from the jury background factors about the accused that may be prejudicial.

Historically, a woman's sexual history was used to demonstrate her credibility as a genuine victim of rape, the inference being that women who had previously engaged in consensual sex were more likely to do so willingly in future. A common ploy has been to apply the double standard of morality to besmirch the complainant's reputation. This tactic was recognised when feminists were seeking rape law reforms from the 1970s, and sought to introduce measures designed to restrict exposure in court of a complainant's sexual history. Such information was viewed as potentially able to skew juror decision-making given the blame and moral judgments that could be levelled at complainants to undermine their credibility, which would disrupt impartial consideration of the evidence against the accused.

Since then various jurisdictions internationally have introduced what have become widely known as "rape shield" provisions to limit the admission of sexual history evidence and the possibility of prejudicial inferences being drawn (Allison & Wrightsman, 1993; Edwards & Heenan, 1994; McDonald et al, 2020; McGlynn, 2017; Smith, 2018; Taslitz, 1999; Temkin, 2002; Wiehe

& Richards, 1995). In Aotearoa New Zealand, this resulted in changes to the Evidence Act in 1977 prohibiting the questioning of any witness about the previous sexual experience of a complainant, unless the leave of the judge was obtained (McDonald et al, 2020; Sullivan, 1986). This was extended in a 1985 amendment specifying that such questions could not be put “directly or indirectly” (Sullivan, 1986, p. 45). In practice, however, defence lawyers continue to make insinuations and raise questions about the complainant in full expectation of the judge intervening, knowing that the very raising of the doubt in the jury’s mind is what carries significance (Adler, 1987; Lees, 1996; McDonald, 1997; Taslitz, 1999).

Subsequent research has found sexual history evidence remains influential with juries and that defence lawyers find various ways to present it, despite legal requirements specifying that this practice requires special application and prior judicial approval (Mason, Riger & Foley, 2004; Temkin et al, 2018). An example from the UK research conducted by Temkin et al (2018) details how in a case of reported stranger rape, one where the complainant’s allegation was surprisingly observed by two independent witnesses, the defence counsel alleged the victim was lying and successfully obtained permission to cross-examine her in order to demonstrate she was a woman of bad character who had made previous rape allegations. However, in this case, despite the lengths the lawyer went in order to prove she was a liar, the defendant was convicted (Temkin et al, 2018).

Sexual reputation continues to impact how women are perceived and responded to within the criminal justice system. Despite rape shield laws typically requiring advance applications for such evidence to be made, in practice sexual history evidence continues to be routinely presented and remains a problem internationally. This is evident in England and Wales (Kelly, Temkin & Griffiths, 2006; Smith & Skinner, 2012; Temkin et al, 2018), Scotland (Campbell & Cowan, 2017), Ireland (Hanly, Scriver & Healy, 2009), Aotearoa New Zealand (McDonald & Tinsley, 2011; McDonald et al, 2020), and the United States (Horney, 2013). The fact that defence lawyers continue to find ways to slur a woman’s sexual past makes sense when we consider the mileage they know will be gained by doing so. As Olivia Smith (2018, p. 102) astutely observes:

It is perhaps unrealistic to expect that one piece of legislation would undo centuries of portraying women’s morality and credibility as linked to their sexual behaviour. It is also arguable that the adversarial imperative to win might justify the introduction of sexual history in some countries, because research suggests that juries are convinced by it.

In their study of UK rape trials, Kelly et al (2006), found that 90% of those with sexual history applications resulted in the defendant’s acquittal compared with 52% in which no such application was made. Analyses of rape trials demonstrate the on-going existence of a sexual double standard used

to discredit women's testimony on the basis of perceptions of their moral and reputational character. Smith's extensive study concluded that:

Sexual history evidence is one of the most contested elements of rape trials and has long been perceived as the canary in the criminal justice mine. If women are undermined by moral judgements or are assumed to have a 'propensity to consent' because they have consented to other acts at other times, the criminal justice system can no longer maintain its illusion of objectivity or gender equality.

(Smith, 2018, p. 119)

In identifying that "sexual history is embedded" (p. 120), Smith alerts us to what I argue in this book comes back to the socially embedded nature of patriarchy. Familiar tropes depicting women as inherently deceitful, and sexually active women as immoral, continue to be applied against women in ways that facilitate the acquittal of many men accused of rape. This biased approach is legitimated by arguments demanding the rights of the accused to a fair trial but, as has often been determined, in practice the scales of justice in rape cases are weighted against the rights of the victim (Kennedy, 2018; Temkin & Krahé, 2008; Smith, 2018). As various international commentators have observed, although questioning the complainant about her previous sexual history is now only admissible with the leave of the judge, inferences can be made and questions posed that, even if overturned, nevertheless raise doubts in the jury's mind regarding her sexual reputation or veracity (Farrell, 2017; Lees, 1996; Taslitz, 1999; Temkin, 2002).

Such matters are complicated further through their intersection with stereotypes associated with class, ethnicity, sexuality, and disability, resulting in some women facing additional barriers when seeking just outcomes. For example, rape victim/survivors from ethnic minority communities are less likely to report sexual violence to police and, when they do, to experience higher rates of attrition (Maier, 2008; Munro & Kelly, 2009). Similarly, in relation to class, women of lower socio-economic status are more likely to be presented and perceived in rape trials as promiscuous and blameworthy than their middle-class counterparts, combining with gender to limit their access to justice (Phipps, 2009; Spencer, 2016). The ways to cast aspersions on a woman's reputation emerge as many and varied, and within the context of rape culture serve to favour the interests of the accused over those of the victim.

Additional credibility concerns

The factors already discussed all contribute to the perceived credibility of rape allegations. A further stereotype of relevance here is the construction of women as emotional creatures lacking in reason and judgment in

ways that add to their overall lack of credibility (Smith, 2018). As noted in [Chapter 2](#), the binary thinking dominant within patriarchy has for centuries dismissed women as emotional and inferior in contrast to male rationality and superiority (Brescoll, 2016). These misogynistic assumptions have been nicely identified by Smith (2018, p. 130) as evident in three key themes emerging from rape trial analysis. The first of these depicted women as delusional and unable to understand their experience because they were “damaged goods,” an inference achieved by defence lawyers asking questions supposedly related to the women’s medical and counselling records or their histories of previous victimisation. This tactic enabled doubts to be established about the reliability of the victim’s recall and observations without the more overt hostility for which defence lawyers had previously been criticised. This trend has parallels with the “trauma creep” identified by Sandra Walklate (2016, p. 10), which enables recognition of past abuse and mental health impacts while simultaneously using these to undermine credibility. As she so clearly articulates, conflating victimisation with trauma risks pathologising all victims’ experiences in ways that render invisible the varied ways in which individuals manage and respond to violence. “Trauma creep can silence this capacity,” she says (p. 11), and it also “others” victims in ways that heighten the visibility of particular victims to result in theirs being the “‘victim’ voices” most listened to and likely heard.

The second theme Smith discerned follows from the first in suggesting that women’s deceitfulness results from the emotional vindictiveness they felt when rejected by the accused. In presenting the victim as a revenge-driven liar, Smith observed how two of the defence lawyers in the observed trials made explicit reference to the familiar quote from William Congreve alleging, “Heaven has no rage like love to hatred turned, nor hell a fury like a woman scorned” (p. 134). The third narrative referred to what Smith termed “capricious princesses” and was associated with portrayals of women as demanding and childlike. This depiction was used in ways that implied the woman concerned was too unlikeable to be considered a victim and failed to meet the criteria of the ideal victim (Christie, 1986).

Taken together, these three pervasive themes demonstrate the continuing salience of negative stereotypes concerning women’s credibility. Ironically, arguments made about female emotionality and proneness to delusional thinking themselves originate from men’s emotional fears and beliefs, telling us more about the masculine anxieties underlying patriarchal dominance than anything intrinsic about women.

Intersectional factors

While credibility issues predominate, not all women rape complainants have been equally perceived as dubious complainants, as an intersectional analysis reveals. Factors of class and ethnicity have been linked to

perceptions of credibility, with US research frequently demonstrating how African American women still struggle to be viewed as “legitimate victims of sexual victimization” (Tillman, Bryant-Davis, Smith & Marks, 2010, p. 60). Poverty and negative mental health effects combine with historical legacies of slavery, colonisation, and discrimination to make women of colour vulnerable to sexual violence yet more likely to be disbelieved than their white counterparts (Belknap, 2010; Tillman et al, 2010). This is evident in Aotearoa New Zealand where Māori women, and women from ethnic minority groups generally, may be less likely to report sexual victimisation to the police, or approach mainstream external agencies for assistance, despite high rates of sexual victimisation. A large study of intimate partner violence enabling analysis of ethnic-specific similarities and differences found Māori women had a significantly higher rate of lifetime prevalence of physical and/or sexual IPV than women of other ethnic origin, equating to a rate of more than 1 in 2 women compared with 1 in 3 for European/Other women (Fanslow & Robinson, 2011).

The country’s history of colonisation and the abuses experienced by Māori translate into Māori placing very low levels of confidence in the police as a traditionally monocultural institution (Te Whaiti & Roguski, 1998), as well as police distrust generally of Māori people (Maxwell & Smith, 1998). This contributes to even lower levels of reporting of sexual violence by Māori women, despite their high risks of victimisation. The impacts of colonisation extend to the very definitions of sexual violence applied by Government failing to reflect the ways in which such offending, from a Māori perspective, is perpetrated against the collective as well as the individual and must also be responded to and healed within both contexts (Pihama, Te Nana, Cameron, Smith, Reid & Southey, 2016).

Women from other minority ethnic and migrant communities in Aotearoa New Zealand also hesitate to disclose sexual violence and/or report it to police. Their reticence has been linked to the “double silencing” arising from their fears of being stigmatised *within* their own communities as well as their fears of bringing shame *to* their communities, resulting in a “network of silence around sex, sexuality and sexual violence” that contributes to high rates of under-reporting and fears of not being believed (Rahmanipour, Kumar & Simon-Kumar, 2019, p. 847).

On a wider scale, reputational concerns continue to hold significance in relation to the shame associated historically with rape, and still manifest in different contexts. Notions of women who are raped being viewed as defiled or “damaged goods” can form barriers to disclosure, along with fears of being blamed and shamed by others (Feiring & Taska, 2005). In some cultural contexts, perceptions of women’s modesty and purity are linked to family reputation and honour in ways that render rape shameful not only to the victim but her entire family (Weiss, 2010). For example, in traditional Muslim cultures within countries such as Afghanistan and Pakistan, women who are raped can face the risk of being killed in an attempt to

restore family honour (Jafri, 2008). The inequalities and double standards emanating from our patriarchal legacy link rape and reputation in multiple ways that can compound the harms experienced by women.

Age can also affect perceptions of credibility. For example, a recent study with US detectives found they overwhelmingly viewed young females as the most likely to lie about sexual assault, framing teenagers as “self-serving false reporters” (O’Neal & Hayes, 2020). “Red flags” signalling a perceived lack of victim credibility have also been identified in relation to victims viewed as having problematic reputational backgrounds and/or mental health issues/history (Jordan, 2004a). McMillan’s (2018) interview-based study with UK detectives noted frequent references to what officers believed were false allegations by complainants with mental health problems or histories. Few acknowledged the increased risks of being raped faced by these women, many of whom had previously experienced extensive victimisation, although this comment by one officer offers some hope that greater awareness of such links is developing:

“Now there are people who are uniquely vulnerable because of various factors and we have one ongoing case, a woman I’ve had and I think she’s reported 11 rapes now over her adult life and [sighs] obviously there’s enormous scepticism about them. I don’t know – because nobody does, and she’s also got mental health problems, but I think that if anybody is going to be raped 11 times it’s probably her, she forms relationships with dangerous lunatic men who she invites back to her house at the drop of a hat and then starts living with them and she’s enormously vulnerable so”

(Senior Detective, male) (Quoted in McMillan, 2018, p. 17)

Research findings substantiate that many women experience repeat sexual victimisation (Walklate & Clay-Warner, 2017), yet repeated complaints to police about such incidents tend to be viewed with suspicion (Kelly, 2010; Stanko & Williams, 2009). This reflects the prejudicial thinking identified in earlier studies (e.g. Jordan, 2004) highlighting the barriers faced by repeat victims in having their accounts believed and investigated. Such an outcome has also been identified in relation to women with intellectual impairment, prompting the observation that the lack of police preparedness to investigate effectively equates to rape being decriminalised for these women (Stanko, in Newman, 2014), a conclusion welcomed by the offenders who target them.

Greater understanding of the realities associated with rape allegations traditionally perceived as false may be emerging in some jurisdictions within certain areas of the world, but the tenacity of rape myths within rape cultures suggests many genuine victims of sexual violence still face high risks of being disbelieved should they decide to report rape. While police cultures

continue to reflect and reproduce the gender inequalities pervasive within the wider society, and manifest also within their own organisations, rape victims' struggles to have their voices heard and believed will continue. The emphasis by police and the courts on issues of women's credibility and reputation has historically served men's interests and upheld notions of male sexual entitlement. This has been particularly evident within the context of marital rape, where criminal justice system responses have often blatantly reinforced assumptions regarding male "ownership" and prerogatives, as the next section explores.

Silencing wives

The historical acceptance of violence as normative within heterosexual relationships emerges as a significant factor complicating judicial and court perceptions (Anderson, 2010; Jackson, 2006; Kelly, 1988; Stanko, 1985; Walklate, 2008). Intimate partner abuse has been viewed more as a private matter within the home than as a crime and violation of rights, resulting in what effectively amounts to a toleration of controlling and abusive behaviours (Bergen, 2004; Spohn & Tellis, 2012). The expectation that at least some degree of coercion is a marital norm prompted commentators to view our laws as granting men "a licence to rape" (Easteal, 1998, p. 107; Stuart, 1993, p. 97). This view has sometimes been overtly expressed in various judicial pronouncements. For example, in 1992 a South Australian judge asserted:

There is, of course, nothing wrong with a husband faced with his wife's initial refusal to engage in intercourse, in attempting, in an acceptable way, to persuade her to change her mind, and that may involve a measure of rougher than usual handling. It may be, in the end, that handling and persuasion will persuade the wife to agree. Sometimes it is a fine line between not agreeing, then changing of the mind, and consenting.

(Justice Bollen, quoted in Easteal, 1998, p. 115) [My emphasis]

In their review of studies on marital rape, Bennice and Resick (2003, p. 233) asserted:

Taken together, the cultural beliefs that men have an overpowering need for sex and forced sex in marriage is due to the withholding of sex by wives again minimizes the effects of such a traumatic experience and places blame on the victims of marital rape.

The shame, blame, and stigma of rape can be linked to marriage in other ways, such as when the rapist offers to marry the woman he raped. Studies

of rape in India (Basu, 2011) and Taiwan (Luo, 2000) have identified how a cultural emphasis on virginity can be used to pressure women into agreeing to such marriages in the aftermath of their “ruination” by rape. Basu gives the example of a 2005 case in which a hospital worker raped a nurse, gouged out one eye and severely injured the other, locked her up and left her for dead, then made the gallant offer of marrying her in a post-conviction application submitted prior to his sentencing. While ultimately rejected by the court, as well as by the victim and feminist groups who condemned the judge for even accepting this application, it is salutary that the offender considered his offer of turning rape into marriage a legitimate prospect. Examples exist of men in Western nations also hoping that offering to marry the woman they have abused might earn them forgiveness for harms perpetrated (Ferraro, 2006).

Today several decades have passed since the criminalisation of rape in marriage across many jurisdictions. In some ways there is greater recognition now that all women, irrespective of their marital status, should have sexual autonomy and the right to say “no.” However, the likelihood of women being able to successfully prosecute sexually coercive partners and husbands remains difficult to achieve (Spohn & Tellis, 2012). Refuge workers supporting women trying to leave violent relationships have observed that the hardest form of violence for the women to disclose is sexual violence, despite their observing that almost every woman coming to their attention will have been raped within an intimate partner violence context (Jordan, 2019, p. 78).

Support worker 1: *We have women that come through our service who talk about quite serious sexual violence, and don't identify it as sexual violence. They simply don't.*

Support worker 2: *It's just part of being a woman, in their eyes.*

Support worker 1: *And part of being in that relationship.*

It helps in understanding why under-reporting is common when so few recognise their experiences as constituting sexual violence:

“I would say there's a lot of minimisation with the clients that I see, that will say, “No, no, no,” and then when you dig a bit deeper there will definitely be some things that are sexually abusive and coercion and that sort of stuff, but they'll be, “No, I've never been sexually abused or sexually assaulted,” in the context of the relationship.”

(Support agency)

Issues of shame can be salient also with intimate partner rape experienced as particularly humiliating for victims. The shame of the violation combines with the shame of being in a relationship with a man who would do such a

thing to them (Weiss, 2010). In her exploration of rape shame, Karen Weiss included the following two incidents:

Respondent's boyfriend who is the father to her child, raped her in a hotel room even after he said he wouldn't. She was giving him visitation rights. He pinned her down on the ground and spread her out. *Police weren't called because she was so humiliated.*

(29-year-old woman)

While sleeping after midnight, respondent's separated spouse physically forced himself on her and forced her to engage in intercourse. He was a guest in the house, visiting at the time of the incident. He used force during the rape and choked and "manhandled" her. She struggled to get away but could not. *Not reported to police "because I was embarrassed."* (37-year-old woman)

(Weiss, 2010, p. 297. Emphasis in original)

Even in situations where marital/partner rape has been disclosed, workers in agencies supporting survivors noted that it was difficult to have cases accepted for prosecution if they lacked evidence of accompanying physical violence (Jordan, 2019). Twenty years into the 21st century, the bottom line still seems to be that various degrees of sexual coercion remain widely accepted within sectors of both society and the justice system. The latest manifestation of this appears to be the growing use of "she wanted rough sex" as a defence in some cases involving violence against women. All of these factors contribute to one of the most concerning, and long-lasting, factors associated with rape and sexual assault cases—the attrition rate.

Attrition in sexual violence cases

The impacts of rape myth adherence, in tandem with the influence of historically masculinist perspectives, have contributed to the extremely high attrition rate for rape and sexual assault offences. This was apparent from the early days of feminist criticism, when police departments had to respond to increasing concern over the extremely low reporting rates for rape and other sexual assault offences (Chambers & Millar, 1983; Gregory & Lees, 1999; Nixon, 1992). As awareness of sexual violence grew and the issue received more media attention, concerns were raised about increased numbers of victims reporting rape then finding their case essentially went nowhere. Attention was initially focused on police because of the gatekeeper role they play, with various cases publicised internationally for the lack of empathic responsiveness given to victims.

One of the 21st century policing scandals in the UK arose in London where black cab driver, John Worboys, committed a large number of serious sexual offences against female passengers travelling alone (IPCC, 2010).

He typically manipulated these women into sharing a drink with him to celebrate his good fortune at a casino or a lottery win, often pre-mixing it with drugs to render the passenger unconscious before assaulting them. Afterwards the women were unsure what had happened, and most said nothing. However, after 12 women reported and police launched a media appeal, 81 offences were identified. Worboys was charged with approximately a quarter of these, convicted, and in April 2009 sentenced to an indeterminate sentence. Two women made formal complaints against the officers who had investigated their allegations and these, combined with the findings of an internal review by the Metropolitan Police Service (MPS), led to the Independent Police Complaints Commission (IPCC) investigating police responses to allegations made against Worboys and also another serial sex attacker, Kirk Reid. Among concerns raised were poor compliance by officers with Standard Operating Procedures, with these often resulting in significant investigative opportunities being overlooked or missed, such as failing to search Worboys' home or cab. Assumptions were made regarding both the credibility of the victim and the accused, as evident in a detective constable's first entry following one woman's allegation, quoted here and followed by the IPCC Commissioner's response:

“The victim cannot remember anything past getting in the cab, it would seem unlikely that a cab driver would have alcohol in his vehicle let alone drug substances.”

This appears to be indicative of a mindset that had already been formed – that a black cab driver would not commit such an offence. This mindset would have meant that the cab driver, rather than the victim, had been believed, and would inevitably have damaged the victim's confidence in the police handling of her allegation.

(IPCC, 2010, p. 10)

The Commissioner noted many women who eventually came forward had not approached police earlier from a fear of not being believed, and concluded:

The overwhelming themes in these cases are of an actual or perceived sceptical or insensitive police response to victims of sexual violence, investigations that lack rigour and during which the victims feel they are not being kept informed.

(p. 15)

Recommendations included i) ensuring clear information was available online and in leaflet form setting out what victims could expect from police on reporting and signposting community support services available; ii) providing regular case updates and support while the case is ongoing; iii) sharing information, in appropriate cases, with local agencies to promote public

safety; and iv) working more closely with voluntary agencies and support organisations, including providing the latter with information specifying police standard operating procedures.

While cases such as this drew attention to police responses initially, other failures of the system became apparent with growing awareness of barriers to justice at later stages. Empirical research in the UK and elsewhere has consistently found evidence of what is termed the “justice gap” between reported rapes and offenders arrested/convicted (Brown, 2011; Lonsway & Archambault, 2012; Temkin & Krahé, 2008), a gap so wide that others have likened it more correctly as a “chasm” (Kelly et al, 2005). The conviction rate in the UK has been found, at 7%, to be among the lowest in Europe (Home Office and Ministry of Justice data, 2013, in Hohl & Stanko, 2015), while a US study similarly found only 7.8% of all sexual assaults reported to the Los Angeles Police Department resulted in a criminal conviction (Spohn & Tellis, 2014). Statistics such as these have prompted some commentators to argue that such low chances of offender conviction mean rape has effectively been “decriminalised” (Gregory & Lees, 1999, p. 91).

Growing recognition of the size of the attrition problem has led to numerous commissioned reviews and reports being conducted to investigate it (Angiolini, 2015; Feist, Ashe & Lawrence, 2007; HM Government, 2011; Stern, 2010). While countless such review exercises have been conducted in the UK, the positive benefits deriving from these have been questioned in terms of their efficacy in reducing attrition rates (Brown, 2011; Cook, 2011; Jordan, 2011a). These have helped to improve how victims are responded to and increased their satisfaction with police performance but, while also expected to contribute towards increased conviction rates, have failed to do so (Hohl & Stanko, 2015). Hohl & Stanko present UK Home Office and Ministry of Justice data from 2013 showing the changes that *have* occurred over time: the proportion of complaints resulting in a conviction reduced from 24% in 1985 to 12% in 1995, and since 2000 has remained in the vicinity of 7% (Hohl & Stanko, 2015). Their assessment: “Attrition is still high, and getting worse, at every stage of the criminal justice process” (Hohl & Stanko, 2015, p. 3).

Since Hohl and Stanko’s study, concern has grown even further over rape prosecution and conviction rates in England and Wales. When Dame Vera Baird QC released her first annual report after taking up the role of Victims’ Commissioner, she labelled the decline in rape prosecutions “catastrophic,” noting that: “In effect, what we are witnessing is the decriminalisation of rape. In doing so, we are failing to give justice to thousands of complainants” (in Siddique, 2020). Criticism was made of Crown Prosecution Services advice to police suggesting they refrain from prosecuting cases deemed “weak” in order to boost the conviction rate. More recently, following a series of investigations, *The Guardian* concluded: “Today a victim is less likely to see their attacker prosecuted than they were a decade ago. Rape prosecutions in England and Wales have plummeted to the lowest levels on record” (Barr & Topping, 2021).

Studies of attrition frequently show that a large proportion occurs early in the reporting process when complainants withdraw their allegation (Harris & Grace, 1999; Hester, 2013; Kelly et al, 2005; Jordan, 2004; Jordan & Mossman, 2019; Lovett & Kelly, 2009). The frequency with which this occurs has often been linked to complainants feeling disbelieved, judged, or blamed by police, resulting in decisions to withdraw or retract allegations (Jordan, 2001, 2004; Taylor, Muldoon, Norma & Bradley, 2012).

In an Aotearoa New Zealand study analysing rape cases reported in 2015, the most significant factor associated with cases not progressing to further police investigation arose from victims withdrawing their allegation or deciding after initial police contact to make no formal complaint (Jordan & Mossman, 2019). While victim withdrawal was often assumed to amount to a retraction, and interpreted by police as evidence of fabrication (Aiken, Burgess & Hazelwood, 1999), this study identified a diverse range of explanations could be involved. These included wanting to avoid extra stress; feeling ambivalent/reluctant about involving police; wanting to move on and forget what happened; fears of the perpetrator; and trepidation about court proceedings (Jordan & Mossman, 2019). One example of a case where the victim withdrew through fear of retribution involved at least eight rapes perpetrated by a male relative while the victim's partner was away from home. She felt fearful of both men; the detective's file notes explaining:

“She is concerned about what [her partner's] response will be should she make a complaint and she is concerned about [perpetrator's] response should she make a complaint. She considers [perpetrator] to be dangerous and he has sent her a text message that she takes to be a threat to her should she say anything.”

(Jordan & Mossman, 2019, p. 45)

Despite police support to continue, she withdrew the allegations.

A second major pathway to attrition occurs when police decide to discontinue the investigation and “no crime” the incident (UK), “unfound” it (USA), or determine it “no offence” (NZ). Police departments were often criticised in the past for over-reliance on this category, with Hohl and Stanko (2015) noting that the average no-criming rate for rape complaints in England and Wales was 12% in 2012/13, six times higher than for other victim-based crimes. A major problem associated with the overuse of this category was the misleading impression it gave that there had actually been no offence, inferring that these were false complaints (Jordan, 2004; McMillan & Thomas, 2009). Often it appeared police officers themselves varied in their usage of it, some restricting it to false complaints while others used it as a catch-all, as evidenced in this comment from an Aotearoa New Zealand detective: “I would have suspected that ‘no offence disclosed’ grouped together a whole lot of things – false complaints, no offence, ‘it happened – no evidence’ and ‘I don't know what happened’”(quoted in

Jordan, 2004, pp. 171–172). While some police departments, including in Aotearoa New Zealand, have actively sought to restrict use of this category to only cases of intentional fabrication, recent research has indicated it is still prone to inappropriate usage (Jordan & Mossman, 2019). This does not simply have coding implications since if a complainant’s history reveals a prior rape complaint was filed as “no offence,” this can be interpreted as signifying that she is a repeat false complainer. Research evidence has shown that if police records indicate women have made previous rape allegations, this factor counts against their chances of being believed and having the more recent case fully investigated (Jordan, 2004). These fly in the face of studies showing the risks of repeat victimisation are high, supporting notions of particular individuals or groups of women being targeted by offenders adept at detecting vulnerabilities.

What determines complainant credibility?

Given that small numbers of cases do successfully proceed what, then, influences police in determining complainant credibility? In the Aotearoa New Zealand study, the most common factor affecting the likelihood of case progression to an offender’s arrest was evidence of victim resistance (Jordan & Mossman, 2019). Where serious levels of physical force and violence were apparent, multiple charges were often laid with pleas bargaining sometimes occurring around the sexual violence charges. The factors associated with those cases which were less likely to proceed to prosecution were victim-related, and as well as involving those where the allegation was withdrawn also commonly included cases assessed by police as based on the complainant’s unreliable testimony. In particular, these involved police doubts generated by perceived inconsistencies in the victim’s statement. There was a similarity between these patterns of decision-making with those in Hohl and Stanko’s UK study:

Our findings suggest that one of the most influential factors is the perceived credibility of the allegation in light of the evidence as seen through the eyes of the investigating police officer and prosecutor.

(Hohl & Stanko, 2015, p. 337)

Hohl and Stanko’s analysis of police rape files revealed that in only 2% of cases where police expressed doubts about a particular rape allegation did they proceed to charging an offender. No cases proceeded to charging if there were perceived inconsistencies in a complainant’s account or they had made a previous allegation deemed false by police. The existence of any independent evidence raising doubts about an allegation was sufficient to halt progression; conversely, however, independent evidence supporting an allegation did not protect it from attrition. Subsequent research conducted by Dhami, Lundrigan and Thomas (2020) found that officers identified

consistency of the victim's account as a factor holding particular importance in investigative decision-making. The high significance attached to inconsistencies in a victim's account may be to some degree understandable, given that her version of events will likely be the main evidence available. It may be unrealistic, however, to expect complainants to provide full accounts to the level of detail police require in the aftermath of rape (McMillan & Thomas, 2009). Moreover, understanding is growing within psychology of how inconsistencies are a normal feature of human memory (Hohl & Conway, 2017) and should not be used as indicators of truthfulness. Furthermore, research on trauma impacts suggests such experiences will almost inevitably produce memory flaws and distortions, so fully coherent and unwavering accounts will be the exception rather than the rule (Coffey, 1998; Franklin, Garza, Goodson & Bouffard, 2020; Rich, 2019). This understanding needs to be incorporated into police sexual assault investigator training in order to reduce the current over-emphasis placed on victim consistency as an indicator of case credibility.

As [Chapter 2](#) illustrated, rape laws emerged directly from patriarchal notions of women's inferiority to, and ownership by, men. The historical privileging of men and the male voice resulted in legal systems designed to reflect men's perspectives and advance their interests. Carol Smart described in the 1980s how the law emphasises male-dominated ideals, valuing rationality and reasonableness in ways that infer a male "normality" that women inevitably lack (Smart, 1989). The binary divisions of characterising patriarchy were incorporated into law through the dualities of truth vs. falsehood, and reason vs. emotion, mapped as we saw in ways that linked men to truth and reason and women to falsehood and emotion (Smart, 1989). The hierarchical dimension is evident in the differential prioritising of male-associated characteristics over female ones, a pattern affecting justice system interpretations of victim behaviour and testimony.

This male bias continues to pervade the justice system, contributing to the high attrition rates in rape cases that mean most victims never see their attacker prosecuted or convicted while the majority of men who rape are never charged (Kelly et al, 2005; Temkin & Krahé, 2008; Walklate, 2008). Despite the reforms and improvements made in case management and victim care, high attrition rates have persisted (Horvath et al, 2011). As Holly Johnson observed in the Canadian context:

Law reform has not lived up to the promise of improving the reporting or conviction rate, and survivors' confidence in the justice system is not likely to improve until they can be sure of a fair, unbiased, and professional response from police, prosecutors, defence counsel, and judges.

(Johnson, 2017, pp. 43–44)

The question of rape ostensibly revolves in law around questions of consent, but proving a lack of consent is often difficult given the complex contexts

within which sexual violence is perpetrated. No single factor determines police scepticism. Police investigative processes and the organisational culture play key roles, and impact on how victims disclose, but these in turn reflect the patriarchal rape culture that shaped their institutional development as well as their framing of sexual violence as a crime. While some of the ways in which victim-survivors feel silenced have already been identified, concerns have also been raised at times over victims being treated as evidential objects, and this is singled out for examination in the next section. In reality, however, it is often difficult to disentangle objectifying and silencing processes since these are typically connected in mutually reinforcing ways.

Objectification

Awareness of their objectification begins for many women experiencing sexual violence from the moment they first realise they are being used as a pawn for another's dominance and pleasure. For example, many of the women attacked by Malcolm Rewa recounted how his first words to them were "Shut up!" (Jordan, 2008). If they tried to speak, he told them again—and tied a gag over their mouths. His ability to achieve his intent depended on their silence, on their being reduced to objects he could control and manipulate.

Beliefs in sexual entitlement erase empathy, enabling offending; for victims to receive an empathic and validating response enables disclosure. A major challenge facing any large organisation is how to deliver services to its client group in empowering and empathic ways. Currently victim/survivors' experiences within justice systems can reflect a sense of disconnection from the processes involved. Many have spoken of feeling as if they have little or no control once they enter the system, and that their subjectivities vanish the more they are perceived as objects or items from whom "truth" must be extracted. This dynamic is explored below within both police and trial contexts.

Police practices

As the silence around rape was increasingly broken from the 1970s onwards, so also was the silence around how police treated rape victims. Traditionally police had been defined primarily as an offender-oriented law enforcement and crime-fighting agency, with police training focused on preparing officers for offender apprehension and suspect interrogation (Bayley, 2002; Fielding, 1994). Criminal investigators were taught the importance of establishing as quickly as possible the "facts" of a case, with officers trained in interrogation-style techniques designed to elicit the "truth" (Alderden & Ullman, 2012; Kassin, Drizin, Grisso, Gudjonsson, Leo & Redlich, 2010). When the impact of the second-wave women's movement resulted in more rapes being reported, not surprisingly victims often described police interviewing as hostile and revictimising (Jordan, 2004a;

Maier, 2008; Weis & Borges, 1973). Women recounted feeling unseen and unheard, appraised primarily for the evidence they could provide to assist with offender apprehension.

How police officers fit rape victims into their schema affects both their own judgments as well as victims' experiences of investigative processes. Writing within the Australian context, Christine Nixon noted:

There has always been a contradiction between how police construct their role as protectors generally and how they deal with victims of rape....police attitudes have often reflected stereotypes that allowed them to dismiss a complaint of rape as being provoked and therefore deserved, or never having happened anyway.

(Nixon, 1992, p. 38)

Among the first criminal justice researchers to focus on how rape complaints were framed and conceptualised were Martin and Powell (1994) whose large organisational study in Florida identified a range of ways "frames" affected police responses. These included viewing victims primarily as a source of evidence, anticipating the responses of other criminal justice actors, and conventions prescribing officers maintain a neutral, unemotional attitude lacking obvious empathy (Martin & Powell, 1994). This can be interpreted as encouraging officers to adopt a detached and objective stance that treats victims of rape as objects for assessment evaluation, leading to some victims feeling like little more than evidence receptacles (Jordan, 2013).

More recently, this emphasis has shifted in many jurisdictions with recognition growing of the importance of detectives establishing good rapport with victims (Spohn & Tellis, 2014). Not only is it more humane to treat victims well, but it is also the most conducive approach towards achieving positive case resolution (Westera, Kebbell & Milne, 2016). Such an approach reflects advice given by a detective as early as 1991 but not widely adopted for many years. He urged officers to view the victim as their "best evidence" who needs to be looked after with as much care as that given to gathering and preserving DNA and any other forensic evidence (Wells, 1991). This emphasis, however, can also reinforce that the victim exists as an instrument from which information must be extracted, maintaining a view of her utility in identifying and prosecuting the offender. This preserves the crime-fighting imperative within policing that sees "real policing" as being about catching crooks, with victims appraised in terms of their likely contribution to such an outcome. When the majority of rapes involve already known offenders, the emphasis shifts to asking how genuine a victim is she and the quest for evidence shifts accordingly. What evidence exists to support her allegation? Or, if doubting her word, what exists to refute it? She becomes the crime scene that must be objectively examined and dissected so the real job of catching offenders can be achieved.

Victims have described in a range of ways the sense of objectification experienced when reporting rape. For some it became apparent in the loss of control they immediately felt. As one woman expressed it:

“I remember feeling it flowed, like I was in the system now and a little out of control.... Now we’re going to do this, now we’ll take you here, now we’ll take you there, so you feel as though you’re a piece of flotsam on a river that has its own momentum and you’re just going along with it. It was like a perpetuation of everything that had happened.”

(Jordan, 1998, p. 53)

Others also have described how they felt none of their subjectivities mattered, how they were not recognised as having any sense of agency once they reported—the police controlled everything.

“You feel very much, as a victim, that you’re just a cog in the system, that you don’t really have a voice.”

(Jordan, 1998, p. 53)

A woman attacked by a serial rapist felt very supported by police until an officer rang one day and referred to her as “number 67?” This immediately thrust her into feeling unimportant and unseen, paralleling the way she felt the offender had treated her as an object during the rape (Jordan, 2008). Some women interviewed in an earlier study felt the most objectified by the doctor conducting the forensic medical examination, an invasive procedure with the potential to revictimise. Comments made about this procedure included:

“He treated me like a slab of meat. He didn’t care at all - I was just an object.”

“It would have been nice to have been called by name. They never called me anything, just said, ‘This is what we’re going to do.’ They could talk to you, ask about your children, anything, instead of just saying, ‘I’m going to put the speculum in now.’”

(Jordan, 1998, p. 71)

A recent study conducted by Aotearoa New Zealand’s Ministry of Justice included interviews with 39 victims of sexual violence whose cases had gone through both police and court processes, meaning these are not representative of all cases reported to the police. While most commented positively regarding their experiences with police, in a minority of occasions complainants described their treatment in ways similar to the study from 20 years previously. For example, one woman described her experience of the complaint process as follows: “They handled it as if they were taking a school lunch order or something” (Gravitas, 2018, p. 30). Victims also found

the delays that followed their reporting of the incident difficult, with one describing her experience as follows:

“I was told that there was an ongoing homicide investigation that was taking priority over my case and that I would have to wait some more before they could go ahead and approach [offender] for an interview. Five months in and they still hadn’t spoken to [offender]. I was just utterly flabbergasted by the process. I was starting to realise that the process is not what I thought it was. It’s not like you go and tell the Police something has happened then someone gets arrested and put in jail.”

(Gravitas, 2018, p. 50)

One of the positive comments made by another victim captured well what victim/survivors are often looking for in terms of police response:

“[The Police] were brilliant. [Police detective] was fantastic. He was kind, didn’t treat me like I was guilty, didn’t treat me like I was making it up. He knew how to talk to me. He was professional the whole way through. He had had a lot of training and it showed.”

(Gravitas, 2018, p. 29)

A further way in which victims of sexual violence can experience objectification lies in reliance on stereotypical assumptions made regarding how victimisation is manifest. Notions of a particular kind of victim-object can mask the multiplicity of ways in which victims might act and appear post-rape, potentially confounding attempts to determine genuineness (Franklin et al, 2020; Haskell & Randall, 2019). This can include a failure to recognise the diverse ways women might respond and the misinterpretation of trauma impacts, discussed further later.

Additionally, inferences drawn regarding victim frailty and vulnerability can affect decisions police and prosecutors make regarding how convincing they imagine a victim might be on the stand (Stanko & Williams, 2009). Those identified in some studies as most likely to be disadvantaged are women attributed as having mental health issues: they are three times less likely to have their allegations classified as a crime of rape and have reduced odds of reaching a conviction at the subsequent two stages of the criminal justice decision-making process (Stanko & Williams, 2009). Thus, even when police determine a complaint to be genuine, decisions regarding prosecution are strongly influenced by predictions concerning how much ammunition exists that would enable defence lawyers to crush the woman on the stand. While on one level it makes sense to put before the courts only those cases considered “winnable,” in a system characterised by extreme attrition such filtering removes many women’s access to the possibilities of justice.

Court and trial processes

Many women whose cases progress to court experience trials within adversarial justice systems as dehumanising processes. This begins from the moment they realise how little recognition is given to victims, whose role within the court is equated to that of any other witness. As an interview-based study found, “For those who sought redress in the criminal justice system, the single greatest shock was the discovery of just how little they mattered” (Herman, 2005, p. 581).

As well as victims, some justice practitioners recognised the inadequacies long ago, with one New Zealand judge strongly condemning the adversarial justice system as appropriate for victims of rape as early as 1994 (Thomas, 1994). Women waiting for rape trials are typically fearful and anxious to have these proceed as soon as possible. One of the hardest aspects for many is managing the constant delays and the complete lack of control they feel they have over the process. Their “case” can be moved round seemingly at whim, with one woman in an Aotearoa New Zealand study referring to the “huge emotional and mental rollercoasters” (Gravitas, 2018, p. 53) she experienced during the three years before her day in court finally came. Another spoke of her relief at finally being en route to court when the detective rang to say the judge had called in sick that day, and it took six months before it eventually happened (Gravitas, 2018). Such delays can, unintentionally, convey to victims a sense of how little they matter and how much they are pawns in a system organised around institutional imperatives and reflecting men’s predominance throughout our legal history. As noted as early as 1978:

Few realize the impersonal, dehumanizing impact of the legal machine, or that the “game of the law” has very little to do with “justice”. For the rape victim, these revelations occur at a time when she is psychologically least prepared.

(Cooper & Weinberg, 1978, p. 173)

The court system is primarily oriented around the needs of judges and legal counsel, with provisions made for managing defendants. Victims’ needs, however, have historically not been prioritised. Within adversarial courtrooms, men’s perspectives traditionally determined not only the laws but the layout of the court and the practices adopted. It is only recently that challenges to the system have resulted in greater consideration being given to how these might impact on victims. For example, traditionally the victim was required to appear in person before the court and within sight of the defendant, with no awareness given of how difficult many genuine victims would find this requirement. It, in effect, could serve as a silencing mechanism that prevented some from agreeing to go to trial while muzzling many who did. The fear of having to confront the man who raped them in court should not be under-estimated—neither should women’s bravery in doing this.

