Abstract: Legal standards of proof are epistemic thresholds that must be met for institutions to impose sanctions on individuals accused of misconduct. The preponderance of the evidence standard, also known as the ‘balance of probabilities’ standard, currently governs Title IX proceedings for sexual misconduct hearings in educational institutions in the US. For the institution to properly formally punish the accused, the misconduct must first be established to a preponderance of the evidence.

I articulate four claims that enjoy initial plausibility. But, I argue, the claims jointly support the view that the preponderance of the evidence standard is not sufficiently demanding to govern Title IX proceedings. The four claims are: (1.) The ‘preponderance of the evidence’ standard is satisfied if the evidential balance supports the relevant proposition. (2.) In ‘she said, he said’ situations, given the evidence typically available, the accusation is likely true. (3.) Finding an individual culpable of at least some kinds of sexual misconduct warrants significant consequences, such as expulsion or termination of employment. (4.) Significant consequences, such as expulsion or termination of employment, are not legitimised by one-on-one conflicting testimony where there is no specific reason to suspect one party or the other lacks credibility.

Claims (1.) through (4.) thus constitute, I argue, a liberal feminist argument for the conclusion that the preponderance of the evidence standard is too low to govern Title IX proceedings. Advocates of the current standard for Title IX proceedings—and I count myself amongst them—must deny at least one of the four claims.

1. Five Claims
In this essay I present five claims. They are each plausible, but they are mutually incompatible. I articulate the five claims more carefully below, but here is the informal overview: Rape accusations are very likely true. They are not the kind of assertion that people tend to lie about. Denials following rape accusations lack this reliable track record. Rape accusations are such reliable indicators of rape that they, by themselves, plausibly satisfy the preponderance of evidence standard. If a university’s formal investigation finds someone guilty of rape, this warrants considerable consequences such as expulsion or termination of employment. But these kinds of consequences are not typically warranted by one person’s assertion with no other specific evidence bearing on the case; a liberal society must protect individuals from each other. This reasoning suggests that the preponderance of evidence standard is too low to govern university Title IX investigations into rape accusations; Title IX investigations need a higher standard. But this conclusion is unwelcome. This was the thumbnail sketch of the claims. A higher resolution image follows.

First, some background. Legal proceedings are governed by standards of proof. Before the government can impose sanction or punishments, it must first establish relevant claims to a certain epistemic threshold, known as a standard of proof. Common standards in the US include the preponderance of evidence, clear and convincing evidence, and beyond reasonable doubt standards. The preponderance of evidence standard, also known as the ‘balance of probabilities’, governs civil cases and family court cases solely involving money. The standard is often glossed as ‘more likely than not’ and is sometimes interpreted to require the disputed claim is at least 50% likely given evidence.
adduced. The clear and convincing evidence standard is more demanding. It governs equity cases such as paternity disputes, child custody, and right-to-die hearings. It also governs some criminal proceedings, such as habeas corpus relief from capital punishment. The standard is often glossed as 'substantially more likely than not', and is sometimes quantified as at least 70-75% likely given the evidence. \(^1\) Beyond reasonable doubt, which is yet more demanding, governs criminal conviction in the US and in increasingly many jurisdictions throughout the world. In what follows I focus on standards of proof as employed in Title IX investigations in US colleges and universities.

Title IX is part of the 1972 Educational Amendments. It prohibits sex-based discrimination in federally funded educational institutions. Title IX mandates that universities and colleges must investigate accusations of sexual misconduct, including sexual assault and harassment; they cannot ignore or conceal accusations. In 2011 the Obama administration issued a ‘dear colleagues’ letter making explicit that the preponderance standard is obligatory in Title IX investigations. Institutions that employ a higher standard, or fail to employ a standard, thereby violate Title IX.

In 2017 Betsy DeVos, Education Secretary in the Trump Administration, rescinded these Obama era guidelines. Institutions can now use either the ‘preponderance’ standard or the higher ‘clear and convincing evidence’ standard. The institution can choose, although it must be consistent; it cannot vary its standard by investigation. This change, along with others DeVos introduced, increases protections for the accused—affirmative verdicts of culpability are harder given the higher standard.

Broadly speaking, feminist commentators decry DeVos’s changes, and for good reason. Sexual misconduct is rampant on campus. Legal and professional consequences for rape are rare. And DeVos's changes plausibly only exacerbate these problems.\(^2\) This essay focuses exclusively on standards of proof, and sets aside other debates. This paper presents a liberal feminist argument that the Title IX standard of proof should be higher than the ‘preponderance’ standard. The Obama-era standard was correct.

The other four claims are:

Claim 1. Gloss on the ‘preponderance’ standard

The target claim is:

Claim A. ‘Preponderance’ is the correct standard

The ‘preponderance of the evidence’ standard should govern Title IX proceedings for sexual misconduct hearings in US educational institutions. The Obama-era standard was correct.

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\(^2\) Note also that there are many controversies surrounding Title IX rules, and sexual misconduct investigations. This paper focuses exclusively on the question of the appropriate standard of proof.
The ‘preponderance of the evidence’ standard is satisfied if after a well-executed investigation, given the evidence adduced, there is greater than fifty percent chance that the proposition is true.

Claim 2. She said, he said evidence favours accuser
In ‘she said, he said’ cases, it is rational to incline towards believing the accuser and disbelieving the denier. Given the evidence, the accuser is more likely telling the truth.

Claim 3. Considerable consequences
Finding an individual culpable of at least some kinds of sexual misconduct warrants considerable consequences, such as expulsion.

Claim 4. Liberal claim
Considerable consequences, such as expulsion, are not legitimatised by mere one-on-one conflicting testimony with no specific additional evidence.

I have named each claim, for ease of reference. I present claims 1–4 as an argument against Claim A; I do so because grappling with these claims illuminates the debate. I discuss the claims in detail below, including especially how to understand the nature and epistemic significance of ‘she said, he said’ cases. But first, the gist of why the five claims are in tension:

Suppose a university investigates a ‘she said, he said’ rape accusation. Claim two holds that given the evidence, the accused is probably guilty. So then, by claim one, the evidence satisfies the ‘preponderance’ standard. By claim A, the Title IX investigation should find the accused culpable. Given claim three, this warrants considerable consequences. But since the case is a ‘she said, he said case’, it is an instance of mere one-on-one conflicting testimony and so, given claim four, it does not warrant considerable consequences. The accused both should and should not face severe sanctions. Since the five claims are independently plausible, but conflict, the five claims constitute a paradox.

This essay articulates a paradox. My aim is to help navigate thorny debates about rape accusations. I hope adversaries can better understand each other by making explicit which of the five claims are disputed. Although I focus on Title IX investigations—which are an important context—the epistemological ramifications are broader. One broader aim is to illuminate the epistemology of legal proof standards. Another is to ameliorate the undue doubt endemic to rape accusations; I argue that an impartial hardnosed look at their epistemic properties reveals their probativity.

2. She Said, He Said Cases
A ‘she said, he said’ case is when the evaluator’s evidence includes an accusation of severe sexual assault and the accused’s denial of that conduct. The evaluator lacks any other significant specific evidence pertaining to what happened. I unpack this in detail below, but the intuitive idea is that there is no recording of the assault, no earlier bragging of the attack by the accused, no record of independent similar accusations against the accused, no eyewitnesses, no credible alibi, and so on. The accusation and denial might be witnessed first-hand, or arrive via a trusted chain of testimony.

