

# Chapter 3

## Beyond Rape Myths: The Role of Cultural Narratives in English Sexual Offences Trials



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### Introduction

The notion that we live in a ‘rape culture’—that is, a culture that normalises, minimises, justifies, and excuses sexual violence—has gained significant traction in the twenty-first century. ‘Rape culture’ is a term that seems to have first emerged in the 1970s through feminist activism (see, e.g. Herman, 1979) to describe the cultural acceptance and normalisation of sexual violence against women. But as Garcia and Vemuri (2017) point out, the ideas behind the concept of rape culture were not new and had been recognised within the politics of suffragists. Suffragists recognised the role of patriarchal culture in the normalising and excusing of violence against women, and they critiqued the law and the courts in relation to rape (Garcia & Vemuri, 2017). Contemporary understandings of what constitutes rape culture continue to recognise the role of patriarchal values and attitudes in rape culture (Roze & Koss, 2001), and the conceptualisation of rape culture put forth by Buchwald et al. (1993) remains in common usage today. They surmise that rape culture is:

A complex of beliefs that encourages male sexual aggression and supports violence against women. It is a society where violence is seen as sexy and sexuality as violent. In a rape culture women perceive a continuum of threatened violence that ranges from sexual remarks to sexual touching to rape itself. A rape culture condones physical and emotional terrorism against women *as the norm*. In a rape culture both men and women assume that sexual violence is a fact of life, inevitable as death or taxes...Much of what we accept as inevitable is in fact the expression of values and attitudes that can change. (Buchwald et al., 1993, p. vii, emphasis in original)

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Understanding rape culture as simply a product of patriarchy is limiting, however, and fails to recognise other systems of oppression, such as colonialism, heteronormativity, white supremacy and xenophobia and the interactions between them (Kessel, 2022). Kessel (2022) therefore suggests a reconceptualisation of ‘rape culture’ that removes the single axis focus of male domination over women and thus encourages an intersectional analysis, preferring to understand rape culture as:

A set of intersubjective and collectively reproduced myths, discourses, and practices that individuals use to assign interpretations of rape victimhood and perpetration, innocence and guilt, and power and powerlessness that, in turn, reproduce a culture that normalizes rape and other sexual violence as an effective (though outwardly condemned) way to reinforce relations of subordination. (Kessel, 2022, p. 137)

The specific attention paid to myths, discourses and practices in Kessel’s conceptualisation is especially useful in the analysis of rape trial narratives, which forms the basis of this chapter. The analysis I present herein draws on court observations of rape and sexual assault trials conducted in England in 2019, where I sought to understand the interactions between rape myths and broader cultural narratives that (re)produce pejorative ideas about gender and social class (Daly, 2022). Focusing on one of those trials as a case study, I delineate the ways in which the notion of ‘respectability’ is operationalised within the courtroom context. Specifically, I argue that middle-class ideals of respectability (re)produce, and are (re)produced by, the notion of the ‘ideal victim’, and I outline the ways in which the deeply embedded gendered concept of ‘hysteria’ is implicated within this. Ultimately, I argue that until these deeply entrenched cultural narratives are addressed, a narrow focus on solving the problem of rape myths through, for instance, ‘myth-busting’ measures, fair justice will continue to be out of reach for many victim-survivors.

## **Social Class and ‘Respectability’ in Britain**

The discussions within this chapter centre on the notion of respectability, which according to Skeggs (1997) is a primary marker by which social class is measured and ascribed. It is therefore pertinent to set out how social class can be signified within courtroom narratives, particularly because social class is not something anybody in a trial would usually be asked about directly. Social class is a persistent system of oppression in Britain, but it is not something people necessarily typically ascribe to themselves in the way that they would with, for example, their ethnicity (Roberts, 2011). Whilst there is no unified definition or way of categorising social class, it is perhaps most commonly understood in the terms of upper, middle and working classes. The working classes are often demonised and stigmatised in British society and stereotypes about people perceived to be working class abound (Jones, 2011; McLaughlin, 2021). As Skeggs (1997) argued, notions of respectability are formed from middle-class ideals and dictate the ‘standards’ to which working-class

people should aspire in order to boost their social capital and thus be taken seriously and considered ‘deserving’.

