



Debating Rape Myths

Helen Reece

LSE Law, Society and Economy Working Papers 21/2014

London School of Economics and Political Science

Law Department

This paper can be downloaded without charge from LSE Law, Society and Economy Working Papers at: www.lse.ac.uk/collections/law/wps/wps.htm and the Social Sciences Research Network electronic library at: <http://ssrn.com/abstract=2497844>.

© Helen Reece. Users may download and/or print one copy to facilitate their private study or for non-commercial research. Users may not engage in further distribution of this material or use it for any profit-making activities or any other form of commercial gain.

Debating Rape Myths

Helen Reece^{*}

Abstract: In a recent article, I argued that the regressiveness of current public attitudes towards rape has been overstated, suggesting that, to a troubling extent, we are in the process of creating myths about myths. The article itself and the arguments contained within it have provoked various responses from feminists. While these responses proceed at times on the basis of misunderstandings or misinterpretations of my argument, they are helpful both in clarifying areas of disagreement and in underscoring some important points of agreement - at times explicitly by accepting, and at other times implicitly by leaving unchallenged, some of my core claims. In what follows, I aim to point out the misunderstandings or misinterpretations, and to clarify both the areas of assent and the areas of dissent in an attempt to move us towards the productive public conversation we believe we want.

Keywords: Feminist research, rape, rape law reform, rape myths, Sexual Offences Act 2003.

^{*} Associate Professor (Reader) in Law, London School of Economics and Political Science. I am grateful to readers for helpful comments on earlier drafts of this article.

INTRODUCTION

In a recent article, I argued that the regressiveness of current public attitudes towards rape has been overstated.¹ I suggested that the claim that rape myths are widespread may be challenged on three grounds: first, some of the attitudes are not myths; secondly, not all the myths are about rape; thirdly, there is little evidence that the rape myths are widespread. I suggested that, to a troubling extent, we are in the process of creating myths about myths.² The article itself and the arguments contained within it have provoked various responses from feminists.³ While these responses proceed at times on the basis of misunderstandings or misinterpretations of my argument, they are helpful both in clarifying areas of disagreement and in underscoring some important points of agreement – at times explicitly by accepting, and at other times implicitly by leaving unchallenged, some of my core claims. In what follows, I aim to point out the misunderstandings or misinterpretations, and to clarify both the areas of assent and the areas of dissent in an attempt to move us towards the productive public conversation we believe we want.⁴

PARTIALITY AND PERSPECTIVE

Perhaps the most developed response is that of Joanne Conaghan and Yvette Russell, writing recently in *Feminist Legal Studies*.⁵ At the top of their list of criticisms of my article is that I present myself as impartial while in fact having an ‘agenda’.

I have never hidden my agenda, nor claimed to be agenda-free – quite the opposite, as Conaghan and Russell point out, I have ‘utilized a broad range of public fora to disseminate [my] views in the course of which the partiality of [my] position emerges more explicitly’.⁶ Even so, their drawing attention to my ‘agenda’ early on in their response enables the portrayal of my views as shadowy and

¹ H. Reece, ‘Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?’ (2013) 33 *Oxford Journal of Legal Studies* 445 at 446.

² See R. B. Felson, *Violence and Gender Reexamined* (American Psychological Association: Washington DC, 2002) 170.

³ See for example J. Conaghan and Y. Russell, ‘Rape Myths, Law, and Feminist Research: ‘Myths about Myths?’ (2014) 22 *Feminist Legal Studies* 25; B. Krahé, ‘Myths about Rape Myths? Let the Evidence Speak. A Comment on Reece (2013)’ (2013), available at http://www.uni-potsdam.de/fileadmin/projects/sozialpsychologie/assets/Comment_Reece_Paper.pdf; J. Temkin, ‘Is rape different?’, 30th October 2013, available at <http://www.lse.ac.uk/newsAndMedia/videoAndAudio/channels/publicLecturesAndEvents/player.aspx?id=2081>.

⁴ Conaghan and Russell, above n. 3 at 46; Reece, above n. 1 at 473.

⁵ Conaghan and Russell, above n. 3.

⁶ *Ibid.* at 31.

sinister. This portrayal is at times direct: ‘beneath the surface neutrality of Reece’s presentation’, Conaghan and Russell write, ‘lie murky, agenda-filled depths’.⁷ At other times, this portrayal occurs through putting words into my mouth. Complaining that I ‘couch [my] enquiry in dichotomized terms’,⁸ Conaghan and Russell prove this to be so by giving me such terms to mouth. Chastising me for quoting others apparently out of context, they dispense with the need to quote me, in or out of context. Objecting that my position is too polarised, they still find it necessary to stretch it.⁹ Perhaps the most misleading instance of this is to attribute to me ‘an insistence that rape should be viewed in *exactly the same way* as other serious crimes, that it has *no claim to distinction or particularity*’,¹⁰ a depiction of my view that is as caricatured as it is unsustainable.¹¹ And all this is from writers who take exception to my use of rhetoric!¹²

Once we have recognised the rhetorical power Conaghan and Russell gain from framing their response around my ‘agenda’, this point can be set aside, because they clarify: ‘Of course, adopting a particular stance is not a problem – academics are as entitled to their political views as anyone else’:

What *is* problematic however is the presentation of this stance as if it were value-free, as if, appropriately attired in the academic respectability of the *Oxford Journal of Legal Studies*, it did indeed offer a wholly impartial, evidence-based, empirically-grounded assessment of rape myth discourse.¹³

This is a puzzling passage. First of all, I do not present my stance as if it were value-free or wholly impartial. Indeed, Conaghan and Russell continually castigate me for my use of rhetoric: I am rhetorically unyielding¹⁴ – I use a range of rhetorical techniques,¹⁵ rhetorical tactics,¹⁶ rhetorical stratagems,¹⁷ and even rhetorical sleights of hand,¹⁸ including emotively potent language.¹⁹ Wouldn’t this relentless rhetoric have given the game away that I ‘have a dog in this fight’?²⁰

⁷ Ibid. at 31; see also Temkin, above n. 3 at 28:14-29:20 minutes.

⁸ Conaghan and Russell, above n. 3 at 32.

⁹ See also Temkin, above n. 3 at 25:57-26:06 and 28:14-29:20 minutes.

¹⁰ Conaghan and Russell, above n. 3 at 30, emphasis added.

¹¹ See further below. A few other examples are: they claim that I regard gender bias as an historical *aberration* which law has all but cast off save for *those rarely occurring instances of misogyny we occasionally encounter* (ibid. at 40, emphases added); they attribute to me a conception of a liberal, atomized, gender-neutral legal subject who negotiates sex from a position of *absolute equality* (ibid. at 43, emphasis added); they repeatedly assert that I use ‘miscommunication’ theory to explain away ‘sex gone wrong’ (ibid. at 44 and 45), but also and inconsistently that I assert there is a ‘truth’ to such encounters (ibid. at 45).

¹² See below.

¹³ Conaghan and Russell, above n. 3 at 31.

¹⁴ Ibid. at 25 and 27.

¹⁵ Ibid. at 32.

¹⁶ Ibid. at 27.

¹⁷ Ibid. at 35.

¹⁸ Ibid. at 34 and 46.

¹⁹ Ibid. at 32 and 46.

