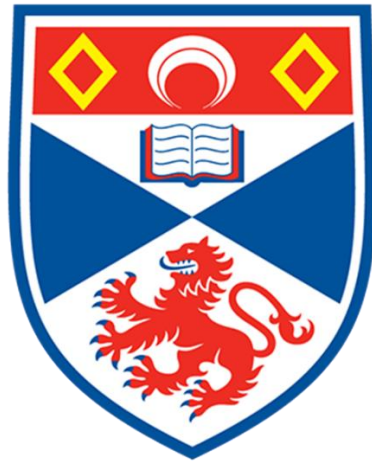


An epistemological problem: the permissibility of belief in cases of sexual assault

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Campaigns like #BelieveWomen and #MeToo have triggered social debate surrounding believing sexual assault accusations. Claims that we should believe women's accusations of rape and sexual violence¹, either generally or about specific cases, often face fierce responses. Some critics argue that believing such accusations undermines the presumption of innocence and risks believing false accusations (Ferzan 2021: 65-66). The permissibility of belief is at the forefront of public conversation, with questions like "*Am I permitted to doubt that my friend was sexually assaulted when she tells me so?*".

The permissibility of belief is an epistemological concern. Epistemology is the area of philosophy concerning knowledge, belief, and justification. This essay examines the permissibility of (i) believing accusations of sexual assault and, conversely, (ii) doubt towards sexual assault accusations. I consider how the permissibility of belief and doubt shifts depending on the type of belief, such as between a lay-person's belief about a celebrity and a juror's belief during a trial.

In Section 1, I outline the scope of my research, before offering a diagnosis of the problem seen in contemporary debates in Section 2. In Section 3, I examine the specific role that testimony plays in permitting belief in accusations. In the Section 4, I consider what are permissible forms of doubt. In Section 5, I present the problem of how to tell when our own doubt is unreasonable.

1. Which cases lead to contention about the permissibility of belief?

My research concerns problems surrounding the permissibility of belief in cases of sexual assault. These problems do not apply to all beliefs about sexual assault. Consider Kimberly Ferzan's case (2021: 79):

***The Law Student Case:** A law professor is due to teach a class on sexual assault. Before the class, a student approaches the professor and asks them not to call on her as she has experienced sexual violence herself.*

Ferzan argues that belief in this case is unproblematic; the professor is permitted to believe the student without question. This uncontroversially permissible belief differs from the cases I

¹ Not all incidents of sexual violence are committed by a man against a woman. However, I am looking at how gendered prejudice leads women to face specific forms of scepticism. I am therefore following much of the recent literature in focusing on responses to women's testimony. Yet, I do believe that my suggestions will be useful beyond my narrow focus.

consider since the student does not make a named accusation, there is consequently no denial by an accused perpetrator and any harms resulting from believing a false claim are minimal.

I consider cases in which the accused denies the accusation. There may be additional non-testimonial evidence, but the most acute problem occurs in what Georgi Gardiner terms ‘she said, he said’ cases (2021b: 124), where a woman makes an accusation of sexual assault against a man, which he denies. Beyond their testimonies, there is no individualised evidence² (Gardiner 2021b: 127-128), which I will address later.

2. Why do these cases cause contentious debate?

Consider the following case:

***The Actor Case:** You read a news report that Mr Woods, a famous actor, has been accused of rape by Ms Stephens, his younger co-star. In response, Mr Woods has released a statement of denial. Are you permitted to believe that Mr Woods raped Ms Stephens?*

The inability to find a widely accepted answer results from several competing principles. The problem arises from trying to satisfy them all. I outline three reasons which support permitting belief in accusations like Ms Stephens’: a non-moral or “epistemic” reason (in Section 2.1); the redressing of systemic prejudice against women’s accusations (in Section 2.2); and a moral motivation (in Section 2.4). In Section 2.3, I outline a reason to be hesitant towards permitting belief, typically expressed as the principle of “innocent until proven guilty” – this responds to Sections 2.1 and 2.2 and sets up for Section 2.4.

2.1 A non-moral reason for belief:

One epistemic motivation for believing a woman’s accusation is that there is a very high probability it is true. Whilst calculations of false accusations are difficult, estimates suggest that less than 7% of criminal rape allegations are false (Tuerkheimer 2017: 20). This seems to be a strong motivation for permitting belief in Ms Stephens’ accusation, especially considering that we permit belief on far weaker statistics, such as beliefs like “it will rain today” based on relatively low probabilities by meteorologists.