Turning to the courtroom then, social class was not directly referenced in any of the trials I observed; instead, it was subtly pointed to through barristers’ questions and the overall narratives they produced over the course of the trials, which pointed to stigmatising cultural narratives about working-class people and communities. Small details about victim-survivors’ and defendants’ lives were elicited and referenced which when taken together, and framed within the overarching trial narratives, pointed towards them being from a working-class background. The details referenced included things such as them residing in areas considered deprived, the types of accommodation they lived in, being in receipt of state welfare, and the types of (un)employment they were in (see Daly, 2022, for more detail on this). It is also pertinent to note that the victim-survivors, defendants and other witnesses in the trials were all racialised as white, positioning them as racially privileged. In the context of Britain, however, this white racialisation plays a key role in the formation of classed narratives because whiteness is salient within British working-class stereotypes, where there is a delineation between respectable and non-respectable working-class whites (Lawler, 2012; Nayak, 2019; Skeggs, 2004; Watt, 2006). Thus, the discussions within this chapter specifically relate to narratives about white British working classes.

It is crucial to point out here that identifying these classed narratives is not a comment on whether the victim-survivors or defendants were or were not working class. Indeed, the structural inequalities and systems of oppression that were reproduced within barristers’ narratives, such as social class, may not necessarily have been congruent with the lived realities of the victim-survivors or defendants. This is because characteristics of witnesses are made salient at trial without their choice when their affiliation (whether real, perceived or portrayed) to a particular group is imposed on them through the narratives employed by barristers. That is, a narrative may draw on stigmatising ideas about working-class people and encourage the jury to perceive the victim-survivor or defendant as such, even though they may not in actuality consider themselves working class. This is made possible by the combative nature of barrister conduct in the adversarial tradition (Smith, 2018), along with the controlled question-and-answer format that constrains witnesses’ ability to present a free narrative or challenge the content or manner of the questions (Brown et al., 2010; Ainsworth, 2015).

## Being a ‘Respectable’ Victim-Survivor

As noted above, the notion of ‘respectability’ is a significant marker of social class in British society. It plays a key role in gendered, classed and racialised perceptions of femininity that seep into everyday life (Skeggs, 1997), not only in Britain but across the world—for instance, Ecuador (Fleetwood, 2015), India (Radhakrishnan, 2009; Gilbertson, 2014), the Netherlands (Roelofsen & Peters, 2015), Pakistan

(Ansari, 2016), Sweden (Odenbring & Johansson, 2019) and Turkey (Alemdaroğlu, 2015). Speaking from a US perspective, Ortner (2006, p. 34) noted that ‘class differences are largely represented as sexual differences’. For some, this is understood in terms of the ‘grotesque’ body, where the ‘classical’ body is socially acceptable and reflective of middle- and upper-class values, with the ‘grotesque’ as the abjected other and target of disgust (Brown, 2005; Cocker et al., 2015). ‘Traditional’ heterosexual femininity, then, has been constructed from middle-class ideals, with respectability used as a marker by which to regard particular groups as dignified and valued whilst othering those who do not conform (Skeggs, 1997; Lawler, 2005). These are deeply embedded ideas that have a long history of maligning working-class women in Britain. For instance, Robinson (1984) historically situated these narratives in the obscuring and denial of women’s sexuality and desire, and Clark (1987) delineated the significance of classed narratives in the construction of working women as unchaste and thus unrapable. Indeed, Phipps (2009) and Anthias (2014) have both pointed to the significance of the intersections of class and gender in the context of sexual violence, and such narratives have been noted in previous rape trial observation research (Lees, 2002; Smith, 2018).

In the trials that I observed, respectability was reflected in barristers’ narratives through the notion of excessiveness. Women’s femininity has long been judged and policed in terms of excessiveness, particularly with regards to sex and alcohol (Mackiewicz, 2016) and particularly for women perceived as working class (Skeggs, 1997, 2005). The narratives in one of my observed trials demonstrated this with particular clarity, and whilst it is set out in detail elsewhere (Daly, 2022), I summarise here for context.