Part of the grip of this paradox is that the claims are feminist, and yet lead to a seemingly anti-feminist conclusion. And the more strongly we endorse the feminist reasoning behind claim three—the more significant the consequences—the harder it is to jettison claim four.
Although Title IX covers all sexual misconduct, including harassment, this essay focuses on rape and similar forms of severe sexual assault.\footnote{By ‘severe sexual assault’, I mean actions legally resembling rape. It is important to acknowledge, though, that sexual misconduct that is not deemed severe legally, such as non-consensual breast-grabbing can be more emotionally severe, such as when executed by a trusted authority figure.}

What qualifies as a ‘she said, he said’ case is relative to the evaluator’s evidence. An accusation might qualify as a ‘she said, he said’ case to one person, but not to another because the latter also has access to, say, a video recording of the assault. No accusation can be a ‘she said, he said’ case to everyone, since the accused and accuser, at least, will have additional information.

I use the pronouns ‘she’ for the accuser and ‘he’ for the accused throughout. This distribution is most common. But, of course, any permutation of pronouns can occur. I do not think the gender of the accused or accuser makes any difference to my epistemological analysis of the five claims.\footnote{Gender might make a difference to the ratios of true and false assertions. Gay men might face elevated risk of false accusation, for example, from men who consent to sex but later deny the sex was consensual. But I doubt these differences are sufficiently large to affect claims two or four.}

Disputes concerning criminal culpability fall into two categories. The first category agrees about the identity of the individuals involved and instead questions whether a crime occurred. Such disputes focus on whether contested conduct occurred or whether non-contested conduct is proscribed. The second category sets aside whether the crime occurred, and focuses on whether the accused individual is the perpetrator. That is, the question concerns identification: is the defendant the assailant? ‘She said, he said’ cases are typically the former. They involve—as do most rapes—acquaintances. The identity of the individuals involved is not in question. The dispute instead concerns whether any sexual contact occurred or whether the contact that occurred was consensual.\footnote{These questions—whether particular contact occurred and whether it was consensual—can intertwine. Perhaps the denier claims that the sex was aggressive only to the degree consented too, for example. Cf. Nussbaum (2016) describing her own sexual victimisation:}

Such cases are typically called ‘he said, she said’ cases. The male pronoun comes first and denotes the accused. In language male terms typically come first. We say ‘boys and girls’, ‘guys and dolls’, ‘kings and queens’, ‘lords and ladies’, ‘men and women’, ‘man and wife’, ‘males and females’, and so on. (Rare exceptions include ‘ladies and gentlemen’ and ‘bride and groom’.) Since it is typical, the gender order does not stand out linguistically. It conforms with the normal, default order in speech and thought. But this order is epistemically pernicious for two reasons. Firstly, the accuser-accused order distorts

\begin{quote}
Unlike the Cosby women, I certainly intended to consent to intercourse. What I did not consent to was the gruesome, violent, and painful assault that he substituted for intercourse. I remember screaming for help, to no avail, and I remember him saying, “It’s all part of sex.”

I never seriously considered going to the police, even though there was a lot of forensic evidence… I thought, with good reason, that the police would dismiss the issue because I had after all consented to some kind of sex act. Even now, the law is not well equipped to handle that type of case, since consent is usually understood to be an all or nothing matter, despite the fact that there is a world of difference between what I intended to consent to and what happened to me. I’ve taught rape law and read a large amount on this topic and have never found discussion of this question. This, at least, we can fix, with more nuanced accounts of legal consent in the case of violent practices.
\end{quote}

Nussbaum thereby raises the question: How should we delineate the boundary between what actions occurred and what actions were consensual.
and disguises the fact that in almost every case the accusation comes first. The denial responds to an antecedent accusation. As I argue in section five, this temporal order matters epistemically, since it bolsters the claim the accuser is likely telling the truth. Secondly, the expression ‘he said, she said’ melds with similar expressions, such ‘boys and girls’. It suggests linguistic counterpoise—two halves, equally weighted—in which order is irrelevant. The linguistic balance implicitly suggests an epistemic balance. I argue that the two halves are not, however, epistemically balanced. Probably the accuser speaks truly and the denier speaks falsely, and the magnitude of the difference is significant. To destabilise these associations with epistemic balance, I call them ‘she said, he said’ cases.³

We can see this conflation of epistemic balance and linguistic balance in William Safire’s *The New York Times Magazine* column ‘On Language’. On the history of the term ‘he said, she said’, he writes:

Now the phrase most often means “testimony in direct conflict,” with an implication that truth is therefore undiscoverable. That was its meaning in this Oct. 7, 1991, account in The Chicago Tribune about Hill’s accusation of the Supreme Court nominee [Clarence] Thomas for verbal impropriety: An F.B.I. report “could not draw any conclusion because of the ‘he said, she said’ nature of the allegation and denial.”

Within two years, the phrase popularized in the Thomas hearings found its way into judicial proceedings: “It was an error for the trial court,” noted an Ohio appellate judge in a dissenting opinion, “to admit such he-said-she-said testimony.”

Uniform punctuation would clarify the phrase’s use as a modifier: by hyphenating the pronoun and verb on each side of the issue, we make them two units that can then be separated by a comma, which acts as a kind of referee. Treat it thus: “It’s one of those classic, unresolvable he-said, she-said situations.”

Within three short paragraphs, Safire leaps from competing testimony, to epistemically balanced testimony, and then finally to a prescription for emphasising the linguistic balance. He enjoins us insert dashes, turning the comma into a fulcrum that highlights the symmetry of the expression. I urge the opposite: discern and emphasise the asymmetry.

To prepare this research I tried to think of real life ‘she said, he said’ cases. I struggled. Real life rape accusations that I know of tend to fall into two groups. In the first kind, a public figure is accused. After the first accusation, other accusers commonly come forward. Prominent examples include Donald Trump, Bill Clinton, Bill Cosby, Harvey Weinstein, and Michael Jackson. Other examples conforming to this pattern include professors, police officers, prison wardens, priests, and members of other professions with social power that engenders sexual exploitation. These do not qualify as ‘she said, he said’ cases because there is more than one accuser. Multiple similar accusations typically qualify as substantial specific evidence favouring the accusation.⁹

The second kind is when a friend tells me about a sexual assault. In these cases, I rarely hear what the accused says. Often the perpetrator is picked out by description, rather than named. They do not

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⁷ In reality, masculine terms appearing first likely reinforce the conception of masculine as dominating or mattering more. The expression ‘he said, she said’, then, might implicitly favour the man’s word above the woman’s.

⁸ I also avoid the term ‘allegation’. Undue doubt about rape accusations is fueled, in part, by raising the perceived epistemic standards for belief. This occurs partly through the unwarranted infusion of legal standards and legal sanctions into everyday conversations. The term ‘allegation’ contributes to this. Secondly, ‘allegation’ signifies third-party doubt and suspicion by implying cautious distancing from the accusation itself. For these reasons, I use the more neutral term ‘accusation’.

