Are Rape Myths 'Myths'?

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Abstract

Little attention has been paid to what the word 'myth' contributes to the concept of rape myths. Rape myths tend to be regarded as widely-believed falsehoods that need to be debunked in order to address patriarchal injustices. This account draws upon a long-standing vernacular English association between myth and falsehood, which originated in the Enlightenment. But it is not the only possible definition of myth. This paper draws upon mythological studies across a range of disciplines to argue that rape myths should be considered authentically mythic; that is, rape 'myths' are culturally significant folk narratives about sexual wrongdoing. This reappraisal enables a shift in our understanding of what rape myths are, what they could be – and what we can do to reduce their pernicious influence on the criminal justice system. It also enables legal scholars to more generally reassess how the concept of 'myth' is used across our discipline(s).

Keywords: anthropology, culture, feminism, myth, mythology, rape myths.

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1. Introduction

There are few concepts in criminal law theory more evocative than rape myths. Originating in feminist scholarship in the 1980s, rape myths have achieved widespread academic discussion,[1] ferocious critique,[2] robust defences,[3] and even adoption in policy documents published by governmental organisations and pressure groups around reform of the criminal law and its processes.[4] For all this widespread discussion, however, little attention has been paid to what work the word 'myth' is doing in the concept of 'rape myths'. Are rape myths actually myths, or is the term being used metaphorically, to pithily capture a range of stereotypes, misapprehensions, and falsehoods?[5] Given that there is an entire interdisciplinary field – *mythology* – that studies myth,[6] to the extent that rape myths *are* authentically mythic, we can use the insights of that field to think about what rape myths are, how they function, and crucially, what we can do about them and the injustices to which they lead.

This paper argues that we should recognise rape myths as myths in mythological terms and considers the implications of doing so, across the next three Parts. In Part 2, I give an overview of rape myths, as a concept in (especially feminist) legal scholarship. I argue that this account draws on a much older understanding of myths as unscientific falsehoods, which imposes limits on our perspective on

[1] See especially MR Burt, 'Cultural Myths and Support for Rape' (1980) 38 *Journal of Personality and Social Psychology* 217.

[2] See especially H Reece, 'Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?' (2013) 33 *OJLS* 445; C Thomas, 'The 21st Century Jury: Contempt, Bias and the Impact of Jury Service' [2020] *Crim LR* 987; C Thomas, 'Juries, Rape and Sexual Offences in the Crown Court 2007-2020' [2023] *Crim LR* 200.

[3] See, e.g., J Conaghan and Y Russell, 'Rape Myths, Law, and Feminist Research: "Myths about Myths"?' (2014) 22 *Feminist Legal Studies* 25; J Chalmers, F Leverick, and VE Munro, 'Why the Jury Is, and Should Still Be, Out on Rape Deliberation' [2021] *Crim LR* 753; and E Daly, O Smith, H Bows, J Brown, J Chalmers, S Cowan, M Horvath, F Leverick, J Lovett, V Munro, and D Wilmott, 'Myths about Myths? A Commentary on Thomas (2020) and the Question of Jury Rape Myth Acceptance' (2023) 7 *Journal of Gender-Based Violence* 189.

[4] See, e.g., L Kelly, J Lovett, and L Regan, *A Gap or a Chasm? Attrition in Reported Rape Cases* (2005, Home Office Research Study 293); Angiolini E, *Report of the Independent Review into the Investigation and Prosecution of Rape in London*, (2015, Crown Prosecution Service, 30th April 2015), available online at: <https://www.cps.gov.uk/publication/report-independent-review-investigation-and-prosecution-rape-london-rt-hon-dame-elish>, accessed 4th August 2023.

[5] Cf. D Gurnham, 'Debating Rape: To Whom Does the Uncanny "Myth" Metaphor Belong?' (2016) 43 *J L & Soc* 123.

[6] In English, 'mythology' is also the term used to describe the sum total of myths belonging to a particular culture (e.g. 'Greek mythology'). To avoid confusion I will generally use 'mythology' in this vernacular sense, and refer to the academic field by reference to 'mythological scholarship' or 'mythologists'.

what we can do about rape myths and the harms that they cause. Part 3 then moves on to consider myths as they appear in mythological scholarship, illustrating the range of socio-political and cultural functions that myths can play, even in modern, supposedly rational societies. Finally, in Part 4, I apply this account of myth to the context of rape myths, arguing that when we take rape myths seriously as myths, we can better understand their impact on criminal justice institutions, and conceive of a wider range of solutions to the harms that they cause. I conclude by considering the implications of the discussions for wider scholarship, arguing in favour of a less pejorative approach to myth across legal scholarship more generally.

2. Rape Myths

Rape myths are defined in legal scholarship as widely held but false beliefs about what constitutes a 'real' rape, which inhibit the proper investigation, prosecution, and conviction of sexual offences.[7] They tend to express *victim-blaming* attitudes that concern behaviour that is perceived as showing that they in some sense invited their victimisation (e.g. where the survivor wore revealing clothing, was intoxicated, or behaved flirtatiously), as well as expectations that characterise sexual offences as violent or otherwise forcible, or as committed by strangers.[8] Both sets of attitudes are empirically false. In English law, for instance, there is no requirement that sexual offences be committed by force, and

[7] See, e.g., J Temkin, JM Gray, and J Barrett, 'Different Functions of Rape Myth Use in Court: Findings from a Trial Observation Study' (2018) 13 *Fem Criminol* 205, p. 205. The word 'false' here should be read as a shorthand for beliefs that are categorically untrue, but also stereotypes, which may be true sometimes, but which are treated as if they were always true. For instance, flirtatious behaviour towards another may well indicate a willingness to engage in some sexual acts with the other under certain circumstances, but not in others. *Cf*. Burt's definition of rape myths as '*prejudicial, stereotyped, or false* beliefs about rape, rape victims, and rapists' (n. 1, p. 217, emphasis added), and see further critique in D Gurnham, 'A Critique of Carceral Feminist Arguments on Rape Myths and Sexual Scripts' (2016) 19(2) *New Crim L Rev* 141, pp. 146-148.

[8] See, e.g., Kelly et al (n. 4); H Gerger, H Kley, G Bohner, and F Siebler, 'The Acceptance of Modern Myths about Sexual Aggression Scale: Development and Validation in German and English' (2007) 33 *Aggressive Behavior* 442, esp. pp. 422-423; L Ellison and V Munro, 'Of "Normal Sex" and "Real Rape": Exploring the Use of Socio-sexual Scripts in (Mock) Jury Deliberation' (2009) 18 *Soc Leg Stud* 291; Temkin et al (n. 7).

consent is a matter of subjective assent in the moment, not prior behaviour.[9] Moreover, most sexual offences are carried out by acquaintances, rather than by strangers.[10]

Susceptibility to belief in rape myths is encouraged by acceptance of the 'Just World' fallacy: the belief that good things happen to good people, and thus that if someone has suffered some harm, they must have done something to incur it.[11] This attitude is not helped by well-intentioned attempts by police and other criminal justice agencies to encourage women (as the most common victims of sexual offences)[12] to proactively protect themselves in ways that tend to imply that rape is the fault of careless survivors, rather than the wrongdoing of the rapist.[13] Rape myths are also therefore part of a wider '*rape culture*': a cluster of societal expectations that men are sexually aggressive, uncontrollable, and dangerous, while women are passive, compliant, and vulnerable.[14] In a rape culture, the threat of sexual victimisation is accepted as an inevitable fact of life: male sexual urges are essentially uncontrollable, and so women must avoid exposing themselves to the risk of victimisation by effectively denying themselves full participation in everyday life.[15]

Rape myths thus cause two kinds of social harm. Firstly, they obstruct the pursuit of justice in cases where rape has already occurred, by discouraging: victims from reporting the crime to the police;[16] police from taking complainants seriously, and/or properly detecting and investigating sexual

[9] Sexual Offences Act 2003, ss. 1-4, 74-76, and 79(3)); see also *R v C* [2009] UKHL 42, [2009] 1 WLR 1786. England and Wales is my home jurisdiction and so the principal focus of this essay is on rape myth scholarship against that backdrop, although I engage with scholarship from across the wider English-speaking world, too.
[10] See, e.g., Angiolini (n. 4), p. 16.
[11] See, e.g., RM Hayes RM, K Lorenz, and KA Bell, 'Victim Blaming Others: Rape Myth Acceptance and the Just World Belief' (2015) 8 *Fem Criminol* 202.
[12] Ministry of Justice, Home Office, and Office for National Statistics, *An Overview of Sexual Offending in England and Wales: Statistical Bulletin* (The Stationery Office, 2013). Available online at: <https://www.gov.uk/government/statistics/an-overview-of-sexual-offending-in-england-and-wales>, accessed 4th August 2023.
[13] Brooks O '"Guys! Stop Doing It!": Young Women's Adoption and Rejection of Safety Advice when Socialising in Bars, Clubs and Pubs' (2011) 51 *BJ Criminol* 635.
[14] See generally S Brownmiller, *Against our Will: Men, Women, and Rape* (Simon and Schuster, 1975); MR Burt and RS Albin, 'Rape Myths, Rape Definitions, and Probability of Convictions' (1981) 11 *Journal of Applied Social Psychology* 212.
[15] E Buchwald, PR Fletcher, and M Roth, *Transforming a Rape Culture* (revised edn, Milkweed Editions, 2005).
[16] See, e.g., R Egan and JC Wilson, 'Rape Victims' Attitudes to Rape Myth Acceptance' (2012) 19 *Psychiatry, Psychology and Law* 345.

offences;[17] prosecutors from effectively prosecuting defendants;[18] judges from properly managing sexual offences cases;[19] and juries from properly finding factually guilty offenders guilty.[20] Rape myths therefore contribute to the high attrition rate in rape cases, whereby very few complaints of rape result in conviction due to failure to investigate, prosecute, and convict in particular cases.[21] To the extent that rape myths help to produce this attrition rate,[22] they harm the criminal justice system by impeding the quality of justice it can provide for survivors of rape. They also contribute to maintaining the socio-cultural conditions that make rapes more likely, by propping up the misogynistic preconceptions about the roles of men and women that define rape culture.