In my own research involving the 15 women attacked by the same serial rapist, court staff offered to screen the offender from view but interestingly none of the women wanted this option (Jordan, 2008). Their reasons varied, although in ways that could be linked back to objectification. Some wanted their attacker to see them in a different light from when he had last confronted them—they wanted him to see them as discrete individuals rather than as anonymous objects there for his sexual use. Others wanted to see him as he actually was—this helped to make him an individual and countered their risks of objectifying all men, or all Māori men, as rapists.

A concern voiced by several women in a recent Aotearoa New Zealand study was how uncomfortable they found the court situation when there were no separate facilities to help them avoid contact with the offender. One victim was afraid the offender's family would follow her into the bathroom, and another described:

“I ended up in the lift with the accused and his lawyer on the first day of the trial – which was definitely not cool. That should never have happened – for the accused's protection as well. If I was really pent up, I could have easily socked him one.”

(Gravitas, 2018, p. 75)

Many studies based on victim interviews have found the trial process itself replicates for victims all of the powerlessness experienced in the sexual violence (Gregory & Lees, 1999; Herman, 2005; Kingi & Jordan, 2009; McDonald et al, 2020). Said one Aotearoa New Zealand victim: “[It] felt like being thrown into the lion's den, like the Coliseum, like everyone was staring at you. It made you feel like you're the offender in some way” (Gravitas, 2018, p. 69).

The process of being cross-examined in court has been uniformly described by complainants as harsh and gruelling (Adler, 1987; Brown et al, 2007; Kennedy, 1992, 2018; Lees, 1997; McDonald et al, 2020; Scutt, 1998; Smith, 2018; Taslitz, 1999; Thomas, 1994). The questions put to women have been designed to provoke, shame, and compromise their integrity. The victims in the Aotearoa New Zealand study referred to above were virtually unanimous in describing cross-examination as the most traumatic part of the whole process. One called it “pure evil” (Gravitas, 2018, p. 80), another said the defence lawyer was “just trying to demonise me” (p. 80), and a third said she felt reduced to “a piece of dirt, like scum” (p. 79).

In a major Australian study that tracked 150 sexual assault cases progressing through the New South Wales courts in a one year period, the researcher observed how difficult the complainants found being asked repeated questions in court regarding the sex/rape act and sexual organs (van de Zandt, 1998). Complainants were asked on average 16 such questions, with one woman with a psychiatric disability asked 81 such sexual questions during her court case. The way in which such questions forced women to talk

about their bodies in sexualised ways prompted the study's author, Pia van de Zandt, to condemn, as noted in [Chapter 1](#), the “ritualised degradation” (1998, p. 125) characterising rape trials.

Some commentators maintain that rape trials function in ways akin to pornography (Henning & Bronitt, 1998; Lees, 1997; Smart, 1989), while others have drawn parallels with witch trials that provided pornographic “thrills” for repressed monks (Daly, 1979).

The harsh and unyielding cross-examination of the complainant appears intent on identifying the real villain in the trial, the whore, harridan, temptress, or any other mythical depiction that protects men from allegations of sexual assault. English academic and researcher, Sue Lees, described this process well:

The myth of equal justice for all is no more blatantly exposed than in a rape trial. The whole procedure loads the dice against her. Not only her testimony, but her very life up to her complaint of rape and her motives in making that complaint are brought into question, and often aggressively or mockingly so.... It is a consolidation of heterosexual privilege; the privilege of men to decide when a woman says ‘yes’; the right of men to have sex when, how and when (sic) they want; the right of men to control female sexuality and prevent female autonomy.

(Lees, 1997, pp. 61–62; 88)

Such censure has not been confined to defence lawyers, however. A criticism made of the prosecutors by three interviewees in an Aotearoa New Zealand victims' study concerned the clinical way in which they were treated. One victim/survivor said she felt like “just another number” while a second also referred to feeling like an object, saying: “I just felt like he treated me like oh not even really a person. Just somebody that had like a case kind of thing” (Kingi & Jordan, 2009, p. 94). Another observed how lacking in warmth the prosecutor who spoke to her was, commenting: “he just went for the facts.” It is not surprising that the few rape victims who end up participating in court processes typically experience these as alienating and often traumatic.

Conclusion

This chapter explored some of the major barriers to justice encountered by women reporting rape. It demonstrated how the patriarchal legacy has been manifest in the formulation of rape laws and their enactment, affecting police and court responses in ways that have contributed to the staggeringly high attrition rates still evident. Most women experiencing sexual violence still decide not to report it to the police, so the system is entrusted with few of the actual incidents perpetrated. Victim/survivors approaching the police have historically been required to prove their innocence and credibility before

investigations proceeded, including overcoming dominant rape myths such as “she asked for it” and “she’s lying.” In the very few instances where prosecution results, similar myths influenced trial and judicial processes, and made the possibility of conviction remote.

Identifying the many ways in which the scales of justice are skewed against victims should come as no surprise. Systems ostensibly designed to adjudicate issues of justice emerged within socio-political contexts defined by gender inequality. The dominance of men and male thinking within these environments ensured the development of a system that purported to be a neutral arbiter of the facts when in reality it was built upon biased and gendered premises, inconsistent and contradictory as some of these might be. Men could be portrayed as sexual “monsters” but were more likely to be viewed as helpless creatures at the mercy of their libidos. Women, on the other hand, were depicted as sexed bodies both vulnerable to men’s uncontrollable urges as well as exploitative of them. Such ambivalence contributed to complex and opposing stereotypes depicting women as dangerous victims, preyed upon yet also inviting of their own victimisation. Accordingly, rape trials were more concerned with issues of victim reputation and credibility than whether the woman had been sexually violated, enabling most male perpetrators to avoid accountability and escape conviction.

Feminist criticisms from the 1970s onwards challenged rape laws themselves as well as their enforcement within the justice system, prompting extensive research documenting women’s experiences and bringing pressure to bear on the state to undertake reviews and enact reforms. These have resulted in significant developments within both policing and court processes, aimed ostensibly at making the system more victim-centred. The next chapter reviews key measures adopted in response to growing awareness of the rape conundrum.

* * *

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* * *

4 Riding the review-go-round

In 2008 Marie, a young woman from an abusive background, alerts police after a sexual predator subjects her to a bizarre and invasive attack that she was forced to endure for over four hours. Her history, combined with minor inconsistencies in her account, leads the two male interviewing detectives to conclude she was lying. Their repeated accusations against her result in Marie deciding it is futile to continue. She retracts her story and is then formally charged with making a false complaint. The impacts on her life arising from their decision are profoundly damaging and difficult to disentangle from the effects of the rape itself. Her life unravels further as a result.

Marie's experience should make us all ask: Why in the 21st century does justice for rape victims remain so elusive? The Netflix series *Unbelievable* tells her sadly true and only too believable story. She was silenced by the response of the criminal justice system until years later when two women detectives working on separate stranger-rape cases discovered similarities suggesting a common perpetrator was involved. They worked together and eventually arrested a man who had in his possession video footage he had recorded of his victims. Marie was identified as one of them. Finally she received validation for all she had endured, and felt sufficiently empowered to confront one of the detectives who had earlier been so dismissive of her experience. Later she said of the man who raped her at knifepoint:

“He didn't take my life away. I don't want to cower in the corner. I didn't want it to ruin the rest of my life. I didn't want to give him the satisfaction. I wasn't going to let him destroy me.”

(in Armstrong & Miller, 2019)

* * *

Introduction

Women's struggles to have their rape accusations believed have been a hallmark of history for centuries (Jordan, 2004). A woman's words per se have been viewed as less believable and significant than those uttered by men, with many proverbs reflecting the popular sentiment that it is better if women remain silent rather than speak at all:

A silent woman is a good woman (Sicilian proverb)

A silent woman is a gift from God (French Proverb)

Silence is a wonderful jewel for a woman but she seldom wears it (Danish Proverb).

There is some evidence that this view is being successfully challenged. Today we live in a #MeToo world, a world seemingly divided between pre-MeToo silence and post-MeToo speaking about the pervasiveness of women's experiences of sexual violence and harassment. A recent optimism suggests that, now the silence has been broken, all will be well—we will hear and validate those who have been victimised, our justice systems will hold their assailants accountable, and prevention programmes will be implemented with unwavering success. Experiences such as Marie's and those of countless other women suggest otherwise.

What Marie encountered exemplifies the issues raised in [Chapter 3](#) regarding the burden of proof for rape being placed on the victim. The assumption by the initial police she encountered that she was making a false complaint and their decision to bring charges against her, rather than search for the offender, reflects a common pattern of disbelieving women's voices when they speak of rape. Baroness Stern, appointed to undertake a major UK review of policing that is discussed later in this chapter, observed in a reflective presentation how it soon "became clear that the subject of rape of women was shrouded in a web of attitudes, strongly held views and responses shaped by centuries of history" (Stern, 2010a, p. 119). The Stern review was one of many conducted both within the UK and internationally, each responding to criticisms and resulting in lists of recommendations for change.

This chapter canvasses several key policing initiatives that have been considered internationally, and presents an account showing why a review programme involving New Zealand Police seemed, in the short term at least, to resist the trend of seeing little of substance change following review processes. Improvements affecting rape victims' experiences in the police system have not, however, necessarily been matched by positive changes within the courts, raising questions addressed later about the need to consider alternatives to current court and trial processes.

The pressure to change

The previous chapter noted how successive studies of women's experiences of reporting rape to the police resulted in mixed, and sometimes damning, responses (Chambers & Millar, 1983; Hall, 1985; Holmstrom & Burgess, 1978; Jordan, 1998, 2001; Medea & Thompson, 1974; Temkin, 1999; Toner, 1982). Women frequently reported encountering high levels of disbelief over their rape allegation, while many felt judged and blamed for provocative or risk-taking behaviour. The fact that such a serious criminal offence had both the lowest reporting rate and the highest attrition rate raised increasing levels of concern over why justice seemed so elusive for these victims. As early feminist criticisms of the criminal justice system became more widely recognised, pressure mounted for changes to improve experiences for victim/survivors. Recognition grew that rape and sexual assault were unlike other crimes and warranted specialist attention, with rape crisis organisations established from the 1970s onwards in the voluntary sector in many countries (McDonald, 2017; Westmarland & Alderson, 2013). Gradually the complexities associated with sexual violence offences became more widely acknowledged, including the potential for victim/survivors to be traumatised by their experiences and in need of informed and empathic support. With generic support services increasingly viewed as unable to consistently provide the level of understanding and service delivery required, a trend towards specialisation developed.

Specialisation is intended to ensure that all victims are responded to by persons trained to understand the complex dynamics and control issues involved in the perpetration of rape as well as the diverse ways rape trauma can impact on, and be manifest in, victims. In Aotearoa New Zealand, the first professionals to implement a specialised response to rape were women medical practitioners. They established the organisation, Doctors for Sexual Abuse Care, in 1983 in response to growing concerns about male police surgeons performing post-rape forensic medical examinations of victims in police cells (Jordan, 2001). This resulted in women doctors volunteering for specialist training to perform such examinations, and agreeing to be rostered on duty to ensure their availability to rape victims when required (Sullivan, 1986). Despite both counselling and medical services accepting the need for specialisation relatively early, the New Zealand Police did not recognise its merits until 1998 when they introduced their first policy to inform sexual assault investigations, followed by short, specialist training courses for detectives from 2003. Policy implementation should have been relatively easy to establish given that the country has one, nation-wide police organisation with a centralised training college. In reality, the reticence about adopting a specialist policy was matched by initial institutional ambivalence regarding its implementation (Jordan, 2004). The catalyst for major change was the case involving Louise Nicholas, outlined in the introduction to [Chapter 3](#).

This reflected the pattern developed in many countries of scandalous rape cases being widely canvassed in the media and prompting major reviews of criminal justice agencies. As noted in [Chapter 1](#), in England and Wales the HM Crown Prosecution Service Inspectorate and/or HM Inspectorate of Constabulary have undertaken multiple reports on the investigation and prosecution of rape offences (e.g. 2007; 2012; 2017; 2019). Larger scale reviews have also been commissioned, including the Stern Review (2010) and the Angiolini Report (2015). One of the most influential was Baroness Stern's inquiry following the aforementioned John Worboys case, with her recommendations largely oriented around improving victim care and increased funding to support such provision (Stern, 2010). This was welcome news yet at the same time triggered cynicism in some quarters, with a Rape Crisis spokeswoman expressing this well:

We would also ask questions about who is going to monitor the 23 recommendations, as they are similar to those that came out of previous rape reviews in 2001, 2002, 2005 and 2007.

(Williams, 2010)

This suggested what I have termed elsewhere the “here we go round the review-go-round” tendency (Jordan, 2011) which sees successive inquiries being undertaken to suggest government responsiveness despite clear knowledge already existing of the problematic areas that need to be addressed.

In Aotearoa New Zealand this pattern of scandals followed by inquiries and recommendations continued for many years, with even an inter-governmental Taskforce for Action on Sexual Violence failing to result in effective action and change. The pattern was interrupted, however, as a result of how the government responded when the case involving Louise Nicholas was recognised as involving many more women victims and male police perpetrators than had initially emerged. Since then New Zealand Police have been hailed by some as a success story in the positive changes made to improve their responsiveness to victim/survivors of sexual violence (Rowe & Macauley, 2019). Their reform trajectory is sketched below to illustrate key aspects within their change processes.

Aotearoa New Zealand's Commission of Inquiry into Police Conduct

The case involving the raping police officers referred to in the introduction to [Chapter 3](#) prompted arguably the most significant inquiry ever held into the New Zealand Police. Concerns over Police having possibly mishandled or undermined sexual assault allegations made against other officers saw the Commission of Inquiry into Police Conduct charged with assessing these in the context of an independent review of adult sexual assault investigations overall (Bazley, 2007). Commissioner Dame Margaret Bazley was

forthright in identifying how, particularly in the 1980s, there was considerable “evidence of officers condoning or turning a blind eye to sexual activity of an inappropriate nature; a wall of silence from colleagues protecting those officers complained about; negative and stereotyped views of complainants; and a culture of scepticism in dealing with complaints of sexual assault.”

Dame Margaret acknowledged the positive changes achieved in undertaking sexual assault investigations in recent years while also urging more effective implementation of the Adult Sexual Assault Investigation Policy. The latter had, as noted earlier, been introduced in 1998 and stipulated that detectives interviewing rape complainants should complete a specialist adult sexual assault investigation course, yet nearly ten years on many had not yet undertaken such training. Not only that, but many remained oblivious that a specific policy to guide adult sexual assault investigations even existed. This meant in practice that major inconsistencies existed, with procedures adopted on an ad hoc basis. Among the 47 recommendations made for New Zealand Police, the Commission of Inquiry insisted one of the first be the adoption of a Code of Conduct to guide police behaviour (Bazley, 2007).

Many of the Commission of Inquiry’s recommendations were not particularly novel but simply required New Zealand Police to comply with their own policy. This included ensuring a specialised response to sexual violence offences was provided by mandating that all detectives involved in such offences must attend specialist training courses and expanding the number of sexual assault teams within major cities. Increased responsiveness to victims’ needs was demonstrated by a changed approach to statement-taking that moved away from traditional expectations that it must be conducted immediately. The revised approach gave complainants time to recover from the initial trauma first, with further benefits coming from having specialist, usually women, interviewers conducting these using a narrative-style, “tell me what happened” approach. Also emphasised was that tripartite agreements in local areas between police, doctors, and specialist sexual assault support agencies mostly worked well in encouraging greater collaboration between agencies in seeking the best outcomes for victims, particularly those with enhanced needs or risk factors.

The ten-year implementation period for the Commission of Inquiry ended in 2017 and was followed by reviews to determine how successful it had been. New Zealand Police presented their own assessment of what was termed “a decade of change,” with their report interestingly featuring a photo of four beaming policewomen on the cover and attesting to all of the Inquiry’s recommendations having been implemented (New Zealand Police, 2017). The Auditor-General’s office was less effusive in its external assessment but nonetheless recognised the benefits arising from many of the changes introduced (Office of the Auditor-General, 2017). These included the tangible benefits arising from specialist training for adult sexual assault investigators, with evidence provided of significantly improved compliance to the policies and

procedures specified for such investigations. Concern was expressed over the inconsistencies in compliance between police districts and also the variation that could still exist among officers' attitudes. Inconsistencies were also apparent between districts in terms of the resources allocated for sexual assault investigations. This echoed a caution expressed by external reviewers Rowe and Macauley (2019, p. 405) when they concluded:

Key to many of the improvements seems to have been the development of specialist squads of detectives, highly trained and solely dedicated to investigations of ASA. Frequently during the fieldwork, this was described as the "Rolls Royce" model, which, if accurate, is beneficial to victims. However, the luxury vehicle does not operate across the whole country raising significant concerns about justice, equality and access to a victim-centred service.

More broadly, Rowe and Macauley (2019) hailed the changes made within the New Zealand Police as an example of how to achieve rapid and significant reforms in traditionally conservative organisations. They framed their journal article around the concept of "giving voice" to victim/survivors, while recognising that "considering the whole system, victims may still be disbelieved, discredited and dismissed" (p. 405). More in-depth qualitative research with victim/survivors is needed to fully assess the extent to which *they* consider their voices are heard and needs met, but the Auditor-General's report recognised changes made to interviewing procedures and communication processes that were already producing positive impacts. In detailing what police and victim advisors informed them, they noted:

A more informal interview setting also showed increased respect to victims and provided greater dignity:

'... victims [I work with] are surprised when they are sitting on a beautiful couch and it is really casual and they are literally telling their story being comfortable... They feel human. They feel heard.'

(Clause 3.31)

Other research from Aotearoa New Zealand has further underscored the importance of improving the interview experience for complainants in order to increase the likelihood of just outcomes being achieved, including greater use of video-recorded interviews to improve evidence quality (Westera, Keibell & Milne, 2016). Sustained and consistent adherence to practices experienced by victim/survivors in positive ways is likely to counter the silencing and objectifying impacts of interviewing approaches that are now, hopefully, moving towards becoming more historical than present.

A critical factor identified as key to the successes achieved was Dame Bazley's stipulation that the ten-year implementation phase for the recommendations must be externally audited. This auditing process was carried

out at regular intervals by the Office of the Auditor-General, with four interim reports identifying those areas requiring additional efforts to reach compliance. Many of those interviewed in a study canvassing key informants' perspectives of changes in adult sexual assault investigation processes applauded these external auditing and compliance measures. As one specialist agency support worker expressed it:

“The Commission of Inquiry, particularly the audit requirements for ten years, that held Police to account in a way that was public, transparent, and because it was external to the Police, meant that – I think it had a huge influence. Which doesn't mean I don't think senior Police are genuine, but I think that, like anyone else, we're all overwhelmed in our work, really, and so you dance to the tune of a whip.”

(Jordan, 2019, p. 20)

Some expressed their concerns that now the final audit had been completed, New Zealand Police might relax their stance and slippage would occur. A support agency manager stressed the importance of ensuring the positive momentum within NZP continued:

“They have to maintain and keep doing things better, not just tick the box because – yes, there's been a lot of work that's happened in that ten years, and we know that still it's not the best experience for women that are going forward.”

(Jordan, 2019, p. 21)

The key to preventing this was seen as lying with police leadership, whose responsibility it would be to ensure sexual assault offences remained a high priority area for on-going training and resourcing. It was hoped that maintaining a Headquarters-based national unit responsible for this area, and one led by a strong advocate for victims, would guard against any decline in the quality of service delivery.

Current situation: Police file and key informants' studies

The significant progress made by New Zealand Police has been recognised internationally (Rowe & Macauley, 2019) while locally a mantra has emerged confidently claiming “everything's changed” and asserting none of the travesties of the past would occur now. While the best way of ascertaining if the system now operates in a more victim-centred manner would be to ask victim/survivors themselves, to date such an evaluation has not been resourced and undertaken. In lieu of this, I conducted two investigative studies: the first, with Elaine Mossman, the police file analysis referred to in [Chapter 3](#) (Jordan & Mossman, 2019), and the second a qualitative research project obtaining the views of 32 key informants, three of them

specialist police and the remainder doctors, rape crisis workers, and victim advocates (Jordan, 2019).

The file analysis was compared with results from an earlier similar study of police rape files from the year 1997 (Jordan, 2004). The findings suggested judgments based on perceptions of the victim's credibility may be less likely to prevent case progression now than in the past, but still posed a significant barrier to achieving justice through a prosecution. Two key factors associated with a lack of case progression included perceptions that the complainant's testimony should be considered unreliable (key to decision-making in 28% of cases) and mental health concerns being identified in relation to the victim (key to decision-making in 13% of cases) (Jordan & Mossman, 2019). The presence of inconsistencies in victims' accounts were mostly interpreted as indicators of falsehood, despite research evidence suggesting inconsistencies are to be expected in contexts where traumatic events are being disclosed. Accordingly, recent police guidance in the UK advised officers against assuming inconsistencies indicated fabrications, suggesting these be reframed as possible indicators of trauma impacts, alcohol and drug effects, or shame and self-blame (National Council of Police Chiefs, 2015, cited in Dhami, Lundrigan & Thomas, 2020). Few charges were laid not only in cases involving mental health issues but also where complainants presented with intellectual disability/learning difficulties. A pattern existed of police being at risk of misinterpreting issues of victim vulnerability as indicators of a lack of credibility. The example below illustrates this point:

Following police attendance at a family violence incident, the perpetrator was served with a Police Safety Order (PSO) requiring him not to have contact with the victim and after he left the address, the victim went to sleep in the lounge. Later that night the perpetrator breached the PSO and returned to the house, woke the victim, and an argument ensued. He forced her into the bedroom, stripped off her clothes and allegedly raped her. When he left she rang Police to report his breaching the PSO. While Police were in attendance she disclosed the rape but was then unwilling to say more or have a medical.

The CIP (Case Investigation Plan) notes 'The victim has a mental health history. The victim has previously made a rape complaint against the same suspect several years earlier. The victim later recanted her statement while a patient in [mental health facility]. The rape charge was dismissed, and the victim was warned for making a false statement.'

She was noted as being a sex worker, with numerous family violence involvements and a suicide attempt noted. The perpetrator was recorded as having committed multiple family violence offences and had been

identified twice watching/following young women and mothers with young children while appearing to be rubbing his genitals. It was interesting that, despite all her victimisation by him, it was assumed this would be a false rape complaint like an earlier recorded false complaint. It was curious that the CIP recorded there were no vulnerability factors in relation to this victim. The case was filed K6.

(Jordan & Mossman, 2019, pp. 52–53)

Evidence from a recent attrition study in London produced similar results, finding “almost all vulnerabilities presenting at a disproportionately higher rate than their prevalence in society” (Murphy, Hine, Yesberg, Wunsch & Charleton, 2021, p. 22). The authors identified the most pressing need as mental health issues with these strongly associated with cases not progressing, and also having increased significantly since a study based on 2012 data (Hohl & Stanko, 2015). They observed:

Whatever the reason, our findings show that victims with mental health issues are a group at risk of multiple attrition avenues, who may benefit from additional support throughout the investigative process. Furthermore, results also highlight susceptibility to cumulative vulnerabilities in rape cases, and that rape may indeed be a significant risk factor for those with a broader ecology of overall vulnerability. Such results provide a useful opportunity to consider the role of trauma-informed policing as a response to sexual assault....

(p. 22)

The Aotearoa New Zealand analysis revealed, in common with research elsewhere, that barriers to justice remain in place for those victims made vulnerable by evidential factors still assessed through a credibility lens. There were areas where some increased awareness existed of factors associated with men perpetrating rape. For example, the increased vulnerability resulting from alcohol intoxication was more widely recognised by police responding to reported rapes in 2015 than in 1997, but there was little evidence to suggest they recognised how it increased men’s responsibilities for ensuring women were able to give consent. With regard to the attrition problem discussed in the previous chapter, victim intoxication was associated with cases not proceeding to prosecution, police and prosecutors anticipating how it would likely be used against the victim in court.

The research conducted with key informants found high levels of endorsement for the changes made by New Zealand Police since the Commission of Inquiry into Police Conduct (Jordan, 2019). There were, however, instances of poor practice identified along with concerns that there was not yet optimal service delivery across the country. A rape support agency worker voiced her disappointment when, after she started believing the “everything’s changed” rhetoric herself, a spate of reported rapes in her area in 2017 were

dealt with in a manner she considered particularly unprofessional and disrespectful. As she expressed it:

“It was ten years after the Bazley Report. So, there’d been a lot in the paper about what the Police had been doing and I’d been asked to comment and Louise had been asked to comment, and I’d said fairly confidently, “I think that the Police are doing a lot better,” and then I got these calls and I’m like, “Oh, my god, but are the Police doing better at all?” And I do think they are, but there’s always room for improvement.”
(Jordan, 2019, p. 25)

Her ambivalence was reflected in other responses indicating that instances of poor practice remain, with an overall lack of consistency still evident nationwide. Agency workers identified specific detectives who were clearly unsuited to sexual assault investigations, particularly in terms of relating positively to victims.

Not all the concerns raised related to individuals, with systemic issues also identified. These included the on-going need for changes within the police culture in relation to beliefs and attitudes that appeared victim-blaming and reflective of traditional myths. Also stressed was the need for greater police understanding of the ways in which trauma impacts on victims, given that, as noted above, inconsistencies in victim testimony were still often interpreted as indicative of falsehood rather than trauma. Doctors and support workers/counsellors referred to the need to increase awareness of the impacts of trauma on memory generally and particularly in relation to how trauma can make recall patchy and changeable. One support worker expressed this view strongly, saying: “Trauma response is that you can’t remember clearly. That’s what your brain does” (Jordan, 2019, p. 44). Another referred to research she had seen from Australia and the UK indicating greater judicial recognition of how trauma impacts memory, an understanding she wished was accepted more widely within the Aotearoa New Zealand justice system.

Recent research conducted in the US has found links between rape myth acceptance and trauma misperceptions, suggesting “some of the same underlying stereotypes and misperceptions surrounding trauma response would fall within the suite of attributions directed toward rape survivors” (Franklin, Garza, Goodson & Bouffard, 2020, p. 1075). The benefits of trauma-informed training designed to counter officers’ expectations that “real” victims would, for example, display visible emotional distress and be able to provide a linear timeline of events were underlined. The authors reiterated how their findings demonstrated “the resilience of rape mythology” and the negative impacts it could have on case processing.

This underscores the need for additional programming designed to decrease rape myth acceptance and further inculcate the importance of empathy, compassion, and victim-centeredness in responding to

sexual and family violence. Doing so has the capacity to enhance trauma-informed police practice, engage victim cooperation, and increase case processing for sexual and family violence crimes.

(Franklin, Garza, Goodson & Bouffard, 2020, p. 1076)

A report conducted for Justice Canada (Haskell & Randall, 2019, p. 5) explored how findings from neuroscience were relevant in understanding sexual violence and similarly concluded that the “justice gap can, in part, be closed by moving towards a more trauma-informed criminal justice system.” This is consistent with the findings of the recent London study (Murphy, Hine, Yesberg, Wunsch & Charleton, 2021), and indicates a growing body of international research is emerging underscoring the need for significant change in this area.

A further issue of concern identified in the Aotearoa New Zealand key informants’ research was the lack of prioritising and resourcing given to adult sexual assault investigations, despite the seriousness of the crime. While rape is the second most serious offence on most statute books after homicide, the latter is assessed and funded as a priority area to the extent that other police personnel, including specialist sexual assault investigators, will be seconded to such cases. Even while the Commission of Inquiry’s recommendations were still being implemented, evidence existed from the 2015 file analysis of inadequate staffing levels to provide optimal caseload management in sexual violence cases. The consequences of insufficient police staffing include delays in case assignment to individual detectives as well as being unable to keep victims adequately informed about case progress or maintain an on-going supportive relationship with them. This is regrettable and potentially harmful in that the quality of the police-complainant relationship is vital to victim trust and well-being, as well as necessary to good case outcomes. In Louise Nicholas’s case, even though her rapists were serving police officers, she was subsequently able to move past her fear and mistrust of police and work alongside them, primarily because her more recent police experiences were significantly more positive and affirming.

Summary

The New Zealand Police were in effect ordered by the government to comply with the Commission of Inquiry’s recommendations regarding improved service delivery and accountability. In other words, they had little choice but to change. A combination of internal review processes and external auditing requirements placed police decision-making in sexual assault cases under scrutiny. This was important given the variable attitudes that exist surrounding rape complainants and investigative techniques, and the scope for exercising individual police discretion. As Rowe and Macauley (2019) identified, a broad strategy for change was needed encompassing both shifts in organisational practices as well as changing the ethics and values

embedded within the culture. The New Zealand Police's change process has been presented here to illustrate the depth and extent of changes necessary to achieve substantive reform, tempered by recognition of the continuing need to move towards gender equality within police organisations as part of any overall strategy to improve women victims' experiences.

Major specialist interventions were needed to start shifting how police processes operated in Aotearoa New Zealand, and to date not all victims have benefitted equally. Those high in what have traditionally been viewed as credibility-compromising factors still struggle to be perceived and treated as legitimate victims, and even if recognised as such by police may nevertheless experience high levels of attrition because of judgments made regarding case winnability (Jordan & Mossman, 2019; Jordan, 2019). The police file analysis indicated that the proportion of reported rapes being progressed to further investigation had significantly increased in the last 20 years. However, disturbing findings emerged showing high levels of victim withdrawal remain an issue at the entry point, while at the other end it is still apparent that relatively few cases are advanced to prosecution. Research conducted in Aotearoa New Zealand also demonstrates that for the minority that do result in trial processes, the chances of seeing the offender convicted are often unlikely unless plea bargaining produces a guilty plea (Jordan & Mossman, 2019). Moreover, whatever the verdict, complainants still consistently report feeling reviolated and degraded by contemporary courtroom experiences. Patriarchal attitudes continue to scaffold and shape the system we euphemistically call "justice."

Key initiatives

In the wake of repeated reviews internationally identifying similar inadequacies in police responses to rape complainants, several key initiatives have been introduced as measures to improve service delivery. These have included:

- Specialist police responses
- Female police detectives
- Specialist support for victims

Each of these is reviewed in the next section.

Specialist police responses

The desirability of a specialised approach for child sexual abuse and rape cases was recognised from the 1980s in the UK (Blair, 1985; Lloyd & Burman, 1996). One of the first specialist units was established following the notorious Thames Valley rape interrogation, with five female officers deployed in an attempt to provide a less hostile experience (Rumney, McPhee, Fenton & Williams, 2020). Since then there has been a growing international trend

towards greater specialisation in sexual assault and intimate partner violence cases. Specialised sex crimes units were established in the US (Epstein and Langenbahn, 1994; LaFree, 1980) and England (Brown & Heidensohn, 2000), as well as in many other jurisdictions, with training programmes also gradually introduced to increase police officer awareness about sexual victimisation in Australia (Nixon, 1992), and Aotearoa New Zealand (Jordan, 2004). Some countries deployed specially trained police officers (such as SOITs—Sexual Offences Investigative Trained officers, in the UK) to attend sexual assault cases and developed new policies and guidelines for investigating rape cases (Brown & King, 1998; Hohl & Stanko, 2015; Jordan, 2004). A series of reports and reviews since then have all indicated that while some improvements are evident, overall there is a lack of consistency in how victims are treated and many recommendations have lacked implementation (Brown, Horvath, Kelly & Westmarland, 2010). Research reviewing the impacts of police training on a diverse range of areas, including sexual assault, domestic violence, and prejudice-related offending, concluded:

Collectively, findings have suggested participation in training has had a mixed effect on practitioner attitudes, cognitions, and behaviors directed toward victims, perpetrators, and marginalized communities, and when attitude change has been observed, it has not directly translated to behavior or it has not remained stable over time.

(Franklin, Garza, Goodson & Bouffard, 2020, p. 1062)

The relatively few studies conducted of specialist police units have yielded generally positive results (Rumney et al, 2020). Favourable findings have emerged regarding improvements in such areas as victim support and satisfaction, officer attitudes, and communications, including inter-agency collaboration. For example, an Australian study found victims rated the responses of a specialist sexual offences unit more highly than a non-specialist response and that they specifically felt valued when assured that the officer assigned was specially trained and experienced (Powell & Cauchi, 2013). Research with police officers attached to such units has also been positive. A UK mixed methods study conducted by Rumney et al (2020) seeking to compare specialist and non-specialist investigations found officers in the specialist team affirmed the importance of the key skills, knowledge, and commitment needed in sexual violence cases, as well as the opportunities provided for building investigative expertise. The researchers considered the investigative challenges of rape cases combined with often complex victim circumstances made specialist units ideal, and that police investigations, as well as victims, benefitted from the team approach. Major concern was expressed, however, that current fiscal constraints were bringing pressure on police departments and leading to the possible disbanding of specialist units. The authors in fact noted that Greater Manchester Police and the Metropolitan Police had recently reassigned sexual offence unit detectives

to local teams, outcomes that run counter to successive reports applauding investigative specialism (Stern, 2010; Angiolini, 2015). For example, a Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service (HMICFRS) report from 2018 noted:

[W]e found a continuing disparity in the quality of investigations undertaken in specialist units where the quality of investigation is generally good and non-specialist units where all too often the quality of investigation is poor.

(HMICFRS, 2018, pp. 46–47)

Recent Aotearoa New Zealand research has also raised concerns regarding how the realities of police work and organisations can disrupt specialist service delivery (Jordan, 2019). Officers in specialist units can be moved back and forth in response to other kinds of crime being prioritised, or may be encouraged to view a year or two in the unit as a promotions pathway, rather than being selected for their skills and sensitivity. The specialist unit in the study by Rumney et al comprised volunteers and this may be an important consideration given that their enthusiasm and commitment was recognised in contrast to the attitudes about rape officers said were held by others. Not all police officers are viewed as equally suitable to conduct rape investigations, an observation many detectives themselves have made in training sessions.

There is also some suggestion that not all officers will be impacted consistently by specialist training. In McMillan's (2018) study based on police interviews, for example, she found beliefs in the frequency of false allegations were extremely polarised, between 5% and 90%, in contrast to earlier research (e.g. Gregory & Lees, 1999; Kelly, Lovett & Regan, 2005), adding: "This may suggest that specialist training may be having an impact on some officers, and may constitute evidence of a culture change, but only amongst some officers" (McMillan, 2018, p. 12). The tendency towards disbelief remained widespread, despite specialist training, indicating that simply increasing the training will not solve the issue. Given how entrenched patriarchal beliefs are throughout society, it makes sense that they will not simply depart after a few days of specialist training. Such attitudes, however, are not uniformly held and adhered to, meaning in practice that police officers will be differentially affected by training content and their own rape case experiences. As McMillan implies, some officers are likely to be more receptive than others, and less invested in maintaining rigid beliefs.

This speaks to the observation made by a woman I interviewed many years ago:

"Individual cops are really, really good and deal with these situations really, really well, and probably now there are more individual cops who are good than there were, but it shouldn't be an individual thing.

They're paid by us and they need to be able to respond to things appropriately and it's not good enough when it's just left up to individuals. It shouldn't be a case of just who you happen to get."

(in Jordan, 2001, p. 700)

More than 20 years later, despite the many reforms and training initiatives, there are suggestions a lottery still operates. Specific measures to help address this issue could include careful selection and regular vetting of officers deployed to rape investigations combined with systems of intense case review (McMillan, 2018). The New Zealand Police have moved significantly in the latter direction in response to external pressure following the Commission of Inquiry. A recent research study conducted with key service providers identified many positive impacts ensued from these changes, although concerns were expressed about specific groups of complainants still not being served consistently well (Jordan & Mossman, 2019). To be certain that all victim/survivors reporting rape receive the optimal treatment they are promised in victims' charters necessitates a stronger commitment to providing arenas within which their voices can be heard—and a willingness to hear and act on what they are saying.

Continuing to provide specialist training and services is important and warrants being a priority area given the seriousness of crimes of sexual violence. As the next most serious violent offence to homicide in many jurisdictions, sexual violence should be a leading police priority for resourcing, training, and monitoring. These initiatives will remain limited in impact, however, if firstly, gender issues within policing are not equally tackled, and secondly, the wider social environment of gender inequalities and rape-supportive beliefs is not challenged and changed. Justice systems constructed from beliefs in male sexual entitlement are inherently flawed and unable to provide consistently fair treatment and outcomes for rape victim/survivors. As Kelly, Lovett & Regan (2005, p. 85) have argued, "Perhaps the greatest challenge to the CJS [criminal justice system] is to rethink what rape is, and from this to then develop new understandings of how to approach, investigate and prosecute it." Currently the silencing and objectification of women overall is reflected in the ways victim/survivors can feel dehumanised firstly, by their attacker and secondly, by the justice system. The deeper changes required involve ending the gender inequalities and male cultures of dominance throughout not only our justice systems but the wider society. Such inequalities are features of police organisations also, which function within the same social environment as that from which officers were drawn. One result is that officers are shaped by similar beliefs about men, women and rape as those whose cases they are required to investigate. While this applies to male and female officers alike, some police organisations have opted to assign rape cases to females, as the following section discusses.

Female police detectives

The first specialist policing unit in the UK, as mentioned earlier, comprised five female officers (Rumney et al, 2020). This was in response to early assumptions arguing that rape complainants should have the right to be interviewed by policewomen, the expectation being that this would ensure a more sympathetic response (Bohmer & Blumberg, 1975; Caringella-Macdonald, 1985). The views of rape complainants themselves on this issue have been equivocal. Research by Frances Heidensohn (1992), for example, indicated that in some cases both complainants and policewomen rated the experience positively while in others policemen were found equally able to be supportive.

An Aotearoa New Zealand based on interviews with 48 women who reported incidents of rape and sexual assault to the police also found mixed responses (Jordan, 2002). While the gender of the officer was of little concern to some women, others struggled revealing the details of their sexual victimisation to men, or even naming what had happened to them. For example, at least three women said they felt unable to disclose rape to a male officer over the phone, with others similarly struggling when male officers were the first on the scene. One woman described the hard process she went through for three years deciding to report a high school counselor. The detectives initially scheduled to meet with her never turned up. She persevered and two male detectives arrived “like Starsky and Hutch – they came rushing in here all hyper after having been on some big bust” (Jordan, 2002, p. 327). She felt blamed by them with the sexual assaults minimised because, being nearly 16 when they began, one detective dismissed it saying, “These days girls that age get up to all sorts.” Not surprisingly, she decided not to proceed.

Overall, however, while the study revealed instances where men responded inappropriately and women “got it right,” there were also examples where police women responded inappropriately and it was male officers whose support was appreciated. Gender matching alone was insufficient without specialist training, empathy, and professionalism. This confirmed international research showing mixed results on the gender issue (Martin, 1997; Radford, 1987), with one factor involved being the need some women officers may feel to conform to occupational cultural norms. To gain acceptance within the “macho culture” of the police (Radford, 1987, p. 41), some women will over-conform to its dominant values rather than risk ostracism and exclusion from it (Brown, 1998; Gregory & Lees, 1999).

Policewomen’s own experiences within policing organisations may impact in ways that could engender either greater victim empathy or rejection and hostility. Those with their own experiences of sexual assault, harassment and misogyny could opt to identify with, or distance from, victims of rape. Sandra Walklate provides an interesting example from when she went to address a training session for police officers engaged in domestic violence

work, 99% of whom were female. The officers described their difficulties within the organisation of being heard and taken seriously, and she observed how their response constituted:

[A] remarkable expression of parallel experience with the women they were endeavouring to support, clearly highlighting some of the internal organisational issues that increased involvement in work of this sort is likely to produce and marking some interconnections with their gendered work experience.

(Walklate, 2001, p. 136)

The complexities and tensions policewomen face on the job, including their own experiences of sexual assault and harassment, are reflected in the mixed responses they can have towards both rape victims and perpetrators. Researchers in a US study seeking to determine the effect of gender on arrest decision-making in rape cases initially hypothesised that female detectives would, through greater victim identification, be more likely to arrest suspects in sexual assault cases (Alderden & Ullman, 2012). The findings showed the converse, however, with male detectives found to be significantly more likely to arrest. This result supports other research results suggesting women criminal justice practitioners should not be assumed to be more sensitive to female victims (Martin, 2005) and may, in some cases, be harsher (Weir & Wrightsman, 1990).