⁹ Cf. ‘Susan Carpenter-McMillan, spokeswoman for Paula Jones [said] “It’s no longer she-said, he-said,” after the testimony of Ms Willey and reports of the tapes made of Monica Lewinsky about Mr. Clinton, followed by his adamant denials. “It’s now she-said, she-said, she-said and he-said.”’ (Safire, 1998.)
qualify as ‘she said, he said’ cases, because the accused does not speak; at least I, as the evaluator, do not learn of his assertion.

Real life ‘she said, he said’ cases are, I posit, quite rare. Yet the expression ‘he said, she said’ is common. It is considered hackneyed; “it’s just another she said, he said case…” In the public imagination, many accusations are ‘she said, he said’ cases; such cases are the norm. I diagnose this discrepancy: Many situations are mischaracterised as so-called ‘he said, she said’ cases. The reason is illuminating. It is a misogynistic alchemy that turns speech into silence and silence into speech.

Cases of the first kind—the public figures—involve multiple accusations: She said, she said, she said, and he denies them all. We dub them ‘he said, she said’, and thereby divide and conquer. We treat each ‘she said’ as isolated, and so qualifying as one person’s word against another’s, when in fact it is multiple people’s words against one. Calling these cases ‘she said, he said’ turns the speech of the other accusers into silence. It is as if they had not spoken.

In the second kind, the accuser speaks and the denier says nothing. We never hear from him. Or he denies, but the relevant evaluator does not hear of it. But we nonetheless dub it a ‘she said, he said’ case, and thereby project onto him a denial. This projection is common. In conversation I ask interlocutors to think of a real life ‘she said, he said’ case. They think of a case. After questioning it emerges that the accused never issued a denial. Denial is assumed, and is sometimes even given epistemic weight comparable to the articulated accusation. This everyday alchemy turns silence into speech.

Thus I think real life ‘she said, he said’ cases are rarer than is appreciated. Many evaluative situations are mischaracterised as ‘she said, he said’, and typically to the benefit of the accused. But I think they exist. And presumably some professionals—such as magistrates, police officers, college dorm room supervisors, school counsellors, and Title IX investigators—encounter them with frequency. So what are they and, in such cases, what does the available evidence indicate?

3. Two Intertwined Questions: What Counts as Significant Additional Evidence?
Claim two states that in ‘she said, he said’ cases, the evidence favours the accusation’s being true and the denial’s being false. Insofar as we should lean, we should lean towards believing the accusation.

Two questions are deeply interconnected: (i.) What exactly is a ‘she said, he said’ case? That is, what cases qualify as ‘she said, he said’ cases? And, (ii.) What does the available evidence favour in such a case? In this section I explore these questions and explain their intimate connection.

I have claimed that ‘she said, he said’ cases are rarer than the public imagination appreciates. One might wonder whether they are even possible. Part of the conception of a ‘she said, he said’ case is the lack of other specific, significant evidence. But other antecedent, background evidence always bears on our interpretation of new evidence. Our social judgements, in particular, are not isolated. Suppose a judge instructs a juror to base her adjudication only on evidence adduced in the courtroom.

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10 See also Saunders (2018).
11 They all attest to different incidents, of course, but they nonetheless corroborate that the accused commits the relevant crimes. It is widely acknowledged that committing rape once correlates with committing other rapes.
Epistemologists perceive a problem. Background beliefs always bear on how evidence is perceived, taken up, understood, processed, integrated, and valued.

Juror one might interpret police testimony in light of background beliefs that police are upstanding and honest; they face a tough challenge keeping citizens safe, but they would never commit perjury. Besides perjury is itself criminal, juror one thinks, and it is irrational to risk prosecution for your job. Juror two interprets the same testimony filtered through background beliefs that police are characteristically dishonest and frame Black defendants. Juror two has heard stories about such cases. Similarly when an eyewitness testifies, juror one might judge he looks shifty and appears mendacious. Juror two thinks he seems upset, and understandably so given the recent crime and courtroom stress. The differing judgements are fuelled by previous experiences, bias, and background beliefs about behaviour. In short, background evidence and understanding always play a role in interpreting evidence; indeed, it is necessary. The judge’s instruction is thus not strictly speaking possible. Other evidence always plays a role.

Such background evidence also informs responses to rape accusations and denials. The background beliefs affect a hearer’s assessment of the probability that the accusation is false, and also affect what we take to constitute a genuine example of a ‘she said, he said’ case (that is, competing testimony lacking other significant specific evidence). Background beliefs generate an interplay between these two questions.

In ‘she said, he said’ cases, as characterised above, the evaluator lacks any other significant specific evidence pertaining to what happened. Competence with this idea, then, requires some conception of what additional specific evidence would qualify as sufficiently significant to preclude the case from being a mere ‘she said, he said’ case.

Consider cases with this evidence: A rape accusation and denial and, furthermore, the accuser was friendly to the accused after the night in question. One hearer might regard the case as not a ‘she said, he said’ case because, they aver, there is significant specific additional evidence. They likely perceive the supplementary information as counting against the accusation. They draw on a (widely held) background belief that rape victims are not typically friendly to their attackers after the crime. A second hearer, with different background beliefs, might regard the supplementary information as epistemically insignificant or neutral. They might draw on background beliefs that most acquaintance rape victims are friendly to their rapists afterwards, and so aver the accuser’s friendliness does not say much or anything about whether the accusation occurred.

We can set aside the question of who is correct—that is, whether the supplementary information is in fact epistemically significant—and simply note that the second hearer can categorise the evidence as constituting a ‘she said, he said’ case, whereas the former would not.

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12 A pernicious rape myth holds that since rape is a serious crime, victims are not friendly afterwards. This myth is used to discredit accusations that do not conform and testimonially smothers such accusations—the victim does not voice an accusation because they were friendly afterwards and perceive that this impacts the expected uptake. (The term ‘testimonial smoothing’ is from Dotson, 2011.) I do not know whether most acquaintance rape victims are friendly to their assailants afterwards. My inquiries suggest this is the case. There are many reasons victims are friendly afterwards: perpetrators select victims for whom causing ‘trouble’ would be costly. Retaining apparent cordiality can be rational to avoid further violence, reprisals, and social costs. Hermeneutical blocks mean the victim fails to realise they were raped. I return to this in section seven.
The same holds for other supplementary information, such as: She excelled academically that semester, she doesn’t seem distraught when discussing it, her teachers report she seemed fine, the accused is polite and respectful to his swimming coach and other authority figures, the accused is known for making rape jokes and other misogynistic remarks. For each piece of supplementary information, hearers disagree about whether it is significantly probative to qualify as significant, specific, additional evidence. Some hearers perceive it as having little or no import, and so consider the case a ‘she said, he said’; other hearers judge the information epistemically significant, which precludes a ‘she said, he said’ case. A widespread, albeit dying, rape myth holds that polite, respectful men do not characteristically commit rape. Subscribers to the myth regard the accused’s apparent politeness to be significant evidence against the accusation. Others demur. Aside from the reputation for rape jokes, the supplementary information listed above is, if deemed probative, seen as counting against the accusation.

