THE DIMENSIONS OF RAPE REFORM LEGISLATION

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Largely as a result of the feminist movement, most states have passed some form of rape reform legislation. Most rape law research has attempted to ascertain whether the reformed laws have achieved specific instrumental goals. In contrast, this paper emphasizes rape law reform as a symbolic indicator of women's contemporary social status. We believe there is a need for a greater appreciation of the diversity of rape law reform across the country and of the coexistence of traditional and feminist elements in contemporary law. Through a comprehensive empirical assessment of state rape statutes, we identify the different dimensions of rape legislation and provide insight into the degree to which feminist conceptualizations of rape have achieved social legitimacy.

I. INTRODUCTION

Social scientists have drawn attention to the centrality of social movements in the creation of law reform (see Abel, 1980; Freeman, 1975; Gusfield, 1963; Handler, 1978; Marsh *et al.*, 1982; Rose, 1977). Law reforms are aimed at achieving both the instrumental and symbolic goals of social movements. Instrumental goals focus on tangible results and include procedural mechanisms to implement change. Symbolic goals focus on changing attitudes and legitimizing the values and aspirations of social movements. Instrumental and symbolic goals are often intertwined, and the distinction between the two can be subtle (Handler, 1978).

The contemporary feminist movement has been the driving force behind a number of legal reforms aimed at changing women's roles and social status (Freeman, 1975). Feminists have perceived the law as a symbol of male authority and a means to perpetuate females' subordinate social status (Edwards, 1981; MacKinnon, 1983; Polan, 1982; Rifkin, 1982). They have thus viewed law reform as a prerequisite to broader social change because of the law's capacity to influence public perceptions of women's problems and provide visibility and legitimacy to feminist goals and values (Freeman, 1975; Marsh *et al.*, 1982). Much of this feminist reform activity has focused on violence against women,

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particularly rape (Rose, 1977; Tierney, 1982). Rape law was considered a highly visible place to begin to change the law, secure equal rights for women, and demand that women's "autonomy be protected by agents of social control" (Bienen, 1980a: 213; see also Chappell, 1984; Loh, 1980; Marsh *et al.*, 1982).

Traditionally, rape law regulated women's sexuality and protected male rights to possess women as sexual objects (Edwards, 1981; Field, 1983). The law contained misogynist assumptions and reflected societal skepticism regarding the seriousness of rape and the veracity of women's accusations of rape. Images of women as seductive and untrustworthy were combined with sociolegal conceptions of women as the property of males to produce a wide range of prejudicial criminal justice system practices in the handling of rape cases (Field, 1983; Robin, 1977; Tong, 1984). These practices included stringent corroboration and proof of resistance requirements, special cautionary instructions to juries, admissibility of evidence regarding women's prior sexual history, and absolute spousal exemptions.

Since the mid-1970s most states have modified or otherwise reformed their rape laws (Bienen, 1980a; Marsh, 1983). The changes symbolize a movement away from the conception of women as inferior beings defined by family roles and male ownership toward a view of women as responsible, autonomous beings who possess the right to personal, sexual, and bodily self-determination (Marsh, 1983; Schwendinger and Schwendinger, 1983). Rape law reforms "reflect and legitimate increasingly varied and independent roles . . . for women . . . [and] are part of a larger statement that [women's] activities deserve to be acknowledged and respected" (Marsh *et al.*, 1982: 3).

In addition to its symbolic functions, feminists saw rape law reform as a means of achieving specific instrumental goals (Marsh, 1983), including: (1) increasing the reporting of rape and enhancing prosecution and conviction in rape cases; (2) improving the treatment of rape victims in the criminal justice system; (3) achieving comparability between the legal treatment of rape and other violent crimes; (4) prohibiting a wider range of coercive sexual conduct; and (5) expanding the range of persons protected by law. Reformers sought to implement these goals through changes in the following areas of rape law: (1) redefinition of the offense; (2) evidentiary rules; (3) statutory age offenses; and (4) penalties (Bienen, 1980a; Caringella-MacDonald, 1984, 1985; Chappell, 1984; Field, 1983; Marsh, 1983; Osborne, 1984; Tong, 1984).

Most rape law research has neglected the symbolic content of the legislation and has attempted instead to ascertain whether these instrumental goals of reform have been attained. This research, like much sociolegal research (see Abel, 1980; Sarat, 1985), has invariably discovered that the results fall far short of initial

expectations. While such work continues to be necessary, our study contributes to a better understanding of the nature of the laws themselves (see Marsh, 1983) and provides an assessment of the degree to which feminist conceptualizations of rape have achieved social legitimacy. First we review the rape law reforms that have been advocated by feminists and the studies that have examined the impact of the law reforms.

II. AREAS OF RAPE LAW REFORM

Although there is tremendous diversity in the actual rape law reforms that have been instituted across the country, the major areas of reform include: (1) redefinition of the offense; (2) evidentiary rules; (3) statutory age offenses; and (4) the penalty structure.

A. Redefinition of the Offense

One feminist reform redefined rape as sexual assault (or criminal sexual misconduct, etc.) to emphasize that rape was a violent crime and not a crime of uncontrollable sexual passion. Equating rape with other assaults was designed to divert attention from questions of the victim's consent, for assault is, "by definition, something to which the victim does not consent" (Bienen, 1980a: 182; see also Schwartz and Clear, 1980; Tong, 1984). Redefining rape as sexual assault also broadened the definition of the crime beyond its traditional meaning of vaginal-penile intercourse to include oral and anal penetration, sexual penetration with objects, and, in some cases, touching of intimate body parts.

Another change reconstituted the offense with a continuum of acts that specified varying degrees of seriousness based on the amount of coercion, infliction of injury, age of the victim, and the like. This reform attempted to draw attention to the objective circumstances (e.g., presence of a weapon or rape in the course of another crime) that indicated the absence of consent, hence rendering proof of the victim's resistance unnecessary. Some statutes reflected a criminal circumstances approach, thereby eliminating the term "consent" entirely, on the assumption that the objective circumstances would preclude a consent defense. Other statutes retained the "consent" terminology but attempted to eliminate through evidentiary reforms (see below) aspects of the law that drew attention to the victim's rather than the offender's behavior (Bienen, 1980a; Tong, 1984).

Feminist reformers have been divided on the issue of consent terminology (Tong, 1984). Although reforms that remove the term "consent" from sex offense statutes make use of the consent defense more difficult, they are less consistent with the feminist goal of criminalizing a wider range of nonconsensual sex contacts, since the only illegal contacts are those associated with a particular spec-

ified set of criminal circumstances. Statutes that criminalize nonconsensual penetration or touching without requiring force or other extreme circumstances attempt to prohibit a broader spectrum of offensive acts (see Estrich, 1987).[1]

Another feminist reform redefined the crime in sex-neutral terms to protect victims from female offenders and to protect male victims. Still another focused on the removal of the spousal exemption that has traditionally given husbands immunity for rape of their wives (see Finkelhor and Yllo, 1985; Russell, 1982).

B. Evidentiary Rules

Evidentiary reforms attempted to eliminate prejudicial evidentiary rules that were not required for other violent crimes and that made it more difficult to convict accused offenders. Rules that were abolished included special corroboration and proof of resistance requirements and cautionary instructions given to juries. Reform statutes also contained "rape shield" laws that limited admissibility of evidence regarding the victim's prior sexual history (Bienen, 1980a; Field, 1983; Tong, 1984).