²⁰ J. Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press: Princeton, 2006) 15.

Surely even the *title*, ‘Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?’, would put the reader on notice that this was not some arid account.

Secondly, I find this a particularly puzzling criticism to come from *feminists*. Conaghan and Russell chide me repeatedly for my shallow understanding and awareness of feminist scholarship, but still I had understood feminism in general and Conaghan’s perspective in particular to challenge the idea that there *could be* ‘a wholly impartial, evidence-based, empirically-grounded assessment’ of *anything*,²¹ let alone something as politically charged as rape myth discourse. So far as social science questions are concerned, this is one of the insights from feminist legal scholarship that I have found helpful, even agreed with. Do Conaghan and Russell really believe that there *could be* such a value-free assessment of rape myth discourse? Or, more worryingly, is it that Conaghan and Russell accept that everyone themselves included has a political perspective when writing about rape myths, but find this acceptable only if writers have the *correct* political perspective? Only if the latter does their criticism achieve coherence. It is not that I have an agenda, hidden or explicit, but rather that I have the *wrong* agenda.

Reading this passage in the context of their article as a whole clarifies that this is the – most coherent but also most troubling – meaning of their complaint. What Conaghan and Russell object to is that I have written about rape myths without adopting their interpretation of a feminist perspective.²² They are disappointed that I did not write a different, more agreeable, account – one critically exploring the difficulties of feminist strategic legal engagement, for example,²³ even though I gave this a go a few years ago,²⁴ or one tracing the historical legacy of women’s subordination back to the 13th century, even though, as Conaghan and Russell amply demonstrate, the bookshelves bulge with various versions of this thesis.²⁵

Conaghan and Russell are especially insistent that it is imperative to hang on to the historical legacy of women’s subordination.²⁶ An example that for them is ‘particularly illustrative of the continued purchase of rape myths’²⁷ within the law itself is the House of Lords decision on the admissibility of evidence of a complainant’s previous sexual history with a defendant in *R v A (No. 2) (2001)*.²⁸ While discussion of the circumstances in which sexual history evidence may or may not be relevant is beyond the scope of this rejoinder,²⁹ Conaghan and

²¹ See J. Conaghan, *Law and Gender* (Oxford University Press: Oxford, 2013) ch 6.

²² See e.g. Conaghan and Russell, above n. 3 at 37.

²³ *Ibid.* at 27.

²⁴ H. Reece, “‘Unpalatable Messages’? Feminist Analysis of United Kingdom Legislative Discourse on Stalking 1996-1997” (2011) 19 *Feminist Legal Studies* 205.

²⁵ Conaghan and Russell, above n. 3 at 40-41.

²⁶ *Ibid.* at esp. 40-43.

²⁷ *Ibid.* at 42.

²⁸ [2001] UKHL 25.

²⁹ See N. Kibble, ‘Judicial Discretion and the Admissibility of Prior Sexual History Evidence under Section 41 of the Youth Justice and Criminal Evidence Act 1999: Sometimes Sticking to your Guns means Shooting Yourself in the Foot: Part 2’ [2005] *Criminal Law Review* 263; N. Kibble, ‘Judicial

Russell's principal example is certainly neither a value-free nor an uncontentious example of the law being infused with rape myths.³⁰

This aside, it is of course right that older discourses are not universally superseded by newer ones: out-dated ideas live on, messily overlapping, co-existing and conflicting with modern orthodoxies. I recognise the persistence of misogynistic attitudes in my article, briefly,³¹ too briefly for Conaghan and Russell.³² And Conaghan and Russell recognise the entrenchment, within the criminal justice system, of the newer orthodoxy of rape myth discourse, commenting: 'Such is the level of consensus about the deleterious effects of rape myths on criminal justice that the policy literature is saturated with exhortations to disregard them'.³³ But once we have recognised that rape myth discourse is now essential education for the range of criminal justice practitioners, integral to the guidance they follow, with proposals to take this further,³⁴ it becomes at least as important to interrogate what has changed as it is to rake over the remnants. Relatedly, the entrenchment of rape myth discourse in the criminal justice system means that it is both important and legitimate to put rape myth discourse to proof, pointing out leaps of logic, absence of comparators or exaggerations of results.³⁵ Such interrogation is 'a simple predicate of responsible power wielding'.³⁶

Let me – too briefly! – state that feminist theory and activism has been essential both to developing an understanding of rape and to pioneering necessary reforms to the legal system. But the issue of rape is not owned by feminism, let alone a particular interpretation of feminism.³⁷ Far from it, now that feminism is, in some respects, running things,³⁸ it is imperative to analyse rape myth discourse from other angles, to see around the corners of feminism's own construction.³⁹

So I plead: guilty to eschewing the orthodox feminist perspective;⁴⁰ guilty to seeking to further my own perspective with some rhetoric (though less than Conaghan and Russell suggest,⁴¹ and arguably less than they volley back);⁴² not

Perspectives on the Operation of s. 41 and the Relevance and Admissibility of Prior Sexual History Evidence: four Scenarios: Part 1' [2005] *Criminal Law Review* 190; M. Redmayne, 'Myths, Relationships and Coincidences: The New Problems of Sexual History (2003) 7 *International Journal of Evidence and Proof* 75.

³⁰ See further N. Kibble, 'Uncovering Judicial Perspectives on Questions of Relevance and Admissibility in Sexual Offence Cases' (2008) 35 *Journal of Law and Society* 91.

³¹ Above n. 1 at 446.

³² Above n. 3 at 40.

³³ *Ibid.* at 26.

³⁴ Reece, above n. 1.

³⁵ See contra Temkin, above n. 3 at 27:13 minutes.

³⁶ Halley, above n. 20 at 14.

³⁷ See Reece, above n. 24.

³⁸ Halley, above n. 20 at 20.

³⁹ See *ibid.* at 321.

⁴⁰ See Reece, above n. 24.

⁴¹ In particular, some but not all of the language that Conaghan and Russell pick out is emotively potent (above n. 3 at 32). When I wrote that rape researchers are associated with elite or super-élite opinion, I meant this quite literally, and I develop this theorisation in H. Reece, *Divorcing Responsibility* (Hart: Oxford, 2003): see further Halley, above n. 20. It is hardly contentious that the attrition rate is 'galloping', nor does this particularly further my argument.

guilty to denying my perspective by disguising my argument as value-free. Conaghan and Russell can't eat their cake and have it too. In truth, I don't object to my style being described as rhetorical – this was not intended as an arid article (not that there is anything wrong with them). If I managed to persuade or even unsettle or startle with an arresting turn of phrase, I am happy. If my OJLS article functions – for any reader – as a page-turner, I am delighted. However, while I do not believe it is possible - and I certainly do not aim - to write neutrally about rape, I do believe that it is possible to select and marshal *facts* and *evidence* in support of an - avowedly political - argument. I believe in *truth* and *facts*, and therefore in *falsehoods* and *fictions*. I am happy to use rhetoric as a device to persuade, to trouble, to stop readers in their tracks, but not to trick, mislead or bamboozle.

Conaghan and Russell imply the latter. They write: 'Reece's analysis is seductive. It self-presents as balanced and *meticulously researched*, the dense footnoting *suggesting* mastery of the scholarly field'.⁴³ The implication is that it is not meticulously researched, as if I rustled up the 'dense footnoting' to hoodwink the reader. But Conaghan and Russell provide little evidence of such sharp practice. With two exceptions, I select and marshal facts and evidence to further my – overtly political – argument.