2.2 Redressing epistemic injustice:

² Individualised evidence is evidence that is sensitive to the accused’s culpability, meaning that evidence in favour of guilt would not exist if the accusation was not true (Gardiner 2021b: 127-128)

Epistemic injustice refers to specific forms of injustice relating to knowledge and beliefs. In cases of sexual assault, these injustices result from “rape culture”. We arguably live in ‘a cultural environment where sexual assault and sexualized violence is a normative or expected type of interaction’ (Crewe and Ichikawa 2021: 256). In general, women face two kinds of epistemic injustice when speaking of their experiences of rape and sexual assault.

Women face *testimonial injustice*: prejudice leads hearers to give a woman like Ms Stephens less credibility than she is due, treating her as untrustworthy. Further, women face *hermeneutical injustice*: rape myths distort the hearer’s conception of what cases of rape look like, so they treat Ms Stephens’ claim as less plausible than they should do since it does not accord with cultural conceptions of rape (Jenkins 2017: 197-198). Emily Tilton argues that these forms of injustice interact and exacerbate each other, meaning that hearers treat Ms Stephens as even less credible because they already judged her claim to be implausible and vice versa.³ (Tilton 2022: 7-8)

Women who make accusations of sexual assault are victims of systemic injustice, as seen in low reporting and prosecution rates (Tuerkheimer 2017). As with other forms of systemic injustice, we must decide how to redress it. Arguably, we should epistemically correct for systemic injustice and shift to treating women as believable (Ferzan 2021: 69-71). However, I will return to a pertinent criticism of this in 2.3.

2.3 “Innocent until proven guilty”:

The arguments outlined in 2.1 and 2.2 face a serious problem, typically expressed as the principle of “innocent until proven guilty”. However, this legal term has little meaning in non-legal situations (Ferzan 2021: 94-95). When someone uses the phrase “innocent until proven guilty” in a non-legal context, they mean the following argument:

- (i) Believing someone committed sexual assault is a belief with significant consequences (a moral claim).

³ This analysis does not apply to all sexual assault accusations. Tilton (2022) emphasises that privileged white women who accuse black men of sexual violence receive an excess of credibility. These accusations accord with racist beliefs and rape myths, so these women are systematically believed, even against good evidence.

- (ii) If we are forming belief with significant consequences, then a higher standard of evidence is required to be sufficient to permit the consequential belief (the principle of pragmatic encroachment⁴).
- (iii) Therefore, a higher standard of evidence is required to be sufficient to permit the belief that someone committed sexual assault.
- (iv) The reasons outlined in 2.1 and 2.2 do not meet this higher standard of evidence (an epistemic claim).
- (v) Beliefs are only permissible if they are based on sufficient evidence (an epistemic claim).
- (vi) Consequently, believing someone committed sexual assault is not permissible, and thus we should suspend our judgement about the accusation rather than believe it⁵.

I now consider (iv) in more detail, starting with the reason outlined in 2.1. I return to the idea of individualised evidence (evidence that is sensitive to whether the accusation is true), which contrasts non-individualised evidence (evidence that is not specific to the case and the truth of the accusation). The low rate of false accusations is non-individualised evidence; these statistics remain consistent regardless of the truth of the accusation in question. Arguably, non-individualised evidence is insufficient to form consequential beliefs about sexual assault as it is not specific to the case in question. Put simply, we have a moral-practical-epistemic responsibility to always consider the possibility that Ms Stephens' accusation is the statistical exception (Crewe and Ichikawa 2021: 273).

The reason why the motivation outlined in 2.2 does not meet a higher standard of evidence is that whilst we should try to redress the injustice that women experience, uniformly believing women's accusations on these grounds appears problematic. Like non-individualised evidence, such correctives are not sensitive to the truth of an accusation and thus come with the risk of permitting belief in false accusations (Ferzan 2021: 69). It may be that this is a cost

⁴ Pragmatic encroachment is the principle that we should be more sceptical in situations where the consequences of belief are more severe (Crewe and Ichikawa 2021: 263). For discussion of moral and pragmatic encroachment, see Moss (2018), Gardiner (2018), Basu (2019) and Goldberg (2020) and (2021).