Thus, background beliefs influence whether we characterise a case as a ‘she said, he said’ case or as conflicting testimony supplemented with significant specific evidence. And these background beliefs influence how we evaluate the total evidence. These two roles are so intimately linked that there is a trap. The trap is categorising cases as ‘she said, he said’ only when the perceived odds are approximately balanced. When asked to think of paradigm examples of ‘she said, he said’ cases, we instead focus on cases about which we are undecided. They draw our attention; out thoughts return to them. The evidence seems to pull in both directions and so the question is not settled. These cases come to mind because unresolved, and they present themselves as emblematic ‘she said, he said’ cases. But, I aver, such cases are not typical ‘she said, he said’ cases (and arguably do not even qualify). We are torn about those cases because we perceive (rightly or wrongly) significant specific evidence against the accusation. We mistake the linguistic balance of the expression ‘she said, he said’ for epistemic balance. We aim to think of a paradigm ‘she said, he said case’, and we instead think of a case of accusation and denial supplemented with additional information that—in our estimation, at least—tips the balance towards epistemic parity. To avoid the trap, we must instead think of genuine, legitimate ‘she said, he said’ cases—cases of bare accusation and denial—and then investigate their epistemic balance. The trap is instead focusing on cases we deem epistemically balanced, or that we don’t know how to adjudicate, and dubbing them paradigm ‘she said, he said, cases.

4. Base Rates and Prior Probabilities
We are examining the role of background beliefs in determining what a person deems a ‘she said, he said’ case and how they evaluate the balance of the evidence. What one antecedently considers typical, common, likely, and possible makes an enormous difference. In this section I focus on accusations; we can set aside denials. The following content is a little tender; you may want to make yourself a cup of tea.

Consider the claim ‘my dad raped me’. Some hearers antecedently believe such crimes are extremely rare; for these hearers, the speaker’s claim has a low prior probability. They may concede such crimes happen ‘elsewhere’, but deny it happens in their area. People like ‘us’—whether that is rural, urban, professional, educated, God fearing, conservative, progressive, Midwestern, or similar—don’t do this. Given this background assumption, the speaker claims something extremely surprising and abnormal. To believe the assertion, the hearer must allocate significant credibility to the speaker. For those hearers, it is epistemically akin to hearing testimony like ‘I have only eaten fruit, nothing else, for three months.’ You can believe this based on a person’s testimony, but it requires assigning a lot of credibility
to the speaker. Uncorroborated assertion might not suffice for you to judge it more likely than not.\footnote{Cf. Hume (1748: § 10: Of Miracles).} A second hearer might antecedently believe incest is relatively common. Here, for example, is an abstract from Noami Wolf’s *The Beauty Myth*:

According to [various studies cited by Wolf] 44 percent [of San Francisco women] had survived rape or attempted Rape... 88 percent of those knew their attacker, and 1 woman in 7 had been raped by her husband or ex-husband... 15.6 percent [of Dutch middle-class, educated women] had been sexually abused by relatives, 24.4 percent had been sexually abused as children by nonrelatives, and 32.2 percent had forced sexual experiences before age sixteen... In Canada, a woman in 4 will have her first sexual experience under conditions of force, at the hands of a family member or someone close to the family. In Great Britain, 1 wife in 7 is raped by her husband. [Among] London women... 1 in 6 had been raped and 1 in 5 had fought off attempted rape... Women’s experience of violence from their lovers is epidemic...

Child sexual abuse, of course, links sex to force very early in a quarter to a third of the female population. Kinsey found in 1953 that nearly a quarter of the 4,000 women he surveyed had survived rape or attempted rape by adult men when they were children. Diana Russell’s survey found in 1987 that 38 percent of women had been sexually abused by an adult relative, acquaintance, or stranger before age eighteen; 28 percent had been sexually abused before age fourteen, 12 percent by someone in their family... [In a US] poll... 22 percent of those questioned had been sexually abused as children; of the women, 27 percent. [In the poll] 1 man in 10 acknowledged that he had [sexually abused a child]. Worldwide, research culled from countries as diverse as Australia, the United States, Egypt, Israel, and India suggests that one in four families is incestuous; in 80 to 90 percent of those cases, girls are sexually abused by a male relative, usually fathers. In Cairo, between 33 and 45 percent of families had daughters who had been sexually abused by a male relative or family friends; Kinsey found incest in 24 percent of American families, a figure that is consistent with the numbers in Australia and the United Kingdom... Debbie Taylor... suggests that as many as 100 million young girls “may be being raped by adult men—usually their fathers—often day after day, week after week, year in, year out.” The numbers are staggering... Wolf (1990: 159ff.)

A person who affirms such statistics as even remotely plausible will not view an assertion like ‘my dad raped me’ as stating something antecedently implausible. The speaker has no barrier to being believed; one need not afford her her high credibility to believe her assertion. With such base-rate beliefs operating in the background, one need not afford the speaker much credibility to deem the claim more likely than not. Epistemically it is akin to asserting ‘I am vegetarian’, which is commonly enough true to be readily believed. As above, it does not matter for the epistemological point which background beliefs are more accurate. What matters is their epistemic potency.

This essay focuses on acquaintance rape; conflicting testimony characteristically concerns whether the sex was consensual or whether it occurred, rather than the identity of individuals involved. Typically when someone tells me about an acquaintance rape they offer very few details, and I don’t ask. In particular, they do not supply details about ‘how’ the crime occurred. In written accounts—blogs and newspapers—people are more likely to offer some such details. But even then, rarely.

Wondering ‘how’ such crime occurred itself manifests an epistemic stance, namely that suffering acquaintance rape is puzzling and demands special explanation. This perspective is likely implicit and unacknowledged, but can nonetheless be potent. The question asks ‘How could it have happened?’ or even, ‘How was it possible?’, and the answer sought is something like unconsciousness. To better see the implicit stance, suppose during an anecdote about driving the speaker says ‘I was speeding’. A hearer wonders ‘How?—what happened?’ The hearer’s response is intelligible only if the hearer’s attitudes include that speeding demands special explanation—the person was running late or their speedometer broke. For most hearers, they would not think to wonder ‘how?’ about speeding; they lack the assumptive preconditions underwriting the question.
There are several common ‘modes’ of acquaintance rape—answers to this oft-considered ‘how’ question. The speaker might supply such details. They might say, for example, I was unconscious, I blacked out, I was asleep, I fought back but was overpowered, I froze, I was drugged, I didn’t know he was inside me. Hearers harbour different background assumptions about these circumstances. A hearer might implicitly believe—through experience, science, prejudice, or assumption—that a person would not remain asleep during rape. Given this belief, the accusation—augmented with the additional information about ‘how’—attests to something regarded implausible or even impossible. The probability of the rape remains, in their estimation, below a preponderance of the evidence. Or one might believe—through experience, science, testimony, or similar—that it can easily happen, and so the supplementary details do not render the claim implausible.

During the #MeToo movement, which started in Autumn 2017, social media users articulated their experiences of sexual violence. On a Facebook thread, a woman described,

I thought I would have just punched him too… until it happened. [Ellipsis in original]

Underneath a second woman wrote,

I thought this way years ago. I have two older brothers and know how to fight back. If it happened to me, I was sure I’d fight.

But when it did happen, I didn’t react at all how I thought I would. You never really know until it’s actually happening. [Formatting replicates original.]

The writers attest—powerfully and articulately—to their experience of coming to realise their convictions about how they would respond were false. The writers describe presuppositions about their own dispositions; people also harbour similar presuppositions about other people’s psychology. People regarded the freeze response as abnormal or implausible, for example.14 Suppose someone shares their story of sexual assault. She describes, ‘He grabbed my breast. I froze.’ A hearer might assume this narrative is implausible. It conflicts with their antecedent convictions about human behaviour. But someone whose insight includes the reckonings described above might instead evaluate the narrative as perfectly in accord with their understanding of human behaviour.