Specialist support for victims

Feminists were the first to provide specialist support services for victims of sexual violence through rape crisis organisations, which were established from the 1970s onwards in the voluntary sector in many countries (McDonald, 2017; Westmarland & Alderson, 2013). The feminist origins of rape crisis groups resulted in many police regarding them initially with suspicion, even hostility, a sentiment often felt mutually. Even after partnerships were established requiring police to interview rape complainants with a sexual violence support person present, these relations often remained strained. The benefits of multi-agency collaboration have since become more widely recognised, with many jurisdictions establishing partnership models to inform and monitor the delivery of services to victims of sexual violence (Campbell, 2005; Spohn, Tellis & O'Neal, 2015).

In Aotearoa New Zealand, police routinely involve medical examiners and support workers in providing training to detectives, and specialist officers meet regularly with doctors and sexual assault support agencies to discuss cases and issues. Such collaboration has contributed to greatly improved relationships overall between the police, doctors, and specialist

agencies. This was also observed in Hester and Lilley's (2018) UK research, based on interviews with victim/survivors, which found

that when the police responses were inconsistent and at times negative, the specialist sexual violence services provided the only 'safe space' (Brown et al, 2010) where disclosure and support tended to be consistently positive.

(p. 325)

An anomaly exists regarding the three key players involved when a rape is reported, however. While both police and doctors internationally are well-funded and resourced, many counselling agencies remain seriously underfunded and may still depend on volunteers to provide on-going service delivery (Hester & Lilley, 2018; Maier, 2011; Ullman & Townsend 2007). The consequences are profound when "the provision of independent advocacy support is fundamental to ameliorating any 'secondary victimization' which may arise as a result of the investigative and prosecution process" (Brooks & Burman, 2017, p. 221). State rhetoric regarding the importance of victim support has typically not been matched by state funding to ensure this outcome. While on some levels this appears paradoxical, on others it is comprehensible as yet another example of how the logic of patriarchy remains manifest. Three relevant factors are immediately obvious. Firstly, the historical ambivalence surrounding rape makes consistent state responses to it as a crime unlikely to be easily achieved. Secondly, the feminist origins of rape crisis agencies historically made them anathema to a male-aligned state represented by masculinist institutions such as the police. And thirdly, dominant rape myths and stereotypes continue to portray victims as undeserving, unworthy recipients of state funding. Thus, while research has frequently underscored the critical role played by specialist agencies in supporting victim recovery (Ahrens, 2006; Campbell, 2002; Cook & Jones, 2007; Hester & Lilley, 2018; Kingi & Jordan, 2009), the agencies providing such services continue to struggle to survive. While in Aotearoa New Zealand an enhanced funding package was finally announced in 2019 (Owen, 2019), it remains to be seen how viable this will make agencies in the sexual violence sector, and whether such funding will be sustained across time.

How and where specialist support services are accessible to victim/survivors is also a critical element. When the first Sexual Assault Referral Centre (SARC) was established in Manchester in 1986, the key aim was to provide a separate environment away from police stations where victims could be interviewed, medically examined, and offered support. Providing a safe environment for police to meet with victims was quickly recognised as a positive response and several more SARCs, also known as Havens, were established in the 1990s (Ewing, 2009). These operated as multi-purpose

facilities receiving most of their clientele on referral from police, and in turn on-referring clients to Independent Sexual Violence Advisers (ISVAs) and specialist counselling services, such as Rape Crisis Centres (Hester & Lilley, 2018). Despite their success, only a handful of SARCs were set up, resulting in assertions that a “postcode lottery” of treatment operated in the UK (Kelly, Coy & Foord, 2007). Concerns over underfunded and non-existent services led to the Solicitor-General, Vera Baird, criticising the Government for not doing enough to secure justice for rape victims, with the Home Secretary, Jacqui Smith, pledging funding to increase support (Ewing, 2009). Evaluations of SARCs have generally yielded positive results with victim/survivors reporting appreciation for the emphasis on female medical examiners being available combined with proactive follow-up and advocacy support (e.g. Lovett, Regan & Kelly, 2004). Baroness Stern (2010a, p. 120) observed that her review found universal support for this initiative, explaining the advantages in this way:

In so many ways the SARCs symbolized a new regime of patient-centred and respectful victim care. The outward symbols of clean, neatly folded, comforting bathrobes and scented toiletries were indicative of a way of seeing the patient as first of all a human being needing care and support and, secondly, as a potential witness in a criminal case, and then only if going to court was the victim’s choice.

Treating victims with greater care not only improved their experiences of the system but could contribute also to better justice outcomes, including a higher quality of medical evidence being obtained and victims feeling more able to disclose intimate details and remain engaged. In 2013, the National Health Service (NHS England) assumed the lead commissioning role for the centres, together with Police and Crime Commissioners, with the latest figures referring to a total of 47 SARCs operating across England (NHS England, 2021).

Also positively rated within the *Stern Review* (2010) were the ISVAs. Their role is to provide independent victim-focused service provision and they were praised for the enormous yet cost-effective difference they could provide by supporting victim/survivors through criminal justice system processes. Their services addressed many of the criticisms made by victim/survivors in previous research regarding their needs to have processes explained and be kept informed of case developments, and were recognised as important in reducing the number of complainant withdrawals (Stern, 2010a). This parallels findings from the US endorsing the value of specialist advocates in providing support through legal processes and recognising how this leads to improved outcomes for victims (Campbell, 2006). Particularly important was the level of specialist knowledge and understanding of the impacts of sexual violence and the ability to target individual victim/survivors’ needs and enable these to be met. Overall, increased moves towards specialisation emerge as the most significant development

contributing to criminal justice processes becoming more victim-centred and responsive. This reflects growing awareness of the complex realities of rape perpetration and victim impacts, and an increased willingness to recognise the onus such complexities place on organisations to train and equip their personnel appropriately.

Limits to progress and progression

Feminist criticism and scandalous cases have pressured police agencies to consider a range of reform initiatives aimed at improving victim care. These have contributed to various measures being adopted including increased access to support workers, delayed statement-taking, and the training and deployment of specialist sexual assault units and investigators. While the views of victim/survivors and advocates alike suggest a greater proportion might express positive views of their experiences with police than previously, this is only part of the picture. As discussed in the previous chapter, improved police services to victims have made no difference to attrition rates, meaning that women reporting rape today face no greater chance of seeing the man who raped them convicted than women decades ago, in some cases even less of a chance. It must be remembered that not all women who contact police want to pursue a case through court, and some will feel satisfied with receiving support and validation from police, or with having the perpetrator spoken to by officers (Jordan & Mossman, 2019). It is also significant that victimisation surveys continue to demonstrate how low the reporting rates have remained, suggesting at least some have little confidence in the system being able to deliver justice. It becomes apparent that the police's position as gatekeepers to the justice system may have changed such that more cases now progress further through investigative processes, but few will proceed to trial and very few to conviction. The patriarchal shaping of our rape laws ensures outcomes continue to favour male defendants over female complainants. Within adversarial court systems, such biases are concealed beneath well-established practices including non-disclosure of a defendant's previous convictions and witness cross-examination, the latter ostensibly constrained in law but not in practice or inference. In describing his horror at the lack of "dignity and humanity" accorded to women rape complainants, a commentator reflected not knowing if court practices arose from:

an unconscious misogyny, covert sexism, male chauvinism, a deep-rooted conservatism, an uncompromising formalism, a lack of empathy for the victim of sexual crimes, or an incomplete sense of justice ... But some reform is necessary if women who complain of sexual offending are not to be unfairly and unnecessarily disadvantaged in the legal process.

(Thomas, 2008, p. 172)

His words should have carried weight—he is a former Court of Appeal judge.

One area of reform sought by repeated legislation in many international jurisdictions since as far back as the 1970s has involved limiting disclosure of the victim's previous sexual history in court. In response to such efforts, defence lawyers became increasingly adept in making inferences that raised question marks for jurors regarding a victim's morality or credibility (Scutt, 1998; Taslitz, 1999; Temkin, 2002; Temkin & Krahe, 2008). Instead of achieving greater fairness for victims, the major reform achieved was in enhancing the means available for victim denigration. A police officer described it this way:

“The victim is required to be in the stand having her credibility and morals dragged through the mud by defence counsel questioning them in often an inappropriate and degrading manner ... Often the defence counsel will use any tack to call into question her credibility as a truthful witness.”

(Quoted in Mossman et al, 2009, p. 103)

A second area of reform arose from concerns over victims having to face the perpetrator within the courtroom. This resulted in the provision of screens in the courtroom to protect the complainant from seeing the defendant, and more recently in allowing pre-recorded testimony (Benton-Greig, 2011; McDonald, Benton-Greig, Dickson & Souness, 2020). Related considerations include ensuring decisions about the use of such measures lie with the complainant, rather than justice system personnel deciding on the basis of their own assumptions. The needs and desires of complainants vary, and this was reinforced when, as discussed in [Chapter 3](#), women attacked by a serial rapist all insisted they did not want screens (Jordan, 2008). Their reasons also varied, with some wanting to see him and to be able to distinguish him from other men while others wanted him to see them standing there in their power, unlike the last time he viewed and objectified them. This reinforces the need for consultation and collaborative decision-making with complainants and those supporting them before implementing procedures. Overall, years of seeking to implement court reforms aimed at reducing the barriers to justice victims' encounter have failed to make substantive improvements to victims' experiences, resulting in contemporary discussions turning more towards court alternatives.

Court alternatives

The extensive criticisms made about the adversarial justice system led to considerations of various reforms as well as alternative ways to adjudicate sexual violence cases. Options considered have included judge alone trials, using only female judges, juror selection, and specialist judicial training (Krahe & Temkin, 2009; McDonald et al, 2020). It is beyond the scope of

this book to cover all options, and in my view it is also largely beyond the scope of the adversarial system to deliver justice. The focus in the next section is on alternative options such as the introduction of specialist courts and the use of more restorative justice processes, both of which have been trialled within the Aotearoa New Zealand context.

Specialist sexual violence courts

A Sexual Violence Courts Pilot began in two areas in late 2016 with one express aim being to improve for both child and adult complainants their experiences of trial processes. While still involving jury trials, a major change is that only designated judges can preside over such courts, specially trained to monitor and intervene in court proceedings to minimise the risks of secondary trauma to complainants. This included increasing judicial understanding of the impacts of complex questioning and the need for breaks and reduced periods on the stand, as well as the importance of reducing delays in waiting for trials. An initial evaluation conducted with stakeholders considered procedural changes made in these courts were mostly working well, although concerns were expressed by some regarding on-going delays, cross-examination, and the use of facilities inadequately designed to protect complainants from encountering defendants (Gravitas, 2018). A subsequent evaluation conducted specifically with young witnesses concluded little had changed in terms of their court experiences, compared both with the last two decades of similar studies as well as in a direct comparison between pilot and other courts (Gravitas, 2018). The authors note: “For many young witnesses, credibility challenging questioning during cross-examination in which lack of belief in their testimony was indicated, was experienced as particularly distressing” (p. 23). Young people reported feeling intimidated by defence lawyers and confused when repeatedly asked the same question, often in different ways, yet also struggled to feel they could challenge the adult confronting them in this environment. Comments included:

“I felt like just, just saying nothing, but you couldn’t just say nothing... ‘Cause I was just scared of talking to the lawyer.... just everything in his eyes were scary.”

(p. 22)

“Because that’s how they explain the questions, ‘I don’t believe you, you have to give more evidence’. And I was like, how can I remember when it was, like, ages ago? But I didn’t say ‘How could I remember?’”

(p. 23)

“It was like sitting in a hot seat, it was really scary. And I try to like, you know, pretend I was not scared, but I was really scared...the offender’s lawyer was really scary, like he looked mean, he sounded mean too.”

(p. 22)

Comments such as these prompted those undertaking the evaluation to recommend a reconsideration of the process of cross-examination. This would involve a shift from the primary purpose of cross-examination being to discredit the witness to “prioritise a focus on the accuracy and productivity of children’s evidence” (p. 61). While made specifically in reference to young witnesses here, there is clear relevance for adults also.

This was recognised also in a recent study comparing the use of rape myths in adult rape trials and Sexual Violence Court Pilot trials (McDonald et al, 2020). Somewhat depressingly, yet also predictably, the findings revealed both trial processes reflected “a reliance on rape mythology and reinforcement of the ‘real rape’ schema” (Ibid., p. 477). This included attempts to humanise the defendant and distinguish him from a “real” rapist, as the following three trial excerpts show:

There’s no suggestion that he dragged her back to the bed and threw her onto the bed to have his evil way with her is it?

(Ibid., p. 450)

Is an apology consistent with the behaviour of a rapist?

(Ibid.)

For that matter, why does a rapist bring breakfast in bed?

(Ibid., p. 451)

Credibility issues were frequently raised, with defence lawyers both attacking the complainant’s veracity and “informing” the jury about the supposed commonality of false allegations:

Now, members of the jury, just because someone makes an allegation of rape or sexual violation, it doesn’t make it true, and I just need to tell you a few things about that. Yours and my knowledge of human nature, which is very important in your decisions that you make, will tell you that people lie about allegations like this up and down this country, every week in trials. And sometimes they tell the truth too. Let’s just be human about it. But they also lie, members of the jury. People lie. That’s what humans are like, and they lie about allegations like this.

(Ibid., p. 421)

Efforts to smear the complainant’s reputation included finding ways to present evidence of her previous sexual history as well as emphasising her level of intoxication to infer both a sense of blame as well as a lack of reliability in recall. Also evident were cases in which the cross-examination focussed on the complainant’s lack of resistance, recalling another centuries old myth. The following example from a trial transcript demonstrates this line of questioning:

Q: So, you are saying you lay there as a brick, didn’t moved (sic), had your eyes squeezed shut and just wanted it to be over?

A: I fought as best I thought I could fight at the time. (voice cracks)

Q: So, are you saying that you lay there like a brick, didn't move, had your eyes squeezed shut and just wanted it to be over?

A: I did my best to say no as many times as I could. I was frightened, and he was heavy and he was pushing my face and he was spitting on me, and holding me.

(HEAVY BREATHING)

Q: You don't agree that –

A: I am a small person, there was only so much I could do under the weight of his body.

Q: So, you lay there as a brick, didn't move, had your eyes squeezed shut and wanted it to be over is not how it happened for you in your claim of this rape? (*Ibid.*, p. 350)

In their introduction to this report, UK researchers Julia Quilter and Vanessa Munro note how despite 30 years of progressive reforms to substantive, procedural and evidential rules, this study continues to reflect what they describe as “the brutal, reform-resistant nature of rape trials, particularly in relation to the questioning of complainants” (in McDonald et al, 2020, p. xi). The overall finding endorsed previous studies in concluding that “it is societal beliefs that must be changed, in order to see consequential change to the decision-making processes in rape trials” (*Ibid.*, p. 481) while also providing insights to guide best practice in law reform. Many specific recommendations were made, including prosecutors becoming better acquainted with complainants before the trial, psychological support in preparing complainants for cross-examination, and practical supports such as collar microphones to avoid repeated requests for witnesses to “speak up.” Given the ubiquity of rape myths, the recommendation was made for prosecutors to pre-empt defence counsel attempts to undermine complainant credibility by providing information on real rape stereotypes and faulty assumptions, as well as for judges to challenge inferences such as those made regarding the “ease” of making allegedly false rape complaints. Similarly, with respect to reputation, recommendations were made about juries being directed as to the limited use and relevance of any sexual history evidence presented about the complainant.

Internationally support for specialist sexual violence courts appears to be growing. In 2021, for example, a cross-justice review group in Scotland strongly recommended a specialist court for the most serious sexual offences (Brooks, 2021). This court would use processes aimed at reducing trauma to the complainant, with both prosecution and defence lawyers accredited in dealing with vulnerable witnesses. The specialist sexual violence courts considered here operate using adversarial processes, but some commentators are adamant that substantive changes to complainants' experiences will be impossible to achieve within that framework, with support growing internationally for restorative justice possibilities.

Restorative justice

Restorative justice options have been proposed in some contexts, the concept covering a range of less formal processes within which all parties involved in a crime can collectively determine a way forward (Jülich, Buttle, Cummins & Freeborn, 2010; Koss, 2006). The concept has been widely debated in terms of its appropriateness for sexual violence contexts (Cameron, 2006; Daly & Stubbs, 2006; Lewis, Dobash, Dobash & Cavanagh, 2001). Of central concern are issues of equality of treatment when, as noted by Jülich and Thorburn (2017, p. 35),

Sexual violence as an abuse of power negates the notion of any pre-existent equality between victim and perpetrator. This deeply entrenched power imbalance, existing between men and women within a world that is predominantly defined by men, could preclude any assurance of formal equality, let alone substantive equality in any justice intervention.

Fears that restorative justice processes will replicate, and potentially reinforce, existing power imbalances between victims and offenders have made many feminists cautious about promoting this alternative framework for seeking justice (Cameron, 2006; Lewis, Dobash, Dobash & Cavanagh, 2001; McGlynn, Westmarland & Godden, 2012). Recognition is growing that while such concerns are important and necessitate clear procedural guidelines and monitoring of processes, restorative justice can offer victims the possibility of a less traumatising arena that provides greater scope for their voices to be heard (Daly & Stubbs, 2006; Jülich & Thorburn, 2017; Koss, 2006; McGlynn, Downes & Westmarland, 2016).

In Aotearoa New Zealand, Project Restore, adapted from the RESTORE programme in the US (Koss, 2014), is defined as a “survivor-driven organisation” using restorative justice processes in a manner explicitly oriented to holding victims central and enhancing safety through the involvement of victim advocates (Jülich, et al, 2010). It provides an alternative to reliance on police and court processes, with cases carefully selected to ensure safety and appropriateness for all involved. In particular it addresses cases of adult acquaintance rape and sexual assault, excluding those occurring in intimate relationships with histories of domestic violence. Other countries including Denmark and the US have also used mechanisms to achieve victim/offender dialogue in resolving cases of sexual coercion (McGlynn, Westmarland & Godden, 2012).

One immediate gain over traditional court systems is that offenders typically begin with an admission of guilt in contrast to the obstinate denial usual within most sexual violence cases in court (Daly & Stubbs, 2006). McGlynn, Westmarland and Godden (2012) provide a clear account of a restorative justice conference involving a woman survivor of child rape and other abuse who gained strength from her experience of engaging with

her abuser. This woman's comments illustrate the potential for empowerment and validation within such settings when they are set up and managed well. She said:

“it's made me understand my position as a victim and see him as the offender, which has enabled me to resolve a lot of conflict [...] in retrospect ... it was more important to have my say and have him listen than for him to go to prison.”

(McGlynn, Westmarland & Godden, 2012, p. 228)

Overall it seems support is growing for alternatives such as restorative interventions to be considered on the basis that they can potentially provide less traumatising options to victim-survivors and more meaningful outcomes for all parties involved, but only if these are well-designed with the needs and concerns of victim-survivors paramount.

Barriers to change

Recent efforts to make police and court processes more victim-centred are laudable in their recognition of the need for such change. The hope has also been widely expressed that improvements to the system will encourage greater reporting and result in increased access to justice. The potential limitations of such approaches within the current climate, and the barriers to change, also need to be acknowledged. As forcefully expressed by Helena Kennedy (2018, p. 113),

It is in rape that the law crashes up against the rawest display of the continuing power imbalance between men and women. It is the perfect example of the inadequacy of legal reform in challenging the more immutable forces operating in the system.

Accordingly, increased reporting of rape may not necessarily reflect increased victim empowerment. In recent years growing awareness and media discussion of sexual violence has contributed to increased reporting by victim/survivors, followed often by frustration and disillusionment over the inaction that follows. The UK is a case in point, given the high attrition rates examined earlier. A recent in-depth media investigation observed the following:

Reports of rape to the police have almost doubled since 2015, but there are fewer prosecutions and convictions than during any other period on record. The number of cases referred to the Crown Prosecution Service (CPS) by police has dropped by 40% in the last three years, while prosecutions and convictions have more than halved.

(Barr & Topping, 2021)

The National Police Chiefs' Council lead for rape in England and Wales, Sarah Crew, lamented how austerity measures had earlier resulted in the disbanding of specialist sexual assault teams and calling for their reinstatement (Barr & Topping, 2021). A further concern identified related to the amount of investigative time spent searching complainants' phone records, with a complete download generating on average 35,000 pages of information, most irrelevant. This process also leads to many victim/survivors feeling additionally violated by the intrusion of privacy involved, with advocacy groups complaining that these amount to "digital strip searches" (Barr & Topping, 2021).

Who makes the initial report can also make a difference to the victim's experience. A recent Scottish study indicated different motivations and experiences for victim/survivors depending on whether they or a third-party reported their victimisation to police (Brooks-Hay, 2020). This study also demonstrated the gap that often exists between the aspirations held by victim/survivors when they report and the realities of their subsequent experience, suggesting the need for a more nuanced and complex awareness of what reporting rape can mean for different individuals. As Brooks-Hay (2020, p. 190) urges:

Within the context of a politicized and expanded criminal justice response to rape and sexual assault, victim-survivors are apparently being put at the center of the justice process. However, we must critically question whether they are really being listened to, who is putting them there and to what end.

This raises wider questions concerning the structure of policing and the organisational constraints affecting behaviour and decision-making. Increased public demands for accountability have resulted in moves aimed at implementing policies to achieve more standardised procedures but, as Emma Williams' (2019) research with London police showed, "the delivery of the internal and external strategy for rape investigation improvement is incongruent." Greater accountability requirements and performance targets could result in a checklist approach to rape investigations that were more concerned with safeguarding the institution than actual victims. Furthermore, deployment policies requiring staff rotation for professional development could stymie the positive potential impacts from officers with high levels of specialist, working knowledge. Williams identified the critical importance of recognising the central influence played by officers themselves alongside the need for strategic change based on determining the key values informing what is "good policing" in this area.

This includes respecting the different outcomes victim-survivors may desire when reporting sexual violence. For some, what they want is to have the police believe and validate that what happened to them was wrong, and they are less concerned with seeing the offender charged with an offence.

Others consider it sufficient to have the offender spoken to, while some feel strongly that he should be arrested and held accountable by the justice system, to the point of condoning a carceral response. The commonality here resides in victims wanting *their* wishes to be heard and factored into decision-making. As Spohn, Tellis and O’Neal (2015, p. 98) succinctly observe, “In the context of a complicated relationship between victims and legal personnel, victim empowerment becomes increasingly important.” There is a particular importance attached to victim empowerment for rape victims arising from the need to find ways of restoring a sense of control in the aftermath of such a violating and disempowering experience. The need to be seen and heard is vital, and helps to counter the objectification and silencing experienced during the sexual assault. This underscores the importance of law enforcement environments being spaces where victims feel safe, involved, and kept up-to-date in relation to how their cases proceed. The question remains: how possible is this within a rape culture percolated in patriarchy?

Women, rape, and justice

This chapter has explored some of the key challenges faced by women victims of sexual violence when seeking justice, an issue which cannot be fully understood without acknowledging broader issues associated with women as workers within criminal justice organisations. The history of policing has been defined along a patriarchal trajectory from its inception as an exclusively male institution built on hypermasculine stereotypes. Self-defining itself as a man’s job saw women excluded for lacking the physical strength, logical thinking, and emotional stability deemed essential to its undertaking (Batton & Wright, 2019; Martin & Jurik, 2007; Rabe-Hemp, 2009). The extremely hierarchical structure within police organisations clusters the majority of employees at the lowest rank level, with barriers to women’s retention contributing to their under-representation at senior levels. As Batton and Wright (2019, p. 299) allege:

In consideration of the hypermasculine culture and structure of police work, it is perhaps not surprising that women working in law enforcement often experience a hostile work environment and resistance from coworkers. The masculine nature of police culture is well established, and as Crank (2004) notes, masculinity functions as a solidarity theme, which helps maintain group boundaries.

The traditional emphasis valuing a strong, aggressive, authoritarian style of policing favoured what has stereotypically been viewed as a male approach, with some commentators suggesting that shifts towards community policing may benefit women in emphasising communication skills, empathy, and informal mediation—skill sets seen as more traditionally “feminine” (Martin

& Jurik, 2007; Rabe-Hemp, 2009). However, such gender-stereotypical thinking risks further entrenching gender divisions in ways that could restrict deployment opportunities for both genders, as well as consolidating erroneous views about “natural” abilities as opposed to skillsets able to be more widely acquired.

The male-dominated history of policing has profoundly impacted how women generally are viewed and responded to, with the hypermasculine environment characteristic of police organisations internationally translating into high levels of bullying, sexual harassment and hostility towards women (Brown, Gouseti & Fife-Shaw, 2018; Franklin, 2005; Lonsway, Paynich & Hall, 2013). Such an environment is characterised by rewarding displays of toughness and dominance and other behaviours deemed “masculine,” with policemen and policewomen alike soon learning how inappropriate displays of emotion, compassion and anything resembling weakness/femininity will be received. As sagely noted by Brown and King (1998, p. 265):

The occupational culture within which the police operate has been described as “an almost pure form of hegemonic masculinity” (Fielding, 1994, p. 47) in which there is an exaggeration of aggressive physical action, competitiveness and a preoccupation with images of conflict, and heterosexuality acted out within a strong exclusionary environment of misogyny and patriarchy.

Policewomen also have to adapt to their minority status within a hierarchical organisation that historically did not “allow” women to serve as police officers until the early twentieth century, with the first female officer appointed in both the US and Canada in 1910, UK in 1915 (Brown & Heidensohn, 2000). Organisational resistance to women continued to be manifest in their low numbers and comparative lack of organisational status, features that remain evident today. For the past 20 years in the US, for example, women have consistently comprised less than 13% of total police officers, with relatively few in leadership roles (Schuck & Rabe-Hemp, 2019). While a more gender-balanced landscape exists in England and Wales, where women form 30% of the overall police workforce, this figure is still far from constituting an equal and fully integrated organisation. A recent article reviewing European policing notes that “the reality suggests that, in most developed democracies, the percentage of sworn women police remains below 25 percent and, for the most part, appears to have reached a plateau” (Silvestri & Tong, 2020, p. 6).

Efforts to enhance equal employment opportunities within police organisations have not always achieved the intended consequences, with the dominance of male cultural values remaining pervasive (Batton & Wright, 2019; Brown, 1998). This makes sense when policing, like the courts, is considered as what Acker describes as a “gendered institution,” one “historically

developed by men, currently dominated by men, and symbolically interpreted from the standpoint of men in leading positions” (Acker, 1992, p. 567). Patriarchal power relations structure women’s positions and participation and impact on their employment and promotional experiences, including experiences of discrimination and sexual harassment (Batton & Wright, 2019; Martin & Jurik, 2007). Silvestri and Tong (2020) observed, following interview-based research with policewomen from European countries, that many reported experiencing similar kinds of prejudice, chauvinism and discrimination as Jennifer Brown (1998) had identified more than 20 years earlier. Gender equality was still more an aspiration than reality.

The precarious positioning of women within most police organisations affects their perceptions of workplace safety. Police culture and rape culture have many characteristics in common, and both contribute to policewomen experiencing high levels of objectification and gender-stereotypical attitudes (Chu, 2013; Haarr & Morash, 2013). Combatting silencing can still be an issue, with US researchers investigating women officers’ sexual harassment experiences reiterating:

It is important to hear from women what behaviors they find to be intolerable and tolerable, and why they feel they can or should tolerate behaviors that could be considered as anti-woman. Women also need to be heard when they explain why they cannot address unwanted behaviors, so that these barriers can be eliminated.

(Somvadee & Morash, 2008, p. 495)

There are suggestions that the same ambivalence surrounding “allowing” women to become police officers continues to influence their work environment. Women are seen as useful for the key tasks they traditionally performed with women and children, yet also perceived as a threat to the masculine ethos of policing. The tough, only-men-can-do-this-job attitude of the past is being increasingly challenged on some levels as individual women are promoted, yet police organisations internationally struggle to retain women. The proportion of officers who are female is not increasing, and the ongoing minority status of women can result in many feeling survival depends on adapting to the existing organisational culture. A recent Aotearoa New Zealand example illustrates this ambivalence. It highlights the risks that women still face in policing, despite attempts at cultural change, as well as indicating that the possibilities for achieving just outcomes may possibly have increased to some extent.

In February 2019 officers were being accommodated in a motel while performing police duties away from home. During the evening they drank and socialised together, during which time a female officer said “she skulled out of a hollowed-out police baton and participated in a stripping game after a senior sergeant exposed himself” (Owen, 2020a).

The CCTV footage from the motel confirmed officers were drinking, socialising and playing a stripping game, with the observation later made in the media that, “The group’s collective actions and lewd behaviour have caused severe embarrassment and questions over police culture” (Hurley, 2020a). During this drinking session a male officer came on to the female officer sexually but she rejected him and went to bed in her own motel room. She woke later in pain and realised the male officer was raping her. She reported him, something many women officers in similar positions have decided against previously.

The evidence against the accused was deemed sufficiently strong for him to be prosecuted. At trial the Crown alleged the officer crept into her room and “helped himself,” demonstrating a “sense of entitlement,” while the defence claimed it was a consensual hook-up (Owen, 2020b). The woman was shamed and accused with the all too familiar refrains – she was lying, she felt guilty, she flirted, she invited it, it was all simply “a night of regret and embarrassment” (Otago Daily Times, 2020). The accused’s lawyer confronted the woman: “You had a choice to be a cheater, squad rule breaker, or a rape victim and you chose the latter,” to which she replied “I did not cheat...I was sexually assaulted.”

(Hurley, 2020b)

The appraisals of culpability voiced in court appeared weighted towards holding the woman responsible for what happened that night. Many were surprised, therefore, when the jury returned a guilty verdict, convicting the male officer of indecent assault and sexual violation, and he was subsequently sentenced to six years imprisonment (Hurley, 2020b). His behaviour calls to mind the drunken rapes police officers enacted on Louise Nicholas and multiple other women years ago, with the jury’s verdict in the recent case suggesting there may be growing understanding of how some men use a woman’s drunkenness as a rape ticket, and of how police officers are not exempt from rape culture beliefs.

Appointing more female leaders within policing organisations has been suggested as a strategy to change the traditional macho behavioural norms and culture (Kingshott, 2013; Silvestri, 2006, 2007). This presupposes that the majority at least of the women appointed to leadership positions will not have internalised nor reproduce traditionally male norms and values. A study with 28 Swedish police leaders found that male leaders performed gender in more gender-stereotypical ways than female leaders, providing some hope that increasing the numbers of female leaders could potentially increase gender equality within policing organisations (Haake, 2018).

This discussion has focused on policing given the extremely low number of rape cases that proceed beyond investigation to prosecution. That fact in itself speaks volumes about the male biases that still pervade our

legal systems. Even when women are appointed to the highest roles in the system, as judges, stereotypical perceptions continue to influence how they are treated. This was evidenced in Loughland's recent study of Full Bench hearings in Australia's High Court, which found that women judges were subjected to higher levels of interruption behaviour than their male counterparts. The most dominant interrupters of proceedings were male advocates, and interestingly the levels of interruption counter intuitively increased when the Court was presided over by its first female Chief Justice. As noted by the researcher, "The fact that women are more likely to be treated unequally even at the pinnacle of their legal careers suggests an embedded bias towards male judicial authority" (Loughland, 2019, p. 822).

Similarly to the history of women in policing, women were initially excluded from judicial roles and appointments, the rationale given based on assumptions that the rigours and responsibilities involved would be too much for them to manage (Gleason, Jones & Rae, 2019). Perceptions of women being less rational than men have resulted in exhortations for women attorneys to be more male-like in order to be successful in their careers. In the US, Justice Sotomayor (2013) reflected how she felt she needed to argue cases "just like a guy" (p. 180) and was referred to by her colleagues as "one tough bitch" (p. 261). A gender-comparative study of how male and female judges evaluated attorney's briefs found male justices applied and enforced traditional gender norms whereas no evidence emerged of gender norms impacting on female justices' assessments (Gleason et al, 2019). The authors concluded that: "For male justices, gendered expectations reveal subtle biases that influence their evaluation of 'good' arguments. This is problematic because enforcing traditional gender norms perpetuates the relative authority of men's voices compared with women's" (Gleason et al, 2019, p. 519). In ways such as these the silencing of women remains evident not only when presenting as victims in rape trials but across a range of judicial contexts. Justice, despite the scales being held by a woman, operates with a male face.

Conclusion

This chapter has explored examples of key initiatives introduced in response to criticisms and reviews highlighting the difficulties faced by rape victims seeking justice. What it reveals is a repetitive pattern of scandals prompting reviews and recommendations that may slowly be improving police treatment of victims but are not increasing their access to justice. A summation made in 2007 of benefits accruing from the review-go-round remains equally salient today in its assertion that "a woman can get better care, but she still can't get justice" (Liz Kelly, quoted in Campbell, 2007). Similarly, at an organisational level, the feminist gains and criminal justice system changes made since the second-wave women's movement have been significant in their efforts to remove discriminatory language and policies, ensure

gender pay equity, and eliminate barriers to women's promotions. In reality, however, the impact of these changes has scarcely dented the masculinist, patriarchal culture still dominant within policing and other criminal justice institutions (Batton & Wright, 2019; Bitton & Jaeger, 2020). The multiple ways in which patriarchal thinking and realities are evident include women's concentration within lower ranks or lower status roles, men's predominance in positions of power and authority over women, and organisational expectations of 24-hour availability that ignore social expectations of women occupying primary care roles. As Jeanne Gregory and Sue Lees observed (1999, p. 201): "There is a clear link between the requirement that sexual attacks are treated as serious crimes and the requirement that police-women are treated as equal within the force."

It is naïve to expect "justice" from laws and legal institutions shaped by male input and designed to privilege men in their entitled access to women's bodies. As stated, there are examples in this chapter hinting at changes gradually occurring within police organisations and attempts to make our courts more victim-centred and responsive. These may benefit individual women while fundamentally the culture remains essentially unchanged. Furthermore, not all women are benefitting equally from these changes. Some women, particularly those from ethnic and sexual minorities and/or those living with disabilities, continue to struggle to be appraised as credible victims and face even fewer chances of receiving justice.

The rape culture we live in impacts not only criminal justice practitioners but everyone, including jurors, witnesses, journalists, and victims and perpetrators themselves. It reproduces a focus on victim behaviour and blame that effectively leaves rape offenders unscathed and invisible. The centuries-old mechanisms of silencing and objectification, processes that the sister book to this addresses more fully, contribute to the occurrence of sexual violence, as well as its low rates of reporting and high attrition. They also shape the credibility contest fought in courtrooms in those very rare cases that proceed to trial. The failure of our justice system to deliver justice undermines women's confidence at the same time as it reinforces men's sense of privilege and entitlement, confirming the urgency of achieving gender equality in all spheres of social life. The next chapter places masculinity under the focus, examining how it impacts on men and rape through considering men not only as perpetrators but also as victims and as the partners of female victims.

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5 Men, masculinity, and rape

In November 2017 a young woman in Aotearoa New Zealand was contacted by a detective who wanted to discuss a photograph with her (Sharpe, 2019a). She later said she would never forget the shock of seeing that image for the first time, adding: “I had no idea that had happened. I knew something might have happened but I had no idea that it was anything like what was in that photo” (Sharpe, 2019a). Confronted with the image, she began shaking uncontrollably and was unable to give evidence until the next day (Duff, 2019). It depicted a man, Joshua Pauling, “straddling” her seemingly comatose body, smiling and giving a “hang 10” signal as he performed a sex act on her. His friend, Jason Trembath, had taken the image on his phone (Sharpe, 2019a). The woman had neither clear recollection of how she came to be in the hotel bedroom with these two men or of what happened there, nor of it being photographed.

She was horrified to learn that it was three months since the photo had been taken. In that time it had been posted on a cricket club’s closed Facebook page and sent by Trembath to other cricketing mates and work colleagues (Sharpe, 2019b)—Trembath, as well as being a leading local cricketer, was also a businessman, and engaged to be married. Throughout this time, of all the men who viewed this image, not one had questioned the context or expressed concern for the woman. Rosemary McLeod subsequently suggested:

It’s my - let’s call it hunch - that recipients of the image found it acceptable, and were male. Or maybe they didn’t want to look uncool if they said something like, “This is gross and offensive.” All but one of them, it seems. And even they didn’t act until they learned of indecent assault charges against Trembath.

(McLeod, 2019)

The one man who did speak out only did so after being interviewed by police regarding an investigation into 11 indecent assaults perpetrated by Trembath, also known as the “smirking groper” (Otago Daily

Times, 2019). His offending involved him driving round until he spotted a young woman out walking or running, stopping his car to sprint after her, groping and squeezing her crotch or bottom, then running off (Sharpe, 2019c). While subsequently pleading guilty to these attacks, the jury that sat on the case involving the photographed woman were not able to be told of his actions in case these were prejudicial to his receiving a fair trial (Sharpe, 2019a). They were, however, informed by his defence counsel of the victim's clothes, her intoxication, her use of the Tinder app, and her previous consensual sex with Pauling on an earlier night (McLeod, 2019). Their verdict: neither man was convicted of rape. Trembath admitted making and distributing an intimate visual recording; Pauling, although he pleaded not guilty to being party to this, was found guilty. These were the only offences for which the men were found guilty at this trial. The victim protested over the double standard apparent, observing: "I was asked about my high heels and how my bodysuit could be undone easily to have sex but Trembath couldn't be portrayed as someone who had sexually assaulted 11 women" (Duff, 2019). The jurors, informed after acquitting him that Trembath was a "serial groper," were shocked.

In his defence, Trembath's lawyer blamed his sexual offending on methamphetamine and gambling issues (Sharpe, 2019c). The judge was not convinced, noting that "despite his professed addictions to alcohol, gambling and pornography, he was a high performing businessman and sportsman" (Sharpe, 2019c). He sentenced Trembath to three years and nine months jail for the groping charges and one year and seven months for taking and distributing the photograph. The judge told Pauling that his claim to being unaware the photo was being taken was "quite frankly, specious" and sentenced him to 150 hours community work and nine months supervision (Sharpe, 2019c).

The cricket club chairman quickly denied the club had any kind of "culture problem" and said he was "disappointed" and "peevd off" the club was named in previous stories. "Our main issue was being brought into this whole mess" (Chumko, 2019). Of Trembath personally, he maintained "this is one bad weed," apparently refusing to recognise any complicit behaviour by the many club members who looked, laughed, and stayed silent. A media studies lecturer commented that posting this image in a social media chat room suggested these were men: "used to moving through life in a position of power and privilege," and that, "To report a mate for sexual abuse would not only make you a wet blanket but it would violate the community norms of that group while likely calling your own sexuality into question" (Chumko, 2019).

Male conquest, bonding and mateship prevailed, resulting in Trembath and Pauling not being the only ones to objectify this woman, but all the men who viewed the image and said nothing.

Introduction

Throughout the social sciences, men have been conspicuously absent in most accounts of rape. The focus has been on the victims, with earlier accounts explicitly based on assumptions of victim precipitation (Amir, 1967) while more recent renditions reflect subtler versions of the same message. In ways parallel to how women living with violent partners were asked why they simply did not leave, victims of rape are subjected to an array of questions about their behaviour while rarely is a man asked, “Why did you decide to rape her, and what made you think you could get away with it?” The silence surrounding rapists is a manifestation of the patriarchal legacy, matching perfectly with the historical silencing of victims. Emphasising and critiquing victim behaviour has kept men’s actions out of the spotlight, perpetuating a rape culture that has consistently sought ways of ensuring men are seldom held accountable for rape. In 1984, Dianne Herman (1984, p. 49) asserted,

American culture produces rapists when it encourages the socialization of men to subscribe to values of control and dominance, callousness and competitiveness, and anger and aggression, and when it discourages the expression by men of vulnerability, sharing, and cooperation.

It is an observation with saliency far beyond both America and the 1980s. It suggests, and has been supported by subsequent research, that rapists are not deviant but rather individuals responding to cultural expectations of aggression and dominance (Flood, 2008; Katz, 2006; Kimmel, 2007; Keith, 2020).