The trial related to two allegations of rape involving a female victim-survivor and male defendant who had been long-time friends. Both were in their late teens at the time of the alleged rapes. The defendant was ultimately acquitted by the jury on both counts. Alcohol formed an integral part of the classed and gendered narratives within the trial because the alleged rapes both took place after evenings of heavy alcohol consumption. The prosecution’s position was that the victim-survivor was passed out asleep after consuming large amounts of alcohol late into the night and therefore had no capacity to consent, whereas the defence’s position was that the victim-survivor was not as drunk as she claimed, was not asleep and had consented to sexual intercourse with the defendant. Because of this, the victim-survivor’s drinking habits were put under heavy scrutiny by the defence barrister:

Defence: *You get drunk quite often, you often can’t remember how you got home.*

*What were you drinking that night?*

Victim-survivor: *I can’t remember.*

Defence: *You can’t remember?*

Victim-survivor: *Alcohol.*

Defence: *Yes, well I got that. <chuckles> What type?*

Victim-survivor: *I don’t remember.*

Defence: *I suggest that you weren’t drunk.*

The defence’s core argument in this case was that the victim-survivor was not as drunk as she claimed she had been. It is interesting, then, that he prefaced his

suggestion that she was not drunk with a question that established that she often drank excessively to the point where she was unable to remember how she got home. Whilst it may seem counterproductive to the defence's key argument, it may not be so if it encourages the jury to form moral judgements about the victim-survivor's character. Indeed, this was bolstered further by the defence later commenting that the victim-survivor had 'developed a taste for [vodka]'. In Britain, to say that someone has 'got a taste for something' tends to indicate that person partakes in frequent consumption of or has a strong inclination/desire for something. In addition to contributing to the classed construction of excessiveness in relation to this victim-survivor's form of femininity (which I continue to delineate below), value for the defence could be found from the pejorative cultural understandings of 'excessive' substance use that position it as an indicator of a person being inherently unreliable and untrustworthy (Selseng, 2017), thus damaging the victim-survivor's credibility. Taken together, then, the defence's seemingly counterproductive argument actually helped depict the victim-survivor as a 'problem drinker'.

Add to this a digital message the victim-survivor sent to the defendant in the weeks prior to the alleged rapes, stating 'I know I have a drink problem; I get fucked all the time now'. The message was stripped of context; it was not explained nor explored whether this was a serious comment, a comment made in jest or an offhand comment. Nevertheless, the trial judge specifically drew the jury's attention to the message in her summing-up of the evidence. She said:

[Victim-survivor] says 'I know I have a drink problem, I get fucked all the time now'. We know from [victim-survivor's] mum that they spoke just before she went to bed, her mum said she sounded fine, it was a normal conversation. You may wish to consider that compared to the victim's account of struggling to walk, feeling weird, and passing out.

The victim-survivor's message was mentioned with no clear link to the issues the jury were to decide about. The judge suggested that the jury may wish to consider the victim-survivor's mum's description of the conversation that had taken place between them that night compared to the victim-survivor's account of her level of drunkenness, but this is not linked to the digital message. The statement the judge made would not help the jury in deciding whether or not there was consent. It seems, then, that the message was raised as a point to consider regarding the victim-survivor's credibility. Regardless of intent, there was no clear instruction to the jury as to how they might use the digital message in their deliberations. In the absence of clear context or instruction, this could be seen as drawing on narratives that position women who have consumed alcohol as unreliable and incredible.

Along with the questioning regarding the victim-survivor's drinking habits, evidence was adduced regarding the length of her dress and the height of her heels. The context in which this evidence was adduced and referenced by the defence could be argued relevant because the questions about the clothing were framed within the context of establishing the mechanics of how the defendant had touched the victim-survivor and the questioning regarding the height of her heels was done in the context of attempting to establish the victim-survivor's level of drunkenness. Nevertheless, drawing attention to the ways in which the victim-survivor dressed

plays into the rape myth that ‘women who wear revealing clothing have themselves to blame if they are raped’ (Workman & Orr, 1996; Moor, 2010). Crucially, snippets such as these may not by themselves seem overly damaging to a victim-survivor’s character or credibility, but in fact, they go towards building a larger picture that can be far more damaging than it seems on the surface.