C. Statutory Age Offenses

Traditionally, statutory age offenses were not aimed at prohibiting sexual exploitation of young girls but at protecting female virginity and regulating consensual sexual conduct (Bienen, 1980a). At the same time, these laws carried relatively low penalties to minimize the consequences to males for engaging in sex with unmarried females. Reforms in this area attempted to move away from this moralistic focus and double standard. They sought to permit consensual teenage sex, while also providing increased protection for children. These goals are potentially contradictory, as increasing protection for children requires relatively high statutory ages, while permitting consensual teenage sexual contact requires somewhat lower ages. Feminist reformers are divided on how to translate these goals into law (see Bienen, 1980a; Olsen, 1984), although a common approach is to identify a series of two or more graded offenses that prohibit sexual activity with youths below specific ages (e.g., first-degree sexual assault if the victim is less than twelve years, but second-degree sexual assault if the victim is older than twelve but less than sixteen years). Another type of reform was directed at eliminating the "mistake of age" defense, which has been used to assuage the guilt of male defendants while subjecting young females (particularly those who appear physi-

[1] For example, Wisconsin's sexual assault law defines "consent" as "words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact" (Wisconsin Department of Justice, 1981–82: 5145).

cally mature) to accusations of victim precipitation (Bienen, 1980a).

D. The Penalty Structure

Reforms in the penalty structure included provisions for mandatory minimum sentences as well as penalty gradations that based the severity of punishment on the seriousness of the crime. Another reform reduced the penalties for rape on the assumption that judges and juries would be more likely to convict if the punishment was less severe (Bienen, 1980a; Estrich, 1987). While feminists may disagree about the appropriate prison term for rape, many believe that certainty of punishment has a stronger deterrent effect than severity of punishment (Tong, 1984).

III. EVALUATING RAPE REFORM LEGISLATION

A. Impact Studies

Research has been conducted in Michigan (Caringella-MacDonald, 1984, 1985; Marsh *et al.*, 1982), California (Polk, 1985), and Washington (Loh, 1980; 1981) that partially assesses the impact of the new legislation in these states (also see Chappell, 1984; Osborne, 1984; Wells, 1985). In general, little change directly attributable to rape reform legislation has been found in the number of crimes reported by citizens and in police arrest and clearance rates (Loh, 1980, 1981; Marsh *et al.*, 1982; Polk, 1985). Criminal justice and rape crisis center personnel have indicated they believe chances for conviction have improved since the prereform period and that victims now experience less trauma during the criminal justice process (Marsh *et al.*, 1982). From a prosecutorial perspective, studies indicate "limited success" in reducing case attrition and in making prosecution and conviction of rape and sexual assault cases more feasible (Caringella-MacDonald, 1984: 72). However, since attrition rates are still quite high, "a conclusion of success is questionable" from a victim-advocate's point of view (ibid., p. 78).

Marsh (1983) suggests that the most significant impact of rape law reform has been on conviction statistics. Although studies have found no overall change in conviction rates, there has been a substantial increase in convictions as charged, that is, decrease in reductions to lesser offenses and to nonsexual assault offenses (Loh, 1980, 1981; Marsh *et al.*, 1982). This increase in convictions as charged, which Loh (1981) refers to as the "truth-in-labeling" effect, helps to maintain the symbolic stigma of the offense.

On the other hand, comparability in case treatment between rape and sexual assault and nonsexual assault offenses has been only "limitedly realized" (Caringella-MacDonald, 1985: 220). While some prosecutors believe the reformed laws have increased comparability (Marsh *et al.*, 1982), others believe the probability of

conviction for rape and sexual assault cases remains lower than for nonsexual assault cases (Caringella-MacDonald, 1985). This latter perception apparently results in a greater willingness to reduce charges in rape and sexual assault cases.

Furthermore, prosecutors continue to distinguish cases of "real" or "classic" rape from other sex offenses insofar as they issue warrants primarily for more serious offenses (Marsh *et al.*, 1982).[2] This practice is not consistent with reformers' goals of defining a continuum of offenses and expanding the range of crimes that could be prosecuted. The broadened legal definition of rape and sexual assault appears to play a minimal role in decisions regarding case filings (Chappell, 1984; Marsh *et al.*, 1982).

Researchers have also concluded that punishments for those convicted of rape or sexual assault appear to be more certain, but not necessarily more severe, than in the prereform era (Loh, 1980, 1981; Marsh *et al.*, 1982). For instance, Loh (1981) reports a slight decrease in prison sentences and a substantial increase in commitment to sex offender treatment programs. Polk (1985) finds an increase in the likelihood of incarceration, but notes that this increase occurred for all serious offenses.

B. Limits of the Reforms

The results of the impact studies indicate that the goals of rape reform legislation have not been fully realized, and rape law reform thus remains a controversial issue. Defense attorneys have challenged the constitutionality of "rape shield" provisions (Bienen, 1980a; Marsh *et al.*, 1982), and some states (i.e., Hawaii, Iowa, and North Carolina) have already repealed their evidence reform statutes. The impact studies suggest that many criminal justice personnel continue to operate on the basis of traditional assumptions and that they do not always comply with the statutes. Decisions regarding rape cases are still subject to a great deal of discretion, and the reforms do not significantly affect the informal operations of the criminal justice system (Bienen, 1980a; Chappell, 1984; Marsh *et al.*, 1982; Osborne, 1984). Indeed, many reforms have been directed at the trial model of legal adjudication, when in fact most cases are handled more informally through plea bargaining (Caringella-MacDonald, 1984; 1985).

In addition, the evidentiary reforms often contain loopholes that limit the admissibility of evidence regarding the victim's past sexual conduct for some purposes (e.g., to prove the victim's consent), but continue to allow this evidence for other purposes (e.g.,

[2] A rape may be considered "classic" if the woman has been threatened with or subjected to a high degree of force; if she has been seriously injured; or if she has been raped by a stranger, raped in public, abducted from a public place, attacked in her car, or attacked after her home has been broken into (Williams, 1984).

to challenge the victim's credibility). Requirements for judicial review of certain evidence in closed (in-camera) hearings merely erect procedural barriers, as most judges inevitably allow the evidence to be admitted (Bienen, 1980a; Marsh *et al.*, 1982). And when evidence of the victim's past sexual conduct is admitted, juries continue to use it to mitigate the defendant's culpability (LaFree *et al.*, 1985).

Moreover, many of the rape law reforms are based on untested assumptions. For example, there is no evidence that changing the definition of the offense from rape to sexual assault actually increases the perception that rape is a crime of violence rather than of sexual passion (Chappell, 1984; Osborne, 1984). There is also little evidence that lower sentences increase juries' propensity to convict (see Feild and Bienen, 1980).

Similarly, advocates of the "criminal circumstances" approach, which removes the term "consent" from the definition of sex offenses to preclude consent defenses, failed to anticipate that statutory silence on consent might allow defense attorneys to continue to use common law consent defenses or general definitions of criminal coercion that remained in other parts of the criminal code (Bienen, 1980a). As Loh (1981: 45–46) observes, "As a practical matter a prosecutor must prove nonconsent . . . [and] one cannot avoid the issue . . . or pretend it no longer exists because of semantic changes in the law." The criminal circumstances approach assumes that certain objective features of an act can easily be ascertained, when in fact "unambiguous criminal circumstances are few and far between" (Tong, 1984: 111; also see Estrich, 1987). Furthermore, should such a statute fail to include a possible condition under which consent might be absent, no violation of the law could be claimed.

