

ARTICLE

Addressing the “Puzzle” of Gray-Area Sexual Violations

Nic Cottone

Department of Philosophy, Michigan State University, 503 S. Kedzie Hall, East Lansing, Michigan 48824-1312, United States

Corresponding author. Email: cottonen@msu.edu

(Received 26 October 2020; revised 29 December 2021; accepted 18 January 2022)

Abstract

The gray area of sexual violations generally refers to ambiguous sexual experiences that are not readily distinguishable from rape or sex. Such experiences are describable as ambiguous or complex in a way that, to some, seems to defy existent categories of sexual experiences. This leads some feminists to approach the gray area as a puzzle that must be resolved either by understanding it as a new category, or by upholding existing rape categorization. Rather than dispelling the gray-area ambiguity by resolving conceptual puzzles, I assign the gray-area ambiguity a positive analytical role by attending to it in a historical and dialectical light. By tracing histories of feminist antirape discourse, I elaborate a way of understanding the “gray area” of sexual violations, articulating it as a historical condition affecting the interpretive possibilities of our sexual experiences. Such an approach underscores the potential of the gray area to inaugurate feminist critique in virtue of its status as a historically specific yet ambiguous horizon where our experiences can contradictorily seem not-like rape, but not-like sex.

In the late part of the twentieth century, feminists and social scientists developed an understanding of sexual abuse, coercion, and assault capable of recognizing how they work along a continuum, highlighting how forms and categories of abuse shade in and out of one another (Kelly 1987; 2011). Situating the occurrence of sexual violence across a continuum enabled feminists to grapple with the relationship between coercion and so-called normal sex, drawing a connection between the character of sexual abuse, assault, and coercion. Highlighting the continuity between standard heterosex and sexual violence also made apparent certain ambiguities concerning the meaning and/or categorization of experiences of unwanted or coercive sexual encounters. Feminists have called this the *gray area of sexual violations*. The gray area generally refers to ambiguity or confusion over experiences that are not readily distinguishable from rape nor “simply” sex. Such experiences are describable as ambiguous or complex in a way that, to some, seems to defy existent categories of sexual experiences. Feminist researchers and theorists have described the ambiguity regarding our sexual experiences as a hallmark of contemporary (hetero)normative sexuality, in which confusion over

whether an encounter is “just sex” or rape provides cover for rationalizing rape (Cahill 2014; Gavey and Senn 2014; Cahill 2016; Gavey 2019).

This issue of ambiguity features both implicitly and explicitly in recent feminist philosophical literature on sexual violence. Some feminist theorists seek to disambiguate and resolve questions over rape categorization by exploring them as conceptual puzzles. When it comes to ambiguity with categorizing experiences of sexual violence, generally two approaches are taken: an epistemic approach and an agential approach. The former interrogates ambiguity about rape categorization with a focus on knowledge. For example, sometimes a person does not understand their experience as one of sexual violence even if their description of the event meets a given definition of rape. A feminist account with an epistemic orientation might try to resolve this puzzle by developing a framework capable of accounting for how social knowledge affects individual conceptualizations of sexual violence, such as making use of theories of epistemic injustice (Jenkins 2017; Jackson 2019). The agential approach might try to address issues around categorization and ambiguity by accounting for the distinct ways that agency operates across experiences of sexual violence. Ann Cahill articulates such a puzzle about the difference between what she calls “unjust sex” and rape, and resolves the ambiguity by appealing to the differing ways in which agency is harmfully solicited, or truncated, within each.

By articulating and closely examining both approaches’ puzzles, I explain how each could benefit from a historicized understanding of the gray area of sexual violations. A historical orientation enables us to situate gray ambiguity not as a puzzle to resolve, but as a problematic that ought to be given a positive analytical role by attending to it in a historical light. By tracing histories of feminist antirape discourse and methodology, I highlight the transformative potential of the gray area of sexual violations owing to its ambiguity. From this vantage point, we can understand the gray area as an ambiguous yet contradictory condition capable of igniting feminist critique of the material conditions subtending sexual violence. I suggest that the gray area of sexual violations is a historically specific yet ambiguous horizon from which it can be hard to discern the difference between sex and rape, where experiences can seem contradictorily not-like rape, but not-like sex.

The Gray Area of Sexual Violations

The gray area of sexual violations is how some feminist researchers, activists, and theorists refer to the complexity, difficulty, and ambiguity surrounding attempts to distinguish an encounter from rape or simply sex (Alcoff 2018; Gunnarsson 2018; Karlsson 2019; Hindes and Fileborn 2020). It adopts the feminist insight that coercion is not extraneous to sex. Coercion is a feature of normative heterosex that, when considered from a *hegemonic perspective*, is “unremarkable.” To recognize coercion as part and parcel of normative sex, it needs to be considered from the vantage point of those sexually violated—a point long understood by feminists who sought to center subjective experiences when theorizing sexual violations. Catharine MacKinnon, for example, explains how approaches that distinguish “sharply between rape on one hand and intercourse on the other” operate from a dominant point of view that contradicts the experiences of people who are sexually violated (MacKinnon 1991, 114). A perspective seeking to cleanly delineate between rape and intercourse is one that already ignores the ways in which our experiences do not “so clearly distinguish the normal, everyday things from those abuses from which they have been defined by distinction” (MacKinnon

1987, 86). In a similar vein, Linda Martín Alcoff links the refusal of a sharp rape/not-rape binarism with properly attending to the perspectives of people who experience these violations. Attending to the grayness or ambiguity is a way of respecting and giving credence to survivors rather than foreclosing their meaning-making (Alcoff 2018, 61).

The continuum of sexual violence brings coercive experiences trivialized as “just sex” under the heading of sexual violence. It demonstrates a range of understandings of experiences that are obscured between rape and sex. The gray area underscores the complex, mediated nature of sexual encounters. A paradigmatic example is when someone is coerced into undesired sex that they nonetheless feel unable to refuse (perhaps due to pressure or under threat of violence).¹ Such a person may not describe the experience as rape even though it may feel like a violation that seems wrong to call just sex (Gavey 2019, 128). In the sections that follow, I turn to recent feminist treatments of sexual violence that feature the gray area. Although both approaches address issues arising with the gray area of sexual violations, they would benefit from a historical analysis.