Taken together, the narratives in this trial went towards building a depiction of the victim-survivor that corresponded with embedded social stereotypes at the intersection of gender and social class that position female heavy-drinkers as sexually available (Blume, 1991; Cozzarelli et al., 2002). Indeed, Riemer et al. (2018) found that by merely holding an alcoholic beverage, women were routinely dehumanised and assessed as sexually available. Furthermore, research has shown that victim-survivors from low socioeconomic backgrounds are more likely to be rated as ‘promiscuous’ than victim-survivors from higher socioeconomic backgrounds and that this is correlated with higher levels of blame and negative attitudes towards victim-survivors from lower socioeconomic backgrounds (Spencer, 2016). Indeed, victim-survivors who were voluntarily intoxicated when they were raped tend to be apportioned higher levels of blame than those who were not (Finch & Munro, 2005, 2007; ICM, 2005; Gunby et al., 2012; Schuller & Wall, 1998). It is also worth noting here that all of the witnesses in the trial were questioned by both the defence and prosecution about the victim-survivor’s level of intoxication, but there was far less focus on the defendant’s level of intoxication. This disparity reflects the double standard previously noted by Finch and Munro (2005) whereby intoxicated victim-survivors are viewed as more blameworthy and intoxicated perpetrators are viewed as less blameworthy (Grubb & Turner, 2012).

In my book (Daly, 2022), I explain how these portrayals of the victim-survivor reflect dominant media characterisations of young, white, working-class women in Britain, especially through so-called ‘reality’ TV, wherein the women are characterised as hypersexualised and sexually available through imagery of them drinking alcohol to excess and engaging in, or talking about, sexual acts (Griffin et al., 2013; Payne, 2016; Stepney, 2015; Wood, 2017). Alcohol is highly prevalent in British reality TV (Barker et al., 2020; Lowe et al., 2018), so too is highly gendered language that constructs women as objectified, sexualised beings as well as irrationally emotional (Payne, 2016). The notion of emotion management was also a significant thread throughout the trial, with the victim-survivor frequently being described as ‘hysterical’. This is a point I return to later.

Taking the narratives of feminine excess within this trial as a whole, then, culminates in an image of a young, white, promiscuous, working-class woman, who binge drinks often and who, therefore, does not conform to middle-class ideals of respectability. These narratives at the intersection of gender, social class, race and age thereby positioned the victim-survivor as unreliable and drew on victim-blaming myths about rape. Furthermore, when barristers deploy these narratives about young working-class women, the effect of any sexual history evidence that is introduced is arguably compounded (Smith, 2018). Indeed, as I delineate elsewhere (Daly, 2022), questionable sexual history evidence was adduced in relation to this victim-survivor. That alcohol can play such an easy role in the formation of narratives about the

sexual behaviour of victim-survivors is significant because alcohol is a prominent feature in many rape and sexual assault cases in Britain (Her Majesty's Crown Prosecution Inspectorate, 2007; Hester, 2013; Lovett & Horvath, 2009; Mayor of London Office for Policing and Crime, 2019). Being perceived and portrayed as a young working-class woman, then, can work as a tool for undermining victim-survivors' credibility through casting them against respectability standards and, as I set out below, the image of the 'ideal victim' (Christie, 1986).

## Respectability and the 'Ideal Victim'

To understand the links between the notions of 'respectability' and the 'ideal victim', it is first important to recognise the role and function of rape myths. Rape myths are 'descriptive or prescriptive beliefs about rape...that serve to deny, downplay or justify sexual violence that men commit against women' (Bohner, 1998 cited in Gerger et al., 2007, p. 423). Their function is to cast doubt over the suggestion that a rape has occurred, place blame on the victim-survivor and excuse or absolve the perpetrator (Eyssel & Bohner, 2008; Lonsway & Fitzgerald, 1994). Rape myths therefore serve to legitimise sexual violence against women. They stem from rape culture (Burt, 1980) and also reproduce it (Edwards et al., 2011). These myths shape what Christie (1986) termed the 'ideal victim', that is, the standards a victim-survivor must meet in order to gain the status of 'victim', to be considered worthy and legitimate and to receive compassion. Christie (1986) surmised that the 'ideal victim' is virtuous, blameless, unknown to the perpetrator and weak in relation to the perpetrator. Similar conceptualisations include Jordan's (2001) 'perfect victim', Stevenson's (2000) 'unequivocal victim' and Larcombe's (2002) 'valorised victim'. Christie identified several key attributes of the 'ideal victim', one of which was 'The victim was carrying out a respectable project' (Christie, 1986, p. 19). Thus, to be perceived as 'unrespectable' prohibits being perceived as an 'ideal victim'. Indeed, throughout his varied exemplifications of the 'ideal victim', Christie (1986) recognises the role of social class (which is key to the concept of respectability) in its construction.