The primary focus of this book to date has been on how patriarchal beliefs have impacted on women’s lives through the crime of rape. Patriarchy, of course, impacts men also. This chapter uses the conceptual lens of “hegemonic masculinity” to tackle the question of where and how men fit into the rape equation. It begins by defining this term before considering how it is manifest in three key areas: men as perpetrators of rape; men as victims of rape; and the impact of women’s rape on their male partners. In all three areas, men have been uncharacteristically invisible and their connections with rape largely unrecognised. This book’s emphasis on how contemporary rape culture is sustained necessitates more extensive analysis of the first area, men as perpetrators, in considering what enables such high rates of male rape against women to continue. The other two sections are covered more briefly, since while undoubtedly significant, and also linked to rape culture, they would ideally be the primary focus of specific research.

Recognising men as gendered: Hegemonic masculinity

When we consider social history over the past two centuries, one of the central factors emerging shows women having a greater propensity for reflecting on the gender question. This is not surprising since it extends

logically from a history of patriarchal dominance that traditionally subsumed women within men's identities, not recognising them as persons in their own right, let alone as equals. In ways parallel with slave culture, those who are subordinated need to acquire more knowledge about their masters to survive than their masters do about them (O'Fallon & Ryan, 1989). The limited knowledge the master acquires derives in part from the inability of the oppressor to view the slave's humanity and listen to his/her voice.

The slaveholder's denial of the slave's humanity, his failure to recognize the internal relation that binds them in a common humanity, his closure to the slave's experience of him and the world and his consignment of the slave to a realm of indefinite difference outside the claims of justice, are features that are endlessly replicated in..and indeed constitutive of..relations of dominance and subordination. The distinctiveness of the master-slave relation lies primarily in its explicitness..in the way it wears its heartlessness on its sleeve.

(O'Fallon & Ryan, 1989, p. 902)

The parallels with the history of women's oppression, and men's inability to see, hear, and understand the pains associated with it, are obvious. This helped to fuel 1970s feminist anger when women felt their shouts and screams protesting men's rape of women went unheard. As we have seen, these women encouraged discussion and consciousness-raising about many previously held taboo topics, and in this process acquired enhanced understanding of their bodies and themselves (Brownmiller, 1999; Kedgley, 2021). They also undertook research to provide the data and information men wedded to the positivist approach to scientific knowledge maintained they needed before they would accept what women's voices were saying.

However, within academia generally, even in the critical and often self-reflexive social sciences such as criminology, the question of gender has typically been ignored until comparatively recently, and is still engaged with very selectively (Kersten, 1996). Its recognition is still often unacknowledged in "mainstream" criminology, a staggering trend when crime, particularly violent crime, is one of the most gender-specific behaviours on the planet. Analyses of class and race have dominated criminology for more than a century, yet despite being crime's most defining feature, gender can still be viewed as a code word for "feminist," dismissed as unscientific by some or maligned by others who feel threatened by it. Mostly it is quietly ignored or assumed to be irrelevant.

This silence about gender has been sustained by contemporary assertions that, in the West at least, we live in a post-gender world characterised by sexual equality. This belief is one of the most successful at shutting down feminist debate—it simply makes it irrelevant. Lacking or ignoring any structural analysis of inequality results in behaviours being individualised—offenders are viewed as "rotten apples" or "bad seeds" while victims

are perceived as personal risk-takers and/or in need of individual empowerment. Parallels exist with maintaining white, as well as male, status.

As Bonilla-Silva (2006) points out, if the ultimate goal of the dominant race is to maintain their position of privilege within a racialized society, they must develop rationalizations to account for the status of minorities. This is also true with patriarchy. To maintain power, authority, and privilege, dominant group members must develop rationalizations to account for the status of women, men of subordinated masculinities, and any other persons who are gender or sexual nonconforming.

(Stoll, Lilley & Block, 2021, p. 5854)

Courses on women's and feminist studies grew within many universities from the 1970s onwards, with those on offer in American colleges and universities rising to 3,000 by 1980 and a massive 30,000 noted in 1987 (Smyth, 1987; Young, 1988). Most students were female and even today's courses on gender and crime are heavily over-populated by women. Earlier predictions maintained such courses would be temporary bridging blocks to a time when gendered perspectives were mainstreamed and male knowledge biases had been corrected. A 1984 review, for example, noted that many assumed "women's studies would become unnecessary within the decade as the core curriculum developed to eliminate gender bias" (Holleran, 1984, p. 10). There is scant evidence of such a shift. Instead we have seen the demise of many "women's" courses occurring primarily as a result of university cut-backs within the arts and humanities, and gender featuring only marginally on most agendas. One sad consequence of this reality is that most men never participate in an environment where they can reflect on one of the most significant factors shaping their lives—their gender (Schmitz & Kazyak, 2017). Gaining an appreciation of how masculinity is historically and socially constructed enables reflection of alternative ways of "doing gender," and in turn may foster a stronger sense of ethical and respectful choice-making within sexual relationships.

Fortunately, a small number of male criminologists and sociologists were willing to step outside the binary and consider, alongside feminist women in these disciplines, the gender question. This led to an evolving field critically reflecting on the nature of masculinity, including how it is linked to criminal offending and behaviour. One of the most influential early theorists was Australian-based academic, R. W. Connell (1985), who began critically examining gender in the 1980s. Connell developed a theory of gender order centred on hegemonic masculinity (1995), a concept applied and expanded by many subsequent male writers, including James Messerschmidt (1993) within the US, who had influentially been utilising structured action theory to examine masculinities of violence.

Hegemonic masculinity

One of Messerschmidt's more recent books traces the developments and shifts in the concept of hegemonic masculinity, and notes how, as part of the backstory to its development, Connell had moved away from early feminist analyses of patriarchy to an approach emphasising "gender relations" (2018, p. 22). Writing within the Australian context of the early 1980s, Connell sought to formulate a theory that was less reliant on social structural explanations and more cognisant of how these interacted with the ways gender was practised in personal lives.

Hegemonic masculinity refers to an idealised form of masculinity that serves as a standard against which men may be assessed, or assess themselves, to gauge if they meet its precepts (Connell, 1993; Connell & Messerschmidt, 2005; Dobash & Dobash, 1998; Hearn, 2004; Mullaney, 2007). Its power, or hegemony, derives from the cultural dynamics involved in establishing the social group possessing such attributes as the legitimate occupiers of the most privileged position in the social hierarchy. These attributes reflect stereotypical notions of strength, aggression, and dominance that identify "real men," accompanied by emotional toughness and a refusal to be "bossed around" by women (Connell, 1995; Messerschmidt, 1993). Early definitions invoked a culturally idealised form of manhood that was criticised by some for failing to recognise different, often competing, forms of masculinity (Whitehead, 2002) and for not adopting a consistently relational approach to understanding gender (Brod, 1994). There has also been debate over how power and dominance are manifest, and the relationship between what has been termed "external hegemony" (relating to how male dominance over women has been institutionalised) and "internal hegemony" (referring to how one group of men sustains cultural dominance over all other men) (Demetriou, 2001). This construction enables recognition of both a dominant, hegemonic form as well as marginalised and subordinated forms of masculinity.

In a useful reformulation of hegemonic masculinity, Connell and Messerschmidt (2005) adjusted the earlier framework in ways that addressed these and other criticisms. Of particular relevance here was the emphasis on gender hierarchy and the relational dimensions among groups of men as well as with women. Masculinity is then more fully understood as resulting from socialising processes participated in by women as well as men, and this also allows for recognition of the interactions between masculinities and femininities. The reformulation overall encouraged more complex attention to local, national, and global differences as well as recognising how masculinities may change in response to shifting social, political, and economic conditions, including when resisted and challenged by women or subordinated masculinities. While debates continue to modify and challenge its conception, hegemonic masculinity continues

to provide a useful framework to aid in understanding the social construction of men as gendered beings and the persistence of gendered power relationships.

A central feature of hegemonic masculinity involves a male presumption of sexual entitlement to women's bodies (Connell & Messerschmidt, 2005; DeKeseredy, Burnham, Nicewarner, Nolan & Hall-Sanchez, 2019; Kimmel, 2008). As noted in [Chapter 2](#), the notion that women exist as sexual objects for male pleasure is one of the core attitudes underlying rape proclivity. Sexual violence is a major way by which men demonstrate power and control, and is typically accompanied by less overt means of abuse such as isolation, threats, emotional abuse, and minimising, denying and blaming women in ways that form a pattern of dominance and abuse (Pence & Paymar, 1993). The power accorded men within patriarchal societies results in the disproportionate harms arising from the perpetration of male violence against women, with women's violence against men more often constituting defensive violence used to protect themselves and/or their children (Dragiewicz & DeKeseredy, 2012). Estimates suggest self-defence accounts for three-quarters (75%) of the violent acts committed by women, while men commit 90% of *all* violence, covering public, private, and relationship contexts (Kimmel, 2002). Interpersonal violence may also increase at times of social change when masculinities are under pressure and respond by seeking to dehumanise and victimise those viewed as weaker and "other" (Kersten, 1996; Messerschmidt, 1993).

The concept of hegemonic masculinity has been expanded and refined to include recognition of its complex relationships to power and domination (Flood, 2002–2003). Connell and Messerschmidt (2005) recognised the concept also needed to allow recognition of how subordinated groups (such as gay men and women) could exercise agency, and of the ways in which its precepts could be challenged and potentially changed. Important within such considerations is acknowledgement of "*positive masculinities...that contribute to legitimating egalitarian relations between men and women, masculinity and femininity, and among masculinities*" (Tomsen & Messerschmidt, 2020, p. 188. Emphasis in original).

While the remainder of this chapter recognises the critical significance of hegemonic masculinity to understanding the complex relationships between men and sexual violence, I maintain its meanings and impacts derive from, and reflect, patriarchal thinking and privilege. Hegemonic masculinity may shape the ways in which boys learn to perform toughness and dominance, but it is the gender hierarchies, inequalities, and compulsory heterosexuality of patriarchy that legitimate using their strength to control women and gay or "weak" men. The core messaging all children receive is that they have been born into a gender-divided world primarily governed by men, a world where boys are raised expecting to be privileged over, and entitled to, women. Such binary and hierarchical thinking is supported by gendered attributes conducive to the maintenance and reproduction of this

structure—boys learn how to take up space and exercise their dominance while girls become skilled in compliance and self-containment. The recipe for rape is written.

The next section explores the question of how men come to be such frequent perpetrators of sexual violence against women.

Men as perpetrators

A common feature within rape culture is the relative invisibility of the perpetrator of rape in contrast to the high profile of the victim. Or, as the headline to an article by Rebecca Solnit (2021) expressed it, “Women are harmed every day by invisible men.” The social preoccupation with women’s sexuality and the double standard that judges sexually active women as “sluts” serve to maintain a focus on how the *victim* of rape behaves. Fewer questions are asked about why men who rape behave as they do, despite their being the perpetrators of most sexual violence. For example, as previously mentioned, the US *National Intimate Partner and Sexual Violence Survey 2010*, that interviewed more than 16,500 adults, found that 98% of female rape victims reported only male perpetrators, as did 93% of male rape victims (Black, Basile, Breiding, Smith, Walters, Merrick, Chen & Stevens, 2011). More recently, the *National Intimate Partner and Sexual Violence Survey 2015* found approximately one in five women (21.3%) reported having experienced completed or attempted rape in their lifetime, with this figure rising to 44% of women experiencing some form of contact sexual violence in their lifetime (Smith, Zhang, Basile, Merrick, Wang, Kresnow & Chen, 2018). For men, the comparable figures are 2.6% of all men reporting completed or attempted rape in their lifetime, rising to 25% experiencing some form of contact sexual violence in their lifetime. One of the few community-based studies conducted on rape perpetration outside of the United States was undertaken in South Africa by Jewkes, Sikweyiya, Morrell and Dunkle (2011). The researchers obtained a randomly selected sample of 1737 men from the general adult population, aged 18–49, of whom more than a quarter (27.6%) admitted to having raped a woman in some context.

Male rape behaviour has been normalised historically, variously depicted as a means of securing a wife, winning a war, and strengthening male bonding. Membership of the gender category “men” bestows a particular form of power and privilege, evident in the strategies used to indicate and express manhood (Schrock & Schwalbe, 2009; Schwalbe, 2014). Schrock and Schwalbe (2009) maintain the three major strategies used by men involve: differentiating themselves from women/femininity; signifying a capacity to control; and demonstrating resistance to being controlled. This underscores the importance attached to male autonomy, paired with the equal importance given to female subordination, and makes the use of violence a logical outcome.

Violence clearly signifies a capacity to assert control and resist being controlled. It can establish masculine credibility and dominance over other men and over women. Establishing control over women is especially important, as failure to do so compromises the ability to present oneself as superior to women and femininity.

(Morris & Ratajczak, 2019, p. 1992)

The patriarchal structures that govern society privilege men as a gender class over women, but individual men need to work to ensure their dominance or risk subordination to their male peers (Connell & Messerschmidt, 2005). Masculine status is gained through competition with other men, necessitating continual engagement in what Butler termed gender performativity (Butler, 1990). Her concept is useful here in drawing attention to how men's gender performances demonstrate masculine subjectivity within a patriarchal environment where male supremacy is viewed as "natural" rather than socially constructed or bestowed. Boys raised as members of a bonded brotherhood adopt attitudes that are destructive to women and themselves, fuelled often by misogynist notions of what it means to be a man (Katz, 2006; Keith, 2020). Since manhood is performed for an audience, male peer support and approval are an important aspect (DeKeseredy & Schwartz, 2013). Thus, Morris and Ratajczak (2019, p. 1992) recognise "the importance of an audience of patriarchal male peers in spurring men to seek dominance over women."

The centrality of such performativity emerged strongly in Michael Flood's qualitative analysis of young Australian men exploring what he terms "the homosocial organization of men's heterosexual relations" (Flood, 2008, p. 339). His interview data made clear that, for some men at least, their most significant relationships were with other men such that male-male social bonds structured their lives, including their interactions with women. Masculine status was measured not only by being seen to achieve intercourse with a woman deemed desirable by the "boys" but increased should she be viewed as particularly powerful or attractive. Having an "imaginary male audience for one's sexual behaviour" (Flood, 2008, p. 348) was all that was needed to give it masculine meaning. An example provided by Tim, a young man at a military university, illustrates this dynamic when he explains his favourite sexual act is fellatio, adding:

"There's something really appealing to me about sittin' there with a beer, just watching the footy, and Lucinda finishes cleaning up after lunch, she sits down and gets toey and just starts suckin' me off. And I'm sittin' there with my beer. And I'm watchin' the footy. And I've got a girl suckin' me off [little laugh]. And I just go, "Hohhh. If the boys could see me now."

(Flood, 2008, p. 348)

The pleasure of this trifecta of footy, beer and oral sex is intensified by Tim imagining the back-slapping approval of his mates, the latter achievable also

through the sexual story-telling that can characterise some all-male gatherings. In these ways sexual violence serves as a mechanism through which dominant social constructions of masculinity are reproduced (Fahlberg & Pepper, 2016; Katz, 2006). The links with gender inequality are well established—sexual violence rates are higher where gender inequality is greater (Kearns, D’Inverno & Reidy, 2020; Krahe, Berger, Vanwesenbeeck, Bianchi, Chliaoutakis & Fernández-Fuertes, 2015). The study of Jewkes et al with men in South Africa, a nation of marked gender inequality and high rape prevalence, found that the beliefs they held justifying rape were one of the key differences separating men who raped from those who did not. Of men who raped they found: “They held more gender inequitable views, adversarial and hostile ideas about women and were more likely to subscribe to rape myths that provide cognitive legitimacy for their acts” (Jewkes et al, 2011, p. 8). These men also acted out hegemonic masculinity in their relationships with women, expecting that as men they would control women, as well as having high numbers of sexual partners, and engaging in transactional sex (the latter enabling greater male control by minimising emotional engagement). In their efforts to understand rape perpetration, the authors concluded:

The most commonly reported motivations stemmed from ideas of sexual entitlement and of rape motivated by anger and a desire to punish. This finding strongly supports the need to emphasise gender inequality and gender relations in understanding the act of rape and the patterns of ideation that provide space for it.

(Jewkes et al, 2011, p. 9)

Their findings reinforce the centrality of engaging with the impacts of patriarchy in both seeking to understand rape perpetration and working to prevent it (the latter is addressed in the next chapter). Placing the male as the subjective performer in a binary world positions a woman in the role of object. Men’s perpetration of violence against women is enabled by their establishing women as “other,” outside the realm of identification and empathy. While few men would literally use the term “object” in relation to their female partner, male batterers frequently use verbally abusive terms such as “bitch” and “whore” to reduce her subjectivity and legitimate their violence (Hydén, 1995). Men may also “other” their own lust, for sex and power, in ways that turn “the sexual object into a fragmented object” (Enright, 2021). Believing in male entitlement erases responsibility while placing blame on the other. Anne Enright (2021) has described this well:

These men speak as though arousal comes from somewhere outside the self, and that it, even more strangely, continues to happen outside the self. There is no reality check. She started this. She wants this. It comes from her.... Male agency is routinely removed from descriptions of male violence, and this helps men get away with it.

The emphasis in this book is on the ways the patriarchal legacy remains manifest in contemporary rape cultures rather than on the individual variables that may be correlated with sexual aggression. One variable requires particular acknowledgement, however, given its close association with sexual violence perpetration. Alcohol use has been identified as present in about half of all rape cases (Abbey, Zawacki, Buck, Clinton & McAuslan, 2004), and has specifically been linked to the high incidence of campus sexual assaults associated with binge drinking, particularly for first year female students (Mouilso, Fischer & Calhoun, 2012). A study conducted across 10 European countries found that “the more regularly participants reported drinking alcohol in sexual interactions, the more likely they were to have experienced sexual victimisation” (Krahé et al, 2015, p. 695). Relevant to this discussion are the links between alcohol use and hegemonic masculinity, with heavy and/or binge consumption widely accepted as consistent with male risk-taking generally (Carlson, 2008). In contexts of male sexual victimisation, disclosing heavy alcohol use beforehand can help victims to avoid being stigmatised for failing to fight off their attacker; the feminising of a man by rape can be offset by proving his masculinity in alcohol associated ways, which may make self-defining as a victim easier (Javaid, 2015). In terms of heterosexual rape perpetration, men may also benefit from conforming to masculine drinking ideals given the ways in which these are argued to reduce rape culpability (Ryan, 2011). Patriarchal “logic” is again visible, however, in the double standard that consistently uses high alcohol use by women as a factor signifying blame and risk-taking, using this to men’s advantage (Schiffrin, 2013). As rape myths remind us, women ask to be raped and being drunk in male company is interpreted as consent, even in cases like the one at the beginning of this chapter where the victim was so inebriated as to be comatose, yet those who violated her were acquitted.

Perceiving drunk men who rape as more victim than perpetrator can be viewed as part of a broader trend towards what Kate Manne (2018, p. 197) describes as “himpathy.” As she observes, it was particularly manifest in the responses to Brock Turner (see [Chapter 1](#)) who was regarded with excessive sympathy and concern over how his life would be ruined by a rape conviction. The irrelevancy of the impacts of the rape on the victim were eclipsed by considerations of *his* future, emphasised in part by his being one of America’s white, athletic “golden boys.”

Himpathy is enhanced by victim-blaming. As previous chapters showed, this strategy characterises the defence’s preoccupation in rape trials with humiliating and accusing the victim in order to have their client exonerated (Gravitas, 2018; Lees, 1997; van de Zandt, 1998). It is a tactic more widely apparent in media and social media discourse when the focus is so intensely placed on the victim’s character and behaviour that the perpetrator is denied all responsibility or even erased from view (Boyle, 2019; Solnit, 2021). Men who rape are largely excused if they are drunk or mentally ill while women are negatively judged for the same factors. The extent to which

men are viewed as deserving of empathy tends to rise on a par with their social status (Manne, 2018). In this way,

The most privileged demand our attention, not least because they are so routinely represented as points of identification that a empathetic perspective is utterly normalised. At the same time, this means that the most privileged can be re-presented as the most vulnerable, the most prone to malicious victimisation, precisely because they have the most to lose.

(Boyle, 2019, p. 109. Emphasis in original)

Furthermore, as Solnit (2021) pointed out in referring to a campus sexual assault study, victimisation survey results are often presented and discussed with little recognition of who is perpetrating the violence.

It is clear that the question of *why* men rape is not universally engaged with and explored. In discussing the New Delhi rape and murder of Jyoti Singh, Benedict (2013) observed that the *why* question is only asked in the context of “other” cultures. Otherwise attention remains on the victim. In considering these dynamics, prominent media analyst Karen Boyle (2019) notes how when white men rape, their race and gender are typically ignored in favour of individualised explanations for their deviance. The focus becomes understanding how “monsters” such as Harvey Weinstein or Jeffrey Epstein were made, reflecting a societal reluctance to engage with men’s violence as a structural issue. As Boyle (2019, p. 119) notes:

The feminist understanding of the gendered nature of violence remains profoundly threatening in a patriarchal context where the maleness of male violence is both taken for granted and invisible. In contrast, the mainstream portrayal of female violence is routinely about gender, thus creating implicit and explicit links between female violence and feminism.

Identification and empathy with the male perpetrator is also evident in contexts of intimate partner violence when his actions are presented as justifiable given who *she* was or what *she* did to him. Given the prevalence of such violence, and its frequent inclusion of sexual victimisation, it warrants further consideration here.

Intimate partner violence

A recent case history published in *The Guardian* documents the experiences of a young woman, Marie, whom police encouraged to report the “daily rapes” she experienced from age 17 while living with a violent boyfriend (Topping, 2021). It was ten years later, in the context of reporting another

crime, that Marie was persuaded to record a four-hour video statement, hand over her journal, and provide a list of the people she had confided in at the time. When the initial video became corrupted, she agreed to make a repeat statement, despite feeling “retraumatised” with each telling. Two years of anxiety followed before she was informed by a prosecutor that no further action was to be taken. This, she was reassured, was not because she was disbelieved but because of predictions regarding how a jury might respond. One reason she was given later, after requesting a review, stated that it may be difficult for jury members to accept she had been raped when she continued living in the abusive relationship. After the case was finally closed, Marie still struggled with this decision, saying:

“Over the last four years I’ve had to relive an abusive relationship that was only two years long in the first place. I don’t have words for how betrayed I feel by the system. I feel like I was so silenced. I was gaslighted, essentially – gaslighted over and over again. It’s left me with more scarring because now he is walking around thinking that he’s won. And this wasn’t even my fight, I didn’t even want to start this fight, I didn’t even want to report it.”

(Topping, 2021)

Marie’s experience illustrates some of the difficulties encountered by women when they finally decide to report their abuser, and are confronted by a lack of awareness regarding the realities of what it is like to live with violence. The fear of being killed is one of the most effective silencing mechanisms in patriarchy’s arsenal. Ken Polk’s (1994) analysis of “masculine scenarios” of intimate partner violence clearly established the motives of jealousy and domination evident in many spousal assaults and killings. A common picture emerged of men who became obsessed with maintaining control over their sexual partner, particularly if they feared or experienced rejection. Polk’s description of one case exemplifies this, where he notes of the killer: “He would destroy his intimate ‘possession’ rather than let her fall into the hands of a competitor male” (Polk, 1994, p. 29).

Accounts of criminal justice system responses to spousal homicide also produce revealing gender differences. For example, Gavin (2015) has shown how courts and judges have recognised the ways husbands appear justifiably provoked to kill their wives, and sentenced them leniently, yet viewed women who killed their husbands as “evil” and censured them accordingly. This pattern of thinking was evident in Helena Kennedy’s comparisons of how, in the same week a UK judge refused Sara Thornton’s appeal against conviction for the murder of her violent, alcoholic husband, another trial judge felt such empathy with Joseph McGrail killing his long-term partner, Marion, that he handed down a suspended sentence. Marion, said the judge, was a scold and a nag and “would have tried the patience of a saint” (Kennedy, 2018, p. 253). Thornton’s experiences of repeat violent

victimisation, however, did not factor in judicial decision-making. As Kennedy (2018, p. 253) observed:

...the willingness to recognise the male experience is a reflection of the male nature of our courts. Nagging is seen as the female equivalent to violence. Yet men married to intolerable women usually have many more alternatives available to them and find it easier to leave.

Marital and partner rape may be the most common form of sexual violence occurring globally (Martin, Taft & Resick, 2007). While patriarchal mythology suggests the most seriously damaging rapes are those perpetrated by strangers, research findings caution against minimising the impacts of partner rape (Huff & Rappleyea, 2020). Victim/survivors of Intimate Partner Sexual Violence (IPSV) are impacted differently long-term than women victimised by stranger rape or by non-sexual forms of IPV, both of which are uniquely traumatising in their own ways (Bennice, Resick, Mechanic & Astin, 2003). As identified by Finkelhor and Yllo (1983), unique to victims of IPSV is the loss of trust and sense of betrayal that comes when the perpetrator is the person they share a relationship with. Living alongside the man who raped you serves as a “constant reminder of the humiliation, pain, and continued threat” (Howard, Riger, Campbell & Wasco, 2003, p. 718), impacting on recovery processes. Huff and Rappleyea (2020) provide a useful overview of research findings exploring the multiple impacts experienced by victims of IPSV and the implications of these for practitioners working to support them. One aspect they stress is the importance of clinicians and mental health/support professionals being aware of the dominant attitudes that may impact disclosure and affect recovery. As they advise, “Understanding societal beliefs surrounding IPSV can help a therapist understand victims’ reactions to sexual assault, helping them respond in a more appropriate and empathetic way” (Huff & Rappleyea, 2020, p. 122).

Accepting that marital/partner rape is the most common and prevalent form should immediately raise the question, “Why?” While multiple factors operating on a range of levels contribute, the social context within which all forms of IPV occur is the patriarchal belief system. In a study based on interviews conducted with men incarcerated as batterers within US prisons, Wood (2004) found many believed they were fundamentally entitled to aggressively control and discipline their female partner. For example, one 23-year old detailed the ways women needed to be “tamed,” explaining:

“A woman’s kind of like a dog. You got to break ‘em. A dog don’t do right, you beat it ‘til it do what you say. It either leave or be broke. Same with women.”

(in Wood, 2004, p. 556)

One man described hitting his wife for turning his back to her when he wanted sex, asserting “you wanna control. I mean, that’s where the hitting comes from. To put fear in `em”.

(in Wood, 2004, p. 564)

Another man referred to how “natural” it was for him to “dish out” the violence and for her to take it, articulating a belief that women existed to serve and please men. He expected “to be the center of her world,” describing:

“I had her basically trained to fix my supper and wash my clothes. She wouldn’t dare let me get up outta my chair, fix my own drink. I didn’t wanna get up, fix my own drink. And then she kinda got tired of it. [I’d say] ‘Bitch, fix me something to drink.’ And if she didn’t, then it [the violence] would just start all over again.”

(in Wood, 2004, p. 568)

How these men articulated their use of violence reflected their belief that women essentially existed for them, with violence justified should she need to be reminded of his paramount importance. While Wood’s study was conducted with men incarcerated for violence, others have observed that, harking back to Brownmiller (1975), the majority of men do not need to employ violent means to perpetuate gender hierarchies. As Hunnicutt observed:

Those males who occupy a seat at the patriarchal table are less likely to need ‘violence as maintenance’ because their elevated position is sustained in legitimate ways.... Direct threat and coercion are hardly necessary in a world where gender relations are entrenched and remarkably self-perpetuating.

(Hunnicutt, 2009, pp. 560–561)

Establishing patriarchal dominance

Believing that “it’s a man’s world” is not a narcissistic disorder but a reflection of patriarchy. By definition, men historically have been cast as superior to women. Moreover, women’s inferiority is depicted not as naïve innocence but as potentially deadly and dangerous. Iconic images include Eve as temptress, The Sirens luring sailors on to rocks, spell-binding witches, and the founding father of criminology, Lombroso with son-in-law Ferrero (1895, p. 151), describing the female criminal as “more terrible than any man.” The contexts and cultural forms may vary, shifting through history, but the continuity of the core thinking prevails. In the words of Saint John Chrysostom: “Woman is a necessary evil, a natural temptation, a desirable calamity, a domestic peril, a deadly fascination, and a painted ill” (quoted in Collins, 1975, p. 263). The logic of patriarchy dictates that men must

keep such “evil” under firm control and guard themselves from any risk of emasculation. Rape has been used for centuries as a mechanism to achieve such outcomes.

Sexual violence is a valuable tool within patriarchy’s arsenal, a primary vehicle by which men establish dominance over women and also over other men (Connell, 1995; Flood, 2011; Kimmel, 2008). Women become the objects through which men signal their status and dominance to other men, a means by which men prove their “masculine credentials” (Kaufman, 1999, p. 17). One way this is evidenced is through the Trumpesque practice of older men seeking to “prove” their manly abilities in sexual conquest by marrying significantly younger, attractive women who can be paraded as decorative trophies (Saunders, Kurko, Barlow & Crane, 2011). Another is in gang rapes providing groups of men the opportunity to demonstrate their commitment to shared masculine goals, enhancing peer relations through subordinating women whose bodies are used instrumentally (Kimmel, 2008). In these examples, sexual violence is used to reproduce male dominance, reinforcing hierarchical gender systems and structured inequalities (Anderson & Umberson, 2001).

Not all men attain equal manhood status or possess equal resources enabling this to occur. The unequal power between men and women is accompanied by inequalities among men that result in the marginalisation of those not considered sufficiently “masculine.” Using violence against women to maintain male dominance is one key way by which men demonstrate their masculinity to other men—“real men don’t take shit from women”—while those judged as weak by their peers risk being insulted with feminised epithets such as “fag” or “pussy” (Morris, 2012). One of the worst insults that can be thrown at a man involves reducing him to the status of a woman. This message is acquired in childhood with boys dreading school playground taunts of being a “sissy” or a “girl” and soon learning what failed masculinity looks like and the price to be paid for it. Advance the age and change the institutional context to that of a prison and a similar dynamic is evident in the sexual and physical violence used by some men to subjugate others (Robertson, 2003)

Threats to masculine status can prompt some men to engage in compensatory acts of violence, displaying exaggerated forms of hegemonic masculinity that can potentially result in harm to themselves and/or others (Katz, 2006; Schrock & Schwalbe, 2009). These are often referred to as hyper- or hostile masculinity (Morris & Ratajczak, 2019), frequently displayed as men endeavour to resist any feelings of emasculation triggered by strains or perceived failures in other areas. Hyper- and hostile masculinity have frequently been associated with military and athletic contexts where women are often viewed and treated as objects against whom the use of violence, including sexual violence, is normalised (Gage, 2008; Rosen, Kaminski, Parmley, Knudson & Fancher, 2003).

Men of colour have often been portrayed as holding hypermasculine ideals, evident in stereotypes of Black rapists and with Black bodies in pornography frequently represented as hostile and dangerous (Dines, 1998). Framing Black men as sexually and physical violent towards White women in particular is a construct associated with the systemic oppression of Black people during the slavery era, with the legacies of racism still evident today in ways that parallel, and intersect with, the legacies of patriarchy (Patton & Snyder-Yuly, 2007). The violence used historically to assert White supremacy fostered a fragile “peace” that has subsequently been ruptured numerous times, with the police killing of George Floyd in June 2020 making this abundantly clear (Bolsover, 2020). This incident prompted arguably the largest protests in US history (Bolsover, 2020) and reignited support for the Black Lives Matter movement both within and outside of the country. Black men living in urban communities are disproportionately impacted by violence, with homicide the leading cause of death for those aged between 18 and 25 years (Singletary, 2020). Multiple factors contribute, including the impacts of poverty and male competitiveness for dominance as well as police, and societal, racism.

As well as recognising the critical intersections of race and gender, applying an intersectional lens is useful in identifying the influence of class factors, with many academic commentators observing the nexus of poverty and violence, for men in particular (Anthias, 2014; Jewkes, Flood & Lang, 2015; Short, 2018). Economic inequalities compounded by racism have created communities of fear and under-privilege where drugs and crime often predominate (Alfieri, 2019). In researching violence among male adolescents, Quam, VanHook, Szoko, Passarello, Miller and Culyba (2020, p. 639) stressed the importance of focusing on

the impact of structural inequalities and racism on youths’ identity and behavior. The construct of masculinity among Black youths is additionally complex, as Black male youths develop masculine identity amidst the influences of structural racism, class expectation, and heterosexist ideology.

The patriarchal requirements within capitalist societies for men to be financially dominant and serve as family providers are realisable by only some men, with those viewed as less economically successful often seeking alternative ways to perform masculinity. Asserting themselves within interpersonal relationships can become an alternative arena within which to gain masculine recognition, and has been linked to male violence against male peers as well as against women (Katz, 2006; Kimmel, 2007, 2008). Kimmel has argued that the fact that in the US men and boys perpetrate 95% of all violent crime means “this may be the single greatest public health issue of all” (Kimmel, 2007, p. 105).

This can be particularly evident in indigenous and ethnic communities characterised by low socio-economic status. Young men growing up in such

contexts often struggle to achieve male approval and acceptance, with gang culture providing an environment for some within which to prove their manhood (Alison, 2007). Respect from the “bro’s” is frequently associated with conforming to an exaggerated caricature of swaggering masculinity within which the use of violence is normative (Keith, 2020). This can result in high levels of violence towards both men and women, including sexual violence towards the latter. Within Aotearoa New Zealand, and internationally, examples have emerged of men willing to break this mould to campaign against the use of such violence, but such promising signs have yet to become widespread initiatives. A dual approach is necessary that enables individual experiences to be heard and understood within the context of patriarchal power structures, and one that is committed to dismantling these to achieve equality.

Intersections of gender and class are also apparent amongst men from more privileged backgrounds, who may also perpetrate sexual violence for peer approval. This became powerfully evident in India in 2020 as publicity mounted over the gang rapes committed by higher caste males against lower caste women, especially those from the lowest status group of Dalit women. Despite tougher rape laws being introduced following the 2012 rape and murder of Jyoti Singh, sexual violence shows no sign of abating and the chances of victims securing justice remain remote. Researchers found that, of 40 rape cases in one state (including murders and victims aged under six), only 10% resulted in the offenders being convicted (Nagaraj, 2020). Jacqui Hunt, Eurasia Director of the women’s rights group, Equality Now, stated

“Dalit women’s bodies are being used to assert caste supremacy and keep women ‘in their place...’. Perpetrators from dominant castes know they are likely to go unpunished because every branch and echelon of the system is weighted in their favour, and this impunity for rape creates an enabling environment that fosters further abuse.”

(in Nagaraj, 2020)

The hierarchies of race, gender, class and caste systems intersect to create an intricate web of multiple oppressions reinforceable by rape.

While early feminist theories of sexual violence emphasised men’s desire to maintain male dominance over women (Brownmiller, 1975; Dobash & Dobash, 1979), more recent studies find that beneath their control tactics, men’s perpetration of rape may be associated with feelings of masculine insecurity and inadequacy (Lisak & Roth, 1990; Kimmel, 2007). Such insecurity could be felt in relation to anxieties about containing and controlling potentially powerful women, as well as in response to status differentials. For example, in capitalist societies the revering of an elite of rich white men signals failure to the majority of those who consider it unlikely or impossible for them to achieve such status. In a study of Latinos living in New York City, Philippe Bourgois (1995) maintained growing de-industrialisation had

resulted in declining low-wage employment options for men while simultaneously women's rights were being promulgated throughout all communities. Sexual violence, he argued, became a tool through which emasculated Latino men tried to counter their growing sense of failure and subordination. Feeling under threat as men, they strove for ways to demonstrate and reproduce their own sense of power and identity. It is conceivable this response may arise in multiple situations where a man feels under pressure to assert his masculinity, such as when saving face or preserving male honour (Polk, 1994), as well as in more generalised contexts where the power associated with being male appears to be weakening, evident for example in the responses of Incel members to women gaining greater gender equality (Lindsay, 2020; Scaptura & Boyle, 2020).

The dictates of compulsory heterosexuality require men to avowedly "prove" their masculine status through the sexual conquest and domination of women's bodies (Franklin, 2004; Kimmel, 2008). Demonstrating their sexual entitlement to women becomes an important indicator of male supremacy, with intersectional analyses informative also in shedding light on the social factors that may influence individual men to sexually aggress against women in specific contexts. Military contexts, for example, have been recognised as zones characterised by high rape prevalence and are briefly explored next.

Rape in war

Raping women in war and conflict situations has a long history, with some saying it "is as ancient as war itself" (Bergoffen, 2009, p. 307). The motives for men are many, including viewing access to women's bodies as one of the many "spoils" of war, compensatory benefits after the ardours of fighting. More recently, particularly in the aftermath of the rapes perpetrated in Rwanda and Yugoslavia, attention has turned to the use of rape as a weapon of war (Bergoffen, 2009; Kirby, 2012). This shift in focus did not naturally "evolve" so much as stem from what Carol Harrington (2012, p. 40) described as follows: "The astute campaigning of UN feminists to link human rights with women's rights in the radically altered post-socialist international order brought the politics of sexual violence into the mainstream of UN politics." In the wake of their efforts, the criminal tribunals authorised by the UN Security Council after these wars made history when they convicted the Rwandan and Bosnian-Serb soldiers of raping civilian women and girls, pronouncing them guilty of war crimes committed against humanity (Bergoffen, 2009).

This landmark finding reflected the efforts of local and international women's groups as well as emerging from recognition that the rapes occurred in the context of an official genocidal campaign. Rape had become a state tool for violating the "purity" of a community/nation's ethnic lines and was used for the forced impregnation of women, termed by Card (2008, p. 185) the

use of “sperm as a biological weapon.” The mass rapes of women in Bosnia-Herzegovina destroyed family and community ties and inhibited procreation. Female survivors became “damaged goods,” with rape viewed as a tool for ethnic cleansing (Allen, 1996; Slim, 2007). The strategy of genocidal rape reflects patriarchal power, as Debra Bergoffen (2009, p. 315) recognises:

By creating a world where the ties of the community are linked to the men who control the meanings of women’s sensuality, these societies create the conditions that make genocidal rape an effective war time weapon; for by transferring power over women from one group of men to another, the war time rapist transforms the women’s body from a symbol of her community’s bonds into an instrument of the rapist’s world.

The international tribunals separated rape from torture, maintaining it was not the infliction of pain that was the defining issue but the denial of women’s right to sexual self-determination (Bergoffen, 2009). Women’s bodies, viewed as passive and feminised ‘others’, become sites for humiliation and shame.

The invaders’ actions also function in ways that humiliate and shame the men. By raping “their” women, war contexts provide aggressors with the means of trying to emasculate their enemies. Soldiers can enhance their masculine status and demonstrate their virility, the act of “possession” fueling the anger, shame and jealousy of their opponents.

A raped woman’s body stigmatizes her and the men who failed to protect her. Her raped body carries, and is intended to carry, a message to the men of her community - ‘You are not men. Like your women who are now ours, you too are subject to our power.’

(Bergoffen, 2009, p. 317)

One of the most recent sites of conflict where sexual violence has become normative is the Tigray region of Ethiopia.

Hundreds of women have reported horrific accounts of rape and gang rape since the start of the conflict in Tigray nearly six months ago. Medics have reported removing nails, rocks and pieces of plastic from inside the bodies of rape victims, while the United Nations said last week women and girls in the mountainous region’s remote areas are being subjected to sexual violence “with a level of cruelty beyond comprehension.”

(Kassa, 2021)

Some perpetrators of gang rape and torture have expressed their desire to render the women infertile, explaining their brutality as justified because “a Tigrayan womb should never give birth.”

Acts of rape may also prove men's masculinity to their fellow soldiers, and become part of a triumphant male bonding ritual. Such demonstrations of masculinity can occur within the military also, as evidenced by growing awareness of the risks of sexual violence faced by women in the armed forces (Zurbriggen, 2010). Rape and war are both fuelled by hegemonic masculinity, with attributes positively reinforced within the military including toughness, aggression, restricted emotionality, and lack of empathy (Zurbriggen, 2010). Respect for hierarchy is a core value, reinforcing acceptance of the virtue of knowing one's place and condemning acts of insubordination. The links with patriarchy's hierarchies are obvious. Also evident is the importance, even necessity, of objectification. The ability to feminise or dehumanise the enemy is what makes war, and killing, possible, in ways parallel to the objectifying processes that often precede rape. This is consistent with Sanday's (1981) finding that there is a correlation between societies that have high levels of rape with those which wage war more frequently. As Zurbriggen (2010) argues, the common denominator is hegemonic masculinity.