MEA CULPA

The first exception is that I erroneously describe Donald Dripps as Donald Draper. While embarrassing, all the more so since a quotation from Dripps gives me the title for the article,⁴⁴ nothing substantive turns on this – his quotations, argument and reference are all accurate.⁴⁵

My second mistake is more substantial. Re-reading my article in the light of Conaghan and Russell's, and particularly Barbara Krahe's,⁴⁶ criticisms, I now see

⁴² Aside from my 'murky, agenda-filled depths' (Conaghan and Russell, above n. 3 at 31), a few examples are: 'a *mountain* of evidence' indicates that rape myths are widely held (ibid. at 26, emphasis added); 'It is difficult to gauge from a close reading of the text to what extent Reece consciously resorts to legerdemain' (ibid. at 36), but even though it is difficult to gauge, the implication hangs there (cf D. Davison, 'Logic: another form of female oppression' (2014), available at <http://www.avoiceformen.com/feminism/logic-another-form-of-female-oppression/>); two references to my 'repeated' iteration of a quotation from Mary Koss (Conaghan and Russell, above n. 3 at 35 and 36), which I in fact cite on two occasions, on the second of which I refer back to the original citation to conclude the discussion which opened with the quotation; a negative image of woman is '*immortalized* in legal discourse as the myth that 'women cry rape' (ibid. at 41, emphasis added); they refer to my '*collusion* in the ready ontological distinction of rape and sex' (ibid. at 43, emphasis added).

⁴³ Above n. 3 at 31, emphases added.

⁴⁴ D. Dripps, 'After Rape Law: Will the Turn to Consent Normalize the Prosecution of Sexual Assault?' (2008) 41 *Akron Law Review* 957 at 958.

⁴⁵ Conaghan and Russell charitably make little of my 'senior moment', merely politely pointing it out in a footnote (above n. 3 at 28).

⁴⁶ Above n. 3.

that I should have drawn a clearer distinction between Sections 5 and 8 of my article. Section 5 on Rape Myth Methodology focused specifically on methodological criticism of the Acceptance of Modern Myths about Sexual Aggression (AMMSA) scale, and also highlighted how problems with AMMSA replicated themselves in other forms of rape myth research. Section 8 was planned as an exposition of what I described as the ‘coffee’ myth, with AMMSA propositions as the backdrop to this exposition. But I can see that I unwittingly brought criticisms of AMMSA methodology into Section 8 – unclearly and, at one point, inaccurately.

In her Comment on my article, Krahe writes that AMMSA reliably captures individual differences in attitudes towards rape,⁴⁷ that these individual differences in attitude are inter-related,⁴⁸ and that capturing these individual differences requires responses to be normally distributed.⁴⁹ I did not put any of this in issue. On the contrary, I explicitly recognise these points in Section 5:

To a large extent, Gerger and others are concerned with the correlation that they find between RMA [rape myth attitude] and rape proclivity. Analysis of this is beyond the scope of this article, but if there is solid evidence that those men more prone to rape can be predicted by their answers to AMMSA then this could be useful information in a range of contexts. While they have their dangers, *there is certainly a legitimate role for bell curves.*⁵⁰

In writing this passage with a pronounced focus on the potential correlation between RMA and rape proclivity, I did not dismiss all other correlations.⁵¹ I did not doubt that an individual’s position on the bell curve would tell us something about his general attitude towards rape. In other words, I did not doubt that AMMSA was measuring something. This would have been an unsustainable claim, which I did not make.

In Section 5, I make just two points about AMMSA, both crucial. The first is its shift from defining rape myths as false to defining rape myths as wrong in an ethical sense.⁵² The second is that the results obtained from AMMSA cannot in themselves demonstrate the regressiveness of public attitudes. So I continue immediately on from the quotation above as follows:

But what we definitely cannot do with a scale specifically designed to produce a bell curve is demonstrate the awfulness of people’s attitudes. And this is

⁴⁷ Ibid. at 7.

⁴⁸ Ibid. at 8-9.

⁴⁹ Ibid. at 7.

⁵⁰ Reece, above n. 1 at 455, emphasis added.

⁵¹ I clarify this in *ibid.* at footnote 100, which is attached to the end of this passage and reads ‘[s]ee Lonsway and Fitzgerald for their related point about the importance of behavioural variables’ (see K. A. Lonsway and L. F. Fitzgerald, ‘Rape Myths: In Review’ (1994) 18 *Psychology of Women Quarterly* 133).

⁵² See below.

exactly what some try to do with their AMMSA results⁵³ [...] This is as fallacious as making the driving test practically impossible to pass, then treating the resulting failure rate as evidence of appalling driving.⁵⁴

For all of Krahe's defence of AMMSA methodology, she never responds to this crucial criticism. She complains that I lack 'even a basic understanding of the principles of quantitative methodology in general and attitude measurement in particular',⁵⁵ but this point is so simple that even a lawyer can understand it. This shockingly simple but important point having been ignored rather than challenged in the responses to my article, it would be good to see an end to rape myth researchers' treating AMMSA results as evidence of the extent of RMA.

So far, so good, but then I re-read Section 8, where I intended to use AMMSA examples as a launch pad to a more generalised discussion of the 'coffee' myth. Conaghan and Russell have read this Section as being about generalised societal beliefs towards sexual consent and, while they disagree with my conclusions, their reading is in line with my objectives. Krahe in contrast has read this section as being about AMMSA, and I can see that hers is a viable reading. It would thus have been clearer if I had acknowledged that, in the context of a scale consisting of a number of items such as AMMSA, large variations in interpreting individual items of the scale would show up.⁵⁶ Relatedly, I agree with Conaghan and Russell that my statement that 'AMMSA participants are given a binary choice'⁵⁷ is misleading, when AMMSA in fact gives participants a scale.

TARRING OF THE (WRONG) FIELD?

Conaghan and Russell go far further though, accusing me of 'excision of much of the subtlety of rape myth research', tarring 'this whole body of research with the same sweeping brush'.⁵⁸ Apart from the calumny they believe this causes to 'a rich research literature which is, for the most part, nuanced and reflective, attuned to changing social and cultural attitudes and always open to new ideas and approaches',⁵⁹ they suggest that this also hoists me on my own petard, as I inconsistently draw on rape myth research as the only evidence we have of public attitudes.⁶⁰

⁵³ Reece, above n. 1 at 455.

⁵⁴ Ibid. at 456.

⁵⁵ Above n. 3 at 6.

⁵⁶ Ibid. at 7.

⁵⁷ Above n. 1 at 462.

⁵⁸ Above n. 3 at 32.

⁵⁹ Ibid. at 32.

⁶⁰ Ibid. at 33.