Background beliefs about what is normal, common, and likely, thus have an enormous influence on how rape accusations are evaluated. These background beliefs, and their potency, can be pernicious in large part because implicit. Because they are background beliefs they are not typically acknowledged, ventilated, assessed, or even recognised. People might doubt a rape narrative because they implicitly believe a rape victim would not remain asleep. But they do not realise this is the source of doubt; they instead think they detect weakness in her credibility, for example. And they fail to appreciate that their implicit belief has not been evaluated for truth. A crucial way we test beliefs is by noticing them and airing them to ourselves and others. Implicit background beliefs can be pernicious because potent yet unevaluated.

The foregoing suggests a source of epistemic injustice about rape accusations. A non-feminist way of acknowledging rape is common holds that rape is characteristically committed by strangers. It

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14 If people can be radically wrong about their own dispositions, as the Facebook writers exemplify, this suggests even more room for error when presupposing how others would respond.
prescribes that women take taxis, for example, and not walk alone at night. Feminist perspectives acknowledge the prevalence of acquaintance rape. But a person might endorse this yet harbour implicit doubts about all or many of the modes. Accordingly, if any details are offered—such as those listed above—it triggers doubt. I suspect this is somewhat common and cognisance of this partially explains why rape victims so rarely provide any details that address ‘how’.

Other factors contribute to this (wholly reasonable) reticence, of course. It is a private experience, and can evoke shame. The details can be painful to recall, and such details can fuel victim blaming. But I think this is at least a partial explanation: Victims notice that supplying information about the ‘mode’ sparks doubt; people harbour ungrounded, unacknowledged, and untested background beliefs according to which many or all such ‘modes’ are implausible.

5. Incentives
In sections three and four I examined the role of background beliefs in evaluating ‘she said, he said’ cases, including how they inform which cases of competing testimony are regarded as ‘she said, he said’ cases. These sections primarily aimed to explicate ‘she said, he said’ cases, and so illuminate the meaning of claim two. Secondarily, the sections motivated the truth of claim two by, for example, intimating that some putative counterevidence against an accusation is spurious. I now turn to direct arguments for claim two.

When assessing competing testimony, we should evaluate two questions: Is there a significant difference in evidence between the testifiers? And is there a significant difference in incentives to lie? These questions correspond to the two main causes of false assertion, namely false belief and insincere assertion. I first examine incentives to lie. I then look at track records in section six. In section seven I turn to common differences in evidence.

Some brief comments about how empirical claims fit with the ambition of this essay: Some of my arguments invoke disputed empirical claims about, for example, crime rates and false accusation rates. But, I aver, they do not rely on empirical claims about which there is reasonable disagreement. Empirical research might indicate that around 8% of rape reports investigated by Title IX offices are false, for example. And people might contest the precise number. But my arguments rely only on far more coarse-grained claims, such as that the figure is less than 20%, for example. Such coarse-grained claims are on firm ground. Secondly, note I cannot satisfactorily evaluate these empirical claims directly here; doing so lies outwith the scope of this essay. This essay aims to explain five claims and motivate that they are plausible but inconsistent. Empirical data support claim two. Readers might dispute these data in an effort to reject claim two. I think rejecting claim two is a mistake, but the central ambition of this essay is to raise and motivate the paradox; I do not in this essay aim to persuade readers who are keen to dispute claim two.

First, consider accusers’ incentives. Needless to say, this depends on context: Whether the accuser talks to friends, posts on social media, reports to police, and so on. The most relevant context for this essay is Title IX investigations and the conversations that lead to them; I focus on those. In what follows I concentrate on accusations—rape reports that identify an individual—rather than non-directed rape reports, which are rape victimisation claims that do not identify a suspect. (I return to this distinction below.)
A significant incentive operative in many such contexts is to not speak.\textsuperscript{15} Accusations are costly, whether true or false. It is a painful process. Rapists are often someone close to the victim—relative, friend, colleague, professor, or senior figure—and often enjoy perceived power and impunity on campus, such as a valued sports player.\textsuperscript{16} There are often repercussions, or fear of repercussions, including professional consequences. This is no coincidence: Assailants select victims in part for this property; it contributes to the prevalence of rape. Accusers risk acquiring a reputation as a troublemaker, and face the unappealing dichotomy of being known either as rape victim or liar. Both involve stigma and shame.

The reality of these costs is reflected in the narratives of those who regret reporting rapes to university Title IX offices and in the widespread advice to not report rape to institutional authorities. This advice is forcefully articulated by Law Professor Martha Nussbaum (2016),

And if you ignore my sage advice [to never date famous men] and encounter trouble, move on. Do not let your life get hijacked by an almost certainly futile effort at justice. Focus on your own welfare, and in this case that means: forget the law.

Further evidence for the costs of speech is the low reporting rate to legal authorities. The \textit{Campus Sexual Assault Study} (Krebs et al., 2007) found that only 2\% of incapacitated rape victims and 13\% of forcible rape victims reported the crime to campus security or local police. (Acquaintance rape is less likely to be reported than stranger rape. Since campus rape is disproportionately acquaintance rape, even relative to society at large, this partially explains why campus rape is less likely to be reported than non-campus rape. Note also that research suggests acquaintance rape accusations have an even lower falsity rate than stranger rape claims.)\textsuperscript{17}

Many of these costs are higher if the accusation is false. To the extent that costs are lower with false accusations, it is because false accusations tend to be dropped sooner, usually within a few days. (I return to the characteristics of false rape accusations below.) In short, significant incentives for the accuser press towards not speaking, rather than lying.

What about the incentives to speak? That is, what motivational features characterise assertions, rather than silence? Recall the accusation comes first. The denial, if issued, is precipitated by the accusation. So what causes the accusation? In many cases, rape.

Rape by itself does not normally suffice. Other causes include the topic arising in a conversation that is perceived as non-hostile, the victim’s judging she is likely enough to be believed, and feeling socially secure enough for an accusation to be heard. Other causes include an anticipated change in the assailant’s social position, such as running for public office, being promoted, or dying. Motivations for true accusations include not wanting to share educational contexts with their assailant, aiming to protect others from him, hopes to see justice served, and so on.


\textsuperscript{16} Ullman, Karabatsos, and Koss (1999); Fisher, Cullen, & Turner (2000); Krebs et al. (2007).