Racialisation is also a factor in formulations of the 'ideal victim', with the 'ideal victim' status being more easily conferred to those belonging to privileged races. In Western societies, this ideal is positioned as whiteness and is evident across a range of contexts. For instance, in her analysis of legislation and policies named after crime victims (e.g. 'Megan's law' in the USA), Wood (2005) demonstrated that such practices have reinforced the image of the 'ideal victim' as a young, white, middle-class female. Wood (2005) also pointed out that the 'ideal victim' is aligned with who is considered a 'good woman' and 'good mother'. The ideal victim as white is also reflected through media coverage. For example, Gilchrist (2010) and Slakoff and Fradella (2019) delineated the disparate (in both quantity and quality) media coverage received between white women who go missing and indigenous and minoritised women who go missing, with white women receiving more and

better-quality coverage. Again, Slakoff and Brennan (2019) found that white female crime victims were afforded more sympathy and more coverage in the US media than were Black and Latina female victims. The privileging of whiteness in victimhood is also visible in the formation of policies responding to violence against women, as Wooten (2017) described in the context of sexual violence in higher education institutions and as has been highlighted in the UK through the *Anti-Racism in VAWG Charter* (Anti-Racism Working Group, no date). Indeed, through analysing how Swedish courts respond to victims from Roma communities, Nafstad (2019) posits that minoritised victims must be perceived to closely align with the dominant culture to be able to achieve ‘ideal victim’ status.

The ideals of respectability, then, can be seen reflected in the construction of the ‘ideal victim’; the ideal victim is white, middle-class and virtuous, and this mirrors the conceptualisation of what makes British ‘respectability’. This mirroring means that to be perceived as not respectable is to be perceived as not being an ‘ideal victim’. As is set out earlier in the chapter, this is clearly visible with regards to gendered and classed ideas about alcohol and femininity in cases of sexual violence. Not only this, but respectability is also positioned as a marker of truth (Burns, 2005). Thus, highlighting ways in which a victim-survivor does not meet respectability standards serves to damage her credibility in the eyes of a jury. In subtly casting a victim-survivor against standards of respectability, she is cast as untrustworthy, and as she is simultaneously cast against the ‘ideal victim’ standard, she is also cast as unrapeable.

## **Respectability, the Ideal Victim and ‘Hysteria’**

Du Mont et al. (2003) also noted that the ‘ideal victim’ is bound by the notion of respectability, which therefore disqualifies from victimhood those who do not measure up against the middle-class ideals of respectability. One particular example Du Mont et al. (2003) provided of a group excluded from ‘respectable’ and ‘ideal’ victimhood was women who have been ‘psychiatrised’. This reflects the long history of the pathologisation of women, where their distress has been persistently framed as madness (Busfield, 1996; Ussher, 2011). This is evident through cultural narratives about women’s innate ‘hysteria’, which became commonplace in the seventeenth century but can be traced as far back as the ancient Greeks (Ussher, 2013). Historically, ‘hysterical’ women were viewed as prone to making false allegations of sexual violence (Bourke, 2007; Jordan, 2004); thus, being considered hysterical disqualifies victim-survivors from victimhood. This is particularly pronounced in the context of the courtroom, where there have long been concerns regarding defence barristers’ use of victim-survivors’ medical or therapeutic mental health records as a means of undermining victim-survivor credibility (Ellison, 2009; Kelly et al., 2006; Smith & Daly, 2020; Temkin, 2002). These records are used to depict victim-survivors as ‘crazy’, damaged, disturbed and untrustworthy and thus someone who cannot be trusted to provide reliable evidence (Ellison, 2009; Temkin,



2002). However, even without such records, defence barristers can rely on the strength of the same deeply embedded attitudes to undermine the credibility of victim-survivors in the courtroom. For example, Smith (2018) found that defence barristers asked questions about victim-survivors' emotional vulnerabilities and linked these to narratives about mental health and women as pathological in order to portray them as 'damaged goods'. She also identified defence narratives that characterised women as delusional and erratic and therefore untrustworthy (Smith, 2018).