Epistemic Approach: The Unacknowledged Victim Puzzle

This section considers recent feminist work that focuses on rape categorization from the vantage point of epistemology (Jenkins 2017; Jackson 2019). These accounts pose and resolve what I call the “unacknowledged victim puzzle,” which makes use of an epistemic injustice framework to resolve the puzzle that unacknowledged victims pose about rape categorization: how to epistemically account for people who mis-conceptualize their experiences of sexual violence without accusing them of making poor use of epistemic resources. After introducing these accounts, I explain why we must avoid covering over the historical processes that contribute to how people make sense of their experiences of sexual violence.

In “Rape Myths and Domestic Abuse Myths as Hermeneutical Injustices,” philosopher Katharine Jenkins claims that some cases of unacknowledged victims result from a hermeneutical injustice, wherein due to rape myths, these victims have a faulty or defective understanding of rape (Jenkins 2017). On this view, rape myths constitute hermeneutical injustices, which prevent unacknowledged victims from conceptualizing their experience as rape. The term *unacknowledged victim* refers to people who provide a description consistent with the definitional criteria of rape, but don’t report that experience as rape. *Rape myths* refer to misconceptions about rape that work to excuse or justify sexual violence by altering understandings of it (Burt and Albin 1981, 213). *Hermeneutical injustice* is the kind of epistemic injustice occurring when collective understanding obscures an important area of an agent’s experience, particularly when this lacuna is procured by the undue influence of powerful groups on that collective understanding (Fricker 2009, 155).

Much hermeneutical injustice literature examines cases involving an outright epistemic lacuna or gap (for example, the experience of sexual harassment before women possessed the term to conceptualize their experiences accordingly). What puzzles Jenkins is how unacknowledged victims suffer from a hermeneutical injustice due to rape myths, given that a concept of rape capable of avoiding rape myths is available and even written into law. Jenkins asks, “How can these be cases of conceptual impoverishment, much less hermeneutical injustice, when the concepts that are needed are right there, enshrined in law and policy?” (Jenkins 2017, 195). Jenkins appeals to UK rape law to show that, at least in the context of her writing, the relevant concept of rape is available

in policy. Jenkins's solution is to argue that rape myths constitute a new kind of hermeneutical injustice; an individual may lack access to a nonfaulty concept of rape in their everyday lives even if a nonfaulty concept is available in more formal, legal avenues to which other individuals may have access (200). In other words, just because the concept is available to some individuals does not mean that it is available to all of us, even when it is in our interest to know it (hence the injustice).

Elaborating this new type of hermeneutical injustice is Jenkins's way of avoiding the conclusion that unacknowledged victims make bad use of their epistemic resources: they are instead subject to epistemic injustice. It is not clear, however, that her account avoids this conclusion. Debra Jackson's article, "Date Rape: The Intractability of Hermeneutical Injustice," helps to explain why. Jackson points out that Jenkins's account fails to explain how unacknowledged victims in fact regularly make use of a nonfaulty concept of rape when it comes to other people. Research shows that "unacknowledged victims" are often willing to describe other victims' experiences—ones that meet the same definitional criteria—as rape, but not their own (Jackson 2019). This observation belies Jenkins's suggestion: so-called unacknowledged victims may well have a nonfaulty concept of rape and yet nevertheless "fail" to make "good use" of it for themselves.

Jackson tries to resolve this new problem within Jenkins's unacknowledged victim puzzle. She describes the hermeneutical injustice faced by unacknowledged victims as a product of competing interpretive resources, rather than "as a result of hermeneutical incapacity" (Jackson 2019, 47). Such an approach employs what Ishani Maitra calls a "broad" definition of hermeneutical injustice, because it accommodates "other things besides linguistic/conceptual lacunae" as the source of hermeneutical injustice (Maitra 2018, 347).² Unacknowledged victims, in Jackson's view, do not experience a faulty concept or gap within a (single) hermeneutical resource pool (as in Jenkins's case); rather, they experience a tension between competing sets of hermeneutical resources. Jackson's appeal to the existence of multiple sets of resources explains what Jenkins's view cannot: how victims can obscure their own experiences of rape while nonetheless identifying others as victims of rape with the relevant, proper concept.

In this view, given that unacknowledged victims experience hermeneutical injustice, they are therefore subject to its primary harm. According to Miranda Fricker, the primary harm of hermeneutical injustice is a "situated hermeneutical inequality," or the inability to make an experience intelligible to themselves or communicatively to others when it is in one's interest to do so (Fricker 2009, 162). The issue, at least for theorists who want to explain the hermeneutical injustice puzzle about unacknowledged victims, consists in whether they *intelligibly* communicate their experiences: whether they succeed in properly conceptualizing their experience as rape or not. The subject who draws upon a faulty concept of rape (in the case of Jenkins), or draws upon conflicting sets of hermeneutical resources (in the case of Jackson) doubtless still communicates something about their experience. The problem, at least according to these views, is that it would be a faulty understanding and a mis-conceptualization (at least to the extent that their experience meets the definitional criteria).

In this respect, Jenkins's and Jackson's approaches share an assumption with the psychological literature on unacknowledged victimhood: "in asking why some women don't label their experiences of forced sex as 'rape'. . . there seems to be a subtext that women should label these experiences as rape" (Gavey 2019, 170). Making use of the psychological rubric of "unacknowledged victims," Jenkins's and Jackson's

philosophical task centers around explaining individuals who have not conceptualized their victimization. From this vantage point, communicative intelligibility is reached when someone properly conceptualizes their own and others' experiences as rape, so long as it meets a given definition. For Jenkins, the question is crude: what explains why unacknowledged victims do not conceptualize their victimization, given that the relevant concepts are not lacking? It poses a philosophical conundrum. Recall that she asks, "How can these be cases of conceptual impoverishment, much less hermeneutical injustice, when the concepts that are needed are right there, enshrined in law and policy?" (Jenkins 2017, 195). Jackson's question follows Jenkins's framework, but reworks it according to a broadened conception of hermeneutical injustice: why do unacknowledged victims fail to conceptualize their own victimization, given that they can correctly conceptualize other women's victimization?