For Conaghan and Russell, the trouble begins with my title which is ‘formulated to yield an answer to a question – is elite opinion right and popular opinion wrong? – the academic merits of which are never put up for discussion’.⁶¹ Granted the title is strongly worded and I hope arresting, it is a *question*, to which I give the answer – as Conaghan and Russell acknowledge⁶² – ‘to some extent’. Turning from the title to the substance, it is at best a gross over-statement to suggest that I tar ‘this whole body of research with the same sweeping brush, drawing no distinction between casual, unsubstantiated claims (such as Dripps’) and carefully thought-out, properly evidenced academic positions’.⁶³ On the contrary, I make targeted criticisms of particular methodological features and substantive assumptions of specific pieces of rape myth research and individual rape myth researchers. Demonstrating this in full would necessitate reproducing my original article.⁶⁴ This is why I am not hoisted on my own petard, because far from ‘tarring the whole field’, I criticised *some* and relied upon *other* aspects of rape myth research.

I have already exposed the real criticism here. While some of the rape myth research I relied upon both describes itself and is accepted as feminist research, some other pieces do not and are not; and worse still, most if not all the research which I criticised is written from a feminist perspective. It is not that I have ‘tared the whole field’ but rather that, so far as Conaghan and Russell are concerned, I have ‘tared the wrong section of the field’.

Conaghan and Russell take me to task for criticising some of their favoured feminist research, but they also castigate me for taking other feminist research a little too seriously. Donald Dripps, having already suffered the ignominy of my getting his name wrong, has to face his work being described by Conaghan and Russell as ‘crude’⁶⁵ and ‘unsubstantiated’.⁶⁶ Having come across Dripps’ writing by way of his chapter in *Rethinking Rape Law: International and Comparative Perspectives*⁶⁷ – an edited collection specifically praised by Conaghan and Russell⁶⁸ – I had no idea that his opinion was not to be taken seriously.

⁶¹ Ibid. at 32.

⁶² Ibid. at 33.

⁶³ Ibid. at 32.

⁶⁴ I will limit myself to listing some of the rape myth researchers whose work I used to develop and support my argument: Elizabeth Rice Allgeier; Ronald Ross (‘Behind the Pencil / Paper Measurement of Sexual Coercion’ (1996) 26 *Journal of Applied Social Psychology* 1587); David Brereton (‘How Different are Rape Trials? A Comparison of the Cross-Examination of Complainants in Rape and Assault Trials’ (1997) 37 *British Journal of Criminology* 242); Mark Cowling (*Date Rape and Consent* (Ashgate Publishing: Farnham, 1998)); Richard Felson (above n. 2); Nicky Gavey (*Just Sex? The Cultural Scaffolding of Rape* (Routledge: London, 2005)); Douglas Koski (‘Jury Decisionmaking in Rape Trials: A Review and Empirical Assessment’ (2002) 38 *Criminal Law Bulletin* 21); Lynne Phillips (*Flirting with Danger: Young Women’s Reflections on Sexuality and Domination* (New York University Press: New York, 2000)); Philip Rumney (‘False Allegations of Rape’ (2006) 65 *Cambridge Law Journal* 128).

⁶⁵ Above n. 3 at 28.

⁶⁶ Ibid. at 32.

⁶⁷ D. Dripps, ‘Rape, Law and American Society’ in C. McGlynn and V.E. Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Routledge-Cavendish: London, 2010).

⁶⁸ Above n. 3 at 32.

Likewise, I had no inkling that – in the interests of demonstrating feminist subtlety and nuance – Mary Koss’ view would be so readily thrown out of the feminist tent.⁶⁹ I quote Koss’ comment that ‘strong laws [...] cannot successfully compete with a citizenry that condones sexual violence’;⁷⁰ concluding this discussion on the next page, I ask whether public attitudes are accurately labelled in this way. Conaghan and Russell write:

This somewhat extreme statement of regressive public attitudes is thereby re-articulated as mainstream and representative of the general position of rape researchers, allowing Reece to challenge the calumny with such righteous good sense that one might be forgiven for not pausing to consider who, other than (apparently) Koss, actually labels public attitudes in this way.⁷¹

Again, fully answering this rhetorical question would necessitate reproducing my article. As I acknowledge when introducing her quotation,⁷² Koss puts this starkly. However, since the very definition of rape myths is ‘beliefs about rape [...] that serve to deny, downplay or justify sexual violence’,⁷³ Koss’ depiction of ‘a citizenry that condones sexual violence’ is even on the face of it not far from the hegemonic opinion that rape myths are pervasive in the population, shored up by unsustainable interpretations of AMMSA results.⁷⁴

Conaghan and Russell claim that I quote Koss out of context,⁷⁵ but when we look at the context, it becomes even clearer that Koss is describing the same phenomenon as other rape myth researchers:

Sex offending is reinforced by low prosecution and conviction rates combined with SV [survivor/victim] self-protective minimizing and justifying coping mechanisms. Social psychological research has shown that not-guilty rape verdicts increase both men’s and women’s rape myth acceptance, which are one of the best predictors of juror’s (sic) refusal to convict of rape. Not-guilty rape verdicts create a self-perpetuating, downward negative spiral in public response to date and acquaintance rape because prosecutors fail to charge when they think juries will not convict (Frohman, 1996; 1997; 1998). Even when reforms have put strong laws in place prohibiting sexual offenses,

⁶⁹ Cf. Davison, above n. 42.

⁷⁰ Reece, above n. 1 at 451, citing M. P. Koss, ‘Restoring Rape Survivors: Justice, Advocacy, and a Call to Action’ (2006) 1087 *Annals of the New York Academy of Sciences* 206 at 221.

⁷¹ Above n. 3 at 34.

⁷² Above n. 1 at 451.

⁷³ H. Gerger et al, ‘The Acceptance of Modern Myths about Sexual Aggression Scale: Development and Validation in German and English’ (2007) 33 *Aggressive Behavior* 422 at 423.

⁷⁴ See above.

⁷⁵ Above n. 3 at 34-36.

they cannot successfully compete with a citizenry that condones sexual violence (Koss, 2000). [End of section]⁷⁶

Some might think that Koss' is indeed an extreme assessment to draw from her evidence, namely not guilty verdicts, and prosecutors second-guessing those not guilty verdicts. Conaghan and Russell complain that Koss' comment is made in the course of a multi-jurisdictional survey, so that it is not targeted at a particular population but at the challenge rape supportive attitudes pose, wherever they exist.⁷⁷ I cannot find an implication otherwise in my citation of Koss. Moreover, the unfocused, generalised, character of the comment seems to make it more, not less, stark.

Conaghan and Russell make rather heavy weather of their claim that I quote Koss out of context,⁷⁸ reaching a crescendo when they describe my 'repeated,⁷⁹ out-of-context iteration of the Koss quotation' as 'unnecessarily provocative'.⁸⁰ Ironically though, in claiming that I re-articulate Koss' view as 'mainstream and representative of the general position of rape researchers', so 'that one might be forgiven for not pausing to consider who, other than (apparently) Koss, actually labels public attitudes in this way',⁸¹ Conaghan and Russell take my quotation from Koss quite out of context. I spend the next page of the article outlining the extent to which other commentators and researchers join issue with Koss, with, yes, dense footnoting at this point.⁸² Furthermore, I return to this question, of the extent to which some rape myth researchers believe rape myths have a hold even on criminal justice agents, in the last page and a half of the article.⁸³ All in all then, I do not accept Conaghan and Russell's criticism of my citation of Koss.