A. (Rape) Myth as Metaphor? The Pejorative Approach to Myths and Rape Myth Scholarship

The concept of rape myths is therefore not (quite) the same as those folk stories that we tend to think of as 'myths,' featuring heroes such as King Arthur, Coyote, or Isis. They are myths in that they are false (or stereotyped, or incomplete) information about the subject matter; myths in the same way that an advertisement for a food brand might encourage us to reject 'the myth of trans fats'. Conventional wisdom suggests that this sort of myth terminology is merely being used *metaphorically*. Rape myths are *like myths*, insofar as they deal with culturally successful but empirically untrue material; but they are not of the same stuff as 'myth', which is used only as a shorthand for a concept like 'stereotypes' or 'false or incomplete understandings'.[23] This metaphor, however, draws upon a

[17] See, e.g., KA Parratt and A Pina, 'From "Real Rape" to Real Justice: A Systematic Review of Police Officers' Rape Myth Beliefs' (2017) 34 *Aggression and Violent Behaviour* 68.
[18] See, e.g., JA Gylys and JR McNamara, 'Acceptance of Rape Myths among Prosecuting Attorneys' (1996) 79 *Psychological Reports* 15.
[19] See, e.g., O Smith, *Rape Trials in England and Wales* (Springer, 2018); Temkin et al (n. 7).
[20] See, e.g., Burt and Albin (n. 14); Ellison and Munro (n. 8); JM Gray and MAH Horvath, 'Rape Myths in the Criminal Justice System, in E Milne, K Brennan, N South, and J Turton (eds), *Women and the Criminal Justice System* (Palgrave Macmillan, 2018).
[21] See, e.g., Kelly et al (n. 4); Ministry of Justice et al (n. 12); Angiolini (n. 4); Centre for Women's Justice, End Violence against Women Coalition, Imkaan, and Rape Crisis England and Wales (2020) *The Decriminalisation of Rape: Why the Justice System is Failing Rape Survivors and What Needs to Change*. November 2020, <https://rapecrisis.org.uk/get-informed/the-decriminalisation-of-rape/>, last accessed 4th August 2023.
[22] Recall nn. 2-3 for debate on this connection. Since this debate concerns whether rape myths are harmful, rather than whether they are *mythic*, I presume the truth of the prevailing scientific consensus that rape myths *do* contribute to attrition rates, for the purposes of this article.
[23] Recall Gurnham, 'Debating Rape' (n. 5).

much more general and deeply-engrained conceptualisation of myth, which I will call the *pejorative approach to myth* (PAM). Under the PAM, myth is a dangerous form of irrationalism, an enemy to scientific reasoning and therefore to civilisational progress. This is an old and well-established attitude, stemming from a (misunderstanding of) themes first developed in Ancient Greece, which were reappraised over the course of the eighteenth-century Enlightenment.[24]

The classical origins of the PAM can be located in the emergence of written philosophy in Ancient Greece, and is rooted in the distinction between two concepts, *mythos* and *logos*. *Mythos* referred to a category of fictitious narrative, spread by poets and presenting itself as historically true, despite its dubious historicity. *Logos*, by comparison, was a form of thought associated with the emerging Socratic tradition of philosophers, based upon rational enquiry from first principles; the antecedent of the modern scientific method and the root of both the contemporary English word 'logic' and the suffix '-logy'.[25] Plato, in particular, is a strong proponent of the division between *mythos* and *logos*, and the superiority of the latter as a means of making sense of the world. The problem, he argues, is that while myths can be effective at transmitting information, their historicity and empirical truth are not guaranteed, and thus they can lead their students into false as well as true conclusions. By contrast, Plato argues that *logos* ensures validity by focussing on rational deduction and analysis through argument and counter-argument.[26] Famously, therefore, he argues that in the ideal society imagined in the *Republic*, there would be no poets, with truth being rigorously protected by an elite caste of paternalistic guardians.[27]

From this, it certainly seems that the PAM's treatment of myth as an inherently false narrative is well-grounded in Greek thought. However, the Greek philosophers' attitudes towards myth were far more complicated than is suggested above. Plato, for instance, employed myths frequently as a

[24] See, e.g., JP Vernant, *Myth and Society in Ancient Greece* (1990, Princeton University Press); RL Fowler, *'Mythos* and *Logos*' (2011) 131 *Journal of Hellenic Studies* 45.
[25] See generally Fowler, ibid. Technically the Ancient Greek term is '*muthos*'. However, since 'mythos' (and 'myth') are widely-known nowadays, I will use this spelling throughout.
[26] Fowler (n. 24).
[27] Plato, *Republic* (R Waterfield (trans), OUP, 1993), Ch.'s 4 and 13.

heuristic device to explain his ideas, despite his antipathy towards *mythos*.[28] His concern was not so much that myth was innately harmful, so much as that myth was put to misleading uses by poets when they presented it as historical fact.[29] We need, if you will, to distinguish myth from *mythos*.

Nevertheless, and despite this nuance, Enlightenment thinkers in the eighteenth century came to view the Greek contrast between *mythos* and *logos* as an adversarial opposition, and to interpret the emergence of Greek philosophy as a civilisational advance that was only possible because the Hellenes made a transition from *mythos to logos*.[30] Instead of being more-or-less incompatible thought processes that coexisted, mythos became the primitive forebear of scientific, rational logos. Only by eliminating the superstitions of the past and replacing them with the cold, unremitting light of scientific truth could society hope to advance.[31] This re-conception of Greek thought was popular in the Enlightenment both because it followed the internal logic of the Enlightenment project and because it was externally useful as a rhetorical and political claim.

Internally, the Enlightenment project presented itself as the triumph of the power of the individual to self-direct their thought. The Scientific Revolutions had made it far easier for an individual to make sense of the world through personal observation, and therefore less reliant on instruction by Church and State. This enabled the flourishing of liberal values such as respect for human dignity and the fundamental rights that spring therefrom, since the ability of the individual to make sense of the world was a necessary prerequisite of the claim that individuals were capable, even deserving, of

[28] See, e.g., C Partenie, 'Introduction', in: Plato, *Selected Myths* (C Partenie (ed), R Waterfield, CCW Taylor, and D Gallop (trans), OUP, 2004), xiii-xxx; TY Keum, *Plato and the Mythic Tradition in Political Thought* (The Belknap Press, 2020).

[29] See, e.g., E Cassirer, *The Philosophy of Symbolic Forms, Volume Two: Mythic Thought* (R Manheim (trans), Yale University Press, 1955), pp. 2-3; J Overing, 'The Role of Myth: An Anthropological Perspective, or: "The Reality of the Really Made-Up"', in: G Hoskins and G Schöpflin (eds), *Myth and Nationhood* (Hurst & Co, 1997), 1-18.

[30] See, e.g., W Nestle, *Vom Mythos Zum Logos: Die Selbstentfaltung des grieschichen Denkens von Homer bis auf die Sophistik und Sokrates* (1940, Kröner). *NB:* This book has not been translated into English. For critical discussion, see, e.g., Keum (n. 28), pp. 10-16; H Blumenberg, *Work on Myth* (1985, RM Wallace (trans), The MIT Press, 1985), p. 49; and cf. R Buxton (ed), *From Myth to Reason? Studies in the Development of Greek Thought* (OUP, 1999).

[31] See, e.g., GWF Hegel, *The Phenomenology of Spirit* (M Inwood (ed, trans), OUP, 2018).

moral and political self-determination.[32] The political values of the Enlightenment, which became embedded in the liberal tradition, therefore depended heavily upon rationalism, and upon the defence of that rationalism against the irrational. Myth became seen as *primitive* and *conservative*, where science and Enlightenment were *modern* and *progressive*.[33] Since *logos*, as a form of rational thought underpinning scientific reasoning, was the engine of socio-political (as well as economic-technological) progress, *mythos*, its opposite, therefore needed stamping out to ensure that progress could occur.

But the primitiveness with which myth was associated also came to be useful as an external political rationale for (Global Western) State actors during and after the Enlightenment. In an era in which scientific enquiry seemed to be unveiling natural laws at every turn, it was easy to read the liberal project's claim that Greek culture had transitioned from *mythos* to *logos* as a *universal rule*; that there was a single, globally applicable ladder of progress up which every human society must climb.[34] At the top of this ladder was 'modern' Man – a term used in a purportedly gender-neutral way amongst Enlightenment scholars, but which often took on decidedly masculine traits.[35] At its bottom were the various 'savage' and 'primitive' societies who occupied the various spaces outside of the emerging Global West. Since these primitive societies were technologically, economically, and socio-culturally inferior (in Western eyes), Enlightenment values made it easy to justify colonialism and imperialism (processes that pre-dated the eighteenth century, but which accelerated prodigiously as a result of the Industrial Revolutions). Imperialism could simultaneously be justified as a process of

[32] See particularly I Kant, 'An Answer to the Question: What is Enlightenment?', collected in I Kant, *An Answer to the Question: What is Enlightenment*? (1991, HB Nisbet (trans), Penguin); see also I Kant, *Groundwork on the Metaphysics of Morals* (2012, revised edn, J Timmerman (ed), M Gregor and J Timmerman (trans), Cambridge University Press), pp. 45-48.