Under contention is how these questions might presuppose not only an understanding of what constitutes rape, but also of what constitutes communicative intelligibility for people experiencing types of sexual violation. With respect to conceptualizing rape, Jenkins and Jackson differ in their approach. Jenkins appeals to a rigid definition of rape to identify unacknowledged victims as people whose descriptions meet legal specifications of rape. She narrowly specifies rape's definition using the United Kingdom's law, which regards rape as "intentional penetration with the penis of the vagina, anus or mouth, without consent and without reasonable belief in consent" (Jenkins 2017, 192). Not only does this narrow conception exclude acts of sexual violence that we call rape (for example, penetration of the anus, mouth, or vagina by hands or objects), but it leaves the definition of rape up to the intention and beliefs of the assailant. In contrast to Jenkins, Jackson's account leaves open the meaning of rape, instead pointing out that some people do not apply their own conception of rape—whatever that may be—to themselves, even if they are willing to apply it to other people.

Although Jackson and Jenkins differ on whether they narrowly articulate the meaning or definition of rape, they share an important theoretical goal. By introducing the concept of unacknowledged victims into the framework of epistemic injustice, both authors can be understood as trying to expand the meaning of rape. The unacknowledged victim puzzle contests the meaning of rape from the vantage point of epistemology by including under the heading of sexual violence cases where people's individual conception is "faulty," or inconsistently applied. This theoretical move is in line with the understanding of rape articulated by Eric Reitan, who argues that rape is an essentially contested concept. For Reitan, extending the meaning of the term *rape* to include "borderline cases" is part of what it means to properly use that term (Reitan 2001, 45).³

Even while contesting the concept of rape, we must nevertheless be cautious about our presuppositions concerning its meaning, and sensitive about what constitutes successful communicative intelligibility. I suggest that we must attend to multiple sets of hermeneutical resources in a way that avoids appealing to narrow legal definitions of rape. In what follows, I explain why uncritical appeals to legal definitions of rape tend to flow from a failure to attend to a full range of hermeneutical resources that have to do with sexual violence. Much of this section deploys "resistance echoing"—to use Gaile Pohlhaus Jr.'s term—in which I echo points that have long been made with the purpose of emphasizing it to others for whom it may not be "situationally pressing" in the same way (Pohlhaus 2020, 682). I consider both the issue of hermeneutical resources and the issue with legal conceptions of rape.

With respect to epistemic resources, Jackson, unlike Jenkins, explicitly acknowledges the *existence* of multiple sets of hermeneutical resources. Jackson, however, only

considers the possibility of multiple resources with respect to explaining the presence of unacknowledged victimhood, instead of considering them in relation to how knowers navigate the meanings of sexual violations beyond the unacknowledged victim framework. People can (and do) have other hermeneutical resources that work from different starting points for understanding sexual violation, including hermeneutical resources that bring along with them different considerations informing which properties are relevant for achieving communicable intelligibility. Kristie Dotson suggests that a plurality of hermeneutical resources results from the fact that the power relations subtending hermeneutical marginalization do not always blunt or inhibit knowledge (Dotson 2012, 31). Dotson emphasizes how hermeneutically marginalized people readily articulate their experiences using their own sets of resources—a fact not always recognized, that may even be willfully disregarded in what Pohlhaus calls willful hermeneutical ignorance (Pohlhaus 2012, 722). The central question, then, is whether the communicative intelligibility assumed by the epistemic framing of the phenomenon of unacknowledged victims is the only relevant concern when thinking about our experiences of sexual violation. I suggest it is not, and this is especially evident with any approach that might rely upon a narrow, legal definition of rape.

Examining feminist and antiracist theory is key to understanding why we should doubt any approach that appeals uncritically to legal conceptions of rape as the determinant of communicative intelligibility. Feminists have long pointed out the way in which law incorporates social hierarchy, ultimately using consent to legitimate coercion (MacKinnon 1991, 238). If true, this makes legal definitions of rape a dubious resource for sufficiently apprehending and categorizing experiences of sexual violations. Next, as Lisa Schwartzman notes, rape law's reliance upon the notion of consent often leaves its meaning unspecified (Schwartzman 2019, 94). Rape law often fails to specify the meaning of consent, instead leaving it ambiguous—a point that sits oddly with any appeal to it not only as an authority for the meaning of rape, but as a legitimate basis for establishing the category of (un)acknowledged victimhood. Although the ambiguity surrounding the meaning of rape may well be manifest in law, feminists have carefully articulated the dangers of coming up with more precise definitions for categorization. Ann Cahill warns against approaches that utilize categorization as “an objective practice that either succeeds (by correctly aligning an experience with a definition) or fails,” explaining how definitional attempts to “corral the multiple ways in which sexual violence is experienced” not only erases the complexity surrounding the sense-making of experiences, but perpetuates “the interlocking systems of inequality and injustice that result in acts of sexual violence” (Cahill 2016, 752).

Attending to the racialization of rape and racist uses of rape law is paramount for understanding how rape definitions can perpetuate injustice. Racist mythology is fundamental in establishing the meaning of rape, stereotypically and unjustly situating Black men as “predatory” while sexually objectifying Black women. This mythology enables ongoing anti-black utilization of rape, and rape law, to legitimate and ignore sexual violations against Black women, while perpetuating violence, like lynching and incarceration, against Black men. Dorothy Roberts notes the discriminatory nature of criminal rape law, in which Black men receive harsher sentences when convicted of rape against white women, whereas men convicted of raping Black women receive more lenient ones. Such practices convey the racialized nature of who may be regarded as a perpetrator, and who may be regarded as the victim, of sexual violence (Roberts 1993, 368). As Angela Davis points out, this disparity and racist fixation underscores how the “criminalization process further bolsters the racism of the courts and prisons”

(Davis 2000). Feminist antirape resistance must contend with racist ideology that leads to racial disparities not only within convictions, but also within reported and unreported rapes (including acknowledged and unacknowledged victims) (Davis 1981, 43). An uncritical reliance upon legal articulations of rape fails to contend with the structuring role that slavery and racism play in the present realities of rape law and how they determine the meaning of rape.