In spite of the limits of rape law reform, some reform advocates and sociolegal researchers suggest that desired goals can eventually be achieved through further modification of existing laws, experimentation with alternative legislative strategies, and elimination of the gap between the law on the books and the law in action (see Caringella-MacDonald, 1985; Polk, 1985). This view has been characterized as a form of legal liberalism that continues to promise "efficacy and justice" in spite of research that "repeatedly reveals instances of [its] ineffectiveness and injustice" (Abel, 1980: 829; also see Sarat, 1985; Silbey, 1985).

Impact studies have neglected the symbolic aspect of rape law reform and have not been sufficiently sensitive to the variation of reforms around the country. Rape law reform accommodated the demands of an increasingly influential political force—the feminist movement—and helped preserve the law's legitimacy by removing its most blatantly sexist provisions (see Polan, 1982). However, the reforms that reached the statute books in different localities were extremely varied, and many preserved significant features of the

prereform legislation. The reforms were passed through a coalition of women's rights advocates, law and order groups, and nonfeminist legal reformers, and many were linked to conservative concerns about rising crime rates and lenient criminal justice practices (Bienen, 1980a; Chappell, 1984; Loh, 1981). Proposals for reform that failed to resonate with these latter concerns (e.g., removal of spousal exemptions) were consequently met with more resistance (Bienen, 1980a; Lawson, 1984; Marsh *et al.*, 1982; Schwartz and Slatin, 1984).

Thus, a better understanding of rape law reform requires a greater appreciation of the coexistence of traditional and feminist elements in contemporary law, for feminist law reforms have been only partially incorporated into legislative statutes. Toward this end, we identify the different dimensions of state rape law and provide a comprehensive assessment of rape law reform across the country. We hope to sensitize future researchers to the diversity of rape legislation and provide a broader context in which to evaluate the impact of law reforms in particular states.

IV. METHODOLOGY

Rose (1977: 82) has observed that "the rapidity of change, the state-to-state variations, and the lack of any organization to keep tabs on . . . legislation revisions makes accurate and definite statements about the current nationwide status of rape legislation impossible" (also see Chappell, 1984; Randall and Rose, 1984). Collecting the data from legislative statutes and analyzing the content of the laws are indeed extremely time-consuming tasks. The most ambitious research to date has been conducted by Bienen (1980a; 1980b), who compiled information on rape laws for each of the fifty states through the late 1970s (also see Feild and Bienen, 1980). Our study extends this earlier work in two important respects. First, we have updated the laws to reflect recent changes (see Searles and Berger, 1987). Second, our data are presented and analyzed in a more systematic fashion. Bienen's excellent summary and appraisal of rape reform was based on a qualitative analysis of the law. In our study, the statutes are quantified through a coding procedure (described below) that makes the data amenable to statistical manipulation. Through factor analytic techniques we are able to identify the patterns of association among different elements of rape law that constitute the underlying dimensions of rape reform legislation, and we are able to make generalizations about national patterns that would not be possible without data reduction techniques.

A. Coding of Statutes

Data on the 1985 rape and sexual assault laws of the fifty states and the District of Columbia were obtained from legislative

statutes.[3] While the literature helped us anticipate many key features of the legislation, we could not foresee all possible variations of the laws before the research began. We decided that an inductive or "grounded theory" approach, which allows the categories that are to be used in the analysis to emerge in the course of the data collection process itself, provided the best research strategy (Glaser and Strauss, 1967). We recorded information regarding definition of the offense, evidentiary reforms, age of consent, and penalties, as well as elements of rape law not generally identified as central to legislative reform (e.g., the mistake of incapacity defense).[4]

After considerable deliberation, we selected fifteen variables that represented key elements of rape legislation. We placed the categories of twelve of these variables on ordinal continua that ranged from traditional to progressive with respect to feminist goals for rape reform legislation. Because the ordinal continua contained different numbers of points, we placed the twelve variables on seven-point scales to create uniform interval continua that ranged from the most traditional point (coded as 1) to the point most consistent with feminist goals (coded as 7).[5] The categories of three of the variables (highest age of prosecutrix, minimum period of incarceration, and maximum period of incarceration [Variables 12, 14, and 15, respectively]) were arranged in a numerical order because there is no agreement among feminists as to what constitutes progressive reform on these aspects of the law; we also placed these three variables on seven-point scales, although this ordering does not conform to the traditional-feminist continuum. After the statutes were coded, we analyzed the data using factor analysis.[6]

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[3] As of fall 1986, the 1985 or 1986 editions or supplements were available for forty-nine states, and the 1984 editions or supplements were available for two states. (Not all states hold legislative sessions every year.) Some 1985 or 1986 publications may not include all legislation passed in 1985.

[4] We did not record laws prohibiting incest and a variety of noncontact offenses, such as indecent exposure, voyeurism, making lewd or indecent proposals to a minor, and photographing a child in an obscene act. Also, we limited our analysis to the actual content of the legislative statutes, and did not code the case law that was sometimes included or referenced. (In a few instances we did consult case law to help us interpret legislative intent.) We assumed that analyzing the content of the legislative statutes was a critical first task, and one that would provide considerable insight into the concerns and goals of state legislators (see Berk *et al.*, 1977). We did note, however, that statutes no longer contained special corroboration requirements (with the occasional exception of states that required this for juveniles) or special provisions for cautionary jury instructions, and that these practices had frequently been eliminated through case law rather than through legislative enactments (see Field, 1983).

[5] A seven-point scale was chosen as this represented a workable range that minimized the loss of important distinctions due to the collapsing of categories. Only four variables required such collapsing.

[6] Berger and Searles collected and coded the statutes, and the final coding decisions were made by consensus after discussion of each entry. (There

B. Description of Variables

Appendix 1 shows the fifteen variables that represent the key components of state rape legislation. It also lists the categories of each variable along with the number and percentage of states that fall within each category. Variables 1–7 represent aspects of the redefinition of the offense, Variables 8–11 describe evidentiary reforms, Variables 12–13 concern statutory age offenses, and Variables 14–15 identify penalties for the offense.

Variable 1 specifies the definition of the primary offense, that is, the offense against an adult that includes what has traditionally been thought of as rape. This continuum ranges from the most traditional statutes, which call the offense "rape" and limit the crime to vaginal penetration, to the statutes most consistent with feminist goals, which call the offense "sexual assault"[7] and define the crime more broadly to include sexual penetration generally (i.e., vaginal, oral, and anal) as well as the touching of intimate body parts.

Variable 2 indicates whether the statute defines rape and sexual assault as a single continuum. The statutes most consistent with feminist goals integrate a wide range of sex offenses within a single offense category, specifying varying degrees of seriousness. More traditional statutes have more than one offense, with at least some of the offenses containing a degree structure. The most traditional statutes contain a number of separate offenses and no degree structure whatsoever.

Variable 3 specifies whether nonconsensual sexual contacts are criminalized. Although all statutes criminalize certain forcible sexual contacts, some statutes do not criminalize sexual penetration or the touching of intimate body parts unless certain extreme circumstances are present (e.g., if the victim was physically forced or threatened, unconscious, or of a very young age). The statutes most consistent with the feminist goal of broadening the offense

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was a total of 765 coded entries.) A substantive check of the placement of statutes into coding categories was made by the staff of *Women's Rights Law Reporter*, which published the state-to-state breakdowns of the laws (see Searles and Berger, 1987). Another trained, independent coder also examined a 15% random sample of statutes. This coder was able to reproduce 113 of the 120 initial placements, yielding a correlation of .925 with the original coding scheme. The difference between the mean codes for the independent and initial codings was not statistically significant.