[33] See Keum (n. 28), pp. 10-16. Note that I use these terms in their most technical senses; progressivism is the preference for change over tradition, and conservatism the opposite. The reader should not mistake their use for the more contemporary Americanised vernacular uses, to refer to the left and right wings, respectively.

[34] See, e.g., A Comte, *The Positive Philosophy of Auguste Comte* (H Martineau (ed, trans), Belford, Clarke & Co, 1853; L Lévy-Bruhl, *Primitive Mentality* (LA Clare (trans), Routledge, 1923).

[35] See, e.g., SJ Hekman, *Gender and Knowledge: Elements of a Postmodern Feminism* (Polity Press, 1990).

cultural 'uplifting', enabling the colonised to benefit from new scientific and social developments,[36] and also as freeing superstitious savages from what were perceived as barbarous and unseemly rites.[37]

The scientism and dogmatic positivism of the early Enlightenment scholars now seems at best rather quaint, and at worst as part of the West's shameful legacy of imperialism, slavery, and expropriation, which enabled non-Westerners to be cast as subhuman as often as it treated them as being 'civilised' by their colonisation.[38] Over time, many of the certainties of the Enlightenment, not least the division between 'civilised' and 'savage' or 'primitive' societies began to collapse in the face of exactly the sort of social-scientific research that Enlightenment values enabled,[39] as well as critical intellectual and political movements that complicated or resisted the emergent liberal orthodoxy.[40] However, the conceptualisation of 'myth' as a dangerous, reactionary superstition that holds society back and which must be expunged by scientific Truth has survived the intervening centuries more or less unscathed. Although this approach to myths was challenged between the two world wars,[41] the rise of European fascism would ensure its ongoing prevalence after 1945. Fascism, and especially Nazism, revelled in their use of myths as propaganda to serve their expansionistic and authoritarian causes.[42] This use of mythical reasoning as a key plank of political rhetoric, caused a significant backlash against myth amongst liberal theorists, entrenching the attitude that myth was an inherent

[36] See, e.g., D Armitage, 'John Locke: Theorist of Empire?' In: S Muthu (ed), *Empire and Modern Political Thought* (2012, Cambridge University Press), 84; J Whitehead, 'John Locke, Accumulation by Dispossession and the Governance of Colonial India' (2011) 42 *J Contemp Asia* 1.

[37] See, e.g., C Geertz, 'Found in Translation: On the Social History of the Moral Imagination', in C Geertz (ed), *Local Knowledge: Further Essays in Interpretive Anthropology* (Fontana Press, 1983), pp. 39-43.

[38] See, e.g., Said E, *Orientalism* (Penguin, 1978); cf. F Fanon, *The Wretched of the Earth* (C Farrington (trans), Penguin, 1965); GC Spivak, 'Can the Subaltern Speak?', in: C Nelson and L Grossberg (eds), *Marxism and the Interpretation of Culture* (Macmillan, 1988), 271-313

[39] See, e.g., C Lévi-Strauss, *Myth and Meaning: Cracking the Code of Culture* (University of Toronto Press, 1978), pp. 15-24; B Malinowski, 'Myth in Primitive Psychology', in: B Malinowski, *Magic, Science and Religion and Other Essays* (1948, R Redfield (ed), The Free Press, 1948); and see Part 2 below.

[40] See, e.g., Hekman (n. 35); M Foucault, 'What is Enlightenment?', collected in P Rabinow (ed), *The Foucault Reader* (1984, Penguin); MacIntyre A, *Whose Justice? Which Rationality?* (Duckworth Press, 1988).

[41] See, e.g., Cassirer (n. 29); Malinowski (n. 39).

[42] See, e.g., N Goodrick-Clarke, *The Occult Roots of Nazism: Secret Aryan Cults and their Influence on Nazi Ideology* (Tauris Parke Paperbacks, 1985); Z Baumann, 'Soil, Blood and Identity' (1992) 40 *The Sociological Review* 645.

threat to socio-political progress and civilisation, and not just a quaint bygone mode of thought.[43] At the same time, critics of the liberal model (especially Marxists) argued that fascism's successful employment of myth showed the failure of the Enlightenment to replace *mythos* with *logos* – and indeed, the susceptibility of bourgeois, capitalist societies to mythical thinking.[44] Whether one was a liberal or a more radical thinker, in other words, the enduring political rhetoric was that myth was the enemy, and the best way to progress was to 'bust' it.

At first blush, rape myths seem to fit squarely within the tradition of discounting myth as mere falsehood. However, it is not really possible to read the PAM into the feminism that produced (and continues to dominate) rape myth scholarship. Of course feminism is a broad church, and not immune to the sorts of positivist assertions that typify the PAM.[45] However, feminism has tended to strongly reject the sort of over-simplistic and imperialistic certainties summarised above. Feminists strongly critiqued the Enlightenment construct of objective 'Man', for instance, noting the illusory nature of 'his' gender-neutrality, and the ways in which female experiences and knowledge were routinely dismissed as irrational and insignificant in so-called objective scientific discourse.[46] Rape myth scholarship, in particular, is an attempt to confront beliefs that there is a relatively narrow class of 'real rapes', or that all victims of sexual offences will behave in a certain way during or after an offence.[47] It seeks to *complicate* existing narratives of the truth, rather than just to replace a falsehood with a Truth.[48] So it is not really easy to map the PAM's positivist and scientistic epistemology onto

[43] See especially E Cassirer, *The Myth of the State* (1946, Yale University Press), which stands in stark contrast to his earlier *Phenomenology of Symbolic Forms* (n. 29), which was originally published in German in 1927.
[44] See, e.g., R Barthes, *Mythologies* (R Howard and A Lavers (trans), Hill & Wang, 2012), pp. 215-274; TW Adorno and M Horkheimer, *Dialectic of Enlightenment* (J Cumming (trans), Verso, 1972); cf. E Fromm, *Fear of Freedom* (1942, Routledge, 1942).
[45] Consider, for instance, the biological essentialism that attends so much 'gender critical' feminism.
[46] See, e.g., Hekman (n. 35). In law and criminology, see especially C Smart, 'The Quest for a Feminist Jurisprudence', in C Smart (ed), *Feminism and the Power of Law* (Routledge, 1989); C Smart, 'Feminist Approaches to Criminology, or Postmodern Woman Meets Atavistic Man', in C Smart (ed), *Law, Crime and Sexuality: Essays in Feminism* (SAGE, 1995); cf. L Snider, 'Constituting the Punishable Woman: Atavistic Man Meets Postmodern Woman' (2003) 43 *BJ Criminol* 354.
[47] See, e.g., Smith (n. 19), pp. 53-95; cf. Ellison and Munro (n. 8).
[48] Critics have argued that rape myth scholarship can go farther than this, asserting a Truth of its own that is just as prone to stereotype and exaggeration as the beliefs it studies. For example, Reece and Gurnham assert that rape stereotypes associated with 'real rape' are treated by rape myth scholars as if they *never* indicate consent,

feminism in general or rape myth scholarship in particular. What, then, should we make of that scholarship's adoption of the language of the PAM?

The typical explanation (almost always left implicit in actual rape myths scholarship)[49] is that rape myths use the concept of a myth, as defined in the PAM, metaphorically, taking advantage of the PAM's widespread influence in vernacular English as a shorthand for the *kind* of stereotypes and falsehoods that the concept of the rape myth is intended to cover. Rape myths, on this account, are not *really* mythic, and do not invoke the kind of dogmatic rejection of *mythos* to which the PAM is committed. However, since the PAM is only one approach to myth, it is insufficient to show that rape myths are not myths according to one particular perspective, especially in the face of the diversity and complexity of mythological scholarship as a field. The question therefore becomes: what can that scholarship tell us about myths in general, and rape myths in particular?

3. Rape Myths and Mythological Scholarship

Mythological scholarship is incredibly wide-ranging and intensely interdisciplinary, drawing in scholars as diverse as psychologists, philosophers, sociologists, and anthropologists, and so I cannot give more than a basic summary of some core ideas here. In particular, this Part will emphasise two ways in which the mythological account differs from the version of myths presented in the PAM. Firstly, it treats myths as operating on both 'deep' and 'literary' levels, recognising myths at work in various

going substantially beyond the claim that they *usually* (or even *almost always*) do not (see, e.g., Reece (n. 2); D Gurnham, 'Victim-Blame as a Symptom of Rape Myth Acceptance? Another Look at How Young People in England Understand Sexual Consent' (2016) 36 *Leg Stud* 258). Saunders, by contrast, presents evidence that rape myth scholarship tends to ignore the evidential complexities that influence actual sexual offences investigations, prosecutions, and trials, thereby overestimating the effect of rape myth acceptance on case outcomes (e.g. CL Saunders, 'Rape as "One Person's Word against Another's": Challenging the Conventional Wisdom' (2018) 22 *IJE&P* 161). To the extent that these accounts are valid, they reflect the consequences of particular deployments of the idea of rape myths, rather than the epistemological groundwork underpinning (or purporting to underpin) it. Indeed, to the extent that these critiques are accurate, they illustrate the seductive influence of the PAM, casting competing accounts as categorically and empirically untrue, even when that is not what one sets out to do, or thinks that one is doing. Since this would still prove my point, I will not engage further with this line of critique here.

[49] The main source of the claim that rape myths are metaphors is Gurnham's critical account ('Debating Rape', n. 5), although Gurnham draws upon the typification of wider critiques of rape myths as 'myths about myths'. Recall n. 3 for examples.

socio-cultural and political media; and secondly, it rejects the assumption that myths are inherently conservative and restrictive artefacts that must be replaced, debunked, or 'busted' through pedagogical interventions. Let us consider both points in turn.