Multiple masculinities

Social constructions of masculinity are not static and have changed significantly across time and cultures. One example explored by Stearns (1994) describes how the passionate, Victorian male of the 19th century gave way to the emotionally inexpressive forms of masculinity evident today. Recognition has grown also that multiple forms of masculinity exist, with differences frequently constructed across class and race lines, as well as on the basis of sexual preference and gender identity (Connell, 1995; Smiler, 2004). Particular traits are emphasised in specific contexts, as shown in Messner's (1992) study that showed how US college athletes soon learned that their masculinity was recognised and rewarded through sports rather than academic prowess, acquiring "jock" status among their peers.

While masculinity is socially significant and closely associated with gender inequalities, structurally it is patriarchy that establishes and reproduces the hierarchies and binaries splicing our society. The patriarchal privilege derived from being male is the constant factor evident here, irrespective of the kinds of masculine behaviours approved of in any given nation or generation. Being male still, despite recent moves towards gender equality, counts for more than being female. A poor Black man living in an impoverished US neighbourhood undeniably lacks social, racial, and economic privilege; his poor Black female partner suffers the same lacks, and in addition lacks gender privilege.

Male-on-male violence is prevalent and visible on the streets, yet most sexual violence, as we know, occurs in the private sphere and within the context of established relationships, and it is here that women face their greatest risks. According to Breiding, Chen and Black's (2014) national study, four

in ten Black women have experienced rape, physical violence, or stalking by an intimate partner during their lifetime. The rates are heightened in lower socio-economic communities, with researchers finding “disturbingly high rates of rape among impoverished Black women” (West & Johnson, 2006, p. 3). The marginalisation of Black and indigenous women contributes both to sexual violence victimisation and to the subsequent disempowerment many face (Crenshaw, 1991).

Black women share the same barriers inhibiting their speaking out as white women, but also face additional challenges. One stems from the knowledge that reporting a Black man involves handing him over to a justice system that is historically renowned for its racism and mistreatment of Black men (Gómez & Gobin, 2020). A second significant factor arises from Black women’s fear of betraying their own culture, prompting many to compromise their own safety and well-being by staying silent (Ibid.). This concern was clearly expressed by a Black woman’s reflection when hearing of another woman’s experience of gang rape by four Black men. She wrote:

I was flooded with pain for all the Black women who are raped. What I did not expect to feel was intense, debilitating fear. What if They get a hold of this story? What if They paint all Black men as rapists? Maybe we, as Black women, should just stay silent when these things happen to us. For the good of the Black community. To save ourselves from Them.
(Gómez, 2016)

Attention has been given to the role played by a particularly racialised and sexualised stereotype of Black women known as the Jezebel stereotype (Cheeseborough, Overstreet & Ward, 2020; Gillum, 2002). This stereotype portrays Black women as hypersexual, seductive, and promiscuous and has been linked to multiple violent and humiliating acts being committed against them from slavery days onwards (Gillum, 2002; Littlefield, 2008). It is also closely linked to their objectification, influencing the perpetration of violence towards them not only by white men but Black men also (Cheeseborough et al, 2020). A recent study highlighted how the Jezebel stereotype was influential in justifying violence, with the authors suggesting that

one of the reasons why objectification and racialized stereotypes about Black women are associated with greater support of violence toward women is because Black women may experience a “double dose” of dehumanization via interpersonal sexual objectification and racialized stereotypes such as the Jezebel.

(Cheeseborough et al, 2020, p. 211)

As well as contributing towards sexual violence perpetration, stereotypes of Black women can foster victim blaming and divisiveness (Gillum, 2002).

Similar patterns of heightened levels of sexual violence exist outside of the US, shaped by specific historical and cultural contexts. For example, in Aotearoa New Zealand Māori women experience disproportionately high rates of sexual violence with this linked to the negative impacts of European colonisation (Cavino, 2016). The latter include the dispossession of Māori from their land, alienation from their culture, and social and economic deprivation, as well as what has been described as the “transformation of Māori male masculinity through colonization and the replication of settler manhood” (Cavino, 2016, p. 7). This process has been described as follows:

Colonisation, thus, brought with it the productive and repressive nature of nineteenth century bourgeois orthodoxy, stoicism and clearly demarcated gender divisions determined by heteronormativity. Hegemonic British culture, in particular was in a constant apprehensive state regarding the contamination of the masculine by the feminine, leading to the production of private boys’ schools and the explicit inculcation of stoicism through sports such as cricket and rugby.

(Hokowhitu, 2012, p. 38)

The forms of masculinity reproduced reflected a toughness and aggression that, while serving teams like the All Blacks well, has not always served Aotearoa New Zealand women quite so favourably, and today the country’s overall rates of family (domestic) violence have been rated the highest in the developed world (Jury, 2020). This example shows the importance of not only undertaking intersectional analyses but of locating these within specific historical systems of oppression in order to understand the particular dynamics involved in the transmission of sexual violence. As this book has explored, significant efforts by women at different times have challenged male oppression in ways that, particularly since the second wave of the women’s movement, have precipitated what has been termed the crisis of masculinity (Kimmel, 2018; McDowell, 2000). The resulting backlash has been manifest in a range of ways, one of the most significant resulting from harnessing the internet to perpetrate misogynistic abuse and violence.

Online sexual violence

Male perpetration of online sexual violence was not initially recognised for the severity of its harms. In the 1990s debate raged regarding whether virtual rape could impact women negatively, with hesitancy in some quarters regarding how “real” or substantive online realities could actually be in their consequences. The case involving “an evil clown, a Haitian trickster Spirit, two wizards, and a cast of dozens” (Dibbell, 1994) became celebrated as an indicator of the growing realisation that online actions have offline impacts. Dibbell’s article demonstrated how rapes and other sadistic acts perpetrated

using voodoo dolls in a virtual world could have real-life impacts and emotional consequences for those virtually victimised. As he argued:

To participate, therefore, in this disembodied enactment of life's most body-centered activity is to risk the realization that when it comes to sex, perhaps the body in question is not the physical one at all, but its psychic double, the bodylike self-representation we carry around in our heads.
(Dibbell, 1994, p. 476)

Today an extensive body of research evidence exists documenting the impacts of sexual victimisation perpetrated online. Image-based sexual abuse is causing increasing concern, and unsurprisingly is disproportionately perpetrated by men (Lindsay, Booth, Messing & Thaller, 2016; Powell & Henry, 2016, 2017). Awareness of “embodied harms” (Henry & Powell, 2015) increased as individuals progressively spent more and more time on digital devices, compounded by the proliferation of social media. This built on the history of men primarily being the seers and women the seen. Naked female bodies have long been depicted for male viewing pleasure, while outside of Western classical art male nudity has been largely taboo for the last 600 hundred years (Ostberg, 2010). The most heavily censored part of human anatomy has been the erect penis, a ban persisting until very recently (Gill, 2008; Maddison, 2010; Ostberg, 2010). For many years pornography displayed women's genitals while coyly concealing men's, but while this has significantly changed, it is represented in particularly stylised ways. As Ostberg (2010, p. 47) argues,

closer inspection reveals the extent to which these representations are continuous with a long tradition in which the specifics of the physical penis are obscured by a phallic ideal
(p. 47).

This ideal equates penis size with masculinity, such that “the very word ‘manhood’ is synonymous with both the penis and masculinity” (Owen & Campbell, 2018, p. 333). Today not only are the penises of porn actors routinely visible but informally men send their own “dick pics” out via social media (Thorburn, 2018). The next section examines this practice as a form of “doing” masculinity.

Dick pics

One of the first points to make about men using digital media in this way is that many more women receive such images than men admit to sending them. In the UK, for example, a 2017 online survey with 2,121 women and 1,738 men, all aged 18–36 years old, found 46% of women reported receiving a dick pic while 22% of men said they had ever sent one to a woman (Smith, 2018).

For most of the women, the dick pic was unsolicited, yet only 5% of the men admitted to sending an unsolicited image. A similar US study found 60% of women reported having received an unsolicited dick pic and 22% of men stated they had sent one without being asked (Bame, 2017).

Similarly, a qualitative Aotearoa New Zealand study with men about the practice of sending unsolicited dick pics found men did not personally admit to doing so but all knew others who had or had read about it online (Thorburn, 2018). From the interviews conducted it was apparent how linked this behaviour was to perceptions of masculinity (Thorburn, 2018). In line with Ostberg's comment above, the images were photographed in ways that enhanced the size and "normality" of the penis depicted (Thorburn, 2018). Interviewees spoke of men choosing an angle to "make it look bigger," with one explaining, "I guess the main thing is going to be how big does it look [laughs]. I think that would be the main consideration. There could be other nitty gritty things like are you properly groomed or what not" (in Thorburn, 2018, p. 37). This was reinforced in comments from others stating that whose was the biggest was always important to men, a "sign of like male dominance" (in Thorburn, 2018, p. 37), with another explaining how it was "very difficult to separate ourselves from using that as a sort of metric of manhood" (in Thorburn, 2018, p. 38).

How these men spoke about dick pics maps reflected traditional Western understandings of masculinity where "a large penis is indicative of being 'more' of a man" and "a small penis draws into question a man's sexual prowess and his overall masculinity" (Drummond & Filiault, 2007, p. 122). In suggesting why men might send dick pics, those in Thorburn's study typically explained it as an instrumental motivation—"if I send something then it makes her feel obligated to send something back" (p. 51). A dick pic was also described as signalling a sexual invitation, explained by one man as "a visual form of DTF down to fuck kind of thing" (p. 51).

The attitudes described suggest an objectifying stance not only towards the women receiving the images but also in relation to the sender. The compartmentalisation of body parts and use of these as signifiers can offer expectations of sexual connection uncomplicated by emotional trappings and relationship expectations. Objectification in this context may be considered a sexual aid. This perspective is predicated, however, on assumptions of sexual and gender equality. Being sent unsolicited dick pics is not a benign gesture in a context where gendered power differences mean the penis can be used as a signifier of rape and domination. As Buchbinder (2013, p. 132) explained: "The penis is never just a fleshy organ. It is imbued with cultural and gender-political meaning, constituting it an object of desire that is both sexual and part of the phallic dynamic of the patriarchal economy." Consensual image-sharing may be viewed as a potentially fun and light-hearted exercise but gender differences mean diverse impacts may follow. For example, the men in Thorburn's study noted that receiving nude images from a woman earned a man status among his peers, thus encouraging him

to show such pictures to other men as “proof” of his sexual attractiveness to women. Male status was further enhanced by how sexually attractive the woman was, with one interviewee explaining: “I would say it’s a form of showing an accomplishment” (in Thorburn, 2018, p. 54). In this sense, male success was represented by their ability to obtain such an intimate image and demonstrated the sexual power they commanded (Harvey & Ringrose, 2015). These homosocial aspects to heterosexual sex were recognised by Michael Flood, who observed how:

Sexual activity is a key path to masculine status, and other men are the audience, always imagined and sometimes real, for one’s sexual activities. Heterosexual sex itself can be the medium through which male bonding is enacted.

(Flood, 2008, p. 399)

The sexual double standard that condones male expressions of their sexuality but judges women negatively for acting similarly also enhances men’s power when women send men nude photos of themselves. As one of the young men in Thorburn’s (2018, p. 52) study observed: “I think guys who get nudes of a girl they underestimate how much power they have.” By this he was referencing the possibility of men image-sharing and slut-shaming the woman involved, an awareness recognised by others also that more damage would be done to women’s reputations than men’s in such contexts. Viewed in this light, the practice of sending nude images condemns in women a behaviour that may be applauded in men (Jackson & Cram, 2003). Women are often judged as sluttish for sending nude images while for men such actions are more likely to be viewed as a way of performing masculinity (Walker, Sancu & Temple-Smith, 2013). In contexts where nude photos of a woman are non-consensually distributed further, she is more likely to be blamed for her initial, consensual sending than the man is for non-consensually sharing them wider afield (Ringrose, Gill, Livingston & Harvey, 2012). Furthermore, studies conducted with teenagers have found girls are much more likely than boys to experience pressure and coercion to send nude images, including receiving unsolicited dick pics from boys hoping they will reciprocate (Thorburn, 2018).

Dick pics have been focused on here as an example of technology-facilitated sexual violence (TFSV) that is attracting increasing research attention. This term encapsulates the “diverse ways in which criminal, civil or otherwise harmful sexually aggressive and harassing behaviours are being perpetrated with the aid or use of digital communication technologies” (Powell & Henry, 2017, p. 5). These behaviours include online sexual harassment (e.g. rape threats), image-based sexual abuse (e.g. ‘revenge pornography’ or ‘sextortion’), cyberstalking, and doxing (malicious posting of private/identifying information). Interestingly, prevalence rates emerge as similar for men and women in relation to the percentages receiving TFSV,

but qualitative analysis has revealed significant gender differences in content (Powell & Henry, 2017). These indicated that while the men typically received unwanted spam emails or pornography advertisements, the women described receiving unsolicited dick pics and sexual requests, with refusals on their part often resulting in hostile, misogynistic responses (Powell & Henry, 2017). Such online exchanges point to a wider cultural context characterised by stereotypical forms of masculinity, misogyny, and entitlement. The heteronormative gender norms that position men as sexually initiating, dominant subjects and women as the submissive and accommodating objects of their attention privilege male desire and entitlement (Shaw, 2016). The presumption of entitlement becomes particularly evident in situations where women fail to respond to images sent by sexually pursuing men in the ways hoped for by the latter. Ignoring or rejecting men's image-based approaches can result in further unsolicited images being sent and/or threats and abuse directed at the woman. The sites *Tinder Nightmares* and *Bye Felipe* are among those established to document users' (mostly women's) experiences of sexually harassing and hostile messages, with Shaw's analysis of the content on *Bye Felipe* prompting the following observation: "Women are arguably being made into sexual objects while being simultaneously denigrated for having sexual agency and the ability to choose, reject, or not to respond" (Shaw, 2016, p. 5).

Phallogocentric forms of masculinity are reproduced through practices such as the sending of dick pics in ways that can leave many men feeling inadequate for failing to measure up, to attain the "metric of manhood." In contemporary digital society, such men include those characterised as nerds, geeks, and gamers who, while appraised as failing to meet traditional masculine standards, may benefit from the technological and economic changes that enable them to attain online status. As Ging (2017) has argued, men experiencing subordination offline may find they can attain and reproduce power and status online. To illustrate this point, the next section considers how the abusive, sometimes overtly violent, behaviours of men belonging to Incel groups relate to concepts of hegemonic masculinity.

Incels

Recent analysis of Incel culture is useful in identifying what hegemonic masculinity looks like when taken to an extreme form, and how men who feel inadequate may be prompted to respond (Ging, 2017; Lindsay, 2020). Curiously, the term originated in 1993 with a young woman who established what she envisaged as a supportive website known as "Alana's Involuntary Celibacy Project" (Kassam & Cecco, 2018). She has since expressed dismay at how, after she walked away from it, the site became an online global network of angry and disaffected men united in their opposition to feminism. Defining themselves as "beta" men, they bond through their non-alpha status while also fiercely resenting it.

Incels position themselves and other males hierarchically in relation to what originated as a 4Chan meme referred to as Chad Thundercock, or simply Chad in a male buddy sense. Nagle (2016) explains, “Chad is a stand-in for the young, attractive, muscular football player claiming dominance over the beta-world in the contest for sexual success with women.”

This caricature of extreme masculinity is characterised by such physical traits as height, strength, and conventional white male attractiveness, embodying traits of tough, hard, aggressive competitiveness (Whitehead, 2002). Men who conform to this stereotype are viewed by Incels as not only sexually entitled but repeatedly sexually rewarded. Their attractiveness to women helps to assure their repeated sexual conquests, but so does their aggressive insistence on possessing what they view as rightfully theirs. The women depicted by Incels as Stacys are those who spurn and reject them while positively responding to Chads. This helps in explaining why Incels may angrily target both women and men—the women for spurning them and the men for their successful sexual conquests.

Elliot Rodger provides a case in point. In 2014 he killed six people and wounded 13 others in California, leaving behind a manifesto in which he vented his anger at the women who had rejected him sexually. This document provides insights into the misogyny characterising the Incel movement as well as the stereotypes of masculinity dominant in these men’s attitudes. For example, it shows how Rodger felt he did not measure up physically, with Vito, Admire and Hughes (2017, p. 93) analysis noting: “Rodger stated that he desperately wanted to be taller and recalls lying on the ground in between basketball sessions at school to try to increase his height.” Throughout his manifesto Rodger described himself as a “kiss-less virgin” and a “lonely virgin,” expressing anger and confusion towards those who rejected him. He also posted a seven-minute video on social media shortly before the attack proclaiming:

On the day of retribution I’m going to enter the hottest sorority house of UCSB. And I will slaughter every spoiled, stuck-up, blond slut I see inside there. All those girls I’ve desired so much, they would have all rejected me and looked down upon me as an inferior man if I ever made a sexual advance towards them (scoffs) while they throw themselves at these obnoxious brutes. I’ll take great pleasure in slaughtering all of you.

You will finally see that I am in truth the superior one. The true alpha male.

(Transcript CNN, 2014)

His sense of entitlement was apparent in his conviction that girls owed him sex and were denying him pleasure, and in his admonition: “If I can’t have you, girls, I will destroy you.” Similar refrains are more widely discernible

in other Incel communications and sites (Lindsay, 2020). To be a celibate male feels to such men like a contradiction in terms.

Rodger's actions and the publicity around them have earned him status within Inceldom, with others referencing him in their own acts of violence. Minutes before he intentionally drove a rented van into Toronto pedestrians, killing 10 and injuring 14 others, Alex Minassian posted a cryptic message on Facebook referencing Rodger as "the Supreme Gentleman" and alleging, "The Incel Rebellion has already begun! We will overthrow all the Chads and Stacys!" (Kassam & Cecco, 2018).

Incels are not a stand-alone group but are positioned at the extreme end of a continuum of misogyny that includes Alt-Right groups and other members of the broader "manosphere" (Ging, 2017; Lindsay, 2020). The proliferation of such groups has been linked to a crisis of masculinity, with links drawn between economic anxiety and misogynistic attitudes (Messner, 2016; Shaw, 2019). Combinations of deindustrialisation, neo-liberalism, and feminism have produced changes within the workforce that have worsened the prospects for blue-collar and poorer men, fueling both racist and sexist responses (Coston & Kimmel, 2012; Kimmel, 2008, p. 2014; Messner, 2016). Perceptions that women and minority groups are advancing at the expense of white men have spawned calls for patriarchal dominance and white supremacy to be reinstated (Morris & Ratajczak, 2019).

Some contemporary commentators on Incels emphasise the complex and ambivalent relationship they may have with hegemonic masculinity. Ging (2017), for instance, prefers to use the term "hybrid masculinities" to capture how Incels both distance from and embrace hegemonic masculinity. They extoll Chad virtues while simultaneously blaming the supremacy of these for their own rejection and for what they interpret as feminist misandry. Feminists are blamed for inculcating women with a belief that they are entitled to refuse sex, thereby thwarting some men from succeeding in sexual conquest. The reassertion of patriarchal male dominance would, in their view, return both women to their place as objects of men's property and men to their rightful position of supremacy. As Angus Lindsay's (2020, p. 45) analysis of Incel sites found, an oft-repeated mantra proclaims "feminism is the root of all evil."

It is relevant to remember that identification of feminism as the enemy of masculinity, and the perpetration of misogynistic murders, pre-dates Incels and the internet. Back in 1989 Marc Lépine entered the Engineering Department of the University of Montreal and ordered all males to leave a lecture theatre, announcing, "I am here to fight against feminism" (Chun, 1999). He shot and killed six women, then roamed the halls of the school declaring, "I want the women" (Chun, 1999). Angry at the way he considered females were invading male domains, he killed a further eight women before finally shooting himself. Lépine was represented by some journalists as a "monster" in ways that obscured recognition of the links between

“ordinary” and “extraordinary” forms of violence against women (Carter, 1998). His actions externalised a more widespread fear held by subcultures of men over what they construed as women’s encroachment.

Recent social shifts and developments have forced men to address issues of gender power that previously were typically taken for granted. These include feminist advances, the rise of post-feminism, and the characteristics of a postindustrial, neoliberal economy (Messner, 2016). Morris and Ratajczak (2019, p. 1990) recently commented: “As feminism has gained traction in popular culture, and economic uncertainty has expanded, men have felt the patriarchal foundations of manhood erode (Green & Van Oort, 2013; Kimmel, 2012).”

Changing masculinities have seen some lessening of homophobia along with more men signalling support for gender equality (Bridges & Pascoe, 2014). Termed “hybrid masculinity” (Bridges & Pascoe, 2014), the “new man” manifests the appearance of progressive egalitarianism while simultaneously ignoring or concealing masculine privilege. Intersections of class and race can assume significance here, with white, high-income men assuming “good guy” status as they condemn, for example, the “toxic” masculinity expressed in the violence of marginalised men. For example, Pascoe and Hollander (2016) discuss football players taunting a player from the opposing side by chanting “no means no,” referring to rape allegations made against him. While this initially implies “good” men were calling out another’s sexual violence, Pascoe and Hollander suggest a deeper meaning here in which the alleged rapist is perceived as *a failed man*—“a man who needed to use force to secure sexual access to a woman’s body” (p. 2). The inference is that “real” men need not use coercion or violence to have sex with women. As Morris and Ratajczak (2019, p. 1995) observe: “Gender hegemony actually rests on men’s capacity to use violence, not violence itself.” On a more macro level, the sexual violence used by some men against women benefits all men by reinforcing male dominance generally while making nonviolent men look good by comparison. Patriarchal dominance can accordingly remain obscured, with Pascoe and Hollander (2016, p. 3) describing how “rape, in this sense, may be symbolically utilized in a variety of ways to reinforce the contemporary ordering of gender relations.”

This section has addressed some of the multiple factors that need to be considered in understanding why sexual violence is such a common reality. Equally important to address is the question of why not *all* men perpetrate sexual violence. The fact that high prevalence figures suggest rape is a common occurrence normalised within societies characterised by rape cultures must not be interpreted as meaning rape behaviour by men is inevitable. While all men, as well as women, are socialised within a rape-condoning culture, the majority manage to stop short of raping a woman. They are also able to resist socialising messages urging that “real men will not take no for an answer.” This is critical to acknowledge for three key reasons. Firstly, it counters notions of evolutionary determinism suggesting reproductive urges

propel men into sexually aggressive behaviour against women. Secondly, on an individual level it reminds us that rape behaviour is the outcome of choices and decisions made that could have been made differently—in other words, rape cannot be the result of uncontrollable sexual urges when so many men do in fact appear able to control these. And thirdly, on a broader societal level it has positive implications for rape prevention initiatives that encourage men to question any sense of masculine sexual entitlement they may hold and to adopt more respectful and egalitarian approaches, particularly in their heterosexual intimate relationships but also in relation to interactions with other women and men.

Men can be connected to rape in multiple ways. A rounded understanding necessitates recognising that while the emphasis on men as those most likely to perpetrate rape is warranted, we need also to be cognisant of other ways in which men can be impacted. The next two sections explore these dimensions by firstly focusing on how men can be affected by the rape of their wives or partners, and secondly on men's own experiences of rape victimisation.

Men as the partners of rape victims

As we have seen in earlier chapters, sexual violence is most often perpetrated between men and women already known to each other, often intimately. However, other contexts in which rape occurs must also be acknowledged, along with the particular impacts they can produce. These include rapes perpetrated by friends, family members, colleagues, or any professionals or persons in authority positions, as well as sexual violence perpetrated by strangers. The intimate partners of women who are raped can play an important role in their recovery process and enhance their healing (Ahrens & Campbell, 2000; Campbell & Wasco, 2005). What has seldom been recognised, however, is the extent to which a male partner may struggle to manage his own reactions to her sexual victimisation, and it is this issue which is addressed here. In doing so it recognises how a single act of sexual violence can ripple out to impact multiple lives, affecting all those associated with the direct victim (Morrison, Quadara & Boyd, 2007).

It did not take long during the second wave women's movement for those supporting rape victims to recognise that the men closely connected to victims might also need their own forms of support. While early crisis intervention models emphasised the importance of helping victims to regain control of their lives in rape's aftermath (Burgess & Holmstrom, 1974), sometimes little understanding existed regarding how women's own support systems could potentially impede this process (Orzek, 1983). This could especially occur when a woman's boyfriend/partner/husband was battling with his own feelings in the aftermath of her rape, which could include shock, grief, guilt, and blame (Orzek, 1983). Holmstrom and Burgess (1979) divided male partners' responses into those they described as "modern," viewing rape

in terms of the injury done to the victim, or “traditional,” seeing rape as a sexual act and focusing on how it harmed or stigmatised them. Those in the latter grouping could become absorbed in their own feelings of shame and betrayal, and were more likely to blame the victim/survivor for being sexually assaulted.

Suggestions were made by Orzek in the 1980s that a counsellor speaking with a male partner present should emphasise rape as a violent act rather than stress its sexual nature. Even male counsellors, she said, might be more inclined to focus on the sexual side and this could reduce their ability to empathise with the victim. It could also provoke anger in them that the victim had allowed the rape to happen, especially, she added, if her partner holds the “woman as man’s possession philosophy” (Orzek, 1983, p. 143). Stressing the violent and potentially life-threatening aspects of a rape came with its own risks, however, given that this might prompt over-protective responses.

Despite the early recognition given to the potential impacts on partners, since then few studies have been conducted specifically in this area. Those that have been conducted reflect growing awareness of the ways in which those close to a rape victim could experience secondary victimisation, suffering symptoms similar to those of the primary victim/survivor (Figley & Kleber, 1995; Morrison, 2007). Much of this research has been conducted in the field of trauma impacts, recognising how witnessing the abuse or harm of a significant other can create secondary traumatisation (Morrison, Quadara & Boyd, 2007). Research has found, for example, that some partners experienced PTSD-like symptoms similar to those of primary victims and that their reactions were also affected by their internalisation of societal rape myths (Smith, 2005). Such trauma responses were recognised by Figley and Kleber writing in 1995, who observed:

Nearly all publications focusing on people confronted with extreme stress events exclude those who have experienced the event indirectly or secondarily and concentrate on those who were directly traumatized (i.e. the “victims” or “survivors”). Yet, diagnostic descriptions of what constitutes a traumatic event ... clearly suggest that mere knowledge of the exposure of a loved one to a traumatic event can be traumatising as well.
(p. 77)

Partners who became particularly distressed and struggled to cope could unintentionally burden the victim/survivor for emotional support, drawing the focus away from meeting her needs as the direct victim of rape (Morrison, 2007). The different ways in which male partners are impacted means their responses to the victim/survivor can range from extremely supportive to extremely unhelpful (Daane, 2005). Early research in this area identified four key themes relevant to how male partners of female rape victims might react: guilt and self-blame; desire for revenge; jealousy, anger,

and a sense of loss; and the need to protect the victim (Rodkin, Hunt & Cowan, 1982). Each of these themes is briefly explored with reference to qualitative research, including a study I conducted with women all victimised by the same serial rapist in Aotearoa New Zealand who discussed their partners' reactions (Jordan, 2008).

Guilt and self-blame

Male partners can be prone to self-blame when they feel they have failed to keep the victim safe. The sense of guilt felt can emanate from an expectation that men should protect their female partners, as well as from frustration at a sense of their own helplessness. In my *Serial Survivors* study, the rapist Malcolm Rewa would scope out areas to establish which houses were inhabited by women living alone or with young children. Several women described the guilt their husbands and partners felt over not being present at the time, including Shelley who was in a relatively new relationship with a man who had just decided to end his marriage. She said:

“The weekend he went down to tell his wife was the weekend I got raped.

So there's a lot of guilt at that; he carries that. He said to me, 'I should have been in Auckland with you,' and he would have been. Had he been in Auckland with me it would never have happened, well, in theory. So I think there's a lot of guilt around that.”

(in Jordan, 2008, p. 149)

Another woman, Jennifer, was in the process of separating from her husband at the time Rewa attacked her. That night, she said, was the one that finally brought confirmation that he was seeing someone else:

“Initially he just felt awesomely guilty because he wasn't there, and also because at the time he was bonking someone else – that's why I couldn't get him that night.”

(p. 152)

She felt his guilt ended up prolonging their separation process.

In a South African study, one man spoke similarly of how he felt he had neglected his responsibility:

“I feel so guilty and blame myself that she was raped here in Cape Town I feel so bad and sorry for her that I was not there to save her out of his claws.”

(van Wijk, Duma & Mayers, 2014, p. 4)

For another, his own sense of failure was compounded by his girlfriend's family accusing him of not looking after their daughter. These accounts

reinforce patriarchal notions of women's dependency on male protectors, stereotypes limiting to both genders.

Desire for revenge

For some men their response reflects that aspect of hegemonic masculinity which is focused on taking action, doing something to help them manage any feelings of inadequacy or helplessness they might have. One woman in my study, Connie, described how her husband became fixated on wanting revenge. During the trial he went to court, she said, more often than she did. When I asked if he went to see the offender, Rewa, she replied:

“No, part of him wanted to go to court to make sure Rewa was dead. If Rewa hadn't been guarded, he would have been dead. [Husband] would have killed him.”

(p. 150)

He used to follow the prison van on his motorbike hoping for any opportunity to get hold of the offender himself.

“Personally, if Rewa hadn't been protected by police, [husband] would have killed him. He would have gone and got a gun off someone and he would have killed him. And he would have been quite willing to sit in jail for the rest of his life.”

(p. 150)

Connie felt that the police came to realise her husband was suffering mentally, and it was clear that he needed counselling as much as she did because, she said, he could not communicate what he was feeling. When Rewa was convicted, it was her husband who was in the courtroom at the time, not her. He phoned her and was so obsessed with it all that she struggled to cope with him:

“It was hard. Because I was trying to forget about something and to me, it was like he was saying, ‘Me, me, me. I am number one again. What about me?’ I was thinking, ‘This is not about you! This is not your day in court!’ It was like he had been raped and after all these years, it was him that had been violated.”

(p. 151)

Jealousy, anger and a sense of loss

Patriarchal notions of women as “belonging” to their husbands/partners can result in men feeling they have been violated if another man rapes “their” woman. One explained that “if you want to hurt a man, the only way is to sleep with his wife,” adding that her being raped had completely changed

his life, so that “right now I don’t have that manhood, that I am still a man” (van Wijk, Duma & Mayers, 2014, p. 3). Resuming sexual intimacy with a partner can be difficult following rape, and Burgess and Hazelwood documented decades ago the ways in which men might struggle from viewing a woman as having betrayed them by “having sex” with another man. This was evident in Kathleen’s case when she described how being raped had not put her off sex but it “put my husband off sex of course!” (Jordan, 2008, p. 152). She found it difficult to understand his response, to understand “how men’s minds work,” particularly given the ways he would say to her when they had fights, “Well, I’ve never had sex with anyone else!” She described how sad she felt knowing that he was probably going to feel and express this sense of betrayal and jealousy for the rest of her life (Jordan, 2008, pp. 152–153).

The need to protect the victim

It was difficult for some men to trust that their partner would be safe in the world again following a rape attack. Some women have described how they were attacked at a time when their relationship was quite shaky, and it resulted in their partner deciding to move back in or stay in the relationship longer when, in hindsight, that was not the best decision. Others spoke of how, if their partner was going away, he and his family might insist she should not stay on her own. One woman, for example, expressed her resentment at how her fiancée was “trying to make decisions for me and I didn’t like that” (Jordan, 2008, p. 154). Another described how angry she felt that her partner was insisting what he was doing was for her:

“It’s almost like, ‘Hey, let me do what I need to do because I’m the one who suffered all this.’ It’s a male being selfish and saying, ‘I want to do this because it’s affected me.’ They’re not really doing it to protect you.... I’m not inside a man’s brain but just remember who the person is who’s going through the trauma.”

(p. 150)

The importance for victim/survivors of regaining a sense of personal control in the aftermath of rape is well-established (Campbell et al, 2004; Jordan, 2008; Ullman & Townsend, 2008), but can be a difficult aspect for partners to grasp.

From these different research studies emerges the similar finding that having one’s partner raped can result in such an upheaval in a couple’s life that a previously strong relationship might, without good support, collapse. As van Wijk et al (2014, p. 6) concluded from their interviews with intimate partners, “The trauma shattered their assumptions about themselves, their relationships and the world around them, which were unchallenged prior to the crisis.” While support services for victim/survivors of rape are now often widely available, little exists for partners. As well as the themes addressed

above, some struggle also with their own masculinity, as one woman relayed when speaking about her partner:

“His comment about the whole situation was that there’s nothing for the husband, for partners of rape victims. He felt there was just nothing out there for him and he felt really, really isolated as well in that situation ... As a male, his terms of reference were shifted as well. I think there was that sense of, ‘I represent the race of rapists. I’m a male. All rapists are male. I represent them. I’m one of them.’”

(Jordan, 2008, p. 149)

How partners respond when a woman discloses being raped by another man can also impact her decision to report to police or not. This is acknowledged as an area about which still little research evidence exists (DePrince, Wright, Gagnon, Srinivas & Labus, 2020), with most studies on disclosure including partners within a broader grouping of informal support persons. A qualitative study of women victimised by sexual assault found that one-third described being discouraged by friends, partners or family members from either reporting or help-seeking (Sit, 2015). Negative reactions have been found to serve a silencing function that can prevent some victim/survivors talking at all about their experience (Ahrens, 2006), compounding the societal shame and secrecy often surrounding sexual assault (Morrison, 2007). In contrast, positive responses from the partners and family members in Sit’s study encouraged more than a quarter of the women to seek formal support, and other research has suggested partners can potentially be the most important support persons available (Morrison, 2007). While the focus in this section is on male partners, friends, and family members need recognition also for the crucial support roles they can play, and for the profound ways they also can be impacted (Ahrens & Campbell, 2000).

Zoe Morrison’s (2007) research paper fully recognises the ways in which a sexual assault can detrimentally affect the victim/survivor’s significant others and includes useful advice addressing ways that non-assaulted family members (including partners) can care for themselves. The five areas addressed are:

- i Lack of blame—encouraging blame being placed on the actual perpetrator, not on the victim-survivor nor on oneself for causing the rape or being unable to ‘make’ the survivor feel better.
- ii Validating your distress—acknowledging that it is normal to feel a range of strong emotions, including guilt and anger, and to experience one’s own trauma symptoms.
- iii Seeking support—recognising the benefits of talking with trusted friends about what has happened and one’s reactions, and seeking professional support for oneself from specialist sexual assault counselling services who are available to see family members.

- iv Seeking knowledge and understanding—educating oneself about sexual assault through accessing research and websites, obtaining information and considering involvement in rape prevention work as a constructive response and a means of directing a sense of powerlessness towards a positive end.
- v Practising self-care—caring for oneself as well as the victim/survivor by reducing stress levels, eating and sleeping well and following professional advice.

Morrison's overview ends by noting the policy implications arising from recognising the ways in which rape can impact partners and family members. These include increased community education to rebut rape myths in order to facilitate more supportive responses to victim/survivors of sexual violence. She adds: "rape needs to be conceptualised as a family and social issue, as well as an issue facing individuals – this will also strengthen prevention efforts" (Morrison, 2007, p. 63). Also recognised is the need for services for partners and family members to be funded so they can access the support needed to care appropriately and supportively for both the victim/survivor and themselves. Finally, she suggests the need for more research to be undertaken to increase awareness and understanding of the wider social and relational impacts of sexual violence.

The study referred to earlier that was conducted in South Africa with the male partners of rape victims found many experienced serious trauma themselves, noting:

The instant they were informed of their partner's rape was a defining moment in their lives, a 'line in the sand' between their former lives and their future. The known life-world becomes an uncharted and unexplored territory, in which both partners have to re-establish their own identities and that of each other in the relationship.

(van Wijk, Duma & Mayers, 2014, p. 6)

What is evident in many of these men's responses is that they react consistently with their own understandings of masculinity. As discussed above, this translated into some partners viewing the rapist primarily as a competing sexual male, a perception that disrupted their ability to respond empathically and listen to what their partner needed from them. Other men responded from a sense of their own failed masculinity, blaming themselves for not fulfilling the protector role they felt was their responsibility. Again, their self-blame had the potential to absorb their emotional energy so that they became more obsessed with their own responses than available to their partner. This was also evident in situations where the men's desire for revenge became their primary focus. Their adherence to traditionally patriarchal forms of masculinity prevented them from being able to see and hear their partner—she became a raped object while their own subjectivities dominated.

The complexities of hegemonic masculinity and sexual violence are also evident in the third key area examined in this chapter which focuses on men as the victims.

Men as victims of sexual violence

The high prevalence of male sexual victimisation of female victims, in tandem with the dominance of heteronormativity, obscured recognition for many years of the realities of male sexual assault victimisation. Research in this area has been hampered by many of the same silencing factors affecting female victims and also fraught with similar methodological difficulties. The prevalence rates for men suggest considerably lower rates than for women; for example, Turchik and Edwards (2012) estimated between 5 and 10% of rape victims were male. This still makes the likely numbers involved significant, but male rape has received comparatively little attention compared with female rape. Significant outcomes arising from this neglect include inadequate provision of support services for male victims along with a lack of strategies targeting the issue (Davies, 2011; Javaid, 2016). Early rape researchers Mezey and King (1989, p. 208) argued that, “the politicization of rape as a feminist issue may contribute to the isolation and suffering experienced by the male victim.”

To be both male *and* a victim has been identified as a contradiction in terms (Allen, 2002; Scarce, 1997; Walklate, 2007; Weiss, 2010). The very nature of traditional hegemonic masculinity depicts men as strong, powerful, and in control, the antithesis to how victimhood is understood (Connell & Messerschmidt, 2005; Javaid, 2015). As Turchik and Edwards (2012, p. 213) argue:

[M]ale rape emanates from the same patriarchal structure as female rape and is related to various systems of oppression, including sexism and heterosexism. Specifically, under a social system of patriarchy, masculine hegemony and heterosexism are valued ideals and these are incongruent with men’s experiences of sexual victimization.

The stereotypical female was viewed as susceptible to victimisation because of her weak body, irrational mind and fragile emotions. Men traditionally had a different story told about them. If they were attacked by another male, they were expected to fight back and win; to fail and be raped was to have one’s identity emasculated. Expectations such as these can contribute to male victims’ fears of ridicule or blame if they report the crime, reinforcing the silencing around male rape (Javaid, 2016). Under-reporting of male rape is believed to be high, with many men opting to self-silence in ways similar to female victims. Non-disclosure to authorities is estimated to be at least as prevalent for male as it is for female rape survivors (Abdullah-Khan, 2008)—our historical legacies continue to pose barriers to acknowledging and disclosing rape for all victims.

Media and public images depicting almost exclusively female rape victims can enhance male victims' disclosure reticence. A male therapist observed the difficulties he saw with men trying to understand male rape, one aspect of which he identified as struggling to accept what it means for a male to be the one sexually penetrated:

“...in general in culture and sex, women are seen to be penetrated. So if a man is penetrated, whether that is consensual or not, it makes him almost seem like a woman. It's difficult for men to understand, it's almost an inbuilt misogyny.”

(in Javaid, 2018, pp. 156–157)

In terms of academic research, male rape was initially portrayed as a behaviour that men might resort to in contexts where no females were present, such as in prisons or the military. This reflected traditional thinking that men had uncontrollable libidos that needed sexual outlets, a drive so strong that “normal” prohibitions could be ignored (Abdullah-Khan, 2008; Javaid, 2018a). It took at least two decades for a body of research to emerge on male sexual victimisation similar in focus to that on female victimisation. The disparity continues today, and while understandable on one level given women's predominance as rape victims, nevertheless researching male sexual victimisation is important for developing male-appropriate and informed ways of providing support, including access to justice.