\textsuperscript{17} Lott, Reilly, & Froward (1982); Fisher, Daigle, Cullen, & Turner, 2003); Krebs et al. (2007: pp. xvii and 5-22).
What about false assertions? Here we must return to the distinction between rape victimisation claims that do not name or otherwise identify a suspect—non-directed rape claims—and those that accuse an individual. Only the latter are false accusations, since the former do not accuse an individual.\footnote{They can, of course, lead to accusations against individuals. A resulting investigation can erroneously target a suspect.}

Incentives to falsely accuse an individual loom large in the public imagination. The scorned lover, and those pursuing money, fame, or a political agenda. Such public imagery fuels the spectre of false accusations. Research suggests, however, these imagined motives are rarely operative.\footnote{Kelly et al. (2005), Newman (2017).} Instead few false rape claims are directed accusations; most are undirected. This is because their motivations are not served by naming a suspect; self-interested incentives advise against doing so. They are caused by, for example, teenagers missing a curfew or being pregnant. False accusations have distinctive traits: Around half are submitted by third parties, usually parents. They feature gang rapes, weapons, and kidnapping. The claimant often has a history of crime, similar fabrications, and mental health problems.\footnote{These features likely correlate with rape victimisation, however, and so should not be used to disregard rape claims.} False claims usually concern physically violent, forcible rape. Another common feature is they target police officers or other government workers, because of a financial motive. In short, the rape claims deemed false by police do not normally resemble acquaintance rape accusations. As Newman (2017) vividly writes,

Neither are false accusations the result of miscommunications taking place in a murky world of casual hook-ups and heavy drinking. False accusers almost never tell stories that could, by any stretch of the imagination, be seen as an innocent misunderstanding. In a study of false rape claims made to the Los Angeles Police Department, 78% involved claims of aggravated rape—assaults involving a gun or knife, gang rapes, and/or attacks resulting in injuries.

When a woman says she’s been brutally raped by seven men at a public party on a bed of broken glass, as the UVA accuser did, and when that woman has a history of strange lies, as the UVA accuser also did, there’s nothing wrong with being skeptical. But if a woman without any history of dramatic falsehoods says she went home with a man and, after they’d kissed a while consensually, he held her down and forced her into sex—in the absence of compelling evidence to the contrary, you can just assume it’s true. This is not because of any political dictum like “Believe women.” It’s because this story looks exactly like tens of thousands of date rapes that happen every year, and nothing at all like a false rape accusation.

We can set aside Newman’s exhortations concerning skepticism and belief; they are likely too simple. But the distinction she draws is important. Some people have incentives to make false rape claims. But typically these motives push towards undirected claims, rather than directed claims. We can remain misanthropic and still see the error of doubt: focusing on the accuser’s self-interested incentives suggests acquaintance rape accusations are likely true.

Perversely widely-held conceptions emphasise motives to lie as being distinctive of acquaintance rape accusations, rather than stranger rape claims. This is exhibited by the epistemic reasoning of these two British police officers, interviewed in July 2002. (Kelly, 2005, p. 51.):

\begin{quote}
We have a lot of allegations that [h]e says it’s consensual and she doesn’t, or they’ve been together for like hours beforehand, she’s gone back to his flat … But stranger rape, you immediately start to think “Oh God, this could be a real proper sort of drag you in the car,” absolutely nothing beforehand’s happened. I think subconsciously you would consider it more serious … I think I’d have more belief in the victim, that was saying it was by a stranger, that … it was a proper rape, rather than perhaps someone who said “It’s my ex-boyfriend, he came round”, ’cause then you start to think things like “Oh, she’s just getting back at him now.”
\end{quote}
Well, honestly, it’s because most of them are not telling the truth … I think what happens to a lot of adults is they may have consensual sex with somebody, they get found out by their husband, partner, whoever, they then say “Oh but I didn’t consent” as a way of getting themselves out of that trouble … I mean I have dealt with hundreds and hundreds of rapes in the last few years, and I can honestly probably count on both hands the ones that I believe are truly genuine.

We turn now to motivations concerning denials. Denial is a response to prior accusation. Many accusations are not conveyed to the accused; the accused never learns about the accusation. Once they learn, there are three options: Denial, silence, or concurrence. The incentives, if one speaks, point strongly towards denial. One can face significant consequences if one affirms. The consequences include prison, unemployment, expulsion, and so on.\(^\text{21}\) Denial is a sensible strategy, since it leaves open the option to later admit. It is far less effective to affirm and then later deny.

Reflect on a serious error you made at work or within your family that people do not know about. Really: Do it. It is uncomfortable, but very little about this essay is comfortable. Suppose you judged that if you lied and denied it, there is a very good chance you would be believed, and you would get away with it. In fact, many of those close to you likely want to believe your denial. Their life is easier if you deny—your boss would rather avoid the trouble of knowing about the error; your parents hate to think poorly of you… I think many of us feel the pull. The incentives to lie are strong; human nature responds to those incentives.

Lying denials are likely to be taken seriously, at least by those close to the denier. This fuels the incentive to issue lying denials. A person might lie, knowing that many won’t believe the denial, but knowing his denial allows a few people—close family and friends—to maintain credence in his innocence. This incentivises denial.

I described above the silence-to-speech alchemy exhibited when people assume the accused issued a denial, and so project one onto his silence. This tendency itself implicitly acknowledges the enormous incentives to deny. We know that, whatever happened, the accused has strong inclinations to deny. Social discourse focuses on the accuser’s perceived incentives to lie. But notice that—assuming most accusations are true—the denier has incentives to lie in most cases. If most accusations are true then, given that denials follow accusations, incentives to lie is a typical precondition of denial.

6. Track Records
One might question whether most accusations are true. This brings us to track records. The relevant track records concern the proportion of truth and falsity amongst assertions of the relevant kind. These track records are starkly different.

In what follows, I make empirical claims. As noted above, I believe the broader ambitions of the paper, such as motivating claim two, do not rely on empirical claims about which there is reasonable disagreement. Some readers might nurture doubts about claim two; convincing such doubters would require its own paper. Also, as noted above, the central ambition of this essay is to layout a paradox; this ambition can be met even if some readers maintain that denying claim two is the best solution to the paradox.

\(^\text{21}\) Bad consequences are likely overestimated. Few people are convicted of rape or suffer significant long term social or professional consequences. But those who concur with the accusation might, on average, suffer worse consequences than those who deny, which incentivises denial.
First, let’s consider the relevant track record for accusers; since we are evaluating ‘she said, he said’ cases, they must be accusations that lead to denials. Let’s home in on the track record of those: \(^{22}\) Most rape victimisation claims are true. A minority are false. Of those false ones, most fit the patterns described above: A teenager’s excuse for lateness or pregnancy, or a violent narrative about being attacked by strangers in an alley. These narratives usually do not identify an individual. \(^{23}\) They are undirected, rather than directed, claims. Of the false claims that name a person, many are dropped so early that the accused person never learns about it. Here are some numbers:

These data are not specific to Title IX contexts, but the largest ever study of rape accusations, the Home Office Research Study 293 found that of 2,643 claims made to the police, 216 (8%) were classified as false as by the police. The study questions some of these official designations as false claims, since many such designations are on spurious grounds such as mental health problems, drugs, and alcohol. The authors suggest the rate of false accusations might be nearer 3%. \(^{24}\) Of the 216 officially classified as false, only 126 reached the stage of a formal complaint. Only 39 named a suspect. Acquaintance rape accusations—which are characteristic of ‘she said, he said’ cases, are more likely true than stranger rape claims. I do not know what percentage of those 39 named suspects learnt they were named. This is a significant figure for the track record of ‘she said, he said’ cases, because the accused cannot deny an accusation unless he learns of it. Of those 39, only six cases led to an arrest. Of those, only two led to formal charges before being deemed false. Documented within the Home Office study, the same number—two people—were charged with perverting the course of justice for making a false accusation. \(^{25}\)

The numbers indicate that whilst the rate of false claims about rape is low, the rate is even lower for false accusations that identify a suspect. That is, rape accusations are more likely to be true than non-directed rape claims; acquaintance rape claims, in particular, have high truth rates. In short, ‘she said, he said’ accusations have good epistemic pedigree.