A. 'Deep' vs 'Literary' Myth: Myth as Immanent Ideology

Between 1954 and 1956, Roland Barthes produced a series of short magazine articles sketching out what he called the various different '*Mythologies'* at play in then-contemporary France, which form a useful starting point for thinking about how to define myth in the modern world. Barthes's mythologies communicated a range of underlying meanings through seemingly prosaic images and ideas, such as a young black boy saluting the French flag (during the Algerian war of independence), or an advert for a new car, or the role played by wine in French culture.[50] The point was that these apparently prosaic signs were in fact loaded with meaning by a structural code underlying and supporting the existing status quo within society. By presenting an innocent Algerian boy as happily embracing his colonial masters, French popular culture could salve the conscience of the metropole about the iniquities of imperialism, by implying that the majority of the country supported continuing French rule, presenting the armed revolution against it as a dangerous but marginalised minority.[51] Importantly, although this web of significations served the interests of French society's ruling elites, they were *folk* understandings, arising out of popular interpretations of ideas and symbols. While certainly manipulated by the people deploying those symbols, the code was not wholly within their control, because it relied upon a deep-rooted series of collective agreements about the meanings of certain ideas, which could not be directly manipulated by any one person.[52]

We might argue that these webs of signification are mythic in the same, metaphorical, sense that we have seen it argued that rape myths are mythic; that is, that Barthes calls them 'myths' purely

[50] Barthes (n. 44), pp. 231-249, 169-171, and 79-82, respectively.
[51] Ibid, pp. 231-249. Cf. Fanon (n. 38).
[52] Ibid, pp. 219-242; cf. Foucault's notions of *discourse* and *episteme*, in, e.g. M Foucault, *The Order of Things: An Archaeology of the Human Sciences* (Tavistock/Routledge (trans), Routledge, 1970); M Foucault, *The Archaeology of Knowledge* (AMS Smith (trans), Routledge, 1972).

to draw 'attention to the insubstantial, spectral qualities of beliefs that the "other side" takes to be real and true'.[53] Certainly Barthes's general argument was that bourgeois French society was suffused with myths, which were the only way that it could contain the internal contradictions of a capitalist and imperialist society.[54] By contrast, Barthes argued that a truly Left-wing (read: Marxist)[55] society would have no need to use myths to cloak their internal injustices and contradictions.[56] So we might read Barthes as calling bourgeois cultural symbols 'myths' purely to dismiss them as fatuous, illusory, and false, in the same way that Gurnham argues rape myth scholars do.[57] However, Barthes' own understanding of myth precludes such an approach. Barthes's position evolved from acceptance of the 'traditional sense' of myth as a 'phony' or falsehood, to one which treats myth as a *language*, a 'general semiology of our bourgeois world'.[58] Specifically, myth operates as a 'stolen language'; it provided a symbolic understanding that imposes a systematised folk meaning, denying individual subjects an ability to speak for themselves, outside of the vocabulary imposed by mythic schemas.[59] This allows myth to further function as *depoliticised speech* – reifying the subject of myth and presenting it as natural rather than political, eternally unchanging rather than historically contingent.[60]

We might still object that this interpretation of myth is metaphorical – the metaphor here being between a genre of stories about Gods, heroes, and the supernatural ordering of the world and the symbolic imagery used to prop up a particular socio-political-cultural order. This reading is unsustainable, however, because it relies on a faulty definition of myth. Any definition of myth that emphasises particular literary characteristics is doomed to exclude other things that we would tend to think of as myths. Armstrong, for instance, insists that all myths are concerned in some sense with

[53] See Gurnham, 'Debating Rape' (n. 5), p. 142.
[54] See Barthes (n. 44).
[55] On the defensibility of calling Barthes a Marxist at the time of his writing the *Mythologies*, see, e.g., Y Zhuo, 'The "Political" Barthes: From Theatre to Idiorrhythmy' (2011) 36 *French Forum* 55.
[56] Barthes (n. 44), pp. 254-258.
[57] Recall Gurnham, 'Debating Rape' (n. 5).
[58] Barthes (n. 44), p. xi.
[59] Ibid, pp. 242-249.
[60] Ibid, pp. 254-258. *Cf.* Blumenberg (n. 30), pp. 126-129.

the confrontation of living beings with death,[61] which sits poorly with stories that are called myths that seem only intended to entertain, and which have more in common with a bawdy limerick than a Greek epic.[62] Similarly, Dundes defines myth is 'a sacred narrative explaining how the world and man came to be in their present form',[63] but this fails to account for myths that engage with the end of the world, such as the Norse Ragnarök and the apocalypse in the Revelation of St John (to say nothing of stories that happen 'out of time', as in the 'Dreamtime' traditions of various indigenous Australian cultures). We might argue that these examples are not really myths – entertaining stories are only folk tales, and the various apocalypses are really prophecies. But this is just splitting hairs. It is to artificially structure our perspective on myth in order to fit the pre-existing definition, not to build a definition around the real-life complexity of the phenomenon to be defined. Myth defies our attempts to put it into neat categories related to its *content*, in part because we have taken a label for a particular genre of Greek poetry and applied it to a diverse range of folk traditions from cultures throughout history and across the world, which have used myth in radically different ways.[64] For this reason, it is more useful to define myth according to its socio-cultural *functions* – by the effects it has on society. Thompson and Schrempp, for instance, offer the following definition:

> [M]*yths are narratives of profound cultural and individual importance that in some way help establish our symbolic sense of the ultimate shape and meaning of existence – of ourselves, of everything else in the cosmos, and perhaps especially of the relationship between the two*.[65]

Jensen offers a similarly function-focussed definition:

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[61] K Armstrong, *A Short History of Myth* (Canongate, 2005), pp. 5-11.
[62] See, e.g., P Clastres, 'What Makes Indians Laugh?' In: P Clastres (ed), *Society against the State* (R Hurley and A Stein (trans), Zone Books, 1987), 129.
[63] A Dundes (ed), *Sacred Narratives: Readings in the Theory of Myth* (University of California Press, 1984), p. 1.
[64] See, e.g., Overing (n. 29).
[65] T Thompson and G Schrempp, *The Truth of Myth: World Mythology in Theory and in Everyday Life* (OUP, 2020), p. 7.

> *Myths are traditional, authoritative narratives referring to transcendent referents, and which fuse the lived-in world with the thought-of world in such a manner that this seems the only plausible version*.[66]

These definitions capture the idea of a folk narrative containing some inner meaning that resonates within a particular culture, and which is capable of embracing a wide range of narrative forms and subjects. This brings us back to Barthes's mythologies of modern bourgeois societies, expressed in various non-literary contexts and forms. Keum provides a gloss on Barthes's arguments that clarifies the 'mythicality' of such myths, by distinguishing two levels on which myth operate: the 'literary myth' and the 'deep myth'.[67] The former are myths as a genre of literature: 'orally transmitted tales of a fantastic nature'.[68] 'Deep myths', by contrast, are composed of the symbolic meanings communicated by those tales: 'dense imaginative frames that are taken for granted in culture'.[69] Barthes argument, in essence, was that bourgeois France in the 1950s was possessed of a broad stock of deep myths, but that they were communicated through popular media, rhetorical devices, and forms of everyday speech, rather than by literary myths.

Keum's reading of Barthes's account is particularly useful because it helps to distinguish the different levels on which a myth may be read: its literal content and its symbolic *meaning*. What makes a myth mythic is not its surface narrative, but rather its conveyance of deeper, underlying understandings and meanings of the world and a culture's or individual's place within it. These cultural meanings have been present in every human culture, historical and contemporary; Barthes's point was that bourgeois Western civilisation was not as exceptional as it claimed to be in this regard. The literary myths might have been eradicated (or at least, reduced in socio-cultural status to little more than a subgenre of fantasy literature), but the deep myths remained.

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[66] JS Jensen (ed), *Myths and Mythologies: A Reader* (Equinox Publishing, 2009), p. 10.
[67] Keum (n. 28), pp. 5-9.
[68] Ibid, p. 10.
[69] Ibid.

For Barthes, however, myths remained a fundamental problem, a seam of irrationalism coursing through purportedly rational capitalist societies. His account therefore finesses, but ultimately endorses, the PAM, on the basis that myth is a restrictive tool in service of a reactionary ideological system propagating an unjust society. Barthes's vision of an enlightened future after a left-wing revolution was one in which myths had been eradicated and replaced with paradigms that were commonly understood, but still amenable to intellectual critique, which would ground a culture that was ultimately amenable to objective argumentation, rather than reliant on subjective suppositions.[70] If we swap out 'capitalism' for 'patriarchy' in the logic of this argument, rape myths seem to be playing more or less the same role as the bourgeois myths identified by Barthes; they are regressive and restrictive significations about the characteristics of men and women that propagate a patriarchal rape culture and misdirect folk understandings of the nature and potential forms of rape, embedded within cultural understandings of sexual wrongdoing. Seen from this perspective, rape myths *are* a species of deep myth; they are mythic in the most socially impactful sense.

B. The Functions of Myth in Human Cultures

We could stop here, since the aim of this paper is to explore the question of whether rape myths are myths, which the analysis of deep myths has just shown. However, the implications of this perspective are minimal so long as we continue to view myths only as obstacles to social progress and enemies of justice. The ultimate conclusion – that rape myths need to be debunked, or at least accounted for systematically, in order to ensure the effective prosecution of sexual offences – is still more or less the same, whether rape myths are seen as being actually or metaphorically mythic. For the argument that rape myths actually are myths to amount to more than just playing around with words, it needs to unseat this conclusion; in other words, it needs to show that myths are not just reactionary tools of ideological compliance. So the question becomes: what is myth *capable* of doing?