Two additional, independent coders also rank-ordered the categories of each variable on the traditional-feminist continuum in a manner similar to Thurstone scaling. These coders were able to reproduce the initial rank-ordering with a high degree of reliability; correlation coefficients with the original coding scheme were .961 and .994, respectively.

[7] Instead of sexual assault, some states label their penetration offenses "criminal sexual conduct," "sexual battery," "criminal sexual penetration," "gross sexual imposition," "sexual abuse," or "sexual intercourse without consent" (Searles and Berger, 1987).

criminalize nonconsensual penetration and touching even if extreme circumstances are not present.

Variable 4 delineates the sex classification of the offender and victim. The most traditional statutes define the offender as male and the victim as female, whereas the statutes that reflect feminist goals use sex-neutral terminology for both the offender and victim.

Variable 5 specifies the statutory spousal exemptions for crimes involving adults. The most traditional statutes contain statutory spousal exemptions for all sex offenses. The most feminist-oriented statutes have removed previous exemptions, contain special laws that substitute for the exempted crimes, or include an explicit provision that allows for the prosecution of spouses for all sex offenses. Statutes that fall in between these positions include exemptions for some crimes, are silent regarding spouses, or allow spousal prosecution only for rape or sexual assault under extreme circumstances.

Variable 6 identifies statutory exceptions to the spousal exemptions. The statutes most reflective of feminist goals have no statutory exemptions whatsoever, whereas the most traditional statutes not only have exemptions but also allow no exceptions to these exemptions. Statutes that fall in between either limit the applicability of the exemptions under some circumstances (e.g., when the spouses are living apart) or are silent on the status of spouses.

Variable 7 indicates whether cohabitants and voluntary social companions are exempt from prosecution. In the most traditional statutes, cohabitants are exempt from prosecution and partial immunity is provided for voluntary social companions. In the more feminist-oriented statutes, neither cohabitants nor voluntary social companions are exempt.

Variable 8 describes the admissibility by the defendant of evidence regarding the prosecutrix's past sexual conduct with the defendant. The most traditional statutes have no rape evidence reform provision whatsoever, or else they allow all such evidence to be admitted. The statutes most consistent with feminist goals limit the admissibility of such evidence to prove consent only, and admit such evidence at the trial only after an in-camera hearing determines that the probative value of the evidence outweighs its possible prejudicial impact.

Variable 9 describes the admissibility by the defendant of evidence regarding the prosecutrix's past sexual conduct with persons *other* than the defendant. The most traditional statutes have no rape reform provision, while the statutes most reflective of feminist goals make all such evidence inadmissible. Statutes that fall in between include various restrictions on admissibility (e.g., the evidence is admissible with a hearing to show only an alternative source of semen, pregnancy, injury, or disease).

Variables 10 and 11 specify respectively whether the statute

allows for defenses based on mistake of incapacity or age. Some statutes define certain sexual contacts as criminal when the prosecutrix is deemed unable to consent due to incapacity (e.g., mental defect or unconsciousness), while they all prohibit sexual activity with persons under a certain age. The defenses allow a defendant to argue that he or she was unaware of the prosecutrix's incapacity to consent or underage status. The most traditional statutes specifically provide a mistake of incapacity or age defense for rape and sexual assault, whereas less traditional statutes offer a general mistake of fact defense that can be used to argue mistake as to incapacity or age. The statute most consistent with feminist goals does not allow either of these defenses.

Variable 12 specifies the age below which sexual activity is prohibited. Sexual penetration of a youth below this age is automatically an offense.[8] Some statutes refer to this age as the age of consent. This variable is coded in numerical progression from the lowest to highest age. Higher ages provide relatively more protection for children but restrict consensual teenage sex. Variable 13 indicates those states that specify an additional lower age(s) that automatically increases the seriousness of the charge or the penalty for sexual penetration or both.[9]

Variable 14 defines the minimum period of incarceration for the most serious offense (not including aggravating circumstances). This variable is coded in numerical order from the lowest possible period of incarceration (an unspecified minimum) through a term of life without the possibility of parole.

Finally, Variable 15 defines the maximum period of incarceration for the most serious offense (including aggravating circumstances). This variable is coded in numerical order from the lowest possible period of incarceration (nine years) through the maximum penalty of life without the possibility of parole or, in a few cases, death.

V. RESULTS OF FACTOR ANALYSIS

This study reports the results of principal components analysis with varimax rotation. A five-factor solution accounting for 62.4

[8] In these cases age itself automatically defines the crime irrespective of other circumstances (e.g., force or injury). However, some states pair the prosecutrix's age with a specific age range for the offender, or with the specification that the offender knew or should have known that the prosecutrix was underage. In addition, some states specify that the prosecutrix is not the offender's spouse or cohabitant, or that she is unmarried or of a previous chaste character. Some states also set a higher age when the offender is the prosecutrix's guardian, is responsible for the supervision of or has authority over the prosecutrix, is related by blood or marriage, or resides in the same household. Variables 12 and 13 refer to felony offenses only.

[9] Some states pair this lower age with a specific age range for the offender or with the specification that the offender is not the prosecutrix's spouse.

Table 1. Dimensions of Rape Legislation (Principal Components, Varimax Rotation)

Variable	Factor 1 (Definition)	Factor 2 (Spouse-Penalty)	Factor 3 (Consent)	Factor 4 (Age)	Factor 5 (Evidence)
Definition of offense	(.882)	.174	.048	−.084	.098
Single continuum	(.567)	−.032	−.231	.065	−.095
Criminalization of nonconsensual contact	(−.362)	.087	(−.540)	−.049	−.222
Sex classification	(.817)	−.011	.031	−.100	.111
Spousal exemption	.067	(.714)	−.176	.006	.144
Exceptions to exemption	.008	(.716)	(.474)	.059	−.071
Exemption of cohabitants	−.004	.089	(.595)	(.425)	−.212
Evidence of sex conduct with defendant	.017	.069	−.032	−.065	(.840)
Evidence of sex conduct with others	.073	.001	.062	−.007	(.810)
Mistake of incapacity	−.131	−.126	(.728)	−.152	.232
Mistake of age	−.242	−.103	(.548)	−.060	−.283
Highest age	−.172	.105	.081	(.840)	−.044
Lower age	.076	−.147	−.115	(.891)	.009
Minimum penalty	.105	(−.707)	−.017	.040	−.003
Maximum penalty	−.199	(−.619)	.281	.008	.027
Eigenvalues*	2.49	1.96	1.85	1.67	1.39
Percent of variance	16.6%	13.1%	12.3%	11.1%	9.3%

* Eigenvalues and percent of variance are reported for the unrotated matrix.

percent of the total variance provided the "cleanest" and most parsimonious representation of the data.[10] The results demonstrate that national patterns of state rape legislation can indeed be characterized by several distinct dimensions and that different aspects of rape law reform have not gone hand-in-hand. Table 1 presents the rotated matrix of the factor-loading estimates.[11]

The factors in this study represent the underlying dimensions of rape reform legislation. Factor 1 (Definition) constitutes a dimension of rape legislation that includes four variables related to the redefinition of the offense. Factor 1 represents statutes likely to contain sexual assault terminology and to include touching as well as penetration in the offense (Variable 1), to define a degree structure or a single continuum of sexual assault (Variable 2), and to utilize sex-neutral terminology in defining offenses (Variable 4). Although this dimension reflects statutes that incorporate a femi-

[10] Four- and six-factor solutions were also examined.