Still, I would have been delighted to discover that Conaghan and Russell regarded Koss' as too harsh an assessment. Unfortunately, as their article progresses it becomes ever clearer that they largely share her view.⁸⁴ By page 39, 'indifference to female desire is apparent not only in the discursive application of legal rules but is enshrined within the rules themselves'. By page 42, the House of Lords' decision in *R v A (No. 2)* in 2001,⁸⁵ the logic of which derives support from 'associated assumptions that a woman's word on the matter cannot be believed', is 'particularly illustrative of the continued purchase of rape myths'.⁸⁶

SAMENESS/DIFFERENCE

⁷⁶ Koss, above n. 70 at 221.

⁷⁷ Above n. 3 at 35.

⁷⁸ *Ibid.* at 34-36.

⁷⁹ See above n. 42.

⁸⁰ Above n. 3 at 36.

⁸¹ *Ibid.* at 34.

⁸² Above n. 1 at 451-452.

⁸³ *Ibid.* at 472-473.

⁸⁴ Cf. Davison, above n. 42.

⁸⁵ [2001] UKHL 25.

⁸⁶ See above.

Near the beginning of their response, Conaghan and Russell set me up with the impossible view that ‘rape should be viewed in exactly the same way as other serious crimes, that it has no claim to distinction or particularity’.⁸⁷ For good measure though, they begin their discussion of sameness and difference by ramming home this caricature: ‘At the heart of Reece’s analysis lies a concern to refute *any claim rape might have* to different or special status within the criminal justice system’.⁸⁸ Their evidence for this is the view that I expressed elsewhere that: ‘The sooner we treat rape in the same way as other serious crimes, the better’. But this is a view that I expressed in a particular context, at the end of an article exclusively dealing with the issue of anonymity.⁸⁹ I do indeed hold the view that it is unhelpful to treat rape complainants differently with regard to anonymity. But I have never expressed nor held the view attributed to me by Conaghan and Russell that rape should be treated *exactly the same*, in all respects – I am not even sure what this would entail.

Standing up this straw man allows Conaghan and Russell to attack it by patiently explaining how much more complicated matters are than I appreciate, retorting that there isn’t ‘a uniformity in the criminal justice system which rape improperly disrupts’.⁹⁰ In truth, sexual violence *is* treated differently from other crimes in a number of significant respects.⁹¹ In the context of the current discussion however, this is an aside, for Conaghan and Russell are right that a honed and detailed discussion is necessary to determine whether or not the particularities of rape imply different treatment in relation to any specific rule or policy. I agree with Conaghan and Russell that ‘it makes little sense to pose questions about sameness and difference in the abstract’,⁹² and I have never done so. What I did argue in my article is that when making claims that rape fares badly in some particular respect – disbelief of complainants, or the attrition rate, for example – some comparison is not only necessary but inescapable, the absence of an explicit comparison invariably indicating an implicit one. ‘Badly, compared with what?’ is a crucial and indeed unavoidable question.

VICTIM-BLAMING

These points become critical concerning the evidence in relation to public blaming of rape victims, for which I argued there was less evidence than is often

⁸⁷ Above n. 3 at 30.

⁸⁸ Ibid. at 36, emphasis added.

⁸⁹ ‘Rape trials must be completely open’, 18th February 2013, available at <http://www.spiked-online.com/newsite/article/13353#.U3zQWXc1Hzg>.

⁹⁰ Above n. 3 at 36.

⁹¹ See e.g. Sexual Offences (Amendment Act) 1992, s. 1; Youth Justice and Criminal Evidence Act 1999, ss. 17, 34 and 41.

⁹² Conaghan and Russell, above n. 3 at 36.

supposed.⁹³ I made a simple but significant criticism of the interpretation of public opinion surveys such as the Amnesty International UK survey,⁹⁴ which asked people whether or not they believe women are ‘responsible’ for being raped, but which is then interpreted as demonstrating that people blame rape victims. I suggested that, given the options of responding yes/no/partly, some respondents may have meant ‘responsible’ only in a causal sense, so that it was illegitimate to interpret these responses as evidence of victim-blaming.⁹⁵ While it is heartening that there has been a little acceptance of my criticism,⁹⁶ it is disconcerting that, for so long and previously without challenge, so many – academics as well as journalists – have cited these surveys as clear-cut evidence of victim-blaming.⁹⁷

Having queried the public opinion surveys as evidence of generalised victim-blaming, I then recognised that there certainly is evidence that some people do blame rape victims.⁹⁸ However, insisting on the importance of comparisons, I claimed that ‘there is very little reason to believe that people blame rape victims more than they blame other crime victims’.⁹⁹

Barbara Krahe is sympathetic towards the necessity of making comparisons,¹⁰⁰ so, at one point in her Comment on my article, she seeks to dispute the validity, not the relevance, of my claim about the extent to which people blame victims of diverse crimes. There she draws attention to her recent study comparing attributions of blame towards victims of rape and robbery respectively, where participants seemed to blame the rape victim more than the robbery victim.¹⁰¹

This study used six robbery and six rape vignettes, ‘representing three types of relationship (strangers, acquaintances, and ex-partners) and two coercive strategies (use of force and exploitation of the victim’s intoxicated state)’.¹⁰² In the Appendix at the end of this article, two of the vignettes are reproduced, namely ‘Rape: Strangers, Use of Force’ and ‘Robbery: Strangers, Use of Force’.¹⁰³ These were the parallel vignettes in which the study reported the least divergence between blame of the robbery victim and blame of the rape victim: when the crimes were committed by a stranger using force, the rape victim was found to be blamed slightly more than the robbery victim.¹⁰⁴

⁹³ Above n. 1 at 468-472.

⁹⁴ Amnesty International UK, *Sexual Assault Research Summary Report*, 12th October 2005.

⁹⁵ Above n. 1 at 468-471.

⁹⁶ Conaghan and Russell, above n. 3 at 45; L. Ellison and V. E. Munro, ‘Better the Devil you Know? ‘Real Rape’ Stereotypes and the Relevance of a Previous Relationship in (mock) Juror Deliberations’ (2013) 17 *International Journal of Evidence and Proof* 299 at 301.

⁹⁷ See Reece, above n. 1 at 468.

⁹⁸ *Ibid.* at 471.

⁹⁹ *Ibid.* at 471.

¹⁰⁰ Above n. 3 at 2.

¹⁰¹ *Ibid.* at 4, citing S. Bieneck and B. Krahe, ‘Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard?’ (2011) 26 *Journal of Interpersonal Violence* 1785.

¹⁰² Bieneck and Krahe, above n. 101 at 1788.

¹⁰³ *Ibid.* at 1795-1796.

¹⁰⁴ *Ibid.* at 1789.