Indeed, in my own observations of the trial outlined earlier in this chapter, information about the victim-survivor's mental health was adduced without the assistance of medical or therapeutic records. I have outlined this in detail elsewhere (Daly, 2022), so the following serves as a summary. The defence elicited confirmation from the victim-survivor that she had been taking antidepressants through asking her to clarify what she meant by her reference to 'happy pills' in a text message to the defendant. Her antidepressant use was also included in the toxicology report and, significantly, was also mentioned multiple times by the defendant in his police interview when discussing what others had characterised as the victim-survivor's 'hysterical' reaction. The defendant very much relied on this depiction of the victim-survivor as hysterical and had in the immediate aftermath of the alleged rape been witnessed calling the victim-survivor 'crazy', 'paranoid' and a 'psycho' and described her as 'having a breakdown'. The defence barrister in this case repeatedly referred back to the victim-survivor's 'hysterical' reaction to the alleged rape, with two other witnesses describing her reaction as such. The use of the descriptor 'hysterical' was significant because as well as having gendered connotations regarding 'false allegations', it also carries negative gendered connotations about femininity and mental ill health (Epting & Burchett, 2019). The narratives about the victim-survivor's mental health and her 'hysterical' reaction became intertwined, reinforcing one another in undermining her credibility. The characterisation of the victim-survivor as 'crazy' was further galvanised through the defendant's testimony in court, where he described her as having 'always had a temper'. This drew on pervasive gendered stereotypes of women as irrational and overly emotional (Shields, 2013; McCormick et al., 2016), that is, hysterical.

Emotionality is salient in cultural narratives of credibility and 'ideal victimhood', especially at the intersections of gender, race and social class. For example, Gilmore's (2017) analysis of women's testimony delineated the ways in which Black women's emotions and associated credibility are judged against different criteria than are white women's. Whilst the victim-survivors in all of the trials I observed were racialised as white and were therefore racially privileged, the axis of social class provided a means for their emotionality and credibility to be judged through oppressive cultural narratives. That is because middle-class ideals of respectability guide what is considered acceptable expression of emotion and what is not. Attributes such as calmness, congeniality and warmth are valued and attributed to those perceived to be middle-class, whereas traits such as anger and aggression are stereotypically attributed to those considered working class (Bjornsdottir & Rule, 2020; Fiske et al., 2002; Loughnan et al., 2014). Indeed, Wingfield (2010)

found that rules regarding what is considered appropriate ways of displaying emotions are differently constructed for different racialised and classed groups. Furthermore, Cossey and Martin's (2021) analysis of anger and emotion management practices on *Love Island* found that women who overtly express anger were met with ridicule and scorn because they did not conform to gendered, classed and racialised expectations of emotion expression and that this was amplified for working-class women and for Black women. Returning to the trial outlined throughout this chapter, then, the framing of the victim-survivor through cultural narratives regarding young, British, working-class women bolstered, and was bolstered by, narratives depicting her as being highly emotional because of mental ill health.

Interestingly, though, the 'ideal victim' is expected to be upset, and so in the observed trial, the victim-survivor's tearful response in the aftermath of the alleged rape could have been framed as congruent with the 'ideal victim' prototype. Indeed, the prosecution barrister used the victim-survivor's distress in his closing argument to help depict her as an 'ideal victim': '[Victim-survivor] woke up and became very distressed, she told people straight away, she gave a full detailed account to the police very soon after'. Klippenstine and Schuller's (2012) research on expectancies regarding the emotional response of rape victim-survivors over time found that perceptions of credibility are negatively influenced by emotions incongruent with the 'ideal victim' but that regardless of emotion type *consistency* of emotions over time was associated with more support for victim credibility. This could have impacted the jury's assessment of the victim-survivor's credibility in the observed trial, because although her initial response was distress, she gave her evidence with a calm demeanour. Indeed, another finding from Klippenstine and Schuller's (2012) research was that calm and controlled demeanours were perceived as less credible than upset and tearful demeanours. Likewise, research on the deliberations of mock jurors has shown that victim-survivors' calmness in court can negatively impact perceived credibility (Ellison and Munro, 2009). At the same time, Ellison and Munro's (2009) study showed that a victim-survivor's upset demeanour in court can also be perceived as part of a manipulative performance by a dishonest complainant. This conflict reflects one of the many 'damned if they do, damned if they don't' situations for victim-survivors, where blame and doubt can be apportioned to them no matter how they react. Ultimately, although distress and upset can be considered congruent with an 'ideal victim', barristers can draw on deeply embedded gendered and classed cultural narratives in order to make it *incongruent*. Upset and distress can simply be recast as hysteria or mental illness, as demonstrated above, and it can also be reframed as evidence of a mendacious complaint.