[11] We used factor loadings greater than .361 ($1 - \sqrt{N} \times 2.58$; $p < .01$) to identify the variables most strongly associated with each factor. Data analyses using unweighted least squares and alpha factoring techniques as well as oblique rotation did not reveal any substantive differences in the composition of factors (see Kim and Mueller, 1978, on different types of factor analysis). In addition, factor loadings computed with an ordinal rather than a standardized interval scale (e.g., variables coded as 1, 2, and 3 instead of 1, 4, and 7) did not produce any significant changes in the results.

nist conceptualization of these three aspects of the offense, the statutes are also likely to retain a traditional component: They do not criminalize nonconsensual sexual contacts in the absence of physical force or other extreme circumstances (Variable 3).[12]

Moreover, statutes represented in Factor 1 have not necessarily removed the spousal exemption (see Factor 2). While redefinition of the offense was one of the central goals of rape reform legislation, the factor analysis indicates that different elements of the redefinition of the offense do not constitute a single dimension of rape legislation. In addition, statutes that adopt sexual assault terminology, define the offense with a continuum of acts, and contain sex-neutral terminology have not necessarily adopted the key evidentiary reforms advocated by feminists, that is, limitations on the admissibility by the defendant of evidence of the prosecutrix's past sexual conduct with the defendant and with others (see Factor 5).

Factor 2 (Spouse-Penalty) represents statutes with a feminist position on the status of spouses (i.e., the relative absence of spousal exemptions [Variable 5] and the inclusion of relatively broad exceptions when exemptions are present [Variable 6]), as well as those statutes with relatively low minimum and maximum penalties (Variables 14 and 15). This dimension of rape legislation reflects statutes that have removed the traditional immunity for spouses but that have offset this change by providing relatively low penalties for conviction. This factor represents a feminist approach in that it expands the range of offenders who can be prosecuted. Insofar as it provides low penalties, it is consistent with the view held by some feminists that lower penalties increase the likelihood of conviction (Bienen, 1980a). These spouse-related provisions are the only aspects of rape reform legislation that go hand-in-hand with a particular penalty structure.

Factor 3 (Consent) includes statutes that tend to be consistent with a feminist position on cohabitants and on exceptions to the exemption. These statutes allow the prosecution of a nonspouse who was cohabitating with the prosecutrix (Variable 7), and they provide relatively broad exceptions to the spousal exemption if an exemption is present at all (Variable 6). It is important to note that the primary spousal exemption variable (Variable 5) is not included on this factor. In other words, Factor 3 does not necessarily represent statutes that have removed the spousal exemption. Rather, the tendency to omit an exemption for unmarried cohabitants while revoking the exemption for noncohabitating or legally separated spouses suggests that statutes represented by this dimension tend to allow spousal immunity only when both de jure and de facto marriage are present.

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[12] This variable, as well as Variables 6 and 7, does not have a pure simple factor structure (see Kim and Mueller, 1978), but is associated with more than one dimension.

Factor 3 also includes statutes that tend not to criminalize sexual contacts unless extreme circumstances (e.g., physical force) are present (Variable 3). This dimension is thus somewhat consistent with the feminist goal of expanding the category of potential *offenders*, but not with the goal of expanding the types of sexual *contacts* that could constitute an offense. While unmarried cohabitants and separated spouses tend not to have prosecutorial immunity, they will only be prosecuted when extreme circumstances are present.

Factor 3 is also consistent with a feminist position on two secondary evidentiary variables, as it represents statutes that tend not to allow a mistake of incapacity or age defense (Variables 10 and 11). In other words, these statutes do not assume that the defendant's alleged misperception of the prosecutrix's incapacity or age should assuage his guilt. This exclusion of the two mistake defenses somewhat offsets the traditional limitation on prosecutable acts. Although only acts involving extreme circumstances can be prosecuted, the defendant is not given the additional benefit of the doubt contained in these defenses.

Factor 3 has been labeled the "Consent Dimension" because the five variables it encompasses are all related to the issue of consent. Variable 3 specifies whether nonconsensual penetration or touching is criminalized. The variables that indicate if statutes make exceptions to the spousal exemption or extend the spousal exemption to cohabitants are also relevant to the issue of consent because the traditional spousal exemption has been based upon the belief that when a woman marries she impliedly and irrevocably consents to the sexual advances of her husband (Price, 1984). Finally, the two mistake variables specify whether a defense can be made on the grounds that the offender was unaware of the prosecutrix's inability to consent due to incapacity or age.

Factor 4 (Age) includes the two variables that are related to statutory age offenses. It represents statutes that set a relatively high age below which sexual penetration is automatically an offense (Variable 12) and that also tend to specify an additional lower age(s) that increases the seriousness of the charge or penalty or both (Variable 13). This dimension represents a legislative strategy that provides relatively greater protection for children while restricting consensual teenage sex. However, these statutes offset this restriction somewhat by providing a lesser charge or penalty or both for offenses involving older minors. They define age-related violations less seriously as the age of the minor increases.

The dimension related to statutory age offenses does not include other feminist reforms. Particularly notable is the fact that it does not include either the mistake of age variable (see Factor 3) or sex-neutral terminology (see Factor 1). Although statutes represented by this dimension aim to protect children, traditional ele-

ments have not necessarily been removed. These statutes may not preclude a mistake of age defense, and because they are not necessarily sex-neutral, the double standard and focus on the consensual sexual activity of underage females may remain.

Statutes that eliminate the mistake of incapacity and age defenses do not necessarily contain the primary evidentiary reforms advocated by feminists. These latter reforms are included in Factor 5 (Evidence), a dimension of rape legislation that represents statutes likely to limit the admissibility by the defendant of evidence regarding the prosecutrix's past sexual conduct with both the defendant and others (Variables 8 and 9). These evidentiary reforms have been among the most widely publicized aspects of rape reform legislation. However, the absence of other feminist reforms on this dimension suggests that legislators willing to pass procedural reforms have often done so without embracing the broader conceptualization of reform advocated by feminists.

The factor analysis provides clear evidence that reforms that have reached the statute books in different localities are extremely varied. Rape law reform has been rather piecemeal, and statutes that contain reforms on certain dimensions do not necessarily contain reforms on others. The factor scores[13] for each state on the different dimensions of rape legislation (see Appendix 2) indicate the degree to which traditional and feminist elements continue to coexist in many statutes. Our analysis suggests that researchers evaluating the impact of rape law reform in different states should not assume that any given state has reformed its statutes across all dimensions, that all reform statutes are comparable, or that findings in one state can be generalized to other states. For instance, a comparison of the factor scores for the three states previously evaluated in impact studies—Michigan, Washington, and California—indicates considerable variation in the degree to which their statutes have been reformed along the different dimensions of the law.