The notion that male rape feminises men poses significant barriers for male victims in terms of disclosing, and also accepting, their sexual victimisation. This can result in male victims responding by self-isolating and deciding not to engage with the criminal justice system (Javaid, 2018). This is understandable given that masculinist institutions such as policing are not positioned in ways that would encourage male victims of rape to approach them. As a police officer interviewed by Javaid commented, “The police see male rape victims as failed men, not ‘real’ men” (in Javaid, 2018, p. 158). The shame and fear male rape victims experience acts to self-silence many, while male victims who have reported their assaults frequently recount difficulties in being viewed and responded to by police as legitimate victims (Abdullah-Khan, 2008; Javaid, 2016, 2018). Such perceptions are reinforced should victims have been unable to fight back and defend themselves. As Javaid has observed, “Fighting back not only shows that one is ‘man enough’, but also may avoid drawing in hostile, homophobic, and disbelieving attitudes and responses from societies and from state and voluntary agencies” (Javaid, 2018, p. 161). To not fight back can, as with female victims, be interpreted as signalling the sex was wanted and consensual, and ignores the many factors that can render victims of any gender identity unable to physically resist a determined attacker (Javaid, 2018).

Perpetrators of male rape use many of the same tactics to subdue and subordinate their victims as do perpetrators of female rape. These include

threats and fear tactics, overt physical force, emotional manipulation, use of alcohol and/or drugs—anything likely to facilitate their achieving control of the victim. The act of rape confirms the male dominance and power of the attacker, serving as a means of “performing masculinity” (Butler, 1990) and “doing gender” (Messerschmidt, 1993). In his book on male rape, UK writer Javaid maintains that:

Sexual violence is always available as a way to build a gender project. It is a masculine pursuit that guarantees legitimation of unequal gender relations between men and women, masculinity and femininity, and amongst masculinities.

(Javaid, 2018, p. 189)

A male raping another man not only violates his body but also annihilates his maleness. To be raped means being subordinated and treated as if one were a woman, having one’s body penetrated in an act of male conquest and possession (Pascoe & Hollander, 2016). In feminising the male victim’s body, the perpetrator conveys his contempt for the other, dismissing him as that always dismissible object, a woman. In a patriarchal world composed of gender hierarchies, no greater insult can be levelled at a man.

The power of this insult is understood well by many perpetrators of rape against men. Contrary to assumptions that male rape is always a gay crime, male-perpetrated sexual assaults can be carried out by heterosexual men against other heterosexual men. Within prison contexts, for example, a macho male seeking to affirm his dominance may use the act of rape to subordinate another man, knowing that in so doing he effectively emasculates him (Robertson, 2003, 2010; Sivakumaran, 2005). The male victim is treated like a female object, his body removed of its masculine power. Stripped bare of the stereotypical assumptions usually surrounding it, the act of rape is clearly revealed as a means of expressing control and dominance. The desire driving it is not a lust for sex but a lust for power.

This motivation is evident also in cases of homophobic rape where the heterosexually identified perpetrator(s) sexually violate a boy or man whom they perceive as gay, punishing and humiliating him for his deviance. The victim may or may not identify as gay—he may simply not fit the tough stereotypes of hegemonic masculinity. To his attacker(s) this fact is inconsequential—they felt affronted by his difference and intent on proving their own heterosexual “normality.” The victim’s identity becomes irrelevant in contrast with the audience for whom this act may be performed, and with whom homosocial bonds are strengthened (Flood, 2008). In this way rape can be understood as an enactment of gender irrespective of whether the victim is male, female, or transgender. As expressed by Shugart (1994, p. 8):

The rapist is actively engaged in feminizing his victim in an ultimate and most fundamental way; given that gender is premised most basically

however mistakenly) upon biological difference between the sexes, rape represents the most blatant act of the oppression of the feminine by virtue of active objectification and dehumanization. In other words, feminization becomes equivalent with dehumanization – rape is a way of establishing masculinity via the degradation of the feminine; and, significantly, by feminizing (i.e., objectifying) his victim, the rapist confirms his subjectivity.

Some discussions of male rape myths recognise the role played by homophobia in shaping attitudes and responses to male victims/survivors who have experienced sexual violence. A study by Davies, Gilston and Rogers (2012), for example, found that individuals with high levels of adherence to rape myths were likely also to hold homophobic attitudes and to attribute high levels of blame to gay male victims. Presumptions of heteronormativity impact on those providing services to LGBTQ+ victims of rape, as well as contributing to the internalised homophobia felt by many individuals from these communities, and can result in notably high levels of minimisation and blame.

The effects of male rape on victims hold many similarities with those experienced by female victims, including self-blame, shame, and impacts on relationships as well as physical and mental health (Abdullah-Khan, 2008). Two additional impacts for men emerge, both around issues of identity. One involves the doubts and questions male rape raises about the victim's sense of their own sexual identity (Javaid, 2018). For men who previously considered themselves heterosexual, being raped by a man can foster doubts about their sexual identity—were they viewed as gay; are they in fact gay; what does it mean going forward? Men who already identify as gay may risk being victim-blamed for placing themselves in risk-prone situations and not be viewed as genuine victims. Accepting a gay identity is problematic when heterosexuality is assumed to be normative, placing the individual “at risk of no longer being seen as a whole person, but in terms of a sexualized and stigmatised category” (Richardson & May, 1999, p. 317).

A second identity issue stems from the societal assumptions that only women can be raped (Stanko, 1990). Male victims, regardless of sexuality, can experience a masculinity crisis in the aftermath of rape. Their experience challenges the precepts of hegemonic masculinity, with Sandra Walklate (2007, p. 159) emphasising the

...uneasy relationship that exists between being male and being a victim.... In making sense of the tensions in this relationship, men who experience victimization clearly engage in different kinds of coping to keep their sense of themselves as men whole.

The gendered differences in how rape impacts derive from how the hierarchical and binary structures of patriarchy intersect with dominant cultural assumptions casting men as more likely to be offenders and women victims.

Recognising the risks and vulnerabilities of being male is a vital ingredient in loosening their confinement within the straitjacket of hegemonic masculinity to enable full acknowledgement of their victimisation experiences. However, in reality this may be much more difficult to achieve than it sounds. Allen's (2002) interview-based study with 50 male rape victims found that men used a range of conceptual strategies to explain why they were raped, such as having been particularly entrapped or overpowered, that allowed them to retain a sense of the normality of masculine power. The threat to their sense of their own masculinity emerged as a key impact, indicative of the overwhelming importance of their identities as "men."

The threat posed by rape links to perceptions of it being an emasculating act (Sivakumaran, 2005). Men who are raped are viewed as weak and effeminate, the act itself rendering he who should be the active participant into a passive receptacle. The objectified man has effectively been reduced to a woman's status, with male rape used as a deliberate strategy in some contexts to establish or maintain hierarchies of power. This is particularly evident in male-segregated contexts such as prisons, where the sexual violation of one man by another can be used to prove the hypermasculinity and dominance of the abuser (Robertson, 2003). Rape is accepted as "an entrenched part of prison life" (Sivakumaran, 2005, p. 1299) and:

Given the focus on power and not the sexual nature of the act, the vast majority of men who commit these acts self-identify as heterosexual.

Victims are feminized and the male/female power dynamic allows sexual aggression to reaffirm heterosexuality. Not only do the aggressors not consider themselves homosexual, they do not consider themselves to have taken part in homosexual acts.

(Sivakumaran, 2005, p. 1299)

The rules of patriarchal culture enable male on male rape to be perceived as masculine behaviour because it functions as a violent act of sexual conquest (Javaid, 2018). This helps in understanding how avowedly heterosexual men can rape another man without any fears of being perceived as gay. It also elucidates situations where groups of straight men will strengthen their male bonds by attacking, and sometimes raping, men whom they perceive as gay. Often termed "hate crimes" or "homophobic crimes,"

These crimes serve a dual purpose of constructing a masculine and heterosexual identity through a simultaneous involvement with violence and by establishing homosexuals as social outsiders.

(Tomsen, 2001, p. 37)

Homophobic violence and rape can similarly be used against lesbian women, with the women at highest risk being those perceived as "butch" (De Wee, 2017; Muholi, 2004). A South African study found that 20 of the 47 lesbian

rape victims interviewed had been “raped explicitly because of their sexual and gender non-conformity” (Muholi, 2004, p. 118). The author, herself a black lesbian, located what she termed these lesbophobic rapes within the patriarchal and colonial contexts that had determined who an “African woman” should be, and that “makes non-heterosexual women’s gender, sexual, and erotic autonomy so disturbing” (Muholi, 2004, p. 122). The practice of what is termed “corrective rape” is a related crime, reflecting not only a hatred for and rejection of lesbianism but a presumption of moral authority to “cure” lesbians (De Wee, 2017; Muholi, 2004). De Wee’s (2017, p. 9) study of corrective rape defines it as “the sexual violation of a lesbian woman with the intention of the perpetrator to turn her into a normatively heterofeminine woman.” Such aggression seeks to silence and suppress the identities and agency of women who are rejected not only as “other” but for the supposed threat they pose to “real” men.

Much of the discussion on male rape has focused on public or institutional contexts, in ways similar to the initial emphasis on stranger attacks against female victims. It is now widely accepted for women that the biggest threats of sexual violence come from men they already know, with partners and acquaintances forming the majority of attackers. While the context of intimate partner violence still focuses more closely on physical beatings and violence, recognition is growing of the crossover between physical and sexual violence, and the likelihood of both being common features of relationships identified as violent (Finneran & Stephenson, 2013; Island & Letellier, 1991; Oliffe, Han, Maria, Lohan, Howard, Stewart & MacMillan, 2014.). This suggests a significant line of research is needed on the use of sexual violence in gay male relationships, both in the context of casual/acquaintance encounters as well as in the context of long-term relationships. Some such studies exist, although in comparatively small numbers. For example, a British study of 930 gay and bisexual men found over a quarter (27.6%) had experienced unwanted sex, most frequently in dating contexts (Hickson, Davies, Hunt, Weatherburn, McManus & Coxon, 1994). More recently, an Australian study conducted with LGBTQ+ people in New South Wales found 9% of participants said their partner “pressured them to engage in sexual behaviour they were not comfortable with” and 4% reported having been raped by a current partner (LGBTIQ Domestic Violence Interagency and University of NSW, 2014, p. 16). Difficulties often confront victims needing support given the prevalence of heteronormative assumptions and rape myths that can affect their abilities to disclose as well as support services’ capabilities to make aware and informed responses (Mortimer, Powell & Sandy, 2019). Given the increasing role played by the medical community in identifying and supporting IPV victims generally, some doctors have recognised the need for greater clinician upskilling to counter their profession’s previous neglect of LGBTQ+ patients’ needs (Ard & Makadon, 2011).

Disputes have sometimes arisen over who are the “worst” offenders when it comes to intimate partner violence. A large US study explored this question

by comparing intimate partner victimisation rates between same-sex and opposite sex couples (Tjaden & Thoennes, 2000). The National Violence against Women Survey was conducted by telephone with a nationally representative sample of 8,000 women and 8,000 men, asking all participants about their experiences as victims of different forms of violence. These forms included rape, physical assault, and/or stalking. This study found men living with male intimate partners reported higher levels of violence (15%) than men living with female intimate partners (7.7%). On the other hand, women living with male intimate partners experienced more IPV (nearly 25%) than women living with female partners (11%). Confirming other research, these results indicated that men were the more likely perpetrators of violence against their partners irrespective of whether that partner was same-sex or opposite-sex. This suggests the relevancy of exploring how hegemonic masculinity within patriarchal contexts impacts men as men as well as, more specifically, the differences arising from identification as a gay/bi/straight/trans man. Little such research appears to have been undertaken, with some commentators noting a tendency for more studies being conducted to date on IPV and sexual violence within lesbian relationships than within gay male relationships (Ristock, 2011).

One of the few autobiographies available including testimony of a man's sexual victimisation by a partner was written by Olympic diver, Greg Louganis (1995). In the book he provides a clear description of the rape attack he experienced from his partner, Tom, and details the self-blame he felt afterwards that silenced him from speaking about it for many years. The twin stigmas of being gay and being a male victim of rape felt too difficult to manage, and his account provides insights into the very real disclosure difficulties faced by men in such circumstances. In Louganis's case, his worldwide celebrity status as a successful male athlete created an additional barrier, blatantly challenging the myth that raping a physically strong male was impossible.

A related issue beyond the scope of this book involves the possibility of men being sexually assaulted by women. While research evidence overwhelmingly demonstrates that males are primarily those who sexually violate both men and women, this does not rule out the possibility of some women being abusers (Javaid, 2018; Weiss, 2010). In such contexts the woman seeks to assert control and dominance over the victim in a reversal of the normal power relations, and the latter may struggle to have their experiences taken seriously. This is because such acts challenge two dominant gendered expectations—firstly, that women are always the more sexually vulnerable party, and secondly, that any “real” man being offered sex would willingly participate (Weiss, 2010). As Weiss (2010, p. 301) notes,

Admitting that they didn't want to have sex with women, or that they were forced to sexually submit to women, inverts heterosexual roles and violates (hetero)sexual norms. Combined with the notion that women

are weaker, nonthreatening, and incapable of rape, men who are sexually victimized by women...may be especially ashamed to report incidents to the police.

In a society convinced that only men can be rapists, male victims of rape are among those most likely to have their experience trivialised or silenced (Javaid, 2017). Their shame and blame may be further enhanced should, during the course of the rape, their body respond with the involuntary physiological reaction of an erection (Tewksbury, 2007). Such a response increases the chance of the act being viewed as consensual sex, rather than rape, with the assumption made that obviously the victim enjoyed it and thus cannot be perceived as a real victim (Javaid, 2018).

A second category of sexual victimisation outside of this book's parameters but nevertheless important to recognise is that involving assaults perpetrated by women on other women. Just as dominant norms make it difficult to conceive of women being perpetrators against men, so also has there been a reluctance to consider the possibilities of a woman sexually aggressing against another woman (Gavey, 2019).

These other contexts for sexual assault have also been shaped by patriarchal dominance and subject to the same mechanisms of silencing and objectification addressed throughout this book. The recognition of men as victims of any kind of sexual assault destabilises assumptions of male privilege and control, potentially weakening the veneer of unassailability. Voicing vulnerability, let alone victimhood, can threaten male identity in profoundly unsettling ways (Allen, 2002). Women, however, are considered "natural" victims, the objects of male acquisition, with perceptions of their passivity and weakness ensuring reliance upon, and compliance with, men. The hierarchies and gender binaries of patriarchy can only maintain social order while everyone accepts their ordained place and aberrations are silenced.

My final point urges greater critical engagement with how concepts that sound unproblematic can be experienced in different, gendered ways, and the importance of recognising these differences in responding to victims. It also underlies the importance of qualitative research to unpack terms and explore their gendered meanings. While shame, for example, is widely recognised as a common response to rape, shame for women is often linked to patriarchal narratives suggesting a woman's value has been damaged, or as Weiss explains (2010, p. 303):

For women, shame is sustained by the ideas that women are deserving, disgraced, or defamed by sexual victimization. Ideologies that hold women responsible for sexual victimization and differentiate "good girls" from those who get raped contribute to sexual victimization as shameful for women and as threats to their feminine selves.

Men also often refer to feeling high levels of shame as victims of sexual violence, but this is associated with their position in a patriarchal world and linked to narratives of hegemonic masculinity. To quote Weiss (2010, pp. 303–304) again:

For men, shame is reinforced by constructs of masculinity that view real men as strong, in control, sexually potent, and not victims. Ideologies that view male rape victims as disempowered or emasculated, coupled with men's fear of exposure, contribute to sexual victimization as shameful for men and as threats to their masculinity.

There is what has been called a “taint” associated with male rape, but this has been identified as the taint of homosexuality (Sivakumaran, 2005). Male rape has been erroneously perceived as a homosexual offence, with Hlavka (2017, p. 492) noting that: “The myth of male rape is that it is about homosexuality: that only gay men are raped, only gay men rape other men, or if you are raped you are gay.” Understanding and addressing the often silencing impacts of shame needs to become an essential component enabling gender-sensitive responses and support provision for male victims.

In the act of rape a man uses another's body as a canvas on which to assert his dominance and superiority, this mission deemed sufficiently important to justify any means or amount of force necessary for its successful completion. Sexual violence serves as a way of maintaining gender hierarchies and inequalities, and men's proclivity as the primary rapists of both women and men is a logical outcome of patriarchy. Not only is a male's power over his direct victim(s) demonstrated—his conquest can instill fear and submission in other women while affirming his masculine identity and dominance to other men.

Emphasising men's use of power and control in rape contexts can, however, mask the dimensions of powerlessness and insecurity often involved. Studies of sexual assaults perpetrated in men's prisons, for example, often demonstrate how in situations where all men are deprived of their normal access to power, using aggression becomes an important means of gaining status and mastery (Robertson, 2003; Jones & Pratt, 2008). Men raping men serves as a means to emasculate and feminise others, a trait frequently identified also within the context of wartime conflict (Sivakumaran, 2005). The stigma of male rape and the shame associated with victimisation keeps many male victims silent and can prevent their obtaining appropriate support and services.

Conclusion

This chapter has focused on men and rape, examining their roles as perpetrators, victims, and as the partners of women victims. Despite obvious differences between these groupings, clear continuities are apparent with the themes addressed throughout this book.

Firstly, in relation to silencing, men who perpetrate rape against their partners and other women they know may rely on the victim maintaining silence. This can be for many reasons, including expecting her subordination, using other forms of violence or manipulation, or correctly anticipating that most women decide not to invoke criminal justice processes.

The silencing of women's voices around rape is paralleled to some extent by the silencing of male victims of rape. The shame and stigma associated with rape is linked to the widespread under-reporting that still exists, and the research considered earlier suggests this may be enhanced further for male victims. Societal expectations of masculinity, and of male voices typically expressing strength and bravado, make it difficult for men to disclose vulnerabilities generally, and sexual vulnerabilities in particular.

Secondly, men are often enabled to rape through objectifying processes. Viewing their partner in an objectified manner can facilitate and legitimate the use of sexual violence against a body that has had its subjectivity erased, such erasure arising often from the volatile combinations of fear and anger intimacy can trigger. Viewed in this light, the ability to sustain emotional connection can serve as a barrier to objectification, and to violence. Stranger attacks are rarer, the lack of emotional connection between offender and victim often enabling more pronounced objectification. As noted earlier, male stranger rapists frequently target a specific house or location where the identity of the woman attacked is irrelevant—she is little more than an available hole.

All three groups of men—perpetrators, victims, and partners—are shaped as individuals and in their relationships by the legacy of patriarchy, manifest in the hierarchies of male power and heteronormativity that privilege white, heterosexual males to the disadvantage of other men as well as all women. Rape becomes culturally condoned as a tool of power to establish and maintain dominance, manifest particularly in contexts of threat and crisis. Dominant forms of hegemonic masculinity emphasise male strength and conquest in ways that make recognition of male vulnerabilities almost impossible. The glorifying of violence and aggression in men perpetuates a narrow and potentially harmful model of masculinity that must be challenged in order to enable a diverse range of ways of “doing masculinity” to be accepted (Campbell & Wasco, 2005).

The crisis of masculinity that has been intensifying in the 21st century has arisen in response to the most significant steps to gender equality occurring globally since the second wave of the women's movement. It is vital here to remember the many ways patriarchy has been, and continues to be, challenged, and the impacts of feminist empowerment. Despite its prevalence, rape must never be accepted as an inevitability that cannot be avoided or resisted. The next chapter considers key initiatives aimed at rape prevention, seeking to affirm their significance while also recognising the limits of their reach within societies still so profoundly patriarchal as ours.

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6 Preventing rape; challenging patriarchy

A recent movie script depicts two close friends, Cassie and Nina, who are both doing exceptionally well at medical school until a male classmate, Al, rapes Nina one night when she is very drunk. The devastating impacts are not acknowledged by the school or legal systems, nor by others of their peers, and Nina is pressured into dropping the charges. Cassie begins feigning drunkenness in bars and clubs, and allows men to pick her up and initiate sexual contact until her very sober self actively challenges their behaviour. Her efforts turn to confronting those individuals whom she felt betrayed Nina, contriving situations to force them to see past their blaming of Nina and to recognise their condoning of male sexual entitlement. One of her targets is the medical school dean who dismissed Nina's case in favour of protecting a male student's reputation—Cassie allows her to think her teenage daughter is now trapped with a group of young men in the same room in which Nina was raped. The dean quickly loses empathy with “boys being boys,” fearful now of what might happen to her daughter. As other scenarios unfold, the audience see Cassie's desperation growing as she works to shame those who protected Al and concealed incriminating evidence. Finally she manages to fake her way into meeting him the night before he is due to marry, separating him from his bachelor friends and eventually confronting him with Nina's rape. The story twists again, but the underlying message remains constant in calling for an end to blaming women as victims while excusing the men who rape them.

The movie was released in December 2020 and quickly earned critical acclaim for *The Crown* actor, Emerald Fennell, in her directorial debut. One commentator, for example, applauded Fennell for producing something “fresh and totally wild, describing *Promising Young Woman* as a “#MeToo rape revenge thriller with bite!” (Erbland, 2020). A *Variety* review of lead actor Carey Mulligan provoked its own controversy when writer Dennis Harvey suggested her looks did not match the irresistible attractiveness required for the role (Shoard, 2021), a comment reinforcing the pervasiveness of institutional sexism within the movie industry. Mulligan later earned

an Academy Award for Best Actress, and Fennell was nominated for both Best Director and Best Original Screenplay.

Labelling *Promising Young Woman* a 'revenge' story is reminiscent of how women's rape accusations were often attributed to a spiteful, pay-back mentality. An alternative interpretation could emphasise the extreme lengths a young woman felt she needed to adopt in order to disrupt rape culture and promote sexual violence prevention. Cassie had to invoke desperate measures to have any chance of permeating the victim-blaming and rape-condoning attitudes that, firstly, endorsed Al raping Nina and subsequently ensured no-one apart from Cassie saw any reason to hold him responsible. Viewed in this light, *Promising Young Woman* becomes a film advocating rape prevention, demonstrating how the persistent invisibility of men as rapists demands exaggerated and extreme action for any possibility of substantive change to occur.

* * *

Introduction

The discourse of rape is in many ways a woman-inscribed space yet also a space in which women are repeatedly held accountable for men's assaultive behaviours. It is a curious irony that the same patriarchal dominance that produced male-defined legal and justice systems renders men invisible in rape. Instead, women are typically blamed and held responsible for men's actions. Such issues hold salience when considering ways of preventing rape. The realisation that so few sexual assaults and rapes are reported to the police, most of which never result in charges being laid, means the criminal justice system is largely irrelevant to the majority of those victimised. Its limitations and narrow reach, combined with increased awareness of the extensive harms of rape, reinforce how imperative it is to find ways of preventing sexual victimisation in the first place. This emphasis invokes a wider conception of what "justice" means, one which recognises the rights of all human beings to live safe from the fear of violence.

This chapter begins by considering key prevention initiatives, starting first with a brief historical overview of rape prevention. It addresses the early dominance of strategies aimed at changing women's behaviour before addressing more recent initiatives aimed at men. The limitations of prevention initiatives are canvassed before extending the focus to the broader context of rape culture. The discussion returns to the rape conundrum that began this book as we consider the challenges and difficulties that still exist and continue to pose barriers to justice for women victimised by sexual violence. The final section serves as a conclusion to this book, summarising the terrain covered while also acknowledging the deeper questions posed by this material. True to the spirit of much academic research, the question that began this research is not neatly

answered but instead poses additional questions, and these become the springboard for a second book (*Tackling Rape Culture: Ending Patriarchy*) that probes more fully the ways in which rape culture is sustained and reproduced as part of a wider patriarchal legacy.

Shifting discourses of rape prevention

In the late nineteenth and early twentieth centuries, women's lives in Britain and North America changed significantly with the rapid expansion of industrialisation and urbanisation. With increased numbers of women now walking city streets, concerns grew regarding their safety in a public sphere traditionally monopolised by men. While popular history has focused on the threats posed by such infamous serial killers as Jack the Ripper, far more common were the men who came to be known as “mashers” (Frost, 2017; Rouse, 2017). This name was given to men who approached lone women and might touch or grope them, try to manhandle them away, or verbally harass and berate them. The unwelcome sexual advances made could become explicit solicitations for sex or threats of sexual violence (Rouse, 2017). Young single mashers were often described as travelling in herds, emboldened by their peers to harass and assault women. One media source in 1914 described the masher as “just a plain cad ... a coward, too, for he knows that an unescorted girl can only express her resentment by ignoring him” (*The Scranton Truth*, quoted in Frost, 2017). What this comment ignored, however, was the secret weapon used by many women: their hatpins. Often six inches or more in length, these small fashion accessories were recognised by many as a source of protection and crime prevention. The length of the pins was justified by the difficult task they faced fastening large and cumbersome hats to the heads of fashionable women, with a popular fad involving hats adorned with whole or partial birds (Frost, 2017). The *Los Angeles Herald* in 1904 referred to mashers as “low-down cowardly cumberers of the earth,” adding that “Any woman with courage and a hatpin can prove it” (Zarrelli, 2018). In similar vein, Theodore Roosevelt observed that “no man, however courageous he may be, likes to face a resolute woman with a hatpin in her hand” (Zarrelli, 2018).

It was not long before lawmakers in Europe and America sought to limit the length of hatpins and demand that women place protective sheaths over the ends. Women often furiously resisted such attempts to control their wearing them, with sixty women in Sydney in 1912 arrested and sent to jail for refusing to pay the fines issued for pins deemed overly long (Frost, 2017). Anti-masher ordinances were introduced in some parts of the US but quickly became unpopular as news articles questioned why women would want to limit men's attentions (Zarrelli, 2018). It was apparent some felt masculinity was under threat, with a *New York Times* piece arguing that “‘a man would not be a very good one otherwise’ if he didn't *want* to bother a woman in the street” (Zarrelli, 2018; emphasis in original).

As men debated how to keep women safe on the streets, some women “rejected patriarchal notions of male protectionism and called for an end to men’s oppression of women in the public and private spheres” (Rouse, 2017, p. 189). The domestic realm was recognised by only a few commentators, however, with most of the emphasis on safety focused on the streets. From a feminist perspective, it was argued that women’s rights would be advanced by the twin strategies of women’s self-defence and female suffrage (Rouse & Slutsky, 2014). Both would empower women to resist violence and abuse and achieve social equality. Against this backdrop the women’s self-defence movement emerged in the early years of the twentieth century, with courses in jiu-jitsu and boxing becoming popular especially in America. Presented primarily as a means of preparing women to resist attacks from strangers on city streets, these were tolerated by some white men as long as the rhetoric emphasised the threats “their” women faced from foreigners and lower-class men of colour (Rouse, 2017). Others, however, feared such physical training would masculinise women’s bodies and rejected women’s self-defence for its alignment with feminist politics. A better way for women to avoid street violence and harassment, some argued, was to ensure they did not venture out alone in public, reflecting the commonly held sentiment that “women are intruders in the public arena” (Rouse, 2017, p. 193). Male control and protectionism reasserted themselves during World War 1 and women’s self-defence training essentially lapsed and became depoliticised until its resurgence within the context of 1970s feminism, as considered later in this chapter.

Apart from the brief embracing of women’s self-defence, rape prevention did not emerge as a significant issue until the late 1960s when the psychological impacts and trauma of sexual violence began to be recognised (Bourke, 2012). The realisation that being raped could be profoundly harmful, and that rape could no longer be trivialised as merely unwanted sex, provided impetus for its prevention. Thus in the early years of second wave feminism, victim/survivors were actively involved in campaigns seeking not only support for those victimised by sexual violence but fighting also for the social transformation needed to end it. Twenty years later the rhetoric had shifted. The need for systemic change had become buried beneath a neoliberal focus on the individual. As Mardorossian (2002, p. 768) elaborated, rape victims were now depicted as “irremediably and unidirectionally shaped by the traumatic experience of rape and hence incapable of dealing with anything but their own inner turmoil.” The victim’s pathology was deemed to be evident in her passivity, rendering her too damaged to be politically active, while the anger fuelling feminist activism became viewed as its own form of irrational pathology. As yet another form of “divide and rule” for women emerged, victims had their agency eroded and helplessness reinforced with the implications extending far beyond them.

The reduction of the discourse of victimization to an agentless interiority has contributed not only to changing our perceptions of victims

of violence but also to refashioning the feminist movement itself. What made the second wave strong was that victims of male violence took social transformation into their own hands and started organizing and demonstrating, founding and running shelters and women's communities, and volunteering their time and energy to promote social justice. While such political activities still occur, they have been irremediably dissociated from victims insofar as the latter are now the objects rather than the subjects of these movements.

(Mardorossian, 2002, p. 768)

Victimisation became defined more as an issue of women's identity than men's offending, and within this context rape prevention also was individualised. The systemic and structural analyses articulated by early second wave feminists were replaced by a depoliticised discourse of risk avoidance that came scarily close to the notions of victim-precipitated rape dismissed earlier. Instead of critiquing male sexually aggressive behaviour, women were encouraged to review their own behaviours and modify these in the interests of self-safety. As Mardorossian (2002, p. 757) points out,

...locating rape prevention in women's self-reflexivity vis-a`-vis their own imbrication in wider cultural dynamics runs the risk of becoming a new form of panopticism, an interiorized and individualized system of surveillance by which every woman becomes her own overseer. It is as if, having noted the failure of the panopticon project to reform criminals individually, we now applied it to their victims by gradually asking women to police their own behavioral and mental maps. Rather than question the principle of self-surveillance itself, we thus merely change its object.

Ensuring women become preoccupied with their own self-surveillance enables men to pass beneath the radar, as the next section explores further.

The invisible man

As the previous chapter showed, men have been relatively invisible in rape research and far more attention has been focused on the victim/survivors of rape than on the men who do the actual raping. It is not surprising that male invisibility emerges as a strong theme within the field of sexual violence prevention. Although most of the most serious sexual victimisation enacted by men is against women they know and are often living in partnership with, rape prevention strategies have seldom directly addressed this context (DeKeseredy, Burshtyn & Gordon, 1992). As pointed out by Campbell (2005, p. 129), "advice that warns women about the 'risky' behaviours of marriage and dating, which more likely give rise to victimisation, are not common place."

The dynamics of gender power are sustained, as we saw earlier in this book, through men's sexual possession and control of women, with the threat of rape ever-present as an option to reassert dominance. The physical assertion of such dominance is unnecessary much of the time, however, since gender role socialisation typically achieves the internalisation of female acquiescence to male control. As observed by Naffine (1997), the inevitability of rape is assumed to be self-evident, based not only on gendered differences of size and strength but on gendered role distinctions. This flies in the face of anthropological studies suggesting cultural differences in levels of rape, with Sanday's (1981) research suggesting those societies that are more rape-free are characterised by greater gender equality and less polarised gender roles.

In contrast, as recognised by Griffin in 1971 (p. 318), "in our culture heterosexual love finds an erotic expression through male dominance and female passivity." This model of normative sexuality blurs the distinction between sex and rape, underscoring the acceptance of sexual coercion as ordinary and natural within rape culture. Sex is viewed in biological terms not only for its reproductive role but also for providing male pleasure and satisfaction, while for women it is imbued with sacrifice for the greater good—the bearing of children and the satisfying of men. Research exploring intimate partner violence has found men who abuse and rape are more likely than other men to hold conservative and patriarchal attitudes towards women (Jewkes, 2002). Such attitudes are reinforced through popular culture in repeated scripts based around female vulnerability and weakness contrasted with male strength and violence (Campbell, 2005). Approaches to rape prevention can, often unintentionally, reproduce existing sexual norms at the same time as they purport to challenge them. Thus, as Alex Campbell (2005, pp. 127–128) asked,

The question to be posed here concerns the extent to which current forms of rape prevention interrupt particular gender-logics, which mutually materialize specific sexed bodies, which make rape probable. To put it another way, do rape prevention narratives disrupt the script of rape or do they further a predictable plot in which the ending (rape) is evermore unavoidable?

The linking of female subjectivity with victimisation reinforces notions of passivity and vulnerability in ways that contribute to perceptions of women as rapeable objects. As described by Ann Cahill (2001, p. 160), the female body becomes caricatured then as "a pre-victim," a representation reinforced in the myriad ways rape prevention advice admonishes women to be constantly wary, watchful and prepared "just in case." Women's heightened fear ripples throughout all aspects of life, restricting and constraining choices spanning everything from walking times and routes to employment, housing, transport, and travel plans. The rhetoric of women always being at

risk translates into the need for constant protection, with Campbell (2005, p. 130) asserting how “these knowledges strike the body, bending and contorting it, as it engages in normative feminine safekeeping strategies in ways which confirm a specific femininity (read vulnerability).” In keeping with this view, traditional rape prevention advice urged women not to physically resist an attacker, invoking an image of feminine frailty pitted against masculine strength. The discourse of vulnerability is apparent in the encouragement given to women to remain slender and engage in aerobic activities designed to burn calories and decrease body mass rather than participate in such “male” sports as boxing and weightlifting (Campbell, 2005; Dowling, 2000). Rape prevention advice typically engages with and reproduces this discourse, seldom addressing the male body and the conquest and ownership mentality characteristic of hegemonic masculinity. When men enact their masculinity through rape, the behaviours most often scrutinised are those of the female victim who fails to protect herself. She commits the crime of acting against her gender class, while the rapist acts so consistently with his that he is seldom called to account for his actions. This brings us back to the conundrum that sparked this book: why is it so difficult for women victimised by rape to receive justice?

Brownmiller (1975) was one of the first to write about rape as a control strategy, recognising how the rape of *some* women was sufficient to render *all* women fearful and self-constraining. Radford (1987) also understood how the fear of rape translated into women accepting controlled and dependent relationships with men in exchange for protection from other men. Despite early recognition in feminist research that the real risks of violence came from the men on whom women were dependent and in relationship with, the myth of the stranger rapist predominated for decades (Gavey, 2019). Even today, despite increased awareness of partnership violence and the legal recognition given to marital rape, sexual violence is the least discussed and resourced aspect of intimate partner violence. The on-going silence surrounding it contributes to its continuing efficacy as a social control mechanism. The fear of rape is internalised such that it not only constrains women’s public behaviour but also their private and domestic interactions, encouraging the embracing of a particularly weak and docile brand of femininity. Alex Campbell (2005, p. 121) has argued that within this context, rape prevention narratives, rather than preventing rape, may instead increase the possibilities of rape, explaining:

Women learn to view themselves as always-vulnerable and this affects physical body and simultaneously subjectivity, which come to be experienced as lacking and deficient. Critically, this is precisely the kind of body/subjectivity (vulnerable, weak, indefensible) which makes rape seem inevitable and thus ultimately unavoidable both in public and critically in private domains where gender identities are lived and experienced.

Such gendered norms become incorporated into the body and consciousness in ways that contribute to self-identity as well as to the shaping of relationships between strangers, acquaintances and intimates (Cahill, 2001; Campbell, 2005).

Rape prevention advice, even while acknowledging that risk can come from the men whom women know and share homes with, has primarily been focused on safety tips aimed at women in public (Campbell, 2005). A raft of guidelines instruct women on the street to avoid dark streets, walk close to the curb, cross if they hear footsteps behind them, carry their keys like a knife, tell others their route home, avoid parking on the top floor of parking buildings, ask others to walk them to their cars or the bus stop, with advice extending to social venues advising women not to become intoxicated, never to leave their drink exposed, and to always tell friends if they leave with someone. Tips for safety in the home are usually directed at women living alone, suggesting they use a man's voice on the answer phone, put men's boots at the door and men's pyjamas on the washing line—measures designed to convey the impression that this house is occupied by a male. Inviting women to fashion an invisible man infers that a woman cannot be safe without a man's presence, even when that presence is imaginary, as elucidated further in the next section.

The frail woman

Rape prevention advice can itself be a risky proposition for women. Messages that reinforce women's powerlessness and susceptibility to attack are congruent with gender norms emphasising men's strength and women's weakness and convey a sense of feminine frailty at odds with the ability to resist a rape attack. Betsy Stanko (1997, p. 487) captured this sentiment well when she described:

The dominant image of the frightened woman, usually pictured clutching a bag on a darkened street, is a recognized portrayal of the modern woman: our fear has become a prominent and common symbol about the danger of the other.

(Emphasis in original)

Traditional rhetoric urging women to behave in a ladylike manner instructs them to speak quietly, act demurely, and refrain from physicality. Such behaviours could equally be described as rape enablers. Instilling in women a lack of confidence in their own abilities to resist rape contributes to their high levels of fear and vulnerability. The latter can constrain women's choices and participation in activities while also eroding any belief in their capacity to act in their own self-defence. Should an attack eventuate, a woman may feel able only to utter feeble protests and flutter ineffective punches, unaware of the potential power of both her voice and limbs.

Prescriptions to women in public places as to how to achieve safety are framed in terms of a rhetoric of limited competence, that is, a series of presentational strategies that project dependency and lack of skill.

(Gardner, 1990, p. 316)

Research on rape avoidance demonstrates that it is women who confront their attacker's gendered expectations who are most likely to avoid rape (Gidycz & Dardis, 2014; Ullman, 2007). The specific behaviours exhibited can include screaming loudly, poking eyes, grabbing or kicking genitals, and vomiting or urinating to repel them—all actions typically viewed as the antithesis of being ladylike. The associated prevention implications are obvious, with Campbell asserting:

...it is evident that eradicating rape extends beyond content-changes to rape prevention literature; it requires a cultural shift in which the conceptual opposites of man/woman are unhinged. Women learn their frailty from a variety of sources, while rape prevention literature (designed to stop rape) should not be one of them...

(Campbell, 2005, p. 136)

Reinforcing to women that the world is a dangerous place for them serves both to constrain the options of many and justify bestowing blame on those who choose not to heed cautionary tales. Her awareness of her own lack of safety was captured well in a piece by writer Sylvia Plath, penned when she was a young woman of nineteen:

Being born a woman is my awful tragedy Yes, my consuming desire to mingle with road crews, sailors and soldiers, barroom regulars - to be part of a scene, anonymous, listening, recording - all is spoiled by the fact that I am a girl, a female always in danger of assault and battery. My consuming interest in men and their lives is often misconstrued as a desire to seduce them, or as an invitation to intimacy. Yes, God, I want to talk to everybody I can as deeply as I can. I want to be able to sleep in an open field, to travel west, to walk freely at night.

(Sylvia Plath, *The Journals of Sylvia Plath*, 1950–1962, in Gardner, 1990, p. 311)

Sylvia Plath recognised that the ability “to walk freely at night” is a gendered construct. Traditional divisions of public and private sought to contain women within the private constraints of the home, a rhetoric of male protection eclipsing recognition of intimate partner violence and rape until very recently. Notions of women's vulnerability in public thoroughfares were historically used to discourage women from venturing out, especially without a male gentleman to accompany them, and contributed to high

fear levels that required women to adopt risk-reducing measures (Edwards, 1987; Radford, 1987).

An interview-based study conducted by Carol Gardner (1990, p. 316) more than thirty years ago found women frequently internalised messages of their own limited competence, illustrating this in the many ways they sought to avoid harm. Common strategies included dressing so as to appear “manly” and less feminine, enlisting the company of a male to escort them in public, and pretending to live with a man. In several instances the imaginary male companion over time developed a name, dress habits and favourite sports teams. While some women treated the invented male protector as a culturally required accessory not to be taken too seriously, others experienced such efforts to pursue safety as undermining. As Gardner (1990, p. 319) observed:

This ritual accompaniment emphasizes to her that her “true” or “real” self provides insufficient protection for her own safety. She must create a tissue of a man, which can be suggested by the merest hints and evidences.

Almost every woman interviewed described ways of avoiding dressing or walking in ways that might be deemed provocative or “inviting” of rape, with some adding that they also felt it necessary to stifle any natural exuberance or good humour in case it was misinterpreted.

Going even further, some prevention literature has advised women to not only avoid being attractive but to make themselves repulsive and disgusting. Strategies suggested have included the following:

“urinate, drool or even throw up” (Schraub, 1979, p. 153);
 “act insane; eat grass, jump around, etc” (Krupp, 1978, p. 152);
 “quack like a duck” (Scribner, 1988, p. 69); and
 carry old penicillin bottles to bolster claims they have venereal disease (Pickering, 1983, p. 121) (All quoted in Gardner, 1990, p. 321)

Gardner points out that such advice would appear strange if proffered to a man facing street violence, but encouraging women to present what she describes as “a floridly flawed self” (p. 321) reinforces the message that she is “out of role in public.”