As I noted in my article,¹⁰⁵ two of the four measures used to assess victim blame in this study in fact ask participants to assess victim control – (i) ‘How much do you think YY had control over the situation?’ – or even victim causation – (ii) ‘How likely do you think it is that YY could have avoided the incident?’.¹⁰⁶ These surrogates for blame are particularly problematic when we look in detail at the contrasting vignettes made available in the Appendix. In the rape vignette, research participants seem to be discouraged in several ways from answering ‘not at all’ to how likely they think it is that the victim could have avoided the incident: having declined her male colleague’s offer to walk her home as unnecessary, the victim walks home at night through an unlit parking lot, and is attacked while pausing to admire the night sky.¹⁰⁷ In contrast, in the robbery vignette, the research participant does not seem to have similar triggers for finding possibilities of avoidance: in the robbery scenario, which takes place during the day, the victim takes money out of a cash point, puts the money away before leaving the bank, and is then attacked.¹⁰⁸ The difference in victim blame between these supposedly parallel rape and robbery vignettes is relatively small:¹⁰⁹ it would be helpful to know the extent to which this difference is accounted for by contrasting answers to the question about the possibility of avoidance.¹¹⁰

As Bieneck and Krahe recognise in this study:

Whereas the tendency to blame the victim and exonerate the perpetrator has been studied extensively with respect to sexual assault, little evidence is available on whether this tendency is specific to rape cases or affects judgments about other criminal offenses of comparable severity in a similar fashion.¹¹¹

As they elucidate,¹¹² theirs is only the third study to have compared rape to other offences committed by a male perpetrator against a female victim, the other studies having found respectively that robbery victims were blamed more than rape victims¹¹³ and theft victims were seen as more at fault than rape victims¹¹⁴ (with Bieneck and Krahe expressing important reservations about the

¹⁰⁵ Above n. 1 at 469.

¹⁰⁶ Bieneck and Krahe, above n. 101 at 1789.

¹⁰⁷ Ibid. at 1795.

¹⁰⁸ Ibid. at 1795-1796.

¹⁰⁹ Ibid. at 1789.

¹¹⁰ This article states that ‘the full set of scenarios can be obtained from the first author’ (ibid. at 1788; see also ibid. at 1796). However, despite my sending two email requests (on file), to date I have not received the other scenarios.

¹¹¹ Above n. 101 at 1787.

¹¹² Ibid. at 1787.

¹¹³ S. Kanekar, N. J. Pinto and D. Mazumdar, ‘Causal and Moral Responsibility of Victims of Rape and Robbery’ (1985) 15 *Journal of Applied Social Psychology* 622.

¹¹⁴ C. Brems and P. Wagner, ‘Blame of Victim and Perpetrator in Rape versus Theft’ (1994) 134 *Journal of Social Psychology* 363.

comparability of the vignettes in the latter study).¹¹⁵ All in all then, while direct, more robust, comparisons between rape and other crimes are without doubt a helpful trajectory for future research, it would be premature to reach a conclusion on the basis of the existing research. It seems that as yet ‘there is very little reason to believe that people blame rape victims more than they blame other crime victims’.¹¹⁶

A contrasting strand in the responses to my argument however is that all of the above is of little importance, because it is objectionable to attribute any responsibility, to any rape victim, in any sense, even causal: Krahe claims that this is indeed the ‘trap that is at the heart of the whole problem of rape myths’,¹¹⁷ because ‘any responsibility shifted to the victim automatically serves to reduce blame attributed to the perpetrator’.¹¹⁸ Krahe’s research has demonstrated an unsurprising correlation between victim blame, perpetrator exoneration and endorsement of the view: ‘Rape is caused by’ various forms of female behaviour.¹¹⁹ However I am not convinced that – specifically in rape cases and irrespective of context – people make no more complex causal judgments than this see-saw effect, namely that the more the victim is the cause the less the perpetrator is the cause. Still, belief in this see-saw has no doubt contributed to the marked current anxiety about any expression of any view that rape victims’ behaviour might have any causal relevance.

For Conaghan and Russell, the ‘question is not whether we consider rape victims more or less ‘responsible’ than other crime victims’. Rather, ‘what is problematic about attributions of responsibility in rape cases is the role they can play in legally exonerating the rapist. The burglar by contrast is no less legally culpable because a householder has forgotten to lock the door’.¹²⁰ While individual attributions of responsibility or blame do not map straightforwardly on to the jury’s collective and deliberative binary verdict,¹²¹ in his exhaustive analysis of mock jury rape trials, Koski found that a principal theme in jury discussion of rape verdicts was indeed victim legitimacy.¹²² However, this is similar to findings in relation to crimes other than rape, where there is likewise evidence that attributions of blame and responsibility affect legal outcomes.

In their study of violent crime, Cretney and Davis found that their research sample:

¹¹⁵ Bieneck and Krahe, above n. 101 at 1787.

¹¹⁶ Reece, above n. 1 at 471.

¹¹⁷ Above n. 3 at 5.

¹¹⁸ Ibid. at 6.

¹¹⁹ J. Temkin and B. Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing: Oxford, 2008).

¹²⁰ Above n. 3 at 45.

¹²¹ See L. Ellison and V. E. Munro, ‘A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections upon Received Rape Myth Wisdom in the Context of a Mock Jury Study’ (2010) 13 *New Criminal Law Review* 781 at 787-788; Koski, above n. 64; see contra Temkin and Krahe, above n. 119.

¹²² Koski, above n. 64 at 88.

[...] included at least a dozen assault victims whose ‘innocence’ was very much in question. Some were drug addicts; some had criminal records in relation to other matters; some were suspected by the police of having been less than frank in their accounts of what brought them to the area where they had been assaulted [...] This is a problem with a great many victims – they are not innocent enough. They are not innocent enough to convince the police of the truth of their story, or to convince them that they are prepared to see the prosecution through; and if those hurdles are surmounted they may still not be innocent enough to convince a court.¹²³

Cretney and Davis found that drunken victims were particularly likely to be viewed with scepticism,¹²⁴ with far fewer drunken than sober victims seeing their assailant convicted.¹²⁵

When Baumer et al examined a random sample of 1,990 murder cases in the United States,¹²⁶ they found that:

Incidents in which the victim provoked the defendant are less likely to be prosecuted, less likely to lead to indictment, and more likely to lead to conviction on a reduced charge. Incidents during which the victim engaged in other disreputable conduct are less likely to be carried forward and more likely to result in conviction on a reduced charge. In contrast, past disreputable conduct has no significant effect on any of the legal outcomes.¹²⁷

Baumer et al summarise:

These findings show that legal outcomes are affected by victims’ conduct at the time of the incident, not by their past conduct. Apparently, decision making in murder cases reflects attributions of responsibility for the event, rather than beliefs about the degree of harm based on the victim’s general character.¹²⁸

They conclude:

In sum, our analyses indicate that victim characteristics affect the processing of murder cases. The effects are modest but are consistent with the general

¹²³ A. Cretney and G. Davis, *Punishing Violence* (Routledge, London: 1995) 64-65.

¹²⁴ *Ibid.* at 85.

¹²⁵ *Ibid.* at 86.

¹²⁶ E. P. Baumer, S. F. Messner and R. B. Felson, ‘The Role of Victim Character and Victim Conduct in the Disposition of Murder Cases’ (2000) 17 *Justice Quarterly* 281 at 291.

¹²⁷ *Ibid.* at 297.

¹²⁸ *Ibid.* at 303.

claim that killings of disreputable or stigmatized victims tend to be treated more leniently by the criminal justice system.¹²⁹

There is thus little reason to believe that the role that attributions of responsibility play in legally exonerating the perpetrator is unique to rape cases.