Our findings also cause us to question the characterization of Michigan as the "model" rape reform statute (see Caringella-MacDonald, 1984; Marsh *et al.*, 1982). The state's factor scores are *not* consistently high across all dimensions that reflect feminist reforms.[14] Although its statute is feminist with respect to reforms

[13] We used the regression method for computing factor scores to estimate the association between a specific case (i.e., state) and each factor. While the decision to utilize the 1 to 7 scale for variables with fewer than seven categories does not affect the factor loadings since correlational measures are independent of origin or unit of measurement (see n.11 above), attributing ratio properties to the ordinal scale may affect the factor scores. Thus, we also computed factor scores using an ordinal scheme. These factor scores were highly correlated with the factor scores reported in Appendix 2; the correlations were .998, .999, .994, .997, and .997 for Factors 1, 2, 3, 4, and 5, respectively.

[14] In fact, Michigan's factor score is in the top 10% on only one dimension that reflects feminist reform—Factor 1. Its low factor score on Factor 2 re-

directed at cases of "classic" rape, it is traditional with respect to feminist goals of broadening the range of prosecutable offenses and offenders (see Estrich, 1987). Thus Michigan may represent a "model" statute only insofar as it contains the particular mix of traditional and reform elements that state legislators may find acceptable.

VI. DISCUSSION

The coexistence of traditional and feminist elements in contemporary rape statutes is symbolic of the current status of women. While progress has undoubtedly been made toward achieving legal and social equality for women, many legislators have been reluctant to pass laws that challenge certain basic assumptions about men's and women's roles and social relationships. For instance, statutes that remain traditional regarding offenses with persons previously known to the victim (e.g., spouses) continue to maintain the distinction between the private and public realms of women's activities that has been central to the maintenance of patriarchal relationships (Polan, 1982; Taub and Schneider, 1982). The absence of legal regulation in the private realm (e.g., spousal exemptions) gives license to men's exploitation of women within the family and reinforces the traditional assumption that men's dominant and women's subordinate social statuses are the result of "natural" biological and psychological differences (Schwartz and Slatin, 1984).

Removal of the spousal exemption has been one of the most difficult law reforms to accomplish. Legislators often cling to traditional justifications for a marital rape exemption (e.g., that a wife's consent to sex is irrevocable) and often fear that its removal will invite false rape claims by angered or vengeful wives (Lawson, 1984; Marsh *et al.*, 1982; Price, 1984). Legislators have been particularly fearful that removal of the spousal exemption would make the reconciliation of estranged couples less likely and enable wives to win unjust property settlements and custody disputes during divorce proceedings. Thus the persistence of the exemption is not merely the result of "historical inertia" (see Schwartz and Slatin, 1984), but also a reflection of legislators' desire to maintain the dis-

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flects the fact that the statute contains a spousal exemption for all crimes, unless the spouses are living apart *and* one of them has filed for separate maintenance or divorce. Michigan's factor score on Factor 5 is also not particularly high. The state's evidentiary reforms place substantive limits on the admissibility of evidence regarding past sexual conduct only with persons *other* than the defendant but not with the defendant. (Evidence of conduct with persons other than the defendant is admissible only to show the source of semen, etc., and a hearing is required; evidence of conduct with the defendant is admissible with a hearing.) This discrepancy suggests that Michigan's evidentiary reforms are directed primarily at offenses by persons not previously known to the victim. In addition, the statute does not criminalize either nonconsensual penetration or touching.

tinction between private and public spheres and to preserve the traditional family unit.

The desire to protect spouses' immunity is likewise related to a more general reluctance to use the law to regulate sex offenses involving offenders acquainted with the victim. For example, some states have extended the spousal exemption to cohabitants and, for certain crimes, to voluntary social companions as well (Finkelhor and Yllo, 1985; MacKinnon, 1983; Searles and Berger, 1987). This practice, in conjunction with the trend to revoke the exemption for noncohabitating spouses, indicates that the right to immunity is coming to be defined less on the basis of a legal relationship and more on the basis of contemporary sexual conventions.

States have also been rather reluctant to place limitations on the admissibility of evidence regarding the prosecutrix's prior social interaction with the defendant, on the assumption that past contact is relevant to the issue of consent. The admissibility of this evidence is crucial, for as MacKinnon (1983) observes, when indexes of closeness (e.g., marriage or dating) or prior social interaction (e.g., the victim's acquaintance with the accused) are taken as evidence of the victim's behavior during the offense, many common types of coercive sexual encounters go unregulated by law (also see Estrich, 1987).[15] Loh (1981: 48) represents a common point of view when he argues that although prior social interactions should not necessarily exonerate an offender, the law must nevertheless "take into account the difference in moral culpability and dangerousness to society of an actor who has had prior social contact with a victim, and one who selects an unknown victim at random." Furthermore, insofar as the law defines the offense in terms of the accused's possession of criminal intent (*mens rea*), indexes of closeness and prior social interaction can be used by defendants to persuade judges and juries that they believed the woman had consented. According to MacKinnon (1983: 652), although "the injury of rape lies in the meaning of the act to its victims, . . . the standard for its criminality lies in the meaning of the same act to the assailants."

MacKinnon (ibid., p. 649) critiques the present-day legal framework, arguing that the law merely attempts to adjudicate "the level of acceptable force starting just above the level set by what is seen as normal male sexual behavior." In a society in which men are socialized to be the sexual aggressors, to expect women to be coy and reluctant, and even to dismiss women's protests,

[15] Recent research suggests that most coercive sexual encounters are not "classic" rapes. For instance, Russell (1984) found that only 12% of the perpetrators in cases of completed rape were strangers and that women were actually more likely to be raped by their husbands or exhusbands or lovers or exlovers than by strangers (also see Berger *et al.*, 1986; Estrich, 1987; Finkelhor and Yllo, 1985; Russell, 1982).

MacKinnon notes that it is difficult to determine just how much resistance is required for women to communicate effectively to men that they have not given their consent or that they have withdrawn it. Under these circumstances, women often feel confused and unsure of how to stop the aggression. Fearing the risk of bodily injury or humiliation, some women fail to persist in their resistance (see Berger *et al.*, 1986; Estrich, 1987). This may be acquiesence but it is not consent, for consent entails a freely given agreement. As MacKinnon (ibid., pp. 651–53) notes:

> [T]he distance between most sexual violations of women and the legally perfect rape measures the imposition of someone else's definition upon women's experiences. Rape, from women's point of view, is not prohibited, it is regulated. . . . [While] many women are raped by men who know the meaning of their acts to women and proceed anyway, . . . women are also violated . . . by men who have no idea of the meaning of their acts to women. To them, it is sex. Therefore, to the law it is sex.

Although legislators have removed proof-of-resistance requirements from rape laws, in practice it has been difficult to distinguish forced acquiesence from freely given consent, and legislators have been reluctant to criminalize contacts not involving clearly demonstrable force, threat of force, or other extreme circumstances. Only a small percentage of states criminalize nonconsensual sexual penetration and touching (see Appendix 1). Most require force or other extreme circumstances (e.g., an unconscious or mentally incapacitated victim) to define the act as a crime. Although prosecution of nonconsensual sex acts is difficult (and these crimes are often used for plea bargaining as they provide lesser penalties), the presence of these offenses in the criminal code sends an important symbolic message that this sexual conduct is neither tolerable nor appropriate (Estrich, 1987).[16] States that criminalize nonconsensual conduct go further in incorporating the feminist view that rape takes many forms, from coercive contacts to brutal, violent attacks.