⁵ The latter claim that we should suspend judgement is contentious – there is a wealth of philosophical literature surrounding the extent to which we can control which beliefs we form. For this reason, my essay concerns the permissibility of belief, rather than an obligation to form or suspend beliefs.

worth taking, especially when we are focusing on permitted belief rather than knowledge, but this requires a further defence.

2.4 A moral response:

There are moral motivations for believing women's accusations of sexual assault. Alexandra Lloyd (2022) provides a compelling argument that we owe victims of sexual assault social support and empathy, and that belief in their claims is a necessary precondition for this. Whilst I will not consider her argument, it offers a reason why the undue suspension of judgement can be harmful towards victims of sexual assault.

This directly opposes the way the stakes are presented in claim (iii). We often focus on the harms of believing a false accusation to a man, such as losing future jobs, friendships and harming his marriage. Whilst these are real possibilities, Crewe and Ichikawa (2021: 263-265) argue that presenting the stakes of sexual assault accusations in this way is morally charged and an ideological position. They adopt Kate Manne's term "himpathy" to highlight our societal preoccupation with the harms of sexual assault to men. Together with Lloyds' explanation of the potential harms of suspending belief, they suggest how hesitancy around belief formation is not morally neutral.

Returning to the big picture of this problem, we have moral reasons to be wary both of believing false accusations and of not believing true ones. We also have epistemic reasons to permit belief in women's accusations (they are highly probably true, and we should correct for our systematic prejudiced doubt), but also reasons to be hesitant to form beliefs about specific cases on these non-individualised grounds for belief. Intractable contemporary debate results from the need to balance these competing factors.

In what follows, I argue that we have better reason to favour permitting belief in women's accusations, first because their testimony can function as a ground for permissible belief, and second because much doubt is unreasonable.

3. What role does testimony play in permitting beliefs about sexual assault?

In everyday life, testimony is good evidence which can permit belief (Ferzan 2021: 72-74), in the absence of "defeaters" (contradictory evidence which is sufficient to undermine the belief). For example, it seems permissible to believe that your favourite football team won the

match when your friend calls to tell you. We can look for further verifying evidence, but I suggest we are permitted in holding these beliefs even if we could not. In the Law Student Case, her testimony permits the professor's belief that she experienced sexual violence.

She said, he said cases are cases of two competing testimonies without corroborating evidence for either account. But I suggest that it is mistaken to present the accusation and denial as two equally credible testimonies. As Reneé Jorgensen Bolinger (2021: 120-121) argues, on a non-individualised basis, there is significantly more incentive for Mr Woods to deny an accusation than there is for Ms Stephens to make it, so we should treat Ms Stephens as more credible. Also considering the low rates of false accusations, it seems that Ms Stephen's testimony of sexual assault should count for something more than the accused's' denial. Consequently, the denial is not an automatic "defeater" for belief in the accusation.

To clarify, I am not arguing that a woman's accusation is always sufficient grounds to permit belief, but it has a role that is not automatically "defeated" by a denial. Further, the role that testimony plays shifts depending on what is at stake in the specific case of sexual assault. I have focused so far on the Actor Case, where the lay-person's belief would make a limited impact on Mr Woods. I will also consider a case in which the consequences of acting on a permitted belief are more severe for the accused.

4. When should we be permitted to believe accusations of sexual assault and what kind of doubt is reasonable?

I think that we morally owe it to victims to be permitted to believe at least some accusations of sexual assault. Further, I have tried to suggest that this is epistemically defensible. Therefore, we must resist some forms of sceptical doubt and permit some beliefs, even though we cannot eliminate every possibility that the accused may be innocent. To think otherwise would be to set beliefs about sexual assault apart from all other forms of belief; in all other circumstances beliefs are permissible even if the agent cannot eliminate the possibility of error entirely.