## Final Thoughts

Rape myths are commonly used as an explanatory model for low conviction rates (Dinos et al., 2015; Page, 2010; Temkin & Krahé, 2008; Willmott et al., 2017), and evidence has indeed consistently shown that they are frequently used in court as

tools to undermine the credibility of victim-survivors (Adler, 1987; Lees, 2002; Smith, 2018; Temkin, 2010; Temkin & Krahé, 2008; Temkin et al., 2018; Smith & Skinner, 2017). But rape myths alone cannot explain why the existing evidence suggests that victim-survivors from minoritised and marginalised groups have a particularly low chance of seeing a conviction (Hester, 2013; Hester & Lilley, 2017; Kelly et al., 2005; Lovett et al., 2007; Munro & Kelly, 2009). Deeper analysis of rape trial narratives shows that barristers also draw on broader cultural assumptions formed from systems of oppression such as racism, classism and ableism (Daly, 2022; Smith, 2018). This chapter has delineated some of the ways in which oppressive cultural narratives linked to ‘respectability’ and ‘hysteria’ reinforce common rape myths linked to the ‘ideal victim’.

Victim-survivors are undermined through classed and gendered narratives of respectability in ways that reach beyond rape myths. The misconception that false allegations of rape are common is reinforced by deeply embedded narratives that position women, and particularly working-class women, as inherently untrustworthy. These narratives of belief and disbelief can be historically traced and were constructed through gendered and classed ideals of what counts as respectable. Seeing rape myths as the root of the issues faced by victim-survivors of sexual violence fails to recognise the whole picture and does not enable us to see just how embedded these cultural narratives are. The interaction of subtly deployed rape myths and subtly deployed cultural narratives distorts them and makes them difficult to recognise. I have argued elsewhere that this means myth-busting measures, such as judicial directions, could find difficulty in achieving the desired effect due to the mismatch in the way each is presented (Daly, 2022). Indeed, my identification of the subtle narratives and references to cultural narratives and rape myths in courtroom discourses was the result of careful analysis over many months, which is very different to the context of an adversarial trial where jurors listen to proceedings, rarely taking notes, and are expected to reach a verdict within a few hours, sometimes a few days.

Addressing and dismantling these deeply entrenched cultural narratives is a long-term project, however, and in the meantime, victim-survivors of sexual violence continue to report their victimisation to the police. One possible way to improve access to justice for those whose cases reach court is to introduce more accountability for juries. Indeed, whilst trial by jury is the fundamental touchstone of the English criminal justice system, there has long been debate as to whether juries are fit for purpose and able to produce fair justice (Jackson, 2016), particularly with regard to the influence of prejudicial views and implicit biases (Bergold & Bull Kovera, 2021; McDonald, 2021; Willmott et al., 2021). Debate about the utility of juries is often viewed in binary terms (abolish or keep), but there are growing calls to examine the ‘middle ground’—specifically, a *modernisation* of the jury system based on robust contemporary evidence (Willmott et al., 2021). Looking to other jurisdictions could provide useful insights into how to increase jury accountability. For instance, there are jurisdictions on the European continent, outside of the common-law tradition, which require ‘reasoned verdicts’ (Burd & Hans, 2018; Martín & Kaplan, 2013), that is, an accompanying written justification for the

verdict decision. Reasoned verdicts are an increasingly common element of jury systems in Europe and are seen as a means of reducing bias and arbitrariness in jury decision-making, improving transparency and legitimacy (Burd & Hans, 2018). Consideration and exploration of alternative jury models such as this could help provide a much-needed level of accountability within the criminal jury model in England and Wales.

Ultimately, it is crucial that debates and research on sexual violence are situated within a broader cultural context that widens the lens with which rape myths in the courtroom, as well as in the wider criminal justice system, are viewed. Without this, fair justice will likely continue to be out of reach for many victim-survivors.

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**Ellen Daly’s** interdisciplinary research focuses on criminal justice responses to sexual violence and specifically explores intersectional narratives in rape trials. Her research interests further extend to policing and justice responses to violence more broadly, and she is particularly interested in how the intersections of gender, age, (dis)ability, and social class shape victims’ journeys through the justice system