VII. CONCLUSION

Rape law reform is a necessary but by no means sufficient measure to address the complex problem of rape. Feminist law reformers had hoped the new laws would fundamentally change the perceptions of criminal justice personnel and jurors, but they had overestimated the law's capacity to alter significantly "the boundaries of sanctioned behavior towards women" (Marsh *et al.*, 1982:

[16] Some feminists favor law reforms that delineate "criminal circumstances" and remove "without consent" terminology in order to focus attention on the offender's rather than the prosecutrix's behavior. They believe that protecting the victim at trial outweighs the symbolic significance of criminalizing some coercive sex acts that are in fact rarely prosecuted.

107; see also Price, 1984). Legislators have been motivated largely by a desire to clean up statutory inconsistencies and the "hodgepodge" of sex offense laws (Lawson, 1984: 7), and criminal justice personnel have been interested primarily in reforms that provide them with clear guidelines and that involve specific procedural changes that increase the efficiency of the criminal justice system. These groups have been generally less interested in reforms that alter traditional conceptions of rape and challenge ideologies that reinforce women's experience of victimization.

The ability of feminists to influence the nature of rape law reform has thus been constrained by the ideologies and social control objectives of the criminal justice personnel and nonfeminist political groups that formed the basis for the coalitions that made reforms possible (Marsh *et al.*, 1982). While feminists in some states have succeeded in pushing through laws more consistent with their goals, only limited research is available to help us understand the actual *process* of rape law reform. Our study has helped to clarify the legislative *outcomes*, but we need to know more about the particular coalitions in different states and the relative influence of different groups (e.g., feminists, "law and order" advocates, and civil libertarians) that are associated with particular legal reforms. For instance, we have not yet been able to demonstrate whether evidentiary reforms that reflect feminist goals actually resulted from the desire to implement feminist reforms or the willingness of conservative legislators to restrict the rights of defendants. Nor are we certain whether the tendency to offset one provision with another (see Table 1, Factors 2, 3, and 4) was a conscious attempt to balance provisions of the law or the result of negotiated compromises. Similarly, we do not know whether provisions in the area of statutory age offenses were primarily the result of attempts to reconcile the need to protect children with the desire to allow consensual teenage sex or to protect males from false reports by females (see Bienen, 1980a). Finally, we do not know the extent to which the dimensions of rape reform legislation we have identified are the product of piecemeal, fragmented legislative reform processes rather than legislators' support of or resistance to feminist influences.

In addition, future research should examine the characteristics of states and regions associated with various legislative outcomes and particular configurations of traditional and feminist elements in rape law. For example, do states in which women have higher socioeconomic status or greater political participation have more feminist laws? Are certain sociocultural variables (e.g., the degree of religiosity, the tolerance of alternative sexual life styles, or the support for nontraditional gender roles) related to particular types of rape laws? Are reforms in others areas of the law (e.g., divorce

law) related to reforms in the area of rape? Do state variations in legal culture influence the nature of rape laws?[17]

Research along these lines would contribute to an understanding of both rape law reform in particular and the dynamics of legal change in general. Our study does, however, underscore a point relevant to reform in other areas of the law. For progressive social movements to succeed in instituting law reform, they must form political coalitions and offer a legislative agenda attractive to legislative sponsors who hold more traditional ideologies than the movement participants. Such coalitions will likely result in piecemeal reforms and dilution or cooptation of movement ideals and goals. On the other hand, if movements are unable to attract the interest of dominant groups, they may fail to achieve any success at all.

[17] For instance, some states may emphasize case law rather than legislative enactments as a means to redress outdated legal traditions in the handling of rape cases. States may also differ in terms of the degree to which the lay (general public) and internal (professional) legal cultures serve as barriers or stimuli to reform (see Friedman, 1977; 1984).

APPENDIX 1. Coding and Distribution of Variables*

Variable			Number	Percent
1. *Definition of major offenses*				
1.	(1)	Rape limited to vaginal penetration	17	33.3
2.	(3)	Rape limited to penetration	11	21.6
3.	(5)	Sexual assault limited to penetration	13	25.5
4.	(7)	Sexual assault includes penetration and touching	10	19.6
2. *Statute defines a single continuum of rape and sexual assault*				
1.	(1)	No	10	19.6
2.	(4)	No—but has some degree structure	34	66.7
3.	(7)	Yes	7	13.7
3. *Criminalization of nonconsensual contacts*				
1.	(1)	Neither nonconsensual penetration nor touching is a crime	31	60.8
2.	(3)	Nonconsensual penetration only is a crime	5	9.8
3.	(5)	Nonconsensual touching only is a crime	12	23.5
4.	(7)	Both nonconsensual penetration and touching are crimes	3	5.9
4. *Sex classification of offender and victim*				
1.	(1)	Male offender and female victim	13	25.5
2.	(4)	Male offender and male or female victim	1	2.0
3.	(7)	Sex-neutral terminology for both offender and victim	37	72.5
5. *Statutory spousal exemptions for crimes involving adults*				
1.	(1)	Statutory exemption for all crimes	12	23.5
2.	(2)	Statutory exemption for some crimes, including rape	3	5.9
3.	(3)	Statutory exemption for rape only	3	5.9
4.	(4)	Statutory silence on spousal exemption	2	3.9
5.	(5)	Statutory exemption for some crimes, but no statutory exemption for rape with force, injury, etc.	19	37.3
6.	(6)	Statutory removal of previous exemption or special law which accommodates exempted crime	8	15.7
7.	(7)	Statutory provision allowing spousal prosecution for all crimes	7	7.8
6. *Statutory exceptions to spousal exemptions*				
1.	(1)	No exceptions to the exemption	6	11.8
2.	(2)	Not applicable if living apart and have a legal written agreement	15	29.4
3.	(3)	Not applicable if have a legal written agreement	3	5.9
4.	(4)	Statutory silence on spousal exemption	2	3.9
5.	(5)	Not applicable if living apart	6	11.8
6.	(6)	Not applicable if living apart or have a legal written agreement	8	15.7
7.	(7)	No statutory exemption	12	23.5
7. *Exemptions for cohabitants and voluntary social companions*				
1.	(1)	Exemption for cohabitants; partial immunity for voluntary social companions	2	3.9
2.	(2)	Exemption for cohabitants	8	15.7
3.	(5)	No exemption for cohabitants; reduced penalty for voluntary social companions	2	3.9
4.	(7)	No exemption for cohabitants	39	76.5