Ignoring the ongoing history of how social processes work to racialize the meaning of rape idealizes those processes. It is an idealization to conceptualize rape by appealing to legal systems (or any social institution) without attending to the actual workings of how they oppress people (Mills 2005, 169). At the level of epistemology, ignoring the impact of legal institutions on the conceptualization of rape partakes in what Charles Mills calls the idealization of the cognitive sphere. Undertheorizing the effects that oppression has on the cognition of agents abstracts away from the sociality of individual cognition and conceptualization of rape. Some of the cases comprising the so-called unacknowledged victim may, in fact, involve someone who is contending with ambiguity over their experiences (gray area ambiguity). It may involve reluctance to identify oneself as a victim within a system designed to permit and ignore sexual violation. Antirape feminism must attend to the perspectives of people who know their experiences will not be taken seriously as rape, and how this social reality shapes how individuals might understand their experiences.

Uncritically using the givenness of narrow, legal rape categorizations as determinative of the meaning of sexual violation runs the risk of covering over the social histories and practices that have determined its variegated meaning. To properly theorize the epistemic dimensions of surviving sexual violence, we ought to locate the unacknowledged/acknowledged victim framework as a historical, and therefore socially contingent, feminist strategy (see the final section of this article). Doing so resists unwittingly upholding legal rape categorization as the sole consideration guiding effective communicative intelligibility and rape conceptualization. Instead, we should explain and historicize the unacknowledged victim framework (and the understanding of rape upon which it relies) to situate its contingent value. This would transform the epistemic puzzle about unacknowledged victimhood into an inquiry about the conditions from which it emerged. What tensions produced the strategic need for that methodology? Is it always in someone's interests to adhere to it? What about ambiguity over the meaning of rape? Is gray-area ambiguity related to the intractability of sexual violation itself? Asking these questions recognizes the unacknowledged victim framework as a historically specific feminist strategy whose application is not ultimate (or ultimately valuable).

Agential Approach: The Unjust Sex Puzzle

The agential approach to the gray area is exemplified by Cahill's work. Rather than upholding a definitional approach to categorizing sexual violations, her work offers a sophisticated treatment of the gray area, drawing on the work of feminist psychologist Nicola Gavey. Cahill's account helpfully resists a simplistic idea of sexual violence categorization, instead providing us with new ways to think about the complexity of our sexual experiences by looking at the role of agency. Although Cahill's account gives much insight about agency under sexual violence, it can benefit from a historicized understanding of the gray area. After introducing the puzzle posed by the agential approach, I analyze Cahill's central claims in the context of Gavey's writings to explain why we should opt for a different understanding of the gray area. I argue that Cahill's

novel category of sexual experience—unjust sex—risks reifying the harmful effects of hegemonic discourse by holding it apart from rape. Transforming the gray area into the category of “unjust sex” as a means of resolving a philosophical puzzle also flattens the potential of the ambiguity for responding to the social conditions causing it.

In “Unjust Sex vs. Rape,” Cahill articulates and resolves a puzzle arising from the continuum of sexual violence. According to Cahill, the continuum view of sexual violence presents feminist theory with a “philosophical conundrum” concerning the relationship between sexual violations and sex (Cahill 2016, 746). The challenge consists in explaining the relationship between sex, rape, and the gray area by articulating their differences and commonalities. Cahill uses Gavey’s central claim as her starting point: there is a “murky ground we can find ourselves on in making sense of coerced and forced sex and its relationship to sexuality” which occurs due to “rape-supportive discourses” that obscure, rationalize, and prop up rape (Gavey and Senn 2014, 347).

According to Cahill, Gavey refuses to categorize “gray area” experiences as either “rape” or “just sex.” On Cahill’s interpretation, a gray-area experience is an ambiguous one that fits “neither the category of clearly ethical . . . or clearly unethical” sexual encounters: it is its own category of experience that is “ethically questionable without rising to the category of sexual assault” (Cahill 2016, 751, 746). Cahill calls this category of experiences “unjust sex,” which falls in between sex and rape on a continuum. Cahill’s approach views the continuum as a theoretical puzzle to be solved: what are the differences and commonalities between gray-area experiences (unjust sex) and rape? She answers the puzzle in two parts. Unjust sex and rape are similar in that they both fail to recognize the woman’s desire (Cahill 2014).⁴ The differences between unjust sex and rape consist in how they each take up the woman’s agency: in unjust sex, a woman’s agency is actively invoked to get her to consent to an encounter that may otherwise be unwanted, whereas her agency is never sought in rape—it is truncated, overcome, or nullified (Cahill 2016, 758).

In contrast to Cahill’s reading of Gavey, I suggest that Gavey does not understand rape and the gray area as entirely categorically distinct. My claim is not tantamount to denying the existence of variations in how sexual encounters invoke/ignore agency. Rather, with Gavey, I am suggesting that experiences that are “obviously rape-like” can be captured by what we are told is “simply sex,” or unjust sex (Gavey 2019, 151). In other words, what gets called “just sex” can include rape, even if not all ambiguous gray-area experiences are rape.