These numbers—two charged for rape and two charged for making a false accusation—somewhat challenge the concern about men languishing in prison from false accusations of rape. I do not want to dismiss outright the risk of false accusation—claim four takes seriously this risk—but I do believe it is overstated.

As noted above, false accusations have distinctive traits. They typically look nothing like acquaintance rape accusations. The track record of the relevant assertion kind—directed rape accusations, where the accused learns about the rape and replies—have a high truth-to-falsity ratio. I will not attempt to estimate the rate, but I’d wager more than 90% of such accusations are true. Indeed, I am confident

\(^{22}\) To see why we should focus on the track record of the relevant subsets of rape claims, rather than all rape claims: Suppose, counterfactually, that non-directed rape claims constitute the majority of rape claims and all of them are false. This is consistent with all directed rape claims being true. And so ‘she said, he said’ claims can constitute compelling evidence for rape even if most claims about rape are false.

\(^{23}\) Kelly et al. (2005: 49).

\(^{24}\) Kelly et al. (2005: 49-52), Jordan (2001) studied 164 police files documenting rape investigations in New Zealand. The files covered all cases, not just accusations designated false. She found three cases that had been designated false, which subsequently turned out to be early reports of serial rapists.

\(^{25}\) And in six cases, advice files were submitted to the Crown Prosecution Service, an action taken to prepare for charging the accuser with perverting the course of justice. Women are increasingly articulating their fears of facing legal sanctions for making false accusations after reporting a rape. See, for example, the horrifying experience of Marie Adler, on whom Netflix’s Unbelievable was based.
it is above 99%. But, as emphasised above, this essay lacks space to fully engage with the relevant social statistics. Compare this to the other crucial base rate: What percentage of ‘she said, he said’ denials are false? Plausibly, most denials are false. Evidence for this includes that most accusations are true, and there are strong motivations to deny regardless of the truth.

Some readers might bristle—aren’t I assuming that most denials are false, and isn’t this the crux of the debate? In response, firstly let me re-emphasise that readers keen to deny claim two may remain unconvinced. Secondly it is worth emphasising: Even if you assume that most accused men reply truthfully and so admit to rape if guilty, still (given plausible assumptions), if you hear a denial it is probably false. This may seem counterintuitive, but let me explain. Suppose one in a hundred ‘she said, he said’ accusations are false. Assume accused men tend to be honest. Say, nine times out of ten, if a guilty man is accused he will admit it. Only one in ten will lie and deny it. This assumption is clearly fictional, and almost certainly overstates the honesty of rapists. Suppose you hear a ‘she said, he said’ denial. Given these numbers, the denial is 90% likely to be false. These numbers illustrate that one can maintain that accused men tend to be honest, and yet nonetheless, denials are likely false. This is because of the original base rate—accusations are very likely true. Failing to recognise this commits the statistical fallacy of base rate neglect.\(^{27}\)

These numbers are fictional, and serve only to illustrate that the base rate fallacy applies to reasoning about rape accusations; those who doubt claim two because they concentrate on the perceived honesty of the accused commit a statistical fallacy; they neglect the base rate of truth and falsity amongst accusations.

I believe we witness a related informal error. Doubters focus on the fact that a serious wrong is being accused: Doubt is fuelled by the precept that we should be cautious when accusing someone of wrongdoing; the topic is serious. They are doubtful that the accused would do such a thing. But they thereby overlook features pertaining to the accuser. By harbouring doubts, they thereby suggest the accuser is committing a serious wrong—false accusation, lying about a serious topic, attempting to destroy someone’s reputation, perhaps even perjury. But this suspicion of wrong—accusation by the doubter—is overlooked. This error differs in significant ways from base rate neglect. But its similarity is sensitivity to the normativity of the accused—his integrity, his probability of honesty, and moral character—and neglect of those traits in the accuser. In both cases, this attentional imbalance fuels doubt.

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\(^{26}\) The falsity rate for all species of rape victimisation claim is believed to be about 2-8%. As argued above, acquaintance rape accusations where the person learns of the accusation have a lower falsity rate. Ferguson and Malouff (2016).

\(^{27}\) One can play around with the numbers: One can include silence as an option, for example, and derive similar figures. Suppose that 1% of accusations are false. And suppose 50% of accused men remain silent. And suppose truly accused men, if they speak, tend to be honest and admit it. Suppose they are four times more likely to truthfully admit than to falsely deny. Still, a denial is 90% likely to be false. Perhaps you bristle at the illustration’s assumption that 99% of accusations are true. Suppose instead that 90% of accusations are true. And, again, suppose that most truly accused men tend to honestly admit their crime: Two thirds of accused rapists admit it, and only one third lie and deny. (This is still an implausibly high honesty rate, given the incentives.) Still, 75% of denials are false. Suppose, and this is highly improbable, that accusers and deniers lie at the same rate. Still a denial is 50% likely to be false. Denials tend to be given far too much weight. Partly this trend is fuelled by ‘himpathy’ and misogyny; partly this simply commits the base rate fallacy. (Cf. Manne (2018) for discussion of ‘himpathy’.)

\(^{28}\) In some cases, to be fair, the doubter thinks the accuser is mistaken rather than lying. Ichikawa (ms) and Crewe and Ichikawa (forthcoming) insightfully articulate how doubt, rather than belief, is seen as cautious and safe. But this instinct favours conservatism and the status quo. They emphasise that when assessing rape accusations, doubt is not neutral.
When we compare the two base rates—the percentage of directed accusations and resulting denials that are false—the difference is striking. Plausibly, false denials are the expected, normal, typical, most common response. They are both statistically common, given the base rates and also the most normal, given the incentives and human psychology. False accusations, especially ones that generate ‘she said, he said’ cases, are strange, rare things that need explaining by appeal to abnormal features.

Claim two holds that in ‘she said, he said’ situations, given the evidence typically available, she is more likely to be telling the truth. For the base rates to support claim two, they need not be extreme. It need not be 99% or even 90% of ‘she said, he said’ cases that have true accusations. The preponderance of the evidence is a low bar; it only requires more likely than not.

I should note that track records are not independent from incentives to lie. Incentives to lie generate track records, for example. It would thus be double-counting to treat section five as providing a case for claim two over and above section six. Instead they are two ways to motivate and layout the same idea: An objective, impartial, intelligent, informed assessment of the evidence in ‘she said, he said’ cases favours that the accusation is probably true. Claim two holds.

7. Evidence
I noted at the beginning of section five that if two people disagree we might adjudicate this by examining differences in incentives to lie and in quality of evidence. Section five considered incentives to lie. I now turn to differences in evidence. The evidence available depends, of course, on the details of the case. I describe some systemic differences.

The accused might have hermeneutical blocks that prevent his recognising his behaviour as rape. The mental blocks protect his self-conception as not monstrous or as simply not a rapist. He thereby maintains a false belief that he did not rape. Similarly a conception of rapists as exclusively or prototypically strangers in dark alleys, armed with weapons, or serial offenders might impede self-recognition as a rapist; he does not fit these stereotypes and so does not label his actions as rape.