THE JUSTICE GAP

There does seem to be some unnecessary resistance to my attempt to insist on comparators. In my article, I examine the first point at which the crime of rape is seen as different in relation to the justice gap, which is that it is frequently unacknowledged by the victim. In this regard, I query Myhill and Allen's speculation that '[s]urvivors of sexual attacks may be less likely to view themselves as victims of a "crime" than people who suffer, for example, property crimes'.¹³⁰ I respond:

This seems implausible in the light of all those times when a boyfriend 'borrows' a ten pound note from his girlfriend's purse, a son repeatedly 'forgets' to repay the loan he received from his mother, or a friend manoeuvres himself out of paying his share of the restaurant bill.¹³¹

Conaghan and Russell object that these scenarios are highly unlikely to constitute crimes, because, for example, a boyfriend who 'borrows' money or a son who 'forgets' to repay a loan does not have the intention permanently to deprive, and may not be dishonest.¹³² This seems unnecessarily caustic. I appreciate that theft requires the intention permanently to deprive as well as dishonesty, and my use of quotation marks around 'borrows' and 'forgets' was meant to indicate, in as brief a manner as possible, that this was not really what the boyfriend or son was up to. Conaghan and Russell are on no firmer ground with their next objection that, in contrast, 'Myhill and Allen's comments about under-reporting are directed to experiences legally classifiable as rape'.¹³³ First of all, they quite explicitly are not – they are directed at the much broader and looser category of sexual attacks. Secondly, Conaghan and Russell cannot, they just *cannot*, be unaware of the voluminous extant critique of sexual assault surveys highlighting the ways in which experiences that do not necessarily constitute crimes routinely gain inclusion in such surveys.¹³⁴ Finally, far from being 'the greatest irony'¹³⁵ of my examples of unacknowledged property crimes, their gendered nature was deliberate and

¹²⁹ Ibid. at 304.

¹³⁰ A. Myhill and J. Allen, *Rape and Sexual Assault of Women: The Extent and Nature of the Problem*, Home Office Research Study 237 (2002) 7.

¹³¹ Above n. 1 at 450.

¹³² Above n. 3 at 38.

¹³³ Ibid. at 38.

¹³⁴ For a survey, see Cowling, above n. 64.

¹³⁵ Conaghan and Russell, above n. 3 at 38.

conscious on my part – an attempt to make an important point as succinctly as possible.

My discussion of the justice gap was meant to put some questions on the table and unsettle some ingrained assumptions, in the context of a broader and more wide-ranging article. It was not intended as a finely grained comparison of diverse crime conviction and attrition rates, which would, at the very least, have taken an entire article in itself. This area is crying out for careful comparisons, and there are intricate questions of judgment involved about the proper comparisons to make. I mention burglary in my article as the crime with the then most similar attrition rate to rape,¹³⁶ but of course there are glaring differences between burglary and rape, and I briefly allude to these¹³⁷ (as opposed to dismissing them).¹³⁸ Conaghan and Russell and Temkin choose murder as the appropriate comparison to rape when it comes to conviction rates,¹³⁹ following the Ministry of Justice Overview of Sexual Offending in England and Wales.¹⁴⁰ But compared with other serious or violent crimes, the conviction rate for murder is unusually high,¹⁴¹ so it is unsurprising that the rape conviction rate compares unfavourably with the murder conviction rate.

For Temkin and Krahé,¹⁴² since convictions depend on there being a defendant, ‘the critical comparison is the conviction rate relative to the rate of cases in which a suspect has been identified’.¹⁴³ Accordingly, Krahé compiles a table of conviction rates that draws a veil over the point before a potential offender has been identified, comparing the proportion of offenders to convictions.¹⁴⁴ Temkin puts this point vividly: ‘The most recent figures tell us that the identity of a rapist is known in 90% of cases. They could be prosecuted, but very often they are not.’¹⁴⁵

Without a doubt, identifying a suspect removes one enormous obstacle to conviction. Nevertheless, the equation ‘suspected offender = prosecution’ is frighteningly reductionist, obscuring the fact that a prosecution rests on there being sufficient evidence as well as a suspect, and also over-looking the fact that finding a suspect is a human endeavour, not a fixed natural circumstance.¹⁴⁶ Accordingly, once we decide that cases where a suspect has not been identified

¹³⁶ Above n. 1 at 449.

¹³⁷ Ibid. at 449-451.

¹³⁸ See Conaghan and Russell, above n. 3 at 37.

¹³⁹ Ibid. at 36-37; Temkin, above n. 3 at 22:27-23:00 minutes.

¹⁴⁰ Ministry of Justice, Home Office and the Office for National Statistics, *An Overview of Sexual Offending in England and Wales* (2013) 37-40.

¹⁴¹ Ministry of Justice Statistics bulletin, *Criminal Justice Statistics 2013: England and Wales* (2014) 15 and 17.

¹⁴² Temkin, above n. 3 at 19:30-20:08 minutes; Krahé, above n. 3 at 2-4.

¹⁴³ Krahé, above n. 3 at 2.

¹⁴⁴ Ibid. at 3-4.

¹⁴⁵ Temkin, above n. 3 at 19:50-20:08 minutes.

¹⁴⁶ So if we as a society felt that too many armed robbers or stranger rapists were escaping detection, there are measures we could *choose* to take to increase detection rates, for example more police on the streets.

can be counted out, it becomes a value judgment whether other factors can count out cases, and if so which. For example, it is a matter of judgment how significant the ratio is between convictions and cases with corroborative evidence. Rape cases present their own particular difficulties, and it is a judgment call whether these are more or less insurmountable than finding a suspect.¹⁴⁷

TRUTH AND FALSITY

In my OJLS article, I criticised the relatively recent shift in the definition of rape myth, from a belief that needed to be demonstrably false, to a belief that may or may not be false, but needs to be wrong in an ethical sense.¹⁴⁸ ‘Facts are not myths’, Conaghan and Russell explain that I claim, ‘nor are opinions based on those facts’.¹⁴⁹ Conaghan and Russell take exception to this because I am substituting ‘an entirely different conception of ‘myth’ from that of the researchers whose work [I am] critiquing’.¹⁵⁰ In one sense, their criticism can be easily dealt with: yes, that is exactly what I am doing, because, as they report, I do not agree with describing facts as myths. But this seems to be a disagreement rather than a criticism.

So what is their criticism? First of all, they complain that my ‘substitution of a different conception of ‘myth’ from that deployed by rape researchers is so subtly executed one barely notices that [I offer] no adequate justification for the move’.¹⁵¹ There was in fact nothing subtle about this ‘move’. Near the beginning of the article, I devote over a page to this point, firmly drawing the reader’s attention to my perspective:

The admission into the category of rape myths of beliefs that are not demonstrably false and may on occasions be true sets the stage for my core argument. There are undoubtedly a range of attitudes on which the general public and rape myth researchers – and for that matter diverse rape myth researchers – do not see eye to eye. [...] But where what we have is a difference of opinion on a normative question [...] this needs to be discussed and debated, rather than stigmatized in, or still worse excluded from, the discussion as a rape myth.¹⁵²

In disagreeing with the definition of ‘rape myth’ currently employed by the rape myth research community, I could perhaps be criticised for my audacity, but definitely not my subtlety.

¹⁴⁷ See Reece, above n. 1 at 449.

¹⁴⁸ Ibid. at 453.

¹⁴⁹ Conaghan and Russell, above n. 3 at 34.

¹⁵⁰ Ibid. at 34.

¹⁵¹ Ibid. at 34.