[70] Ibid, pp. 5-16. Cf. Hegel (n. 31).

Mythological scholarship furnishes far too many answers to this question to properly do justice to them here. However, framing the question in these terms allows us to draw upon a particular approach to mythological scholarship that will help to clarify the political effects of myth, namely, *functionalism*. As the name suggests, functionalist analysis starts from the assumption that the form that a myth takes, its prevalence within a culture, its survival over time, and the ways in which it is altered over successive generations, all depend to a greater or lesser extent on what roles that myth plays within the societies that tell it.[71] Like any theoretical framework, functionalism is a *perspective*, and is subject to perspectival limitations and biases. For instance, functionalism risks over-emphasising the socio-cultural functions played by myths over their aesthetic and entertainment value, which may be just as important, if not more important, in determining the content and survival of a myth.[72] It can also be difficult to tease apart exactly what functions myths play in human societies, which are necessarily complex enough that it is difficult to have such a complete view of society as a whole that one can attribute particular functions to particular social phenomena.[73] Subject to these caveats, however, functionalism offers a useful framework with which to critique the PAM's claim that myth is always harmful and reactionary, because it shifts our attention from the content of myths to their impacts on the societies that produce and reproduce them.

Adopting a functionalist perspective allows us to recognise that myth is a tremendously *adaptable* political and cultural force. Although myths present themselves as timeless traditional accounts, they are part of a constant web of reception, reinterpretation and reappropriation that can radically change the myth's content to meet the particular needs of a society.[74] For example, in the Trobriand Islands, each clan traditionally claimed ownership of certain land on the basis that their ancestors emerged into the world from a hole supposedly located thereon. However, as clans and

[71] See generally Malinowski (n. 39); Blumenberg (n. 30); K Dowden, *The Uses of Greek Mythology* (Routledge, 1992); É Durkheim, *The Elementary Forms of Religious Life* (MS Cladis (ed), C Cosman (trans), OUP, 2001).
[72] See, e.g., Clastres (n. 62).
[73] See, e.g.: R Needham, 'Introduction', in É Durkheim and M Mauss, *Primitive Classification* (R Needham (ed, trans), Routledge, 1963), pp. vii-xlviii; Lévi-Strauss (n. 39), pp. 15-16.
[74] See, e.g., Blumenberg (n. 30).

subclans migrated and intermingled, new myths had to be concocted to explain why certain incomers also had a right to inhabit another clan's traditional lands.[75] Changing socio-political circumstances necessitated the amendment of the earlier myth, its content shifting to explain the new conditions. This sort of change is neither exceptional nor even uncommon. Indeed, myth is inextricable from 'work on myth' – the evolutionary process of interpretation and reinterpretation that determines a myth's continuing relevance and meaning to successive generations, including into the present.[76]

This plasticity has meant that myth has served a variety of political uses, whether progressive or conservative, reactionary or revolutionary. We have already noted, for example, the Nazis' use of pagan symbolism and occultism, as well as the conscious and explicit construction of new myths of German racial superiority, as a means of securing a totalitarian State, justifying wars of expansion, and enabling the horrors of the Holocaust.[77] Similarly, the Aztec Empire of the sixteenth century Mexica people weaponised existing traditions of human sacrifice to justify expansionistic wars. Human sacrifice was a common practice among the Nahua-speaking peoples of central America and was undergirded by myths that spread the belief that blood sacrifice was needed to enable the sun to continue His daily passage through the sky (and therefore, to forestall the end of the world).[78] However, the scale and brutality of human sacrifice so often associated to the Mexica in Western media, to the extent that it is accurate, was actually only a comparatively recent intervention, serving the needs of a theocratic elite pursuing imperialistic ambitions.[79] Myth, in other words, is quite comfortable propping up undesirably reactionary and authoritarian regimes.

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[75] Malinowski (n. 39), pp. 117-126. For more examples, see R Firth, 'The Plasticity of Myth: Cases from Tikopia' and van TP Baaren, 'The Flexibility of Myth', both collected in A Dundes (ed), *Sacred Narratives: Readings in the Theory of Myth* (University of California Press, 1984).

[76] See generally Blumenberg (n. 30).

[77] Recall nn. 42-43.

[78] See, e.g., C Dodds Pennock, *Bonds of Blood: Gender, Lifecycle and Sacrifice in Aztec Culture* (Palgrave Macmillan, 2008).

[79] Ibid; see also M León-Portilla, *Aztec Thought and Culture: A Study of the Ancient Nahuatl Mind* (JE Davis (trans), University of Oklahoma Press, 1963), pp. 158-165.

At the same time, however, myths have been used to motivate political movements aimed at overthrowing imperial domination. The Finnish epic *Kalevala*, for instance, was collated from folk tales explicitly as a means of identifying a Finnish national identity and was a significant cultural touchstone in the successful Finnish independence movement.[80] Moreover, if we expand our scope to consider the influence of deep myths, myth has influenced a wide variety of political projects. I will focus on two: revolutionary left-wing movements such as Marxism; and the international human rights project. In the last section, we saw Roland Barthes contend that Leftist politics would do away with myth, since myth amounted to 'depoliticised speech' and would not be necessary in a post-revolutionary, rational society. This claim is, to put it mildly, debateable. It is, on the one hand, an extension of the 'myth of mythlessness' – the widely-held but false belief that post-Enlightenment Western thought is somehow free from and immune to the influence of myths.[81] But regardless of whether a post-revolutionary society would (or even could) [82] escape the influence of myth in a way that no other human society ever has, Marxist and other revolutionary political movements in contemporary human societies are fundamentally reliant upon a Barthesian deep myth – the myth of utopia.[83] Revolutions cannot be achieved without large-scale organisation around a (sufficiently) common vision of the future that the revolution is aimed at, and this common vision can only be achieved with some sort of shared cultural narrative – in other words, a myth. However rationalistic the language upon which revolutionary theory is based, the dream of that revolution is a vital – and vitally *emotional* – component of the appeal of such theory. Without an ideological zeal approaching faith in relation to the end goal of revolution, meaningful revolutionary politics would not be possible – without a narrative of the better

[80] See, e.g., WR Mead, '*Kalevala* and the Rise of Finnish Nationalism' (1963) 73 *Folklore* 217; TK Ramnarine, 'Folklore and the Development of National Identity in Finland' (1995) 2 *Europa* 39.
[81] R Jewett and JS Lawrence, *The American Monomyth* (Doubleday, 1977), p. 250; L Coupe, *Myth* (Routledge, 1997), pp. 9-13.
[82] There is a significant debate within mythological scholarship about how intrinsic and inevitable mythical thought is to human cognition. For an overview, see EJM Witzel, *The Origins of the World's Mythologies* (OUP, 2012), pp. 1-36; Thompson and Schrempp (n. 65); *cf.* Keum (n. 28), pp. 16-21.
[83] See, e.g., J Gray, *Black Mass: Apocalyptic Religion and the Death of Utopia* (Penguin, 2008); R Levitas, *Utopia as Method: The Imaginary Reconstitution of Society* (Palgrave Macmillan, 2013).

world that one is striving towards, there could be no meaningful motivation to overturn the status quo.[84]

Nor is this sort of deep myth limited in its reach to radical political movements. It can also be found in the invention of human rights as a legal and political concept. Habermas influentially argues that the human rights project offers a 'realistic utopia' – an imagination of a better society within the broad architecture of the current socio-political order of liberal capitalism.[85] But this realist, liberal project is built on mythic foundations. Famously, Bentham dismissed the pronouncement of human rights during the French Revolution as 'nonsense upon stilts'[86] – an ahistorical and politically naïve claim that human beings were invested with a set of minimum guarantees and protections that had never, before that point, been guaranteed or protected. Bentham argues that the claim of human rights as *natural rights* – things attaching to human beings not as the gift of a benevolent government but as a result of the fundamental nature of humans as such – therefore amounts to wishful thinking, which cannot overpower the ability of States to pass whichever positive laws they choose to.[87]

In the strictest sense, Bentham is right.[88] To talk of a (legal) right that the State cannot take away is legal non-sense, because the State ultimately determines what the law is. Human rights law was, essentially, brought into effect by an act of collective wishful thinking, an assertion along the lines that fundamental rights do not exist, but we would all benefit if they *did* exist, and so we should therefore act as though they did! This is the very essence of mythical thinking – a reconstruction of jurisprudential and political world-views based not upon factual conditions but on the imagination of

[84] See also S Critchley, *The Faith of the Faithless: Experiments in Political Theology* (Verso, 2012); cf. O Wilde, 'The Soul of Man Under Socialism', collected in: O Wilde, *In Praise of Disobedience: The Soul of Man Under Socialism and Other Writings* (M Martin (ed), Verso, 2018), especially pp. 17-18.
[85] J Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights' (2010) 41 *Metaphilosophy* 464.
[86] J Bentham, 'Nonsense upon Stilts, or Pandora's Box Opened, or the French Declaration of Rights Prefixed to the Constitution of 1791 Laid Open and Exposed: With a Comparative Sketch of What Has Been Done on the Same Subject in the Constitution of 1795, and a Sample of Citizen Sieyès', collected in part in J Bentham; S Engelmann (ed), *Selected Writings* (Yale University Press, 2011), p. 318.
[87] Ibid, 328-330.
[88] For a discussion of Bentham's essay in more traditionally jurisprudential terms, see J Waldron, *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man* (Routledge, 1987), pp. 29-45, 151-209.

an (in this case, social rather than natural) order, and then acting on the basis of that world-view (through legislative and judicial activity). Of course, it is possible to defend human rights rationalistically (in the same way that it is possible to rationalise revolutionary politics): now that we are in a system that treats human rights as fundamental, we logically benefit from continuing these existing legal and political practices, because giving those rights up would reorient the relationship between individuals and States in a way that would not benefit us.[89] But that first imaginative leap required an essentially mythical envisioning of a better world.[90]

These various examples do not prove that myth is a morally good force in society; rather they suggest that myth, as a symbolic medium, is a *politically flexible* tool that can be used in a variety of different ideological contexts, for better and for worse. To be sure, myth has often been a socio-culturally conservative force, since the people manipulating it most explicitly and regularly have been members of the political elite, with a vested interest in maintaining the status quo. But a survey of the political uses of myth suggests that it does not have to be, and indeed, it has been (and is) put to use in rhetorical support of fundamental changes to the pre-existing status quo. This means that the assertion of the PAM, that myths serve a generally conservative and reactionary political purpose, is untrue, or at least, oversimplistic. This has substantial implications for how we approach myths as socio-cultural forces in contemporary and historical societies, including rape myths (when understood as authentically mythic in the sense discussed in the last section), to which we should now turn.