In Cahill’s rendering, Gavey regards rape as categorically distinct from “unjust sex” and sex. Cahill takes it as given that Gavey sees the “gray area” as a new category of sexual encounters entirely distinct from both rape and sex. Cahill’s account provides reasons to convince us why Gavey has not “missed the mark” in holding them apart, but does not provide us with direct justificatory reasons as to why they are categorically distinct (Cahill 2016, 751). I briefly consider all three of these reasons. First, Cahill points out that the gray area indicates the existence of *similarities* and *differences* between the phenomena. An experience may be akin to rape or sex while being dissimilar in other ways, thus making them ambiguous. On this line of reasoning, any experience thought to fall into the gray area constitutes a third kind of experience distinct from both rape and sex, given that it is *both akin to and different from* each. This point assumes, rather than proves, the meaning of “unjust sex” as always categorically distinct from “rape.” The second reason Cahill gives for treating the gray area as distinct from rape is that it avoids taking a definitional approach to rape. Definitional approaches might, for example, use a definition of rape as a standard to assess the

accuracy of interpretations (like with so-called acknowledged/unacknowledged victims). Resisting the definitional approach, Cahill instead opts for an emphasis on the *meaning* of rape that explores the nature of its ethical harms. It is sufficient to note that we need not accept the gray area as a distinct category to opt for a “meaning” rather than “definitional” approach to rape.

The final and most apposite reason she provides for justifying an inquiry into the difference between unjust sex and rape concerns the social imaginary. According to Cahill, the normalization of ambiguity within our social imaginary implies that such ambiguous experiences are distinct from rape and sex. The fact that experiences of “unjust sex” are treated as “normal,” whereas “at least some forms of sexual assault are constructed in the social imaginary as *aberrant* and worthy of social condemnation” tells us that there are differences between the experiences to be explored (Cahill 2016, 752). Cahill does not clarify or specify the nature of the social imaginary, but she understands the differing locations of unjust sex and rape within it as proof that they are distinct.

It is no surprise that constructions normalizing coercive experiences also treat rape as an extreme and aberrant act. This is the very view that social scientists and feminists since the 1980s sought to challenge and displace with the continuum view of sexual violence. It is doubtful, however, that Gavey would hold unjust sex as entirely categorically distinct from rape, especially if the argumentative basis for their differentiation appeals to a simplistic view of the difference between rape and sex. A close reading of Gavey’s work will help explain why.

One of the central claims of Gavey’s book, *Just Sex? The Cultural Scaffolding of Rape*, is that a lot of what people regard as “just sex” actually comprises a whole range of ambiguous, gray-area experiences—or “unjust sex”—that provide a smokescreen for justifying rape. Gavey is not thereby claiming that normative forms of sex are identical with rape, nor is she claiming that normative forms of sex (things we are told are “just sex”) are never rape (Gavey 2019, 2). In fact, Gavey criticizes Cahill’s earlier work (Cahill 2001) for maintaining a clear-cut distinction between rape and consensual sex. Gavey emphasizes the thesis of her book in contrast to Cahill’s claim:

[Cahill’s] distinction overlooks a whole realm of sexual experience that falls uncomfortably into the cracks between these two possibilities. Unfortunately, I think the evidence suggests that this distinction [between sex and rape] is all too often not at all clear cut. The problem, as feminists in the 1970s began to argue, lies in the way that normative heterosex is patterned or scripted in ways that permit far too much ambiguity over distinctions between what rape is and what is *just sex*. (Gavey 2019, 2)

Gavey exposes the “just sex” narrative as comprised of things that are not-just sex, which, on one occasion she calls “un-just sex” in a clever turn of phrase. Experiences scripted by normative sexual discourse as “just sex” are emphatically not-just sex. Put differently, some experiences called “just sex” are in fact not-just sex (or un-just sex). If “just sex” is “un-just (not-just) sex,” and “just sex” is continuous with “rape” in the ways insisted on by Gavey and other feminists, then there is no clearer a distinction between “unjust sex” and “rape” than there was between “sex” and “rape.” This point does not identify sex with rape, but underscores the continuity between the two owing to ambiguity. For Gavey, gray-area, “not-just” sex is a consequence of sexual discourses that provide a “convenient smoke-screen for rationalizing rape as simply just

sex” (Gavey 2019, 70). Referring to a gray area of “un-just” sex does not imply that “un-just sex” is categorically distinct from rape, especially when Gavey’s thesis is precisely that these sexual discourses “provide the cover for rape to be confused with just sex” (219). Gavey is committed to a continuum view of sexual violence that treats rape in relation to other “normal” forms of sexual behavior, such as subtler forms of coercion.

Cahill’s now recanted view—that women can readily tell the difference between rape and heterosex (Cahill 2001)—was initially developed out of a worry that a continuum view of sexual violence, at least as developed by MacKinnon, conflates heterosexual sex and rape. According to Cahill, the conflation of heterosexual sex and rape eliminates the potential for agency. Gavey’s book uses this position of Cahill’s as a foil for her own view. Despite this, Cahill nonetheless suggests that Gavey “is willing to understand examples of the two phenomena [rape and heterosex] as having absolutely nothing in common,” speculating that this may be why Gavey “opted for the vertical metaphor of scaffolding rather than the horizontal metaphor of a continuum” (Cahill 2014, 308). In my view, this interpretation underestimates Gavey’s adherence to the continuum view of sexual violation. To elucidate why, I will consider the metaphor at the heart of Gavey’s view—the metaphor of the cultural scaffolding of rape—in order to draw out my reading of Gavey.

Motivating Gavey’s account of the cultural scaffolding of rape is the fact that rape is simultaneously, and contradictorily, treated as a serious crime and minimized and justified (Gavey 2019, 227). The “cultural scaffold” of rape refers to what Gavey calls the “conditions of possibility” that permit rape. Heterosexist discourses on gender and sex comprise the conditions for scripting gendered and sexual dynamics. These dynamics, says Gavey, allow for experiences that are not readily discernible from rape (3).⁵ Gendered sexual dynamics permit coercive sexuality by providing cover for the construal of rape as “just sex” (70). The cultural scaffolding is a “*normative pattern*” for heterosexuality that enables rape, not in the sense that “it shapes the form and experience of all heterosexual sex,” but rather normative in that it makes sexual relations that are skewed and gendered seem “unremarkable or even *normal*” (228).