¹⁵² Reece, above n. 1 at 454.

Conaghan and Russell clarify that the problem is that at no point do I address the issues which lead rape myth researchers to adopt their definition,¹⁵³ allowing me to ‘avoid all concerns about the prescriptive dimensions of rape myths discourse and to treat rape myths solely in terms of descriptive validity’.¹⁵⁴ This is somewhat inconsistent with their earlier clamour that I leave ‘no apparent stone unturned in documenting the deleterious effects of rape research on public understanding and debate’.¹⁵⁵

They clarify further:

Reece never actually engages with the prescriptive dimensions of rape myths notwithstanding that this is the key concern animating rape myth research – not that the factual configurations comprising rape myths may on occasion be true but rather that they are treated as *generalizable* truths which function normatively to shape perception and inform judgments.¹⁵⁶

There is truly a voluminous literature on the perils of making inferences about an individual instance from a background generalisation; in a different context, I have indeed recognised and explored these dangers.¹⁵⁷ Conaghan and Russell are of course right that where jurors start from a generalised belief that women lie about rape then move seamlessly to the inference that this particular woman is lying, this precludes a just outcome.¹⁵⁸ On the other hand, I remain unconvinced either that it is possible for jurors to manage without background generalisations¹⁵⁹ or that this problem is currently more acute for complainants in rape trials than for other trial participants.¹⁶⁰ Arguably, given that some background generalisation is unavoidable, the best that we can hope for is to enhance the *accuracy* of our background generalisations, at the same time as reminding ourselves that even when accurate, they are only generalisations. None of this is aided by telling people that they believe myths when their beliefs have not been shown to be inaccurate, or even have been shown to be accurate.

This leads on to perhaps the most important point in this interchange. Language is no doubt pliable, but when most people hear ‘myth’ they think ‘false’. If rape myth researchers wish to detach ‘myth’ from ‘falsity’, then they need to do

¹⁵³ Conaghan and Russell, above n. 3 at 34.

¹⁵⁴ *Ibid.* at 34.

¹⁵⁵ *Ibid.* at 31.

¹⁵⁶ *Ibid.* at 34.

¹⁵⁷ H. Reece (2010) ‘Bright line rules may be appropriate in some cases, but not where the object is to promote the welfare of the child’: Barring in the best interests of the child? (2010) 22 *Child and Family Law Quarterly* 422.

¹⁵⁸ Conaghan and Russell, above n. 3 at 34.

¹⁵⁹ See Reece, above n. 1 at 454.

¹⁶⁰ An extreme recent example is the acquittal of a defendant in a rape trial prompting the comment from a feminist academic on twitter that ‘another rapist goes back to work as usual’, 6th February 2014, available at <https://twitter.com/sarahjkeenan>. Such an attitude amongst jurors would preclude a just outcome for the defendant in a rape trial.

this with a flashing neon light above and a huge pointing red finger to the side, and they have not. There is a great deal of confusion and slippage in the way that the term ‘rape myth’ is understood and indeed used, even in academic discourse let alone public discourse.¹⁶¹ Any part that I may have played in foregrounding this slippage makes this whole exchange worthwhile for me.

To illustrate, Krahé opens her Comment with the claim that ‘many rape myths are, in fact, false beliefs that can be refuted on the basis of empirical research’.¹⁶² As she is one of the world’s foremost rape myth researchers, I cannot read her as doubting that rape myths no longer need to be false. So it is instructive that Krahé still regards it as important to emphasise their empirical dimension. The example she gives is the ‘myth’ that stranger rape is more serious than acquaintance rape. In my article, I accept that there is strong enough evidence of public belief in this hierarchy of seriousness, but I query whether this belief deserves to be designated a myth.¹⁶³ Krahé replies that indeed it does, because psychological evidence demonstrates that acquaintance rape is at least as damaging as, if not more damaging than, stranger rape. She concludes: ‘It is obvious here that Reece does not have a sufficient grasp of the psychological literature on the effects of rape victimisation’.¹⁶⁴

It is true that a detailed examination of the relative trauma caused by diverse forms of rape was beyond the scope of my article. It is also true that some research shows that some people hold the misapprehension – myth - that relationship rape is *per se* less traumatic than stranger rape.¹⁶⁵ But Krahé is reading off the seriousness of a crime from the trauma to the victim, when the latter is but one dimension of the former. With the benefit of hindsight, I can see that I should have made it clearer that I was referring to seriousness not trauma; at the time, I thought this was plain from my comment that ‘judgments about seriousness are multi-dimensional, encompassing such diverse factors as the offender’s motivation, the victim’s trauma, and the public interest’.¹⁶⁶ Still, such easy elision between seriousness and trauma is an interesting illustration of the seemingly inexorable rise of victim-centred justice.¹⁶⁷

Conaghan and Russell are quite wrong that I was unconcerned with the prescriptive dimension of rape myth discourse.¹⁶⁸ One of my main prescriptive concerns was the rhetorical power that is gained from describing a normative opinion or even an accurate belief as a ‘rape myth’, placing the point of view beyond discussion and thus enabling debate on the question to be very effectively

¹⁶¹ See Reece, above n. 1 at 453-454.

¹⁶² Above n. 3 at 1.

¹⁶³ Above n. 1 at 457-458.

¹⁶⁴ Above n. 3 at 5.

¹⁶⁵ See e.g. S. Ben-David and O. Schneider, ‘Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance’ (2005) 53 *Sex Roles* 385 at 395; A. Clarke et al, *Attitudes to Date Rape and Relationship Rape: A Qualitative Study* (2002) 38, 41 and 48.

¹⁶⁶ Above n. 1 at 458.

¹⁶⁷ See R. N. Lancaster, *Sex Panic and the Punitive State* (University of California Press: California, 2011) ch 7.

¹⁶⁸ Conaghan and Russell, above n. 3 at 34.

shut down. My main focus in the article being elsewhere, I made this point briefly at the end.¹⁶⁹ A few months later, I was invited by my employer, the London School of Economics Law Department, to take part in a debate entitled ‘Is rape different?’, prompted by publication of this research.¹⁷⁰ In response, *feminists@law*, an open access journal of feminist legal scholarship emanating from Kent Law School, produced an editorial to which they invited readers to add their names in support.¹⁷¹ My contribution to the debate being to argue that the existence and prevalence of rape myths have been over-stated,¹⁷² their reply that my arguments ‘appeal to existing rape myths in society’ was beyond parody.¹⁷³ Their conclusion, which they asked readers to sign in support of, was: ‘We deplore LSE Law’s decision to give a platform to [these] dangerous and unsupported views [...] As feminist academics we wish to condemn the decision of the LSE Law Department to hold this event and to continue to defend it’.¹⁷⁴ This, from feminists, was truly an object lesson in how slapping on the label ‘rape myth’ serves to legitimise the call to close down discussion and debate. They made this point for me, far more eloquently and effectively than I ever could have with my words.

¹⁶⁹ Above n. 1 at 473.

¹⁷⁰ Above n. 3.

¹⁷¹ The Editors, ‘A Response to the LSE Event “Is Rape Different?”’ (2013) 3 *feminists@law* 1.

¹⁷² Above n. 3.

¹⁷³ Above n. 171 at 1.

¹⁷⁴ Above n. 171 at 3.