Notions of female frailty also inevitably influence perceptions of women’s sexual expression, with the dominant construction of heterosexual encounters positing “masterful seduction and silent submission” (Pineau, 1989, p. 222). The active role of men as strong initiators is contrasted with women’s weak passivity and role as receptors, a binary construct characterised by male subjects and female objects. This perception makes rape appear natural and inevitable, contributing to its normalisation within rape culture. While there is widespread recognition of the sexual pressures placed on women, not so frequently recognised are the pressures facing men (Jozkowski & Peterson, 2013). In some contexts men may feel they do not want to engage

in sexual intercourse yet respond to a male script portraying men as always “up for it.” This can arise particularly in situations where men are conscious of how their male friends will respond, and the fears of being viewed as less of a man if they do not have sexual intercourse with the woman they are with (Duckworth & Trautner, 2019; Kimmel, 2008). In some cases men may genuinely misinterpret women’s behaviour as indicating consent. This can arise in contexts where the ways in which women are socialised to be nice and friendly are wrongfully interpreted as sexual attraction or willingness (Lindgren, Parkhill, George & Hendershot, 2008). Consistent with rape prevention, then, is the rejection of essentialist gender roles for men as well as women in order to decouple men from stereotypes prescribing masculine dominance, control and entitlement in sexual encounters (Campbell, 2005).

Much rape prevention advice derives from the assumption, noted earlier, that women are most at risk from stranger attacks (Fileborn, 2016; Stanko, 1996). Messages routinely recommend women wear running shoes, carry keys in their hands, and have whistles or alarms with them. This flies in the face of the overwhelming evidence that most sexual violence is perpetrated by men already known to the victim. For example, research on college sexual assaults in the US has repeatedly shown that in approximately 90% of cases the perpetrator was a friend, acquaintance, dating or intimate partner of the victim (Fisher, Daigle & Cullen, 2009; Jozkowski & Peterson, 2013). Moreover, the rates of sexual assault among college students have remained relatively stable for more than 50 years (Bedera & Nordmeyer, 2015; Jozkowski & Peterson, 2013), and despite an array of initiatives colleges still struggle to find effective prevention measures. The traditional responsibility for prevention that was placed on women has in recent years provoked controversy. Arguments can be made, on the one hand, that such involvement is empowering, with training in particular measures such as self-defence yielding positive outcomes (Hollander, 2014, 2016; Jordan & Mossman, 2016, 2019; Mossman & Jordan, 2013.). On the other hand, risk reduction strategies targeting women can increase women’s fear levels and also be potentially victim-blaming when women are judged for “risky” behaviour (Bedera & Nordmeyer, 2015; Filipovic, 2008; Friedman & Valenti, 2008). Despite how potentially fraught this arena is, recent years have seen a growing emphasis on the importance of rape prevention with a diverse range of initiatives proposed, some of which are reviewed below.

Rape prevention initiatives

The sheer historical prevalence of rape suggests that for centuries women are likely to have planned, possibly discussed, how to avoid being raped, with collective efforts occurring as early as the years of the suffrage movement in the late 19th and early 20th centuries. The emphasis was initially on protecting women from attacks on the streets and involved teaching self-defence

skills and martial arts, as outlined in more detail below. The fear of sexual danger, while sometimes minimised or dismissed as irrational, has gained increasing recognition alongside growing realisation of the high prevalence of sexual violence (Walklate, 1998). The normality of sexual assault and fears of its occurrence were documented in Liz Kelly's study undertaken with very ordinary women in a London community (1988). The continuum of sexual violence she developed from this study remains conceptually relevant as a means of understanding the linkages between *all* forms of sexual violence (Kelly, 1988). This includes behaviours once dismissed or trivialised as minor and devoid of harm, such as acts of indecent exposure and the many behaviours grouped together as "street harassment," now understood to be one of the most prevalent forms of sexual violence and one familiar to most women (Fileborn, 2017b, 2019; Vera-Gray, 2018).

What Betsy Stanko (1993) termed for women an "ordinary fear" translated into women developing and learning routine ways to manage fear and safety as they went about their lives. Consciousness-raising groups had been vital to the development of the 1970s women's movement and sparked initial optimism that with awareness-raising and myth-challenging, the rates of rape might decrease. Writing in 1973 (p. 110), Weis and Borges (1973) outlined their vision of what liberation might bring:

Women who subscribe to the ideal of liberation seek to be able to set the limits of encounters and to choose and refuse partners on their own volition. The woman who is accustomed to dating will probably have been subjected to certain unpleasant and offensive sexual experiences which in former times she simply accepted as part of the female lot. With a new raised consciousness and increased sensitivity, however, she may feel more justified in complaining. She will not allow or accept treatment as an object and will become less willing to passively accept the male definition of seduction.

Rape crisis groups began holding awareness-raising classes and running risk-reduction and self-defence courses for women (Dann, 1985; Searles & Berger, 1987), but these joined the on-going battle for funds faced by women's refuges/shelters, phone helplines, and every other service for women experiencing male violence. Rape prevention advice typically targeted women as potential victims and urged a range of initiatives they could do to reduce their risks of being attacked, measures that often reinforced perceptions of women's vulnerability (Hollander, 2016; McCaughey, 1998; Stanko, 1996). The importance of prevention efforts became increasingly obvious, however, as awareness grew regarding the multiple harms of rape. As trauma understanding expanded, research studies found "women with assault histories are between one and a half to two times more likely to be sexually assaulted than are women without assault histories" (Gidycz et al, 2002, p. 246). The importance grew of designing and delivering programmes that recognised the

likelihood of previous sexual assault victimisation and how it could increase passivity, ensuring such women could be offered additional input regarding active resistance strategies (Lonsway, Banyard, Berkowitz, Gidycz, Katz, Koss, Schewe & Ullman, 2009). It was not until the 1990s that the importance of engaging men in rape prevention came to be emphasised (Flood, 2019a; Katz, 1995). Targeting courses at male participants was one important plank, while also seen as increasingly desirable was engaging men as rape educators.

Crime prevention measures generally are notoriously difficult to evaluate, one fundamental problem being how do we know we have prevented something that never happened (Carmody & Carrington, 2000). Accordingly, sexual violence prevention programmes have often struggled from a lack of evaluation research providing evidence of their effectiveness (Carmody, 2009; Henry & Powell, 2014). Reviews have increasingly provided guidelines informing best practice, emphasising in particular the need for programmes to be grounded within a clear framework with specific aims and show how they will address key attitudes, skills, and behaviours (Carmody, Evans, Krogh, Flood, Heenan & Ovenden, 2009; Flood, Fergus & Heenan, 2009).

The discussion of rape prevention initiatives here focuses on the potential of these to challenge the silencing and objectifying processes that serve as reinforcers of rape culture. The measures explored here are:

- i self-defence;
- ii bystander education;
- iii consent education;
- iv engaging men and boys; and
- v digital rape prevention.

Self-defence

Women's self-defence courses are often assumed to have originated with the 1970s Women's Movement but evidence suggests they were popular in some quarters during the first wave of feminism. Historically fighting and self-defence were regarded as more masculine pursuits, but, as noted earlier in this chapter, in the late 19th and early 20th centuries concerns over women's vulnerability to street violence prompted classes being made available to women (Rouse & Slutsky, 2014). Suffragist campaigns actively promoted self-defence courses as an essential step in moves towards equality.

Just as the female body had long been subjected to violence and abuse, women now used their bodies as a tool to fight against that abuse and violence and secure for themselves a newfound sense of freedom.

(Rouse & Slutsky, 2014, p. 499)

Self-defence classes made a resurgence during the 1970s, in response to the women's movement raising awareness of the risks faced by women. In Aotearoa New Zealand, for example, the first women's "Reclaim the Night" march was held in 1979, the same year as self-defence courses, combining martial arts with feminist principles, were begun by Sue Lytollis in Auckland (Dann, 1985). The risks were predominantly still presented as street-based, and the skills taught in feminist programmes, as opposed to more general martial arts courses, focused on acquiring specific techniques to use in disarming an attacker. These might involve, for example, learning to target the especially vulnerable areas on a man's body, sites which schoolgirls undertaking such courses more recently in Aotearoa New Zealand were taught to remember as "Eyes, nose, guts, nuts" (Jordan & Mossman, 2016).

Opposition to self-defence courses has come from many quarters. Traditional police advice urged women not to fight back for their own safety, saying resistance on their part might escalate the violence and prove fatal (Kleck & Sayles, 1990). Moreover, a fightback mentality threatened to subvert traditional gender relations predicated on assumptions of female vulnerability and male protection (Campbell, 2005). Within feminist communities debate still rages as to whether equipping women with self-defence knowledge places the responsibility on women to keep themselves safe and equates to victim-blaming (Gidycz & Dardis, 2014; Hollander, 2009, 2016; Ullman, 2014, 2020). This may account for the resistance that often exists around teaching rape resistance. Jocelyn Hollander, for example, expressed surprise after reviewing the literature that despite research demonstrating the effectiveness of resistance,

... there was a resounding silence about the question of whether formal training in self-defense bolsters women's ability to resist. Self-defense training was, in effect, invisible as a means of violence prevention.

(Hollander, 2009, p. 575)

Evidence from research on rape avoidance showed that physical resistance (fighting or fleeing) combined with verbal resistance (yelling, sending clear messages) was associated not only with avoiding rape but brought with it no increased risk of physical injury (Hollander, 2014, 2007; Ullman, 1998). A review by Brecklin (2007) additionally found evidence for a number of other positive outcomes, including improved self-esteem, increased sense of personal control, decreased anxiety, and reduced avoidance behaviours (that restricted activities such as walking alone). Feelings of increased assertiveness were also apparent, manifest for example in women feeling less immobilised and more connected to their anger at being attacked. As observed by Brecklin and Ullman (2005, p. 753),

Women with training before their assaults were angrier and less scared during the incident than women without training, consistent with the

teachings of self-defense training...[which] often teach women the importance of channeling their fear into anger during an assault.

Evaluation studies conducted with university-based women in North America have found that those who participated in feminist self-defence classes had higher rates of self-esteem and lower rates of sexual victimisation in comparison to control groups (Hollander, 2014; Senn, Eliasziw, Barata, Thurston, Newby-Clark, Radtke & Hobden, 2015). Studies conducted in other contexts, including with younger girls, have also produced positive outcomes (Jordan & Mossman, 2018). In Kenya, Sinclair, Sinclair, Otieno, Mulinge, Kapphahn and Golden (2013) conducted one of the few studies conducted in deprived areas characterised by high levels of sexual assault. A self-defence programme, taught from an empowerment perspective, resulted in a 15% reduction in sexual violence for the participants in contrast to the control group. More than half of the self-defence group reported having used the strategies taught to prevent sexual victimisation, and reported decreased levels of assaults perpetrated by boyfriends and family members.

The evidence suggests that self-defence programmes taught from a feminist empowerment perspective are effective in challenging both the traditional silencing and objectifying of women. The emphasis on using voice contradicts the socialisation experienced by many girls that instructs them to be quiet and conciliatory (McCaughy, 1997). This was reflected in findings from Aotearoa New Zealand research with young schoolgirls suggesting a major benefit was the increased confidence they felt about using their voice effectively, as evidenced in the following comments made when asked what they would do if attacked:

Say “STOP Touching ME NOW”; “I DON’T LIKE IT.”

(Jordan & Mossman, 2018, p. 1602)

I would use my big voice to say stop and if they didn’t I would ballerina kick their nuts, hammer punch their face and run and tell a trusted adult.

(Jordan & Mossman, 2016, p. 45)

Women who have undertaken such courses routinely express surprise on discovering how loud and powerful they could actually sound, important learning should they find themselves needing to stand up to a man and/or call for help. A participant in a women’s self-defence course said:

The most empowering thing that she [the instructor] taught us that day was our voice ... It makes you 10 feet tall because even though “no” is a two-letter word, it is a very hard word to say.

(Jordan & Mossman, 2019, p. 324)

Self-defence advice can also empower women to resist ways in which their attacker may be objectifying them. Many situations have been reported where men were confounded by their potential victim's efforts to be seen and responded to as an individual, a real person, someone with a name, a family, and an identity. This has been recognised as significant given how, as a 16-year-old Indian girl on a self-defence course in Delhi said, "Men treat us like we aren't human" (Habib, 2018). Men convicted of stranger rape attacks have, as observed in previous chapters, spoken about expecting a passive, compliant response from a woman, someone they targeted not for any particular reason other than that she was an available object (Scully, 1990). Martha McCaughey, an early researcher on feminist self-defence, gives an example of a woman who, while taking a course, "was confronted by a man with his pants down, masturbating. So forceful and piercing was her clamour that the man had to release his penis to put his hands over his ears" (McCaughy, 1998, p. 284).

Within the context of intimate partner violence also, women who have completed feminist self-defence programmes have recounted feeling empowered afterwards to view themselves as more than their partner's punching bag or rape object, prompting shelters and refuges to partner with self-defence teachers in providing workshops and support for repeat victims of physical and/or sexual violence (Mossman & Jordan, 2013). They have also reported feeling more assured and comfortable in their interactions with both intimates and acquaintances after participating in feminist self-defence courses (Hollander, 2004). During the course of evaluation research Elaine Mossman and myself were conducting, for example, we interviewed a woman in her fifties who had experienced abuse and violence all her life. She had written her self-defence instructor a letter sharing how she finally stood up to a man she knew who was "nutting off at me in my own home":

I walked back into my lounge and jumped into the kick arse position. I stood the way you showed us. I had my hand in a fist position, and as I gently bounced up and down with my knees, I yelled at him:

I'VE HAD ENOUGH OF THIS. GET OUT OF MY HOME AND DON'T COME BACK.

Well, believe it or not he just sat there, and I thought, oh shit, but I stood my ground and moved a bit closer with such an angry face and repeated what I had said before:

GET OUT OF MY HOME AND DON'T COME BACK.

He left this time.

(Jordan & Mossman, 2019, p. 325)

The awareness raising and empowerment that came from undertaking this course enabled the women to access an inner strength and confidence

most said they never knew they had. This was consistent with evaluations of other self-defence courses taught from a feminist empowerment perspective showing how these can be transformative in changing how women view themselves and their bodies and be a catalyst for personal growth (Hollander, 2004; McCaughey, 1998; Ullman, 2020). For example, a recent US study of adult women aged 18–77 years compared students who took a 9-hour community-based empowerment self-defence course with those who did not (Hollander & Cunningham, 2020). At the one-year follow-up, participants who had taken the course reported significantly less sexual assault, with other gains including increased knowledge about sexual assault and the possibility of resistance as well as less self-silencing. Feminist self-defence training can be considered an effective means of primary rape prevention, with the increased awareness it brings serving as a powerful challenge to rape culture mythology. Its subversive potential has been recognised by many, since “Self-defence training presents a concrete way to disrupt the cultural script of rape” (Campbell, 2005, p. 135). The increased physical strategies and abilities gained by women have been found to reduce feelings of fear and vulnerability and enable greater confidence (Madden & Sokol, 1997; Thompson, 2014). Accordingly, a major research project undertaken within the European Union (EU) recommended that greater recognition was needed of the ways women’s self-defence training can contribute to the prevention, and eventual elimination, of gender-based violence (Seith & Kelly, 2003).

Bystander intervention

A shift in emphasis occurred this century as realisation grew regarding how often a woman was raped in contexts where others could possibly have intervened to prevent it happening (Cares, Moynihan & Banyard, 2014). The concept of bystander intervention has been increasingly embraced as a strategy to encourage people to be attentive to the safety of those around them and willing to intervene if necessary to prevent a sexual assault or rape occurring. Suggested measures can also include advice on responding to sexual victimisation disclosures as well as proactive strategies for challenging expressions of sexism and rape-normalising attitudes (Lonsway et al, 2009). Such courses have grown so rapidly in popularity that, as Hollander and Cunningham (2020, p. 187) observed: “the rush to perpetrator- and bystander-focused prevention has largely abandoned one approach that does appear to reduce victimization without blaming victims: women’s empowerment-based self defence training.” The support for bystander interventions may be related to these appearing less threatening to many than responses which involve women empowering themselves. As noted by Sarah Ullman (2020, p. 3) bystander intervention “entails community members stepping up to help protect women from rape which conforms to patriarchal notions of protecting vulnerable women from harm.” To what

degree this accounts for their popularity is unknown, but many see merit in emphasising measures that encourage individuals to display concern and be prepared to act to increase the safety of others.

The bars and clubs of the night-time economy are one arena often considered as ideally suited to the promotion of bystander prevention programmes. These venues are well-recognised as environments in which young women in particular may be subject to sexual assault and unwanted sexual attention (Fileborn, 2016; Kavanaugh, 2013), although tensions and ambivalencies may arise in such venues between unwanted and wanted sexual contacts. As Fileborn points out:

Unwanted sexual attention is also occurring within a cultural context where wanted sexual attention can be a welcomed if not desired feature of a night out. The behaviours and interactions of interest here cannot always be simply or readily classified as ‘wanted’ or ‘unwanted’ – instead, they can be fluid and malleable, with their classification liable to change direction as the night unfolds.

(Fileborn, 2017a, p. 215)

Those victimised by sexual assault in such environments are frequently subject to victim-blaming (Abbey, Zawacki, Buck, Clinton & McAuslan, 2001; Weiss, 2009). Judgments are often levelled that women drank to excess, dressed provocatively, and acted flirtatiously (Schuller & Stewart, 2000; Weiss, 2009), with the emphasis on women “inviting” sexual assault serving to deny or minimise perpetrator accountability, legitimating and normalising notions of drunk women being viewed as “fair game.” As Fileborn (2015) identified, most research in this area has framed sexual violence in heteronormative ways with greater emphasis needed on research to understand the dynamics and impacts of sexual violence in more diverse LGBTQ+ arenas and contexts.

Early encouragement of bystander intervention emerged in response to a moral panic over drink spiking and fears that drug rapes were commonplace (Quigley, Lynch, Little, Murray, Lynch & O’Halloran, 2009). Bar staff and patrons were encouraged to notice and act should they observe any evidence of drink spiking occurring. While there is a strong association between rape and alcohol intoxication, research suggests the majority of such sexual assaults involve perpetrators taking advantage of the victim’s voluntary consumption rather than engaging in drink spiking (Clark & Quadara, 2010). Bystander programmes usefully broaden the responsibility for sexual violence to communities, promoting recognition of ways in which the silence of others can contribute to the occurrence of sexual violence (Banyard, Moynihan & Plante, 2007). This was a strong plank within the *Sex and Ethics* rape prevention programme pioneered by Australia’s Moira Carmody (2015) and more recently the major emphasis of Aotearoa New Zealand’s *Who Are You* campaign.

Who Are You was a multimedia venture developed collaboratively by multiple sexual violence support and prevention agencies working with police, doctors, and a local radio network (Sexual Abuse Prevention Network). It includes an eight-minute film developed around the scenario of a man preying upon a young drunk woman in a bar and insisting she accompany him to a context where he rapes her. The scenario is then repeated to show multiple points where various bystanders (barman, witnesses, flatmates, etc.) could potentially have intervened to check on her safety and protect her. Since 2017, an innovative campaign has been the “Don’t Guess the Yes” campaign, collaboratively developed in Wellington by the Sexual Abuse Prevention Network in tandem with local police, hospitality venues, and university student associations (New Zealand Police, 2018). As well as seeking to raise awareness generally around alcohol and sexual assault, the campaign also trains bar staff how to identify and intervene effectively in problematic situations. This includes publicising the internationally recognised system, “Ask for Angela,” that bar customers can use if needing a discreet means of asking for support.

Bystander intervention programmes directly challenge the often self-imposed silencing of onlookers witnessing threatening and potentially assaultive behaviour. Fear and anxiety are often responsible for inhibiting others to respond, including the fear of making an erroneous judgment and feeling embarrassed as a result. To counter this, bystander programmes encourage others to overcome their self-silencing and act appropriately and safely to protect others. They also prompt onlookers to relate to the person under apparent threat as an individual with her/his own subjectivities and connections. From this perspective, bystanders are encouraged to see and speak in ways conducive to promoting the safety of another person, even if they do not know them. Research has found men completing a bystander intervention programme are more likely to intervene only if the woman concerned is already known or familiar to them (Katz, Pazienza, Olin & Rich, 2015). While this marks a good start, it may be important to work on ways aimed at encouraging bystanders to feel connected and responsive when seeing or hearing others under threat. Bystander intervention programmes can also be usefully combined with feminist self-defence courses. One example comes from New Delhi where, in the aftermath of Jyoti Singh’s death and scores of other brutal rapes, women police officers now offer women and girls free self-defence courses alongside “gender sensitization for boys,” a lawyer-led course that teaches men how to help women in trouble and how to be more respectful to them in public spaces” (Habib, 2018).

Internationally a raft of campaigns have been developed in recent years to raise awareness and encourage all members of whichever communities are targeted that they can, and should, play a role in ending sexual and relationship violence (see Flood, 2019a, [Chapters 6](#) and [7](#) for a recent overview). Evidence for the effectiveness of such programmes is mixed. Earlier research by Banyard et al, 2007 found positive changes on a range of outcomes including knowledge of sexual assault, awareness of active bystander

behaviours and willingness to engage in them. Other studies have been less clear in providing evidence of changes in bystander behaviours (Fulu, Kerr-Wilson & Lang, 2014; Ricardo, Eads & Barker, 2011), and Flood (2019b) suggested that bystander approaches appear no more effective in changing rape-supportive attitudes than other educational measures. As with self-defence, to maximise their effectiveness bystander programmes need to be based on sound feminist theory built around a gendered analysis of violence. Men's educator Jackson Katz and colleagues cautioned that a gendered approach must be maintained that begins "with the premise that structural and systemic inequalities are the context for, if not the root cause of, most interpersonal violence" (Katz, Heisterkamp & Fleming, 2011, p. 689). Neither bystander programmes nor any other single approach will be sufficient to prevent rape, resulting in recent calls arguing for "integrated prevention" strategies incorporating a mix of bystander intervention, social norms education, and resistance/self-defence training (Orchowski, Edwards, Hollander, Banyard, Senn & Gidycz, 2018).

Consent education

The issue of consent has been central within rape legislation since the 19th century. Consent, however, as noted in [Chapter 2](#), is a vexed issue in relation to proving its presence or absence, and is in reality a much more complex concept than laws suggest. The major criticism levelled at how consent is legally defined relates to the onus of proof being on the complainant—she has to provide evidence to prove she was not consenting. The historical emphasis placed on women to be sexual gatekeepers creates tensions in women's sexual behaviour and responses. As discussed earlier, if a woman does not resist physically, and strongly enough, she risks being blamed for contributing to her own victimisation. Agreeing or complying with some sexual behaviours but drawing the line at others can result in her being labelled a "tease," with men's culpability for any subsequent forced sex reduced. Conversely, agreeing to intercourse "too quickly" or with "too many" sexual partners can result in her being depicted as a "slut" (Jozkowski & Peterson, 2013). Additional risks can follow such labelling, for example when men make assumptions that a woman who had sex with other men will automatically agree to sex with them. In such contexts a woman can risk being raped, or, should she try refusing them, be responded to with anger and coercion should the man interpret it as a personal rejection (Wood, Lambert & Jewkes, 2007).

A US study focused on college students' understanding of consent concluded that

...results of this study suggest that college students' communication of consent is heavily influenced by traditional and stereotypical gender roles. As a result, men are expected to be responsible for initiating sex,

men's pleasure is prioritized over women's, and some men may resort to aggressive or deceptive strategies to obtain sex. At best, these rigid gender roles may contribute to unsatisfying sex; and at worst, they may contribute to men's sexual aggression against women.

(Jozkowski & Peterson, 2013, p. 522)

The belief that men want and need more sex than women underlay expectations that "men's sexual pleasure supersedes women's sexual pleasure" (p. 521), with responses to a question about consenting to oral sex indicating, for both male and female participants, the expectation that this involved oral sex being performed on the man by the women, rather than the reverse. A male participant expressed this strongly and clearly by responding "She can give me a blow job, but she's not getting any" (p. 520). Also emergent in this study was a theme of male aggression evident in how some men said they would obtain sexual consent, including using their position or physical strength to achieve this. For example, when asked what cues they would use to indicate consent, more than a quarter of the male respondents said they would simply tell their partner they were going to have sex with them. In relation to receiving oral sex, male responses included, "I would just push her down, use my strength to get her head down there. Then she would have no choice but to do it," while another stated: "I would use aggression, physicality, my strength I would ask 'Am I going to have to do this myself or can I get some help?'" (p. 520). None of the female participants reported using aggressive tactics to achieve or communicate consent.

The researchers expressed surprise when evidence emerged of a theme of men obtaining consent through deception. When asked, for example, how they would indicate sexual consent some men said they would pretend it had happened by mistake. As one described it, "Start having sex and then say oops, didn't mean for it to go in, so too late now" (p. 520). This was also the strategy some adopted regarding anal intercourse. Men's comments included the following: "Most women hate it, so I would slip it in the back door and pretend like I had done it by mistake" and "I would flip her over and pretend like I was going to do it doggy style [rear-entry sex], but then I would stick it in her butt" (p. 520). No women in the study reported engaging in deceptive behaviour to achieve sexual consent. These findings reflect traditional sexual scripts and expectations, suggesting little progress has been made in shifting gender attitudes and behaviours around sexual intercourse. As the researchers concluded:

Despite the sexual revolution and increased representation of women as sexually assertive and autonomous, many participants in the current sample conceptualized men as sexual initiators and women as sexual gatekeepers, consistent with the gender roles prescribed by traditional sexual scripts.

(Jozkowski & Peterson, 2013, p. 520)

Consent education is a relatively recent initiative that has emerged alongside the increased state attention given to exploring shifts towards affirmative models of consent (Beres, 2018, 2020; Borges, Banyard & Moynihan, 2008). There have been attempts in some places, such as in university policies in several US states, to switch this emphasis to the accused, requiring him to provide the evidence he relied on to know she was consenting (Gilbert, 2018). More widely, mandatory consent education programmes have already been implemented in universities in the UK (Weale, 2014) and Australia (Cook, 2018), and are expected to increase elsewhere as a result of increased awareness of sexual violence brought about by the #MeToo movement. Recent social marketing campaigns aimed at young people, for example, have been oriented towards emphasising the importance of consent (Beres, 2018).

The main aim of consent education is to increase young people's awareness regarding what consent means and how to communicate consent (e.g. De Leon, 2014, in Beres, Treharne & Stojanov, 2019; Weale, 2014). The messages given are consistent with affirmative consent models, described by Beres (2020) as follows:

Affirmative consent requires consent to be communicated in a 'positive' manner, and for anyone initiating sexual behaviour to be sure their partner is willing. In other words, affirmative consent models focus on 'only yes means yes' understandings of consent, in contrast to 'no means no' models, where the focus is on listening to refusals.

(Beres, 2020, p. 228)

Aotearoa New Zealand, Australia, and the UK are all currently debating shifts towards the adoption of affirmative consent laws, but Beres observes that despite the way this approach is being touted as "seemingly revolutionary" (2020, p. 228), Canada in effect adopted such law in 1992 and several US states introduced affirmative consent legislation decades ago.

Many current prevention efforts focused on consent education have been criticised for failing to demonstrate how increasing young people's knowledge of sexual consent will reduce sexual violence (Beres, 2018; Harris, 2018). The assumption informing such programmes is that it was a lack of knowledge about what sexual consent is that caused the sexual violence, which Beres identifies as consistent with a similar oft-cited belief that "miscommunication" causes many instances of sexual violence (Beres, 2020). A considerable body of research evidence now exists showing that while discrete instances of miscommunication may occur, men and women overall share similar understandings about sexual communication and negotiation (Beres, 2014), with women providing clear refusals that men report they hear as such (Kitzinger & Frith, 1999; O'Byrne, Hansen & Rapley, 2008).

Currently the popularity of consent education programmes is largely unsupported by research evidence as to their effectiveness as a sexual

violence prevention measure. After conducting a study with educators and activists about the potential of consent-focused education to prevent sexual violence, Beres concluded that deeper understanding was still required regarding the benefits and challenges of such programmes. As she states it:

If offending is a result of misunderstanding or lack of knowledge, then consent education may have some potential to reduce rates of sexual violence. However, if offending stems from a willingness to cross boundaries and injure others, consent education will likely have little effect.

(Beres, 2020, p. 236)

The evidence suggests that consent education on its own is insufficient to effect change unless it is accompanied by more direct challenging of rape-reinforcing social norms combined with measures aimed at increasing empathy and connection. Multiple media sources currently depict women in sexually objectified ways that are consistent with masculinist notions of sexual entitlement and conquest. It is these beliefs that form part of the cultural scaffolding of rape (Gavey, 2019) that sustain high rates of sexual violence and must be dismantled before any significant reduction can be expected.

Engaging men and boys

A predominant strand of feminist thinking from the 1970s has recognised that the responsibility for rape should rest with the perpetrator, not the victim (Rozee & Koss, 2001). “[R]ape prevention work begins with men and with men’s questioning of prevailing assumptions about masculinity and their rethinking what it means to be a man” (Capraro, 1994, p. 22). This emphasis comes from recognising that “the perpetration of rape is traceable to a highly problematic masculinity, constituted by sexism, violence and homophobia” (Capraro, 1994, p. 22). Such an emphasis has been difficult to establish given the historical dominance of victim-blaming attitudes and their on-going manifestation within contemporary rape culture. This has contributed to the relative invisibility of men in rape prevention, with one review finding that only 8% of rape education programmes were designed specifically for men (Morrison, Hardison, Mathew & O’Neil, 2004). This initially surprising finding is not so startling when placed within the context of a patriarchal history in which women were blamed for their victimisation while men’s rape offending was cloaked in invisibility. Recent campaigns and programmes directed towards boys and men have typically sought to address the impacts of rape culture on normative attitudes and to change male norms of behaviour towards women (DeGue, Valle, Holt, Massetti, Matjasko & Tharp, 2014; Flood, 2019a; Lonsway et al, 2009). At their core is a critique of the ways in which masculinity remains so often defined by a narrow set of stereotypes emphasising male strength, dominance, and sexual entitlement. The reinforcement of these stereotypes through a wide

range of media has been recognised as a major contributor to their on-going influence, prompting the following question posed by prominent US rape educator Jackson Katz (2006, p. 252):

How much can things change if successive generations of men are taught that part of being a man means dominating and controlling women? And how can we change that sexist and oppressive definition of masculinity unless we address the 24-7 media culture that reinforces it?

High levels of alcohol use and tolerance have been linked to cultural tropes of masculinity in many cultures, with intoxication accepted as common for all gender identities within youth and dating cultures. Estimates suggest that approximately half of all sexual assaults involve alcohol use by the perpetrator, victim, or both, with cultural beliefs about alcohol reinforcing gender stereotypes and potentially exacerbating perpetrators' decision-making and behaviours (Abbey, Zawacki, Buck, Clinton & McAuslan, 2004). However, although alcohol has been identified as a common risk factor in sexual violence, prevention strategies focused solely around reducing alcohol use or binge drinking are unlikely to be effective. Courtney's study of rugby-related violence in the "All Blacks are gods" country of Aotearoa New Zealand noted "the seemingly inseparable connection between alcohol and masculinity, which in the context of sport, has been repeatedly linked to gender-based violence (Sønderlund et al, 2014)" (Courtney, 2019, p. 111). In her research, alcohol emerged more as a contextual feature than a causative factor, and she identified a need for prevention strategies to address the "aggression, alcohol use and the alleged sexual objectification of women by men" (p. 108), three key aspects associated with New Zealand rugby culture's concepts of ideal masculinity.

A recent review article identified that prevention activities aimed at night-life settings were often short-term interventions and most were not rigorously evaluated (Quigg & Bigland, 2020). The well-publicised campaign mentioned earlier in this chapter, *Ask for Angela*, implemented in Australia, Aotearoa New Zealand and the UK, encouraged anyone feeling unsafe to approach bar staff for help using this code word but research is lacking on its impacts on those within such venues (Quigg et al, 2020; Ramaswamy, 2017). More broadly, greater attention needs to be given to resolving the tension associated with delivering effective rape prevention programmes within highly sexualised settings that promote 'hooking up' and encourage heavy alcohol consumption.

Recognising the maleness of rape forms part of what I term "silenced knowledge." Despite the plethora of research attesting to men's over-representation as perpetrators of sexual violence, there remains ongoing resistance to naming this fact. Twenty years ago Bacchi (1999) observed how our dominant forming of languaging presented a distorted picture by using such terms as "domestic violence," "family violence," and "violence against

women.” More recently, Bob Pease (2014) has pointed out that this problem remains evident with government policies and violence prevention campaigns failing to make explicit what they often acknowledge implicitly—it is *men’s* use of violence that is the primary issue. Sexual violence is the most profoundly gendered crime, but recognition of its overwhelming male-ness remains as elusive as ever. Contemporary shifts in awareness enabling recognition of multiple gender identities can be acknowledged as bringing individual benefit to those long oppressed, such as those from intersex and transgender communities, but must be managed in ways that preserve a gendered analysis of all forms of violence against women. Whereas earlier resistance to the naming of male violence often came from conservative men’s rights groups, the potential dangers facing a gendered analysis today come from more alternative and often feminist contexts.

A path needs to be forged supporting individual recognition of multiple gender and gender fluid identities while retaining a political focus addressing men’s violence as a normative aspect within patriarchal societies. This necessitates acknowledging how the hegemony of heteronormativity is associated with violence perpetrated by men not only against girls and women, but against men who identify as gay, men mistakenly identified as gay, transwomen perceived as rejecting their masculinity, transmen viewed as seeking male privilege illegitimately, and anyone else not conforming to alpha male stereotypes. Adherence to binary codes of acceptability within a hierarchy assuming white male privilege translates into multiple acts of imperial aggression at individual, community, and national levels. These can be understood as “behaviors which reflect and sustain the expectation that all heterosexuality must be practiced with explicit requirements of dominance and subordination” (Schacht & Atchison, 1993, p. 39).

In his analysis of masculinity, Michael Kimmel sought to explain how men’s sexual dominance and sense of their own entitlement problematises sexual communication, saying:

Women’s sexual agency, women’s sense of entitlement to desire, is drowned out by the incessant humming of male desire. A man’s job is to wear down her resistance...Men suffer from socialized deafness, a hearing impairment that strikes only when women say no.

(Kimmel, 2004, p. 142)

This results from men having received so many peer and cultural messages supporting their sexual pursuit of women that their ability to hear what a particular woman is saying is reduced, even removed. Living within a rape culture with the patriarchal legacy explored in this book encourages heterosexual men to feel sexually entitled to view women’s bodies as potential objects of conquest. While these factors may make men *unwilling* to hear a woman’s refusal, they do not render them *unable* to, and thus cannot be used to justify rape.

Michael Flood (2019b) has identified three key elements integral to engaging men in efforts to end violence against women. Firstly, acknowledging that men are overwhelmingly the perpetrators of such violence. Secondly, recognising how the social construction of masculinity plays a key role in shaping expressions of violence. This is linked both to adherence to patriarchal and often sexually hostile attitudes as well as to male role dominance within relationship and family structures. The third and more optimistic factor identified is affirming the vital and positive role men can play in preventing violence against women. Not only do women benefit from men sharing the burden of prevention work, but some men will, from their own socialisation, always rate men's words and advice as more credible than women's voices (Flood, 2005, 2019; Jordan, 2004).

The most common means used to engage men in preventing violence against women has been by face-to-face education programmes. Evaluations of these provide some positive indicators of effectiveness. For example, a cluster-randomised trial of the Stepping Stones programme in South Africa showed that, two years following the intervention, men's self-reported perpetration of physical and/or sexual intimate partner violence was significantly lower than the rates for similar men from the control villages (Ellsberg, Arango, Morton, Gennari, Kiplesund, Contreras & Watts, 2015). More generally, evidence suggests single-gender education and prevention programmes are more effective than mixed-gender ones (Lonsway et al, 2009; Schewe, 2006), particularly given the wisdom of excluding from men's programmes the kind of information that could potentially equip them with enhanced strategies for committing sexual assault and escaping detection (Ullman, 2007).

Many programmes have been offered within male-dominated workplace environments, with recent arenas including sports teams and the military. In Australia the Sex and Ethics programme was adapted for young male football players, and comprised six sessions of two hours each giving participants opportunities to develop and practise skills in negotiating respectful relationships (Flood, 2019a; Carmody, 2015; Carmody, Salter, & Presterudstuen, 2014). The content included communication skills as well as training focused on negotiating consent and bystander intervention. An evaluation showed improvements in understanding with a six-month follow up finding that the young men reported having using the skills acquired. In the US there have been multiple programmes focused on sexual assault prevention in recent years (Flood, 2019). A large-scale overview of such training found exposure was variable and often judged harshly by women and sexual assault survivors, the conclusion reached being that "military sexual assault training is often lacking in content and efficacy—especially in the eyes of personnel for whom it is most relevant (e.g. those who are at greatest risk of sexual assault)" (Holland, Rabelo & Cortina, 2014, p. 290). To date men's involvement in rape prevention work remains limited, and many initiatives have only a short-term focus rather than seeking longer-term social change

(Flood, 2019b). Commentators such as Michael Flood advocate that such training programmes are more likely to be successful when they are incorporated into a whole-of-institution approach oriented at promoting gender equality overall (Flood, 2019a). Indicators of strong support from senior management are vital to a programme's success, and can ensure a consistent message and approach throughout policy and process approaches.

The success of such initiatives, however, can be neither assumed nor guaranteed.

When there are efforts to engage men in preventing violence against women, one of the most frequent responses among men is hostility and defensiveness. As various studies show, men may be disinterested or even angry when invited to be involved in sexual assault prevention programs on campus (Rich, Utley, Janke, & Moldoveanu, 2010), they may resent portrayals in communications campaigns of men as perpetrators and women as victims (Keller & Honea, 2016), and they may perceive rape prevention workshops as 'male bashing' (Scheel, Johnson, Schneider, & Smith, 2001).

(Flood, 2019a, p. 319)

Men in some workplace cultures, such as police and military organisations, may be resistant to any perceived "feminization" of their work environment. If required to participate in sexual assault prevention programmes, these men may express open hostility, token involvement, or sit in silent protest. Understandably, men who have their own previous histories of hostility or violence towards women will be hard to educate (Flood, 2019a). Those who may have already perpetrated sexual coercion and violence will hold "a vested interest in affirming and potentially defending attitudes that legitimise and condone sexually aggressive inclinations" (Elias-Lambert & Black, 2016, p. 3214). Evidence suggests that rape prevention programmes may actually increase the likelihood of men who have already perpetrated sexual violence doing so again, although it is unclear if such a finding reflects increases arising from a defiant resistance or increases in awareness and self-reporting (Stephens & George, 2009).

Pro-feminist/anti-sexist men's groups began emerging in the 1970s for men who were allies of feminism. The first groups in Australia had names such as Men Against Patriarchy (MAP), Men Opposing Patriarchy (MOP), and the Men's Anti Gender Injustice Group (MAGIC) (Flood, 2019a), and were similar to groups emerging in US in response to the second wave women's movement (Messner, Greenberg & Peretz, 2015). In Australia and Aotearoa New Zealand, the contemporary White Ribbon campaign is the most significant example of men's participation in prevention campaigns seeking to end violence against women (Flood, 2019a).