This explanation of cultural scaffolding is at odds with Cahill’s depiction of it. Exploring the metaphor of scaffolding, Cahill suggests that heterosex is the scaffold, and rape culture is the building: “the scaffolding that is hegemonic heterosex is distinct from the building that is rape culture, but its construction involves a degree of simultaneity with the construction of the building” where they “mirror and shape each other” (Cahill 2016, 750). Gavey’s point, however, is not that the scaffold shapes and is shaped, but that the scaffold *supports and props up* rape, wherein whole ranges of coercive sexual encounters look normal against the edifice that is recognized as (extreme views of) rape. Understanding Gavey as adhering to a continuum view is necessary to grasp the full extent of her point about the gray area and the cultural scaffolding of rape, given how the continuum view eschews the idea that rape and “just sex” have “nothing in common.” *Our discourses on sexuality and gender not only support and rationalize rape, but confuse it in what is known as the gray area.* I elaborate this point more thoroughly in the next section.

The challenge as Cahill sees it is to resolve the unjust sex puzzle—the conundrum in which we must explain rather than conflate rape and unjust sex—by differentiating the gray area as a distinct category for a tenable sexual ethics. However, on my reading of Gavey, their conflation by hegemonic discourse is the point of the scaffolding. Gavey’s work impressively fathoms how this conflation suggests not an identity (that all

heterosex is sexual violence), but a scaffolding relation. Heterosexist discourse supports sexual violence through procuring ambiguity, or the gray area. Gavey is right to worry that a lot of what we are told is “just sex” actually rationalizes rape. In a surprising twist, Cahill makes use of this rationalization to prove that that rape is different from not-just sex by appealing to a clean-cut, hegemonic distinction between what is regarded as “just sex” and “rape.” We know, however, *à la* Gavey, that “just sex” means “*not just sex*,” and that it is not always clearly distinguishable from rape (that is, the ambiguity of the gray area). An attempt to disambiguate the puzzle over the difference transforms the ambiguity arising from the cultural scaffold into a distinct category, which risks reifying the hegemonic scaffolding that produces it. In the next section, I explore the history of the emergence of the gray area to expose it not as a puzzling ambiguity, but as an ambiguity that is fundamentally contradictory and imbued with transformative potential.

Historicizing Our Puzzles

A more promising approach to the gray area exposes the historical conditions from which the ambiguity arises. Instead of resolving the puzzle by transforming ambiguity into category, we should let ambiguity retain its positive status as an existent contradiction to historicize it. Rosemary Hennessy explains the significance of feminist critique in naming and identifying faults within hegemonic discourses. For Hennessy, our experiences of contradictions are central for shoring up and opposing hegemony, and thus provide the “inaugural space” for critique (Hennessy 1993, 28). Using a materialist conception of hegemony, Hennessy explains that hegemony describes “the process by which a ruling group comes to dominate by establishing the cultural common sense” (22). “Common sense” refers to those values and beliefs whose meanings are already known and taken for granted, like regarding rape as an exceptional experience committed by an aberrant stranger. From this vantage point, we can situate the ambiguity over what is “just sex” and “rape” (the gray area) as a contradiction resulting from hegemony’s inability to exhaust the experiences of sexually violated people.

First, I explain and identify why we should understand the gray area as contradictory, and therefore as the proper subject of feminist critique. This includes exposing and historicizing the contradictions that permit ambiguity over the difference between just sex and rape. Gavey’s work in *Just Sex: The Cultural Scaffolding of Rape* provides a useful basis for apprehending historical and social contradictions in our discourses on sexuality. I consider contestations over rape within feminist and social-science research to underscore the dialectical, historically specific nature of the major oppositions within discourse on rape that emerge from and speak back to crises and contradictions within hegemonic culture.

Early social-science research on rape tended to blame and pathologize victims of rape as responsible for what had happened to them (Amir 1967). In the 1970s, this trend was met with pushback by researchers and feminist antirape activist movements that sought to center the *effects* of rape on victims. This resistance meant more attention would be given to exploring the traumatizing nature of rape, which had not, up to that point, been acknowledged. Researching rape in terms of its traumatic harms and effects resulted in a broader conversation about rape that would politicize its role in society more broadly, including feminist articulations of rape as gendered harm.

Feminist research and activism at this point took care to center women’s point of view in understanding sexual violation. Some feminists articulated rape as an act of *violence*, as opposed to simply sex, whereas others underscored the continuity between

heterosex and rape—feminists who saw rape as part and parcel of normal sex. Gavey historicizes these discourses in a way that refuses to turn them into abstract, philosophical positions, but situates them as practical theories “directed to the social conditions for women at the time” (Gavey 2019, 30). The well-known “rape is violence” view emerged only in response to the mid-twentieth-century hegemonic defense of rape. That hegemonic understanding relied upon victim-blaming ideas to narrow the scope as to what constituted rape: rape was only a “crime of passion” committed by a stranger with “undeniable” physical force. It therefore made rape sex-like, by calling a whole cluster of interactions that violated women “just sex” while it promoted the ideas that women enjoyed and/or provoked those interactions. When considered in this light, it is hardly remarkable that feminists needed to highlight *violence* in response to a discourse that sexualized rape. When taken out of its context to imply an abstract position (“rape is violence, not sex”), the historical conditions are reified and the position loses its specificity.

Conceptualizing “rape as violence” aimed to shift perspectives away from the patriarchal insistence that violations are just sex (a position that romanticizes and sexualizes rape), against which a debate about the “correct nature” of rape emerged: is rape violence or sex? Rape-as-violence spoke back to the idea that rape is sex-y. In contrast, rape-as-sex (or rape as continuous with heterosexuality) spoke back to the normalization of sexual violence (Henderson 1992, 157). These oppositional positions on rape emerged from and responded to different aspects of hegemonic culture that feminist intervention sought to counter. They are historically specified and inaugurated by the limits of prevailing systems of power and sense: in the case of rape as violence by the hegemonic romanticization of rape; in the case of rape as part of heterosex by the hegemonic normalization of rape.