4. Implications of Treating Rape Myths as Myths

If we recognise rape myths as myths in the sense suggested by mythological scholarship – that is, as culturally significant folk narratives of ambiguous facticity about sexual wrongdoing – then three areas of discussion open up. Firstly, when we recognise the political adaptability of myth as a medium, the

[89] See, e.g., Habermas (n. 85); Kant, *Groundwork on the Metaphysics of Morals* (n. 32).
[90] See generally Blumenberg (n. 30). *Cf.* JR Slaughter, 'Enabling Fictions and Novel Subjects: The *Bildungsroman* and International Human Rights Law' (2006) 121(5) *Publications of the Modern Language Association* 1405, highlighting the tautologous nature of human rights' claims to recognise the subject's already-existing natural rights, and simultaneously, to bring those same fundamental rights into being.

objection to rape myths is subtly shifted. Rape myths (as they have been defined thus far) are not bad because they are myths, but because they are *patriarchal*. It follows that other, non-patriarchal, myths about sexual wrongdoing could exist. This implies, secondly, new potential strategies for responding to the harms that (patriarchal) rape myths cause, shifting attention away from the single-minded pursuit of 'myth-busting'. Thirdly, and finally, treating rape myths as myths opens up new avenues for approaching rape myth scholarship itself. Let us consider each topic in turn.

A. Rape Myths as Myths about Rape (and Other Sexual Wrongdoing)

The first change that a mythological account of rape myths would make is that the concept of a rape myth would, in and of itself, lose its pejorative status. Since the concept of a 'myth' is no longer being treated as innately pejorative, the mere existence of a 'rape myth' would not, by itself, be taken a cause for concern. Rather, the problem posed by rape myths, as we know them today, should be traced to their *content* rather than the mere fact of their nature as myths. The main focus of rape myth scholarship to date would be better defined as *patriarchal rape myths*, and problematised for their support for existing rape culture rather than for their mythicality as such. This is what most rape myth scholarship already does, using 'myth' as a shorthand for 'false or incomplete account'. But as we saw in Part 2(B), the pejorative definition of myth being used as that shorthand maps poorly onto a feminist account, given feminism's tendency to reject the narrow rationalism and dogmatism associated with post-Enlightenment patriarchy.[91] The attempt to treat the 'myth' in rape myths as a metaphor that takes advantage of the rhetorical value of the pejorative approach runs the risk of implicitly endorsing the values that underpin it – in particular, its commitment to an exclusionary definition of rationality, of the sort that feminism itself emerged historically as a reaction to, as well as its underlying historical connections to imperialist and white supremacist thought.[92] Virtually no rape myth studies unpack what they mean by 'myths' when they approach rape myths – they tend to be empirical studies and so to have more important things to do – and in the void left by this lack of a

[91] Recall n. 46 above, in particular.
[92] Recall especially Hekman (n 35).

definition it is too easy for the audience to read 'myth' in the same sense offered by the vernacular PAM. So to my mind, this clarification is more than just a semantic fiddle. It is about ensuring that the language of rape myth scholarship does not tend to undermine its epistemic (and political) mission by tacitly endorsing an account of truth and falsehood that is at odds with feminist epistemologies.

A mythological account would also enable rape myth scholars (and feminists more generally) to bypass a reliance on myth as a metaphor, and consequently to avoid the critique of their work as telling 'myths about myths'.[93] By drawing on the approach to myths in mythological scholarship – by treating rape myths as authentic myths – rape myth scholarship can avoid being drawn into rationalistic truth-games about competing ideological visions of some unitary, objective Truth and remain closer to feminist epistemology's interest in presenting multiple subjective truths that resist and complicate patriarchal binaries.[94] It becomes harder to treat rape myth scholarship as just a way of making a topic taboo, turning dissenting critiques into presumed anti-feminist attacks,[95] because myth is no longer treated (implicitly or otherwise) as an inherently problematic feature of cultural discourses around sexual wrongdoing. Rather, scholars can focus more clearly on what the rhetorical tool (and linguistic shortcut) of the rape myth was always about: the *patriarchal* underpinnings of myths that reflect the perspective of rape culture.

B. Responding to the Harms of (Patriarchal) Rape Myths: Myth-Busting Plus

This focus on patriarchal rape myths implies the potential existence of other, non-patriarchal rape myths, which, in turn, opens up new ground for thinking about how to respond to the harms caused by patriarchal myths. In Part 2, I linked rape myth scholarship to the PAM, which operates a general strategy of 'debunking' or 'busting' myths on the understanding that they are an insidious and intractable barrier to truth and social progress. While the feminism from which rape myth scholarship

[93] Recall nn. 2-3 and 5.
[94] See, e.g. HE Longino and K Lennon, 'Feminist Epistemology as a Local Epistemology' (1997) 71 *Proceedings of the Aristotelian Society, Supplementary Volumes* 19.
[95] As Gurnham, 'Debating Rape' (n. 5) argues.

sprung has a complicated relationship with the liberal rationalism underpinning the PAM,[96] rape-myth rejecting interventions tend to closely map on to a 'myth-busting' strategy. Rape myth scholarship tends to propose solutions based around two main strategies: firstly, *educating* juries (for instance, using expert evidence or judicial direction, typically at the start of the trial)[97] and/or criminal justice workers[98] to debunk rape myths; and secondly, *reforming* institutions to reduce the discursive control exerted by rape myths over criminal justice proceedings (for instance, by abolishing juries, or abandoning an adversarial model of criminal justice, in sexual offences cases or more generally).[99] In both cases, the attempt is to exclude and downplay the mistruths embodied in rape myths, and thereby ensure the sanctity of the decision-making process at trial.

Although I have constructed the PAM in opposition to the mythological account, it does not follow that we must reject myth-busting altogether when we reject the PAM. Again, the mythological account does not suggest that (rape) myths are good and desirable, only that they are *adaptable* to a wide range of socio-political agendas, and extremely commonplace in human societies, modern and otherwise. Even if we accept that human beings tend to rely on mythical thinking as a means of making sense of the world, however, it does not follow that we must accept *particular myths* as inevitable or immutable. When confronting harmful myths, myth-busting can be a viable response, especially in circumstances where mythical thinking is simply not good enough as a form of rationality. Jury decision-making is one such arena. We rely upon juries to inject some democratic 'common sense' into criminal justice, and thereby preserve the views and the conscience of the general public in otherwise elite professional judicial decision-making.[100] However, this does not mean that juries should not be expected to comply with high standards of cognition during the trial. Criminal wrongs

[96] Recall nn. 46-47 and accompanying text.
[97] See, e.g., F Leverick, 'What Do We Know about Rape Myths and Jury Decision-Making?' (2020) 24 *IJE&P* 255.
[98] See, e.g., B Kim and H Santiago, 'Rape Myth Acceptance among Prospective Criminal Justice Professionals' (2019) 30 *Women Crim Justice* 462.
[99] See, e.g., L Ellison, 'Rape and the Adversarial Culture of the Courtroom', in: M Childs and L Ellison (eds), *Feminist Perspectives on Evidence* (Routledge, 2000); D Dripps, 'After Rape Law: Will the Turn to Consent Normalize the Prosecution of Sexual Assault?' (2008) 41 *Akron Law Review* 957.
[100] See generally AW Dzur, *Punishment, Participatory Democracy, and the Jury* (OUP, 2012); *cf.* C Bennett, 'What is the Core Normative Argument for Greater Democracy in Criminal Justice?' (2014) 23 *The Good Society* 41.

(properly recognised as such) represent some of the most fundamental wrongs done by one individual against another,[101] and in particular, sexual offences represent such fundamental invasions of bodily integrity and personal dignity that they should always be taken very seriously by any just society.[102] It therefore behoves the decision-makers responsible for identifying sexual offences in individual cases to maximise their ability to properly recognise those guilty of sexual offences (and to acquit the factually innocent) by considering the facts before them as carefully and rigorously as possible, without taking cognitive shortcuts.[103] Mythical thought is an example of just such a cognitive shortcut; it relies upon stereotypes, archetypes, and other symbolic abstractions to make sense of complex phenomena through a process of simplification and relation with other concepts and ideas.[104] Accordingly, it makes sense to expect jurors to challenge their own assumptions and consider the facts before them carefully, guided by the actual legal tests that they must apply.