		Variable	Number	Percent
8.		*Admissibility by defendant of evidence regarding past sexual conduct with defendant*		
1.	(1)	No rape evidence reform statute	8	15.7
2.	(2)	Admissible without hearing	11	21.6
3.	(3)	Admissible with hearing for some purposes, without hearing for other purposes	4	7.8
4.	(4)	Admissible with hearing	21	41.2
5.	(5)	Admissible without hearing only to prove consent	2	3.9
6.	(6)	Admissible with hearing only to prove consent	5	9.8
9.		*Admissibility by defendant of evidence regarding past sexual conduct with persons other than defendant*		
1.	(1)	No rape evidence reform statute	8	15.7
2.	(2)	Admissible with hearing for consent, without hearing for other purposes	2	3.9
3.	(2)	Admissible with hearing	13	25.5
4.	(3)	Inadmissible to prove consent; admissible without hearing for other purposes	1	2.0
5.	(3)	Admissible with hearing to show source of semen, etc., and either consent or ulterior motives; inadmissible for credibility	5	9.8
6.	(4)	Admissible without hearing for consent; inadmissible for other purposes	2	3.9
7.	(5)	Admissible with hearing for either consent, credibility, or fabrication; inadmissible for other purposes	6	11.8
8.	(6)	Admissible only to show source of semen, etc., and past false allegation—hearing required	1	2.0
9.	(6)	Admissible only to show source of semen, etc.—hearing required	6	11.8
10.	(7)	All evidence inadmissible except evidence of prior untruthful allegations—no hearing required	1	2.0
11.	(7)	All evidence inadmissible	6	11.8
10.		*Mistake of incapacity defense*		
1.	(1)	Specific defense available	9	17.6
2.	(2)	General mistake defense available	5	9.8
3.	(4)	Statutory silence	36	70.6
4.	(7)	No defense available	1	2.0
11.		*Mistake of age defense*		
1.	(1)	Specific defense available	19	37.3
2.	(2)	General mistake defense available	3	5.9
3.	(4)	Statutory silence	21	41.2
4.	(7)	No defense available	8	15.7
12.		*Highest age below which age of prosecutrix automatically makes sexual penetration an offense*		
1.	(1)	Thirteen	2	3.9
2.	(2)	Fourteen	3	5.9
3.	(3)	Fifteen	4	7.8
4.	(4)	Sixteen	31	60.8
5.	(5)	Seventeen	4	7.8
6.	(6)	Eighteen	7	13.7
13.		*Statute specifies lower age(s) of prosecutrix that automatically increases seriousness of charge or penalty for offense involving sexual penetration*		
1.	(3)	No	16	31.4
2.	(5)	Yes	35	68.6

APPENDIX 1 (Continued)

Variable			Number	Percent
14. *Minimum period of incarceration for most serious offense*				
1.	(1)	Unspecified (any term of years)	18	35.3
2.	(2)	One to two years	6	11.8
3.	(3)	Three to four years	3	5.9
4.	(4)	Five to six years	12	23.5
5.	(5)	Ten to twelve years	6	11.8
6.	(6)	Fifteen years	1	2.0
7.	(6)	Twenty years	2	3.9
8.	(7)	Life	1	2.0
9.	(7)	Life without parole	2	3.9
15. *Maximum period of incarceration for most serious offense*				
1.	(1)	Nine years	1	2.0
2.	(2)	Fourteen years	1	2.0
3.	(3)	Twenty years	8	15.7
4.	(4)	Twenty-four to twenty-five years	5	9.8
5.	(5)	Thirty years	3	5.9
6.	(6)	Forty years	1	2.0
7.	(6)	Forty-eight to fifty years	4	7.8
8.	(7)	Sixty years or life	21	41.2
9.	(7)	Life without parole	3	5.9
10.	(7)	Death	4	7.8

* The numbers in parentheses reflect the interval coding scale.

APPENDIX 2. Rank-Ordered Factor Scores of States

Factor 1		Factor 2		Factor 3		Factor 4		Factor 5	
State	Score	State	Score	State	Score	State	Score	State	Score
WY	1.79	WI	1.89	MA	1.76	OR	1.47	WV	2.06
MN	1.50	OR	1.88	FL	1.48	TN	1.27	PA	2.01
NH	1.48	ME	1.70	DC	1.31	CA	1.23	IL	1.48
MI	1.39	CA	1.59	NE	1.19	MS	1.20	MT	1.43
RI	1.20	VT	1.50	NC	1.11	ID	1.18	VA	1.40
AK	1.15	PA	1.36	TX	1.10	AZ	1.14	NE	1.39
CT	1.13	NH	1.26	LA	1.07	MO	1.12	IN	1.35
WI	1.09	NJ	1.08	OK	1.04	FL	1.06	AL	1.22
NM	.89	AK	1.07	NM	1.02	NY	.86	OH	1.01
NJ	.85	NE	1.06	RI	1.01	LA	.85	CA	.94
CO	.82	MA	1.01	GA	.96	TX	.77	WA	.93
IA	.81	FL	.87	ID	.96	AR	.73	DE	.90
WV	.76	GA	.76	SD	.82	WA	.72	NJ	.77
VT	.73	HI	.53	NH	.80	NJ	.70	MA	.72
IL	.68	MS	.51	TN	.65	WI	.63	MI	.61
NE	.67	MT	.51	NV	.63	IL	.60	GA	.52
TX	.66	NY	.44	CA	.62	WY	.52	MN	.47
SC	.61	MN	.44	MI	.59	OH	.52	VT	.39
AR	.56	CT	.43	VT	.56	NH	.52	SC	.30
AZ	.55	SD	.30	SC	.53	IN	.50	LA	.22
HI	.43	KS	.29	VA	.48	AK	.47	NH	.21
OK	.41	DC	.24	AK	.46	MI	.46	ID	.20
FL	.41	ID	.19	AZ	.42	WV	.37	AK	.14
TN	.37	ND	.18	MS	.34	OK	.37	ND	.14
SD	.30	AZ	.14	KS	.27	RI	.34	MD	.03
NC	.20	WA	.06	CO	.19	MD	.34	AR	.00
ND	.20	RI	−.21	IN	.16	SC	.33	TN	−.01
WA	.08	CO	−.22	WY	.03	SD	.32	KY	−.08
OH	−.06	NM	−.36	IL	.01	UT	.25	TX	−.19
NV	−.08	WY	−.37	MT	.00	VA	.15	SD	−.27
MT	−.12	OH	−.42	AL	−.02	KY	.13	KS	−.33
LA	−.13	SC	−.48	MD	−.21	ME	.11	MO	−.39
KY	−.29	MD	−.49	NJ	−.23	IA	.02	WI	−.46
UT	−.50	VA	−.54	OH	−.43	MN	.01	NV	−.46
IN	−.50	UT	−.58	ME	−.62	AL	−.39	NM	−.56
CA	−.63	OK	−.63	UT	−.67	VT	−.64	OK	−.63
MA	−.66	WV	−.66	PA	−.80	NE	−.67	CT	−.68
DE	−.73	TX	−.67	DE	−.90	KS	−.73	MS	−.68
PA	−.84	NV	−.71	AR	−.99	MA	−.88	FL	−.68
VA	−1.10	IA	−.74	NY	−1.01	NV	−.93	WY	−.69
OR	−1.12	IL	−.82	IA	−1.05	DC	−1.00	RI	−.80
MO	−1.14	IN	−.83	MN	−1.06	DE	−1.10	ME	−1.02
GA	−1.19	MI	−.87	WI	−1.10	MT	−1.19	CO	−1.10
NY	−1.30	AR	−.90	WA	−1.13	ND	−1.21	AZ	−1.11
MS	−1.34	MO	−1.03	ND	−1.15	CO	−1.24	IA	−1.22
MD	−1.51	DE	−1.09	OR	−1.35	GA	−1.44	HI	−1.27
KS	−1.52	KY	−1.46	HI	−1.40	CT	−1.52	NY	−1.37
ME	−1.68	LA	−1.63	MO	−1.44	NM	−2.03	DC	−1.46
ID	−1.68	TN	−1.72	WV	−1.88	PA	−2.04	OR	−1.55
DC	−1.69	AL	−1.81	CT	−2.06	HI	−2.11	NC	−1.86
AL	−1.92	NC	−2.04	KY	−2.10	NC	−2.16	UT	−1.96

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