I define what kind of doubt is reasonable through a decision-making framework. First, I claim that if all forms of doubt about the case are unreasonable, then it is permissible to believe an accusation of sexual assault. Second, more demanding standards of evidence apply when the consequences of believing that the accused committed sexual assault are more severe. For a belief to be permissible by a judge with the potential consequence of imprisonment a higher standard of evidence is required than by a lay-person, whose belief only has minimal

consequences like not associating themselves with the accused. To meet these higher standards of evidence, more doubtful possibilities become relevant, and so more forms of doubt are reasonable. I use the following rules to define which kinds of doubt are reasonable in each case:

First, to resist rape myths and counteract hermeneutical injustice, *any doubt that depends on rape myths is unreasonable, unless there is further evidence that the myth holds true in the case in question.* Consider the following case:

The Ex-Boyfriend Case: *A student makes an uncorroborated report to her university's misconduct team that she was raped by her now ex-boyfriend. He argues that it was consensual. What is the Student Conduct Officer permitted believe?*

It follows from the first rule that it is impermissible for the officer to doubt the student's testimony on the basis that she is seeking revenge for her ex-boyfriend breaking up with her. Such doubt results from a rape myth that women maliciously lie about rape to get revenge. Her claim is no less plausible because she is bringing it against an ex-boyfriend than against a current partner, relative or stranger. However, such doubt would be reasonable if, for example, there were screenshots of her texting that she hates him and wants to ruin his life.

The second rule resists the sceptical concern that, despite the evidence, the claim could be false. Doubt is considered unreasonable when it pushes the standard of evidence sufficient for belief to an unobtainable position, asking for outlandish possibilities to be eliminated. *Any doubt that relies on assumptions we would normally reject as outlandish is unreasonable, unless there is further evidence that it holds true in the case in question.* An outlandish assumption is one which, given the conversational context, the hearer would not tend to share and would question. This rule ensures that the permissibility of belief about accusations of sexual assault does not differ significantly from other accusations.

Third, I treat testimony as a generally permissible ground for belief and the accuser as a credible source: *Any doubt that relies on the evidence being misleading (like the accuser's perception, memory or testimony failing) is unreasonable, unless there is further evidence that it is unreliable.* (Lewis 1996: 558) This rule is weaker in legal and institutional contexts, where it is important to ensure the reliability of evidence. However, following the second rule, this must accord with the scrutiny of evidence normally permissible in these contexts. For example, it may be permissible for a Student Conduct Officer to check that the accuser's testimony is consistent, but not for them to doubt whether DNA evidence was legitimate. Sexual assault accusations must be treated consistently with other accusations. Scrutiny of evidence is

important, but I suggest that the necessary standards of evidence should be able to be met with a credible accusation, even if it is uncorroborated.

5. How can we tell when our own doubt is reasonable?

The first and second rules face a practical epistemic issue⁶. How can we tell when our doubt is the result of a rape myth or when an assumption is outlandish? As Sandford Goldberg (2021) identifies, we live in non-ideal epistemic circumstances. Systemic prejudice affects the available evidence and how we conceive sexual assault. Consequently, we may be unable to identify the influence of rape myths and outlandish assumptions on our belief formation.

My account concerns agents working in ideal epistemic circumstances, who can identify the influence of prejudice. Whilst such an account clarifies what kinds of belief are permissible and challenges undue scepticism, it fails as a decision-making framework for an agent in non-ideal circumstances.

I am yet to solve this problem. It may be a part of wider questions about the production of knowledge from misleading evidence, but I make two practical suggestions. First, we are better at seeing others' prejudice, so we must call out the use of rape myths and outlandish assumptions. Second, the more we learn about prejudice, sexism, rape myths and injustice, the more likely we are to see our errors. I hope these suggestions can bring our beliefs about sexual assault into closer alignment with what is idealistically permissible.

6. Where does this leave us?

I have responded to contemporary debates surrounding the permissibility of believing women's accusations of sexual assault, focusing on a variety of cases involving accusations and denials, especially those without further individualised evidence. I have identified sources of tension between epistemic and moral principles, as well as the influence of epistemic injustice.

I have defended the general permissibility of believing sexual assault accusations, offering reason to give weight to women's testimony and three rules to resist undue doubt. Throughout, I have tried to acknowledge the ways in which the permissibility of belief shifts depending on the significance of consequent action, as well as identifying situations in which doubt is reasonable and belief should not be permitted. I have aimed to provide an account that

⁶ This problem results from a conversation with Sandford Goldberg, for which I am very grateful.

allows us to permissibly believe women's accusations whilst maintaining that we should form our beliefs on sufficient evidence.

What I believe to be a useful account of the permissibility of beliefs about sexual assault faces challenges when applied to our own non-ideal epistemic circumstances. This leaves scope for future research.

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