To the extent that juror education works in reducing levels of (patriarchal) rape myth acceptance,[105] it can provide a defensible example of myth-busting, insofar as its methods are focussed on a specific, time-limited intervention (a single criminal trial). By focussing on jurors, rape myth scholars propose an intervention that does not need to result in some sort of Damascene conversion to a particular world-view. Rather, all that is needed is that the harmful myth be 'busted' *for the purposes of that specific trial*. While it would be desirable for (patriarchal) rape myth accepters

[101] See, e.g., AYK Lee, 'Public Wrongs and the Criminal Law' (2015) 9 *Criminal Law and Philosophy* 155. This is not to say that contemporary criminal law *does* properly recognise only the most fundamental wrongs as crimes: see, e.g., D Husak, *Overcriminalization: The Limits of the Criminal Law* (OUP, 2008).

[102] See, e.g., J Gardner and S Shute, 'The Wrongness of Rape', collected in: J Gardner (ed), *Offences and Defences: Essays in the Philosophy of Criminal Law* (OUP, 2007); M Plaxton, 'Nussbaum on Sexual Instrumentalization' (2016) 10 *Crim Law Philos* 1; SP Green, *Criminalizing Sex: A Unified Liberal Theory* (OUP, 2020).

[103] On the idea of cognitive shortcuts, see Kahneman D, *Thinking, Fast and Slow* (Penguin, 2011).

[104] See, e.g., Blumenberg (n. 30); Cassirer, *The Philosophy of Symbolic Forms* (n. 29); Lévi-Strauss C, *Wild Thought: A New Translation of* Le Pensée Sauvage (J Mehlman and J Leavitt (trans), University of Chicago Press, 2021).

[105] There is some evidence that juror education can work in this regard. See, e.g., Leverick (n. 97), especially pp. 270-273; LF Hudspith, N Wager, D Wilmott, and B Gallagher, 'Forty Years of Rape Myth Acceptance Interventions: A Systematic Review of What Works in Naturalistic Institutional Settings and How This Can Be Applied to Educational Guidance for Jurors' (2021) *Trauma, Violence, & Abuse*, forthcoming, <https://doi.org/10.1177/15248380211050575>, accessed 4th August 2023. *Cf*. Russell-Brown K, 'The Academic Swoon over Implicit Racial Bias: Costs, Benefits, and Other Considerations' (2018) 15(1) *Du Bois Review* 185-193, in the context of racial stereotypes and implicit biases.

to be convinced of the wrongness of their assumptions about 'real rape', it is not necessary that any such acceptance last longer than the point of the jury's delivering a verdict. This is important because human cognition *depends* upon cognitive shortcuts of the sort that define mythical thought. In an ever-increasingly complex social world, it is simply impossible to learn everything and keep it in one's head, and so society depends upon a social division of knowledge.[106] This makes it very difficult to go about life while maintaining rigorous knowledge of everything in one's head. Indeed, this is what makes myths so effective as disseminators of information, whether fact, fiction, or some blend of the two: myths are culturally widespread and use a code of stock symbols that present an easily-available means of parsing new or complex phenomena. This makes it an effective means of transmitting 'common sense' – regardless of how sensible or desirable the assumptions and stereotypes that make common sense up actually are.[107] It follows that a general campaign of myth-busting would be doomed to fail, because it would compel individuals to take on a cognitive load that is far in excess of human capability by abandoning the cognitive shortcuts needed to live life minimally effectively.[108] Thus, myth-busting only really makes sense as a strategy for confronting harmful myths in specific, limited circumstances – such as in individual trials.

But this raises a problem, insofar as rape myth scholars want to deal with attrition rates in sexual offences cases. Data suggest that the vast majority of complainants fall out of the criminal justice system well before reaching the trial stage – while police are investigating and prosecutors deciding whether or not to prosecute.[109] These criminal justice workers are professionals, who rely upon a stock of accepted wisdom and assumptions that undergird their everyday activities. To the extent that harmful rape myths affect criminal justice actors' decision-making, the conclusion above suggests that a strategy of myth-busting alone is unlikely to succeed in reducing the impact of rape myth acceptance

[106] See generally PL Berger and T Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Penguin, 1966).
[107] *Cf*. C Geertz, 'Common Sense as a Cultural System', in C Geertz (ed), *Local Knowledge: Further Essays in Interpretive Anthropology* (Fontana Press, 1983).
[108] See generally Kahneman (n. 103). Recall the idea of the 'myth of mythlessness' (Jewett and Lawrence, n. 81).
[109] See, e.g., Ministry of Justice et al (n. 12); Centre for Women's Justice et al (n. 21).

on complaint attrition rates, because it would need to engage not with a special moment where enhanced cognition is expected (a jury's particular criminal trial), but the everyday experience of professional life, where cognitive shortcuts are much more useful and therefore deeply-ingrained. If myths are no longer understood as inherently problematic, could *myth-making* offer a solution in cases like these, where harmful attitudes are more entrenched?

If we accept that rape myths need not always and inevitably communicate patriarchal ideas, the possibility of a *feminist* rape myth becomes at least conceivable. Such a narrative – emphasising the commonality of sexual offending and its distance from the current conception of 'real rape' – would need to be sufficiently compelling to catch on in the public imagination, and so be adopted as a folk narrative at the cultural level. It might be disseminated through cultural media like movies and novels, or more indirectly, like Keum's deep myths, through advertising, news coverage, and indeed, academic scholarship. Anything that touches upon public discourses about 'real rape' is capable of transmitting the mythic narrative, so long as it can lodge in people's minds.[110] In this regard, it is instructive to learn the lessons from research into public education about criminal justice – the public tend not to absorb raw information about crime, for instance, preferring the morality tales provided by particular *crimes* in their news reporting.[111] The making of myths therefore needs to extend beyond the traditional sorts of outputs with which academics tend to be familiar.

With that said, it would be difficult to make myths that overturn the narrative of existing rape narratives in a society suffused with the patriarchal propaganda of rape culture. The #MeToo movement provides a good example of the challenges and pitfalls of such an approach. In positioning survivors' accounts of sexual offending front and centre, the movement created a vast web of interconnected testimonies that emphasised the ubiquity of female suffering, and challenged the narrative that sexual offences are rare, violent attacks by strangers against risk-taking provocateurs.[112]

[110] Recall Barthes (n. 44); Keum (n. 28).
[111] See MY Feilzer, 'Criminologists Making News? Providing Factual Information on Crime and Criminal Justice through a Weekly Newspaper Column' (2007) 3 *Crime Media Culture* 285.
[112] See, e.g., M Murphy, 'Introduction to the #MeToo Movement' (2019) 31 *Feminist Family Therapy* 63.

However, the movement has tended to produce some problematic simplifications in narratives about sexual offences. For instance, given that offending against women is far more common than against men, the #MeToo movement has been less successful at drawing attention to the experiences of male victims, as well as non-heteronormative survivors.[113] The discussion around #MeToo has also tended to underplay the impact of the intersections of race, sex and gender in the experience of sexual offending.[114] In short, those narratives that transcended the (often highly nuanced and complex) discourse around #MeToo into its mythicised understanding in the general public tended to become simplified and to reflect other aspects of patriarchy, white supremacy, and heteronormativity. At the same time, the very prominence and cultural salience of the #MeToo movement provoked a strong backlash, which has reinforced dominant mythic narratives about what 'real rape' looked like, not least by encouraging the expression of explicit misogyny, especially in online spaces.[115]

It would be strange to claim that #MeToo was aimed at making a new myth of sexual offences. Its stated aim was to tell survivors' stories; to provide a factual record to counter the narratives in rape myths. And yet, #MeToo undoubtedly *did* produce mythic content, in the form of cultural narratives and counter-narratives that were continually absorbed, reproduced, and reinterpreted by wider society, and which influenced further discourse around the movement. The myth of #MeToo developed around the movement in real time, whether participants consciously wished it to or not. Literary myths are never the product of a single author or group of authors; they are continually worked and reworked over centuries and even millennia.[116] Deep myths must likewise be transmitted

[113] See, e.g., M Nutbeam and EH Mereish, 'Negative Attitudes and Beliefs towards the #MeToo Movement on Twitter' (2022) 37 *Journal of Interpersonal Violence* NP13018, pp. NP13039-NP13040; S Hindes and B Fileborn, 'Reporting on Sexual Violence "Inside the Closet": Masculinity, Homosexuality, and #MeToo' (2021) 17 *Crime Media Culture* 163.

[114] See, e.g., A Onwuachi-Willig, 'What About #UsToo? The Invisibility of Race in the #MeToo Movement' (2018-2019) 128 *Yale Law Journal Forum* 105.

[115] See, e.g., Nutbeam and Mereish (n. 113); K Boyle and C Rathnayake, '#HimToo and the Networking of Misogyny in the Age of #MeToo' (2020) 20 *Feminist Media Studies* 1259; MB Andreasen, '"Rapeable" and "Unrapeable" Women: The Portrayal of Sexual Violence in Internet Memes about #MeToo' (2021) 30 *Journal of Gender Studies* 102.

[116] See Blumenberg (n. 30); Lévi-Strauss C, *From Honey to Ashes: Introduction to a Science of Mythology, Volume Two* (1973, J Weightman and D Weightman (trans), Harper & Row), p. 354.

through public discourse, and are subject to distortion, simplification, and rationalisation with other deep myths before they are accepted to any extent. Past a certain point, what the public does with myths is out of the myth-maker's hands.[117] At the same time, however, political actors constantly and inevitably create myths in their wake – something that any actor ought to keep in mind, given the potential of cultural perceptions to affect the political impacts of any action.[118] If one fails to engage with the myths that grow up around one's actions, then one cedes that socio-cultural terrain to one's opponents, who may have fewer compunctions about using it to their own ends.