We must also see the emergence of the “gray area” in a historical, dialectical light. Research focusing on the continuity between normative heterosex and rape enabled a new understanding of rape as nonexceptional. This is a notable distinction from prior research that merely highlighted the harmful effects of rape. By using objective, operational definitions, the researchers could now identify the widespread prevalence of rape. As Mary Koss—the researcher who developed the term *unacknowledged victim*—points out, “as long as the expression ‘rape victim’ is used” as a sampling methodology in accounting for rape prevalence, it leaves out someone “who has experienced a sexual assault that would legally qualify as rape but who does not conceptualize herself as a rape victim” (Koss 1985, 195). The “unacknowledged victim” is a consequence of the utilization of operational definitions because it construes experiences that would have previously been regarded as “just sex” as “forms of sexual victimization” (Gavey 2019, 162).

Feminist research on rape’s use of “operational definitions” is part of a broader positivist methodology that assumes that “events have particular ontological forms that may not precisely match (less informed) lay understandings of that same state or condition” (166). Gavey explains that, as far as social-science methodology goes, these standards are considered good practice. In the context of sexual encounters, however, she struggles from a feminist, ethical point of view to assign the title of “rape victim” when the person does not themselves use that description. The implication of the hidden/unacknowledged victim paradigm—that someone can be raped without necessarily knowing it (perhaps due to false consciousness, rape myths, or hermeneutical injustices)—gives Gavey pause. Although the use of operational definitions held strategic value in showing the prevalence of rape against the view that rape is rare

and only committed by strangers, Gavey questions the strategic value of always identifying people as victims when they do not do so themselves. This dovetails with my earlier point that properly attending to multiple sets of hermeneutical resources complicates the idea that it is ultimately valuable to report oneself as a victim.

Rather than capturing multiple hermeneutical resources or complexities surrounding the classification and conceptualization of rape, the positivist methodology utilizing operational definitions flattens out the contradictions and complexities of our experiences. There is no doubt that experiences of sexual violence can (and do) victimize people; rather, Gavey's claim is that the current practice of ascribing categorization based on operational definitions, even when people do not understand or interpret their experiences in such a way, misses something about their experiences. Gavey insists that "no matter how this discrepancy between so-called 'acknowledged' and 'unacknowledged' rape victims is understood, it at the very least highlights a murky gray area between rape and what some may consider to be just sex" (Gavey 2019, 59). The gray area refers to the contradictory "not-rape-not-sex" ambiguity that is endemic to contemporary heteronormative sexuality. Such ambiguity does not imply a middle range of categorically distinct sexual encounters between rape and sex but describes a murky horizon from which it can be hard to tell whether an experience is, or is distinct from, rape.

The development of the unacknowledged victim framework, coupled with rape prevalence research, provides unique conditions for apprehending the ambiguity over our experiences. The gray-area ambiguity highlights something disconcerting not only about our experiences, but about how we can make sense of them. The gray area lays bare the incompatibility between utilizing positivist methodologies and attending to the perspectives of those contending with their experiences. Situating the gray-area ambiguity within the context of the history of these strategies, rather than resolving it as a puzzle through conceptual clarity, brings this incompatibility to the fore, and ultimately draws our attention to a contradiction that demands feminist attention: how rape is simultaneously serious and deplorable, yet disregarded, minimized, enabled, permitted, and protected. If rape were not disregarded, minimized, permitted, and protected, we would be relieved of the struggle to have it taken seriously (through, for example, the adoption of positivist methodologies to show the prevalence of sexual violations). Similarly, we know that *because* sexual violence is disregarded, minimized, enabled, permitted, and protected, we must center violated people's experiences in their complexity—including cases where someone does not articulate their experience as rape when the definition holds. Historically examining the gray area as an ambiguous horizon affecting our interpretation brings out its transformative potential. By eschewing reification of the gray area as a category of experiences, and by refusing to reify clean-cut definitions of rape to categorize unacknowledged victims, this conception shows how the "gray area" contains within it contradicting and conflicting moments in hegemonic discourse.

I have considered accounts that feature, but nevertheless do not historically explore, feminist concepts and strategies that led to the emergence of the gray area. By situating the gray area within its historical context, I argue that it can be understood as an ambiguous, yet contradictory condition affecting our interpretive possibilities. My argument neither implies the inevitability of ambiguity, nor does it outright refuse the importance of categorizing sexual experiences. Rather, it suggests the need to examine the conditions of sexual exploitation about which the gray area gives us insight. Historically, the gray area indicates a contradiction in hegemonic discourses that comes to a head with the ambiguous yet contradictory "not rape, not sex." If we are too quick to resolve

this contradiction by erecting new, or sticking to narrow, categories, we may lose view of the history that is integral to changing the structures of oppression causing intractable sexual violence. We should not settle for ambiguity, but rather use a historical understanding of the gray area as a counterhegemonic place from which we can collectively challenge structures of oppression and exploitation. Historicizing and critiquing the gray area can help to locate its ideological function in relation to a central and disturbing contradiction in hegemonic rape discourse: the way in which rape is simultaneously normalized, supported, and ignored on one hand, and treated as heinous and criminal on the other. An examination and critique of the relationship between the confusion about sexual violence and other hegemonic contradictions is needed in the fight against rape and interlocking social oppressions.

Acknowledgments. I would like to thank two anonymous reviewers from *Hypatia* for their valuable suggestions for revisions on this manuscript. In addition, I would like to thank Lisa Schwartzman for generous feedback on earlier drafts of this article.

Notes

1 Dorothy Roberts helpfully explains that verbal and physical coercion/abuse are continuous, wherein the threat of physical violence underlies, or is latent within, verbal coercion (Roberts 1993).