A critical question that arises asks *why* might men be motivated to work towards ending violence against women specifically, or gender inequalities

more generally. If men hold power in a world that favours and rewards them for simply being male, why would they even contemplate changes to existing social arrangements? As Connell (1995) described it, men currently receive a “patriarchal dividend” that not all want to forego. This point was well-recognised by Flood when he observed: “Men’s involvement in efforts to end men’s violence against women is a delicate form of political activity, as it involves the mobilisation of members of a privileged group in order to undermine that same privilege” (Flood, 2019a, p. 91). Part of the delicacy needed requires men being careful not to make assumptions about what women want or need and to not speak over or for them—in other words, to resist patriarchal male socialisation

Salient in this regard is recognition of the patriarchal limitations preventing men’s self-expression and capacity for intimate connection. The dictates of hegemonic masculinity emphasise the importance of male peer approval in conforming to a narrow range of stereotypical behaviours. High social costs are borne by men, women and other gender identities when these norms idealise male strength and aggression at the expense of sensitivity and empathy. Maintaining dominance becomes more important than maintaining connection, demonstrating how the logic of patriarchy extends to multiple settings where the subordination of others is essential to a strong male sense of self. This masculine imperative extends beyond individual men to encourage competition for dominance in contexts as diverse as peer groups, sports teams, and entire nations, fuelling the armies of warfare and colonisation. Patriarchy is poisonous to everyone, and its overthrow necessary for human advancement. It benefits the most from the myth that being anti-patriarchy equates to being anti-male.

Patriarchy is demonstrably bad for men’s health. As well as inclining them towards risky actions and pursuits, it inhibits them from verbalising fears and engaging in help-seeking (Wong, Ho, Wang & Miller, 2017). In advocating male aggression as the solution to challenges, it encourages men to use violence not only against women but against other men as well (Katz, 2006; Keith, 2020). While anti-feminist rhetoric demands attention to women’s violence against men, research evidence overwhelmingly demonstrates that the greatest risks to men and boys are posed by other men (Flood, 2019a; Keith, 2020).

One specific area of intervention has developed in recent years in response to growing concern regarding the impact of pornography on men’s attitudes and behaviours towards women. Much of the concern stems from recognising how almost all pornography is made with male viewers in mind and is oriented towards promoting male sexual pleasure. As noted earlier, the content routinely features sexually aggressive language and behaviours that can include inflicting pain or injury on women, presenting such acts as normal and routine (DeKeseredy & Olsson, 2011; Dines, 2010; MacKinnon, 2005). For this reason some sexual assault prevention programmes have begun including segments on pornography, while a few courses have been developed focused specifically on addressing the impacts of pornography. Maree

Crabbe is an example of one educator who has created a set of resources that can be used in educating young people about pornography, teaching them in particular the importance of distinguishing between porn sex and real sex (Rarity, 2019). This perspective is critically important for challenging the harmful condoning of rough sex practices in pornography as well as the more general and pervasive objectification of women.

Digital rape prevention

No discussion of rape prevention in the 21st century can ignore the realm of the Internet and social media, given their emerging prominence as arenas within which sexual violence is perpetrated (Henry & Powell, 2015; Powell & Henry, 2017). During the early years of the Internet's existence, before the emergence of social media, discussion was divided regarding how the online world impacted offline contexts. As noted in [Chapter 5](#), debate raged as to whether virtual rape could have real consequences (Dibbell, 1994). Since then, the distinction between the virtual and the real has evaporated with growing awareness of the serious embodied harms inflicted by online abusers (Henry & Powell, 2015). The proliferation of social media, including networking sites and blogs, has extended the reach. With no physical boundaries to constrain it, the possibilities for digital abuse have global reach, with any individual or group "othered" through objectification at risk of online abuse and harassment. The offenders typically remain anonymous, while gatekeeping is mostly nonexistent. This is a vast, unbounded and largely unregulated space providing endless opportunities for sexually abusing, shaming, and degrading others. This can involve specific targeting of individuals, with online shaming and harassment been recognised as a contributory factor to youth suicides. On a wider level, online and social media messaging can also reinforce societal rape myths, including victim-blaming beliefs. For example, research on young people's use of social networking sites suggests that, in common with other forms of media, they can play a significant role in perpetuating rape culture (Armstrong & Mahone, 2017).

More positively, social media can be influential as arenas within which rape culture can be challenged and contested (Keller, Mendes & Ringrose, 2018). Feminism in the 1970s was constrained in its outreach by communication and technological limitations—organising marches without the Internet, social media, and cellphones called for on-the-ground strategies and reliance on informal networks to spread the word. The enhanced communication measures of the 21st century bring clear advantages, and have enabled the rapid spread of social movements globally to nations reachable only by mail and long distance calling earlier.

Online social activism has played critical roles in assisting mobilisation and collective action against sexual violence, with the #MeToo social movement being one of the most obvious examples (Beres, 2020; Fileborn

& Loney-Howes, 2019; Keller et al, 2018; Powell, 2015). Enabling victim/survivors of sexual violence from even the most remote parts of the world to find each other and voice their experiences has been a powerful outcome, particularly when serving as a source of validation by others who know and believe their narratives.

The bystander intervention programmes discussed earlier in this chapter, while mostly focused on face-to-face social settings, have potential applicability to digital media. Research in this area is very recent and has typically considered reactive interventions such as responding to online stalking and harassment behaviours (Fairbairn, 2020). Mainstream media portrayals of sexual violence, such as coverage of specific rape cases, can also provide opportunities for bystander intervention, as McMahon & Banyard (2012 p. 8) recognised:

Another type of reactive bystander opportunities can be labeled low risk, which can be defined as situations in which negative attitudes toward women and/or sexual violence are expressed, but do not pose immediate or high risk of harm to potential victims of sexual assault. These bystander opportunities address the lower side of the continuum of sexual violence behaviors, such as calling out sexist language, questioning media portrayals that objectify women and girls, challenging the use of pornography, and confronting friends who rank girls' appearances.

The potential for proactive bystander interventions is also being recognised, such as when a person acts to promote social norms that do not accept or condone sexual violence. Borrowing the term “upstanders” from genocide studies, bystander interventions to prevent sexual violence are evident in contexts where

... an upstander may speak out publicly against bigotry and injustice. An upstander may be a whistle-blower, who exposes wrongdoing in the hope of stopping it. An upstander may resist the temptations of silence and passivity by expressing and offering support directly to victims of bigotry and injustice. An upstander may provide immediate aid to victims of bigotry and injustice through physical rescue or other help.

(Minow, 2017, p. 817)

Former US President Donald Trump’s commentary about “grabbing women by the pussy” prompted many individuals to respond using the #NotOkay hashtag on Twitter. A study of a sample of these Twitter users found three key themes emerged: recognition and condemnation of rape culture; criticism of Trump and the prevalence of sexual assault; and the need to engage men and boys in efforts to end violence against women (Maas, McCauley, Bonomi & Leija, 2018). The researchers suggested the findings underscored

the potential for celebrity scandals and Twitter (and other social media) to be included in sexual violence prevention programmes as a way of targeting attitudes and encouraging help-seeking.

An important first step in prevention work involves increasing public recognition of the prevalence and harms of sexual violence. In a qualitative study conducted with public educators, activists and other prevention workers in North America, Fairbairn (2020) identified three specific ways in which they engaged social media: firstly, to involve wider audiences in conversations to raise awareness; secondly, to challenge societal norms that support or enable violence against women; and thirdly, to encourage mobilisation around high profile news stories. Speaking to the potential of social media, an advocate and educator with many years of experience behind her commented that she felt it had helped to accelerate progress and advance recognition, recalling her excitement:

I will always think of that big moment when [a local newspaper] had a cover page about rape culture and had the word rape culture. And it wasn't like "does it exist?" It was "what do we do about it?" ... You know, [the story] lacked nuance and they quoted MRAs [Men's Rights Activists] inside and all kind of other things, but it was the mainstream. The word rape culture in [my city] has hit the mainstream.

(quoted in Fairbairn, 2020, pp. 9–10)

Online mobilisation around news stories can contribute to shifting discussion from the individual level (she was drunk; he is a psychopath) to structural causes, including the role of misogyny and the impacts of patriarchal thinking. In 2014 two reporters in Canada, fed up with the scepticism surrounding women's accounts of sexual assault, decided to share their own experiences on Twitter (Mendes, Keller & Ringrose, 2019). It did not take long before #BeenRapedNeverReported generated tens of millions of tweets and retweets, while also attracting national and international media attention (Teotonio, 2014). As with more recent social movements such as #MeToo, the visibility and accessibility of hashtag conversations enable more mainstream journalists to use and quote directly from these digital records, spreading their reach even further.

Engaging in online prevention work using social media can in itself be a risky business. Advocates, educators and activists often describe being targets for online harassment and abuse, including rape threats (Fairbairn, 2020). Such backlash responses function as a "gendered silencing strategy" (Fairbairn, 2020, p. 14) and can exacerbate the high burnout rates already experienced by those supporting victim/survivors of sexual violence. The frequency with which feminists online experience misogynistic threats and abuse must itself be recognised as a form of violence against women (Lewis, Rowe & Wiper, 2017), and reinforces the importance of valuing and supporting their role in rape prevention. The vitriolic nature of the

backlash indicates that, just as women's participation in the public sphere was resisted, now their involvement in online spaces threatens patriarchal control. In their British study on the online abuse of feminists, Lewis et al (2017, p. 1479) concluded that:

Once heralded as a haven for free speech and democracy, the Internet is also revealed as an extension of offline gendered realities, where violence and abuse is the 'wallpaper' (Lewis et al 2015) of everyday life for women and girls.

While the digital world may call for digital interventions, the rape prevention messages needed remain fundamentally the same. The societal norms that condone rape behaviour and promote victim-blaming demand countering in whatever medium they present, bringing us back to the need to eliminate rape culture and promote gender equality and respect.

Conclusion: Rape prevention and rape culture

The discussion of rape prevention initiatives here shows how varied these approaches can be, as well as how mixed they are in terms of impacts. There are many positive benefits accruing from the dedicated efforts of educators and advocates to raise rape awareness and accountability, and to counter the societal myths still so broadly influential. Overall there is good reason to retain the provision of such programmes and they can form a valuable role in raising awareness and promoting respectful sexual relationships.

Their effectiveness, however, will always be limited by the essentially unchanged patriarchal nature of the environment surrounding them. Teaching men and women how to negotiate consent assumes the equal status of both parties, for without such equality some degree of male privilege and influence remains. Likewise,

Making women's behavior and identity the site of rape prevention only mirrors the dominant culture's proclivity to see rape as women's problem, both in the sense of a problem women should solve and one that they caused.

(Mardorossian, 2002, pp. 755–756)

Also apparent is that education and awareness-raising is not automatically effective in changing behaviour. Some men intentionally disregard knowledge and training when it does not suit their own sexual agendas, or is not congruent with peer pressures, and will avoid refusals by not asking or engage in deceptive sexual practices. Beliefs in male sexual entitlement can impact on both men's and women's decision-making, demonstrating again how the patriarchal structures girding our society need to be dismantled before true sexual and gender equality become possible.

To understand why brings us face to face with the rape-condoning culture that not only surrounds us but is internalised within us. This is evident, for example, in the ways we are socialised to focus on the victim's behaviour instead of immediately asking questions about the perpetrator's, as well as in the tendency evident in many women to shrug off unwanted and coerced sex as "no big deal." Nor do we need to look far to see evidence of the internalisation of rape culture by men. This includes incidents such as the 2010 event at Yale University that included male fraternity members walking around women's residences chanting slogans such as "No means yes and yes means anal" (Jozkowski, 2015), and the posting of a flyer in the men's restrooms of a co-ed residence at Miami University of Ohio that gave advice on the "Top Ten Ways to Get Away with Rape," including drugging women so they won't remember and urging college boys to "live it up" and "Rape, rape, rape!!" (Ibid.). The embeddedness of rape culture was further indicated by inadequate and minimising responses to these behaviours, which in the Yale case provoked media attention and allegations criticising university management for allowing "the cultivation of a 'sexually hostile environment,' in which misogyny flourishes and sexual attacks on young women are frequent" (Swaine, 2011). Rape prevention messages on college and university campuses typically place the onus on women, urging them to become more sexually assertive, avoid risky behaviours, and establish peer and buddy systems. While the sphere of responsibility has been extended in some contexts to bystanders, the role of male perpetrators remains largely invisible (Enright, 2021). The privileged male elites who mostly manage these institutions are committed to protecting both their institutional reputation and their male reputations, particularly when those males may be star performing athletes such as the earlier discussed Brock Turner. Men's responsibility for sexual violence is deliberately hidden, and in the few instances where perpetrators are called to account the emphasis is placed on "bad" individuals or individuals made bad by alcohol. The sociocultural environment within which rape and sexual assault occur are obscured such that rape culture is never challenged. Programmes such as consent education will have minimal if any effect while patriarchal beliefs asserting male sexual entitlement and dominance reign supreme.

Does this mean rape prevention activities are a waste of time and money? To this I would answer no, since raising awareness about the realities of sexual violence is important as a means of countering societal myths and false beliefs. The silence that surrounded rape for so long needed to be broken and the global response to #MeToo provided some indication of the millions of girls and women who needed to speak about their violating and abusive experiences. Efforts to speak out and engage in prevention strategies are not, however, making inroads on rape behaviour. More than twenty years into the 21st century, we must acknowledge that women and girls still face high risks of experiencing sexual violence, and that the fear of rape continues to serve as a major constraint on their lives and freedom (Ullman, 2020). The risk is not evenly distributed, being elevated for those from minority and

marginalised communities. As noted by Sarah Ullman (2020, p. 2), "...women are delegitimized as rape victims in various ways, a process facilitated by a racist heteropatriarchal societal context." This translates into one in eight lesbian women and half of bisexual women experiencing rape at some point in their lives (Walters, Chen & Breiding, 2013), along with two-thirds of trans individuals (Grant, Mottet, Tanis, Harrison, Herman & Keisling, 2011). The enhanced risks faced correlate with the risks members of these communities are perceived as posing to the maintenance of a gendered status quo dominated by heterosexual males, as discussed in relation to homophobic attacks in the previous chapter. Similar dynamics are apparent with respect to ethnic minority, indigenous, migrant and refugee women, all of whom threaten white male privilege. These considerations are important to ensure rape prevention and resistance strategies are tailored to maximise their efficacy across different intersecting identities (Ullman, 2020). Rape prevention initiatives will therefore need to become increasingly tailored to fit the needs, beliefs, and risks faced across diverse communities, and to counter the misogyny underlying sexual violence both online and offline. Their success and effectiveness will remain limited while the attitudes and beliefs informing rape cultures fundamentally remain firmly entrenched.

* * *

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7 The end is the beginning

In March 2021 chalked graffiti mysteriously appeared on the walls and pavements of Christchurch Boys' High School, a well-ranked Aotearoa New Zealand secondary school. The messages condemned male sexual harassment and promoted LGBTQ+ rights and feminism (McCallum, 2021). An anonymous senior male student described how, when the boys turned up to school, they reacted very personally, spitting and drawing over the chalk which, he observed, "proved the point of the graffiti more than anything" (in McCallum & Van Beynen, 2021). A social media war broke out between Boys' High and Christchurch Girls' High students. When a student linked to Girls' High posted an invitation urging girls who had been sexually assaulted to come forward, it provoked angry responses from boys claiming "false allegations" accompanied by hash-tags including "feminismiscancer" and "mensrightsactivist" (McCallum, 2021).

Tensions escalated, until approximately one hundred Girls' High School pupils set out on a lunchtime protest march to the neighbouring boys' school. The signs they carried sported slogans such as "our bodies are not your conversation starters," "my assaulter got a second chance," and "no more excuses, dismantle rape culture" (Mau, 2021). Before they could reach their destination, however, the girls were met and turned back by their school principal, Christine O'Neill, supported by the police, with both citing safety concerns (McCallum, 2021). In a message to parents, O'Neill said the students should be guided to participate constructively in "global conversations" about gender violence:

"This should not be about singling out or blaming individual boys' schools or targeting all males. We all have wonderful men and boys in our lives whom we love. The focus needs to be on systemic and wider issues which are serious and real."

(in McCallum & Van Beynen, 2021)

Many voices, including some parents, criticised what appeared to be efforts to silence the girls and wanted this opportunity to be taken to address the issues raised, with one stating:

“It’s all very well to consider the ‘global conversation and the systemic problems’ – but this does not help girls of 14, 15, 16, 17, influence and promote change in the community they live in, right now.”

(in McCallum & Van Beynen, 2021)

The girls’ determination to draw attention to the assaults and harassment they were experiencing prompted the principals of both schools to work with senior student leaders and police to tackle the issues raised. The Girls’ High School commissioned an anonymous survey of more than a thousand students to assess the extent of sexual harassment and assault being experienced (Bolger, 2021). The results were presented by O’Neill to students at a special assembly on 28 June, with support staff in place for students and staff impacted by the information. The findings specified that in the year to May 2021, there had been 2,677 incidents of sexual harassment, affecting nearly 60% of the girls, a quarter of them more than 10 times (Bolger, 2021). The most commonly described experiences involved cat-calling, body-shaming, and being rated on looks, with a quarter of the incidents carried out by groups, and most others by lone males (Bolger, 2021). Incidents included “being grabbed on buses, offered money to allow them to be touched, being slapped in the face when having sex against their will, and being forced to touch boys” (O’Callaghan, 2021a). Online experiences of harassment included being sent unsolicited “dick pics” and pestered for nude photos. When asked to describe their “worst” incident of sexual harassment, 20 incidents of rape were disclosed, three of which were group rape incidents. None had been reported to police.

The Office of the Children’s Commissioner quickly responded to the survey findings, suggesting “it would be surprising if similar results were not found throughout the country” (McDougall, 2021). Andrew Becroft added;

“Sadly, this survey is the latest in a growing body of evidence about the extent of sexual violence against girls and LGBTQ+ teenagers in Aotearoa. It’s time for New Zealand to admit this is an epidemic, and it needs a national epidemic-level response.”

(McDougall, 2021)

He reiterated the urgent need to challenge and stop abusive and harassing behaviour by boys and men, and recommended a nationwide survey of sexual harassment (McDougall, 2021).

* * *

Introduction

The example above serves as a microcosm highlighting both the positive impacts stemming from more than 50 years of feminist activism as well as the persistent features of rape culture that stymie systemic change. These are schoolgirls who have grown up in a radically different social environment from that surrounding 1970s girls, one characterised by messages of empowerment and expectant of equal opportunities. Their confidence to protest and speak out against male violence reflects this relatively new-found optimism, enhanced in part by their location within a privileged, single-sex school. At the same time, however, the girls' experiences of sexual victimisation indicate that many features of 1970s rape culture remain starkly evident. Paramount amongst these is the normalisation of sexually harassing and assaultive behaviours against girls and women. While some commentators expressed shock and horror at the results, others, including the Girls' High head girl, Amiria Tiako, said that sadly they revealed nothing surprising—"she and her peers live with sexual harassment every day – and have for years" (Bolger, 2021). The same observation could have been made by her mother's generation, or her mother's before her, but while experiencing male harassment and abuse are not new, speaking publicly against it is, even in this #MeToo era.

This survey highlighted the extent of sexual violence and its impacts in particular on girls and LGBTQ+ teenagers. Significantly, fewer than 10% of the girls surveyed had sought help or support for any of the incidents, and none of the rapes had been reported (Bolger, 2021). The overwhelming majority considered it safer to remain silent and develop their own, often personally restrictive, strategies in attempts to avoid further victimisation. These included not going to parties, not drinking alcohol or catching buses and, when walking on the street, minimising encounters with males and especially groups of boys by changing direction, pretending to be talking on their phones, and keeping their heads down. Concerns about body-shaming and sexual identity humiliation also led to some girls choosing to wear shapeless, baggy clothing to hide their bodies (O'Callaghan, 2021a).

This Aotearoa New Zealand survey echoes the findings of a recent Ofsted review of sexual harassment and abuse in schools across the United Kingdom (Weale, 2021). That review was triggered in the wake of thousands of testimonies being posted on the *Everyone's Invited* website earlier in 2021 by school pupils detailing their experiences. Website founder, Soma Sara, said more than 16,000 accounts had been posted by pupils at nearly 3,000 schools, both public and private, prompting school inspectors to conduct the eight-week review (Weale, 2021). Their findings revealed that sexual harassment was so pervasive in school and online settings that pupils accepted it as part of their daily lives.

Girls suffer disproportionately, complaining of sexist name-calling, online abuse, upskirting, unwanted touching in school corridors and rape jokes on the school bus. Boys share nude pictures on WhatsApp and Snapchat “like a collection game”, inspectors were told.

(Weale, 2021)

Ofsted told head teachers that a whole-of-school approach was necessary to develop a culture where such abuse was recognised and censured as well as ensuring sex education classes addressed issues of consent and the sharing of explicit images. These calls are similar to those made in the wake of the Christchurch Girls’ survey, which echoed comments made in 2017 when pupils in Wellington organised a march against rape culture following incidents in which boys from one school posted “jokes” on a Facebook page about raping drunk girls while at the same time four boys from another school were suspended for inappropriately filming female teachers (Dooney, 2017). This protest in turn echoed discussions that raged across Aotearoa New Zealand in 2013 after the Roast Busters were exposed, as discussed at the beginning of [Chapter 2](#). These were teenage boys who, before anyone intervened, had bragged online for two years about their successes at getting young girls under 16 drunk before raping and shaming them (Ryan, 2014). In other words, recent “revelations” followed by shocked responses come hard on the heels of previous revelations and shock about similar behaviours. These date back for decades, with the same mantra often voiced as that by the Girls’ High principal in June 2021, “[W]e hope it’s the beginning of lifting the silence for [students]” (in O’Callaghan, 2021a).

Breaking the silence

Breaking the silence around sexual violence may be individually empowering, even therapeutic, but to date has not resulted in major systemic change. As with the multiple reviews of police sexual assault investigations canvassed in [Chapter 4](#), exposés of sexual harassment in schools are beginning to pile up. Thus in the same breath as Soma Sara welcomed the UK Ofsted review, she pointed out that it repeated many of the findings from a report five years earlier by the House of Commons Women and Equalities Committee (2016). In releasing the report, Committee Chair Maria Miller (2016) stated:

We have heard girls talk about sexual bullying and abuse as an expected part of their everyday life; with teachers accepting sexual harassment as “just banter”; and parents struggling to know how they can best support their children.

It is difficult to explain why any school would allow girls to be subjected to sexual harassment and violent behaviour that has been outlawed in the adult workplace.

The behaviours included the high prevalence of girls experiencing unwanted sexual touching at school, how “sexual harassment has become a normal part of school life,” and an “alarming inconsistency” in how schools respond (House of Commons Women and Equalities Committee, 2016). Referring to this earlier report, Sara asked:

“Why hasn’t anything happened since then? How can we be sure that real change will come about after the Ofsted report? We’ve had reports in the past and nothing has happened. What’s different now?”

(Weale, 2021)

What may be different now is the impact of #MeToo and its capacity to raise awareness about sexual assault and harassment (Williamson, Bayly, Poncelet & Lawson, 2020). This point was made by the director of *Promising Young Woman*, Emerald Fennell, when she was interviewed after the movie received five Oscars nominations:

“The thing that I feel that is happening right now is that conversation is really happening. It’s such an uphill struggle for things to be taken seriously; it has always felt so relentless. But over the past few years it feels as if we are able to more publicly have a conversation – and to communicate our fear and our anger and our distress. And, for the first time ever, it feels perhaps as if people are willing to listen.”

(in Fleming, 2021)

Hopes that speaking out will produce change shares parallels with the optimism held by 1970s feminists when, as we saw earlier, the prevalence of sexual violence was first exposed. Today, widespread engagement with social media enables “conversations” about sexual violence to ripple instantly around the globe. As we now know, awareness alone is insufficient to produce change. The results from the school surveys show the continuing objectification and sexualisation of the female body, beginning for some at a very early age, by males raised with expectations of dominance and entitlement (Manne, 2020). As described in [Chapter 5](#), young men’s quests for peer acceptance may be sought through participating in the group harassment or rape of girls and women, as well as in homophobic attacks (De Wee, 2017; Javaid, 2018; Muholi, 2004). This was reflected in the Girls’ High survey, where a quarter of the incidents reported were perpetrated by groups of boys acting together (Clark, 2021).

These surveys add to a growing data-set documenting how sexual harassment is a reality that girls and women learn to negotiate on a daily basis (Vera-Gray, 2018). A recent UN Women UK survey established that, “Almost all young women in the UK have been sexually harassed” (Topping, 2021). The results found 97% of women aged 18–24, and 80% of women of all ages, had experienced sexual harassment in public spaces. The executive

director of UN Women UK, Claire Barnett, referred to this situation as “a human rights crisis,” adding that:

“We are looking at a situation where younger women are constantly modifying their behaviour in an attempt to avoid being objectified or attacked, and older women are reporting serious concerns about personal safety if they ever leave the house in the dark....”

(in Topping, 2021)

Despite the seriousness of some incidents, which included groping, stalking, and coercion into sexual activity, 96% of respondents did not report them, many saying that to do so would change nothing. The almost universal female experience of sexual harassment is matched by typically low recognition of its pervasiveness by men. A survey conducted in the US in the aftermath of the #MeToo campaign found, for example, that while 81% of women had experienced sexual harassment at some point in their lives, men on average estimated this would have been the experience of only 44% of women (Duncan & Topping, 2018).

The Christchurch girls’ responses to the sexual harassment and assaults they experienced initially reflected the silencing, self-blame and shame of previous generations, but this began to change when some chose to take collective action, followed by speaking out through the anonymous survey. Subsequent encouragement by police on-site at the school resulted in three of the 20 rapes from the survey being formally reported while more such incidents were believed to have occurred (O’Callaghan, 2021b). This was because the researcher chose to under-count rather than risk criticism for exaggerating the numbers, and did not include second-hand accounts of rapes against girls “too traumatised to report being raped,” nor accounts where girls said they came to after being drunk or asleep and felt like something had happened to them (Radio New Zealand, 2021, 28 June). The reluctance to disclose rape, combined with the murky confusion often surrounding its occurrence, contributes to the high levels of non-reporting and case withdrawals discussed in [Chapter 4](#). For many of those victimised, the justice system featured less than concerns about safety, prevention, and male accountability. This also is no surprise. Talking about rape and the justice system in the same breath is like mixing oil and water—they are mutually repellent.

Rape and the justice system

The prevalence of rape must be considered against the scarcity of convictions; likewise, the multitude of women victimised against the handful of men held accountable. Fifty years on, the rape conundrum that began this book needs to be revisited. This puzzle essentially asks why everything is changing *and* is also staying the same. The first strand I posed asked why,

despite 50 years of feminist activism and pressure on governments, rape prevalence rates remain so high? After considering the wide range of material presented in this book, the evidence points straight back to how our patriarchal history established binary and hierarchical systems of gendered thinking, and how these were translated into social and legal relationships that persisted through the centuries. As illustrated in [Chapter 2](#), defining women and children as the property of men established the preconditions for sexually assaultive behaviours to be both facilitated and condoned. Furthermore, norms encouraging men to enact their dominance and entitlement justified rape behaviour not only against women, but also at times against other men. As canvassed in [Chapter 5](#), the latter could include gay men who threatened hegemonic masculinity but also any man whom the perpetrator wished to humiliate through emasculation. While rape continues to serve a gendered purpose, its prevalence rates will remain high.

It is very recent in our patriarchal history that the “normality” of rape behaviour has faced the collective challenges posed by the women’s movements. While individual women throughout the last 6,000 years have resisted rape, rape culture has faced its major challenges only in the last 50 years. More recently, the multitude of women’s voices has strengthened globally through online activism and networking, with #MeToo celebrated by many as signalling a turning point in the rejection of rape culture. Yet, as the Christchurch Girls’ High and Ofsted surveys showed, girls continue to grow up experiencing the sexual objectification that links to all forms of sexual violence and harassment.

The second strand of the rape conundrum asked why reporting rates for such a serious and injurious offence as rape remain so low. Disclosing rape means overcoming a raft of fears that continue to silence the majority of those victimised (Jordan, 2012). These include fears related to the offender, fears regarding how family and friends will react, and fears that the police will not believe them or, in the rare event of a court case, that defence lawyers will crucify them (Sable, Danis, Mauzy & Gallagher, 2006; Temkin & Krahé, 2008; Zinzow & Thompson, 2011). While these fears silence many victims, a more fundamental barrier to reporting can come from confusion over whether what occurred *was* rape and the understandable reluctance to define oneself as a rape victim (Gavey, 2019). High levels of self-doubt, blame and shame continue to mute many victims (Starzynski, Ullman, Filipas & Townsend, 2005; Vidal & Petrak, 2007), with the impacts of these amplified within a societal context structured by gender inequality and characterised by rape-condoning beliefs. Speaking out about rape is still perceived in some quarters as equivalent to an act of treason, with female socialisation traditionally oriented towards obedience and compliance to men’s wishes. While the “naturalness” of women’s inferiority to men is now widely opposed in numerous contexts, many women still consider placing men and their needs first is the safest option. This contributes to sexual violence continuing to be the least recognised and addressed aspect of what is

more widely referred to as domestic or family violence. For decades prevalence rates from victimisation surveys have challenged the myth of real rape being stranger rape, yet women living with violence still struggle to name and report the rapes perpetrated by their partners (Weiss, 2011). Just as the fear of rape shapes how many women live their lives, the fear of speaking out continues to keep most women silent.

The third and final strand of the rape conundrum asked why, for those victims who do report, attrition rates remain so high? Given that the majority of rapes are perpetrated by men already known to the victim, and often their boyfriends or partners, the police typically have easily identifiable and locatable offenders to apprehend. The reality, however, is that few cases result in an offender being arrested and even fewer proceed to trial (Alderden & Ullman, 2012). This is why the justice gap has been deemed so wide as to constitute a chasm, given how remote a rape victim's chances are of seeing the perpetrator convicted (Kelly, Lovett & Regan, 2005; Triggs, Mossman, Jordan & Kingi, 2009). As canvassed in [Chapters 3 and 4](#), pressure placed on the justice system to become more victim-centred has seen progress made in such areas as police specialisation and evidential law reform, but these have not translated into higher conviction rates (Brown, 2011; Hohl & Stanko, 2015; Ministry of Justice, 2019).

So why does it remain so difficult to achieve a rape conviction? The reasons suggest there is no easy fix to this dilemma. Key factors include beliefs about the nature of women, the nature of rape, and the nature of justice. For example, linking women's inferiority to men to Eve's deceitful nature provided a rationale supporting female duplicity and false allegations, contributing to the difficulties encountered by centuries of women in having their words about rape believed (Jordan, 2004). Assumptions about women have intersected with assumptions about men to encourage rape behaviour. Beliefs about men's uncontrollable sex urges when faced with female temptation placed sexual responsibility on women, blaming them for rape if they appeared to be sexually available yet also holding them culpable if they held out in ways that frustrated men's desires. Notions of male sexual entitlement also encouraged rape behaviour, justifying the use of force to secure what they viewed as rightfully theirs. Attempts to secure justice within a rape-condoning culture will always prove difficult. Thus, despite such legal reforms as restricting material concerning the complainant's previous sexual history, victims still overwhelmingly experience rape and sexual assault trials as traumatic revictimisation (Gravitas, 2018; Smith, 2018; Spohn, 2020).

This links to growing awareness regarding the inadequacy of the adversarial justice system to adjudicate rape cases (Smith, 2018; Taslitz, 1999; Temkin & Krahé, 2008; Thomas, 1994), with relevant factors including how the complainant and defendant are represented by lawyers pitted against each other in a verbal jousting match oriented more towards winning the

battle than determining the truth of what happened. Add to that the variabilities of jury members and the likelihood that they have internalised prevalent rape myths, as well as the chances of the presiding judge lacking specialist understanding of trauma impacts, then place all of these players in an environment shaped by gendered and patriarchal thinking deeming women inferior and deceitful, and one might wonder how any rapist is ever held accountable before the law.

The limitations of adversarial systems of justice will not be readily solved by substituting alternative justice models, whether the inquisitorial forms favoured by many European nations or newer restorative options. This is because all justice systems are contained within, and shaped by, the same gendered and patriarchal legacies discussed in this book. The pervasiveness of rape-condoning beliefs, including norms of hegemonic masculinity and the sexual objectification of women, exist on a global scale, even if variably, and are inevitably reflected in all so-called “justice” systems. They shape the very container within which cases are presented and assessed, along with differential power relations not only of gender but including other intersectional identities.

As I have argued in this book, to understand how rape and justice intersect, we need firstly to appraise the historical shifts that have occurred surrounding how rape has been defined in law and how it has been responded to by criminal justice agencies. As shown, a patriarchal imperative determined not only early legal definitions but also shaped the emergence and development of our policing and justice institutions. The impacts of being designed by men, informed by men’s thinking, and with roles held only by men inevitably resulted in systemic male bias. It is little surprise, then, that when highly gendered crimes such as rape are investigated and adjudicated within highly gendered justice systems, the latter operate to men’s advantage. Recent efforts at reform and moves to employ and promote women within policing and justice agencies will never be sufficient to produce the substantive changes needed to achieve an equal playing field. Moreover, the retention of traditional concepts of what “justice” means need also to be challenged if we are to contest high attrition rates in ways that move us beyond a carceral stance. Considering alternatives, such as the restorative justice options canvassed in [Chapter 4](#), may provide enhanced opportunities for those victimised by rape to speak out and have their wishes considered regarding case resolution. Despite the merits of continuing to press for reforms and alternatives, however, their scope remains limited while gender inequalities and patriarchal thinking persist. The equality required for substantive change will not automatically be achieved when police and court hierarchies are equally staffed by men and women, or even when women hold all the top positions. To understand why, we need to examine the patriarchal roots that have shaped all of our social and justice institutions.

Conclusion

The sociocultural environments within which we are raised are infused with a patriarchal mindset that has prevailed for so long that its “truths” appear natural and self-evident. Despite both past and recent challenges to this male-privileged way of thinking, the gender divide that has dominated for centuries shows few signs of disappearing. The pockets of optimism that exist in the wake of social movements such as #MeToo have been encouraged further by recent large anger-fuelled protests, such as in New Zealand following the murder of Grace Millane (Walters, 2021), in the UK over the killing of Sarah Everard (Hinsliff, 2021) and in Australia protesting the sexual harassment and assaults so rampant within a “toxic” government culture (Khalil, 2021; Zhuang, 2021). In all three contexts, what began as outrage over an individual act of violence morphed into much bigger conversations concerning male violence and the responsibilities we share for its pervasiveness. In reviewing this shift, journalist Laura Walters (2021) observed how:

Women saw themselves reflected in Sarah, and while they mourned her, they also felt a profound outrage at the constant threat women face.

When police told women to stay home, told them abductions were rare, and then tried to silence those gathered to mourn Sarah, women pushed back.

It’s been more than 40 years since the first Reclaim the Night march, which was prompted by the Yorkshire Ripper murders and the police response, telling women to stay home after dark. And the dynamic has finally shifted.

Those too young to remember the Reclaim the Night marches and protests of the 1970s may feel buoyed by recent uprisings, while those old enough to remember continue to wonder what it will take to truly hold men to account and achieve gender equality for all. Early concerns conflating real rape and stranger danger were widely challenged by feminist activism and research, with a key success being the law reforms enacted opposing men’s “right” to rape in marriage (Hasday, 2000). The pervasiveness of sexual harassment and violence came to be recognised as extending across public and private arenas, with what are now termed gender microaggressions occurring on the same continuum of sexual violence as rape. In 1990 the arena of public safety for women was recognised as lagging behind other areas in which women had made advances. As Gardner expressed it:

Women may have made considerable progress in occupation, education, and home life; yet in public places they are regularly subject to inferior treatment by men in the form, for instance, of catcalls, evaluative “compliments,” and verbal contacts that subtly go astray when gender, not the business at hand, becomes a topic.

(Gardner, 1990, p. 311)

Her observation could equally stand today. It is curious that as women have fought for and gained increased equality in some arenas, such as equal pay and abortion rights, this is not accompanied by increased cultural respect for women. The advances won could, cynically, be viewed as lip-service designed to placate and silence women while beneath this veneer misogyny constantly reasserts itself in the maintenance of patriarchal gender relations. In the last ten years especially, feminist activism has sought to expose and challenge the beliefs sustaining rape culture, and #MeToo has galvanised the latest spike of efforts aimed at effecting social change (Fileborn & Loney-Howes, 2019). What is also evident, however, is that rape remains an ever-present fear for women, and intimate relationships continue to be potentially dangerous and violent arenas. Today men who harass women on the streets may not be called “mashers,” as they were a century ago (Frost, 2017; Rouse, 2017), but the generalised pervasiveness of sexual violence means women continue to be sexually harassed, cat-called, groped, bum-patted, and generally objectified. The cumulative effects of such repeated incidents can produce what has been termed “a legacy of cynical exhaustion” (Johnson, 2021), with one commentator observing how at “some point around our mid-teens we all just start saying, “This is how it is.” The question posed next reflects the resignation of those confronted by the rape conundrum: “If anyone’s got a solution for escaping this engulfing, exhausting, everyday numbness, please let us know. God knows, we’re out of ideas” (Johnson, 2021).

Preventing rape is ultimately an attempt to prevent patriarchy endlessly reproducing the sexual subjugation of women. An important part of the challenge involves making men visible as the primary perpetrators, addressing the maleness of rape while developing ways to do so with men as the active agents of change. As [Chapter 5](#) indicated, even when the victim of rape is male, the act can reflect one man feminising another, degrading and humiliating him through sexually violent behaviours intended to reduce his body to a female, penetratable orifice. Rendering the victim’s penis invisible denies his mastery and status as a male, at the same time elevating the rapist’s power and supremacy. When sexual acts are used to assert power and dominance, no possibility of equal, respectful connection is possible. In this way the goal of preventing rape broadens to the much more profound ambition of achieving the gender equality essential for enabling deeply connected relationships forged without fear. This can never be achieved while men perceive rape as a “woman’s” problem and refuse to make themselves visible as those who perpetrate it. A tweeted comment using the #NotOkay hashtag asserted this well: “The end of violence against women begins with the end of silence from men” (quoted in Maas, McCauley, Bonomi & Leija, 2018, p. 1745).

Our patriarchal legacy is not easily dismissed, and remains pervasive in the very ways men, women, and gendered relationships are considered and constructed. While 21st century rape culture has a particular form, one

that includes recognition of intersectional realities and gender diversity, the premise of male dominance and female submission remains evident. The internalisation of gender binaries and hierarchies resist erasure, embedded as they are in a history that continues to elevate *his* stories over hers. Rape is a manifestation of this gendered belief system, and prevention initiatives will be resisted and surpassed as long as patriarchal thinking remains dominant.

To smash the patriarchy is not as easily achieved as smashing a vase, given how strongly welded together patriarchy is by gendered beliefs asserting the naturalness of male dominance and authority. The fear is also present that those who believe their interests are best served by patriarchy will rush to fix and solder over any crack that appears. While patriarchy may benefit some men in terms of the values and attributes most powerful white men aspire to, such as money and status, it also harms and damages them. It is fundamentally a system oppressive of everyone, with its overthrow necessary not only for the liberation of women but for the liberation of all human beings, indeed the whole planet. Maintaining the superficial war between genders polarises men and women in ways that benefit neither, obscuring points of identification and empathy that could connect both and overcome division.

Ultimately the terrain covered here has presented a mixed, at times contradictory, picture of rape and justice issues in the 21st century. The many positive indicators of change that have emerged in recent years suggest increased social awareness of sexual violence and a greater commitment to meeting victim/survivors' needs within justice agencies. We can see also how the activism against rape that characterised the 1970s has recently re-emerged, this time on a vastly more extensive scale thanks to the proliferation of digital and social media. At the same time, the increased speaking out and calling to account is being met with responses ranging from jubilation and relief on the part of those finally feeling heard to hostility and misogyny from those threatened by feminist gains. A rape-free future is far from assured.

As this book has argued, solving the conundrum of rape necessitates engaging not only with the sexual violence of the present time but with the structures and systems that shaped the social environments of our past. Tackling these realities necessitates engagement with the historical definition of women as objects belonging to men, valued primarily for their silent service. The point where this book ends is by no means the conclusion, marking instead the beginning of a wider conversation with more expansive theorising. How the mechanisms of silencing and objectification have worked to sustain rape culture is the focus of the sister-book to this one, *Tackling Rape Culture: Ending Patriarchy*, bringing us face-to-face with patriarchy's insistence on keeping women in what men define as their rightful place. It is impossible for rape prevalence to abate or for rape victims to receive justice while current gender inequalities and hierarchies persist. The patriarchal mindset that we all internalise will remain manifest until

actively challenged and replaced with structures emanating from a belief system that is egalitarian in a way patriarchy can never be. For rape to end, we need women's liberation to begin.

* * *

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