All of this is to say that myth-making is hard, and cannot be the product of a single intervention, crafting a perfect narrative that instantly overwhelms previous cultural attitudes and stereotypes. In a sense, the production of feminist rape myths would resemble the work that (postmodernist and) radical feminists advocate to challenge and redefine the concepts of sex, gender, and gender roles that lie at the heart of rape culture.[119] Such accounts aim at addressing the cultural foundations of rape culture – the expectations and scripts about male and female behaviour that lump people into categories of abuse and predation, with an aim of deconstructing the assumptions that make patriarchal rape myths so easy to accept without question. Myths, when understood holistically, can absolutely play a role in this process, as a means of propagating ideas out of academic and political discourse and into general life. By taking a more holistic, mythologically-informed approach to myths,

[117] Cf. Foucault, *The Archaeology of Knowledge* (n. 52).

[118] One consequence of this for the myth-making approach I suggest here is that myth-makers need not be limited to 'cultural' media outputs in attempting to make and promulgate feminist rape myths. For instance, we might look at how sex education (at primary, secondary, and tertiary levels) produces and reproduces rape myths; even profoundly factual and entirely rationally-delivered messages from education may, after all, produce myths that influence subsequent socio-cultural attitudes and beliefs. This is a subject that (primarily US-based) feminist scholars have already addressed, albeit typically with respect to the patriarchal rape myths that sex education perpetuates, rather than as a vehicle for feminist rape myths. See, e.g., MJ Anderson, 'Sex Education and Rape' (2010) 17 *Michigan Journal of Gender and Law* 83; SY Sneen, 'The Current State of Sex Education and Its Perpetuation of Rape Culture' (2019) 42 *California Western International Law Journal* 463; K Clonan-Roy, EA Goncy, SC Naser, KA Fuller, A DeBoard, A Williams and A Hall, 'Preserving Abstinence and Preventing Rape: How Sex Education Textbooks Contribute to Rape Culture' (2021) 50 *Archives of Sexual Behavior* 231.

[119] See, e.g., Buchwald et al (n. 15); Hekman (n. 35); J Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990).

rape myth scholars can open up cultural narratives as a terrain for discussion and create opportunities to begin to contest the patriarchal orthodoxy of the current mythology around sexual wrongs.

C. Epistemic Injustices and Political Solutions: Situating Myths in Rape Myth Scholarship

I have so far focussed on the level of political action. But rape myth scholarship is an academic subject of study, not just a participant in an ideological dispute. Let us therefore discuss how taking a mythological approach to rape myths affects our understanding of rape myth scholarship itself.

It is important to recognise that rape myth scholarship operates on two broad levels. Firstly, it is sociologically *descriptive*. That is, its aim is to chart the incidence and content of rape myths through empirical study, contributing to the development of scientific knowledge about public attitudes towards sexual wrongs and their impact on the criminal justice system. The intrinsic academic value of such description should not be underestimated. In particular, feminist epistemologists have recently engaged with the concept of *epistemic injustice* (the wrong that is done when a person's experiences are denied or ignored by prevailing systems of knowledge) to illustrate the importance of recognising experiences that tend to be ignored or discredited.[120] From such a perspective, patriarchal rape myths amount to systems of understanding the world that prevent survivors of sexual wrongs from being recognised as such, allowing their experiences to be properly heard and understood. Rape myth scholarship, in challenging patriarchal rape myths, therefore provides an avenue for widening our understanding of how individual survivors experience sexual wrongs. Merely by cataloguing instances of unjust unbelief, it is doing something valuable. This is not a function that a mythological approach to rape myths really alters, one way or the other; it remains important to hear the truths of survivors' experiences, irrespective of how we place those truths in relation to mythic representations of sexual wrongs. It is important that any analysis that engages at

[120] See generally M Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (OUP, 2007). In feminist contexts, see, e.g., K Jenkins, 'Rape Myths and Domestic Abuse Myths as Hermeneutical Injustices' (2017) 34 *Journal of Applied Philosophy* 191; AS Yap, 'Credibility Excess and the Social Imaginary in Sexual Assault Cases' (2017) 3(4) *Feminist Philosophy Quarterly* <https://ojs.lib.uwo.ca/index.php/fpq/article/view/3098>, accessed 4th August 2023; ECR Tilton, 'Rape Myths, Catastrophe, and Credibility' (2022) *Episteme* 1, Online First, published 28th March 2022, doi:10.1017/epi.2022.5.

the macro-political and cultural levels does not lose sight of the individual human beings that form the subject of rape myth scholars – the survivors themselves, and their testimonies of experiences of sexual wrongdoing.[121]

But rape myth scholarship is not purely descriptive, as is reflected by the focus of so many writers on some sort of reform to the institutions and practices of criminal justice. Rape myth scholars catalogue injustices, and it is hard to simply describe such serious wrongs without thinking about how we might respond to them. So rape myth scholarship is also, secondly, politically *prescriptive*. If you like, there is a difference between the questions, 'do rape myths exist, and what is their content?' and 'what impact do rape myths have upon criminal justice problems, and how should we respond to them?' It is at this second level that a mythological approach to rape myths would open up many new avenues to rape myth scholarship. In particular, there would be room to engage in cultural-theoretical analysis of rape myths: where do they come from, and how do they spread? How are they received, in different sections and subcultures across society? How, and to what extent, do different rape myths evolve over time, and in response to which pressures? This more abstract analysis could also be matched by further extension of the concept of rape myths away from those that focus on discrediting the survivor; for instance, buttressing the black (and intersectional) feminist critique of rape myths about black men as rapists of white women.[122] 'Rape myths', after all, need not focus only on stereotypes affecting survivors, and could be expanded to provide a useful frame for thinking about a wider range of intersectional issues that academics currently tend to approach separately.

At the same time, the question of what to do about patriarchal rape myths remain, and a whole host of more practical questions remain that I have scarcely scratched the surface of here. How

[121] I owe this point to the careful criticism of Vanessa Munro on an earlier draft of this paper.

[122] See, e.g., AY Davis, *Women, Race and Class* (Vintage Books, 1981); AM White, MJ Strube, and S Fisher, 'A Black Feminist Model of Rape Myth Acceptance: Implications for Research and Antirape Advocacy in Black Communities' (1998) 22 *Psychology of Women Quarterly* 157; J Wriggins, 'Rape, Racism, and the Law', in: P Searles and RJ Berger (eds), *Rape & Society: Readings in the Problem of Sexual Assault* (Routledge, 1995); *cf.* S Merken and V James, 'Perpetrating the Myth: Exploring Media Accounts of Rape Myths on "Women's" Networks' (2020) 41 *Deviant Behavior* 1176.

effective, for instance, are different myth-making efforts at unseating the orthodoxy of patriarchal rape myths? To what extent can different rape myths be reinterpreted and reimagined to defang them of their patriarchal content? How can feminist rape myths be proposed without incurring backlash? What sorts of myths attend as socio-cultural impacts of rational political movements (like #MeToo)? Given that myth is a folk product, influenced by socio-political power but ultimately expressed collectively, it is extremely difficult to influence its content directly at a more than glacial pace. But just because something is difficult, that does not mean that it is impossible, and rape myth scholarship could productively look to the cultural – including to the mythic – to pursuing a solution to the harms caused by patriarchal rape myths.

5. Conclusion: Taking Myths Seriously

This has been a paper about the mythicality of rape myths, but it has implications beyond that subject. The pejorative approach to myths is so widespread as to be unnoticeable. Myth has been used as a framework for thinking about mistakes, stereotypes, and mistruths across the spectrum of legal, socio-legal, and criminological scholarship, almost exhaustively in a pejorative context.[123] But by a greater engagement with mythological scholarship, legal study more generally could benefit just as much as I have argued here that rape myth scholars could. Of course the presence of myths in and around the subjects of law is likely to vary by field; emotive and more overtly politicised branches of law, such as criminal law and public law probably enjoy more day-to-day interactions with the socio-cultural, including with the myths of contemporary societies.[124] But that is not to say that tax law or commercial law, say, would not benefit from thinking about their cultural interpretation and reinterpretation.

Ultimately, the study of myth exposes the wide diversity of ways of thinking within even contemporary societies, despite their claim to have moved 'from *mythos* to *logos*'.[125] Myths abound

[123] See, e.g., P Fitzpatrick, *The Mythology of Modern Law* (Routledge, 1992).
[124] There is a lively subset of political science that engages with the mythic, pejoratively or otherwise. See, e.g., D Grant, *The Mythological State and its Empire* (Routledge, 2009); cf. Cassirer, *The Myth of the State* (n. 43).
[125] Recall n. 30.

in contemporary societies, in part because they serve as a vector for helpful assumptions and cognitive shortcuts. These shortcuts can cause problems – as they do in the patriarchal rape myths discussed above – but they are not inherently bad or problematic. Indeed, they make it possible to live effectively in an increasingly specialised and complicated world. The question of whether or not myths are psychologically intrinsic to human cognition, or just a particular mode of thought that human society could, if it wanted to, transcend, is fiercely debated and remains unsettled.[126] But what is clear is that myth is a major part of contemporary societies. The mythological approach argues that this is neither implicitly good or bad – it is just a fact of contemporary socio-cultural life. This is tremendously important to the study of laws and their effects, since law presents itself, fundamentally, as a rationalistic phenomenon of rules and reasoning. But that rationalistic space must emerge out of a politics that we cannot claim is purely and scientifically logical, and it must apply not to perfectly rationalistic clusters of political rights, but to something much more complex, messy, frustrating, and beautiful – that is, to human beings. The rehabilitation of myth as a concept in law and the social-scientific disciplines around it is long past due, not just because of the problematic legacy of the pejorative approach, but also because of the benefits that recognising myth as a potent socio-cultural force could bring.

[126] Recall n. 82.