2 In one sense, Jenkins's approach can be said to operate according to a broad definition because her type of hermeneutical injustice is not due to a lack in collective understanding. Rather, it owes to a lack of the right concept at the level of the individual due to the *presence* of distortions (rape myths) in collective understanding. Jenkins's type of hermeneutical injustice, however, still differs from Jackson's account. Jenkins describes a situation wherein person A lacks a nonfaulty concept whereas person B has it; in contrast, Jackson describes a situation wherein person A has access to multiple epistemic resources in tension, where one set of resources features the nonfaulty concept and the other features the faulty one.

3 I would like to thank an anonymous reviewer for this suggestion.

4 Cahill restricts the scope of her account to cisnormative and heteronormative sexual relations. As such, the gendered terminology herein reflects the scope set by Cahill for her arguments (Cahill 2016).

5 See Gavey 2019, chapter 4. In that chapter, Gavey draws on the work of Wendy Hollway to elaborate dominant heterosexist discourses, which include the permissive sex, male sexual drive, and have/hold discourses.

References

- Alcoff, Linda Martín. 2018. *Rape and resistance*. Cambridge, Mass.: Polity Press.
- Amir, Menachem. 1967. Victim precipitated forcible rape. *Journal of Criminal Law, Criminology & Police Science* 58 (4): 493–502.
- Burt, Martha R., and Rochelle Semmel Albin. 1981. Rape myths, rape definitions, and probability of conviction. *Journal of Applied Social Psychology* 11 (3): 212–30.
- Cahill, Ann J. 2001. *Rethinking rape*. Ithaca, N.Y.: Cornell University Press.
- Cahill, Ann J. 2014. Recognition, desire, and unjust sex. *Hypatia* 29 (2): 303–19.
- Cahill, Ann J. 2016. Unjust sex vs. rape. *Hypatia* 31 (4): 746–61.
- Davis, Angela. 1981. Rape, racism, and the capitalist setting. *The Black Scholar* 12 (6): 39–45.
- Davis, Angela. 2000. The color of violence against women. *Colorlines: Race, Culture, Action* 3 (3): 4–12.
- Dotson, Kristie. 2012. A cautionary tale: On limiting epistemic oppression. *Frontiers: A Journal of Women Studies* 33 (1): 24–47.
- Fricker, Miranda. 2009. *Epistemic injustice: Power and the ethics of knowing*. Oxford: Oxford University Press.
- Pohlhaus Jr., Gaile. 2012. Relational knowing and epistemic injustice: Toward a theory of willful hermeneutical ignorance. *Hypatia* 27 (4): 715–35.
- Pohlhaus Jr., Gaile. 2020. Gaslighting and echoing, or why collective epistemic resistance is not a “witch hunt.” *Hypatia* 35 (4): 674–86.

- Gavey, Nicola. 2019. *Just sex?: The cultural scaffolding of rape*, 2nd ed. New York: Routledge.
- Gavey, Nicola, and Charlene Y. Senn. 2014. Sexuality and sexual violence. In *APA Handbook of Sexuality and Psychology, Vol. 1: Person-Based Approaches*. Washington, D.C.: American Psychological Association.
- Gunnarsson, Lena. 2018. "Excuse me, but are you raping me now?" Discourse and experience in (the grey areas) of sexual violence. *Nordic Journal of Feminist and Gender Research* 26 (1): 4–18.
- Henderson, Lynne. 1992. Rape and responsibility. *Law and Philosophy* 11 (1/2): 127–78.
- Hennessy, Rosemary. 1993. Women's lives/feminist knowledge: Feminist standpoint as ideology critique. *Hypatia* 8 (1): 14–34.
- Hindes, Sophie, and Bianca Fileborn. 2020. "Girl power gone wrong": #MeToo, Aziz Ansari, and media reporting of (grey area) sexual violence. *Feminist Media Studies* 20 (5): 639–56.
- Jackson, Debra. 2019. Date rape: The intractability of hermeneutical injustice. In *Analyzing violence against women*, ed. Wanda Teays. New York: Springer.
- Jenkins, Katharine. 2017. Rape myths and domestic abuse myths as hermeneutical injustices. *Journal of Applied Philosophy* 34 (2): 191–205.
- Karlsson, Lena. 2019. Towards a language of sexual gray zones: Feminist collective knowledge building through autobiographical multimedia storytelling. *Feminist Media Studies* 19 (2): 210–24.
- Kelly, Liz. 1987. The continuum of sexual violence. In *Women, violence and social control*, ed. Jalna Hanmer and Mary Maynard. London: Palgrave Macmillan UK.
- Kelly, Liz. 2011. Standing the test of time? Reflections on the concept of the continuum of sexual violence. In *Handbook on sexual violence*, ed. Jennifer M. Brown and Sandra L. Walklate. New York: Routledge.
- Koss, Mary P. 1985. The hidden rape victim: Personality, attitudinal, and situational characteristics. *Psychology of Women Quarterly* 9 (2): 193–212.
- MacKinnon, Catharine A. 1987. *Feminism unmodified: Discourses on life and law*. Cambridge, Mass.: Harvard University Press.
- MacKinnon, Catharine A. 1991. *Toward a feminist theory of the state*. Cambridge, Mass.: Harvard University Press.
- Maitra, Ishani. 2018. New words for old wrongs. *Episteme: A Journal of Individual and Social Epistemology* 15 (3): 345–62.
- Mills, Charles W. 2005. "Ideal theory" as ideology. *Hypatia* 20 (3): 165–84.
- Reitan, Eric. 2001. Rape as an essentially contested concept. *Hypatia* 16 (2): 43–66.
- Roberts, Dorothy E. 1993. Rape, violence, and women's autonomy. *Chicago-Kent Law Review* 69: 359–88.
- Schwartzman, Lisa H. 2019. Defining rape: Gender equality, force, and consent. *Social Philosophy Today* 35: 89–101.

Nic Cottone is currently a PhD candidate in the Department of Philosophy at Michigan State University. Their research focuses on feminist philosophy and social theory, especially theories of social reproductive labor and sexual violence. cottonen@msu.edu