Similarly a rape victim might fail to realise she was raped. She might have been unconscious throughout or have hermeneutical blocks preventing her from acknowledging her experience as rape. Such causes can interact: Unconsciousness enables the hermeneutical blocks. Such hermeneutical blocks are likely more common than is recognised in the public imaginary. The truth remains inconceivable or the victim never joins the dots to realise what—given her evidence—is manifest. Or her mind never visits the question, and so never allows the belief to form. How prevalent such blocks are is a question for psychology and social science. I will make three comments as an epistemologist.

Firstly, ordinarily epistemology condemns such failures to believe as marginal and irrational. In so doing it arguably perpetuates the rape myth that people who have been raped straightforwardly

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29 Some might advocate the following strategy to reduce the prevalence of this mental block: dismantle the conception that anyone who commits rape is thereby monstrous. Yap (2017) discusses epistemic costs of this conception, although not with regard to rapist themselves failing to realise they committed rape.


31 Pitts & Schwartz (1993) begins ‘Research has found that approximately half of women who report an experience that meets the legal definition of rape do not label it rape.’ Fisher, Cullen, & Turner (2000).
recognise this fact. Epistemology paints such inference as relatively straightforward: If S knows she was penetrated by R, and S knows this is not something she would ever consent to, for example, then S believes she was raped by R. Variations from this normative standard are not discussed, which may obscure their prevalence. Mainstream epistemology certainly never considers such failures of belief formation as rational. Secondly, the #MeToo movement might well impair victim’s ability to sustain these mental blocks. The movement has authored significant social and hermeneutical progress and is indubitably a powerful force for good. But it has costs, including especially emotional labour for victims of sexual assault. Arguably one cost is dismantling the collective and personal ignorance that sustains these useful or necessary hermeneutical blocks.\(^{32}\)

Thirdly, testimonial injustice is often glossed as a speaker suffering credibility deficit due to an identity prejudice on the hearer’s part.\(^ {33}\) This raises the question of whether a person can suffer testimonial injustice from being afforded credibility excess. We can harm the speaker, certainly, through credibility excess. We might express insufficient skepticism or fail to correct their errors. The speaker becomes overconfident or retains false beliefs. But what about wrongings through credibility excess? Lackey (ms) offers an example: Defendants who confess to a crime and later recant. Lackey argues that their earlier assertion—the confession—is assigned too much epistemic weight, and this qualifies as testimonial injustice.

I offer a further example of testimonial injustice through credibility excess: Our widely-held conception holds that rape victims immediately believe it. This is a large part of why an accuser’s being friendly to the accused is regarded as significant, specific evidence against the accusation.\(^ {34}\) If this widely-held belief is false—if failures of belief are not uncommon—this misconception can constitute testimonial injustice through credibility excess. Individuals are taken to be reliable believers when they are not. This credibility excess can itself impede the victim’s coming to realise, since the victim absorbs this self-conception. The credibility excess undermines uptake of the victim’s later accusation, since her intervening friendliness is seen as evidence of mendacity. Acknowledging this, she may choose to refrain from accusing.\(^ {35}\) Her past ignorance is erroneously taken to be knowledge, which undermines the victim’s later perceived credibility.

Thus victims, like rapists, can also suffer powerful hermeneutical blocks. But notice that such blocks on the victim’s part are false negatives: She believes she was not raped when she was. Such false beliefs do not result in accusations. This contrasts with the rapist’s hermeneutical blocks, which underwrite false denials. If a person thinks she was raped, these evidential failures do not apply. If a person thinks she was raped, her evidence is probably very good.

\(^{32}\) Note here I am emphasising that ignorance might be valuable. The #MeToo movement also affects the hermeneutical blocks of rapists.

\(^{33}\) McKinon (2016), Fricker (2007), Jose Medina (2013). Note that undue doubt endemic to rape accusations centres on a kind of assertion content rather than membership in a social group. Cf. Ichikawa and Crewe (forthcoming); Ichikawa (ms).

\(^{34}\) As described in section three, there are other reasons a victim might be friendly afterwards, including self-preservation and a rational response to social forces.

\(^{35}\) Cf. testimonial smothering in Dotson (2011). The widespread conviction that victims are easily able to recognize that they have been raped also means people do not perform the potent hermeneutical activity of labelling it for victim. In some cases, a friend saying ‘your experiences seem to be an example of X; does that label seem to fit?’ where X is abuse, sexual exploitation, gaslighting, trauma, date rape, sexual harassment, or similar. The labelling by another invites the victim to apply the label to themselves, supplies permission to do so or helps them realise the label fits.
There are some counter-instances. That is, there are rape accusations stemming from the accuser having poor evidence and resulting false belief. These include cases where the accuser’s self-conception is inconsistent with having consented. Perhaps she sees herself as someone who would never willingly have a one-night-stand, extra-marital sex, gay sex, or interracial sex, for example. These self-conceptions, perhaps combined with alcohol, may lead a person to falsely believe they were raped. In such cases, the accuser may have better evidence: They remember the consent.36

In section three I described interplay between (i) what counts as a ‘she said, he said’ case, as opposed to cases of competing testimony with significant specific additional evidence, and (ii) how one evaluates the evidence in such a case. One might worry whether ‘she said, he said’ cases can be precisely delineated. The boundary between ‘she said, he said’ cases and testimony augmented with significant supplementary evidence might be vague. And one might worry whether any case is strictly a ‘she said, he said’ case, since other evidence always bears on our interpretation of testimony.37

In response, I suggest that we do not fret too much about precisely what qualifies as a ‘she said, he said’ case, and precisely how to limn those boundaries. Instead we can focus on normal, everyday real-life examples of competing testimony without significant specific additional evidence. (And we should take care to avoid the trap described in section three.) In those cases, I submit, probably the rape accusation is true. Claim two holds.

Doubt mongers ask, ‘Where is her evidence? We only have her say-so.’ They suggest—sometimes explicitly—that absent corroboration or further evidence we have no idea what happened. This stance treats the competing testimony as laying outside the epistemologically evaluable. But once we take a more impartial, objective, evidentialist stance, and so evaluate the testimony as we would other evidence, we see that the total evidence favours the accusation, and quite considerably. Indeed, this epistemic favouring is so strong, it calls Claim A into question. Accusations enjoy such good epistemic pedigree, that by themselves they can satisfy the preponderance of evidence standard (at least as the standard is glossed by claim one). But this seems in tension with our liberal ideas of a fair and secure society—that one person’s word, in a case where no exonerating evidence can come to light absent their change of heart, suffices for considerable consequences, such as firing or expulsion.38

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36 Black, trans, and queer individuals may be particularly at risk of false accusations from these kinds of false accusations.
37 People suggest to me that Title IX investigators, and other ‘she said, he said’ evaluators, have demeanour evidence, for example. But notice this is good evidence for truth telling only if people have a reliable sense of what sincere rape accusations and denials characteristically look like. Does the speaker appear ‘too’ calm, agitated, and so on? I am doubtful that we can assess this reliably. Such cues might be anti-reliable if, for example, we erroneously perceive signs of mendacity in the fidgeting and hedging characteristic of woman’s gendered communication style and the distress of describing rape.
38 As documented by the research of Nicole Bedera (The University of Michigan), the actual consequences for those found culpable in Title IX proceedings tend to be low—not often leading to firing or expulsion—but claim three holds the consequences should be high.
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